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BRIEFING NOTE

To: LMTAC Executive Committee
From: LMTAC Staff
Report Date: July 15th, 2011
Subject: Review of Service Agreements between the Village of Burns Lake and the Burns Lake Band

ISSUE

Comprehensive Service Agreements between the Village of Burns Lake and the Burns Lake Band

- In April of 2011, the *Corporation of the Village of Burns Lake* and the *Burns Lake Band* signed two service agreements. One service agreement was comprehensive, including a mixture of hard and soft municipal services, while the other agreement was for sewer and water services.

Relevance to LMTAC Discussion Paper¹

- The service agreements signed are the most recent examples of comprehensive agreements signed in British Columbia between a local government and a First Nation, including water, sewer and a full range of municipal services. The municipal service agreement was created using the *Federation of Canadian Municipalities'* comprehensive service agreement template developed under the *Community Infrastructure Partnership Program*.
- A review of the agreements is pertinent given the recent focus on service agreements by LMTAC, including the continued updating of its discussion paper on service agreements.

BACKGROUND

Historic Relationship

- The new service agreements appear to be a step forward for the relationship between the Village of Burns Lake and the Band, as previous agreements had led to court cases.
- In 2000 (*Burns Lake Indian Band v Burns Lake (Village)*), the Village took the Band to court over unpaid servicing fees. The Village argued that it had no common law or contractual duty to continue providing services to the Band and it was at liberty to terminate the provision of services due to unpaid fees. In 1994, the Band had received the authority to implement independent property taxation on their reserve lands and declared that it intended to develop its own service providing capacity. As such, the *Supreme Court of British Columbia* ruled that because the Band

¹ Local Government Service Agreements with First Nations – Recommendations and Considerations (June 2011).

had the capacity to quickly and inexpensively establish and maintain its own services, there was no common law duty by the Village to continue providing services.

Municipal Services Agreement

- *The Municipal Service Agreement* signed between the *Village of Burns Lake* and the *Burns Lake Band* is to provide the “same quality and quantity of Services provided by the Municipality to the users of such Services on non-Reserve lands within the Municipality” to reserve lands.
- Under the Agreement, the services to be provided include:
 - General government services;
 - Bylaw Enforcement;
 - Emergency program services;
 - Animal control;
 - Transportation services (snow removal, sanding, bulk drink water, holding tank disposal);
 - Environmental health services (refuse collection);
 - Public health and welfare services;
 - Environmental development services;
 - Cultural services;
 - Parks and recreation services; and
 - Fire protection.

Water and Sewer Services Agreement

- The *Water and Sewer Service Agreement* between the *Village of Burns Lake* and the *Burns Lake Band* is to provide the following services to reserve lands:
 - A supply of water to the Reserve through the *Reserve Water System*; and
 - The collection, conveyance, treatment and disposal of sanitary waste that is discharged from the Reserve through the *Reserve Sewer System*.
- The *Reserve Water System* and the *Reserve Sewer System* were constructed by the First Nation on the reserve. Furthermore, under the Agreement, the First Nation is responsible for constructing, at its own cost, any works required for connecting the Reserve Systems to the Municipal Systems. The First Nation is also required to provide, at its own cost, any required extensions, maintenance and repairs to the Reserve Systems.
- The quality and quantity of Water and Sewer Services to be provided to the Reserve are to be the same as those provided to users off-reserve by the municipality.

OVERVIEW

Term of the Agreements

- The Agreements are for a period of seven months (until December 31st, 2011). If the agreements are not explicitly renewed or terminated before December 31st, 2011 they will continue on a month-to-month basis.
- Either party can terminate the Agreements at their discretion subject to providing two month written notice. A written notice is also needed for renewing the contract, which is subject to the First Nation’s compliance with the agreement.

Payment for Services

- **Municipal Services Agreement Fees**
 - Fees will be equal to the levy made by the Municipality times the average assessment of all lands and improvements on the Reserve that would have been taxable for Municipal Services if they were located off-reserve. This seems to indicate that a *pro-rata* of off-

reserve assessments is being used, rather than on-reserve assessments. However, the wording is not entirely clear and may require confirmation.

