

2018-19



KALISPEL TRIBAL COUNCIL  
KALISPEL INDIAN RESERVATION  
USK, WASHINGTON 99180

**MEMORANDUM:** Tribal Council Action Form

**SUBJECT:** Amendment of Memorandum of Agreement between the Kalispel Tribe of Indians and The Washington State Liquor and Cannabis Board concerning the authorization of liquor sales.

**COUNCIL ACTION:**

The Kalispel Business Committee approves and adopts the Amended Memorandum of Agreement and authorizes Raymond Pierre, Vice Chairman, to sign on behalf of Glen Nenema, Chairman, to execute any and all documents necessary to complete the transaction contemplated by, and agreed to, in the Amended Memorandum of Agreement on behalf of the Kalispel Tribe.

**MOTION:** Darren Holmes

**SECOND:** Curt Holmes

**COUNCIL MEMBERS**

	VOTE CAST	
	(YES)	(NO)
<u>Darren Holmes</u>	✓	_____
<u>Curt Holmes</u>	✓	_____
<u>R. Pierre III</u>	✓	_____
_____	_____	_____

**COUNCIL ACTIONS:**

**SIGNED:** R. Pierre III

FOR: 3      AGAINST: 0  
 ABSTAINED: 0  
 FOR: 3  
 AGAINST: 0

**DATE:** 12-12-17

20171212.60

KALISPEL RESOLUTION NO. 2018-19



Kalispel Tribe of Indians  
P.O. Box 39  
Usk, WA 99180

(509) 445-1147  
(509) 445-5302 fax  
www.kalispeltribe.com

RESOLUTION

WHEREAS, the Kalispel Business Committee is the duly Constituted governing body of the Kalispel Tribe by the authority of the Constitution and By-Laws for the Kalispel Tribe; and

WHEREAS, under the Constitution and By-Laws of the Tribe, the Kalispel Business Committee is charged with the duty of protecting the health, security and general welfare of the Kalispel Tribe and all reservation residents; and

WHEREAS, the Kalispel Tribe of Indians wishes to amend the Memorandum of Agreement with The Washington State Liquor and Cannabis Board; and

WHEREAS, this Amended MOA is intended to provide a general framework for the government-to-government cooperation and coordination between the State of Washington and the Kalispel Tribe of Indians.

NOW THEREFORE, BE IT RESOLVED that the Kalispel Business Committee approves and adopts the attached Amended MOA between the Kalispel Tribe of Indians and the Washington State Liquor and Cannabis Board concerning authorization of liquor sales and authorizes Raymond Pierre, Vice Chairman of the Kalispel Tribe of Indians, to sign on behalf of Glen Nenema, Chairman, to execute any and all documents necessary to complete the transaction contemplated by, and agreed to, in the Amended MOA on behalf of the Kalispel Tribe.

CERTIFICATION

The Kalispel Business Committee adopted the foregoing RESOLUTION at a meeting held on the 12 day of December 2017, on the Kalispel Indian Reservation, with the required quorum present by a vote of 3 FOR and 0 AGAINST.

R. Pierre III vice-chair  
GLEN NENEMA, CHAIRMAN  
KALISPEL BUSINESS COMMITTEE  
(TERM EXPIRES JUNE 2020)

Darren Holmes  
DARREN HOLMES, SECRETARY  
KALISPEL BUSINESS COMMITTEE  
(TERM EXPIRES JUNE 2019)

20171212.00

AMENDED MEMORANDUM OF AGREEMENT  
Between  
THE KALISPEL TRIBE OF INDIANS  
And  
THE WASHINGTON STATE LIQUOR AND CANNABIS BOARD  
CONCERNING AUTHORIZATION OF LIQUOR SALES

I. Parties

The Parties to this Amended Memorandum of Agreement (“MOA”) are the Kalispel Tribe of Indians (the “Tribe”), and the Washington State Liquor and Cannabis Board (the “Board”) (collectively “the Parties”).

The Tribe is a federally recognized Indian tribe possessed of the full sovereign powers of a government. The Tribe, its enterprises, and other Tribally licensed businesses operate on the Tribe’s reservation and trust lands (hereafter “Indian Country”).

The Washington State Liquor and Cannabis Board is an executive department of Washington State government operating under the authority of the Governor, with statutory authority with respect to liquor licensure and operations under Title 66 RCW.

II. Purpose

The introduction, possession, and sale of liquor on Indian Reservations have long been matters of special concern to Indian tribes and to the United States federal government. Federal law currently prohibits the introduction of liquor into Indian Country, leaving tribes the decision regarding when and to what extent liquor transactions shall be permitted. After serious deliberation, the Tribe has determined that present day circumstances make a complete ban of liquor within Indian Country ineffective and unrealistic. At the same time, the need still exists for strict regulation and control over liquor distribution.

The Parties share a strong interest in ensuring that liquor sales in Indian Country are well-regulated to protect public safety and community interests. The Parties have entered into this MOA in order to strengthen their ability to meet these mutual interests.

The Parties acknowledge that pursuant to federal law, 18 U.S.C. § 1161, the federal prohibition on sale of liquor in Indian Country shall not apply to any act or transaction within any area of Indian Country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian Country, certified by the Secretary of the Interior, and published in the Federal Register. The Tribe has adopted a liquor ordinance which was certified by the Secretary of Interior and published in the Federal Register, as amended, on November 25, 2009.

The Parties further acknowledge that within the framework of federal Indian law, tribal law and state law, there are uncertainties and unsettled issues regarding jurisdiction, licensing, taxation, enforcement and other matters essential to the proper regulation of liquor sales in Indian Country.

The Parties therefore agree that it is in the best interests of the Tribe and the Board, on behalf of the State of Washington, that they enter into an agreement to provide certainty and cooperation in this area of mutual concern.

This MOA is intended to provide a general framework for the government-to-government cooperation and coordination between the State of Washington and the Kalispel Tribe of Indians regarding the sale of liquor in Kalispel Tribal Indian Country. This MOA is not intended to address the siting or operation of a liquor store, and does not supersede or affect the validity or interpretation of any agreement between the Parties regarding the

siting or operation of a liquor store, including the Agreement Between the Washington State Liquor Control Board and the Kalispel Tribe of Indians for the Purchase and Resale of Liquor in Indian Country, dated November 2, 2010.

The Parties originally entered into a Memorandum of Agreement Concerning Authorization of Liquor Sales on June 11, 2011. Since that time there have been changes to the Operating Plan and several new agreements that have been entered. The purpose of this Amended MOA is to update the Operating Plan and to incorporate the terms of the other existing agreements entered between the Parties. The following are the other agreements which are hereby incorporated and attached:

- A. First Supplement to the Memorandum of Agreement effective February 27, 2013.
- B. Contract Amendment Effective April 30, 2012.
- C. Approval of Sponsorship at the Pend Oreille Pavilion dated June 6, 2014.

