

**FRAMEWORK AGREEMENT
FOR THE TRANSFER OF RESPONSIBILITIES
TO OPERATE WATER AND WASTE-WATER INFRASTRUCTURE AND PROVIDE RELATED
SERVICES ON BEHALF OF FIRST NATIONS COMMUNITIES**

BETWEEN:

**ATLANTIC FIRST NATIONS WATER AUTHORITY INC.
("AFNWA")**

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indigenous Services
("Canada")

(hereinafter referred to collectively as the "Parties" and individually as a "Party")

WHEREAS, Canada is to take into account socio-economic gaps that persist between Indigenous individuals and other Canadians as well as social factors having an impact on their health and well-being and is to implement the gradual transfer of departmental responsibilities to Indigenous organizations;

WHEREAS, the AFNWA was incorporated on July 18, 2018 as a federal not-for-profit corporation with the objective of owning, operating, and maintaining water and wastewater systems within First Nation communities in Atlantic Canada. The AFNWA's membership will consist only of First Nations Bands that agree to participate;

WHEREAS, the goal and mandate of AFNWA is the provision of safe, clean, water and the treatment of wastewater in all participating First Nations reserves in Atlantic Canada, delivered by a regional water authority that ensures the application of Two-Eyed Seeing which integrates science-based decision making with respect for traditional knowledge;

WHEREAS, membership in the AFNWA is open to all First Nations Bands in Atlantic Canada and the business model is scalable to allow additional Bands to join at a later date;

WHEREAS, Canada provides First Nations with funding for individual First Nations Bands to operate water and wastewater systems to meet or exceed current applicable regulatory and health standards. Canada's current policy provides 80% of operations and maintenance funding, with 20% being provided by the First Nation.

NOW THEREFORE the Parties agree as follows:

1. DEFINITIONS

“Agreement-in-Principle” means a non-binding agreement following the Framework Agreement and preceding the Transfer Agreement that represents the Parties’ substantial agreement, and in some degree of detail, the full range of subject matters for negotiation.

“Atlantic First Nations” are the First Nation Bands in New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

“Framework Agreement” means this non-binding agreement which sets the stage for the Negotiation Process and primarily outlines the Negotiation Process, and roles and responsibilities of each party, and lists the subject matters for negotiations.

“Ownership” in this Framework Agreement relates to the relationship between the Authority and each Band, recognizing that suitable land instruments will be required based on the land governance system of participating First Nations. This Framework Agreement will not convey or transfer the ownership of any assets. The transfer of assets will be matters between the AFNWA and Participating First Nations, and involve the assistance of ISC and the Department of Justice, where applicable.

“Participating First Nations” refers to the Atlantic First Nations that have agreed to become members of the Atlantic First Nation Water Authority evidenced through a Band Council Resolution provided to the AFNWA and ISC.

“Principals” in this agreement refer to other individuals or groups that may not be directly involved in the implementation of the Framework Agreement, but that have an interest (e.g. Member Councils, ISC Sectors, and Other Government Departments).

“Transfer Agreement” means the final agreement that will be legally-binding on the Parties and that will:

- a) Set out the commitment of the Parties to establish a process for the transfer to the AFNWA of all responsibility that the Minister of Indigenous Services has for the development, provision and funding of Water and Wastewater Services related to Participating First Nations; and
- b) Set out how funding from Canada to the AFNWA will be determined and transferred.

“Two-eyed Seeing” as defined by Albert Marshall Sr. is an approach “To see from one eye with the strengths of Indigenous ways of knowing, and to see from the other eye with the strengths of Western ways of knowing, and to use both of these eyes together”.

“Water and Wastewater Services” refers to all collective activities in relation to ownership, operation, and maintenance of drinking water and wastewater assets delivered to Atlantic First Nation communities.

