

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**THE SWINOMISH INDIAN TRIBAL COMMUNITY**  
**AND**  
**THE WASHINGTON STATE DEPARTMENT OF LICENSING**

**I. PARTIES**

The Parties to this Agreement are:

1.1 The Swinomish Indian Tribal Community, a federally-recognized Indian Tribe organized under the Indian Reorganization Act of 1934 and Swinomish Development Authority, a governmental subdivision of the Swinomish Indian Tribal Community, and with its principal place of business on the Swinomish Reservation (hereinafter "Tribe").

1.2 The State Department of Licensing, the state agency with the authority and responsibility for collecting state motor vehicle fuel and special fuel taxes (hereinafter "State").

**II. PURPOSE AND OBJECTIVES**

2.1 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. As authorized by the legislation, the Governor has delegated the power to negotiate such agreements to the director of the Department of Licensing.

2.2 This Agreement applies to the sale of all fuel for use in motor vehicles sold at all facilities owned by the Tribal government within Swinomish Indian Tribal Community Indian Country ("Tribal Fuel Facilities"), except for fuels which are produced on-reservation, and for

which the Parties separately agree the provisions of this Agreement should not apply, either in whole or in part. Swinomish Indian Tribal Community Indian Country, consistent with the meaning given in 18 U.S.C.1151 means lands subject to the jurisdiction of the Swinomish Indian Tribe, including: (a) all land within the limits of the Swinomish Indian Reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation; and (b) all Indian allotments or other lands held in trust for a Swinomish tribal member or the Swinomish Tribe, or otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, including rights of way running through the same.

2.3 Pursuant to chapters 82.36 and 82.38 RCW, the state imposes a tax on motor vehicle fuel suppliers and importers and special fuel suppliers and importers, the revenue from which is used exclusively for highway purposes.

2.4 This Agreement is the result of each of the Parties' mutual good faith efforts to resolve some of the issues that underlie or could underlie legal disputes related to the application of fuel taxes, and to agree on a fuel taxing system that will operate as between the Parties under the terms specified in this Agreement. This Agreement primarily addresses the establishment of a framework for a cooperative taxing and service provision scheme, which shall operate during the term of this Agreement, that recognizes and addresses the substantive needs and interests of the respective Parties, without deciding or conceding their respective legal arguments related to the application of fuel taxes.

2.6 The State Department of Licensing is empowered and directed to collect motor vehicle fuel taxes and special fuel taxes, where those taxes are applicable. These tax revenues are used and needed to keep roads in good repair and to support a broad array of highway and road needs.

2.7 The Swinomish Indian Tribal Community is a federally recognized Tribe, the governing body of which is interested in preserving and advancing the economic well-being and self-sufficiency of the Tribe and providing employment opportunities for members of the Tribe. In addition, the Tribe contributes funds and in-kind services to off-reservation recipients, including local governments. The Tribe has a cross-deputization agreement with the local Sheriff's Department and a service agreement with the local fire district.

2.8 The Swinomish Indian Tribal Community has the authority to impose certain taxes respecting fuel used in motor vehicles, and to expend the revenue from such taxes for governmental services.

2.9 The State of Washington has the authority to impose certain taxes respecting fuel used in motor vehicles, and to expend the revenue from such taxes for highway related governmental services. Except where specifically indicated otherwise in this Agreement, the Parties intend the state's laws and regulations concerning the imposition and collection of fuel and special fuel taxes will remain in full force and effect.

### III. INTENT

3.1 In general the Parties intend this Agreement to facilitate the on-reservation retail sale of fuel products to member and non-member customers at prices competitive with surrounding retail sellers, while at the same time allowing the Tribe to impose tribal fuel taxes; and to ensure that state and local highway needs and purposes, as well as tribal road and highway needs and purposes, continue to be met.

### IV. ACTIONS TO BE TAKEN BY THE PARTIES

4.1 Without waiving any legal argument or otherwise conceding that they are required to do so, the Tribe agrees:

- a. Unless otherwise agreed to in writing, to acquire all motor vehicle and special fuel, additized or unadditized, only from persons/companies who are properly licensed in Washington State as a fuel or special fuel distributor, supplier or importer in accordance with chapters 82.36 and 82.38 RCW, respectively, or a tribal distributor, supplier or importer lawfully doing business according to all applicable laws.
- b. To purchase only fuel on which applicable state taxes have been paid or to impose and maintain in effect a tax on the retail sale of all fuel sold at Tribal Fuel Facilities equaling no less than 100 percent of the then-current state tax on motor vehicle or special fuel, which taxes are expressed in cents per gallon.
- c. To expend fuel tax proceeds retained by or paid to the Tribe or amounts equivalent thereto on the following:

Planning, construction, and maintenance of roads, bridges, boat ramps,

Qualifying transit services and facilities,

Transportation planning,

Police services, and

Such other highway related purposes as the Parties shall mutually agree.

The amount of any tax payment to the State pursuant to section 4.2(c)(ii) shall be deducted from the amount of tax proceeds for the purposes of this section 4.1(c). For the purposes of this Section 4.1, 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 10 years. The Tribe shall maintain records as necessary to demonstrate its compliance with this Section 4.1.

