

**CIGARETTE TAX CONTRACT**  
**Between**  
**THE STILLAGUAMISH TRIBE OF INDIANS**  
**and**  
**THE STATE OF WASHINGTON**

**1.0 PREAMBLE**

- 1.1** WHEREAS, the Stillaguamish Tribe of Indians is a federally recognized Indian Tribe, possessed of the sovereign powers of a government; and
- 1.2** WHEREAS, the state of Washington is a state within the United States of America, possessed of the sovereign powers of state government; and
- 1.3** 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
- 1.4** 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
- 1.5** WHEREAS, a long-standing conflict exists between the Tribe and the State over questions regarding jurisdiction over and the taxation of the sale and distribution of cigarettes, and this conflict has been addressed through the state legislature's policy regarding cigarette contracting; and
- 1.6** WHEREAS, the State and Tribe will benefit from resolution of that conflict by the change in focus from enforcement and litigation to a focus on the administration of this cigarette tax Contract; and
- 1.7** WHEREAS, the Tribe and State will benefit from resolution of that conflict by the tax base this Contract will enable, taxation being an essential attribute of sovereignty and a tool of self-sufficiency; and
- 1.8** WHEREAS, the State and Tribe will 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
- 1.9** WHEREAS, both the Tribe and the State desire a positive working relationship in matters of mutual interest and seek to resolve disputes by conducting discussions on a government-to-government basis; and
- 1.10** WHEREAS, the mutual interests of the Stillaguamish Tribe of Indians and the state of Washington brought these two governments together to pursue their common interest in resolving this tax disagreement; and

- 1.11** WHEREAS, RCW 43.06 *et seq.* authorizes the Governor of the state of Washington to enter into cigarette contracts with certain Washington state Indian Tribes identified as eligible to enter into such contracts by specific state legislation; and
- 1.12** WHEREAS, legislation was enacted by the 60<sup>th</sup> legislature and signed by the Governor, authorizing the Governor to enter into a cigarette contract with the Stillaguamish Tribe of Indians.
- 1.13** NOW THEREFORE, the Tribe by and through its Board of Directors, and the state of Washington by and through its Governor, do hereby enter into this Contract for the mutual benefit of the Tribe and the State.

**2.0 DEFINITIONS**

- 2.1** "Auditor" means an independent third party auditor selected pursuant to section 10 of this Contract.
- 2.2** "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
- 2.3** "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.
- 2.4** "Contract" means this contract entered into by the state of Washington and the Stillaguamish Tribe of Indians.
- 2.5** "Department" means the Washington state Department of Revenue.
- 2.6** "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.
- 2.7** "Indian country," consistent with the meaning given in 18 USC 1151, means:
- 2.7.1 all land within the limits of the Stillaguamish 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
- 2.7.2 all Indian allotments or other lands held in trust for a Stillaguamish Tribal Member or the Tribe, including rights of way running through the same.
- 2.8** "Non-Indian" means an individual who is neither a Stillaguamish Tribal member nor a nonmember Indian.
- 2.9** "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Stillaguamish Tribe of Indians.

- 2.10** Parties to the agreement" or "parties" means the Stillaguamish Tribe of Indians and the state of Washington.
- 2.11** "Retail sales tax" means the combined state and local retail sales taxes applicable in the area.
- 2.12** "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, which price includes the Tribal taxes.
- 2.13** "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, and who has by letter certified to the Department that it will abide by the terms of this Contract and who has signed a contract with the Tribe requiring it to abide by the terms of this Contract.
- 2.14** "Self-certified wholesaler" means an out-of-state wholesaler who is not a self-certified tribal wholesaler and who has by letter certified to the Department that it will abide by the terms of this Contract and who has signed a contract with the Tribe requiring it to abide by the terms of this Contract.
- 2.15** "State" means the state of Washington.
- 2.16** "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.
- 2.16.1 "Tobacco products" do not include cigarettes.
- 2.17** "Tribal tax" means the combined tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold (the tribal cigarette tax) and on the purchase of cigarettes by retail buyers (the tribal retail sales tax).
- 2.18** "Tribal member" means an enrolled member of the Stillaguamish Tribe of Indians.
- 2.18.1 For purposes of this Contract, a member of another federally recognized Tribe who is the spouse of an enrolled Stillaguamish will be treated the same as an enrolled member of the Stillaguamish Tribe of Indians.
- 2.19** "Tribal retailer" means a cigarette retailer wholly owned by the Stillaguamish Tribe of Indians and located in Indian country.
- 2.20** "Tribal tax stamp" means the stamp or stamps indicating payment of the Tribal cigarette tax imposed on the units of cigarettes sold under this Contract
- 2.21** "Tribally-licensed retailer" means a Tribal Member who has a business license from the Tribe to sell cigarettes at retail from a business located in Indian Country.
- 2.22** "Tribe" or "Tribal" means or refers to the Stillaguamish Tribe of Indians, a federally recognized Tribe.

**2.23** "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

### **3.0 Applicability of the Contract**

#### **3.1 Execution of Contract**

3.1.1 This Contract will become effective when approved by the Stillaguamish Board of Directors and signed by the authorized signatory for the Tribe, and signed by the Governor of the state of Washington.

3.1.2 This Contract will be executed in duplicate originals, with each party retaining one fully-executed duplicate original of the Contract.

