

**FUEL TAX AGREEMENT  
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL  
BETWEEN THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA  
NATION AND THE STATE OF WASHINGTON**

**I. RECITALS**

1.1 The Confederated Tribes and Bands of the Yakama Nation (hereinafter the “Yakama Nation” or “Tribe”) enters into this Agreement with the State of Washington. The Yakama Nation is a sovereign Indian tribal government recognized under the laws of the United States, specifically the Treaty With The Yakamas, 12 Stat. 951 (1859). The Yakama Nation is a beneficiary of the rights and privileges reserved to and created for members of the Yakama Nation by the Treaty between the Yakama Nation and the United States, executed on June 9, 1855, and ratified by the Senate and proclaimed by the President in 1859.

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 State was admitted into the Union on November 11, 1889, pursuant to the President’s Proclamation of that date in accordance with the Enabling Act of February 22, 1889. 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 Yakama Nation 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 Reservation as hereinafter defined. 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 public roads within the Reservation.

1.5 In 1994, the parties executed, and the Court entered, a Consent Decree in *Teo v. Steffenson*, No. CY-93-3050-AAM (E.D. Wash.), concerning fuel taxes. The Court approved amendments to the Consent Decree in 2006 in *Teo v. Steffenson*, No. CV-04-3079-CI (E.D. Wash.). To the extent that the Consent Decree remains in effect as of the effective date of this Agreement, this Agreement supersedes and replaces the Consent Decree in its entirety. This Agreement shall not be presented to any court for approval, nor shall its terms be incorporated in any court order.

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 By entering into this Agreement, the Yakama Nation does not waive, alter, or otherwise diminish the rights, privileges, remedies, authority, or services guaranteed by the Yakama Treaty of 1855, either expressed or implied. Neither the Yakama Nation nor the State of Washington waives, alters or otherwise diminishes either party's sovereign immunity, whether expressed or implied, by virtue of this Agreement or any action that may arise directly or indirectly from the same.

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 By entering into this Agreement, the Yakama Nation does not concede its immunity from the State's tax and tax collection provisions, or that the laws of the State of Washington, including its tax and tax collection provisions, apply to the Nation or its members or agents, or to any activities or conduct within or beyond the Yakama Reservation.

1.10 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. In general the Parties intend this Agreement to facilitate the on-reservation sale of fuel products to non-Yakama customers at prices competitive with surrounding retail sellers. Although the State has entered into fuel tax agreements with other tribal governments pursuant to RCW 82.36.450 and RCW 82.38.310, this Agreement is unique in that it also takes into account the Yakama Nation's unique Treaty rights.

## **II. PURPOSE AND OBJECTIVES**

2.1 This Agreement addresses the establishment of a cooperative framework for taxation and regulation, by the Yakama Nation 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.

2.2 The parties agree that this Agreement is consistent with the parties' mutual interests. The parties intend 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 motor vehicle fuel and special fuel remain in full force and effect under this Agreement.

2.4 The Yakama Nation has the authority to impose taxes respecting fuel used in motor vehicles, and to expend the revenue from such taxes for Tribal governmental services and programs.

### **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 "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.

3.4 "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.

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

3.6 "Reservation" means the Yakama Reservation (12 Stat. 951, 952, art. II; 18 U.S.C. 1151), together with Tribal trust lands over which the Tribe exercises governmental authority located outside the boundaries of the Yakama Reservation.

3.7 “Special fuel” has the meaning given in RCW 82.38.020(23), as it now exists or as it may hereafter be amended.

3.8 “State” means the State of Washington and the Washington State Department of Licensing.

3.9 “Tribe” means the Confederated Tribes and Bands of the Yakama Nation.

3.10 “Tribal business” means a business that is owned and operated by the Yakama Nation.

3.11 “Tribal Fuel Facilities” means a retail filling station that is owned and operated by the Yakama Nation or by a Tribal business, and any facilities owned and operated by the Yakama Nation or a Tribal business for bulk storage of motor vehicle fuel or special fuel.

