



**A REFERENCE MANUAL
FOR
MUNICIPAL DEVELOPMENT
AND
SERVICES AGREEMENTS**

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This Reference Manual provides a compilation of the issues that a Municipality (and Entitled First Nation) may wish to address in a Municipal Development and Services Agreement (MDSA) pursuant to the Manitoba Treaty Land Entitlement Framework Agreement (Framework Agreement). The Reference Manual is relevant to Selections and Acquisitions of land by First Nations that are signatories to the Framework Agreement, whether the land is located in an urban or rural Municipality, or Northern community. In addition, although not specifically intended for this purpose, this Reference Manual may provide useful reference information to Municipalities that are involved with First Nations who are not parties to the Framework Agreement.

This Reference Manual also provides examples of provisions that *may* be used in a MDSA. These examples are intended to provide guidance on how various issues might be addressed in a MDSA. However, they will certainly not be appropriate for every agreement. For example, some provisions may be more appropriate for urban than for rural Selections and Acquisitions. In addition, since a MDSA is a negotiated agreement, in order for any particular provision to be included in an agreement, both parties must agree to its inclusion. Agreements involving land in a Northern Community between an Entitled First Nation, the Government of Canada (Canada) and the Government of Manitoba (Manitoba) will require additional provisions to those discussed in this Reference Manual.

It is also important for a Municipality to recognize that it should negotiate a MDSA with the assistance of legal counsel. If a Municipality wishes to negotiate an agreement without the assistance of legal counsel, at a minimum, it should have the agreement reviewed by its legal counsel prior to executing it. In addition, where Canada is not a party to the agreement (which will be the normal case for MDSAs), the agreement should be reviewed prior to its execution by Canada's Department of Justice, the HQ Additions Committee and the Assistant Deputy Minister of Lands, Revenues and Trusts (Federal Department of Indian Affairs and Northern Development Land Management and Procedures Manual, approved November 1991, Chapter 9, Additions to Reserves Policy, s. 9.3.2.2, para. 2) (Additions to Reserves Policy).

While the length of this Reference Manual may suggest that MDSAs are complex and lengthy documents, this will not always be true. Some agreements will be lengthy and complex; others will be simple and short. No doubt, no two MDSAs will be the same.

Finally, it should be recognized that this document will not provide answers to all of the questions and issues that may arise through the negotiation of a Municipal Development and Services Agreement. It should be used with a recognition that an understanding of these complex issues will evolve over time. This Reference Manual's role in raising awareness of the issues is equal to, if not more important than, its role in providing specific answers to them.

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I. BACKGROUND

1. HISTORY OF TREATY LAND ENTITLEMENT

Canada entered into seven treaties with First Nations in Manitoba between 1871 and 1910. These treaties provided that Canada would set apart a certain amount of land as Reserve land based on Band populations at the time of the original Reserve surveys.

Unfortunately, not every First Nation that entered into a treaty received its full amount of land. For this reason, Canada continues to owe land, referred to as Treaty Land Entitlement (TLE), to specific First Nations under the terms of the original treaties.

Manitoba's participation in TLE results from its obligations to Canada under the 1929-1930 Manitoba Natural Resources Transfer Agreement (MNRTA). Through the MNRTA, Canada transferred the administration and control of all unallocated Crown lands to Manitoba and required Manitoba to set apart sufficient unoccupied Crown land so that Canada could satisfy its outstanding treaty obligations. This is a constitutional obligation.

As of April 2001, thirty-one of Manitoba's First Nations have TLE claims that have not been fully resolved. Canada has validated, that is, confirmed, the TLE claims of twenty-seven of these First Nations. The TLE Committee represents twenty First Nations with validated claims. Seven other First Nations with validated claims have signed individual TLE settlement agreements. One First Nation (Peguis) is negotiating its TLE.

As part of the settlement process, Entitlement First Nations have an opportunity to obtain additional lands, including those located within Municipal areas and Northern Communities. It is anticipated that the additional lands will be converted to Reserve status. The process of having land converted to Reserve status is governed by the Framework Agreement and Canada's Additions to Reserves Policy.

2. FRAMEWORK AGREEMENT

Canada, Manitoba and the TLE Committee on behalf of nineteen First Nations entered into the Framework Agreement on May 29, 1997. In general, the Framework Agreement addresses the rights of nineteen Entitlement First Nations to obtain land of sufficient area to fulfil the requirements of the terms of the treaties entered into by themselves or their predecessors, and Canada.

The Framework Agreement outlines principles for the Selection and Acquisition of Land by the nineteen Entitlement First Nations. Issues in dispute that cannot be resolved by the parties to the Framework Agreement may be referred to a committee called the Implementation Monitoring Committee.

The guiding principles for land acquisition set out in the Framework Agreement are that acquisition must be undertaken on a "willing buyer and willing seller" basis and

neither Canada nor Manitoba will expropriate any land or interest in land (Framework Agreement, s. 3.05(2) and (3)). Other principles include:

- An Entitlement First Nation may Select Crown land or Acquire other land from its treaty area or traditional territory within Manitoba (Framework Agreement, s.3.02(1)(a)).
- An Entitlement First Nation may Select Crown land from outside its treaty area or traditional territory but within Manitoba where, on a case-by-case basis, it can establish a reasonable social or economic development objective and Manitoba concurs in the Selection (Framework Agreement, s. 3.02(1)(b)).
- Certain Entitlement First Nations may Acquire land from within their treaty areas or traditional territories within Manitoba, or from outside their treaty areas or traditional territories but within Manitoba, where, on a case-by-case basis, they can establish a reasonable social or economic development objective (Framework Agreement, s. 3.02(2)(a) and (b)).
- Selections must be at least 1,000 acres in size, unless suitable Crown land is not available in a location that is preferred by the Entitlement First Nation, the purpose of the choice of land, whether historical, cultural, economic or social, necessitates a Selection of less than 1,000 acres, or the land is located in reasonable proximity to an existing Reserve of the Entitlement First Nation (Framework Agreement, s. 3.02(4) and (7)).
- Land may be Selected or Acquired where the owner or lawful user of another parcel of land is not deprived of access to that other parcel (Framework Agreement, s. 3.02 (11)).

As of April 2001, fifteen of the twenty Entitlement First Nations whose TLE is governed by the Framework Agreement have entered into Band-specific Treaty Entitlement Agreements.

Crown land Selections must be completed within three years of the date that the Entitlement First Nation's Band-specific Treaty Entitlement Agreement comes into force (Framework Agreement, s. 4.01(a)). Acquisitions must be completed within fifteen years of the date that the Entitlement First Nation's Band-specific Treaty Entitlement Agreement comes into force (Framework Agreement, s. 4.01(b)).

The Framework Agreement also sets out special rules for the Selection or Acquisition by an Entitlement First Nation of land in an "Urban Area", "Municipality" or "Northern Community".

A. MUNICIPALITY IN AN URBAN AREA

"Urban Area" is defined in the Framework Agreement as "land within the boundaries of a 'city', 'town' or 'village' as defined in *The Municipal Act*" (Framework Agreement, s. 1.01(106)). The Framework Agreement sets out the process to be followed for the setting apart of land in an Urban Area as Reserve. Where an Entitlement First Nation Selects or Acquires land in an Urban Area, the Entitlement First Nation must give Canada, Manitoba and the Municipality notice in writing of its intention to request that the land be set apart as Reserve, and must provide the Municipality with

- a copy of the provisions of Canada's Additions to Reserves Policy that pertain to Municipal considerations, and
- Schedule D of the Framework Agreement (Practice of the Manitoba Regional Office of the Department of Indian Affairs and Northern Development relating to the Application of the Additions to Reserves Policy in Urban Areas) (Framework Agreement, s. 3.06(1)).

The practice of the Manitoba Regional Office of the Department of Indian Affairs and Northern Development of applying Canada's Additions to Reserves Policy to urban land will apply to the Selection or Acquisition of the Entitlement First Nation (Framework Agreement, s. 3.06(2) and Schedule D).

B. MUNICIPALITY THAT IS NOT AN URBAN AREA

The Framework Agreement defines "Municipality" as "a 'municipality' as defined in *The Municipal Act* or 'local government district' as defined in *The Local Government Districts Act*" (Framework Agreement, s. 1.01(61)) and sets out the process to be followed by an Entitlement First Nation when Selecting or Acquiring land in a Municipality that is not within an Urban Area (Framework Agreement, s. 3.07).

The Entitlement First Nation must

- give Canada, Manitoba and the Municipality written notice of its intention to request that the land be set apart as Reserve (Framework Agreement, s. 3.07(1)(a)),
- ask the Municipality to provide its concerns relating to the setting apart of the land as Reserve, if any, and
- inform the Municipality that if it fails to provide its concerns within 90 days of notification, the land may be set apart as Reserve without further notice (Framework Agreement, s. 3.07(1)(b) and (c)).

Where the Entitlement First Nation intends to use the infrastructure of the Municipality or requires services provided by the Municipality, the Entitlement First Nation must also ask the Municipality to enter into negotiations with a view to concluding a MDSA (Framework Agreement, s. 3.07(1)(d)).

Where the Municipality is willing to negotiate a MDSA, the Entitlement First Nation must make reasonable efforts to conclude such an agreement with the Municipality (Framework Agreement, s. 3.07(3)).

However, a Selection or Acquisition will not be ineligible to be set apart as Reserve due to the failure or inability of an Entitlement First Nation to satisfy the concerns of a Municipality, the failure of the Entitlement First Nation and Municipality to enter into a MDSA, or a claim by a Municipality or School Division alleging a Loss of Municipal and School Taxes (Framework Agreement, s. 3.07(4)).

C. NORTHERN COMMUNITY

The Framework Agreement defines “Northern Community” as “a ‘community’ or ‘incorporated community’ as defined in *The Northern Affairs Act*” (Framework Agreement, s. 1.01(64)) and sets out the process that must be followed for the Selection or Acquisition of land by an Entitlement First Nation in a Northern Community.

An Entitlement First Nation may Select or Acquire land in a Northern Community to be set apart as Reserve, provided that it notifies Canada, Manitoba and the Northern Community of its intention in writing and consults with the community council, the local committee or the incorporated community council of the Northern Community, as the case may be (Framework Agreement, s. 3.08(1)).

Where the Entitlement First Nation does not want all or substantially all of the land in a Northern Community to be set apart as Reserve, the process set out in the Framework Agreement for the Selection or Acquisition of land in a Municipality that is not in an Urban Area applies, with necessary modifications (Framework Agreement, s. 3.08(3)). Where an Entitlement First Nation intends to use the infrastructure of the Northern Community or requires services provided by the Northern Community, the Entitlement First Nation must ask the Northern Community to enter into negotiations with a view to concluding a MDSA.

Where the Entitlement First Nation intends to Select or Acquire all or substantially all of the land in a Northern Community for the purpose of having it set apart as Reserve, the Selection or Acquisition cannot take place until Canada, Manitoba and the Entitlement First Nation conclude an agreement. An Entitlement First Nation shall be deemed to intend to have all or substantially all of the land in the Northern Community set apart as Reserve where:

- the Entitlement First Nation has declared by Council Resolution that its intent is to have all or substantially all of the land in the Northern Community set apart as Reserve; or
- the Selection or Acquisition, whether by itself or in combination with other Selections or Acquisitions by the Entitlement First Nation, would result in more than 25 per cent of the area comprising the Northern Community being set apart as Reserve for the Entitlement First Nation.

The agreement between the Entitlement First Nation, Canada and Manitoba must address:

- the timing of the Selection or Acquisition and setting apart of the land as Reserve,
- transfer and operation of capital infrastructure and related costs,
- ongoing provision of social and public services to members of the Entitlement First Nation and other persons ordinarily resident in the Northern Community, and related costs, and
- other matters which may be addressed by a MDSA if the land were located in a Municipality (Framework Agreement, s. 3.08(2)).

3. ADDITIONS TO RESERVES POLICY

As mentioned above, in order for land that is Selected or Acquired by an Entitlement First Nation to be set apart by Canada as Reserve, the land must meet the Additions to Reserves Policy. The Additions to Reserves Policy applies to land within the boundaries of an urban Municipality (defined in the Policy as a municipality, town, village or other built-up area) as well as to land within a rural Municipality (defined in the Policy as a Municipality that falls outside the definition of an urban Municipality) (Additions to Reserves Policy, s. 9.3.2.2, para. 1 and s. 9.1.2). It should be noted, however, that the Framework Agreement has paramountcy over the Additions to Reserves Policy. As such, in the event of an inconsistency between the Additions to Reserves Policy and the Framework Agreement, the Additions to Reserves Policy must be modified to the extent of the inconsistency and the terms of the Framework Agreement will apply (Framework Agreement, s. 8.02(5)).

According to the Additions to Reserves Policy, where a First Nation proposes that land located within the boundaries of a Municipality be set apart as Reserve, the Municipality must be informed in writing of the proposal and asked to identify its views and concerns, if any, in writing.

The Additions to Reserves Policy suggests that a Municipality may be concerned about:

- measures to compensate for its tax loss after the land is set apart as Reserve (tax loss may include the loss of property taxes, loss of grants in lieu of taxes from senior government agencies, and loss of licence and permit fees which will no longer be collected by the Municipality on the new Reserve lands);
- arrangements for the provision of, and payment for, Municipal services;
- by-law application and enforcement on the Reserve; and
- a joint consultative process for matters of mutual concern, such as land use planning, and a dispute resolution process, where possible (Additions to Reserves Policy, s. 9.3.2.2, para.1).

The Additions to Reserves Policy stipulates that any reasonable concerns of the Municipality with respect to these issues must be addressed. The Policy also suggests that these concerns could be addressed in a number of ways, including, a letter from the mayor or city manager (Chief Administrative Officer), a municipal resolution or a written agreement between the Municipality and Entitlement First Nation.

The process of developing a written agreement between a Municipality and Entitlement First Nation may be initiated by the Municipality asking the Entitlement First Nation to enter into a written agreement to address the Municipality's concerns. On the other hand, an Entitlement First Nation may initiate discussions with the Municipality. The Policy provides that where the Municipality asks the Entitlement First Nation to enter into a MDSA and an agreement is not concluded, a Reserve will not normally be established. However, the Deputy Minister of Indian Affairs and Northern Development (Canada) may proceed with the creation of a Reserve where:

- the federal Department of Justice advises that there is a legal obligation to proceed; or
- the Entitlement First Nation is prepared to enter into an agreement on the concerns raised by the Municipality, but the Municipality is unwilling to respond in good faith and one of the following conditions exists:
 - the proposed Reserve does not adjoin an urbanized or developed area and is not located in an area which is covered by an approved urban use development plan;
 - the land has traditionally and up to the present time been used for Indian purposes or was once part of an Indian Reserve which was surrendered and remains unsold; or
 - the proposal involves an addition to an existing Reserve, as opposed to the creation of a new one (Additions to Reserves Policy, s. 9.3.2.2, para. 3).

II. MEETING BETWEEN MUNICIPALITY AND ENTITLEMENT FIRST NATION

1. NEIGHBOUR RELATIONSHIP

When an Entitlement First Nation Selects or Acquires land within a Municipality, after the land is set apart as Reserve, the Entitlement First Nation and Municipality will be neighbours, if they are not already neighbours. As with other neighbours, the Entitlement First Nation and Municipality will be continually impacted by the actions of the other party and, as such, will have a continuing need to interact with the other party to resolve their concerns. As such, it is important for the Entitlement First Nation and Municipality to maintain a healthy and respectful relationship with one another.

2. NEGOTIATING COMMITTEE

A MDSA cannot be negotiated by correspondence: in most cases, the issues will be too complex for such an approach. Instead, the Municipality and Entitlement First Nation will have to meet with one another to discuss the issues. Open, in-person discussion will assist in avoiding misunderstandings.

While it is possible that the entire council of the Municipality and the entire Chief and Council of the Entitlement First Nation will, at some point, meet to discuss the terms of the MDSA or to formalize their agreement, it is unlikely that the entire Councils of each party will negotiate all aspects of the agreement, as the number of persons who would sit at the negotiating table would be too unwieldy. For this reason, it is suggested that each party appoint several individuals as representatives on a negotiating team that is required to report back for approval and further direction after each negotiating session to the full Municipal Council in the case of the Municipality, and to the Chief and Council, in the case of the Entitlement First Nation.

3. INSTRUCTION IN ABORIGINAL WAYS

While the representatives of the Municipality may be on a first-name basis with representatives of the Entitlement First Nation, they may not have dealt with First Nation members on any "business" matters, and may be unfamiliar with what is important to First Nations people in terms of their use of the land.

Therefore, before meeting with the representatives of the Entitlement First Nation, it would be best if the Municipality's representatives could obtain some instruction or 'cultural orientation' on Aboriginal ways. Such instruction might include instruction on traditional and current Aboriginal land use and occupancy, spiritual dimensions of the particular First Nation and its regard for the land and resources, social structure and kinship systems, decision-making structures, and how these factors influence Aboriginal decision-making.

The representatives should be guided throughout the negotiations with respect and dignity.

4. THE ISSUES

The representatives of the Municipality should come to the negotiating table with knowledge of the issues that they would like to discuss. In addition, prior to the meeting, the Municipality should request of the Entitlement First Nation that it provide, in writing, information in general terms addressing the following issues:

- Intentions of the Entitlement First Nation for the use of the land (business, housing, recreation, etc.),
- How the Entitlement First Nation sees the Reserve land integrating with the Municipality, including zoning and by-law compatibility, and
- What the Entitlement First Nation's principles are for managing Reserve land (i.e., If the Entitlement First Nation intends to use the land for businesses or services, will persons who are not band members have equal access? Will the land uses be compatible with adjacent land uses on Municipal land?).

The representatives of the Entitlement First Nation may want the Municipality to discuss the following issues:

- Capacity of Municipality to provide services for the Entitlement First Nation's proposed development, and
- The Municipality's plan for the land adjacent to the Reserve.

The representatives of the Municipality should allow the representatives of the Entitlement First Nation to ask all of their questions and, if possible, the Municipality should provide them with answers.

Of course, it is also possible that the Entitlement First Nation may be able to provide certain services to the Municipality, and in this case, the discussions between the parties may be quite different.

5. ASSISTANCE

The Framework Agreement provides that the TLE Committee, Manitoba and Canada must use their best efforts in the implementation of the Framework Agreement. The Framework Agreement specifically provides that Manitoba must use its best efforts to "assist the Entitlement First Nations and Municipalities in the negotiation of issues relating to Municipal Services and Development Agreements" (Framework Agreement, s. 31.02(f)) and the TLE Committee must use its best efforts "to provide, as requested, ongoing technical support and assistance in the course of land Selection and Acquisition to any Entitlement First Nation that executes a Treaty Entitlement Agreement" (Framework Agreement, s. 31.02(e)). Accordingly, and when requested, the applicable department/agency will provide assistance.

6. MORE THAN ONE MEETING

Although it may be obvious, it is worth stating that the issues to be addressed in a MDSA cannot be resolved in only one meeting. The parties should be realistic about how quickly such an agreement can be negotiated and drafted. The goal of the first meeting between the Municipality and Entitlement First Nation should simply be for each party to gain a better understanding of the other party's concerns and objectives, and what may be needed to address these concerns. Both parties will probably need to provide additional clarification on the issues discussed, which may require some consideration and additional research. In concluding the first meeting, the parties should agree to meet again at a time that is sufficiently distant but not so far into the future that momentum is lost.

