

**CIGARETTE TAX CONTRACT BETWEEN THE SHOALWATER BAY INDIAN TRIBE
AND THE STATE OF WASHINGTON**

PREAMBLE

WHEREAS, the Shoalwater Bay Indian Tribe ("Tribe") is a federally recognized Indian tribe, possessed of the full inherent sovereign powers of a government; and

WHEREAS, the State of Washington ("State") 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 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, 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 within the exterior boundaries of the Shoalwater Bay Indian Reservation; and

WHEREAS, the State and the 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 Contract; and

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

WHEREAS, the State and the 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 seek to resolve disputes and disagreements by conducting discussions on a government-to-government basis; and

WHEREAS, the mutual interests of the Tribe and the State brought these two governments together to pursue their common interest in resolving this tax disagreement; and

WHEREAS, this Contract is authorized, on the part of the State, by legislation, including House Bill 5372, enacted by the 2001 Regular Session of the 57th Legislature and signed by the Governor, effective July 22, 2001, and House Bill 2553, enacted by the 2002 Regular Session of the 57th Legislature and signed by the Governor, effective June 13, 2002, as codified in Revised Code of Washington (RCW] 43.06.450, RCW 43.06.455, RCW 43.06.460, and RCW 82.24.295 and by SB 6216, enacted by the 2008 Regular Session of the 60th Legislature, effective June 12, 2008; and on the part of the Tribe, by Shoalwater Bay Tribal Resolution signed by the Tribal Chair and attested to by the Tribal Secretary.

NOW THEREFORE, BE IT RESOLVED that the Tribe by and through its Tribal Council; and the State by and through its Governor, do hereby enter into this Contract for the mutual benefit of the Tribe and the State.

PART 1 DEFINITIONS

- 1.1** "Auditor" means an independent third party Auditor or an internal Tribal Auditor selected pursuant to Part 8 of this Contract.
- 1.2** "Allocation" means the number of cigarettes available to be sold to Indians free of all taxes, and is based on a formula that includes consumption data and tribal service area population.
- 1.3** "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
- 1.4** "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.
- 1.5** "Contract" means this Agreement entered into by the State and the Tribe.
- 1.6** "Department" means the Washington State Department of Revenue.
- 1.7** "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.
- 1.8** "Essential government services" means services provided by the Tribe including, but not limited to, administration, public facilities, fire, court, police, health,

education, elder care, social services, sewer, water, environmental and land use, transportation, utility services, community development and economic development.

- 1.9** "Indian Country," consistent with the meaning given in 18 United States Code (U.S.C.) section 1151, includes:
- (a) All land within the exterior boundaries of the Shoalwater Bay 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 Shoalwater Bay 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.
- 1.10** "Shoalwater Bay Indian Reservation" or "Reservation" means the geographic area recognized as the Shoalwater Bay Indian Reservation by the United States Department of the Interior.
- 1.11** "Liquor Control Board" means a certain agency of the State with a mission to prevent the misuse of alcohol and tobacco through education, enforcement, and controlled distribution.
- 1.12** "Local Retail Sales Tax" means the combined county and local retail sales and use taxes applicable in the area.
- 1.13** "Non-Indian" means an individual who is neither a Shoalwater Bay Indian Tribal Member nor a nonmember Indian.
- 1.14** "Nonmember Indian" means an enrolled member of a federally recognized Indian tribe other than the Shoalwater Bay Indian Tribe.
- 1.16** "Parties to the Agreement" or "parties" mean the Tribe and the State.
- 1.17** "Retailer" means an individual or entity that sells cigarettes to consumers instead of selling cigarettes to entities who intend to resell such cigarettes.
- 1.18** "Retail Selling Price" means the price paid by the consumer for each cigarette or package or carton of cigarettes, which price includes the Tribal Cigarette Tax.
- 1.19** "Self-Certified Tribal Wholesaler" means a wholesaler who is a federally recognized Indian tribe or a member of such a tribe.