3.12 “Tribal member” means a person who is an enrolled member of the Yakama Nation.

3.13 “Tribal member station” means a retail filling station located within the Reservation and operated by a Tribal member under license from the Yakama Nation.

#### **IV. AGREEMENT**

##### **Government-To-Government Cooperation**

4.1 The State of Washington and the Yakama Nation 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 member stations, non-tribal filling stations, tribal filling stations, and businesses that sell or deliver motor vehicle or special fuel within the Reservation as defined herein;
- b. the State’s laws and rules respecting the imposition and collection of its fuel taxes from all persons and 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 chapter 82.36 and 82.38 RCW, as they now exist or as they may hereafter be amended. The Tribe shall require non-tribal filling stations, Tribal Fuel Facilities, Tribal businesses, and Tribal member stations to purchase fuel subject to this Agreement only from persons who are properly licensed in Washington State to distribute fuel in accordance with chapters 82.36 and 82.38 RCW. Such requirements shall become effective within 6 months of the execution of this agreement, or unless otherwise agreed.

4.3 The Tribe agrees to:

- a. require Tribal members who operate filling stations within the Reservation to obtain a license from the Tribe before commencing such operation;
- b. acquire all motor vehicle and special fuel only from persons or companies who are properly licensed in Washington State as a motor vehicle fuel or special fuel distributor, supplier or importer in accordance with RCW 82.36 and RCW 82.38, respectively, and to require that Tribal member stations do the same;
- c. purchase only fuel on which applicable state taxes have been paid, and to require that Tribal member stations do the same; and
- d. pass on to the retail customer the state fuel tax included in the price of fuel, and to require that Tribal member stations do the same.

4.4 The parties agree to the following refund framework:

- a. Upon compliance with the procedures described in Paragraph 6.1 of this Agreement, the Yakama Nation shall be entitled to a refund equal to 75% of the fuel tax paid and included in the price on each gallon of motor vehicle fuel or special fuel
  - i. purchased by the Yakama Nation for resale at Tribal Fuel Facilities, and
  - ii. purchased by Tribal members for resale at Tribal member stations.
- b. In accordance with the parties' Settlement Agreement relating to *State of Washington v. Confederated Tribes and Bands of the Yakama Nation, et al.*, No. CV-12-3152-LRS (E.D. Wash.), the State shall retain 50% of the refund payments otherwise due to the Yakama Nation pursuant to this Paragraph 4.4 until the agreed amount specified in the Settlement Agreement has been retained by the State.

4.5 The Yakama Nation may also request a refund of 100% of the fuel tax included in the price of fuel purchased for use in Yakama Nation government vehicles. The amount of refund is limited to the number of gallons claimed for refund for Yakama Nation government vehicles for Federal fuel tax purposes on Internal Revenue Service (IRS) Form 4136, Credit for Federal Tax Paid on Fuels. These gallons are then multiplied by the state fuel tax rate in effect to arrive at a dollar amount to be refunded to the Yakama Nation. A copy of the IRS Form 4136 shall accompany the refund request.

4.6 The Tribe, Tribal Fuel Facilities, Tribal 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 Fuel Facility, the Tribal 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 ¶ 4.4 of this Agreement.

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

4.8 The Yakama Nation agrees to expend fuel tax proceeds refunded to the Yakama Nation 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 Paragraph 4.8, in any fiscal year in which the Yakama Nation's expenditures for the permissible transportation purposes exceeds the amount of refund remitted to the Yakama Nation plus the amount retained by the State under Paragraph 4.4, the Nation 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.

#### Records and Audit Provisions

4.9 The State of Washington:

- a. shall provide refunds to the Yakama Nation based on invoices recording sales of motor vehicle fuel and special fuel that the Yakama Nation submits to the Department showing the number of gallons of motor vehicle fuel and special fuel purchased by the Yakama Nation, Tribal Fuel Facilities, or Tribal members for resale at Tribal Fuel Facilities or Tribal member stations, from persons who are properly licensed in Washington State to distribute fuel in accordance with chapters 82.36 and 82.38 RCW;
- b. shall maintain records of the monthly refunds provided to the Yakama Nation in accordance with Paragraph 4.4;



- c. shall maintain records showing the monthly and cumulative amounts retained by the State in accordance with Paragraph 4.4; and
- d. shall maintain records related to this Agreement in accordance with Washington State record retention requirements.

