

---

# SERVICES, SERVICE AGREEMENTS AND TREATY NEGOTIATIONS

## Backgrounder to First Principle #35

---

*Discussion Paper by David Didluck*

August 2001  
(Appendix updated January 2002)

LOWER  
MAINLAND  
TREATY  
ADVISORY  
COMMITTEE

Lower Mainland Treaty Advisory  
Committee

4th floor, 4330 Kingsway, Burnaby, B.C., Canada V5H 4G8 Tel (604) 451-6179 Fax (604) 436-6860  
E-mail: [lmtac.lmtac@gvrd.bc.ca](mailto:lmtac.lmtac@gvrd.bc.ca) Web: [www.lmtac.bc.ca](http://www.lmtac.bc.ca)

## 1. PURPOSE

The purpose of this discussion paper is to explore issues related to servicing and service agreements and discuss the implication of these issues for treaty negotiations. This paper provides a contextual summary of the scope of Local Government's current involvement in service provision and catalogues existing Indian Band-Local Government servicing agreements in the Lower Mainland. The paper concludes with a summary of possible conditions which are needed to build effective servicing arrangements with First Nation governments.

This paper does not evaluate and prescribe whether self-delivery of services by a First Nation government is more or less efficient than the purchase of comparable services from a neighbouring Local Government. For some Aboriginal communities, capital transfers that accrue from treaty settlements or other federally-funded initiatives may make it advantageous for First Nations to fund the development of their own community facilities and infrastructure. For other communities, the financial burden and high capital cost of self-financed projects may make self-provision of services unrealistic. Ultimately, the decision by the First Nation government to provide self-delivered services will necessitate a comprehensive evaluation of the same financial and management considerations that are typically part of any decision-making process.

## 2. DEFINITIONS

For the purpose of this report, the following definitions are used:

- **Aboriginal peoples** – status and non-status Indians, Inuit and Metis persons.
- **First Nations** – self-defined Aboriginal communities which may or may not be participating in the BC Treaty Process. First Nations differ from Indian Bands in that their membership is determined by the Aboriginal community, not the federal department of Indian Affairs. It is envisioned that, in the post-treaty environment, First Nations will be 'self-governing' and have many governance powers similar to that of existing Local Governments in British Columbia.
- **Local Governments** – municipalities or regional districts recognized under the *BC Local Government Act*.
- **Indian Bands** – Aboriginal communities recognized under the federal *Indian Act*.

The distinction between First Nations and Indian Bands is made to emphasize the differences between pre- and post-treaty conditions. Post-treaty, it is anticipated that First Nation governments will be a separate legal entity distinct from the federal department of the Indian Affairs and exempt from the limitations imposed by the federal *Indian Act*. This paper does not assume that the servicing arrangements Local Governments have developed with existing Indian Band administrations will be the same as the arrangements developed with future self-governing First Nations.

## 3. CONTEXT

Service provision and the contractual agreements which set out how services are delivered are of key interest to Local Governments and Indian Bands across British Columbia. Service delivery is one of the primary functions of Local Governments and of growing significance to First Nations seeking to enhance the carrying capacity of their land base to support growing populations. Population growth pressures placed upon the already heavily subscribed urban land base are of particular concern for communities working to define compatible land uses and long-term community plans.

In past years, dialogue between Local Governments and Indian Bands on land use and infrastructure issues has been largely confined to specific contractual arrangements known as 'servicing agreements'. These agreements typically set out the range of community services that are provided by one of the parties to the community. As treaty negotiations progress with First Nations across British Columbia and final treaties are realized, it can be anticipated that any existing contractual relationships between Indian Bands and Local Governments will also evolve, particularly since land and land use issues are key components of treaty negotiations. As of August

2001, approximately 70% of Aboriginal communities are participating in the BC Treaty Process. The signing of treaty agreements, therefore, raises questions about what impacts such agreements may have on existing servicing arrangements and intergovernmental initiatives between Local Governments and Aboriginal administrations.

There is a long history of Local Governments providing services to reserve lands in British Columbia.<sup>1</sup> In some cases, particularly when large capital investments were involved, formal contracts were developed between Local Governments and the Department of Indian and Northern Affairs.<sup>2</sup> In other cases, there were direct agreements with Indian Band administrations and Certificate of Possession holders. In situations where municipal or regional district governments collected property taxes from non-Aboriginal leaseholders on reserves, servicing contracts were developed in which the majority of on-site services were provided by the neighbouring Local Government. This latter situation is still common in many Lower Mainland area communities.

As more Aboriginal communities pursue economic development initiatives and work to build financial capacity for self-government, there is increasing pressure on Indian Band administrations to ensure that there is an adequate level of services provided to the community. In urban areas like the Lower Mainland, where existing Indian reserves are located near or adjacent to municipalities, Indian Band administrations have either worked to develop agreements with Local Governments for the delivery of community services that are often too expensive for the Aboriginal community to finance independently or, in some limited cases, have acted as a primary service provider to the neighbouring Local Government.<sup>3</sup> Depending on the needs and circumstances of the parties, the type and nature of servicing arrangements between Local Governments and First Nations have varied and evolved significantly over time.