- 1.20** "Self-Certified Wholesaler" means an Out-of-State Wholesaler who is not a self-certified Tribal Wholesaler.
- 1.21** "State Cigarette Tax" means the State tax imposed on each cigarette, which is expressed in cents per cigarette.
- 1.22** "State and Local Retail Sales and Use Taxes" means taxes levied by the State or by local units of government and expressed as a percentage of the sales price (which includes the State Cigarette Tax) of a unit of cigarettes.
- 1.23** "State Taxes" in this Contract only, means a combination of the "State Cigarette Tax," and the "state and local retail sales and use taxes."
- 1.24** "State" means the State of Washington.
- 1.25** "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 products" does not include cigarettes.
- 1.26** "Tribal Wholesaler" is a wholesaler who meets the requirements of Section 6.3 of this Contract.
- 1.27** "Tribal Member" means an enrolled member of the Shoalwater Bay Indian Tribe. For purposes of this Contract, a member of another federally recognized Tribe who is the spouse of an enrolled Shoalwater Bay Indian Tribal Member shall be treated the same as an enrolled member of the Shoalwater Bay Indian Tribe.
- 1.28** "Tribal Retailer" means a cigarette retailer wholly owned by the Shoalwater Bay Indian Tribe or owned and/or operated by one of its branch or agencies and located in Indian country.
- 1.29** "Tribal Cigarette Tax" means the tax or taxes enacted as a provision of Tribal law on the units of cigarettes sold, expressed in cents per cigarette, and on the sales of cigarettes to retail buyers, expressed in terms of a percentage of the sales price of the unit of cigarettes.
- 1.30** "Tribally-Licensed Retailer" means a Tribal Member who has a license from the Tribe to engage in retail cigarette sales from a business located within Indian Country.

1.31 "Tribal Tax Stamp" means the stamp or stamps that indicate the taxes imposed under this Contract have been paid or that identify those cigarettes with respect to which no tax or another tribal tax is imposed.

1.32 "Tribe" or "Tribal" means or refers to the Shoalwater Bay Indian Tribe, a federally recognized Tribe.

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

PART 2 APPLICABILITY OF THE CONTRACT

2.1 Effective Date

(a) This Contract shall become effective when the conditions specifically set for in Section 13.1 are met.

2.2 Application

(a) From its effective date, this Contract shall apply to the retail sale of cigarettes by Tribal Retailers and Tribally-Licensed Retailers.

(b) Sales subject to the Tribal Cigarette Contract between The Shoalwater Bay Indian Tribe and the State of Washington 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.

(c) If the Tribe desires to pursue mail order, telephone or internet sales of Cigarettes the parties will negotiate in good faith a Memorandum of Agreement concerning taxation, if any, of such sales.

2.3 Scope Limited

This Contract does not apply to:

(a) Cigarettes sold by non-Indians or nonmember owned retailers; and

(b) Tobacco products as that term is defined in Part 1 of this Contract; and

(c) Cigarettes manufactured by the Tribe within Indian Country, such treatment conditioned on reasonable notice to the Department and an opportunity for the Department to understand the facts and circumstances.

PART 3
IMPOSITION OF TRIBAL CIGARETTE TAXES

3.1 Tribal Retailers

- (a) The Tribe will inform the Department regarding the startup of cigarette sales by any Tribal Retailer or Tribally-licensed Retailer who begins selling cigarettes after the effective date of this Contract.
- (b) Any cigarette retailer wholly owned by Tribe or a tribal member is subject to this Contract.

3.2 Tribally-Licensed Retailers

- (a) The Tribe will enact and enforce law that requires Tribal Members who seek to sell cigarettes in Indian Country to obtain a Tribal Tobacco Seller's License from the Tribe.
- (b) As a condition of such seller's license the Tribal Member must:
 - (1) Consent to comply with those terms of this Agreement which are applicable to Tribal Retailers;
 - (2) Consent to providing access to the Department or the Liquor Control Board, in coordination with the Tribe, to observe sales pursuant to Section 7.4 of this Contract; and
 - (3) Consent to access by the Tribe's retained third party Auditor or an internal Auditor to review records of its cigarette sales in Indian Country.

3.3 Tax Imposed on Sales of Cigarettes

- (a) The Tribe, by Tribal law and in accord with the requirements of this Part, shall impose taxes on all sales by Tribal Retailers and Tribally-Licensed Retailers of cigarettes to non-Indian and non-member Indian purchasers within Indian Country.
- (b) Such ordinance may provide for compensation to wholesalers for their services in affixing the Tribal tax stamp.
- (c) The Tribe shall add a sales tax factor to its Tribal stamps by a formula mutually agreed to by the parties in a separate memorandum of agreement. This formula will allow a state and local sales tax equivalent to be reflected in the value of the

Tribal Tax Stamps.

- (d) The mutually agreed upon formula pursuant to part 3.3 (c) shall be assessed and levied in lieu of the state and local sales tax.