#### **3.2 Application**

3.2.1 From its execution, and contingent on the imposition of the Tribal taxes pursuant to a Tribal ordinance meeting the terms of section 4 of this Contract, this Contract will apply to the retail sale of cigarettes by Tribal retailers and Tribally-Licensed retailers.

3.2.2 Sales subject to the Tribal taxes imposed pursuant to this Contract are those in which delivery and physical transfer of possession of the cigarettes from the retail seller to the buyer occurs within Indian country.

3.2.3 "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.

#### **3.3 Scope Limited.** This Contract does not apply to:

3.3.1 Cigarettes sold at retail by nonIndians or nonmember Indians

3.3.2 Tobacco products as that term is defined in subsection 2.16 of this Contract; and

3.3.3 Cigarettes manufactured by the Stillaguamish Tribe of Indians or its enterprises within Indian country, such treatment conditioned on an agreement with the Department of Revenue as to the status of such cigarettes, such agreement to not be unreasonably withheld and to be negotiated in good faith.

#### **3.4 Mail Order Type Sales.** If the Tribe desires to pursue mail order, telephone, or internet sales of Cigarettes the parties will negotiate in good faith a memorandum of understanding concerning the taxation, if any, of such sales.

### **4.0 Imposition of Tribal Taxes**

#### **4.1 Notice regarding new retail locations**

4.1.1 The Tribe agrees to notify the Department 30 days prior to the start up of cigarette sales by a Tribal retailer or Tribally-Licensed Retailer. Such notice will

include information regarding the status of land upon which any retailer is located.

#### **4.2 Tribally-Licensed Retailers**

- 4.2.1 Tribally-licensed retailer refers to, as of the date of this Contract, the Blue Stilly Smoke Shop.
- 4.2.2 The Tribe will require, by enactment of Tribal law, that each Tribally-licensed retailer comply with the terms of this Contract.
- 4.2.3 The Tribe agrees to maintain and enforce a requirement that any Tribal Member selling cigarettes at retail in Indian Country must first obtain a business license from the Tribe.
- 4.2.4 The Tribe agrees to provide to the Department a list of Tribally-licensed retailers, and to provide the Department with an updated list upon the Tribe's issuance of the business license to a Tribally-licensed retailer as provided in subsection 4.2.3.
- 4.2.5 The Tribe and the State agree that compliance efforts regarding Tribally-licensed retailers will be in accordance with section 9.
- 4.2.6 The Tribe will enact policies regarding Tribal access to records of Tribally-licensed retailers.
- 4.2.7 Such policies will be in accord with and in furtherance of section 9.

#### **4.3 Tax Imposed on Sales by Tribal Retailers**

- 4.3.1 The Tribe will impose by ordinance taxes pursuant to the requirements of this section on all sales by Tribal retailers and Tribally-licensed retailers of cigarettes to nonIndian and nonmember Indian purchasers within Indian country.
- 4.3.2 Such ordinance may provide for compensation for wholesalers for their services in affixing the Tribal tax stamp.
- 4.3.3 During the term of this Contract, upon any future increase in the state cigarette excise tax, state retail sales tax or local retail sales tax, the Tribal tax on cigarettes will increase by no less than 100 percent of the increase in the combined state and local tax rates; provided however that during the phase-in period the Tribal tax rate will be set so that it is at least equal to 80 percent of the then current combined state cigarette tax and state and local sales tax.
- 4.3.4 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 however that during the phase-in period the Tribal tax rate will be set so that it is at least equal to 80 percent of the then current combined state cigarette tax and state and local sales tax.

4.3.5 Pursuant to chapters 43.06 and 82.24 RCW, during the term of this Contract the state retrocedes collection of state taxes against the Tribe, its wholesalers, or retailers.

**4.4 Phase-In Tax Rate.** Beginning on the date of the execution of this Contract, the Tribe will impose and maintain in effect taxes on the retail sale of cigarettes equaling no less than the sum of an amount equal to 80 percent of the state cigarette excise tax, which is expressed in cents per cigarette, plus an amount equal to 80 percent of the combined state and local retail sales taxes.

**4.5 Final Tax Rate.** No later than 36 months after the initial imposition of tax under this Contract and subject to the phase-in reduction under this Part, the Tribe will impose and maintain in effect taxes on the retail sale of cigarettes equaling no less than the sum of: an amount equal to 100 percent of the state cigarette excise tax, which is expressed in cents per cigarette, plus an amount equal to 100 percent of the state and local retail sales taxes.

**4.6 Reduction in Three Year Phase-In – How to Determine**

4.6.1 If during any quarter, the number of cartons of cigarettes, excluding those manufactured by the Stillaguamish Tribe of Indians or its enterprises subject to an agreement under 3.3.3, that are sold at retail exceeds by at least 10 percent the quarterly average sales of the six months preceding the imposition of the Tribal taxes, the 36 month period noted above will be reduced by three months.

4.6.2 The quarterly average sales baseline will be determined by the Auditor.

4.6.3 The Auditor will notify the Tribe and the Department when the retail sales for any one quarter exceed the baseline by at least 10 percent.

4.6.4 These reductions will be cumulative so that newly calculated reductions to the phase-in period will be in addition to any previously calculated phase-in period reductions.

