



LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD · BELLINGHAM, WASHINGTON 98226 · (360)384-1489

DEPARTMENT _____

DIRECT NO. _____

June 28, 2011

WSLCB MS: 43090

JUN 29 2011

James Lunsford
Contracts, Procurement & Support Services Manager
Washington State Liquor Control Board
3000 Pacific Ave SE, PO Box 43085
Olympia WA, 98504-3085

Re: Lummi Nation Agreement with the Liquor Control Board

Dear Mr. Lunsford:

The purpose of this letter is to confirm that the Lummi Indian Business Council, the governing body of the Lummi Nation (the Nation), has accepted the terms that are contained in the "Agreement between the Washington State Liquor Control Board and the Lummi Tribe of Indians" that was exchanged by email in early May.

Enclosed with this letter are two documents, (1) the Lummi Indian Business Council resolution No. 2011-071 to approve the agreement between the Board and the Nation and (2) three original copies of the Agreement. I've enclosed three copies, understanding that the Board will need an original and that the Nation would like two original copies, countersigned and returned to me. My address is included in the letterhead, please send the countersigned documents to my attention.

As you know, the Lummi Nation has amended its Liquor Code, Title 20 of the Lummi Code of Laws. The purpose of the code amendment is to authorize, under tribal law, liquor sales from the new liquor store at the Lummi Gateway Center. Under federal law, the Nation is required to have the amended code certified by the Secretary of the United States Department of the Interior. The certification process requires publication in the Federal Register. The Liquor Code amendments will be published very soon. At that point, there will be both this new Agreement between the Nation and the Board and an amended Liquor Code that will allow liquor sales at the Gateway Center.

If you have any questions, please contact me. My email is dianab@lummi-nsn.gov and my phone number is 360-384-7150.

Kind regards,

Diana Bob

Diana Bob
Staff Attorney



LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 384-1489

RESOLUTION # 2011-071

TITLE: Approval of the Agreement between the Washington State Liquor Control Board and the Lummi Nation

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; and

WHEREAS, the introduction, possession, and sale of liquor on Indian reservations have, since treaty time, been clearly recognized as matters of special concern of Indian tribes and the United States and the control of liquor on reservations remains exclusively subject to their legislative enactments; and

WHEREAS, the Lummi Nation has regulated liquor sales since 1978 when the Lummi Code of Laws Liquor Code was enacted; and

WHEREAS, since 1984, the Lummi Nation has operated tribally-run liquor retail sales outlets under agreement with the Washington State Liquor Control Board and from time to time that agreement has been modified or amended; and

WHEREAS, the Lummi Nation has plans to open a new retail sales liquor outlet and the current agreement with the Liquor Control Board must be updated to recognize the new sales outlet; and

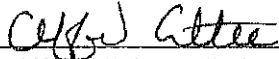
WHEREAS, an agreement has been negotiated preserving the Lummi Nation's right to regulate liquor sales on Lummi trust lands;

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 County" is approved.

BE IT FURTHER RESOLVED, that the Chairman is authorized to execute the Agreement in substantial conformity to the attached agreement; and

BE IT FINALLY RESOLVED, that the Chairman (or 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.

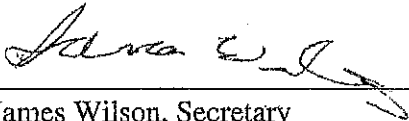
LUMMI NATION



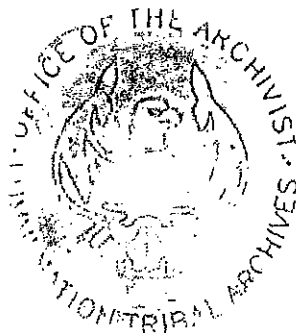
Clifford Cultee, Chairman
Lummi Indian Business Council

CERTIFICATION

As Secretary of the Lummi Indian Business Council, I hereby certify that the above Resolution #2011-071 was adopted at a **Regular/Special** Meeting of the Council held on the 7th day of May, 2011, at which time a quorum of 6 was present by a vote of 5 for, 0 against, and 0 abstention(s).