3.4 Phase-In Period

- (a) Beginning no sooner than the date this Contract is signed by both parties, and subject to enactment or revision of Tribal law authorizing the imposition of a tax on cigarettes, the Tribe shall impose and maintain in effect a tax on retail sales of cigarettes equal to eighty (80) percent of the State taxes.
- (b) No later than thirty-six (36) months after the initial imposition of a tax under this Contract and subject to the phase-in reduction under this Part, the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equal to one-hundred (100) percent of the State taxes.
- (c) If during any quarter, the number of cartons of cigarettes, excluding those manufactured by the Tribe, its branches, agencies, or economic instrumentalities that are sold at retail exceeds by at least ten (10) percent the quarterly average sales of the twelve (12) month period, as specified in this Part, the thirty-six (36) month period noted above shall be reduced by three (3) months.
- (d) The Auditor shall determine the quarterly average sales baseline, which shall be calculated using sales by the Tribal Retailer and post compact sales by Tribally-licensed Retailers for the six (6) months from the effective date of this Contract.
- (e) The Auditor shall notify the Tribe and the Department when the retail sales for any quarter exceed the baseline by at least ten (10) percent.
- (f) These reductions will be cumulative.
- (g) For purposes of this provision:
 - (1) "Quarter" means a three (3) month period, each quarter immediately succeeding the next. The first (1st) quarter begins the first (1st) day of the last month the Tribal Cigarette Tax is imposed, if the imposition of the tax is on or before the fifteenth (15th) of the month, or begins the first (1st) day of the second (2nd) month the Tribal Cigarette Tax is imposed, if the imposition of the tax is after the fifteenth (15th) of the month.
 - (2) "Quarterly average sales" means the sum of the retail sales made during the two (2) quarters divided by two (2).

3.5 Future Increases or Decreases in State Cigarette Tax

- (a) During the term of this Contract and upon any future increase in the State Cigarette Tax, the Tribal tax on cigarettes shall increase by no less than one-hundred (100) percent of the increase in the combined State taxes.
- (b) Notwithstanding the foregoing sentence, so long as the Tribe is entitled to apply the eighty (80) percent formula set forth above to cigarette sales, the increase in State taxes shall trigger an increase in the corresponding Tribal Cigarette Tax of one-hundred (100) percent of the eighty (80) percent of the increased amount.
- (c) Upon any future decrease in the State Cigarette Tax, the Tribal tax on cigarettes may decrease to a minimum of no less than one-hundred (100) percent of the combined State taxes.
- (d) The State will notify the Tribe at least thirty (30) days prior to the effective date, in writing, of any increases or decreases in the cigarette tax or state sales tax rates.
- (e) Pursuant to chapters 43.06 and 82.24 RCW, the State waives its right to collect the state cigarette tax and state and local sales and use taxes against the Shoalwater Bay Indian Tribe, its wholesalers, retailers, or buyers, subject to the Shoalwater Bay Indian Tribe being in conformance with this Contract. (See also Section 5.6 of this Contract) In addition, the State agrees that enforcement of this compact shall be in accordance with the conditions set forth in this Contract.

3.6 Exempt Sales

- (a) The State recognizes that federal law prohibits the State from taxing the purchase of cigarettes by enrolled members of federally recognized tribes within their own reservations, and the State hereby acknowledges that such transactions are not subject to this Contract, unless the Tribe unilaterally elects otherwise.
- (b) The Tribe may allow for an exemption from this tax for Tribal Members who are over the age of eighteen (18) years.
 - (1) If the Tribe chooses to exempt its members from all tax, the Tribe agrees to keep exact records of such sales.
 - (2) The expectation of both Parties is that if the Tribe chooses to tax its members the allocation allowance under WAC 458-20-192 it will be used as an approximation of sales to members and the Tribe will not be required to keep exact records of such sales.

**PART 4
PURCHASE OF CIGARETTES BY TRIBAL RETAILERS**

4.1 Wholesale Purchases; Requirements

The Tribe shall enact and maintain in effect Tribal law that requires Tribal Retailers and Tribally-Licensed Retailers to purchase cigarettes only from:

- (a) Wholesalers or manufacturers licensed to do business in the State;
- (b) Self-Certified Wholesalers who meet the requirements of Section 6.2 of this Contract;
- (c) Self-Certified Tribal Wholesalers who meet the requirements of Section 6.3 of this Contract; or
- (d) The Tribe, its branches, agencies or economic instrumentalities as a Tribal manufacturer or wholesaler.

