

**AGREEMENT
CONCERNING TAXATION OF MOTOR VEHICLE FUEL
AND SPECIAL FUEL**

**BETWEEN THE LUMMI INDIAN NATION
AND THE STATE OF WASHINGTON**

I. RECITALS

1.1. The Lummi Indian Nation and the Washington State Department of Licensing (collectively "the parties") have conferred and engaged in government-to-government negotiations in accordance with the authority conferred upon them by their respective legislative bodies, including 1995 Wash. Laws ch. 320. This Agreement is the result of each party's mutual good faith effort to resolve the differences between the parties with regard to taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Lummi Indian Reservation.

1.2. Each party to this Agreement respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.3. The parties acknowledge that, pursuant to chapters 82.36 and 82.38 RCW, the State imposes taxes upon the distribution, sale, transfer, use or possession of motor vehicle fuel and diesel and other special fuels within the State, the revenue from which is used exclusively for highway purposes. The Tribe expends Tribal funds each year for public highways and traffic law enforcement within the Reservation, as well as for other essential governmental purposes.

ORIGINAL

1.4. The parties mutually acknowledge the need to maintain the integrity and quality of public roads within the Reservation.

II. PURPOSES OF THIS AGREEMENT

2.1. The parties agree that this Agreement constitutes a fair resolution and compromise of the parties' competing contentions. The parties intend that this Agreement completely resolve, as between them, all issues related to motor vehicle fuel taxes and special fuel taxes within the Reservation, and that this Agreement be binding upon the parties and upon persons subject to regulation by the parties.

2.2. This Agreement primarily addresses the establishment of a cooperative framework for taxation and regulation, by the Tribe and by the State, respecting the distribution, sale, transfer, use or possession of "motor vehicle fuel" and "special fuel" when such fuel is distributed, sold, used, or possessed within the Reservation.

2.3. In general, the parties intend that the State of Washington's statutory and regulatory law for taxation with respect to such fuel remain in full force and effect under this Agreement except with respect to:

- a. fuel distributed or sold to the Tribe that the Tribe uses for its essential governmental functions and Tribal businesses, and
- b. fuel distributed or sold to Tribal filling stations or Lummi businesses that operate Tribally-licensed filling stations within the Reservation, to the extent they

resell such fuel through their filling station pumps to Tribal members, Lummi businesses, Tribal businesses, or the Tribe, by depositing the fuel into the fuel tanks of motor vehicles owned or leased by such Tribal members or Lummi businesses, or into the fuel tanks of Tribal vehicles, where such fuel is not resold, distributed or transferred to any other person or entity.

III. DEFINITIONS

3.1. "Department" means the Washington State Department of Licensing, or any successor agency, and its officials, employees, and agents acting in their official capacity.

3.2. "Distributor" has the meaning given in RCW 82.36.010(3), as it now exists or as it may hereafter be amended.

3.3. "Essential governmental function" has the meaning given in 26 C.F.R. § 305.7871-1(d) (1994).

3.4. "Filling station" means a place of business operated for the purpose of delivering to the general public motor vehicle fuel or special fuel into the fuel tanks of motor vehicles.

3.5. "Lummi business" has the meaning governed by the following standards:

a. "Lummi business" means a business that is:

- (1) incorporated under the laws of the Lummi Indian Nation or possesses a Tribal Business License or a federal Indian trader's license allowing the business to operate within the Lummi Indian Reservation, and that is

- (2) wholly-owned and operated by an enrolled member or members of the Lummi Indian Nation.
- b. Owners of a Lummi business may include non-Tribal-member spouses, forbears, siblings, children, and grandchildren of Tribal member owners, so long as the collective ownership share of the non-Tribal members does not exceed 50%.
 - c. A person or entity shall not be deemed an owner of the Lummi business if that person or entity, together with any officer, director, owner, employee, agent, or other representative of that entity, meets all of the following criteria:
 - (1) The person or entity takes no part in the management or operation of the Lummi business except as an employee whose compensation or salary does not exceed that which is commensurate with the responsibilities of the position in comparable non-Indian businesses; and
 - (2) The person or entity does not share in the operating profits or losses of the Lummi business, except that reasonable commissions on sales that are comparable to industry standards shall not be considered a share in the operating profits or losses; and
 - (3) The person or entity does not share in the increase or decrease in the value of the Lummi business.

