

# SOLID WASTE SERVICE AGREEMENT AND ISSUES TO CONSIDER

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT	ISSUES TO CONSIDER
Title	<b>SOLID WASTE SERVICE AGREEMENT</b>	<p>The title makes it clear what the Agreement is about</p>
Date	This agreement made this <i>[day]</i> of <i>[month, year]</i>	<p>Date Agreement signed</p>
Who are the Parties to the Agreement	<p><b>BETWEEN:</b>  <i>[NAME OF MUNICIPALITY]</i>  <i>[Address]</i></p> <p>(hereinafter called the "Municipality")</p> <p><b>AND:</b>  <i>[NAME OF FIRST NATION]</i>  <i>[Address]</i></p> <p>(hereinafter called the "First Nation")</p> <p>(collectively, the "Parties")</p>	<p>Presumably this will be at least one First Nation and one Municipality, but consider whether there are additional parties that should be included. This might include a regional government, or other neighbouring communities. Indigenous and Northern Affairs Canada will likely not be a party to the agreement. First Nations generally have legal capacity to enter into contracts in their own right.</p>
Whereas clauses	<p><b>WHEREAS:</b></p> <p>A. The First Nation's Band Council has approved this Service Agreement by passing Band Council Resolution <i>[Name of Resolution]</i> at its meeting held on <i>[Date]</i> in accordance with the provisions of the Indian Act, R.S.C. 1985, c. I-5. A certificate of the Band Council Resolution is attached to this Service Agreement as Schedule <i>[Name of Schedule]</i>.</p> <p>B. The Municipal Council has approved this Agreement by passing By-law No. <i>[Number of By-law]</i> at its meeting held on <i>[Date]</i>. A copy of the By-law is attached to this Service Agreement as Schedule <i>[Name of Schedule]</i>.</p> <p>C. The First Nation is responsible for the administration and control of Reserve Lands.</p> <p>D. The Municipality and the First Nation have reached an agreement whereby the First Nation will pay the Municipality to provide Solid Waste Services to the Lands.</p> <p>E. The said Parties deem it to their mutual interest to enter into this agreement.</p>	<p>This section is dedicated to the high level principles and objectives the agreement will address.</p> <p>It is also the place to reference mandating documents for the agreement, for example Band or municipal council resolutions or by-laws.</p>
A standard enactment clause	<p><b>THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained the sufficiency which is hereby acknowledged, the PARTIES hereto agree as follows:</b></p>	<p>This can be copied as is into the agreement.</p>

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
Definitions section	<p><b>1.0 DEFINITIONS</b></p> <p>1.1 In this agreement, including this section, the recitals and schedules hereto, unless the context otherwise requires:</p> <p><b>“Annual Fee”</b> has the meaning ascribed in Section 4.</p> <p><b>“Lands”</b> means the lands outlined in Schedule [Number of Schedule] and includes anything within the boundaries of those lands.</p> <p><b>“Leasehold Land”</b> means any areas of the Reserve that is leased under the provisions of the Indian Act, RSC 1985, c. 1-5 to any non-Band members at any time during the Term.</p> <p><b>“Leaseholder”</b> means a tenant or occupier of leasehold land.</p> <p><b>“Reserve”</b> means the [Name of First Nation] which is a reserve within the meaning of the <i>Indian Act</i> R.S.C. 1985, c. 1-5.</p> <p><b>“Service Agreement”</b> means this agreement, including the recitals and schedules hereto, as amended and supplemented from time to time.</p> <p><b>“Serviced Properties”</b> has the meaning ascribed in Section 3.2.</p> <p><b>“Solid Waste Services”</b> means, where appropriate, the gathering, transporting, separating, sorting, selling, processing, and disposing of wastes, refuse trash, garbage and recyclables.</p> <p><b>“Term”</b> means a period of time which this Agreement remains in force and effect, as described in Section [Number of section which describes the term of the agreement].</p>

## ISSUES TO CONSIDER

Are there specific terms that should be defined in the agreement?

