

**TRIBAL – STATE AGREEMENT
CONCERNING MOTOR VEHICLE FUEL AND SPECIAL FUEL TAXES
BETWEEN
THE SUQUAMISH TRIBE AND THE STATE OF WASHINGTON**

I. RECITALS

1.1. The Suquamish Tribe, a sovereign government, is a federally recognized Indian tribe located on the Port Madison Indian Reservation in Kitsap County, Washington.

1.2. The State of Washington 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. 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 State's Governor to enter into agreements regarding Motor vehicle and Special fuel taxes with any federally recognized Indian tribe located on a reservation within the State. 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 engaged in government-to-government negotiations in a mutual, good faith effort to reach an agreement regarding the state fuel taxes on the distribution, sale, transfer, use, or possession of Motor vehicle fuel and Special fuel within the 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 it uses exclusively for highway purposes. The parties further acknowledge that the Tribe has authority to impose certain taxes respecting fuel used in motor vehicles. 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 and public safety 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 the regulation of filling stations operating within the Reservation to ensure such regulation is consistent with the intent and spirit of this Agreement. However, nothing in this Agreement shall be construed as modifying the regulatory jurisdiction of either party.

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 and the Tribe does not concede that the State can enforce its tax or tax collection provisions upon it.

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

II. PURPOSE AND OBJECTIVES

2.1. This Agreement addresses the establishment of a cooperative framework for taxation and regulation by and between the Tribe and 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 either party.

2.3. Nothing in this Agreement is intended to increase, decrease or otherwise affect either governments' statutory and regulatory law or authority to regulate or tax Motor vehicle fuel and Special fuel and such statutory and regulatory laws shall remain in full force and effect during the term of 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). “Special Fuel Distributor” has the meaning given in RCW 82.38.010(24). As with respect to the definitions in this Agreement, the State Legislature may amend the definitions in RCW 82.36.010(15) and RCW 82.38.010(24) so long as such amendments do not alter the terms and definitions of this Agreement as executed.

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 retail place of business operated for the purpose of selling and 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 with respect to the definitions in this Agreement, the State Legislature may amend the definitions in RCW 82.36.010(20) so long as such amendments do not alter the terms and definitions of this Agreement as executed.

3.7. “Reservation” means all lands within the exterior boundaries of the Port Madison Indian Reservation together with all Tribal or other trust lands located outside the Port Madison Indian Reservation over which the Suquamish Tribe exercises jurisdiction and governmental authority.

3.8. “Special fuel” has the meaning given in RCW 82.38.020 (23). As with respect to the definitions in this Agreement, the State Legislature may amend the definitions in RCW

82.38.020 (23) so long as such amendments do not alter the terms and definitions of this Agreement as executed.

3.9. "State" means the State of Washington and the Washington State Department of Licensing.

3.10. "Tribe" means the Suquamish Tribe.

3.11. "Tribal business" means a business that is owned and operated by the Tribe.

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 Suquamish Tribe.

3.14. "Tribal member business" means a business that is owned and operated by a Tribal member, so long as the business meets the requirements of a "Tribal member business" as defined by ordinance by the Tribe and such business is licensed or permitted by the Tribe to do business on the Reservation.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State 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 Fuel Facilities and businesses that sell or deliver Motor vehicle fuel 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.

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. The Tribe agrees to purchase only fuel on which applicable state taxes have been paid. Unless otherwise agreed to in writing, the Tribe and all Tribal Fuel Facilities shall acquire all Motor vehicle and Special fuel only from persons/companies which are licensed in the State as a Motor vehicle fuel or Special fuel distributor, supplier, or importer in accordance with RCW 82.36 and 82.38, respectively, or a Tribal distributor, supplier or importer lawfully doing business according to all applicable laws. The Tribe shall by ordinance require filling stations under its jurisdictional authority, located on the Reservation, to purchase fuel only from persons/companies which are licensed in the State as a Motor vehicle fuel or Special fuel distributor, supplier, or importer in accordance with RCW 82.36 and 82.38, respectively, or a Tribal distributor, supplier or importer lawfully doing business according to all applicable laws. Such ordinance shall become effective within six (6) months of the execution of this Agreement unless otherwise agreed.

