

LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA RD. • BELLINGHAM, WASHINGTON 98226-9298 • (360) 384-1489

DEPARTMENT _____

EXT: _____

RESOLUTION #95-104 OF THE LUMMI INDIAN BUSINESS COUNCIL

WHEREAS, the Lummi Indian Business Council is the duly constituted governing body of the Lummi Indian Reservation by the authority of the Constitution and By-Laws of the Lummi Tribe of the Lummi Reservation, Washington, as approved on April 10, 1970, by the Assistant Commissioner of Indian Affairs; and

WHEREAS, subsequent to federal court decisions addressing the competing sovereign interests of Indian tribal governments and state governments to regulate the distribution and sale of distilled spirits in Indian Country, the Lummi Indian Business Council and Washington State Liquor Control Board, on behalf of the State of Washington, in 1984 entered into an agreement concerning such activities within the Lummi Indian Reservation; and

WHEREAS, the 1984 agreement preserves the Lummi Nation's right to control and regulate liquor sales within the Lummi Reservation by (1) forbidding the state from establishing a retail liquor store within two miles of the reservation and (2) providing Lummi an annual allotment of liquor free of state taxation; and

WHEREAS, the Lummi Indian Business Council will open soon a new mini-market at Slater Road and Haxton Way that will offer retail liquor products covered by the agreement with the Washington State Liquor Control Board; and

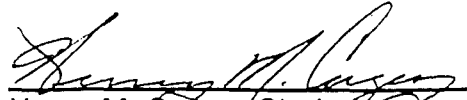
WHEREAS, the original agreement is expired and the Washington State Liquor Control Board has requested that the expired agreement be renewed prior to Lummi opening the new retail outlet; and

WHEREAS, an agreement has been negotiated preserving the Lummi Nation's right to regulate liquor sales within the Lummi Indian Reservation; and

NOW THEREFORE BE IT RESOLVED, that the attached "Agreement between the Washington State Liquor Control Board and the Lummi Indian Nation for Purchase and Resale of Liquor in Indian Country" is approved; and

BE IT FURTHER RESOLVED, that the Chairman (or the Vice Chairman in his absence) is hereby authorized and directed to execute this resolution and any documents connected therewith, and the Secretary (or the Recording Secretary in his absence) is authorized and directed to execute the following certification.

LUMMI INDIAN NATION



Henry M. Cagey, Chairman
Lummi Indian Business Council

CERTIFICATION

As Secretary of the Lummi Indian Business Council, I hereby certify that the above **Resolution #95-104** was adopted at a Special Meeting of the Council held on the 30th day of August, 1995, at which time a quorum of 9 was Present, and was adopted by a vote of 5 For, and 3 Against, and 0 Abstention(s).



Merle Jefferson, Secretary
Lummi Indian Business Council

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

WHEREAS, the Lummi Indian Nation 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 Nation 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 Nation 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 Nation 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 Nation, 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 Nation and the Nation agrees to purchase all distilled spirits for resale in Indian Country from the Board. Should the Nation be desirous of selling beer and wine not available from the Board, the Nation 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 Nation. The Nation 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. The purchase price of the distilled spirits shall be the standard case cost to the Board plus a handling charge of 8 percent for the shipments FOB the Board's Distribution Center plus the tax imposed by the RCW 82.08.150 or any future taxes imposed by the

legislature, or 10 percent for the shipments FOB the tribal stores plus the tax imposed by RCW 82.08.150 or any future taxes imposed by the legislature. Provided: That each year of this agreement, the Nation may purchase a number of gallons of spirituous liquor free of the tax imposed by RCW 82.08.150 or any future taxes imposed by the legislature. The number of gallons will be determined annually by multiplying the number of registered tribal members twenty-one years old and over times 3.0 gallons. The Nation will furnish formal updated population data thirty days prior to the end of each year of this agreement for this purpose.

4. 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 for the shipments FOB the Board's Distribution Center plus, in the case of wine, an amount equal to, and in lieu of, the taxes imposed by RCW 66.24.210 or any future taxes imposed by the legislature on wine and beer, or 10 percent for shipments FOB the Tribe's stores plus, in the case of wine, an amount equal to, and in lieu of, the taxes imposed by RCW 66.24.210 or any future taxes imposed by the legislature on wine and beer.

5. The Board shall invoice the Nation for the cost of liquor and the FOB point shall be the Board's distribution center or the tribal stores depending on the choice of the Nation.

6. Purchase of liquor by the Nation shall be consummated upon payment by money order, certified check, or tribal check. The payment must be made either at the Board's distribution center at the time the liquor is picked up (FOB Board's distribution center) or be placed in the United States mail the same day as the liquor is delivered (FOB tribal store). The Nation shall keep in force an Irrevocable Letter of Credit issued by WestOne Bank, or such other bank as the parties shall from time to time agree upon, protecting the Board from non-sufficient funds or non-mailing of payment to insure payment of invoice. The Letter of Credit shall be in an amount exceeding the amount of any tribal check given in payment for liquor.

7. Sales of liquor to the Nation by the Board include return privileges for mechanical ordering 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 Nation agrees to resell all distilled spirits, beer, and 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; Provided, that the Nation may, at its option, reduce prices on not more than two items per month, with the retail price of those items being no less than 90 percent of the Board's total retail price including taxes on that item in effect at that time.

