

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

WHEREAS, the Tulalip Tribe, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, and the Washington State Liquor Control Board created by Title 66 RCW desire to enter into a government-to-government agreement for the sale and purchase of liquor in order that liquor sales may take place in Indian country in accordance with the requirements of federal law (18 U.S.C. § 1161), Tulalip Tribal Ordinance, and state law to the mutual benefit of both the tribe and the Board, and

WHEREAS, both the Tribe and the State are desirous of amicably settling pending litigation between them concerning sale of liquor in Indian country (specifically Tulalip v. State of Washington, U.S. District Court No. C78-750V), 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 as, and to the extent, declared by the United States Congress and the courts is not altered, diminished, or abdicated in any way by voluntarily 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 voluntarily 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 in 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 Tulalip Tribe, acting by the Tulalip Liquor Commission (Tribe) through authority delegated by its governing tribal council and the state of Washington, acting through the Washington State Liquor Control Board (Board) as authorized by Title 66 RCW, as follows:

1. Upon execution of the agreement, the Tribe and the State shall jointly dismiss, without prejudice and without costs to either party, the litigation pending between them entitled Tulalip v. State of Washington, U.S. District Court No. C78-750V, it being agreed that nothing contained in this agreement shall be deemed an admission by either one to the other of the validity of any claims made or positions taken in the pending litigation.

2. The Board agrees to sell distilled spirits 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 purchase that beer and wine from a state licensed beer and/or wine wholesaler.

3. The Board shall use its best efforts to supply all liquor products ordered by the tribe. The tribe shall have its orders filled on equal basis with those made by state liquor stores, state liquor agencies, and state licensees. 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 equally apportioned among all customers.

4. The Tribe agrees to carry for resale a selection or variety of liquor items by brand, proof, size, etc., as would be carried by a state liquor store of similar size and geographical market area; except typical "Class H" items. The Tribe need not, and will not, sell to "Class H" establishments.

5. Purchase of liquor by the tribe shall be consummated upon payment by money order, certified check, or tribal check. The payment must be placed in the United States mail the same day as the liquor is delivered. A bond must be posted by the tribe equal to one (1) approximate month purchases. The FOB point shall be the Tulalip Tribal Store. Deliveries to the Tribe shall be weekly unless the Tribe requests twice a week or twice a month deliveries.

6. The purchase price of the distilled spirits, based on weekly deliveries, shall be the standard case costs to the Board plus a handling charge of 12.5 percent plus the

tax currently imposed by RCW 82.08.150, except that the standard case cost will be reduced by a like amount when the Board matches a special promotional allowance received from a supplier. PROVIDED: That each year of this agreement, the Tribe may purchase 3945 gallons of spirituous liquor free of the tax imposed by RCW 82.08.150.

7. The purchase price of wine and beer handled by the Board, based on weekly deliveries, shall be at the standard case cost to the Board plus a handling charge of 12.5 percent plus, in case of wine, an amount equal to, and in lieu of, the taxes imposed by RCW 66.24.210, except that the standard case cost will be reduced by a like amount when the Board matches a special promotional allowance received from a supplier.

8. 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 5 above.

9. Sales of liquor to the tribe by the Board include return privileges for ordering and shipment errors. "Dry breakage" claims will be filed against either the carrier or the Board as circumstances and facts indicate in each individual instance.

10. The tribe agrees to resell all distilled spirits, and beer or wine purchased from the Board, at a per unit regular total retail price equal to that of the Board's regular total retail price, including all applicable taxes. PROVIDED: That it is agreed the tribe may, at its option, pass through the "temporary price reductions" it receives from the Board resulting from a special promotional allowance made by the liquor supplier which is matched by a like reduction by the Board (see paragraphs 6 and 7 above). It is agreed that no item will be offered for retail sale by the Board in either its stores or agencies at a price lower than the tribe would be allowed to sell the same item.

11. 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.

12. The tribe agrees that all liquor sold by the tribe shall be sold from a tribal store located within the exterior boundaries of the Tulalip reservation. Said store shall be located at 6323 - 33rd Avenue Northeast, Tulalip, Washington 98270, commonly known as the "I-5 Site." Relocation of the tribal outlet or opening of additional tribal outlets shall be subject to prior agreement between the tribe and the Board.

