

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

WHEREAS, the Tulalip Tribes of Washington ("Tribe") and the Washington State Liquor Control Board ("Board") desire to continue 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. ss 1161), 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 Centennial Accord of August 4, 1989 between federally recognized Washington State Indian Tribes and the State of Washington, the governmental authority of the Tribe over its own affairs and its sovereignty under law is not altered, dismissed, 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 maintain the government-to-government arrangement whereby liquor may be sold by the Tribe on its Reser-

vation within Indian country as defined by 18 U.S.C. ss 1151 and ss 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 Tribe, acting by and through the Tulalip Liquor Commission pursuant to authority delegated by its governing Tribal Council, and the 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. For the purposes of this agreement, the Tribe will not be required to maintain any minimum dollar inventory requirements that are specified in the appropriate state beer and/or wine licenses. The Tribe may sell to Tribal operated "Class H" establishments. The Tribe will not sell to non-Tribal operated "Class H" establishments.
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. The purchase price of the distilled spirits shall be the standard case cost to the Board plus a handling charge of 10 percent plus the tax imposed by RCW 82.08.150, or any future applicable tax, 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 a number of gallons of spirituous liquor free of the tax imposed by RCW 82.08.150 or any future applicable tax. The number of gallons will be determined annually by multiplying the number of enrolled Tribal members twenty-one years old and over times 3.0 gallons. The Tribe will furnish an annually updated number of Tribal members twenty-one years old and over to the Board thirty(30) 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 10 percent plus, in case of wine, an amount equal to, and in lieu of, the taxes imposed by RCW 66.24.210, or any future applicable tax of wine and beer.
5. The Board shall invoice the Tribe for the cost of the liquor and the FOB point shall be the Tribal store. Provided, that the Tribe shall have a right to change the

FOB point to the Board's warehouse, whereby the handling charge in #3 and #4, above, will be reduced to 8 percent. The Tribe agrees to provide 30-day notification to the Board if electing to pursue this option.

6. Purchase of any 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. Deliveries to the Tribe shall be weekly unless the Tribe requests twice a week or twice a month deliveries. The Tribe must post a bond, letter of credit or deposit a sum of money in a bank releasable only to the Board, in the event of non-payment by the Tribe after ten (10) days written demand therefor, equal to one (1) approximate month purchases to insure payment.
7. Sales of liquor to the Tribe 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 Tribe 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 it is agreed that the Tribe may, at its option, pass through the "temporary price reduction" it and other vendors receive from the Board resulting from a special promotional allow-

ance made by the liquor supplier which is matched by like reduction by the Board. This "temporary price reduction" shall correspondingly reduce the purchase price of distilled spirits, wine and/or beer acquired by the Tribe from the Board as set forth in Sections 3 and 4; provided furthermore, the Tribe may, at its option, reduce prices on twelve (12) items each contract year, and each reduction shall be limited to one month, with the retail price of those items being no less than 90 percent of the Board's total retail price including taxes of that item in effect at that time.

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 distributed in the market area served by the Tribal store. Any such advertising will not contain direct comparisons between Tribal prices and State prices.

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 Tribe's retail outlet at any time during regular business hours to review the administration of the agreement.

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 Tulalip Reservation. Said store is located at 6323 – 33rd Avenue Northeast, Tulalip, Washington 98270, commonly known as the “I-5 site.” Relocation of the Tribal outlet or an additional Tribal outlet on the Tulalip Reservation is anticipated by the parties; the Board shall have the right to approve the proposed location prior to either relocation or the opening of a new outlet. Such approval will not be unreasonably withheld. Board approval is hereby given for the Tribe to relocate the Tribal outlet or place an additional Tribal outlet at either the northwest quadrant of Interstate 5 and 88th Street or the northwest quadrant of Interstate 5 and 116th Street no later than three (3) years from the date of this Agreement. The Board agrees not to locate a liquor store or liquor agency within two (2) miles of the existing Tribal store or the site which the Tribe chooses to locate its Tribal outlet, which is either the northwest quadrant of Interstate 5 and 88th Street or the northwest quadrant of Interstate 5 and 116th Street. If an additional Tribal store is established thereafter, the Board agrees not to locate any store or agency within two (2) miles of that additional Tribal store. The Board will not be required to relocate or close any Board store or agency if the Tribe should locate a Tribal store within the two (2) miles of a Board store or agency.