James Wilson, Secretary
Lummi Indian Business Council



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

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

Preamble

WHEREAS, the Lummi Tribe of Indians ("Tribe") is a federally recognized Indian Tribe, possessed of the full inherent sovereign powers of a government; and

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

WHEREAS, the Lummi Tribe of Indians and the Washington State Liquor Control Board ("Board") desire to enter into a government-to-government agreement ("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 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 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, Tribal Ordinance, and 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:

ORIGINAL

AGREEMENT

1. General Terms

- 1.1. The Washington State Liquor Control Board ("Board") agrees to sell spirits, wine, and beer ("Liquor") to the Lummi Tribe of Indians.
 - 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.
 - 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, except the Tribally owned and operated facilities may purchase directly from the Tribe.
 - 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 with options to extend for additional terms for a total term not to exceed eleven (11) years.

ORIGINAL

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 both parties are unable to satisfactorily establish a new agreement this agreement shall terminate in its entirety.

1.3.4. The Board and the Tribe shall negotiate in good faith.

2. Ordering Product

2.1. The Tribe shall order product for the Tribal stores from the Washington State Liquor Control Board Distribution Center (DC) located at 4401 East Marginal Way S, Seattle, WA 98134. The Tribe shall place timely orders no more than once per week.

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

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

2.1.3. 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.

2.1.4. 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.

3.1.1.1. 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 and beer 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.

4.1.1. The Tribe shall place payment for Liquor in the United States mail on the date the Liquor is delivered. Mailing address:

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

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

4.1.2.1. 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.

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

5. Tax Exemptions and Credits

5.1. Pursuant to WAC 314-37-010(2)(b), 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 twenty-one (21) years of age and older, certified by the Tribe and provided to the Board 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 its 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, thirty (30) days prior to the end of each year of this Agreement for this purpose.

5.1.4. 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 Licensees 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, however, 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 changes or modifications to standards for a liquor store, 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 Tribe shall keep all Liquor products sold at the Tribal Stores in the manufacturers' original containers and the products shall only be sold from stores within Indian Country.

7.3. The Tribal Stores are located at the following addresses:

Lummi Gateway Center
1344 Sunset Ave
Ferndale, WA 98248

Lummi Mini-Mart
4884 Haxton Way
Ferndale, WA 98248

7.4. Any relocation of the above-described Tribal Stores shall be subject to Board approval.

7.4.1. Such approval shall not be unreasonably withheld.

7.5. 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.

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

7.5.2. 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.

7.6. The Tribe may only advertise spirituous Liquor in print media that is primarily distributed in the market area to be served by the Tribal stores.

7.6.1. No advertising shall contain direct comparisons between the Tribe prices and State prices.

7.7. The Tribe shall not sell Liquor between the hours of 2:00 a.m. and 6:00 a.m.

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

7.7.2. The Tribe shall provide a written attachment to this Agreement containing the Tribal store operating hours, and any changes to the store 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.

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.

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

8.3. All sales of Liquor on Lummi Tribal Lands within Indian Country shall conform with the Tribe's federally approved Tribal Liquor Ordinance (37 CFR 10963), federal law and Washington State law relating to Liquor transactions.

8.4. The Tribe shall not import any Liquor into Lummi 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.

8.5.1. The Tribe may accept such items as are permitted to be accepted by licensees of the Board under applicable State law or Board regulations.

8.6. Should the Tribe's retail Liquor store(s) fail to comply with this Agreement, federal law, tribal ordinance, and provisions of Washington State Law relating to Liquor transactions, this Agreement shall be null and void.

9. Termination by Mutual Agreement

9.1. The Board and the Tribe may terminate this Agreement in whole or in part, at any time, by mutual agreement.

10. Assignment

10.1. This Agreement shall inure to the benefit of and be binding upon the parties named herein and upon their successors in interest. Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Tribe without prior written consent of the Board. Upon written request from the Tribe, the Board may authorize the assignment of this Agreement.

