

# A Partnership Guide Town of Richmond Hill



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## Introduction

### *Overview*

Cultivating, developing and sustaining effective partnerships is increasingly important in the effective delivery of municipal sport and recreation services. Successful partnerships can help municipalities deal with intensifying demands for increased levels of services which may be otherwise difficult because of shrinking budgets and diminished staff resources. While partnerships may not be a panacea for all of the financial pressures currently facing municipal community services departments, they do offer an attractive alternative to traditional forms of service delivery.

But, while the benefits of partnerships are many, relationships between public agencies and outside entities can be challenging - especially if partnering is a new concept to the municipality. Progressive municipalities are capitalizing on the potential of these new models and maximizing the probability of success by adopting standardized frameworks and methodologies to ensure that the partnership structure is right for the municipality, its partner and the venture in question. Proactive frameworks also determine where the proposed partnership can most effectively fit within the toolkit of municipal services.

The Town of Richmond Hill routinely develops relationships with external organizations for a variety of purposes. The most common of these relationships are with external service delivery organizations that are developed through the implementation of the Town's Program Partnership Procedure. The Procedure outlines the principles that apply to the relationship between the Town and its partner, the processes for utilizing the Procedure's various tools, templates and resources, revenue implications of the arrangement, signing authority as well as roles and responsibilities of the partner and various Town staff. The Procedure and its supporting documents are comprehensive and offer specific direction for developing relationships through which programs are delivered by non municipal personnel.

This Guide complements the Program Procedure by focusing on relationships between the Town and external entities interested in partnering on an endeavour involving asset delivery, asset management, exclusive use of a publicly owned facility or the delivery of for-profit services (or quasi for-profit services) involving municipal assets. The processes and guidelines presented herein are applicable to arrangements that may involve capital investment or reinvestment in a facility while in other cases it may simply be of a "more commercial enterprise" than is generally covered by the Town's Program Partnership Procedure.

It is noteworthy that the form and structure of a partnership between the Town and an external entity should be dictated solely by the nature of the venture. The contractual arrangements that spell out the details of an arrangement for the venture must be

consistent with the needs and nuances of the endeavour regardless of whether the Town's partner is from the private, not-for-profit or charitable sectors. Even if a group's mandate and service philosophies are seemingly aligned with municipal values, the contract terms and conditions must protect the municipality from the inherent risks of the arrangement – notwithstanding the well meaning intentions of the proponent organization. Additionally, there may be circumstances where certain groups are not qualified to undertake a project despite their desire to serve the community. Or they may be ill-equipped, under financed, inexperienced or simply incapable of partnering on a facility development and management project.

The partnership framework described in this Guide standardizes the scrutiny of proposals and proponents to ensure that they are evaluated to the level of detail called for by the size and sophistication of the endeavour.

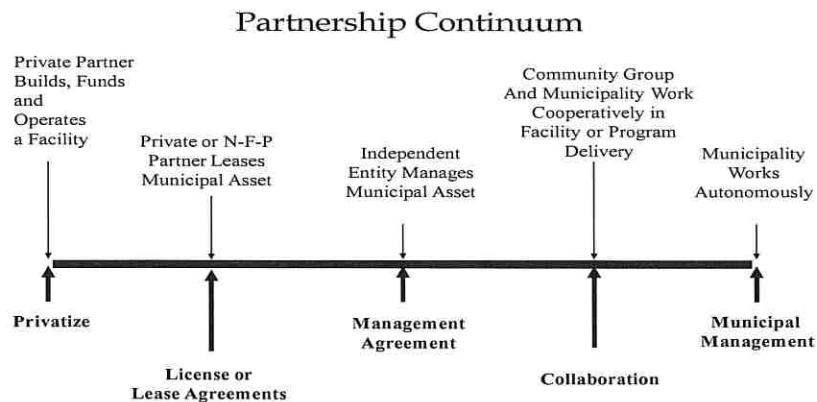
It is noteworthy that each project is unique and proponents will have different backgrounds, qualities and attributes. The templates presented herein can customize and modify as required by a particular project or partner circumstance. But, the Guide's information and tools will help the Town determine the most appropriate partnership arrangement and relationship structure pertaining to a particular venture.

In summary, the Guide will increase the Town's capacity to effectively and efficiently evaluate the merits and drawbacks of potential partners and perspective arrangements, which ultimately will protect the interests of the potential partners and the general public.

### *Partnership Background*

Many municipal community service departments utilize a variety of relationship structures to develop or operate publicly owned leisure facilities. These operating alternatives can be viewed as a continuum, with the municipal development and management approach furthest on the right of the range, representing the most conservative and traditional methodology. Privatizing facility operations would be at the opposite end of the spectrum given that the municipality would have entirely transferred the management and operating responsibilities to a private partner. There are a number of options in between these extremes, including collaborative relationships with community organizations, joint ventures with a not-for-profit of private service providers, management agreements with private interests or facility license or lease agreements. The choice of the most appropriate model will depend on the characteristics and business case of the project, the municipality's expectations for the facility or service, the availability of qualified partners and the level of risk the municipality and the potential partner will tolerate.





Agreements between local governments and external organizations are not new. However, certain jurisdictions are contemplating relationships that are quite different from service delivery approaches of the past. For example, non-profit or charitable groups like the YMCA are now operating facilities and providing programs in certain jurisdictions where the municipal recreation department was once the sole service provider – e.g. London ON, Innisfill ON, Kelowna BC, etc. Likewise, municipalities have opted to align with private operators who help develop, manage and program community facilities – Hamilton ON, Halifax NS, etc. This is locally exemplified by Richmond Hill's David Hamilton tennis courts. Some municipalities are creating lease and operating agreements with community groups or Boards of Education for "sport specific" facilities such as bubbled indoor turf facilities - Toronto, ON, Milton, ON, etc.

Understandably, non-traditional partnerships – especially those involving private entities - have been met with a degree of skepticism by public sector staff and to a certain extent taxpayers. However, there is increasing evidence that well conceived and thoughtfully designed relationships can provide mutual benefit to both partners while protecting the interests of the communities they serve.

There is no question that the concept of partnerships between governments and non-traditional partners is a growing trend. According to the Canadian Council of Public Private Partnerships, the significant rise in the number of partnered projects is a testament to the commitment of the Canadian and provincial governments to use partnerships to deliver and operate public infrastructure. And, with national and provincial ministries dedicated specifically to the cultivation of successful partnerships (P3 Canada, Partnerships BC, Infrastructure Ontario, etc.), it is unlikely that trend will diminish any time soon.