#### 4. LOCAL GOVERNMENT SERVICES

As the implementing arm of the provincial government, Local Governments perform a diverse array of both mandated and voluntary service functions.<sup>4</sup> Mandated functions are required by provincial statute. For example, all municipalities must construct and maintain local roads and must engage an assistant to the provincial fire commissioner to perform fire inspections. In some cases, provincial rules also designate how some activities must be organized. For example, for a municipality with its own police force or library system, each function must be governed by a board.

In addition, Local Governments have the general authority to provide any service that the elected council considers to be necessary or desirable for its community and to regulate in relation to the provision of the service. Such functions include, but are not limited to:

‘Hard’ Services	‘Soft’ Services
• Transportation infrastructure (roads, bridges)	• Social planning
• Public works	• Public health regulation
• Leisure and Recreation Centres	• Subdivision control
• Irrigation and flood control	• Regulation of nuisances
• Liquid/solid waste management	• Economic development
• Parks	• Emergency planning

<sup>1</sup> See: R. Bish, *Property Taxation and the Provision of Government Services on Indian Reserves in British Columbia* (Centre for Public Sector Studies, School of Public Administration, University of Victoria, 1987).

<sup>2</sup> Now known as ‘Indian and Northern Affairs Canada’ (INAC).

<sup>3</sup> ‘Case Study: First Nation Provision of Services at Lake Windermere’ (Kinbasket Development Corporation), from UBCM and First Nations Summit, *Community to Community Forum – Final Report* (2001), p. 38.

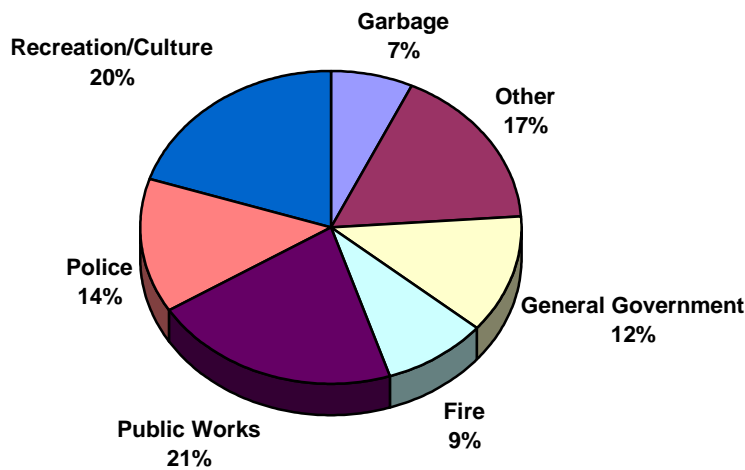
<sup>4</sup> See: Robert Bish, Eric Clemens, *Local Government in British Columbia, 3<sup>rd</sup> Edition* (Union of BC Municipalities, 1999).

• Police protection	• Noise control
• Fire protection and rescue	• Business licencing
• Public Housing	• Planning and zoning
• Marinas and Marina Operations	• Traffic planning and control
• Water supply and distribution	• Recreation programs

**4.1 How Much do Services Cost?**

The most expensive services are typically police and fire protection, public works and recreation.<sup>5</sup> This varies between municipalities depending upon whether they actually provide the service and the level of services they provide. For example, municipalities with fewer than 5,000 residents are not responsible for police costs. While some larger municipalities have full-time fire departments, many smaller communities rely on volunteer fire departments.

**Municipal Operating Expenditures 1997**



The portion of the budget for recreation and related services can vary widely depending on what type of facility each community has decided it wants and can afford. The diversity in expenditure pattern underscores the ability of Local Governments to vary priorities to address local needs and interests.

**4.2 How Are Services Funded?**

Local Governments raise funds to provide and maintain services within the community from three main sources: 1) property taxes (residential and commercial/industrial); 2) grants from other levels of government; and 3) special user charges. On average in 1997, approximately 53% of the revenue needed by municipalities to provide and maintain services was raised through property taxes and grants from other levels of government.<sup>6</sup> (The federal and provincial governments provide grants-in-lieu of taxes for land they own within a municipality. The provincial government also provides operating grants to Local Governments, although these grants have

<sup>5</sup> Union of BC Municipalities, *Local Government in British Columbia – A Community Effort* (1997), p. 14.

<sup>6</sup> Union of BC Municipalities, *Local Government in British Columbia – A Community Effort* (1997), 15 and Robert Bish, Eric Clemens, *Local Government in British Columbia, 3<sup>rd</sup> Edition* (Union of BC Municipalities, 1999), p. 150.

declined significantly in recent years). The reliance on property taxes, grants and other revenue sources varies amongst individual Local Governments.

Local Governments also raise revenue by renting, selling or charging fees for the use of their facilities or services. Some of these charges include fees for garbage pickup, swimming pool and arena admission, and subdivision approvals. For example, Development Cost Charges (DCCs) are charged when approved land development within a municipality has a measurable impact on municipal services, particularly when the approved development requires costly infrastructure expansion or improvement.