III. GENERAL TERMS

There are a number of general terms that may be appropriate for inclusion in many MDSA. These include:

- preamble
- authority of parties to enter agreement
- description of land
- term of agreement
- effective date of agreement where more than one Selection or Acquisition
- renewal of agreement
- alteration of municipal boundaries
- amalgamation or creation of First Nations
- members of municipal government
- applicable law
- constitutional or legislative changes
- existing aboriginal or treaty rights
- termination for breach of agreement
- consent by interested party
- standard provisions:
 - notice
 - entitlement agreement
 - amendment
 - assignment
 - enforcement
 - severance
 - waiver of breach
 - headings
 - further assurances.

The reasons for including these provisions in a MDSA are discussed below together with suggested provisions.

1. PREAMBLE

A preamble sets out the background that led to the agreement and describes the purpose of the agreement, in general terms. In the context of a Selection or Acquisition of land in a Municipality by an Entitlement First Nation, the preamble could include the following points:

- A. **The Entitlement First Nation and certain other First Nations, together established, authorized and directed the Treaty Land Entitlement Committee of Manitoba Inc. to act as their representative in the negotiation of an agreement between the Treaty Land Entitlement Committee of Manitoba Inc., the Government of Canada (Canada) and the Government of Manitoba (Manitoba), dated May 29, 1997 (Framework Agreement).**

- B. The Framework Agreement establishes the process that the Entitlement First Nation must use to select Crown Land or acquire Other Land that it wishes to be set apart by Canada for its use and benefit as a Reserve.
- C. The Entitlement First Nation, the Treaty Land Entitlement Committee of Manitoba Inc., Canada and Manitoba entered into a Treaty Entitlement Agreement on the **** day of *****, ****, in which the Entitlement First Nation accepted the terms of the Framework Agreement.

[Acquisition by Entitlement First Nation]

- D. The Entitlement First Nation has acquired Other Land with the intention of transferring it to Canada to be set apart by Canada as Reserve for the use and benefit of the Entitlement First Nation and has given notice to Canada in accordance with the process established by the Framework Agreement.
- E. The Acquisition is situated within the boundaries of the Municipality.

[Selection by Entitlement First Nation]

- F. The Entitlement First Nation has selected Crown Land that it wishes Canada to set apart as Reserve for its use and benefit and has given notice to Canada in accordance with the process established by the Framework Agreement.
- G. The Selection is situated within the boundaries of the Municipality.

[Acquisition or Selection in Urban Area]

- H. Section 3.06 of the Framework Agreement provides that Canada's Additions to Reserves Policy applies to the setting apart of land in an Urban Area as Reserve. In accordance with the Additions to Reserves Policy, the Entitlement First Nation has informed the Municipality in writing of its proposal to have the Selection/Acquisition set apart as a Reserve and has asked the Municipality to identify its views and concerns in a written response. The Municipality has requested of the Entitlement First Nation that it enter into a Municipal Development and Services Agreement with the Municipality to address the Municipality's concerns.
- I. The parties are entering into this Municipal Development and Services Agreement to address the Municipality's concerns in respect of the setting apart of the Selection/Acquisition by Canada as Reserve for the use and benefit of the Entitlement First Nation.

[Acquisition or Selection in Municipality that is not an Urban Area]

- J. Section 3.07 of the Framework Agreement provides that where the Entitlement First Nation intends to use the infrastructure of, or requires services provided by, a Municipality that is not in an Urban Area, it must request of the Municipality that it negotiate and enter into a Municipal Development and Services Agreement.
- K. The parties are entering into this Municipal Development and Services Agreement to meet the requirements of the Framework Agreement for the setting apart of land located in a Municipality but not in an Urban Area, as a Reserve.

If a MDSA is negotiated with a First Nation that is not a party to the Framework Agreement, the suggested preamble set out above, as well as other terms used in the

example provisions throughout this Reference Manual, such as “Entitlement First Nation”, “Selection” and “Acquisition”, would have to be changed accordingly.

2. AUTHORITY TO ENTER INTO AGREEMENT

The parties to a MDSA may wish to evidence their authority to enter into the agreement, in the agreement itself.

As mentioned above, the parties to a MDSA that pertains to an urban or rural Municipality will be an Entitlement First Nation and the Municipality. Where a Northern Community is involved, the parties to the agreement will be an Entitlement First Nation and Northern Community, except where an Entitlement First Nation intends to Select or Acquire all or substantially all of a Northern Community for the purpose of having it set apart as Reserve, in which case, the parties to the agreement will be an Entitlement First Nation, Canada and Manitoba.

A First Nation is governed by an elected Chief and Council. Paragraph 2(3)(b) of the *Indian Act*, R.S.C. 1985, c. I-5 provides that a band council must exercise its powers by a majority of the band councillors present at a duly convened council meeting. Thus, an Entitlement First Nation’s authority to enter into an agreement will be derived from approval of the agreement by the band council at a band council meeting, as is required by paragraph 2(3)(b) of the *Indian Act*. Such approval is commonly evidenced by a Band Council Resolution, signed by a quorum of the council.

Therefore, the Entitlement First Nation could warrant in the MDSA that it has the necessary authority to enter into the MDSA by virtue of a particular Band Council Resolution passed at a particular council meeting. A copy of the Band Council Resolution could also be attached as a schedule to the MDSA. In addition, the agreement could refer to the *Indian Act*, which provides the statutory authority for the actions of the band council.

Similarly, a Municipality derives its authority to enter into an agreement from a Municipal by-law or resolution. However, since municipal resolutions can be destroyed after one year, the Municipality may consider it to be preferable for record keeping purposes that a by-law be passed to authorize the municipality to enter into a MDSA. The MDSA could refer to the by-law number and the Municipal council meeting at which the by-law was passed. In addition, a copy of the by-law could be attached to the agreement as a schedule. The agreement could also refer to the statutory authority (*The Municipal Act*, C.C.S.M. c. M225, s. 250(2)(d)(v), *The Local Government Districts Act*, C.C.S.M. c. L190, s. 5 or *The City of Winnipeg Act*, S.M. 1989-90, c.10, s. 4(1)) for the Municipality’s actions.

Similar provisions to the following could be used in a MDSA to set out the authority of the parties:

The Entitlement First Nation’s Band Council has approved this Municipal Development and Services Agreement by passing Band Council Resolution ** at its meeting held on *****, 20** in accordance with the provisions of the *Indian***

**Act, R.S.C. c. I-5. A certificate of the Band Council Resolution is attached to this Municipal Development and Services Agreement as Schedule “*”.
The Municipal Council has approved this Municipal Development and Services Agreement by passing By-law No. ***** at its meeting held on *****, 20** in accordance with the provisions of *The Municipal Act*, C.C.S.M. c. M225. A copy of the By-law is attached to this Municipal Development and Services Agreement as Schedule “*”.**

3. DESCRIPTION OF LAND

A MDSA should include the accurate legal description of the Selection or Acquisition to which the agreement relates. The description could be included in the preamble or incorporated into the body of the agreement.

As mentioned above, a Selection or Acquisition in a Municipality will not usually be set apart by Canada as a Reserve until a MDSA is concluded between the Municipality and Entitlement First Nation. Where the Selection or Acquisition is not yet set apart as Reserve, the following provision could be used in the agreement:

The Entitlement First Nation seeks to have certain land which it has Selected/Acquired and which is situated within the corporate limits of the Municipality and described as follows:

(“Selection/Acquisition”)

set apart as Reserve pursuant to the Framework Agreement and the Treaty Entitlement Agreement.

Where the land is already set apart as Reserve prior to the parties entering into a MDSA, which will not often happen, the following provision could be used:

The land described as follows:

(“Selection/Acquisition”)

the legal title to which is vested in Canada has been set apart by Canada for the use and benefit of the Entitlement First Nation and is a Reserve as defined in the *Indian Act*, R.S.C. 1985, c. I-5.

4. TERM OF AGREEMENT

It is important for the parties to a MDSA to know when their obligations and rights under the agreement will begin and when they will end. The parties may want to have the agreement end after a finite period of time. The parties have to carefully consider the length of the term of their agreement; there are advantages and disadvantages to both long term and short term agreements. If the Municipality intends to invest time and money in the arrangement between the Municipality and the Entitlement First Nation, it may desire a longer term for the agreement. The Entitlement First Nation may desire a shorter term to provide them with another opportunity to negotiate the terms of the

agreement. The parties can specify a start date and an expiry date in the MDSA in the following way:

The term of this Municipal Development and Services Agreement shall commence upon the Selection/Acquisition becoming Reserve and shall continue for ** years following that date.

Where the parties want the MDSA to continue indefinitely, they can provide in the agreement that it will remain in effect for so long as the Selection or Acquisition remains a Reserve.

The term of this Municipal Development and Services Agreement shall commence upon the Selection/Acquisition becoming Reserve and shall be for the same duration as the Selection/Acquisition remains a Reserve.

In this case, more so than where the agreement has a finite term, it is important for the parties to incorporate a voluntary termination provision in their agreement. The parties must determine the notice period for termination by weighing all the factors that are relevant to their particular situation. The following provision could be used as a voluntary termination provision:

The Municipal Development and Services Agreement may be terminated by either party upon * * * (* *) days notice in writing to the other party. Notwithstanding notice of termination, all obligations that arose prior to the date of termination of the Agreement shall be enforceable under the Agreement.

5. EFFECTIVE DATE OF AGREEMENT WHERE MORE THAN ONE SELECTION OR ACQUISITION

Where an Entitlement First Nation has identified or acquired more than one Selection or Acquisition within a Municipality with the intention that each parcel will be set apart as Reserve, one MDSA *may* suffice to govern the Entitlement First Nation's and Municipality's rights and obligations in respect of each of the Selections and Acquisitions. However, it is possible that not all Selections or Acquisitions will become Reserve at the same time. A provision could be inserted into the agreement to allow the MDSA to apply to future Selections or Acquisitions of land:

The parties acknowledge that the Selections/Acquisitions may not be simultaneously set apart as Reserve lands pursuant to the Framework Agreement and the Treaty Entitlement Agreement. This Municipal Development and Services Agreement shall become valid and effective in respect of a particular Selection/Acquisition as and when it is set apart as a Reserve.

On the other hand, a Municipality and Entitlement First Nation may not be certain at the time of negotiating and executing the MDSA that the agreement will be applicable to every future Selection and Acquisition by the Entitlement First Nation within the Municipality. For example, a Selection in an Urban Area within a Municipality may require very different terms and conditions than a Selection in a Rural Area within the same Municipality. If the parties wish to be flexible about whether the MDSA will apply to future Selections or Acquisitions within the Municipality, the agreement could reflect this as follows:

The parties acknowledge that the Selections/Acquisitions may not be simultaneously set apart as Reserve lands pursuant to the Framework Agreement and the Treaty Entitlement Agreement. This Municipal Development and Services Agreement shall become valid and effective in respect of a future Selections or Acquisitions as and when each Selection or Acquisition is set apart as a Reserve, provided that both parties agree in writing, the Entitlement First Nation by a Band Council Resolution and the Municipality by a Municipal By-law.

In the alternative, the parties may wish simply to agree to enter into further discussions in the event that additional land within the Municipality is set apart as Reserve, as follows:

The Municipality and Entitlement First Nation agree to enter into discussions for the provision of Services by the Municipality to future Selections/Acquisitions, as may be required.

6. RENEWAL OF AGREEMENT

Where a MDSA has a limited term, such as five years, it is possible that the term will expire before the parties have negotiated a new agreement. The parties may wish to include an automatic renewal provision, so as to avoid the situation of no agreement being in place following the expiration of the original agreement and before the execution of a replacement agreement.

Upon its expiration, this Municipal Development and Services Agreement shall automatically be renewed for successive *** (*) month terms unless either party has given written notice to the other, received at least 180 calendar days prior to the date of expiry of the term, of its intention to terminate or otherwise amend the Municipal Development and Services Agreement.

7. ALTERATION OF MUNICIPAL BOUNDARIES

The Municipal Act contemplates that two or more municipalities may amalgamate (s. 4(4)). Similarly, *The City of Winnipeg Act* and *The Municipal Act* contemplate that the area or boundaries of the City of Winnipeg may be altered to form a rural municipality from land within the city or by annexation by a municipality of land within the city (*The City of Winnipeg Act*, s. 4; *The Municipal Act*, s. 72). *The Local Government Districts Act* similarly provides that the area or boundary of a district may be altered by regulation of the Lieutenant Governor in Council (s. 8). Thus, it is possible that the boundaries of a Municipality that exist when the Municipality enters into a MDSA could change after the agreement is executed.

Subsection 50(1) of *The Municipal Act* provides that by regulation, an area of land that was in one municipality may be included or placed in another municipality. When this occurs, unless the regulation provides otherwise, the new municipality becomes the successor of the old municipality respecting that land and the old municipality ceases to have any jurisdiction respecting the land. In addition, the assets, liabilities, rights and obligations of the old municipality that relate to the land pass to the new municipality and cease to be those of the old municipality. The by-laws and

resolutions of the old municipality continue to apply to the new municipality until repealed or the new municipality makes others in their place.

Thus, if the land adjacent to the Reserve ceases to be a part of the original Municipality and this boundary change results in the original Municipality being unable to fulfil its obligations under the MDSA, unless the regulation respecting the municipal boundary change provides otherwise, the new Municipality which will exercise jurisdiction over the land adjacent to the Reserve will become bound by the MDSA; this is so, even if the new Municipality does not want to provide the services that the old Municipality provided to the Entitlement First Nation, or wants to provide the same services, but for a higher fee. The Entitlement First Nation may wish to have the MDSA state that it will remain in effect notwithstanding a change to the area or boundary of the Municipality, subject to the passage by Manitoba of a regulation to the contrary. The following provision could be used to provide such an assurance:

Subject to a regulation pursuant to *The Municipal Act* to the contrary, any alteration to the Municipality's boundaries so that the land or part of the land that is contiguous with the Selection/Acquisition is thereafter situated in another municipality shall be subject to this Municipal Development and Services Agreement remaining in effect and binding upon the other municipality.

8. EFFECT OF AMALGAMATION OF FIRST NATIONS

The Minister of Indian Affairs and Northern Development may amalgamate one First Nation with another First Nation (*Indian Act*, s.17(1)(a)). Given the possibility of amalgamation of First Nations, an Entitlement First Nation and Municipality may want to provide in their MDSA that should the Entitlement First Nation amalgamate with another First Nation after the execution of the MDSA, the agreement will apply to the new entity automatically, without the need for an assignment, as follows:

Where the Entitlement First Nation amalgamates with one or more other First Nations in accordance with paragraph 17(1)(a) of the *Indian Act*, R.S.C. 1985, c. I-5:

- (a) the amalgamated First Nation shall be included within the definition of Entitlement First Nation, despite the definition of "Entitlement First Nation" in the Framework Agreement,**
- (b) any specific reference in this Municipal Development and Services Agreement to the Entitlement First Nation shall be a reference to the amalgamated First Nation; and**
- (c) any benefits that the Entitlement First Nation is entitled to receive pursuant to this Municipal Development and Services Agreement shall accrue to the benefit of the amalgamated First Nation, and any obligations of the Entitlement First Nation pursuant to this Municipal Development and Services Agreement shall obligate the amalgamated First Nation.**

9. EFFECT OF CREATION OF FIRST NATIONS

The Minister of Indian Affairs and Northern Development may constitute a new First Nation from an existing Band (*Indian Act*, s. 17(1)(b)). Given this authority to create new First Nations, the parties may want to provide in the MDSA that should a new First Nation be created from the existing Entitlement First Nation, the MDSA will

apply to the new entity without the need for an assignment, provided that on such an occurrence, the original Entitlement First Nation and the new First Nation consents to such an arrangement, as follows:

Where a new First Nation is established from the Entitlement First Nation or any part thereof in accordance with paragraph 17(1)(b) of the *Indian Act*, R.S.C. 1985, c. I-5:

- (a) the new First Nation shall be included within the definition of Entitlement First Nation, despite the definition of “Entitlement First Nation” in the Framework Agreement,**
- (b) any specific reference in this Municipal Development and Services Agreement to the Entitlement First Nation shall be a reference to the Entitlement First Nation and the new First Nation; and**
- (c) any benefits that the Entitlement First Nation is entitled to receive pursuant to this Municipal Development and Services Agreement shall accrue to the benefit of the Entitlement First Nation and the new First Nation, and any obligations of the Entitlement First Nation pursuant to this Municipal Development and Services Agreement shall obligate the Entitlement First Nation and the new First Nation;**

provided that the Entitlement First Nation and new First Nation both agree in writing by way of Band Council Resolutions.

On the other hand, an Entitlement First Nation may believe that a newly created First Nation will never want to be bound by the MDSA entered into by the original Entitlement First Nation. Since band division is a slow process, there will probably be sufficient time between the announcement of a future band division and the actual band division, for the new First Nation and Municipality to develop their own agreement, or for the Municipality to plan for the discontinuance of services to the new First Nation. As such, rather than including a provision similar to that mentioned above, the Entitlement First Nation may prefer to have the MDSA terminate early and a new MDSA negotiated, in the event that the Entitlement First Nation divides into two First Nations, as the following provision indicates:

Where a new First Nation is created from the Entitlement First Nation or any part thereof in accordance with paragraph 17(1)(b) of the *Indian Act*, R.S.C. 1985, c. I-5, either party may, at its option, and without prejudice to any other remedy which may be available, terminate this Municipal Development and Services Agreement or, in the case of the Municipality, suspend or withdraw the Services to the Entitlement First Nation, upon the provision of six (6) months written notice to the other party.

10. MEMBERS OF THE MUNICIPAL GOVERNMENT

The Municipal Council Conflict of Interest Act, C.C.S.M. c. M2 55 sets out rules for disclosure and voting for Municipal councillors who have a pecuniary interest in a matter before the Municipal council. Provided that Municipal councillors comply with the requirements of the *Act*, they may receive personal benefits from contracts entered into by the Municipality. However, the parties to a MDSA may place additional restrictions on Municipal councillors so that they can't benefit from the Municipality's contract with the Entitlement First Nation more so than other members of the Community to avoid any public perception of favouritism which might otherwise arise. In this case, a restriction

prohibiting Municipal councillors from receiving any benefits not received by others in the community would have to be expressly provided in the agreement, as follows:

No member of the Municipal government shall be entitled to any benefit which may arise out of this Municipal Development and Services Agreement not enjoyed by other residents of the Municipality of which he or she is a member.

An Entitlement First Nation may wish to include a similar provision in the agreement to preclude band councillors from obtaining personal benefits from the MDSA.

11. APPLICABLE LAW

Section 88 of the *Indian Act* provides that, subject to the terms of any treaty or any other federal legislation, all laws of general application from time to time in force in the province apply to and in respect of Indians in the province, except to the extent that such laws are inconsistent with the *Indian Act* or any order, rule, regulation or by-law made under the *Indian Act* and provide for a matter for which provision is made by the *Indian Act*.

The Entitlement First Nation may wish to have this provision restated in the MDSA. However, as this provision would merely reiterate the existing scope of law, it would certainly not be necessary. In addition, it is possible that the parties may wish to provide for an alternative dispute resolution process, other than the courts, to deal with disputes respecting whether a law is one of general application that is not in conflict with the *Indian Act* or Entitlement First Nation by-laws and, therefore, applies to the Selection or Acquisition. If the parties wish to include provisions respecting the applicability of provincial law and the resolution of disputes pertaining thereto, they could include provisions such as the following in their Agreement:

(1) Subject to section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, all provincial laws of general application which are not in conflict with the provisions of the *Indian Act*, C.C.S.M. c. I-5 or any Entitlement First Nation By-law enacted thereunder, apply to the Selection/Acquisition and may be enforced on the Selection/Acquisition.

