



## K'ÓMOKS CONSTITUTION

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## **VISION**

### ***həhewčis; Hayuthela la xens: Moving Forward Together***

We, the K'ómoks people envision a prosperous and healthy Nation, in which we exercise our rights and title throughout our territory, honouring our people, lands, waters, cultures and languages.

## **DECLARATION OF IDENTITY AND VALUES**

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

**We** have existed since time immemorial, and occupied, owned and used the lands, waters and resources of our traditional territory throughout history. Our traditional territory extends from the Salmon River to the Englishman River, and from the mountaintops to the territorial waters.

Our identity flows from our Pentlatch, Island K'ómoks, and Kwakwaka'wakw, ancestors; and from our rich traditions and heritage, cultures, languages, land, water and stories passed on from our elders.

**We** honour our ancestors, our respected elders, our hereditary chiefs and our families.

**We** are committed to the fundamental values that have preserved us and continue to provide us with dignity and enhance our humanity.

**Our** fundamental values include:

- Protecting the lands, waters and resources that have sustained us;
- Fostering responsible self-government through openness and transparency;
- Communicating effectively with our members and our neighbours;
- Promoting a healthy and prosperous community;
- Ensuring we are responsible and self-sufficient; and
- Fostering our minds and spirits through our culture.

**We** honour our children in our determination to see these values carried into the future.

**As** a self-determining people, we accept the responsibilities inherent in self-governance and seek to govern with wisdom and respect for all people. Through the exercise of our inherent right to self-government, we assume the power to preserve our environment and enhance our identity.

## **1. PURPOSE**

- 1.1. The K'ómoks Constitution sets out the relationship between K'ómoks Members and the K'ómoks Government.
- 1.2. The K'ómoks Constitution is the supreme law of K'ómoks subject only to the K'ómoks Treaty, and any K'ómoks Law that is inconsistent with the provisions of the K'ómoks Constitution is, to the extent of the inconsistency, of no force or effect.

## **2. MEMBERSHIP, RIGHTS, AND RESPONSIBILITIES**

### **Membership Criteria**

- 2.1 An individual is entitled to be a K'ómoks Member if that individual:
  - a. is enrolled or is eligible for enrollment under the K'ómoks Treaty; or
  - b. was registered or entitled to be registered on the K'ómoks First Nation Membership List on the day immediately prior to the Effective Date of the K'ómoks Treaty.
- 2.2 Changes to the Membership Criteria require a referendum in which at least
  - a. fifty percent (50%) plus one (1) of all Eligible Voters on the Official Voters List vote; and
  - b. fifty percent (50%) plus one (1) of those who vote approve the proposed changes.

### **Rights and Freedoms**

- 2.3 Every K'ómoks Member enjoys all of the individual rights and freedoms guaranteed under the Constitution of Canada.
- 2.4 Every K'ómoks member may exercise K'ómoks Section 35 Rights as set out in the Treaty.
- 2.5 All K'ómoks Members are equal under this Constitution, and have the right to:
  - a. participate in K'ómoks political elections in the manner set out in K'ómoks Law;
  - b. be informed regarding K'ómoks public affairs;
  - c. express, in a civil manner, opinions and views on K'ómoks affairs;
  - d. hold the K'ómoks Government accountable to this Constitution, in accordance with K'ómoks Law;
  - e. fair and equitable employment opportunities within the K'ómoks Government, K'ómoks Corporations and K'ómoks Public Institutions;
  - f. fair and equitable provision of public services by the K'ómoks Government; and

- g. participate in K'ómoks cultures, languages and traditions.

### **Non-Member Residents**

- 2.6 K'ómoks Institutions will seek the views of Non-Members in decisions of K'ómoks Institutions that directly and significantly affect those Non-Members and give full and fair consideration of such views.
- 2.7 K'ómoks will provide Non-Members with the opportunity to participate in the decision-making processes of a K'ómoks [Public] Institution if the activities of that K'ómoks [Public] Institution directly and significantly affect Non-Members.
- 2.8 Nothing precludes granting additional rights to Non-Member spouses of K'ómoks Members.

