

**AGREEMENT BETWEEN THE
WASHINGTON STATE LIQUOR CONTROL BOARD
AND THE
PUYALLUP TRIBE OF INDIANS**

**FOR THE PURCHASE
AND RESALE OF LIQUOR IN INDIAN COUNTRY**

Preamble

WHEREAS, the Puyallup Tribe of Indians is a federally recognized Indian Tribe, possessed of the full inherent sovereign powers of a government; and

WHEREAS, the State of Washington is a State within the United States of America possessed of full powers of State government; and

WHEREAS, the Puyallup Tribe of Indians ("Tribe") and the Washington State Liquor Control Board ("Board") 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, as that term is defined in 18 U.S.C. § 1151, in accordance with the requirements of federal law (18 U.S.C. § 1161), Puyallup Tribal Ordinances, and Washington 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 Indian Tribes within the State of Washington and the State of Washington, the governmental authority of the Tribe over its own affairs and its sovereignty under 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 maintain the government-to-government arrangement whereby liquor may be sold by the Tribe on its ancestral land within Indian country as defined by 18 U.S.C. §1151 and §1154, in conformity with federal law, Tribal Ordinance, and State law; and

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

AGREEMENT

1. General Terms

1.1. The Washington State Liquor Control Board agrees to sell spirits, wine, and beer ("Liquor") to the Puyallup Tribe of Indians. The Tribe hereby authorizes its wholly-owned economic development corporation, Marine View Ventures, Inc., to purchase and make retail sales of Liquor on its behalf in accordance with the terms of this Agreement.

1.1.1. The Board agrees that this 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 Agency's Divisions.

1.1.2. The Board agrees that all orders shall be Free On Board ("FOB") Tribal Store(s).

1.1.3. The Board shall use its best efforts to supply all Liquor ordered by the Tribe.

1.1.4. The Board shall fill the Tribe's orders on the same basis as the orders from other Liquor stores.

1.1.5. The Board shall equitably distribute supplies of items when there is insufficient stock of the items to satisfy all orders made by all of the Board's customers.

1.2. The Tribe agrees to purchase all spirituous Liquor for resale in Indian Country from the Board.

1.2.1. The Tribe shall not sell to non-Tribal Liquor licensees.

1.2.2. The Tribe shall purchase all beer and wine from a state licensed distributor or from a Board Certificate of Approval holder, except that businesses owned and operated a) by the Tribe or b) by licensees of the Tribe who are enrolled members of the Tribe, in Indian Country may purchase directly from the Tribe. The Tribe shall not actively solicit purchases from facilities owned by enrolled members currently served by other liquor stores.

1.2.3. The Tribe agrees to obtain and maintain the appropriate State beer and wine retail licenses for Tribally owned and operated facilities unless

otherwise mutually agreed upon, in writing, in the form of a Memorandum of Agreement between the Board and the Tribe establishing an alternative licensing mechanism.

1.3. This Agreement shall be effective for ten (10) years from the date of execution.

1.3.1. At the conclusion of the ninth (9th) year of this Agreement, the Board and the Tribe shall begin discussions for the purpose of establishing a new agreement or extensions of this Agreement.

1.3.2. If both parties mutually fail to meet for discussions, this Agreement shall be automatically renewed at the expiration of the ten (10) year term for an additional one (1) year term.

1.3.3. In the event that the parties are unable to satisfactorily establish a new agreement after the initial term this Agreement shall terminate in its entirety.

1.3.4. If the Board determines a need for a new liquor store location that could be effectively served from within the Tribe's Indian Country, the Board will notify the Tribe and work in good faith to allow the Tribe to operate up to two (2) additional liquor stores within Indian Country. Similarly, if the Tribe requests an additional store at any time during the term of this Agreement, the Board will work in good faith to determine whether the addition of the requested store complies with applicable state policy. In the event the addition of the requested store is deemed feasible and complies with state policy, the Board will thereafter negotiate with the Tribe in good faith.