### 4.3 Impacts of the Indian Self-Government Enabling Act (Bill C-115)

In 1988, Bill C-115 was passed amending the *Indian Act* to allow for direct taxation by Indian Bands based on property assessment for both Aboriginal and non-Aboriginal people on Indian Reserves. Complementary provincial legislation known as the *Indian Self-Government Enabling Act* required the withdrawal of provincial and Local Government property taxation on reserves when the First Nation implemented its own taxation system.<sup>7</sup> As a consequence, Indian Band administrations assumed responsibility for ensuring that an appropriate degree of local services was provided to all leaseholders now subject to taxation. In most cases, these services were provided by Indian Bands through a contract for the purchase of services from a neighbouring Local Government.

The *Indian Self-Government Enabling Act* was the result of a court challenge lost by the Kamloops Indian Band concerning municipal taxation of their tenants. The Act allowed for the distinction between reserve lands available for leasing (called ‘designated lands’) and those lands surrendered for sale. The result gave Indian Band Councils regulatory and taxing jurisdiction over their leased lands. By the same amendment, leasehold interests in designated lands could now be subject to mortgage.<sup>8</sup>

It should be further noted that Section 83 of the *Indian Act* provides First Nations governments with the authority to create by-laws governing the assessment, rate and collection of property taxes. Section 83 effectively provides First Nations with additional authority to govern community affairs and an opportunity to generate revenue for other community uses. The Indian Taxation Advisory Board (ITAB) provides support to First Nations engaging in this new authority and makes recommendations to the federal Minister to authorize by-laws under Section 83.

## 5. SERVICE AGREEMENTS

Servicing agreements are contractual arrangements between Indian Bands and Local Governments for the provision of services. Agreements typically set out the list of services subject to the agreement, timelines for review, costing/valuation formulas, and termination provisions. The focus of most servicing agreements is on hard services (e.g. water, sewer, fire protection), rather than soft or regional services such as libraries, recreation centres, growth or air quality management. A summary of Lower Mainland area servicing agreements is provided in Appendix A.

In the Lower Mainland, where existing Indian reserves are often located near or adjacent to incorporated municipalities, Indian Band administrations have worked to develop agreements with Local Governments for the delivery of hard and soft services that are often too expensive for the Aboriginal community to self-deliver. The contractual relationships between Indian Bands and Local Governments for the provision of services are primarily with municipal governments. The Greater Vancouver Regional District (GVRD), for example, does

---

<sup>7</sup> *Indian Self-Government Enabling Act*, S.B.C. 1990, c. 52.

<sup>8</sup> This is an exception to *Indian Act*, s. 89.

not currently provide any direct services to Indian Bands. The GVRD describes itself as a wholesaler of services to its Local Government membership.<sup>9</sup>

In most of Canada, servicing agreements typically provide 100% cost recovery for Local Government. The trend in British Columbia is, however, towards 75% recovery, with no funds transferred to Local Governments to pay for ‘general governance’ costs (presuming that the First Nation provides governance services to its citizens).<sup>10</sup> When disputes arise between Indian Bands and Local Governments over servicing arrangements or valuation methods, one of the primary challenges facing Local Governments is to actually receive payment for services rendered. In many cases, collection is often accomplished through ‘diplomacy’ and political tactics, as opposed to typical administration of a contract.

### 5.1 How do Indian Bands Enter Into Servicing Agreements?

‘Indians and lands reserved for Indians’ are the subject of federal jurisdiction under section 91(24) of the *Constitution Act, 1867*. The federal *Indian Act* does not explicitly provide the authority for Indian Bands to enter into service agreements. However, Indian and Northern Affairs Canada has encouraged Indian Bands, as a matter of policy, to enter into agreements with Local Governments for services.

Neither the federal Minister of Indian Affairs, nor his appointed delegates, are required to be signatories to servicing agreements with Local Government. Servicing agreement negotiations are typically initiated and concluded directly between the Indian Band and Local Government. Indian and Northern Affairs Canada may, however, provide First Nations with financial support for operations and maintenance of infrastructure subject to the agreements.<sup>11</sup>

### 5.2 Challenges of Servicing: Case Study – Village of Burns Lake

The following section provides an example of some of the challenges faced by Local Governments in developing servicing arrangements with First Nations.

#### CASE STUDY: Village of Burns Lake

In 1971 and 1974, the Village of Burns Lake and the Burns Lake Indian Band agreed to have the municipality provide fire, water and sewer services to the Band. The Band initially wanted to purchase sewer, water and fire protection services, and refused to pay for other municipal services included in the tax assessment for other residents. However, with the assumption of taxing authority by the Burns Lake Indian Band in 1993, the Village has wanted full payment for all services, and will not accept what they consider partial payment for only the sewer and water. In 1998, the Village ceased to provide water and sewer services, and the courts became involved in assessing the ability of the Village to do cut off services, and adjudicating the nature of the servicing agreement.