4.2 Delivery of Cigarettes to Tribal Retailers Outside of Indian Country

- (a) Cigarettes bearing the tax stamp required by this Contract or cigarettes purchased by the Tribe for stamping may be delivered or transferred within or outside Indian Country by a wholesaler to the Tribe, a Tribal Retailer, a Tribally-Licensed Retailer, or a Self-Certified Wholesaler subject to meeting any notification requirements of this Contract.
- (b) Commercial carriers may make deliveries.
- (c) Invoices identifying the delivery as Shoalwater Bay Indian Tribe cigarettes must accompany delivery of cigarettes pursuant to this section.

**PART 5
TAX STAMPS**

5.1 Tribal Tax Stamp Required

All cigarettes purchased, possessed or sold by Tribal Retailers and Tribally-Licensed Retailers shall bear a Tribal Tax Stamp.

5.2 Creation and Supply of Tax Stamps

- (a) The Tribe shall arrange for the creation and supply of a Tribal Tax Stamp by a

nationally recognized stamp manufacturer.

(1) Tribal Tax Stamps shall bear a serial number or some other discrete identification so that stamps may be traced to the wholesaler.

(b) The Tribe may contract with a bank or other stamp vendor to distribute Tribal Tax Stamps, subject to the conditions set forth in this Subsection.

(1) The stamp vendor shall distribute stamps to wholesalers, upon payment of the applicable Tribal Cigarette Tax by the wholesaler, and remit the collected taxes to the Tribe.

(2) The contract shall provide that the stamp vendor shall purchase a supply of Tribal Tax Stamps from the manufacturer and make them available for purchase.

(3) 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 parties.

(4) The Tribe shall require the stamp vendor to remit to the Tribe all revenue collected from the Tribal Cigarette Tax.

(5) The Tribe shall 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) The Tribe's contract with the stamp vendor shall specify a process by which the Tribe is assured that all wholesalers who sell cigarettes to Tribal Retailers are paying the applicable Tribal taxes, unless the Tribal Retailer has prepaid the tax to the stamp vendor.

(7) This process may include a requirement that wholesalers agree to provide documentation such as invoices of sales to verify to the Tribe that the Tribal taxes were paid.

(8) In the alternative, the Tribe may elect to act as its own stamp vendor in which case the parties shall enter into a Memorandum of Agreement setting forth protocols regarding security and audit. The Department shall not unreasonably refuse entry into said Memorandum of Agreement.

5.3 Requirements for Affixation of Stamps by Wholesalers

- (a) Wholesalers or the Tribe shall be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal Retailer.
- (b) Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp.
- (c) Stamps shall be affixed so that they may be readily viewed by inspection.
- (d) Wholesalers may only possess unstamped cigarettes for as long as is reasonably necessary to affix tax stamps to the packages for sale or to ship to the Tribe.
 - (1) It is presumed that any such possession in excess of seventy-two (72) hours (excluding Saturdays, Sundays, and Holidays) is contrary to this Contract.
 - (2) The term "holiday" is limited to the following holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas.

5.4 Transition Period

- (a) Beginning on the effective date of the Tribal Cigarette Tax, the Tribe or its branches or agencies will affix stamps to the unstamped floor inventory in its possession, and in the possession of Tribal Retailers or Tribally-Licensed Retailers, if applicable.
 - (1) In the alternative, the Tribe may arrange for a licensed wholesaler to stamp such inventory.
- (b) After this transition period, the Tribe will not possess unstamped inventory, subject to entering into an agreement with the Department to act as its own wholesaler, which shall not be unreasonably withheld.

5.5 Wholesaler Obligation Under State Law

Affixing of the 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, shall be deemed to satisfy the State cigarette excise tax obligation of a wholesaler.

5.6 State Agreement Regarding Compliance with State and Federal Law

All transactions that conform with the requirements of this Contract do not

violate state law. For the purpose of 18 U.S.C. § 2342 or other federal law specifically based on violation of state cigarette laws, the State will not assert that any such transactions violate state law.

PART 6 WHOLESALERS

6.1 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 Tribal Cigarette Tax.

6.2 Self-Certified Wholesalers

- (a) Wholesalers who are not licensed to do business within the State, 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 Tribe and the Department that they will, and can meet the terms of this Contract.
- (b) A Self-Certified Wholesaler must be licensed to do business as a cigarette wholesaler within the jurisdiction where it has its main business office.
- (c) The Tribe shall require compliance with this Contract in its agreements with any Self-Certified wholesaler and shall provide copies of such agreements to the Auditor for its record.
 - (1) Agreements between the Tribe and the Self-Certified Wholesaler shall include the following requirements:
 - (A) Invoices detailing the quantity and brand of cigarettes destined for the Tribe will accompany the cigarettes transported into the State.
 - (B) Such invoices shall provide an order number that matches the order number provided under Section 7.4 of this Contract and shall identify the seller of the cigarettes as well as the buyer of the cigarettes; and
 - (C) The wholesaler shall allow the Auditor access to its records for the purpose of determining whether the required tax stamps are properly affixed to the cigarette containers.