1.3.5. The Board and the Tribe shall negotiate all matters related to this Agreement in good faith.

2. Ordering Product

2.1 The Tribe shall place timely orders no more than once per week.

2.2 The Tribe shall place orders based on customer and licensee demand.

2.3 The Tribe shall be responsible for verifying the accuracy of each order.

2.4 No supplemental orders are allowed unless an emergency 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

2.5 Special Orders for unlisted items may only be purchased directly from the Board and not from a State store: REFERENCE ATTACHMENT A: Special Order Process.

3. Pricing: Sales to Tribe

3.1. The Board shall apply a handling charge to the price of all products sold to the Tribe under this Agreement.

3.1.1. The initial handling charge for this Agreement shall be ten percent (10%) of each order.

3.1.2 The Board may change the handling charge at anytime with ninety (90) days written notice to the Tribe.

3.2. The Tribe's purchase price of spirituous Liquor 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.

3.3. The Tribe's purchase price of wine and beer shall be the Board's standard case fee 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 and RCW 66.24.290, or any future tax of wine and beer.

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

4. Payment

4.1. Purchase of Liquor by the Tribe shall be consummated upon payment of money order, certified check, or Tribal check. For the purposes of this section, a Tribal check includes a check from a wholly-owned enterprise of the Tribe.

4.2. The Tribe shall place payment for Liquor in the United States mail on the date the Liquor is delivered. The Tribe may submit payment electronically with prior arrangement with Board. Mailing address:

**Washington State Liquor Control Board
P.O. Box 43096
Olympia, WA 98504-3096**

4.3 In the event of non-payment by the Tribe, the Board shall make a written demand to the Tribe for payment.

4.4 In the event that payment is not received within thirty (30) calendar days from the date of written demand, the Board may suspend further shipments to the Tribe until payment is made in full.

4.5 Multiple occurrences of non-payment by the Tribe may result in the termination of this Agreement.

5. Tax Exemptions and Credits

5.1. The Tribe shall be allowed to purchase tax-exempt spirits every year for the number of eligible tribal members.

5.1.1. The number of tax-exempt gallons will be determined by the number of Tribal members over the age of twenty-one (21) certified by the Tribe and provided to the Board at least thirty (30) days prior to the end of each calendar year this Agreement is in effect.

5.1.2. In the event that the Tribe fails to submit their Tribal population data on or before the annual deadline, the Board may be unable to process the Liquor tax exemption and Tribal Tax refund until the data is submitted.

5.1.3. To arrive at the quantity of tax-exempt spirits, the number of eligible members shall be multiplied by the average consumption rate of spirituous Liquor for Washington State residents, age twenty-one (21) and older, as published in the Liquor Handbook. This calculation will be updated annually, within thirty (30) days prior to the end of each year of this Agreement for this purpose.

5.2 A credit will be provided for the difference between the tax paid at the time of purchase from the Board, and the lower tax applied on sales to Licensee's assigned to the store. In order to obtain the Liquor tax credit, the Tribe shall follow the process set forth in Attachment B, Tribal Tax Refund (TTR) Process; provided, that no credit shall be provided on any product subject to the liquor tax exemption described in Section 5.1.

6. Damaged and Missing Merchandise

6.1.1. 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.

6.1.2. The Tribal Store 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.

6.1.3. The Tribal Store 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.

6.1.4. 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 Store that may be taken against a future order.

7. Retail Operations

7.1. The Tribe recognizes the Board's interest in ensuring all retail stores display Liquor in an attractive manner that allows customers a clean, comfortable and safe environment to make purchases.

7.1.1. The Board shall notify the Tribe of store standard changes and the Tribe will reasonably comply with any such standard changes.

7.1.2. The Tribe agrees that any future signage regarding Liquor sales shall comply with applicable zoning ordinances.

7.2. The Tribal Store operated under Section 7.4 of this Agreement is intended to provide Liquor products to meet the interests of the market area as defined in Attachment C.