2. SCOPE

This Framework Agreement applies only to matters related to funding, liability and authority for the delivery of water and wastewater services, including funding for operations and capital project delivery in Participating First Nations communities that have signed Band Council Resolutions (BCRs) agreeing to become members of the AFNWA.

3. PURPOSE

Atlantic First Nations desire to establish a culturally appropriate, service oriented and technically strong First Nations water authority which will operate, and maintain, water and wastewater facilities on their reserves. The AFNWA will also be responsible for asset management and integrated resource planning.

This Framework Agreement aligns with the stated policy directives and priorities established by Canada, including self-determination and reconciliation with First Nations and builds on the collaborative relationship between the Parties. The purpose of this Framework Agreement is to:

- 3.1. Promote efficient and effective progress towards an Agreement-In-Principle and subsequent Transfer Agreement.
- 3.2. Identify topics to be set out in the Agreement-in-Principle and subsequent Transfer Agreement, as illustrated in Schedule “A”.
- 3.3. Agree on a process that, in accordance with section 7(b) of the *Department of Indigenous Services Act*, will lead to the transfer to the AFNWA of all responsibility that the Minister of Indigenous Services has for the development, provision, and funding of Water and Wastewater Services.
- 3.4. Agree on a process that will provide for a long-term funding agreement with the AFNWA to provide water and wastewater services to Participating First Nation communities.
- 3.5. Agree on a process that will set out how funding levels to the AFNWA are to be determined.

4. AGREEMENT

- 4.1. The Parties agree to collaborate on the development of the AFNWA business case, interim transfer plan, Agreement-in-Principle (if required) and all other related activities which will lead to a final Transfer Agreement.

The Parties agree that, following ratification of the Transfer Agreement by AFNWA, ISC and Participating First Nations, ISC will transfer funding and responsibilities for water and wastewater services to the ANFWA.

- 4.2. This Framework Agreement does not create any legally enforceable obligations.

5. TRANSFER PROCESS PLAN

- 5.1. The Parties will participate in good faith in a co-development process aimed at completing a Transfer Agreement. The Parties agree that the Transfer Process Plan (TPP), attached as Schedule "A", contains the phases and steps needed to initiate the interim transfer phase and to reach a final Transfer Agreement.
- 5.2. Canada agrees to provide to the AFNWA mutually agreed upon funding required to complete the Interim Phase.
- 5.3. The Parties commit to continue engaging in a co-development process that fosters an open exchange of ideas, the frank discussion of interests and the joint analysis of issues and solutions designed to fulfill the requirements of the AFNWA Business Case.
- 5.4. While not intended to be exhaustive or restrictive, the Parties have identified a series of subject matters that may be discussed as part of the negotiation process and addressed in the Agreement-In-Principle and Transfer Agreement, which are listed in Schedule "B".

6. OPENESS AND PUBLIC AWARENESS

The Parties recognize that there is a high level of disclosure required given the interests of various stakeholders and in that spirit the Parties agree as follows:

- 6.1. That information regarding the Framework Agreement and co-development process may be shared with Participating First Nations or with First Nations that are considering joining the AFNWA.

- 6.2. That the Parties may engage in joint or separate public communication initiatives; and
- 6.3. That any Party wishing to engage with the public shall endeavor to provide reasonable notice to the other Party of its intent.
- 6.4. Unless the Parties otherwise agree in writing or unless required by law, a Party shall not disclose to any person the following information with respect to the negotiations pursuant to this Framework Agreement:
 - (a) any other Party's view, positions, proposals and draft provisions; or
 - (b) information marked as confidential and received in confidence by the.
- 6.5. Notwithstanding 6.3, the Parties may disclose information to their Principals, provided that they ensure that their Principals do not disclose to the public the information provided to them.
- 6.6. Once the Parties have approved the Agreement-in-Principle and the Transfer Agreement, each shall be made public.