6.3 Self-Certified Tribal Wholesalers

- (a) Tribal Wholesalers who are not required as matter of federal law to be licensed by any state, 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.
- (b) The Tribe shall require compliance with this Contract in its agreements with any such Tribal Wholesalers and shall provide copies of such agreements to the Auditor for its record.
 - (1) Agreements between the Tribe and Tribal Wholesalers shall include the following requirements:
 - (A) Invoices detailing the quantity and brand of cigarettes destined for the Tribe will accompany the cigarettes transported in the State.
 - (B) Such invoices shall provide an order number that matches the order number provided under Section 7.4of this Contract and shall 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 tax stamps for the Tribe's cigarettes are properly affixed to the cigarette containers.

6.4 Tribe as Wholesaler and/or Manufacturer

- (a) This Contract contemplates that the Tribe may, at some future date, act as its own wholesaler.
- (b) If the Tribe decides to act as its own wholesaler, the Tribe will first enter into a Memorandum of Agreement with the Department regarding this activity.
 - (1) The Department shall not unreasonably refuse entry into said Memorandum of Agreement.
 - (2) The Memorandum of Agreement shall reference any applicable requirements of this Contract.
- (c) If the Tribe, its branches agencies, or economic instrumentalities manufactures and wholesales to the Tribal Retailers, that wholesale activity does not require a Memorandum of Agreement under this Section.

Part 7

Responsibilities of the Shoalwater Bay Indian Tribe, the Department of Revenue, and the Liquor Control Board

7.1 Shoalwater Bay Indian Tribe

- (a) The Shoalwater Bay Indian Tribe is responsible for both enforcement of the terms of this and administration of this Contract, including audit procedures and record keeping, and dispute resolution.
- (b) The Tribe recognizes that the Department and the Liquor Control Board (LCB) share enforcement authority under chapter 82.24 RCW.

7.2 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.

7.3 Liquor Control Board

- (a) The State authorizing legislation for this Contract states it is the intent of the Legislature that the Liquor Control Board and the Department continue their division of duties and shared authority under Chapter 82.24 RCW and therefore the Liquor Control Board is responsible for enforcement activities that come under the terms of Chapter 82.24 RCW.
- (b) The Tribe shall have primary responsibility for enforcement against Tribal Retailers and Tribally-Licensed Retailers.

7.4 Enforcement Protocols

The parties shall work cooperatively and adopt enforcement protocols for implementation of this Contract, including provisions for prior notice to the Tribe, to develop and enhance effective cooperation between them.

7.5 Commercial Carriers

- (a) 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.
- (b) Such shipments must be accompanied by documents as required under this Contract and are subject to the notice requirements set forth in Section 7.4.

PART 8
INDEPENDENT THIRD PARTY AUDITOR

8.1 Purpose

- (a) The parties desire that all parties to this Contract and all persons named in this Contract who engage in cigarette wholesaling or retailing comply with the spirit and terms of this Contract.
- (b) The purpose of this Part is to provide a process for regular verification of the requirements in this Contract and is intended to reconcile data from all sources that make up the stamping, selling, and taxing activities under this Contract.

8.2 Third Party Auditor; Internal Auditor

- (a) The Tribe will retain, at its own expense, an independent third party Auditor or, alternatively, may use its own internal Auditor to verify its compliance with this Contract.
- (b) The Tribe shall be entitled to freely communicate with the Auditor.
- (c) The 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 Washington Licensing Board through which the Auditor is licensed.
- (d) The Auditor will review records on an annual basis, consistent with the Tribe's fiscal year, to verify the requirements of this Part unless otherwise specified.
- (e) If the Tribe uses an internal Auditor, such person must be duly qualified as an Auditor under the definitions of this Contract and must complete the audits using the standards and procedures set forth in this Part. (including the certification under Section 8.4).
 - (1) The method used by the internal Auditor and/or his results must be available upon request of the Department for inspection by an independent third party Auditor to be provided by the Tribe.
 - (2) During the first audit cycle in which an internal Auditor is used, the Department and the Tribe will develop standards and procedures acceptable to both parties.