A definition section is sometimes included in the contract to either provide greater clarification of a term (for example, “reserve” means R1 and R2 at ABC First Nation) or to create short forms for complex ideas that are contained in the agreement (for example, “agreement” means this agreement including all the recitals and schedules hereto, as amended and supplemented from time to time).

There is no need to define every term, just those that might cause confusion or would make the agreement easier to read and follow.



SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
<p><b>Duration of the Agreement</b></p>	<p><b>2.0 TERM</b></p> <p>2.1 Subject to earlier termination under paragraph 2.2 this agreement commences on <i>[Date of Agreement]</i> and shall continue to <i>[End date parties agree upon]</i> and may be renewed in accordance with Section 2.3 below. Subject to termination under Section 2.2 or paragraph 7.1 below.</p> <p>2.2 This agreement may be terminated on <i>[Number of months/year(s)]</i> of written notice by a Party, at their sole discretion.</p> <p>2.3 If the First Nation fulfils the terms and conditions of this Agreement so as to be on good standing with the Municipality, the First Nation shall have an option to renew the Agreement for <i>[number of terms this agreement can be renewed]</i> additional terms of <i>[term of the agreement]</i> years each, and may exercise such option by providing the Municipality written notice at least <i>[minimum number of months' notice]</i> months in advance of the expiry of the initial Term or any renewal term. The same terms and conditions as outlined in this Agreement shall apply to each renewal term. Failure to provide such notice shall extinguish the renewal option under this agreement.</p>

## ISSUES TO CONSIDER

When will the agreement take effect?

Examples might include immediately on signing, a specific date in the future (i.e., Thursday March 31, 2018), or upon something else happening (i.e., two days after the new solid waste site is completed and has passed inspection).

Answers to this question are dependent on many factors including whether infrastructure is already in place, whether there is already informal sharing of services, or whether you need time to get things ready for implementation.

When does the agreement end?

- You may want to include a specific end date for the agreement, perhaps because you want to see how it works before committing to a long-term open-ended agreement;
- Or perhaps you are comfortable working together and are happy to sign a long term agreement with no specified end date, but that can be cancelled by either party with sufficient notice;
- The term of the agreement may also be dependent on the type of funding arrangement between INAC and the First Nation.

Can the agreement be renewed?

- Consider whether you want to include the possibility of the agreement being renewed. If yes, there are many ways this can be addressed in the document. This could include automatic renewal after a certain time period unless one of the partners objects;
- Perhaps you want to include a date when the agreement will come up for review (i.e., three years after it was signed, the agreement will be reviewed by all parties and either renewed or cancelled at that time);
- INAC has advised that renewals will also depend on whether the First Nation has submitted all required reports to INAC, including copies of invoices. It will also depend on an assessment and review of the service agreement, mutually agreed upon service fees, and confirmation of funding sources.

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
Who is providing what?	<p><b>3.0 SERVICES</b></p> <p>3.1 During the Term, the Municipality will provide Solid Waste Services through its own resources and/or independent contractors to the following properties of the initial year in existence as of the commencement date of this Agreement:</p> <ul style="list-style-type: none"> <li>(a) <i>[number of]</i> businesses</li> <li>(b) <i>[number of]</i> homes</li> <li>(c) <i>[number of]</i> mobile homes and non-Band housing</li> </ul> <p>3.2 On the first day of <i>[agreed upon month, usually the month the Agreement came into effect]</i> during each year of the Term, the First Nation shall provide the Municipality, in a form and with content satisfactory to the Municipality, information regarding all parcels of property and other taxable folios within the Lands. On an annual basis of the initial date of the Service Agreement, the Municipality and the First Nation, acting reasonably, will determine the number of properties which will be services under this Service Agreement for each upcoming year, collectively the “Serviced Properties”.</p> <p>3.3 Co-ordination of the provision of Solid Waste Service to be provided with the Municipal or Reserve boundaries shall be the responsibility of the Municipality. The First Nation agrees to expend all reasonable efforts in supporting this coordination function.</p> <p>3.4 The quality and quantity of the Services to be provided by the Municipality under this Agreement will be substantially the same as the quality and quantity of Services provided by the Municipality to the users of such Services on non-Reserve lands within the Municipality. The Municipality is not obliged to provide Services at a greater level or degree than the level or degree to which the same Service is provided elsewhere within the Municipality. The Municipality makes no representation or warranty that the level or degree of Services provided under this Service Agreement will be maintained or continued to any particular standard, other than as stated expressly herein. The First Nation acknowledges and agrees that there may be from time to time interruptions or reductions in the level of Services, and that the Municipality will not be held liable for any losses, costs, damages, claims or expenses arising from or connected with a temporary interruption or reduction in the level of a Service provided under this Agreement.</p>

