

MEMORANDUM OF AGREEMENT

BETWEEN

THE LOWER ELWHA KLALLAM TRIBE

AND

THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD

CONCERNING THE AUTHORIZATION OF LIQUOR SALES

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MEMORANDUM OF AGREEMENT

I. Parties

The Parties to this Memorandum of Agreement ("MOA") are the Lower Elwha Klallam Tribe ("**Tribe**"), and the Washington State Liquor and Cannabis Board (the "**Board**") (collectively the "**Parties**" or individually the "**Party**").

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**" as further defined below).

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. Federal law currently prohibits the introduction of liquor into Indian Country, leaving the state and Tribes the decision regarding when and to what extent liquor transactions will be permitted. After serious deliberation, the Tribe 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 June 16, 2023.

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 and Cannabis Board.
- B. Indian Country** means the lands of the Lower Elwha Klallam Tribe of Indians as defined by 18 U.S.C. Section 1151 and including the Lower Elwha Klallam Tribe's Indian Reservation and all lands held in trust by the United States for the Tribe or its members.
- C. TLO** means the Lower Elwha Klallam Tribal Liquor Ordinance.
- D. MOA** means this Memorandum of Agreement.
- E. Parties** means the Board and the Tribe.
- F. "Question of Law" or "Legal Question"** means a legal issue, the resolution of which requires the interpretation or application of legal authority, and which, were the issue presented in a court, would be within the sole province of a judge to resolve.
- G. Tribal Enterprise** means a majority owned business enterprise of the Tribe.
- H. Tribal Member** means an enrolled member of the Tribe.
- I. Tribally Licensed Business** means a business licensed, but not wholly owned, by the Lower Elwha Klallam Tribe pursuant to the TLO.
- J. Tribe** means the Lower Elwha Klallam Tribe.

IV. Terms of Agreement

A. Liquor Licensing.

Tribe 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. Notwithstanding the foregoing, the terms of this MOA extend to only the locations identified in Exhibit A.

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 and future locations to be included in this MOA):

- a. Lower Elwha Food & Fuel
License #: **422598-2M**
License Type: Grocery Store – Beer/Wine
4773 S Dry Creek Road
Port Angeles, WA 98363
- b. Elwha River Casino
License #: 424818-1W
License Type: Restaurant – Beer/Wine/Spirits
631 Stratton Road
Port Angeles, WA 98363

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 umbrella MOA in lieu of otherwise applicable state law.

2. Retail. 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 liquor 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 liquor and prevent minor access to liquor at the locations;
 - e. An update to the Tribe's Operating Plan referenced in Section IV(C)(2) below;
 - f. If the new location has off-premises sales and there is a drive through window, the Tribe will provide written verification that no liquor sales will take place through said drive through window.
3. Non-Retail. A wholly owned enterprise of the Tribe may operate locations that engage in the manufacturing, distilling, storing or distribution of beer, wine and spirits provided the location is a standalone business with no direct access into another licensed business or business listed on Exhibit A.
 4. 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.

C. Tribal Licensing.

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.
2. 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 TLO. 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.

D. 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 umbrella 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 Activities Authority. The Board agrees the Tribe or its wholly owned Tribal enterprises are authorized to manufacture, distill, store, distribute, 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 Tribal Entity, location, nature, and times of liquor activities; **(Exhibit A)**;
 - b. The training of staff involved in liquor sales. It is required that persons responsible for serving liquor for on-premises consumption possess a Mandatory Liquor Server Training (MAST) permit; **(Exhibit B)**;
 - c. Consideration of proximity of liquor sales to a school, church, playground, or public building;
 - d. Confirmation that the land on which liquor 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 liquor 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; **(Exhibit C)**; and
 - h. Other information as deemed necessary by agreement between the Board and the Tribe.