4.10 The Yakama Nation:

- a. shall submit copies monthly to the Department of invoices recording sales of motor vehicle fuel and special 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 fuel taxes paid or included in the price of the fuel. The Yakama Nation may also submit copies of invoices recording sales of motor vehicle fuel and special fuel delivered to Tribal member stations during the same month, which invoices shall include the invoice date, name of the seller, and the amount of State motor vehicle fuel and special fuel taxes paid or included in the price of the fuel. Any invoices recording sales of motor vehicle fuel and special fuel submitted under this paragraph must be from persons who are properly licensed in Washington State to distribute fuel in accordance with chapters 82.36 and 82.38 RCW;
- b. shall maintain records to document the use of fuel tax proceeds or their equivalent for the purposes identified in Paragraph 4.8 of this Agreement; and
- c. shall provide Internal Revenue Service (IRS) Form 4136 and detail schedules reflecting the number of gallons claimed for refund for Federal fuel tax purposes.

The Yakama Nation shall maintain such records for a minimum of three years or for such time as necessary to demonstrate that credited amounts were used as agreed in Paragraph 4.8.

4.11 The Yakama Nation shall cause an audit to be performed annually, by an independent third party auditor who shall be a certified public accountant licensed under RCW 18.04 and in good standing, to review such records as are necessary to (a) certify that the fuel tax proceeds or an equivalent amount was expended by the Yakama Nation for the purposes identified in Paragraph 4.8 above, and (b) certify that records are maintained for a minimum of three years or for such time as is necessary to demonstrate that credited amounts were used as agreed in Paragraph 4.8. The audit report shall list the expenditures by the categories listed in Paragraph 4.8. The Yakama Nation shall deliver a copy of the final written report of such audit to the Director of the State Department of Licensing.

4.12 If any audit required by Paragraph 4.11 is not performed, or if the final written report is not delivered to the Director within the time period agreed to by the parties, the Yakama Nation shall be entitled to no further refunds until the audit is performed and the report delivered.

4.13 If the auditor is unable to make any certification required by Paragraph 4.11, either party may invoke the dispute resolution process under Paragraph 5.1. If the parties are unable to resolve the dispute through that process, either party may terminate this Agreement in accordance with Paragraph 5.1.d.

4.14 The State agrees to treat as personal information under RCW 42.56.230(4)(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, TERM AND RENEWAL, AND SOVEREIGN IMMUNITY**

5.1 Should a dispute arise between the Tribe and the State upon an issue of compliance with, or the interpretation of, 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 ¶ 5.1.a. The representatives of each government shall come to the meeting with the authority to settle the dispute. The parties may agree to convene one or more additional face-to-face meetings if they mutually agree that significant progress has been made and that one or more additional meetings is necessary to resolve the dispute. If the parties agree to amend this Agreement, the amendment must be in the form of a written instrument duly signed and executed by the parties.
- c. If the parties are unable to resolve the dispute within sixty (60) days of the date of the face-to-face meeting between representatives of the two governments, either party may demand mediation by sending a written mediation demand to the other party, no later than sixty (60) days after the date of the face-to-face meeting. If either party demands mediation, 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. The parties shall pursue the mediation process in good faith until the dispute is resolved or until ninety (90) days after the date of the mediation demand, whichever occurs first. The parties may continue mediation after the 90-day period by mutual agreement. 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. If the parties agree to amend this Agreement, the amendment must be in the form of a written instrument duly signed and executed by the parties. Unless the parties mutually agree otherwise, the Yakama Nation will not be entitled to refunds under ¶ 4.4 after the date of the mediation demand .

