

CIGARETTE TAX COMPACT
Between
THE MUCKLESHOOT TRIBE
and
THE STATE OF WASHINGTON

PREAMBLE

WHEREAS, the Muckleshoot Tribe is a federally recognized Indian Tribe, possessed of the full inherent sovereign powers of a government; and

WHEREAS, the state of Washington is a state within the United States of America, possessed of full powers of state government; and

WHEREAS, the body of Federal Indian law and policy recognizes the right and the importance of self-determination for Indian Tribes, the authority of a Tribe to tax certain activities, and the need for economic development in Indian country by Indian Tribes; and

WHEREAS, the state of Washington has committed, through the Centennial Accord and Millennium Agreement, to the political integrity of the federally recognized Indian Tribes within the state of Washington and has formally recognized that the sovereignty of each Tribe provides paramount authority for the Tribe to exist and to govern; and

WHEREAS, the imposition of the State cigarette taxes on Muckleshoot Reservation sales of cigarettes from Tribal retailers to nonmember purchasers has the practical effect of limiting the Tribe's ability to impose cigarette taxes on such sales for essential Tribal governmental purposes; and

WHEREAS, a long-standing disagreement exists between the Tribe and the State over questions regarding jurisdiction over and the taxation of the sale and distribution of cigarettes; and

WHEREAS, the State and Tribe will benefit from resolution of that disagreement by the change in focus from enforcement and litigation to a focus on the administration of this cigarette tax Compact; and

WHEREAS, the Tribe and State will benefit from resolution of that disagreement by the tax base this Compact will enable, taxation being an essential attribute of sovereignty and a tool of self-sufficiency; and

WHEREAS, the State and Tribe will also benefit by the exercise of the attributes of Tribal sovereignty and from the improved well-being of members of the Tribe that will result from economic development by the Tribe and its members; and

WHEREAS, both the Tribe and the State desire a positive working relationship in matters of mutual interest and disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, the mutual interests of the Muckleshoot Tribe and the state of Washington brought these two governments together to pursue their common interest; and

WHEREAS, both governments worked diligently to gain for the Governor of the state of Washington the authority to enter into a tax compact regarding cigarettes with the Muckleshoot Tribe; and

WHEREAS, Engrossed Substitute Senate Bill 5372 was enacted by the 57th Legislature and signed by the Governor, authorizing the signing of compacts such as this, such authority effective July 22nd, 2001; and

NOW THEREFORE, the Tribe by and through its Tribal Council and the state of Washington by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tribe and the State to wit:

PART I
Definitions

- (1) "Auditor" means the third party auditor working under the direction of the Tribe and the "department auditor" working under the direction of the department of revenue.
- (2) "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
- (3) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
- (4) "Compact" means this compact entered into by the state of Washington and the Muckleshoot Tribe.
- (5) "Department" means the Washington State Department of Revenue.

- (6) "Essential government services" means services such as Tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
- (7) "Indian country," consistent with the meaning given in 18 U.S.C. 1151 means:
 - (a) All land within the limits of the Muckleshoot Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and
 - (b) All Indian allotments or other lands held in trust for a Muckleshoot Tribal member or the Tribe, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.
- (8) "Local retail sales tax" means the combined Washington local retail sales taxes applicable in the area. "State taxes," in this Compact only, means a combination of the "State cigarette tax," and the "state and local retail sales and use taxes."
- (9) "Muckleshoot Indian Reservation" or "reservation" means the area recognized as the Muckleshoot Indian Reservation by the United States Department of the Interior.
- (10) "NonIndian" means an individual who is neither a Tribal member nor a nonmember Indian.
- (11) "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Muckleshoot Tribe.
- (12) "Parties to the agreement" or "parties" means the Muckleshoot Tribe and the state of Washington.
- (13) "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal cigarette tax.
- (14) "Self-certified tribal wholesaler" means a wholesaler who is a federally recognized Indian Tribe or a member of such a Tribe, who is not required to be licensed under any state law.
- (15) "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler.
- (16) "State" means the state of Washington.
- (17) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. "Tobacco product" does not include cigarettes.

