

**WESTBANK FIRST NATION  
LONG-TERM DEBT LIABILITY  
AND GUARANTEES LAW NO. 2005-01**

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**SPECIAL MEMBERSHIP MEETING,  
FEBRUARY 3, 2005**

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**WESTBANK FIRST NATION  
LONG-TERM DEBT LIABILITY  
AND GUARANTEES LAW NO. 2005-01**

**WHEREAS** Westbank has jurisdiction and responsibility for financial management and accountability for its moneys;

**WHEREAS** Westbank has established general principles for financial management and accountability in its Constitution;

**WHEREAS** it is the goal of Westbank to maintain a long-term stable and positive financial condition;

**WHEREAS** well planned and prudent financial, debt and investment management is essential to the achievement of Westbank's goal;

**WHEREAS** Westbank does not wish to incur Long-Term Debt Liability or provide Guarantees that would expose Westbank to excessive financial risk; and

**WHEREAS** Westbank wishes to enact a Westbank Law setting out rules and procedures applicable for the incurring of Long-Term Debt Liability and providing Guarantees.

**NOW THEREFORE** Council of Westbank First Nation enacts the following law as a law of Westbank.

**PART I  
APPLICATION**

**1. TITLE**

1.1 This Law may be cited as the "*WFN Long-Term Debt Liability and Guarantees Law No. 2005-01*".

**2. APPLICATION**

2.1 Westbank may not incur Long-Term Debt Liability or provide a Guarantee unless the incurring of the Long-Term Debt Liability or the providing of the Guarantee is done in accordance with this Law.

**3. DEFINITIONS**

3.1 In this law, unless the context otherwise requires:

"**annual calculation revenue**" means the revenue of Westbank determined in section 6.1 of this Law which is used to establish the acceptable debt and Guarantee limits;

"**Authorization**" means a document prepared in accordance with section 14.1 of this Law;

"**Business Venture**" means a

- (a) corporation;
- (b) joint venture;
- (c) partnership or a limited partnership;
- (d) sole proprietorship;
- (e) incorporated society; or
- (f) any other commercial enterprise;

that Westbank owns, or wishes to purchase or invest in;

**"Calculation Time"** means the point in time at which a calculation is made in accordance with Part III of this Law;

**"Community Process"** means the process outlined in sections 16.1 to 16.12 of this Law;

**"Constitution"** means the *Westbank First Nation Constitution*;

**"Debt Service"** means the amount calculated in accordance with section 8.1 of this Law that is used to pay the annual costs of the long-term debt liability and Guarantees provided by Westbank or proposed to be provided by Westbank;

**"Financial Institution"** means a registered bank, credit union or trust company;

**"General Government Revenue"** means the revenues of Westbank from the sources described in section 11.1 of this Law;

**"Guarantee"** means agreeing to answer for a debt or default of a monetary obligation;

**"Local Government Revenue"** means the revenues of Westbank from the sources described in section 12.1 of this Law;

**"Public Authority"** means any of the following public bodies providing local services to Westbank Lands or Westbank Members:

- (a) Westbank, the government of Canada, the government of British Columbia or the government of another province, or an agent of any of them;
- (b) a local government body, educational body or health care body, as those terms are defined in the *British Columbia Freedom of Information and Protection of Privacy Act*;
- (c) a First Nation;
- (d) a body in another province or country that provides local government services;
- (e) any other body designated by provincial or federal statute or prescribed by provincial or federal Regulation as a public authority;
- (f) a First Nation Tribal Council.

**"Member Housing"** means housing for Members on Westbank Lands financed by loans made directly to Members through a housing loan program offered by a Financial Institution;

**"Social Housing"** means a housing program for low-to-medium income persons that is provided by a Public Authority and that excludes immediate individual ownership;

**"Total Debt"** means the amount calculated in accordance with section 7.1 of this Law.

- 3.2 Unless the context otherwise requires, words and expressions used in this law and not otherwise defined have the same meaning as in the Constitution.

