



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 05-93 Of the SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises, and its agencies by authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and with protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, the Squaxin Island Tribal Council previously approved a Memorandum of Agreement (MOA) under which the Squaxin Island Tribe would be treated as the equivalent of a state-licensed cigarette wholesaler without either waiving the Tribe's sovereign immunity or exposing the Tribe to increased state jurisdiction; and

**WHEREAS**, pursuant to a change in State law effective October 1, 2005, it is desirable that the Squaxin Island Tribe enter into a similar Memorandum of Agreement under which the Squaxin Island Tribe would be treated as the equivalent of a state-licensed wholesaler of other tobacco products without either waiving the Tribe's sovereign immunity or exposing the Tribe to increased state jurisdiction; and

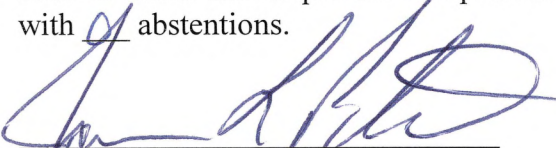
**WHEREAS**, staff has negotiated a Memorandum of Agreement under which the Squaxin Island Tribe would be treated as the equivalent of a state-licensed wholesaler of other tobacco products without either waiving the Tribe's sovereign immunity or exposing the Tribe to increased state jurisdiction;

**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby agrees to sign the Memorandum of Agreement Between the Squaxin Island Tribe and the Washington State Department of Revenue Concerning Authority to Transport and Distribute Tobacco Products in the State of Washington (hereafter, the "MOA") (copy in draft form attached hereto); and

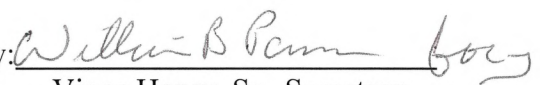
**NOW THEREFORE BE IT FINALLY RESOLVED**, that the Squaxin Island Tribal Council hereby authorizes Jim Peters to sign the MOA on behalf of the Tribe.

### CERTIFICATION

The Squaxin Island Tribal Council does hereby certify that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 29<sup>th</sup> day of September, 2005 at which time a quorum was present and was passed by a vote of 4 for and 0 against with 0 abstentions.

  
\_\_\_\_\_  
Jim Peters, Chairman

Attested by:

  
\_\_\_\_\_  
Vince Henry, Sr., Secretary

  
\_\_\_\_\_  
Andy Whitener, Vice Chairman

**MEMORANDUM OF AGREEMENT**  
**Between**  
**THE SQUAXIN ISLAND TRIBE**  
**And**  
**THE WASHINGTON STATE DEPARTMENT OF REVENUE**  
**CONCERNING AUTHORITY TO TRANSPORT AND DISTRIBUTE TOBACCO**  
**PRODUCTS IN THE STATE OF WASHINGTON**

**I. Parties**

The Parties to this Memorandum of Agreement (MOA) are the Squaxin Island Tribe (“the Tribe”) and the Washington State Department of Revenue (“the Department”) (collectively “the Parties”).

The Squaxin Island Tribe is a federally recognized Indian Tribe, possessed of the full sovereign powers of a government.

The Washington State Department of Revenue is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to tobacco products and licensure under chapter 82.26 RCW.

**II. Purpose**

This MOA is intended to provide a general framework for the government-to-government cooperation and coordination regarding tobacco products distribution by the Tribe. More specifically this MOA addresses the voluntary licensure of the Tribe and the limitations on the Parties in regards to such voluntary act, and the conditions upon which the Tribe has agreed to be subject in regards to its acting as a licensed Washington State tobacco products distributor.

**III. General Terms of Agreement**

1. The Parties agree that it is in the mutual interests of the Tribe and the State that the Tribe be treated as a licensed Washington State tobacco distributor.
2. The Department agrees for the purposes of chapter 82.26 RCW, and related provisions of State law, that under the authority granted the Department that the Tribe is deemed a licensed distributor as that term is used in chapter 82.26 RCW.
3. The Parties agree that offering a license is a voluntary act of the Department and not compelled, and that the Tribe is similarly not compelled to come forward to seek such a license, and they agree that operating under a license is a voluntary act of the Tribe. Further, the State agrees the Tribe is not subject to the regulatory authority of the state in Indian Country and the Tribe agrees the state has a legitimate interest in the collection of its taxes.



