



K'ÓMOKS FIRST NATION DRAFT CONSTITUTION (Consultation Draft)

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K'ÓMOKS FIRST NATION DECLARATION OF IDENTITY

We, the people of *K'ómoks First Nation*, by this Constitution declare our distinct identity as a Nation and claim our rightful place as equal participants in Canadian society.

We have existed from time immemorial and have occupied, owned and used the lands, waters and resources of our traditional territory throughout history. Our traditional territory extends from the mountain tops to the off-shore areas as shown on the map attached as Appendix 1 to this Constitution.

We draw our identity from our Pentlatch, Coast Salish and Kwakiulth traditions, from our land and from our rich heritage, culture, language and our stories passed on from our Elders, myths and oral traditions.

We honour our ancestors, respected Elders, Hereditary Chiefs and our families. **We** honour our children in our determination to see these values carried into the future. We are committed to the values that have preserved us, values that provide us dignity and enhance our humanity. **As** self-determining peoples, we accept the responsibilities inherent in self-governance and seek to self-govern with wisdom and respect for all people. Through the act of self-governance, we assume the power to preserve our natural world and enhance our identity.

CHAPTER 1: INDIVIDUAL RIGHTS, FREEDOMS AND RESPONSIBILITIES OF THE K'ÓMOKS FIRST NATION

Membership

- 1.1. An individual is entitled to be a *K'ómoks First Nation* Member if that individual:
- a) is enrolled or is eligible for enrolment under the *K'ómoks First Nation* Treaty; or,
 - b) was registered or entitled to be registered on the *K'ómoks First Nation* Indian Band list on the day immediately prior to the Effective Date of the *K'ómoks First Nation* Treaty.

K'ómoks First Nation Membership Criteria that differs from the criteria set out in the *K'ómoks First Nation* Treaty must be approved in a referendum in which fifty percent plus one of the eligible voters vote in favour of the new Membership Criteria.

Rights and Freedoms

- 1.2. Every *K'ómoks First Nation* Member enjoys all of the individual rights and freedoms guaranteed under the *Constitution of Canada*.
- 1.3. All *K'ómoks First Nation* Members are equal under this Constitution and, based on this equality and in accordance with *K'ómoks First Nation* customary law, possess the right to:
 - a) participate in the *K'ómoks First Nation* political activities, elections and government as set out in *K'ómoks First Nation's* law;
 - b) be informed about and consulted regarding the *K'ómoks First Nation* affairs;
 - c) express opinions and views on the *K'ómoks First Nation* affairs without retribution;
 - d) hold *K'ómoks First Nation* government accountable to this Constitution;
 - e) equal employment opportunities within the First Nation's public administration;
 - f) equal provision of public services by the *K'ómoks First Nation*;
 - g) pursue their fullest personal and community potential. utilize the *K'ómoks* languages;
 - h) participate in *K'ómoks* culture and *traditions* consistent with established practices and customs; and,
 - i) reside on *K'ómoks First Nation's* lands in accordance with this Constitution and *K'ómoks First Nation's* laws.
- 1.4. Every *K'ómoks First Nation* citizen accepts the responsibilities of citizenship including:
 - a) upholding and respecting this Constitution and *K'ómoks First Nation's* laws;
 - b) acting in good faith towards fulfilling all personal obligations with respect to the care and guidance of our children, Elders and families;
 - c) adhering to the teachings related to our Pentlatch, Coast Salish and Kwakiulth traditions by promoting *K'ómoks First Nation's* values, culture and languages;
 - d) promoting a healthy and vibrant community for all members.

Non- K'ómoks First Nation Residents

- 1.5. Non-members living on *K'ómoks First Nation's* lands have the right to participate in all decision-making processes respecting matters that directly and significantly affect them, in accordance with *K'ómoks First Nation's* laws.

