

**AGREEMENT  
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL  
BETWEEN THE NOOKSACK INDIAN TRIBE AND THE STATE OF WASHINGTON**

**I. RECITALS**

1.1. The Nooksack Indian Tribe is a federally recognized Indian Tribe with a reservation in the state of Washington. The Nooksack Indian Tribe will be referred to in this Agreement as the "Tribe".

1.2 The State of Washington ("State") is a state within the United States of America, possessed of full powers of a state government. The Department of Licensing is an agency of the State of Washington. The State of Washington and the Department of Licensing are referred to collectively in this Agreement as the "State". Senate Bill 5272, chapter 515, laws of 2007, effective May 15, 2007, amended certain sections of chapters 82.36 and 82.38 RCW to allow the Governor to enter into an agreement with any federally recognized Indian tribe located on a reservation within the State regarding motor vehicle and special fuel taxes. The legislation also authorized the Governor to delegate the power to negotiate such agreements to the Department of Licensing. The Governor has delegated this authority to the director of the Department of Licensing.

1.3 The Tribe and the State (collectively "the parties") have conferred and engaged in government-to-government negotiations in a mutual, good faith effort to reach an arrangement in regard to state fuel taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Nooksack Indian Reservation. Each party to this Agreement respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.4. The parties acknowledge that, pursuant to chapters 82.36 and 82.38 RCW, the State imposes state fuel taxes on motor vehicle fuel suppliers and importers and special fuel suppliers and importers, 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. The parties mutually acknowledge the need to maintain the integrity and quality of public roads within the Reservation.

1.5 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.

1.6 The Tribe and the State shall confer regarding regulation of filling stations operating within the jurisdiction of the Tribe to ensure such regulation is consistent with the intent and spirit of this Agreement.

1.7 By entering into this Agreement, the State does not concede that the Tribe has any immunity from the State's tax and tax collection provisions.

1.8 This Agreement is not intended, and will not be construed to confer a benefit or create any right on a third party, or the power or right of any third party to bring an action to enforce any terms of this Agreement.

## **II. PURPOSE AND OBJECTIVES**

2.1 This Agreement 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.

2.2 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.

2.3 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.

## **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” shall be used in this Agreement to refer to either a Motor Vehicle Fuel Distributor or a Special Fuel Distributor. “Motor Vehicle Fuel Distributor” has the meaning given in RCW 82.36.010(15), as it now exists or as amended in the future. “Special Fuel Distributor” has the meaning given in RCW 82.38.101(24), as now or as amended in the future.

3.3. “Essential governmental function” has the meaning given in 26 C.F.R. § 305.7871-1(d) (2000).

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. “Motor vehicle” means every self-propelled vehicle designed for operation upon land and utilizing motor vehicle fuel or special fuel as the means of propulsion.

3.6. “Motor vehicle fuel” has the meaning given in RCW 82.36.010(20), as it now exists or as it may hereafter be amended.

3.7. “Reservation” means the Nooksack Indian Reservation together with Tribal trust lands located outside the boundaries of the Reservation over which the Nooksack Indian Tribe exercises governmental authority.

3.8. “Special fuel” has the meaning given in RCW 82.38.020 (23), as it now exists or as it may hereafter be amended.

3.9. “State” means the State of Washington and the Washington State Department of Licensing.

3.10. “Tribe” means the Nooksack Indian Tribe.

3.11. “Tribal business” means a business that is owned and operated by the Tribe or by an enrolled Tribal member, so long as the business operated by an enrolled Tribal member is licensed or permitted by the Tribe to do business on the Reservation.

3.12. “Tribal Fuel Facilities” means a retail filling station that is owned and operated by the Tribe or by a Tribal business, and any facilities owned and operated by the Tribe or a Tribal business for bulk storage of Motor vehicle fuel or Special fuel.

3.13. “Tribal member” means a person who is an enrolled member of the Nooksack Indian Tribe.

## **IV. AGREEMENT**

### **Government-To-Government Cooperation**

4.1. The State of Washington and the Tribe 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, non-tribal filling stations, tribal filling stations and businesses that sell or deliver motor vehicle or special fuel within the Reservation, and Tribal trust lands where the Tribe exercises governmental authority;
- 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.

### **Framework for Taxation and Regulation**

4.2. 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. The Tribe agrees to purchase only fuel on which applicable state taxes have been paid.

