

**AGREEMENT  
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL  
BETWEEN THE KALISPEL TRIBE OF INDIANS AND THE STATE OF  
WASHINGTON**

**I. RECITALS**

1.1. The Tribe is the Kalispel Tribe of Indians. The Kalispel Tribe of Indians will be referred to in this Agreement as the “Kalispel 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”. 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.

1.3 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 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 the transportation facilities within the Kalispel Indian Reservation Road System.

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. 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.

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 “Aircraft fuel” means any combustible gas or liquid, which is normally defined as motor vehicle fuel under chapter 82.36 RCW and chapter 308-72 WAC or a special fuel under chapter 82.38 RCW and chapter 308-78 WAC when used to propel an aircraft.

3.2 “Department” means the Washington State Department of Licensing, or any successor agency, and its officials, employees, and agents acting in their official capacity.

3.3 “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.

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

3.5 “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.

3.6 “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.

3.7 “Motor vehicle fuel” has the meaning given in RCW 82.36.010(19), as it now exists or as it may hereafter be amended.

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

3.9 “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 Kalispel Tribe of Indians.

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 Kalispel Tribe.

#### **IV. AGREEMENT**

##### Government-To-Government Cooperation

4.1. The State of Washington and the Kalispel 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 the 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 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.

4.3. Upon compliance with the procedures described in this Agreement, 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, Tribal members, or Kalispel Tribal businesses 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, the Tribal member, or the Kalispel Tribal business, 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.

4.7. The Tribe agrees to expend fuel tax refunds from the State 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;
- 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.

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 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.

## **V. DISPUTE RESOLUTION 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 subsections 5.1(a) through (d) 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 subsection 5.1(a). The representatives of each government shall come to the meeting with the authority to settle the dispute.

c. The second stage of the process will be that if the parties are unable to resolve the dispute within sixty (60) days of the notice sent under subsection 5.1(a), above, the parties shall engage the services of a mutually agreed upon qualified mediator to assist them in attempting to negotiate the dispute. Costs for the mediator shall be borne equally by the parties. 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, the resolution shall be memorialized by the mediator and shall bind the parties.

d. If a 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 ("AAA"), but AAA need not administer the arbitration. 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.

e. After completion of the process in ¶ 5.1.a. through ¶ 5.1.d., either party may terminate this Agreement with sixty (60) days written notice served upon the Chairman of the Kalispel Tribe and Director of the Department of Licensing.

5.2 This Agreement shall remain in effect unless the parties mutually agree in writing that the Agreement should be vacated or terminated and superseded by a new agreement between the

parties.

5.3 If, at any time after the effective date of this Agreement, the State enters into 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, the State agrees to make such terms and conditions available to the Tribe, at its option, and if so agreed to by the Tribe, such terms and conditions shall become a part of this Agreement by a signed amendment, executed by both parties. Provided, however, that if this clause is exercised by the Tribe, all the terms in this 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 an modification of replacement terms in this Agreement.

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 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 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.

6.1.5 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: David C. Bonga, Senior Tribal Attorney, 934 S. Garfield, Airway Heights WA, 99001. The contact person for the State, for any changes or concerns about this Agreement, shall be: Alan Haight, Deputy Director, PO Box 48001, Olympia, WA, 98504-0001.

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.

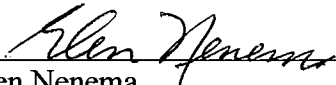
6.5 If the Tribe proposes to purchase fuel for bulk storage for use in Tribally owned vehicles or for resale, before such activities begin, the Tribe shall notify the State, and the parties shall confer on any changes necessary to this Agreement.

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 paragraph, the State may terminate this Agreement on 30 day's notice.


DATED this \_\_\_\_\_ day of  
\_\_\_\_\_, 2009

DATED this \_\_\_\_\_ day of  
\_\_\_\_\_, 2009

KALISPEL TRIBE

  
\_\_\_\_\_  
Glen Nenema  
Chairman, Kalispel Tribe

Approved as to Form

  
\_\_\_\_\_  
David C. Bonga,  
Senior Tribal Attorney,  
Kalispel Tribe

DEPARTMENT OF LICENSING

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

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