



# Agreement Selection

---

## Legal models for Cost-sharing Agreements

For an example of general principles of a cost sharing agreement, tips on drafting an agreement and the elements that should be contained in an agreement, see elements of a cost sharing agreement.

For further assistance in preparing cost sharing agreements, please see the sample agreement library to review existing agreements between municipal governments.

Cost sharing agreements may benefit from the use of a legal framework. The frameworks below are commonly used models in Alberta, provided to assist municipalities in selecting an agreement most appropriate for them.

- [Bi-lateral Agreement](#)
- [Multi-lateral Agreement](#)
- [Regional Services Commission](#)
- [Traditional Delegated Regulatory Organization \(DRO\)](#)
- [Modern Delegated Regulatory Organization \(Modern DRO\)](#)
- [Services Corporation](#)

# Bi-lateral Agreement

## General Description

This model involves a contract between two municipal governments where one purchases services/goods from the other. Bilateral agreements are contractual arrangements that indicate the services to be provided and the costs of the services. The primary advantage is that bilateral agreements generate economies of scale.

## Legal Basis

The legal basis for bilateral agreements between municipalities is contract law. Municipalities are corporate bodies and have the powers of a natural person (Municipal Government Act, R.S.A. 2000, c. M-26, ss. 3, 4 and 5). Natural persons have the powers to enter into contracts.

## Nature of the Agreements

A wide range of services may be contracted for, and a wide range of agreements may be established to facilitate the delivery of the service(s). The minimum requirements to be written into bilateral agreements are:

- the parties to the agreement;
- a description of the goods or services to be provided;
- a description of the price of the goods or services; and
- the term of the agreement.

## Parties to the Agreement

The two municipal governments that are party to the agreement should be named and the agreement should clearly state which municipal government is providing the services/goods and whether such services/goods are provided directly or through an agent or sub-contractor. The agreement should also provide terms respecting the ability (or limitation) on assigning the contract.

## Description of the Services

The agreement must describe the services/goods provided to a level of detail appropriate to the nature of agreement. This is even important when the service/good is an essential service/good to be provided by the municipal order of government. The description should not be so general as to be vague nor so specific that it causes gridlock or unintentional breach.

The following table shows how services to be provided under a bilateral agreement should be described, using an example of road maintenance:

<b>The agreement should address:</b>	<b>Example: road maintenance</b>
<b>Level of service</b>	Technical specification for graders to be used
<b>Frequency of service</b>	Roads graded once per month
<b>Scope of service</b>	All roads, some roads, part or all of the municipality
<b>Quality of service</b>	Who evaluates, who mediates disputes

For goods there should be an adequate description of what is provided, where it is delivered and if a shipping cost applies.

### **Description of Price**

If the service is well-defined and easily quantified, the matter is straightforward. However, when the wording of the agreement is not specific to each service that is agreed to, issues of price and risk may apply.

The agreement could be for a flat monthly fee covering the washing of all vehicles owned by a neighbouring municipality. The service-recipient has little risk because the price is the price. The service-provider carries some risk if too many vehicles get dirty during the month, or if the price of water increases. Conversely, if the weather is good, fewer washings may be needed and the provider would receive a notional windfall. The provider may decide to price the service higher in order to cover the risk carried on the agreement. The price of a good or service often takes into account risk.

Another critical issue relating to price, is accountability. The agreement should provide for both process and financial audits.

### **Term of the Agreement**

The agreement should describe the maximum term it may run and whether it can be terminated early or renewed. The term is critical where the price is fixed for the entire term of the agreement, as the risk of cost changes falls on the provider. This risk is mitigated where the contract can be terminated. Any renewals should contain clauses for the re-calculation of the price of services/ goods during the renewal period.

### **Contract Management Capacity**

The use of bilateral agreements requires that municipal governments have the capacity to manage their agreements. Contract management for the provider of the services may not differ from the general management of the municipality. A benefit of bilateral agreements is that existing management structures can be used with little cost increase to provide the service in a neighbouring municipality. However, when the agreement is overly complex or requires a service delivery model different from what is used in the provider's own municipality, contract management is not so simple.

The service-recipient should maintain its own contract management capacity. Responsibility for the services remains with the Council and it therefore should ensure that the terms of the contract are being fulfilled.