4.6.5 For the purposes of this provision:

- (a) "Quarter" means a three-month period, each quarter immediately succeeding the next;
- (b) The first quarter begins the first day of the first month the Tribal taxes are imposed, if the imposition of the tax is on or before the 15th of the month, or begins the first day of the second month the Tribal tax is imposed, if the imposition of the tax is after the 15th of the month; and
- (c) The "quarterly average sales" means the sum of the retail sales made during the two quarters divided by two.

**5.0 Purchase of Cigarettes by Tribal Retailers and Tribally-Licensed Retailers**

**5.1 Wholesale Purchases – Requirements.** The Tribe agrees to add to Tribal law, and maintain in effect, a requirement that the Tribal retailers and Tribally-licensed retailers purchase cigarettes only from:

5.1.1 Wholesalers or manufacturers licensed to do business in the state of Washington;

5.1.2 Self-certified out-of-state wholesalers who meet the requirements of subsection 7.2 of this contract;

5.1.3 Self-certified tribal wholesalers who meet the requirements of subsection 7.3 of this contract; and

5.1.4 The Tribe or its enterprises as a Tribal wholesaler or Tribal manufacturer.

**5.2 Delivery of Cigarettes to the Tribal Retailer or Tribally-licensed Retailer Outside of Indian Country**

5.2.1 Cigarettes bearing the Stillaguamish Tribe of Indians Tribal tax stamp required by this Contract may be delivered or transferred within or outside Indian country by a wholesaler to the Tribe, a Tribal retailer, or a Tribally-licensed retailer subject to meeting any notification requirements of this Contract.

5.2.2 Such cigarettes must be accompanied by invoices identifying the cigarettes as Stillaguamish Tribe of Indians cigarettes.

## **6. Tribal Tax Stamps**

### **6.1. Tribal Tax Stamp Required**

6.1.1. All cigarettes purchased, possessed, or sold by the Tribal retailer or a Tribally-licensed retailer will bear a Tribal tax stamp. The Tribe agrees that tribal retailers and tribally-licensed retailers may not possess unstamped cigarettes, subject to the provisions of 7.4.

6.1.2. The Tribe may allow for an exemption from the tribal tax for enrolled members. If the Tribe chooses to exempt its members from tax, the Tribe agrees to keep exact records of such sales and to exempt the members at the point of sale. The Tribe will put in place a reimbursement process for its retailers for cigarette tax paid by the retailers, as evidenced by the stamp. The expectation of both Parties is that if the Tribe chooses to tax its members, the allocation allowance described in WAC 458-20-192 will be used as an approximation of sales to members and the Tribe would not be required to keep exact records of such sales to Tribal members. This allocation allowance would be used to distinguish funds subject to the requirements of Section 16.7 and funds that are not.

6.1.3. The Tribe may arrange for the creation of a Tribal tax stamp by a nationally recognized stamp manufacturer. Tribal tax stamps will have a serial number or some other discrete identification so that stamps may be traced to the wholesaler. The Tribe agrees to purchase stamps from a nationally recognized stamp manufacturer. The Department agrees to work with the tribe to obtain a suitable stamp.

- 6.1.4. The Tribe agrees to require Tribally-licensed retailers to post a notice advising that cigarettes may not be purchased for resale.

## **6.2. Stamp Vendor Contract**

- 6.2.1. The Tribe will contract with a bank or other stamp vendor to distribute tax stamps.
- 6.2.2. Except as provided in 6.2.3, the stamp vendor will distribute stamps to wholesalers upon payment of the Tribal cigarette tax by the wholesaler, and remit the collected tax to the Tribe.
- 6.2.3. The Tribe may elect to collect the Tribal cigarette tax direct from Tribal retailers and tribally-licensed retailers. The stamp vendor will distribute stamps to the wholesaler or to the Tribe, as designated by the Tribe.
  - 6.2.3.1 If stamps are distributed to the wholesaler, the wholesaler shall affix the stamps to the cigarettes without the tax included in the price, and distribute the stamped cigarettes to the Tribe. The Tribe will collect the cigarette tax upon transfer of the stamped cigarettes to the Tribal retailer or tribally-licensed retailer.
  - 6.2.3.2 If stamps are distributed to the Tribe acting as the wholesaler, the Tribe will affix the stamps to the cigarettes and collect the cigarette tax upon transfer of the stamped cigarettes to the Tribal retailer or tribally licensed retailer.
- 6.2.4. The contract will provide that the stamp vendor will purchase a supply of Tribal tax stamps from the manufacturer and make them available for purchase.
- 6.2.5. The Tribe may, at its option, select as the stamp vendor the bank with which the Department contracts for that service, or some other third party stamp vendor satisfactory to both the Tribe and the Department.
- 6.2.6. The Tribe will require the stamp vendor to remit to the Tribe all revenue collected from the Tribal cigarette excise tax.
- 6.2.7. The Tribe will require that the stamp vendor provide to the Tribe and to the Department timely reports detailing the number of Tribal tax stamps sold, and make its records available for auditing by the Tribe and the Department.
- 6.2.8. The Tribe's contract with the stamp vendor will specify a process by which the Tribe is assured that all wholesalers who sell cigarettes to Tribal retailers and tribally-licensed retailers are paying the applicable cigarette tax. This agreement contemplates that the Tribe may in the future act as a stamping wholesaler in which case it will also act as the stamp vendor. In this event, the Tribe will institute appropriate segregation of duties and internal controls regarding stamp vending and handling.