(2) In the event of a dispute between the parties as to whether a provincial law is a law of general application that applies to the Selection/Acquisition and may be enforced on the Selection/Acquisition, the parties shall resolve the dispute in accordance with the dispute resolution process set out in sections * of this Municipal Development and Services Agreement.**

(3) If the parties fail to resolve the dispute to the satisfaction of both parties and legal proceedings are commenced by either party to determine the question of the applicability of provincial laws, then nothing in this Section shall be construed to diminish, derogate from or prejudice the constitutional, aboriginal, treaty or other rights of either party, nor affect their legal position in the matter.

12. CONSTITUTIONAL OR LEGISLATIVE CHANGES

Many MDSAs will continue in effect for a long period of time. For this reason, it is possible that while a MDSA is in effect, legislative changes may take place that will

affect the rights and obligations of the parties to the agreement. The parties may wish to provide a mechanism in their agreement for resolving any difficulties caused by future legislative changes, such as the following:

Where any amendment not contemplated by this Municipal Development and Services Agreement is enacted to the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, the *Indian Act*, R.S.C. c. I-5 or any other legislation, the result of which amendment is inconsistent with the legal rights or obligations of the parties under this Municipal Development and Services Agreement and which, in turn, materially affects the implementation, operation or effect of this Municipal Development and Services Agreement, the parties agree to enter into good faith negotiations designed to determine and implement any necessary amendments to this Municipal Development and Services Agreement required to remedy or alleviate the effect of such constitutional or legislative changes.

13. EXISTING ABORIGINAL OR TREATY RIGHTS

Aboriginal rights and treaty rights are two distinct types of rights. Aboriginal rights are rights that belong to Aboriginal peoples, allowing them to practice activities that are elements of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming those rights. The practices, customs and traditions that constitute aboriginal rights must be independent and of central significance to the Aboriginal society in question and have continuity with the traditions, customs and practices that existed prior to contact with Europeans (*R. v. Vanderpeet*, [1996] 9 W.W.R. 1 (S.C.C.)).

Treaty rights are rights that belong to Aboriginal peoples by virtue of treaties. As mentioned above, Canada entered into seven treaties with Indian Bands in Manitoba between 1871 and 1910. Each of these seven treaties provide that in exchange for the Indian Bands giving up any right to lands inhabited by them at that time, Canada would set apart a certain amount of land as Reserve land based on the Band populations at the time of the original Reserve surveys and would provide certain other benefits to the Indian Bands who are signatory to the treaties. For example, Treaty No. 1 provides:

The Chippewa and Swampy Cree Tribes of Indians and all other the Indians inhabiting the district herein after described and defined do hereby cede, release, surrender and yield up to Her Majesty the Queen and successors forever all the lands included within the following limits...

Her Majesty the Queen hereby agrees and undertakes to lay aside and reserve for the sole and exclusive use of the Indians the following tracts of land, that is to say: For the use of the Indians belonging to the band ... so much of land ... as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families, beginning from the mouth of the river....

...three dollars for each Indian man, woman and child belonging to the bands here represented

...to maintain a school on each reserve hereby made whenever the Indians of the reserve should desire it...

...in every year ensuing the date hereof, at some period during the month of July in each year, to be duly notified to the Indians and at or near their respective reserves, pay to each Indian family of five persons the sum of fifteen dollars Canadian currency, or in like

proportion for a larger or smaller family, such payment to be made in such articles as the Indians shall require of blankets, clothing, prints...or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash.

Aboriginal and treaty rights that were not extinguished before April 17, 1982 were given constitutional protection by subsection 35(1) of the *Constitution Act, 1982*:

35(1) Recognition of existing aboriginal and treaty rights – The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

An Entitlement First Nation may want the MDSA to include an acknowledgement that its aboriginal and treaty rights are not affected by the MDSA. In addition, an Entitlement First Nation may want the MDSA to provide that the MDSA will not affect the application of subsection 35(1) of the *Constitution Act, 1982* to any aboriginal and treaty rights that may accrue to the Entitlement First Nation or its members in the future.

This Municipal Development and Services Agreement shall not be construed so as to abrogate or derogate from any existing aboriginal or treaty right of the Entitlement First Nation or any member of the Entitlement First Nation, nor shall it be construed so as to abrogate or derogate from the application of subsection 35(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, to any aboriginal or treaty right of the Entitlement First Nation that may accrue after the date of execution of this Municipal Development and Services Agreement.

14. TERMINATION FOR BREACH OF AGREEMENT

A Municipality has remedies available to it, to use when Municipal residents don't pay their property taxes. A Municipality can impose penalties and liens, seize and sell goods, and conduct tax sales of real property (*The Municipal Act*, Part II). In addition, a Municipality can simply not provide further services to Municipal residents who don't pay for them.

A Municipality will want to have some recourse against an Entitlement First Nation that does not pay for Municipal services as agreed, or that breaches the MDSA. Not all of the remedies that are usually available to a Municipality would be available to a Municipality in respect to an Entitlement First Nation, as the title to Reserve lands is held by Canada. A provision, such as the following one, could be used to set out the consequences of a breach of the agreement by the Entitlement First Nation:

Should the Entitlement First Nation breach any of its covenants or undertakings under this Municipal Development and Services Agreement and not rectify the breach for a period of thirty (30) days following written notification by the Municipality to the Entitlement First Nation of such breach, the Municipality may, at its option, and without prejudice to any other remedy which may be available, immediately terminate this Municipal Development and Services Agreement or suspend or withdraw the Services being provided to the Entitlement First Nation pursuant to the provisions of this Municipal Development and Services Agreement.

Similarly, an Entitlement First Nation may want the MDSA to provide it with remedies that it can use in the event that the Municipality breaches its obligations under

the agreement. The Entitlement First Nation may request that a reciprocal provision such as the following be included in the agreement:

Should the Municipality be in breach of its covenants or undertakings under this Municipal Development and Services Agreement and not rectify the breach for a period of thirty (30) days following written notification by the Entitlement First Nation to the Municipality of such breach, the Entitlement First Nation may, at its option, and without prejudice to any other remedy which may be available, immediately terminate this Agreement or withhold payment for the Services being provided by the Municipality pursuant to the provisions of this Agreement.

On the other hand, an Entitlement First Nation may wish to negotiate with the Municipality for the inclusion in the agreement of an exception to the suspension or withdrawal of *all* Services for a breach of the agreement by the First Nation. It may wish instead to have the agreement provide that the Municipality may suspend or withdraw any or all Services "other than police services and fire protection and prevention services" on a breach by the First Nation (where these services are being provided by the Municipality).

A Municipality may also wish to have a remedy available to it, other than termination, for a failure by the Entitlement First Nation to pay for Services. For example, a Municipality may wish to have the Entitlement First Nation provide it with an irrevocable letter of credit that it can draw on if the Entitlement First Nation fails to pay for services. In this case, a provision such as the following could be inserted into the agreement (another provision respecting the letter of credit would also be required):

The Entitlement First Nation shall, within fifteen (15) business days of the date upon which the Selection/ Acquisition is set apart as a Reserve, provide the Municipality with an irrevocable standby Letter of Credit drawn upon a Canadian Chartered bank in the amount of \$**.00 [insert estimated cost of services for one year], in form substantially the same as the form attached as Schedule "**", to be used as security for payment of amounts owing to the Municipality pursuant to this Municipal Development and Services Agreement and shall renew or substitute and keep in effect the Letter of Credit throughout the term of this Agreement. Any renewed or substituted Letter of Credit shall be delivered by the Entitlement First Nation to the Municipality not less than thirty (30) days prior to the expiration of the then current Letter of Credit.**

Should either party be in breach of its covenants or undertakings under this Municipal Development and Services Agreement, other than a failure by the First Nation to pay for Services, which remains unrectified for a period of one hundred and twenty (120) days 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 Municipal Development and Services Agreement.

If, in any year, the Entitlement First Nation fails to pay an invoice for Services by December 31st, the Municipality shall have the right to discontinue and/or disconnect the Services or any of them, upon fifteen (15) days notice in writing given to the Entitlement First Nation, unless payment is made before that time. So long as this agreement remains in force, if any discontinuances and/or disconnections are made, the Municipality shall recommence and/or reconnect the Services upon payment of all outstanding Service charges, plus all reasonable cost incurred by the Municipality.

Whether or not the Services or any of them are discontinued or any disconnections are made, where invoices remain unpaid by the Entitlement First Nation as at June 30th 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. If, at any time during the term of this Agreement invoices remain unpaid as at June 30th and the Entitlement First Nation fails to have the Letter of Credit in place, the Municipality may give immediate notice of termination of this Agreement.

The Municipality shall provide written notice to the Entitlement First Nation of any call upon the Letter of Credit and the Entitlement First Nation shall, within thirty (30) days of receipt of such notice, replace the Letter of Credit with a new Letter of Credit having the same terms and conditions, and in the original face amount.

15. CONSENT BY INTERESTED PARTY

Where an Entitlement First Nation hires a developer or incorporates a band-controlled development corporation to develop the Selection or Acquisition, which is more likely to occur with Selections or Acquisitions within Urban Areas, the Municipality may want to ensure that the developer or corporation is aware of the terms of the MDSA. The Municipality can be assured of this, by obtaining the consent of the developer or corporation to the terms of the MDSA and its agreement to be bound by such terms, which consent might be attached as a schedule to the agreement, as follows:

The ** Developer/Corporation consents to the terms of this Municipal Development and Services Agreement and agrees to be bound by the same.

Such a consent provision would not be a substitute for a Development Agreement between the Municipality and the band-controlled corporation, which would outline the Municipal standards to be followed when developing the property, the construction responsibilities of the land developer and the amount of off-site levies to be paid by the developer.

However, the Entitlement First Nation may consider such a provision to be overly intrusive. The Entitlement First Nation may consider that, in dealing with its contractors (including a band development corporation), it should be responsible for doing so in a way that complies with the agreement. An alternative provision could require the Entitlement First Nation to require the developer or band development corporation to comply with the requirements of the MDSA:

The Entitlement First Nation agrees that in any agreement between the Entitlement First Nation and the ** Developer/Corporation, it shall require the ** Developer/Corporation to be bound by the terms and conditions of the Municipal Development and Services Agreement.

16. STANDARD PROVISIONS

Standard provisions are those provisions that are routinely used in commercial agreements. They are essential components of an agreement, providing a framework for the provisions that set out the substantive rights of the parties. The following standard provisions would be appropriate to most, if not all, MDSAs, no matter how

simple or complex the agreement. They are drawn from the Framework Agreement, with some modification.

A. NOTICE

A notice provision ensures that the parties clearly understand how they can deliver effective notice to the other party to the agreement. The following provision could be used for this purpose:

(1) The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Municipal Development and Services Agreement, including any notice advising the other party of any change of address, shall be as follows:

(a) to Municipality:

Fax. No.:

(b) to Entitlement First Nation:

Fax. No.:

(2) The parties may change their address for delivery of any notice or other written communication in accordance with Subsection (1).

(3) Any notice or other written communication shall be sufficient if delivered personally, by registered mail, postage prepaid or facsimile transmission, and shall be deemed to be effective on the last of the following dates:

- (a) the date stated in the notice as the effective date of the notice;**
- (b) if mailed by prepaid registered mail, that date five business days after mailing;**
- (c) if delivered personally, on the date of the delivery; and**
- (d) if delivered by facsimile transmission, on the date of receipt of the transmission**

provided that during an actual or anticipated postal disruption or stoppage, neither party shall use postal delivery.

B. ENTIRE AGREEMENT

It is prudent for the parties to describe their rights and obligations in only one document or one set of documents, and to exclude from having legal force any documentation or negotiations that took place between the parties prior to the final agreement. If the agreement consists of more than one document, the other documents must be attached as schedules to the MDSA, so that it is clear which documents are intended by the parties to form a part of the agreement. The following provision could be used to convey the message of which documents constitute the agreement:

(1) This Municipal Development and Services 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 Municipal Development and Services Agreement.

(2) This Municipal Development and Services Agreement supersedes, merges and cancels any and all pre-existing agreements and understandings in the course of negotiations between the parties.

C. AMENDMENT

An amendment provision represents the parties' agreement about the manner in which future changes can be made to the agreement. If the provision requires that an amendment must be in writing, it reduces the possibility that oral agreements will be permitted by the courts to amend the original agreement and increases certainty to the agreement. The following provision could be used:

This Municipal Development and Services Agreement shall not be varied or amended except by written agreement of both parties.

D. ASSIGNMENT

With certain exceptions, the courts will presume that a contractual right is assignable unless the parties expressly provide in the agreement that the right is not assignable. However, usually a party to an agreement will not want the other party to be able to assign his or her rights under the agreement without obtaining his or her consent. Given that an agreement could be interpreted as allowing a party to assign rights if it doesn't expressly provide otherwise, if a party to the MDSA does not want the other party to be able to assign his or her interests under the agreement, the agreement should expressly provide that neither party can assign rights under the agreement without the consent of the other party.

As mentioned above, the *Indian Act* and *The Municipal Act* authorizes First Nations to amalgamate and Municipalities to amalgamate. The common law is not clear as to whether an amalgamation constitutes an assignment. Given this uncertainty, the parties should expressly provide for whether amalgamation constitutes assignment. If the agreement were to provide that amalgamation does not constitute an assignment, the MDSA could continue to govern the rights and obligations of the parties despite an amalgamation of the Entityment First Nation with another First Nation or the amalgamation of the Municipality with another Municipality. The following provision could be used:

The rights and obligations of the parties may not be assigned or otherwise transferred. An amalgamation by a party does not constitute an assignment.

E. ENUREMENT

An enurement provision ensures that the rights and obligations contained in the agreement bind a substituted party, notwithstanding the common law doctrine of privity of contract. The following provision could be used:

This Municipal Development and Services Agreement enures to the benefit and is binding upon:

- (a) the Municipality, its successors and permitted assigns; and
- (b) the Entitlement First Nation, its successors and permitted assigns.

F. SEVERANCE

If one or more provisions of an agreement are determined by a court to be invalid, the entire agreement may fail in the absence of a provision that allows for severance of the invalid provisions. Such a provision allows a court to sever the invalid part of the agreement, leaving the remainder of the agreement intact. The following provisions allow for severance of invalid provisions of the agreement, and also provide for the resolution of any issues that may result from the severance:

- (1) In the event that any provision of this Municipal Development and Services Agreement should be found to be invalid, the provision shall be severed and the Agreement read without reference to that provision.
- (2) Where any provision of this Municipal Development and Services Agreement has been severed in accordance with Subsection (1) 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 Municipal Development and Services Agreement accordingly.

G. WAIVER OF BREACH

Usually, parties to an agreement do not want their rights to be relinquished by their conduct, silence or inaction. To avoid having the agreement interpreted as allowing a party's conduct, silence or inaction to constitute a waiver of a contractual right, the parties to a MDSA should include a provision similar to the following one in their agreement:

The failure on the part of either party to exercise or enforce any right conferred upon it under this Municipal Development and Services Agreement shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

H. HEADINGS

Headings enable readers to easily locate particular provisions. However, a heading does not always accurately reflect the subject matter that follows it. A provision such as the following one should be included in a MDSA to ensure that headings do not affect the interpretation or construction of the agreement or a particular provision of the agreement.

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 Municipal Development and Services Agreement.

I. FURTHER ASSURANCES

The contracting parties may need to execute other documents to fulfil the terms of the MDSA. A provision should be inserted into the MDSA to obligate the parties to do

whatever is necessary to fulfil the intended purposes of the agreement. The following provision could be used:

The parties covenant each with the other to do such things and to execute such further documents and take all necessary measures to carry out and implement the terms of this Municipal Development and Services Agreement.

Where an Entitlement First Nation has Acquired the land that it wishes Canada to set apart as Reserve for its benefit, and has set up a corporation to lease the land from the Crown, the Municipality may want to enter into a separate agreement with the corporation rather than having the corporation consent to the terms of the agreement between the Entitlement First Nation and itself. The following provision could be inserted in the MDSA to follow the previous general provision:

Without limiting the generality of the foregoing, the Entitlement First Nation agrees to ensure that a term and condition of the designation of the Acquisition by way of surrender to the Crown, and subsequent lease of the Acquisition by the Crown to the Corporation, shall be a requirement that the Corporation enter into an agreement with the Municipality in the form annexed as Schedule “*” hereto.**

IV. SERVICES

An Entitlement First Nation may determine that it cannot physically service the land that it Selected or Acquired due to the distance of the Selection or Acquisition from the main Reserve. In the alternative, an Entitlement First Nation may determine that it would be less expensive to purchase services from the Municipality than to supply the services to the Reserve itself. For either of these reasons, an Entitlement First Nation that Selects or Acquires land within a Municipality may be interested in receiving services from the Municipality.

As mentioned earlier, if an Entitlement First Nation requires services to be provided to the Reserve, it will have to request of the Municipality that it enter into negotiations regarding the provision of such services with a view to concluding a MDSA (Framework Agreement, s. 3.07 (1)(d)). The Municipality will have to decide whether it is capable of providing the requested services and whether it wishes to service the future Reserve land. If the Municipality is willing and able to provide the requested services, it will enter into negotiations with the Entitlement First Nation. However, as mentioned above, land within a Municipality will not be ineligible to be set apart as Reserve for a failure by the Entitlement First Nation and Municipality to enter into a MDSA (Framework Agreement, s. 3.07 (4)(b)).

Issues that the parties may wish to consider and address in a MDSA include:

- the services that the Entitlement First Nation would like to purchase from the Municipality,
- the services that the Municipality is able and willing to supply to the Entitlement First Nation,
- the level of services that will be supplied by the Municipality,
- the basis for the charges for the services,
- the charges for the services,
- the manner in which the Entitlement First Nation will be billed for the services,
- payment due dates,
- prepayment discounts and whether they will be offered at the same rate as for Municipal residents,
- late or non-payment penalties,
- the responsibility for collection of payment,
- fees for administration, legal costs, disconnection and reconnection if services are suspended for non-payment,
- access by Municipality to Reserve to install, maintain and operate the services,
- access for emergency services such as fire services,
- failure by Municipality to provide services as agreed,
- upgrading, improvement, replacement or major repairs respecting services, including:
 - integration of services, such as road maintenance and drainage,
 - capital cost of service enhancement or upgrade, including cost sharing,

- impacts of a major development on the Reserve which will have a significant effect on municipal services (where the Entitlement First Nation intends to undertake such a development),
- engineering studies relating to services, including who is responsible for the cost.

An alternative arrangement that may be contemplated by some parties is for a Municipality and Entitlement First Nation to provide services to one another on a shared basis, with the Entitlement First Nation providing certain services to the Municipality and the Municipality providing other services to the Entitlement First Nation. In the alternative, a Municipality may wish to purchase services from the Entitlement First Nation. The variety of possible service arrangements between the parties is almost endless; this Reference Manual does not attempt to provide examples of each of these possible servicing arrangements and, instead, discusses and gives examples only of provisions that might be used where services are provided by a Municipality.

1. TYPE OF SERVICES

As mentioned above, a MDSA must specify the type of services that will be provided. In some cases, only one service will be provided, for example, sewer and water service. In other cases, a Municipality will provide the Entitlement First Nation with all services that it provides to the residents and businesses within the Municipality.

Services provided by a Municipality to residents of the Municipality are classified as hard or soft services and may be provided on a site-specific (direct) or Municipality-wide (indirect) basis.

Hard services often include:

- road paving and patching, snow clearing, and sanding of icy streets,
- provision of drinking water,
- operation of a sewage collection and treatment system,
- maintenance of a storm water drainage system,
- garbage collection and operation of a landfill,
- fire fighting and prevention,
- traffic control,
- enforcement of building codes,
- policing, and
- public transit.

Soft services often include:

- maintenance of parks,
- planning and zoning of the municipality,
- operation of recreational and leisure facilities, and
- special services such as inner-city youth programs.