### III. Definitions

- A. Board means the Liquor Control Board and its staff.
- B. Indian Country means the lands of the Kalispel Tribe of Indians as defined by 18 U.S.C. § 1151, including the Kalispel Indian Reservation and all lands held in trust or in restricted fee status by the United States for the Tribe or its Tribal Members.
- C. KLOC means the Kalispel Tribal Law and Order Code.
- D. MOA means this Memorandum of Agreement.
- E. Parties means the Board and the Tribe.
- F. Tribal Enterprise means a business owned in whole or in part by the Tribe or the Kalispel Tribal Economic Authority ("KTEA") and authorized to sell alcohol products under the KLOC.
- G. Tribal Member means an enrolled member of the Kalispel Tribe of Indians.
- H. Tribally-Licensed Business means a business licensed by the Tribe pursuant to the KLOC or other Tribal Ordinance.
- I. Tribe means the Kalispel Tribe of Indians.

### IV. Terms of Agreement

- A. Liquor Licensing.
  - 1. Tribe and Tribal Enterprises. The Parties agree that the State's licensing process does not sufficiently address unique jurisdictional and other matters that arise in Indian Country under federal and tribal law and that the Parties have a longstanding disagreement with respect to the application of state law to Tribal liquor sales. Therefore, the Parties agree that in lieu of maintaining and/or obtaining one or more state licenses for the sale of liquor in Indian Country, the Tribe and its Tribal Enterprises shall hereafter make liquor sales in Indian Country pursuant to the terms of this MOA.
  - 2. Tribal Members and Tribally-Licensed Businesses. Tribal Members and Tribally-Licensed Businesses located in Indian Country will comply with all applicable State licensure requirements and State law, and prior to issuance of any State license, will obtain approval from the Tribe to sell liquor in Indian

Country pursuant to KLOC. No enterprise owned and operated by a Tribal Member or Tribally-Licensed Business shall be considered a "location" for purposes of this MOA.

B. Locations of Sales.

1. Current Locations. The Tribe and Tribal Enterprises currently make liquor sales in Indian Country at the following location(s) under the state license(s) specified below:

- a. Northern Quest Resort & Casino  
MOA License Number: 082935  
License Type: Hotel  
Address: 100 N. Hayford Road, Airway Heights, WA 99001
- b. Kalispel Market (Hayford Road)  
MOA License Number: 406857  
License Type: Convenience/Grocery Store  
Address: 220 S. Hayford Road, Airway Heights, WA 99001
- c. Kalispel Market (HWY 2)  
MOA License Number: 082935  
License Type: Convenience/Grocery Store  
Address: 11514 West SR2, Airway Heights, WA 99001
- d. Crossroads Family Restaurant  
(Current Restaurant Beer & Wine License Type 360575 – this will change to reflect MOA language after execution of MOA.)  
421341 HWY 20  
Usk, WA 99180

The Parties agree that liquor sales currently allowed pursuant to the licenses specified above, as well as additional liquor sales not currently authorized under such licenses that the Tribe and its Tribal Enterprises may wish to add or modify at these or other locations in the future, shall hereafter be governed by the terms of this MOA in lieu of otherwise applicable state law.

2. New or Expansion of Current Locations. The Tribe and Tribal Enterprises may amend or expand the locations where liquor is sold and/or served as listed in subsection (B)(1) in accordance with the terms set forth in this MOA. The Tribe and its Tribal Enterprises shall notify the Board in writing of the addition of a new location for sale or service of alcohol and/or the addition of privileges at an existing location. For new locations within the footprint of an existing facility or for the addition of privileges at an existing location, said notification shall be provided at least 30 days prior to the effective date of said change. For new locations outside the footprint of an existing facility, said notification shall be provided at least 60 days prior to the effective date of said change. The information to be provided will include:

- a. The identity of the entity which is operating the facility;
- b. Location of the premises;
- c. Certification that the premises is located in Indian Country;
- d. Certification to the Board by the Tribe that the Tribe has adequately addressed the issues necessary to prevent the misuse of alcohol and prevent minor access to alcohol at the locations pursuant to subsection (C)(2) and (3) below; and

- e. An update to the Tribe's Operating Plan referenced in subsection (C)(2) and (3) below.
- f. If the new location is outside the original footprint, identify how the location will be policed, i.e., Tribal police or other law enforcement or Tribal regulatory agency for service calls or regular patrols.
- g. If the new location has off-premises sales and there is a drive-through window, the Tribe will provide written verification that no liquor sales will take place through said drive-through window.

The Board will then do the following:

- a. Determine if the additional location necessitates fee re-negotiation;
  - b. Notify the appropriate parties in Enforcement to determine impact.
3. Without resolving jurisdictional questions that may arise, the Board and the Tribe agree that it is in the best interests of both Parties that notice be provided to neighboring jurisdictions prior to the opening of a new location where liquor sales will be made.
- a. When the Tribe or its Tribal Enterprises proposes to open an additional location at a new and unique address in Indian Country, the Board will provide written notice to the city, or if outside city limits, the county in which the sales will occur. The Board and the Tribe agree that the primary purpose of the notice is to facilitate an exchange of information that may be helpful to all parties concerned in addressing unanticipated impacts with the understanding that such notice related to Indian Country is primarily a matter of intergovernmental courtesy.
  - b. When any other business operating in Indian Country applies for a liquor license, the Board agrees that such license will not be granted without the business first obtaining express written consent of and licensure by the Tribe, as required by the KLOC.

#### C. Tribal Authority and Jurisdiction

1. Conditions. Without determining the scope of the legal authority of either party to regulate the sale of liquor by the Tribe in Indian Country, the Parties agree that it is in the mutual interest of the Tribe and the Board that the Tribe and its Tribal Enterprises be authorized to sell liquor under the terms of this MOA. Therefore, when the following conditions are met, the Board agrees that for the purposes of Title 66 RCW, and related provisions of state law, the Tribe and its Tribal Enterprises will be treated as holding the necessary authority to make liquor sales. To the extent necessary, the Board agrees to work with the Tribe and with any third party distributors to assure such distributors that the Tribe is legally authorized to purchase liquor pursuant to the terms of this MOA.
2. Liquor Sales Authority. The Board agrees the Tribe and its Tribal Enterprises are authorized to sell and/or serve liquor in Indian Country provided they have submitted an approved Operating Plan containing the following elements:
  - a. The location, nature, and times of liquor sales (see Exhibit A);
  - b. The training of staff involved in liquor sales. It is required that persons responsible for serving alcohol for on-premise consumption possess a Mandatory Alcohol Server Training (MAST) permit (see Exhibit B);

