

**Summary of**  
**Westbank First Nation**  
**Self-Government**  
**Agreement**

**October 2003**

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## **Summary of Westbank First Nation Self-Government Agreement**

### **Preamble**

This part outlines the historic reasons for the agreement.

### **Part I Definitions**

This part lists the definitions of key concepts and words which are used throughout the Agreement.

### **Part II Fundamental Principles**

This part sets out that this Agreement reflects a government-to-government relationship within the framework of the Canadian constitution. The Agreement will not be constitutionally protected within the meaning of section 35 of the *Constitution Act, 1982*. The Agreement is without prejudice to treaty negotiations in British Columbia and will be superseded by the governance provisions included in a ratified treaty.

### **Part III Legal Status and Capacity**

Westbank First Nation will be a legal entity, with the capacity, rights, powers and privileges of a natural person.

### **Part IV Powers of Government**

Westbank First Nation will have the capacity to govern itself in accordance with the Agreement, and Westbank First Nation shall act through the Council. They may enter into agreements with other levels of government concerning delivery of programs and services on Westbank Lands

### **Part V Application of Laws**

This part clearly establishes general rules for the priority of laws that set out which laws will prevail in the event of a conflict.

### **Part VI Structures and Procedures of Government**

Westbank First Nation will have in place a constitution that sets out the structure, duties and membership of their government and ensures that their government is open, accountable and democratic. Westbank First Nation will establish a membership code and Westbank Lands code as part of its constitution.

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Westbank First Nation will provide non-members with a mechanism through which non-members may make representations to Westbank First Nation government when proposed Westbank Laws directly and significantly affect them. The law may only be amended or replaced with the approval of non-members, through a process to be set out in Westbank law.

Both members and non-members may seek a judicial review, in accordance with the Agreement, of administrative decisions of the government of Westbank First Nation.

Westbank First Nation government will have financial accountability standards at least comparable to other public governments providing similar public services and will establish a financial management regime.

### **Part VII Westbank First Nation Membership**

Westbank First Nation will be responsible for the determination of membership for Westbank First Nation with the proviso that any person who was entitled to have their name entered on the Band List prior to Effective Date of the Agreement will not be removed from the new Westbank First Nation membership list for any reason that arose before the Effective Date. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

The determination of Canadian citizenship and Indian status under the *Indian Act* will continue to be the responsibility of Canada

### **Part VIII Wills and Estates**

Westbank First Nation may make laws in relation to wills and estates of Westbank members ordinarily resident on Westbank Lands who are Indians under the *Indian Act*. Westbank Laws do not apply to immovable property off Westbank Lands. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

### **Part IX Financial Management**

Westbank First Nation will be responsible for its internal financial management and will establish a financial management regime for this purpose. Canada will not be financially liable for Westbank First Nation financial management. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

### **Part X Westbank Lands and Lands Management**

Title to Westbank Lands remains with the Crown in right of Canada and as such the lands remain as section 91(24) lands under the *Constitution Act, 1867*.

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Westbank First Nation will have authority to make laws for the management of Westbank Lands and may establish a registry system for the Westbank Lands. Westbank Lands will consist of Mission Creek Indian Reserve Number 8, Mission Creek Indian Reserve Number 12, Tsinstikeptum Indian Reserve Number 9, Tsinstikeptum Indian Reserve Number 10 and Medicine Hill Indian Reserve Number 11.

The land management powers set out in the Agreement are consistent with those provided under the *First Nation Land Management Act*. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

All existing rights and interests in Westbank Lands will continue to be recognized and access will be provided to these interests. Subject to the provisions of the Agreement, the Westbank First Nation will have all the rights, powers, responsibilities and privileges of an owner, including the ability to grant Licences and interests in relation to Westbank Lands. Should Westbank First Nation acquire new lands, they may apply to Canada, under the Additions to Reserve policy, to have these lands become Westbank Lands.

Westbank Laws in relation to the treatment of interests in Westbank Lands on marriage breakdown, where at least one partner is a Westbank Citizen, may not discriminate on the basis of sex, but may distinguish as between Members and non-Members.

The Agreement sets out restrictions to federal powers of expropriation which will raise the threshold for justification and compensation for the potential expropriation by Canada of Westbank Lands. The province will not acquire any expropriation powers.

