

(Sample)
MEMORANDUM OF AGREEMENT
Between
_____ TRIBE
And
THE WASHINGTON STATE LIQUOR CONTROL BOARD
CONCERNING AUTHORIZATION OF LIQUOR SALES

I. Parties

The Parties to this Memorandum of Agreement (“MOA”) are _____ Tribe (the “Tribe”), and the Washington State Liquor Control Board (the “Board”) (collectively “the Parties”).

The _____ Tribe is a federally recognized Indian Tribe possessed of the full sovereign powers of a government. The Tribe and its wholly-owned enterprises operate on the Tribe’s reservation or trust lands (hereafter “Indian country”).

The Washington State Liquor Control Board is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to liquor licensure and operations under Title 66 RCW.

II. Purpose

The introduction, possession and sale of liquor on Indian Reservations have, since treaty time, been clearly recognized as matters of special concern to Indian tribes and to the United States federal government. The control of liquor on reservations remains subject to their legislative enactments. (Each Tribe would provide statement here on its regulation of alcohol.) Federal law currently prohibits the introduction of liquor into Indian country, leaving tribes the decision regarding when and to what extent liquor transactions shall be permitted. The Tribal Council has determined that present day circumstances make a complete ban of liquor within Indian country ineffective and unrealistic. At the same time, the need still exists for strict regulation and control over liquor distribution.

The Parties share a strong interest in ensuring that liquor sales in Indian country are well-regulated to protect public safety and community interests.

The Parties have entered into this MOA in order to strengthen their ability to meet these mutual interests.

The Parties acknowledge that pursuant to federal law, 18 U.S.C. §1161, the federal prohibition on sale of liquor in Indian country shall not apply to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

The Parties further acknowledge that the Tribe has adopted a liquor ordinance which was certified by the Secretary of Interior and published in the Federal Register on _____.

The Parties further acknowledge that within the framework of federal Indian law, tribal law and state law, there are uncertainties and unsettled issues regarding jurisdiction, licensing, enforcement and other matters essential to the proper regulation of liquor sales in Indian country.

March 3, 2010

The Parties therefore agree that it is in the best interests of the Tribe and the Board, on behalf of the State of Washington, that they enter into an agreement to provide certainty and cooperation in this area of mutual concern.

This MOA is intended to provide a general framework for government-to-government cooperation and coordination regarding the sale of liquor by the Tribe¹ and its wholly-owned enterprises in Indian country. This MOA is not intended to address the siting or operation of a liquor store, and does not supersede or affect the validity or interpretation of any agreement between the Parties regarding the siting or operation of a liquor store [include specific reference to any agreement presently in place].

III. Terms of Agreement

A. Liquor Licensing. The Parties agree that the state's licensing process does not sufficiently address unique jurisdictional and other matters that arise in Indian country under federal and tribal law and that the Parties have a longstanding disagreement with respect to the application of state law to Tribal liquor sales. Therefore, the Parties agree that in lieu of maintaining and/or obtaining one or more state licenses for the sale of liquor in Indian country, the Tribe and its wholly-owned enterprises shall hereafter make liquor sales in Indian country pursuant to the terms of this MOA.

B. Locations of sales.

1. Current locations. The Tribe and its wholly-owned enterprises currently make liquor sales in Indian country at the following location(s) under the state license(s) specified below:

a. [Identify location and license type]

b.

c.

The Parties agree that these liquor sales, as well as other liquor sales that the Tribe and its wholly-owned enterprises may add or modify at these or other locations in the future, shall hereafter be governed by the terms of this MOA in lieu of otherwise applicable state law.

2. New or expansion of current locations.

The Tribe and its wholly-owned enterprises may amend or expand the locations where liquor is sold and/or served as listed in Section III(B)(1) in accordance with the terms set forth in this MOA. The Tribe and its wholly-owned enterprises shall notify the Board in writing of any substantial change to their Operating Plan or liquor facilities. Examples of a substantial change shall include the addition of a new location for sale or service of alcohol and/or the addition of privileges at an existing location. Said notification shall be provided at least 90 days prior to the effective date of said change. The information to be provided will include:

- a. the identity of the entity which is operating the facility;
- b. location of the premises;
- c. certification that the premises is located in Indian Country;

¹ The Board and the Tribe may wish to address issues related to sales by tribal members in Indian country and/or sales by non-members on tribal or tribal-member trust lands, including for example, communication protocols under which Tribal licensing requirements and licensees are identified to the Board and mutually agreeable enforcement protocols are established. The Board and the Tribe agree that such issues may be addressed in a separate document without amendment of this Agreement.