7.3. The Tribe shall keep all Liquor products sold at the Tribal Store(s) in the manufacturers' original containers and the products shall only be sold from stores within Indian Country.

7.4. The Tribal Store is located at the following address:

**6006 Pacific Hwy E
Fife, WA 98424**

7.5. Any relocation of the above-described Tribal Store(s) shall be subject to Board approval. Such approval shall not be unreasonably withheld.

7.6. The Tribe agrees to resell all 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 that is in effect at the time of sale by the Tribe, including all applicable taxes.

7.6.1. The Board shall provide the Tribe with lists of the applicable prices to be charged.

7.6.2. 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.

7.7. The Tribe may advertise spirituous Liquor in the manner permitted by applicable law, so long as such advertisements are primarily targeted to the market as defined in Attachment C of this Agreement. No advertising shall contain direct comparisons between the Tribe prices and State prices.

7.8. The Tribe shall not sell Liquor between the hours of 2:00 a.m. and 6:00 a.m. unless such sales are authorized for other liquor stores.

7.8.1. The Tribe may sell beer, wine, and spirits any day, except during the above hours.

7.8.2. The Tribe shall provide a written attachment to this Agreement containing the Tribal Store's operating hours at each location. Any changes to the store's hours shall be provided to the Board within thirty (30) days of such change.

8. Compliance

8.1. The Board shall have the right to visit any of the stores governed by this Agreement during regular business hours to review compliance with this Agreement, provided that the Board follows any and all protocols now in place or later adopted between the Tribe and the Board.

8.2. The Tribe 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. The Tribe shall cooperate with the Board in promoting public safety by preventing the misuse of Liquor.

8.3. All sales of Liquor on Puyallup Tribal Lands within Indian Country shall conform with the Tribe's federally approved Tribal Liquor Ordinance (45 FR 17641), federal law and Washington State law relating to Liquor transactions.

8.4. The Tribe shall not import any spirits, beer, or wine into Puyallup Tribal Lands except as provided in this Agreement.

8.5. The Tribe shall not 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.

9. Dispute Resolution

9.1. The Tribe and the Board wish to prevent disagreements and violations of the Agreement whenever possible, and to quickly and effectively resolve disagreements and violations when they arise by using the process outlined in Section 9.2 of this Agreement.

9.2 Neither party, nor officers acting on either party's behalf, may petition any court to enforce this Agreement unless (a) the dispute resolution process described in this Section 9.2 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 parties upon an issue of compliance with the Agreement by either government, or by their officers, employees or agents, the parties shall attempt to resolve the dispute through the following dispute resolution process:

9.2.1 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.

9.2.2 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 Section 9.2.1. The representatives of each government shall come to the meeting with the authority to settle the dispute.

9.2.3 If the parties are unable to resolve the dispute within sixty (60) days of the date of the written notice, the parties shall engage the services of a mutually-agreed upon qualified mediator to assist them in attempting to negotiate the dispute. Cost for the mediator shall be borne equally between the disputing parties.

9.2.4 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 parties cannot agree on a format for the mediation process, the format shall be that directed by the mediator. If the dispute is resolved, that resolution shall be memorialized by the mediator and shall bind the parties.

9.2.5 If any 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 the American Arbitration Association. If the arbitrator determines that a party is in violation of a material provision of this Agreement, and such violation is not or cannot be cured within thirty (30) days of the arbitrator's decision, then the other party may terminate this Agreement with sixty (60) days written notice served upon the Chairman of the Puyallup Tribe of Indians and Chair of the Liquor Control Board.

9.2.6 Notices shall be given as follows:

Tribe:

Chairman
Puyallup Tribe of Indians
3009 E Portland Avenue
Tacoma, WA 98404

Tribal Attorney:

Director
Law Office of the Puyallup Tribe
3009 E Portland Avenue
Tacoma, WA 98404

With a copy to:

General Counsel
Marine View Ventures, Inc.
1201 Pacific Avenue, Suite 1500
Tacoma, WA 98402

Board:

Board Chair
Washington State
Liquor Control Board
P.O. Box 43076
Olympia, WA 98504-3076

Administrative Director
Washington State
Liquor Control Board
PO Box 43080
Olympia, WA 98504

9.3 This Agreement shall remain in effect for the period set out in Par. 1.3 unless the parties mutually agree in writing that it should be terminated or superseded by a new agreement between the parties, or unless it is earlier terminated pursuant to Section 9.2.5.