Services to Municipal land, such as the snow ploughing and maintenance of roads adjacent to the Reserve, will benefit First Nation residents by allowing them access and egress from the Reserve. Similarly, weed control and dust abatement near the Reserve may keep weeds and dust off the Reserve. First Nation adults and children may also use Municipal parks and playgrounds. Each of these Municipal services primarily benefit Municipal residents, but they are also of some benefit to First Nation residents. As such, a Municipality may consider that the provision of these services should be included within the MDSA.

Services that are provided by another level of government should not be dealt with, or should specifically be excluded from being dealt with, in a MDSA. For example, the Royal Canadian Mounted Police (RCMP) provides policing services to Municipalities outside Winnipeg and Brandon. Municipalities obtain policing services from the RCMP by agreement with Canada or Manitoba. Some First Nation communities receive First Nations Community Policing pursuant to a tri-party agreement between Canada, Manitoba and the First Nation. Other First Nation communities receive policing services pursuant to the Provincial Policing Services Agreement between Manitoba and Canada. Which of these options is appropriate for an Entitlement First Nation will depend upon the location and size of the Selection or Acquisition, as well as the number of residents. For Selections or Acquisitions in Winnipeg or Brandon, the Entitlement First Nation will have to negotiate with the Winnipeg or Brandon Police Services for the provision of policing services. If the parties wish to provide in their MDSA that the Entitlement First Nation will enter into an agreement for policing services with the RCMP, the following provision may be inserted into the Agreement:

The Entitlement First Nation shall enter into an agreement with the Royal Canadian Mounted Police to confirm the right of access of the Royal Canadian Mounted Police to the Selection/Acquisition, and to act as peace officers with respect to the Selection/ Acquisition and its occupants.

Similarly, the education of First Nation children, whether on the Reserve or in neighbouring communities, is funded by the federal government. In the event that a Municipality does not play a direct role in the education of First Nation children, the education of First Nation children should not be addressed in a MDSA.

If the Entitlement First Nation wishes to obtain all of the services that are provided to Municipal residents, the following provision could be used in a MDSA to indicate the type of services that will be provided:

The Municipality shall provide all normal Municipal services to the Selection/Acquisition and the occupants of the Selection/Acquisition (the "Services"). The type and level of services supplied to the Selection/Acquisition and the occupants of the Selection/Acquisition shall be the same as the Municipality supplies to similarly zoned lands within the Municipal boundaries, which are in a similar state of development. Policing services and services provided by other levels of government, including, without limitation, the services of the public and separate school boards, shall not be included within the Services.

In the alternative, the Entitlement First Nation may want to be provided with the same services that are provided to other municipal residents, but may wish the agreement to describe in greater detail, what services will be provided. Where the Entitlement First Nation already has enacted its own by-law respecting land use and occupancy, a provision similar to the following provision could be used:

“Services” includes fire and ambulance, garbage collection and disposal, water distribution and sewage collection, inspection and enforcement of the Entitlement First Nation’s Land Use and Occupancy By-law, and all activities related thereto, on the Selection/Acquisition, and the maintenance of municipal infrastructure and all services and activities related thereto outside the Selection/Acquisition that contribute to its use and enjoyment.

So long as this Municipal Development and Services Agreement remains in force, the Municipality shall deliver all Services to the Selection/Acquisition and its occupants as would be provided from time to time to any other similarly situated and used land and its occupants within the Municipality.

The Municipality shall, as part of the Services, provide designated officers to carry out inspection and enforcement of the Entitlement First Nation’s Land Use and Occupancy By-law on the Selection/Acquisition, in substantially the same manner as inspection and enforcement of the corresponding by-laws of the Municipality, so long as and to the extent that the Land Use and Occupancy By-law of the Entitlement First Nation continues to confer that inspection and enforcement authority on the designated officer of the Municipality.

The Entitlement First Nation shall support the inspection and enforcement process by:

- (a) ensuring that the designated officers of the Municipality and their delegates who have inspection and enforcement authority on the Selection/Acquisition have the right to enter upon any part of the Selection/Acquisition for the purpose of providing the Services; and**
- (b) providing evidence required to prove the validity and content of the Land Use and Occupancy By-law.**

In particular, the Entitlement First Nation shall take all steps necessary to support the issuance of a permit to the Municipality for the express purpose of providing a right of access to provide the Services.

If the Entitlement First Nation wants to obtain only specific services, the provisions to be incorporated in the MDS Agreement will have to be tailored to fit the circumstances. For example, the Entitlement First Nation may want to be provided with only water, fire and sewer services, as indicated in the following provisions:

Subject to the terms and conditions of this Municipal Development and Services Agreement, during the term of this Agreement, the Municipality shall provide the following Services to the Entitlement First Nation:

- (a) domestic water including fire hydrant maintenance;**
- (b) fire protection; and**
- (c) sanitary sewer collection.**

The Entitlement First Nation shall construct the Reserve System and Off-Reserve System as described in Schedules “*” and “***” attached hereto, and such construction shall meet the specifications of the Municipality.

The quantity and quality of each Service provided by the Municipality shall be substantially the same as the quantity and quality of such service provided by the Municipality within the Municipal boundaries.

The Entitlement First Nation shall retain a Professional Engineer to supervise the construction of the Reserve System and Off-Reserve System, who shall certify to the Municipality that such works have been constructed to Municipality specifications, such certification to be delivered to the Municipality’s engineer before connection of the works to the Municipal water and sanitary sewer system.

The Municipality shall have control and supervision for all repairs and maintenance of the Reserve System, the costs of the materials, equipment, and labour, for such repairs to be borne by the Entitlement First Nation. The Municipality shall not be responsible for repairs or maintenance to the service laterals between the main and the building.

The Municipality shall supply water, sanitary sewer service and fire protection to that portion of the Reserve shown crosshatched on the plan attached hereto as Schedule “****”.

The Municipality shall accept all domestic sanitary sewage from the Entitlement First Nation. Acceptance of any other type of sewage shall require written approval of the Municipality.

The Municipality agrees that no connections shall be permitted to the Off-Reserve System.

As mentioned above, these are only a few examples of the provisions that might be included in an agreement.

2. PAYMENT FOR SERVICES

Municipalities are almost totally self-financing. Although they may receive some government grants, most of their revenue is derived from property taxes, as they do not have the power to raise revenue through income tax, gasoline tax or sales tax, as do other levels of government. Each property within a Municipality generates property tax revenues. The amount of tax on a particular piece of property is based on factors that include its zoning, location and level of development. For example, a piece of raw land on the edge of an Urban Area would be taxed at a lower rate than a similarly sized property with a building on it, located in the main business district.

However, Reserve land is specifically excluded from Municipal land (*The Municipal Act*, s. 2; *The Local Government Districts Act*, C.C.S.M. c. L190, s. 1.1). As such, Reserve land is exempt from taxation by a Municipality, even if the Reserve land is bordered on all sides by the Municipality. This means that, if land that is part of a Municipality is Selected or Acquired by an Entitlement First Nation and set apart as Reserve, it will be exempt from Municipal taxation. The removal of land from the Municipality’s tax base by the implementation of the Framework Agreement is likely to result in a tax loss for the Municipality. In fact, the possibility of a tax loss by a

Municipality that loses part of its property tax base as a result of the setting apart of land within the Municipality is recognized as a distinct possibility within the Framework Agreement (Framework Agreement, s. 14.01(2), s. 37.03 (1)).

The Entitlement First Nation may wish to have the Municipality expressly agree that it will not ask the Entitlement First Nation to pay for any tax losses attributable to the land being set apart as Reserve. A provision such as the following could convey this intention:

The Municipality hereby agrees that upon execution of this Municipal Development and Services Agreement, it shall cede, relinquish and abandon unto the Entitlement First Nation, and forever discharge and release the Entitlement First Nation, its agents, members and successors from all claims, rights, title and interest relating to any and all of the provision of and payment for compensation to the Municipality for loss of taxes, levies, or grants in lieu, which, but for the setting apart of the Selection/ Acquisition as Reserve, could reasonably have been expected to have been received by the Municipality for its own purposes (save the Service charge as contemplated in this Agreement).

Although a Municipality cannot tax the Reserve land, it can require the Entitlement First Nation to pay a reasonable amount for services that the Municipality provides to the Reserve and its residents. The fee charged for the services is an amount that will be derived through negotiation between the Municipality and the Entitlement First Nation; it may or may not be equal to the taxes that would have been payable on the land had it not been Selected or Acquired by the Entitlement First Nation as part of the Entitlement First Nation's TLE. The fee that will be payable by the Entitlement First Nation for such services will depend upon the type of services that will be provided and the level of those services. The MDSA should set out the details of the amount and the timing of payments for services provided by the Municipality to the Entitlement First Nation.

In the event that the Entitlement First Nation Selects or Acquires undeveloped land with the intention of developing it, the Municipality and Entitlement First Nation will have to consider who, as between the Municipality, purchaser of the undeveloped land and developer, should be responsible for the cost of development infrastructure. Typically, when land is developed for industrial or commercial purposes, the purchaser pays for on-site infrastructure such as water pipes, sanitary sewer pipes, storm sewer pipes, catch basins, streets, lanes, paving, curbing and boulevards, while the developer of the land pays a one-time off-site levy (usually as a hook-up fee) to offset the cost of off-site infrastructure such as street signs, traffic lights, street lighting, trunk sewers, primary water mains, arterial (main) roads, bridges, sewage lift stations, and major parks.

The following is an example of provisions that could be used where a Municipality provides the same services to the Entitlement First Nation as it provides to Municipal residents and the Entitlement First Nation agrees to pay for these services by paying a fee that is equivalent to the taxes that a Municipal resident would have paid for the same services:

Payment for Municipal Services

(1) In consideration for the Services, the Entitlement First Nation shall pay the Municipality an annual amount based on the assessed value of the Selection/Acquisition which would have been payable by the Entitlement First Nation to the Municipality during the year pursuant to *The Municipal Act, C.C.S.M. c. M225*, if the Selection/Acquisition were not Reserve land and the Selection/Acquisition, the improvements thereto, its occupants and the owners of businesses conducted thereon were assessed and taxed by the Municipality, less the portion of such taxes that are assessed and levied by the Municipality in consideration of policing services and on behalf of any public or separate school board.

(2) In addition to the amount required to be paid under Subsection (1), the Entitlement First Nation shall pay the Municipality an annual amount equal to any grant in lieu of taxes which would have been payable by the Entitlement First Nation to the Municipality during the year pursuant to *The Municipal Act, C.C.S.M. c. M225*, if the Selection/Acquisition were not Reserve land, less the portion of such grant that is in consideration of policing services and on behalf of any public or separate school board.

(3) The Entitlement First Nation agrees to pay annually, in addition to the amounts required to be paid under Subsections (1) and (2) amounts equal to

- (a) any business tax;
- (b) any local improvement tax;
- (c) any special services tax; and
- (d) any other charges, which would have been charged to the Entitlement First Nation, were the Selection/Acquisition not Reserve land.

(4) The Entitlement First Nation and the Municipality agree that the use of the tax and levy replacement calculation is a reasonable proxy for, and is to be used in replacement of, detailed calculations of the actual costs incurred by the Municipality in providing the Services and is intended by the parties to constitute a fee for the Services and not a tax.

(5) In the event that the Entitlement First Nation does not agree with the consideration for the Services, including the application or establishment of the appropriate mill rate, property categorizations, methods of assessment, assessed value of the Selection/Acquisition, or amounts payable or amounts in arrears, the Entitlement First Nation may take steps to have the issue or issues reviewed in accordance with the dispute resolution process set out in sections * * * of this Municipal Development and Services Agreement. Either party may refer matters hereunder to the dispute resolution process, at any time, notwithstanding any time limits imposed under Municipal Taxation By-laws or *The Municipal Act, C.C.S.M. c. M225*. Where a matter in dispute is referred to the dispute resolution process set out in this Agreement, the application of the Section headed "Remedies for Non-Payment" shall be suspended.

(6) Notwithstanding any other provision of this Agreement, the annual amount to be paid by the Entitlement First Nation under Subsections (1) and (2) shall not cover those services which are normally provided by the Municipality in consideration of a direct charge or user fee payable by the party to whom such services are provided. Such services include, without limitation, the supply of water, the disposal of sewage and the supply of electricity. The charges for these services shall be paid by the Entitlement First Nation or by the occupant of the Selection/Acquisition to whom the service is supplied, in the same manner as any other party to whom such services are provided. Such payment will include, if

required by law, any tax imposed by federal or provincial legislation in relation to the provision of such services.

Adjustment for Undeveloped Lands

The annual amount payable by the Entitlement First Nation to the Municipality pursuant to the Section headed "Payment for Municipal Services" shall be reduced in the following manner:

- (a) for the years 2001 and 2002, the amount payable with respect to undeveloped lands shall be calculated at the rate of **% of the sum otherwise payable pursuant to the Section entitled "Payment for Municipal Services";
- (b) for the years 2002 and 2003, the amount payable with respect to undeveloped lands shall be calculated at the rate of **% of the sum otherwise payable pursuant to the Section entitled "Payment for Municipal Services";
- (c) for the years 2003 and 2004, the amount payable with respect to undeveloped lands shall be calculated at the rate of **% of the sum otherwise payable pursuant to the Section entitled "Payment for Municipal Services"; and
- (d) ***

Invoicing

The Municipality shall invoice the Entitlement First Nation for the Services at the same time that the Municipality sends out tax notices in each year. Such invoices shall set out the amount which is assessed and levied by the Municipality against the Selection/Acquisition, its occupants and the owners of businesses conducted thereon, as provided in the Sections headed "Payment for Municipal Services" and "Adjustment for Undeveloped Lands". An invoice for Services is payable in full to the Municipality on or before * * * in each year.

Penalties

If the invoice for Services is not paid in full by ***** **, any unpaid amount shall be subject to a penalty at the following rate: * * *.

Prepayment Discount

So soon as is practicable in each year, the Municipality shall provide the Entitlement First Nation with an estimate of the amount to be invoiced for Services for that year. Upon receipt of such estimate and subject to adjustment at the time of formal invoicing, the Entitlement First Nation may prepay all or a part of the cost of the Services. The discount rate allowed by the Municipality for prepayment of taxes shall apply to any prepayment made by the Entitlement First Nation.

Remedies for Non-Payment

If any invoice for Services is not paid in full by ***** ** of the year in which it is issued, the Municipality, upon thirty (30) days notice, may suspend or withdraw any or all of the Services until the invoice plus penalties are paid in full. The Municipality's right to suspend or withdraw the Services shall be without prejudice to any other remedy which may be available to the Municipality.

Transition

With respect to the portion of the calendar year 2001 that is included in the term of this Agreement, the Municipality shall assess the Selection/Acquisition, the improvements thereto, its occupants, and the owners of businesses conducted thereon, as at the ** day of ***** , 2001, and immediately thereafter deliver to the Entitlement First Nation an invoice reflecting the amount due and payable for Services, as herein provided, for the remaining portion of the calendar year. The invoice shall be paid in full to the Municipality by the *** day of ***** , 2001, and the provisions of this Agreement that relate to penalties on unpaid taxes shall apply.

This payment scheme is only one example of many payment schemes that could be devised. The following is another example of a similar scheme that more simply refers to the fee for services as being equal to that paid by other Municipal consumers:

Basic Service Charge

In consideration for the provision of Services, the Entitlement First Nation shall pay to the Municipality for the Services, as requested by the Entitlement First Nation, a service charge from time to time charged by the Municipality, calculated on the same basis as other consumers of such Services within the limits of the Municipality, more specifically identified to be equal to the municipal portion of the mill rate applied to the assessed value of the Selection/Acquisition, improvements and businesses thereupon, each year (the "Service Charge").

Reduction

In the event that any Service shall not be supplied, the value of the Service Charge referred to in the provision headed "Basic Service Charge" shall be reduced. In the event of a dispute as to the availability or value of the reduction, upon the request of either party, the **** [the "Joint Council Committee" if one is organized, could fill this role] shall determine the issue.

Direct Charges and Consumption Rates

The Entitlement First Nation shall further pay to the Municipality wherever applicable, in consideration for the consumption of public utilities, directly charged services and other land user charges, those user fees which are equal in amount and payable in the same manner as by other consumers of Municipal public utilities, directly charged services and other types of land use charges as are established by Municipal by-law.

Discounts

The Entitlement First Nation shall be eligible for any discounts, exemptions, rebates or deferrals on the Service Charge on the same terms and same basis as other consumers of Services.

Development Charges

The Entitlement First Nation shall pay charges for new developments (on a per-acre-developed basis), trunk charges for sewer, water, storm water drainage and arterial roads, off-site levies, and the value of charges which would be payable in respect of local improvements, as if the Selection/Acquisition was not a Reserve. Invoices for same shall be paid by the Entitlement First Nation within sixty (60) days of invoice.

In the event of default of the Service Charge, the Municipality shall not suspend any Services without having provided written notice to the Entitlement First Nation of the Municipality's intention to suspend such Services as a result of default of payment, such suspension to take effect thirty (30) days after written notice is received by the Entitlement First Nation.

The parties agree that the Municipality shall continue to provide any and all Services upon payment of the defaulted Service Charge plus a penalty of one percent (1%) per month, being twelve percent (12%) per annum, on the outstanding balance of the unpaid Service Charge.

The Municipality shall invoice the Entitlement First Nation on April 1 of each year, and the invoice shall be a charge, which is estimated for the provision of Services for one (1) year from the 1st of April to the 30th day of March for the one (1) year.

The Municipality shall extend to the Entitlement First Nation identical prepayment discounts as are offered to other Municipal residents and allow those discounts to be applied in respect of the Service Charge referred to in the provision headed "Basic Service Charge".

Should conditions warrant, and upon a reassessment of the Selection/Acquisition, any portion thereof, or the improvements thereon, the Municipality may, no later than the 31st day of August in each year, render a supplemental invoice for Services to the Entitlement First Nation, reflecting any increase in the assessment of the Selection or any portion thereof, or the improvement thereto, during the course of that year, subject to an appeal of the assessment to the * * *[the Joint Council Committee, if one is organized, could hear appeals]. Such supplemental invoice shall be paid in full to the Municipality by the 31st day of October in each year as part of the Service Charge.

Although the above examples are indicative of provisions that may be used where an Entitlement First Nation is charged for services in the same manner as Municipal residents, this basis for charging for services will not always be the basis that the parties will decide to use. In fact, even if the same services at the same level are provided to the Entitlement First Nation as are provided to the Municipal residents, it will not necessarily be the case that the Entitlement First Nation will be required to pay the same amount for those services, since the fee for services is a negotiated amount to be negotiated between the Entitlement First Nation and the Municipality.

If the Entitlement First Nation doesn't want all of the services that are normally provided to Municipal residents or wants a different level of service than what is normally provided to Municipal residents, a payment scheme such as those set out above for services equivalent in type and level to those provided to Municipal residents would not be appropriate. Instead, the MDSA payment provisions would be specific to the specific services being provided. For example, the following provisions pertain to payment for water, fire protection and sewer services:

The Entitlement First Nation shall pay the Municipality for the supply of water services at the Municipality standard water meter rate in effect from time to time.

The Entitlement First Nation shall pay the Municipality the sanitary sewer rate in effect from time to time for sanitary sewer service at the Municipality standard according to the quantity of water as measured by the water meter.

The Entitlement First Nation shall pay the Municipality the amount of \$50.00 per residential unit for fire protection service and four (4) times the residential rate for each non-residential building. The Entitlement First Nation shall advise the Municipality not later than March 15th of each year, as to the number of residential units within the Reserve. The Entitlement First Nation shall advise the Municipality immediately of any non-residential construction that is being undertaken.