- c. A regulatory enforcement and compliance plan (see Exhibit C); and
  - d. Consideration of proximity of alcohol sales to a school, church, or non-tribal public institution;
  - e. Confirmation that the land on which alcohol sales are to occur is either reservation or trust land held by the Tribe (see Exhibit D);
  - f. Any lease, purchase, partnership or franchise agreement with a non-tribal entity which directly relates to the location where alcohol is sold or served;
  - g. A copy of the Tribe's ordinance permitting the sale of liquor in Indian Country (see Exhibit E);
  - h. Other information as deemed necessary by agreement between the Board and the Tribe.
3. On-Premise Consumption. In addition, for locations providing liquor service by the drink for on-premises consumption, the Tribe shall include in its Operating Plan the following factors, as applicable to each particular location:
- a. The location, nature, and times of alcohol and food service (see Exhibit A);
  - b. A description of how the Tribe will prevent the sale of alcohol to persons under 21 years of age and those who appear to be intoxicated (see Exhibit B);
  - c. A security plan. Those serving alcohol must at minimum possess a valid Mandatory Alcohol Server Training permit (see Exhibit B);
  - d. The nature of any special events or entertainment events hosted on the premises including security and alcohol service plans for these events (see Exhibit B); and
  - e. Any other special conditions considered necessary to protect public safety based on the type of events to be held at Tribal facilities.
4. Consultation and Agreement on the Operating Plan. In consultation with the Tribe, the Board will then determine if the Tribe has met the public safety requirements consistent with Title 66, RCW and Title 314 WAC together with the provisions of this MOA. The Board acknowledges that no one license type under Title 66 RCW is applicable to the Tribe's operations and that one purpose of this MOA is to allow flexibility with respect to Tribal operations. The Tribe and the Board agree that consultation with respect to the Operating Plan will occur in good faith and the Board's approval will not be unreasonably withheld. The Board will make every effort to accommodate Tribal interests as reflected in the Tribe's proposed Operating Plan and any disapproval will include a clear explanation of the decision, its necessity in order to prevent misuse of alcohol and service to minors, and proposed alternatives. If the Tribe objects to the disapproval or to approval of any conditions imposed by the Board, it may invoke the dispute resolution provisions of subsection (F). The Board hereby approves the initial Operating Plan as attached as Exhibit A and the Safety and Training Provisions as attached as Exhibit B.
5. Annual Payment to the Board. The Tribe agrees to pay the Board \$5,000 annually in lieu of any license fees and \$1,644 in exchange for the selling of packaged spirits per the First Supplemental Agreement for a total of \$6,644. This annual fee shall be due on or before July 31 of each year this MOA is in effect. Either party may invoke a renegotiation of this fee based on substantial changes to the Operating Plan (Exhibit A) or the Enforcement/Compliance Plan (Exhibit C) where said changes

substantially modify the regulatory effort required by the Board. Notice by the party requesting renegotiation of this annual fee will include a written reason for the request.

6. Sponsorships/Advertising. The Board acknowledges and agrees that in lieu of holding any specific licenses under state law, the Tribe will be subject to the terms of this MOA. However, should the Tribe wish to enter into arrangements with a manufacturer, importer, or distributor for brand advertising and/or promotion of events at the Tribe's outdoor concert venue and the Pend Oreille Pavilion that, absent this MOA, would typically be regulated as part of a specific license, the Tribe will be allowed to enter into such arrangements upon the prior approval of the Board. This MOA grants the Tribe privileges afforded Sports Entertainment venues of 5,000 seats or more under RCW 66.24.570(6).

D. Enforcement. The Parties shall handle enforcement issues in accordance with Exhibit C.

E. Conditions and Limitations. The Board and the Tribe agree to the following conditions and limitations:

The Tribe agrees sales of liquor by the Tribe, its enterprises, and other Tribally licensed businesses will conform to Title 66 RCW to the extent required by 18 U.S.C. §1161. The Tribe will comply with RCW 66 and WAC 314 except as stated herein. To the extent any terms in this MOA conflict with RCW 66 or WAC 314, the terms of this MOA shall control. The Parties agree that RCW 66.24.010(2) which provides for criminal background checks of applicants is inapplicable to the Tribe and its Tribal Enterprises. Any other exemptions from statute must be negotiated individually between the Tribe and the Board.

F. Dispute Resolution.

1. Neither the Tribe, nor the Board, nor officers acting on either government's behalf, may petition any court to enforce this MOA unless (a) the dispute resolution process described in subsections (a) through (d) below has been followed in good faith to completion without successful resolution or (b) the other party fails to enter into the dispute resolution process. Should a dispute arise between the Tribe and the Board upon an issue of compliance with the MOA by either government, or by their officers, employees or agents, the Tribe and Board shall attempt to resolve the dispute through the following dispute resolution process:
  - a. Notice. 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.
  - b. Meet and Confer. 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 30 days of the date of the written notice described in subsection (a). The representatives of each government shall come to the meeting with the authority to settle the dispute. If the dispute is resolved, the resolution shall be memorialized in a writing signed by the parties.
  - c. Mediation. 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 (a) above, the parties shall engage the services of a 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 parties cannot agree on a format for the mediation process, the format shall be that directed by the mediator. If the dispute is resolved, the resolution shall be memorialized by the mediator and shall bind the parties.



d. Arbitration.

- (A) 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 the American Arbitration Association ("AAA"), but AAA need not administer the arbitration. If the arbitrator determines that a party is in violation of a material provision of this MOA, 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 MOA with sixty (60) days written notice.
  - (B) In the event that the Tribe disagrees with any final order of the Board pursuant to Exhibit C, Section 3(A)(iii)(b)(i), the Tribe may, within thirty (30) days of the Board's decision, initiate binding arbitration proceedings under the rules of the American Arbitration Association ("AAA"), but AAA need not administer the arbitration. Initiation of binding arbitration must be based on a final order issued by the Board and said arbitration is intended to substitute for judicial review of Board actions provided for in RCW 34.05, Part V of the Administrative Procedures Act. Initiating such arbitration will stay the Board's action at issue in the arbitration. The Tribe may present to the arbitrator that the Board's decision was inappropriate in light of mitigating circumstances or otherwise, and the Board may present extenuating circumstances or otherwise defend its decision. The arbitrator's decision to either uphold, reject, or amend the Board's decision shall be final and binding on the parties.
  - (C) Each party shall bear its own legal costs incurred under either subsection (A) or (B), and all costs of the arbitrator shall be shared equally.
2. If, at any time after the effective date of this MOA, the Board enters into an agreement, compact, or consent decree with any other federally recognized Indian tribe, of or relating to the regulation of liquor in Indian country which includes a "most favored nation" provision, then, upon the Tribe's written request, this MOA 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 MOA.
3. In any action filed by a third party challenging either the Tribe's or the State's authority to enter into or enforce this MOA, the Tribe and the State each agree to support the MOA and defend each of their authority to enter into and implement this MOA; provided, however that this provision does not waive, and must not be construed as a waiver of, the sovereign immunity of the Tribe including but not limited to or its Tribal Enterprises.

- G. Sovereign Immunity. The Board agrees that, the signing of this MOA by the Tribe does not imply a waiver of sovereign immunity by the Tribe or its Tribal Enterprises and is not intended by the Tribe as a waiver of sovereign immunity and that any action by the Board in regard to liquor sales by the Tribe shall be in accord with this MOA.
- H. No Limitation. The Parties agree that the signing of this MOA and the resultant benefits and obligations shall not be construed as limiting any otherwise lawful activity of the Tribe or its Tribal Enterprises nor subject the Tribe or its Tribal Enterprises to any state jurisdiction not agreed to in this MOA.
- I. Updated Information. The Tribe and its Tribal Enterprises will review any Operating Plan on an annual basis and notify the Board of any substantial changes in the plan or procedures. This review is in addition to the notification of changes in the service of alcohol reference in subsection (B)(2).