3. On-Premises 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 liquor and food service;
 - b. A description of how the Tribe will prevent the sale of liquor 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 liquor must at minimum possess a valid Mandatory Liquor Server Training permit;
 - d. The nature of any special events or entertainment events hosted on the premises including security and liquor 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 liquor 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;
 - 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 \$2,500.00 annually in lieu of any license fees. (The amount of the annual fee will be negotiated with the individual Tribes).

E. 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 in lieu of retail taxes on spirits sales, in the amount of \$1644 per location for sale of spirits for off-site consumption. The fee shall be inclusive of all spirit retail spaces within the same location, such as a casino or similar venue as under the above subsection of this MOA and will not impose nor pursue collection of such licensing fees on sales by the Tribe and the Tribal Enterprises. In the event that new licensing fees on spirits retailers are added, or the existing licensing fees 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 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.

F. 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.

G. 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 Tribe's 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.

H. 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 liquor 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; or
 - e. Criminal conduct by an employee or permitting same on the premises.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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 liquor referenced in Section IV. (B)(2).

V. DISPUTE RESOLUTION

- A.** The Parties acknowledge and agree that determination or disputes of law arising under, state, federal, and/or Tribal law must be resolved by a court of competent jurisdiction. Disputes relating to the administration of this MOA must be settled through arbitration, as provided below, if informal means of dispute resolution prove unsuccessful.
- B. Informal Dispute Resolution.** The Parties wish to prevent disagreements regarding, and violations of, this MOA whenever possible, and to resolve any such disagreements quickly and effectively and/or violations whenever they may occur. Accordingly, the Parties agree that, to the extent possible,

informal dispute resolution methods, pursued in good faith, shall be used before engaging in the formal processes provided by this Article.

C. Notification of Violation. If either Party believes a violation of the MOA has occurred, it shall notify the other Party in writing pursuant to Article VI., below. 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.

D. Arbitration.

1. If the Parties are unable to resolve disputed issue(s) related to the administration of this MOA through joint, good faith discussions under Article V. section A, above, either party may request arbitration by tendering a written arbitration demand to the other party. The Parties shall first attempt to agree on an arbitrator. However, if the Parties cannot agree on an arbitrator within thirty (30) days of the written arbitration demand, a three-person arbitration panel shall be selected as follows: Each Party shall select an arbitrator and the two arbitrators selected by the Parties shall jointly select a third arbitrator. Issues related to the administration of this MOA are limited to those involving the Parties' compliance with the respective rights, duties, and obligations created by, and arising under, this MOA.
2. 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.
- 3 Absent an interim order from the Arbitrator(s) specifying otherwise, the Parties shall continue to fulfil their obligations under this Agreement in good faith during the course of the proceeding.

E. Questions of Law. The Parties acknowledge and agree that determinations of, or disputes arising under, state, federal, and/or Tribal law may not be arbitrated under this MOA, but, rather, such determinations may only be made, and disputes resolved, by a court of competent jurisdiction.

F. Remedies. Whenever an issue is submitted to arbitration under this Article, the arbitrators may recommend, or direct, corrective action to remedy any violation that has occurred. In no case, however, shall an arbitrator render an independent recommendation or decision on any issue on which the Parties reach agreement.

Remedies shall not include an award of monetary damages or costs, or injunctive or other equitable relief, of any kind.

VI. Communication and Notice

A. Designated Contacts.

1. The parties agree to maintain regular and open communication regarding the administration and implementation of this MOA. For ease of implementing the Agreement, current names of personnel in the designated positions are listed. Should a change in personnel occur the parties shall maintain open communication regarding the designated individuals, and this shall not require an amendment to the MOA.
2. The Parties agree that the following individuals will be designated primary contacts regarding administration of this MOA:

For the Liquor and Cannabis Board:	For the Lower Elwha Klallam Tribe's Reservation:
Nicola Reid Acting Deputy Director of Administration nicola.reid@lcb.wa.gov 360-725-0111	Frances Charles Tribal Chairwoman frances.charles@elwha.org 360-452-8471 ext. 7411
Dr. Marla Conwell Tribal & Government Liaison tribal.liaison@lcb.wa.gov	Sam Hough Tribal Attorney Lower Elwha Klallam Tribe sam.hough@elwha.org 306-504-3002
Josh Bolender Enforcement Captain josh.bolender@lcb.wa.gov (206-588-9346)	Mike Watson General Manager Elwha River Casino mike.watson@elwharivercasino.com 360.452.3005 Ext. 106

3. 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.