## **PART II PERMITTED PURPOSES FOR LONG-TERM DEBT LIABILITY AND GUARANTEES**

### **4. PERMITTED PURPOSES**

- 4.1 Westbank may assume Long-Term Debt Liability for the following purposes:

- (a) complying with an order or requirement for Westbank to pay money into the Supreme Court of British Columbia or the Federal Court of Canada as security
  - (i) for payment of a judgment or other debt,
  - (ii) for damages or costs,
  - (iii) for the costs of an appeal from the decision of a court or arbitrator;
- (b) satisfying the judgment or other order of a court against Westbank;
- (c) satisfying an award resulting from the determination of liability or quantum of damages against Westbank including any determination made through use of an alternative dispute resolution mechanism;
- (d) paying compensation in respect of property expropriated by Westbank;
- (e) addressing an Emergency;
- (f) any purpose of a capital nature;
- (g) lending to any person or Public Authority under an agreement; or
- (h) purchasing or financing a Business Venture;

- 4.2 Westbank may provide Guarantees for the following purposes:

- (a) Member Housing;
- (b) Social Housing;
- (c) debts or obligations of a Public Authority; or

- (d) debts or obligations of a Business Venture.

### **PART III DEBT LIMITS**

#### **5. DEBT LIMITS**

- 5.1 Westbank may incur Long-Term Debt Liability or provide Guarantees provided that the Long-Term Debt Liability or Guarantee does not cause the Total Debt as determined in accordance with section 7.1 to exceed:
  - (a) in respect of Westbank's Total Debt, 1.5 times the annual calculation revenue of Westbank; and
  - (b) in respect of Westbank's Debt Service, 0.25 times the annual calculation revenue of Westbank.

#### **6. ANNUAL CALCULATION REVENUE**

- 6.1 The annual calculation revenue of Westbank at the Calculation Time is the total revenue for the year reported in the last annual audited consolidated financial statement of Westbank prior to the calculation time minus any transfers from the federal or provincial governments specifically identified for the purposes of constructing or purchasing a capital property that are included in the total revenue.

#### **7. TOTAL DEBT**

- 7.1 The Total Debt of Westbank at the Calculation Time is the total of:
  - (a) the principal outstanding at the Calculation Time on all debt owed by Westbank; and
  - (b) in relation to any Guarantees given by Westbank, the amount Westbank would be or is required to pay under those Guarantees, less 50% of the total amount guaranteed for the purposes of Member Housing.

#### **8. DEBT SERVICE**

- 8.1 The Debt Service of Westbank at the Calculation Time is the total of:
  - (a) for borrowings made by Westbank in which Westbank is required to pay principal during the 12 months after the Calculation Time, the total amount of principal and interest that Westbank will be required to pay in respect of those borrowings during the 12 months after the Calculation Time;
  - (b) the total amount that Westbank estimates on reasonable grounds that they will be liable to pay during the 12 months after the Calculation Time in respect of loans not in good standing that have been Guaranteed by Westbank.

**9. MAXIMUM TERM**

9.1 The maximum term, including all possible renewals, allowable for repayment of a Long-Term Debt Liability or for the providing of Guarantees shall be the lesser of:

- (a) 30 years; or
- (b) in the event that Long-Term Debt Liability is incurred or a Guarantee provided for the purpose of financing the purchase of a capital property, the probable lifetime of that capital property.

**PART IV  
RESTRICTIONS ON LONG-TERM DEBT LIABILITY AND GUARANTEES**

**10. RESTRICTIONS**

10.1 For greater certainty, the debt limits established under Part III of this Law always apply and the restrictions in this Part are additional requirements that must be met before incurring Long-Term Debt Liability or giving a Guarantee.

**11. GENERAL GOVERNMENT REVENUE**

11.1 The annual General Government Revenue for a year is the total revenue of Westbank from the following sources for the year:

- (a) sales taxes collected by Westbank including but not limited to taxes collected on the sale of tobacco, fuel and alcohol;
- (b) fees and charges for the services provided by Westbank other than those under a Local Revenue Law, which services include but are not limited to:
  - (i) processing and registering of interests in Westbank Lands
  - (ii) issuance of status cards
  - (iii) licensing of hunting and fishing
  - (iv) holding of special events;
- (c) fines collected in relation to violations of Westbank Law other than fines collected for violations of a Local Revenue Law;
- (d) rental income;
- (e) federal transfers;
- (f) provincial transfers;
- (g) all other revenues of Westbank that are not Local Revenues.

11.2 Westbank may not incur a Long-Term Debt Liability or provide a Guarantee utilizing the General Government Revenue if:

- (a) at the time it proposes to incur the liability;
  - (i) the annual cost of servicing the aggregate liabilities of Westbank using funds from the General Government Revenue for the year exceeds;
  - (ii) 25% of the annual General Government Revenue of Westbank; or
- (b) incurring the liability would cause the annual costs referred to in paragraph (a) (i) to exceed the limit established by paragraph (a) (ii).