**V. Communication and Notice.**

- A. Designated Contacts. The Parties agree to maintain regular and open communication regarding the administration and implementation of this MOA. *The designated contacts for both parties are held by the position title rather than individuals. For ease of implementing the Agreement, current names of personnel in the designated positions are listed. Should a change in personnel occur the parties shall maintain open communication regarding the designated individuals and a change in personnel shall not require an amendment to the Agreement.*
- B. The Parties agree that the following positions are designated as primary contacts regarding administration of this MOA:

For the Liquor and Cannabis Board:

Nicola Reid  
Compliance & Policy Manager  
Liquor and Cannabis Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3080  
Nicola.reid@lcb.wa.gov  
360-725-0111

Joanna Eide  
Agency Tribal Liaison  
Liquor and Cannabis Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3080  
joanna.eide@lcb.wa.gov  
360-664-1622

Sheri Lopez  
LCB Enforcement Captain  
1303 W. Broadway  
Spokane, WA 99201-2053  
Sheri.lopez@lcb.wa.gov  
509-625-5513

For the Tribe:

Darren Holmes  
Tribal Administrator/Secretary of the Business Committee  
Kalispel Tribe of Indians  
P.O. Box 39  
Usk, WA 99180

djholmes@kalispeltribe.com  
509-445-1147

Michael Wernz  
Chief Financial Officer ("CFO")  
Kalispel Tribal Economic Authority  
100 N. Hayford Road  
Airway Heights, WA 99001  
mwernz@kalispeltribe.com  
509-481-6282

Gregory Werry  
Director of Food & Beverage  
Northern Quest Resort and Casino  
100 N. Hayford Road  
Airway Heights, WA 99001  
gwerry@northernquest.com  
509-481-2126

The Parties agree that if either party believes that the goals and objectives of this MOA are not being met, that they will meet promptly to discuss any issues and concerns.

C. Notice. Any notice that may be or is required to be sent under this MOA shall be sent as follows:

If to the Liquor and Cannabis Board: Compliance & Policy Manager  
Liquor and Cannabis Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3080

With a copy to: LCB Enforcement Captain  
1303 W. Broadway  
Spokane, WA 99201-2053

If to the Tribe: Chairman  
Kalispel Tribe of Indians  
P.O. Box 39  
Usk, Washington 99180

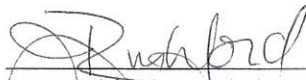
With a copy to: Tribal Administrator/Secretary of the Business Committee  
Kalispel Tribe of Indians  
P.O. Box 39  
Usk, WA 99180


CFO  
Kalispel Tribal Economic Authority  
100 North Hayford Road  
Airway Heights, Washington 99001

VI. Effect, Duration, and Amendment

- A. While the Parties intend to reach a perpetual agreement related to licensing of tribal liquor sales, this MOA shall remain in effect for an initial term of five (5) years unless the Parties mutually agree in writing that the MOA should be vacated or terminated and superseded by a new MOA between the Parties within that time frame. Should the Parties fail to negotiate a perpetual agreement during initial term of this MOA, the MOA shall automatically renew for additional one-year periods unless either party provides written notice to the other, no later than 120 days before the expiration of the then current one-year period, that they wish to modify the terms of the MOA.
- B. Amendment. No amendment or alteration of this MOA shall arise by implication or course of conduct. This MOA may be altered only by a subsequent written document, approved by the Parties, expressly stating the Parties' intention to amend this MOA.

This Amended MOA is hereby made this 12<sup>th</sup> day of December 2017.

  
\_\_\_\_\_  
Jane Rushford, Board Chair  
Washington State Liquor and Cannabis Board

 vice-chair for  
\_\_\_\_\_  
Glen Nenema, Chairman 12-12-17  
Kalispel Tribe of Indians

  
\_\_\_\_\_  
Ollie Garrett, Board Member  
Washington State Liquor and Cannabis Board

Absent  
\_\_\_\_\_  
Russell Hauge, Board Member  
Washington State Liquor and Cannabis Board

  
\_\_\_\_\_  
Rick Garza, Agency Administrative Director  
Washington State Liquor and Cannabis Board

\* The Board signed on 1/16/18 - see following page.


This Amended MOA is hereby made this 16<sup>th</sup> day of January, 2018.

  
\_\_\_\_\_  
Jane Rushford, Board Chair  
Washington State Liquor and Cannabis Board

\_\_\_\_\_  
Glen Nenema, Chairman  
Kalispel Tribe of Indians

  
\_\_\_\_\_  
Ollie Garrett, Board Member  
Washington State Liquor and Cannabis Board

Absent  
\_\_\_\_\_  
Russell Hauge, Board Member  
Washington State Liquor and Cannabis Board

  
\_\_\_\_\_  
Rick Garza, Agency Administrative Director  
Washington State Liquor and Cannabis Board

**EXHIBIT A**  
**OPERATING PLAN:**

Locations where alcohol is served on Kalispel Tribal Lands by the Tribe and/or Tribal Enterprises

A. Northern Quest Resort & Casino (Airway Heights), Operated by the Kalispel Tribal Economic Authority

#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
1	Hotel rooms	Hotel	6am-2am	Beer/wine/spirits and packaged bottles through room service;
2	Hotel Lobby	Hotel	6am-2am	Beer/wine/spirits (concierge services complimentary for hotel guests only). Occasional beer/wine/spirits tastings events (not limited to hotel guests.)
3	Lounge at Masselow's	Hotel bar	6am-2am	Beer/wine/spirits Bar service; table service
4	Hotel functions (meeting rooms, catered parties in hotel suites, etc.)	Meeting/party	6am-2am	Beer/wine/spirits Catered by staff
5	Masselow's	Fine dining	6am-2am	Beer/wine/spirits <sup>2</sup> Table service VIP bottle service <sup>3</sup>

<sup>1</sup> The Tribe reserves the right to change the hours of service of each location as business dictates without notice to the Board, provided that the Tribe does not sell, serve, or allow public consumption between 2am-6am. Any change in hours of service shall not be an "additional privilege" requiring notice to the Board under the MOA. Occasional changes in service for special events will not require an amendment to the MOA. For all locations tastings can be conducted as follows: guests over the age of 21 and not apparently intoxicated will be allowed a limited number and volume of complimentary samples of beer, wine, and/or spirits, served by MAST-certified employees within a designated location.

<sup>2</sup> Beer/wine/spirits means individual drinks and includes bottles of wine for on premises consumption unless otherwise specified.

<sup>3</sup> VIP bottle service: spirits bottles remains on site and poured only by MAST-trained staff. If a guest at the hotel it can be corked and delivered by room service to the room.