For the calendar year 20 and for each subsequent year thereafter, the annual fee for fire protection service fee set out in the preceding provision shall be increased or decreased from the fee for the immediately preceding calendar year by a percentage equal to the percentage increase or decrease in the official Consumer Price Index for Canada (all items) published by Statistics Canada for the period January 1st to December 31st in the immediately preceding calendar year.**

All fees due under this Municipal Development and Services Agreement shall be payable within 30 days of delivery of the invoice.

The Entitlement First Nation shall have ownership of the Reserve and Off-Reserve Systems and shall be responsible for maintenance costs, replacement costs and any further installation costs.

Finally, it bears repeating, particularly given the earlier examples provided above, that the fee that the Entitlement First Nation will pay for the services that are provided by the Municipality is an amount that will be arrived at by negotiation between the Municipality and Entitlement First Nation. While the parties may decide to base the fee on the amount of taxes that would have been payable by the Entitlement First Nation if the land had not been set apart as Reserve, the parties may not take this approach to the calculating the fee for services. The fee for service may bear no resemblance in amount or the way in which it is calculated to the taxes that the Municipality would have derived from the property had the land not been set apart as Reserve.

3. ACCESS BY MUNICIPALITY

The Municipality may require information from the Entitlement First Nation to assess and reassess the amounts payable by the Entitlement First Nation for services to the Selection or Acquisition, particularly if the calculation of fee for service is based on assessment of property. For example, the Municipality may want to access the Selection or Acquisition to inspect improvements made to the Selection or Acquisition to determine what amounts should be payable by the Entitlement First Nation for the services rendered by the Municipality. The Municipality will also require access to the Selection or Acquisition for purposes incidental to the provision and maintenance of its services. In addition, the Municipality may want to access the Selection or Acquisition to provide assistance in circumstances that may pose a danger to the public's safety. Provisions such as the following would entitle the Municipality to obtain information from the Entitlement First Nation and access the Selection or Acquisition for various purposes:

Supply of Assessment Information

The Entitlement First Nation shall supply such information to the Municipality as may reasonably be required from time to time in order to allow the Municipality to assess or reassess the Selection/Acquisition and the improvements thereon, in the same manner as if the Municipality were assessing and levying taxes on the Selection/Acquisition, the improvements thereto, its occupants or on the owners of businesses conducted thereon pursuant to *The Municipal Act*, C.C.S.M. c. M225.

Access to the Selection/Acquisition

The Entitlement First Nation shall allow and accommodate the Municipality, its officers, employees and agents, upon providing reasonable notice to the Entitlement First Nation, to have access to the Selection/Acquisition at any reasonable time in the following instances:

- (a) incidental to the provision and maintenance of Services, local improvements and special services;**
- (b) to review and assess the Selection/Acquisition, improvements and businesses carried on upon the Selection/Acquisition as required to perform the**

- calculations contemplated in the Section headed "Payment for Municipal Services";
- (c) to carry out enforcement or other actions authorized by *The Municipal Act*, C.C.S.M. c. M225, including, without limitation, seizure and sale of goods found on the Selection/Acquisition, and removal of improvements from the Selection/Acquisition; and
 - (d) with the consent of the Entitlement First Nation and occupants of the Selection/Acquisition.

Danger to Public Safety

Where, in the opinion of a person designated by the Municipality, a condition exists on the Selection/Acquisition, which is a danger to public safety, the designated person and his agents may enter upon the Selection/Acquisition and take any reasonable emergency action to eliminate the danger to the safety, health, protection and well-being of people, and the safety and protection of property. The designated person shall, whenever it is reasonably possible to do so, notify the Entitlement First Nation of such actions in advance.

It should be borne in mind by the Municipality that it is acceptable for the MDSA to provide for access by the Municipality to the Selection or Acquisition in order for the Municipality to provide services to the Entitlement First Nation, provided that the Entitlement First Nation will own any infrastructure on the Selection or Acquisition. However, if the Municipality will own the infrastructure on the Selection or Acquisition, the Municipality must also obtain a permit from Canada allowing for use and occupancy on the Reserve, due to subsection 28(1) of the *Indian Act*, c. I-5 which provides:

a ... contract ... or agreement of any kind whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void.

4. FAILURE BY MUNICIPALITY TO PROVIDE THE SERVICES

Services provided by the Municipality to the Entitlement First Nation may be interrupted for reasons other than for suspension or withdrawal of services for non-payment. For example, services may be disrupted because of an accident or the repair or replacement of part of the utility or service. *The Municipal Act* provides that a municipality will not be liable for loss or damage that results from such a disruption of service (s. 389). A Municipality may want to be afforded the same exemption from liability in regard to its provision of services to an Entitlement First Nation:

Liability of Municipality for Services

The Municipality shall have no greater liability or obligation with respect to the supply of Services than it has to the owners and occupants of land, improvements and businesses in the Municipality and all defences available to the Municipality under sections 385 to 404 of *The Municipal Act*, C.C.S.M. c. M225 with respect to the provision or interruption of services shall be available to the Municipality as if incorporated in this Municipal Development and Services Agreement. The Municipality shall have no liability for a suspension or withdrawal of Services pursuant to the Section of this Agreement that sets out remedies for non-payment.

The Entitlement First Nation may wish to have the Municipality agree to indemnify the Entitlement First Nation, subject to their restrictions set out in *The Municipal Act*, from any losses that result as a consequence of the provision of services, in the following manner:

Indemnification by Municipality

Subject to the limitations on liability set out in the section headed “Liability of Municipality for Services”, the Municipality shall indemnify and save harmless the Entitlement First Nation from and against any and all costs, losses and damages which may accrue to the Entitlement First Nation as a consequence of the provision of the Services, including the condition or state of repair of any of the streets or other improvements situate upon the Reserve and being maintained by the Municipality pursuant to the provisions hereof, except for such costs, losses and damages which arise as a consequence of the acts or omissions of the Entitlement First Nation or those for whom it is responsible at law.

V. COMPATIBLE BY-LAWS

A MDSA should provide a mechanism for the development, adoption and enforcement of compatible Environment First Nation and Municipal by-laws where compatibility is necessary.

It is important for Municipalities to be aware that First Nation Band Councils usually exercise their authority by passing Band Council Resolutions. They also less frequently enact by-laws. In order for a by-law to be “in force”, for by-laws relating to money, a First Nation must seek approval of the by-law from the Minister of Indian Affairs and Northern Development; in respect of other by-laws (see Appendix B of this Reference Manual for a listing of matters on which a First Nation may enact a by-law) the First Nation must forward the by-law to the Minister and it must not be “disallowed” by him (Indian Act ss. 8 2,83(4)). Municipalities should bear this in mind when negotiating the issue of compatible by-laws with First Nations.

1. WHY ARE COMPATIBLE BY-LAWS NEEDED?

Sections 2 and 229 of *The Municipal Act* provide:

Indian Reserves Excluded

2 Despite any Act of the Legislature,

- (a) land within an Indian Reserve is not part of the area of any municipality;
- (b) persons residing within an Indian Reserve are not residents of any municipality; and
- (c) any description of the boundaries of a municipality is deemed to provide that land within an Indian Reserve is excluded from the municipality.

Geographic application of by-laws

229 A by-law of a municipality applies only within its boundaries unless

- (a) the municipality agrees with another municipality that a by-law passed by one has effect within the boundaries of the other and the council of each municipality passes a by-law approving the agreement; or
- (b) this or any other Act provides that the by-law applies outside the boundaries of the municipality.

Similarly, section 1.1 of *The Local Government Districts Act*, C.C.S.M. c. L190 provides:

Indian Reserves Excluded

1.1 Despite any Act of the Legislature,

- (a) land within an Indian Reserve is not part of the area of any local government district;
- (b) persons residing within an Indian Reserve are not residents of any local government district; and
- (c) any description of the boundaries of a local government district is deemed to provide that land within an Indian Reserve is excluded from the local government district.

A local government district has the same right, power and duty as a Municipality or Municipal corporation to pass by-laws under *The Municipal Act*, subject to the approval of the minister (*The Local Government Districts Act*, s. 5 (1)(b), 5(2)(b)).

Thus, when Municipal land is Selected or Acquired by an Entitlement First Nation and is set apart as Reserve, Municipal by-laws that would have applied to the Municipal land and residents had the land remained part of the Municipality, no longer apply to the Reserve land and its residents. Instead, the Entitlement First Nation has jurisdiction over the Reserve lands as allowed by the *Indian Act*. The *Indian Act* provides that an Entitlement First Nation has the power to pass by-laws to govern development and activities on the Reserve. A band council is authorized to make by-laws that are not inconsistent with the *Indian Act* or its regulations (s. 81(1)).

However, the *Indian Act* does not require a band council to make by-laws that are compatible with neighbouring municipalities. Thus, an Entitlement First Nation may enact by-laws for various purposes, such as land use and development, the regulation of businesses, keeping of animals, environmental protection and public safety that differ from and perhaps even conflict with those of the neighbouring Municipality.

The need for by-law compatibility is not a new concept for Municipalities. Municipalities need by-law compatibility with neighbouring Municipalities. *The Planning Act*, C.C.S.M. c. P80 sets out a process to enable two or more neighbouring Municipalities to co-ordinate their approaches to land use and development. The rationale for a co-ordinated approach by Municipalities to land use was discussed by Bill Lye in a paper entitled “Developing Effective Land Management Strategies On and Off Reserves” presented at the Aboriginal Land Management and Property Development Strategies Conference, May 25-26, 2000 (at 6):

Municipal governments have found that there is an interdependency between them and they must collaborate and collectively manage regional land use planning and economic development, transportation, sewer, water, waste management, and to some degree policing.... Land use is the issue that continues to be most contentious. Conflicts often arise in situations where there are incompatible uses on community borders and on the issue of growth and density concentration.

Where a Reserve is located in an Urban Area, the close proximity and density of development increases the potential for problems and disputes if the Band by-laws and Municipality by-laws are significantly different. A compelling reason for an Entitlement First Nation to work with a neighbouring Municipality to achieve compatibility of land use by-laws is that experience has shown that First Nations who work with their neighbours' planning objectives achieve the greatest economic development successes (Lye, at 7).

In addition, as mentioned earlier, the Additions to Reserves Policy provides that “band by-laws which relate to activities which may affect neighbouring municipal lands or residents should be consistent with the municipality's by-laws” (Additions to Reserves Policy, s. 9.3.2.2, para. 1).

2. WHAT IS COMPATIBILITY?

Compatibility does not mean that the by-laws of a Municipality and Entitlement First Nation must be the same. By-laws will be compatible if they achieve goals and objectives that are acceptable to the Municipality and Entitlement First Nation.

3. IN WHAT AREAS IS COMPATIBILITY NEEDED?

The need for compatible by-laws depends on local circumstances. Each party should identify existing by-laws and compare them to those of the other party to determine how well they fit together. In addition, the authority of each party to pass by-laws must be reviewed, since (as mentioned earlier) the authority of each party to pass by-laws is limited by statute.

An Entitlement First Nation has the power to make by-laws on a wide variety of matters pursuant to subsection 81(1) of the *Indian Act* (see Appendix B to this Reference Manual). An Entitlement First Nation can also make by-laws relating to taxation for local purposes of land or interests in land in the reserve, licensing of businesses, callings, trades and occupations, as well as other money by-laws, subject to the approval of the Minister of Indian Affairs and Northern Development (*Indian Act*, s. 83(1)(a) and (a.1) – see Appendix B to this Reference Manual).

A Municipality obtains its authority to make by-laws from Part 7 of *The Municipal Act*. Subsection 232(1), within Part 7, sets out those matters on which a Municipality may enact by-laws (see Appendix A to this Reference Manual). Greater specificity with regard to the authority of the Municipality to make by-laws is provided in other sections of Part 7 of *The Municipal Act*.

As mentioned above, a local government district is authorized to pass by-laws under *The Municipal Act*, with the approval of the minister (*The Local Government Districts Act*, s. 5(1)(b) and 5(2)(b)).

A review of these statutory provisions indicates that there are many areas in which both Municipalities and Entitlement First Nations can enact by-laws. Areas in which the parties may wish to try to achieve compatibility in their by-laws are:

- land use or zoning standards for use of land (what activities are allowed on particular pieces of land),
- land development standards: lot sizes, width of streets and sidewalks, servicing standards such as size of water and sewer pipes (to ensure the development is similar in quality, functionality and general appearance to the surrounding areas),
- building and safety standards: quality of construction, fire safety, permits, inspection (how buildings must be built to safeguard the occupants and neighbours),
- animal control: keeping of animals, animals running at large,
- public utilities: connection to water and sewer, design specifications,
- health and safety: ambulance, fire and policing, environmental standards, building inspections,

- traffic regulation: speed, parking, signs,
- business licensing and operation: fees, permits, store hours, and
- property maintenance and upkeep, including weed control.

Appendices A and B to this Reference Manual identify some legislation that govern topics that may be of mutual interest to a Municipality and Entitlement First Nation.

4. METHODS OF DEVELOPING COMPATIBLE BY-LAWS

Without ongoing communication between the Entitlement First Nation and Municipality, it is likely that there will be conflicting developments and disputes. Thus, the Municipality and Entitlement First Nation should establish a consultation process for the development and adoption of their by-laws. Options for mechanisms to develop and adopt compatible by-laws include a joint by-law committee, planning district commission approach and notification process. Where a Selection or Acquisition is located in a rural area, the parties may consider the simpler “notification process” to be more appropriate than the other processes.

A. JOINT BY-LAW COMMITTEE

An Entitlement First Nation and Municipality could establish a Joint By-law Committee made up of representatives of each council and an independent person jointly agreed upon by both parties to act as Chairperson.

The Joint By-law Committee could perform the following duties:

- provide recommendations on areas where compatible by-laws are needed,
- develop guidelines on content of compatible by-laws,
- review existing Municipal and Entitlement First Nation by-laws, if any, to determine compatibility,
- review proposed Municipal and Entitlement First Nation by-laws prior to their adoption to determine compliance with guidelines and to identify conflicts, and
- advise both councils in writing of concerns and recommend changes.

Where a council does not wish to change an existing or proposed by-law, the matter could be submitted to a dispute resolution process.

The advantages of this option are, it:

- provides for an independent review of by-laws,
- ensures ongoing dialogue between the parties, and
- can function as an initial dispute resolution process.

The disadvantages of this option are:

- it is slower due to referrals and consultation,

- it may result in added costs, and
- there is no legislation in place to ensure compliance with policies.

Provisions such as the following demonstrate how a Joint By-law Committee can be established to review a Municipality's and Entitlement First Nation's by-laws to ensure the development of compatible by-laws:

Formation of Joint By-law Committee

The Municipality and Entitlement First Nation shall form a Joint By-law Committee within thirty (30) days of the date of execution of this Municipal Development and Services Agreement.

Composition of Joint By-law Committee

The Joint By-law Committee shall be comprised of the following members:

- three (3) representatives from the Entitlement First Nation appointed by the Chief and Council;
- three (3) representatives from the Municipality appointed by resolution of the Municipal Council; and
- one (1) independent person appointed by agreement of the parties.

If the parties cannot agree on the appointment of the independent person within seven (7) days of the date of execution of this agreement, then either party may apply to the Court of Queen's Bench for the appointment to be made by a Judge of that court.

The independent person shall act as Chairperson of the Joint By-law Committee.

Term of Office of Representatives of Parties on Joint By-Law Committee

(1) Each of representatives of the parties on the Joint By-law Committee shall be appointed to the Committee for a term that is not less than one year and not more than three years from the date of appointment, and any person so appointed shall be eligible for re-appointment.

(2) The members who are representatives of the parties shall serve until:

- his or her term of appointment or re-appointment expires;
- he or she dies;
- he or she resigns; or
- he or she is declared incapable of managing his or her own affairs by a Court of competent jurisdiction.

Term of Appointment of Chairperson and Vacancy

(1) The Chairperson shall be appointed on terms and conditions, including remuneration as the parties may agree, for a term of two years from the date of appointment and any person so appointed shall be eligible for re-appointment.

(2) A Chairperson shall serve until:

- his or her term of appointment or re-appointment expires;
- he or she dies;
- he or she resigns;
- he or she is declared incapable of managing his or her own affairs by a Court of competent jurisdiction; or
- the parties agree in writing to withdraw his or her appointment.

Mandate of Joint By-law Committee

The Joint By-law Committee shall:

- (a) provide recommendations to the Municipality's and the Entitlement First Nation's Councils on areas where compatible by-laws are needed,
- (b) review existing Municipal and Entitlement First Nation by-laws to determine compatibility,
- (c) develop guidelines on content of compatible by-laws,
- (d) review all proposed Municipal and Entitlement First Nation by-laws to determine compliance with guidelines and to identify conflicts before adoption, and
- (e) advise both Councils in writing of concerns in respect of existing by-laws and proposed by-laws and recommend changes that will result in by-law compatibility.

The Joint By-law Committee shall determine who, as between the Entitlement First Nation and the Municipality, will provide administrative services to the Joint By-law Committee.

Amendment of Joint By-law Committee Procedures

The parties may, from time to time, make and amend rules to govern the procedures of the Joint By-law Committee, provided that:

- (a) all members of the Joint By-law Committee shall be given notice of each meeting of the Joint By-law Committee;
- (b) all members of the Joint By-law Committee shall attend all meetings, either in person, by telephone or by another method of communication that permits each member to communicate with all other members at the meeting;
- (c) all decisions and actions of the Joint By-law Committee shall be in accordance with the majority vote of the members of the Joint By-law Committee;
- (d) the Chairperson shall not be entitled to vote on any resolution before the Joint By-law Committee, except that in the event of a tie, the Chairperson shall cast the deciding vote;
- (e) minutes of all meetings of the Joint By-law Committee shall be recorded and circulated to each of the members of the Joint By-law Committee and signed by the Chairperson.

Costs of Joint By-law Committee

Each party shall assume the costs of its representatives on the Joint By-law Committee and shall share equally in the costs of the Chairperson and any other general expenses of the Joint By-law Committee.

In the alternative, the parties may wish to use a Joint By-law Committee only to ensure that a proposed development or business on the Selection or Acquisition complies with the Municipality's by-laws. If this option were adopted, the above provisions could be used except that the following provisions would replace the section headed "Formation of Joint By-law Committee":

Notice of Development

The Entitlement First Nation shall provide written notice to the Municipality of its intentions to:

- (a) develop and construct buildings or undertake improvements upon the Selection/Acquisition, or both; or
- (b) conduct a new business enterprise upon the Selection/Acquisition; or
- (c) do both (a) and (b).

The Municipality shall provide written notice to the Entitlement First Nation of its intentions to:

- (a) develop and construct buildings or undertake improvements upon the land adjacent to the Selection/Acquisition; or
- (b) conduct a new business enterprise upon the land adjacent to the Selection/Acquisition; or
- (c) do both (a) and (b).

Formation of Joint By-law Committee

The Municipality or Entitlement First Nation, as the case may be, may, within fourteen (14) days of receiving the notice referred to in the Section headed "Notice of Development", provide written notice to the other party requesting that the Entitlement First Nation and Municipality form a Joint By-law Committee to review the intended development, improvement or business enterprise in detail. The notice shall also name the persons appointed by the Municipality or the Entitlement First Nation, as the case may be, to serve as members on the Joint By-law Committee.