## **6.3. Requirements for Affixation of Stamps by Wholesalers**



- 6.3.1. Wholesalers will be responsible for affixing the Tribal tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal retailers and the tribally-licensed retailers.
- 6.3.2. Stamps will be affixed so that the stamps may not be removed from the package without destroying the stamp.
- 6.3.3. Stamps will be affixed so that it may be readily ascertained by inspection that the tax has been paid.
- 6.3.4. Wholesalers may only possess unstamped cigarettes for as long as is reasonably necessary to affix Tribal tax stamps to the packages for sale. It is presumed that any such possession in excess of 72 hours (excluding Saturdays, Sundays, and Federal holidays) is in contravention of this Contract.
- 6.3.5. The Tribe, as part of its tax administration function, may maintain and distribute tax stamps and be deemed the "stamp vendor" for purposes of this Contract. The Tribe, as a government, shall also be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal retailer or Tribally licensed retailer, except where the Tribe contracts with another wholesaler to provide these services in compliance with this Contract. The Department and the Tribe agree that the affixation of stamps, as set forth in this Contract, is a governmental function. The Tribe agrees to maintain a separation between its enterprise activity of retailing cigarettes and its tax administration functions of holding stamps, storing wholesale cigarette inventory, affixing stamps, and releasing cigarette inventory to the retailer. To that end, the Tribe will maintain its unstamped cigarette inventory in a secure location apart from Tribal retailer store(s) and subject to camera surveillance.
- 6.3.6. Prior to affixation, tax stamps shall be maintained in a secure area subject to 24 hour surveillance. The Tribe shall invite the Department to view its secure stamp storage area and walk the Department through its protocols and protections. The Department and Tribe agree to share technical assistance and advice in the area of tax administration.
- 6.3.7. The Tribe may only possess 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 (excluding Saturdays, Sundays, and holidays) is in contravention of this Contract. Cigarettes that are damaged or were not ordered, and that are to be returned to the vendor, are not subject to the 72-hour standard. Such cigarettes must be set aside and kept in a secure location until the vendor picks them up. It is expected by both Parties that the vendor will pick up these cigarettes within a reasonable period of time. The Department and the Tribe have agreed to this weekend and holiday exclusion in recognition of the governmental function being carried out and the burden that a strict 72-hour rule would place on government staff on weekends and holidays. The Tribe has agreed that "holiday" for purposes of this section means all Federal and Tribal holidays, and Tribal funeral closures as determined by the Tribal government. If a holiday falls on a Saturday, the preceding Friday is considered a holiday; if a holiday falls on a Sunday, the following Monday is considered a holiday.

**6.4. Wholesaler Obligation Under State Law.** Collection of the Tribal cigarette taxes, affixing of the Tribal tax stamps, retention and production of records required by state law (in the case of state licensed wholesalers) and by this Contract (in the case of self-certified out-of-state or self-certified Tribal wholesalers), and compliance with other requirements in this Contract, will be deemed to satisfy the state cigarette excise tax obligation of a wholesaler.

**6.5. State Agreement Regarding Compliance with State and Federal Law.** All transactions that conform with the requirements of this Contract do not violate state law, and the State agrees that it will not assert that any transactions in conformity with this Contract violate state law for the purpose of 18 U.S.C. § 2342 or other federal law specifically based on violation of state cigarette laws.

## **7.0 Wholesalers**

**7.1 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 Stillaguamish Tribe of Indians Tribal cigarette tax, as evidenced by the proper stamp and tax rate.

### **7.2 Self-Certified Out-of-State Wholesalers.**

7.2.1 Wholesalers who are not licensed to do business within the state of Washington, and who are not required by state law to be licensed, but who have agreed to comply with the provisions of this Contract, must certify by letter to the Department and to the Tribe that they will and can meet the terms of this Contract. The Tribe will provide copies of such contracts to the Auditor for its review.

7.2.2 The out-of-state wholesaler must be licensed or authorized to do business as a cigarette wholesaler with the state in which they reside.

7.2.3 The contract between the Tribe and the out-of-state wholesaler will also include a requirement that:

- (a) The cigarettes transported in the state of Washington will be stamped and accompanied by invoices detailing the quantity and brand of cigarettes destined for the Stillaguamish Tribe of Indians.
- (b) Such invoices will provide an order number and will identify the seller of the cigarettes as well as the buyer of the cigarettes; and
- (c) The wholesaler will allow the Auditor access to its records for the purpose of determining whether the Tribal cigarette tax has been paid and whether Tribal tax stamps are properly affixed to the cigarette containers.

### **7.3 Self-certified Tribal Wholesalers**

7.3.1 Tribal wholesalers 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, but who have agreed to comply with the terms of this Contract, must

certify by letter to the Department that they will and can meet the terms of this Contract.

7.3.2 The Stillaguamish Tribe of Indians will require compliance with this Contract in its contracts with any such Tribal wholesalers and will provide copies of such contracts to the Auditor for its review.

7.3.3 The contract between the Tribe and the Tribal wholesaler will also include a requirement that:

(a) The cigarettes transported in the state of Washington will be stamped and accompanied by invoices detailing the quantity and brand of cigarettes destined for the Stillaguamish Tribe of Indians, and which will provide an order number and will identify the seller of the cigarettes as well as the buyer of the cigarettes; and

(b) The wholesaler will allow the Auditor access to its records for the purpose of determining whether the Tribal tax has been paid and whether Tribal tax stamps are properly affixed to the cigarette containers.