#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
6	Marketplace	Sundry shop and casual dining	6am-2am	Packaged beer/wine/spirits for on- and off-premises consumption. * Sale of packaged spirits for off-premises consumption as set forth in First Supplement to MOA (2013). Beer/wine/spirits for on premises consumption. Beer /wine/spirits tasting events
7	Cravings Coffee Stand	Coffee stand/kiosk on gaming floor	6am-2am	Beer/wine/spirits for on premises consumption
8	Catering (NQRC)	Occasional off-site catering of special events with liquor service	6am-2am	Beer/wine/spirits poured only by MAST-trained staff
9	Small outdoor venues (volleyball court, pool patio (pool service set forth with Spa); Epic patio)	Outdoor area	6am-2am, depending on event scheduled	Beer/wine/spirits Bar service; table service depending on event (room service menu available)

#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
* 10	Outdoor concert venue (e.g., Summer Concert Series)	Outdoor area with seating, stage, VIP tents	Before and during events	Beer/wine/spirts; drinks may be consumed anywhere within concert venue area, except spirits confined to minor restricted area  VIP bottle service (Includes sponsorship by a manufacturer, importer, or distributor for brand advertising and/or promotional events.)  (Includes sponsorship by a manufacturer, importer, or distributor for brand advertising and/or promotional events. This is an exception to RCW 66.24.570(6).)
11	Epic	Bar & restaurant	6am-2am	Beer/wine/spirts; Bar service/table service
12	Legends of Fire	Cigar lounge	6am-2am	Beer/wine/spirts Bar service; table service VIP bottle service
13	Liquid	Bar & lounge	6am-2am	Beer/wine/spirts (Bar service; table service)
14	La Rive Spa Includes the Indoor Pool	Spa	6am-2am	Beer/wine/spirts (included in some spa services or for individual purchase) and wine bottle service for on premises consumption with Spa Services or for promotional/open house events; special food events and room service/spa dining menu available. Pool area specific: in plastic cups beer/wine/spirts
15	The Deli	Fast food	6am-2am	Bottled beer and wine. Table service or pickup



#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
16	Fai's Noodle House	Table service restaurant	6am-2am	Beer/wine/spirits; Table service
17	River's Edge Buffet	Buffet dining	6am-2am	Beer/wine/spirits; Table service
18	The Turf Club	Casino/lounge	6am-2am	Beer/wine/spirits Table service; bar service
19	Casino floor	Casino	6am-2am	Beer/wine/spirits Table service, delivery (delivered by servers at guests' locations on gaming floor); and bar service including beverage carts, temporary and permanent bars.
20	Casino floor – South Bar	Casino	6am-2am	Beer/wine/Spirits Table service, delivery (delivered by servers at guests' locations on gaming floor); and bar services including beverage cart.
21	Casino floor – Center Bar	Casino	6am-2am	Beer/wine/Spirits Table service, delivery (delivered by servers at guests' locations on gaming floor); and bar services including beverage cart.
22	Casino floor – Non-smoking Bar	Casino	6am-2am	Beer/wine/Spirits Table service, delivery (delivered by servers at guests' locations on gaming floor); and bar services including beverage cart.

Permanent Bars - within original floor plan will require 30 days' notice for new locations and outside the original floor plan will require 60 days' notice for new locations. Notice will be sent to the Liquor and Cannabis Board Enforcement Captain.

#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
23	Impulse (Name change anticipated in 2018 notification to LCB Enforcement Officer.)	Nightclub/food and beverage venue	6am-2am	Beer/wine/spirits Bar service; table service VIP bottle service
* 24	Pend Oreille Pavilion (concerts/ sporting events/ functions/weddings, etc.)	Exhibition space	6am-2am	Beer/wine/spirits Table service (Meetings, dinners, etc.); bar service VIP bottle service Sporting events/ concerts: See Exhibit B (Includes sponsorship by a manufacturer, importer, or distributor for brand advertising and/or promotional events. This is an exception to RCW 66.24.570(6).)
* 25	Parking garage	Occasionally close floor to private event	6am-2am	Beer/wine/spirits Table/bar service; Special events: See Exhibit B, Section C (food services available at events either catered or other menu)
26	Shuttle bus	Transportation to special event with liquor service on board (e.g., bus to WSU for football game or to golf event)	6am-2am	Beer/wine/spirits supplied and poured by MAST trained staff; Private/Special events  This agreement will stand as an annual banquet permit.
27	Fatburger	Fast food/Food court	6am-2am	Beer /wine/spirits Table service or pickup

#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
28	FatTrailer Catering  No alcohol will be served if operating as a food truck and not catering an event	Catered services through Fatburger Catering Services	6am-2am	Beer/wine/spirits Table service or pickup
29	NQRC indoor/outdoors	Exhibition space	6am-2am	Temporary bar for specific events such as tastings or tradeshow; banquet bars outside of pavilion (beer/wine/spirit by the glass not by the bottle) larger event catered either internal or external that need additional service set up outside of the room.
30	South Expansion – Bar & Restaurant	Bar & restaurant	6am-2am	Beer/wine/spirits Table service or pickup
31	Qdoba	Fast food	6am-2am	Beer/wine/spirits Table service or pickup
32	Coffee Shop	Coffee shop	6am-2am	Beer/wine/spirits Table service or pickup

A copy of the Northern Quest Resort & Casino site plan is included herewith. All numbers in the first column correspond with those numbers on the site plan. An “\*” in the first column indicates that the notice provisions of Exhibit B, Section C(1)(a) will apply to that particular venue; however, at the Pend Oreille Pavilion, notice provisions will apply only to concerts and sporting events. Food is available for purchase at NQRC 24/7.

B. "252 acres" (Airway Heights), Operated by the Kalispel Tribal Economic Authority

#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
1	Kalispel Market (Hayford Road)	Convenience store and gas station	6am-2am	<p>Packaged beer, wine, and spirits for off-premises consumption</p> <p>Growlers of beer for off premise consumption sold to purchaser in a sanitary sealable container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale</p> <p>On premises Beer /wine/spirits (food requirements will be met)</p> <p>Table service or pickup</p>
2	Kalispel Market (HWY 2)	Convenience store and gas station	6am-2am	<p>Packaged beer and wine for off-premises consumption</p> <p>Growlers of beer for off premise consumption sold to purchaser in a sanitary sealable container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale</p>

C. Kalispel Tribal Land located in Pend Oreille County, WA, Operated by the Kalispel Tribe of Indians

#	Location	Type of Establishment	Hours alcohol is typically sold <sup>1</sup>	Nature of alcohol service (beer/wine/ spirits; self-service/ catered; etc.)
1	Crossroads Family Restaurant	Restaurant	6am-2am	Beer/wine/spirits Table service; bar service
2	Kalispel Market – Convenience Store	Convenience store and gas station	6am-2am	Packaged beer and wine for off-premises consumption Growlers of beer for off premise consumption sold to purchaser in a sanitary sealable container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale On premises Beer /wine/spirits Table service or pickup
3	Kalispel Tribe Casino	Restaurant	6am-2am	Beer/wine/spirits Table service; bar service
4	Kalispel Tribe Casino	Casino floor	6am-2am	Beer/wine/spirits Table service, delivery (delivered by servers at guests' locations on gaming floor); and bar service including beverage carts, temporary and permanent bars.

>> Locations #2 through #4 are scheduled to open in spring of 2018

**EXHIBIT B**  
**OPERATING PLAN:**  
**Safety/Training Provisions**

Because the introduction, possession, and sale of liquor in Indian Country have, since treaty time, been clearly recognized as matters of special concern to Indian tribes, the Tribe takes liquor regulation and safety extremely seriously. As a result, the Tribe has imposed strict policies and practices on its Tribal Enterprises that go above and beyond the State's requirements. Safe liquor consumption by its patrons is a top priority of the Tribe, and the Tribe makes a great effort to protect the public safety and community interest and trains its staff accordingly. The Tribe also evaluates events, utilizes its resources, and evaluates risk to best address, monitor, and appropriately control the sale and service of liquor at each of its locations and venues to preserve the public's safety.

