

# **SALES TAX COLLECTION AGREEMENT**

## **BETWEEN:**

**The Government of Canada,  
as represented by the  
Minister of Finance ("Canada")**

**and**

**The Westbank First Nation,  
as represented by the  
Council of the Westbank First Nation ("Westbank")**

## **Whereas:**

Westbank wishes to levy a tax on the sale of tobacco products, alcoholic beverages and fuel on the reserve, called the Westbank First Nation Sales Tax, in accordance with the authority granted to the council in the *Budget Implementation Act 1997*, S.C., 1997, c. 26, as amended;

Westbank desires that, subject to the terms and conditions set out in this agreement, Canada shall collect, administer and enforce the tax on behalf of Westbank; and

Subsection 54(1) of the *Budget Implementation Act 1997*, S.C., 1997, authorizes the Minister of Finance, with the approval of the Governor in Council, to enter into an agreement for the collection and administration of the Westbank First Nation Sales Tax;

## **NOW THEREFORE,**

In consideration of the terms, exchange of promises, covenants and conditions contained in this agreement, the parties to this agreement agree as follows:

## **Interpretation**

1. For the purposes of this agreement:

“Act” means the *Budget Implementation Act, 1997*, S.C., 1997, c. 26, as amended;

“Auditor General of Canada” means the Auditor General of Canada and includes, where circumstances require, the Deputy Auditor General or any officer or class of officer authorized by the Auditor General of Canada;

“by-law” means a by-law made by the Westbank First Nation Council under the authority of the Act;

“consumer” has the meaning assigned by section 123 of the *Excise Tax Act*;

“designated products” means alcoholic beverages, fuel and tobacco products;

“Gross WFNST Revenues” means the aggregate of all WFNST reported as collected or collectible on the schedules received by the Minister prior to March 1<sup>st</sup> which relate to reporting periods ending between January 1<sup>st</sup> and December 31<sup>st</sup> of the previous year and from earlier reporting periods that had not been taken into account in determining Gross WFNST Revenues for prior years;

“interim payments” means payments made to Westbank during the year based on an estimate of Net WFNST Revenues for that year;

“Minister” means the Minister of National Revenue and includes, where circumstances require, the Deputy Minister of National Revenue or any officer or class of officers authorized by the Minister of National Revenue;

“Minister of Finance” means the Minister of Finance and includes, where circumstances require, the Deputy Minister of Finance or any officer or class of officers authorized by the Minister of Finance;

“month” means, unless the context otherwise requires, a calendar month;

“Pre-Adjusted WFNST Revenues” for a year means Gross WFNST Revenues for that year multiplied by the weighted final sales factor for the year to which the Gross WFNST Revenues relate (and in the event that the Gross WFNST Revenues include amounts relating to reporting periods ending in prior years, these amounts should be multiplied, where possible, by the weighted final sales factor applicable for the year in which the relevant reporting period ended);

“reconciliation period” means the calendar year prior to the year in which the reconciliation is performed;

“registrant” has the meaning assigned by section 123 of the *Excise Tax Act*;

“schedule” means the Westbank First Nation Sales Tax (FNT) Schedule to a GST/HST return;

“WFNST” means the Westbank First Nation Sales Tax levied pursuant to a by-law;

“weighted final sales factor” means, in respect of a year, the proportion that collected or collectible WFNST on sales to consumers from a location on reserve is of the aggregate of all WFNST reported as collected or collectible on schedules;

“year” means, unless the context otherwise requires, a calendar year during the term of this agreement.

2. Any term not defined in section 1 has the meaning assigned to it in the Act.

### **Previous Agreement Replaced**

3. This agreement replaces the Tobacco Tax Collection agreement between Canada and the Westbank First Nation dated January 16, 1998.

### **First Nation Covenants**

4. During the term of this Agreement, Westbank shall enact and keep in force a by-law which:
  - (a) conforms to the requirements of section 53 of the Act; and
  - (b) is consistent with subsection 54(3) of the Act with respect to the application of Part IX of the *Excise Tax Act* and proceedings that could be taken under any other Act of Parliament in respect of the tax imposed under subsection 165(1) of the *Excise Tax Act*.

### **Covenants by Canada**

5. Canada agrees to collect for and on behalf of Westbank, the WFNST for the term of this agreement and to remit amounts in respect thereof to Westbank in accordance with this agreement.
6. Canada agrees that, in accordance with section 55 of the Act, no tax under subsection 165(1) of the *Excise Tax Act* will be levied on the sale of designated products on reserve that are subject to the WFNST while this agreement is in effect.

