

TAX SHARING COMPACT
Between
THE TULALIP TRIBES
and
THE STATE OF WASHINGTON

Article I: Preamble

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

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

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

WHEREAS, the state of Washington has committed, through Chapter 43.376 RCW, the Centennial Accord and Millennium Agreement, to the political integrity of the federally recognized Indian Tribes located within the state of Washington, and has formally recognized that the sovereignty of each Tribe provides paramount authority for the Tribe to exist and govern; and

WHEREAS, a long-standing disagreement exists between the Tribes and the State regarding jurisdiction over, and the taxation of, certain retail sales transactions sourced to Indian Country; and

WHEREAS, the Tulalip Tribes has planned, designed, developed, and continues to maintain a comprehensive infrastructure necessary to support Qui! Ceda Village, a tribal municipality and retail and entertainment center within the Tribe's Indian Country; and

WHEREAS, the Tulalip Tribes provide, or fund, virtually all day-to-day government services within the Village, including police protection, traffic control, fire protection, emergency services, garbage and debris collection, and several other critical government services; and

WHEREAS, over one hundred non-Tribal member businesses, including several major national and international retailers, conclude retail sales with non-Tribal customers at Qui! Ceda Village, generating millions of dollars of state retail sales tax revenues annually; and

WHEREAS, the imposition of these state retail sales and use taxes on such nonmember to nonmember sales impedes the Tribe's ability to impose sales taxes of its own on those sales; and

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

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

WHEREAS, the State and Tulalip Tribes 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 Tulalip Tribes 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 State and Tulalip Tribes brought these two governments together to pursue their common interest in resolving the tax disagreement and minimizing the risk of double taxation; and

WHEREAS, both governments worked diligently to gain for the Governor of the state of Washington the authority to enter into a tax compact regarding the sharing of certain tax revenues with the Tulalip Tribes; and

WHEREAS, Substitute House Bill 2803 was enacted by the 66th Legislature and signed into law by the Governor, which authorized the State to enter into this new compact, effective June 11, 2020;

NOW THEREFORE, the Tulalip Tribes, by and through its Board of Directors, and the state of Washington, by and through its Governor, do hereby enter into this Compact for the mutual benefit of the Tulalip Tribes and the State, to wit:

Article II: Parties

THIS COMPACT (the "Compact") is entered into, and is effective, as of July 1, 2020 (the "Effective Date" or "Implementation Date") by and between the TULALIP TRIBES (the "Compacting Tribe"), a federally recognized Indian Tribe with its principal seat of government at 6406 Marine Drive, Tulalip, WA 98271, and the STATE OF WASHINGTON (the "State"), singularly or collectively referred to as a Party or the Parties, respectively.

Article III: Purpose and Intent

- I. The State and the Compacting Tribe intend to further the government-to-government relationship that exists between them by entering into this Compact concerning the state retail sales tax, state use tax, and certain state business and occupation taxes collected in connection with certain qualified transactions sourced within the "Compact Covered Area."
2. The State and the Tribes have a long-standing history of working together in the development of cooperative agreements addressing the taxation of cigarettes, fuel, timber, and marijuana, and, given the positive experiences derived of nearly two decades of cooperation in these and other areas, the Parties intend to build on these successes by compacting to provide for the sharing of state retail sales, state use, and certain state business and occupation taxes collected by the State in connection with certain qualified transactions sourced within the Compacting Tribe's Indian Country.
3. The State and the Compacting Tribe intend and agree that this Compact will have no impact on the taxation of any transaction that is the subject of other compacts, or agreements authorized elsewhere in Chapter 43.06 RCW.

Article IV: Definitions

As used in this Compact:

- I. **"Certain state business and occupation tax"** means the tax imposed in chapter 82.04 RCW with respect to any qualified transaction as defined in Article IV section 17.
2. **"Compact"** means this Compact, a contract between the Parties.
3. (a) **"Compact Covered Area"** means: (A) Trust land, regardless whether located within or outside of the boundaries of the Compacting Tribe's reservation; and (B) fee land within the boundaries of the Compacting Tribe's reservation and under Tribal or Tribal member ownership.
 - (b) For purposes of this Compact, "Tribal or Tribal member ownership" means fee land with a greater than fifty (50) percent ownership interest being held by any combination of the Compacting Tribe or Tribal members.
 - (c) **"Compact Covered Area"** does not include any land that, as of June 11, 2020, was fee land in which one or more nonmembers held a majority ownership, but only with respect to:
 - (i) A business that was in operation on that land on June 11, 2020 and continues to be in operation on that same land; or

(ii) A substantially similar successor business to a business described in subsection (3)(c)(i), above, that is in operation on that same land. See Exhibit A for an example of a substantially similar successor business.

4. **"Compacting Tribe"** means the Tulalip Tribes.
5. **"Days"** means calendar days, computed in accordance with Fed. R. Civ. P. 6, unless otherwise specified.
6. **"Department"** means the Washington State Department of Revenue.
7. **"Indian Country"** has the same meaning as provided in 18 U.S.C. Sec. 1151, as existing on June 11, 2020.
8. **"Indian reservation" or "reservation"** means all lands, notwithstanding the issuance of any patent, within the boundaries of areas set aside by the United States for the use and occupancy of Indian Tribes by treaty, law, or executive order, or otherwise designated or described "reservation" by any federal act. The term applies to all land within the boundaries of the Indian reservation, regardless of whether the land is owned by nonmembers, Tribal Members, or an Indian Tribe.
9. **"Indian Tribe"** means a federally recognized Indian nation or tribe located at least partially within the geographic boundaries of the state of Washington and includes its enterprises, subsidiaries, and constituent parts.
10. **"Local sales tax"** means any sales tax that a local taxing authority is authorized to impose under chapter 82.14 RCW, RCW 81.104.170, or any other provision of state law.
11. **"Local use tax"** means any use tax that a local taxing authority is authorized to impose under chapter 82.14 RCW, RCW 81.104.170, or any other provision of state law.
12. **"New Development,"** with respect to this Compact and the Compact Covered Area associated with this Compact, refers to a person that:
 - (a) Is subject to state sales tax or state use tax collection or payment obligations as a result of business activity within the Compact Covered Area; and,
 - (b) Conducts its operations in a structure within the Compact Covered Area, and construction of that structure began on or after the date the Compact is signed by the Parties, but not including any such construction involving the renovation of or addition to a structure existing before the date the Compact is signed by the Parties; and,