- (18) "Tribal cigarette tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold and on the purchase of cigarettes by retail buyers.
- (19) "Tribal member" or "member" means an enrolled member of the Muckleshoot Tribe.
- (20) "Tribal retailer" means a cigarette retailer wholly owned by the Muckleshoot Tribe and located in Indian country.
- (21) "Tribal tax stamp" means the stamp or stamps that indicate the Muckleshoot Tribal cigarette tax imposed under this Compact is paid.
- (22) "Tribe" or "Tribal" means or refers to the Muckleshoot Tribe, a federally recognized Tribe.
- (23) "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

PART II

Applicability of the Compact

- (1) **Execution of Compact**

This Compact shall become effective when approved by the Tribal Council and signed by the authorized signatory for the Tribe, and signed by the Governor of the state of Washington. This Compact shall be executed in duplicate originals, with each party retaining one fully executed duplicate original of the Compact.
- (2) **Application**

From its execution, and contingent on the imposition of the Tribal cigarette tax pursuant to a Tribal ordinance meeting the terms of Part III of this Compact, this Compact shall apply to the retail sale of cigarettes by Tribal retailers. Sales subject to the Tribal cigarette tax imposed pursuant to this Compact are those in which delivery and physical transfer of possession of the cigarettes from the retail seller to the buyer occurs within Indian country. "Delivery and physical transfer of possession" within Indian country does not include mail order type sales, including internet, catalog, and telephone sales, unless the cigarettes are delivered to the buyer within Indian country.
- (3) **Scope Limited**

This Compact does not apply to:

 - (a) Cigarettes sold at retail by nonIndians or nonmember Indians; and
 - (b) Tobacco products as that term is defined in Part I of this compact.

PART III

Imposition of Tribal Cigarette Taxes

(1) Tribal Retailers

- (a) The Tribe agrees to notify the Department thirty days prior to the start up of cigarette sales by any Tribal retailer other than a retailer in existence on the effective date of this Compact.
- (b) The Tribe agrees that any cigarette retailer wholly owned by the Muckleshoot Tribe is subject to this Compact.
- (c) The Tribe agrees that, for the purposes of this compact, only cigarette retailers wholly owned by the Tribe are authorized to make retail sales of cigarettes.

(2) Tax Imposed on Sales by Tribal Retailers

- (a) The Tribe shall impose by ordinance taxes pursuant to the requirements of this Part on all sales by Tribal retailers of cigarettes to retail purchasers within Indian country. Beginning no sooner than the date this Compact is signed by both parties, and subject to enactment of a Tribal ordinance authorizing the imposition of a Tribal cigarette tax, the Tribe agrees to impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than the sum of an amount equal to 100 percent of the State taxes.
- (b) During the term of this Compact, upon any future increase in the state cigarette tax, state retail sales tax or local retail sales tax, the Tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state and local tax rates.
- (c) Upon any future decrease in the state cigarette tax, state retail sales tax or local retail sales tax, the Tribal tax on cigarettes may decrease to a minimum of no less than 100 percent of the combined state and local tax rates provided.

- (3) Pursuant to RCW 43.06.455, the state retrocedes from its tax during the time this Compact is in effect.

PART IV

Purchase of Cigarettes by Tribal Retailers

(1) Wholesale Purchases – Requirements

The Tribe agrees to add to Tribal law, and maintain in effect, a requirement that Tribal retailers purchase cigarettes only from wholesalers or manufacturers licensed to do business in the state of Washington, or wholesalers that meet the requirements of any memorandum of agreement in Part VI of this Compact.

(2) Delivery of Cigarettes to the Tribal Retailer Outside of Indian Country

Cigarettes bearing the tax stamp required by this Compact may be delivered or transferred within or outside Indian country by a wholesaler to the Tribe or a Tribal retailer. Such cigarettes must be accompanied by invoices identifying the cigarettes as Muckleshoot Tribe cigarettes.

