

1 AGREEMENT FOR THE COLLECTION AND DISSEMINATION
2 OF MOTOR FUEL TAXES WITHIN
3 THE BOUNDARIES OF THE COUER D'ALENE RESERVATION

4
5 BETWEEN THE STATE OF IDAHO
6 AND
7 THE COEUR D'ALENE TRIBE
8

9 THIS AGREEMENT, made and entered into this 16th day of October, 2007, by and
10 between the GOVERNOR of the STATE OF IDAHO, acting on behalf of the state, and the
11 COEUR D'ALENE TRIBE, a federally recognized Indian Tribe:

12
13 WHEREAS, the Tribe and State recognize and respect one another, and
14

15 WHEREAS, it is the desire of the Tribe and the State of Idaho to resolve issues relating
16 to the assessment or non-assessment of the state motor fuel tax on purchases of motor fuels by
17 the Tribe from non-tribal distributors or sold on the Reservation by the Tribe to consumers,
18 through this negotiated Agreement, without further litigation, and
19

20 WHEREAS, Chapter 288, Session Laws of the State of Idaho, 2007, provides, in part,
21 that taxes imposed by Chapter 24, Title 63, Idaho Code, shall not apply to motor fuels sold by
22 the Tribe within the reservation that are the subject of an agreement between the state of Idaho
23 and the Tribe, relating to the assessment, non-assessment, collection, refund and utilization of
24 fuel taxes, to the extent provided in the agreement, if an agreement concerning motor fuel taxes
25 has been signed by the Governor of the State of Idaho and an appropriate representative of the
26 Tribe before December 1, 2007, and
27

28 WHEREAS, the State and the Tribe are of the view that cooperation and negotiation
29 between the Governor, acting on behalf of the State of Idaho, and the Tribe relating to taxation of
30 motor fuels sold to the Tribe or sold by the Tribe within the boundaries of the Coeur d'Alene
31 Reservation, is desirable and mutually beneficial rather than litigating the applicability and effect
32 of state laws relating to state taxation of motor fuels sold to or received by the Tribe.
33

34 NOW THEREFORE, the parties to this Agreement do hereby, in consideration of the
35 promises, covenants and agreements contained herein, do agree, as follows
36

37 **ARTICLE I**

38
39 **DEFINITIONS, APPLICABILITY OF AGREEMENT, EFFECTIVE DATE & TERM OF**
40 **AGREEMENT**

41
42 A. DEFINITIONS: For the purposes of this Agreement the following terms are hereby
43 defined as follows:
44

45 1. “highway or roads” shall mean every place of whatever nature open to the use of
46 the public as a matter of right for the purpose of vehicular travel which is maintained by

1 the Tribe, the state of Idaho or an agency or taxing subdivision or unit of the state of
2 Idaho, or by the federal government or an agency or instrumentality of the federal
3 government.
4

5 2. "motor fuels" shall mean gasoline, special fuels, or any other fuels suitable and
6 used for the operation or propulsion of a self-propelled vehicle designed for operation, or
7 required to be licensed or registered for operation, upon a highway.
8

9 3. "state of Idaho motor fuel tax" shall mean the Idaho state excise tax imposed on
10 motor fuels pursuant to chapter 24, Title 63, Idaho Code, as the same may from time to
11 time be amended.
12

13 4. "net Tribal fuel tax revenues" shall mean revenues derived from collection of the
14 Tribal motor fuels tax, or an amount equivalent to such revenues, in excess of the
15 necessary costs of collection and administration of the Tribal motor fuels tax, and less
16 allowance for exemptions, refunds, credits and depletion allowances authorized by the
17 Tribal fuel tax law. Allowances for exemptions, refunds, credit and depletion allowances,
18 for the purpose of the determination of net Tribal fuel tax revenues, shall not be in excess
19 of amounts allowed for such purposes by the Idaho state fuel tax laws.
20