CHAPTER 2: GOVERNMENT STRUCTURE

K'ómoks First Nation Council

- 2.1. The *K'ómoks First Nation* Legislature will be composed of five (5) members as follows:
 - a) one (1) elected Legislative Chief, and
 - b) four (4) elected Legislative Members.
- 2.2. Any *K'ómoks First Nation* Member who has attained the age of eighteen (18) years is eligible to be a member of the *K'ómoks First Nation* Council.
- 2.3. All meetings of the *K'ómoks First Nation* Council will be chaired by the Chief Councillor or a designate.
- 2.4. The *K'ómoks First Nation* Council may designate an elected Councillor as vice-Chief Councillor who may assume the duties and responsibilities of the Chief Councillor on an interim basis in the event that the Chief Councillor is unable to carry out the duties and responsibilities of that office.
- 2.5. Unless otherwise provided by the *K'ómoks First Nation* Council, all meetings of the *K'ómoks First Nation* Council will be open to all *K'ómoks First Nation* members, and the *K'ómoks First Nation* Council will develop its own procedures for *K'ómoks First Nation* Council meetings.
- 2.6. *K'ómoks First Nation* Councillors will be elected in accordance with the *K'ómoks First Nation Election Act*.
- 2.7. The *K'ómoks First Nation* Council will have the authority and responsibility for the enforcement of *K'ómoks First Nation's* laws, the management of *K'ómoks First Nation* affairs, *K'ómoks First Nation* financial administration and the operations of the *K'ómoks First Nation* Government in accordance with the laws and policies of the *K'ómoks First Nation*.

Committees

- 2.8. The *K'ómoks First Nation* Council, may establish either Standing or Special Committees to assist in the discharge of its authority and responsibilities.

- 2.9. The Committees may include, but not be limited to:
- a) Finance,
 - b) Treaty Implementation,
 - c) Economic Development, and
 - d) Membership.
- 2.10. The terms of reference for any committee will be established by a law enacted by the *K'ómoks First Nation Council*.
- 2.11. The chairperson for each Standing Committee will be chosen by the *K'ómoks First Nation Council*.

K'ómoks First Nation Council as Executive

- 2.12. The *K'ómoks First Nations Executive Branch* will be the elected Chief Councillor and Councillors who will hold executive portfolios.
- 2.13. The Chief Councillor in consultation with the *K'ómoks First Nation Council* has the authority to establish or dissolve executive portfolios. The Chief Councillor, and members of the Executive, will have authority and responsibility for:
- a) promoting *K'ómoks First Nation's* values, culture, traditions and language
 - b) representing the *K'ómoks First Nation Government* in relations with local, provincial, federal, and other First Nation governments;
 - c) ensuring that the *K'ómoks First Nation* citizens are fully informed at the Annual Treaty Meeting and any other special meeting called on all issues that affect the *K'ómoks First Nation*;
 - d) developing and maintaining effective systems of communication with *K'ómoks First Nation* citizens.;
 - e) protecting and enhancing *K'ómoks First Nation's* Aboriginal and Treaty rights;
 - f) ensuring that the *K'ómoks First Nation Constitution* and *K'ómoks First Nation's* laws and policies are adhered to and enforced;
 - g) promoting and maintaining a sound *K'ómoks First Nation* economy. ;
 - h) ensuring the sound management and administration of the *K'ómoks First Nation Government*; and
 - i) establishing committees.

K'ómoks First Nation Council as Legislature

- 2.14. All legislative powers will be vested in the *K'ómoks First Nation Council*.
- 2.15. A *K'ómoks First Nation* law will have full force and effect only if
 - a) the proposed law has been passed by a majority of a quorum of *K'ómoks First Nation Council Members*;
 - b) the proposed law has been certified by the Chief Councillor, and;
 - c) meets any further criteria set out in this Constitution.
- 2.16. Except for *K'ómoks First Nation's* customary laws, all *K'ómoks First Nation's* laws will be published and made available to *K'ómoks First Nation Members* within ten days of coming into effect. (ended here Oct. 12, 2011.)

CHAPTER 3: K'ÓMOKS FIRST NATION PEOPLE'S ASSEMBLY

- 3.1. There will be convened at least once annually a general assembly of *K'ómoks First Nation* members to be known as the Annual People's Assembly at which time the *K'ómoks First Nation Council* will provide current audited financial statements for all *K'ómoks First Nation's* businesses and set out the strategic objectives for the coming year, including the legislative agenda for that year.
- 3.2. The Chief Councillor, in consultation with the *K'ómoks First Nation Council* may call a Special People's Assembly to inform the *K'ómoks First Nation Membership* about important *K'ómoks First Nation's* issues, including the development of *K'ómoks First Nation* laws.
- 3.3. *K'ómoks First Nation's* laws must be presented to the *K'ómoks First Nation People's Assembly* for discussion prior to final approval by the *K'ómoks First Nation Council* respecting
 - a) Financial Management,
 - b) Land Management,
 - c) Membership Criteria,
 - d) Conflict of Interest, and
 - e) Constitutional amendments
- 3.4. Every *K'ómoks First Nation* member has the right to attend and speak at the *K'ómoks First Nation People's Assembly*.