Not surprisingly, alternate service delivery arrangements are becoming more creative and successful as partners learn more about transition issues and the need for ongoing management of these forms of relationships. There is no single formula that will satisfy

all potential partnership situations. However, as the concept evolves, best practices and guidelines are emerging and more knowledge is being gained about the more successful approach to creating and sustaining these relationships.

### *How to Use This Guide*

The Guide is designed to help the Town of Richmond Hill take advantage of industry specific information and best practices for developing partnerships with outside interests. Specifically, the Guide focuses on projects involving municipal assets or endeavours that are somewhat more entrepreneurial than customary municipal services. The Guide is arranged in three key areas of interest. Section One - *About Partnerships* - sets the context for a relationship between the municipality and an external organization while providing information about what to look out for in searching for an appropriate arrangement. Section Two - *Partnership Guiding Principles* - addresses what is required to provide a solid foundation for a successful partnership including the underpinnings of a solid working relationship between the Town and an ally. Section Three - *Creating an Effective Partnership* - presents frameworks and templates that can be utilized by Richmond Hill in designing and implementing its standardized partnership search, selection process as well its relationship management approach to ensure the partnership remains as productive as possible.

While this Guide does not provide all the answers, it presents the templates, tools and information to help the Town identify and select the right solution for a venture or project for which a partnership response is appropriate. It also ensures that each project and proponent is treated with the same degree of scrutiny, transparency and professionalism.

The Town's success in developing sound partnerships will depend on building solid relationships with adept partners. Relationships should adhere to a number of guiding principles that emphasize respect, trust, honesty and a shared vision of accomplishing results by working together.

## About Partnerships

### *What is a Partnership?*

For the purposes of this Guide, the term partnership refers to the Town's relationship with non-municipal entities. While partnerships is an all encompassing term, the nature and structure of the arrangement must be fluid enough to respond to a variety of circumstances. For clarity, most relationships between the Town and an external partner will not be accurate partnerships from a truly business perspective. This Guide refers to a partnership as an enduring relationship between the Town and an external partner through which a degree of value and worth is received by both partners. The arrangement augments the Town's ability to deliver community services and as such the public that is served by the relationship has a certain stake in the nature and structure of the agreement. These types of agreements are wide ranging but frequently include: use or maintenance of civic asset; program and service delivery that benefits the Town and/or its ratepayers; and delivery and operation of a public facility.

### *Elements of a Successful Partnership*

Each potential partnership must respond to specific needs and be structured consistent with the requirements of the proposed project. However, several common elements are usually inherent with successful partnerships.

- The venture will be mutually beneficial to the partners.
- There will be clearly defined roles and responsibilities.
- There will be a performance evaluation methodology.
- There will be shared commitment to serve the needs of those affected by the venture.
- There will be a commitment to improve.
- There will be fair and honest recognition of each partner's contribution.

### *Choosing a Partner*

Research has found nine factors that should be in place when choosing to enter into a partnership or selecting a potential partner.

- Individual excellence - partners have something of value to contribute to the relationship.
- Importance - the contemplated alliance fits the strategic goals of each partner.
- Interdependence - the partners need each other and their complementary skills, to fulfill the goals and objectives of collaboration.
- Investment - there is tangible commitment of resources by all involved.

- Increased reach - the size of the partners' market or scope of services is expanded.
- Information - there is open communication regarding goals, conflicts, problems and changes.
- Integration - there are many connections between partners at several levels.
- Institutionalization - the alliance has a formal status in all organizations and cannot be abandoned on a whim.
- Integrity - no partner will try to undermine the alliance.

### *Types of Potential Partnerships*

Although there are numerous forms of partnership structures available to Richmond Hill, research suggests that most municipal arrangements can be grouped in one of the following categories.

*Strategic Alliance* – a relationship that involves the municipality and one or more organizations collaborating on planning and delivering select facilities, services or programs.

*Contract Agreement* - services contracted by the municipality to a partner organization, whereby the contracting partner delivers a service consistent with a predetermined specification.

*License or Lease Agreement* - facilities rented by the municipality to a partner, where the licensee or lessee licenses or leases a public facility for its private and sometimes its exclusive use (although usually with provisos for public access guarantees).

*Service Agreement* - services provided through an agreement between the municipality and one or more partner organizations, where services are jointly controlled, managed and operated by the partners as specified in an agreement.

*Facility Development (Equity) Agreement* - facilities that are mutually planned and jointly funded, and where constituents of the participating partners would have access to the facilities in accordance with an agreement governing facility use and operations.

### *Realistic Expectations*

A review of partnership case studies suggests that the concept is a reasonable option for creating cost-effective solutions to both capital and operating challenges confronting many municipal community service departments. However, partnerships are not a cure-all for all the problems currently facing the public leisure sector. Too often,



expectations are beyond the capacity of a partnership to deliver and consequently the relationship can eventually be perceived as a failure. Also, a partnership must be mutually beneficial and therefore there will likely be considerable give-and-take in terms of the project's outputs. It is therefore advisable to establish clear and attainable objectives at the outset of the project and to tie the expectations of senior officials of both the municipality and its partner directly to the anticipated results of the relationship.

### *Potential Partnership Outcomes and Benefits*

Partnerships between municipalities and outside interests generally involve one of the following objectives and/or outcomes.

- to create or maintain public infrastructure
- to improve customer service
- to acquire access to more information
- to reduce the cost of government procurement
- to commercialize municipal resources
- to provide public agencies or community groups with greater access to new sources of capital
- to capitalize on collective energies and expertise of participating groups
- to optimize the use of public sector resources
- to undertake major social or economic initiatives

Partnership benefits compared to traditional municipal managed approaches can include the following:

- increases in operational efficiencies
- improved revenue production
- reduced operating costs – although less savings than often presumed
- shared operating and commercial risks
- expanded inventory of programs and services

### *Myths about Partnerships*

As mentioned above, most partnerships will not result in benefits that solve all the problems currently facing municipal leisure service providers. Common misconceptions include the following:

*All risks will be transferred* – while certain risks may be shared between the partners, the municipality will always be exposed to certain operational and commercial risks. For example, taxpayers often look to the municipality to resolve disputes or other operational problems even though an outside entity is responsible for facility or service

delivery. Additionally, it is impossible to transfer risk without also transferring control over the elements that will influence risk. For example, a municipal partner will not likely be successful in transferring revenue risk while retaining control over setting fees. Even though Richmond Hill might decide to contract-out the delivery of certain services, it is likely the municipality will still be on the hook for any complaints or criticisms associated with service quality or interruptions in services. There have been cases in Canada where third party providers have abandoned projects that were valued by the community forcing the municipality to step in to resurrect the service. These situations are troubling because they are often unforeseen which means municipal staff must respond in an emergency fashion. Also, municipalities have had to deal with financial issues where former third party providers have received advance payment for services that were not delivered.