## **3. K'ÓMOKS GOVERNMENT STRUCTURE**

- 3.1 K'ómoks has the inherent right to self-government including the authority to make laws for any matter as set out in the K'ómoks Treaty.
- 3.2 The K'ómoks Government consists of three branches;
  - a. the legislative;
  - b. the executive; and
  - c. the judicial.

### **K'ómoks Legislature**

- 3.3 The K'ómoks Legislature shall be comprised of:
  - a. one (1) Chief elected by Eligible Voters in a K'ómoks Election; and
  - b. six (6) Legislators elected by Eligible Voters in a K'ómoks Election.
- 3.4 The size of the K'ómoks Legislature may be increased by K'ómoks Law, provided that the total number of Legislators, including the Chief, shall not exceed eleven (11).
- 3.5 The K'ómoks Legislature shall designate an elected member of the Legislature as Deputy-Chief who shall assume the duties and responsibilities of the Chief in the event that, in the opinion of the majority of the Legislature, the Chief is unable or unwilling to carry out the duties and responsibilities of that office.
- 3.6 The K'ómoks Legislature shall designate an elected member of the Legislature to chair the sittings of the K'ómoks Legislature.

- 3.7 The law-making authority of K'ómoks is vested in the K'ómoks Legislature.
- 3.8 On the Effective Date, the K'ómoks Legislature shall enact a law setting out the process by which the K'ómoks Legislature shall make laws after the Effective Date.
- 3.9 All laws enacted by the K'ómoks Legislature shall be made publicly available and placed in a K'ómoks Law registry.
- 3.10 The K'ómoks Legislature shall provide for the establishment of K'ómoks Public Institutions.
- 3.11 The K'ómoks Legislature shall establish its own rules and procedures including rules for the establishment of any committees by the legislature.
- 3.12 The K'ómoks Legislature shall approve the budget of the K'ómoks government at least annually.

### **K'ómoks Executive**

- 3.13 The Chief is, *ex officio*, the head of the K'ómoks Executive.
- 3.14 The Chief and the four (4) members of the K'ómoks Legislature with the highest number of votes in the most recent General Election shall serve on the K'ómoks Executive.
- 3.15 Despite section 3.14 a member of the K'ómoks Legislature may decline to serve on the K'ómoks Executive.
- 3.16 Subject to any K'ómoks Law, the K'ómoks Executive shall:
  - a. promote the K'ómoks Vision, the Declaration of Identity and Values, and K'ómoks culture, traditions and languages;
  - b. represent the K'ómoks Government in relations with local, provincial, federal, and First Nation governments;
  - c. convene the K'ómoks People's Assembly in accordance with section 4.1, and ensure that at that Assembly K'ómoks Members are informed of the matters listed in section 4.2;
  - d. ensure effective communication and engagement with K'ómoks Members;
  - e. protect and enhance K'ómoks Section 35 rights;
  - f. ensure that the K'ómoks Constitution, K'ómoks Laws, and K'ómoks Policies are adhered to;
  - g. promote and maintain a sound K'ómoks economy;
  - h. ensure the sound management and administration of the K'ómoks Government;
  - i. approve K'ómoks Policies; and

- j. perform other functions assigned to it under K'ómoks Law.
- 3.17 Subject to any K'ómoks Law, the K'ómoks Executive may establish committees to assist in fulfilling its responsibilities.
- 3.18 The K'ómoks Executive shall establish its own rules of order and procedure and submit those rules for approval of the K'ómoks Legislature.