### **Part XI Landlord and Tenant**

Westbank First Nation may make laws in relation to landlord and tenant matters on Westbank Lands and premises on Westbank Lands including residential, commercial and agricultural lands. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

### **Part XII Resource Management**

Westbank First Nation will have authority to make laws in relation to renewable resources located on Westbank Lands, except fish, and those non-renewable resources set out in this part. To the extent that Westbank First Nation currently has rights over water recognized by federal or provincial laws, Westbank First Nation will have authority to manage and regulate water.

### **Part XIII Agriculture**

Westbank First Nation will have authority to make laws in relation to agriculture on Westbank Lands. However, in the event of a conflict with federal or provincial laws, the federal and

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provincial laws will prevail. Canada retains exclusive jurisdiction in relation to interprovincial and international trade and commerce in agricultural goods.

#### **Part XIV Westbank Environment**

Westbank First Nation has the authority to make laws in relation to the protection and conservation of the environment on Westbank Lands. Westbank First Nation environmental laws and standards established under this section will be equivalent or better than those established under federal laws. Westbank First Nation will have the authority to enforce Westbank First Nation environmental laws on Westbank Lands with powers comparable but not greater than those created under federal legislation.

Westbank First Nation must enact environmental assessment laws, which are equivalent to the standards set out in federal legislation, for projects on Westbank Lands. These laws shall come into force within 12 months of the Effective Date of the Agreement. Environmental assessments of projects which trigger both the Westbank and federal environmental assessment processes will be done through a harmonized process. Provision is also made for harmonization with the provincial environmental assessment process, where appropriate. In the event of a conflict between a Westbank Law and a federal environmental protection law, the federal law will prevail to the extent of the conflict.

#### **Part XV Culture and Language**

Westbank First Nation will have authority to make laws in relation to culture and language on Westbank Lands. This jurisdiction does not include law-making authority over intellectual property. The *Official Languages Act* will continue to apply to federal institutions delivering services on Westbank Lands. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict except in the case of the *Official Languages Act* which will prevail.

Westbank First Nation and the Canadian Museum of Civilization (CMC) have agreed to negotiate protocols to deal with cultural material and ancestral human remains directly related to Westbank First Nation currently in the possession of CMC.

#### **Part XVI Westbank Education**

Westbank First Nation will have authority to make laws in relation to kindergarten, primary and secondary education on Westbank Lands for Westbank First Nation members as well as administer funding for post-secondary education off reserve. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

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## **Part XVII Westbank Health Services**

Westbank First Nation will have authority to make laws in relation to the regulation of the practice and practitioners of traditional Okanagan medicine on Westbank Lands. Westbank First Nation law-making powers do not extend to the regulation of medical or health practices or practitioners under provincial jurisdiction. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

Westbank First Nation may enter into agreements for the delivery of health services or the application of provincial or other health standards on Westbank Lands.

## **Part XVIII Enforcement of Westbank Laws**

Westbank First Nation will have authority to appoint and assign duties to Westbank officials for the enforcement of Westbank Laws on Westbank Lands. Any Westbank First Nation enforcement procedures will be comparable to, but not greater than, those set out in similar federal and provincial legislation. The Royal Canadian Mounted Police will continue to render services on Westbank Lands as required and nothing in the Agreement will alter the arrangement for the enforcement of federal or provincial laws on Westbank Lands by duly empowered federal or provincial officers. Penalties for offences against Westbank Laws will be the same as summary convictions under the *Canadian Criminal Code*, although the monetary penalty may go as high as \$10,000.

## **Part XIX Licensing, Regulation and Operation of Businesses**

Westbank First Nation will have authority to make laws in relation to the licensing, regulation and prohibition of the operation of businesses on Westbank Lands but these powers do not extend to banking, bankruptcy and insolvency, international trade or incorporations. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

## **Part XX Traffic and Transportation**

Westbank First Nation will have authority to make laws in relation to the regulation and control of ground traffic and transportation, and ground infrastructure on Westbank Lands. Westbank First Nation law-making powers do not extend to navigation and shipping. In the event of a conflict between a Westbank Law and a federal traffic and transportation law, the federal law will prevail to the extent of the conflict.