8.3 Audit Protocol

- (a) To ensure compliance with this Contract, the Auditor must adhere to the following protocol:
 - (1) Period under review:
 - (A) To verify the requirements of this Contract, the Auditor 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 Contract only as necessary for an internal reconciliation of the entity's books.
 - (B) In situations where the Auditor is responsible for verifying records on less than an annual basis, the period under review shall not include years previously reviewed by the Auditor, except when a violation is alleged to have occurred during the period previously reviewed.
 - (2) Purpose for Examination of the Records
 - (A) To verify the requirements of this Contract, the Auditor must review at a minimum the records specified in this Section.
 - (B) The Auditor is not responsible for, nor are they allowed to, examine 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 and records.
 - (3) Records to be Examined
 - (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;
 - (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 this Part 8 to verify that the Retail Selling Price included the applicable tribal taxes; and
 - (C) Tribe: records necessary to verify that all Tribal Cigarette Tax revenue was used to fund essential government services of the

Tribe.

(b) Initial Review

- (1) The first required review must cover the period starting on the effective date of the tax and ending September 30, 2010, and the Auditor must report its findings to the Tribe by April 1, 2011.
- (2) This initial review shall include all of the activities covered by the protocol.
- (3) Thereafter, reviews shall take place during the regular audit period, which follows the Tribe's fiscal year, with an audit report submitted at the conclusion of each audit.
- (4) The Tribe and the Department may by prior joint agreement select or vary the audit cycle depending on the on-going audit activity of the Tribe, in order to be efficient and effective in the use of Auditor resources.
- (5) The Tribe fiscal year begins on October 1st and ends on September 30th.

8.4 Audit Report Format

- (a) The Auditor shall provide the Department with a certified statement that, after each audit, the Auditor finds the Tribe to be in compliance with the terms of this Contract.
 - (1) The Department may view the audit report at the Tribal Offices, but may not copy or remove the same.

8.5 Self-Certified Wholesalers and Self-Certified Tribal Wholesalers

- (a) The Auditor will be responsible for reviewing the records, identified in Sections 6.2 and 6.3, 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.
- (b) The Auditor must review the records identified in Sections 6.2 and 6.3, of all Self-Certified Wholesalers and Self-Certified Tribal Wholesalers that sell cigarettes to a Tribal Retailer no less than once every four (4) years.
 - (1) If a wholesaler who previously sold cigarettes to a Tribal Retailer stops making such sales, the Auditor must review the records of that wholesaler during the next regularly scheduled annual audit.

8.6 Tribal Retailers and Tribally-Licensed Retailers

The Auditor will be responsible for reviewing the records, identified in Sub-Section 8.3(a)(2) and pursuant to the Tribe's Cigarette Tax Code, of Tribal Retailers and Tribally-Licensed Retailers to certify that the tribal taxes were collected, that all cigarettes are properly stamped, that cigarettes were obtained from wholesalers authorized pursuant to the Cigarette Tax Contract between the Shoalwater Bay Indian Tribe and the State of Washington under this Contract, that any exemptions from tax are documented, and that revenue from the Tribal Tax under this Contract have not been not used to subsidize the Tribal Retailer.

8.7 Joint Audit Implementation and Review

- (a) The Tribe and the State shall confer prior to the beginning of the initial audit cycle in order 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.
 - (1) Subsequent audit meetings may be held as agreed by the Parties.
- (b) If warranted by the findings in the report, the Tribe and the State shall meet jointly with the Auditor to review the report and discuss any issues of concern.
 - (1) For the purposes of this section, "audit cycle" refers to the reoccurring scheduled audit of an entity.
- (c) 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 Part 10 of this Contract.

Part 9 Prohibition Against Sales to Minors

9.1 Prohibition Against Sales to Minors

- (a) The Tribe or a Tribally-Licensed Retailer shall not give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18) years.

9.2 Notification by the Department of Sales to Minors Violation

- (a) The Department shall immediately notify the Tribe if an allegation is made that the Tribe has made sales to minors in violation of this Contract.

- (b) Upon such notification, the Tribe shall take enforcement action according to the provisions of tribal law.

Part 10 Dispute Resolution

10.1 Intent

- (a) The Tribe and the State desire to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise.
- (b) To the extent possible, the parties will use informal methods of dispute resolution before engaging in the formal processes provided by this Part.

10.2 Computation of Time

- (a) As used in this Part "days" means calendar days, unless otherwise specified. The parties may, by mutual agreement, extend any of the time deadlines stated in this Part.