### **Costs of Administration**

7. Any costs, charges or expenses, including amounts required to be paid in respect of prosecutions or other legal proceedings, incurred by Canada in the collection, enforcement and administration of the WFNST for any year during the term of the agreement will be paid by Canada.



8. Unless otherwise agreed to by the parties, Westbank will pay its own costs, charges and expenses, should it become party to litigation, either voluntarily or because a party other than Canada requires it, relating to the validity of the Act, a by-law or the WFNST.

### **Payments to Westbank**

9. It is agreed by the parties that the interim payments will be an estimate of net WFNST Revenues for that year divided into twelve instalments. This estimate will be based on the best data available and acceptable to the parties and may, where appropriate, take into account any factor (e.g., growth of tax revenues over the estimate period) agreed to by the parties. Canada and Westbank may agree, at any time, to change the amount of interim payments to more accurately reflect net WFNST Revenues should new or better data indicate that the estimate on which interim payments are based is significantly inaccurate.
10. Canada will calculate the estimate of net WFNST Revenues, on which interim payments will be based, in consultation with Westbank. The estimate of revenues from WFNST on alcoholic beverages and fuel for the first twenty-four month period will be agreed to by the parties prior to the implementation of the WFNST on fuel and alcoholic beverages. The estimate of revenues from WFNST on tobacco products agreed to between the parties in accordance with a letter of agreement dated January 14, 1998, will continue to be used until a new estimate is agreed upon by the parties. The estimate for subsequent periods will take place within sixty days of the receipt, by Westbank, of the Auditor General's report referred to in article 40.
11. Interim payments will be paid to Westbank on a monthly basis. The first interim payment, which will include revenues from WFNST on alcoholic beverages, fuel and tobacco products, will be made on or before the last working day in the month after the coming into force of the WFNST on alcoholic beverages and fuel and subsequent payments will be made on or before the last working day of each month thereafter until the agreement is terminated.

### **Annual Determination of WFNST Revenues**

12. An annual estimate of Gross WFNST will be made for each product or group of products subject to WFNST.
13. In recognition of the fact that only WFNST collected or collectible on sales made to final consumers from a location on reserve should be taken into account when determining WFNST revenues, an annual estimate of Pre-Adjusted WFNST Revenues will be made.
14. Pre-Adjusted WFNST revenues for a year will be determined as follows:

$$\text{WFNST}_t = \text{GWFNP}_t * \text{WFSF}_t$$

where

WFNST	Represents total WFNST Revenues in period t;
GWFNP	Represents WFNST collected or collectible as per the schedule in period t;
WFSF	Represents the weighted final sales factor, in period t, indicating the amount of GWFNP collected related to final sales, based upon estimates acceptable to the parties; and,
T	Represents a specific time period.

15. The weighted final sales factor which is equivalent to an estimate of the proportion of WFNST taxable sales which are made to final consumers excluding the proportion of sales made to businesses which are eligible to an input tax credit, will be determined in the following manner:

$$WFSF_t = \frac{((FSFA_t * AS_t) + (FSFTP_t * TPS_t) + (FSFG_t * GS_t) + (FSFD_t * DS_t) + (FSFP_t * PS_t))}{(AS_t + TPS_t + GS_t + DS_t + PS_t)}$$

where

FSFA	represents the estimated final sales factor, in period t, established by the parties for alcoholic beverages subject to the WFNST;
AS	represents the estimated sales of alcoholic beverages in dollars, in period t, sold on the reserve and subject to the WFNST;
FSFTP	represents the estimated final sales factor, in period t, established by the parties for tobacco products subject to the WFNST;
TPS	represents the estimated sales of tobacco products in dollars, in period t, sold on the reserve and subject to the WFNST;
FSFG	represents the estimated final sales factor, in period t, established by the parties for gasoline subject to the WFNST;
GS	represents the estimated sales of gasoline in dollars, in period t, sold on the reserve and subject to the WFNST;
FSFD	represents the estimated final sales factor, in period t, established by the parties for diesel fuel subject to the WFNST;
DS	represents the estimated sales of diesel fuel in dollars, in period t,



sold on the reserve and subject to the WFNST;

FSFP represents the estimated final sales factor, in period t, established by the parties for propane subject to the WFNST;

