



# Washington State Liquor Control Board

AGREEMENT BETWEEN THE WASHINGTON STATE LIQUOR CONTROL BOARD  
AND  
THE JAMESTOWN S'KLALLAM TRIBE  
FOR PURCHASE AND RESALE OF LIQUOR IN INDIAN COUNTRY

WHEREAS, the Jamestown S'Klallam Tribe ("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. § 1161), Tribal law, 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 the Tribe shall not be considered part of, or under the control and supervision of, the Board's stores and its Divisions; 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 Reservation within Indian country as defined by 18 U.S.C. § 1151 and § 1154, in conformity with federal law, Tribal law, and State law; and

WHEREAS, the Tribe desires to sell liquor in a manner that promotes public safety and is in accordance with the highest standards of professionalism and customer service;

## AGREEMENT

NOW, THEREFORE, pursuant to authority of federal law, Tribal law, and State law, it is hereby agreed between the Tribe, acting by and through its governing Tribal Council, and the Board as follows:

**1 DEFINITIONS**

"Board" means the Washington State Liquor Control Board, or any successor agency, and its officials, employees, and agents acting in their official capacity.

"Liquor" means distilled spirits, wine, and beer.

"Reservation" means the Jamestown S'Klallam Tribe's Reservation, together with Tribal trust lands located outside the boundaries of the Reservation.

"State" means the State of Washington and the Washington State Liquor Control Board.

"Tribal Outlet" means the store operated by the Tribe or one of its enterprises on its Reservation with the authority to sell packaged distilled spirits under this Agreement.

"Tribe" means the Jamestown S'Klallam Tribe and its Tribal enterprises.

**2 SALE/PURCHASE OF LIQUOR**

The Board agrees to sell Liquor to the Tribe, and the Tribe agrees to purchase all distilled spirits for resale on its Reservation from the Board; however, the Tribe may purchase beer and wine from the Board or from a state-licensed beer and/or wine wholesaler or from a Board Certificate of Approval holder, provided that the Tribe agrees to obtain the appropriate state beer and/or wine retail license.

The Tribe may sell to Tribally owned or operated facilities which have been properly licensed by the Board. The Tribe will not sell to non-Tribal Liquor licensees.

The Board shall use its best efforts to supply all Liquor ordered by the Tribe. The Tribe shall have its orders filed 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 shared equitably among all customers.

**3 TERM**

The initial term of this Agreement shall be for a period of five (5) years from the date of execution, unless sooner terminated as provided in Section 12 or 13 of this Agreement. At the end of the initial term, this Agreement shall continue in full force and effect for consecutive terms of one (1) year, unless either party hereto gives to the other written notice that the Agreement shall terminate at the end of the present term, provided that such notice is given at least thirty (30) days prior to termination and in the case of the Board's desire to terminate this Agreement, the parties first engage in a good faith attempt to renegotiate this Agreement. Nothing in this Agreement shall prevent the parties by mutual

agreement from establishing an earlier termination date or otherwise modifying the Agreement, provided such modification is made in writing.

#### **4 ORDERING PRODUCT**

The Tribal Outlet shall place timely orders, no more frequently than once per week, for the Liquor offered for sale.

The orders shall be based on what may be reasonably expected to meet customer and licensee demand.

The Tribal Outlet will be responsible for verifying the accuracy of orders and making corrections during the pre-order process.

No supplemental orders shall be allowed unless an emergency situation exists as approved by the Board. The Board may impose an additional handling cost, to be negotiated by the parties, on such orders. Approved supplemental orders will be processed by the assigned State store.

Special orders for unlisted items may only be purchased directly from the Board in accordance with Attachment A (Special Order Process) and not from a State store.

#### **5 PRICING**

A handling charge of ten percent (10%) shall be applied to the price of all products sold to the Tribe under this Agreement.

The Tribe's purchase price of the distilled spirits shall be the standard case cost to the Board, plus the established handling charge, plus the tax imposed by RCW 82.08.150, or any future applicable tax.

The Tribe's purchase price of wine and beer shall be the Board's standard case cost, plus the established handling fee. The Tribe's purchase price for wine shall include 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.

The Board shall invoice the Tribe for the cost of the Liquor.

#### **6 PAYMENT**

Purchase of Liquor by the Tribe shall be consummated upon payment by money order, certified check, or check from the Tribe. The payment must be placed in the United States mail the same day as the Liquor is delivered. To insure payment under this Agreement, the Tribe must post a bond, letter of credit or deposit a sum of money in a bank equal to approximately one (1) month of purchases, and releasable only to the Board. In the event of non-payment and after ten (10) days written demand, the Board shall have the right to access the funds held on its behalf.

**7 TITLE TRANSFER**

The F.O.B. point for all regular shipments shall be the Tribal Outlet.

