

CIGARETTE TAX CONTRACT

Between

THE JAMESTOWN S'KLALLAM INDIAN TRIBE

And

THE STATE OF WASHINGTON

Table of Contents

PREAMBLE	1
PART I Definitions	2
PART II Applicability of the Contract	4
PART III Imposition of Tribal Cigarette Taxes.....	5
PART IV Purchase of Cigarettes by Tribal Retailers.....	5
PART V Tax Stamps.....	6
PART VI Wholesalers.....	7
PART VII Enforcement Authority and Responsibility of Liquor Control Board	8
PART VIII Independent Third Party Auditor	9
PART IX Dispute Resolution.....	11
PART X Responsibilities of the Jamestown S’Klallam Tribe, the Department of Revenue, and the Liquor Control Board.....	14
PART XI Term of this Contract – Amendment	14
PART XII Confidentiality	14
PART XIII Miscellaneous Provisions	15

PREAMBLE

WHEREAS, the Jamestown S’Klallam 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; and

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

WHEREAS, the Tribe and 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 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 22nd, 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 RCW 43.06.450, RCW 43.06.455, RCW 43.06.460, and RCW 82.24.295; and on the part of the Tribe, by a Tribal Ordinance dated _____, and numbered _____, duly adopted by the Jamestown S’Klallam Tribal Council and signed by the Tribal Chairman.

NOW THEREFORE, 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 to wit:

PART I
Definitions

1. "Auditor" means an independent third party auditor selected pursuant to Part VIII section 1 of this Contract.
2. "Allocation" means the number of cigarettes available to be sold to Tribal members free of all state cigarette and sales taxes. It is based on a formula that includes consumption data and tribal service area population.
3. "Carton" or "carton of cigarettes" means, unless otherwise indicated, a carton of two hundred (200) cigarettes.
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.
5. "Contract" means this agreement entered into by the State and the Tribe.
6. "Department" means the Washington State Department of Revenue.
7. "Essential government services" means services provided by the Tribe such as administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development.
8. "Indian country," consistent with the meaning given in 18 U.S.C. 1151, means:

All land within the limits of the Jamestown S'Klallam 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

All Indian allotments or other lands held in trust for a Jamestown S'Klallam Tribal member or the Tribe, the Indian titles to which have not been extinguished, including rights of way running through the same.
9. "Jamestown S'Klallam Reservation" or "Reservation" means the area recognized as the Jamestown S'Klallam Reservation by the United States Department of the Interior.

10. "Liquor Control Board" is an agency of the State with a mission to prevent the misuse of alcohol and tobacco through education, enforcement, and controlled distribution.
11. "Local retail sales tax" means the combined Washington local retail sales and use taxes applicable in the area.
12. "NonIndian" means an individual who is neither a Tribal member nor a nonmember Indian.
13. "Nonmember Indian" means an enrolled member of a federally recognized Indian Tribe other than the Jamestown S'Klallam Tribe.
14. "Parties to the agreement" or "parties" means the Tribe and the State.
15. "Retail selling price" means the ordinary, customary, or usual price paid by the consumer for each package or carton of cigarettes, which price includes the Tribal cigarette tax.
16. "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 an agreement with the Tribe requiring it to abide by the terms of this Contract.
17. "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.
18. "State Cigarette Tax" means the state tax imposed on each cigarette, which is expressed in cents per cigarette.
19. "State and Local Retail Sales and Use Taxes" are self-defined and are expressed as a percentage of the sales price (which includes the State Cigarette Tax) of a unit of cigarettes.
20. "State Taxes" in this contract only, means a combination of the "State Cigarette Tax," and the "State and Local Retail Sales and Use Taxes."
21. "State" means the State of Washington.
22. "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.

23. "Tribal member" means an enrolled member of the Jamestown S'Klallam Tribe.
24. "Tribal retailer" means a cigarette retailer wholly owned by the Jamestown S'Klallam Tribe and located in Indian country.
25. "Tribal Cigarette Tax" means the tax or taxes enacted as a provision of Tribal ordinance 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.
26. "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.
27. "Tribe" or "Tribal" means or refers to the Jamestown S'Klallam Tribe, a federally recognized Tribe.
28. "Wholesaler" means every person who purchases, sells, or distributes cigarettes for the purpose of resale only.

PART II

Applicability of the Contract

1. Execution of Contract

This Contract shall become effective when approved by both the Jamestown S'Klallam Tribal Council as indicated by the signature of the Tribal Chairman, and by the State when signed by the Governor. This Contract shall be executed in duplicate originals, with each party retaining one fully-executed duplicate original of the Contract.