9.4 In any action filed by a third party challenging either the Puyallup Tribe of Indians' or the Liquor Control Board's authority to enter into or enforce this Agreement, the Tribe and the Board each agree to support the Agreement and defend their authority to enter into and implement this Agreement.

10. Sovereign Immunity

Nothing in this Agreement shall be construed as a waiver, in whole or in part, of either party's sovereign immunity.

11. Integration

This Agreement and any attachments contain the entire agreement between the parties.

12. Severability

If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in effect.

13. Modification

Any modification of this Agreement must be in writing, in the form of an amendment to this Agreement and signed by both parties.

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 which includes a "most favored nation" provision, then, upon the Tribe's written request, this Agreement shall be amended to include such provision. A "most favored nation" provision is defined as language by which the Board agrees to accord the tribe the same favorable terms that are offered in later agreements with any other tribe. This shall not be construed to require that the Board offer the tribe the option to receive the same terms offered to every tribe, in the absence of a most favored nation provision in the Agreement.

15. Effect of Federal Law

Nothing in this Agreement is intended or shall be construed to modify the application and effect of federal law on sales of liquor by the Tribe.

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) 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. Store 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.

Attachment B
Tribal Tax Refund (TTR) Process

Procedure to Request Tribal Tax Refund

The original intent of the Tribal agreement was to give Tribes the ability to resell Liquor as an independent retailer. Unlike State and Contract stores, Tribal Stores own the inventory once purchased from the Board. Taxes are collected by the Board at the point of sale to the Tribe. This agreement worked well to ensure adequate taxes were collected.

With the advent of Tribally owned casinos, by certain Tribes, a new opportunity presented itself for the Tribe who already had a Store. Those same Tribes were granted by the Board the assignment to "resell" Liquor to the restaurant/bar licensee ("Licensee"). The Licensee price is fixed by RCW 66.24.440 and tax structure governed by RCW 82.08.150, creating a disparity between what the Tribal Store pays in taxes and what it collects from their Licensee.

This system was developed to issue a credit memo to the Tribe for the difference between taxes paid to the Board and taxes recouped from the Licensee.

Submitting requests is voluntary by the Tribe.

Position:
LCB Merchandise
Accounting

Action:

1. Will provide each eligible Tribe:
 - a. Computer disc containing TTR.xls template
 - b. Sample template illustrating data entry points (TTR Worksheet)
 - c. Process chart for the Tribal Tax Refund (TTR Request Process)

2. Records sales to licensee (as assigned by LCB) in Excel spreadsheet, TTR.xls, including the following information:
 - a. Store Number
 - b. Tribe Name
 - c. Reporting Month
 - d. Date of sale (from register receipt or tape)
 - e. Quantity by Brand Code

Tribal Designee

- f. Licensee Unit Price in effect at point of sale
- g. Name of person, including e-mail address completing the worksheet

(See TTR Worksheet)

- 3. Scan corresponding, original, sales receipts into an electronic form suitable for e-mail (published in pdf format) to accompany each request.
- 4. Each request will be for the period of one calendar month.
- 5. Requests must be sent via e-mail to MerchAcct@liq.wa.gov and received by the LCB no later than forty-five (45) days after the last calendar day of requested month.
- 6. Issues a credit memo to the Tribe which can be applied to subsequent invoice payments.