**8 TAX EXEMPT PURCHASES**

Each year of this Agreement, the Tribe may purchase a number of gallons of distilled spirits free of the tax imposed by RCW 82.08.150. The number of tax free gallons will be determined annually by using the population of the Tribe, as published in the most recent U.S. Department of Interior Bureau of Indian Affairs Indian Service Population and Labor Force Estimates, adjusted to reflect the adult population of the Tribe, 21 years of age and older. This population number will be multiplied by the average consumption rate of distilled spirits for Washington State residents, age 21 and older, as published in the Adam's Liquor Handbook. This calculation will be updated annually, thirty (30) days prior to the end of each year of this Agreement for this purpose.

The Tribe will be allowed the spirit tax exemption on sales to its licensees under RCW 82.08.150 after its yearly population based tax exemption has been met.

**9 DAMAGED AND MISSING MERCHANDISE**

Sales of Liquor to the Tribe by the Board include return privileges for damaged and missing merchandise. Claims will be allowed as circumstances and facts indicate in each individual instance.

The Tribal Outlet will be assigned a State store, authorized to process claims for damaged and missing merchandise. Damage caused by Tribal personnel or their customers shall not be the responsibility of the Board.

The Tribal Outlet will provide the State store with a copy of the Bill of Lading or Freight Bill bearing the carrier driver's signature and notation identifying any missing or damaged merchandise.

When possible, State stores will replace items with the same item from store stock. When a replacement item is not in stock, the Board shall give a credit to the Tribal Outlet that may be taken against a future invoice.

**10 RETAIL OPERATIONS**

**10.1 Product Scope**

The Tribal Outlet operated under this Agreement is intended to provide a limited amount of Liquor to compliment non-Liquor products that are sold in this same location. This Tribal Outlet is not intended to be a full service Liquor store, rather it is to offer a limited sampling of Liquor. The scope of distilled spirits product offering shall not exceed 150 SKU's, provided that distilled spirits sold to Tribal licensees shall not count against this limit.

Should the Tribe desire to increase the scope of its distilled spirits product offering, it shall submit its request, in writing, to the Board. If the parties

are unable to resolve the issue of product scope, either party may invoke dispute resolution in accordance with Section 13 of this Agreement.

**10.2 Location**

The Tribe agrees that all Liquor will be kept in the manufacturer's original containers and shall be sold from a Tribal Outlet located within the boundaries of the Reservation. Said Tribal Outlet is located at 271020 Highway 101, Sequim, Washington, 98382. Relocation of the Tribal Outlet shall be subject to prior Board approval, such approval will not be unreasonably withheld.

**10.3 Retail Pricing**

The Tribe agrees to resell all Liquor purchased from the Board at a per unit total retail price equal to that of the Board's total retail price that is in effect at the time of sale by the Tribe, including all applicable taxes. In addition to selling Liquor purchased from the Board at sale prices in effect by the Board, the Tribe may, at its option, reduce prices on two (2) additional items each month, with the retail price of those items being no less than ninety (90) percent of the Board's total retail price including taxes of that item in effect at that time.

**10.4 Advertisements**

The Tribe may advertise its store location and services in any medium which serves the Reservation community and people who reside in proximity to the Reservation. Advertisements of distilled spirits may only be placed in print media, and the Tribe shall limit any such media advertising to newspapers which are primarily distributed in the market area served by the Tribal Outlet. This includes, but is not limited to, the Peninsula Daily News and the Sequim Gazette. Any such advertising will not contain direct comparisons between Tribal prices and State prices.

**10.5 Hours of Operation**

The Tribe shall set the days and hours of sale of Liquor, but in any event, the Tribe shall not sell Liquor between 2 a.m. and 6 a.m.

The Tribal Outlet shall notify the Board in writing of the normal operating hours and when it will be closed or will maintain other than normal operating hours.

**11 COMPLIANCE**

The Tribe agrees to cooperate with the Board to help promote public safety by preventing the misuse of Liquor.

The Tribal Outlet shall not sell, give or otherwise supply or allow to be sold, given or supplied Liquor to any person under the legal drinking age or any person apparently under the influence of Liquor. A representative of the Board shall have the right to visit the Tribal Outlet at any time during regular business hours

to ensure compliance with this provision, provided that the Board representative follows any and all protocols now in place or later adopted between the Tribe and the Board.

Should a Board representative wish to visit the Tribal Outlet to discuss any other terms of this Agreement with the Tribe, the representative shall identify himself/herself to a staff person and shall only discuss such terms in the presence of the Tribal Outlet manager or his/her designee.

The Tribe agrees with the Board that all sales of Liquor on the Reservation will conform to the requirements of federal law, Tribal law, and state law relating to Liquor transactions.

The Tribe agrees not to solicit, or accept, money or monies' worth from Liquor manufacturers, importers, or wholesalers. The Tribe may accept such items as are permitted to be accepted by licensees of the Board under applicable State law or Board regulations.