12. The Tribe agrees that all external signing shall meet applicable zoning Ordinances.

13. 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. Monday through Saturday. Provided, if the foregoing hourly restrictions are removed or made less restrictive under State law, the same shall be deemed to apply herein. There shall be no sale or delivery of distilled spirits on Sunday. If sale of distilled spirits is ever allowed on Sundays for State liquor stores or agencies, the same shall apply to the Tribe.
14. The Tribe agrees with the Board that all sales of liquor on the Tulalip Reservation will conform to the requirements of federal law, the Tribe's federally approved Tribal Liquor Ordinance, and State law relating to liquor transactions.
15. The Tribe agrees not to import any distilled spirits, beer, or wine, into the Tulalip Reservation except as provided in this agreement.
16. The Tribe agrees not to solicit, or accept, money or monies' worth from liquor manufacturers, importers or wholesalers. PROVIDED, that it is agreed that the Tribe may accept such items as are permitted to be accepted by licensees of the Board under applicable State law or Board regulations.
17. The term of this agreement shall be for a period of ten (10) years and shall include an option to renew subject to satisfactory renegotiations of the conditions hereof. 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 full force until such time as a new agreement is negotiated.

18. 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 discontinue the retail sale of distilled spirits. If 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 Tribe, subject to adjustment for a pro-rata share of the tax exemption quota for the period.
19. Should the Tribe's retail liquor outlet fail to comply with this agreement, federal law, Tribal Ordinance, or provisions of Washington State law or Board regulations relating to liquor transactions (including WAC 314-37-010 as amended by the Board on November 30, 1983), this agreement is ^{voidable} ~~violable~~ by the Board; PROVIDED: that no subsequent amendment of WAC 314-37-010 shall affect in any way the terms of this contract.
20. If any person, firm, corporation, agency and/or entity applies for any type of liquor, beer and/or wine license within the exterior boundaries of the Tulalip Indian Reservation, to either ~~or~~ the Board or the Tribe, the Board and Tribe will provide notice of the same to the other and take comment from the other party hereto and the community in the same manner as the Board and/or Tribe considers input

from other local governments and the community during the license application process. Pursuant to and in accordance with 18 USC Section 1161, such person, firm, corporation, agency and/or entity must first be authorized by both the Board and the Tribe for any sale and use of liquor, beer and/or wine.

21. The parties hereby establish a method of non-judicial dispute resolution in order to foster a spirit of cooperation and efficiency in the interpretation of the terms, provisions and conditions of this Agreement. In the event of a dispute or disagreement between the parties regarding the interpretation of this Agreement, it shall be redressed as follows:

- (i) Either party shall give the other, as reasonably proximate to the event giving rise to the concern, a notice setting forth the issues to be resolved;
- (ii) The parties shall meet and confer not later than ten (10) days from receipt of the notice;
- (iii) If the dispute is not resolved to the satisfaction of either within twenty (20) days of the first meeting, then the parties may refer the dispute to be resolved by and in accordance with the policies and procedures of JAMS/Endispute;

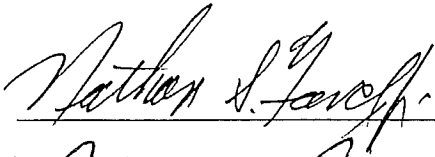
- (iv) The hearing, unless another date is stipulated to by the parties, shall occur no later than fourteen (14) days from Judge(s) selection before a JAMS/Endispute judge or judges of agreed selection by the parties, but in the event no agreement is made, then as selected by JAMS/Endispute;
- (v) The hearing shall occur at a time, place and location of mutual selection, but if such cannot be agreed to, then as selected by JAMS/Endispute;
- (vi) The decision of JAMS/Endispute shall be final and unappealable and if the party against whom curative or other conforming action is required has not paid or performed or expeditiously undertaken to effect cure if not capable of immediate remedy, the failure to comply with the JAMS/Endispute decision shall be deemed a default and breach of the provision(s) of the Agreement at issue, and shall allow the non-breaching party to terminate the agreement.

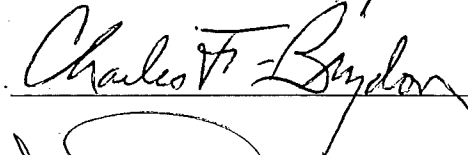
22. Time of performance under this agreement is of the essence.

23. 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 on the 12th day of
September, 1998.

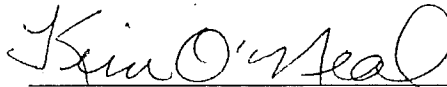
WASHINGTON STATE LIQUOR
CONTROL BOARD BY:





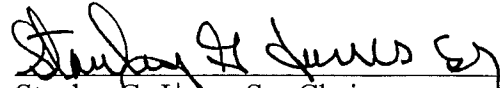


APPROVED AS TO FORM:



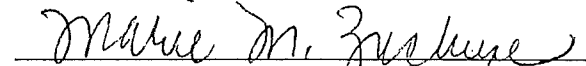
Assistant Attorney General

TULALIP TRIBES OF WASHINGTON
by and through TULALIP
LIQUOR COMMISSION:



Stanley G. Jones, Sr., Chairman

ATTEST:



Marie M. Zackuse, Secretary