2. Application

From its execution, and contingent on the imposition of the Tribal Cigarette Tax pursuant to a Tribal ordinance meeting the terms of Part III of this Contract, this Contract shall apply to the retail sale of cigarettes by Tribal retailers. Sales subject to the Tribal Cigarette Tax 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. "Delivery and physical transfer of possession" within Indian country does not include mail order type sales, including internet, catalog, and telephone sales, unless the cigarettes are delivered to the buyer within Indian country.

3. Scope Limited

This Contract does not apply to:

- a. Cigarettes sold at retail by nonIndians or nonmember Indians;
- b. Tobacco products as that term is defined in Part I of this contract; and
- c. Cigarettes manufactured by the Tribe or its enterprises within Indian country.

PART III
Imposition of Tribal Cigarette Taxes

1. Tribal Retailers

The Tribe agrees to notify the Department thirty (30) days prior to the start up of cigarette sales by any Tribal retailer who begins selling cigarettes after the effective date of this Contract. The Tribe agrees that any cigarette retailer wholly owned by Tribe is subject to this Contract. The Tribe agrees that, for the purposes of this contract, only cigarette retailers wholly owned by the Jamestown S’Klallam Tribe are authorized to make sales of cigarettes.

2. Tax Imposed on Sales by Tribal Retailers

The Tribe, by ordinance and in accord with the requirements of this Part, shall impose taxes (both a unit tax and a sales tax) on all sales by Tribal retailers of cigarettes to nonIndian and nonmember Indian purchasers within Indian country.

Beginning no sooner than the date this contract is signed, and subject to enactment of a Tribal ordinance authorizing the imposition of a tax on cigarettes, the Tribe shall impose and maintain in effect a tax on the retail sale of cigarettes equaling no less than the sum of an amount equal to 100 percent of the state cigarette tax, which is expressed in cents per cigarette, plus an amount equal to 100 percent of the state and local retail sales taxes.

During the term of this Contract, upon any future increase in the state cigarette tax, state retail sales and use tax or local retail sales and use tax, the Tribal tax on cigarettes shall increase by no less than 100 percent of the increase in the combined state and local tax rates.

Upon any future decrease in the state cigarette tax, state retail sales and use tax or local retail sales and use 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.

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 the combined state and local sales and use tax.

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

PART IV
Purchase of Cigarettes by Tribal Retailers

1. Wholesale Purchases – Requirements

The Tribe agrees to add to Tribal ordinance, and maintain in effect, a requirement that the Tribal retailers purchase cigarettes only from:

- a. Wholesalers or manufacturers licensed to do business in the State;
- b. Self-certified wholesalers who meet the requirements of Part VI section 2 of this contract;

- c. Self-certified tribal wholesalers who meet the requirements of Part VI section 3 of this contract; or
- d. The Tribe or its enterprises as a Tribal manufacturer or wholesaler, such wholesale activity being subject to a memorandum of agreement under Part VI section 4 of this Contract.

2. Delivery of Cigarettes to the Tribal Retailer Outside of Indian Country

Cigarettes bearing the tax stamp required by this Contract may be delivered or transferred within or outside Indian country by a wholesaler to the Tribe or a Tribal retailer, subject to meeting any notification requirements of this Contract. Deliveries may be made by commercial carriers. Such cigarettes must be accompanied by invoices identifying the cigarettes as Jamestown S’Klallam Tribe cigarettes.

**PART V
Tax Stamps**

1. Tax Stamp Required

All cigarettes sold by Tribal retailers shall bear a Washington State tax stamp. The Tribe may, by ordinance, allow for an exemption from this tax for enrolled Jamestown S’Klallam Tribal members over the age of 18 years old, in which case the cigarette allocation allowance under WAC 458-20-192 shall apply during the term of this Contract.

The Tribe may elect in the future to institute its own stamp. In such case, the parties agree to modify this agreement to cover such eventuality before any change is made in the tax stamp procedures outlined in the current agreement.

2. Creation and Supply of Tax Stamps

The Tribe will use Washington State tax stamps, which are provided by the State through its stamp vendor.

The State agrees that the Tribe will purchase cigarettes with the state stamp affixed after the effective date of the Tribal cigarette tax, until such time as the Tribe arranges for the use of a Tribal stamp. The State will refund to the Tribe on a minimum of a monthly basis the tax attributable to such cigarettes, provided that the invoices from the wholesaler to the tribal retailer indicate that the cigarette tax was passed on to the tribal retailer.

3. Requirements for Affixation of Stamps by Wholesalers

Wholesalers shall be responsible for affixing the tax stamps to the smallest container of cigarettes that will be sold or distributed by the Tribal retailer. Stamps shall be affixed so that the stamps may not be removed from the package without destroying the stamp. Stamps shall be affixed so that they may be readily viewed by inspection.