*Private equity will solve capital funding problems* – private sector capital investment is often more expensive than traditional municipal funding models. Typically the private sector expects returns on investment that are higher than municipal borrowing rates. Often, traditional lending institutions are not inclined to provide partners – private or (especially) not-for-profit organizations - with financing assistance in the absence of a municipality's covenant to backstop the loan. It is for this reason that many capital projects involving private partners have been entirely funded by local governments.

*Sponsorships/naming right fees will make an otherwise unviable project viable* –while sponsorships, naming rights and creative marketing endeavours can produce useful streams of revenue, the authors of this Guide are not aware of any substantiated cases where these activities have converted a loser to a winner.

*Partners with similar mandates will have a solid and successful relationship* – frequently this is not the case because of conflicts in styles, branding issues or differing approaches to certain aspects of the business. For example, some municipalities that have entered into recreation facility operating agreements with not-for-profit groups have later discovered that the municipality's brand has all but disappeared from the facility. In other cases, under the operating agreement, municipal recreation clients are required to pay higher than expected fees to access the facility or participate in a program.

*Once the relationship is struck, the municipality has little to do* - to be successful, partnerships need to be effectively managed. It is not sufficient for the municipality to nurture a relationship and then leave the partner to its own devices. It is the municipality's obligation to maintain an ongoing relationship with its partner to ensure that service standards are maintained; contractual obligations are met; required supports are provided; and potential problems are addressed through joint planning and action. A balance must be struck between the municipality's responsibility for audit and oversight and the partner's right to conduct business with minimal interference. Each party should appoint one person to be the main contact point on all matters relating to the administration of the agreement. They should meet on a regular basis to stay

abreast of emerging issues, resolve potential problems and identify opportunities where additional resources are required to enhance the success of the relationship.

## Partnership Guiding Principles

### *Mutual Responsibilities*

The extent of the Town's influence on a partnered relationship will hinge on a number of issues such as the amount of municipal investment in the project, the allocation of risk, the intricacies of the facility or project for which a partnership is contemplated and the community's perception and acceptance of a partnership for the undertaking. All of these factors must be addressed and managed not only while developing the relationship but also as the arrangement is managed throughout its lifecycle.

The Town will always be perceived as the trustee of public resources and as such should focus on achieving public benefit while managing or minimizing risk. Meanwhile, the Town's partner can be focused on the facility's development and/or operations which meet pre-established partnership principles, objectives and standards. Both the Town and its partner are responsible for the success of the partnership and both are ultimately accountable to the community.

### *A Standardized Partnership Approach*

Most municipal decision makers believe that it is the municipality's responsibility to protect the public's interest in terms of accessibility and affordability when contemplating the creation of a partnership with an external entity. However, too frequently, little consideration is given to other issues that should be specified or controlled in relationships with external entities. Furthermore roles, responsibilities, expectations and relationship structures are often established in response to the characteristics of a particular project with too little regard given to *what makes most sense for the municipality and its ratepayers*.

As the public/private partnership concept became more popular in the late '90s a Ministry of Citizenship, Culture and Recreation report provided numerous observations that remain relevant today. The report revealed that several municipalities had created relationships with private sector partners without a general framework or pre-established protocol to guide the partnership development process. In the absence of a framework, knee-jerk decisions became common place causing difficulty in effectively creating successful arrangements. At the time, municipal officials expressed a desire for a standardized approach for the evaluation and selection of the most appropriate partnership strategy and the most adept partner.

Interestingly, public sector officials frequently had difficulty in describing the municipal expectations for a relationship with a potential partner which often resulted in miscommunication and poorly understood project objectives. Moreover, officials

reported that projects frequently *developed a life of their own* creating momentum that was difficult to harness and that eventually compromised the quality and potential benefit of the venture.

### ***Partnership Principles***

A well conceived partnership framework begins with the establishment of foundational principles that pre-determine the municipal response to issues that will likely emerge during discussions with potential partners. In essence, the partnership principles lay out the municipality's position regarding significant partnership elements. Normally staff, elected officials and key stakeholders become involved in developing principles that are specific to the municipality in the following areas.

- The desired level of compliance with municipal values and philosophies and the potential partner's attitude towards public service.
- Desired levels of control and the mechanisms that the municipality must be provide to ensure adequate facility and service quality is maintained.
- Minimum attributes that the partner must bring to the relationship.
- Municipal risk tolerance and the conditions under which risk will be absorbed.
- The degree to which stakeholders and others should be involved in the deliberations regarding the partnership and the manner in which the public's interest will be reflected in the selection process.
- The municipality's financial expectations and conditions under which certain types of investments in the partnership will be considered.

### ***A Partner Opportunities Audit***

Many municipalities utilize informal models to identify projects that may be good candidates for relationships with third parties. Often municipalities respond to proposals that arise from potential community partners and in so doing examine the most appropriate service delivery approach – self-delivered, partnered, hybrid model - for its existing inventory of programs and services. Or the municipality may have identified potential opportunities for which it could issue a Request for Proposal in search of a project or program partner - like in the case of contracting out learn-to-skate or tennis instructional programs. Another approach would be to develop and implement a partner opportunities audit.



An opportunities audit is a series of steps that act as a filtering process helping municipalities define suitable projects for which relationships with third party groups could be considered. The audit is a useful method to identify new projects for which the municipality would seek a partner. For example, municipal officials may decide to use the audit to determine a facility development strategy such as the manner in which it will bring new ice surfaces on line to meet demand. It could also be used to determine if an existing program or service that is currently being directly delivered by municipal staff could be more effectively or efficiently divested to a partner organization.