- d. certification to the Board by the Tribe that the Tribe has adequately addressed the issues necessary to prevent the misuse of alcohol and prevent minor access to alcohol at the locations pursuant to Section III(C)(2):III(C)(3) below; and
 - e. an update to the Tribe's Operating Plan referenced in Section III(C)(2) below.
3. Without resolving jurisdictional questions that may arise, the Board and the Tribe agree that it is in the best interests of both Parties that notice be provided to neighbouring jurisdictions prior to the opening of a new location where liquor sales will be made. When the Tribe or its wholly-owned enterprise proposes to open an additional location and/or add additional privileges related to the sale of liquor in Indian country, the Board will provide written notice to the city, or if outside city limits, the county in which the sales will occur. The Board and the Tribe agree that the primary purpose of the notice is to facilitate an exchange of information that may be helpful to all parties concerned in addressing unanticipated impacts with the understanding that such notice related to Indian lands is primarily a matter of intergovernmental courtesy. Similarly, when any other licensee or applicant proposes to open a new location or obtain a new license within **five (5) miles²** of Indian country, the Board agrees to provide written notice to the Tribe. The Board and the Tribe will agree to the geographic limits of this notification area as part of this MOA.

C. Tribal Authority and Jurisdiction

1. Conditions.

Without determining the scope of the legal authority of either party to regulate the sale of liquor by the Tribe in Indian country, the Parties agree that it is in the mutual interest of the Tribe and the Board that the Tribe and its wholly-owned enterprises be authorized to sell liquor under the terms of this MOA. Therefore, when the following conditions are met, the Board agrees that for the purposes of Title 66 RCW, and related provisions of state law, the Tribe and its wholly-owned enterprises will be treated as holding the necessary authority to make liquor sales.

2. Liquor Sales Authority.

The Board agrees the Tribe or its wholly owned Tribal enterprise is authorized to sell and/or serve liquor in Indian country provided it has submitted an approved application for such authority which will include an Operating Plan containing the following elements:

- a. the location, nature, and times of liquor sales;
- b. the training of staff involved in liquor sales. It is required that persons responsible for serving alcohol for on-premise consumption possess a Mandatory Alcohol Server Training (MAST) permit;
- c. consideration of proximity of alcohol sales to a school, church, playground or public building;
- d. confirmation that the land on which alcohol sales is to occur is either reservation or trust land held by the Tribe;
- e. any lease, purchase, partnership or franchise agreement with a non-tribal entity which directly relates to the location where alcohol is sold or served;
- f. a copy of the Tribe's ordinance permitting the sale of liquor in Indian Country;
- g. a regulatory enforcement and compliance plan; and
- h. other information as deemed necessary by agreement between the Board and the Tribe.

² Five miles is a "placeholder" figure. The region in which intergovernmental notification occurs will be negotiated individually with each Tribe.

3. On-Premise Consumption.

In addition, for locations providing liquor service by the drink for on premises consumption, the Tribe shall include in its Operating Plan the following factors, as applicable to each particular location:

- a. the location, nature, and times of alcohol and food service;
- b. a description of how the Tribe will prevent the sale of alcohol to persons under the age of 21 years of age and those who appear to be intoxicated;
- c. a security plan including the planned ratio of staff to customers and training of service and security staff. Those serving alcohol must at minimum possess a valid Mandatory Alcohol Server Training permit;
- d. the nature of any special events or entertainment events hosted on the premises including security and alcohol service plans for these events; and
- e. any other special conditions considered necessary to protect public safety based on the type of events to be held at Tribal facilities.

4. Consultation and Agreement on the Operating Plan.

In consultation with the Tribe, the Board will then determine if the Tribe has met the public safety requirements of Title 66, RCW and Title 314, WAC together with the provisions of this MOA. The Board acknowledges that no one license type under Title 66 RCW is applicable to the Tribe's operations and that one purpose of this Agreement is to allow flexibility with respect to Tribal operations. The Tribe and the Board agree that consultation with respect to the Operating Plan will occur in good faith and the Board's approval will not be unreasonably withheld. The Board will make every effort to accommodate Tribal interests as reflected in the Tribe's proposed Operating Plan and any disapproval will include a clear explanation of the decision, its necessity in order to prevent misuse of alcohol and service to minors, and proposed alternatives. Where applicable, the following will be determined and provided in the Tribe's Operating plan:

- a. areas that should be off limits to minors at all or certain times;
- b. areas where no liquor will be served, or only beer and wine will be served; and
- c. any other restrictions on service the Board and Tribe deem necessary.