B. Notice. Any notice that may be or is required to be sent under this MOA shall be sent to the designated primary contacts referenced above.

C. 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.

VII. Effect, Duration, and Amendment

- A. Duration.** While the parties intend to reach a perpetual agreement related to licensing of Tribal liquor sales, this MOA shall remain in effect for an initial period of five (5) years unless the parties mutually agree in writing that the MOA 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 MOA, the MOA 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 MOA.
- 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 MOA.

(Signature Page to Follow)

This Agreement is hereby made this day of August, 2024.

David Postman, Board Chair
Washington State Liquor and Cannabis Board

Frances G. Charles
Tribal Chairwoman
Lower Elwha Klallam Tribe

Ollie Garrett, Board Member
Washington State Liquor and Cannabis Board

Jim Vollendroff, Board Member
Washington State Liquor and Cannabis Board

William Lukela, Agency Director
Washington State Liquor and Cannabis Board

**EXHIBIT A
OPERATING PLAN:
Locations**

Locations where liquor is or will be served by the Tribe and/or Tribal Entities. No liquor sales will occur between 2:00 a.m. and 6:00 a.m. Food is available on a schedule.

A. Lower Elwha Food & Fuel

License #: **422598-2M** (MOA will use this License Number)
4773 S Dry Creek Road
Port Angeles, WA 98363
Operated by The Lower Elwha Klallam Tribe

#	Location	Type of Establishment	Nature of liquor service (Beer/wine/spirits; self-service/catered; etc.)
1	Grocery Store	Grocery Store – Beer/Wine	Beer and Wine for off-premises consumption.

B. Elwha River Casino

License #: **424818-1W** (never used)
631 Stratton Road
Port Angeles, WA 98363
Operated by The Lower Elwha Klallam Tribe

#	Location	Type of Establishment	Nature of liquor service (Beer/wine/spirits; self-service/catered; etc.)
1	<p>Restaurant Name</p> <p><u>Restaurant Hours *Business Will Dictate*</u></p> <p>Sunday-Thursday 11:00am-9:00pm (Full Menu) 9:00pm-12:00am (Limited Menu- Fryers) Bar Service 11:00am-12:00am</p> <p>Friday-Saturday 11:00am-10:00pm (Full Menu) 10:00pm-1:00am (Limited Menu-Fryers) Bar Service 11:00am-1:00am</p>	Restaurant – Beer/Wine/ Spirits	Beer, Wine, and Spirits, Catering, and Outdoor Service (private space) for on-premises consumption.

EXHIBIT B
RETAIL OPERATING PLAN:
Safety/Training Provisions

Because the introduction, possession, and sale of liquor in Indian Country have for centuries been clearly recognized as matters of special concern to Indian Tribes, the Tribe takes liquor regulation and safety extremely seriously. As a result, the Tribe has imposed strict policies and practices on its Tribal Enterprises that go above and beyond the State's requirements. Safe liquor consumption by its patrons is a top priority of the Tribe, and the Tribe makes a great effort to protect the public safety and community interest and trains its staff accordingly. The Tribe also evaluates events, utilizes its resources, and evaluates risk to best address, monitor, and appropriately control the sale and service of liquor at each of its locations and venues to preserve the public's safety.

A. Training.

1. In-House Trainer. The Tribe employs a full-time, In-House Trainer, who trains the Tribe employees on a variety of subjects. Among other things, the In-House Trainer is a certified MAST trainer.
2. Mandatory Liquor Server Training. The following Tribal Enterprise employees must obtain and maintain a valid MAST permit through the Tribe's in-house training program:
 - a. Managers and supervisors who supervise the sale and/or service of liquor at all venues.
 - b. Servers and bartenders at all venues.
 - c. Security staff (does not include Tribal Gaming Commission agents).