- 3.5. The People's Assembly may, by majority vote of those in attendance, make recommendations to the *K'ómoks First Nation* by way of resolution.
- 3.6. The People's Assembly may by way of a resolution passed in accordance with the *K'ómoks First Nation* referendum regulations require the *K'ómoks First Nation* Council to hold a referendum on a specific issue.
- 3.7. All recommendations passed by the People's Assembly must be considered and voted on by the *K'ómoks First Nation*.
- 3.8. Non-member residents may also be invited to attend but may be excluded where discussions primarily involve matters internal to the *K'ómoks First Nation*
- 3.9. The *K'ómoks First Nation* People's Assembly may establish its own rules of procedure.
- 3.10. There must be at least thirty (30) days notice provided for both the *K'ómoks First Nation* Annual People's Assembly or a Special People's Assembly.

CHAPTER 4: LAW MAKING AUTHORITY

- 4.1. The *K'ómoks First Nation* has the inherent right to self-government and, among other things, all law-making authority set out in the *K'ómoks First Nation* Treaty, all authority as set out in the *Indian Act*, and all law-making authority set out in agreements with the Governments of Canada or British Columbia, including making laws in relation to:
 - a) the election, administration, management and operation of *K'ómoks First Nation* including
 - i. the establishment of *K'ómoks First Nation* Public Institutions, including their respective powers, duties, composition, and membership but any registration or incorporation of a *K'ómoks First Nation* Public Institution must be under Federal Law or Provincial Law;
 - ii. the powers, duties, responsibilities, remuneration, and indemnification of members, officials, and appointees of *K'ómoks First Nation* Institutions;
 - iii. the establishment of *K'ómoks First Nation* Corporations, but the registration or incorporation of *K'ómoks First Nation* Corporations must be under Federal Law or Provincial Law;
 - iv. financial administration of *K'ómoks First Nation* and *K'ómoks First Nation* Institutions; and,
 - v. elections, by-elections, and referenda;

- b) providing *K'ómoks First Nation* Members with reasonable access to information in the custody or control of a *K'ómoks First Nation* Institution;
- c) providing persons other than *K'ómoks First Nation* Members with reasonable access to information in the custody or control of a *K'ómoks First Nation* Institution regarding matters that directly and significantly affect those persons;
- d) *K'ómoks First Nation* Membership;
- e) the use, possession, management and disposition of assets located on *K'ómoks First Nation* lands and assets located off *K'ómoks First Nation* lands;
- f) the adoption of *K'ómoks First Nation* children in British Columbia and the adoption of *K'ómoks First Nation* Members of Children who reside on *K'ómoks First Nation* land;
- g) Child Protection Services on *K'ómoks First Nation* lands for children of *K'ómoks* families and children who are not members of *K'ómoks First Nation* families;
- h) authorizing individuals to practise as aboriginal healers on *K'ómoks First Nation* Lands;
- i) health services on *K'ómoks First Nation* Lands for *K'ómoks First Nation* Members or provided by a *K'ómoks First Nation* Institution;
- j) family and social services provided by a *K'ómoks First Nation* Institution, including
 - i. income assistance,
 - ii. social developing,
 - iii. housing, and
 - iv. family and community services;
- k) the marriage rites and ceremonies of the *K'ómoks First Nation* culture and the designation of *K'ómoks First Nation* Members to solemnize marriages;
- l) child care services on *K'ómoks First Nation* Lands;
- m) the devolution of Cultural Property of a *K'ómoks First Nation* Member who dies intestate;
- n) the *K'ómoks First Nation* language and culture education provided by a *K'ómoks First Nation* Institution on *K'ómoks First Nation* Lands for

- i. the certification and accreditation of teachers for *K'ómoks First Nation* language and *K'ómoks First Nation* culture; and,
 - ii. the development and teaching of *K'ómoks First Nation* language and *K'ómoks First Nation* culture curriculum;
- o) kindergarten to grade 12 education on *K'ómoks First Nation* Lands for *K'ómoks First Nation* Members or provided by a *K'ómoks First Nation* Institution;
- p) post-secondary education provided by a *K'ómoks First Nation* Institution on *K'ómoks First Nation* Lands, including
 - i. the establishment of post-secondary education institutions with the ability to grant degrees, diplomas or certificates;
 - ii. the determination of the curriculum for post-secondary education institutions established by *K'ómoks First Nation*; and,
 - iii. the provision for and coordination of adult education programs;
- q) its rights, powers, duties, and obligations regarding its local authority under Federal Law and Provincial Law in respect of emergency preparedness and emergency measures on *K'ómoks First Nation* Lands;
- r) the regulation, licensing and prohibition of business on *K'ómoks First Nation* Lands, including the imposition of licence fees or other fees;
- s) the regulation, control or prohibition of any actions, activities or undertakings on *K'ómoks First Nation* Lands that constitute, or may constitute, a nuisance, a trespass, a danger to public health, or a threat to public order, peace or safety;
- t) buildings and structures on *K'ómoks First Nation* Lands;
- u) traffic, parking, transportation and highways on *K'ómoks First Nation* Lands to the same extent municipal governments have authority to make in relation to traffic, parking, transportation and highways in municipalities in British Columbia;
- v) the imposition of sanctions for the violation of *K'ómoks First Nation* law, including
 - i. fines,
 - ii. administrative penalties,
 - iii. community service,
 - iv. restitution, and