7. APPROVAL, EFFECTIVE DATE, TERMINATION, WITHDRAWAL AND AMENDMENT

- 7.1. The Parties will signify their approval of this Framework Agreement by signing it by their respective authorized signatories.
- 7.2. The Framework Agreement shall come into force the day that both Parties have signed this document and shall terminate on the day that a Transfer Agreement takes effect or such earlier date as per Article 7.3.
- 7.3. Either Party may indicate its desire to terminate the Framework Agreement by providing three (3) months written notice to the other Party and the Framework Agreement shall be considered terminated at the end of the three (3) month period.
- 7.4. Notwithstanding any termination or withdrawal from this Framework Agreement, the provisions of this Article and Article 6.4 will continue to have effect.
- 7.5. This Framework Agreement may be amended with the written consent of the Parties.
- 7.6. The Parties have signed this Framework Agreement as follows:

ATLANTIC FIRST NATIONS WATER AUTHORITY INC.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Indigenous
Services

Per: _____ Original signed by _____
Chief Wilbert Marshall
Chair of the AFNWA
Date: April 24, 2020

_____ Original signed by _____
Jean-Francois Tremblay
Deputy Minister of Indigenous Services
Date: July 3, 2020

SCHEDULE "A"

TRANSFER PROCESS PLAN

As the requirement to submit a Memorandum to Cabinet has been suspended, Indigenous Services Canada (ISC) has requested that AFNWA provide an interim funding request for the next two fiscal years (2020-2021 and 2021-2022). The AFNWA Business Case recommends a phased milestone-based approach with a two-year transitional period that allows detailed operational and capital budgets to be developed and agreed with ISC based upon an AFNWA operations plan; an Asset Management Plan (AMP); and a 10-year capital program. Therefore, the AFNWA and its partners have developed a transition plan which is organized into three key phases. Within these phases are several steps that need to be delivered sequentially. These phases can be summarized as follows

- **Phase 1: Approval & Funding:** is an enabling phase which includes tasks which must be complete to allow the AFNWA to take on additional operational responsibility in 2020.
- **Phase 2: Operational Initiation:** comprises establishing the AFNWA management team in a staged manner to prepare for the ownership and operation of the participating First Nations water and wastewater assets
- **Phase 3: AFNWA Formation:** comprises the formalization of the AFNWA budget planning and consolidates these into a Funding Model. The funding requirements will be subject to negotiation with ISC with the understanding that the level of funding will be in line with the order of cost identified in the AFNWA business case.

Phased Approach to Transfer

Phase 1: Approval of Funding.

Step 1; Operational Funding for Two Year (2020-2022) Transition Period.

Phase 1 will begin with the Government of Canada approving this proposal to provide funding to the transition period detailed below.

Step 2a: Funding; Commitment by Government of Canada (GOC) to provide:

- long term funding to AFNWA in line with the order of cost identified in the Business Case.

Noting that long term funding will come with final negotiation at the end of this two-year transition. Successful funding and signature of the Framework Agreement will close step 2a.

Step 2b: Band Council Resolutions:

- The commitment to GOC funding will allow Band Council Resolutions (BCR) to be completed with participating First Nations Bands.

This deliverable will require the AFNWA interim COO to travel to participating and non-participating First Nations alike to request a BCR for further commitment to the project. This will allow license and asset transfer agreements to be developed.

This step is dependent on the signature of the proposed Framework Agreement before the community visits commence.

Step 2c: Implement Human Resources Strategy.

The recruitment of a CEO and senior management team is key to delivering Phase 2 and 3. Obtaining GOC commitment to funding will allow the following activity to commence.

- Contract with a professional search organization
- Hire the CEO and senior managers by April 1, 2021

These manager positions will have to be selected in order of priority. For 2020-2021, however, it is recommended that the CEO, Manager of Engineering and selected support staff be identified to work alongside the interim COO. At the beginning of 2021-2022, the remainder of the intermediate managers will be hired.