21 5. "Reservation" shall mean the Coeur d'Alene Indian Reservation.
22

23 6. "Tribe" or "Tribal" shall mean and include:
24

- 25 (a) the Coeur d'Alene Tribe;
- 26 (b) any corporation or other business entity which is wholly owned by the Coeur
27 d'Alene Tribe, or the Coeur d'Alene Tribe owns a controlling interest; or
- 28 (c) any business entity wholly owned by enrolled member(s) of the Coeur
29 d'Alene Tribe, or in which such enrolled member(s) owns a controlling
30 interest.
31

32 B. APPLICABILITY OF AGREEMENT: Nothing contained in this Agreement shall be
33 construed:
34

35 1. To be binding upon any federally recognized Indian tribe not a party to this
36 Agreement, nor set a precedent for agreement between the Governor, acting on behalf of
37 the state of Idaho, with any other federally recognized Indian tribe not a party to this
38 Agreement. Further, the terms of this Agreement shall not be considered to set a
39 precedent for the form or substance of future agreements between the Coeur d'Alene
40 Tribe and the Governor, acting on behalf of the State of Idaho relating to issues other
41 than fuel tax.
42

43 2. The parties agree that by entering into this Agreement, neither the State nor the
44 Tribe shall be deemed to have waived any rights, arguments, or defenses available in
45 litigation on any subject except as specifically provided in this Agreement.
46

1 3. To require either party to this Agreement to waive objections to jurisdiction to sue
2 or be sued in either state or federal court.
3

4 C. EFFECTIVE DATE AND TERM OF AGREEMENT: This Agreement is Perpetual, but
5 may be terminated or amended upon mutual agreement of the parties hereto, which
6 agreements shall be in writing and signed by the parties hereto. This Agreement shall be
7 effective on and after October 16, 2007.
8
9

10 ARTICLE II

11 ASSESSMENT OF TRIBAL AND STATE MOTOR FUEL TAX ON RESERVATION

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- 13
- 14 A. ASSESSMENT OF TRIBAL FUEL TAX. The Tribe, during the term of this AGREEMENT,
15 shall impose and collect a Tribal motor fuel tax on sales of motor fuel by retail outlets owned
16 by the Tribe or an enrolled Tribal member that is not less than the state of Idaho motor fuel
17 tax. In the event of an increase in the state of Idaho motor fuel tax above the current amount
18 of twenty-five cents (25¢) per gallon, the Tribe agrees that it will increase the tribal fuel tax
19 to an amount equal to the increased state of Idaho motor fuel tax. In the event the tax
20 increase is enacted by legislation passed during a regular session of the Idaho Legislature and
21 such legislation is to be effective on July 1 or thereafter, the increase in the tribal motor fuel
22 tax shall become effective on or before, but not later than, the same date as the state of Idaho
23 motor fuel tax, as determined by the Tribe. In the event the fuel tax increase enacted by the
24 Idaho Legislature contains an emergency clause or an effective date prior to July 1, the Tribe
25 agrees to increase the Tribal fuel tax to an amount equal to the state fuel tax within sixty (60)
26 days from the effective date of an increase in the state of Idaho motor fuel tax. During the
27 term of this AGREEMENT, Tribe shall not impose its Tribal motor fuel tax on non-tribal
28 retailers selling motor fuel within the boundaries of the Reservation.
29
- 30 B. ASSESSMENT OF STATE OF IDAHO MOTOR FUEL TAX. During the term of this
31 Agreement, the state of Idaho shall not impose the state of Idaho motor fuel tax upon, nor
32 assess or collect such tax from, a distributor, retailer, or any person who receives motor fuels
33 within the state, to the extent that such motor fuel is sold by such distributor, retailer, or any
34 person to the Tribe for resale of such motor fuel at Tribal locations within the boundaries of
35 the Reservation. Provided, however, this Agreement shall not affect or limit the ability of the
36 State to impose, assess, or collect the state of Idaho motor fuel tax on motor fuel received
37 within the state of Idaho by a distributor to the extent that such motor fuel is distributed to a
38 non-Tribal retailer within the boundaries of the Reservation.
39

