

MEMORANDUM OF AGREEMENT
Between
THE _____ TRIBE OF INDIANS
And
THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD

CONCERNING AUTHORIZATION OF LIQUOR SALES

I. Parties

The Parties to this Memorandum of Agreement ("MOA") are the _____ Tribe of Indians ("Tribe"), and the Washington State Liquor and Cannabis Board (the "Board") (collectively "the Parties").

The _____ Tribe of Indians 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 and Cannabis 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, for more than 150 years, been clearly recognized as matters of special concern to Indian tribes and to the United States federal government. The control of liquor on the _____ Indian Reservation and trust lands remains subject to the Tribe's legislative enactments, Chapter 24 of the revised _____ Tribe of Indians Law and Order Code. 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 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 Tuesday March 26, 2002. 67 FR 13793-02.

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, taxation, enforcement and other matters essential to the proper regulation of liquor sales in Indian country.

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 Tribe and its wholly-owned enterprises in Indian country.

III. Definitions

A. Board means the Washington State Liquor Control and Cannabis Board.

B. Indian Country means the lands of the _____ Tribe of Indians as defined by 18 U.S.C. Section 1151, including the _____ Indian Reservation and all lands held in trust by the United States for the Tribe or its members.

C. RSLOC means the revised _____ Tribe of Indians Law and Order Code.

D. MOA means this Memorandum of Agreement.

E. Parties means the Board and the Tribe.

F. Tribal Enterprise means a wholly owned business enterprise of the Tribe.

G. Tribal Member means an enrolled member of the _____ Tribe of Indians.

H. Tribally-Licensed Business means a business licensed, but not wholly-owned, by the Tribe pursuant to Tribal Law.

I. Tribe means the _____ Tribe and Tribe of Indians.

IV. Terms of Agreement

A. Liquor Licensing.

Tribes and Tribal Enterprises

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 (**Exhibit A** includes additional description of liquor sales at each location):

- a. Trade name, License type, License #
Address
- b.
- c.
- d.
- e.
- f.
- g.
- h.

The Parties agree that these liquor sales, as well as either 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 IV. (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 new privileges at an existing location. Said notification shall be provided at least 60 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 by the Tribe that the premise is located in Indian Country;

- 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; and
- e. An update to the Tribe's Operating Plan referenced in Section IV(C)(2) below.

3. Notice to other Jurisdictions.

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 neighboring 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 for 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.

4. Tribal Licensing.

A. 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

B. When any other business operating in Indian Country applies for a liquor license, the Board agrees not to grant such license without first requesting the express written consent of the Tribe and evidence of licensure by the Tribe as required by the RSLOC. If the Tribe does not respond within 30 days of the Board's request for express written consent, the Board will conclude that the Tribe has consented.

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 (**Exhibit B**) containing the following elements:

- a. The location, nature, and times of liquor sales; (**Exhibit A**)
- 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 ;(**Exhibit B**)
- 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 (**Exhibit C**)
- h. Other information as deemed necessary by agreement between the Board and the 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 be 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 the individual Tribes).

6. Spirits Retailer Fees.

The Board Agrees that in lieu of the spirits retailer license fees imposed by RCW 66.24.630, the Board will accept payment as under the above subsection of this MOA and will not impose nor pursue collection of such licensing fees/taxes on sales by the Tribe and the Tribal Enterprises. In the event that new licensing fees or taxes on spirits retailers are added, or the existing licensing fees/taxes are modified, repealed, or replaced, as the result of legislation, initiative, referendum, court decision or otherwise the Parties agree that the fee for services outlined herein and in the MOA shall remain in effect pending the agreement of the parties to a revised fee for regulatory services as the Parties agree is appropriate under the circumstances and that the Board shall not impose nor pursue collection of the new fees and taxes on sales by the Tribe or Tribal Enterprises. The Parties agree to meet and pursue discussions of the applicability of any new fees on an expedited basis.

7. DOR Suspension Request.

The Parties acknowledge that Chapter 39 of the 2012 Washington Session Laws (HB 2758) provides that the Department of Revenue ("Department") may request that the Board suspend a taxpayer's spirits license if the Department determines that the taxpayer is more than 30 days delinquent in reporting or remitting spirits taxes. The Board asserts that a failure by the Tribe or a Tribal Enterprise to pay a spirits tax alleged to be due and owing by the Department would constitute a breach of this MOA. However, the Tribe disagrees that such result would necessarily ensue and preserves its right to dispute any tax assessment by the Department without penalty under this MOA and to prove in dispute resolution proceedings under this MOA that the Board's licensing authority under 18 U.S.C. Section 1161 does not allow the Board to prohibit Tribal liquor sales or purchases by reason of asserted state tax noncompliance. In the event the Board believes the Tribe has failed to remit spirits tax that the Department asserts to be validly and legally due and owing, the Board will notify the Tribe in accordance with the notification provisions of this MOA. Within 90 days following the date of notification, the Parties agree to meet and

confer in an effort to resolve the issue consistent with any related settlement between the Tribe and the Department or determination by a court of competent jurisdiction regarding the underlying tax assessment. If the Parties are unable to resolve the issue in six months after the date of notice, either Party may involve the dispute resolution provisions of this MOA. This Section C.7 does not apply to sales where the Tribe or Tribal Enterprise is the retail customer.