Step 3; License Agreements

Finalizing BCRs will enable required land instruments such as licenses, permits, leases, or rights of way depending on the land governance system of participating First Nations (Indian Act or Framework Agreement on First Nation Land Management). The AFNWA and its legal team will work directly with First Nations lands departments on the drafting of required land instruments. Where applicable, ISC and the Department of Justice will create land access/license agreements based on the direction decided upon by ANFWA and those First Nations. The land instruments ~~that~~ will both allow the AFNWA to enter communities, exclusively work on water and wastewater infrastructure, and indemnify Chiefs and Councils for water and wastewater service delivery.

Phase 2: Operational Funding.

Step 4; Planning for the Implementation of an FSD “hub and spoke” operations model.

Hire all senior managers by April 1, 2021 (one year after transition funding approval) with a clear preference to hire from participating Atlantic First Nations. Management to develop and adopt a formal training and development program for all staff. Furthermore, senior management will develop Human Resource strategies that recognize the experience and knowledge of staff currently employed in water and wastewater system operation and take a consistent approach to salaries, benefits, training and career development.

Data gathering regarding current salaries and benefits, as well as the levels of certification will be gathered during the 2020-2021 fiscal year.

Step 5; Implement Change Management.

AFNWA to appoint a dedicated change management team. Develop an AFNWA change management strategy and align the communications and change management strategies to ensure effective engagement and support. This step will be maintained for the 2-year transition period and the first year of full autonomous operation.

Step 6 Regulatory Oversight.

AFNWA to confirm regulatory oversight agencies with GOC and develop a plan for implementing their requirements.

As an interim step, the AFNWA and Dalhousie University will continue their work in developing a strategy for operating in the interim within an unregulated environment.

Step 7 Operational planning.

Senior Management team develop an operations plan that identifies AFNWA operational funding requirements including:

- board and management costs,
- operating and maintenance costs
- administration and accommodation costs,

Step 8 Capital planning.

The implementation of steps 2,3 and 4 will allow Senior Management to develop an Asset Management Plan within 18 months after CEO and Manager of Engineering are hired and prepare a draft 10-year capital program based on the asset management plan. This further emphasizes the need to engage the AFNWA CEO and Manager of Engineering at the early stages of 2020-2021.

Complete Step 8 within 18 months, by December 31, 2021.

Phase 3: Detailed Business Case and Funding

Step 9 Risk Assessment.

Prepare a detailed risk assessment to act as an input into the detailed financial model. This will be an ongoing practice within the AFNWA. The asset management plan will identify detailed operational risks; however, it will be the prerogative of the AFNWA to identify additional risks along with the appropriate mitigation strategy. Risks categories may include but are not limited to:

- Economic
- Social
- Political
- Technological
- Legal
- Environmental

Complete Step 9 November 30, 2021

Step 10; Financial Model.

Develop a detailed financial model that incorporates inputs from the AMP, Operational plan, risk assessment and 10-year capital spending plan. The model should be sufficiently detailed to consider scenarios and risks which might impact operations and service delivery. The model will be a vehicle for agreeing to the funding model with GOC.

Step 11 Refine Detailed Budgets and funding model.

The intention of this step is to review the detailed financial model and risk assessment with ISC and participating First Nations to develop/agree on a detailed funding model

Step 12 Transfer Agreement.

Transfer Agreement will coincide with the date of AFNWA full autonomous operation. The Transfer agreement will include the agreed funding model and will address how changes such as future upgrades to regulations will be dealt with.