10.3 Notification of Violation

- (a) If either party believes a violation of the Contract has occurred or has concerns about an Auditor's report which the parties have been unable to resolve through the joint audit review process, it shall notify the other party in writing.
- (b) The notice shall state the nature of the alleged violation and any proposed corrective action or remedy.
- (c) The parties will meet, either in person or by teleconference, within twenty one (21) days of receipt of the notice, unless the parties mutually select a different date.
- (d) The purpose of the meeting will be to attempt to resolve between the parties the issues raised by the notice of violation, and provide an opportunity to implement any agreed corrective action.
- (e) The parties recognize that disagreements and violations of the terms of the agreement involving Tribally-Licensed Retailers may take longer to resolve.
 - (1) With respect to any disagreement or dispute involving a Tribally-Licensed Retailer, the parties must wait at least forty-five (45) days after the

sending of the notice of violation before delivering a mediation demand with the intent to reach a mutually agreeable solution during this time.

10.4 Mediation

- (a) If the parties are unable to resolve the disputed issues through joint discussions under Section 10.3, either party may request mediation by giving a written mediation demand to the other party.
- (b) The parties shall first attempt to mutually select a mediator.
- (c) If the parties cannot agree on a mediator within thirty (30) days of written demand, the parties shall use a mediator selected by the Judicial Arbitration and Mediation Service's Seattle office, or if no such office exists at the time of the dispute, then to a mediator mutually agreed upon by the parties in writing.
- (d) Each party shall bear its own attorney's costs and expenses but shall share equally in the costs of mediation, including the costs of the mediator. A mediator shall be subject to the following:
 - (1) Mediators may recommend corrective action to remedy any violation that has occurred.
 - (2) In no case shall a mediator render an independent recommendation or decision on any issue on which the parties reach agreement.
 - (3) Remedies may include interpretation of contract terms, changes in reporting, record keeping enforcement practices, business practices, and/or similar changes.
 - (4) 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 Contract.

10.5 Termination of Contract

If the parties use the dispute resolution methods authorized in part 10.3 and 10.4, and are unable to resolve the disagreement or alleged violation and /or the appropriate corrective action prior to twenty-four (24) months from the date of service of the Notice of Violation, this Contract shall automatically terminate two years after the date of such service. The termination of this Contract under part 10.5 shall not prevent the parties from negotiating or entering into a new Contract, on similar or different terms.

10.6 Termination For Substantial Violations

- (a) Notwithstanding Part 10.5, for substantial violations, upon forty-five (45) calendar days written notice, either party may terminate the Contract for cause.
- (b) For the purposes of this Part, "substantial violations" are:
 - (1) A demonstrated pattern of failure by the Tribe to enforce a licensing requirement under Tribal law for Tribal Members engaged in the retail sale of cigarettes subject to this agreement;
 - (2) Failure to submit to mediation as required by this Part;
 - (3) A breach of the confidentiality provisions of Part 14 of this Contract;
 - (4) Use of tax proceeds in violation of the terms of this Contract
 - (5) Failure of the Tribe to comply with or enforce the terms of this Agreement regarding the prohibition against sales of cigarettes with no stamp or with an improper stamp;
 - (6) Failure to complete a required audit;
 - (7) A demonstrated pattern of failure to follow enforcement protocols adopted under part 7.4.
- (c) The party seeking the termination for cause shall notify the other party in writing providing therein the facts upon which the notice is based.
- (d) The responding party shall within ten (10) days of receiving such notice either agree to terminate this Contract or initiate mediation pursuant to Section 10.4.
- (e) If the parties fail to reach resolution of issues arising under this Part through mediation or corrective action within one-hundred eighty (180) days from the date of a party's receipt of the Termination Notice, the Contract shall be terminated.
- (f) If the parties resolve their dispute or the for cause violation is corrected during this period, the Contract shall not terminate.

Part 11 Notification

11.1 Notice Requirements

- (a) For the purposes of this Contract, notice shall be by certified mail, return receipt requested.
 - (1) A party may consent in writing to accept notice by facsimile or e-mail.
 - (A) If the parties consent pursuant to this Part, upon execution of this Contract, the parties shall identify the party's representative authorized to receive notice by facsimile and/or e-mail and provide the appropriate facsimile number and/or email addresses.
- (b) Notice by certified mail shall be deemed effective on the date of actual receipt and shall be addressed as follows:

To the Department:

Director
P. O. Box 47454
Washington State Department of Revenue
Olympia, WA 98504-7454

To the Tribe:

Chair
Shoalwater Bay Indian Tribe
P.O. Box 130
Tokeland, WA 98590
With a copy to:
Tribal Administrator

Part 12 Sovereign Immunity

12.1 Sovereign Immunity

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

Part 13 Term of Contract; Amendment

13.1 Term

(a) This Contract shall become effective upon:

- (1) signing by both parties;
- (2) the Tribe's enactment of a Cigarette Tax Code;
- (3) provision of the Tribe's Cigarette Tax Code to the Department of Revenue;
- (4) determination of the sales tax factor set forth in Section 3.3(c), and;
- (5) the date of the imposition of the Tribal Cigarette Tax.