PS represents the estimated sales of propane in dollars, in period t, sold on the reserve and subject to the WFNST;

16. If either party becomes aware of any change in circumstances which could have an impact on the current final sales factor, it will provide notice to the other party. As soon as is possible after such notice is given, the parties will meet to discuss and attempt to reach agreement on the following:
  - (a) a new weighted final sales factor;
  - (b) the date that the new weighted final sales factor will take effect; and
  - (c) in the event that the new weighted final sales factor takes effect on a date other than January 1<sup>st</sup>, a transitional weighted final sales factor representing an average of the old weighted final sales factor and the new weighted final sales factor, which will be applied in the year the amendment takes effect.
17. Subject to article 18, the Pre-Adjusted WFNST Revenues will be adjusted to arrive at Net WFNST Revenues for the year:
  - (a) WFNST amounts assessed or reassessed by the Minister during that year shall be added or deducted as the case requires; and
  - (b) WFNST amounts relating to the year in question, or to prior years, that have been successfully appealed or settled and repaid to a registrant or other person during the reconciliation period shall be deducted.
18. An adjustment will only be made if it relates to a change in a registrant's tax collected or collectible reported on a schedule. Where possible, such adjustment should be multiplied by the weighted final sales factor that applied for the year in which the relevant reporting period ended, or in a case where no schedule is filed, the weighted final sales factor that would have applied had the information been included in a schedule filed for the relevant reporting period.
19. The parties also agree to assume, for the purposes of determining annual Net WFNST Revenues, that the amount of GST on retail sales of designated products made on-reserve and delivered to a location off-reserve are equivalent to the amount of WFNST on retail sales of designated products made off-reserve and delivered to a location on-reserve. As a result, no adjustment, relating to this issue, is required for the purposes of determining Net WFNST Revenues. However, should either party become aware of a significant imbalance in the relationship between retail sales of

designated products made on-reserve and delivered to a location off-reserve and retail sales of designated products made off-reserve and delivered to a location on-reserve, the parties agree to review this assumption with a view to ensuring that the calculation of Net WFNST Revenues is adjusted appropriately.

20. From time to time, the parties may agree to conduct or have conducted a survey of final vs. business sales of one or more products subject to WFNST. The Band and Canada will each assume fifty (50) percent of the cost of surveys conducted, the Band's share of the cost being calculated net of any federal transfer.
21. Once a survey pursuant to article 20 has been completed and the data analysed, the parties will meet and attempt to reach agreement on the following:
  - (a) a new weighted final sales factor;
  - (b) the date that the new weighted final sales factor will take effect; and
  - (c) in the event that the new weighted final sales factor takes effect on a date other than January 1<sup>st</sup>, a transitional weighted final sales factor representing an average of the old weighted final sales factor and the new weighted final sales factor, which will be applied in the year the amendment takes effect.

### **Reconciliation**

22. A reconciliation comparing the interim payments paid to Westbank during the reconciliation period and Net WFNST Revenues for the reconciliation period will be made once a year. A copy of such reconciliation, together with any relevant information used in arriving at Net WFNST Revenues, except in cases where the provision of such information is prohibited by law, and the Auditor General's report, referred to in article 40, will be provided to Westbank on or before September 1<sup>st</sup>.
23. The first reconciliation will be provided to Westbank on or before September 1<sup>st</sup>, 2001.
24. If the reconciliation determines that Net WFNST Revenues for the reconciliation period exceeded interim payments made to Westbank in the reconciliation period, so that an amount remains payable to Westbank, such amount will be paid to Westbank in the following manner, unless Canada and Westbank agree otherwise:
  - (a) in any case where the agreement is in effect, the amount will be paid to Westbank in twelve equal monthly instalments beginning in the month after the Auditor General's report, referred to in article 40, is provided to Westbank; or
  - (b) in any case where the term of the agreement has ended, the amount will be paid to Westbank within sixty days from the date that the Auditor General's report, referred to in article 40, is provided to Westbank.