**ISSUES TO CONSIDER**

**What goods and services are you expecting to share?**

Be as specific as you can about exactly what is being supplied by whom. For example, it is not sufficient to say ‘garbage collection’, if you are in fact expecting a certain kinds of garbage to be collected and at a particular time. If, for example, you are expecting curbside recycling pick up twice per month, be sure to say exactly that in the agreement.

In addition to solid waste management, are there other services you are interested in sharing. What are they? Do they need a separate agreement or can they be brought together in a comprehensive agreement?



SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
	<p>3.5 Services will be provided within the Federal Level of Service Standards and will comply with all Federal Acts, regulations, and policies, as well as Provincial Acts, regulations and polies. These can be listed below.</p> <p>3.6 Time shall be deemed the essence of this agreement. The service schedule and interval of the service(s) should be outlined below. Some services should take into consideration any special conditions based on the nature, urgency and extent of the services.</p> <p>3.7 The Municipality/Contractor shall, for the prices set out in this agreement and except as otherwise specifically provided, provide at no additional cost to the First Nation/Owner all and every kind of labour, machinery, plant, structures, roads, ways, materials, appliances, articles and things necessary for the due execution and completion of all the work set out in this Contract and shall forthwith according to the instructions of the agreement, commence the works and diligently execute the respective portions thereof, and deliver the works complete in every manner to the First Nation/Owner within the time specified in the Contract.</p>

## ISSUES TO CONSIDER

### Who is going to do what?

Think through all the elements of managing solid waste. For example, who is going to supply what to whom, who is responsible for running the operation and maintaining the service, who is responsible if services break down, who is responsible for construction of new infrastructure or upgrades to existing infrastructure? Will this be the municipality, the First Nation or a private contractor? Be sure you think through the whole supply chain and identify responsible parties.

- Who owns what?;
- Is it necessary to spell out in the agreement who owns what infrastructure?;
- If new infrastructure is to be built, is it owned by whoever's land it sits?;
- What if the parties share the cost for new infrastructure – who owns it then?;
- Is new infrastructure contemplated?;
- If yes—what is to be built, who pays for it, who builds it, when, construction standards, etc.;
- Who is responsible for operations and maintenance?;
- If a system is already up and running, perhaps there may be no need to consider this further because responsibility will remain with whoever is currently doing this work.

### Who will maintain the:

Transfer stations, garbage or recycling bins, the land fill site, the trucks, etc.?

Perhaps it would be helpful to share O&M, providing back-up support for holidays or emergencies, or possibly as a means to build capacity or share the expenses.

- Who do you contact if there is a problem or an emergency?;
- Who is responsible for paying for repairs or making repairs?;
- Does failure to maintain the system constitute breach of the agreement?