## 12 TERMINATION

In the event the Tribal Outlet fails to comply with any term or condition of this Agreement, the Board shall provide notice of any violation to the Tribe. If the Tribe does not cure the violation within thirty (30) days or initiate dispute resolution in accordance with Section 13 of this Agreement, the Board may cancel this Agreement in part or in its entirety. Other violations of this Agreement pertaining to federal law, or provisions of State law or Board regulations relating to Liquor transactions (including WAC 314-37-010), will be subject to the dispute resolution provisions of Section 13 of this Agreement.

The Tribe may terminate this Agreement at any time, upon thirty (30) days written notice to the Board, if in the judgment of the Tribe it is in the best interest of the Tribe to discontinue the retail sale of Liquor. If the Tribe elects to discontinue its retail sales of Liquor, the Board may buy back from the Tribe the entire inventory purchased from the Board remaining in the Tribe's possession by paying the Tribe a price negotiated by the parties. It is entirely at the Board's discretion to purchase the Liquor back from the Tribe.

Further, in the event State law or regulations are amended or adopted that affect the terms of this Agreement, the parties may terminate or amend this Agreement as necessary to comply with such laws and regulations.

## 13 DISPUTE RESOLUTION

Neither the Tribe, nor the State, nor officers acting on either government's behalf, may petition any court to enforce this Agreement unless (a) the dispute resolution process described in subsections ~~13(a) through (d)~~ (1) through (4) has been followed in good faith to completion without successful resolution, or unless (b) the other party fails to enter into the dispute resolution process or terminates the process before its completion. Should a dispute arise between the Tribe and the Board

SB 13(1) through (4)

upon an issue related to the Agreement, the Tribe and the Board shall attempt to resolve the dispute through the following dispute resolution process:

1. Either party may invoke the dispute resolution process by notifying the other, in writing, of its intent to do so. The notice shall set out the issues in dispute and the notifying party's position on each issue.
2. The first stage of the process shall include a face-to-face meeting between representatives of the two governments to attempt to resolve the dispute by negotiation. The meeting shall be convened within thirty (30) days of the date of the written notice described in subsection 1 above. The representatives of each government shall come to the meeting with the authority to settle the dispute.
3. The second stage of the process will be that if the parties are unable to resolve the dispute within sixty (60) days of the notice sent under subsection 1 above, the parties shall engage the services of JAMS/Endispute or another mutually agreed upon qualified mediator to assist them in attempting to negotiate the dispute. Costs for the mediator shall be borne equally by the parties. The parties shall pursue the mediation process in good faith until the dispute is resolved or until the mediator determines that the parties are not able to resolve the dispute. If the dispute is resolved, the resolution shall be memorialized by the mediator and shall bind the parties.
4. If a party terminates the process before completion, or if the mediator determines that the dispute cannot be resolved in the mediation process, or if the dispute is not resolved within one hundred and twenty (120) days of the date the mediator is selected, either party may initiate binding arbitration proceedings under the rules of JAMS/Endispute or another professional arbitration service agreed to by the parties. The decision of the arbitrator shall be final and unappealable. Nothing in the Agreement is or shall be deemed to be a waiver of either party's sovereign immunity from suit, which immunity is expressly asserted. Notwithstanding the foregoing, each party hereby expressly consents to suit in the State courts only for the limited purpose of (A) enforcing the agreement of the parties to arbitrate disputes and (B) enforcing an arbitration award consistent with the Agreement, and provided further that this limited consent to suit is not, and shall not be deemed to be, a consent by the Tribe to the levy of any judgment, lien, or attachment of any property or income other than to the extent of a judgment for payment of monies due under the terms of the Agreement.

The parties agree to meet and confer from time to time to discuss issues or concerns relating to the sale of Liquor in Indian country that may not be covered by this Agreement. The parties agree to work cooperatively and in good faith to

resolve those concerns and to enter into dispute resolution as provided in this Agreement, as necessary, to resolve those issues or concerns.

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. Both parties hereby agree that changes or modifications to this Agreement may be made by mutual consent and shall be documented in the form of an amendment.

**14 MORE FAVORABLE TERMS**

If, at any time after the effective date of this Agreement, the Board enters into an agreement, compact, or consent decree with any other federally recognized Indian tribe, of or relating to the sale of Liquor in Indian country, upon the Tribe's request, such terms and conditions shall become a part of this Agreement by a signed amendment, executed by both parties. Provided, however, that (1) if this clause is exercised by the Tribe, all the terms in this Agreement are open to renegotiation, and the Board shall be entitled to insist that any other terms as are associated with, facilitated or were given in exchange for the more favorable terms negotiated with the other tribe also be included in any modification of replacement terms in this Agreement; and (2) any terms already present in any agreement, compact, or consent decree with another tribe prior to the effective date of this Agreement that are also included in a new agreement, compact, or consent decree with that tribe need not be made available to the Tribe under the terms of this Section.