In addition, the Tribe typically provides in-house MAST training to an array of other employees whose job duties do not directly relate to liquor sales or service, including without limitation, executive staff, marketing employees, gaming employees, facilities employees, hotel housekeeping employees, and more.

3. Additional training by the Tribe. The Tribe also provides ongoing training of all food and beverage service teams to heighten awareness related to public safety, including avoiding service to minors and intoxicated persons.
4. Additional training by the Board. Upon the Tribe's request, Board staff members will work with the Tribe to provide any requested training and technical assistance for the prevention of violations of liquor laws. Board staff members will meet with the Tribe and with Tribal Police as the Parties may deem appropriate for further training, collaboration, and communication on liquor issues.

B. Safety and Security Measures.

1. Minors in General.

To ensure that liquor beverages are not sold to or consumed by persons under age 21, the Tribe has implemented the following measures:

- a. Staff request ID from any guest appearing to be age 30 or under who is requesting to purchase a liquor beverage.
- b. Staff request ID from any guest in possession of a liquor beverage who appears to be of questionable age, and if guest cannot produce valid ID, the beverage is confiscated, and Security is notified if necessary.
- c. Staff accept only Board-approved forms of ID, per WAC 314-11-025:
 - i. Acceptable forms of identification to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol must include:
 - The identification holder's photo;
 - The identification holder's date of birth; and
 - The identification holder's signature, except on federally issued identification where a visible signature is not required.
 - ii. If the identification has an expiration date, it cannot be used to verify age after the expiration date.
 - iii. Acceptable forms of identification include:
 - A driver's license, instruction permit, or identification card of any state, province of Canada, U.S. territory, or the District of Columbia, or an "identocard" issued by the Washington state department of licensing per RCW [46.20.117](#);
 - A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents;
 - A passport, passport card, or NEXUS card;
 - A Merchant Marine identification card issued by the United States Coast Guard; or
 - An enrollment card issued by the governing authority of a federally recognized Indian Tribe, if the enrollment card incorporates reasonable security features sufficient to deter counterfeiting, which may include features similar to those used by the department of licensing for standard Washington driver's licenses.
 - (i) The Lower Elwha Tribal IDs have been accepted by the board and are approved on the LCB website.
 - iv. An enrollment card must be approved by the board's enforcement division prior to use as an acceptable form of identification. The

Tribe may request approval by submitting the following for review and inspection:

- A letter requesting approval and describing the security features of the enrollment card;
 - A physical sample of an enrollment card; and
 - For tribes located outside of Washington, a contact phone number where enforcement officers may call at any time to verify the validity of the enrollment card.
- v. After review and inspection, the board's designee will send a letter approving or denying the enrollment card as an acceptable form of identification.
- vi. The board may rescind approval if the enrollment card no longer meets the requirements of this section.

2. Minors in the Elwha River Casino.

In addition to the above measures for Minors in General, the Tribe has implemented the following measures specifically to ensure that liquor beverages are not sold to or consumed by persons under age 21:

- a. Elwha River Casino maintains very extensive and sophisticated video surveillance of the premises. With advanced pan, tilt, and zoom capabilities, surveillance agents are able to clearly view virtually any activity that occurs on the Elwha River Casino premises. They monitor live footage 24 hours a day, and the footage is also recorded and maintained as required by the Tribal Gaming Commission.
- b. Casino Security personnel conduct ID checks on all patrons entering into the casino at the staff stationed entrances. If a persons under the age 21 is identified, the guest will be issued a colored wrist band during their time at the casino identifying them as a minor. *Colored wrist bands used to identify persons under the age 21 will change in color every gaming day to defend against distorting the process.
- c. Security Officers are roving through Elwha River Casino at all times and are in close contact with Surveillance and Tribal Gaming Commission agents at all times.
- d. Security Officers are instructed to watch for transfer of liquor from adult guests to guests under age 21.
- e. If a person under age 21 attempts to purchase a liquor beverage, MAST-certified bartenders and servers notify Security, who take appropriate action as described below.