PART V
Tribal Tax Stamps

(1) Tax Stamp Required

- (a) All cigarettes sold by Tribal retailers shall bear a tax stamp.
- (b) The Tribe agrees to post a notice at the applicable Tribal store(s) advising that its cigarettes may not be purchased for resale.
- (c) The Tribe may, by ordinance, allow for an exemption from this tax for enrolled Muckleshoot Tribal members 18 years old or older, in which case the cigarette allocation allowance under WAC 458-20-192 shall apply during the term of this Compact. The expectation of both Parties is that if the Tribe chooses to exempt its members from such tax that the allocation allowance will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales. The Tribe agrees that it will enact an ordinance requiring that eligibility for the sales tax exemption is conditioned on members presenting documentation substantiating enrolled status. The Tribe agrees that the ordinance will establish a reasonable limit on purchases by Tribal members and shall provide a penalty for violation of the ordinance, the objective being to preclude resale of untaxed cigarettes by members.

(2) Creation and Supply of Tax Stamps

- (a) The State agrees that the Tribe may continue to purchase cigarettes with the State cigarette stamp affixed after the effective date of the Tribal cigarette tax, until such time as the Tribe arranges for the use of either the Washington state tribal compact stamp or the Tribe's own stamp. The state cigarette stamps are provided by the State through its stamp vendor to wholesalers licensed with the State.
- (b) If the Tribe elects to institute its own stamp or use the Washington state tribal compact stamp, the Tribe and State agree to negotiate in good faith mutually acceptable terms and conditions of a memorandum of understanding concerning the use of such stamps.

(3) Refund of Tribal Cigarette Taxes Paid – State Cigarette Stamp

During such time that the Tribe uses the state cigarette stamp the Department agrees to remit to the Tribe all revenue collected from the Tribal cigarette tax, less the amount provided under RCW 82.24.295(2), which amount is to be deducted as reimbursement to the state for the cost it incurs in compensating licensed wholesalers to affix stamps. The State will refund to the Tribal government on a monthly basis, using information supplied by the Tribal retailer regarding cigarette purchases, provided that the invoices from the wholesaler to the tribal retailer indicate that the cigarette tax was passed on to the tribal retailer.

(4) Wholesaler Obligation Under State Law

Wholesalers shall be responsible for affixing the Washington State tax stamps according to the provisions of Chapter 82.24 RCW. Such provisions include requirements for: affixing stamps so that the stamps may not be removed from the package without destroying the stamp; affixing stamps so that they may be readily viewed by inspection; and possessing

unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale. It is presumed that any such possession in excess of seventy-two (72) hours is in contravention of this Compact. Affixing of the tax stamps, retention and production of records required by state law, and compliance with other requirements in this Compact, shall be deemed to satisfy the state cigarette excise tax obligation of a wholesaler.

(5) State Agreement Regarding Compliance with State and Federal Law

As to all transactions that conform with the requirements of this Compact, such transactions do not violate state law, and the State agrees that it will not assert that any such transactions violate state law for the purpose of 18 U.S.C. § 2342 or other federal law specifically based on violation of state cigarette laws.

**PART VI
Wholesalers**

(1) Wholesalers Licensed by the State

Wholesalers licensed by the State are subject to the requirements as set forth in Title 82 RCW and any rules adopted thereunder, and therefore must maintain adequate records detailing which cigarettes are subject to state tax and which cigarettes are subject to the Muckleshoot Tribe Tribal cigarette tax.

(2) Self-Certified Out-of-State Wholesalers – Memorandum of Agreement

Should the tribe wish to do business with an out-of-state wholesaler that is not licensed by the state of Washington, the tribe must first enter into a memorandum of agreement with the Department in regard to such business. The memorandum of agreement must at a minimum include:

- (a) An assurance that the out-of-state wholesaler can and will meet the terms of this Compact;
- (b) A means to determine if the out-of-state wholesaler is licensed to do business with the state in which they reside;
- (c) A requirement that cigarettes transported in the state of Washington be accompanied by invoices; and
- (d) An agreement by the out-of-state wholesaler that the third party auditor have access to its records.

(3) Self-Certified Tribal Wholesalers – Memorandum of Agreement

Should the tribe wish to do business with Tribal wholesaler(s) who are not licensed to do business within the state of Washington or any other state, and who are not required by state law to be licensed, the tribe must first enter into a memorandum of agreement with the Department in regard to such business. The memorandum of agreement must at a minimum include:

- (a) An assurance that the tribal wholesaler can and will meet the terms of this Compact;
- (b) A requirement that cigarettes transported in the state of Washington be accompanied by invoices; and

(c) An agreement by the Tribal wholesaler that the third party auditor have access to its records.