- (c) Has not previously been subject to state sales tax or state use tax collection or payment obligations as a result of that same business activity operated within a different structure located elsewhere within the Compact Covered Area; and
 - (d) Has been identified by the Compacting Tribe, with notice provided to the Department.
13. **"Nonmember"** means, with respect to this Compact:
- (a) A natural person who is not a Tribal Member;
 - (b) A Tribe that is not the Compacting Tribe; or
 - (c) Any entity of which not more than fifty percent of the ownership interests are held by any combination of the Compacting Tribe or Tribal Members.
14. **"Nonmember business"** means a business operating within the Compact Covered Area that is a Nonmember, and all businesses operating outside of the Compact Covered Area, regardless of ownership.
15. **"Partnership Portal"** means a secure web portal created and maintained by the Department through which authorized representatives of the Compacting Tribe may access information regarding tax distributions and business-specific confidential taxpayer information respecting the businesses operating within the Compact Covered Area.
16. **"Qualified capital investment"** means a contribution to the development and construction of a project agreed to by the Governor and the Compacting Tribe.
17. **"Qualified transaction"** means:
- (a) A retail sale subject to state sales tax involving a seller and purchaser who are both nonmembers, and that is sourced to a location within the Compact Covered Area pursuant to RCW 82.32.730; or
 - (b) Any use by a nonmember upon which the state use tax is imposed and sourced to a location within the Compact Covered Area pursuant to RCW 82.32.730.
18. **"State"** means the state of Washington.
19. **"State sales tax"** means the tax imposed in RCW 82.08.020(1).
20. **"State use tax"** means the tax imposed in RCW 82.12.020 at the rate set forth in RCW 82.08.020(1).

21. **"State-shared taxes"** means certain local sales and use taxes that are "deducted" from or "credited" against the state sales and use tax.

22. **"Tribal Member" or "Member"** means an enrolled member of the Compacting Tribe, or, in the context of a marital community, the spouse of an enrolled member of the Compacting Tribe.

23. **"Trust land"** means land that is held in trust by the United States government for the benefit and use of the Compacting Tribe, or for the benefit and use of an individual member(s) of the Compacting Tribe.

Article V: Taxes Included in the Compact

I. Tax Types

This Compact concerns revenue collected by the State from the state retail sales tax, state use tax, and certain state business and occupation taxes, to the extent these taxes are imposed on qualified transactions sourced to a location within the Compact Covered Area.

Nothing in this Compact limits, restricts, reduces, or affects local taxes authorized under chapter 82.14 RCW, RCW 81.104.170, Title 35 RCW, Title 36 RCW, or Title 84 RCW, or any other provision of state law authorizing a local tax.

2. Tax Revenue Sharing

Beginning on July 1, 2020, the Compacting Tribe shall receive the following amounts of tax collected in connection with qualified transactions and received by the State:

(a) One hundred percent (100%) of certain state business and occupation tax revenues;

(b) **The Cap.** The first five hundred thousand dollars (\$500,000) of the total amount of state sales tax and state use tax collected during each calendar year from taxpayers, regardless whether one or more taxpayers is a New Development. If this five hundred thousand dollar "cap" is reached during a calendar year, any amounts collected from taxpayers that are not new developments will be deemed to have been collected and applied to the cap first, but only in the calendar month in which the cap is reached;

(c) **New Development.** The following amounts of state sales tax collected and remitted to the Department during each calendar year by, and state use tax collected during each calendar year from, taxpayers that are new developments, provided that the Compacting Tribe has provided notice to the Department of a New Development's status as such:

(I) Twenty-five percent (25%) of any amount over the cap described in subsection (b) of this section 2; or

(2) Sixty percent (60%) of any amounts over the cap described in subsection (b) of this section 2, if the Compacting Tribe has made the qualified capital investment, as described in Article VI; and

(d) **Taxpayers Other than New Development.** Beginning January 1, 2023, the following amounts of state sales tax collected and remitted to the Department during each calendar year by, and state use tax collected during each calendar year from, taxpayers that are not new developments:

(1) Twenty-five percent (25%) of any amount over the cap described in subsection (b) of this section 2; or

(2) Fifty percent (50%) of any amount over the cap described in subsection (b) of this section 2, if the Compacting Tribe has made the qualified capital investment, as described in Article VI section 6.

3. **Parties' Roles and Responsibilities in the Administration of the Compact.**

(a) The Department agrees to perform all functions related to the administration and collection of the taxes due on qualified transactions, consistent with the provisions contained in Title 82 RCW and insofar as they are applicable to the taxes addressed in this Compact. The Department may not impose any charge upon the Compacting Tribe for these services.

(1) The Parties acknowledge that Department rules apply to the administration of this Compact, and the collection of taxes thereunder, in the same manner and to the same extent as elsewhere applicable throughout the State.

(b) The Compacting Tribe agrees to promptly provide all such information the Department determines is necessary to fulfill the Department's tax administration obligations under this Compact. To the extent that the Compacting Tribe fails to timely provide such information to the Department, associated revenues will not be shared under the provisions of Article V section 2.

Necessary information includes, but is not limited to, the following information related to parcel ownership and nonmember businesses operating within the Compact Covered Area:

(1) A geographic information system (GIS) layer containing GIS information and coordinates of the Compacting Tribe's desired Compact Covered Area, identifying the following areas:

(i) Trust lands, both located within and outside the boundaries of the Compacting Tribe's reservation; and

(ii) Fee land within the boundaries of the Compacting Tribe's reservation and under Tribal or Tribal Member ownership.

(2) The following information respecting each nonmember business located within the Compact Covered Area:

(i) Business Name;

(ii) Street and Mailing Address(es);

(iii) City;

(iv) Zip Code; and,

(v) If available to the Compacting Tribe:

[1] Zip+4; and

[2] Washington State Uniform Business Identifier (UBI) number or tax identification number.

(c) The Compacting Tribe acknowledges and agrees that any business located in the Compact Covered Area that qualifies as a new development under the terms of this Compact must be identified by the Compacting Tribe as a New Development, and notice provided to the Department.

(d) The Compacting Tribe acknowledges and agrees that any business located in the Compact Covered Area that does not qualify as a New Development must be identified by the Compacting Tribe, and notice provided to the Department.

(e) The Compacting Tribe agrees to notify the Department of any changes affecting nonmember businesses within the Compact Covered Area, including, but not limited to, new business start-ups, business closures, and business turnover to the extent necessary to allow the Department to fulfill its administrative responsibilities under this Compact.

(f) The Parties acknowledge and agree that the notification envisioned by, and required under, Article V section 3 subsections (c) - (e), inclusive, shall be provided by the fifth (5th) day of each month.

(g) The Department agrees to take into account all such notifications received pursuant to Article V section 3 subsections (c)-(f), inclusive, and, within no more than thirty (30) days of receipt of such notification, update its infrastructure, business processes, and supporting technologies as necessary to fulfill the Department's tax administration obligations under this Compact, including its tax revenue sharing obligations, as described in Article V section 2.