The following steps are generally included in the audit process.

- Identify a range of services that may be potential partnership candidates.
- Determine cost/revenue implications of the traditional municipal model.
- Determine preferable partner contributions to the project.
- Identify a range of potential partners.
- Determine appropriate public sector contribution to the project.
- Identify potential partnership models.
- Identify areas where services might fall outside identified models.
- Identify potential stakeholder concerns.
- Identify mitigating factors to stakeholder concerns.
- Identify service delivery mechanisms that fit within the model.
- Determine potential cost/revenue gains by applying the model.
- Determine operating gains to the system by implementing the model.
- Determine potential costs to the system by implementing the model.
- Identify the priority of the opportunity within the leisure system.
- Identify procedures and desired timetable for the pursuit of partners.

## Creating an Effective Partnership

Like most municipalities, Richmond Hill has many relationships with private, not-for-profit and community organizations. The rationale underpinning the formation of these relationships varies widely. Partnership opportunities sometimes arise from projects conceived by the Town or a new or restructured initiative. In other instances, the Town will be required to respond to a proposal submitted by outside interests.

This section of the Guide provides background information and resources to assist the Town evaluate the merits and drawbacks of potential partnerships.

### *Setting the Stage for Partnerships*

Municipalities often use logic models or decision frameworks to determine the most appropriate service delivery approach for new facilities or services. Effective frameworks provide answers to several important questions.

- Is the proposed facility or service needed in the community?
- Is the proposed facility or service consistent with municipal values?
- Who is best equipped to deliver the facility or service?
- Will municipal interests be protected within the selected approach?

Flexibility is an essential ingredient in functional frameworks because facility or program characteristics are frequently unique. And, community groups often have complex expectations. Practically, it is quite likely that a pre-established framework will evolve as the Town becomes more familiar with its application.

There are several key questions that should be answered before entertaining the concept of a partnership for the development of a facility or a new partnered approach to service delivery.

- What is the value of the asset for which a partnership is contemplated and what is the Town's required investment to support the partnership. For existing facilities, the value question should take into account the physical condition of the asset, its replacement value, any peculiarities of the facility and its geographic location. It may be helpful for the Town to establish "dollar value thresholds" for small, medium and large projects that could be linked to different levels of approvals, special investigation requirements, the application of various degrees of viability tests, etc.
- Will the Town's investment be a one-time expense or will there be a requirement for ongoing funding support? Municipal subsidies to pay for financial short falls over the lifecycle of a facility (which could be 25 to 40 years)

could easily eclipse the initial capital costs of construction. The total project cost including subsidy support should be determined early in the process.

- To what extent is the public expected to utilize the facility or service? Conversely, what would be the community impact if the facility or services were no longer available?
- In view of the size and complexity of the facility in question, what specific skill sets are required of the venue operator? Further, do municipal staff have the necessary skills to operate the facility or would additional expertise be required?
- Does the Town have written operating specifications and standards of performance for the building type contemplated for a partnership arrangement? If so, is it realistic to expect that an external organization would be able to meet the Town's standards?

### *Range of Partnerships*

As mentioned above, the Town has and will continue to create relationships with non-municipal entities for the development and operation of facilities or the delivery of services. The nature of the facility or the service that will be the focus of the partnership will be the most important factor dictating the type of relationship that is most appropriate for the project. In many jurisdictions this judgment is driven by the degree of community value of the facility or service. For example, partnerships for “core services” – that are generally described as services required by legislation or deemed as essential by the community – are often structured much differently than relationships involving “discretionary or optional services” that appeal to a narrower slice of the community.

Richmond Hill has a history of employing a hybrid service delivery model. For certain services, the Town employs a direct delivery approach whereby Town staff are responsible for service delivery (e.g. operating and programming of arenas, pools and community centres). The Town also utilizes its relationships with external organizations for the delivery of selected services through the application of the Program Partnership Procedure or through contracting out the delivery of certain services usually through the implementation of a Request for Proposal process. This experience and the Town's demonstrated capacity to effectively apply a variety of service delivery approaches should help with the implementation of a standardized partnership model.

The amount of influence the Town exerts over the activities undertaken by a partner will likely be driven by the nature of the facility or service within which the partner is involved. The following chart provides some details.

	<b>Project Type</b>	<b>Responsibility</b>	<b>Arrangement</b>
<b>Category One</b>  <b>Example:</b> <b>Partnership for the development and operation of an arena or community centre</b>	<ul style="list-style-type: none"> <li>Core municipal facility or service</li> <li>Deemed as essential public service</li> <li>May be an expensive undertaking requiring large Town investment</li> </ul>	<ul style="list-style-type: none"> <li>High degree of municipal oversight</li> <li>Service or facility operations must conform to municipal values and standards</li> <li>High degree of reporting by partner</li> <li>Shared operating and commercial risk</li> <li>Town funded (in large part)</li> </ul>	<ul style="list-style-type: none"> <li>Lease, License, Operating or Service Agreements are possibilities</li> <li>Likely a longer term arrangement (depending on the value of the asset)</li> </ul>
<b>Category Two</b>  <b>Example:</b> <b>N-F-P organization awarded exclusive use of Town asset</b>	<ul style="list-style-type: none"> <li>Traditional or optional facility or service</li> <li>Demonstrated need but with a narrower market than Category One projects</li> <li>Moderate municipal investment required</li> <li>Town and partner have common interests in the facility or service being provided</li> </ul>	<ul style="list-style-type: none"> <li>Town has some influence over facility operations or service delivery</li> <li>Partner activities must conform to municipal values and standards</li> <li>Shared funding model</li> </ul>	<ul style="list-style-type: none"> <li>Lease, License, Operating or Service Agreements are possibilities</li> <li>Medium to long term depending on partner's investment in the project</li> </ul>
<b>Category Three</b>  <b>Example:</b> <b>For-profit entity renting or licensing a municipal asset</b>	<ul style="list-style-type: none"> <li>Demonstrated need for an identified group of users or an organization</li> <li>No traditional municipal role in the delivery of the service or the operations of facility</li> <li>Organization has the capacity to operate independently</li> <li>Limited or no municipal investment</li> </ul>	<ul style="list-style-type: none"> <li>Organization reports annually about financial status and maintenance standards</li> <li>Minimal requirement to conform to municipal standards</li> <li>Town responds to complaints from public</li> <li>Town occasionally checks on operating status</li> </ul>	<ul style="list-style-type: none"> <li>Lease or license</li> </ul>

### *Framework to Determine Service Delivery Approach*

Community Service's mandate, goals and service objectives should establish the Town's basic position on issues associated with the desired community and individual benefits arising from the provision of a new facility or service. Therefore the Town's public-



service philosophy, service priorities and objectives for a relationship with outside groups should form the foundation upon which the decision framework is based.