Wholesalers 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 is in contravention of this Contract.

4. 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. State Agreement Regarding Compliance with State and Federal Law

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

**PART VI
Wholesalers**

1. Wholesalers Licensed by the State

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

2. Self-Certified Out-of-State Non-Tribal Wholesalers

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 Department that they will and can meet the terms of this Contract.

The out-of-state self-certified wholesaler must be licensed to do business as a cigarette wholesaler within the state in which they reside.

The Tribe shall require compliance with this Contract in its agreements with any such out-of-state self-certified wholesalers and shall provide copies of such agreements to the Auditor for its review. The contract between the Tribe and the out-of-state self-certified wholesaler will also include a requirement that:

- a. The cigarettes transported in the State will be accompanied by invoices detailing the quantity and brand of cigarettes destined for the Tribe. Such invoices shall provide an order number that matches the order number provided under Part VII section 2 of this Contract and shall 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 required tax stamps are properly affixed to the cigarette containers.

An out-of-state self-certified wholesaler who has provided a letter of certification to the State and who has an agreement with the Tribe, in which agreement the wholesaler agrees to abide by the terms of this Contract, shall be referred to as a “self-certified wholesaler.”

3. Self-Certified Tribal Wholesalers

Tribal wholesalers who are not licensed to do business within the State 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.

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

- a. The cigarettes transported in the State will be accompanied by invoices detailing the quantity and brand of cigarettes destined for the Tribe. Such invoices shall provide an order number that matches the order number provided under Part VII section 2 of this Contract and shall 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 tax stamps for the Tribe’s cigarettes are properly affixed to the cigarette containers.

A Tribal wholesaler who has provided a letter of certification to the State and who has an agreement with the Tribe, in which agreement the wholesaler agrees to abide by the terms of this Contract, shall be referred to as a “self-certified tribal wholesaler.”

4. Tribe as Wholesaler

This Contract contemplates that the Tribe may, at some future date, act as its own wholesaler. In the event that the Jamestown S’Klallam Tribe decides to act as its own wholesaler in regards to sales to the Tribal retailers, it agrees to first enter into a memorandum of agreement with the Department regarding this activity. The memorandum of agreement shall reference any applicable requirements of this Contract. If the Tribe, by itself or through a Tribal enterprise, manufactures and wholesales to the Tribal retailers, that wholesale activity does not require a memorandum of agreement under this subsection.

PART VII Enforcement Authority and Responsibility of Liquor Control Board

1. Intent

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 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.

2. Notification

The Tribe or its designee shall notify the Department seventy-two (72) hours in advance of all shipments of cigarettes by the self-certified wholesaler or self-certified tribal wholesaler to the Tribe or Tribal retailers. Such notice shall include who is making the shipment (meaning who is the wholesaler), detail regarding both quantity and brand, and the invoice order number. Transportation of the cigarettes without the notice required by this section subjects the cigarettes to seizure. If all other requisite criteria are in order, such lack of notice does not subject the Tribal cigarettes to seizure unless the immediately previous order of Tribal cigarettes also lacked the requisite notice.

3. Commercial Carriers

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. Such shipments must be accompanied by documents as required under this Contract and subject to advance notice requirements.

**PART VIII
Independent Third Party Auditor**

1. General

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. The purpose of this Part is to provide a process for regular verification of the requirements in this Contract. The verification process is intended to reconcile data from all sources that make up the stamping, selling, and taxing activities under this Contract.

2. Tribe to Contract with Third Party Auditor

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. The Auditor will be retained by the Tribe and the Tribe shall bear the costs of the auditing services. The Tribe shall be entitled to freely communicate with the Auditor. 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 licensing board through which the auditor is licensed. 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.

3. Audit Protocol

To ensure compliance with this Contract, the Auditor must adhere to the following protocol:

Period under review: 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. 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.

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

- a. Self-certified wholesaler and self-certified tribal wholesaler: records and invoices of stamp purchases, records and invoices of sales of stamped cigarettes, stamp inventory, and the stamping process;
- b. Tribal retailers: records and invoices of cigarettes purchased from licensed wholesalers, self-certified wholesalers, self-certified tribal wholesalers and manufacturers, records and invoices of cigarettes sold, cigarette inventory, and additional records necessary to verify whether Tribal cigarette tax revenue was used in accordance with the requirements of Part XIII section 8 and records 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.

4. Audit Report Format

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. The Department may view the audit report at the Tribal Offices, but may not copy the same.

5. Initial Review

The first required review must cover the period starting on the effective date of the tax and ending September 30, 2003, and the Auditor must report its findings to the Tribe by January 1, 2004. This initial review shall include all of the activities covered by the protocol. Thereafter, reviews shall take place on the regular audit cycle.