11. Dispute Resolution

11.1. 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 11.2 of this Agreement.

11.2. Informal Dispute Resolution Process

11.2.1. If either party believes a violation of this Agreement has occurred or disputes the interpretation of this Agreement by either party, it shall notify the other party in writing.

11.2.1.1. Notices shall be given as follows:

**Tribe: Chairman
Lummi Indian Business
Council
2616 Kwina Road
Bellingham, WA 98226**

**Reservation Attorney
Lummi Indian Business
Council
2616 Kwina Road
Bellingham, WA 98226**

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

**Administrative Director
Washington State
Liquor Control Board
P.O. Box 43080
Olympia, WA 98504**

11.2.2. The notice shall state the nature of the alleged violation or dispute and any proposed corrective action or remedy.

11.2.3. The party receiving notice shall have ten (10) days (not including weekends or holidays) to respond, unless the time to respond is extended by agreement of both parties, which agreement shall not be unreasonably withheld in order to allow complete and accurate response.

11.2.4. The parties shall meet within fourteen (14) days (not including weekends or holidays) of receipt of the response to the notice of violation or dispute, unless the parties agree in writing to a different date.

11.2.5. The purpose of the meeting shall be an attempt to resolve between them the issues raised by the notice of violation or dispute, and provide an opportunity to implement any agreed corrective action.

11.2.6. Unless agreed upon by the parties, after 40 calendar days from the date of the initial notice of violation or dispute, the parties cannot agree on whether a violation has occurred or cannot agree on corrective actions, either party may terminate this Agreement.

12. Sovereign Immunity

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

13. Integration

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

14. Modification

14.1. Any modification of this Agreement must be in writing, in the form of a mutually agreed upon written amendment to this Agreement and signed by personnel authorized to bind each of the parties.

15. Severability

15.1. The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

16. Assurances

16.1. The Board and the Tribe agree that all activity pursuant to this Agreement will be in accordance with all applicable current federal, state and local laws, rules, and regulations.

17. Conformance

17.1. If any provision of this Agreement violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

This Agreement shall begin upon on signature of all parties as provided below.

**WASHINGTON STATE
LIQUOR CONTROL BOARD**

LUMMI TRIBE OF INDIANS

Sharon Foster, Board Chair

Clifford Cultee
Clifford Cultee, Chairman

Date

June 28, 2011
Date

Ruthann Kurose, Board Member

Date

APPROVED AS TO FORM:

WSLCB CONTRACTS MANAGER

Mary M. Tennyson
Assistant Attorney General

James Lunsford
James Lunsford
Contracts, Procurement & Support
Services Manager

Date

6-29-2011
Date

Mary M. Neil
Mary M. Neil
Reservation Attorney

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 additional 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 to retail customers as an independent retailer. Unlike State Liquor Stores and Contract Liquor Stores, Tribal stores purchase their inventory 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, a new opportunity presented itself for the Tribe which already had a retail Liquor store. The Board assigned the Tribe's casino to the Tribe's retail Liquor store to purchase product needed by the casino for sale to its customers, thus allowing the Tribe to "resell" Liquor to the restaurant/bar licensee (casino). 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 when it purchases the product from the Board, and what it collects from its casino when the casino purchases product from the Tribe's retail Liquor store.

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 (casino).

Submitting requests is voluntary by the Tribe.

Position:

**WSLCB 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 the WSLCB) 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 no more than one calendar month.
- 5. Requests must be sent via e-mail to MerchAcct@liq.wa.gov and received by the WSLCB no later than forty-five (45) days after the last calendar day of the month for which the refund is requested.
- 6. Issues a credit memo to the Tribe which can be applied to subsequent invoice payments.

WSLCB 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 WSLCB Merchandise Accounting Supervisor in the Financial Division (360) 664-1680 or MerchAcct@liq.wa.gov .

Tribal Tax Refund (TTR) Request Process