In addition, the following provision would substitute for "Mandate of Joint By-law Committee":

Mandate of Joint By-law Committee

The Joint By-law Committee shall review the Municipality's by-laws or the Entitlement First Nation's by-laws, as the case may be, to determine whether the intended development, improvement or business enterprise is compatible with the Municipality's or Entitlement First Nation's by-laws respecting:

- (a) development and construction of buildings and improvements;
- (b) zoning; and
- (c) classification, regulation and licensing of businesses;

in existence at the time of the review. The Joint By-law Committee shall proceed with its review as soon as practicable, and shall put the matter under review to a vote of the Committee within two (2) weeks of its meeting at which the matter was first reviewed, unless such period is extended by agreement of the Municipality and Entitlement First Nation.

In addition, the following provision would be added:

Approval of Joint By-law Committee

The intended development, improvement or business may proceed:

- (a) where the Entitlement First Nation or Municipality does not provide notice to the other party pursuant to the Section headed "Formation of Joint By-law Committee" requesting the formation of a Joint By-Law Committee; or
- (b) upon the prior written approval, by a simple majority, of the Joint By-law Committee.

The parties may wish to define what they mean by "adjacent to the Selection/Acquisition" in the context of the above provisions.

B. PLANNING DISTRICT COMMISSION

As mentioned earlier, a planning district board established pursuant to *The Planning Act* enables two or more Municipalities to co-ordinate land use and

development planning where the Municipalities have common social and economic interests and values, and common planning concerns. The scheme under *The Planning Act* is not applicable to an Entitlement First Nation and Municipality with common interests, as a “band council” is not an organization within the definition of “municipality” for purposes of the *Act*.

However, an Entitlement First Nation and Municipality can agree to adopt and codify a similar approach to that set out in *The Planning Act* in their MDSA. In other words, a board or commission could be established with a mandate to develop a comprehensive land use and development plan (Plan) that encompasses both the Municipal and Reserve lands. The Plan could address issues such as:

- land use and development,
- the environment,
- servicing,
- infrastructure,
- finances, and
- economic development.

If the Plan is acceptable to the Municipality and Entitlement First Nation, the parties would each enact separate by-laws accepting the Plan. After the Plan is accepted, the parties would be required to enact only those by-laws that are consistent with the policies contained in the Plan. Changes to the Plan could be made only on the recommendation of the Planning District Commission. Duties of the Planning District Commission would be similar to those of a Joint By-law Committee.

The advantages of this option are:

- it ensures ongoing dialogue, and
- it provides for day-to-day administration of the parties’ by-laws.

The disadvantages of this option are:

- it is a slower process due to the need for referrals and consultation,
- higher costs to the parties if staff are hired, and
- there is no legislation in place to ensure compliance with the policies contained in the Plan.

The following provisions, which follow the scheme set out in *The Planning Act*, could be used to establish a Planning District Commission:

Establishment of Planning District Commission

The Municipality shall, within thirty (30) days of the date of execution of this Municipal Development and Services Agreement, provide written notice to the Entitlement First Nation calling for the formation of a Planning District Commission (the “Commission”) of the parties.

Composition of Commission

The Commission shall be comprised of:

- (a) three (3) representatives from the Entitlement First Nation appointed by the Chief and Council; and
- (b) three (3) representatives from the Municipality appointed by the Municipal Council.

Term of Office of Commission members

The term of office of a Commission member shall run concurrently with his or her term on Council, unless the Council nominates an alternate Council member to take that member's place on the Commission.

Meetings of the Commission

The Commission shall meet at such times and places as are fixed from time to time by the rules of the Commission.

Quorum

A majority of the members of the Commission constitute a quorum for the transaction of business.

Chairperson

The Commission shall, at its first meeting, elect a chairperson from its members.

Voting by Chairperson

The Chairperson shall be entitled to cast a vote as a member of the Commission. In the event of a tie vote, a resolution shall be deemed to be lost.

Majority Vote

All resolutions at a Commission meeting shall be decided by a majority vote.

Rules and Procedures

The Commission may enact rules and procedures that are not contrary to law

- (a) governing its proceedings and the conduct of its affairs and business;
- (b) respecting the calling of meetings of the Commission; and
- (c) prescribing and regulating the fees and charges to be paid by any person in respect of services rendered by any officer or employee of the Commission;

and may enact other rules as may be necessary to discharge its duties and functions.

Recording

Every resolution of the Commission shall be recorded in the minutes and signed by the Chairperson.

Staff

The Commission may employ such officers and employees as may be necessary and may fix their remuneration.

Responsibilities of the Commission

The Commission shall

- (a) prepare and adopt a development plan (Plan) and any amendments to the Plan;
- (b) request the advice and assistance of the Municipal Council and Entitlement First Nation Council in preparing the Plan or any amendment thereto;
- (c) review and co-ordinate policies and programs relating to the use of land within the Municipality and the Selection/Acquisition;
- (d) perform such other duties as may be delegated to it by the Municipality or the Entitlement First Nation; and

- (e) prepare and submit to the Municipality and the Entitlement First Nation an annual report of its activities and an operating budget for the next ensuing fiscal year.

Preparation of Plan

The Commission shall prepare and adopt a Plan for the Municipality and Entitlement First Nation that is designed to promote the optimum economic, social, environmental and physical condition of the Municipality and Selection/Acquisition, and which shall

- (a) serve as a framework whereby the Municipality and the Entitlement First Nation may be guided in formulating development policies and decisions;
- (b) identify the factors relevant to the use and development of land;
- (c) identify the critical problems and opportunities concerning the development of land and the social, environmental and economic effects;
- (d) set forth the desired timing, patterns and characteristics of future development of land and determine the probable social, environmental and economic consequences;
- (e) establish and specify the programs and actions necessary for the implementation of the Plan;
- (f) outline the methods whereby the best use and development of land and other resources in the Municipality and Selection/Acquisition may be co-ordinated; and
- (g) identify those matters of government concern which affect the use and development of land and other resources within the Municipality and the Selection/Acquisition.

Consultation

In order to obtain participation by the residents of the Municipality and Entitlement First Nation on issues affecting the development of the area, the Commission shall

- (a) consult a qualified planning officer or consultant and any public authority affected by a Plan; and
- (b) hold one or more public meetings and publish information on issues affecting the development of the Municipality and the Selection/Acquisition.

Studies and Surveys

The Plan shall be prepared on the basis of studies and surveys of land use which are appropriate for the Municipality and Selection/Acquisition and may include considerations relating to agriculture, forestry, wildlife, mineral extraction, population growth, the economic base of the area, its transportation and communication needs, public services, social services, the capacity of the natural resources and environment to accommodate development, and any other matter related to the present or future physical, social or economic factors relevant to the preparation of the Plan.

Consultation with Councils

Before adopting a Plan, the Commission shall consult with the Councils of the Municipality and the Entitlement First Nation.

Contents of Plan

The Plan shall contain,

- (a) statements of objectives and policies with respect to some or all of the following matters:
 - (i) the development and use of land and other resources,
 - (ii) the conservation, management and improvement of the physical and social environment,

- (iii) the control and abatement of all forms of pollution or activities deemed to be detrimental to the natural environment,
- (iv) the establishment and maintenance of land banks to reserve land for future use and to ensure the orderly, economical, convenient and compatible development of land,
- (v) the preservation, protection or enhancement of areas of land, buildings and structures by reason of their historical, archaeological, geological, architectural, environmental or scenic significance or character,
- (vi) proposals relating to the use, changes in use or intensity of use of residential, commercial, industrial, recreational and open spaces, institutional, and other activities on or affecting land,
- (vii) the provision of public services and facilities including,
 - (A) sewage collection, treatment and disposal,
 - (B) water supply and distribution,
 - (C) garbage disposal,
 - (D) educational and cultural institutions,
 - (E) recreational facilities, parks, playgrounds and other public open spaces,
 - (F) fire and police facilities,
 - (G) transportation and communication facilities,
 - (H) facilities for the provision of health and social services,
 - (I) preservation of buildings, structures, sites and areas of historical interest,
- (viii) proposals dealing with
 - (A) the control of hazard areas such as flood plains, soil erosion areas, perma-frost areas, erosion prone slope lands, valleys and banks of waterways, marsh areas, head water areas, and similar conditions,
 - (B) the management and preservation of agricultural land and activities, forested areas, natural and wildlife areas and water storage areas,
 - (C) the protection, restoration, reclamation or use of shore land,
 - (D) the subdivision of land in rural areas and the establishment of limited development areas for agriculture, water storage, wildlife,
 - (E) the fringe areas of cities, towns, villages, hamlets and other built-up areas,
 - (F) the location and creation of new communities and settlements,
 - (G) the development, control, rehabilitation and reclamation of top soil removal areas, gravel and sand pits, quarries and other mineral deposits,
- (ix) the spatial distribution of residential development, and the renewal, rehabilitation and improvement of neighbourhoods, and urban cores,
- (x) the co-ordination of programs relating to the economic, social, and physical development of the Municipality and Selection/Acquisition,
- (xi) the programming of public investment in respect of public and private development, in terms of cost and available financial resources, including the phasing of the development or redevelopment of the Municipality and Selection/Acquisition,
- (xii) guidelines for land use control measures and the subdivision of land,
- (xiii) the fiscal capacity of the Municipality and Selection/Acquisition to support the planned development,
- (xiv) such matters other than those mentioned in this clause as are, in the opinion of the Commission advisable;
- (b) a map or series of maps, showing the division of all or part of the land in the Municipality and Selection/Acquisition, into areas of permitted land uses or permitted land use densities, or both, as the Commission considers necessary for the purposes of the Plan; and
- (c) such proposals as are, in the opinion of the Commission advisable for the implementation of policies contained in the Plan.

Public hearing

The Commission shall give notice of a public hearing and shall hold a public hearing to receive representations from any person regarding the proposed Plan, and after the public meeting shall proceed or not proceed with the Plan in the same manner as is set out in *The Planning Act*, with such modifications as are necessary.

Zoning by-law

Upon the adoption of a Plan, the Municipality and Entitlement First Nation Councils shall enact or amend their zoning by-laws to bring them into conformity with the Plan within twelve (12) months or such extended period as the parties may agree.

Effect of adoption of Plan

The adoption of a Plan does not require the Municipality or Entitlement First Nation to undertake any proposal in the Plan. However, no undertaking, improvement or development within the Municipality or Reserve shall be carried out that is inconsistent or at variance with the proposals or policies set out in the Plan.

Periodic review of Plan

The Commission shall review the Plan no later than five (5) years after the date on which the Plan came into effect or the previous review.

Amendment of Plan

The Commission may amend an adopted Plan in accordance with the procedure set out in this Municipal Development and Services Agreement for the adoption of the original Plan.

In the alternative, while the parties may wish to establish a Joint Planning Commission in their MDSA, they may prefer to leave decisions respecting the process to be used by the Joint Planning Commission and outcomes to be achieved, to the Commission itself. In this case, provisions such as the following could be used:

The Municipality and the Entitlement First Nation acknowledge and agree that in order to successfully fulfil this Municipal Development and Services Agreement, it is essential that they work together in a spirit of cooperation and maintain an open and ongoing dialogue with respect to this Agreement and any matters not contemplated by this Agreement that impact on the continuing harmonious interface of the two jurisdictions.

The Municipality and the Entitlement First Nation agree that a Joint Planning Commission be established with a view to ensuring the harmonious operation of this Agreement and the orderly development of their respective lands to ensure peaceful and cooperative relationships between their peoples in the community of **** [insert the name of the community].

The Joint Planning Commission shall be comprised of the following:

- (a) two (2) representatives from the Entitlement First Nation, who shall be appointed by Chief and Council of the Entitlement First Nation; and
- (b) two (2) representatives from the Municipality, who shall be appointed by the Municipal Council;

one of whom shall be appointed by the above four (4) representatives as Chairperson, for a term of one (1) year. The Chairperson shall alternate annually between a representative of the Entitlement First Nation and a representative of the Municipality.

C. NOTIFICATION PROCESS

A third option for developing compatible by-laws is the establishment of notification requirements in the MDSA. For example, the parties could require that each of them send a copy of any proposed by-law to the other party for comment prior to it being adopted. A reasonable period would be provided for the other party to review and comment on the proposed by-law. If the other party has concerns that cannot be dealt with by discussion, that party could request dispute resolution to resolve the conflict.

The advantage of this option is:

- it is easy to administer.

The disadvantages of this option are:

- there are possible time delays due to the referral process,
- it may result in increased demands for dispute resolution, and
- it does not address the need to evaluate the by-laws at the start of the process.

The following general provisions could be used by the parties should they want to adopt a notification process for the development and adoption of compatible by-laws:

Enactment of By-laws by Entitlement First Nation

(1) In the event that the Entitlement First Nation exercises its powers under the *Indian Act*, R.S.C. c. I-5 to enact a by-law that in any way affects the Municipality or the use and development of the Municipality, the Entitlement First Nation agrees to exercise those powers in the following manner:

- (a) the Entitlement First Nation shall notify the Municipality of its intention and shall submit a copy of the proposed by-law to the Municipality for comment and consultation;**
- (b) the by-law shall be compatible with all laws of general application from time to time in force in the Province of Manitoba as contemplated by section 88 of the *Indian Act*, the by-laws of the Municipality as currently exist or as are amended, passed or proclaimed from time to time; and the terms and conditions of this Municipal Development and Services Agreement;**
- (c) in the event of a disagreement between the parties about the by-law, which cannot be resolved by discussion between the parties, the parties shall resolve the dispute in accordance with the dispute resolution process set out in sections ** of this Municipal Development and Services Agreement; and**
- (d) a copy of the by-law shall be forwarded to the Minister of Indian Affairs and Northern Development and a certified copy of the by-law shall be immediately provided to the Municipality.**

(2) A by-law of the Entitlement First Nation that is lawfully passed pursuant to the *Indian Act*, R.S.C. 1985, c. I-5 and in accordance with the terms and conditions of this Municipal Development and Services Agreement shall take effect according to its provisions.

Enactment of By-laws by Municipality

In the event that the Municipality exercises its powers to enact or amend a by-law that in any way affects the Selection/Acquisition or the occupation, use, development or improvement of the Selection/Acquisition, or implement any form

of additional tax which would obligate the Entitlement First Nation to pay an additional amount to the Municipality pursuant to the Section in this Municipal Development and Services Agreement that pertains to payment of fees for Services other than the amount referenced in that Section, the Municipality shall exercise those powers in the following manner:

- (a) the Municipality shall notify the Entitlement First Nation of its intention and shall submit a copy of the proposed by-law to the Entitlement First Nation for comment and consultation;
- (b) the Municipality shall not enact a by-law which has the effect of discriminating against the Entitlement First Nation or an occupant of the Selection/Acquisition;
- (c) in the event of a disagreement between the parties about the by-law, which cannot be resolved by discussion between the parties, the parties shall resolve the dispute in accordance with the dispute resolution process set out in sections ** of this Municipal Development and Services Agreement; and
- (d) a certified copy of a by-law upon enactment shall be forthwith provided to the Entitlement First Nation.

The following is another example of provisions that could be used in an agreement where the Entitlement First Nation has already enacted its own land use by-law, and the parties wish to ensure that their by-laws comply with the Development Plan that governs the area:

Land Use and Development

The Entitlement First Nation agrees that its Land Use and Occupancy By-law shall be in effect at all times on the Selection/Acquisition.

If the Entitlement First Nation decides to exercise any of its powers under the *Indian Act*, R.S.C. 1985, c. I-5 or pass new by-laws which affect the use, occupancy or development of the Selection/Acquisition, the Entitlement First Nation agrees to exercise those powers in the following manner:

- (a) the Entitlement First Nation shall notify the Municipality of its intention and shall submit a copy of the proposed by-law to the Municipality for comment and consultation, as early as practicable but no less than sixty (60) days before implementation of the proposed passage of any new by-law or any proposed addition, amendment or change to the Land Use and Occupancy By-law;
- (b) the Entitlement First Nation shall make all reasonable efforts to ensure that the new by-laws do not conflict with the by-laws of the Municipality and the Development Plan of the Municipality Planning District in effect from time to time; and
- (c) the Entitlement First Nation shall provide a certified copy of each by-law to the Municipality forthwith upon the approval by the Minister of Indian Affairs and Northern Development.

If the Municipality decides to amend or pass by-laws which will affect the use, occupancy or development of the Selection/Acquisition, the Municipality shall notify the Entitlement First Nation of its intention and shall submit a copy of the proposed by-law to the Entitlement First Nation for comment and consultation, as early as practicable but no less than sixty (60) days before implementation of the proposed passage of any new by-law or any proposed addition, amendment or change to the Municipality's by-laws, which affect land use, occupancy or development.

The Entitlement First Nation acknowledges that the *Environmental Assessment Act*, S.C. 1992, c. 37 applies to major development projects on the Selection/Acquisition and that the Municipality is entitled to timely notification about such

projects and consultation in the planning, assessment and approval processes related to such projects.

4. ADMINISTRATION OF COMPATIBLE BY-LAWS

Two options for the administration of by-laws are a notification procedure and a process whereby the Municipality and Entitlement First Nation each administers its own by-laws without consultation.

A. NOTICE

A MDSA can specify that before a decision is made on a development or application, a copy of the proposed development or application must be sent to the other Council for review and comment. If the other Council has concerns, it would provide them in writing to the other party before the date set for the decision on the matter. If the parties cannot agree, a dispute resolution process could resolve the matter.

The advantages of this process are:

- there would be minimal interference between the Municipality and the Entitlement First Nation in administration, and
- the process is relatively easy to set up.

The disadvantages of this process are:

- there would be time delays, and
- there would be some added costs.

The following provisions could be used to implement the notice approach to the administration of compatible by-laws:

Notice to Municipality

The Entitlement First Nation shall notify the Municipality of any proposal to develop the Selection/Acquisition that it intends to consider at a future Council meeting and shall submit a copy of the development proposal to the Municipality for review and comment, specifying the date on which the Entitlement First Nation's Council will consider and vote on the proposal.

In the event that the Municipality has concerns about the proposed development, the Municipality shall provide a written response to the Entitlement First Nation prior to the date set out in the Entitlement First Nation's notice, setting out its concerns and recommended changes to the development proposal which alleviate its concerns.

The Council of the Entitlement First Nation shall consider the Municipality's concerns and recommended changes to the development proposal at the Entitlement First Nation's Council meeting that considers the development proposal.

In the event that the Entitlement First Nation does not agree to change the development proposal in accordance with the Municipality's recommendations, the

Entitlement First Nation shall notify the Municipality in writing of its decision, and before proceeding with the development, the parties shall resolve their differences regarding the development proposal in accordance with the dispute resolution process set out in sections ** of this Municipal Development and Services Agreement.

The Municipality shall keep the Entitlement First Nation's development proposal confidential and shall not disclose it to any third party, except with the prior written consent of the Entitlement First Nation.

Notice to Entitlement First Nation

The provision headed "Notice to Municipality" shall apply to development proposals of the Municipality mutatis mutandis.

"Mutatis mutandis" means "in the same way".

B. NO CONSULTATION

A second option available to the Municipality and Entitlement First Nation councils for the administration of by-laws is for each party to administer its own by-laws without consultation with the other party.

The advantages of this process are:

- it recognizes the jurisdiction of each council process,
- it is more streamlined; and
- if compatible by-laws are in place, they would govern implementation and administration.

The disadvantages of this process are:

- the potential for variation in application and enforcement of by-laws due to different priorities and interpretation,
- conflicting developments can lead to mistrust and increase alienation between the Entitlement First Nation and Municipality, and
- the potential conflict between Municipal residents and Entitlement First Nation residents over different rules.

A provision such as the following could be used by the parties if they choose the no-consultation option:

Entitlement First Nation Use and Development of Selection/Acquisition

The Entitlement First Nation agrees that the use and development of the Selection/Acquisition shall at all times be compatible with the laws of the Province of Manitoba and the by-laws of the Municipality, as amended from time to time. Without restricting the generality of the foregoing, the Entitlement First Nation agrees that the use and development of the Selection/Acquisition shall be compatible with zoning by-laws from time to time passed by the Entitlement First Nation in respect of the Selection/Acquisition, and acknowledges that the Selection/Acquisition is presently zoned for *****.