### **K'ómoks Judiciary**

- 3.19 The K'ómoks Justice Tribunal:
- a. shall be composed of a minimum of three persons;
  - b. must have at least one person appointed to it from among K'ómoks Members; and
  - c. may have non-members appointed to it.
- 3.20 On the Effective Date, the K'ómoks Legislature shall enact a law establishing:
- a. the K'ómoks Justice Tribunal, including its composition, the qualifications of tribunal members and the appointment process.
  - b. a process for judicial review or appeal of administrative decisions of the K'ómoks Government and K'ómoks Public Institutions by the K'ómoks Justice Tribunal, including appeal from the K'ómoks Justice Tribunal to the Supreme Court of British Columbia;
  - c. a process for challenging the validity of K'ómoks Laws; and
  - d. a process for resolving disputes with the K'ómoks Government.
- 3.21 The *Judicial Review Procedure Act* of British Columbia applies to an application for judicial review under section 3.19 (b).

## **4. K'ómoks People's Assembly**

- 4.1 The K'ómoks Executive shall convene at least once annually a general assembly of K'ómoks Members to be known as the K'ómoks People's Assembly.
- 4.2 K'ómoks Executive shall provide to the K'ómoks People's Assembly:
- a. the previous year's audited financial statements of the K'ómoks Government, K'ómoks Public Institutions and K'ómoks Corporations;
  - b. the annual strategic plan of the K'ómoks Government;
  - c. the proposed legislative agenda for the year; and
  - d. information concerning other matters of importance to the K'ómoks First Nation.

- 4.3 The K'ómoks People's Assembly may recommend constitutional amendments to the K'ómoks Legislature by a resolution passed by majority vote of Eligible Voters in attendance
- 4.4 Every K'ómoks Member may participate in the K'ómoks People's Assembly.
- 4.5 Non-Member residents may be invited to attend but may be excluded where discussions involve matters internal to K'ómoks.
- 4.6 The K'ómoks People's Assembly may make recommendations to the K'ómoks Executive by a resolution passed by majority vote of Eligible Voters in attendance.
- 4.7 The rules of order and procedure for the K'ómoks People's Assembly shall be established in legislation enacted by the K'ómoks Legislature.

## **5. K'ÓMOKS ELECTIONS**

- 5.1 All members of the K'ómoks Legislature shall be elected democratically.
- 5.2 Members of the K'ómoks Legislature:
  - a. shall be elected for a term of three (3) years; and
  - b. may serve for more than one (1) term.
- 5.3 On the Effective Date, the K'ómoks Legislature shall enact a K'ómoks Election Law.
- 5.4 The elected K'ómoks First Nation Chief and Council at the Effective Date shall continue as the K'ómoks Legislature until such time as elections can be held under this Constitution and the K'ómoks Election Law.
- 5.5 The first election for the Chief and the K'ómoks Legislature shall be initiated within six (6) months of the Effective Date.
- 5.6 The first election must be completed within one (1) year of the Effective Date.
- 5.7 Persons elected shall take office upon completion of the election.

## **6. TRADITIONAL TERRITORY AND K'ÓMOKS LANDS**

- 6.1 Since time immemorial, K'ómoks has used and occupied the K'ómoks Traditional Territorial lands and waters, including K'ómoks Lands.
- 6.2 K'ómoks has ownership and jurisdiction over K'ómoks Lands and water rights as set out in the K'ómoks Treaty.
- 6.3 K'ómoks has the authority to grant interests in K'ómoks Lands, in accordance with the K'ómoks Treaty and K'ómoks Law.

- 6.4 On the Effective Date, the K'ómoks Legislature shall enact a K'ómoks Land Law which includes conditions under which K'ómoks may grant interests in K'ómoks Lands.
- 6.5 The K'ómoks Government shall not alienate, sell, surrender, mortgage or otherwise use their interest in K'ómoks Lands as security for a loan except in accordance with a K'ómoks Land Law.

## **7. FINANCIAL ADMINISTRATION**

- 7.1 The K'ómoks Government, K'ómoks Corporations and K'ómoks Public Institutions shall manage their finances, on behalf of K'ómoks Members, in a manner that conforms to principles of sound financial management.
- 7.2 On the Effective Date, the K'ómoks Legislature shall enact a K'ómoks Financial Administration Law that is modeled on accounting standards comparable to those generally accepted for governments of similar size and circumstance in Canada through which K'ómoks Government, K'ómoks Corporations and K'ómoks Public Institutions will be financially accountable to K'ómoks Members.
- 7.3 The K'ómoks Financial Administration Law shall establish a Finance Committee to provide advice and recommendations to the K'ómoks Legislature and Executive.