- f. If Security or Tribal Gaming Commission observes a person under age 21 to be in possession of liquor or to be exhibiting possible signs of intoxication, Security makes contact with the individual and takes appropriate action as described below.
- g. If Security determines a person under age 21 is in possession or under the influence of liquor (even if the liquor was not consumed on premises), Security contacts law enforcement. Security also prepares a written incident report which is circulated to Elwha River Casino management.
- h. Persons under 21 who wish to dine in the attached restaurant will be required to follow the designated lighted pathway from the Casino main entrance to the restaurant, or to enter through the exterior entrance to the restaurant. Persons under 21 dining in the restaurant must be accompanied to the restrooms by an adult over age 21 and must follow the designated lighted pathway across the Casino floor.
- i. On evenings when there is live music in the restaurant (between the hours of 8:00pm and 12:00am) persons under the age of 21 are not permitted on the premises.

3. Intoxicated persons.

To ensure that liquor beverages are not consumed by persons who appear to be intoxicated, the Tribe has implemented the following measures:

- a. All staff involved in the sale and service of liquor beverages are trained how to recognize the signs of intoxication.
- b. Staff will be instructed to refuse to sell liquor beverages to any person who appears to be intoxicated.
- c. Sales for off-premises consumption. If a guest who appears to be intoxicated attempts to purchase packaged liquor beverages for off-premises consumption, staff will politely but firmly decline to make the sale. Staff request assistance from the manager on duty when necessary. In the event the guest becomes aggressive or belligerent after being refused service, staff or the manager will contact Security immediately. Security will contact law enforcement if necessary. Staff and managers (and Security, if applicable) will appropriately report and document the incident in accordance with policy.
- d. Sales for on-premises consumption. If a guest who appears to be intoxicated is seen in possession of or consuming a liquor beverage or attempting to order a liquor beverage for on-premises consumption, staff will notify Security. The guest is then assessed using MAST procedures and a determination is made if the guest is to surrender the drink if in possession

of one, in which case the guest is notified by Security that due to staff's observations, the guest will not be served any additional liquor beverages.

- i. The guest will be offered non-liquor beverages and food if desired while waiting for a ride home or to another location where he or she will be spending the night by a non-intoxicated personal acquaintance, a cab or other car service, or transportation provided by Elwha River Casino, or the brewery or distillery as appropriate, when necessary.
 - ii. Security is called to assist with guests who are apparently intoxicated and non-cooperative. Security determines the level of response based on the circumstances, which may include removal from the property. In that event, Security staff will first try to locate a sober driver or call a taxi or ride-share app for the guest. If the guest refuses a sober driver, taxi, ride-share app or other reliable transaction and attempts to drive away, he or she will be notified that local police will be contacted that he has refused alternative transportation. In the event the guest does drive away, Security will promptly call 911, notify police of a suspected intoxicated driver, and provide a description of the vehicle and its direction of travel. Security will also fill out an Incident Report in accordance with standard procedures.
 - e. Any team member who is suspected of over serving will be investigated through surveillance tapes and reports filed by either the appropriate manager or Security. The investigation may lead to disciplinary action up to and including termination in accordance with policy.
4. Additional security measures. The Tribe also has the following measures in place that will further ensure liquor is safely served and consumed on site:
- a. The Tribe has certified MAST trainer(s) on staff.
 - b. Elwha River Casino is under 24-hour surveillance. Live footage is viewed around the clock, and the footage is also recorded. Surveillance footage is retained in accordance with Tribal Gaming Commission regulations. Footage of specific incidents may be retained longer upon the direction of the Tribal Gaming Commission and Casino management.
 - c. The ratio of service staff to patrons is scheduled to be adequate to maintain the public safety for each event and is increased based on level of risk, depending on the event.
 - d. The Security staff is highly trained and experienced. Reasonable levels of Security staff are present at all times.