3.6. "Motor vehicle" means every self-propelled vehicle

designed for operation upon land utilizing motor vehicle fuel or special fuel as the means of propulsion.

3.7. "Motor vehicle fuel" has the meaning given in RCW 82.36.010(2), as it now exists or as it may hereafter be amended.

3.8. "Reservation" means the Lummi Indian Reservation together with Tribal trust lands located outside the boundaries of the Reservation over which the Lummi Indian Nation exercises governmental authority.

3.9. "Special fuel" has the meaning given in RCW 82.38.020(5), as it now exists or as it may hereafter be amended.

3.10. "Special fuel dealer" has the meaning given in RCW 82.38.020(7), as it now exists or as it may hereafter be amended.

3.11. "State" means the State of Washington.

3.12. "Tribe" means the Lummi Indian Nation including its Tribal government and is used herein interchangeably with the term "Lummi Indian Nation."

3.13. "Tribal business" means a business that is wholly-owned and operated by the Tribe. A person or entity shall not be deemed an owner of the Tribal business if that person or entity, together with any officer, director, owner, employee, agent, or other representative of that entity, meets all of the following criteria: (1) The person or entity takes no part in the management or operation of the Tribal business except as an employee whose compensation or salary does not exceed that which is commensurate with the responsibilities of the position in comparable non-Indian businesses; and (2) The person or entity does not share in the

operating profits or losses of the Tribal business, except that reasonable commissions on sales that are comparable to industry standards shall not be considered a share in the operating profits or losses; and (3) The person or entity does not share in the increase or decrease in the value of the Tribal business.

3.14. "Tribal filling station" means a filling station that is wholly-owned and operated by the Tribe or by a Tribal business.

3.15. "Tribal member" means a person who is an enrolled member of the Lummi Indian Nation.

3.16. "Tribal vehicle" means a motor vehicle owned or leased by the Tribe or by a Tribal business, or by the United States and assigned for use by the Tribe.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State of Washington and the Lummi Indian Nation shall cooperate to the extent legally permitted to ensure the enforcement of:

- a. The Tribe's laws with respect to the taxation and regulation of Tribal members and Lummi businesses that sell or deliver motor vehicle or special fuel within the Reservation;
- b. The State's laws and rules respecting the imposition and collection of its fuel taxes from all persons except as provided under this Agreement; and
- c. The terms of this Agreement.

4.2. Upon request, the Tribe shall inform the Washington

State Department of Licensing, or any successor agency, which persons or entities it knows to be engaged in the transport of motor vehicle fuel or special fuel to the Reservation.

Framework For Taxation And Regulation

4.3. Subject to ¶ 4.8, the Department shall collect Washington State motor vehicle and special fuel taxes in accordance with chapters 82.36 and 82.38 RCW, as they now exist or as they may hereafter be amended.

4.4. Except where the Tribe acquires motor vehicle fuel when acting as a distributor licensed under chapter 82.36 RCW, the Tribe, Tribal filling stations, and Tribal businesses shall purchase fuel subject to this Agreement only from persons who are properly licensed in Washington State to distribute fuel or act as a special fuel dealer in accordance with chapter 82.36 RCW and chapter 82.38 RCW, respectively. The Tribe shall require that Tribally-licensed filling stations shall purchase fuel only from persons who are properly licensed in Washington State to distribute fuel or act as a special fuel dealer or supplier in accordance with chapter 82.36 RCW and chapter 82.38 RCW, respectively.

4.5. Upon compliance with the procedures described in ¶ 4.9, the Tribe shall be entitled to a refund from the State of Washington Motor Vehicle Fund of the amount of motor vehicle fuel tax and special fuel tax that any seller, distributor or dealer of such fuels has paid to the State and passed on to, or collected from, the Tribe, a Tribal filling station, a Tribal business, or a Lummi business operating a Tribally-licensed filling station within

the Reservation, measured by gallons of such fuel that:

- a. (1) are delivered into and stored at the Tribe's own bulk fuel storage facilities within the Reservation; and (2) thereafter, are deposited only into the fuel tank of a Tribal vehicle; and (3) are used solely for the Tribe's essential governmental functions or Tribal businesses; or
- b. are resold at the pump, by a Tribal filling station or by a Lummi business operating a tribally-licensed filling station within the Reservation, (1) to Tribal members or Lummi businesses by deposit directly into the fuel tank of a motor vehicle owned or leased by them, or (2) to the Tribe or Tribal businesses by deposit directly into the fuel tank of a Tribal vehicle.