- d. After completion of the process in ¶¶ 5.1.a-c or one-hundred eighty (180) days after the written notice described in ¶ 5.1.a, whichever occurs first, either party may terminate this Agreement upon thirty (30) days' written notice served upon the Chairman of the Yakama Nation or the Director of the Department of Licensing.

5.2 This Agreement shall remain in effect indefinitely, unless (a) the parties mutually agree in writing that the Agreement should be terminated and/or superseded by a new agreement, or (b) the Agreement is terminated pursuant to ¶ 5.1.d.

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 Yakama Nation, at its option, and if so agreed to by the Yakama Nation, 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 Yakama Nation, 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 a modification or replacement of terms in this Agreement. If the parties are unable to reach agreement on modified or replacement terms in this Agreement, the dispute resolution provisions of this Agreement shall apply.

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.

5.5 Nothing herein shall be deemed to (1) waive the sovereign immunity of either party or its officers, agents or employees or (2) alter, or otherwise diminish the rights, privileges, remedies, authority, or services guaranteed by the Yakama Treaty of 1855, either expressed or implied.

## **VI. PROCEDURES, IMPLEMENTATION, AMENDMENTS**

6.1 The following procedures for fuel tax refund shall apply:

6.1.1 The State shall remit monthly to the Yakama Nation an amount equal to 75% of the state motor vehicle and special fuel tax actually paid and included in the price on all such fuel delivered to the Tribal Fuel Facilities, Tribal businesses, and Tribal member stations in the preceding month, in accordance with Paragraphs 6.1.2 and 6.1.3.

6.1.2 Each month, the Yakama Nation shall submit to the Department copies of invoices recording sales of motor vehicle fuel and special fuel pursuant to Paragraph 4.10.

6.1.3 Within 30 days of receiving invoices recording sales of motor vehicle fuel and special fuel pursuant to ¶¶ 4.9 and 4.10, the State shall remit to the Yakama Nation 75% of the state motor vehicle fuel and special fuels tax actually paid and included in the price of the fuel delivered to the Tribal Fuel Facilities, Tribal businesses, and Tribal member stations, as shown on the invoices. In accordance with the parties' Settlement Agreement in *State of Washington v. Confederated Tribes and Bands of the Yakama Nation, et al.*, No. CV-12-3152-LRS (E.D. Wash.), the State shall retain 50% of the refund payments otherwise due to

the Yakama Nation pursuant to this paragraph and Paragraph 4.4, until the agreed amount specified in the Settlement Agreement has been retained by the State.

6.1.4 If the accuracy or authenticity of any invoice, refund payment, or amount retained by the State is questioned, the State and the Yakama Nation shall use their best efforts to resolve the issue informally. If informal efforts do not resolve the dispute, the dispute resolution provisions in Part V of this Agreement shall apply.

6.1.5 If any audit required by Paragraph 4.11 is not performed, or if the final written report is not delivered to the Director within 30 days of the parties' agreed annual audit date, the Yakama Nation shall be entitled to no further refunds until the audit is performed and the report delivered.

6.2 This Agreement may be amended only by a written instrument duly signed and executed by the parties.

6.3 The parties agree to meet at the request of either party 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. If the parties are unable to resolve concerns informally, the dispute resolution provisions of Part V of this Agreement shall apply.

6.4 In the event the Yakama Nation proposes to blend fuel, the parties agree to meet and discuss the application of this Agreement to fuel blended by the Yakama Nation, before any such blending begins. If the Yakama Nation begins blending fuel without compliance with this paragraph, or if the parties are unable to agree on the need for changes to this Agreement, the dispute resolution provisions of Part V of this Agreement shall apply.

6.5 If the Yakama Nation proposes to purchase fuel for bulk storage for use in Tribally-owned vehicles or for resale, before such activities begin, the Nation shall notify the State and the

parties shall confer on any changes necessary to this Agreement. If the Yakama Nation begins to purchase fuel for bulk storage for use in Tribally-owned vehicles or for resale without compliance with this paragraph, or if the parties are unable to agree on the need for changes to this Agreement, the dispute resolution provisions of Part V of this Agreement shall apply.