- e. Tribal Gaming Commission agents are on site at the Elwha River Casino 24/7.
 - f. Tribal Police are available to respond to police calls at the Tribe facilities.
 - g. The Tribe understands that it, and not the Board, is responsible for all security and enforcement within a “darkened house.”
5. Special events. For certain special events at Elwha River Casino the Tribe will take the extra precautions described below. For the avoidance of doubt, these extra precautions will apply only to the special event itself, not to the rest of the Tribe’s normal business operations.
6. The Tribe will provide a quarterly schedule of special events to the Regional Captain (“Special Events”). The Tribe will update the schedule as necessary. If the Regional Captain has any concerns about the schedule or any plan for the Special Events, the Parties will meet and confer in good faith to resolve those concerns.
7. Unless prior notice is provided to Board staff of an alternate plan, liquor sales will occur as follows for Special Events:
- a. At point-of-sale locations with proper lighting and where ID may be adequately checked;
 - b. With a maximum of two (2) drinks or one bottle of wine sold to an individual patron during one transaction;
 - c. With adequate service staff to patron ratios;
 - d. With adequate security staff to patron ratios;
 - e. With staff stationed at entrances; and
 - f. With posted signs at entrances and dispensing areas as appropriate (e.g., signs at dispensing areas stating that customers must be 21 years of age or older to purchase liquor).
8. Should the Tribe wish to deviate from this standard plan for any given Special Event, the Tribe will notify the Board in writing at least 14 days prior to the event. The Parties will meet and confer in good faith to resolve any concerns with the Tribe’s alternate plan.

EXHIBIT C
OPERATING PLAN:
Enforcement/Compliance Plan

A. Licensing.

1. Tribal Enterprises. The Tribe and its Tribal Enterprises do not require licenses to sell or serve liquor.
2. Other Business Enterprises. All Tribally Licensed Businesses must be licensed in accordance with state law and the TLO. However, the Parties acknowledge that the Tribally Licensed Businesses, not the Tribe, are responsible for obtaining and maintaining the appropriate licenses.
3. Employees. All Tribal Enterprise employees who perform duties specified under State-issued Class 12 or 13 permits must hold such State-issued permits in order to perform such duties.

B. Enforcement.

1. Premises Checks.
 - a. **By the Tribe.** The Lower Elwha Klallam Tribal Police Department or other authorized agency may conduct its own premises checks in Indian Country to observe compliance with applicable liquor laws and this MOA and to provide support and education to Tribal Enterprises and staff. To the extent it is informed of the results of such premises checks, the Tribe will share the results of the premises checks with the Board.
 - b. **By the Board.** The Board, through its staff, may also conduct premises checks. Prior to conducting any such check, the Board will contact the following Tribal representatives or their successors to provide reasonable notice of such premises check, prior to conducting the check:
 - i. Frances Charles, Tribal Chairwoman
Frances.Charles@elwha.org, (360) 452-8471 x7411
 - ii. Sam White, Chief of Police
Sam.White@elwha.org, (360) 452-6759 x2922
 - iii. Tonya Clark, Executive Director
Tonya.Clark@elwha.org, (360) 452-8471 x7461
 - iv. Keri Ellis, Executive Administrative Assistant
Keri.Ellis@elwha.org, (360) 452-8471 x7418

- v. Sam Hough, Tribal Attorney
Sam.Hough@elwha.org, (360) 452-8471 x7436
- vi. Elaina Begay, Director, Lower Elwha Gaming Commission
Elaina.Begay@elwha.org, (360) 452-3005

The Tribe may designate appropriate staff to observe the premises check provided they do not interfere with the check. The Board will share the results of such premises checks with the Tribe.

- c. **Cooperation.** Should either Party have any concerns arising out of a premises check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the premises checks themselves or of liquor service by the Tribal Enterprise that was checked.