4.6. Refunds will be made quarterly upon application therefor by the Tribe. The refund process shall be that set out in RCW 82.36.270, RCW 82.36.310 and RCW 82.38.190. Unless the parties agree otherwise, applications shall be made upon the form attached to this Agreement, completed by an authorized representative of the Tribe. The application for refunds shall be based upon records maintained by the Tribe under ¶ 4.11, records of Lummi businesses operating Tribally-licensed filling stations upon the Reservation accurately maintained as required in ¶ 4.13 below, records of distributors, dealers, or sellers of fuel, and upon other records that the parties may agree to consider.

4.7. The Tribe, Tribal filling stations, Tribal businesses, Tribal members, or Lummi businesses may also be eligible for

refunds under the provisions of RCW 82.36.280, RCW 82.36.285, RCW 82.36.290, RCW 82.36.300, RCW 82.36.305, RCW 82.38.080, RCW 82.38.082, RCW 82.38.180, and similar state fuel tax exemption statutes that may be later adopted, but only (1) to the extent such statutes apply to the Tribe, the Tribal filling station, the Tribal business, the Tribal member, or the Lummi business, and to the particular use by them of motor vehicle and special fuels and (2) to the extent a refund is not available to the Tribe with respect to the same gallons of fuel under ¶ 4.5 of this Agreement.

4.8. If the Tribe qualifies and become licensed under chapter 82.38 RCW as a special fuel user and complies with the requirements of that chapter for special fuel users, ¶ 4.3 shall not apply as to special fuel sold or delivered to the Tribe. In that event, the Department may not collect the State's special fuel tax as to special fuel meeting all the criteria for refunds set out in ¶¶ 4.5.a or 4.7 above. However, the State may collect from the Tribe, and the Tribe shall pay to the State, the State's special fuel tax for all other gallons of special fuel obtained or used by the Tribe.

4.9. No refund of motor vehicle or special fuel taxes need be made by the State except as specifically set out in this Agreement. Except as specifically set out in this Agreement, the State may impose and collect, according to state law and regulation now existing or as may hereinafter be amended, the State's motor vehicle fuel and special fuel taxes with respect to any such fuel sold or distributed to, or used or possessed by, any person or

entity within the Reservation, including Tribal members and Lummi businesses who purchase bulk fuel.

4.10. Nothing herein shall preclude the Tribe from choosing to become a distributor or a special fuel dealer. Should the Tribe choose to become a distributor, the parties shall comply with the provisions of Chapter 82.36 RCW relating to distributors. Should the Tribe choose to become a special fuel dealer, the parties shall comply with the provisions of Chapter 82.38 RCW relating to special fuel dealers.

Tribal Records

4.11. The Tribe shall maintain records as set forth in this paragraph.

a. The Tribe shall maintain records indicating:

(i) the quantity of all motor vehicle fuel and all special fuel sold or distributed to, or otherwise obtained by, the Tribe;

(ii) the quantity of all motor vehicle fuel and all special fuel delivered into the Tribe's bulk storage facilities;

(iii) the quantity of all motor vehicle fuel and all special fuel withdrawn from the Tribe's bulk storage facilities;

(iv) the identity of each vehicle for which motor vehicle fuel or special fuel is withdrawn from the Tribe's bulk storage facilities; and

(v) the Tribal programs or Tribal businesses for

which all motor vehicle fuel and special fuel withdrawn from the Tribe's bulk storage facilities is used.

- b. Records relating to the use of fuel for which the Tribe may claim an exemption under ¶ 4.7 of this Agreement shall conform to the requirements for such records established by chapters 82.36 RCW or 82.38 RCW, and implementing rules.
- c. When the Tribe acts as a distributor of motor vehicle fuel, the Tribe shall maintain records in accordance with chapter 82.36 RCW and implementing rules. When the Tribe acts as a special fuel dealer, the Tribe shall maintain records in accordance with chapter 82.38 RCW and implementing rules.
- d. When the Tribe operates a Tribal filling station, the Tribe shall maintain records that conform to ¶ 4.13 of this Agreement.