In March of 2000, the matter was heard by the Supreme Court of British Columbia. The decision of the Court was that British Columbia had not specifically granted power under the *Municipal Act* to permit BC municipalities to enter into servicing agreements with either Canada or First Nations until a later date. Consequently, the Village of Burns Lake could, at its option, refuse to honour the 1971 and 1974 agreements. The Court further decided that the Village is entitled to discontinue service upon “reasonable notice”, and that the two parties may enter into an agreement to again provide and pay for services, under new conditions, at any

---

<sup>9</sup> Greater Vancouver Sewerage and Drainage District, *Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (July 1996).

<sup>10</sup> Mountjoy, Terry, “Municipal Government Perspectives on Aboriginal Self-Government”, in John Hylton ed., *Aboriginal Self-Government in Canada: Current Trends and Issues* (Saskatoon: Purich Publishing, 1999), p. 323.

<sup>11</sup> Contact: John Gordon, Indian and Northern Affairs Canada, Manager of Funding Services: 666-8295.

time. Following the decision, the Village began lobbying the Federal Government to provide funds to pay for all services rendered under contract by Local Government.

Central to this dispute is the transfer of taxation authority from the Village to the Band under the *Indian Self-Government Enabling Act* in 1993. Included on the reserve is a substantial industrial site which was previously taxed at a higher industrial rate, with funds going directly to the Village as revenue. These lands, on which a sawmill was located, were added to the municipal boundary in 1975 to allow the Village to collect taxes. The Indian Band now receives that tax revenue instead, thus reducing the Village's tax revenue over the course of one year by over \$200,000 dollars (equal to approximately one-quarter of the Village's tax base).

Since 1959, reserve residents have also voted in the municipal elections, and have access to all municipal services (according to the Village). Beginning in 1994, the parties attempted to negotiate a new agreement to address the change in taxation authority. The Village alleges that the Band did not fully pay for the servicing in the agreement. There is also disagreement on the costs of the services; for example, the Village cites the 1996 cost of services as \$132,000 dollars (for 17 homes, a total of 60 people - a total of about \$2,200 dollars per person or \$7,800 dollars per household), but the Band sent a cheque payment in full for services for \$20,000 dollars, which the Village rejected. On two other occasions the Band sent cheques for increased amounts, but still below \$30,000 dollars. On November 24, 2000, the Burns Lake Indian Band made an offer to purchase only water, sewer, fire protection and solid waste management services from the Village of Burns Lake at the actual cost of providing those services, together with a 10% premium, but not to purchase and pay for other municipal services. This proposal was rejected by the Village.

Several questions are raised by this case:

- Should the Band have to pay only the hard services they want, or pay for all the services provided to their residents (i.e. the full range of municipal services)? Why? Why not?
- If, as a result of treaty negotiations, self-governing First Nations supply many of their own services to their community, are Local Government expectations of First Nation participation in or contribution to municipal service delivery realistic? What are the implications of an absence of First Nation contributions?
- What is a reasonable cost for the services provided by the Village to the Band? What is the appropriate valuation standard for determining the cost of services?
- This case raises the question of the effectiveness of using contractual negotiations and agreements on hard services to bring about Indian Band participation in, and contributions to, Local Government activities. What are the risks and benefits? If disputes that arise have to be adjudicated in court, what opportunities for negotiated outcomes, suitable to both parties, are missed? How would the existence of previous political relationships between the Village and Band assisted in resolving this dispute over servicing?

### 5.3 Other Issues

#### a) Taxation and Payment for Services Rendered

The goal of taxation is to provide revenue for a government to pay for services provided. For First Nations, taxation is a fundamental element of self-government in that it provides the financial resources by which governments pay for services.

The goal of a servicing agreement is to ensure that Local Governments who provide services to First Nations on Indian Reserves, for which the First Nation has taxation authority under the *Indian Act*, are paid for by that First Nation. A related goal is to ensure that comparable standards of service are provided by neighbouring Local Government and First Nation jurisdictions.

In 1988, Bill C-115 was passed amending the *Indian Act* to allow for direct taxation by Indian Bands based on property assessment for both Indians and non-Aboriginal people on Indian Reserves. The result was to give

Band Councils regulatory and taxing jurisdiction over their leased lands. As a result of Bill C-115, there is potential in the *Indian Act* for First Nation governments to both have taxation authority on Indian Reserves and provide services. Practically, however, few First Nations currently have the capacity or the size to provide significant services on reserve. The resulting change in taxation authority creates the need to ensure that services which were provided on Indian Reserves by an external government are paid for by the receiving First Nation at full cost recovery, and that treaty agreements that set out specific Treaty Settlement Lands do not hinder or impact Local Government's ability to accomplish this objective through servicing agreements with future self-governing First Nations.

### **b) Land Use / Land Use Planning**

Service agreements and other cost recovery mechanisms (e.g. Development Cost Charges) have also been effectively utilized by Local Governments to direct land use patterns, including development on Indian Reserves, due in part to continuing Local Government frustration over the lack of existing land use planning within reserve communities. Land development is often tied to the availability of local infrastructure and hard and soft services. An absence of an agreement on these issues between a Local Government and Indian Band is a significant impediment to economic development and effective long-term planning.