## **12. LOCAL GOVERNMENT REVENUE**

12.1 The annual Local Government Revenue for a year is the total revenue of Westbank from the following sources for the year:

- (a) revenues raised under a Local Revenue Law;
- (b) utility charges collected pursuant to a Westbank Law;
- (c) business licenses and fees;
- (d) any penalties, interest or charges collected pursuant to paragraphs (a), (b) or (c); and
- (e) investment income from the Local Government Revenue other than revenue from the disposition of assets.

12.2 Westbank may not utilize Local Government Revenue to incur a Long-Term Debt Liability or provide a Guarantee if:

- (a) at the time it proposes to incur the liability:
  - (i) the annual cost of servicing the aggregate liabilities of Westbank using funds from Local Government Revenue for the year exceeds;
  - (ii) 25% of the annual Local Revenue of Westbank for the previous year; or
- (b) incurring the liability would cause the annual costs referred to in paragraph (a) (i) to exceed the limit established by paragraph (a) (ii).

## **13. MEMBER HOUSING**

13.1 The total outstanding of Long-Term Debt Liability incurred and Guarantees provided for the purpose of Member Housing shall not, at any point in time, exceed ten million dollars (\$10,000,000.)

13.2 Westbank may accept a mortgage from an eligible Member on residential property purchased or owned by the Member, where Council has entered into a Member Housing loan agreement with a Financial Institution and where Westbank is guaranteeing the Member Housing loan made by the Financial Institution to the eligible Member.

13.3 For the purposes of sections 13.1 and 13.2 an eligible Member is a Member who:

- (a) has been approved by the Financial Institution as if the loan was with that Financial Institution;
  - (b) the Financial Institution has agreed to loan money;
  - (c) has met all the requirements of the Financial Institution;
  - (d) does not currently have another Member Housing loan guaranteed by Westbank.
- 13.4 The Council shall not Guarantee a loan on the security of a Members' residential property for the purpose of purchasing, renovating or improving that residential property, or refinance such a loan, if the amount of the loan, together with the amount then outstanding of any mortgage having an equal or prior claim against the property, would exceed 75% of the appraised value of the property at the time of the loan.
- 13.5 The maximum amount of Long-Term Debt Liability incurred or Guarantee provided by Westbank for a Member at a point in time is three hundred and fifty thousand dollars (\$350,000.00).
- 13.6 Westbank shall not provide a Guarantee for a Member's Housing loan if the Member has monies owing to Westbank, and is not in good standing with respect to those monies owing.

**PART V**  
**APPROVAL OF LONG-TERM DEBT LIABILITY AND GUARANTEES**

**14. AUTHORIZATION**

- 14.1 Where Westbank intends to incur any Long-Term Debt Liability or give a Guarantee, Council shall prepare an Authorization which shall include:
- (a) the amount proposed to be borrowed or guaranteed;
  - (b) in brief and general terms, the purposes for which the Long-Term Debt Liability is to be incurred or the Guarantee given;
  - (c) the due dates, amounts of and method of repayment;
  - (d) the maximum term, including all possible renewals, of the Long-Term Debt Liability or Guarantee;
  - (e) the total cumulative Long -Term Debt Liability and Guarantees if the Long-Term Debt Liability is incurred or if the Guarantee is granted;
  - (f) any significant risk factors;
  - (g) the following appendixes where the Long-Term Debt Liability is to be incurred for the purchasing or financing of a Business Venture or the Guarantees to be made for the debts or obligations of a Business Venture:



- (i) a copy of a proposed business plan that includes a cash flow projection for the first three (3) years of the Business Venture's operation;
- (ii) the costs related to purchasing or financing the Business Venture, as the case may be;
- (iii) if an existing Business Venture is being acquired:
  - (1) the value of any assets of the Business Venture that are to be transferred to Westbank or a group of First Nations including Westbank;
  - (2) a copy of the Business Venture's most recent annual audited financial statements,
  - (3) its current operating and capital budgets; and
  - (4) a copy of the certificate of incorporation for the Business Venture, if that Business Venture is incorporated.

## **15. EXEMPTIONS FROM COMMUNITY PROCESS**

### **15.1 If an Authorization**

- (a) relates to a purpose identified in paragraphs 4.1(a),(b),(c),(d),(e) or 4.2(a); or
- (b) relates to the use of Local Government Revenue;

the approval of the Authorization may be given by Resolution of Council and does not require approval through the Community Process described in sections 16.1 to 16.12.