Once the mandate, values and service objectives have been established, it is necessary to determine if the municipality is best equipped to provide the facility or service (direct delivery) or if a relationship with a community group, not-for-profit organization or private partner is the most appropriate service delivery approach (indirect delivery). This is a reasonable starting point whether the Town is readdressing its delivery method for an existing facility or service or determining the best approach for a proposed new one.

At a very minimum, the facility or service must concur with the Community Service's mandate and values. This is an important determination because from time to time the Town may be asked to participate in ventures or to provide services that are outside usual norms - which represent elevated levels of service and sometimes involve new operating expertise or other requirements. Even though the proposed service may have merit, the municipality should not feel obligated to participate in its delivery if the service is outside of the Town's mandate or in conflict with municipal priorities.

Determination of need, assessment of inherent or potential risks, identification of adequately equipped partners and an assessment of the necessary attributes required to be involved in facility or service provision are all necessary precursors to shaping service delivery approaches. With this information in hand, Community Service can effectively compare the merits and drawbacks of the direct and indirect delivery methods on a facility-by-facility or service-to-service basis.

The following model illustrates a sample framework or decision-making process that could assist in selecting from the two delivery approaches.

#### Decision Tree for Direct vs. Indirect Service Delivery

Steps in the Process	Consequence
<b>Is the facility or service consistent with the municipal mandate and service philosophy?</b>	If yes, proceed to next step  If no, do not consider municipal involvement in the project
<b>Is there a municipal role to play in providing the facility or service?</b>	If yes, proceed to next step  If no, do not consider municipal involvement in the project



<b>Is there demonstrated community need for the proposed facility or service?</b>	<p><b>If yes, proceed to next step</b></p> <p><b>If no, do not consider municipal involvement in the project</b></p>
<b>Can specifications ensure that an outside entity will conform to the principles of Department's mandate, values and service standards?</b>	<p>If yes, proceed to next step</p> <p>If no, consider providing the service using a traditional municipal self managed approach (direct).</p>
<b>Can financial and liability risks be reasonably mitigated through an arrangement with an outside entity?</b>	<p>If yes, proceed to next step</p> <p>If no, consider providing the service using a traditional municipal self managed approach (direct).</p>
<b>Are there suitably qualified or properly equipped partners willing to provide the facility or service?</b>	<p>If yes, proceed to next step</p> <p>If no, consider providing the service using a traditional municipal self managed approach (direct).</p>
<b>Can the delivery responsibility of the service or program be assigned to an outside entity on a sole source basis?</b>	<p>If yes, proceed to next step</p> <p>If no, issue a Request for Proposal or other procurement process specified by purchasing policies.</p>
<b>Is there consensus regarding the terms, conditions, standards of delivery and responsibilities of the facility or service delivery agent?</b>	<p>If yes, proceed to next step</p> <p>If no, negotiate mutually acceptable operating and performance standards with an outside entity.</p>

**Establish a relationship with an outside entity to deliver the facility or service and adopt a mutually agreeable monitoring system.**

This framework simply formalizes the thought process when evaluating the merits of the direct compared to the in-direct facility or service delivery approach. Additionally, utilizing the framework to define "who is best to do what" also involves an assessment of the requirements of the facility or service to ensure that the responsible party is adequately equipped to be successful. This might result in the identification of new or additional supports that the Department should provide an outside entity or opportunities where organizations can become more effective with increased assistance from municipal staff. In other words, if the indirect delivery approach were identified as the most appropriate direction for a particular service, the Department's role would change from a service delivery to a support function. This may require the deployment

of different types of resources and it might be necessary for staff to acquire new types of skills in order to effectively nurture and support outside groups.

If the indirect delivery approach is found to be most applicable to a particular facility or service, careful management of the relationship between the Town and its delivery agent (volunteer organization, private company or community partner) will be important in achieving desired results. Mutual planning, regular monitoring and frequent communication are critically important.

Departments that elect the indirect delivery approach are finding it increasingly difficult to simply rely upon a willing service delivery partner without first establishing operating or service standards of delivery to protect the interests of the municipality and leisure service clients. Some municipalities work out what is expected of the community partner and then create an agreement or letter of understanding that is endorsed by both parties. The points that are covered in the documentation are dependent upon the complexity of the initiative and the risks involved – but at a minimum should include specifications regarding safety, facility operations (if applicable) service quality and the financial agreement.

In summary, the framework outlined above can be employed to: (1) determine the role of partners in service delivery; (2) determine the Department's most appropriate delivery method for new services; (3) reassess the Department's role for existing services.