In the post-treaty environment, it is envisioned that First Nations will have self-government powers over land use and planning, and will determine their own processes and mechanisms to develop their treaty settlement lands. In addition to the need for coordinating these processes with neighbouring local and regional planning processes, it may be increasingly difficult for Local Governments to use servicing agreements (or the threat of not concluding a serving agreement) to direct land use by First Nations in the post-treaty context. It is also apparent that proposed land use and planning chapters of treaties (e.g. Nisga'a) may deal primarily with the First Nation-provincial post-treaty relationship and, thus, may not be able to effectively address Local Government interests, particularly in more complex urban contexts where land use issues are of higher profile.

This issue underscores the continuing need for diplomacy and intergovernmental co-operation on land use and planning. Better linkages between First Nations and existing land use and planning processes, whether locally or provincially, are also needed. A continued absence of discussion of land use and planning within community contexts will make the implementation of treaty agreements (particularly urban agreements) more challenging. There are opportunities to utilize the current treaty process as a forum for these discussions.

### **c) Full Vs. Partial Participation**

Local Governments continue to struggle with valuation and participation issues in servicing, particularly how First Nations should participate in regional programs and soft services (such as libraries or recreation centres) where Local Governments must bear the full costs of delivery. It could be argued that, for some types of environmental or sanitary services (particularly those with significant human health implications) -- services such as water, sewer or air quality monitoring -- First Nations should be obliged to be involved in, and contribute to, since all residents of the region benefit. The non-participation of one community can undermine the efficacy of the entire regional program, particularly for issues such as regional growth planning, air quality control and solid waste management. Since Local Governments are not treaty signatories, it is unclear at this time what steps provincial Ministry representatives are taking to ensure that First Nations are integrated into regional initiatives and how treaties will address these issues.

### **d) Subsidization**

Related to participation, Local Governments remain keen to ensure that the actual cost of delivering a service to a user group is recovered by Local Government (i.e. that there is no unintentional subsidization of one group by another). This same principle applies to Local Government servicing arrangements with First Nations. In 1999

and 2000, provincial commitments were made to Local Governments that treaty agreements will have no net financial impact on Local Governments, and that treaties will be 'revenue neutral' to communities. Continued follow-up and discussion with provincial representatives about mechanisms to achieve these commitments in the negotiations will be needed.

### **e) Valuation**

There continues to be no established valuation formula or standard for determining an appropriate cost for the provision of services. For example, it is not known whether the BC Assessment Authority will be utilized for determining property tax rates on future Treaty Settlement Lands, or how disputes over valuation between Local Governments and First Nations will be resolved. Since Local Governments are not treaty signatories, it may be the case that treaty agreements offer little guidance to Local Governments on these matters.

### **f) Increased Demand**

As a result of self-government and the additional land and funds available through treaty settlement, there is significant possibility that more First Nations will seek to negotiate servicing agreements with neighbouring Local Governments. It is unknown what the long-term affects of this trend will be on Local Governments, particularly if an increasing share of revenues will need to be derived from fee-for-service and other similar cost recovery arrangements. In this environment, Local Governments will want to ensure that they have the capacity to implement these additional contractual agreements and, in working closely with provincial representatives, ensure that Community Charters and other legislative reform initiatives enable Local Governments to implement innovative and flexible cost recovery mechanisms in their future dealings with First Nations.

### **g) Representation**

There are two key issues related to representation: 1) the representation of non-Aboriginal members in First Nation decision-making processes involving services; and 2) the representation of First Nations in existing Local Government decision-making processes involving services.

It is anticipated that in the post treaty environment, First Nations will either be directly providing or contracting with another Local Government to provide a variety of hard and soft services to their community. In cases in the Lower Mainland where there will likely be a significant population or majority of non-Aboriginal residents living on future Treaty Settlement Lands – residents who seek a voice in how community services are provided – it is unclear how these residents will be represented within First Nation governments. Treaties will need to clarify this issue, as residents living on an Indian Reserve currently have the right to vote in municipal elections, even though the services delivered to the on-reserve community may be provided via contract from the Indian Band. In these cases, Local Governments have no effective ability to address community member concerns, only refer residents back to the Indian Band who has initiated the servicing agreement.

Further, there is presently no unique mechanism to provide First Nations with a voice in existing Local Government decision-making processes involving services. If, for example, regional districts provide a variety of services of benefit to the region, and First Nations are contributing to their share of costs for this service, then mechanisms need to be developed to ensure First Nations also have the ability to be directly represented. There are several possible mechanisms to achieve this objective that have been identified by LMTAC members and that need further exploration, including full, stakeholder and Aboriginal Council membership on regional districts.<sup>12</sup>

### **h) Non-Payment**

---

<sup>12</sup> See: Lower Mainland Treaty Advisory Committee, Governance Symposium, June 2001, Summary Report.

Local Governments continue to face obstacles in collecting outstanding revenues when there is a non-payment by an Indian Band for Local Government services rendered. The immediate cessation of the contracted service is not possible since some services cannot be easily halted (e.g. sewer services) and since court decisions have confirmed that ‘reasonable notice’ and a termination period must be first provided.