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
Who pays for what	<p><b>4.0 PAYMENT FOR SERVICES</b></p> <p>4.1 As compensation for the provision of Solid Waste Services provided hereunder, the First Nation shall pay the Municipality the Annual Fee, which shall be payable and calculated in accordance with this Section 4.</p> <p>4.2 On the <i>[day of the month]</i> of <i>[month]</i> each year of the Term, the Municipality will calculate the Annual Fee payable by the First Nation for the provision of Solid Waste Services for the upcoming year, as follows:</p> <ul style="list-style-type: none"> <li>(a) the Parties will designate a reasonable property fee acting in a reasonable manner;</li> <li>(b) that property fee will be multiplied by the number of serviced properties in accordance with Section 3.1; and,</li> <li>(c) the result of that calculation shall be the Annual Fee payable that year.</li> </ul> <p>4.3 The Annual Fee payable by the First Nation for the provisions of Solid Waste Services for the first year of the Term of this Service Agreement will be calculated as follows:</p> <p><i>[Demonstrate an initial calculation of the fees]</i></p> <p>4.4 On or before <i>[date an invoice for services is to be sent]</i> of each calendar year, the Municipality shall invoice the First Nation for the Annual Fee for the upcoming year.</p> <p>4.5 The First Nation will pay all of the Municipality's invoices within thirty days of issuance. Interest on all outstanding invoices shall accrue at a rate of <i>[agreed interest rate]</i> percent, calculated monthly.</p> <p>4.6 The First Nation shall, within <i>[number of days]</i> of the date upon which the agreement is executed, provide the Municipality with an irrevocable standby Letter of Credit drawn upon a Canadian Chartered bank in the amount of <i>[estimated cost of services for one year]</i> dollars to be used as security for payment of amounts owing to the Municipality pursuant to this. Any renewed or substituted Letter of Credit shall be delivered by the First Nation to the Municipality not less than <i>[number of days]</i> prior to the expiration of the then current Letter of Credit.</p>

## ISSUES TO CONSIDER

### What is the cost of the service?

- What are the costs of operation, maintenance, capital investment, or closing and monitoring land fill sites?;
- Will these costs be divided equally between the parties?;
- What happens if new or unexpected costs arise?

CIPP recommends full cost accounting to determine the price to charge for solid waste management.

It may also be worthwhile to consider including an increase to fees annually to account for inflation, or a set percentage increase per year, or negotiation of new rates annually or as required.

Who is paying for what? Who is paying any related taxes or duties, third party liability insurance or workers compensation?

Are there:

- Bin rental or purchase fees?;
- A volume or weight limit?;
- Fees if these limits are exceeded?;
- Are there fines, for example for mixing recyclables with waste destined for the land fill site?

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
<p><b>Commitments</b></p>	<p><b>5.0 COVENANTS OF THE MUNICIPALITY</b></p> <p>5.1 The Municipality shall provide Solid Waste Services to the Lands.</p> <p>5.2 The Municipality shall bill the First Nation for the cost of the Solid Waste Services in accordance with the payment provisions of this Service Agreement.</p> <hr/> <p><b>6.0 COVENANTS OF THE FIRST NATION</b></p> <p>6.1 The First Nation shall give the Municipality maps and other information required by the Municipality in order to enable the Municipality to identify the location of all existing residents and business which require Solid Waste Services.</p> <p>6.2 The First Nation will comply with, and take all reasonable steps to ensure compliance with any person receiving the Solid Waste Service with the Municipality's [insert name of bylaw], and any amendments thereto or replacements thereof, and all applicable provincial and federal regulations.</p>
<p><b>Communicating with citizens</b></p>	<p><b>7.0 PUBLIC INFORMATION</b></p> <p>7.1 The First Nation and the municipality will work together to develop information to be shared with the public about this agreement and to inform the First Nation members of any changes to service, including among other things recycling, composting, and garbage pick-up or drop off.</p>
<p><b>Access to Reserve or Municipal lands for implementing the agreement</b></p>	<p><b>8.0 RIGHTS OF ACCESS</b></p> <p>8.1 Representatives of the Municipality may at any time enter upon the Reserve for the purpose of providing any of the Services required in accordance with this Service Agreement as outlined by Section 3 and inspecting the Reserve Infrastructure and ensuring compliance with the terms of the Agreement.</p>

**ISSUES TO CONSIDER**

The agreement boiled down to its bottom line. Community X will do such and such, Community Y will do this, that, and the other thing.

Often community members need reminders about new waste management practices. Working together, First Nations and municipalities can develop common communication materials that keep citizens informed.

Does one party have the right to be on territory of the other in order to repair or maintain the system?

If yes, under what circumstances (i.e., as a matter of course in the context of regular work; upon one day's notice to the other party; only in special circumstances; etc.)?

If no, how do the parties inform the other of the need for access, under what circumstances will permission be granted, how much notice is required for obtaining permission, etc.?