### **Cost Savings**

An assumption often made is that savings are realized in an agreement where small municipalities contract for services from larger municipalities. This assumption is related to amortizing the cost of management over a larger population or geographic area, but studies of this assumption are not conclusive. If the larger municipality is well-run, it may have the ability to provide management services on a cost-effective basis to its neighbours. It is just as likely though, that the larger municipality is well-run because it has an optimum level of management for the services it provides. If it were to provide services to its neighbours, the municipality would assume an incremental management cost. It appears

that modest management cost savings can be achieved where the service provider is efficient and the contract specifically addresses management cost issues.

The more likely cost savings is with services with a significant capital cost component. A municipality of 500 people may not be able to afford some services due to capital costs. The examples of such situations are varied ranging from sewage treatment to swimming pools to bylaw enforcement. The sharing of the cost of a large project should lower the cost to the ratepayers of both municipalities.

### **Potential Applications**

Municipal governments may choose to use bilateral agreements where the cost of infrastructure (usually capital assets) can be shared over a larger population base. It should enable a small municipality to provide a service it could not otherwise provide, at a reasonable cost. Larger municipalities could lower the cost of priority capital assets through cost-sharing agreements. The challenge is in accurately costing the service for both municipalities and fairly allocating risks.

#### *Sources:*

Bish, Robert L., "Evolutionary Alternatives for Metropolitan Areas: The Capital Region of British Columbia", in the Canadian Journal of Regional Science, Spring 2000, pp. 73-78.

Cashaback, David, "Regional District Governance in British Columbia: A Case Study in Aggregation", Institute on Governance, 2001

Guide to Regional Service Arrangements and Service Reviews, Government of British Columbia.

# Multi-lateral Agreement

## General Description

This model extends the Bi-lateral Agreement model. By creating a "framework agreement", similar to an international convention, that municipal governments can join (adhere) or leave (abrogate). These agreements are open and transparent, and the parties always join voluntarily. The primary benefit is that it is easy for municipalities to participate because they do not have to build the agreement themselves. Multilateral agreements require a leader to establish the framework agreement. Once established, it is easy for municipal governments to join. An organization may be required to maintain this type of agreement, as it can involve many parties, and can be complex.

## Legal Basis

The legal basis for multilateral agreements among municipal governments is contract law, and some international law. Municipal governments are corporate bodies and have the powers of a natural person (Municipal Government Act, R.S.A. 2000, c. M-26, ss. 3, 4 and 5). Natural persons have the powers to enter to contracts. Municipalities are also "sovereign" in a sense that they exercise jurisdiction within a geographic area based on delegated jurisdiction.

There are also specific statutory provisions that may form the basis of agreements among municipalities. One example is the creation of an inter-municipal development plan under section 631 of the Municipal Government Act. Another example is the Safety Codes Act, R.S.A. 2000, c. S-1, s. 26(b), which allows a combination of municipalities to agree to provide services under a common accreditation.

## Framework Agreement

Multilateral agreements are used to lower costs to municipalities by standardizing service delivery. Greater standardization might result in greater efficiency and less cost, but it may decrease local choice. One of the arguments used by provincial governments in Canada for municipal amalgamation is that some regions could be more cost-effective by streamlining administrations. Administrative and service delivery processes can be standardized by municipal governments through a multilateral agreement. In some areas, local concerns take precedence over concerns about costs of administration, while in other areas standardization of services and administration among several neighbouring municipalities could sense from an administrative and business point of view.

A framework agreement can establish standardized practices and procedures for delivering a service. Once in place, each municipal government could provide similar services, while benefiting from the cost savings that result from standardization.

Framework agreements could be regionally-based, or even province-wide. Drafting the framework agreements is a challenging task, and in this case, legal consultation is recommended.

Once the framework agreement has been developed for a region, municipal governments can choose to participate. The process of joining (adhesion) is consensual and municipal governments can later opt out (abrogation). Adhesion and abrogation provisions allow for a maximum degree of local accountability.

If the framework agreement requires a governance function, that function would be confederal. Each participating municipal government would exert influence in accordance with the terms of the

framework agreement. The framework agreement would belong to the participating municipal governments who could amend the agreement by a vote of a majority of municipal governments reflecting a majority of the participating population.

### **Nature of the Agreements**

The framework agreement structure is similar to international treaties. This reflects the independence of each municipal government and to respect their jurisdictional responsibility for providing the service. The subject matter could range from the simple (e.g. standardized forms/applications) to the complex (e.g. standardization of land use planning processes).

### **Cost Savings**

There is an expectation of cost savings from standardization that usually occurs from not duplicating process development costs.