If existing Indian Bands become independent legal entities as a result of treaty agreements, then Local Governments should be more effectively able to pursue First Nations to uphold their contractual obligations whether via negotiation or in court. Until treaties are signed, however, Local Government representatives need to work closely with Indian and Northern Affairs to find an interim solution. There may be mechanisms whereby Indian and Northern Affairs acts as a guarantor when Indian Bands enter into contractual commitments on servicing – mechanisms to ensure that Indian Affairs becomes the equivalent of an underwriter in cases when non-payment occurs.

### **i) Treaty Transition**

It is not clear whether servicing agreements with existing Indian Bands will ‘roll over’ to First Nation Governments post treaty. Local Governments involved in the treaty process need to clarify if re-negotiation will be necessary, and whether transition language is needed in the treaty.

### **j) Dispute Resolution**

Clarity is needed if the Province of BC will continue to represent Local Government interests in the post-treaty environment. If the Province (not Local Governments) is the signatory to final treaty agreements, does the Province anticipate working on behalf of Local Governments when disputes arise with First Nations regarding Local Government matters, such as servicing? Will the Province be prepared to invoke the dispute resolution provisions of the treaty at Local Government’s request? If the answer to these questions is ‘yes’, then it may be necessary for Local Governments to negotiate a protocol with the Province, prior to final treaty, that outlines provincial commitments to Local Government as a treaty signatory and specific procedures for dealing with disputes.

## **6. Key Elements of Effective Servicing Arrangements**

Until treaty negotiations with First Nations are finalized in British Columbia, Local Governments will need to ensure that, in the interim, effective servicing agreements are reached with First Nations which meet community and corporate interests. It is, therefore, useful to think of servicing agreements (or other contractual arrangements) with First Nations as a stepping stone to developing long-term community partnerships.

There are three key elements that impact Local Government’s ability to achieve effective, stable servicing arrangements with existing Indian Bands and future self-governing First Nations:<sup>13</sup>

### **Service Definition**

- Services provided under the agreement need to be explicitly defined. The agreement needs to include an agreed to scope and purpose, as well as identify what will be the anticipated service levels for each service. It is also useful to develop, and include in the agreement, a common perspective on community benefit.

### **Cost**

---

<sup>13</sup> Adapted from: Peter Adams, Presentation to Union of BC Municipalities Convention, October 2000.

- Costs need to be clearly outlined in the agreement, and perceived by each party as ‘fair’. Discussion of how ‘fair costs’ are determined may be the most significant and time consuming element of the negotiations. Since costs also need to be predictable, using a mutually accepted valuation formula is helpful.
- Agreements also need to be adaptable should unforeseen costs arise in the future. Provisions should be included that describe what happens when costs changes.

### **Control**

- Parties to the agreement each need some ability to influence the decisions of the other party, while still seeking to achieve a balance. In order for the agreements (and the parties to them) to be responsive to significant changes in the community, labour conditions, market realities, etc., provisions should be included that enable the parties, when sufficient notice is given, to re-visit the agreement.
- Agreements should include well-defined exit provisions and conditions so that an unfavourable agreement can be terminated if necessary.

Ultimately, all three components need to be well designed, comprehensive and complementary.

Further research conducted by the BC Ministry of Municipal Affairs indicates that there are also specific conditions in which the implementation of effective and stable servicing agreements is more likely to occur.<sup>14</sup>

Stability in servicing agreements is easier where:

- there are clear and direct benefits to the parties (e.g. fire protection)
- there is a similar actual or desired level of service (e.g. water supply)
- non-participants can be excluded
- economies of scale in service provision exist
- equal partnerships can be developed
- tax bases are similar

By contrast, stability in servicing agreements is more difficult where:

- there are uneven actual or desired service levels (e.g. transit, recreation, parks, solid waste)
- there are uncertain or indirect benefits (e.g. economic development)
- potential for significant ‘free riders’ exist (e.g. recreation)
- only one partner is dominant (e.g. core municipality)
- tax bases are uneven

Such information can be used as a framework to guide Local Government’s approach to developing lasting and effective servicing agreements with existing Indian Bands or future self-governing First Nations.

## **7. CONCLUSION**

In past years, servicing agreements have largely defined the linkages between Local Government (particularly municipalities) and Indian Bands on land and land use issues. These agreements were historically used by Local Governments to secure contributions to the costs of providing a variety of hard and soft services to neighbouring or adjacent Aboriginal communities. Servicing agreements are legal, contractual instruments which have proven mostly effective at achieving Local Government’s goal of cost recovery. However, many outstanding issues – such as partial participation, representation and valuation – remain.

Of particular interest to Lower Mainland area Local Governments is how the outcome of treaty negotiations will not only impact existing servicing agreements, but also the ability of Local Government’s to enter into these arrangements and resolve disputes with future self-governing First Nations. This paper provides a summary of

---

<sup>14</sup> Ibid.

issues for discussion with provincial representatives and makes a preliminary contribution to understanding the linkages between services, service agreements and treaty negotiations.