4. The Parties agree that the framework of chapter 82.26 RCW as amended by chapter 180, Laws of 2005, authorizes the Tribe and the Department to enter into agreements regarding the wholesale sale of tobacco products, and that chapter 82.26 RCW grants the Department the authority to administer tobacco products licenses.
5. The Department and the Tribe agree to the following conditions and limitations:
  - a. The Tribe agrees to fulfill the terms of chapter 82.26 RCW and that it will provide a third party auditor (as that phrase is used in the State-Squaxin Island Cigarette Contract between the Tribal Chair and the Governor) to audit and monitor the activities of the Tribe as a distributor. The goal and objective of any audits and monitoring is to measure the Tribe's activities in terms of the principles and conditions of chapter 82.26 RCW and this MOA. Such audits and monitoring includes but are not limited to regular review of records and invoicing in regards to tobacco products purchases and sales. The Parties agree to meet regularly, and on an "as needed" basis, with the third party auditor to discuss the audit function, its scope, and the reports and review required to meet the terms of chapters 82.26, 70.157, and 70.158 RCW. It is the expectation of the Parties that the Auditor will provide assurances to the Department in the form of certification letters, or a comparable method agreed upon by the Parties.
  - b. The Tribe agrees to permit the Department to review its distribution operation, subject to reasonable notice by the state. Such requests for review shall not be unreasonably withheld.
  - c. To the extent required for sales of tobacco products, by the Master Settlement Agreement, chapter 70.157 RCW, or chapter 70.158 RCW, the Tribe agrees to provide a monthly report to the Department detailing the number of "cigarettes" sold, as that term is defined in the referenced chapters, by brand family.
6. The Department and the Tribe agree that violation of any term of this MOA may result in a termination of the MOA. The Parties agree to abide by the following dispute resolution procedures should a violation arise:
  - a. If the Department discovers that a violation has occurred it shall notify the Tribe in writing and by phone within five calendar days of such violation;
  - b. The Tribe agrees that upon receipt of such notice that it will work diligently with the Department to correct the violation, and shall provide a written response to the Department detailing its response.
7. The Tribe agrees that upon notice from the Department that this MOA is terminated that it will return this MOA to the Department within five working days and will discontinue making wholesale sales for which a State license is required. The Parties agree that if the MOA is terminated, that a dispute is deemed to have occurred, and that the Parties will meet within 20 working days to discuss resolution of the matter. If one Party is unsatisfied with the outcome of this meeting, that Party can request mediation.
8. The Department and Tribe agree that if ownership and title pass to the buyer in Indian Country under the jurisdiction of the Tribe, that the Tribe as wholesaler has not incurred any State business and occupation tax liability. Any other selling activity is subject to state business and occupation tax, unless other exemptions or exclusions from tax apply. In

making determinations regarding taxability, the Department and Tribe agree to use the standards applicable to making sales in interstate commerce, as established in WAC 458-20-193. Application of those standards provide that the Tribe will not incur a business and occupation tax liability if the Tribe as wholesaler transfers the tobacco products to the buyer in Indian Country either actually or if the tobacco products are transported by a third party carrier and that carrier has authority on behalf of the buyer.

9. The Tribe agrees that:
  - a. The Tribe will not make wholesale sales of tobacco products unless (1) the Tribe obtains proof the purchaser holds a valid Washington State tobacco products distributor's license, or (2) the Tribe pays the tax under chapter 82.26 RCW on the tobacco products sold and verifies the purchaser has a valid Washington State tobacco products retailer's or distributor's license, or (3) the Tribe establishes the purchaser is not required to be licensed under chapter 82.26 RCW. The Tribe will by regulation establish procedures to identify wholesale purchasers.
  - b. The Tribe will report the names of all state-licensed wholesale purchasers of untaxed tobacco products to the Department. This report will be provided on a quarterly basis unless otherwise agreed by the Parties.
  - c. The Tribe is liable for tax under chapter 82.26 RCW on all sales to nonIndians where business and occupation tax is due under paragraph (8) above.
10. The Department agrees that the signing of this MOA by the Tribe does not imply a waiver of sovereignty by the Tribe and is not intended by the Tribe as a waiver of sovereignty and that any action by the Department in regards to the license shall be in accord with this MOA.
11. The Parties agree that the signing of this MOA and the resultant benefits and obligations shall not be construed as limiting any otherwise lawful activity of the Tribe nor subject the Tribe to any State jurisdiction not agreed to in this MOA.

#### **IV. Communication**

The Parties agree to maintain regular and open communication regarding the administration and implementation of this MOA. The Parties agree that the following individuals will be designated contacts regarding administration of this MOA:

- Kelly Croman, Squaxin Island Tribal Attorney
- Leslie Cushman, Tribal Liaison, Department of Revenue

The Parties agree that if either believes that the goals and objectives of this MOA are not being met, that they should meet promptly to discuss any issues and concerns.

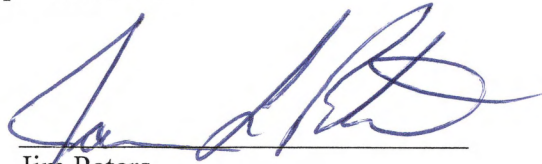
#### **V. Effect and Duration**

No amendment or alteration of this MOA shall arise by implication or course of conduct. This MOA may be altered only by a subsequent written document, signed by the parties, expressly

stating the parties' intention to amend their agreement. The license issued under this MOA is valid for a period of two years. The license shall be automatically renewed for successive periods of two years, unless either party objects in writing at least thirty days prior its expiration date.

This Agreement is hereby made this 29th day of September, 2005.

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Stuart Thronson, Assistant Director  
Department of Revenue



\_\_\_\_\_  
Jim Peters  
Tribal Chairman