This Agreement shall become effective on May 1, 2008.

Signatures follow on next page.




WASHINGTON STATE LIQUOR  
CONTROL BOARD

JAMESTOWN S'KLALLAM TRIBE

  
\_\_\_\_\_  
Lorraine Lee, Chairwoman

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W. Ron Allen, Chairman

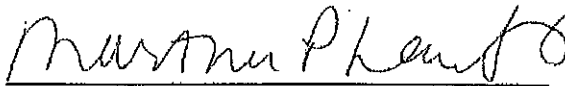
  
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Roger Hoen, Board Member

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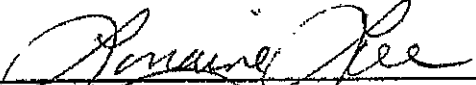
  
\_\_\_\_\_  
Ruthann Kurose, Board Member

May 6, 2008  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Martha Lantz  
Assistant Attorney General

WASHINGTON STATE LIQUOR  
CONTROL BOARD

  
Lorraine Lee, Chairwoman

  
Roger Hoen, Board Member

  
Ruthann Kurose, Board Member

May 6, 2008  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Martha Lantz  
Assistant Attorney General

JAMESTOWN S'KLALLAM TRIBE

  
W. Ron Allen, Chairman

5/10/2008  
Date

## Attachment A

### Special Order Process

Special Orders should be submitted on the Special Order electronic form by email, if possible. Please send an email to the Special Order Buyer ([sob@liq.wa.gov](mailto:sob@liq.wa.gov)) to get the form template and instructions.

If you do not have email, contact the Special Order Buyer by phone at (360) 664-1669 and CIB-4 pamphlets will be mailed to you to be filled out and returned to the mailing address found on the form.

If a spirituous liquor, wine or beer is not listed in the "Official Retail Price List," but is available for sale within the continental United States and over four percent alcohol by weight, the Liquor Control Board's Special Order Buyer can place a special order in case lots only. Beverages from outside the U.S. must be available from a U.S. importer.

Individual distillers, wineries, or breweries may refuse to sell their product through the Board because of marketing agreements or quantity ordered. If your order is rejected, you will be advised.

Allow six to eight weeks for delivery. Delays may occur with the supplier or transportation. After eight weeks, please contact the Special Order Buyer for the status of your order.

If you would like pricing of an item before ordering, mark the special order request form for PRICE REQUEST ONLY. You will receive a price quote by email or mail if you do not have a computer. If you wish to order the item, indicate the number of cases you would like to order and return the quote form via email/mail.

#### **TO COMPLETE THE SPECIAL ORDER REQUEST FORM:**

1. Indicate ORDER or PRICE REQUEST ONLY.
2. Indicate number of cases and bottle size.
3. Complete brand name and type. (Products are researched by brand name only)
4. Brand codes must be used if available, when using brand codes you must also indicate the name of the product.
5. Indicate the name of the supplier or U.S. importer, if known.
6. Outlet number and address must be filled in for all Special Orders.
7. Customer Information is not required for Tribal special orders.
8. On the electronic form there is a space for comments. Please use this area for any addition information.

If you have questions regarding Special Orders contact the Special Order Buyer:  
(360) 664-1669 or [sob@liq.wa.gov](mailto:sob@liq.wa.gov).



# Washington State Liquor Control Board

## AMENDMENT TO THE AGREEMENT BETWEEN THE WASHINGTON STATE LIQUOR CONTROL BOARD AND THE JAMESTOWN S'KLALLAM TRIBE OF INDIANS FOR THE PURCHASE AND RESALE OF LIQUOR IN INDIAN COUNTRY

WHEREAS, the Washington State Liquor Control Board ("Board") and the Jamestown S'Klallam Tribe ("Tribe") executed an agreement for the purchase and sale of liquor in Indian Country ("Agreement");

WHEREAS, the parties wish to amend the Agreement to remove limit on scope of products sold at the Tribal Outlet.

NOW THEREFORE, the Tribe and the State agree the Agreement shall be amended as follows:

Section 10.1 shall be deleted in its entirety.

WASHINGTON STATE LIQUOR  
CONTROL BOARD

By:

Sharon Foster  
Sharon Foster, Board Chair

By:

Ruthann Kurose  
Ruthann Kurose, Board Member

By:

James Lunsford  
James Lunsford, Contracts Manager

Date:

12/10/09

JAMESTOWN S'KLALLAM TRIBE

By:

W. Ron Allen  
W. Ron Allen, Chairman

Date:

12/18/2009

APPROVED AS TO FORM:

Mary Tennyson, Assistant Attorney General