#### **7.4 Tribe as Wholesaler**

7.4.1 This Contract contemplates that the Stillaguamish Tribe of Indians will, at some future date act as a wholesaler.

7.4.2 In the event that the Stillaguamish Tribe of Indians decides to act as a wholesaler in regards to sales to retail businesses other than Tribal retailers or Tribally-Licensed retailers, it agrees to first enter into a memorandum of agreement with the Department regarding this activity, which will reference any applicable requirements of this Contract.

7.4.3 If the Tribe, by itself or through a Tribal enterprise, manufactures and wholesales to Tribal retailers or Tribally-Licensed retailers, that wholesale activity will not require a memorandum of agreement under subsection 7.4.2.

### **8.0 Enforcement Authority and Responsibility of Liquor Control Board**

#### **8.1 Intent.**

8.1.1 The state authorizing legislation for this Contract states that it is the intent of the legislature that the Liquor Control Board and the Department continue the division of duties and shared authority under RCW 82.24 and therefore the Liquor Control Board is responsible for enforcement activities that come under the terms of RCW 82.24.

8.1.2 The Tribe will have primary responsibility for enforcement against Tribal retailers and Tribally-licensed retailers.

8.1.3 The parties will work cooperatively by providing each other with relevant information and in other necessary ways to facilitate their respective enforcement responsibilities.

## **8.2 Commercial Carriers**

8.2.1 The State recognizes that shipments of cigarettes both from in state and from out-of-state wholesalers, who meet the requirements of this Contract, may be made by commercial carrier.

8.2.2 Such shipments must be accompanied by documents as required under this Contract.

## **9.0 Tribally-Licensed Retailers**

### **9.1 Compliance Program**

9.1.1 The Tribe agrees to establish a Tribally-licensed retailer compliance program.

9.1.2 The purpose of the program is to monitor compliance with this Contract and Tribal laws enacted to implement this Contract.

9.1.3 The compliance program will include measures to monitor and investigate Tribally-licensed retailers in regard to:

- (a) Sales to minors;
- (b) Sales of unstamped cigarettes;
- (c) Sales of cigarettes obtained from unauthorized sources; and
- (d) Sales of exempt cigarettes to ineligible persons.

9.1.4 The Tribe agrees to provide monitoring, sampling, investigation, reporting, and related activities necessary to carry out the Tribally-licensed retailer compliance program by the Tribe.

9.1.5 The Tribe will report violations of 9.1.3 and enforcement actions taken pursuant to Tribal law to the Department within 30 calendar days.

## **10.0 Independent Third Party Auditor**

### **10.1 Purpose**

10.1.1 The Tribe wishes to provide assurance that all parties to this Contract and persons named in this Contract are in compliance with the spirit and terms of this Contract.

10.1.2 The purpose of this Part is to provide a process for regular verification of the requirements in this Contract.

10.1.3 The verification process is intended to reconcile data from all sources that make up the stamping, selling, and taxing activities under this Contract.

### **10.2 Tribe to Contract with Third Party Auditor**

- 10.2.1 The Tribe and the State agree that, for the purposes of verifying compliance with this Contract, the Tribe will contract with an independent third party auditor.
- 10.2.2 The Auditor will be retained by the Tribe and the Tribe will bear the costs of the auditing services.
- 10.2.3 The Tribe will be entitled to freely communicate with the Auditor.
- 10.2.4 The Auditor must be a certified public accountant licensed by the state of Washington.
- 10.2.5 The Auditor will review records on an annual basis, consistent with the Tribe's fiscal year, to verify the requirements of this Part.

**10.3 Audit Protocol.** To ensure compliance with this Contract, the Auditor must adhere to the following protocol:

10.3.1 Period under review

- (a) To verify the requirements of this Contract, the Auditor must review records during the appropriate audit cycle, and may review records for earlier years only as necessary for an internal reconciliation of the person's books.
- (b) However, records relating to the period before the effective date of the Tribal tax are not open to review except to verify the quarterly average sales baseline as described in subsection 10.8.1.
- (c) In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review will not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.

10.3.2 Records to be examined. To verify the requirements of this Contract, the Auditor must review at a minimum the following records:

- (a) Stamp vendor: records and invoices of stamps purchased from the stamp manufacturer, records and invoices of sales of stamps to licensed wholesalers, manufacturers, self-certified wholesalers and self-certified tribal wholesalers, or Tribal retailers, or Tribally-Licensed retailers and stamp inventory.
- (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, records of exemptions provided by subsection 6.1.2, cigarette inventory, and additional records necessary to verify whether Tribal tax revenue was used in accordance with the requirements of subsection 16.7 and records to verify remission of the tribal retail sales tax to the Tribe.
- (c) Tribally-licensed 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, records of exemptions provided by subsection 6.1.2, cigarette inventory, and additional records necessary to verify remission of the tribal retail sales tax to the Tribe.

- (d) Tribe: records limited to those which are necessary to verify that all Tribal tax revenue was used to fund essential government services of the Tribe.
- (e) 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.
- (f) In all situations, the Auditor is not responsible for examining records that do not relate to the stamping, selling, or taxing activities of the Stillaguamish Tribe of Indians, unless a review of the records is necessary for an internal reconciliation of the person's books.