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
<p><b>Conditions for cancelling the Agreement</b></p>	<p><b>9.0 TERMINATION FOR BREACH OF AGREEMENT</b></p> <p>9.1 Should either party be in breach of its covenants or undertakings under this Service Agreement, other than a failure by the First Nation to pay for Services, which remains un-rectified for a period of <i>[acceptable period for rectification of breaches of the agreement]</i> following written notification of such breach, the party not in breach may, at its option and without prejudice to any other rights or remedies it might have, immediately terminate this Service Agreement.</p> <p>9.2 Whether or not the Services or any of them are discontinued or any disconnections are made, where invoices remain unpaid by the First Nation as at <i>[Date]</i> of the following year, the Municipality shall have the right, without prejudice to any other right or remedy, to call upon the Letter of Credit as outlined in section 4.6. If, at any time during the term of this Service Agreement invoices remain unpaid as at <i>[Date]</i> and the First Nation fails to have the Letter of Credit in place, the Municipality may give immediate notice of termination of this Service Agreement.</p> <p>9.3 If this Service Agreement is terminated or otherwise cancelled for any reason, a prorated portion of any advance payments made by the First Nation will be refunded.</p>
<p><b>Liability</b></p>	<p><b>10.0 LIABILITY AND FORCE MAJEURE</b></p> <p>10.1 The Municipality does not warrant or guarantee the continuance or quality of any of the services provided under this Service Agreement and shall not be liable for any damages, expenses or losses occurring by reason of suspension or discontinuance of the Solid Waste Services, for any reason which is beyond the reasonable control of the Municipality, including without limitation acts of God, forces of nature, soil erosion, landslides, lightning, washouts, floods, storms, serious accidental damage, strikes or lockouts, vandalism, negligence in the design and supervision or construction of the Reserve Systems, or in the manufacture of any materials used therein, and other similar circumstances.</p>

**ISSUES TO CONSIDER**

What happens if one party does not fulfill its side of the bargain?

- Is there a procedure in the agreement about what to do if one party fails to meet its side of the agreement?;
- Under what conditions does the agreement become null and void?;
- Under what conditions is the agreement redeemable?;
- Failure to pay on time (or at all) - what happens? Is there a late fee penalty? Is the contract automatically terminated? Under what circumstances would it be acceptable for a late payment?;
- Failure to provide the service or goods - what happens? Is the contract automatically null and void? Should there be a procedure for advising the other side about a perceived failure to meet the obligations?;
- Should there be a dispute resolution process spelled out in the agreement? If yes, what would it look like (i.e. go directly to court; hire a mediator or arbitrator; use a talking circle to work through the issue, etc.)? Who pays for these services?

Who is liable for problems?

While the contract will spell out who is responsible for what, it is common to limit liability in certain circumstances. For example, the parties may want to agree that damages resulting from failure to provide services would not be compensated (i.e., loss of income to a restaurant that had to close because the garbage was not collected). So called “Acts of God” might also be excluded, for example, if there is a major flood, neither party is liable for damages.

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
<p><b>Sharing information</b></p>	<p><b>11.0 COMMUNICATIONS AND CONTRACT PROTOCOL</b></p> <p>11.1 All the Parties to this agreement will appoint one or more representatives, with notice to the other Parties of such appointments as the principal contacts for official communications about this Agreement, and as the principal contacts for operational matters pursuant to this Agreement. The Parties further agree to establish a communications protocol to manage issues arising under this Agreement.</p>
<p><b>Settling disagreements</b></p>	<p><b>12.0 DISPUTE RESOLUTION</b></p> <p>12.1 In the interest of cooperative and harmonious co-existence, the parties agree to use their best efforts to avoid conflict and to settle any disputes arising from or in relation to this agreement.</p> <p>12.2 In the event that the parties fail to resolve matters, the parties shall seek a settlement of the conflict by utilizing <i>[Outline agreed upon method(s) of dispute resolution]</i>, and recourse to the Courts shall be a means of last resort except where public health and safety is concerned.</p>
<p><b>Rights of the First Nation and municipality</b></p>	<p><b>13.0 ACKNOWLEDGEMENT OF RIGHTS</b></p> <p>13.1 Nothing contained in this Agreement will be deemed to limit or affect any other Aboriginal rights or claims the First Nation may have at law or in equity. Nothing contained in this Agreement will be deemed to limit or affect the legal rights, duties or obligations of the Municipality. The Parties agree that nothing in this Agreement will affect the cooperation or consultation covenants the Parties have entered into pursuant to other Agreements.</p>

**ISSUES TO CONSIDER**

To whom should communications be made, and in what form?