6.6 The contact person for the Tribe, for any changes or concerns about this Agreement, shall be: Chairman, Tribal Council, Yakama Nation, P.O. Box 151, 401 Fort Road, Toppenish, WA 98948, (509) 865-5121. The contact person for the State, for any changes or concerns about this Agreement, shall be: Pat Kohler, Director, Department of Licensing, P.O. Box 9020, 1125 Washington St. SE, Olympia, WA 98507, (360) 902-4042. Each party shall notify the other of changes in contact information within 30 days of the change.

6.7 The Yakama Nation shall provide the State with a list of the name and physical location (address) of each retail filling station operated by the Yakama Nation and covered by this Agreement, and each Tribal member station covered by this Agreement. No later than 30 days after any new Tribal retail filling station or Tribal member station is opened, the same information will be provided to the State. If any Tribal retail filling station or Tribal member station closes, the Yakama Nation shall notify the State within 30 days of the change.

## **VII. SIGNATURES AND EFFECTIVE DATE**

7.1 The signatories to this Agreement represent that they have the authority to bind their respective governments to this Agreement. This Agreement may be terminated only as provided in Paragraph 5.1 or by mutual agreement.

7.2 This Agreement is the Fuel Tax Agreement referenced in and attached to the parties' Settlement Agreement relating to *Washington v. Confederated Tribes & Bands of the Yakama*

Nation, No. CV-12-3152-LRS (E.D. Wash.), and *Confederated Tribes & Bands of the Yakama Nation v. Haight*, No. R-13-019 (Yakama Nation Tribal Court).


7.3 This Agreement takes effect on the Effective Date of the parties' Settlement Agreement relating to *Washington v. Confederated Tribes & Bands of the Yakama Nation*, No. CV-12-3152-LRS (E.D. Wash.), and *Confederated Tribes & Bands of the Yakama Nation v. Haight*, No. R-13-019 (Yakama Nation Tribal Court).

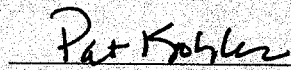
DATED this 12 day of  
November, 2013.

DATED this 18 day of  
November, 2013.


YAKAMA NATION

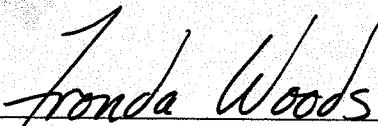
DEPARTMENT OF LICENSING

  
Harry Smiskin, Chairman,  
Confederated Tribes and Bands of the  
Yakama Nation

  
Pat Kohler  
Director, Department of Licensing

Approved as to Form

  
Gabriel S. Galanda  
Galanda Broadman, PLLC

  
Fronda Woods  
Assistant Attorney General



## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”), a federally-recognized Indian tribal government and the State of Washington, Washington Department of Licensing, Governor Jay Inslee, and Director of Licensing Pat Kohler (“State” collectively), relating to matters alleged in *State of Washington v. Confederated Tribes and Bands of the Yakama Nation, et al.*, a lawsuit pending in U.S. District Court for the Eastern District of Washington under Cause No. CV-12-3152-LRS (“the Lawsuit”), and relating to matters alleged in *Confederated Tribes and Bands of the Yakama Nation v. Haight, et al.*, a lawsuit pending in the Tribal Court for the Confederated Tribes and Bands of the Yakama Nation under Cause No. R-13-019 (“the Tribal Court Action”). This Agreement shall become effective upon the final signature by the Parties. The date of that final signature shall be the “Effective Date” of this Agreement.

### RECITALS

In December 2012, the Yakama Nation initiated the Tribal Court Action against the State, and the State of Washington initiated the Lawsuit against the Yakama Nation, its Court, and its officers.

The Parties wish to avoid costly and lengthy litigation and to settle and compromise any and all claims and disputes of any kind or nature whatsoever between the Parties in the Lawsuit. The Parties also wish to have the Tribal Court Action dismissed with prejudice.

The Parties enter into this Agreement without admitting any liability. This Agreement shall not be construed as an admission of any wrongdoing, liability, any fact, or evidence of such, or admission of any violation of law by any of the Parties.