#### **10.4 Report Format**

- 10.4.1 The Auditor must submit its findings in final written reports to the Tribe, and shall provide the Department with a certified statement after each audit regarding whether the Auditor finds the Tribe to be in compliance with the terms of this Contract. The Department may view the audit report at the Tribal Offices but may not copy the same.
- 10.4.2 The report must indicate what types of records were examined for each party audited, what periods were reviewed, and must include a statement regarding verification of the specific requirements identified in subsection 10.3.2.
- 10.4.3 In addition, if a statistical sampling process was used, the report must indicate the sampling method used.

**10.5 Initial Review.** The first required review must cover the period starting on the effective date of the tax and ending September 30, 2008, and the Auditor must report its findings to the Tribe by December 31, 2008.

#### **10.6 Self-Certified Wholesalers and Self-Certified Tribal Wholesalers**

- 10.6.1 The Auditor will be responsible for reviewing the records, identified in subsection 10.3.2(e) of this section, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to Tribal retailers or Tribally-Licensed retailers to verify that the applicable Tribal tax was paid by the wholesaler, unless prepaid to the stamp vendor by the Tribal retailer or Tribally-Licensed retailer, and that the stamps were correctly affixed to containers of cigarettes.
- 10.6.2 The Auditor must review the records, identified in subsection 10.3.2(e) of this section, of all self-certified wholesalers and self-certified tribal wholesalers that sell cigarettes to a Tribal retailer or Tribally-Licensed retailer annually.

10.6.3 If a wholesaler that previously sold cigarettes to a Tribal retailer or Tribally-Licensed retailer stops making such sales, the Auditor must review the records of that wholesaler during the next regularly scheduled annual audit.

#### **10.7 Stamp Vendors**

10.7.1 The Auditor will be responsible for reviewing the records, identified in subsection 10.3.2(a) of this section, of the stamp vendor to verify that Tribal taxes paid by wholesalers, or other party responsible under this Contract, were remitted to the Tribe.

10.7.2 The review required under this section must take place annually.

#### **10.8 Tribal Retailer and Tribally-Licensed Retailer - Phase-In Period**

10.8.1 The Auditor will be responsible for reviewing the records of each Tribal retailer and Tribally-licensed retailer to establish the quarterly average sales baseline for a six month period preceding the first imposition of the Tribal tax as determined by tribe prior to execution of the contract.

10.8.2 Once this baseline has been established, the Auditor is not required to recalculate this information.

10.8.3 During the phase-in period, the Auditor will be responsible for reviewing the records of each Tribally-Licensed retailer to determine the retail sales volume for each quarter.

10.8.4 This review must take place on no less than a semi-annual basis, except for the first year of imposition of the Tribal tax, which will be reviewed at the end of the Tribe's fiscal year in the report due December 31, 2008.

10.8.5 The Auditor will notify the Tribe and the Department when the retail sales for any one quarter exceed the quarterly average sales baseline by at least ten percent.

10.8.6 Based on the findings from the Auditor, the phase-in period will be adjusted according to the provisions in subsection 4.6 of this Contract.

#### **10.9 Joint Audit Implementation and Review**

10.9.1 The Tribe and the State may meet jointly with the Auditor prior to the beginning of an audit cycle.

10.9.2 The purpose of such meeting is 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 Auditor's report.

10.9.3 As soon as possible after the issuance of the Auditor's final report, the Tribe and the State may meet jointly with the Auditor to review the report and discuss any issues of concern.

**10.10 Dispute Resolution.** In the event that either the Tribe or the Department disagrees with the Auditor's final report, either party may notify the other of the disagreement and follow the procedures for resolution of the disagreement in section 11 of this Contract.

**11.0 Dispute Resolution**

**11.1 Intent**

11.1.1 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.

11.1.2 The parties agree that, to the extent possible, informal methods will be used before engaging in the formal processes provided by this section.

**11.2 Notice of Violation**

11.2.1 If either party believes a violation of this Contract has occurred, it will notify the other party in writing.

11.2.2 The notice will state the nature of the alleged violation and any proposed corrective action or remedy.

11.2.3 The party receiving notice will have 10 calendar days to respond, unless the time to respond is extended by agreement of both parties, which agreement will not be unreasonably withheld in order to allow a complete and accurate response.

11.2.4 The parties will meet within 14 calendar days of the receipt of the response to the notice of violation, unless the parties agree in writing to a different date.

11.2.5 The purpose of the meeting will be to attempt to resolve between them the issues raised by the notice of violation, and provide an opportunity to implement any agreed corrective action.

11.2.6 Unless agreed upon by the parties, after 40 calendar days from the date of the initial Notice of Violation, the parties cannot agree on whether a violation has occurred or cannot agree on appropriate corrective action, they will submit the unresolved issue(s) to mediation pursuant to subsection 11.3.

11.2.7 This section does not apply to violations falling under 11.7.

**11.3 Mediation**

11.3.1 If the parties are unable to resolve a dispute through the process set forth in subsection 11.2, either party may request mediation by giving a written mediation demand to the other party.