- Think about who is the best person to receive notice about what. For example, the need for repairs might best be directed to the system manager, but a request for additional time to pay a bill might best be directed to the Chief Administration Officer. In small communities it might make sense for one person to receive all communications no matter the issue;
- Think also about what form communications should take. Is a phone call sufficient, is an email adequate for notice, do some things require a registered letter? The answer to this may depend on the nature of the issue to be discussed in the correspondence. For example, a phone call to the system manager may be the best way to deal with a frozen pipe, but a registered letter may be required to confirm intention to withdraw from the agreement.

What happens if there is a dispute between the parties about the interpretation of the Agreement or a problem with the service or payment?

It is recommended that the Agreements include provisions for dispute resolution. Additional options include neutral third party facilitation, mediation, and arbitration.

What is the process and timeline for settling disputes? Who pays for the dispute resolution process?

This provision is sometimes included to provide comfort that the Agreement will not undermine Indigenous rights or municipal authority.

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
<p><b>Standard Clauses</b></p>	<p><b>14.0 HEADINGS</b></p> <p>14.1 Headings that precede sections are provided for the convenience of the reader only and shall not be used in constructing or interpreting the terms of this Agreement.</p> <p><b>15.0 ENTIRE AGREEMENT</b></p> <p>15.1 This Service Agreement constitutes the entire agreement between the parties and there are no undertakings, representations or promises express or implied, other than those expressly set out in this Service Agreement.</p> <p>15.2 This Service Agreement supersedes, merges and cancels any and all pre-existing agreements and understandings in the course of negotiations between the parties.</p>
<p><b>To whom are communications directed</b></p>	<p><b>16.0 NOTICE</b></p> <p>16.1 The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Service Agreement, including any notice advising the other party of any change of address, shall be as follows:</p> <p>(a) to Municipality: <i>[Provide Address including the attention the letter should be directed to and other relevant contact information]</i></p> <p>(b) to First Nation: <i>[Provide Address including the attention the letter should be directed to and other relevant contact information]</i></p> <p>16.2 The parties may change their address for delivery of any notice or other written communication in accordance with section 11.1.</p>

**ISSUES TO CONSIDER**

Should you include ‘boiler plate’ or standard clauses commonly found in other agreements?

These are standard clauses in these types of contracts.

- Gender: “Any reference to one gender in this agreement also includes reference to the other gender” (helps get around the awkwardness of having to write he/she all the time);
- Governing Laws: “The provisions of this agreement will be governed and interpreted in accordance with the laws of the province or Canada, as applicable.”

Be sure to provide the full name, position, address, phone number, email, etc., for communications between the parties. Keep this information handy for emergency situations.

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
	<p><b>17.0 SEVERANCE</b></p> <p>17.1 In the event that any provision of the Service Agreement should be found to be invalid, the provision shall be severed and the Agreement read without reference to that provision.</p> <p>17.2 Where any provision of the Service Agreement has been severed in accordance with Section 14.1 above and that severance materially affects the implementation of this Agreement, the parties agree to meet to resolve any issues as may arise as a result of that severance and to amend this Agreement accordingly.</p>
	<p><b>18.0 AMENDMENT</b></p> <p>18.1 The Service Agreement shall not be varied or amended except by written agreement of both parties.</p> <p>18.2 No waiver of the terms, conditions, warranties, covenants, and agreements set out herein shall be of any force and effect unless the same is reduced to writing and executed by all parties hereto and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.</p> <p>18.3 Where the provisions of this agreement do not conform to the requirements of any applicable federal or provincial law or any enacted amendment to those laws this agreement will be amended to conform with them and the parties will work together to inform the public about any change to the service that may result.</p>

**ISSUES TO CONSIDER**

This is a standard clause that allows the parties to delete a section of the agreement because it is found to be invalid. For example, if the agreement has a clause that required 15 ton trucks for garbage hauling, but a new municipal by-law prevented trucks over 5 tons to travel the roads for a couple of months in the spring to protect the soft roads, the requirement for 15 tons trucks could be ignored without making the entire contract invalid. Of course it is expected that the municipality and First Nation would have discussed the new by-law before it was implemented and come up with a solution to haul the garbage.