File locator: \\GVRDFILE01\LMT\_RECORDS\Work\Issues-Interests\Servicing\Services, Service Agreements & Treaty Negotiations Jan 02(Paper & Matrix).doc

**APPENDIX A**

*LMTAC Member Servicing Agreements Summary*

Local Government	Indian Band / First Nation	Type	Costs	Term	Dispute Mechanism
Squamish-Lillooet Regional District (SLRD)	Ts’Kw’aylaxw First Nation	Municipal Services Agreement regarding the Lillooet Landfill	-	-	-
Squamish-Lillooet Regional District (SLRD) With the District of Lillooet and Lillooet & District REC Centre Society	Lillooet Indian Council (Lillooet, Cayoosh Creek, Bridge River, Pavilion Bands)	Joint Use Agreement (Operations) regarding Lillooet District Recreational, Educational and Cultural Centre	-	-	-
Squamish-Lillooet Regional District (SLRD) With the Village of Pemberton	Mount Currie Indian Band	Public Transit Cost Sharing Agreement	The Band and the Village agree to share the net Municipal Transit Costs with the Regional District as follows: <ul style="list-style-type: none"> <li>• Mount Currie 58%</li> <li>• Village of Pemberton 28%</li> <li>• Regional District (Area C) 14%</li> </ul> It is understood that each year the Technical Transit Operating Committee shall review the transit operation including ridership and determine whether the cost sharing amount should be altered for future budgets	October 10, 2000 – March 31, 2001	-
City of Vancouver	Musqueam	Municipal Services	Cost of municipal services provided shall be established by multiplying the tax rate established for the current taxation year for residential property, by the respective total taxable assessed values of the residential property as determined for the year on both Village and Leasehold lands of the Reserve and by multiplying fifty percent of the tax rate established for the current taxation year for each non-residential class of property by the respective total taxable assessed values of each non-residential class of property as determined for the year on both Village and Leasehold Lands of the	January 1, 1999 – December 31, 2000	-

			Reserve.		
District of West Vancouver	Squamish First Nation	Municipal Services	-	1993 - 2000	-
District of West Vancouver	Squamish First Nation	District of West Vancouver is currently negotiating with the Squamish Nation. The Squamish Nation is in the process of establishing its own Advisory Planning Commission and asked if West Vancouver wanted to have a representative sit on the Commission.	-	-	-
City of Chilliwack	Sto:lo Nation	<p>Non-native housing on First Nations Lands This is an agreement between the developer, the First Nation or band and the City. It lays out the number of units that can be constructed, the standards for construction (sewer, water and sometimes storm water) (in how they connect to our services), the payment options how maintenance is carried out etc. The commercial development is basically the same agreement, between the three parties.</p> <p>Commercial Development on First Nation lands First Nation housing on First Nation lands This is an agreement between the First Nations &amp; the city &amp; covers [see above #1] Building inspection and plan checking agreement. This is a three way agreement between the First Nation, the developer and the city. We charge a per hour fee for these services based on full cost recovery. We have never undertaken these services for a first nations on first nations land development.</p>	-	-	-
City of Port Coquitlam	Kwikwetlem Indian Band	Interim Fire Services agreement (fire fighting and emergency medical response)	The Band shall pay to the City, on or before June 30 <sup>th</sup> in each calendar year of this agreement, an amount determined by dividing the assessed value of all land and improvements in the Reserve by the assessed	June – December 1996  Renewed under Kwayhquitlum Nation Fire Services Agreement Bylaw, 1997, No. 3125	Arbitration

			value of all land and improvements in the City (including the Reserve) & multiplying that figure by the Fire Department's budget for the calendar year. The most recent assessed values at April 30 <sup>th</sup> in each year shall be used for the purposes of this calculation and the Band authorizes the Assessment Authority of BC to enter the Reserve for the purpose of valuing the land and improvements.	Renewed under Kwikwetlem First Nation Fire Services Agreement Bylaw, 2001, No. 3299. Commencement April 9, 2001 until 12:00 noon, December 31, 2005.	
District of North Vancouver	The Council of the Squamish Indian Band	Service Agreement	Any fees which become payable by the Band or by non-Indian occupiers shall take into account local government costs borne by the Band; the effect on those fees of provincial & other grants to the District; the value & benefits to the non-Indian occupiers of the infrastructure & community support provided by the District	undated	-
District of North Vancouver	Tsleil- Waututh Nation (Burrard)	Service Agreement	In arriving at a fee scale for Municipal Services in negotiations for the new Service Agreement, the parties shall take into account values & benefits, recreation facilities, access roads to the reserve, parks, libraries & other community facilities & infrastructure which enhance use of lands by occupiers	November 1994, 10 years	Arbitration
District of North Vancouver	Tsleil-Waututh Nation (Burrard)	Service Agreement	In arriving at a fee scale for Municipal Services in negotiations for the new Service Agreement, the parties shall take into account values & benefits, recreation facilities, access roads to the reserve, parks, libraries & other community facilities & infrastructure which enhance use of lands by occupiers	August 1995, 10 years	Arbitration
District of North Vancouver	Tsleil-Waututh Nation (Burrard)	Service Agreement – "Windsong"	In arriving at a fee scale for Municipal Services in negotiations for the new Service Agreement, the parties shall take into account values & benefits, recreation facilities, access	Commencement 1996 for 10 years	Arbitration