4.12. The Tribe shall permit the State or its officers, agents, or designees to review the records described in ¶ 4.11 at the Tribe's regular business offices within the Reservation during the Tribe's regular business hours. The Tribe shall maintain such records for a minimum of five years from the sale, distribution, withdrawal, or use to which the record relates.

Tribal Laws

4.13. The Tribe shall establish and implement a procedure for regulation of fuel within the Reservation, including licensure by the Tribe of Lummi businesses that operate filling stations within

the Reservation. The Tribe's requirements shall be, at minimum:

- a. That Tribal licensure, and compliance with the Tribe's laws in connection therewith, shall be made conditions for the operation of a filling station by a Lummi business within the Reservation;
- b. That any Lummi business operating a filling station within the Reservation shall purchase fuel only from a distributor, or a special fuel dealer, licensed under chapters 82.36 RCW or 82.38 RCW as applicable, and that failure to comply with this provision shall result in enforcement action by the Tribe;
- c. That Lummi businesses that operate filling stations within the Reservation shall collect at the pump an amount equal to the State's motor vehicle fuel tax or special fuel tax, as applicable, upon each gallon of such fuel sold or delivered by those filling stations;
- d. That Lummi businesses operating filling stations shall require all Tribal members and Lummi businesses who purchase fuel to display a tribal enrollment card or other document identifying the purchaser as a Tribal member, a Lummi or Tribal business, or the Tribe;
- e. That no Tribal member or Lummi business that purchases fuels from such filling stations shall resell or transfer the fuel to any other person or entity;
- f. That any Tribal member or Lummi business that acquires fuel in bulk shall comply with chapters 82.36 and 82.38

RCW in acquiring and using such fuel;

- g. That Lummi businesses operating filling stations within the Reservation shall maintain records of all of their purchases of motor vehicle fuel and special fuel showing, for each transaction, (1) the identity of the distributor or dealer from whom the fuel was purchased, (2) whether the fuel involved is motor vehicle fuel or special fuel, (3) the number of gallons involved, and (4) the price paid to the distributor or special fuel dealer;
- h. That Lummi businesses operating filling stations within the Reservation shall maintain records of all sales of such fuels showing, for each transaction, (1) whether the fuel involved is motor vehicle fuel or special fuel, (2) the number of gallons involved, (3) the price, (4) the tax status of the purchaser (Tribe, Tribal business, Tribal member, Lummi business, or other), (5) whether the fuel was deposited directly into the fuel tank of a motor vehicle, and (6) whether an amount equal to the State's tax was collected;
- i. That the records of the filling stations be made available at any reasonable time for inspection or audit by the Tribe, and, pursuant to this Agreement, by the State or its employees or agents.

4.14. During each fiscal year (January 1 to December 31), the Tribe shall budget for the enforcement of traffic laws on highways, roads, or streets open to the public within the Reservation, or for

the design, construction, or maintenance of such highways, roads, or streets, at least an amount of money equal to (a) the amount of motor vehicle fuel tax and special fuel tax refunded under ¶ 4.5 of this Agreement, plus (b) any amount of special fuel tax not collected pursuant to ¶ 4.8 of this Agreement for which the Tribe would have been eligible for a refund under ¶ 4.5 had the tax been collected pursuant to ¶ 4.3. The Tribe shall furnish to the State or provide the State access to Tribal records demonstrating that the Tribe has complied with this paragraph. Access to such records shall be at the Tribe's business offices within the Reservation during the Tribe's regular business hours.

Dispute Resolution

4.15. Neither the Tribe, nor the State, nor officers acting on either government's behalf, may petition any court to enforce this Agreement unless (a) the dispute resolution process described in ¶ 4.16 has been followed in good faith to completion without successful resolution, or unless (b) the other party fails to enter into the dispute resolution process or terminates the process before its completion.