11.3.2 The Uniform Mediation Act found at RCW Chapter 7.07 will apply.

11.3.3 The parties will first attempt to agree upon a mediator.



11.3.4 If the parties can not agree on a mediator within 30 calendar days of the written demand, a three person mediation panel will be used and will be selected as follows:

(a) each party will select a mediator and the two mediators selected by the parties will jointly select a third mediator.

11.3.5 The parties will have an opportunity to submit both written materials and argument to the mediator, with timelines for such submissions to be set by the mediator. Within fourteen days following end of mediation or issuance of the mediator's recommendation, the mediator shall return all written materials to the parties with each party receiving the materials it submitted.

11.3.6 The parties will work with the mediator to resolve their differences.

11.3.7 If the parties are unable to reach agreement no later than 80 calendar days from the date of the initial Notice of Violation, the mediator will render a recommendation on the unresolved issue(s) no later than 90 calendar days from the date of the initial Notice of Violation.

11.3.8 The mediator will not render an independent recommendation on issues on which the parties have reached agreement. If the mediator is required to render a recommendation, no more than 10 calendar days following receipt of the recommendation, the parties will meet and may: agree to accept the mediator's recommendation, in whole or in part; agree to continue their discussions in light of the mediator's recommendation; or, if they cannot agree within 15 calendar days following receipt of the recommendation, either party may seek Contract termination.

11.3.9 The parties will equally share the costs of mediation.

#### **11.4 Remedies**

11.4.1 Whenever an issue is submitted to mediation under the subsection 11.3 the mediators may recommend corrective action to remedy any violation that has occurred.

11.4.2 In no case will a mediator render an independent recommendation or decision on any issue on which the parties reach agreement.

11.4.3 Remedies may include: interpretation of Contract terms, changes in reporting, record keeping, enforcement practices, business practices, and/or similar changes.

11.4.4 Remedies will 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 Contract.

#### **11.5 Termination of Contract**

11.5.1 If, after no more than 240 calendar days 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 Contract term after the completion of the mediation process authorized in this section, this Contract may be terminated.

11.5.2 The parties may, after no less than 180 calendar days following any such termination, begin negotiation of a new Contract.

11.5.3 The termination provisions of this subsection will not apply in the case of a Notice of Disagreement that does not involve a violation.

#### **11.6 Disagreements Regarding Reports of the Auditor**

11.6.1 Should either party have a concern about a report from the Auditor, which cannot be resolved through the joint audit review process described in subsection 10.9 of this Contract, that party may choose to resolve the concern through the use of a mediator, pursuant to subsection 11.3.

11.6.2 The provisions of subsection 11.2 will apply, except that the initial 40-day timeline set forth in subsection 11.2.6 will not apply.

11.6.3 Failure of either party to grant the mediator access to any records necessary to review the report is a violation under this Contract.

11.6.4 Records of the State or the Tribe reviewed by the mediator or its agent(s) under this subsection, and the information contained in such records, are not disclosable to anyone, in any forum, for any purpose.

11.6.5 The mediator may use the services of an independent third-party certified public accountant in undertaking such review. Any materials prepared by such accountant are subject to subsection 11.6.4 and subsection 11.3.5. Copies of all such materials shall be provided to the Tribe and the Department.

#### **11.7 Notification of For Cause Termination**

11.7.1 Upon 45 days written notice, either party may terminate the Contract for cause.

11.7.2 For the purposes of this section, "for cause" will mean only the following violations:

- (a) Retail sales of cigarettes with improper stamps or unstamped cigarettes during the effective period of a Tribal tax;
- (b) Failure to submit to mediation as required by subsections section 11.3;
- (c) Failure to complete a required audit;
- (d) Failure of the Tribe to license a member retailer;
- (e) A seizure of Tribal cigarettes in violation of section 8 of this Contract;

- (f) A breach of the confidentiality provisions of section 15 of this Contract;
- (g) Failure, on a regular basis, to provide notice as required by section 8 of this Contract; or
- (h) Use of tax proceeds in violation of the terms of this Contract.

11.7.3 The party seeking termination for cause will notify the other party and the parties will agree upon a mediator to review the facts upon which the for cause termination notice is based.

11.7.4 The party making the allegation must provide a written recitation of the facts with the notice of termination.

11.7.5 The responding party has 10 calendar days to provide its facts to the mediator.

11.7.6 If the mediator determines that the alleged event has occurred, the Contract is terminated, however the party may choose to go through the regular dispute resolution process in regard to the issue.

11.7.7 The parties will use their best efforts to resolve the dispute within the 45-day notice period.

11.7.8 If the parties reach agreement, or the violation is corrected during the notice period, the Contract will not be terminated.

#### **11.8 Continuity**

11.8.1 The parties agree that to the greatest extent possible the individual selected as mediator will be used for future dispute resolutions.

11.8.2 The parties may agree to select such a person in advance.

#### **11.9 Notice Requirements**

11.9.1 For the purposes of this Contract, notice will be by certified mail, return receipt requested, unless both parties agree in writing to accept notice by facsimile.

11.9.2 Notice will be deemed to be given on the date of actual receipt. Notice will be given as follows:

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

To the Tribe:             Chairman, Tribal Council  
                                  Stillaguamish Tribe of Indians  
                                  PO Box 277  
                                  Arlington, WA 98223-0277

With a copy to:                   Legal Counsel  
  Office of the Stillaguamish Tribal Attorney  
  PO Box 227  
  Arlington, WA 98223-0277

**12.0 Sovereign Immunity.** Nothing in this Contract will be construed as a waiver, in whole or in part, of either party's sovereign immunity.