The Tribe and its wholly-owned enterprises will review its Operating Plan on an annual basis. They will notify the Board prior to any substantial change to operations on Tribal premises.

5. Annual Payment to the Board.

The Tribe agrees to pay the Board \$XXX annually in lieu of any license fees. (The amount of the annual fee will be negotiated with individual Tribes)

D. Enforcement. The Parties shall handle enforcement issues in the following manner:

1. Enforcement activities. [Enforcement protocols and or MOA/MOU to be negotiated by each Tribe with the Board].
2. Separate Locations. [Statement about violations in one "location" not counting against the Tribal Authority in general.]
3. Information sharing.
4. Training and Technical Assistance. The Board shall provide training and technical assistance, at the Tribe's request, for the prevention of violations of alcohol laws.
5. Recognition of public safety related violations that are of critical importance. Examples of these violations include:
 - a. sale or service to a minor;
 - b. minor frequenting an age restricted area;
 - c. sale or service to an apparently intoxicated person;

March 3, 2010

- d. disorderly conduct by an employee or permitting such conduct on the premises; and
- e. criminal conduct by an employee or permitting same on the premises.

E. Conditions and Limitations. The Board and the Tribe agree to the following conditions and limitations:

The Tribe agrees sales of liquor by the Tribe and its wholly-owned enterprises will conform to Title 66 RCW to the extent required by 18 U.S.C. §1161. The Parties agree that RCW 66.24.010(2) which provides for criminal background checks of applicants is inapplicable to the Tribe and its wholly-owned enterprises. (Any other exemptions from statute must be negotiated individually between the Tribe and the Board)

F. Dispute Resolution. [to be negotiated by each Tribe and the Board; to include the following elements:

1. Notice requirements and contacts for each party.
2. Dispute resolution processes (may include informal and/or formal steps. may differentiate between matters of interpretation and substantive violations).
3. Timelines.
4. Requirement of good faith participation in dispute resolution processes.
5. Provision for termination of the MOA if the dispute cannot be resolved in the timeframe allowed. [The parties' interests include timely, effective and fair processes as necessary to protect public safety and ensure certainty of business operations]

G. Sovereign Immunity. The Board agrees that the signing of this MOA by the Tribe does not imply a waiver of sovereign immunity by the Tribe, or its wholly-owned enterprises, and is not intended by the Tribe as a waiver of sovereign immunity and that any action by the Board in regard to liquor sales by the Tribe shall be in accord with this MOA.

H. No Limitation. 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 or its wholly-owned enterprises nor subject the Tribe, or its wholly-owned enterprises, to any state jurisdiction not agreed to in this MOA.

I. Updated Information. The Tribe and its wholly-owned enterprises will review its Operating Plan on an annual basis and notify the Board of any changes in the plan or its procedures. This review is additional to the notification of changes in the service of alcohol reference in Section III(B)(2).

IV. Communication and Notice.

A. Designated Contacts. 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 primary contacts regarding administration of this MOA:

For the Liquor Control Board: (LCB Tribal Liaison)

For the Tribe: [State Tribal Liaison]

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

March 3, 2010

B. Notice. Any notice that may be, or is required to be, sent under this MOA shall be sent as follows:

If to the Liquor Control Board: (LCB Tribal Liaison)

If to the Tribe: [State Tribal Liaison]

With a copy to: [Tribe's wholly-owned enterprises]

V. Effect, Duration, and Amendment

- A. While the parties intend to reach a perpetual agreement related to licensing of tribal liquor sales, this Agreement shall remain in effect for an initial period of five (5) years unless the parties mutually agree in writing that the agreement should be vacated or terminated and superseded by a new Agreement between the parties within that time frame. Should the parties fail to negotiate a perpetual agreement during initial term of this Agreement, the Agreement shall automatically renew for an additional two year period unless either party provides written notice to the other, no later than 120 days before the expiration of the two year period, that they wish to modify the terms of the agreement.
- B. Amendment. 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, approved by the Parties, expressly stating the Parties' intention to amend this agreement.

This Agreement is hereby made this ____ day of _____, 20__.

[Name, Title], Board Chair
Washington State Liquor Control Board

[Name, Title]
[Tribe]

[Name], Board Member
Washington State Liquor Control Board

[Name], Board Member
Washington State Liquor Control Board

[Name], Agency Administrative Director
Washington State Liquor Control Board

March 3, 2010