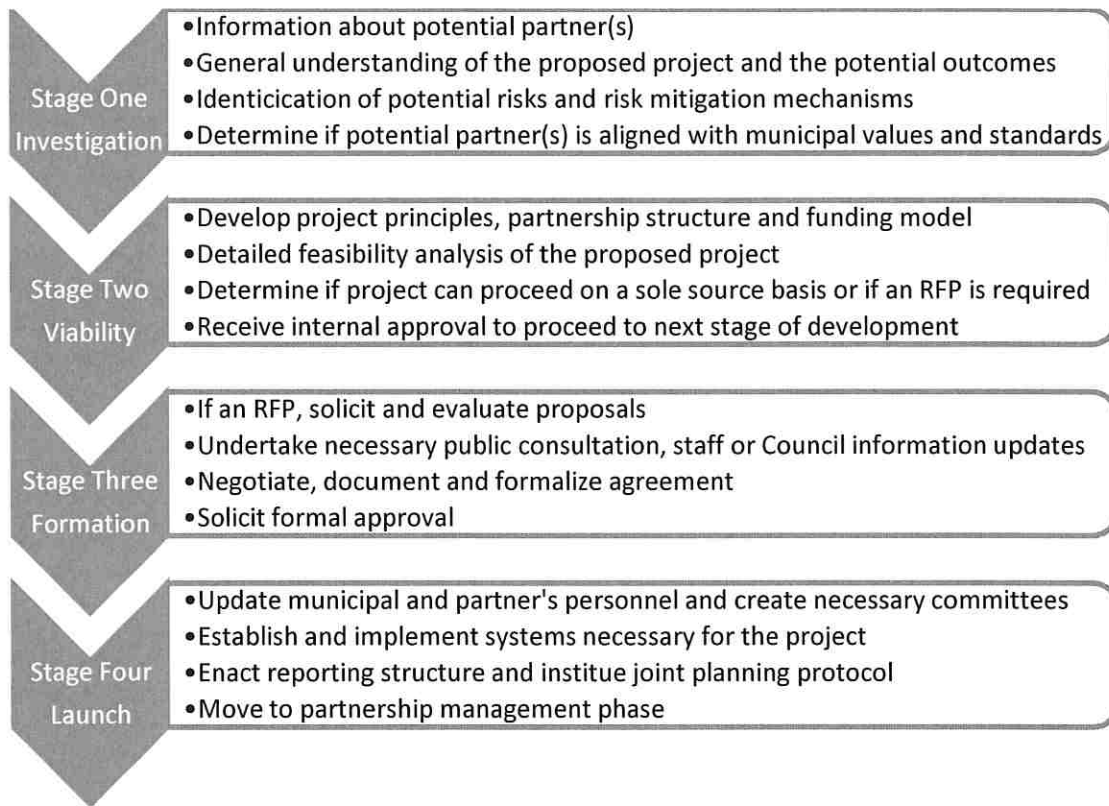
### *Formulating a Partnership*

Guided by the planning principles and based upon the outcome of the opportunities audit, the Town will be in a position to match potential partnership models with selected types of projects. The process of searching for an appropriate partner and establishing a productive relationship will largely hinge upon successfully completing the planning ground work in advance of considering a particular project.

To help standardize the thought process in partnership development and to ensure that partnership variables are considered, many organizations utilize process models to visually demonstrate the required activities, the anticipated outcomes and the decisions that arise from achieving process milestones. As stated earlier, there is tremendous variation in the size, complexity and nuances of partnerships. It is therefore impossible to anticipate all the consideration that may apply to any particular relationship. For this reason, staff typically rely on expertise and resources available through the various municipal business units –in particular Purchasing and/or Procurement, Finance, Legal and the department that will be most affected by the partnership.

Certain jurisdictions have established Partnership Committees or Technical Committees to oversee planning, formation and monitoring of partnerships with outside entities. Committee members are usually representatives of the aforementioned business units.

The following is a simplified process model illustrating a typical four stage approach to establishing a partnership. A more detailed model is presented in Appendix B.



### *Dealing with Unsolicited Proposal*

A standardized review framework is particularly helpful in dealing with unsolicited proposals. Simply because a relationship is proposed is not reason enough to pursue an arrangement with an outside interest. The venture must first successfully proceed through a thorough assessment to ensure compliance with municipal values and mandates. The following review framework is specific for unsolicited proposals and demonstrates the manner in which the Town can assess this particular type of partnership proposition.



The Town receives an unsolicited proposal from an outside entity.



Proposal is forwarded to a staff Review Committee for analysis.

Does the proposal comply with municipal values, public-service philosophies and community focus?

Yes ▼ No ►

Reject the proposal.

Does the proposed project meet a demonstrated need and provide community benefit consistent with municipal priorities?

Yes ▼ No ►

Reject the proposal.

Does the proposed project meet minimum requirements of providing a business plan, risk assessment plan, value assessment, municipal financial and risk obligations, proponent's qualifications, etc.?

Yes ▼ No ►

Reject the proposal.

Does the proposed project or concept meet the proprietary test?

Yes ▼ No ►

Initiate the Town's typical Request for Proposal process or reject the project.

Does the additional detailed information requested by the Review Committee meet the test of reasonableness and does the project seem viable?

Yes ▼ No ►

Reject the proposal.

Recommend the project for further consideration and apply the partnership formulation model described above.

As illustrated above, unsolicited proposals should undergo scrutiny in terms of their compliance with the direct and indirect service delivery decision framework as well as the normal criteria that would be applied to a proposition in response to a Request For Proposals. Additionally, proponents will frequently contend that their propositions are unique and should qualify as a sole source opportunity. It will be important for the Town to thoroughly investigate the validity of these claims prior to establishing the most appropriate partnership search and selection process.

Assuming that the project appears worthwhile, but not deemed proprietary, the Town's usual RFP search and selection process would be implemented. However, if the Town is satisfied that the concept is worthy of further attention and it is deemed proprietary such that a sole source negotiation would be appropriate, the proponent should provide detailed information, which at a minimum should include the following:

- a comprehensive needs analysis;
- a comprehensive business plan;
- the proponent's financial capacity;
- a clear demonstration of the sustainability of the project;
- in the case of a not-for-profit group, the organization's secession plan;
- detailed evidence of community benefit; and
- a full risk analysis.

A staff committee or a review team assigned to the project would apply criteria similar to the normal RFP process to evaluate the proposition and to determine if the project should be recommended for consideration by Council.

### *Elements of Contractual Agreements*

Effective agreements are always well documented. Generally, the agreement provisions should describe:

- the purpose and basic background for the relationship;
- the obligations of the municipality and the third party;
- the practical aspects of the relationship; and
- the consequences of non-performance by either party.

Of course the number of provisions and the level of detail required to describe the relationship will depend entirely on the nature of the project.

Appendix A presents a full list of contractual agreement elements normally included in relationships between municipalities and third parties. The table illustrates which



element applies to service agreements, development and operating agreements and partnerships or contracting-out arrangements.

Definitions of all of the elements are also presented in the Appendix A.

### *Effectively Managing Service or Operating Agreements*

To be successful, agreements need to be proactively and effectively managed. It is not sufficient for the Town to nurture a relationship with an outside group and then leave the group to its own devices. It is the Town's obligation to maintain an ongoing relationship with its partner to ensure that:

- service standards are maintained;
- contractual obligations are met;
- required supports are provided; and
- potential problems are addressed through joint planning.