LCB Merchandise Accounting

Relevant Laws and Other Resources

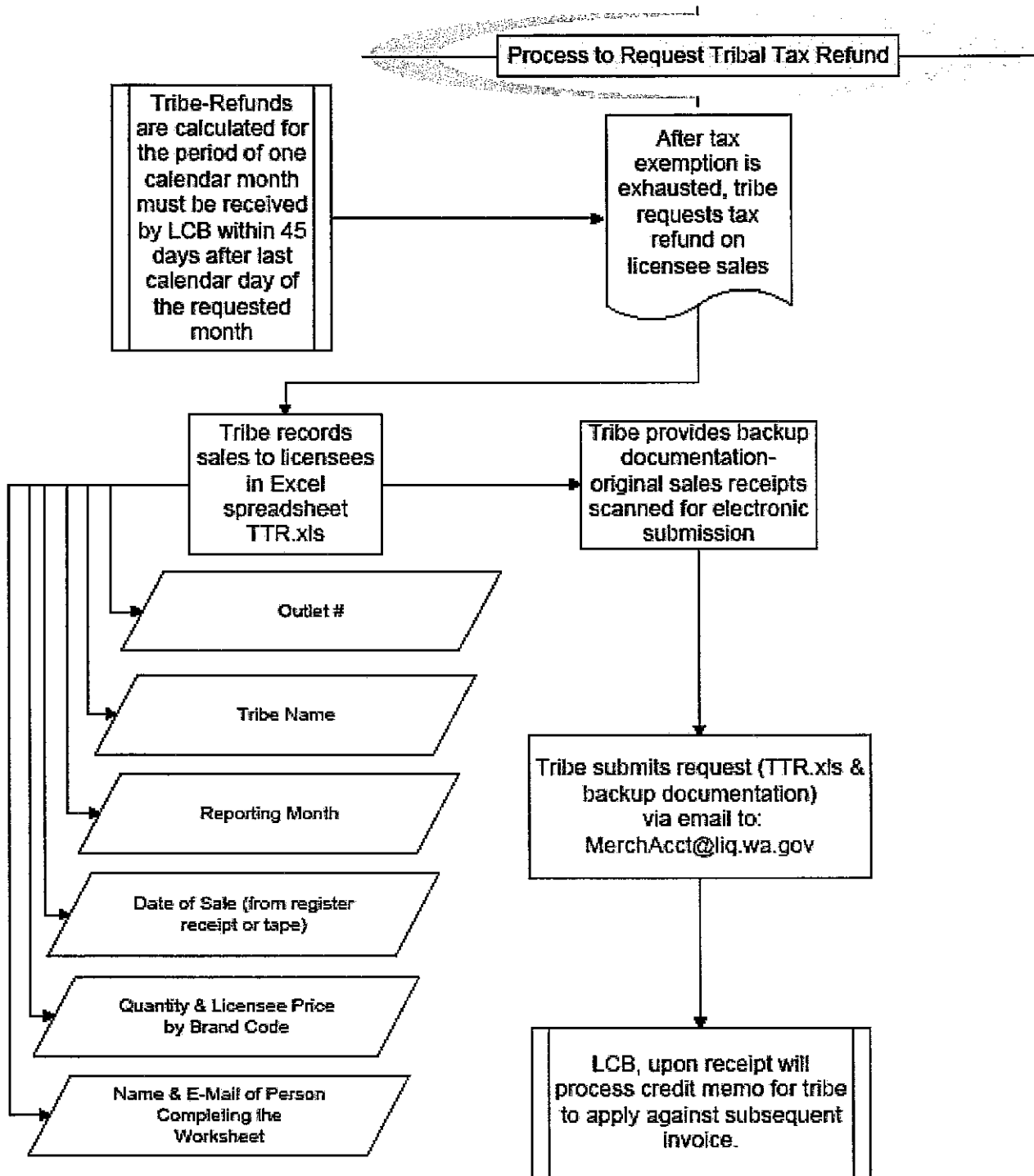
RCW 82.08.150 (Applicable to Liquor Taxes)

RCW 66.24.440 (Applicable to Licensee Pricing)