4.16. Should a dispute arise between the Lummi Indian Nation and the State upon an issue of compliance with the Agreement by either government, or by their officers, employees or agents, the Tribe and State shall attempt to resolve the dispute through the following dispute resolution process:

- a. 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. 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 ¶ 4.16.a. The representatives of each government shall come to the meeting with the authority to settle the dispute.
- c. If the parties are unable to resolve the dispute within 60 days of the date of the written notice described in ¶ 4.16.a., the parties shall engage the services of a mutually-agreed-upon qualified mediator to assist them in attempting to negotiate the dispute. Cost for the mediator shall be borne equally between the two governments.
- d. Both 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 upon a format for the mediation process, the format shall be that directed by the mediator. If the dispute is resolved, that resolution shall be memorialized by the mediator and shall bind the parties.
- e. If either party terminates the process before completion, the other party may petition the United States District

Court for the Western District of Washington for enforcement of the Agreement as to the disputed and unresolved issue or issues. If the parties cannot agree on who the mediator should be, or if the mediator determines that the dispute can not be resolved in the mediation process, or if the dispute is not resolved within 30 days of the date the mediator is selected, either party may petition the United States District Court for the Western District of Washington for enforcement of this Agreement as to the disputed and unresolved issue or issues.

- f. Subject to the dispute resolution processes set out herein, the parties consent to the jurisdiction of the United States District Court for the Western District of Washington in any action brought for the limited purpose of enforcing this Agreement. Neither party may assert sovereign immunity as a defense to such an action.

Implementation

4.17. The State and the Tribe, not less than one year after execution of this Agreement, shall confer, on a government-to-government basis, to evaluate the effectiveness of the Agreement and to attempt to mutually agree upon solutions to any problems that may have arisen.

4.18. The Tribe shall ensure that all Tribal members and Lummi businesses comply with all of the Tribal laws implementing ¶ 4.13.


4.19. Should any third party, in an action brought against the State or against any of its agencies, officials, employees, or agents, allege that the Tribe lacks authority to enter into this Agreement or to adopt or enforce the laws described in ¶ 4.13, the Tribe shall appear in the action and defend its authority.

4.20. This Agreement addresses only the taxation and regulation of motor vehicle fuel and special fuel and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

DATED this 3rd day of October, 1995.

LUMMI INDIAN NATION

WASHINGTON STATE DEPARTMENT
OF LICENSING

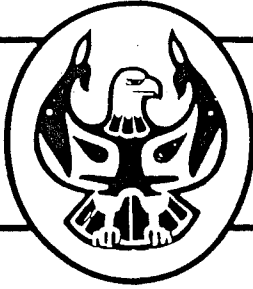

[Signature]
KATHA N. TAYLOR, Chairman

[Signature]
KATHY BAROS FRIEDT, Director

as to form:

[Signature]
HARRY L. JOHNSEN
Office of the Reservation
Attorney, Lummi Indian
Nation

[Signature]
FRONDA WOODS
Assistant Attorney General



LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA RD. • BELLINGHAM, WASHINGTON 98226-9298 • (360) 384-1489

DEPARTMENT _____ EXT: _____

RESOLUTION #95-126 OF THE LUMMI INDIAN BUSINESS COUNCIL

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 Nation of the Lummi Reservation, Washington, as approved on April 10, 1970, by the Assistant Commissioner of Indian Affairs; and

WHEREAS, the Lummi Nation and the State of Washington have entered into negotiations to resolve a dispute regarding the collection of motor vehicle and special fuel taxes on the Lummi Indian Reservation; and

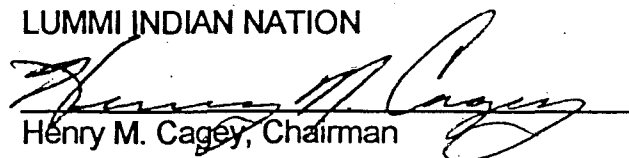
WHEREAS, the State of Washington has been authorized to resolve such disputes with Indian Tribes on terms substantially similar to those involved in the Consent Decree which settled the Federal District Court litigation known as Colville Confederated Tribes v. Washington Department of Licensing, et al. No. CY-92-248-JLQ, Eastern District of Washington; and

WHEREAS, the terms of the attached agreement are substantially similar to those involved in the Colville case and are acceptable to the Lummi Indian Business Council; and