(4) Tribe as Own Wholesaler – Memorandum of Agreement

This Compact contemplates that the Muckleshoot Tribe may, at some future date, act as its own wholesaler. In the event that the Muckleshoot Tribe decides to act as its own wholesaler in regards to sales to the Tribal retailer, it agrees to first enter into a memorandum of agreement with the Department regarding this activity. The memorandum of agreement shall reference any applicable requirements of this Compact.

**PART VII
Audit Process**

(1) General

The Tribe wishes to provide assurance that all parties to this Compact and persons named in this Compact are in compliance with the spirit and terms of this Compact. The purpose of this Part is to provide a process for regular verification of the requirements in this Compact. The verification process is intended to reconcile data from all sources that make up the stamping, selling, and taxing activities under this Compact.

(2) Tribe to Compact with Third Party Auditor – State and Tribe to Share Audit Duties

The Tribe and the State agree that, for the purposes of verifying compliance with this Compact, the Tribe agrees that the State is available to do an audit of the tribal retailer to assure compliance with this compact, should the Tribe so request. In the absence of such a request, the Tribe “third party auditor” will undertake the audit of the tribal retailer. The Tribe agrees to compact with an auditor for the purposes of doing the government audit, and any audit of self certified wholesalers, and the audit of the retailer in the event the Tribe makes such an election. This “third party auditor” will be retained by the Tribe and the Tribe shall bear the costs of the auditing services. The Tribe shall be entitled to freely communicate with the third party auditor and the department auditor. The third party auditor must be a certified public accountant licensed by the state of Washington and in good standing, such good standing subject to confirmation by the licensing board through which the auditor is licensed. The auditors will review records on an annual basis, consistent with the Tribe’s fiscal year, to verify the requirements of this Part unless otherwise specified.

(3) Audit Protocol

To ensure compliance with this Compact, the Auditors must adhere to the following protocol:

Period under review: To verify the requirements of this Compact, the Auditors must review records for all years during the current appropriate audit cycle, and may review records for earlier years after the date of the signing of the compact only as necessary for an internal reconciliation of the entity’s books. In situations where the Auditors are responsible for verifying records on less than an annual basis, the period under review shall not include years

previously reviewed by the Auditors, except when a violation is alleged to have occurred during the period previously reviewed.

Records to be examined: To verify the requirements of this Compact, the Auditors must review at a minimum the records specified below. In all situations, the Auditors are not responsible for examining records that do not relate to the stamping, selling, or taxing activities of the Tribe, unless a review of the records is necessary for an internal reconciliation of the books:

- a. **Self-certified wholesaler and self-certified tribal wholesaler:** records and invoices of stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process (third party auditor duty);
- b. **Tribal retailers:** records and invoices of cigarettes purchased from licensed wholesalers, self-certified wholesalers, self-certified tribal wholesalers and manufacturers, records and invoices of cigarettes sold, cigarette inventory, and additional records necessary to verify whether Tribal cigarette tax revenue was used in accordance with the requirements of Part XII section 8 and records to verify that the retail selling price included the applicable tribal taxes (department auditor duty and/or third party auditor duty); and
- c. **Tribe:** records necessary to verify that Tribal cigarette tax revenue was used to fund essential government services of the Tribe (third party auditor duty).

(4) Audit Report Format

The third party auditor shall provide the Department with a certified statement that, after each audit, such auditor finds the Tribe to be in compliance with the terms of this Compact. The Department may view the audit report at the Tribal Offices, but may not copy the same. The department shall share the audit report prepared by the department of revenue auditor with the Tribe and its auditor.

(5) Initial Review – Audit Cycle

The first required review must cover the period starting on the effective date of the tax and ending December 31, 2005, and the auditors must report their findings by April 1, 2006. This initial review shall include all of the activities covered by the protocol. Thereafter, reviews shall take place on the regular audit period, which follows the Tribe's fiscal year, with an audit report submitted within three months of each audit. The Tribe and the Department may by prior joint agreement select or vary the audit cycle depending on the ongoing audit activity of the Tribe, in order to be efficient and effective in the use of auditor resources.