Contact

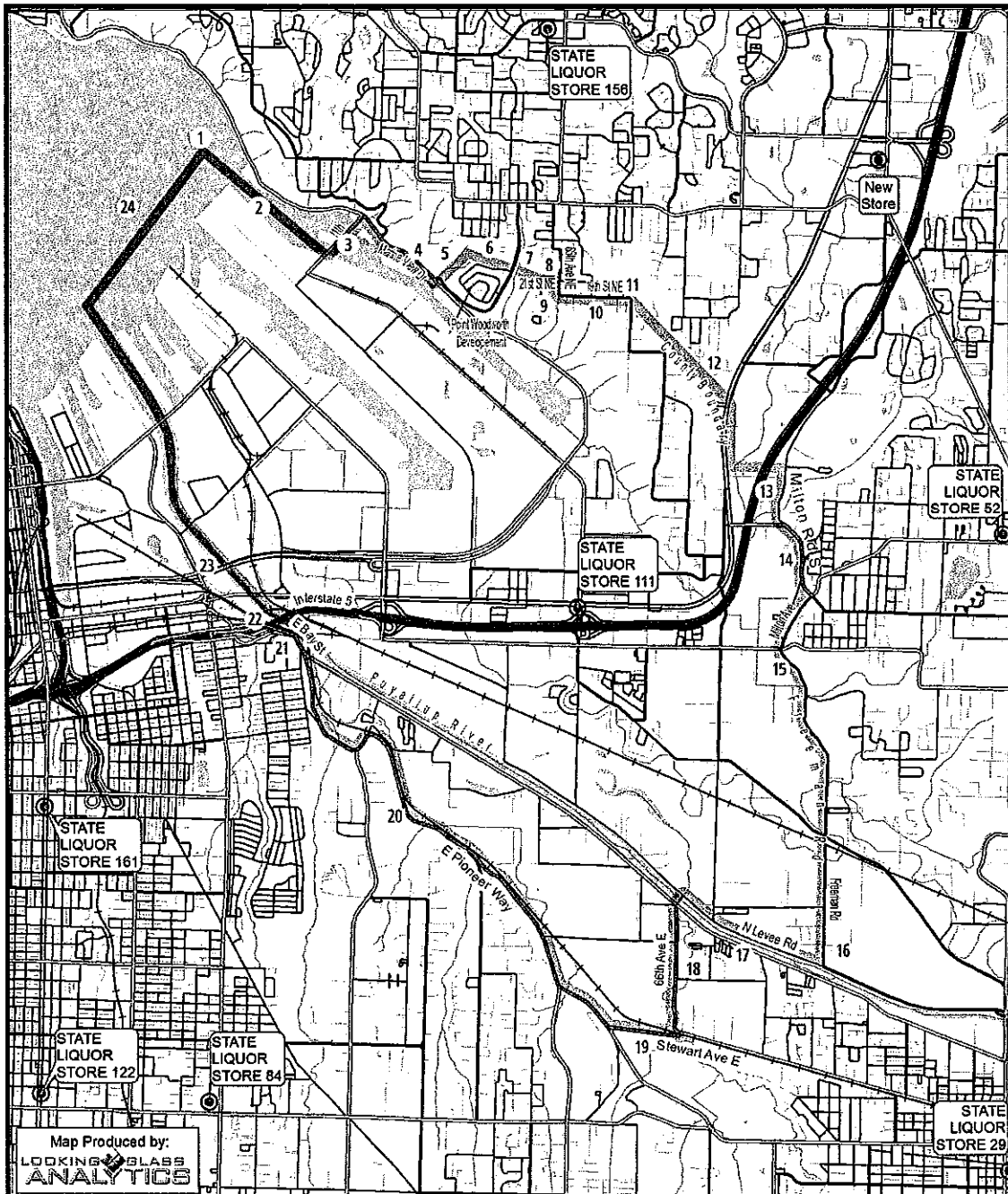
For additional information about this procedure, contact the LCB Merchandise Accounting Supervisor in the Financial Division (360) 664-1680 or MerchAcct@liq.wa.gov .