40 ARTICLE III

41 COLLECTION AND UTILIZATION OF MOTOR FUEL TAX

- 42
- 43
- 44 A. COLLECTION OF MOTOR FUEL TAX. During the term of this Agreement:
45

- 1 1. The Tribe shall collect the Tribal motor fuel tax, in accordance with Tribal law and in
2 accordance with this Agreement, on motor fuel sold by Tribal retail outlets within the
3 boundaries of the Coeur d'Alene Reservation.
4
- 5 2. The State shall collect the state of Idaho motor fuel tax, in accordance with state law,
6 on motor fuel received in this state by a distributor and distributed to non-tribal retail
7 outlets within the Reservation.
8

9 B. UTILIZATION OF REVENUES. During the term of this Agreement:

- 10 1. The Tribe shall expend all net Tribal fuel tax revenues, or an amount equivalent
11 thereto, for the following purposes:
12
 - 13 a. The planning, construction, repair, and maintenance of roads and highways
14 within the state of Idaho, whether such roads are under the jurisdiction of the
15 Tribe, or under the jurisdiction of the state, county, city, or highway district,
16 or are within or outside the boundaries of the Reservation, and traffic
17 supervision of roads within the boundaries of the Reservation that are under
18 the jurisdiction and authority of the tribe, or such other traffic supervision
19 conducted by the Tribe that is pursuant to specific agreement between the
20 Tribe and the state, county or city having such jurisdiction or authority;
 - 21 b. The improvement of waterways and the creation and improvement of parking
22 areas for boating purposes, making and improving boat ramps and moorings,
23 marking of waterways, search and rescue, and all things incident to such
24 purposes,
 - 25 c. The acquisition, maintenance and improvement of areas adjacent to roads and
26 highways within the Reservation for the restoration, preservation, and
27 enhancement of scenic beauty, for use as informational sites, and for rest and
28 recreation of the traveling public, such areas to be parallel to and contiguous
29 with the road or highway,
 - 30 d. The provision of assistance to, or operation of, local and regional public
31 transportation systems, either on or off the Reservation, providing fixed transit
32 routes, and scheduled or unscheduled transit services provided by motor
33 vehicle, bus, rail, van, or other modes of public conveyance service for
34 members of the public, either on or off the Reservation, including the
35 provision of shuttle service for the elderly and disabled; shuttle and commuter
36 service between cities, counties, health care facilities, employment centers,
37 and educational institutions; or park-and-ride locations; subscription van and
38 car pooling services, or transportation services unique to social service
39 programs, either on or off the Reservation, and the management and
40 administration thereof,
 - 41 e. The payment of fees to the state of Idaho by the Tribe, either directly or
42 through a licensed distributor, pursuant to the Idaho Petroleum Clean Water
43 Trust Fund Act, or similar law, that is paid for the purpose of providing
44 casualty or liability insurance coverage to distributors or other entities,
45 including Tribal enterprises; or

1 f. For such other and additional purposes for which the State motor fuels tax is,
2 or may be, expended by state, county, city or highway districts, pursuant to
3 the laws of the state of Idaho.
4

5 2. The Tribe may, in the exercise of its agreement to expend revenues for the purposes
6 set forth in this Article III.B.1,

7 a. Cooperate with, and receive and expend aid and donations from the federal
8 government for transportation purposes, and receive and expend donations
9 from other sources for the construction and improvement of any highways or
10 roads either within or outside the boundaries of the Reservation;

11 b. Contract jointly with the state, counties, cities, and highways districts for the
12 improvement, construction and maintenance of roads and highways either
13 within or outside the boundaries of the Reservation;

14 c. Cooperate financially or otherwise with the federal government, counties,
15 highway districts, and cities for construction, improvement and maintenance
16 of roads and highways either within or outside the boundaries of the
17 Reservation.