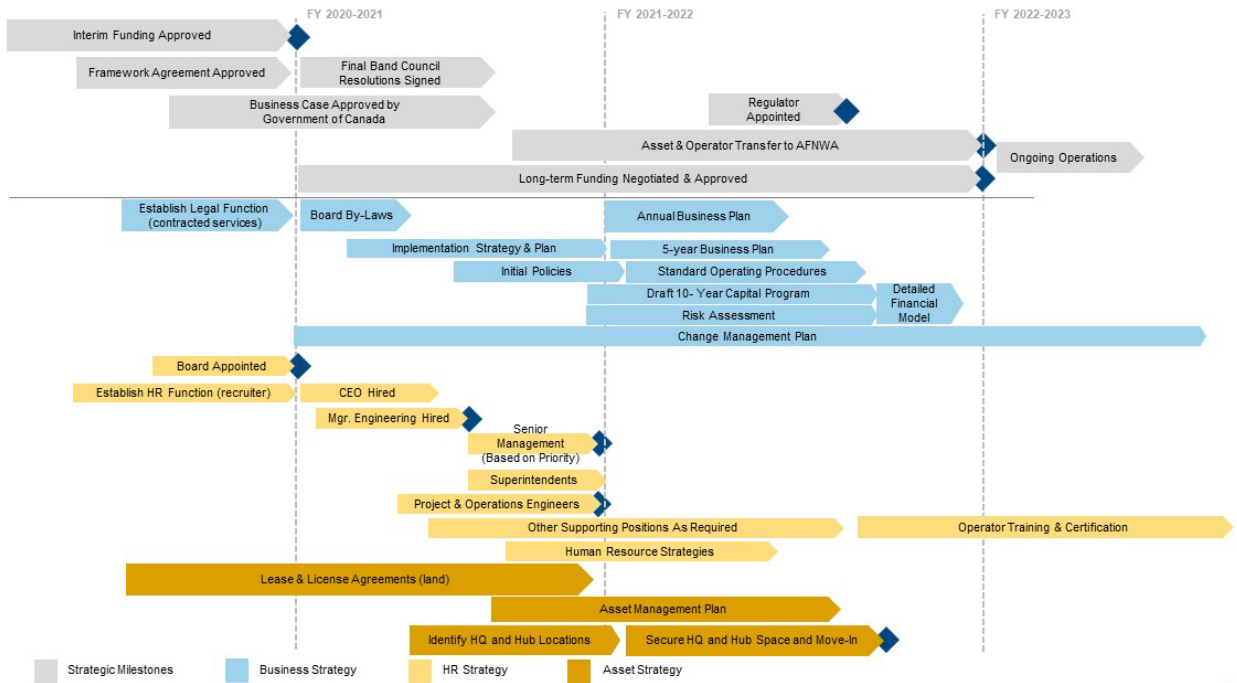
Action Summary

Deliverable	Description	Delivery Date
Signed Framework Agreement	Framework agreement signed demonstrating a co-development process for long-term AFNWA funding	April 1, 2020
Band Council Resolutions	This round of BCRs will signify a further commitment to the AFNWA. AFNWA will travel to each community to present to Chief and Council to seek their continued support.	November 1, 2020
Hire CEO and Manager of Engineering	A professional recruiting firm will be hired to seek qualified personnel as candidates for these positions.	July 1, 2020
Land Access/ License Agreements Drafted	The AFNWA and its legal team will work directly with First Nations lands departments on the drafting of required land instruments. Where applicable, ISC and the Department of Justice will create land access/license agreements based on the direction decided upon by ANFWA and those First Nations.	March 1, 2021
Develop Human Resource Strategies	Develop Human Resource strategies that recognize the	August 1, 2021

	experience and knowledge of staff currently employed in water and wastewater system operation and take a consistent approach to salaries, benefits, training and career development.	
Implement Change Management	AFNWA appoint a dedicated change management team to garner strategic support.	Ongoing
Regulatory Oversight	Continue work with the Government of Canada to identify regulators for the AFNWA. In the interim, ANFWA will continue work with Dalhousie University to produce a strategy to work in an unregulated environment.	December 1, 2020
Operational planning	Develop an operations plan that identifies the following costs: <ul style="list-style-type: none"> • board and management costs, • operating and maintenance costs • administration and accommodation costs, 	September 30, 2021
Asset Management Plan	Develop a comprehensive Asset Management Plan for the infrastructure in participating communities. This deliverable will commence with the receipt of transition funding.	September 30, 2021
Draft 10-Year Capital Program	Develop a draft 10-year capital plan that is based on the asset management plan.	December 31, 2021
Risk Assessment	Develop a comprehensive risk register that will act as an	November 30, 2021