Tribal Tax Refund (TTR) Request Process



Attachment C Market Area

Market Area Map



Market Area Map – Boundary Segment Descriptions

1. The starting point is in Commencement Bay just northeast of the entrance to the northern most inlet of the Port of Tacoma.
2. From here head southeast down this inlet.
3. At the 11th street bridge follow 11th northeast to Marine View Drive.
4. Go southeast on to Marine View Drive to the intersection with Norpoint Way NE.
5. At that intersection, head northeast up the undeveloped hill side in a way that encompasses the entire "Pointe Woodworth" housing development.
6. At the top of the development, head east along the steep hillside along its northern boundary until intersecting with Highline Drive.
7. From this point head east and slightly south along an invisible line through a greenbelt to the west end of 21st St NE.
8. Follow 21th St NE to the intersection with 65th Ave NE.
9. Follow 65th Ave NE south, keeping left as it turns east into 19th St NE.
10. Follow 19th St NE east until just before it turns south onto 58th Ave NE.
11. Instead of turning south here continue due east a short distance to the boundary between Pierce and King Counties.
12. Follow this boundary southeast through two direction changes, across Interstate 5, to where it intersects Milton Rd S. This boundary is not visible but does follow a wooded area that nicely divides the neighborhoods whose main travel routes take them north vs. south.
13. Follow Milton Rd S south. It will change names to 5th Ave, and then merge with Porter way.
14. Continue south on Porter way to its intersection with Milton Way.
15. From here follow Milton Way South past 20th where its name changes to Freeman Rd.
16. Follow Freeman (which is also known as 82nd Ave E in some stretches) all the way to its intersection with N Levee Rd E.
17. Turn West on N Levee Rd E.
18. Turn South on 66th Ave E.
19. Turn West on Stewart Ave E.
20. Continue West on Pioneer Way.
21. Continue West on E Bay St.
22. Turn East on Interstate 5 to the center of the Puyallup River.
23. Follow the center of the Puyallup River northwest all the way to Commencement Bay.
24. Connect up with the starting point in such a way to not intersect land.

Note: When applicable, all boundaries follow centerlines of streets and waterways

State of Washington
Liquor Control Board

3000 Pacific Ave SE
 Olympia Washington 98504
 (360) 664-1600
WWW.LIQ.WA.GOV

CONTRACT AMENDMENT

Contract Number:

K157

Date Issued:

01/31/11

Amendment Number:

1

Date Effective:

01/31/12

This Contract Amendment is issued under the contract identified above. The changes authorized are within the scope of the original contract. All rights and obligations of the parties shall be subject to and governed by the terms of the original contract including any subsequent amendments, which are hereby incorporated by reference.

Purpose of Amendment

This purpose of this amendment is for the WSLCB to grant the Puyallup Tribe of Indians an additional liquor store location in accordance with section 1.3.4 of the Agreement and to update the mailing address for Marine View Ventures:

- Section 7.4 of the Agreement shall be modified to add additional Tribal Store at the following address:
 208 Norpoint Way NE
 Tacoma, WA 98422
- Section 9.2.6 of the Agreement shall be updated to reflect the new address for Marine View Ventures as:
 1409 Alexander Avenue E
 Fife, WA 98424
- All other terms and conditions of the contract shall remain unchanged.

Authorizing Signatures

This contract amendment, consisting of 1 page is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.

Puyallup Tribe of Indians:

Washington State Liquor Control Board:

Herman Dillon Sr., Chair
 Puyallup Tribe of Indians

1/27/12
 (Date)

Sharon Foster, Board Chair

2-7-12
 (Date)

Ruthann Kurose, Board Member

2/7/12
 (Date)

Chris Marr, Board Member

2/7/12
 (Date)

Contact Name

Andrea George,
 Tribal Attorney

Contact Name

Pat D. McLaughlin, C.P.M., CPIM
 Director of Business Enterprise

Telephone No.

253-573-7874

Telephone No.

360-664-1689

E-mail

andrea.george@puyalluptribe.com

E-mail

pdm@liq.wa.gov