- d. To 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 Fuel Facilities, the amount of fuel tax retained by the State, the amount of fuel tax retained by the Tribe and the use of fuel tax proceeds or their equivalent for the purposes identified in paragraph 4.1(c) above and to deliver a copy of the final written report of such audit to the Director of the State Department of Licensing.
- e. To meet periodically with state agency officials for the purpose of assessing the successfulness of this Agreement in achieving its purposes and objectives.
- f. To use good faith efforts to continue the cross-deputization and fire services agreements referenced in section 2.7 above.
- g. To use good faith efforts to continue to provide the off-reservation funds and in-kind services referenced in 2.7 above.
- h. The Tribe shall provide the State with a list of the name(s) 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.
- i. 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 special fuel. The parties agree to meet and discuss the application of this Agreement to fuel blended by the tribe, before any such blending begins.

4.2 Without waiving any legal argument or otherwise conceding that it is required to do so, the State agrees to:

- a. Treat as personal information under RCW 42.56.230(3)(b) any information received by the State or otherwise made available to the State for review pursuant to this Agreement and to exempt such information from public inspection and copying.
- b. Meet periodically with Tribal officials for the purpose of assessing the successfulness of this Agreement in achieving its purposes and objectives.
- c. On condition that the Tribe complies with the provisions of this Agreement, the following provisions for tax remittance shall apply:
  - i. For any motor vehicle or special fuel on which State tax has already been imposed prior to delivery to the Tribal Fuel Facilities, the State will monthly remit to the Tribe an amount equal to 75% of the state motor vehicle fuel and special fuels tax actually paid on all motor vehicle and special fuel purchased for sale from the Tribal Fuel Facilities in the preceding month. The Tribe shall submit copies monthly of invoices for fuel delivered to its Tribal Fuel Facilities, 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 30 days of receiving an invoice, the State will remit to the Tribe 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.

- ii. For any motor vehicle or special fuel on which State tax has not already been imposed prior to delivery to the Tribal Fuel Facilities the Tribe shall monthly remit to the State an amount equal to 25% of the tribal motor vehicle and special fuels tax actually collected on sales of that motor vehicle and special fuels from the Tribal Facilities in the preceding month. The Tribe shall submit with its payment copies of monthly invoices for fuel delivered to its Tribal Fuel Facilities, which invoices shall include the same information required under section 4.2(c)(i) above. 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.

## V. EFFECTIVE DATE, FAIR DEALING AND DISPUTE RESOLUTION

5.1 The Parties agree that this Agreement will become effective immediately upon signing by all parties.

5.2 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.

5.3 All amendments to the Agreement must be in writing.

5.4 Dispute Resolution

- a. Neither the Tribe nor the State nor officers acting on either government's behalf may petition a court to enforce this Agreement unless (a) the dispute resolution process described herein 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.
- b. Should a dispute arise between the Tribe and the State upon an issue of compliance with the Agreement by either government, or by its officers, employees or agents, the Tribe and State shall attempt to resolve the dispute through the following dispute resolution process:
  1. 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.



2. 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 thirty (30) days of the date of the written notice described above. The representatives of each government shall come to the meeting with the authority to settle the dispute.
3. If the Parties are unable to resolve the dispute within sixty (60) days of the date of the written notice, 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 disputing parties.
4. 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 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.
5. If any party terminates the process described in this section 5.4(b) before completion, or if the mediator determines that the dispute can not be resolved in the mediation process, or if the dispute is not resolved within sixty (60) 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 the Agreement as to the disputed and unresolved issue or issues. If the Court declines to accept jurisdiction over the petition, either party may initiate binding arbitration proceedings under the rules of the American Arbitration Association. If the arbitrator determines that a party is in violation of a material provision of this Agreement, and such violation is not or cannot be cured within thirty (30) days of the arbitrator's decision, or if one party refuses to appear, the other party may terminate this Agreement with sixty (60) days by written notice served upon the Chairman of the Tribe and Director of the Department of Licensing.

## VI. CONTACT PERSONS

For matters relating to implementation of this agreement, the contact persons shall be:

Tribe:

General Manager  
Swinomish Indian Tribal Community  
P.O. Box 817  
La Conner, WA 98257  
(360) 466-3163

Department:

Deputy Director  
Department of Licensing  
Highways-Licenses Building  
1125 Washington St SE

Fuel Tax Administrator  
Department of Licensing  
2424 Bristol Court SW  
PO Box 9036

PO Box 48001  
Olympia, WA 98504-8001  
(360) 902-3603

Olympia, WA 98507-9036  
(360) 664-1820

For requested changes to the Agreement, concerns, or to request dispute resolution, the etc.,  
contact persons shall include, in addition to those named above:

Tribe:

Office of Tribal Attorney  
Swinomish Indian Tribal Community  
P.O. Box 817  
La Conner, WA 98257  
(360) 466-3163

SIGNED this 4<sup>th</sup> day of December, 2007

M. Brian Cladoosby  
M. Brian Cladoosby, Chairman  
Swinomish Indian Tribal Community

SIGNED this 12<sup>th</sup> day of December, 2007

Elizabeth A. Luce  
Elizabeth A. Luce, Director  
Washington State Department of