25. If the reconciliation determines that the interim payments made to Westbank in the reconciliation period exceeded Net WFNST Revenues for that reconciliation period, such overpayment will be recovered in the following manner, unless Canada and Westbank agree otherwise:
- (a) in any case where the agreement is in effect, the amount will be recovered as a set-off against future interim payments from Canada to Westbank in twelve equal monthly instalments beginning in the month after the Auditor General's report, referred to in article 40, is provided to Westbank; or
  - (b) in any case where the term of the agreement has ended, the amount will be paid to Canada by Westbank within sixty days from the date that the Auditor General's report, referred to in article 40, is provided to Westbank.
26. Where, at any time within four years after the report of the Auditor General, referred to in article 40, for a reconciliation period has been delivered to Westbank, either Canada or Westbank discovers information indicating that the weighted final sales factor for that reconciliation period was inaccurate, it will give notice to the other party. As soon as possible after such notice is given, the parties will discuss and attempt to reach agreement on what the weighted final sales factor should have been in the prior year or years.
27. Where an agreement on a new weighted final sales factor for a given reconciliation period is reached, Net WFNST Revenues for that period will be re-calculated by taking the Gross WFNST Revenue figure from that reconciliation period multiplying it by the new weighted final sales factor to arrive at a new Pre-Adjusted WFNST Revenue figure. This new Pre-Adjusted WFNST Revenue figure will then be adjusted by repeating the procedure outlined in article 17 for the relevant year.
28. If the re-calculation indicates an underpayment to Westbank, such amount will be paid to Westbank in the following manner, unless Canada and Westbank agree otherwise:
- (a) in any case where the agreement is in effect, the amount will be paid to Westbank in twelve equal monthly instalments beginning in the month after the re-calculation has been completed; or
  - (b) in any case where the term of the agreement has ended, the amount will be paid to Westbank within sixty days from the date that the recalculation has been completed.
29. If the re-calculation indicates an overpayment to Westbank, such amount will be recovered from Westbank in the following manner, unless Canada and Westbank agree otherwise:
- (a) in any case where the agreement is in effect, the amount will be recovered as a set-off against future interim payments from Canada to Westbank in



twelve equal monthly instalments beginning in the month after Westbank has received written notification of the results of the re-calculation; or

- (b) in any case where the term of the agreement has ended, the amount will be paid to Canada by Westbank within sixty days from the date that Westbank receives written notification of the results of the re-calculation.

### **Administration**

- 30. The Minister will administer the WFNST on behalf of Westbank.
- 31. Westbank agrees that, in addition to any other forms vendors may be required to file, vendors selling designated products from a location on reserve are required to file a separate schedule with the Minister.
- 32. In order to assist the Minister in matters relating to the collection, administration and enforcement of the WFNST, Westbank agrees to provide such information or other assistance that is reasonably in its power to provide, when such assistance is requested by the Minister. In particular, Westbank agrees to assist in the following manner:
  - (a) to provide information in its possession relating to any person liable to pay tax, or relating to any vendor under the WFNST;
  - (b) to provide information in its possession relating to transactions subject to the WFNST;
  - (c) to take whatever steps are in its power to grant access to the Minister for the purposes of the administration of the WFNST; and
  - (d) to take whatever steps are in its power to assist in the enforcement of the WFNST.
- 33. In order to facilitate the Minister's administration of the WFNST, Westbank will accept as final and binding all interpretations, assessments, reassessments, decisions and other steps made or taken by the Minister under the WFNST in accordance with this agreement. Nothing in this article is intended to restrict Westbank from using any remedy or procedure that may be available to it in its capacity as a registrant under the WFNST.
- 34. Westbank agrees that Canada will retain interest and penalties collected by the Minister in respect of the WFNST.
- 35. Where, in the opinion of the Minister of Finance, the Minister or Westbank, an amendment to the Act, a by-law, this agreement or the schedule would improve the effective administration, collection or enforcement of the WFNST, the Minister of Finance and Westbank agree to meet and discuss the issue. On reaching a potential solution Canada and Westbank agree to take whatever steps are in their respective

powers, subject to any necessary approvals, authorizations or legislative requirements, to effect the solution. However, it is understood that this provision in no way creates any obligation on Canada to consult or advise Westbank of any amendments or contemplated amendments to the *Excise Tax Act*.

36. Notwithstanding that the term of this agreement has ended the Minister will continue to collect and assess and take steps to ensure the administration of the WFNST in respect of any period during which the agreement was in effect.
37. Westbank agrees to ensure that the Minister will have the authority, after the term of the agreement has ended, to carry out the functions contemplated in article 36.
38. Actions, suits, prosecutions or other legal proceedings required to be brought or taken in the administration or enforcement of the WFNST will be brought or taken by Canada. At the request of the Minister, and subject to article 7:
  - (a) Westbank will assist Canada with respect to the conduct of any such action, suit, or proceeding or any matter related thereto; and
  - (b) Westbank will forward to the Minister any document that may be received by it relating to any assessment under the WFNST or relating to any action, suit or other legal proceeding brought or taken under the WFNST.