	input to the detailed financial model.	
Financial Model	Incorporate inputs from the Asset Management Plan, Operational plan, risk assessment and 10-year capital spending plan to identify the operational and capital funding required for the AFNWA.	January 31, 2022
Refine Detailed Budgets and funding model	Review the detailed financial model and risk assessment with ISC and Participating First Nations to develop/agree on a detailed funding model	March 1, 2022
Transfer Agreement	The Transfer agreement will include the agreed funding model and will address how changes such as future upgrades to regulations will be dealt with	March 31, 2022

Action Schematic



SCHEDULE "B"

SUBJECT MATTER TO ADDRESS IN THE AGREEMENT-IN-PRINCIPLE AND TRANSFER AGREEMENT

The Parties may address the following subject matters in the Negotiation Process:

1. Core Principles

- Dual accountability (public money and First Nations governments)
- First Nations-led process
- Improve quality of service
- Improve water and wastewater services in Participating First Nation communities
- Build management and operations capacity within Participating First Nations communities

2. Business Model

- Governance and accountability mechanisms including:
 - Band Councils of Participating First Nations and relationship with the Board of Directors of the AFNWA
 - Relationship of the AFNWA with Participating First Nations communities and other First Nation organizations

2.1. Scope of AFNWA's role

- Delivery model for water and wastewater programs and services
- Services and programs that will be delivered
- Recipients (First Nation Band Councils, members on and off-reserve, self-governing First Nations, housing providers)
- Cooperation with, including delegation of authority to, other organizations for services and programs delivery
- Functions and staffing requirements (total of full-time equivalents, job levels and categories, and job descriptions)
- Costing (core capital and operational program costs) and means of financing
- Establishment and application of relevant standards to Housing & Infrastructure Services

2.2. Scope of Transfer from Canada

- Canada's responsibilities for the development, provision and funding for water and wastewater services and potentially required legislative amendments
- Canada's administration costs and existing staffing positions (job title, level and description) supporting water and wastewater programs and services for Participating First Nation communities.

- Canada's repositories, information databases and information systems related to the administration of water and wastewater programs and services to Participating First Nations communities. Any transfer of information resources will still be subject to all privacy protections and the approval and process to transfer these resources will be included in the Agreement-in-Principle and Transfer Agreement.

2.3. Transparency/Accountability/Reporting

- Public disclosure of financial statements and information
- Audits/evaluations
- Reporting to Participating First Nations and to Canada
- Performance measures and reporting: Outcomes vs. outputs

3. Transfer Process

3.1. Dispute resolution for negotiations

- Resolution by the Parties
- Third Party mediation

3.2. Ratification of the Agreement-in-Principle and Transfer Agreement (approval process)

- Participating First Nations community ratification
- Process to add new Atlantic First Nation communities
- Canada's ratification process

3.3. Legal responsibility and Liability

- Releases provided to the Crown
- Legal responsibilities
- Other responsibilities, e.g., human rights complaints, litigation relating to water and wastewater services in Participating First Nations brought against Canada before and after Canada's transfer of responsibilities for the development, provision and funding for Water and Wastewater Services to the AFNWA
- Asset ownership
- Liability for assets and environmental contamination
- Future legal issues arising from Treaty negotiations and/or Claims

3.4. Long-term funding arrangement

- Methodology for determining the funding levels
- Mechanism for transferring the funds and schedule of funding

3.5. Canada's residual responsibilities and obligations

- Responsibilities and obligations that remain with Canada and are not captured in the Transfer Agreement, if any

3.6. Implementation

- Process
- Phasing
- Timing (general)
- Duration (general)
- Implementation plan
- Monitoring implementation