### **Potential Applications**

The more common the subject, the broader the likely scope for multilateral agreements. Purchasing is often carried out under multilateral agreements because products/services and suppliers can be similar for all parties. Framework agreements can be templates for standardizing goods/services for which there is a common demand. Standardized procedures and methods will still meet local reporting and accountability requirements.

In sum, framework agreements have a great potential for cost savings while maintaining the present system of local accountability.

# **Regional Services Commission**

## **General Description**

The provincial cabinet can create a Regional Services Commission and designate the services which are covered and the municipalities involved. The advantage of this model is its high degree of political legitimacy. A disadvantage could result from decreased municipal control (perceived or actual) over the services.

## **Legal Basis**

Part 15.1 of the Municipal Government Act, R.S.A. 2000, c. M-26 provides for the creation of regional services commissions by regulation. The enabling regulation must specify the name of the commission, the municipalities that are members of the commission and the services the commission is authorized to provide. A regional services commission is a corporation and can therefore enter into contracts. It also has limited powers to make by-laws.

## **Historical Background**

Regional service commissions have been used almost exclusively for the provision of waste management and water distribution purposes. In rare instances regional services commissions were used for ambulance services and airport services. It may be difficult to use the regional service commissions model for other purposes due to legislative and regulatory constraints found in the Municipal Government Act Part 15.1, outlining administrative reporting requirements, financial constraints and ministerial approvals.

# **Traditional Delegated Regulatory Organization**

## **General Description**

This is the classic type of delegated regulatory organization (known as a DRO) created by an enabling statute, regulation or bylaw crafted specifically to the task being delegated. In the context of municipal cost-sharing, the DRO is limited to a specific geographic area and an activity traditionally undertaken by local government.

## **Legal Basis**

The legal basis of a traditional DRO is a specific enabling statute, regulation or bylaw. The DRO is created by legislation, a cabinet order or a by-law of a body given that power.

An example of this is the creation of Assessment Review Boards under section 454 of the Municipal Government Act, R.S.A. 2000, c. M-26. Section 456 of the Act allows two or more municipalities to establish joint boards.

## **Potential Applications**

There are existing statutory provisions for the creation of traditional DROs in the areas of property tax assessment, planning and development, and safety services on a multiple municipality basis. In theory the Municipal Government Act or other legislation could be amended to provide for DROs in other areas of municipal jurisdiction.

## **Advantages**

The principal legal advantage of using a traditional DRO is its robust legal nature resulting from the statutory basis on which it exists. Due to the DRO's function of enforcing and interpreting rules, it is crucial that its authority be based on statute. In these types of functions other organizational structures (e.g. corporations) can face legal challenges.

It is important to design the DRO to take advantage of its ability to exercise strong legal authority while benefiting from cost savings arising from the municipal cost-sharing agreement. This is not easy as DROs must comply with the procedural legal requirements and are subject to review by the courts. When they are well-researched and well-drafted, DROs are less expensive than traditional government and more responsive to stakeholder concerns.

A traditional DRO can be an effective tool for framing planning and development activities. Where citizens' property rights are involved, proper legal delegation of authority is necessary. Other models are not robust enough to withstand the legal challenges of unhappy property owners.

## **Disadvantages**

There can be a price to pay for being robust. A traditional DRO can only act within its authority through its enabling statute, regulation or bylaw. Any significant change to the DRO requires a legislation change, and amendments to legislation are rarely made quickly.

To be robust usually means being less responsive, especially if the enabling legislation makes the DRO accountable to the provincial government and the courts rather than to the municipalities it serves. Responding to changing local priorities may be difficult or impossible.

The DRO is the most difficult cost-sharing model to design and to maintain.

# Modern Delegated Regulatory Organization

## General Description

Municipal governments can use the Modern Delegated Regulatory Organization (Modern DRO) to delegate authority. The Modern DRO is created by municipal governments under the Societies Act, and then participating municipal governments contract with the Modern DRO to provide services. The Modern DRO can provide services itself, or enter into contracts to have third parties provide them.

The primary advantage of this model is its flexibility and responsiveness. It appears to be a traditional organizational model, yet functions in a non-traditional manner. This model can utilize economies of scale and market forces to decrease the cost of services. The primary disadvantage of this model is that it is untraditional, and may require greater justification for its use.

## Legal Basis

The Societies Act, R.S.A. 2000, c. S-14, c. 3, allows for the creation of organizations for many purposes, excluding trade and business. The wording of the legislation is broad enough to include activities carried out by governments. The main limitation on Modern DROs created under the Societies Act is that they cannot have shareholders and cannot generate profits.