#### **Enforcement**

39. For greater certainty, for the purposes of section 89 of the *Indian Act*, Westbank acknowledges that enforcement measures undertaken by the Minister with respect to the WFNST are undertaken at the instance of Westbank.

#### **Inspection**

40. The Minister of Finance will annually provide to Westbank a report, signed by the Auditor General of Canada, on the results of applying specified auditing procedures to the reconciliation described in article 22 and in a format agreed to between Westbank, the Minister of Finance and the Auditor General of Canada.
41. The Auditor General's report will constitute the only auditing procedures conducted with respect to Canada's obligations under this agreement.

#### **Dispute Settlement**

42. In the event of a dispute between Westbank and Canada arising out of the interpretation of this agreement, the parties agree to use the procedure set out in articles 43 to 46 prior to pursuing any other legal remedy.
43. Within thirty days of either party receiving written notice from the other of a dispute under this agreement, a meeting will be held between the parties to attempt in good faith to settle the dispute.



44. If, within sixty days after this meeting, the parties have failed to resolve the dispute, they agree to submit the dispute to mediation and to equally bear the costs of that mediation.
45. The parties will jointly select a mediator. If after thirty days the parties are unable to agree upon the choice of a mediator, the matter will be referred to a judge of the Supreme Court of British Columbia who will be asked to choose a mediator.
46. The parties agree to participate in good faith in the mediation process for a period of sixty days.
47. The parties may mutually determine time periods other than those referred to in articles 43 to 46.

### **Amendment and Termination**

48. Subject to article 49, this agreement may only be amended by agreement, in writing, of both Canada and Westbank, subject to any necessary approvals, authorizations or legislative requirements.
49. Changes to the amount of interim payments under article 9, the estimate for the first twenty-four month period pursuant to article 10 and changes to the weighted final sales factor under article 16, are to be agreed upon and implemented by an exchange of letters between the Chief of Westbank First Nation and the Assistant Deputy Minister, Tax Policy Branch, Department of Finance.
50. Any amending document will form part of this agreement and will be effective as of the date specified in such amending document.
51. The parties may mutually agree to terminate the agreement at any time on such terms as they may agree.
52. Westbank may terminate, at its discretion, this agreement giving at least six months notice, in writing to the Minister of Finance, of Westbank's desire to terminate this agreement together with a council by-law that repeals the by-law imposing the tax on the date specified in the notice.
53. Canada may terminate, at its discretion, this agreement by giving at least six months notice, in writing to Westbank's council, of Canada's desire to terminate this agreement on the date specified in the notice.
54. Where Canada has given Westbank notice in accordance with article 53, Westbank will have thirty days from the day it receives the notice to notify Canada if it desires to negotiate a new taxation agreement with Canada. In this case, Canada agrees to make reasonable efforts to negotiate and attempt to reach an agreement, subject to any necessary approvals, authorizations or legislative requirements, on an alternative taxation arrangement with Westbank.

### Effects of Termination

55. The effects of termination will be as follows:

- (a) subject to article 36, the Minister's obligations to collect the WFNST on behalf of Westbank will end after the termination date; and
- (b) after the termination date and subject to section 87 of the *Indian Act*, tax on designated products will be payable under subsection 165(1) of the *Excise Tax Act*.

### Term

56. The term of this agreement, except as otherwise specified in this agreement, will commence when duly executed by both parties and will end on:

- (a) in the case of termination in accordance with article 51, the date agreed to by the parties;
- (b) in the case of termination by Westbank in accordance with article 52, the date specified in the notice; and
- (c) in the case of termination by Canada in accordance with article 53, the date specified in the notice.

THE GOVERNMENT OF CANADA  
AT Ottawa, Ontario

This 6<sup>th</sup> day of August, 1999

BY

\_\_\_\_\_  
Minister of Finance for the Government  
of Canada

WESTBANK FIRST NATION  
AT Westbank, BRITISH COLUMBIA

This 25<sup>th</sup> day of August, 1999

BY

\_\_\_\_\_  
Chief for Westbank First Nation