18 d. Payment of funds by the Tribe to the state, counties, highway districts or cities
19 pursuant to contractual or cooperative arrangements set forth in this sub-
20 paragraph (2), shall constitute an expenditure of revenues for the purposes of
21 this Agreement, and Tribe shall not be responsible to account for the
22 application of such funds by the state, counties, highway districts, or cities.
23

24 ARTICLE IV

25 GENERAL PROVISIONS

26 A. Reporting / Auditing

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28 1. The Tribe agrees to report to the State of Idaho Tax Commission the total gallons of
29 motor fuel sold by Tribal retailers within the boundaries of the Reservation. The first
30 report shall cover the period from the effective date of the Agreement through March
31 31, 2008, and shall be filed on or before the twentieth day of April, 2008. Thereafter
32 such report shall be filed quarterly and shall be filed on or before the twentieth day of
33 the month following the end of the quarterly period to which the report relates
34 throughout the term of this Agreement. The Tribe further agrees to report all
35 expenditures made, or contracted to be made, by the Tribe for the purposes set forth
36 in Article III, of this Agreement, with the first report of such expenditures made or
37 contracted to be made, covering the period from the effective date of this Agreement,
38 through December 31, 2008, and annually thereafter. The report of expenditures
39 made, or contracted to be made, shall be filed with the Office of the Governor, on or
40 before March 1, for the period ending December 31 of the preceding year.
41
42

43
44 2. The State may audit the records of the Tribe to determine the accuracy of the
45 statements or representations called for under IV.A.1 of this agreement. The ability to

1 examine or audit shall exist only during the term of this Agreement and the costs of
2 the examination/audit shall be the responsibility of the State.

3
4 B. Non-waiver

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6 The execution of this Agreement by the Tribe shall not affect nor constitute a waiver of
7 any other claim or right to which the Tribe may be entitled with reference to exemption
8 from assessment for any other excise, property, income, or any other non-tribal tax
9 arising out of activities that occur with the Reservation.

10
11 C. Certification of the Parties

- 12
13 1. The Tribe certifies that this Agreement is entered into voluntarily, and without
14 coercion and for the purposes of avoiding litigation as to the subject matter covered
15 by this Agreement and for other significant and mutually beneficial purposes of both
16 parties to the Agreement. Further, the execution of this Agreement by the Tribe is
17 not, and shall not constitute a release, waiver or compromise of any defense, claim or
18 right of the Tribe that may be asserted or to which the Tribe may be entitled, except
19 as specifically provided in this Agreement.
20
21 2. The State certifies that this Agreement is entered into voluntarily and without
22 coercion, for the purposes of avoiding litigation as to the subject matter covered by
23 this Agreement and for other significant and mutually beneficial purposes of both
24 parties to the Agreement. Further, the execution of this Agreement by the State is not
25 and shall not constitute a release, waiver or compromise of any defense, claim or right
26 to which the State of Idaho may be entitled, except as specifically provided in this
27 Agreement.
28

29 D. Warranties

- 30
31 1. The parties hereto represent that this instrument contains all of the terms, provisions
32 and conditions of this Agreement and the subject matter covered thereby, that there
33 are no unwritten agreements or oral understandings existing as to the subject of this
34 Agreement, and that any amendment and/or modification of this Agreement shall not
35 be effective unless or until reduced to writing and properly executed by all parties
36 hereto.
37
38 2. That the individuals executing this Agreement are duly authorized to do so, on behalf
39 of each party.
40

41 E. Dispute Resolution

- 42
43 1. If either party believes that the other party has failed to comply with any requirement
44 of this Agreement, it shall invoke the following procedure:
45

- 1 a. The party asserting the non-compliance shall serve written notice on the other
2 party. The notice shall identify the specific Agreement provision alleged to have
3 been violated and shall specify the factual basis for the alleged non-compliance.
4 The State and the Tribe shall thereafter meet and confer within ten (10) working
5 days in an effort to resolve the dispute.
6 b. If the dispute is not resolved to the satisfaction of the parties within sixty (60)
7 days after service of the notice set forth in sub-paragraph (a) hereof, either party
8 may pursue arbitration to enforce or resolve disputes concerning the provisions of
9 this Agreement.

10
11 2. Both parties consent to arbitration as provided herein.

