

MEMORANDUM OF UNDERSTANDING

between

THE PROVINCE OF BRITISH COLUMBIA

and

THE UNION OF

BRITISH COLUMBIA MUNICIPALITIES

on

LOCAL GOVERNMENT PARTICIPATION IN THE NEW RELATIONSHIP WITH FIRST NATIONS IN BC



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MUNICIPALITIES



This Memorandum of Understanding (MOU) replaces a previously signed MOU and two supporting Protocol Agreements which dealt with local government participation in treaty negotiations. This new MOU incorporates the spirit and intent of those earlier commitments and extends them to include the negotiation and implementation of the full range of agreements encompassed by the Province's New Relationship with First Nations in B.C.

THE PARTIES:

The parties to this MOU are:

- The Province of British Columbia (the Province) as represented by the Ministry of Aboriginal Relations and Reconciliation (MARR); and
- The Union of British Columbia Municipalities (UBCM) representing all municipalities and regional districts of British Columbia.

WHEREAS:

The Parties agree that recent court decisions have resulted in changes to the way the Crown consults with First Nations with respect to decisions made by the Crown that have the potential to impact Aboriginal rights and title.

The Parties acknowledge that the Province and B.C. First Nations' organizations are working together to develop a new government-to-government relationship to improve the process of decision making as it relates to land, resources and economic development.

The Parties recognize that local government jurisdictions may be affected by the negotiation of land, resource and economic development agreements with First Nations.

The Parties accept that local government constitutes a unique and special interest in the negotiation of a range of agreements with First Nations including modern day treaties and non-treaty land, resource and economic development arrangements.

The Parties acknowledge that local governments are developing working relationships with their First Nations neighbours and that this MOU encourages local governments and First Nations to communicate and inform each other about matters of mutual interest.

THEREFORE:

This MOU reflects the development of the relationship between the Parties in response to the evolution of the treaty process and progress made since the New Relationship vision document was developed in 2005. It defines a renewed commitment by the Parties to:

- continue a process for local government participation in the negotiation and implementation of treaties;
- consult and exchange information with local governments on other agreements outside the B.C. treaty process; and
- consult on matters of mutual interest including those matters that will have a significant impact on local government jurisdiction.

The Hon. Michael de Jong
Minister of Aboriginal Relations and Reconciliation

Susan Gimse, President
Union of BC Municipalities

Terry Raymond, Chair
First Nations Relations Committee, UBCM

Date

TOPICS

The Province will share information, consider local government interests and seek advice on matters affecting local government jurisdiction including but not limited to the following:

- Land management and land use planning
- Land selection
- Dispute resolution
- Property taxation
- Environmental assessment and protection
- Local government access to resources for public purposes and access to adjacent lands
- Servicing arrangements
- Governmental relations
- Economic development

CONSULTATION AND INFORMATION SHARING PRINCIPLES

The Parties agree to the following principles governing consultation and information sharing:

- flexibility for local government to identify and represent their interests in a way that they consider appropriate to their local circumstances;
- early notice to local government of a matter that may affect local government jurisdiction;
- sufficient information early on and reasonable time for local government to document their interests and views and to provide advice to provincial negotiators;
- due consideration of local government interests, views and advice;
- a response from provincial negotiators on how local government advice was used; and
- regular information exchange between the Province and local government.

DEFINITIONS

The following definitions cover the types of agreements referred to in this MOU:

Treaty: a comprehensive agreement negotiated among B.C., Canada and a First Nation under the B.C. Treaty Commission process that is a full and formal expression of reconciliation between First Nations and the Crown.

Treaty Interim Measure (IM): a temporary arrangement relating to lands and resources reached between a First Nation and B.C. or one of its agencies pre-treaty.

Treaty Related Measure (TRM): a temporary arrangement negotiated by B.C., Canada and a First Nation at a negotiation table that is tied directly to treaty topics under negotiation. They are cost-shared between Canada and the Province.

Incremental Treaty Agreement (ITA): a legally-binding, longer term arrangement negotiated by B.C., Canada and a First Nation at a treaty negotiation table.

An ITA permits the parties to conclude agreements on topics typically addressed under treaty negotiations and to implement the agreement in advance of a final treaty.

Other Agreements: refers to land, resource or economic development agreements negotiated between a First Nation and the Province outside the B.C. treaty process.

ROLES AND RESPONSIBILITIES RESPECTING TREATY NEGOTIATIONS, TREATY-RELATED MEASURES, INCREMENTAL TREATY AGREEMENTS, AND TREATY INTERIM MEASURES

The Province

Structure: The Chief Negotiator leads the provincial negotiating team in all aspects of the negotiations and provides direction to all team members.