An alternative to the above provision which could be used by the parties to provide greater detail regarding how the Entitlement First Nation will administer the Selection or Acquisition independently but in compliance with the Municipalities By-laws could be accomplished using provisions such as the following:

The Entitlement First Nation shall administer the Selection/Acquisition so as to voluntarily comply with the minimum standards and provisions of applicable Municipal By-laws.

Where the Entitlement First Nation designates the Selection/Acquisition for lease, or assigns any right of possession, occupation or home ownership to any person residing on the Selection/Acquisition, then the Entitlement First Nation shall require the lessee or resident, as a condition of any lease or residence, to comply with the minimum standards and provisions of applicable Municipal By-laws.

The Municipality may wish to have more than a promise from the Entitlement First Nation that it will use or develop the Selection/Acquisition in a way that is compatible with the Municipality's by-laws. The following provisions would provide a Municipality with a remedy that it can use in the event that the Entitlement First Nation's use and development of the Selection or Acquisition land is not compatible with the Municipality's:

Remedy for Incompatible By-laws

If at any time, the occupation, use, development or improvement of the Selection/Acquisition is not essentially the same as the occupation, use, development or improvement which would be allowed if the Selection/Acquisition were not Reserve land, and such condition of breach continues for a period of thirty (30) days following written notification by the Municipality to the Entitlement First Nation of such breach, the Municipality may, at its option, and without prejudice to any other remedy which may be available, suspend or withdraw any or all of the Services which it provides to the Selection/Acquisition and occupants of the Selection/Acquisition, until the condition of breach has been remedied.

Enforcement of Entitlement First Nation By-laws

The Municipality shall, as an incident of its delivery of Services under this Municipal Development and Services Agreement, provide inspection services relating to all regulatory by-laws validly enacted by the Entitlement First Nation. Except as hereafter provided, the Municipality shall enforce and prosecute all such regulatory by-laws in accordance with the by-law provisions, it being expressly agreed that the Municipality shall have no obligation to enforce or prosecute by-laws of the Entitlement First Nation where:

- (a) the courts of the Province of Manitoba lack jurisdiction; or,**
- (b) the Municipality cannot enforce or prosecute the Entitlement First Nation's by-laws in substantially the same manner as the Municipal by-laws; or**
- (c) any conflict of interest exists.**

In such circumstances the Entitlement First Nation shall take all such steps and do all such things as are necessary so as to ensure that its by-laws are enforced and prosecuted to the full extent of the law.

VI. DISPUTE RESOLUTION

It is often the case that agreements will contain ambiguous provisions that can be interpreted in more than one way. In addition, situations will arise from time to time that are not expressly covered in an agreement. For these reasons, agreements, particularly agreements that involve parties who will have a long-term relationship with one another, often contain provisions for resolving disputes.

1. OPTIONS

Disagreements may be resolved through one of three processes:

- **Conciliation:** Pursuant to this process, the parties try to work out issues. The parties may try to work out the issues by themselves, such as at a joint meeting of the Municipal and Entitlement First Nation councils. In the alternative, the parties may work out the issues with the assistance of a third party.
- **Mediation:** Pursuant to this process, a third party assists in working out a solution to the problem. A decision is reached by consensus, which may or may not be binding depending on the terms of the mediation.
- **Arbitration:** Pursuant to this process, the matter in dispute is referred to a third party for review. The third party decides on how to settle the disagreement. The arbitration decision may be non-binding, but it is usually binding on all parties.

An alternative to using only one of these dispute resolution processes is for the parties to use a combination of the above-mentioned processes. For example, the parties could begin the dispute resolution process with conciliation, proceed to mediation if the conciliation is not successful, and as a last resort, have the dispute arbitrated.

2. SELECTION OF THIRD PARTY

An independent third party to assist the parties with conciliation, mediation or arbitration may be an individual or an organization. For example, a third party could be a judge or a board. A third party can be selected in one of three ways:

- the third party could be named in the agreement.
- a judge of the Court of Queen's Bench could appoint the third party.
- both parties could jointly select the third party from a list of suitable individuals or organizations on a case-by-case basis.

3. PROCEDURE

Procedural details of dispute resolution processes that may be addressed in a MDSA include:

- Authority of the dispute resolution body to call meetings and conduct hearings,
- Format of the meetings: open or in camera,
- Authority of the dispute resolution body to review and examine by-laws, reports and minutes of the Municipality and the Entitlement First Nation, and to hear testimony and receive reports, etc.,
- Manner in which a decision will be reached: by majority vote, consensus, or another method,
- Effect of the decision of the dispute resolution body: recommendation or binding, and
- Time frame for the dispute resolution process.

4. COSTS

There may be costs associated with a dispute resolution process, especially if a third party is brought in to assist. The agreement should specify who is responsible for paying the costs. Options for payment are:

- the parties share the costs equally,
- the parties pay their own costs and share the costs of the third party, or
- the party requesting the process pay the costs.

5. DISPUTE RESOLUTION PROCESSES

A. CONCILIATION

JOINT MEETINGS OF COUNCILS (NO THIRD PARTY)

A Municipality and Entitlement First Nation may wish to settle their disputes by means of a joint council. The MDSA could set out the process for the appointment of representatives to the joint council, when and how often the joint council will meet and so on, in a similar manner to the process set out in the Framework Agreement for its Implementation Monitoring Committee:

Establishment of Joint Council Committee

(1) The Joint Council Committee shall be established and shall be comprised of five (5) members, being two (2) representatives appointed by the Municipality, two (2) representatives appointed by the Entitlement First Nation and an independent Chairperson.

(2) The Joint Council Committee shall remain in existence throughout the term of the Municipal Development and Services Agreement.

Appointment of Joint Council Committee Members and Quorum

(1) The parties shall appoint their respective members of the Joint Council Committee by notice in writing to the other party no later than thirty (30) days following the date of execution of the Municipal Development and Services Agreement.

(2) A member of the Joint Council Committee appointed by one of the parties may designate in writing an alternate to attend a meeting of the Joint Council Committee.

(3) A party may change its members on the Joint Council Committee from time to time by notice in writing to the other party.

(4) A quorum of the Joint Council Committee shall be three (3) members, which must include one (1) member representing each party and the Chairperson.

Appointment of Independent Chairperson

The members of the Joint Council Committee shall consider the availability of persons resident in Manitoba who have the appropriate qualifications and experience to undertake and effectively discharge the responsibilities of Chairperson and shall appoint such a person as Chairperson within ninety (90) days of the date of execution of the Municipal Development and Services Agreement or such longer period as the parties may agree.

Terms of Appointment of Chairperson and Vacancy

(3) The Chairperson shall be appointed on terms and conditions, including remuneration as the parties may agree, for a term of two (2) years from the date of appointment and any person so appointed shall be eligible for re-appointment.

(4) A Chairperson shall serve until:

- (a) his or her term of appointment or re-appointment expires;
- (b) he or she dies;
- (c) he or she resigns;
- (d) he or she is declared incapable of managing his or her own affairs by a Court of competent jurisdiction; or
- (f) the parties agree in writing to withdraw his or her appointment.

Appointment of Chairperson upon Vacancy

In the event of a vacancy in the position of Chairperson, the remaining members of the Joint Council Committee shall consider the availability of persons resident in Manitoba who have the appropriate qualifications and experience to undertake and effectively discharge the responsibilities of Chairperson and shall, within ninety (90) days of the vacancy occurring or such longer period as the parties may agree, appoint such a person as Chairperson.

Consensus Decision Making

(1) The Joint Council Committee shall operate with and by the consensus of its members.

(2) The members of the Joint Council Committee shall be guided by the principle that the parties have a continuing obligation to act in good faith in resolving any issue or matter in dispute pursuant to the Municipal Development and Services Agreement.

(3) The Joint Council Committee may from time to time make rules of procedure to govern its operation provided that they are not inconsistent with this Municipal Development and Services Agreement.

Responsibilities of the Joint Council Committee

(1) The Joint Council Committee shall:

- (a) make recommendations to the parties for the resolution of any issue or matter in dispute relating to this Municipal Development and Services Agreement; and

(b) resolve any issue or matter in dispute relating to this Municipal Development and Services Agreement which is referred to it by the Municipality or the Entitlement First Nation.

(2) The Joint Council Committee shall meet upon the call of the Chairperson.

Technical Support and Independent Professional Advice

(1) The Chairperson may, where the members of the Joint Council Committee agree, retain technical support and independent professional advisors, including legal counsel, as necessary from time to time to assist in the proper discharge of the responsibilities of the Joint Council Committee, including the responsibilities of the Chairperson.

(2) Technical support and independent professional advisors retained by the Chairperson on behalf of the Joint Council Committee shall provide advice, guidance and opinions to the Joint Council Committee and the Chairperson as required to assist in the resolution of any issue or matter in dispute.

Costs of Joint Council Committee

All costs associated with the Joint Council Committee, including the costs of remuneration of the Chairperson, any technical support and any independent professional advice shall be shared equally by the parties.

Responsibilities of Chairperson

(1) The Chairperson shall be responsible for the general administration of the Joint Council Committee including:

- (a) calling meetings of the Joint Council Committee;
- (b) chairing meetings of the Joint Council Committee;
- (c) ensuring that written minutes and records are kept of meetings and decisions of the Joint Council Committee;
- (d) distributing the minutes of the Joint Council Committee to the members of the Joint Council Committee on a timely basis;
- (e) submitting to each party an invoice for the reasonable costs incurred by the Joint Council Committee or the Chairperson in each month, including receipts and supporting documents as the parties may reasonably request;
- (f) maintaining records of all costs incurred by the Joint Council Committee and the Chairperson; and
- (g) ensuring timely payment of the expenditures of the Joint Council Committee upon the receipt of payment from the parties.

(2) The Chairperson shall call a meeting of the Joint Council Committee at the request of at least one (1) member of each of the parties represented on the Joint Council Committee.

(3) A meeting of the Joint Council Committee shall be called by the Chairperson upon at least fourteen (14) days notice in writing to the members of the Joint Council Committee or upon a lesser period where all members are in agreement.

(4) The Chairperson shall assist the Joint Council Committee in determining the sufficiency of information relating to the Municipal Development and Services Agreement provided to the Joint Council Committee, and, if necessary, may request any of the members of the Joint Council Committee to take steps the Chairperson deems appropriate to ensure the sufficiency of that information.

(5) In order to facilitate the resolution of issues or matters in dispute, the Chairperson may:

- (a) propose time periods for the parties to respond to an issue or matter in dispute;
 - (b) direct any member to submit to the Joint Council Committee a report about any issue or matter in dispute and propose solutions to that issue or matter in dispute within a time period identified by the Chairperson;
 - (c) identify strengths and weaknesses of proposed solutions to an issue or matter in dispute;
 - (d) direct the members of the Joint Council Committee to assist in resolving an issue or matter in dispute by consensus; and
 - (e) propose solutions to an issue or matter in dispute.
- (6) Where the Joint Council Committee makes a decision on a means to resolve an issue or matter in dispute, the Chairperson shall record the decision in the minutes or records of the Joint Council Committee and provide notice of the decision to the Municipality and the Entitlement First Nation.

CONCILIATION WITH A THIRD PARTY

Where the parties establish a means for an ongoing dialogue between themselves for the administration of their by-laws, they may believe that conciliation by means of a joint committee will not be an effective way to resolve their disputes. Instead, the parties may wish to use a conciliation process but aided by a third party. In this case, a joint council committee could be involved to choose the third party and provide background information to the third party. In the alternative, the parties may wish to jointly appoint, either in the agreement itself, or immediately following the execution of the agreement, a person to act as an adjudicator, and possibly a second person to act as adjudicator in the event that the first named individual is unable for any reason to act. A similar process to the following one, which is based on the “fact finding” dispute resolution process set out in the Framework Agreement, could be adopted by the parties to the MDSA:

Identification of Adjudicators by Joint Council Committee

- (1) The Joint Council Committee shall identify persons qualified in the techniques of conciliation to act as Adjudicators.
- (2) An Adjudicator identified in accordance with Subsection (1) shall be available to resolve issues or matters in dispute arising from the implementation of this Municipal Development and Services Agreement as may be referred to him or her from time to time upon reasonable notice for a period as may be agreed by the Joint Council Committee and the Adjudicator.
- (3) The rates of remuneration for services to be provided by an Adjudicator shall be as determined by the Joint Council Committee having regard to the experience and qualifications of that Adjudicator.
- (4) The Joint Council Committee or the Chairperson shall appoint an Adjudicator to resolve an issue or matter in dispute in accordance with this Municipal Development and Services Agreement.

Method of Conciliation

The method of dispute resolution shall be “conciliation”, being a review of the issue or matter in dispute by an Adjudicator who shall conduct the review and assist the parties in resolving the issue or matter in dispute by the determination of relevant facts bearing upon the issue or matter in dispute.

Joint Council Committee's Role in Conciliation

Subject to any directions provided by the Joint Council Committee, the Chairperson of the Joint Council Committee is responsible, in consultation with the members of the Joint Council Committee:

- (a) for preparing appropriate written directions to the Adjudicator for the completion of the conciliation;
- (b) for providing the Adjudicator with information about the issue or matter in dispute, including a written definition of the issue or matter in dispute, any report on or proposed solution of the issue or matter in dispute submitted to the Joint Council Committee by either party, and any means of resolving the issue or matter in dispute recommended by the Chairperson;
- (c) for determining a time period for the completion of conciliation recognizing that the parties agree that the conciliation should be completed in no more than three (3) days of meetings unless an issue or matter in dispute is of a complex nature; and
- (d) for determining other appropriate procedures in order to ensure the issue or matter in dispute is resolved in a timely and cost efficient manner.

Default by a Party during the Conciliation

(1) Where an issue or matter in dispute has been referred to conciliation and the party who has submitted the issue or matter in dispute to the Joint Council Committee withdraws it, the conciliation shall end.

(2) Where a party to an issue or matter in dispute does not comply with any time period for the provision of information to the Adjudicator, which is required for the conciliation, the conciliation may proceed.

(3) Where either party to an issue or matter in dispute does not appear at any hearing, the conciliation shall proceed based on the information before the Adjudicator and a finding, direction, decision or award may be rendered with respect to the issue or matter in dispute.

Costs of Conciliation

(1) Subject to Subsection (2), the costs of conciliation shall be paid equally by the parties involved based upon invoices for services rendered by the Adjudicator.

(2) Where in a conciliation, a party does not comply with time periods for the provision of information or does not appear at a hearing and the conciliation proceeds in accordance with Subsection (3) beneath the heading "Default of a Party during the Conciliation", the Adjudicator may determine the payment of costs in accordance with Subsection (3) of this Section with necessary modifications and as may be reasonable in the circumstances.

(3) The Adjudicator shall be guided in making an award relating to the payment of costs in accordance with Subsection (2) of this Section by the Manitoba Court of Queen's Bench Rules relating to the award of costs in litigation, including the principle that ordinarily the unsuccessful party to the proceedings is required to pay reasonable costs of the proceedings and of the other parties.

Record and Report of Issues or Matters in Dispute and Events of Default

(1) The Chairperson shall maintain a record of all issues or matters in dispute and Events of Default and the means identified to resolve any issue or matter in dispute and any Event of Default.

(2) The record maintained by the Chairperson in accordance with Subsection (1) may be used:

- (a) as a means of identifying problem areas in implementation which may require consideration by the parties or amendment of this Municipal Development and Services Agreement; and
- (b) as information which may be considered by an Adjudicator in determining if a breach of any provision of this Municipal Development and Services Agreement has occurred.

B. MEDIATION

A second dispute resolution process that the parties may wish to use is mediation. Mediation could be used as the sole dispute resolution process. In the alternative, mediation could be used together with other processes. For example, the parties may wish to provide in their MDSA that

- the process for resolving any dispute will be conciliation by the parties without the assistance of a third party;
- if this process is not successful, the parties will try to resolve their dispute by conciliation with the assistance of a third party; and
- finally, if conciliation with the assistance of a third party is not successful, the parties will have their dispute mediated.

Another option is for the parties to begin the dispute resolution process with conciliation with the aid of a third party, and if this process is not successful, proceed to mediation.

Most of the suggested provisions provided above for conciliation with the assistance of a third party would apply equally to the process of mediation, including the identification of adjudicators, the role of the parties' joint council committee in mediation, the consequences of default by one of the parties during mediation, the determination of the costs of mediation and the recording of issues or matters in dispute and any default during the dispute resolution process. However the method used for mediation would differ from the conciliation process. The mediation method adopted by the parties in their MDSA could be similar to that used in the Framework Agreement, as follows:

Method of Mediation

The method of dispute resolution shall be "mediation", being the exploration of the positions of the parties to the issue or matter in dispute by an Adjudicator as a means of increasing the level of understanding of the positions of the parties, reconciling their positions to the extent possible and assisting the parties in reaching a consensus on the resolution of the issue or matter in dispute, and the Adjudicator may offer suggestions, recommendations and alternatives for consideration by the parties and, if requested, assist in preparing a written agreement on the means of resolving an issue or matter in dispute.

C. ARBITRATION

A third dispute resolution process, that is more likely than the other processes to be the one chosen by the parties for their use, is arbitration. As discussed above for mediation, the parties could provide in their agreement that they wish to begin the dispute resolution process with conciliation and if conciliation is not successful, they will mediate their dispute, and only if mediation fails, will they have their dispute arbitrated. In the alternative, the parties may wish to proceed straight to arbitration. Arbitration

may be either non-binding or binding. If the parties decide that arbitration alone should be used for dispute resolution, provisions similar to the following provisions, which are derived from the Framework Agreement, could be used by the parties in their MDSA:

Method of Arbitration

(1) The methods of dispute resolution shall be:

- (a) “non-binding arbitration”, being a hearing before an Adjudicator at which each party has an opportunity to be fully heard (orally or in writing) on an issue or matter in dispute after which the Adjudicator shall make a decision in writing on the understanding that the parties shall give serious regard to the decision, but the resulting decision is not legally binding on them; and
- (b) “binding arbitration”, being a hearing in accordance with Manitoba’s *The Arbitration Act*, C.C.S.M. c. A120 before an Adjudicator at which each party has an opportunity to be fully heard (orally or in writing) on the issue or matter in dispute after which the Adjudicator shall make a decision in writing and the resulting decision is legally binding on them.

(2) All issues or matters resolved by non-binding arbitration or binding arbitration shall be addressed by written decision of the Adjudicator.

(3) The resolution of issues or matters in dispute shall be a progressive process, from non-binding arbitration to binding arbitration, unless determined otherwise by the Joint Council Committee.

(4) An Adjudicator who has provided dispute resolution services for non-binding adjudication may not be appointed as an Adjudicator for the same issue or matter in dispute for binding arbitration unless the Municipality and Entitlement First Nation agree.

Procedure for Binding Arbitration

(1) Where binding arbitration is used as a means to resolve an issue or matter in dispute, the Joint Council Committee shall prepare and submit to the Adjudicator a reference setting out in writing:

- (a) the question or questions for the Adjudicator to determine; and
- (b) any other terms of reference to define the jurisdiction of the Adjudicator.

(2) Subject to Subsection (3) of this Section, on an issue or matter in dispute submitted to binding arbitration, an Adjudicator shall make an Award which addresses the issue or matter in dispute in accordance with the reference, and which may include:

- (a) the determination of facts relating to the issue or matter in dispute;
- (b) an interpretation of the Municipal Development and Services Agreement;
- (c) a determination that one or both parties is required to take certain action to give effect to this Municipal Development and Services Agreement; or
- (d) a finding that a breach of a term or condition of this Municipal Development and Services Agreement has occurred.