(h) The Compacting Tribe agrees to notify the Department of any alterations affecting the external or internal boundaries of the Compact Covered Area, including, but not limited to, boundary changes and the acquisition or divestment by the Compacting Tribe, or its members, of trust lands, as necessary to allow the Department to fulfill the Department's tax administration obligations under this Compact.

(I) The Department shall take into account such revisions and update its infrastructure, business processes, and supporting technologies as necessary to fulfill the Department's tax administration obligations under this Compact, including its tax revenue sharing obligations, as described in Article V section 2.

(i) The Parties acknowledge and agree that such revisions shall take effect:

[1] No sooner than seventy-five (75) days after the Department receives notice;
and,

[2] Only on the first day of January, April, or July, whichever comes first.

(2) The Parties acknowledge and agree that the delineation and demarcation by the Compacting Tribe of its Compact Covered Area are effective for purposes of this Compact alone, and in no way restrict, limit, or otherwise affect the ownership, use, or regulation of lands within the Compact Covered Area.

(i) The Department agrees to develop and maintain a secure web-based platform that will allow the Compacting Tribe to provide the notifications described in Article V section 3, and facilitate the sharing of Compact-related information, electronically.

(j) Verification of the Compacting Tribe's qualified capital investment, as described in Article VI, shall be effective no sooner than seventy-five (75) days after the date on which the Department receives from the Compacting Tribe verifiable information of siting and permitting for the capital investment, and on the first day of January, April, July, or October, whichever comes first.

(k) The Department agrees to develop and maintain on its public website a secure web portal through which authorized representatives of the Compacting Tribe may access information concerning tax revenues distributed to the Compacting Tribe under this Compact.

(I) Each authorized representative must execute and submit to the Department a Retail Taxes Compact Confidentiality Agreement, or successor affidavit, prior to gaining access to any information generated by the portal.

(l) The Compacting Tribe may, upon seven (7) days' notice, examine Department records related to the payment of tax amounts to the Tribe.

4. Administration and Compliance.

(a) The Department is responsible for the administration and enforcement of the taxes subject to this Compact. As pmt of its authority under this section 4, the Department shall apply the provisions contained in Title 82 RCW, insofar as they are applicable to the taxes at issue in this Compact.

(b) The Compacting Tribe acknowledges and agrees that all nonmember businesses operating within the Compact Covered Area shall be subject to inspection, review, or audit by the Department and duly authorized Depa11ment personnel for purposes of the administration and enforcement of this Compact.

5. Disbursements.

(a) The amounts described in Article V section 2 must be paid to the Tribe on a monthly basis within sixty (60) days after the Department receives the tax amounts.

(b) The Tribe's distributive share of state sales and use tax amounts shall not be reduced by any state-shared tax amounts sourced to within the Compact Covered Area.

(c) The Depm1ment shall distribute to the Compacting Tribe the proportional state share of sales, use, and certain business and occupation tax amounts colTesponding to unidentifiable local sales and use tax collections (pool funds) allocated among the various local taxing jurisdictions within thirty (30) days after the due date of the taxable period for which sales, use, and certain business and occupation taxes are imposed.

(d) If the Department becomes aware that a taxpayer has improperly sourced a retail sale or use to the Compact Covered Area after the tax revenue associated with that sale or use has been collected and distributed to the Compacting Tribe (improper distribution), the Department shall require redistribution upon ten (10) days' notice to the Compacting Tribe of any tax distributed to the Compacting Tribe, but such redistribution shall not be made as to amounts originally distributed earlier than six monthly periods prior to the monthly period in which the Department obtains knowledge of the improper distribution.

(e) All refunds and credits the Department issues to taxpayers of amounts previously paid to the Tribe under the terms of this Compact will, upon notice to the Compacting Tribe, be charged against future tax revenue sharing payments to the Tribe in the same manner as local tax payments.

Article VI: Qualified Capital Investment

1. The Compacting Tribe agrees to invest \$35 million in siting, design, and construction of a civil commitment facility (Facility) of forty-eight (48) beds or less. The investment may be less than \$35 million if a Facility of forty-eight (48) beds can be sited, designed, and constructed for a lesser amount.

2. The facility shall be sited on trust land or land owned by the Compacting Tribe. The facility will be sited in Snohomish County outside of the Tulalip Indian Reservation, or a location mutually acceptable to the Parties.

3. The Compacting Tribe shall be responsible for siting, design and construction of the facility. The State shall support the Compacting Tribe in identifying an appropriate site and in acquiring permits for the facility.

4. The facility must meet applicable federal and state guidelines including for design and construction. Siting and construction of facility must comply with state and the relevant city or county land use regulations unless sited on the reservation or on Tulalip trust land off the reservation.

5. The State shall be responsible for operations and ongoing maintenance of the facility, and for all associated liabilities. If the Compacting Tribe transfers ownership of the facility to the State, the Compacting Tribe will possess the option to reacquire ownership of the facility when the State no longer uses it as a civil commitment facility.

6. For purposes of the higher tax sharing percentages described in Article V section 2, above, the Compacting Tribe shall be deemed to have made this capital investment after completion of siting and permitting of the civil commitment facility on the date the Department receives verifiable information of such siting and permitting, subject to the following:

(a) If the Compacting Tribe submits during the first three years of the Compact complete permit applications for all necessary permits for the facility in an appropriate location, and if the required permits have not been issued by the end of year three, the State and the Compacting Tribe shall re-engage during year four of the Compact and reach agreement on whether (i) to continue pursuing construction of a civil commitment facility at that location, (ii) to pursue construction of a civil commitment facility at a different location, or (iii) to pursue an alternative, mutually agreeable project that provides public infrastructure or services. The agreement shall include the steps necessary for the Compacting Tribe to receive the applicable higher tax-sharing percentage described in Article V section 2. Unless the State and the Compacting Tribe agree otherwise, beginning July 1, 2024, the Compacting Tribe will place the remaining funds for the Compacting Tribe's \$35 million investment in

escrow for the agreed-upon purpose, and the Compacting Tribe shall receive the applicable higher tax-sharing percentage.

(b) If the Compacting Tribe first submits complete permit applications for all necessary permits for the facility in an appropriate location after the first three years of the compact, and if the required permits have not issued within 180 days of the submission, the State and the Compacting Tribe shall re-engage during the following six months to reach agreement on (i), (ii), or (iii) described above. The agreement will include the steps necessary for the Compacting Tribe to receive the applicable higher tax-sharing percentage. Unless the State and the Compacting Tribe agree otherwise, immediately thereafter, beginning July 1, 2024, the Compacting Tribe will place the remaining funds for its \$35 million investment in escrow for the agreed-upon purposes, and the Compacting Tribe will receive the applicable higher tax-sharing percentage described in Article V section 2.

