



## K'ÓMOKS CONSTITUTION

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**Note:**

This draft Constitution may be amended to correct matters of a mere technical, grammatical, clerical or administrative nature at any time prior to the Effective Date.

# VISION

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

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

## DECLARATION OF IDENTITY AND VALUES

**We**, the people of K'ómoks, 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 K'ómoks Traditional Territory includes the lands and waters from the Salmon River watershed to the Englishman River watershed, and from the mountaintops to the limits of our 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, with rights recognized under section 35 of the Canadian *Constitution Act 1982* and the *United Nations Declaration on the Rights of Indigenous Peoples*, 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

- 2.1 Subject to sections 2.2 to 2.4, an individual is eligible for enrolment under this Agreement if that individual:
  - a. is of K'ómoks ancestry by matrilineal or patrilineal descent;
  - b. is a Band member or entitled to be a Band member of the K'ómoks First Nation under the Indian Act as of the day before the Effective Date;
  - c. was adopted as a Child under a law recognized in Canada, including K'ómoks Law, by an individual eligible to be enrolled under this Agreement;
  - d. is a descendant of an individual eligible to be enrolled under this Agreement; or
  - e. after the Effective Date, is accepted according to a community acceptance process set out in K'ómoks Law.
- 2.2 Except where an individual is eligible for enrolment under section 2.1(b), to be eligible for enrolment under section 2.1 individuals must have a Demonstrated Attachment to K'ómoks.
- 2.3 Where an individual having no K'ómoks ancestry became a Band member of K'ómoks First Nation under the *Indian Act* before April 17, 1985, because of marriage to a Band member of K'ómoks First Nation, and that individual subsequently has or adopts a child with another individual who is not eligible for enrolment under this Agreement, that child will not be entitled to be enrolled under paragraph 2.1(c) or 2.1(d).
- 2.4 On the day after the Effective Date, paragraphs 1 to 3 of the Eligibility and Enrolment Chapter in the K'ómoks Treaty cease to be the source of the Eligibility Criteria and an individual is eligible for enrolment under this Agreement if that individual meets the Eligibility Criteria set out in sections 2.1 to 2.3 of this Constitution.
- 2.5 Changes to the Eligibility Criteria must, in addition to any other steps required to amend the K'ómoks Constitution, be authorized by a referendum where more than fifty percent of K'ómoks Members who are eligible to vote cast a ballot and more than fifty percent of the ballots cast are in favour of the change to the Eligibility Criteria.
- 2.6 Individuals who are enrolled under this Agreement on the date immediately prior to the date that changes to the Eligibility Criteria come into effect will continue to be enrolled.
- 2.7 Individuals who have applied for enrolment under this Agreement on the date immediately prior to the date that changes to the Eligibility Criteria come into effect will have their

application determined in accordance with the Eligibility Criteria that would have applied prior to the date that changes to the Eligibility Criteria come into effect.

- 2.8 Individuals with K'ómoks ancestry and a Demonstrated Attachment to K'ómoks will always be eligible for enrolment.
- 2.9 Notwithstanding sections 10.1, 10.2 and 10.3 of this Constitution, sections 2.5, 2.6, 2.7 and 2.8 are unalterable and may not be amended.

### **Rights and Freedoms**

- 2.10 Every K'ómoks Member enjoys all of the individual rights and freedoms guaranteed under the *Canadian Charter of Rights and Freedoms*.
- 2.11 Every K'ómoks Member may exercise K'ómoks Section 35 Rights as set out in the Treaty.
- 2.12 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 provided by the K'ómoks Government; and
  - g. participate in K'ómoks cultures, languages and traditions.

### **Non-Member Residents**

- 2.13 K'ómoks Institutions will engage with Non-Members in respect of K'ómoks Institution decisions that directly and significantly affect those Non-Members.
- 2.14 K'ómoks Institutions will provide Non-Members with access to the appeal and review procedures in respect of administrative decisions that directly and significantly affect Non-Members.
- 2.15 Nothing in this Constitution precludes K'ómoks from 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:
  - a. the K'ómoks Legislature;

- b. the K'ómoks Executive; and
- c. the K'ómoks Judiciary.

### **K'ómoks Legislature**

- 3.3 Subject to section 3.4, 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:
- a. an elected member of the Legislature; or
  - b. a non-elected K'ómoks Member as set out in K'ómoks Law
- to chair the sittings of the K'ómoks Legislature.
- 3.6 The law-making authority of K'ómoks is vested in the K'ómoks Legislature.
- 3.7 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.
- 3.8 All laws enacted by the K'ómoks Legislature shall be made publicly available and placed in a K'ómoks Law registry.
- 3.9 The K'ómoks Legislature shall provide for the establishment of K'ómoks Public Institutions.
- 3.10 The K'ómoks Legislature shall establish its own rules and procedures including rules for the establishment of any committees by the Legislature.
- 3.11 The K'ómoks Legislature shall approve the budget of the K'ómoks Government at least annually.
- 3.12 A member of the K'ómoks Legislature may be removed from office in accordance with K'ómoks Law.
- 3.13 The K'ómoks Legislature may establish in legislation a Knowledge Keepers Advisory Council composed of hereditary chiefs, family heads, elders and knowledge keepers, that shall advise the K'ómoks Legislature and the K'ómoks Executive.
- 3.14 Legislation establishing the Knowledge Keepers Advisory Council shall be drafted after consultation with K'ómoks Members.
- 3.15 K'ómoks will consult with K'ómoks Members concerning the development of a law which would incorporate traditional representation into the K'ómoks Legislature.