9. The Nation may advertise its retail outlets' locations and services in any medium which serves the reservation community and people who reside in close proximity to the

Nation's Reservation; Provided, that advertisements of spirituous liquor may only be placed in print media and that the Nation shall limit any media advertising to newspapers which are primarily distributed in Whatcom County. Any such advertising will contain no direct comparisons between Lummi prices and State prices.

10. In recognition of the fact that this agreement is a government-to-government agreement, it is agreed that the Nation 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 Nation's retail outlet(s) at any time during regular business hours to review the administration of this agreement.

11. The Nation agrees that all liquor sold by the Nation shall be sold from tribal stores located within the exterior boundaries of the Lummi Reservation. Said stores shall be located at 2557 Lummi View Drive, Bellingham, Washington 98226 and at 4884 Haxton Way, Ferndale, Washington 98248.

Relocation of the tribal outlet(s) or opening of additional tribal outlets shall be subject to prior agreement between the Nation 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 Lummi Reservation unless such state liquor stores or agencies are already operating as of the date of this agreement. For purposes of this agreement, all of Lummi Island will be considered within the two mile protected zone, and all of the area

within the Ferndale and Bellingham city limits shall be considered outside of the 2 mile protected zone.

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

14. The hours of sale of distilled spirits, beer and wine, by the Nation shall be set by the Nation 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 Nation 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 Nation agrees not to import any distilled spirits, beer, or wine, into Indian Country except as provided in this agreement.

17. The Nation agrees not to solicit, or accept, money or moneys' worth from liquor manufacturers, importers or wholesalers. Provided; It is agreed that the Nation 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 five (5) years and shall include an option to renew subject to satisfactory renegotiation of the terms and conditions

hereof. The term shall commence September 1, 1995. If at the expiration of this agreement a new replacement has not been negotiated, the terms and conditions of this agreement shall continue to be in force until such time as a new agreement is negotiated or until either party wishes to cancel the agreement, which either party may do.

19. The Nation may terminate this agreement at any time if in the judgment of the Nation it is in the best interests of the Nation to cease the sale of liquor. If the Nation elects to discontinue its retail sales of liquor, the Board shall buy back from the Nation the entire inventory, purchased from the Board, remaining in the Nation's possession by paying the Nation the current sale price to the Lummi Indian Nation, subject to adjustment for a pro-rata share of the tax exemption quota for the period.

20. Should the Nation's retail liquor outlet fail to comply with this agreement, federal law, tribal ordinance, or 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 any way the terms of this contract.

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

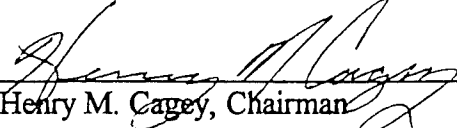
22. This agreement shall inure to the benefit of and be binding upon the parties named herein and upon their successors in interest. This agreement may not be assigned by either party.

IN WITNESS WHEREOF, the parties have signed this agreement to commence on the
1st day of September, 1995.

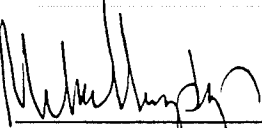
WASHINGTON STATE LIQUOR
CONTROL BOARD BY:

LUMMI INDIAN NATION BY:


Joseph McGavick, Chairman



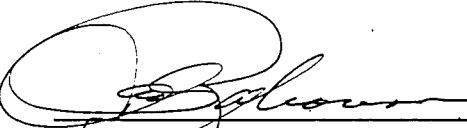
Henry M. Cagey, Chairman
Lummi Indian Business Council



Mike Murphy, Member



William L. Priest, Vice Chairman
Lummi Indian Business Council

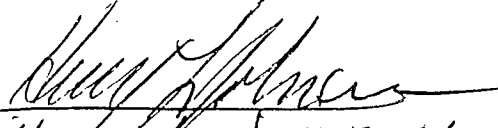


Jack Rabourn, Member

APPROVED AS TO FORM:

Kim O'Neal
Assistant Attorney General

Approved As To Form



HARRY L. JOHNSON
ATTORNEY FOR LUMMI NATION



STATE OF WASHINGTON

WASHINGTON STATE LIQUOR CONTROL BOARD

1025 E Union • PO Box 43075 • Olympia WA 98504-3075 • (360) 753-6262

August 27, 1996

As an amendment to the current agreement between the Lummi Indian Nation and the Washington State Liquor Control Board for purchase and resale of liquor on the Lummi Indian Reservation, the following language will be incorporated into the agreement:

The Nation agrees that if it desires to sell spirituous liquor by the drink, or beer and wine for on-premises consumption, such sales will comply with both Tribal and State licensing requirements as required by 18 U.S.C. 1151, 1154, and 1161. The Nation shall be able to sell spirituous liquor, beer and wine to any state licensed restaurant owned and operated by the Nation within the exterior boundaries of the reservation. The Nation shall make sales of spirituous liquor to its class H licensed restaurants at the class H prices as published in the current Board price list. After the liquor tax exemption granted the tribal liquor store on distilled spirits is used up, a credit will be provided for the difference between the taxes paid at the time of purchase from the Board, and the lower taxes that apply on a sale to a class H licensee.

FOR BOARD APPROVAL:

8/25/1996
DATE

Nathan Ford, Chairman
Washington State Liquor Control Board

Henry M. Cagey, Chairman
Lummi Indian Business Council

Jack Rabourn, Board Member
Washington State Liquor Control Board

Mary McKnew, Board Member
Washington State Liquor Control Board

Original - Purchasing
c Board
8/28/96 Board Minutes