7. Tribal members that are determined by a court to be civilly committed shall have preference at the civil commitment facility, to the extent allowable by law. The State and the Compacting Tribe agree to discuss in good faith potential configurations of the facility that may include additional services, such as voluntary inpatient mental health and chemical dependency treatment for which Tribal members shall have preference, subject to applicable law.

8. The State and the Compacting Tribe agree to negotiate in good faith regarding liability, indemnification and joint defense provisions in connection with the civil commitment facility and any challenges to its siting, permitting and construction.

Article VII: Dispute Resolution

The Parties wish to prevent disagreements and violations whenever possible, and to quickly and effectively resolve disagreements and violations whenever they may arise. Accordingly, the Parties agree that, to the extent possible, informal dispute resolution methods shall be used before engaging in the formal processes provided by this Article.

I. **Notification of Violation.** If either Party believes a violation of the Compact has occurred, it shall notify the other Party in writing, unless the parties agree to notice by electronic means pursuant to Article VII section 9. The notice shall state the nature of the alleged violation and any proposed corrective action or remedy. The Parties agree to meet within fourteen (14) days of receipt of such notice, unless a different date is agreed upon 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 agree upon corrective action.

2. **Mediation.**

(a) If the Parties are unable to resolve the disputed issue(s) through joint discussions under Article VII section I, either party may request mediation by giving a written mediation demand to the other party. Mediation is a condition precedent to dispute resolution by arbitration. The Parties shall first attempt to agree on a neutral mediator. However, if the Parties cannot agree on a mediator within thirty (30) days of written demand, a three-person mediation panel 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.

(b) Each party shall be responsible for its own costs of mediation, including legal fees. All other costs of mediation, including, but not limited to, the fees and charges of the mediator(s), if any, shall be shared equally by the Parties.

3. **Arbitration.**

(a) If mediation does not resolve the disputed issue(s) within ninety (90) days of the mediation demand, either Party may request that any unresolved issues arising under this Compact be submitted to binding arbitration by submitting to the other party a written arbitration demand, so long as the issue does not involve or include one or more tax disputes as defined by Washington law, including, but not limited to, RCW 82.32.160. Upon receipt of such an arbitration demand, the Parties shall select an arbitrator(s) by the same method in which mediators are selected. The arbitrator or the three-arbitrator panel shall establish a timeline to ensure an arbitration decision is reached no later than four months from the date of the arbitration demand, or such longer time period upon which the Parties may agree. Any corrective action ordered by the arbitrator(s) must be taken no later than ninety (90) days after issuance of the arbitration decision, unless a different time for compliance is specified in the arbitration decision.

(b) The Parties acknowledge and agree that, should any issues involving one or more tax dispute(s) remain unresolved following mediation, the Parties' sole recourse for the resolution of such disputes will lie in a court of competent jurisdiction. Nothing in this subsection constitutes or shall be construed as a waiver of either party's sovereign immunity.

(c) Each party shall be responsible for its own costs of arbitration, including legal fees. All other costs of arbitration, including, but not limited to, the fees and charges of the arbitrator(s), if any, shall be shared equally by the Parties.

4. **Remedies.** Whenever an issue is submitted to mediation or arbitration under this Article, the mediators may recommend, or the arbitrators may direct, corrective action to remedy any violation that has occurred. In no case shall a mediator or arbitrator render an independent recommendation or decision on any issue on which the Parties reach agreement. Remedies may include: audit of relevant records, interpretation of Compact terms, reconciliation and adjustment

of tax revenue sharing payments, and changes in reporting, record keeping, enforcement practices, or similar actions. Remedies shall not include an award of monetary damages or costs of any kind, or the disclosure of any records not specifically subject to disclosure under this Compact.

5. **Termination of Compact.** If, after nine (9) months from the initial Notice of Violation, or ninety (90) days from the date of the arbitration decision, whichever is later, 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 Article, or if a Party continues to violate a Compact term after the completion of the arbitration process authorized in this Article, this Compact may be terminated. The Parties may, after no less than six (6) months following any such termination, enter into a new Compact.

6. **Notification of For Cause Termination.**

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

(1) Failure to submit to mediation or arbitration as required by Article VII;

(2) Failure to take action as required by an arbitrator's decision reached in compliance with Article VII.

(b) In the event a disagreement exists regarding whether a Party has failed to submit to mediation or arbitration, or to take action as required by an arbitrator's decision, as required under Article VII, the Party seeking the termination for cause shall notify the other Party and, together, the Parties shall select a mediator pursuant to Article VII section 2, above, to review the facts upon which the for cause termination notice is based. The Party bringing the allegation must provide a written recitation of the facts supporting the allegation with the notice of termination. The responding Party has ten (10) days to provide a written response and facts to the mediator. If the mediator determines that termination for cause is warranted, the mediator may terminate the Compact, however the Party making the allegation may choose to go through the regular dispute resolution process, as delineated in Article VII, above, in regard to the issue.

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

7. **Breach of Confidentiality.** Notwithstanding the provisions of Article VII sections 5 and 6, above, upon written notice, either Party may immediately terminate the Compact for a breach of the confidentiality provisions of Article XL. The Parties shall use their best efforts to cure, correct or otherwise satisfactorily resolve the breach of confidentiality. If the Parties reach agreement in this regard, the Compact may be reinstated.

8. **Effect of Termination.**

(a) **Winding Up.** Upon termination of this Compact, or upon expiration of the Compact, the Parties shall jointly be responsible for winding up all affairs that are the subject of this Compact. The Parties' obligations under this subsection shall survive the term of this Compact. The dispute resolution provisions of Article VII shall likewise survive the term of this Compact for the duration of the period.

9. **Notice Requirements.** For the purposes of Article VII, notice shall be by certified mail, return receipt requested, unless both Parties agree in writing to accept notice electronically or by facsimile. Notice shall be deemed to be given on the date of delivery. Notice shall be given as follows:

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

To the Tribe: Chair, The Tulalip Tribes
 6406 Marine Drive
 Tulalip, WA 98271

With a copy to: Office of the Reservation Attorney
 6406 Marine Drive
 Tulalip, WA 98271

Article VIII: Duty to Notify; Duty to Defend

I. **Duty to Notify.**

(a) **Claims or Proceedings.** The State shall provide the Compacting Tribe with prompt notice of any third-party claim, or any suit or proceeding, arising out of the provisions or terms of this Compact.

(b) **Breach of Confidentiality.** In the event that a Party discovers, or should reasonably have discovered, that a breach of confidentiality has occurred with respect to confidential

information within its possession or control, the discovering Party shall promptly notify the other Party in writing.