### **K'ómoks Executive**

- 3.16 The Chief is the head of the K'ómoks Executive.

- 3.17 Subject to section 3.18, the Chief and the three (3) 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.
- 3.18 A member of the K'ómoks Legislature may decline to serve on the K'ómoks Executive, in which case the member with the next highest number of votes shall serve on the K'ómoks Executive.
- 3.19 The K'ómoks Legislature, after an election, shall designate a member of the Executive as Deputy Chief who shall assume the duties and responsibilities of the Chief temporarily in the event that the Chief is unable to carry out the duties and responsibilities of the office.
- 3.20 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 Indigenous 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.
- 3.21 Subject to K'ómoks Law, the K'ómoks Executive may establish committees to assist in fulfilling its responsibilities.
- 3.22 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**

- 3.23 The K'ómoks Legislature may establish courts and adjudicative bodies and processes for the better administration of K'ómoks Laws.
- 3.24 Subject to the terms of the K'ómoks Treaty, an adjudicative body or process established under section 3.23 may be granted jurisdiction to:
- a. adjudicate offences arising under K'ómoks Law;
  - b. adjudicate civil matters as set out in K'ómoks Law;

- c. review administrative decisions of the K'ómoks Government;
  - d. determine the validity of K'ómoks Laws; and
  - e. adjudicate other matters as set out in K'ómoks Law.
- 3.25 On the Effective Date, the K'ómoks Legislature shall enact a law establishing:
- a. a process for internal review or appeal of administrative decisions of the K'ómoks Government and K'ómoks Public Institutions;
  - b. a process for challenging the validity of K'ómoks Laws; and
  - c. a process for resolving disputes with the K'ómoks Government.
- 3.26 A statutory appeal or an application for judicial review of decisions of the K'ómoks Government may not be brought until all applicable internal processes for appeal or review established by K'ómoks have been exhausted.

#### **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 The 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 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 may 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 as of 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 waters 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 the conditions upon which the K'ómoks Government may grant interests in K'ómoks Lands.
- 6.5 The K'ómoks Government shall not alienate, sell, surrender, mortgage or otherwise use the K'ómoks interest in K'ómoks Lands as security for a loan except in accordance with a K'ómoks 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 Neither the K'ómoks Government nor any K'ómoks Public Institutions shall borrow or lend money under any structure or arrangement except in accordance with a K'ómoks Law.

- 7.4 The K'ómoks financial administration law may establish a finance committee, to provide advice and recommendations to the K'ómoks Legislature and Executive.
- 7.5 The financial administration law shall set out the finance committees:
- a) composition;
  - b) terms of reference; and
  - c) powers and duties.

### **Treaty Settlement Trusts**

- 7.6 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 govern the use of the income derived from the investment of those funds.
- 7.7 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.
- 7.8 Without altering the legislative authority set out in this Constitution, the K'ómoks Government is committed to the principle that at least 50 percent of the augmented Resource Revenues received by K'ómoks in accordance with the Resource Revenue Sharing Chapter of the K'ómoks Treaty shall be deposited into the settlement trust.

## **8. CONFLICT OF INTEREST**

- 8.1 The K'ómoks Government, K'ómoks Public Institutions and their officials shall:
- a. be accountable to the members of the K'ómoks Nation;
  - b. adhere to this Constitution;
  - c. promote the unity and well-being of the K'ómoks Nation;
  - d. provide good, effective and accountable government; and
  - e. develop and maintain communications with the K'ómoks Members.
- 8.2 On the Effective Date, the K'ómoks Legislature shall enact a conflict-of-interest law that enacts conflict of interest rules comparable to those generally accepted for governments of similar size and circumstance in Canada.
- 8.3 Subject to any requirements for corporations established under federal or provincial law, the K'ómoks Government shall ensure that K'ómoks Corporations put in place conflict of interest guidelines similar to the rules established under section 8.2

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

- 9.1 Ratification of this Constitution requires that:
- a. more than fifty percent (50%) of Eligible Voters on the Final Constitution Voters List cast a ballot; and

- b. more than fifty percent (50%) of the ballots cast are in favour of ratification.
- 9.2 This Constitution, if ratified, shall come into force and effect on the Effective Date of the K'ómoks Treaty.
- 9.3 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 Amendments to this Constitution may be initiated by a resolution of the K'ómoks Legislature, acting either on its own motion or on the recommendation to the K'ómoks Legislature of the K'ómoks People's Assembly.
- 10.2 Subject to sections 2.5 and 10.3, this Constitution may only be amended by way of a referendum in which at least:
- a. more than fifty percent (50%) of Eligible Voters on the Official Voters List cast a ballot; and
  - b. more than fifty percent (50%) of the ballots cast 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.

## **11. COMING INTO FORCE**

- 11.1 This Constitution comes into force on the Effective Date of the K'ómoks Treaty.
- 11.2 In ratifying this Constitution, we the people of K'ómoks, hereby agree to be governed by the K'ómoks Constitution and K'ómoks Law.

## **12. DEFINITIONS**

- 12.1 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.
- 12.2 In this Constitution:
- “K'ómoks Section 35 Rights” means “Exercisable Section 35 Rights of K'ómoks First Nation (KFN)” as defined in the K'ómoks Treaty.
- “Official Voters List” means official K'ómoks voters list as managed and maintained after the Effective Date by K'ómoks.