A. Training.

1. Mandatory Alcohol Server Training (MAST). The following Tribal Enterprise employees will receive and maintain a valid MAST permit:
  - a. Managers and supervisors who supervise the sale and/or service of alcohol at all venues.
  - b. Servers and bartenders at all venues (Class 12 and Class 13 permits).
  - c. Security.
2. Additional training by the Tribe. The Tribe also provides ongoing training of all food and beverage service teams to heighten awareness related to public safety, including avoiding service to minors and intoxicated persons.
3. Additional training by the Board. Upon the Tribe's request, staff will work with the Tribe to provide any requested training and technical assistance for the prevention of violations of alcohol laws. Staff will meet with the Tribe and with Tribal Police as the Parties may deem appropriate for further training, collaboration, and communication on liquor issues.

B. Safety and Security Measures.

1. Minors. To ensure that alcoholic beverages are not sold to or consumed by persons under age 21, the Tribe will implement the following measures:
  - a. Staff will request ID from any guest appearing to be age 30 or under who is requesting to purchase an alcoholic beverage.
  - b. Staff will request ID from any guest in possession of an alcoholic beverage who appears to be of questionable age, and if guest cannot produce valid ID, the beverage will be confiscated and security will be notified.

- c. Staff will continue the already approved practice of limiting transport of alcoholic beverages throughout the property by allowing guests to carry open alcoholic beverages through, but not loiter in, common areas of Northern Quest Resort and Casino (NQRC) where minors are allowed.
  - d. Staff will accept only Board-approved forms of ID, including:
    - i. Driver's license, ID card, or Instruction Permit issued by any U.S. state or Canadian province.
    - ii. Washington temporary driver's license.
    - iii. Tribal enrollment card.
    - iv. Passport from any nation.
    - v. U.S. Military ID.
    - vi. Merchant Marine card issued by U.S. Coast Guard.
2. Intoxicated persons. To ensure that alcoholic beverages are not consumed by persons who appear to be intoxicated, the Tribe will implement the following measures:
- a. All staff involved in the sale and service of alcoholic beverages will be trained how to recognize the signs of intoxication.
  - b. Staff will refuse to sell alcoholic beverages to any person who appears to be intoxicated.
  - c. Sales for off-premises consumption. If a guest who appears to be intoxicated attempts to purchase packaged alcoholic beverages for off-premises consumption, staff will notify the manager on duty. The guest will be assessed using MAST procedures and a determination will be made whether to sell packaged alcoholic beverages to that guest.
  - d. Sales for on-premises consumption.
    - i. If a guest who appears to be intoxicated is seen in possession of or consuming an alcoholic beverage, or attempting to order an alcoholic beverage for on-premises consumption, staff will notify a food and beverage supervisor or manager. The guest will then be assessed using MAST procedures and a determination will be made if the guest is to surrender the drink if in possession of one, and notified that due to staff's observations, the guest will not be served any additional alcoholic beverages. The supervisor or manager will then gather information from the guest regarding his or her drink history for the day/night and use this information to complete an Intoxication Report that must be completed and submitted to the Director of Food and Beverage at the

end of the shift. If not staying the night at NQRC or another on-premises hotel, the guest will be offered non-alcoholic beverages and food if desired while waiting for a ride home or to another location where he or she will be spending the night by either a non-intoxicated personal acquaintance, or through a cab service, which will be provided by NQRC when necessary.

- ii. Guests who are apparently intoxicated and non-cooperative will necessitate security to be called and will be immediately escorted from the property and alternative transportation arranged. Specifically, security staff will first try and call a taxi for the guest. If the guest refuses the taxi and attempts to drive away, he or she will be notified that local police will be contacted that he has refused alternative transportation. Reports will also be filed by security regarding the incident and submitted to the immediate supervisor by the end of the shift.
  - e. Any team member who is suspected of over-serving will be investigated through surveillance tapes and reports filed by either the food and beverage manager or security team.
3. Additional security measures. The Tribe also has the following measures in place that will further ensure alcohol is safely served and consumed on site:
- a. The Tribe has certified MAST trainer(s) on staff.
  - b. NQRC, Kalispel Market (Hayford Road), and Kalispel Market (HWY 2) are under 24-hour surveillance.
  - c. Surveillance video is typically retained for seven (7) days at NQRC, thirty (30) days at Kalispel Market (Hayford Road) and eighteen (18) days at Kalispel Market (HWY 2) unless otherwise requested by the Board.
  - d. The ratio of service staff to patrons will be adequate to maintain the public safety for each event and will be increased based on level of risk, depending on the event.
  - e. Reasonable levels of security staff are present at NQRC at any given time.
  - f. Tribal Gaming Agents are on-site at the Casino 24/7.
  - g. Tribal police and EMTs on site at NQRC or on call 24/7.
  - h. The Airway Heights Police Department may also respond to police calls made by Tribal Enterprises in Airway Heights.
  - i. Tribal police and EMTs on site on the Reservation or on call 24/7.



- j. The Tribe understands that it, and not the Board, is responsible for all security and enforcement within a "darkened house."
- C. Special events. For special events (such as sporting events, concerts, etc.) at NQRC, the Tribe shall take the following extra precautions. For avoidance of doubt, these extra precautions will apply only to the special event itself, not to the rest of the Tribe's normal business operations.
  1. Schedule of events.
    - a. The Tribe will provide a quarterly schedule of special events to the LCB Enforcement Captain. The Tribe will update the schedule monthly as necessary.
    - b. Should the LCB Enforcement Captain have any concerns about the schedule or any plan for the events, the Parties will meet and confer in good faith to resolve those concerns.
  2. Unless prior notice is provided to Board staff of an alternate plan, alcohol sales will occur as follows:
    - a. At point of sale locations with proper lighting and where ID may be adequately checked;
    - b. With a maximum of two (2) drinks, one bottle of wine sold to an individual patron during one transaction, or VIP bottle service permitted per procedures outlined in Exhibit A;
    - c. With a minimum ratio of staff to attendees of 1 to 50 (this includes contracted individuals for special events.)
    - d. With posted signs at entrances and dispensing areas; and
    - e. Not within a certain amount of time before the end of the event
  3. Should the Tribe wish to deviate from this standard plan for any given event, the Tribe will notify the LCB Enforcement Captain in writing at least 14 days prior to the event. The parties will meet and confer in good faith to resolve any concerns with the Tribe's alternate plan.

**EXHIBIT C**  
**OPERATING PLAN:**  
**Enforcement/Compliance Plan**

1. Licensing.

- A. Tribal Enterprises. All Tribal Enterprises that serve alcohol must be licensed in accordance with Chapter 10 of the Kalispel Law and Order Code (KLOC).
- B. Other Business Enterprises. Other Business Enterprises includes Tribally-Licensed Businesses, such as Tribal Member Owned businesses and other Tribally Licensed Businesses excluding Tribal Enterprises. Other Business Enterprises must be licensed in accordance with 66.24 RCW and KLOC. The Parties acknowledge that the operators of Other Business Enterprises, not the Tribe, are responsible for ensuring that their employees obtain and maintain the appropriate permits.
- C. Employees. All employees who perform duties specified under State-issued Class 12 or 13 permits must hold such state-issued permits in order to perform such duties at any Tribal Enterprise, Tribal Member-Owned business, or Tribally-Licensed Business. The Parties acknowledge that the operators of Other Business Enterprises, such as Tribal Member-Owned businesses and Tribally-Licensed Businesses, not the Tribe, are responsible for ensuring that employees obtain and maintain the appropriate permits.