NOW THEREFORE BE IT RESOLVED, that the Lummi Indian Business Council does hereby approve the attached Motor Vehicle and Special Fuel Tax Agreement with the State of Washington consisting of seventeen (17) pages specifically including the limited waiver of sovereign immunity found therein and ratifies the signature of Larry Priest, Vice-Chairman of LIBC, acting on behalf of LIBC; and

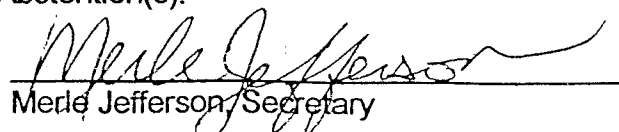
BE IT FURTHER RESOLVED, that the Chairman (or the Vice Chairman in his absence) is hereby authorized and directed to execute this resolution and any documents connected therewith, and the Secretary (or the Recording Secretary in his absence) is authorized and directed to execute the following certification.

LUMMI INDIAN NATION


Henry M. Cagey, Chairman

CERTIFICATION

As Secretary of the Lummi Indian Business Council, I hereby certify that the above Resolution #95-126 was adopted at a special meeting of the Council held on the 24th day of October, 1995, at which time a quorum of _____ was present, and was adopted by a vote of _____ For, _____ Against, and _____ Abstention(s).


Merle Jefferson, Secretary

CLAIM FOR REFUNDS OF FUEL TAX

**FUEL TAX REFUND
PERMIT NUMBER**

THIS PERMIT NUMBER MUST
APPEAR ON ALL CLAIMS FILED
FOR REFUND OF FUEL TAX

CLAIM PERIOD

From: _____
To: _____

FUEL TYPE: (CIRCLE ONE)

GAS DIESEL AIRCRAFT

FOR OFFICIAL USE ONLY

Important: Instructions on back of yellow copy

CODE	FUND	DATE	CCC	CODE	FUND	DATE	CCC	CODE	FUND	DATE	CCC	CODE	FUND	DATE	CCC
GALLONS				GALLONS				GALLONS				GALLONS			
COST				COST				COST				COST			

FUEL TO BE ACCOUNTED FOR

1. Opening Inventory _____

2. Gallons Purchased _____

3. **TOTAL TO ACCOUNT FOR**

CLAIM COMPUTATION

24. Refundable Gallons _____

25. Cost of Line 24 _____

26. Refund Claimed _____

27. Less: use tax _____

28. Less: coastal protection fund ... _____

29. **AMOUNT DUE Claimant**

**ACCOUNTING FOR TAX PAID FUEL
REFUNDABLE GALLONS**

Boats _____

Combines/Tractors _____

6. Stationary Engines _____

7. Unlicensed Vehicles _____

8. Metered Fuel _____

9. Cement Mixer _____

10. Transport Elderly/Handicapped _____

11. Garbage Truck _____

12. Fuel Oil/Milk Truck _____

13. Aircraft Mo-Gas _____

14. Tax Exempt Marine Dealer _____

15. Exported (submit cert.) _____

16. Other _____

17. **TOTAL REFUNDABLE**

LIST OF EQUIPMENT

TYPE	MAKE	YEAR
A.	_____	_____
B.	_____	_____
C.	_____	_____
D.	_____	_____
E.	_____	_____
F.	_____	_____
G.	_____	_____
H.	_____	_____
I.	_____	_____
J.	_____	_____

USE CLASSIFICATION

_____ Marine dealer	_____ Farming	_____ Commerical
_____ Logging	_____ Marine	_____ Construction
_____ Government	_____ Aircraft	_____ Other

NON REFUNDABLE

18. Licensed Vehicles _____

19. Sales/Deliveries _____

20. Unaccountable Fuel _____

21. Closing Inventory _____

22. **TOTAL NON REFUNDABLE**

23. **ACCOUNTED FOR**

INVOICE REQUIREMENTS

- Name and address of the seller
- Purchaser's name, equipment number/name, boat number, etc.
- Complete date of sale (month, day and year)
- Type of fuel delivered
- Number of gallons delivered
- Price per gallon
- Total amount of sale
- Amount of fuel tax paid. The amount of the tax paid need not be separately stated if the invoice bears the notation that the price includes the tax.

I certify under penalties of perjury that this claim is, true, correct and complete.

Signature _____ Date _____ Tel. No. _____