2. Compliance Checks-Minors.

- a. **By the Tribe.** The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through the Lower Elwha Klallam Tribe's Tribal Police Department or other authorized agency in accordance with Tribal regulations and policies. To the extent it is informed of the results of such checks, the Tribe will provide the results of the checks to the Board. No criminal action may be taken against any minor who purchases liquor as part of such a compliance check.
- b. **By the Board.** Board staff may also conduct compliance checks. Prior to conducting any such check, the Board will contact the following Tribal representatives or their successors to provide reasonable notice of such compliance check, prior to conducting the check:
 - i. Frances Charles, Tribal Chairwoman
Frances.Charles@elwha.org, (360) 452-8471 x7411
 - ii. Sam White, Chief of Police
Sam.White@elwha.org, (360) 452-6759 x2922
 - iii. Tonya Clark, Executive Director
Tonya.Clark@elwha.org, (360) 452-8471 x7461
 - iv. Keri Ellis, Executive Administrative Assistant
Keri.Ellis@elwha.org, (360) 452-8471 x7418
 - v. Sam Hough, Tribal Attorney
Sam.Hough@elwha.org, (360) 452-8471 x7436

- vi. Elaina Begay, Director, Lower Elwha Gaming Commission
Elaina.Begay@elwha.org, (360) 452-3005

The Tribe may delegate staff to observe the check, provided they do not interfere with the check. The Board will share the results of such compliance checks with the Tribe.

- c. **Cooperation.** Should either Party have any concerns arising out of a compliance check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the compliance checks themselves or of liquor service by the Tribal Enterprise that was checked.

C. Complaints.

1. Tribal Enterprises. When a complaint regarding liquor service at any Tribal Enterprise is received by either the Tribe or the Board, or when the Tribe or the Board otherwise have reason to suspect a violation either through a premises check or compliance check, the following steps will occur:
 - a. Receipt of Complaint.
 - i. By the Tribe. If the complaint is received by the Tribe, it will be communicated to the Tribe's Legal Department. The Tribe's Legal Department will then document the complaint and provide a copy to the Board staff within seven (7) days.
 - ii. By the Board. If the complaint is received by the Board, it will be communicated to the Tribe's Legal Department in writing within seven (7) days.
 - b. Investigation. The Board will investigate the complaint in its discretion and in accordance with its policies and procedures.
 - c. Alleged Violation.
 - i. Employee. If the investigation is of an alleged violation by a Tribe or Tribal Enterprise employee holding a MAST permit, the Board will provide a copy of any written report to the Tribe's Legal Department. The Board may take any action against the employee in accordance with its laws and regulations. Notice of any additional action taken against that employee by the Tribe will be provided to the Board. If the employee is a Tribal Member, the Tribe will investigate and take such enforcement action as is consistent with Tribal law and procedures.

- ii. Tribal Enterprise. If the investigation is of an alleged violation by the Tribe or a Tribal Enterprise, the Board will provide a copy of any written report to Tribe's Legal Department. The Board may take any action against the Tribal Enterprise consistent with applicable laws and regulations, specifically to the extent applicable WAC 314-29-020, which addresses Group 1 violations against public safety.
- iii. The Tribe may assert, among other things, that some State prohibitions against "criminal" or "lewd" conduct as used in WAC 314-29-020 do not apply to Tribes, Tribal government agencies, Tribal employees, or in Indian Country, or that some "criminal" or "lewd" conduct does not fall within the scope of the Board's authority under 18 U.S.C. § 1161.
- d. Dispute Resolution. If the Board alleges that the Tribe is not complying with any of the provisions of Exhibits A or B of this MOA, the Board and the Tribe will seek resolution in accordance with the dispute resolution process outlined in Section IV(F) of this MOA.
- e. For purposes of this Section only, each "location" in Exhibit A will be deemed a separate location and violations against one location will not affect other locations.

D. Amendment.

Should the Tribe desire in the future to take over more of the enforcement responsibilities, the Parties agree to meet in good faith to amend this MOA to provide as such.