By virtue of this Agreement, the Yakama Nation does not waive, alter, or otherwise diminish the rights, privileges, remedies, authority, or services guaranteed by the Treaty With The Yakama. 12 Stat. 951 (1859). Neither the Yakama Nation nor the State waives, alters, or otherwise diminishes either Party’s Sovereign Immunity, whether expressed or implied, by virtue of this Agreement or any action that may arise directly or indirectly from the same.

## AGREEMENT

Based upon the foregoing, and in consideration for each and every term of this Agreement, including the above Recitals, the Parties agree as follows:

1. The State and the Yakama Nation hereby settle and release all claims asserted in the Lawsuit and in the Tribal Court Action (the "Released Claims") against the Yakama Nation, the Yakama Nation Tribal Court, Chief Tribal Court Judge Strong, and any present and former officer or employee thereof, and against the State (collectively "Released Parties").

2. The State and the Yakama Nation agree that they will not initiate or reinitiate any lawsuit, claim or legal action against Released Parties related to the Consent Decree issued in *Teo v. Steffenson*, No. 93-3050 (E.D. Wash.), as amended in *Teo v. Steffenson*, No. 04-3079 (E.D. Wash.), or related to any and all allegations and claims set forth in the Complaint filed in Yakama Tribal Court, Cause No. R-13-019, or in the Complaint filed in United States District Court, Eastern District of Washington, Cause No. 2:12-cv-03152-LRS. The State and the Yakama Nation shall dismiss all claims and Complaints against the Released Parties with prejudice and without costs, attorneys' fees, or expenses to any Party. The State shall accomplish this by stipulating to and filing Joint Motion To Dismiss papers regarding the Lawsuit within seven (7) business days of the Effective Date. Dismissal with prejudice of the Tribal Court Action shall also be accomplished within seven (7) business days of the Effective Date. Said Joint Motion and Order shall provide:

The Parties to this joint motion have reached a compromise and wish to (1) dismiss all claims against each other, with prejudice, without fees or costs to any party and (2) confirm that the Consent Decree issued in *Teo v. Steffenson*, No. 93-3050 (E.D. Wash.), as amended in *Teo v. Steffenson*, No. 04-3079 (E.D. Wash.), has been vacated.

A proposed Order is filed herewith.

The State and the Yakama Nation will also ensure that the aforesaid *Teo v. Steffenson* case has been dismissed with prejudice and that any and all orders issued therein have been vacated. Notwithstanding the foregoing, the Yakama Nation does not waive, alter, or otherwise diminish the rights, privileges, remedies, authority, or services guaranteed by the Treaty With The Yakama, either express or implied, by entering into this Agreement or stipulating to or filing said Joint Motion and Order; nor are any prospective infringement of any said rights, privileges, remedies, authority, or services reserved in the Treaty With The Yakama considered waived, estopped, or otherwise litigated by operation of this Agreement or any corresponding court order entered as part of this Agreement. Nor does anything in this Agreement waive the sovereign immunity of either the Yakama Nation or the State, or their officers, agents or employees.

3. The State shall retain 50% of the payments otherwise due to the Yakama Nation, pursuant to Paragraph 4.4 of the attached Fuel Tax Agreement, which Fuel Tax Agreement is incorporated herein by reference and made a part of this Settlement Agreement, until \$9,000,000.00 has been retained by the State. Refunds under Paragraph 4.4 of the Fuel Tax Agreement will begin immediately accruing on the Effective Date of this Agreement, but the State will make no payments under the Fuel Tax Agreement per that Paragraph 4.4 until this Agreement is effective under applicable Yakama law and the State is notified of the same by letter from the Chairman of the Yakama Nation Tribal Council.

4. This Agreement shall be binding and inure to the benefit of the Parties and the Parties' respective legal representatives, heirs, successors, assigns, employees, and agents. No other person or entity shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

5. On or before the Effective Date of this Agreement, the Yakama Nation Tribal Council will revoke the Petroleum Products License Responsibilities document that its Secretary issued to Cougar Den, Inc., on September 29, 1993. The Yakama Nation will notify the State of the revocation in writing.