(c) **Change in Applicable Law.** The State shall provide the Compacting Tribe with notice of any change in state tax law materially affecting the provisions or terms of this Compact.

(d) **Form of Notice.** The State shall provide notice for purposes of this section in the same manner as described in Article VII section 9.

2. **Duty to Defend.** Each Party shall have the duty, at its expense, to defend any claim made, or any suit or proceeding brought by a third-party arising out of the provisions of this Compact, including, but not limited to, the tax sharing provisions of Article V. In any action filed by a third-party challenging either the Compacting Tribe's or the State's authority to enter into or enforce this Compact, the Compacting Tribe and the State each agree to support the Compact and defend their respective authority to enter into and implement the Compact.

Each Party may, at its own expense and with its own counsel, join in the defense of any action brought against the other Party.

Article IX: Duration of Agreement

1. **Duration.** This Compact shall remain in effect for fifteen (15) years following its effective date, subject to the termination provisions of Article VII.

2. **Renewal.** Because this Compact represents the culmination of a federally-mediated settlement of a lawsuit between the Compacting Tribe and the State, the Compact shall automatically renew for successive periods of ten (10) years, unless the parties mutually agree otherwise.

Article X: Amendments

1. **Amendments to Applicable Law.** The Parties agree that in the event of a change in the State's tax laws that affects the negotiated terms of this Compact, or a change in the Department's interpretation regarding the property taxation of nonmember owned improvements on trust lands, the Parties will discuss in good faith any changes in the compact or authorizing legislation that may be appropriate to preserve the intended benefits of the negotiated Compact. The Parties further agree that the Compacting Tribe may terminate the Compact if the good faith discussions do not result in a mutually satisfactory resolution.

2. **Most Favorable Terms.** Following the State's negotiations of similar tax sharing compacts with one or more other tribes, the Parties agree to amend this Compact as necessary to

provide the Compacting Tribe with any more favorable terms that may be provided to another tribe or tribes. The Parties acknowledge in this regard that the capital investment components of agreements with other tribes are not required to be identical to the capital investment component of this agreement.

3. **Amendments.** Except as otherwise provided in Article X sections 1 and 2, above, amendments to the Compact shall be considered upon the written request of either Party. The Parties agree to consider and, if necessary, negotiate in good faith any amendments so requested.

Article XI: Confidentiality

1. All information received by the Department under the terms of this Compact, or open to Department review, is "return or tax information" under, and is subject to the provisions of, RCW 82.32.330.

2. The Department may not, without prior written authorization from the Compacting Tribe, use any confidential data, GIS information, or other information provided by the Compacting Tribe under this Compact for any other purpose beyond the purpose provided for by the Compact.

Article XII: Miscellaneous Provisions

1. **Governing Law and Enforceability.** This Compact shall be construed and interpreted in accordance with the laws of the state of Washington.

2. **Limitation of Liability.** In no event will either party, or their agencies, officers, employees, or agents be responsible or liable for the acts or omissions of the other arising from this Compact.

3. **Compact Does Not Create any Third-Party Beneficiaries.** Neither the Compacting Tribe nor the State are creating, or intend to create, any rights in third-parties which would result in any claims of any nature whatsoever against the Compacting Tribe or the State as a result of this Compact.

4. **Periodic Review of Compact Status.** Appropriate representatives of the Compacting Tribe and of the State shall hold periodic meetings to review the status of this Compact and any issues that have arisen under the Compact.

5. **Resolution of Disputes.** The Parties agree that this Compact resolves all current and future tax disputes between the Parties while this Compact is in effect to the extent such disputes relate to revenues from the following:

(a) Transactions between nonmembers, where such transactions are subject to the taxes in effect or authorized as of June 11, 2020, except for any business and occupation tax under chapter 82.04 RCW other than certain state business and occupation taxes as defined in this Compact; and,

(b) State and local use tax imposed on nonmembers and sourced to a location within the Indian Country of the Compacting Tribe pursuant to RCW 82.32.730; and,

(c) Personal property taxes imposed on nonmembers.

6. **Waiver.** The Parties agree that no consent, express or implied, to any breach by either party of any provision of this Compact shall constitute a waiver of any other breach. No term or condition of this Compact shall be held to be waived, modified, or deleted except by a written instrument signed by the Parties.

7. **No Employee or Agency Relationship.** Neither the Compacting Tribe nor its employees, agents, or contractors are employees or agents of the Department. The Director of the Washington State Department of Revenue and his or her employees, agents, or contractors are likewise not employees or agents of the Compacting Tribe. None of the provisions of this Compact will be construed to create a relationship of agency, representation, joint venture, ownership, or control of employment between the Parties other than that of independent parties compacting solely for the purpose of effectuating this Compact.

8. **Non-Assignment.** Neither Party to this Compact shall assign or attempt to assign any rights, benefits, or obligations accruing to the Party under this Compact, unless the other Party expressly agrees in writing to any such assignment.

9. **Entire Agreement.** This Compact, which incorporates by reference EXHIBIT "A", constitutes the entire, complete, and exclusive statement of the terms of the agreement between the Parties with respect to the subject matter hereof and supersedes and cancels any prior agreements. Neither this Compact nor any provision hereof may be amended, waived or modified except by written instrument signed after the date hereof by all Parties hereto and expressly stating that such instrument is intended as an amendment, modification or waiver hereof.

10. **Order of Precedence.** The items listed below are incorporated by this reference herein. In the event of any inconsistency in this Compact, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Relevant and applicable federal law;
- (b) Relevant and applicable Washington law;
- (c) Terms and conditions of this Compact;
- (d) The memorandum of understanding executed by and between the Compacting Tribe and the State on January 8, 2020, and the addendum thereto executed on January 17, 2020 (hereby incorporated into the Compact as Exhibit A); and,
- (e) Any other provisions incorporated by reference or otherwise into this Compact.

11. **Severability.** If any terms or provisions of this Compact are deemed invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms and provisions of this Compact, unless the terms or provisions deemed invalid or unenforceable are necessary to preserve the intended benefits of the negotiated Compact, in which case a party may seek to amend the Compact or may terminate the Compact under Article VII.

[Signature Page to Follow)

THUS AGREED THIS 31 day 0 2020.