## **Part XXI Public Works, Community Infrastructure and Local Services**

Westbank First Nation may make laws in relation to public works and community infrastructure and local services on Westbank Lands, this includes such things as water and sanitation systems and inspections for health and safety purposes. Westbank First Nation standards are required to

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meet or exceed federal standards. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

### **Part XXII Public Order, Peace and Safety**

Westbank First Nation will have authority to make laws in relation to the control or prohibition of any actions, activities or undertakings that constitute a threat to public order, peace or safety on Westbank Lands. In the event of a conflict with a Westbank Law and a federal law or provincial law in relation to public order, peace, safety, or a danger to public health, the federal or provincial law will prevail to the extent of the conflict, except for provincial laws related to the Prohibition of Intoxicants, in which case Westbank Law shall prevail.

### **Part XXIII Prohibition of Intoxicants**

Westbank First Nation will have authority to make laws to prohibit the sale, barter, supply, manufacture or possession of intoxicants on Westbank Lands. In the event of a conflict between a Westbank Law under this part and a federal law, the Westbank Law will prevail to the extent of the conflict.

### **Part XXIV Future Negotiations**

This part lists the subject matters that may be negotiated in a tripartite forum. Westbank First Nation intends to seek negotiations with British Columbia and Canada in respect of further jurisdictional arrangements for those areas set out in this part as part of treaty negotiations in BC.

### **Part XXV Financial Arrangements**

The fiscal relationship between Canada and The Westbank First Nation and Canada will be based on a government-to-government relationship. This part provides for the negotiation of a Financial Transfer Agreement (FTA) between Westbank First Nation and Canada prior to the ratification of the Final Agreement and thereafter at five year intervals. Westbank First Nation's own source revenue capacity will be taken into account in negotiation of the second and subsequent FTAs.

### **Part XXVI Principles of Implementation**

An Implementation Plan accompanies the Final Agreement. The Implementation Plan will not be a contract and will not form part of the Final Agreement. An Intergovernmental Implementation Committee will be established on the Effective Date of the Agreement to provide a forum to monitor and discuss the implementation of the Agreement.

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## **Part XXVII Taxation Treatment**

Provided Westbank First Nation meets certain conditions, Westbank First Nation will receive the same tax treatment as local governments as set out under the *Income Tax Act*. Similarly, a Westbank First Nation Corporation may benefit from an income tax exemption provided it meets the requirements set out in this part.

## **Part XXVIII Tax Agreements**

This part provides an opportunity for Westbank First Nation and Canada to negotiate such things as Westbank First Nation direct taxation authority within Westbank Lands and coordination of a Westbank First Nation taxation system with the existing federal taxation system.

## **Part XXIX Transfer of Capital and Revenue Monies**

This part provides for the transfer to Westbank First Nation of all capital and revenue monies collected, received or held by Canada for the use and benefit of the Westbank First Nation. Following the transfer, Westbank First Nation (and *not* Canada) shall be responsible for the collection of monies owing to Westbank First Nation

## **Part XXX Dispute Resolution**

Westbank First Nation and Canada agree to meet and negotiate in good faith and attempt to resolve amicably without litigation any dispute arising out of the Final Agreement. This part addresses the resolution of disputes between the parties regarding the interpretation, implementation or application of the Final Agreement. The parties will make every effort to resolve the dispute through consultation and information sharing. The parties may refer the dispute to mediation. Failing that, the parties may refer the dispute to arbitration or the courts..

## **Part XXXI Indian Act Provisions**

This part sets out what provisions of the *Indian Act* will continue to apply on Westbank Lands.

This part maintains the status quo with respect to taxation provisions under the *Indian Act*.

## **Part XXXII Ratification**

The Westbank First Nation shall be considered to have ratified this Agreement if at least 50 percent plus one (50% + 1) of all Eligible Voters participate in the ratification by casting a vote, and that at least fifty percent plus one (50% + 1) of those voting approve the Agreement.

Canada will have ratified the Agreement when a duly authorized Minister of the Crown has signed the Agreement and Parliament has enacted federal implementing legislation giving effect to the Agreement.

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## **Part XXXIII General**

This part sets out a number of provisions which apply generally to the Agreement including, interpretation of the Agreement, a five-year review and liability.

The *Canadian Human Rights Act* will apply to Westbank First Nation government, its Land and its Citizens, taking into account the nature and purpose of the Agreement and the entitlement of Westbank First Nation to provide programs and services on an exclusive or preferential basis to its Citizens, where justifiable.

This part also addresses such issues as liability, disclosure of information and matters of a generally administrative nature.

## **Schedule A Ratification of the Westbank First Nation Final Agreement**

The Schedule sets out the process by which Westbank First Nation and Canada will conduct the ratification process.