6. Within six months of the Effective Date of this Agreement, the Yakama Nation will examine its laws, including Title 30 of the Revised Yakama Nation Law and Order Code, and will put into effect such revisions as may be necessary to make its laws consistent with the Fuel Tax Agreement.

7. Neither this Agreement or any term or provision hereof, may be changed, waived, discharged, amended, modified, or terminated orally, or in any manner other than by an instrument in writing signed by all of the Parties hereto. This Agreement may be signed in counterparts. For all purposes, a facsimile or email copy of a signature shall be deemed and given the same force and effect as an original manual signature. Each Party shall take any and all reasonable steps and execute, acknowledge and deliver any and all further documents that any other Party may reasonably request to effectuate the intent and purposes of this Agreement.

8. This Agreement contains the entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and there are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein. The above recitals are hereby made a part of this Agreement. This Agreement shall be deemed to have been drafted by all the Parties hereto, since all Parties were assisted by their counsel in reviewing and consenting to this Agreement, and no ambiguity shall be resolved against any party by virtue of its participation in the drafting of this Agreement.

9. To the maximum extent permitted by law, the parties further agree that this Agreement, the terms and conditions of this Agreement, the facts, events, and issues which gave rise to this Agreement, and any and all actions by the Yakama Nation and the

State in accordance therewith, are strictly confidential and shall not be disclosed or discussed with any other persons, entities, or organizations, whether within or without the State, except as may be required by applicable law.

10. Each Party has the full right and actual authority to enter into this Agreement.

Confederated Tribes and Bands of the Yakama Nation

By: Harj Smith

Its: Chairman, Yakama Native Tribal Council

Date: 11-12-13

State of Washington

By: Pat Kohler

Its: Director, Department of Licensing

Date: 11/18/2013



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

**RESOLUTION**

**T-002-14**

**WHEREAS**, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

**WHEREAS**, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation of the Yakama Reservation, by the authority delegated by Resolution T-38-56, and

**WHEREAS**, the Yakama Tribal Council has the duty and responsibility to ensure the economic well-being of the Yakama Nation and its Tribal Government, protect Yakama sovereignty, and the rights and privileges secured by the Treaty of 1855, and

**WHEREAS**, for the last several decades Washington State has attempted to assert absolute authority to tax and regulate the sale of motor vehicle and special fuel on the Yakama Reservation, including that fuel purchased by enrolled Yakama members, and

**WHEREAS**, for the last several decades the Yakama Nation has asserted its own sovereign authority to tax and regulate the sale of motor vehicle and special fuel on the Yakama Reservation, including fuel purchased by enrolled Yakama members, and

**WHEREAS**, since at least 1994, there have been various problems associated with state-tribal dual taxation and regulation of fuel sales on the Yakama Reservation, and

**WHEREAS**, since 2012 Washington State has sought to terminate the Consent Decree governing state taxation of fuel sold on the Yakama Reservation, which termination would have resulted in 100% of state taxes being levied on all fuel sold on the Reservation, including that fuel purchased by enrolled Yakama members, and 100% of those state tax dollars being paid to the state, and

**WHEREAS**, on January 5, 2012, the Yakama Nation General Council Body passed Motion GCM 12-2012 and on August 2, 2012, the General Council passed Resolution GC-08-2012, which both say that "the Yakama Nation shall be the sole gasoline distributor" to the Yakama Reservation, and

**WHEREAS**, in December 2012, Washington State commenced an action in United States District Court to terminate the Consent Decree and obtain a monetary judgment against the Yakama Nation for an amount in excess of \$27 million in alleged "back-taxes" owed for the sale of all fuel on the Yakama Reservation since 2006, and to abrogate Articles II and III of the Treaty of 1855, and

