

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

I. RECITALS

1.1 The Upper Skagit Indian Tribe (“Tribe”) is a federally-recognized Indian Tribe possessed of the full sovereign powers of a Tribal government.

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”.

1.3 RCW 82.36.450 and RCW 82.38.310 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 Governor has delegated this authority to the director of the Department of Licensing.

1.4 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 Upper Skagit Reservation at both the Bow Hill Reservation site and the Helmick Reservation site together with the trust lands under the jurisdiction of the Tribe, including without limitation trust lands at I-5 and Bow Hill Road (Exit 236) (collectively referred to as 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.

1.5 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 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 roads and highways and law enforcement and other transportation related issues 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.

1.6 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.

1.7 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. However, nothing in this Agreement shall be construed as modifying the regulatory jurisdiction of either party.

1.8 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.

1.9 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. In general the Parties intend this Agreement to facilitate the on-Reservation retail sale of fuel products to Tribal member and non-Tribal member customers at prices competitive with surrounding retail sellers.

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 Except where specifically indicated otherwise in this Agreement, the parties intend that the State of Washington's statutory and regulatory law concerning the imposition and collection of fuel and special fuel taxes will remain in full force and effect.

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(14), as it now exists or as amended in the future. “Special Fuel Distributor” has the meaning given in RCW 82.38.020(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 motor vehicle fuel or special fuel into the fuel tanks of motor vehicles. For purposes of this agreement, “filling station” does not include the business owned by the Tribe that is not located on reservations or trust property. “Filling station” also means a cardlock facility located on reservation or trust land to which the tribe grants access to certain persons, but is not available for use by the general public.

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(19), as it now exists or as it may hereafter be amended.

3.7 “Reservation” means the Upper Skagit Reservation at both the Bow Hill Reservation site and the Helmick Reservation site together with the trust lands under the jurisdiction of the Tribe, including without limitation trust lands at I-5 and Bow Hill Road (Exit 236) over which the 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 Upper Skagit Indian Tribe.

3.11 “Tribal business” means a business that is owned at least 51% by the Tribe and/or wholly-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 Tribe.

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

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, 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 that, when purchasing fuel on Reservation or for distribution or sale on Reservation, tribal filling stations, tribal businesses, tribal member businesses, and tribal members purchase only fuel on which applicable 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 as a motor vehicle or special fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all

applicable laws. Such ordinance(s) shall become effective within 6 months of the execution of this Agreement, unless otherwise agreed.

- b. The Tribe agrees to pass on to the retail customer the state tax included in the price of fuel.

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.

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, 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 (1) to the extent such statutes apply to the Tribe, the Tribal filling station, the Tribal business, Tribal member business, or 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 ¶ 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 or as otherwise permitted by law.

4.7 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 4.7, 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 4.7.

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;
 - b. records to document the use of fuel tax proceeds or their equivalent for the purposes identified in paragraph 4.7 of this Agreement, and
 - c. 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, except that records required pursuant to Subsection 4.8(b) shall be maintained for no less than ten (10) years.

4.9 The Tribe shall cause an audit to be performed annually consistent with its fiscal year, 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 paragraph 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 for review pursuant to this Agreement and to exempt such information from public inspection and copying.

4.11 Beginning with purchases of fuel on or after the effective date of this Compact, the State will, within thirty (30) days of written request by the Tribe pursuant to this Section 4.11, remit to the Tribe an amount equal to seventy-five percent (75%) of the state motor vehicle fuel and special fuels tax actually paid or included in the price of fuel under this Agreement on all purchases of motor vehicle fuel and special fuels by the Tribal filling stations located on reservation or tribal trust lands 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 filling stations, 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 pursuant to this Agreement. 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. DISPUTE RESOLUTION, 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 ¶ 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 thirty (30) days of the date of the written notice described in ¶ 5.1.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 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.
- d. 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 on 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 any party terminates the process before completion, or if the mediator determines that the dispute cannot be resolved in the mediation process, or if the dispute is not resolved within one hundred and twenty (120) days of the date the mediator is selected, 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, then the other party may terminate this Agreement with sixty (60) days written notice served upon the Chairman of the Tribe and Director of the Department of Licensing.

5.2 This Agreement shall remain in effect unless the parties mutually agree in writing that it should be terminated or superseded by a new agreement between the parties, or unless it is earlier terminated pursuant to ¶5.1(e).

5.3 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 insist 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.

5.4 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, AMENDMENTS

6.1 This Agreement shall be effective upon the date signed by the last signatory below.

6.2 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.

6.3 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 those concerns, and to enter into dispute resolution as provided in this Agreement as appropriate.

6.4 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:

Marilyn Scott
Chairman
29544 Community Plaza Way
Sedro Woolley, WA 98284

For the State:

Alan Haight
Deputy Director, Department of Licensing
PO Box 48001
Olympia, WA 98504-0001

With copies to:

Harold Chesnin
1810 – 43rd Avenue E. #203
Seattle, WA 98112

6.5 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.

6.6 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.

6.7 In the event the Tribe proposes to manufacture or blend fuel, bio-fuel or bio-diesel, the Tribe agrees to abide by all applicable Federal laws related to the manufacture, blending and sale of motor vehicle and diesel fuel. If the Tribe proposes to use any fuel or diesel

related to this section 6.7 for sale or use by any individual or entity other than the Tribe, tribal members and/or Tribal businesses, then the parties agree to meet and discuss the application of this Agreement to such manufactured or blended fuel by the Tribe, before any such manufacturing and/or blending begins. If the Tribe begins manufacturing and/or blending fuel without compliance with this paragraph, the dispute resolution provisions of this Agreement shall apply.

DATED this 16 day of
October, 2008

UPPER SKAGIT INDIAN TRIBE

Marilyn Scott
Marilyn Scott
Chairman, Upper Skagit Indian Tribe

Approved as to Form

Harold Chesnin
Harold Chesnin
General Counsel to the Tribe

DATED this 22nd day of
October, 2008

DEPARTMENT OF LICENSING

Elizabeth A. Luce
Elizabeth A. Luce
Director, Department of Licensing

Mary M. Tennyson
Mary M. Tennyson
Sr. Assistant Attorney General