- A. The Tribe shall by ordinance require non-tribal filling stations, tribal filling stations, tribal businesses, and tribal members to purchase only fuel on which state fuel tax has been paid, and to purchase fuel only from persons or companies operating lawfully in accordance with RCW 82.36 and RCW 82.38. Such ordinances shall become effective within 6 months of the execution of this Agreement, or unless otherwise agreed.
- B. The Tribe agrees to pass on to the retail customer the state tax included in the price of fuel and to not use the amounts of tax remitted or refunded to the Tribe to reduce the price at which fuel is sold from its retail outlets or any retail outlet operated by the Tribe or a tribal member.

4.3. Upon compliance with the record and audit procedures described in section 4.8 and 4.9, the Tribe shall be entitled to a refund equal to 75% of the tax paid on each gallon of motor vehicle fuel or special fuel purchased by the Tribe.

4.4 Tax paid on fuel purchased that is claimed for refund for Tribal government vehicles for Federal fuel tax purposes on Internal Revenue Service (IRS) claim form 4136 shall be entitled to a refund of 100% of the tax. A copy of the IRS form 4136 shall accompany the refund request. Such fuel must be used by the Tribe for its essential governmental functions and Tribal businesses.

4.5. The Tribe, Tribal filling stations, Tribal businesses, and Tribal members 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 82.38.080, 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 Tribes, the Tribal filling station, the Tribal business, and the Tribal member, and to the particular use by them of motor vehicle and special fuels and (2) to the extent a refund was not made to the Tribe under section 4.3 of this Agreement.

4.6. No refund of motor vehicle or special fuel taxes need be made by the State except as specifically set out in this Agreement.

4.7. The Tribe agrees to expend fuel tax proceeds retained by the Tribe or amounts equivalent thereto on: Planning, construction, and maintenance of roads, bridges, boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes.

#### Records and Audit Provisions

4.8. The Tribe shall:

- A. maintain invoices showing the number of gallons of motor vehicle fuel and special fuel purchased by the tribe for resale at tribal retail stations; and
- B. maintain records to document the use of fuel tax proceeds or their equivalent for the purposes identified in section 4.7 of this Agreement, and
- C. maintain Internal Revenue Service (IRS) Form 4136 and detail schedules reflecting the number of gallons claimed for refund for Federal fuel tax purposes.

The Tribe shall maintain such records for a minimum of three years.

4.9 The Tribe shall cause an audit to be performed annually or at such other interval as shall be agreed by the parties, by an independent third party auditor who shall be a certified public accountant in good standing, to review such records as are necessary to certify the number of gallons of motor vehicle and special fuel purchased by the Tribe for re-sale at Tribal filling stations, the amount of State tax included in the price of the fuel purchased by the Tribe, and the use of Fuel Tax proceeds or their equivalent for the purposes identified in section 4.7 above. The Tribe shall deliver a copy of the final written report of such audit to the Director of the State Department of Licensing.

4.10 The State agrees to treat as personal information under RCW 42.56.230(3)(b) any information received by the State or otherwise made available to the State by the Tribe, Tribal filling stations, Tribal businesses, and Tribal members, for review pursuant to this Agreement and to exempt such information from public inspection and copying.

## **V. DISPUTE RESOLUTION, TERM AND RENEWAL**

5.1. 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 sections 5.1.A. and 5.1.B. has been followed in good faith to completion without successful resolution, or unless (b) the other party fails to enter into the dispute resolution process or terminates the process before its completion. Should a dispute arise between the Tribe 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 section 5.1.A. The representatives of each government shall come to the meeting with the authority to settle the dispute.

- C. After completion of the process in sections 5.1.A. and 5.1.B., either party may terminate this Agreement with sixty (60) days written notice served upon the Chairperson of the Tribe and Director of the Department of Licensing.

5.2 This Agreement shall remain in effect for a five year (5) term, unless the parties mutually agree in writing that the decree should be vacated or terminated and superseded by a new agreement between the parties within that time frame. The Agreement shall automatically renew for an additional five year (5) period unless either party provides written notice to the other, no later than 90 days before the expiration of the five year (5) period, that they wish to modify the terms of the Agreement.

5.3 In any action filed by a third party challenging either the Tribe's or the State's authority to enter into or enforce this Agreement, the Tribe and the State each agree to support the Agreement and defend their authority to enter into and implement this Agreement.

## **VI. IMPLEMENTATION AND AMENDMENT**

6.1 The following provisions for tax remittance shall apply:

6.1.1 For any motor vehicle or special fuel on which the State tax already has been collected prior to delivery to the Tribal Fuel Facilities and Tribal businesses, the State shall remit monthly to the Tribe an amount equal to 75% of the state motor vehicle and diesel fuels tax actually paid on all such fuel delivered to the Tribal Fuel Facilities and Tribal businesses in the preceding month.