TULALIP TRIBES

By: 
Chairwoman Teri Gobin

Date

11/10/20

STATE OF WASHINGTON

By: 
Governor Jay Inslee

Date

7/1/20

EXHIBIT A

Memorandum of Understanding

I. Framework:

1. The State of Washington (State), Tulalip Tribes (Tulalip) and Snohomish County (County) agree to pursue legislation providing authority for the Governor to enter into compacts allowing sharing of revenue as described below.
2. The State, Tulalip, and the County will work to develop the legislation and commit to support it during the legislative process. The State and Tulalip will use their best efforts to enter into a compact by the effective date of the authorizing legislation and will negotiate in good faith a reasonable implementation date after the compact is signed when the Department of Revenue (DOR) would begin to administer revenue sharing under the compact. Provided that the compact is entered into by the effective date of the legislation and DOR timely receives the information covered in V. 3. below, the implementation date for retail sales and retailing B&O tax on sales from businesses located in the compact covered area will be July 1, 2020. The State and Tulalip will negotiate a reasonable implementation date for the other taxes covered by this compact.
3. The revenue sharing compact will apply to retail sales and use tax and retailing business and occupation (B&O) tax on nonmember-to-nonmember sales transactions that are sourced to a location within the compact covered area following the sourcing provisions in chapter 82.32 RCW.
 - a. **The "compact covered area" includes trust land located on or off the reservation, fee land owned by a tribe within the exterior boundaries of the reservation and fee land owned by a tribal member within the exterior boundaries of the reservation. For purposes of the definition of "compact covered area," tribal or tribal member ownership requires majority ownership by a tribe and/or tribal members or ownership by a married couple, at least one of whom is a tribal member.**
 - b. Revenue sharing under the compact does not apply to existing businesses operating on the effective date of the legislation (or substantially similar successor businesses) that are located on nonmember fee land, which land the tribe or member acquires on or after the effective date of the legislation. As an example, an existing business selling Ford vehicles that operates later as a Toyota dealer is a substantially similar successor business. However, an existing business selling Ford vehicles that operates later as a Recreational Vehicle (RV) dealership is not a substantially similar successor business.
4. The State will administer taxes covered by the compact. Funding for the administration of the compact will be provided by the authorizing legislation.
5. The compact applies only to the state portion of taxes. The local portions of taxes will not be subject to revenue sharing under this agreement.
6. The State, Tulalip and the County agree that the completion of the compact will resolve all current and future disputes between the parties, while the compact is in force and with respect to taxes in

effect or authorized as of the date of passage of the legislation, regarding the sharing of tax revenues from nonmember-to-nonmember transactions in Tulalip Indian Country, and from personal property taxes on nonmembers; but excluding B&O taxes other than retailing B&O.

7. The State and Tulalip agree that in the event of a change in the State's tax laws that affects the negotiated terms of the compact (for example, a change in the rate of state retail sales tax), they will discuss in good faith any changes in the compact or authorizing legislation that may be appropriate to preserve the benefits of the negotiated agreement.
8. Following the State's negotiations with other tribes, the State and Tulalip agree to amend this Memorandum of Understanding and/or the compact to provide Tulalip with any more favorable terms that may be provided to another tribe or tribes. The State and Tulalip acknowledge that the **capital investment components of agreements with other tribes are not required to be identical to the capital investment component of this agreement.**

II. For existing development:

1. Tulalip receives 100% of the first \$500,000 of the state portion of retail sales and use tax. This will be effective when the compact is implemented (no phase in).
2. Beyond the first \$500,000, no additional sharing of retail sales and use tax revenue will occur until year five (beyond the four year fiscal note period). The percentages below will be fully implemented **in year five.**
 - a. With the capital investment(described below), Tulalip receives a 50% share of the state **portion of:**
 - i. Retail sales tax with respect to existing development; and
 - ii. **Use tax sourced to the compact covered area except as provided below for new development.**It is Tulalip's firm intent to make the capital investment.
 - b. Until such time as the capital investment is made, Tulalip receives a 25% share of the state portion of retail sales and use tax covered in the compact.
3. Effective when the compact is implemented, Tulalip receives 100% of the state portion of the retailing B&O tax on sales that are subject to sales tax covered in the compact.

III. Fornewc: Development:

1. The percentages below will be effective when the compact is implemented (no phase in).

- a. With the capital investment (described below), Tulalip receives a 60% share of the state portion of retail sales and use tax with respect to new development covered in the compact. It is Tulalip's firm intent to make the capital investment.
 - b. Until such time as the capital investment is made, Tulalip receives a 25% share of the state portion of retail sales and use tax.
2. Effective when the compact is implemented, Tulalip receives 100% of the state portion of the retailing B&O tax on sales that are subject to sales tax covered in the compact.
3. **"New development" means a business that:**
- a. Generates tax liability subject to the revenue sharing compact from business operations at a **location within the compact covered area;**
 - b. Is located in a structure at a location within the compact covered area and for which **construction was initiated on or after the effective date of the compact. The structure must be new construction, and does not include renovations or additions to existing structures for individual businesses located, or for new businesses locating, in pre-existing structures;** and
 - c. The business was not previously in operation and generating retail sales tax and retailing B&O tax liability in a different location within the compact covered area.
 - d. **A business that is not operating in a structure or that is operating from the location on a transitory basis is not new development, though operations of a permanently located business may be intermittent or irregular. For clarification, business operations that take place in a permanent structure such as a convention center shall be considered new development.**

IV. Capital Investment:

- 1. Tulalip agrees to invest \$35 million in siting, design and construction of a civil commitment facility of 48 beds or less. The investment may be less than \$35 million if a facility of 48 beds can be sited, designed, and constructed for a lesser amount.
- 2. The facility will be sited on trust or tribe owned land. The facility will be sited in Snohomish County outside of the Tulalip Indian Reservation or a mutually acceptable location.
- 3. Tulalip is responsible for siting, design and construction. The State will support Tulalip in identifying an appropriate site and in acquiring permits for the facility. Upon request, the County will provide relevant information regarding proposed sites in unincorporated Snohomish County. The County recognizes the need for *civil* commitment facilities in the state and in good faith will review any development applications for any such facility within its jurisdiction.
- 4. The facility must meet applicable federal and state guidelines including for design and construction. Siting and construction of facility must comply with state and the relevant city or county land use regulations unless sited on the reservation or on Tulalip trust land off the reservation.