6. Self-Certified Wholesalers and Self-Certified Tribal Wholesalers

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

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

7. Tribal Retailer

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

8. Essential Government Services

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

9. Joint Audit Implementation and Review

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

As soon as possible after the issuance of the Auditor’s final report, and 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. For the purposes of this section, “audit cycle” refers to the reoccurring scheduled audit of an entity. For example the audit cycle of a self-certified wholesaler is four years.

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 Part IX section 6 of this Contract.

**PART IX
Dispute Resolution**

The Tribe and the State wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations when they arise. The parties agree that, to the extent possible, informal methods shall be used before engaging in the formal processes provided by this Part.

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

1. Notification of Violation

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

2. Mediation

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

The parties shall share equally the costs of mediation.

3. Remedies

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

4. Termination of Contract

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

5. Disagreements Regarding Reports of the Auditor

Should either party have a concern about a report from the Auditor, which cannot be resolved through the joint audit review process described in Part VIII of this Contract, that party may choose to resolve the concern through the use of a mediator. Failure of either party to grant the mediator access to any records necessary to review the report is a violation under this Contract. The mediator may use the services of an independent third-party certified public accountant in undertaking such review.

6. Notification of For Cause Termination

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

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

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

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

7. Notification of Sales to Minors Violation

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

8. Notice Requirements

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

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

To the Tribe:
W. Ron Allen, Tribal Chairman/Executive Director
1033 Old Blyn Hwy.
Sequim, WA 98382

9. Sovereign Immunity

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

PART X

Responsibilities of the Jamestown S'Klallam Tribe, the Department of Revenue, and the Liquor Control Board

1. Jamestown S'Klallam Tribe

The Jamestown S'Klallam Tribe is responsible for both enforcement of the terms of this Contract and administration of the Contract, audit procedures and record keeping, and dispute resolution. The Jamestown S'Klallam Tribe agrees to allow the Department entry into the retail store, the purpose of such entry being limited to (a) visual observation of the retail sales taking place at the store and (b) the purchase of cigarettes by the Department.

2. Liquor Control Board

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

3. Department of Revenue

The Department is responsible for the 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.

PART XI

Term of this Contract – Amendment

This Contract shall remain in effect no longer than eight (8) years from its effective date, subject to the termination provisions under Part IX of this Contract. The Contract shall be automatically renewed for successive periods of eight years, unless either party objects in writing at least thirty (30) days prior to the expiration date. Amendments to the Contract shall be considered upon the written request of either party. Disputes regarding requests for amendment of this Contract shall be subject to the dispute resolution process in Part IX of this Contract.

PART XII

Confidentiality

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

PART XIII
Miscellaneous Provisions

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.

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.

3. Contract Does Not Create any Third Party Beneficiaries

No third party shall have any rights or obligations under this Contract.

4. Land Status

The Tribe shall provide information regarding the status of land upon which any Tribal retailer is located at least thirty (30) days prior to the startup of any new cigarette sales by such retailer.

5. Tobacco Master Settlement Agreement

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.

The Tribe recognizes the State has an interest regarding nonparticipating manufacturers. The State recognizes the Tribe has an interest in the master settlement agreement. The Tribe agrees to not impede the State's efforts to secure compliance of the nonparticipating manufacturers, and the Tribe reserves its rights regarding these matters.

Nothing in this Contract supercedes or replaces chapter 70.157 RCW.

6. Periodic Review of Contract Status

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.

7. Sales to Minors

The Tribe or a Tribal retailer shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen (18) years.

8. Essential Government Services

Tribal cigarette tax revenue shall be used for essential government services. The Auditor shall certify the use of such revenue under the process set forth in Part VIII of this Contract.

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

- a. "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;
- b. "Essential government services" includes, but is not limited to: government services to provide and maintain infrastructure such as sidewalks, roads, and utilities; services such as fire protection and law enforcement; the costs of administering the Tribal cigarette tax stamp program under this 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, economic development, natural resources, and the provision of job services; and distribution of moneys related to trust funds, education, general assistance, such activities as land and building acquisitions, and building development and construction.

9. Other Retail Sales within Indian Country by Tribal Members

Only Tribal retailers are permitted to make retail cigarette sales within Indian country.

10. Rule 192 – Application

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

11. Subsequent State Legislative Enactments

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

12. Jurisdiction

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

13. 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.

THUS AGREED THIS _____ day of _____, 2002.

JAMESTOWN S'KLALLAM TRIBE

STATE OF WASHINGTON

By: _____
W. Ron Allen,
Tribal Chairman/Executive Director

By: _____
Gary Locke,
Governor