- The Agreement acknowledges that the fee formula may be amended to reflect changes of how the Municipal Council raises revenue to pay for the services it provides.
- There will be a one-time transition fee of \$10,000 applied.
- **Sewer and Water Services Agreement Fees**
 - The First Nation will pay fees based on the residential and commercial per user rates included in Schedule C of the Agreement.
- **Failure to Pay**
 - If the First Nation fails to pay any of the fees agreed upon within the Agreement, the First Nation agrees that the Minister of Aboriginal Affairs and Northern Development (referred to in the agreement under the former name of INAC) will pay the fees.
- **Capital Works Agreement**
 - If the First Nation decides to expand the reserve, a *Capital Works Agreement* with the municipality must be entered into first. The Works Agreement will describe the funding of the Capital Works necessary to service the additional lands, and the municipality will not have to service any expansions until such an agreement has been reached.

Liability

- The Municipality does not guarantee the quality or continuance of service provision and is not liable for damages, expenses or losses caused the stoppage or interruption of services (water, sewer, and fire protection).

Bylaws

- All applications for connections to the Sanitary Sewer or Water must be in compliance with the portions of the *Village of Burns Lake Sewer and Water Rates, Connection & Regulations Bylaws #672 and #673* as included in Schedule D of the Agreement. However, it is unclear how bylaws will be enforced in regard to liquid waste coming from the reserve system, in order to protect the integrity of the municipal system.
- Bylaw Enforcement is included as one of the Municipal Services to be provided in the comprehensive agreement.

REVIEW

- The Burns Lake Service Agreements are excellent examples of the comprehensive type of agreements suggested in the LMTAC discussion paper.
- The First Nation has constructed their *Reserve Water System* and *Reserve Sewer System* on the reserve; water and sewer regulatory bylaws have been applied with respect to connections to the municipal system. The concern, however, remains as to how liquid waste entering the municipal system, from the reserve system, will be regulated.
- Joint and several environmental liabilities are not mentioned in the Agreements.
- Fees for the Municipal Services have been tied *pro rata* to off-reserve assessments, based on the average values of comparable off-reserve assessments, while water and sewer services are based on annual per user fees.
- Clauses have been included to recognize that the way the Municipality recovers costs may need to be amended in the future.
- A provision has been included for AAND to pay the fees should the First Nation neglect its financial responsibilities. The details on how such an arrangement has been reached are not available. Although AAND is sometimes responsible for covering 80-90% of the costs of essential services (water, wastewater, fire protection, and solid waste), it is rare for such a clause to be

included in the service agreement as AAND normally transfers the money to the First Nation which then puts it towards payment.

- Development Cost Charges (DCCs) are not explicitly mentioned in the agreements. It is possible that they may have been built into the user fees for water and sewer services. It is also important to note that some smaller communities, such as Burns Lake, may not collect DCCs. Without knowing how the user fees were developed it is not possible to comment on which off-site costs have been built into the agreement.

Conclusion

- The Agreements appear to be trying to minimize risk to the municipality and achieving full-cost recovery. However, the legislative barriers between Indian Reserves and local governments may prevent the municipality from receiving 'legal guarantees' on some issues (such as bylaw enforcement/compliance) outside of terminating the agreement. Furthermore, insufficient details are available to accurately comment on whether or not the agreements achieve full-cost recovery.
- The *Municipal Services Agreement* should be of interest to other local governments in the province negotiating service agreements with neighbouring First Nations, as it takes a comprehensive approach to hard and soft service provision. The approach used in the fees section is also of great relevance, as it leaves the agreement open to possible amendments in the future rather than locking the municipality into a specific methodology.

Issues Addressed

- Full provision of municipal services;
- Financial liability;
- On-reserve levies to be equivalent to those off-reserve; and
- Ability to amend fee structure.

Outstanding Issues and/or Areas for Further Analysis and Research

- **Cost escalator clauses, DCCs and full-cost recovery;**
- **Land-use compatibility;**
- **Environmental liabilities;**
- **Regulatory bylaw enforcement;**
- **Use of assessments in setting fees; and**
- **Agreement with Minister of AANDC.**