5. The State will be responsible for operations and ongoing maintenance of the facility and for all associated liabilities. If Tulalip transfers ownership of the facility to the State, Tulalip will have the option to reacquire ownership of the facility when the State no longer uses it as a civil commitment facility.
6. For purposes of the higher tax sharing percentages above, Tulalip will be deemed to have made this capital investment after completion of siting and permitting of the civil commitment facility, subject to the following:
 - a. If Tulalip submits during the first three years of the compact complete permit applications for all necessary permits for the facility in an appropriate location, and if the required permits have not issued by the end of year three, the State and Tulalip shall reengage during **year four of the compact and reach agreement on whether (i) to continue pursuing construction of a civil commitment facility at that location, (ii) to pursue construction of a civil commitment facility at a different location, or (iii) to pursue an alternative, mutually agreeable project that provides public infrastructure or services.** The agreement will include the steps necessary for Tulalip to receive the applicable higher tax-sharing percentage. Unless the State and Tulalip agree otherwise, beginning in year five of the compact, Tulalip will place the remaining funds for its \$35 million investment in escrow for the agreed-upon purpose, and Tulalip will receive the applicable higher tax-sharing percentage.
 - b. If Tulalip first submits complete permit applications for all necessary permits for the facility in an appropriate location after the first three years of the compact, and if the required permits have not issued within 180 days of the submission, the State and Tulalip shall reengage during the following six months to reach agreement on (i), (ii), or (iii) described above. The agreement will include the steps necessary for Tulalip to receive the applicable higher tax-sharing percentage. Unless the State and Tulalip agree otherwise, immediately thereafter, but not before year five of the compact, Tulalip will place the remaining funds for its \$35 million investment in escrow for the agreed-upon purposes, and Tulalip will receive the applicable higher tax-sharing percentage.

V. Miscellaneous Terms:

1. The State and Tulalip agree to negotiate in good faith regarding liability, indemnification and joint defense provisions in connection with the civil commitment facility and any challenges to its siting, **permitting and construction,**
2. Tribal members will have preference at the civil commitment facility. In connection with this preference provision, the State and Tulalip agree to discuss potential configurations of the facility that may include additional services, such as voluntary inpatient mental health and chemical dependency treatment.
3. Tulalip will provide information to DOR that is necessary for DOR to administer the compact, **including information regarding parcel ownership on the reservation and information regarding**

businesses operating in the compact covered area. Tulalip and the State will discuss appropriate procedures to keep this information up to date.

4. This Memorandum of Understanding will become effective when signed by two of the parties. The terms and obligations in this Memorandum of Understanding are effective for a party upon signature by that party. Each person signing this Memorandum of Understanding represents and warrants that he or she is authorized to execute this Memorandum of Understanding on behalf of the party for whom they are signing, and that by signing this Memorandum of Understanding, the party shall fulfill the terms contained within.

- *dil
[Title], Tulalip Tribe
Date: 1/2/2010
[Signature]
Date: 1/2/2010
State of Washington
[Signature]
Date: 1/2/2010

[Signature]
Director, Washington State Department of Revenue
[Signature]
Date: 1/2/2010

L.A.A. 77 **SUSAN NEELY**
[Title], Snohomish County **Executive Director**
Date: 1-15-2010

CLARIFICATION TO MEMORANDUM OF UNDERSTANDING

1. The State of Washington, Tulalip Tribes, and Snohomish County (collectively referred to as the "parties") have agreed to and executed a Memorandum of Understanding ("MOU") to pursue legislation providing authority for the Governor to enter into compacts allowing sharing of certain revenue under specified conditions.
2. After the initial execution of the MOU, it has come to attention of the parties that there was a failure to reach a common understanding of certain terms contained in the MOU.
3. Specifically, the MOU provides that the Tulalip Tribes will receive "100% of the first \$500,000 of the state portion of retail sales and use tax."
4. This language appears under the section related to tax revenues derived from existing development, with the heading "II. For existing development."
5. The language does not appear under the following section related to tax revenues derived from new development, with the heading "III. For new development."
6. The parties have discovered that they did not have a common understanding of how the \$500,000 cap was intended to work. In particular, it was unclear to the parties whether the provision allowing 100% recovery of the state portion of retail sales and use tax up to the \$500,000 cap was intended to include both tax revenues from existing development and new development, or intended to be limited to tax revenue from existing development only.
7. The parties have further determined that the language in question appears in the existing development section only because that was the context in which the idea of a cap originated. There was never any discussion or explicit agreement among the parties whether the language would also apply to new development.
8. As a result, the parties now agree that their shared intent is for the Tulalip Tribes to receive 100% of the first \$500,000 of the state portion of retail sales and use tax, regardless of whether that revenue is derived from existing development or new development.
9. The parties further agree that the legislation to implement the MOU and to authorize compacts will be drafted to reflect this shared intent.
10. The parties further agree that this action merely clarifies the parties' original intent, and does not constitute a change to the MOU agreed to by the

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WA State Department of Revenue

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Snohomish County

SUSAN NEELY
Executive Director

Memorandum of Understanding

I. Framework:

1. The State of Washington (State), Tulalip Tribes (Tulalip) and Snohomish County (County) agree to pursue legislation providing authority for the Governor to enter into compacts allowing sharing of revenue as described below.
2. The State, Tulalip, and the County will work to develop the legislation and commit to support it during the legislative process. The State and Tulalip will use their best efforts to enter into a compact by the effective date of the authorizing legislation and will negotiate in good faith a reasonable implementation date after the compact is signed when the Department of Revenue (DOR) would begin to administer revenue sharing under the compact. Provided that the compact is entered into by the effective date of the legislation and DOR timely receives the information covered in V. 3. below, the implementation date for retail sales and retailing B&O tax on sales from businesses located in the compact covered area will be July 1, 2020. The State and Tulalip will negotiate a reasonable implementation date for the other taxes covered by this compact.
3. The revenue sharing compact will apply to retail sales and use tax and retailing business and occupation (B&O) tax on nonmember-to-nonmember sales transactions that are sourced to a location within the compact covered area following the sourcing provisions in chapter 82.32 RCW.
 - a. The "compact covered area" includes trust land located on or off the reservation, fee land owned by a tribe within the exterior boundaries of the reservation and fee land owned by a tribal member within the exterior boundaries of the reservation. For purposes of the definition of "compact covered area," tribal or tribal member ownership requires majority ownership by a tribe and/or tribal members or ownership by a married couple, at least one of whom is a tribal member.
 - b. Revenue sharing under the compact does not apply to existing businesses operating on the effective date of the legislation (or substantially similar successor businesses) that are located on nonmember fee land, which land the tribe or member acquires on or after the effective date of the legislation. As an example, an existing business selling Ford vehicles that operates later as a Toyota dealer is a substantially similar successor business. However, an existing business selling Ford vehicles that operates later as a Recreational Vehicle (RV) dealership is not a substantially similar successor business.
4. The State will administer taxes covered by the compact. Funding for the administration of the compact will be provided by the authorizing legislation.
5. The compact applies only to the state portion of taxes. The local portions of taxes will not be subject to revenue sharing under this agreement.
6. The State, Tulalip and the County agree that the completion of the compact will resolve all current and future disputes between the parties, while the compact is in force and with respect to taxes in

PRIVILEGED AND CONFIDENTIAL SETTLEMENT PROPOSAL-SUBJECT TO MEDIATION AGREEMENT

effect or authorized as of the date of passage of the legislation, regarding the sharing of tax revenues from nonmember-to-nonmember transactions in Tulalip Indian Country, and from personal property taxes on nonmembers; but excluding B&O taxes other than retailing B&O.