Information: Provincial negotiators will, in a timely manner, provide their local government representative with table-specific agendas, work plans, documents for discussion and other relevant information.

Consultation: Provincial negotiators will consult and exchange information in a timely manner with a Treaty Advisory Committee (TAC) or alternate structure on issues considered important by either the Province or the local government according to the consultation principles stated in this MOU.

Side Tables: Where the local government and First Nation agree, the provincial negotiators will undertake to establish a side table or working group for local government and the First Nation to negotiate and come to agreement on issues related to the future local government-First Nation relationship. The provincial negotiators will give full and fair consideration to results produced and agreements reached by these tables.

Low Activity Tables: Where the level of activity at a treaty table is low, the provincial negotiators will keep local government representatives informed of any developments at the table through regular information updates and exchanges.

Funding: Subject to budgeting allocations, the Province will fund local government representatives to participate at a treaty negotiation table if they are:

- participating in Stage 4 or Stage 5 treaty negotiations;
- required to participate directly with First Nations in land, jurisdiction or servicing discussions; and
- required to participate directly in the negotiation of a treaty-related measure, treaty interim measure or incremental treaty agreement.

With respect to the operation of TACs or alternate joint structures, the Province will consider predictable annual funding, as required and on a case-by-case basis.

Local Government

Role: Local government representatives are members and respected advisors on provincial treaty negotiation teams until a negotiation is concluded and the treaty takes effect.

Treaty Implementation: Prior to the effective date, local government and the Province will discuss local government involvement in treaty implementation and make every effort to come to an agreement that identifies the significant issues of interest to local government and how local government will be involved/informed during the implementation of these issues.

On the effective date, the First Nation and neighbouring local governments will deal directly with each other. Local governments and the First Nation will work together to develop and build their relationship.

Attendance: Local government representatives will have the opportunity to attend treaty-related discussions and negotiations including main tables, side tables, working groups and bilateral meetings.

Interests: Local government representatives are responsible for defining and representing their interests in matters related to negotiations and for sharing these interests and other relevant information with the provincial negotiating team.

Providing advice: Local government representatives will engage in discussions and contribute advice on all matters concerning the future local government-First Nation relationship.

Structure: Within the area defined by a First Nation's Statement of Intent, local governments will collectively determine how they will be organized to participate in a negotiation – e.g. as a TAC or an alternate structure – and will advise the appropriate provincial negotiator of their chosen structure as well as the primary contact(s) (e.g. Committee Chair).

Involvement: Based on their interests and the level of activity at the specific treaty table, local governments may determine the level to which they wish to be involved ranging from receiving information to participation at meetings and providing advice.

Confidentiality: Local government representatives who participate in TACs or alternate structures are subject to any and all confidentiality rules and practices that apply to a negotiation.

They may, after consultation with the lead provincial negotiator, share confidential information with their respective councils and regional district boards, other local governments or TACs, and with UBCM on an in-camera basis.

ROLES AND RESPONSIBILITIES RESPECTING OTHER AGREEMENTS

The Province

The Province will initiate contact with a local government when:

- an agreement with a First Nation on a matter relating to land, resources or economic development will be negotiated; and
- the outcome of negotiations will affect the local government's jurisdiction, operations or provision of services.

The Province will consult and exchange information in a timely manner with the local government according to the consultation and information sharing principles stated in this MOU.

The Province and the local government will jointly determine the level of the local government's involvement ranging from receiving information to participation at meetings and providing advice.

Local Government

Local governments will serve as respected advisors to the Province in negotiations that affect their interests.

Based on their interests and the level of activity of a negotiation, local governments and the Province will jointly determine the level of involvement ranging from receiving information to participation at meetings and providing advice.

Local governments are responsible for defining and sharing their interests and other relevant information with the Province, and will advise the Province how their interests may be addressed.

Local government representatives are subject to any and all confidentiality rules and practices that apply to a negotiation. They may, after consultation with the Province, share confidential information with their respective councils and regional district boards, other local governments or TACs, and with UBCM on an in-camera basis.

COMMUNICATION BETWEEN THE PROVINCE AND THE UBCM

The Province will share information with UBCM and/or a body designated by the UBCM on the Province's approaches to the development of non-treaty initiatives under the New Relationship. The Parties will work together on identifying the appropriate avenues for this information sharing.

The Province will provide UBCM with:

- a list of all concluded agreements with First Nations updated semi-annually; and
- a current list of provincial government contacts updated semi-annually.

UBCM will monitor the progress of provincial notification and consultation with local governments on relevant agreements with First Nations.

REVIEW

This MOU will be reviewed three years from the date of signing unless the Parties jointly agree to an earlier review.