2. Enforcement.

A. Premises Checks.

- i. By the Tribe. The Tribe, through its Tribal Police or other authorized agency, may conduct its own premises checks in Indian Country to observe compliance with applicable liquor laws and this Agreement and to provide support and education to the employees of Tribal Enterprises, Tribal Member-Owned businesses, and Tribally-Licensed Businesses. The Tribe will share the results of such premises checks with the Liquor and Cannabis Board Enforcement Captain within seven (7) days.
- ii. By the Board. The Board, through its staff, may also conduct premises checks in accordance with RCW 66 and WAC 314. Prior to conducting any such check, the Board will contact Tribal Police to provide reasonable notice of such premises check, and Tribal Police may observe the premises check, provided they do not interfere with the check. The Board or designated staff will share the results of such premises checks with the Tribe within seven (7) days.
- iii. Cooperation. Should either Party have any concerns arising out of a premises check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the premises checks themselves; or of liquor service by the Tribal Enterprise, Tribal Member-Owned business, or Tribally-Licensed Business that was checked.

- iv. Other Businesses. Other Businesses, such as Tribal Member-Owned businesses and other Tribally-Licensed Businesses excluding Tribal Enterprises, are subject to premise checks conducted by Tribe and Board. Businesses found to be not in compliance with applicable laws are subject to related punishments and fines, including but not limited to, the revocation of their required operators licenses.

B. Compliance Checks – Minors.

- i. By the Tribe. The Tribe may conduct its own compliance checks in Indian Country using minors ages 18, 19, or 20 through its Tribal Police Department or other authorized agency in accordance with Tribal regulations and policies. The Tribe will provide the results of such checks to the Board within seven (7) days. No criminal action may be taken against any minor who purchases alcohol as part of such a compliance check.
- ii. By the Board. Board staff may also conduct compliance checks in accordance with RCW 66 and WAC 314. Prior to conducting any such check, the Board will contact Tribal Police to provide notice of such compliance check, and Tribal Police may view the check, provided they do not interfere with the check. The Board will share the results of such compliance checks with the Tribe within seven (7) days.
- iii. Cooperation. Should either Party have any concerns arising out of a compliance check or the results thereof, the Parties will meet in good faith to discuss any suggested changes to protocols of the compliance checks themselves; or of liquor service by the Tribal Enterprise, Tribal Member-Owned business, or other Tribally-Licensed Business that was checked.
- iv. Other Businesses. Tribal Member-Owned businesses and Tribally-Licensed Businesses, other than Tribal Enterprises, are subject to compliance checks conducted by Tribe and Board. Businesses found to be not in compliance with applicable laws are subject to related punishments and fines, including but not limited to, the revocation of their required operators licenses.

3. Complaints.

- A. Tribal Enterprises. When a complaint regarding liquor service at any Tribal Enterprise is received by either the Tribe or the Board, or when the Tribe or the Board otherwise have reason to suspect a violation either through a premises check or compliance check, the following steps will occur:

- i. Receipt of Complaint.
  - a. By Tribe. If the complaint is received by the Tribe, it will be communicated to the Tribal Police or designated Tribal regulatory agency (Board will be notified upon the designation of such agency). The Tribal Police or designated Tribal regulatory agency will then document the complaint and

provide a copy to the Liquor and Cannabis Board Enforcement Captain within seven (7) days.

- b. By Board. If the complaint is received by the Board, it will be communicated to the Tribal Police within seven (7) days.
- ii. Investigation. The Board will investigate the complaint in its discretion and in accordance with its policies and procedures.
- iii. Alleged Violation.
  - a. Employee. If the investigation is of an alleged violation by a Tribal Enterprise employee holding a MAST permit, the Board shall provide a copy of any written report to the Tribal Enterprise's management staff. The Board may take any action against the employee in accordance with its laws and regulations. Notice of any additional action taken against that employee by the Tribe will be provided to the Board. If the employee is a tribal member, the Tribe and the Board will work together to ensure that the Tribe's additional jurisdiction over that Tribal member is properly preserved and the Tribe will investigate and take such enforcement action as consistent with Tribal laws and procedures.
  - b. Tribal Enterprise.
    - i. If the investigation is of an alleged violation by the Tribal Enterprise, the Board shall provide a copy of any written report to the Tribal Enterprise's management staff. The Board may take any action against the Tribal Enterprise consistent with its laws and regulations, specifically WAC 314-29-020. If the Tribe disagrees with the action taken by the Board, the Tribe may proceed under the dispute resolution provisions contained in Section IV(F)(1)(d)(B) of this MOA. Notice of any additional action taken against any employee of the Tribal Enterprise by the Tribe will be provided to the Liquor and Cannabis Board Enforcement Captain within seven (7) days.

\*Tribe may assert that among other things, that some State prohibitions against "criminal" or "lewd" conduct as used in W.A.C. 314-29-020 do not apply to tribes, tribal government agencies, tribal employees, or in Indian Country, or that some "criminal" or "lewd" conduct does not fall within the scope of the Board's authority under 18 U.S.C. 1161.

- ii. If the Board alleges that the Tribe is not complying with any of the provisions of Exhibits A or B of this MOA, the Board and the Tribe shall seek resolution in accordance with the dispute resolution process outlined in Section IV(F) of this MOA.

- iii. For purposes of this Section only, each "location" in Exhibit A shall be deemed a separate location and violations against one location will not affect other locations.
  
- B. Other Business Enterprises. When a complaint regarding liquor service at any Tribal Member-Owned or Tribally-Licensed Business, not including Tribal Enterprises, is received by either the Tribe or the Board, it will be communicated to the other party within seven (7) days. Either party may take any appropriate action under its laws. The Board will provide notice of its findings and a copy of the report, violations imposed, and any other relevant information to the Tribe through the Tribal Administrator for further action by the Tribe under the KLOC, should the Tribe wish to further prosecute the licensee under the KLOC. Likewise, any information regarding any action taken by the Tribe or Tribal Court will be provided to the Liquor and Cannabis Board Enforcement Captain.
  
- C. Amendment. Should the Tribe desire in the future to take over more of the enforcement responsibilities, the parties agree to meet in good faith to amend this Agreement to provide as such.



KALISPEL TRIBAL COUNCIL  
KALISPEL INDIAN RESERVATION  
USK, WASHINGTON 99180

MEMORANDUM: Tribal Council Action Form

**SUBJECT:** Amendment of Liquor MOA re retail sales

COUNCIL ACTION:

The Committee hereby approves the First Supplement to Memorandum of Agreement Between the Kalispel Tribe of Indians and the Washington State Liquor Control Board Concerning Authorization of Liquor Sales and authorizes Chairman Nenema to take the necessary steps to execute it.