### **Treaty Settlement Fund**

- 7.4 The K'ómoks Government shall establish one (1) or more settlement trusts to preserve and protect the K'ómoks capital transfer amounts received under the K'ómoks Treaty, and the income derived from the investment of those funds.
- 7.5 The trust document establishing these trust funds shall set out the framework for the prudent management, investment and disbursement of the funds that are invested in the trust and the income derived therefrom.

## **8. CONFLICT OF INTEREST**

- 8.1 On the Effective Date, the K'ómoks Legislature shall enact a Conflict of Interest Law that is modeled on conflict of interest standards comparable to those generally accepted for governments of similar size and circumstance in Canada.

### **Governing Principles**

- 8.2 The K'ómoks Government, K'ómoks Public Institutions and their officials shall:
- a. be accountable to the K'ómoks First Nation;
  - b. adhere to this Constitution;
  - c. promote the unity and well-being of the K'ómoks First Nation;
  - d. provide good, effective and accountable government; and



- e. develop and maintain communications with the community.
- 8.3 K'ómoks Corporations shall be required to have in place conflict of interest guidelines comparable to those set out in K'ómoks Law.

## **9. RATIFICATION OF THIS CONSTITUTION**

- 9.1 Ratification of this Constitution requires that at least:
- a. fifty percent (50%) plus one (1) of Eligible Voters on the Official Voters List vote; and
  - b. fifty percent (50%) plus one (1) of those who vote are in favour of ratification.
- 9.2 A vote to ratify this Constitution shall be held prior to the vote held to ratify the K'ómoks Treaty.
- 9.3 This Constitution, if ratified, shall come into force and effect on the Effective Date of the K'ómoks Treaty.
- 9.4 In the event that this Constitution is ratified but the K'ómoks Treaty is not ratified, this Constitution shall not come into effect until it is revised as appropriate, and the revised Constitution is ratified under the terms of section 9.1.

## **10. CONSTITUTIONAL AMENDMENTS**

- 10.1 An amendment to this Constitution may be initiated by:
- a. a resolution passed by a majority of the K'ómoks People's Assembly in accordance with section 4.3; or
  - b. a resolution passed by a majority of the K'ómoks Legislature.
- 10.2 Subject to section 10.3, this Constitution may only be amended by way of a referendum in which at least:
- a. fifty percent (50%) plus one (1) of Eligible Voters on the Official Voters List vote; and
  - b. fifty percent (50%) plus one (1) of those who vote are in favour of the proposed amendment.
- 10.3 The K'ómoks Legislature may amend this Constitution by resolution at any time in respect of correction of matters of a mere technical, grammatical, clerical or administrative nature.

### **Definitions and Terminology**

Words and phrases used in this Constitution have the same meaning as those words and phrases have in the K'ómoks Treaty, unless otherwise provided in this Constitution.

K'ómoks Lands

K'ómoks Policies

K'ómoks Section 35 Rights means “Exercisable Section 35 Rights of K'ómoks First Nation (KFN)” as defined in the K'ómoks Treaty.

K'ómoks Traditional Territory means the traditional territory of K'ómoks as illustrated in Appendix A

Official Voters List means:

- a. for ratification of this Constitution, the Official Voters List as defined in the K'ómoks Treaty, and  
for subsequent votes, the official K'ómoks voters list as managed and maintained after the Effective Date by K'ómoks.

\*\*\*\*\* Insert SOI Map as Appendix

Notes –

Need to ensure all definitions necessary are included and line up with definitions in the Treaty

S.2.6 - 2.8 - Language is exactly as in Treaty. Non Member is defined in the Treaty as a Non Member ordinarily resident on K'ómoks Lands. Square brackets around [Public] as in Self Government Chapter, s. 22. May require revision if treaty language changes.