(3) An Adjudicator on an issue or matter in dispute submitted to binding arbitration shall not have jurisdiction to make an award which:

- (a) requires the Municipality or the Entitlement First Nation to change any of its by-laws or policies, provided that:
 - (i) the Adjudicator may identify and determine any inconsistencies or deficiencies in the by-laws or policies of the Municipality or Entitlement

First Nation and make recommendations to the Municipality or Entitlement First Nation concerning its by-laws or policies affecting the due implementation of this Municipal Development and Services Agreement; and

- (ii) the Municipality or the Entitlement First Nation which receives a recommendation from the Adjudicator made in accordance with Subparagraph (i) shall have due regard for its obligations under this Municipal Development and Services Agreement in the consideration of any determination or recommendation of the Adjudicator; or
 - (b) requires either party to make a payment to any other party or in respect of damages or loss alleged to have been suffered by that other party or Entitlement First Nation as a result of any action or inaction of the Municipality or Entitlement First Nation.
- (4) The resolution of an issue or matter in dispute referred to binding arbitration that is resolved by the consent of the Municipality and Entitlement First Nation involved in that issue or matter in dispute shall issue as an Award.

Appeal of Binding Arbitration Awards

(1) An award, other than an award issued by consent of the parties, may be appealed to the Manitoba Court of Queen's Bench within thirty (30) days of the date of the award by a party to the issue or matter in dispute on the grounds of:

- (a) failure of the Adjudicator to consider the matter fairly;
- (b) bias of the Adjudicator;
- (c) failure of the Adjudicator to act within the jurisdiction provided to the Adjudicator; or
- (d) error of law committed by the Adjudicator, including an error in interpretation of the Municipal Development and Services Agreement.

(2) Where an award is appealed in accordance with Subsection (1), the Manitoba Court of Queen's Bench may:

- (a) dismiss the appeal;
- (b) allow the appeal and remit the issue or matter in dispute to the Adjudicator or to the Joint Council Committee to appoint a different Adjudicator to be reconsidered based on the decision of the Court; or
- (c) allow the appeal and substitute the decision of the Court in place of the award where the determination of the appeal would reasonably resolve the issue or matter in dispute and may make an order for costs.

(3) There shall be no right of appeal from a decision of the Manitoba Court of Queen's Bench made in accordance with Subsection (2) of this Section.

Costs of Arbitration

(1) In matters referred to binding arbitration, the Adjudicator may, in addition to determining an award on the issue or matter in dispute, determine:

- (a) the allocation of the costs of arbitration; and
- (b) the payment of costs of the parties to the proceedings.

For the preceding provisions, the parties would also have to set out provisions for the establishment of, and possibly the procedure for, a Joint Council Committee.

In the alternative, the parties may wish to proceed directly to binding arbitration on any matter in dispute and for the arbitrator's decision to be unappealable, as in the following manner:

If a dispute arises between the parties concerning the application or interpretation of this Municipal Development and Services Agreement which they are unable to resolve, it shall be referred to binding arbitration.

Either the Entitlement First Nation or the Municipality may commence arbitration proceedings with respect to a dispute by delivering to the other party a notice of arbitration in writing stating the nature of the matter in dispute.

Where, within fourteen (14) days of the notice referred to in the preceding provision, the Entitlement First Nation and the Municipality fail to agree on the identity of the arbitrator, the rules and procedures to be used in conducting the arbitration, or the location of the arbitration proceedings then, to the extent applicable, the following shall apply:

- (a) each of the parties shall name one arbitrator within a further period of fourteen (14) days, and the arbitrators so named shall appoint a third arbitrator. If any party fails to appoint an arbitrator within this fourteen (14) days, the arbitrator appointed by the other party shall become the sole arbitrator of the dispute; and
- (b) the arbitration proceedings shall be conducted in accordance with those rules and procedures which the arbitrator (or arbitrators) in his or her (or their) sole discretion determines appropriate having due regard to the nature and magnitude of the dispute and the desire of the parties, which is hereby confirmed, to have all disputes resolved as expeditiously as possible.

In appointing an arbitrator (or arbitrators) to hear matters related to the assessment of the Selection/Acquisition under the provision dealing with assessment for payment of fees, the parties shall select a person or persons with expertise in assessment matters.

Unless otherwise ordered by the arbitrator (or arbitrators), each party shall bear its own costs with respect to any arbitration and shall share equally the fees and disbursements of the arbitrator (or arbitrators).

The Entitlement First Nation and the Municipality agree that any matter of procedure associated with an arbitration that is not expressly provided for in this Municipal Development and Services Agreement, or in an agreement between the parties or, on application of the parties, by the arbitrator (or arbitrators), shall be governed by the *Commercial Arbitration Act*, R.S.C. 1985, c. 17 or successor legislation.

The decision of the arbitrator (or arbitrators) shall be final and binding upon the Municipality and the Entitlement First Nation.

Notwithstanding that the parties intend to have their disputes resolved by binding arbitration, no order of an arbitrator (or arbitrators) shall be binding if such order purports to compel the exercise of legislative powers by either party.

VII. OTHER PROVISIONS

An Entitlement First Nation and Municipality may also want to include the following provisions in their MDSA:

- Provision for holding regular joint council meetings,
- Provision of joint venture for economic development, service delivery, etc., and
- Compatible Taxation by Entitlement First Nation.

1. JOINT COUNCIL MEETINGS

A provision providing for the councils of the parties to meet on a regular basis may not be necessary where the parties have established a joint by-law committee in their MDSA – as this process involves continued communication between the parties. However, if no other process to facilitate communication between the parties is established, the following provision could be used by the parties to provide for on-going dialogue:

The Entitlement First Nation Band Council and Municipal Council or their representatives shall meet together at least once in each calendar year to discuss such matters as may have arisen between them, and to keep open the lines of communication.

In the alternative, the Entitlement First Nation and Municipality may consider that their respective councils should meet when certain issues arise. For example, the parties may wish their councils to meet to discuss changes in the level of services, capital improvements and by-law changes, as follows:

The Entitlement First Nation and the Municipality agree that, to maintain a spirit of cooperation and consultation with respect to matters of ongoing interest to them, it is beneficial to create a formal process for providing specific notice to each other of certain matters and for the convening of joint meetings of their respective Councils.

The parties therefore agree to provide notice to each other of the following matters, as early as practicable but no less than sixty (60) days before the implementation of:

- (a) any proposed additions to or reduction in the Services by either the Entitlement First Nation or the Municipality;
- (b) any proposed capital improvements or developments that might require changes to the Services by either the Entitlement First Nation or the Municipality;
- (c) the proposed passage of any new by-law or any proposed addition, amendment or change to the Entitlement First Nation's or the Municipality's land use and occupancy by-law, which will affect land use, occupancy or development;
- (d) any proposed change in policing services, in which case, the Royal Canadian Mounted Police shall be given notice and shall be entitled to attend meetings contemplated by this provision; and
- (e) any other matters arising from this Municipal Development and Services Agreement; and

the Councils of the Entitlement First Nation and the Municipality shall, unless otherwise agreed by them, meet within fifteen (15) business days of the request of either party.

The Entitlement First Nation and the Municipality agree to provide notice to each other of any matter in dispute concerning the application or interpretation of this Municipal Development and Services Agreement as early as practicable after the existence of the dispute is known to either of them.

Where a notice has been given under either of the two preceding provisions, the Councils of the Entitlement First Nation and the Municipality shall, unless otherwise agreed by them, meet within fifteen (15) business days after receipt of the notice to consider the proposal and its effect, if any, on this Agreement, and in particular, any need to consider alterations or additions to this Agreement.

In addition to the above matters, the Entitlement First Nation and Municipality agree that they shall discuss the following matters at their joint meetings:

- (a) coordination of Entitlement First Nation and Municipal policies; and
- (b) coordination or cooperation regarding Entitlement First Nation and Municipal operational and administrative procedures.

In the case of any other matter of ongoing interest to the Entitlement First Nation or the Municipality in respect of this Agreement, the Councils of the Entitlement First Nation and the Municipality shall hold a joint meeting on or about April 1st in each year and at such other times as may be necessary or desirable within fifteen (15) business days of a request of either party to convene a meeting.

A further option is for the Entitlement First Nation and Municipality to provide for consultation with one another in a less structured manner, such as by the following method:

From time to time, the Municipality and Entitlement First Nation may establish joint committees to deal with matters of mutual concern. Further, the Municipality and Entitlement First Nation may each invite representatives of the other party to attend meetings of their internal committees as guests, advisors or ex-officio members.

2. JOINT VENTURES

It may benefit the Entitlement First Nation and Municipality to undertake a project, such as a construction or development project, on a joint basis, either on the Selection or Acquisition or on Municipal lands, or both. If the parties wish to undertake such a project, they should enter into a separate agreement with respect to the project in addition to the MDSA. However, the parties may wish to acknowledge in their MDSA that they may enter into such an arrangement, as follows:

The Entitlement First Nation and Municipality may enter into one or more joint ventures for the construction and development of the Selection/Acquisition and Municipal lands or for the provision of services to the Entitlement First Nation and Municipality.

3. COMPATIBLE TAXATION

Property taxes are the primary source of revenue for Municipalities. However, in addition to property tax, in some Municipalities, businesses located in the Municipality pay a business tax based on an assessment related to the space used by the business. Business taxes are billed and collected separately from property taxes, and are generally used to enhance the types and levels of services, particularly to businesses. Municipalities also obtain revenues from other sources, which include: licensing and permits; grants-in-lieu of taxes; local improvements; fines; and user fees.

A First Nation is authorized to pass by-laws for the purpose of taxation of the land or an interest in the land in a Reserve, including the right to occupy, possess or use land in the Reserve and for the purposes of licensing businesses, callings, trades and occupations, pursuant to paragraphs 83(1)(a) and (a.1) of the *Indian Act*, subject to the approval of the Minister of Indian Affairs and Northern Development. Land need not be owned or occupied by an Indian in order to be subject to an Indian Band's taxation by-laws. As a result, an Entitlement First Nation can impose property taxes on non-native persons who use Reserve lands so long as there has been no absolute surrender of the Reserve land to the non-native person.

A Municipality may want to ensure that the Entitlement First Nation does not provide a property or business tax advantage to individuals or businesses located on a Reserve that the Municipality does not make available to Municipal residents. To this end, the Municipality may want the Entitlement First Nation to enact taxation by-laws which establish and enforce a taxation scheme on the Reserve that is equivalent to the taxation regime of the Municipality, that is, one that uses assessment and taxation methods on Reserve lands that are consistent with those used for the Municipal lands. In other words, the Municipality may want the Entitlement First Nation to charge individuals or businesses at least as much total property and business tax as the Municipality would charge on similar Municipal lands. The effect will be that any property or business tax advantage associated with Reserve lands will accrue to the Entitlement First Nation rather than to the individuals or businesses located on the Reserve.

The following provision could be used for this purpose:

Entitlement First Nation Taxation

In relation to the developed lands, the improvements thereto, its occupants, and the owners of businesses conducted thereon, the Entitlement First Nation shall enact and at all times maintain and enforce a taxation regime which in all respects imposes upon such developed lands, the improvements thereto, its occupants, and the owners of businesses conducted thereon, a level of taxation which at least equals that which would accrue if the said developed lands were not a Reserve, and the developed lands, the improvements thereto, its occupants, and the owners of the businesses conducted thereon, were being assessed and taxed by the Municipality, less that portion of all such taxes as are levied and assessed by the Municipality on behalf of public and separate school boards. In this regard, the Entitlement First Nation agrees that the Municipality may if desired, and upon reasonable notice having been given, examine the books of account, financial and other records and documents of the Entitlement First Nation to verify the level of such taxation regime and the receipts pertaining thereto.

Exemption, Abatement and Rebate

Subject to the Section headed "Economic Incentives", the Entitlement First Nation shall not, either by way of exemption, abatement, forgiveness, grant, rebate, or otherwise, adopt or implement any scheme or other initiative which would have the effect of reducing, forgiving, rebating or granting back, any portion of the taxation regime to be imposed by the Entitlement First Nation pursuant to the Section headed "Entitlement First Nation Taxation".

An Entitlement First Nation may want to attract development and business by offering the same economic incentives to individuals or corporations who use or develop Reserve land, as the Municipality offers to individuals or corporations who use or develop Municipal land. For this reason, an Entitlement First Nation may wish to insert the following provision into the MDSA:

Economic Incentives

In the event that the Municipality and the Entitlement First Nation directly compete with respect to a specific prospective lessee, purchaser or developer of land, and the Municipality proposes to grant an economic incentive by way of tax exemption or otherwise to such lessee, purchaser or developer, the Entitlement First Nation may propose and implement similar incentives with respect to such lessee, purchaser or developer.

VIII. INFORMATION CONTACTS

If you have any questions or require information regarding:

- the MDSA please contact:

Manitoba Department of Intergovernmental Affairs
500 - 800 Portage Ave.
Winnipeg, Manitoba R3G ON4
Tel.: (204) 945-4864

- the Treaty Entitlement Agreement please contact:

Manitoba Department of Aboriginal and Northern Affairs
200 - 500 Portage Ave.
Winnipeg, Manitoba R3C 3X1
Tel.: (204) 945-2510

APPENDIX A

MUNICIPAL AUTHORITY UNDER PROVINCIAL LEGISLATION

The following is a partial list of Manitoba legislation that pertains to Municipalities and topics that are covered under the legislation:

1. *The Planning Act, C.C.S.M. c. P80*

Contains provisions relating to:

- a. provincial land use planning (Part II),
- b. planning districts (Part III),
- c. development plans (Part IV),
- d. zoning by-laws (Part V, ss. 39-47),
- e. conditional use (Part V, s. 53),
- f. variation orders (Part V, ss. 54, 55, 56),
- g. interim development control (Part V, s. 57), and
- h. subdivision of land (Part VI).

2. *The Municipal Act, C.C.S.M. c. M225*

Authorizes a Municipality to pass by-laws relating to:

- a. the safety, health, protection and well-being of people, and the safety and protection of property (s. 232(1)(a));
- b. people, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls, and private clubs and facilities that are exempt from municipal taxation (s. 232 (1)(b));
- c. subject to section 233, activities or things in or on private property (s. 232(1)(c));
- d. municipal roads, including naming the roads, posting the names on public or private property, and numbering lots and buildings along the roads (s. 232(1)(d));
- e. private works on, over, along or under municipal roads (s. 232(1)(e));
- f. property adjacent to highways or municipal roads, whether the property is publicly or privately owned (s. 232(1)(f));
- g. the operation of off-road vehicles on public or private property (s. 232(1)(g));
- h. drains and drainage on private or public property (s. 232(1)(h));
- i. preventing and fighting fires (s. 232(1)(i));
- j. the sale and use of firecrackers and other fireworks, the use of rifles, guns, and other firearms, and the use of bows and arrows and other devices (s. 232(1)(j));
- k. wild and domestic animals and activities in relation to them, including by-laws that differentiate on the basis of sex, breed, size or weight (s. 232(1)(k));
- l. public utilities (s. 232(1)(l));
- m. local transportation systems (s. 232(1)(m));

- n. businesses, business activities and persons engaged in business (s. 232(1)(n)); and
- o. the enforcement of by-laws (s. 232(1)(o)).

3. *The Northern Affairs Act, C.C.S.M. c. N100*

Provides for:

- a. agreements between the minister and Canada for the provision, maintenance or improvement of local services (water supply, water distribution systems, sewage systems, sewage disposal plants, garbage and waste disposal facilities, local roads, sidewalks, local drains and drainage systems, fire and police protection, street lighting, planning, recreation facilities, transportation facilities, libraries, weed control and schools) (s. 7),
- b. power of minister to make a by-law for or on behalf of the residents of Northern Manitoba, a community or incorporated community (s. 5),
- c. powers of incorporated community (Part VII), and
- d. agreements by incorporated community with Canada, Manitoba, a Municipality, local government district or another incorporated community for policing (s. 81).

4. *The City of Winnipeg Act, S.M. 1989-90, c. 10*

Contains provisions relating to:

- a. jurisdiction (Part 5),
- b. assessment (Part 7),
- c. collection of realty and business taxes (Part 8),
- d. local improvements (Part 10),
- e. public convenience (Part 12),
- f. health and sanitation (Part 13),
- g. building standards (Part 15), and
- h. planning and development (Part 20).

5. *The Buildings and Mobile Homes Act, C.C.S.M. c. B93*

Authorizes the:

- a. Lieutenant Governor in Council to adopt established building construction code or standard, or establish or prescribe a building construction code or standard for use in the province (s. 3(1)) and requires Municipalities to adopt and enforce the same (s.4), and
- b. minister to issue permits relating to buildings.

6. *The Heritage Resources Act, C.C.S.M. c. H39.1*

Contains provisions relating to the designation of properties as heritage sites by the minister (Part I) and Municipality (Part III).

7. *The Fires Prevention Act. C.C.S.M. c. F80*

Provides for the fire chief or clerk (if no fire department) of a Municipality to be a local assistant responsible for preparing reports on fires in the district (s.38).

APPENDIX B

ENTITLEMENT FIRST NATION AUTHORITY - THE *INDIAN ACT*, R.S.C. c. I-5

The *Indian Act* authorizes a band council to make by-laws on the following matters (s. 81(1) and 83(1)):

- a. protection of the health of residents and prevention of spreading of contagious and infectious diseases (s. 81(1)(a)),
- b. traffic regulation (s. 81(1)(b)),
- c. maintenance of law and order (s. 81(1)(c)),
- d. control of disorderly conduct and nuisances (s. 81(1)(d)),
- e. protection against and prevention of trespass by cattle and other domestic animals, establishment of pounds, appointment of pound-keepers, regulation of their duties, and provision for fees and charges for their services (s. 81(1)(e)),
- f. construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works (s. 81(1)(f)),
- g. division of the reserve or a portion thereof into zones and the prohibition of the construction or maintenance of any class of buildings or the carrying on of any class of business, trade or calling in any zone (s. 81(1)(g)),
- h. regulation of construction, repair and use of buildings, whether owned by the band or by individual band members (s. 81(1)(h)),
- i. survey and allotment of reserve land among the members of the band and the establishment of a register of Certificates of Possession and Certificates of Occupation relating to allotments and the setting apart of reserve lands for common use (s. 81(1)(i)),
- j. destruction and control of noxious weeds (s. 81(1)(j)),
- k. regulation of bee-keeping and poultry raising (s. 81(1)(k)),
- l. construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies (s. 81(1)(l)),
- m. regulation of public games, sports, races, athletic contests and other amusements (s. 81(1)(m)),
- n. regulation of the conduct and activities of hawkers, peddlers or others who enter the reserve to buy, sell or otherwise deal in wares or merchandise (s. 81(1)(n)),
- o. preservation, protection and management of fur-bearing animals, fish and other game on the reserve (s. 81(1)(o)),
- p. removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes (s. 81(1)(p)),
- q. membership and residence on the reserve (s. 81(1)(p.1)(p.2)(p.3)(p.4)),
- r. matters arising out of or ancillary to the exercise of powers under section 81 (s. 81(1)(q));
- s. imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a by-law made under section 81 (s. 81(1)(r)),
- t. taxation for local purposes of land, or interests in land, in the reserve, including rights to occupy, possess or use land in the reserve (s. 83(1)(a)),
- u. licensing of businesses, callings, trades and occupations (s. 83(1)(a.1)), and

- v. matters arising out of or ancillary to the exercise of powers under section 83 (s. 83(1)(g)).