- v. imprisonment;
- w) the enforcement of *K'ómoks First Nation* laws including
 - i. the appointment of officers to enforce *K'ómoks First Nation* laws; and,
 - ii. powers of enforcement, provided such powers will not exceed those provided by Federal law or Provincial law for enforcing similar law in British Columbia;
- 4.2. To the extent that the *K'ómoks First Nation* Council chooses not to exercise a law-making authority set out in paragraph 4.1 federal or provincial laws in relation to that authority will continue to apply until such time as the authority is exercised by the *K'ómoks First Nation* Council.
- 4.3. In the event of an inconsistency or conflict between this Constitution and the provisions of any *K'ómoks First Nation's* law, the Constitution prevails and the *K'ómoks First Nation* law is, to the extent of the inconsistency or conflict, of no force or effect.

CHAPTER 5: K'ÓMOKS FIRST NATION ELECTIONS

- 5.1. The *K'ómoks First Nation* Council will enact a *K'ómoks First Nation Election Act* that will come into force and effect on or before the Effective Date of the *K'ómoks First Nation* Treaty.
- 5.2. The *K'ómoks First Nation Election Act* will include provisions:
 - a) specifying the term of office, not exceeding three (3) years, of elected members of the *K'ómoks First Nation* Council;
 - b) prescribing the procedures for selecting the members of the *K'ómoks First Nation* Council and requiring that electing members to the *K'ómoks First Nation* Council will be done by secret ballot;
 - c) Add disclosure paragraph
 - d) prescribing the qualifications of persons to vote at elections of the *K'ómoks First Nation* Council, to run for election to the *K'ómoks First Nation* Council and to nominate candidates for elections;
 - e) respecting the manner of filling vacancies on the *K'ómoks First Nation* Council;
 - f) specifying the grounds and establishing a process for appealing the results of the elections;

- g) specifying the grounds and establishing a process for removal from office of members of the *K'ómoks First Nation Council*;
 - h) providing for the establishment of an Election Board to monitor and implement the election rules and procedures and that no member of the *K'ómoks First Nation Council* will be a member of the Election Board; and,
 - i) providing for the appointment of a Chief Electoral Officer and other Electoral Officers.
- 5.3. There will be an election at least every three (3) years upon a date set by the *K'ómoks First Nation Council*.

CHAPTER 6: THE K'ÓMOKS FIRST NATION LANDS

- 6.1. As of the Effective Date of the *K'ómoks First Nation Treaty*, the underlying title to all *K'ómoks First Nation's* lands will be vested collectively in the *K'ómoks First Nation*.
- 6.2. On or before the Effective Date of the *K'ómoks First Nation Treaty*, the *K'ómoks First Nation Council* will bring into force and effect a *K'ómoks First Nation Land Code*.
- 6.3. The *K'ómoks First Nation Land Code* will address, among other things:
- a) the nature and extent of the rights of individual *K'ómoks First Nation Members* in and to *K'ómoks First Nation's* lands;
 - b) the powers and authority of the *K'ómoks First Nation Council* to administer, regulate, expropriate and grant interests in and to *K'ómoks First Nation's* lands;
 - c) land transactions that will require approval of the *K'ómoks First Nation Members* by way of a referendum;
 - d) registering interests in the *K'ómoks First Nation's* lands;
 - e) procedures for addressing the interests of non-*K'ómoks First Nation* individuals on *K'ómoks First Nation's* lands;
 - f) the regulation of mortgages and other forms of security in relation to *K'ómoks First Nation's* lands;
 - g) procedures for zoning and land use planning; and,
 - h) any other matter that the *K'ómoks First Nation Council* deems necessary for a comprehensive Land Code.
- 6.4. The quantity of *K'ómoks First Nation's* lands as set out in the *K'ómoks First Nation Treaty* will not be reduced except as provided for in the *K'ómoks First Nation Treaty*.