**13.0 Responsibilities of the Stillaguamish Tribe of Indians, the Department of Revenue, and the Liquor Control Board**

**13.1 Stillaguamish Tribe of Indians**

13.1.1 The Stillaguamish Tribe of Indians is responsible for both enforcement of the terms of this Contract and administration of the Contract, audit procedures and record keeping, and dispute resolution.

13.1.2 The Stillaguamish Tribe of Indians agrees to allow the Department entry into the retail store, the purpose of such entry being limited to (a) visual observation of retail sales taking place at the store and (b) the purchase of cigarettes by the Department.

**13.2 Liquor Control Board.** The Liquor Control Board is responsible for enforcement of RCW chapter 82.24. It is the practice of the Department to regularly share information with the Liquor Control Board in regard to cigarette matters, and it is the intent of the Parties that such practice continues under this Contract. However, this practice and any actions taken in regard to such information must be in conformity with the processes in this Contract.

**13.3 Department of Revenue.** The Department is responsible for the administration of the Contract, 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.

**14.0 Term of this Contract – Amendment**

**14.1** This Contract will remain in effect no longer than eight years from its effective date, subject to the termination provisions under section 11.5 of this Contract.

**14.2** The Contract will be automatically renewed for successive periods of eight years, unless either party objects in writing at least 30 calendar days prior to the expiration date, in which case the Contract will be terminated.

**14.3** Amendments to the Contract will be considered upon the written request of either party.

**14.4** Disputes regarding requests for amendment of this Contract will be subject to the dispute resolution process set forth in section 11 of this Contract.

**15.0 Confidentiality**

**15.1** All information under the terms of this Contract 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."

- 15.2** All other information that is subject to review by the Auditor, review by the mediator or certified public accountant, is confidential and will not be disclosed to anyone, in any forum, for any purpose.

**16.0 Miscellaneous Provisions**

- 16.1 Tribe Does Not Submit to State Jurisdiction.** By entering into this Contract, 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.

- 16.2 State Does Not Concede Tribal Immunity.** By entering into this Contract, the State does not concede that the Tribe has any immunity from its tax and tax collection provisions.

- 16.3 Contract Does Not Create any Third Party Beneficiaries.** No third party will have any rights or obligations under this Contract.

**16.4 Tobacco Master Settlement Agreement**

16.4.1 This Contract 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.

16.4.2 The Tribe recognizes the State has an interest regarding nonparticipating manufacturers.

16.4.3 The State recognizes the Tribe has an interest in the master settlement agreement.

16.4.4 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.

16.4.5 Nothing in this Contract supercedes or replaces chapter 70.157 RCW.

**16.5 Periodic Review of Contract Status**

16.5.1 Appropriate representatives of the Tribe and of the Department will hold periodic meetings to review the status of this Contract and any issues that have arisen under the Contract.

16.5.2 Those meetings will be held no less frequently than once every 12 months, but may be held more frequently.

**16.6 Sales to Minors**

16.6.1 The Tribal retailer, or a Tribally-Licensed retailer will not sell or give, or permit to be sold or given, cigarettes to any person under the age of 18 years.

16.6.2 The Department will immediately notify the Tribe if an allegation is made that a Tribal retailer or Tribally-licensed retailer has made sales to minors in violation of this Contract.

16.6.3 Upon such notification, the Tribe will take appropriate enforcement action pursuant to Tribal law.

**16.7 Essential Government Services**

16.7.1 Tribal tax revenue will be used for essential government services.

16.7.2 The Auditor will certify the use of such revenue under the process set forth in section 10.

16.7.3 Tribal tax revenue may not be used to subsidize Tribal cigarette and food retailers.

16.7.4 "Subsidize" means that proceeds from the Tribal tax or taxes pursuant to this Contract cannot be expended on the enterprise activities of the Tribal retail cigarette business.

16.7.5 In addition, where the cigarette business is co-located with a retail food business, the Tribal tax proceeds cannot be expended to support that business.

16.7.6 "Enterprise 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' operating expenses and overhead.

16.7.7 "Non-enterprise activities" include, but are 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 tax stamp program under this Contract, including all deductions and exemptions similar to those available to retailers, wholesalers and others under state law; Tribal administration activities such as tax functions, contracting for health benefits, providing direct social and health care services, economic development, natural resources, and the provision of job services; distribution of moneys related to trust funds, education, and general assistance; and activities for land and building acquisitions, building development, and construction.

**16.8 Other Retail Sales within Indian Country by Tribal Members.** Under Stillaguamish Tribal law, only Tribal retailers or Tribally-Licensed retailers are permitted to make retail cigarette sales within Indian country.

**16.9 Rule 192 – Application.** This Contract is a "cooperative agreement" as that term is used in WAC 458-20-192 (Rule 192).

**16.10 Jurisdiction.** This Contract does not expand or limit the jurisdiction of either the Tribe or the State.

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

AGREED THIS 21<sup>ST</sup> day of April, 2008.

STILLAGUAMISH TRIBE OF INDIANS

STATE OF WASHINGTON

By:   
Shawn Yarity, Chairman

By:   
Christine Gregoire, Governor