A balance must be struck between the municipality's responsibility for audit and oversight and the partner's right to conduct business with minimal interference. Each party should appoint one person to be the main contact point on all matters relating to the administration of the agreement. They should meet on a regular basis to stay abreast of emerging issues, resolve potential problems and identify opportunities where additional resources are required to enhance the success of the relationship.

There are lessons learned from other municipal experiences in this area. Even though a municipality might decide to contract-out the delivery of certain services, it is likely the municipality will still be on the hook for any complaints or criticisms associated with service quality or interruptions in services. There have been cases in Ontario where third party providers have abandoned projects that were valued by the community forcing the municipality to step in to resurrect the service. These situations are troubling because they are often unforeseen which means municipal staff must respond in an emergency fashion. Also, municipalities have had to deal with financial fallout where former third party providers have received advanced payment for services that were not delivered.

These types of issues can be mitigated or completely avoided through proactive contract management.

Staff who are responsible for managing relationships with service providers require contract management expertise that is different from the skills that would be necessary if the same staff were to deliver the service themselves. Effective contract managers thoroughly understand the roles, responsibilities and obligations of both sides of the relationship and establish information sharing and reporting mechanisms to ensure that

the expectations of both partners are met throughout the term of the agreement. The municipal representative may also need to educate the service provider about the necessity for regular meetings and reports especially when dealing with volunteer organizations that are often not well versed in management practices. Utilizing a community development approach, the Town's staff person would become the nurturer, trainer and support agent to help community-partnered projects reach their full potential.

It is also important that the municipal staff responsible for the relationship knows how to monitor results, interpret reports, and evaluate accomplishments and shortfalls. Furthermore, the staff must be capable of identifying areas of necessary improvements, be able to effectively communicate the need for improvements and have the capacity to provide guidance that would lead to performance consistent with the Town's expectations. Therefore, matching the skill sets and talents of the assigned staff person with the nuances of managing the agreement is essential.

#### *Managing Agreements with Volunteer Groups*

The nature of volunteer organizations sometimes requires that agreements set out details not normally required in relationships with formal legal entities - such as private companies. Some municipalities have obligated community partners to have a clear secession plan to ensure that the organization is sustainable beyond the tenure of its current executive or core group of volunteers. This helps to protect the interests of the municipality and brings a certain degree of assuredness to the arrangement for the entire term of the agreement.

#### *Managing Contracts Must Be Adequately Resourced*

Effectively managing arrangements with outside interests is time consuming. A common misconception about out-sourcing is that the practice will substantially reduce or eliminate staff time associated with the delivery of the service. Depending upon the nature and complexity of the agreement, contract management could require as much, if not more staff time than direct service delivery, especially during the contract's infancy. It is therefore important that the Department be equipped with the appropriate number of adequately trained personnel to manage relationships with external organizations.

#### *Evaluation and Monitoring*

After implementation, the partners should engage in mutual evaluation of the relationship. Where necessary, adjustments to roles and responsibilities should be considered to improve the working arrangement between the partners and the results of their efforts. Outcomes should be tested against the partnership principles and new directions should be guided by the pre-determined municipal positions regarding the partnership. The consequence should be consistent with the objectives for the venture and the expectations of the partners and the communities they serve.

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## Appendices

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## Appendix A

### Elements of Contractual Agreements

<i><b>Elements</b></i>	<i><b>Service Agreements</b></i>	<i><b>Development and Operations Agreements</b></i>	<i><b>Partnership and Contracting Agreements</b></i>
Preamble	√	√	√
Not a legal partnership	√	√	√
Rights and obligations: Developer	√	√	√
Rights and obligations: Municipality	√	√	√
Permitting, licensing and approvals	√	√	√
Economic development	√	√	√
Grants, subsidies, tax exemptions	√	√	√
Provincial and federal grants	√	√	√
Contract term liabilities			
Operating/maintenance requirements	√	√	√
Force majeure	√	√	√
Events of default	√	√	√
"Porcupine Clause"	√	√	√
Dispute resolution	√	√	√
Commercial confidentiality	√	√	√
Municipal/business liaison	√	√	√
Design and construction standards		√	√
Acquiring property		√	√
Rate setting		√	√
Financing		√	√
Return on investment		√	√
Incentives & performance standards		√	√
Profit sharing		√	√
Government services		√	√
Transferring assets		√	√
Back payments	√	√	
Labour force transfer	√	√	

(Source: Modified from the "3P's" of Municipal Infrastructure – The Acumen Consulting Group)



Elements applicable to all three types of third party agreements:

*Preamble* - The preamble in the agreement states its purpose, names the objectives and reasons for entering into an agreement between the parties. It summarizes the authority of the agreement and the expectations of both parties. Preamble sets the tone for the main body of the agreement in terms that are legally enforceable. It should allude to all aspects of the agreement, and the individual contractual provisions are the means by which the preambles aims are achieved.

*Not a Partnership* - At the front of the agreement, a statement should stress that is in no way to be construed as establishing a legal partnership, joint venture or fiduciary responsibility between the municipality and the outside entity.

*Rights and Obligations of the Third-Party* - This section spells out what is expected of the third party. It can be as expensive or as narrow as required by the nature of the project. Usually, this provision explains that the third party agrees to perform the core tasks of the project in relation to the facility or program. As well, it should indicate that the third party agrees to conduct itself in a manner consistent with recognized and prudent practices related to the project.

*Right of the Municipality* - The municipality lists its commitments to the third party.  
*Environmental* - Where applicable, the third party should agree to use best efforts to obtain all the environmental clearances and permits required by provincial and federal law for a particular project.

*Permitting, Licensing and Regulatory Approvals* - This provision states the responsibilities of the third party in terms of securing appropriate approvals as well as its compliance with all health and safety standards.

*Economic Development* - These are incentives that may be provided by a third party (or the project) to the municipality for entering into the agreement. These incentives do not specifically concern the facility or program but rather a precondition of the agreement such as hiring local labour, local procurement of services, expenditure of capital, training programs or specific subsidies for affected groups. If the municipality plans to include this feature in the agreement, it should be expressly articulated in calls for proposals.

*Municipal Grants, Subsidies, Tax Exemptions* - Municipal legislation authorizes a municipality to provide certain subsidies, grants, guarantees and tax exemptions but is not normally available for industrial or commercial purposes. In Ontario, this restriction was amended to permit grants, subsidies and tax exemptions for projects involving police, operation and maintenance of the invisible capital facilities. The extent to

municipalities granting authority must be carefully assessed before any commitments are made to the third party<sup>1</sup>.