6.1.2 The Tribe shall submit copies monthly of invoices for fuel delivered to Tribal Fuel Facilities and Tribal businesses, which invoices shall include the invoice date, name of the seller, and the amount of State motor vehicle fuel and special fuels taxes paid or included in the price of the fuel.

6.1.3 Within 30 days of receiving an invoice, the State shall remit to the Tribe 75% of the state motor vehicle fuel and special fuels tax actually paid or included in the price of

the fuel delivered to the Tribal Fuel Facilities and Tribal businesses.

6.1.4 For any motor vehicle or special fuel on which the State tax already has been collected prior to delivery to the Tribal Fuel Facilities and Tribal businesses that is used by Tribal government vehicles for essential governmental functions and Tribal businesses, upon compliance by the Tribe with the terms of par. 6.1.5 of this Agreement, the State shall remit monthly to the Tribe an amount equal to 100% of the state motor vehicle and diesel fuels tax actually paid on all such fuel.

6.1.5 The Tribe shall submit copies monthly of invoices for fuel delivered to Tribal Fuel Facilities and Tribal businesses that is used by Tribal government vehicles for essential governmental functions and Tribal businesses, which invoices shall include the invoice date, name of the seller, and the amount of State motor vehicle fuel and special fuels taxes paid or included in the price of the fuel. The Tribe shall also submit a copy of the IRS form 4136 along with each refund request.

6.1.6 Within 30 days of receiving an invoice, the State shall remit to the Tribe 100% of the state motor vehicle fuel and special fuels tax actually paid or included in the price of the fuel delivered to the Tribal Fuel Facilities and Tribal businesses that is used by Tribal government vehicles for essential governmental functions and Tribal businesses.

6.1.7 If the accuracy or authenticity of any invoice submitted by the Tribe is questioned, the State and the Tribe shall use their best efforts to resolve the issue informally.

6.1.8 If informal dispute resolution efforts are unsuccessful, the dispute resolution provisions of this Agreement shall apply.

6.2 This Agreement may be amended only by a written instrument duly signed and executed by the Parties.

6.3 The contact person for the Tribe, for any changes or concerns about this Agreement, shall be The Honorable Narcisco Cunanan, Chair, Nooksack Indian Tribal Council, PO Box 157, Deming, WA 98244, 360-592-5176. The contact person for the State, for any changes or concerns about this Agreement, shall be: Sharon Whitehead, Deputy Director, 360-902-3600, swhitehead@dol.wa.gov.



6.4 The Tribe shall provide the State with a list of the name and physical location (address) of each retail outlet operated by the tribe and covered by this Agreement. No later than 30 days after any new retail outlet is opened, the same information will be provided to the State.


6.5 If the Tribe proposes to purchase fuel for bulk storage for use in Tribally owned vehicles or for resale, before such activities begin, the Tribe shall notify the State, and the parties shall confer on any changes necessary to this Agreement.


6.6 In the event the Tribe proposes to blend fuel, the Tribe agrees to abide by all applicable Federal laws related to the blending and sale of motor vehicle and diesel fuel. The parties agree to meet and discuss the application of this Agreement to fuel blended by the tribe, before any such blending begins. If the tribe begins blending fuel without compliance with this section, the State may terminate this Agreement on 30 day's notice.

6.7 The term of this Agreement shall commence November 1, 2007 and extend to November 1, 2012 as described in section 5.2.

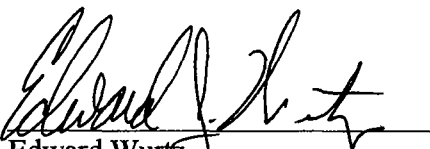
DATED this 28<sup>th</sup> day of  
November, 2007.  
NOOKSACK INDIAN TRIBE

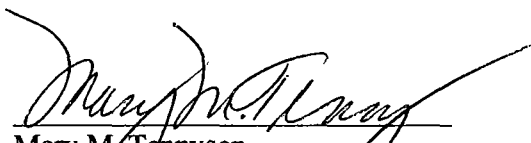
DATED this 3<sup>rd</sup> day of  
December, 2007.  
DEPARTMENT OF LICENSING

  
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Narcisco Cunanan, Chairperson  
Nooksack Indian Tribe

  
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Elizabeth A. Luce, Director  
Washington State Dept. of Licensing

Approved as to Form

  
\_\_\_\_\_  
Edward Wurtz  
Tribal Attorney

  
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Mary M. Tennyson  
Sr. Assistant Attorney General