			roads to the reserve, parks, libraries & other community facilities & infrastructure which enhance use of lands by occupiers		
District of North Vancouver	Squamish Nation	Interim Service Agreement	-	January 1998	-
District of North Vancouver	Tsleil-Waututh Nation (Burrard)	As a result of the implementation of independent Band Taxation, the parties wish to enter a new service agreement to replace the Existing service Agreements (Nov 13, 1994, Aug. 28, 1995 and Oct. 16, 1996) such that the District: <ul style="list-style-type: none"> <li>• Provides fire fighting services to the Reserve</li> <li>• Permits storm water and sanitary sewage from properties on the Reserve, other than those properties used for industrial purposes, to be discharged through Band-constructed infrastructure works into the District’s municipal system.</li> <li>• Supplies water through band-constructed infrastructure work to properties on the Reserve, other than those properties used for industrial purposes, and</li> <li>• Provides other works and services to the Reserve and its occupants as are provided to other residents of the District.</li> </ul>	Annual Service Charge- the Band shall pay to the District for the Municipal Services <ul style="list-style-type: none"> <li>(a) in respect of 2000, the sum of \$325,000.00, and</li> <li>(b) in respect of each subsequent calendar year under this agreement, the sum of                         <ul style="list-style-type: none"> <li>• #325,000.00, and</li> <li>• an increase or decrease in the Annual Service Charge equal to the percentage change in the total resident tax levy imposed generally by the District on ratepayers within the District in respect of single and multi-family residential properties; and</li> <li>• a percentage increase or decrease in the Annual Service Charge equal to the number of additional completed units of any development existing the previous calendar year.</li> </ul> </li> </ul>	December 31, 2000-	Arbitration
Corp. of the District of Surrey	Katzie Indian Band	Water Service		Effective commencement date of agreement was Dec 10/1990; *This is an on-going agreement (a specific agreement termination date has purposely not been identified); *Termination of the agreement may occur	-

				<p>in the event that either party is deemed to be delinquent on any of the outlined terms;                  *At any time, either party may opt out of the agreement, for whatever reason, provided that they give the other party six months advanced notice;                  *The initial 5 year term clause in this agreement was reflected at the onset to ensure that the Katzie 1st Nation would provide consistent and timely payment of the required annual levies (which they did and continue to provide without issue);</p>	
Sunshine Coast Regional District (SCRD) and the District of Sechelt	Sechelt Indian Band (also called the Sechelt Indian Government District when they sit as members of the Regional District Board)	No actual Service Agreement in place. However they jointly run, as full and equal partners, the sewer system. The Sechelt Sewage Facilities Commission owns the Dusty Road Plant and the forcemain trunk line.	-	-	-
City of Coquitlam	Kwikwetlem Indian Band	City of Coquitlam pending Service Agreements with Kwikwetlem Indian Band, regarding sewer and water service, to be completed 2002	-	-	-
Township of Langley	Katzie Indian Band Kwantlen Indian Band	Municipal Water Service Agreement in Northern part of Langley Township (Awaiting further information)	-	-	-
Township of Langley	Matsqui Indian Band	Municipal Services to Matsqui Indian Band Reserve in Southeast part of Langley Township (Awaiting further information)	-	-	-
Township of Langley	Katzie Indian Band	The Katzie Band has approached the Township to determine whether an operating agreement can be negotiated in order for sanitary sewage from the reserve to be pumped	In addition to reimbursing the township's operating costs through a volume use charge, the Band would be responsible for all initial and future capital costs, including the cost of a new	-Langley Township staff authorized by Council to negotiate terms for an operating agreements with the Katzie Indian Band and to make	-

		through the Township's sewage collection system to the GVS&DD trunk.	sewage pumping station on reserve property. The Township would be responsible for all aspects of day to day system operation.	application to other authorities to obtain required permits.	
<b>The following municipalities have indicated that they have no service agreements in place with First Nations.</b>					
Village of Anmore					
Corporation of Delta					
GVRD Electoral Area 'A' University Endowment Lands					
Sunshine Coast Regional District, District of Sechelt					
City of New Westminster					
Village of Belcarra					
City of North Vancouver					
City of Langley					
City of Richmond					
City of Coquitlam (Pending)					
Bowen Island					
<b>The following municipalities have not indicated whether or not they have any service agreements in place with First Nations</b>					
City of Burnaby					
Village of Lions Bay					
District of Maple Ridge					
District of Pitt Meadows					
City of Port Moody					
City of White Rock					

Matrix current as of: January 02, 2002

\\GVRDFILE01\LMT\_RECORDS\Work\Issues-Interests\Servicing\Services, Service Agreements & Treaty Negotiations Jan 02(Paper & Matrix).doc