

AGREEMENT BETWEEN THE WASHINGTON STATE LIQUOR CONTROL
BOARD AND THE LUMMI INDIAN TRIBE FOR PURCHASE
AND RESALE OF LIQUOR IN INDIAN COUNTRY

WHEREAS, the Lummi Indian Tribe and the Washington State Liquor Control Board desire to enter into a government-to-government business agreement for the sale and purchase of liquor in order that liquor sales may take place on the Lummi Indian Reservation in accordance with the requirements of Federal law (18 U.S.C. § 1161), Lummi Tribal Ordinance, and State law to the mutual benefit of both the tribe and the Board, and

WHEREAS, it is recognized by all parties to this agreement that, in conformity with the Governor's Executive Order EO 83-16 the governmental authority of the tribe over its own affairs and its sovereignty under federal law is not altered, diminished, or abdicated in any way by entering into this agreement, and

WHEREAS, the governmental authority and sovereignty of the state of Washington as declared by the Twenty-First Amendment to the United States Constitution and applicable acts of Congress is not altered, diminished or abdicated in any way by entering into this agreement, and

WHEREAS, it being the sole intention of the parties to this agreement to establish a government-to-government arrangement whereby liquor may be sold by the tribe on its reservation within Indian country as defined in 18 U.S.C. § 1151 and § 1154, in conformity with federal law, tribal ordinance, and state law;

NOW, THEREFORE, pursuant to authority of federal law, tribal ordinance, and state law, it is hereby agreed between the Lummi Tribe, acting by and through its governing tribal council, and the Washington State Liquor Control Board as follows:

1. The Board agrees to sell distilled spirits as well as wine and beer that it handles to the tribe and the tribe agrees to purchase all distilled spirits for resale in Indian country from the Board. Should the tribe be desirous of selling beer and wine not available from the Board, the tribe agrees to obtain the appropriate state beer and/or wine license and purchase that beer and wine from a state licensed beer and/or wine wholesaler.

2. The Board shall use its best efforts to supply all liquor products ordered by the tribe. The tribe shall have its orders filled on the same basis as the orders of the state liquor stores and state liquor agencies. In the event that the Board's supplies of an allocated item

(i.e. one in short supply) are insufficient to satisfy all orders by all of the Board's customers, available supplies will be equitably available among all customers.

3. Purchase of liquor by the tribe shall be consummated upon payment by money order, certified check, or tribal check. The payment may be made either at the Board's distribution center at the time the liquor is picked up or may be placed in the United States mail when the liquor arrives at the tribal store. A bond must be posted by the tribe equal to one (1) approximate month purchases if the tribe chooses to pay when the liquor arrives at the tribal store and/or by tribal check. The FOB point shall be the Board's distribution center.

4. The purchase price of the distilled spirits shall be the standard case cost to the Board plus a handling charge of 8 percent plus the tax imposed by RCW 82.08.150. Provided: That each year of this agreement, the tribe may purchase 4875 gallons of spirituous liquor free of the tax imposed by RCW 82.08.150.

5. The purchase price of wine and beer handled by the Board shall be the standard case cost to the Board plus a handling charge of 8 percent plus, in case of wine, an amount equal to, and in lieu of, the taxes imposed by RCW 66.24.210.

6. The charges for liquor sold shall be set forth in an invoice prepared by the Board for payment by the tribe as provided in paragraph 3 above.

7. Sales of liquor to the tribe by the Board include return privileges for mechanical ordering errors and shipment errors. Claims for stock damaged in transit, missing items, dry breaks, and defective products or containers will be allowed as circumstances and facts indicate in each individual instance.

8. The tribe agrees to resell all distilled spirits, and beer or wine purchased from the Board, at a per unit total retail price equal to that of the Board's total retail price in effect at that time, including all applicable taxes.

9. The tribe may advertise its retail outlet's location and services in any medium which serves the reservation community and people who reside in close proximity to the tribe's reservation; Provided, that advertisements of spirituous liquor may only be placed in print media and that the tribe shall limit any media advertising to newspapers which are published in Whatcom County.

10. In recognition of the fact that this agreement is a government-to-government agreement, it is agreed that the tribe shall not be considered part of, or under the control and supervision of, the Board's Stores and Agencies Division. A representative of the Board shall have the right to visit the tribes retail outlet at any time during regular business hours to review the administration of this agreement after first notifying the tribe's administrator or, in the absence of the administrator, the manager of the tribal liquor outlet and presenting proper identification to the staff person at the liquor outlet.

11. The tribe agrees that all liquor sold by the tribe shall be sold from a tribal store located within the exterior boundaries of the Lummi reservation. Said store shall be located at 2616 Kwina Road, Bellingham, Washington 98226.

Relocation of the tribal outlet shall be subject to prior agreement between the tribe and the Board.

12. The Board agrees that it will not open any additional state liquor stores or agencies within two (2) miles of the tribe's reservation unless such state liquor stores or agencies are already operating as of the date of this agreement.

13. The tribe agrees that all external signing shall meet applicable zoning ordinances.

14. The hours of sale of distilled spirits, beer and wine, by the tribe shall be set by the tribe but shall not include the hours between 2 a.m. and 6 a.m. on weekdays and, in accordance with RCW 66.16.080, there shall be no sale or delivery of distilled spirits on Sunday.

15. The tribe agrees with the Board that all sales of liquor in Indian country will conform to the requirements of federal law, the tribe's federally approved tribal liquor ordinance, and state law relating to liquor transactions.

16. The tribe agrees not to import any distilled

spirits, beer or wine, into Indian country except as provided in this agreement.

17. The tribe agrees not to solicit, or accept, money or moneys' worth from liquor manufacturers, importers or wholesalers. Provided; It is agreed that the tribe may accept such items as are permitted to be accepted by licensees of the Board under state law.

18. The term of this agreement shall be for a period of two (2) years and shall include an option to renew subject to satisfactory renegotiation of the terms and conditions hereof.

19. Time of performance under this agreement is of the essence.

20. This agreement shall inure to the benefit of and be binding upon the parties named herein and upon their successors in interest. This agreement may not be assigned by either party.

21. If at any time prior to the expiration of this agreement the tribe elects to discontinue its retail sales of liquor, the Board shall buy back from the tribe the entire inventory, purchased from the Board, remaining in the tribe's possession by paying the tribe the current sale price to the Lummi Indian Tribe, subject to adjustment for a pro-rata share of the tax exemption quota for the period.

22. Should the tribe's retail liquor outlet fail to comply with this agreement, federal law, tribal ordinance, and provisions of Washington State Law relating to liquor transactions (including WAC 314-37-010 as amended by the board on November 30, 1983), this agreement shall be null and void: Provided, That no subsequent amendment to WAC 314-37-010 shall affect in anyway the terms of this contract.

IN WITNESS WHEREOF, The parties have signed this agreement to commence on the 30th day of November 1984.

WASHINGTON STATE LIQUOR
CONTROL BOARD BY:


Robert D. Hannah, Chairman

LUMMI INDIAN TRIBE BY:


Larry Kinley, Chairman

J. H. Pedersen

L. H. Pedersen, Member

Kazuo Watanabe

Kazuo Watanabe, Member

Fred F. Lane

Fred F. Lane, Vice-Chairman

APPROVED AS TO FORM:

John G. Hennen

John G. Hennen

Assistant Attorney General