Modern DROs created under the Societies Act can enter into contracts and carry out many of the activities of municipal governments, and this legal flexibility is advantageous.

The specific legal basis for an organization created under the Societies Act are its bylaws, which are filed with the Registrar of Corporations. The bylaws create a legal framework under which the organization operates.

## Structure

New challenges may require new alternatives. This model takes a traditional tool, a society/organization and finds a new application to address new challenges.

Modern DROs are effective in that they can adapt to new ideas around governance. The structure is not set, or rigid, and can be created on a task-specific basis for projects with a small project team and short timelines, or a structure can be created to organize the activities of thousands of employees with multiple programs and objectives. Once created, it can delegate authority, contract with other entities, or simply be given a task to carry out.

In some circumstances the modern DRO can look very much like a traditional DRO. For example, a regional emergency services authority could be set up as a modern DRO. It could perform all the public functions of a fire and ambulance department, yet do so under a contractual relationship with one or more municipalities or health authorities at the same time as it operates like a business corporation.

This flexibility also allows for partnerships between the public sector and the private sector. When such partnerships exist, the Modern DRO is typically managed by a Board of Directors with representatives of both public and private interests.

If changing circumstances require changes to the Modern DRO, bylaw amendments can be made if 75 per cent of stakeholders agree. Such changes are more straightforward than with a traditional DRO where the enabling statute, regulation or bylaw must be amended.

### **Potential Applications**

The flexibility of the Modern DRO makes it suitable for many public sector applications. It is not suitable for profit-raising activities, or where direct political accountability is required, such as for levying taxes.

### **Cost Saving Opportunities**

The greatest cost savings usually results when Modern DROs are designed with governance and operational efficiencies. A modern DRO does not require a particular governance or operational structure, and can be used with non-traditional governance models.

# Services Corporation

## General Description

This model involves the creation of a legal entity under the Business Corporations Act, R.S.A. 2000, c. B-9, to provide services for two or more municipal governments in a region. The advantage of using this model is primarily financial and secondary advantages include ease of governance and liability management. A corporation can use market forces to its advantage, retain earnings and raise profit. This model should not be confused with a "crown corporation". Public ownership in this model is not required. The disadvantages of this model are lack of political responsiveness, legitimacy concerns and contract management challenges.

## Legal Basis

Corporations may be created under the Business Corporations Act by any legal entity. Shares can then be issued to any legal entity (persons, other corporations, societies, municipalities), who then become the owners of the corporation. However, under the Municipal Government Act, R.S.A. 2000, c. M-26, ss. 73, 250, municipalities can only hold shares in corporations with the permission of the Minister of Municipal Affairs. This restriction does not apply to non-profit corporations.

The corporation then enters into contract with the municipalities involved to provide goods and services to the municipality or the public on the terms and conditions found in the contract.

## Potential Applications

A corporation can be used by a group of municipalities to provide a wide range of services. This may be done by creating a new corporation owned by the municipalities involved or contracting with existing private sector corporations. Typically, delivery of services is most suited to a corporate model, and regulatory activities are less suited to this model.

## Advantages

The principal advantage of using a corporate model is business efficiency. Historically, private businesses have provided services at a cheaper cost than comparable public sector organizations. Often, the private sector can do this because of existing resources are already in place and there are incremental costs in providing additional services to the public sector.

Another advantage is that ownership (and costs and responsibilities) can be distributed on the basis of shares, with some shareholders having more shares than others, reflecting the differing level of commitment/participation between various parties. The use of shares also allows participants to "buy in", or "cash out" (within certain restrictions contained in the by-laws). This is critical for public/private partnerships, areas undergoing rapid growth or decline, and areas where balances are changing and service delivery mechanisms must keep up with that change.

Where municipalities tender for services or goods, the costs are decreased by competitive market forces. Where multiple municipalities combine their tendering, the potential for lower cost exists because of both economies of scale and competitive bidding.

Municipal governments using a corporate model for cost-sharing could choose to establish a new corporation owned by the municipal governments, on either a for-profit or non-profit basis. In other situations, existing private corporations can be used. One factor that comes into play is whether there are such existing private corporations in place already.

### **Disadvantages**

Due to the externalization that comes from using a corporate model, municipal governments should maintain adequate contract management capabilities.

For some municipal government activities, there is a public bias against privatization of service delivery. This can be mitigated when the municipal government is the owner, or one of the owners, of the corporation providing the service.