- 12
13 a. Either party may demand arbitration of disputes and controversies arising out of
14 or in connection with this Agreement, together with a statement of the matter in
15 controversy. Within thirty days after such demand, each party shall name an
16 arbitrator, unless the parties, by written agreement, agree to permit a decision by a
17 single arbitrator. If the parties are unable to agree upon a single arbitrator, the
18 arbitration shall be conducted by a panel of three arbitrators, one selected by each
19 party and a third to be selected by the first two from a panel of not more than five
20 names submitted by each party.
21 b. The arbitrator(s) shall declare the parties' rights under the terms of this
22 Agreement. The arbitrator(s) shall not have any authority, power or right to alter,
23 change, amend, modify, add to, or subtract from any of the provisions of this
24 Agreement.
25 c. An arbitration decision shall be made within one hundred twenty (120) days of
26 the selection of the arbitrator(s) unless extended by the arbitrators. Arbitrator(s)
27 shall have the power to issue orders and decisions as may be necessary to enforce
28 participation by the parties and as may be necessary or desirable to bring about an
29 expeditious and reasonable decision, including discovery. The arbitrator(s) shall
30 bill their fees equally to the respective parties. No former or present employee of
31 the State or State judge, or former or present Tribal employee or Tribal judge may
32 be designated as an arbitrator.
33 d. Limited Waiver. The arbitration decision shall be in writing and shall state the
34 basis for the decision and include detailed findings of fact and conclusions of law.
35 The Tribe and the State agree to a mutual limited waiver of their respective
36 immunities in connection with the jurisdiction of the arbitration and in any federal
37 court action to enforce, confirm, vacate, enforce the other party's obligation to
38 arbitrate, or modify an arbitral decision rendered in the arbitration, or enforce or
39 execute a judgment based on said decision.
40 e. Nothing contained herein shall be construed to preclude, limit or restrict the
41 ability of the parties to pursue, by mutual agreement, alternative methods of
42 dispute resolution, whether binding or non-binding, including, but not limited to,
43 arbitration or mediation; provided, however, that neither party is under any
44 obligation to agree to such alternative methods of dispute resolution.
45
46

1 F. Notices

2
3 All notices and other communications required to be given under this Agreement by the
4 Tribe and the State shall be deemed to have been duly given when delivered in person or
5 posted by United States certified mail, return receipt requested, with postage prepaid,
6 addressed as follows:
7

8 1. To the Tribe:

9
10 Chairman
11 Coeur d'Alene Tribe
12 P.O. Box 408
13 Plummer, Idaho 83851
14

15 2. To the State:

16
17 Office of the Governor
18 State Capitol
19 P.O. Box 83720
20 Boise, Idaho 83720
21

22 G. Covenants

23
24 The parties hereto covenant and agree that any declarations contained herein by any party
25 are for the purposes solely of this Agreement and are not and shall not be deemed to be
26 admissions, concessions, or a waiver of any claims or defenses that might be available to
27 either party, nor shall this Agreement be competent evidence in any judicial or
28 administrative proceeding or suit, other than a proceeding or suit involving a specific
29 subject covered by this Agreement.
30

31 H. Headings The headings have been inserted for convenience solely and are not to be
32 considered when interpreting the provisions of this Agreement.
33

34 I. Counterparts

35
36 This Agreement may be executed in two or more counterparts, each of which shall be
37 deemed an original but all of which together shall constitute one and the same instrument.
38

39 J. Entire Agreement

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41 This Agreement, which may include exhibits or appendices, constitutes the entire
42 agreement between the parties and supersedes all prior agreements or understandings
43 between the State and the Tribe relating to the assessment, non-assessment, collection,
44 refund and utilization of motor fuel taxes,
45

1 IN WITNESS THEREOF each party hereto has caused this Agreement to be executed by:

2
3
4
5
6
7
8
9

Coeur d'Alene Tribe
CHIEF ALLAN, CHAIR

State of Idaho
C.L. "BUTCH" OTTER, GOVERNOR

Chief Allan

C.L. Butch Otter

Signed this 16th day of October, 2007

Signed this 16 day of Oct., 2007