13. As a substantial and material inducement and consideration to and for the Tribe to enter into this Agreement, the State hereby agrees and covenants to close and otherwise cease all of its retail liquor sales operations from Washington State Liquor Store 20 after the tribal store has come into compliance with paragraph 4 hereof. When the tribe has notified the Board that it is prepared to accept full scale fixturing the Board will move the fixtures from Store 20 to the tribal store. The fixtures will, as consideration for entering into this agreement and assuming the lease at Store 20, become the property of the tribe. At the same time the Board will close Store 20. The changeover shall occur so that there will be no interruption of service to the Marysville Market. In the event that neither party has found a sublessee for the Store 20 lease, the Board will assign the lease to the tribe, and the tribe will assume all lease obligations until such a sublessee is found. The lease will be listed for sublease with a commercial real estate company. The commercial real estate commission for sublease will be shared one-half each by the tribe and the Board. Similarly, the State shall not reopen, or open any liquor store itself, or appoint or license as vendors or otherwise any person or entity to sell retail spirituous liquor by the bottle within the geographical area of Snohomish County, Washington bounded on the north by the Smokey Point, Arlington liquor store, on the east by the Lake Stevens and Frontier Village liquor stores, on the south by the Snohomish River and on the west by Puget Sound (Port Gardner/Port Susan) for the duration of this agreement or any extensions or renewals hereof. PROVIDED: That relocations of the Smokey Point Store No. 172 Lake Stevens Agency No. 634, Frontier Village Store No. 141 and North Everett Store No. 125, due to lease terminations shall be permitted: PROVIDED, That any such relocations shall not be more than 1320 feet



nearer to the tribal store than is presently the case: PROVIDED, Further that the Smokey Point Store shall not be moved closer to the Tulalip Tribal Store without tribal consent. No licenses shall be granted by the State to any person, firm, corporation, agency and/or entity for liquor, beer and/or wine within the exterior boundaries of the Tulalip Indian Reservation without the prior consent of the Tribe in accord with its tribal liquor ordinance, which consent may be withheld by the Tribe in its sole discretion.

14. The tribe agrees that all external signing shall meet applicable zoning ordinances. The tribe may advertise its liquor store and its goods and services for sale therein.

15. 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.

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

17. The tribe agrees not to import any distilled spirits, beer or wine, into Indian country except as provided in this agreement.

18. The tribe agrees not to solicit, or accept, money or monies' 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.

19. The initial term of this agreement shall be for a period of five years and shall include a tribal option to renew for an additional five years pending successful renegotiation of the service fee provided in sections 6 and 7 hereof and the tax-free quota provided in section 6 hereof. If the parties cannot successfully renegotiate the service fee and or tax-free quota, the same may be referred by either to binding arbitration in accordance with and under the auspices and procedures of the American Arbitration Association (Seattle). Pending such arbitration, this agreement shall remain in effect. The

tribe may terminate this agreement at any time if in the judgment of the Tribe it is in the best interest of the tribe to cease the sale of liquor. If the tribe should determine to cease the sale of liquor, the Board agrees, upon request of the tribe, to repurchase any remaining spirituous liquor inventory from the tribe at the price the tribe paid the Board for it.

20. Should the Tribe breach any portion of this agreement, it shall receive notice of same by the State and shall cure as soon as possible but no later than seven (7) days after notice in the case of a breach of a continued nature (e.g. failure to follow price restrictions or terms of payment). PROVIDED: That violation by the tribe of paragraph 17 hereof shall result in immediate cancellation of this agreement and repeated, intentional, discrete breaches (e.g. repeated sales to minors or intoxicated persons) may result in cancellation, subject to a right of hearing by the tribe and appeal therefrom as in the manner of "contested cases" under chapter 34.04 RCW. Should the Tribe fail to cure as required, then the State's sole remedy shall be cancellation of this agreement, provided no subsequent amendment to State law or regulatory scheme regarding liquor shall alter the State's obligations as otherwise set forth herein without the prior consent of the Tribe. PROVIDED: If it should become illegal by statute or court decision for the State of Washington to deal in liquor, this agreement shall be null and void. Should the State breach this agreement, then it shall be given notice by the Tribe to such effect, and be given a like period to cure, except in the instance of refusal to sell liquor to the Tribe, in which instance the cure period shall be twelve (12) hours. The Tribe's remedies against the State shall be those as are otherwise available against the State of Washington and its agencies for breach of contract.

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

22. 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.

IN WITNESS WHEREOF, The parties have signed this agreement to commence on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

WASHINGTON STATE LIQUOR  
CONTROL BOARD BY:

TULALIP TRIBES OF WASHINGTON  
by and through TULALIP  
LIQUOR COMMISSION:

\_\_\_\_\_  
ROBERT D. HANNAH, Chairman

\_\_\_\_\_  
STANLEY G. JONES, SR., Chairman

\_\_\_\_\_  
L.H. PEDERSEN, Member

ATTEST:

\_\_\_\_\_  
DEBRA L. POSEY, Secretary

\_\_\_\_\_  
KAZUO WATANABE, Member

APPROVED AS TO FORM:

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JOHN G. HENNEN  
Senior Assistant Attorney General