(6) Self-Certified Wholesalers and Self-Certified Tribal Wholesalers

The third party auditor will be responsible for reviewing the records, identified in subsection 3(a) of this Part, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a Tribal retailer to verify that the Tribal cigarette tax was paid by the wholesaler, unless paid to the stamp vendor by the Tribal retailer, and that the stamps were correctly affixed to containers of cigarettes.

The third party auditor must review the records, identified in subsection 3(a) of this Part, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a Tribal retailer no less than once every four years. If a wholesaler that previously sold cigarettes to a Tribal retailer stops making such sales, the third party auditor must review the records of that wholesaler during the next regularly scheduled annual audit.

(7) Tribal Retailer

The department auditor and/or third party auditor will be responsible for reviewing the records, identified in subsection 3(b) of this Part, of the Tribal retailer to certify that the tribal taxes were collected, that all cigarettes are property stamped, that cigarettes were obtained from wholesalers authorized under this Compact, that any exemptions from tax are documented, and that revenue from the tribal tax under this Compact are not used to subsidize the Tribal retailer.

(8) Essential Government Services

The third party auditor will be responsible for reviewing the records of the Tribe and the Tribal retailer to certify that Tribal cigarette tax revenue is used for essential government services. The Auditor will also be responsible for certifying that the Tribal cigarette tax revenues are used in accordance with the requirements of Part XII section 8 of this Compact. The review under this section shall take place on an annual basis.

(9) Joint Audit Implementation and Review

The Tribe and the State shall meet jointly, with the two auditors, prior to the beginning of the initial audit cycle. The purpose of such meeting will be to discuss the objectives of the upcoming audit, the expectations of both the Tribe and the State, the audit standards to be used in such audit, and any issues regarding detail of the audit, records pertinent to the review, or substance of the Auditors' reports. Subsequent pre-audit meetings will be held as required.

As soon as possible after the issuance of the auditors' final reports, and if warranted by the findings in the reports, the Tribe and the State may meet jointly with the Auditors to review the reports and discuss any issues of concern. For the purposes of this section, "audit cycle" refers to the reoccurring scheduled audit of an entity.

(10) Dispute Resolution

In the event that either the Tribe or the Department disagrees with an audit finding or report, either party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in Part VIII section 5 of this Compact.

**PART VIII
Dispute Resolution**

The Tribe and the State wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. The parties agree

that, to the extent possible, informal methods shall be used before engaging in the formal processes provided by this Part.

As used in this Part "days" means calendar days, unless otherwise specified.

(1) Notification of Violation

If either party believes a violation of the agreement has occurred, it shall notify the other party in writing. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy. The parties agree to meet within 14 days of receipt of the notice, unless a different date is agreed to by the parties. The purpose of the meeting will be to attempt to resolve between themselves the issues raised by the notice of possible violation, and provide an opportunity to implement any agreed corrective action.

(2) Mediation

If the parties are unable to resolve the disputed issues through joint discussions under section 1 of this Part, either party may request mediation by giving a written mediation demand to the other party. The parties shall first attempt to agree on a mediator. If the parties cannot agree on a mediator within 30 days of written demand, a three person mediation panel shall be used and shall be selected as follows: each party shall select a mediator and the two mediators selected by the parties shall jointly select a third mediator.

The parties shall share equally the costs of mediation.

(3) Remedies

Whenever an issue is submitted to mediation under this section, the mediators may recommend corrective action to remedy any violation that has occurred. In no case shall a mediator render an independent recommendation or decision on any issue on which the parties reach agreement. Remedies may include: audit of relevant tribal records, interpretation of Compact terms, changes in reporting, record keeping, enforcement practices, business practices, or similar actions. Remedies shall not include an award of monetary damages or costs of any kind, or the disclosure of any records not specifically subject to disclosure under this Compact.

(4) Termination of Compact

If, after no more than eight months from the initial Notice of Violation, the parties are unable to resolve a disagreement regarding an alleged violation and/or the appropriate corrective action using the dispute resolution methods authorized in this section, or if a party continues to violate a Compact term after the completion of the mediation process authorized in this section, this Compact may be terminated. The parties may, after no less than six (6) months following any such termination, enter into a new Compact.