MOTION: Curt Holmes

SECOND: Darren Holmes

COUNCIL MEMBERS

VOTE CAST  
(YES) (NO)

<u>Darren Holmes</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Betty Puffgram</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Curt Holmes</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

COUNCIL ACTIONS:

SIGNED: Allen Nenema

FOR: 3 AGAINST: 0

ABSTAINED: 0

FOR: 3

AGAINST: 0

DATE: 2-19-13

# **FIRST SUPPLEMENT TO MEMORANDUM OF AGREEMENT**

**Between**

**THE KALISPEL TRIBE OF INDIANS**

**And**

**THE WASHINGTON STATE LIQUOR CONTROL BOARD  
CONCERNING AUTHORIZATION OF LIQUOR SALES**

## **I. Purpose**

The Parties share a strong interest in ensuring that liquor sales in Indian Country are well-regulated to protect public safety and community interests and as such, have already entered into a Memorandum of Agreement Between the Kalispel Tribe of Indians and the Washington State Liquor Control Board Concerning Authorization of Liquor Sales, dated June 7, 2011 ("MOA"), to that effect. The Parties now enter into this First Supplement to the MOA to address the retail sale of packaged spirits. All capitalized terms not defined herein shall have the same meaning as in the MOA.

## **II. Additional Terms**

### **A. Location of Sales of Packaged Spirits.**

The Tribe and its Tribal Enterprises may add the privileges outlined in RCW 66.24.630 related to the retail sale of packaged spirits at the two locations identified in section IV(B)(1) of the MOA. Additional locations may be added pursuant to sections IV(B)(2) and (3) of the MOA. Because the Tribe meets the grandfather provisions of I-1183 as a contract store in operation prior to the passage of I-1183, neither the 24-liter per sale nor the 10,000 square-foot limitations shall apply to retail outlets to be operated pursuant to this First Supplement or the MOA.

### **B. Fee for Services.**

In exchange for the privilege of selling packaged spirits, the Tribe and/or its Tribal Enterprises agree to pay the Board an annual fee for services in the amount of one thousand six hundred forty-four dollars (\$1,644). This fee shall be in addition to the annual payment described pursuant to section IV(C)(5) of the MOA. This fee shall be due upon the Tribe's first sale of packaged spirits as described herein, pro-rated for the first year, and then due on July 1 of each year thereafter, as long as packaged spirits sales continue and the MOA remains in effect.

### **C. Licensing Fee Requirements Not Applicable.**

The Board agrees that in lieu of the spirits retailer license fees imposed by RCW 66.24.630, the Board will accept payment as stated above and will not impose nor pursue collection of such licensing fees/taxes on sales by the Tribe and the Tribal Enterprises. In the event that new licensing fees or taxes on spirits retailers are added, or the existing licensing fees/taxes are modified, repealed, or replaced, as the result of legislation, initiative, referendum, court decision, or otherwise, the Parties agree that the fee for services as outlined herein shall remain in effect pending agreement of the Parties to a revised fee for regulatory services as the Parties agree is appropriate under the circumstances and that the Board shall not impose nor pursue collection of the new fees and taxes on sales by the

Tribe and the Tribal Enterprises. The Parties agree to meet and pursue discussions of the applicability of any new fees or taxes on an expedited basis.

D. Reporting Requirements.

In the event a Board audit of a distributor or other supplier to the Tribe reveals a discrepancy that can best be reconciled through comparison to the Tribe's sales records, the Tribe agrees, on the Board's request, to make available a detailed summary of its purchases from that supplier for the relevant time period. The Tribe's cooperation with the Board's request, if any, shall serve in lieu of submission of any mandatory reporting form(s) required of spirits retail license holders.

E. HB 2758.

The Parties acknowledge that Chapter 39 of the 2012 Washington Session Laws (HB 2758) provides that the Department of Revenue ("Department") may request that the Board suspend a taxpayer's spirits license if the Department determines that a taxpayer is more than 30 days delinquent in reporting or remitting spirits taxes. The Board asserts that a failure by the Tribe to pay a spirits tax alleged to be due and owing by the Department would constitute a breach of this First Supplement; however, the Tribe disagrees that such a result would necessarily ensue and preserves its right to dispute any tax assessment by the Department without penalty under this Agreement. In the event that the Board believes that the Tribe has failed to remit a spirits tax that the Department asserts to be validly and legally due and owing, the Board will notify the Tribe in accordance with Part V of the MOA. Within 90 days of the date of the notice, the Parties agree to meet and confer in an effort to resolve the issue consistent with any related settlement between the Tribe and Department or determination by a court of competent jurisdiction regarding the underlying tax assessment. If the Parties are unable to resolve the issue within six months of the date of the notice, either Party may invoke the dispute resolution provisions of section IV(F) of the MOA. This section E does not apply to sales where the Tribe or a Tribal Enterprise is the retail customer.

All terms of the MOA not otherwise revised herein shall remain in effect.

This Supplement is effective as of the 21<sup>st</sup> day of February, 2013.

\_\_\_\_\_  
Sharon Foster, Board Chair  
Liquor Control Board

Ruthann Kurose  
Ruthann Kurose, Board Member  
Liquor Control Board

Chris Marr  
Chris Marr, Board Member  
Liquor Control Board

Glen Nenema  
Glen Nenema, Chair  
Kalispel Tribe of Indians

Pat Kohler  
Pat Kohler, Executive Director  
Liquor Control Board



State of Washington  
**Liquor Control Board**  
 3000 Pacific Ave SE  
 Olympia Washington 98504  
 (360) 664-1600  
[WWW.LIQ.WA.GOV](http://WWW.LIQ.WA.GOV)

**CONTRACT AMENDMENT**

**Contract Number:**  
K193

**Date Issued:**  
April 30, 2012

**Amendment Number:**  
1

**Date Effective:**  
April 30, 2012

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**

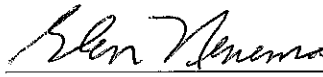
This purpose of this amendment is for the WSLCB to grant the Kalispel Tribe of Indians an additional liquor store location in accordance pursuant to Section 7.8 of the Agreement:

- Section 7.3 of the Agreement shall be modified to add an additional Tribal Store at the following address:  
 220 South Hayford Road  
 Airway Heights, Washington 99001
- All other terms and conditions of the contract shall remain unchanged.

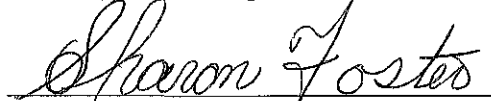
**Authorizing Signatures**

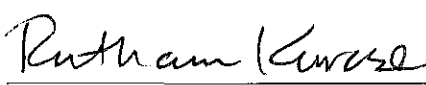
This contract amendment, consisting of 1 page is executed by the persons signing below who warrant that they have the authority to execute this contract amendment.


**Kalispel Tribe of Indians:**

  
 Glen Nenema, Chair  
 Kalispel Tribe of Indians  
 4-16-12 (Date)

**Washington State Liquor Control Board:**

  
 Sharon Foster, Board Chair  
 4/25/12 (Date)

  
 Ruthann Kurose, Board Member  
 4/25/2012 (Date)

  
 Chris Marr, Board Member  
 4/25/12 (Date)

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