8. Reporting Requirements

In the event the Board's audit of a distributor or other supplier to the Tribe or Tribal Enterprise reveals a discrepancy that can best be reconciled through comparison to the Tribe or Tribal Enterprises retails sales records, the Tribe agrees that on the Board's reasonable request, to provide a detailed summary of its purchases as a spirits retail licensee from that supplier for the relevant time period, including date, amount, brand, and price. This summary will serve in lieu of submission of any reporting form(s) required of other spirits retail license holders.

9. Sponsorship/Advertising.

The Board acknowledges and agrees that in lieu of holding specific licenses under state law, the Tribe and Tribal Enterprises will be subject to the terms of this MOA. However, should the Tribe or Tribal Enterprises wish to enter into arrangements with a manufacturer, importer, or distributor for brand advertising and /or promotion of the Tribe's or Tribal Enterprises events at the Tribes Casinos, absent this MOA, would typically be regulated as part of a specific license, the Tribe or the Tribal Enterprises may enter into such arrangements upon prior approval of the Board. This MOA grants the tribe and Tribal Enterprises the privileges afforded Sports Entertainment venues of 5,000 seats or more under R.C.W. Section 66.24.570(6).

D. Enforcement.

The Parties shall handle enforcement issues in the following manner:

- 1. Enforcement activities.** Shall be governed by the Operating Plan contained in Exhibit C
- 2. Separate Locations.** The Board and the Tribe recognize that each "location" in Exhibit A shall be deemed a separate location and violations against one will not affect the other locations.
- 3. Information sharing.** The Tribe and the Board agree to share pertinent information with each other that could impact the others interests in a timely fashion.

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;
- 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.

1. Neither the Tribe, nor the Board, nor officers acting on either government's behalf, may petition any court to enforce this MOA unless (a) the dispute resolution process described in subsections (a) through (d) below has been followed in good faith to completion without successful resolution or (b) the other party fails to enter into the dispute resolution process. Should a dispute arise between the Tribe and the Board upon an issue of compliance with the MOA by either government, or by their officers, employees or agents, the Tribe and Board shall attempt to resolve the dispute through the following dispute resolution process:

(a) Notice. Either party may invoke the dispute resolution process by notifying the other in writing, of its intent to do so. The notice shall set out the issues in dispute and notifying party's position on each issue.

(b) Meet and Confer. The first stage of the dispute resolution process shall include a face-to-face meeting between representatives of the two governments to attempt to resolve the dispute by negotiation. The meeting shall be convened within 30 days of the date of the written notice described in subsection (a). The representatives of each government shall come to the meeting with the authority to settle the dispute. If the dispute is resolved, the resolution shall be memorialized in writing signed by the parties.

(c) Mediation. If the parties are unable to resolve the dispute within 60 days of the notice sent under subsection (a) above, the parties shall engage the services of a mutually agreed upon qualified mediator to assist them in attempting to negotiate the dispute. Costs for the mediator shall be borne equally by the parties. The parties shall pursue the mediation process in good faith until the dispute is resolved or until the mediator determines that the parties are not able to resolve the dispute. If the parties cannot agree on a format for the

mediation process, the format shall be that directed by the mediator. If the dispute is resolved, the resolution shall be memorialized by the mediator and shall bind the parties.

2. Option to Terminate. If the parties are unable to resolve a dispute under the dispute resolution process detailed in Section IV.F.1 (a) – (c) above, then either party may terminate this agreement with 120 days’ written notice, consistent with the notice requirements in Section IV.L, Communication and Notice.

G. Most Favored Nation Provision. If, at any time after the effective date of this MOA, the Board enters into an agreement, compact or consent decree or other arrangement with any other federally recognized tribe, relating to the regulation of liquor in Indian Country which includes a “most favored nation” provision, then upon, the Tribe’s written request, this MOA shall be amended to include such a provision. A most favored nation provision is defined as language by which the Board agrees to accord the same favorable terms that are offered in later agreements with any other Tribe. This shall not be construed to require that the Board offer the Tribe the option to receive the same terms offered every tribe, in the absence of a most favored nation provision in the MOA.

H. Defense of Authority In any action filed by a third party challenging either the Tribe’s or the State’s authority to enter into to or enforce this MOA, the Tribe and the State each agree to support the MOA and defend each of their authority to enter into and implement this MOA; provided, that this provision shall not be construed as a waiver of the sovereign immunity of the Tribe or its enterprises.

I. 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.

J. 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.

K. 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 IV. (B)(2).

L. Communication and Notice.

1. 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 Washington State Liquor and Cannabis Board:

For the _____ Tribe of Indians:

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.

2. Notice. Any notice that may be, or is required to be, sent under this MOA shall be sent as follows to the designated contacts.

With a copy to: Office of the _____ Tribal Attorney

M. Future Activities. The Parties agree that this MOA provides a successful, government-to-government basis by which to address jurisdictional and other issues arising out of the sale and consumption of liquor in Indian Country. In the future the Tribe or the Tribal Enterprises may wish to expand its business into other areas, such as winery activities, or liquor distiller. The Parties acknowledge that the legal backdrop for these activities is different, but agree that the policy concerns of avoiding jurisdictional gaps, protecting the public safety, and preventing youth access are very similar. For that reason and others, the Parties agree to pursue and negotiate in good faith agreements for future activities permitted by state law that are contemplated by the Tribe and the Tribal Enterprises.

V. Effect, Duration, and Amendment

1. 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.

2. 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 and Cannabis Board

[Name], Board Member
Washington State Liquor and Cannabis Board

[Name], Board Member
Washington State Liquor and Cannabis Board

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

For the _____ Tribe of Indians

Chair
_____ Tribe of Indians