7. The State and Tulalip agree that in the event of a change in the State's tax laws that affects the negotiated terms of the compact (for example, a change in the rate of state retail sales tax), they will discuss in good faith any changes in the compact or authorizing legislation that may be appropriate to preserve the benefits of the negotiated agreement.
8. Following the State's negotiations with other tribes, the State and Tulalip agree to amend this Memorandum of Understanding and/or the compact to provide Tulalip with any more favorable terms that may be provided to another tribe or tribes. The State and Tulalip acknowledge that the capital investment components of agreements with other tribes are not required to be identical to the capital investment component of this agreement.

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1. Tulalip receives 100% of the first \$500,000 of the state portion of retail sales and use tax. This will be effective when the compact is implemented (no phase in).
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 - b. Until such time as the capital investment is made, Tulalip receives a 25% share of the state portion of retail sales and use tax covered in the compact.
3. Effective when the compact is implemented, Tulalip receives 100% of the state portion of the retailing B&O tax on sales that are subject to sales tax covered in the compact.

III. For new development:

1. The percentages below will be effective when the compact is implemented (no phase in).

PRIVILEGED AND CONFIDENTIAL SETTLEMENT PROPOSAL-SUBJECT TO MEDIATION AGREEMENT

- a. With the capital investment (described below), Tulalip receives a 60% share of the state portion of retail sales and use tax with respect to new development covered in the compact. It is Tulalip's firm intent to make the capital investment.
 - b. Until such time as the capital investment is made, Tulalip receives a 25% share of the state portion of retail sales and use tax.
2. Effective when the compact is implemented, Tulalip receives 100% of the state portion of the retailing B&O tax on sales that are subject to sales tax covered in the compact.
 3. "New development" means a business that:
 - a. Generates tax liability subject to the revenue sharing compact from business operations at a location within the compact covered area;
 - b. Is located in a structure at a location within the compact covered area and for which construction was initiated on or after the effective date of the compact. The structure must be new construction, and does not include renovations or additions to existing structures for individual businesses located, or for new businesses locating, in pre-existing structures; and
 - c. The business was not previously in operation and generating retail sales tax and retailing B&O tax liability in a different location within the compact covered area.
 - d. A business that is not operating in a structure or that is operating from the location on a transitory basis is not new development, though operations of a permanently located business may be intermittent or irregular. For clarification, business operations that take place in a permanent structure such as a convention center shall be considered new development.

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2. The facility will be sited on trust or tribe owned land. This facility will be sited in Snohomish County outside of the Tulalip Indian Reservation or a mutually acceptable location.
3. Tulalip is responsible for siting, design and construction. The State will support Tulalip in identifying an appropriate site and in acquiring permits for the facility. Upon request, the County will provide relevant information regarding proposed sites in unincorporated Snohomish County. The County recognizes the need for civil commitment facilities in the state and in good faith will review any development applications for any such facility within its jurisdiction.
4. The facility must meet applicable federal and state guidelines including for design and construction. Siting and construction of facility must comply with state and the relevant city or county land use regulations unless sited on the reservation or on Tulalip trust land off the reservation.

PRIVILEGED AND CONFIDENTIAL SETTLEMENT PROPOSAL- SUBJECT TO MEDIATION AGREEMENT

1. The State will be responsible for operations and ongoing maintenance of the facility and for all associated liabilities. If Tulalip transfers ownership of the facility to the State, Tulalip will have the option to reacquire ownership of the facility when the State no longer uses it as a civil commitment facility.
2. For purposes of the higher tax sharing percentages above, Tulalip will be deemed to have made this capital investment after completion of siting and permitting of the civil commitment facility, subject to the following:
 - a. If Tulalip submits during the first three years of the compact complete permit applications for all necessary permits for the facility in an appropriate location and if the required permits have not issued by the end of year three, the State and Tulalip shall reengage during year four of the compact and reach agreement on whether (i) to continue pursuing construction of a civil commitment facility at that location, (ii) to pursue construction of a civil commitment facility at a different location, or (iii) to pursue an alternative, mutually agreeable project that provides public infrastructure or services. The agreement will include the steps necessary for Tulalip to receive the applicable higher tax-sharing percentage. Unless the State and Tulalip agree otherwise, beginning in year five of the compact, Tulalip will place the remaining funds for its \$35 million investment in escrow for the agreed-upon purpose, and Tulalip will receive the applicable higher tax-sharing percentage.
 - b. If Tulalip first submits complete permit applications for all necessary permits for the facility in an appropriate location after the first three years of the compact, and if the required permits have not issued within 180 days of the submission, the State and Tulalip shall reengage during the following six months to reach agreement on (i), (ii), or (iii) described above. The agreement will include the steps necessary for Tulalip to receive the applicable higher tax-sharing percentage. Unless the State and Tulalip agree otherwise, immediately thereafter, but not before year five of the compact, Tulalip will place the remaining funds for its \$35 million investment in escrow for the agreed-upon purposes, and Tulalip will receive the applicable higher tax-sharing percentage.

V. Miscellaneous Terms:

1. The State and Tulalip agree to negotiate in good faith regarding liability, indemnification and joint defense provisions in connection with the civil commitment facility and any challenges to its siting, permitting and construction.
2. Tribal members will have preference at the civil community facility. In connection with this preference provision the state and Tulalip agree to discuss potential configurations of the facility that may include additional services, such as voluntary inpatient mental health and chemical dependency treatment.
3. Tulalip will provide information to DOR that is necessary for DOR to administer the compact, including information regarding parcel ownership on the reservation and information regarding

PRIVILEGED AND CONFIDENTIAL SETTLEMENT PROPOSAL- SUBJECT TO MEDIATION AGREEMENT

businesses operating in the compact covered area. Tulalip and the State will discuss appropriate procedures to keep this information up to date.

4. This Memorandum of Understanding will become effective when signed by two of the parties. The terms and obligations in this Memorandum of Understanding are effective for a party upon signature by that party. Each person signing this Memorandum of Understanding represents and warrants that he or she is authorized to execute this Memorandum of Understanding on behalf of the party for whom they are signing, and that by signing this Memorandum of Understanding, the party shall fulfill the terms contained within.

Leri Kabin
[Title], Tulalip Tribes *Chair*
1/8/20
Date

Aw Su
State of Washington *Legislative Director*
1/8/20
Date

Aiki Smith
Director, Washington State Department of Revenue
1/15/20
Date

Susan Neely **SUSAN NEELY**
[Title], Snohomish County **Executive Director**
1-15-20
Date