*Provincial and Federal Grants* - These contributions are made by federal or provincial governments to assist the municipality to supply a service or construct infrastructure. Grants may be conditional or unconditional depending upon whether they are tied to a specific program or can be used to meet any cost.

*Contract Term* - Limits are placed on the term of years the agreement will run. The municipality may also wish to limit the third party's concession period to exercise more control over the project.

*Liabilities* - The third party should agree to protect and indemnify the municipality against any damages or expense in connection with the exercise of the powers granted to the agreement. As well, the municipality should be protected against all claims made by individuals or organizations who sustain damages due to negligence of the third party in connection with project.

*Operating and Maintenance Requirements* - The provisions related to the operations, maintenance facility or the delivery of a program could be very involved. Where possible, the municipality would want to ensure the maintenance of operating standards by providing detailed specifications to which the third party would be held accountable. The manner in which standards would be assessed will depend on the nature of the service or program being provided. The standards of service being provided should be subject to review if certain adverse or beneficial events occur that would constitute reason to change the specifications.

*Force Majeure* - The term "force majeure" usually means any circumstance beyond reasonable control of either party. The occurrence of a force majeure event has the effect of terminating or suspending the continued performance of third party obligations with limited or no penalties. These events usually consist of natural disasters, acts of terrorism, acts of God, civil disobedience or the like. The agreement may expand the definition of the term to include events specific to the project or certain categories of legislation such as amalgamation, judicial orders, failure to receive certain government grants, strikes, labour boycotts or other events beyond reasonable control of the parties.

*Events of Default* - Issues that can trigger an event of default should be clearly spelled out. Defaults are not without penalties. Such events might be failure to make certain payments, failure to operate and maintain a facility in accordance with the agreement or non-compliance with specified program delivery standards. The defaulting party is normally given a chance to rectify the situation to the satisfaction of either party. Failure to do so can result in termination of the agreement. Any damages can be

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<sup>1</sup> Grants are authorized under the Ontario Municipal Act but limited by Section 111.

identified in advance but the non-defaulting party will normally preserve its rights to seek those damages available to it.

*Porcupine Clause* - These are the default provisions aimed specifically at the municipality. Porcupine Clauses are designed to have the government pay a price for damaging the third party's ability to operate a facility or provide a program. While municipalities may not have the power to arbitrarily cancel the agreement, it could encroach on the privileges granted to the third party. An example might be granting rights to another party that effectively eliminates any benefits associated with exclusive rights to the third party. This clause holds the municipality accountable for exercising governmental powers that would have an adverse effect on the third party.

*Dispute Resolution* - In the event of a dispute or controversy between the parties during the period of the project, the parties usually agree to first try to resolve the matter by negotiation and discussion. Failing a resolution, there should be a formal dispute resolution mechanism that both parties have agreed to in advance.

*Commercial Confidentiality* - The extent of any disclosure may be determined by provincial or municipal access to information legislation. Any information not covered under legislation should be addressed in the agreement and post party should agree on what elements are considered commercially confidential and which can be released to the public.

*Municipal/Third Party Liaison* - A balance must be struck between the audit, oversight and review responsibility of the municipality and the third party's right to conduct business with minimal interference. Each party should appoint one person to be the main contact on all matters related to the administration of the agreement between the two parties. They will act as the internal contact and attempt to resolve all issues that arise. They should meet on a regular basis and any other time upon the reasonable request of the other.

*Design and Construction Standards* - The design should be the same as that spelled out in the third party's proposal and construction should conform to industry standards agreed to by the parties.

*Acquiring Property* - If land is required for the project, this provision should outline the responsibilities and ownership issues pertaining to both parties.

*Rate Setting* - The rates and fees the third party charges for performing the service or offering the program must be clearly specified. This relates to payments received by the third party from the municipality or fees charged by the third party to the end user.

*Financing* - This provision outlines the responsibilities related to obtaining the necessary financing of the project including the ongoing obligations of debt service.



**Return on Investment** - If the third party is providing financing, it will expect a return on its investment. The amount that is considered reasonable will be subject to negotiations and should be reflected in this provision.

**Incentive Rates** - Incentive rates are based upon the ability of the third party to meet measurable targets on such matters as safety, access, education, conservation and environmental protection. The rates are often in addition to the base profitability a third party operator can earn. In effect, they reward the third party for meeting municipal policy objectives while at the same time ensuring that the service provided continues to meet performance and quality standards.

**Profit Sharing** - This is separate from earning a reasonable return or incentive rates. The municipality may wish to share the profits of the project. However, profit sharing should not be so substantial that it raises the issue of being involved in a partnership. If the municipality does not wish to share in a project's success, it may consider collecting a fee based upon revenue generation or some other method tied more to performance than results.

**Government Services** - For certain projects, the municipality may need to continue to play a role or provide certain services. For example, the third party may deliver services while the municipality continues to receive and process program registrations. The agreement should clearly outline responsibilities related to the costs of the services.

**Transferring Assets Back to the Municipality** - This provision is connected to the contract term and the financing of the project. For projects not involved in any capital expenditure on the part of the third party, there is little requirement that the municipality compensate it for succession of the agreement. In larger, more complex relationships that involve construction upgrading or expansion of facilities, it may be necessary to consider the effect such a transfer will have on the third party. The parties should decide in the agreement what mechanism will apply to valuing contributions made by the third party over the life of the agreement. Additionally, criteria should be developed and applied in the event that the municipality wishes to exercise an option to purchase the facility during the life of the agreement.

**Payments** - The manner in which the third party receives payment is central to the contractual relationship. Payments may be based on the amount the municipality currently spends - in the event that the third party assumes responsibilities for an existing program of facility - or could arise from profits generated through a charging user fees.

**Labour Force Transfer** - Issues affecting the labour force should be treated separately from negotiations between the municipality and the third party. Successor rights, pension issues, seniority, hiring and firing practices are best addressed in an agreement

between the transferring municipality, the third party and the affected employees, both unionized and non-unionized.

Other elements to be included in the contract:

- Definitions
- Insurance and bonding
- Representation and warranties
- Indemnification
- Performance and audit procedures
- Airspace and development rights
- Conflict of interest
- Notice



## Appendix B

### Process Model – Partnership Formation