- 6.5. The boundaries of the *K'ómoks First Nation's* lands as set out in the *K'ómoks First Nation Treaty* will not be altered except:
 - a) as provided for in the *K'ómoks First Nation Treaty*, or
 - b) if at least sixty percent of *K'ómoks First Nation* eligible voters approve the boundary alteration in a referendum.
- 6.6. Except as set out in the *K'ómoks First Nation Treaty* and notwithstanding the conveyance or alienation of any estate or interest in the *K'ómoks First Nation's* lands, all lands that are the subject of such estate or interest will continue to be *K'ómoks First Nation Treaty Settlement Lands* in accordance with the *K'ómoks First Nation Treaty* and subject to the jurisdiction and authority of the *K'ómoks First Nation Government*.

CHAPTER 7: FINANCIAL ADMINISTRATION AND ACCOUNTABILITY

- 7.1. On or before the Effective Date of the *K'ómoks First Nation Treaty*, the *K'ómoks First Nation Council* will bring into force and effect a *K'ómoks First Nation's Financial Administration Act* that is:
 - a) provides for the effective and efficient use of *K'ómoks First Nation's* financial resources;
 - b) is modeled on accounting standards comparable to those generally accepted for governments of a similar size in Canada.
- 7.2. The *K'ómoks First Nation's Financial Administration Act* will establish a Standing Committee on Finance and such committee will provide advice and recommendations to the *K'ómoks First Nation Council* on financial matters.

CHAPTER 8: CODE OF CONDUCT AND CONFLICT OF INTEREST

- 8.1. The *K'ómoks First Nation Government* will be administered in a manner that:
 - a) adheres to the highest ethical standards;
 - b) effectively and efficiently uses the resources of the *K'ómoks First Nation*;
 - c) provides services on an equitable and impartial basis;
 - d) responds in a timely and accessible manner; and,
 - e) conforms to the Conflict of Interest guidelines established for the *K'ómoks First Nation Government*.
- 8.2. All elected members of the *K'ómoks First Nation Government* will take an Oath of Office sworn and signed at the *K'ómoks First Nation People's Assembly*.

- 8.3. On the Effective Date of the *K'ómoks First Nation Treaty*, the *K'ómoks First Nation Council* will bring into force and effect a Code of Conduct and Conflict of Interest guidelines to apply to all elected representatives.

CHAPTER 9: DISPUTE RESOLUTION and K'ÓMOKS FIRST NATION JUSTICE TRIBUNAL

- 9.1. On the Effective Date of the *K'ómoks First Nation Treaty*, the *K'ómoks First Nation Council* will bring into force and effect a *K'ómoks First Nation law* which will provide for, among other things, a process for challenging the validity of *K'ómoks First Nation laws* and a process for appealing or reviewing administrative decisions of the *K'ómoks First Nation Government* or *K'ómoks First Nation public institutions*.
- 9.2. The law referred to in section 8.1 will create the *K'ómoks First Nation Justice Tribunal* which is empowered to address disputes within the *K'ómoks First Nation* and will be:
 - a) composed of individuals independent from the *K'ómoks First Nation Government*;
 - b) provided with the authority to conduct hearings, make recommendations and adjudicate disputes and render decisions over
 - i. administrative decisions;
 - ii. disputes within the community;
 - iii. the validity of *K'ómoks First Nation's laws*.

The *K'ómoks First Nation Justice Tribunal* will consist of three (3) members with one chosen by the Chief Councillor and two (2) by the *K'ómoks First Nation People's Assembly*.

CHAPTER 10: RATIFICATION OF THIS CONSTITUTION

- 10.1. This Constitution will be formally approved in a referendum in which at least fifty (50) percent plus one (1) of *K'ómoks* eligible voters, as defined by the *K'ómoks First Nation Treaty*, vote to approve the Constitution.
- 10.2. This Constitution will be ratified prior to the vote held to ratify the *K'ómoks First Nation Treaty*.
- 10.3. This Constitution, if ratified, will come into force and effect on the Effective Date of the *K'ómoks First Nation Treaty*.

CHAPTER 11: CONSTITUTIONAL AMENDMENTS

11.1. An amendment to this Constitution may be initiated by:

- a) a resolution of the *K'ómoks First Nation* Peoples Assembly; or
- b) a resolution passed by a majority of a quorum of the *K'ómoks First Nation* Council.

11.2. This Constitution may be amended by way of a referendum in which a majority (50% + 1) of those voting cast their vote or 50% +1 of eligible voters) in favour of the amendment. (Members to decide on these 2 choices)

11.3. Within two years of the Effective Date of the *K'ómoks First Nation* Treaty, the *K'ómoks First Nation* Council will bring into force and effect procedures governing the conduct of any Constitutional amendment referendum.

*****Insert SOI Map as Appendix