(5) Disagreements Regarding Reports of the Auditors

Should either party have a concern about a report from the Auditors, which cannot be resolved through the joint audit review process described in Part VII of this Compact, that party may choose to resolve the concern through the use of a mediator. Failure of either

party to grant the mediator access to any records necessary to review the report is a violation under this Compact. The mediator may use the services of an independent third-party certified public accountant in undertaking such review.

(6) Notification of For Cause Termination

Upon forty-five (45) days written notice, either party may terminate the Compact for cause. For the purposes of this section, "for-cause" shall mean only the following violations:

- a. Retail sales of unstamped cigarettes during the effective period of a Tribal cigarette tax;
- b. Failure to submit to mediation as required by this Part VIII;
- c. A breach of the confidentiality provisions of Part XI of this Compact; or
- d. Use of tax proceeds in violation of the terms of this Compact.

The party seeking the termination for cause shall notify the other party and the mediation organization, who shall select a mediator to review the facts upon which the for cause termination notice is based. The party making the allegation must provide a written recitation of the facts with the notice of termination. The responding party has ten days to provide its facts to the mediator. If the mediator determines that the alleged event has occurred, the Compact is terminated, however the party making the allegation may choose to go through the regular dispute resolution process in regard to the issue.

The parties shall use their best efforts to resolve the dispute within the forty-five (45)-day notice period. If the parties reach agreement, or the for cause violation is corrected during the notice period, the Compact shall not be terminated.

(7) Notification of Sales to Minors Violation

The Department shall immediately notify the Tribe if an allegation is made that the Tribe has made sales to minors in violation of this Compact. Upon such notification, the Tribe shall take enforcement action according to the provisions of Tribal ordinance. Upon the third or subsequent violation within any rolling one-year period of the sales to minors provisions of this Compact the provisions of section 1 of this Part shall apply.

(8) Notice Requirements

For the purposes of this Compact, notice shall be by certified mail, return receipt requested, unless both parties agree in writing to accept notice by facsimile. Notice shall be deemed to be given on the date of actual receipt. Notice shall be given as follows:

To the Department: Director
 Department of Revenue
 P.O. Box 47454
 Olympia, WA 98504-7454

To the Tribe: Chair, Muckleshoot Tribe
 39015 172nd Avenue SE,
 Auburn, WA 98092

With a copy to: Office of the Tribal Attorney
39015 172nd Avenue SE,
Auburn, WA 98092

(9) Sovereign Immunity

Nothing in this Compact shall be construed as a waiver, in whole or in part, of either party's sovereign immunity.

PART IX

Responsibilities of the Muckleshoot Tribe, the Department of Revenue, and the Liquor Control Board

(1) Muckleshoot Tribe

The Muckleshoot Tribe is responsible for both enforcement of the terms of this Compact and administration of the Compact, audit procedures and record keeping, and dispute resolution. The Muckleshoot Tribe agrees to allow the Department entry into the retail store, the purpose of such entry being limited to (a) visual observation of the retail sales taking place at the store (b) the purchase of cigarettes by the Department, and (c) any access necessary to undertake the audit under Part VII of this Compact.

(2) Liquor Control Board

This agreement does not alter the Liquor Control Board's responsibility under chapter 82.24 RCW.

(3) Department of Revenue

The Department is responsible for the enforcement and administration of the Compact, audit procedures and record keeping, and dispute resolution, as well as negotiation of its terms, on behalf of the Governor of the state of Washington.

PART X

Term of this Compact – Amendment

This Compact shall remain in effect no longer than eight years from its effective date, subject to the termination provisions under Part VIII of this Compact. The Compact shall be automatically renewed for successive periods of eight years, unless either party objects in writing at least 30 days prior to the expiration date. Amendments to the Compact shall be considered upon the written request of either party. Disputes regarding requests for amendment of this Compact shall be subject to the dispute resolution process in Part VIII of this Compact.