## **16. COMMUNITY PROCESS**

16.1 Where an Authorization is not exempt from the Community Process by virtue of section 15.1, or with respect to an Authorization under section 15.1 where Council deems the Community Process necessary, Council shall schedule a Special Membership Meeting for the purpose of considering the Authorization, and shall provide notice to the Membership at least 20 days before the date of the Special Membership Meeting.

16.2 Notice shall be provided to the Membership by:

- (a) publication in the Westbank newsletter mailed to Electors, or by separate written notice delivered or mailed to Electors; and
- (b) posting of the notice in a public area of the Westbank administration building.

16.3 Where an Authorization refers to the incurring of a Long-Term Debt Liability for the purchasing or financing of a Business Venture or the giving of a Guarantee for the debts or obligations of a Business Venture, the Authorization shall be referred to a Special Membership Meeting called to consider the Authorization and the Authorization may only

be approved by a vote of Electors held in accordance with the procedures set out in sections 16.9 to 16.12.

- 16.4 Prior to seeking the approval of Electors for an Authorization at a Special Membership Meeting:
- (a) the Director of Finance shall cause to be undertaken a due diligence study that discloses potential environmental, financial, labour or other liability risks and make available to Members a copy of the study for review prior to the Special Membership Meeting;
  - (b) the Director of Finance must certify that any financing of the Business Venture:
    - (i) will not exceed a loan-to-value ratio exceeding 60% of the value of the Business Venture;
    - (ii) will not cause Westbank to exceed 75% of the Total Debt limit established under paragraph 5.1(a); and
    - (iii) will not cause Westbank to exceed 25% of the general Debt Service limit established under paragraph 5.1(b).
- 16.5 For Special Membership Meetings held under the Community Process for Authorizations where a vote of Electors is not required, the notice under section 16.2 shall include:
- (a) a general summary of the Authorization including the purposes and general terms of the proposed Long-Term Debt Liability or Guarantee;
  - (b) the date, time and place of the Special Membership Meeting; and
  - (c) the place where copies of the Authorization and any related materials may be reviewed or obtained by Members.
- 16.6 At the Special Membership Meeting where a vote of Electors is not required, Council or its designate shall:
- (a) make copies of the Authorization available to Members;
  - (b) explain the Authorization, including the effect of the proposed Long-Term Debt Liability or Guarantee on Westbank's financial position; and
  - (c) Members shall be entitled to ask questions and provide comments.
- 16.7 Where a vote of Electors is not required, Council shall, after the Special Membership Meeting, consider the comments received from Members, and at the next Council Meeting Council shall by Resolution:
- (a) approve the Authorization;
  - (b) reject the Authorization; or

- (c) refer the Authorization to a Special Membership Meeting to be voted upon by the Electors.
- 16.8 Where pursuant to section 16.7 Council decides to refer the Authorization to a Special Membership Meeting to be voted upon by Electors, or where section 16.3 applies, Council shall schedule a date for the Membership Meeting, and the procedures set out in section 16.9 to 16.12 of this Law shall be followed.
- 16.9 Notice of the Special Membership Meeting where an Authorization will be voted upon shall be provided to the Membership in accordance with section 16.2 and shall include:
- (a) a summary of the Authorization;
  - (b) a statement that there will be a vote by secret ballot of the Electors present at the Special Membership Meeting to approve the Authorization; and
  - (c) the date, time and place of the Special Membership Meeting also specifying the time period during which such voting will take place.
- 16.10 At the Special Membership Meeting called to vote on the Authorization, the purpose and provisions of the proposed Long-Term Debt Liability or Guarantee shall be explained to the Members present at the Meeting, and Members shall be entitled to ask questions and provide comments.
- 16.11 Upon completion of discussion, the Electors, including Council members present, shall vote by secret ballot on the Authorization.
- 16.12 The Authorization shall be deemed approved if a Majority of Electors present at the Special Membership Meeting vote in favour of approving the Authorization.

## **PART VI GENERAL**

### **17. GENERAL**

- 17.1 Subject to Parts III and IV if an authorization has been approved in accordance with Part V of this Law and the money to be borrowed is insufficient because the cost of borrowing has increased, and the increased cost does not exceed 10% of the original cost of borrowing, the increased cost does not require a further Authorization under Part V of this Law.
- 17.2 If the purpose of a proposed borrowing is to refinance, redeem or restructure the unpaid principal of one or more existing borrowings and the amount and term of the proposed borrowing do not exceed the unpaid principal of the existing borrowings and the longest remaining term of the existing borrowings, the proposed borrowing does not require Authorization under Part V of this Law.
- 17.3 The currency of all borrowing shall be in Canadian funds.