**Can the contract be amended?**

- If yes, how are changes to be made to the contract? Options include:
  - Following notice from one party to the other of the desire to amend the agreement;
  - After discussion between the parties;
  - Are amendments to be made in writing? This is recommended so there is a written record;
  - Do amendments have to be approved by Councils?;
  - Should amendments be signed by the original parties?;
  - Should the amendments be attached to the original agreement?

**Do you need to include provision for future legislative changes?**

- Laws change from time to time, which may affect contracts. For example, higher standards for solid waste management at the provincial or federal level may require improvements to infrastructure;
- What happens to your agreement if a law changes that affects your agreement?;
- Do you have to provide each other notice that the laws have changed?;
- Should you agree to meet to discuss matters including changes to infrastructure?;
- Who is responsible for making and paying for the improvements if the law changes?

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT	ISSUES TO CONSIDER
	<p><b>19.0 GOVERNING LAWS</b></p> <p>19.1 The provisions of this Agreement will be governed and interpreted in accordance with the laws of <i>[insert province]</i> or Canada, as applicable.</p>	<p>Because First Nations engage with the Federal Government and municipalities are mandated by whichever province they are in, both provincial and federal law needs to be identified here.</p>
	<p><b>20.0 ASSIGNMENT</b></p> <p>20.1 The rights and obligations of the parties may not be assigned or otherwise transferred. An amalgamation by a party does not constitute an assignment.</p>	<p>Can the agreement be assigned, or responsibility for its implementation passed on to another government?</p> <ul style="list-style-type: none"> <li>• As written, this provision states that it cannot be assigned to someone that is not a party to the original agreement. For example, the First Nation could not assign the responsibility for implementation to a different First Nation;</li> <li>• The one exception allowed is if, for example, a municipality were to be amalgamated into a larger body, such as a new regional government. The regional government would automatically become responsible for the municipality's obligations under the contract.</li> </ul>
	<p><b>21.0 ENUREMENT</b></p> <p>21.1 The Service Agreement enures to the benefit and is binding upon the parties and their respective heirs, executors, administrators, successors, and assigns.</p>	<p>Does the contract enure, or automatically pass on, to successive Councils?</p> <ul style="list-style-type: none"> <li>• The issue to consider here is whether the agreement is binding on subsequent Chiefs, Mayors and Councils;</li> <li>• For example, does this agreement only last until the next election, or is it expected to continue to be binding on the municipality and First Nation despite who is elected in the future?;</li> <li>• If the contract is open ended without a set end date, it would be worthwhile including an enurement clause like this one that makes it clear the agreement is binding on future councils.</li> </ul>

SECTION OF AGREEMENT	POSSIBLE PROVISIONS OF AGREEMENT
	<p><b>IN WITNESS WHEREOF</b> the parties hereto have executed this Agreement.</p> <p>On behalf of the <b>[NAME OF FIRST NATION OR MUNICIPALITY]</b></p> <hr/> <p><i>[Position]</i></p> <hr/> <p><i>[Position]</i></p> <p>On behalf of the <b>[NAME OF FIRST NATION OR MUNICIPALITY]</b></p> <hr/> <p><i>[Position]</i></p> <hr/> <p><i>[Position]</i></p>

**ISSUES TO CONSIDER**

Think about who has authority to sign a contract binding your community:

- Is it the Chief and Mayor?;
- Is it a Band Manager or Chief Administrative Officer?;
- Do all members of the council for the municipality and the First Nation have to sign?;
- This is also the time to think about what evidence of approval for the contract might be necessary in addition to a signature. Council resolutions or by-laws approving the agreement can be attached to the contract as an appendix as this kind of evidence.