**PART XI
Confidentiality**

All information under the terms of this Compact received by the Department or open to Department review is "return or tax information" and is subject to the provisions of RCW 82.32.330, the tax information "secrecy clause." All other information that is subject to review by the Auditors, review by the mediator, or review by certified public accountant is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

PART XII Miscellaneous Provisions

- (1) **Tribe Does Not Submit to State Jurisdiction**
By entering into this Compact, the Tribe does not concede that the laws of the state of Washington, including its tax and tax collection provisions, apply to the Tribe, its members or agents regarding activities and conduct within or without Indian country.
- (2) **State Does Not Concede Tribal Immunity**
By entering into this Compact, the State does not concede that the Tribe has any immunity from its tax and tax collection provisions.
- (3) **Compact Does Not Create any Third Party Beneficiaries**
No third party shall have any rights or obligations under this Compact.
- (4) **Land Status**
The Tribe shall provide information regarding the status of land upon which any Tribal retailer is located at least 30 days prior to the startup of any new cigarette sales by such retailer.
- (5) **Tobacco Master Settlement Agreement**
 - (a) This Compact is not intended to impact the State's share of proceeds under the master settlement agreement entered into by the State on November 23, 1998.
 - (b) The Tribe recognizes the State has an interest regarding nonparticipating manufacturers. The State recognizes the Tribe has an interest in the master settlement agreement. The Tribe agrees to not impede the State's efforts to secure compliance of the nonparticipating manufacturers, and the Tribe reserves its rights regarding these matters.
 - (c) Nothing in this Compact supercedes or replaces chapter 70.157 RCW.
- (6) **Periodic Review of Compact Status**
Appropriate representatives of the Tribe and of the Department shall hold periodic meetings to review the status of this Compact and any issues that have arisen under the Compact. Those meetings shall be held no less frequently than once every 12 months, but may be held more frequently.

(7) Sales to Minors

The Tribe or a Tribal retailer shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of 18 years. The Tribe is responsible for the enforcement of this provision. The Tribe agrees to maintain an ordinance prohibiting sales of cigarettes to persons under the age of 18 years.

(8) Essential Government Services

(a) Tribal cigarette tax revenue shall be used for essential government services. The third party auditor shall certify the use of such revenue under the process set forth in Part VII of this Compact.

(b) Tribal cigarette tax revenue may not be used to subsidize Tribal cigarette and food retailers. "Subsidize" means that proceeds from the Tribal cigarette tax or taxes pursuant to this Compact cannot be expended on the direct business activities of the Tribal retail cigarette business. In addition, where the cigarette business is collocated with a retail food business, the proceeds cannot be expended to support that business.

(i) "Direct business activities" include paying wages, benefits, bonuses, or expenses, related to the maintenance and operation of the retail facility or typically considered to be part of a business's operating expenses and overhead;

(ii) "Essential government services" includes, but is not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal cigarette tax stamp program under this Compact, including all deductions and exemptions similar to those available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, compacting for health benefits, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, such activities as land and building acquisitions, and building development and construction.

(9) Other Retail Sales within Indian Country by Tribal Members

Under Muckleshoot Tribal law member retailers are not permitted to make retail cigarette sales within Indian country .

(10) Rule 192 – Application

This Compact is a "cooperative agreement" as that term is used in WAC 458-20-192 (Rule 192) and a contract as that term is used in RCW 43.06.450 through .460.

(11) Subsequent State Legislative Enactments

Should the Legislature enact a law that provides more favorable terms for the Muckleshoot Tribe, the parties shall amend the Compact to reflect such terms.

(12) Jurisdiction

This Compact does not expand or limit the jurisdiction of either the Tribe or the State.

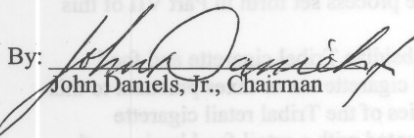
(13) Severability

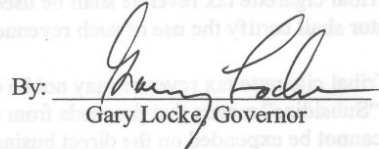
If any provision of this Compact or its application to any person or circumstance is held invalid, the remainder of the Compact is not affected.

THUS AGREED THIS 30th day of June, 2004.

MUCKLESHOOT TRIBE OF INDIANS

STATE OF WASHINGTON

By: 
John Daniels, Jr., Chairman

By: 
Gary Locke, Governor