(b) This Contract shall remain in effect no longer than eight (8) years from its effective date, subject to the termination provisions herein.

(c) This Contract shall be executed in duplicate originals, with each party retaining one fully executed duplicate original of the Contract.

13.2 Renewal

This Contract shall be automatically renewed for successive periods of eight (8) years, unless either party objects in writing at least thirty (30) days prior to the expiration date.

13.3 Amendments

- (a) Amendments to this Contract shall be considered upon the written request of either party.
- (b) Disputes regarding requests for amendment of this Contract shall be subject to the dispute resolution process herein.
- (c) The Department will make all of the Tribal cigarette compacts available upon request in an electronic format. In the event the Tribe identifies terms in the Tribal Cigarette Tax Contracts of other Tribes more favorable than those included in this Contract, the State agrees, within 30 days of receiving notice from the Tribe, to negotiate in good faith regarding inclusion of such terms within this Contract, and shall not unreasonably withhold amendment of this Contract concerning those items.

Part 14 Confidentiality

14.1 Confidentiality of Information Related to this Contract

- (a) 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."

- (b) All other information that is subject to review by an Auditor, mediator, and/or certified public accountant is confidential and shall not be disclosed to anyone, in any forum, for any purpose.

Part 15 Miscellaneous Provisions

15.1 Tribe Does Not Submit to State Jurisdiction

- (a) 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.

15.2 State Does Not Concede Tribal Immunity

- (a) By entering into this Contract, the State does not concede that the Tribe has any immunity from its tax and tax collection provisions.

15.3 Contract Does Not Create Third Party Beneficiaries

- (a) No third party shall have any rights or obligations under this Contract.

15.4 Tobacco Master Settlement Agreement

- (a) This Contract is not intended to impact the State's share of proceeds under the Tobacco Master Settlement Agreement entered into by the State on November 23, 1998.
- (b) The Tribe recognizes the State has an interest regarding nonparticipating manufacturers.
- (c) The State recognizes the Tribe has an interest in the Tobacco Master Settlement Agreement.
- (d) The Tribe agrees to not impede the States efforts to secure compliance of the nonparticipating manufacturers, and the Tribe reserves its rights regarding these matters.
- (e) Nothing in this Contract supersedes or replaces chapter 70.157 RCW.

15.5 Periodic Review of Contract Status

- (a) Appropriate representatives of the Tribe and of the Department shall hold periodic meetings to review the status of this Contract and any issues that have arisen under the Contract. Those meetings shall be held no less frequently than once every twelve (12) months, but may be held more frequently.

15.6 Use of Tribal Cigarette Tax Revenues for Essential Government Services

- (a) Tribal Cigarette Tax revenue shall be used for essential government services.
- (b) Tribal Cigarette Tax revenue may not be used to subsidize tribal cigarette and food retailers.
 - (1) "Subsidize" means that proceeds from the Tribal Cigarette Tax cannot be expended on the direct business activities of the Tribal retail cigarette business.
 - (2) Where the cigarette business is located with a retail food business, the proceeds cannot be expended on the direct business activities of the tribal retail cigarette business.

15.7 Rule 192 - Application

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

15.8 Subsequent State Legislative Enactments

- (a) Should the Legislature enact a law that provides more favorable terms for the Tribe than provided for under this Contract, the parties shall amend the Contract to include such terms.

15.9 Jurisdiction

- (a) This Contract does not expand or limit the jurisdiction of either the Tribe or the State.

15.10 Severability

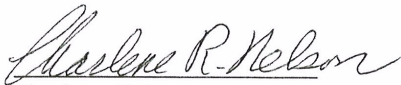
- (a) If any provision of this Contract or its application to any person or circumstance is held invalid, the remainder of the Contract is not affected.

Shoalwater Bay Indian Tribe

State of Washington

Dated: 01-20-2010

Dated:

By: 
Charlene Nelson
Chair

By: 
Christine Gregoire
Governor