4.3. Upon compliance with the procedures described in this Agreement, the Tribe shall be entitled to a refund equal to seventy-five percent (75%) of the tax paid on each gallon of Motor vehicle fuel or Special fuel purchased by the Tribe, tribal businesses, and tribal member businesses. Beginning with purchases of fuel on or after the effective date of Senate Bill 5272, chapter 515, laws of 2007 (May 15, 2007) the State will, within thirty (30) days of written request by the Tribe pursuant to this Section 4.3, remit to the Tribe an amount equal to seventy-five percent (75%) of the state Motor vehicle fuel and Special fuels tax actually paid on all purchases of Motor vehicle fuel and Special fuels by the Tribal Fuel Facilities or other filling stations under its jurisdictional authority in the preceding month or other period at the Tribe's option. The Tribe shall submit copies of invoices for fuel delivered to its Tribal Fuel Facilities or other filling stations under its jurisdictional authority, which invoices shall include the invoice date, name of the seller, and the amount of State Motor vehicle fuel taxes and Special fuels taxes paid or included in the price of the fuel. Within thirty (30) days of receiving an invoice, the State will remit to the Tribe seventy-five percent (75%) of the state Motor vehicle fuel and Special fuels

tax actually paid or included in the price. If the accuracy or authenticity of any invoice submitted is in question, the state and Tribe shall use their best efforts to resolve the issue informally. If such informal efforts are unsuccessful, the dispute resolution provisions of this Agreement shall apply.

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 within thirty (30) days of the Tribe's written refund request. 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, Tribal member businesses, or 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 to the extent a refund has not already been made under ¶ 4.3 of this Agreement.

4.6. The Tribe agrees to expend fuel tax proceeds refunded to 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. For the purposes of this Section 4.6, in any fiscal year in which the Tribe's expenditures for the permissible transportation purposes exceed fuel tax refund receipts, the Tribe may carry forward the additional expenditure amount as a credit against the requirement of permissible transportation expenditures in any subsequent year, up to ten (10) years. The Tribe shall maintain records as necessary to demonstrate its compliance with this Section 4.6.

Records and Audit Provisions

- 4.7. The Tribe shall maintain for a minimum of three (3) years:
- a. invoices showing the number of gallons of Motor vehicle fuel and Special fuel purchased by the Tribe for resale at its retail fuel stations;
 - b. completed Internal Revenue Service (IRS) Form 4136 and detail schedules reflecting the number of gallons claimed for refund for Federal fuel tax purposes,

and,

c. records to document the use of fuel tax proceeds or their equivalent for the purposes identified in paragraph 4.6 of this Agreement.

4.8. Annually or at such other interval that are mutually agreeable to the parties, the Tribe shall cause an independent third party who is a certified public accountant in good standing, to audit 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 Fuel Facilities and confirm that the Tribe's use of fuel tax proceeds or their equivalent have been for the purposes identified in paragraph 4.6 above. The Tribe will deliver a copy of the auditor's written report to the Director of the State Department of Licensing or its designee.

4.9. The State shall treat all information received from the Tribe or otherwise made available to the State for review pursuant to this Agreement as personal information under RCW 42.56.230(3)(b) and, pursuant to such law, shall keep such information exempt from public inspection and copying.

V. DISPUTE RESOLUTION

5.1 The Tribe and State desire to prevent disputes whenever possible, and to quickly and effectively resolve disputes when they arise. To the extent possible, the parties will use informal methods of dispute resolution before engaging in the formal processes provided below in paragraphs 5.2.1 through 5.2.5. As used in this Section "days" means calendar days, unless otherwise specified. The parties may, by mutual agreement, extend any of the time deadlines stated in this Section.

5.2.1 In the event a dispute arises from this Agreement, either party may send a written request for direct dispute resolution to the other party. The notice shall state the nature of the issues in dispute and a proposed resolution for each issue identified. Representative(s) from each party, with authority to settle the dispute, will meet in person at least once within fourteen (14)

days of receipt of the notice. The purpose of the meeting will be to address the issue(s) raised by the notice and provide an opportunity to resolve the dispute through good faith discussion and implement or agree to a timeline to implement any agreed resolution.