**PART VII  
REPORTING TO MEMBERSHIP**

**18. REPORTING**

- 18.1 Council shall prepare an annual report on Long-Term Debt Liability and Guarantees which shall at a minimum detail:
- (a) the total amount of all Westbank Long-Term Debt Liabilities;
  - (b) the total amount Guaranteed by Westbank;
  - (c) the specific purposes for which Long-Term Debt Liability has been incurred in the previous fiscal year; and
  - (d) the specific purposes for which Guarantees have been given in the previous fiscal year.
- 18.2 The annual report on Long-Term Debt Liability and Guarantees shall be made presented to and available to Members at the Special Membership Meeting scheduled under section 88 of the Constitution in the same manner and with the same notice information as the annual audited consolidated financial statement of Westbank.
- 18.3 The report on Long-Term Debt Liability and Guarantees shall be available for inspection by Members at the Westbank administration building during its regular office hours.
- 18.4 Copies of the report on Long-Term Debt Liability and Guarantees shall be provided to Members upon payment of a reasonable copying fee.

**PART VIII  
ENFORCEMENT**

**19. ENFORCEMENT**

- 19.1 Council shall establish policies for the enforcement and collection of loans and Guarantees that are in arrears or default.
- 19.2 In order to preserve and protect Westbank assets and to ensure the prudent financial management of Westbank funds:
- (a) the policy described in section 19.1 shall be equitable and shall provide for the timely collection of loans and guarantees that are in arrears or default;
  - (b) the policy described in section 19.1 shall be in place before the coming into force of the Long-Term Debt Liability and Guarantees Law; and
  - (c) the Department of Finance shall be responsible for the collection of monies owing to Westbank.
- 19.3 If Westbank issues a Guarantee in accordance with this Law and, in accordance with the terms of the Guarantee, Westbank makes a payment to the creditor, the debtor is liable

to repay Westbank the amount it paid together with interest on that amount at the same rate and calculated in the same manner as the debt to which the Guarantee related.

- 19.4 If Westbank has made a payment under a Guarantee, the Council may issue a certificate stating the amount paid together with the interest owing and the name of the debtor who is liable to repay the amount, and the Council may file the certificate with the Supreme Court of British Columbia.
- 19.5 On its being filed, the certificate has the same effect as if it were a judgment of the court and all proceedings may be taken on it for the recovery of the debt from the debtor named in it.

## **PART IX LIABILITY**

### **20. LIABILITY**

- 20.1 A Council member who votes for a Resolution authorizing Westbank to incur a Long-Term Debt Liability or give a Guarantee other than in accordance with this Law is personally liable to Westbank unless the Council member relied on information provided by an employee and that employee was guilty of dishonesty, gross negligence or malicious or willful misconduct in relation to the provision of the information.

## **PART X INTERPRETATION**

### **21. APPLICATION OF LAW**

- 21.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 21.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.
- 21.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.
- 21.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulations thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated or replaced from time to time.

BE IT KNOWN that this Law entitled, "WFN Long-Term Debt Liability and Guarantees Law No. 2005-01" is hereby:

Read a first time by the Council of Westbank First Nation at a duly convened meeting held on the 23rd day of November, 2004;

Read a second time at a Special Membership Meeting held on the 20th day of December, 2004;

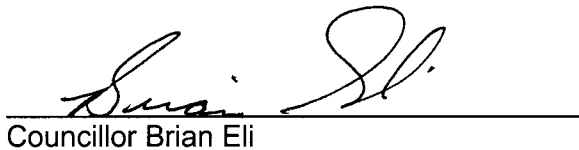
Read a third time by the Council of Westbank First Nation, and referred to a Special Membership Meeting for enactment by Electors, at a duly convened meeting held on the 10th day of January, 2005;

Enacted by a vote by secret ballot of Electors present at a Special Membership Meeting held on the 3rd day February, 2005.

Signed by the following members of Council:

  
Chief Robert Louie

  
Councillor Michael De Guevara

  
Councillor Brian Eli

  
Councillor Loretta Swite

  
Councillor Michael Werstuik