

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

I. RECITALS

1.1. The Tulalip Tribes, a sovereign government, is a federally recognized Indian tribe located on the Tulalip Reservation in Snohomish 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. 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 Tribes 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 Tribes has authority to impose certain taxes respecting fuel used in motor vehicles. The Tribes 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 Tribes 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 Tribes has any immunity from the State's tax and tax collection provisions and the Tribes 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.

1.9. This agreement does not apply to "alternative fuels" (such as biodiesel, ethanol, or similar non-blended fuels) which are, or may in the future be, produced by the Tribes on the Reservation.

II. PURPOSE AND OBJECTIVES

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

2.3. Nothing in this Agreement is intended to increase, decrease or otherwise affect either government's 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(14) as it now exists or as amended in the future. "Special Fuel Distributor" has the meaning given in RCW 82.38.010(24), as it now exists 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 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(19), as it now exists or as amended in the future.

3.7. "Reservation" means all lands within the exterior boundaries of the Tulalip Indian Reservation, and all Tribal lands located outside the Tulalip Reservation that are held in trust for a Tulalip Tribal member or the Tulalip Tribes or are otherwise subject to a restriction against alienation imposed by the United States, the Indian titles to which have not been extinguished, and over which the Tulalip Tribes exercises jurisdiction and governmental authority.

3.8. "Special fuel" has the meaning given in RCW 82.38.020(23), as it now exists or as amended in the future.

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

3.10. "Tribes" means the Tulalip Tribes.

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

3.12. "Tribal Fuel Facilities" means a retail filling station that is owned and operated by the Tribes, a Tribal business or a Tribal member business, and any facilities owned and operated by the Tribes, a Tribal business or a Tribal member 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 Tulalip Tribes.

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 Tribes and such business is licensed or permitted by the Tribes to do business on the Reservation.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State and the Tribes shall cooperate to the extent legally permitted to ensure the enforcement of:

- a. the Tribes' 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 Tribes agrees to either: (1) require Tribal Fuel Facilities to purchase only fuel on which applicable state taxes have been paid, or (2) impose and maintain in effect a tribal tax on the retail sale of all fuel purchased without state tax and sold at Tulalip Fuel Facilities. The tribal tax shall equal 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. Unless otherwise agreed to in writing, 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 Tribes 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. (a) If a Tribal Fuel Facility purchases Motor Vehicle or Special fuel in which the State tax has been imposed prior to delivery, and the Tribes complies with the procedures described in this Agreement, the Tribes shall be entitled to a refund equal to seventy-five percent (75%) of the state tax paid on each gallon of Motor vehicle fuel or Special fuel purchased by Tribal Fuel Facilities.

(b) Beginning with purchases of state taxed fuel on or after the effective date of this agreement, the State will, within thirty (30) days of written request by the Tribes pursuant to this Section 4.3, remit to the Tribes 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 Tribes' option. The Tribes 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 Tribes 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 Tribes 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.

(c) If a Tribal Fuel Facility purchases any Motor Vehicle or Special fuel on which the State tax has not been imposed prior to delivery to the Tribal Fuel Facilities, the Tribes shall monthly remit to the State an amount equal to 25% of the tribal Motor vehicle and Special fuel tax actually collected on sales of that Motor vehicle and Special fuels from the Tribal Fuel Facilities in the preceding month. The Tribes 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 in 4.3(b) above. If the accuracy or authenticity of any invoice submitted is in question, the State and Tribes 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 Tribes' written refund request. A copy of the IRS form 4136 shall accompany the refund request. Such fuel must be used by the Tribes for its essential governmental functions and Tribal businesses.

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

4.6. The Tribes agrees to expend fuel tax proceeds refunded to the Tribes 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 Tribes' expenditures for the permissible transportation purposes exceed fuel tax refund receipts, the Tribes 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 Tribes shall maintain records as necessary to demonstrate its compliance with this Section 4.6.

Records and Audit Provisions

- 4.7. The Tribes shall maintain:
- a. invoices showing the number of gallons of Motor vehicle fuel and Special fuel purchased by the Tribes 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.

The Tribes shall maintain such records for a minimum of three years, except that if the Tribes carry forward expenditures as a credit against amounts to be expended in future years. Records required pursuant to Subsection 4.6 shall be maintained for no less than ten (10) years.

4.8. Annually or at such other intervals that are mutually agreeable to the parties, the Tribes 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 Tribes for re-sale at Tribal Fuel Facilities and confirm that the Tribes use of fuel tax proceeds or their equivalent have been for the purposes identified in paragraph 4.6 above. The Tribes 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 Tribes 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 Tribes 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. through 5.6. 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. 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.

5.3. 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 5.4. below.

5.4. If the parties are unable to resolve the disputed issues through direct dispute resolution under paragraph 5.2. or 5.3., 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.

5.5. 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.

5.6. 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 Tribes and the State from time to time. The initial contact persons shall be:

For the Tribes:

Shelly Lacy
General Manager, Tulalip Tribes
Tulalip Tribes
Tulalip, WA 98271

For the State:

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

With copies to:

Tim Brewer
Reservation Attorney, Tulalip Tribes
6700 Totem Beach Rd.

Tulalip, WA 98271

6.4 The Tribes shall provide the State with a list of the name and physical location (address) of each Tribal Fuel Facility 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 Tribes proposes to purchase fuel for bulk storage for use in Tribally owned vehicles or for resale, before such activities begin, the Tribes shall notify the State, and the parties shall confer on any changes necessary to this Agreement.

6.6 In the event the Tribes proposes to blend or manufacture fuel, the Tribes agrees to abide by all applicable Federal laws related to the manufacture, blending and sale of motor vehicle and diesel fuel or alternative fuels. The parties agree to meet and discuss the application of this Agreement to fuels blended or manufactured by the Tribes, before any such activities begin. If the Tribe begins blending or manufacturing 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 Tribes (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 Tribes, 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.

6.8 This agreement shall take effect on the date the Tribes commence Tribal Fuel Facility operations as specified on a notice of the Tribes to the State. Prior to the date specified in the notice, the parties existing State-Tribal Fuel Tax Agreement dated January 14, 2002 shall remain in effect.

(Signatures on next page)

TULALIP TRIBES

STATE OF WASHINGTON
Through the
DEPARTMENT OF LICENSING



Melvin Sheldon Jr., Chairman

Date: 9/15/09



Elizabeth A. Luce

Director, Department of Licensing

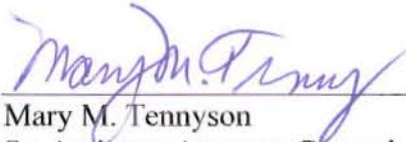
Date:

Approved as to Form



Tim Brewer

Tribal Attorney



Mary M. Tennyson

Sr. Assistant Attorney General