5. 2. 2 The parties recognize that disputes under this Agreement that involve individual(s) may take longer to resolve. With respect to any dispute relating to a Tribal member, the parties will attempt to resolve the dispute for at least 45 days after the sending of the written notice before delivering a mediation demand provided under paragraph 5.2.3 below.

5. 2. 3 If the parties are unable to resolve the disputed issues through direct dispute resolution under paragraph 5. 2. 1 or 5. 2. 2, either party may request mediation by giving a written mediation demand to the other party. If the parties cannot mutually agree upon a mediator within thirty (30) days of written demand, the parties shall use a mediator selected by the Judicial Arbitration and Mediation Service's ("J.A.M.S.") Seattle office.

5. 2. 4 Each party shall bear its own attorney's costs and expenses but shall share equally in the costs of mediation, including the costs of the mediator.

5. 2. 5 If twelve (12) months have passed from the date a party received a written dispute notice and the parties have been unable to resolve the dispute or fully implement any agreed upon resolution or if a party continues to violate a term of this Agreement after completion of the mediation process authorized in this section, this Agreement may be terminated. The termination of this Agreement under this paragraph shall not prevent the parties from negotiating or entering into a new Agreement, on similar or different terms.

VI. IMPLEMENTATION, AMENDMENTS

6.1 This Agreement may be amended only by a written instrument duly signed and executed by the parties. If either party wishes to amend the Agreement, they will notify the other

party in writing of the desire to make amendments and the nature of the amendments. The parties agree to meet within thirty (30) days of a request for amendment pursuant to this Section 6.1 to discuss the requested amendment(s) and to establish a process for negotiations as appropriate.

6.2 The parties agree to meet and confer from time to time to discuss issues or concerns relating to fuel tax matters and the distribution of fuel that may not be covered by this Agreement. The parties agree to work cooperatively to resolve concerns which arise.

6.3 The contact persons for any changes or concerns about this Agreement shall be as designated by the Tribe and the State from time to time. The initial contact persons shall be:

For the Tribe:

Wayne George
Executive Director, Suquamish Tribe
189490 Suquamish Way
Suquamish, WA 98404

For the State:

Sharon Whitehead
Deputy Director, Department of Licensing
PO Box 48001
Olympia, WA 98504-0001

With copies to:

Michelle Hansen,
Senior Tribal Attorney, Suquamish Tribe
189490 Suquamish Way
Suquamish, WA 98404

Rion Ramirez
General Counsel
Port Madison Enterprises
15347 Suquamish Way NE
Suquamish, WA 98392

6.4 The Tribe shall provide the State with a list of the name and physical location (address) of each Tribal Fuel Facility operated by the Tribe and covered by this Agreement. No later than thirty (30) days after any new Tribal Fuel Facility 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 paragraph, the dispute resolution provisions of this Agreement shall apply.

6.7 If at any time in the future the State enters an agreement, compact or consent decree with any other federally recognized Indian Tribe, of or relating to the collection and reimbursement of state fuel taxes, and in the event such agreement or compact contains terms more favorable to the other Indian Tribe than the terms contained herein, the Tribe (party to this Agreement) shall be entitled to modify and replace the terms of this Agreement with the more favorable terms. Provided, however, that if this clause is exercised by the Tribe, all terms in the Agreement are open to renegotiation, and the state shall be entitled to require that any other terms as are associated with, facilitated, or were given in exchange for the more favorable terms negotiated with the other Tribe also be included in any modification of replacement terms.

[Signature page follows]

DATED this 21st day of
December, 2007

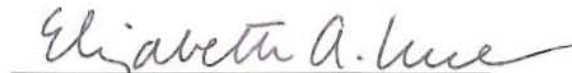
SUQUAMISH TRIBE




Leonard Forsman, Chairman

DATED this 18th day of
December, 2007



STATE OF WASHINGTON
Through the
DEPARTMENT OF LICENSING


Elizabeth A. Luce
Director, Department of Licensing

Attested to by:


Linda Holt, Secretary

Approved as to Form


Michelle Hansen, Senior Tribal Attorney
Mary M. Tennyson,
Sr. Assistant Attorney General