**WHEREAS**, the Yakama Nation disagrees that the Consent Decree allows Washington State to obtain "back taxes" from the Nation, but the Nation wishes to avoid costly, risky and lengthy litigation against the state that would place the Treaty of 1855 in jeopardy before the United States District Court in the City of Yakima, and

**WHEREAS**, per the direction of Tribal Council, Washington state and the Yakama Nation recently entered into formal, confidential mediation and settlement negotiations with the assistance of Ninth Circuit Court of Appeals Judge Edward Leavy, and those negotiations have produced the proposed Settlement Agreement and companion Fuel Tax Agreement with the State of Washington, and

**WHEREAS**, under the Consent Decree, the Yakama Nation has derived no economic benefit from Washington state taxes levied upon the sale of fuel on the Yakama Reservation since at least 2006, but under the proposed Fuel Tax Agreement, the Nation will be entitled to receive from the state up to 28.125 cents, which is equal to 75% of the state tax rate, for every gallon of fuel sold on the Yakama Reservation and elsewhere in Yakama Indian Country, and

**WHEREAS**, such payments could equate to millions of dollars being paid to the Yakama Nation for the Nation's use in providing services and programs to all Yakama enrolled members; and Washington state's retention over the next three years of 50% of such payments, not to exceed \$9 million, will dispose of all of the state's "back taxes" claims against the Nation without the direct expenditure of any existing or future Yakama governmental monies, and

**WHEREAS**, it is expressed in the Fuel Tax Agreement that neither it nor the Settlement Agreement (a) waive, alter, or otherwise diminish Yakama rights, privileges, remedies or services guaranteed by the Treaty of 1855, (b) waive, alter, or otherwise diminish Yakama Sovereign Immunity, whether expressed or implied, or (c) consent the Yakama Nation to the application of any laws of the State of Washington for any activities on the Yakama Reservation; and further the Yakama Nation intends that neither agreement shall, on a go forward basis, operate to preclude, waive or estop any Yakama Treaty or inherent sovereignty rights claims regarding state fuel taxes or travel restrictions, and

**WHEREAS**, the proposed Fuel Tax Agreement is "unique in that it also takes into account the Yakama Nation's unique Treaty rights."

**NOW, THEREFORE, BE IT RESOLVED**, by the Yakama Tribal Council meeting in Regular Session at the Governmental Headquarters of the Confederated Tribes and Bands of the Yakama Nation, with a quorum being present, the Yakama Nation hereby agrees to enter into both the Settlement Agreement and the Fuel Tax Agreement with the State of Washington, thereby settling and dismissing the lawsuit known as *State of Washington, et al. v. The Tribal Court For The Confederated Tribes and Bands of the Yakama Nation, et al.*, United States District Court for the Eastern District of Washington docket number CV-12-3152-LRS; and the Yakama Tribal Council authorizes the Chairman to execute those two agreements, or any substantially similar version of those agreements approved by the Yakama Nation Fuel Tax Mediation Team, on the Yakama Nation's behalf.

**BE IT FURTHER RESOLVED**, that pursuant to General Council Motion GCM 12-2012 and Resolution GC-08-2012, effective immediately, the document "Petroleum Products License Responsibilities" dated September 29, 1993, and executed by Lonnie Selam, Sr., is revoked.

**BE IT FURTHER RESOLVED**, that also pursuant to General Council Motion GCM 12-2012 and Resolution GC-08-2012, the Fuel Tax Agreement entered into by the Yakama Nation provides that the Nation shall be the sole and exclusive means of fuel distribution to the Yakama Reservation until such time as the Nation might be able to distribute fuel itself; and because General Council Officers have not elected to take this matter to the General Council Body, the Fuel Tax Agreement and the Settlement Agreement shall be effective under Yakama law once signed.

**BE IT FURTHER RESOLVED**, that the Yakama Tribal Council directs Galanda Broadman PLLC to negotiate and file federal court settlement order language and to take all other steps in order to settle and dismiss *State of Washington, et al. v. The Tribal Court For The Confederated Tribes and Bands of the Yakama Nation, et al.*, and any related disputes with the State of Washington.

**BE IT FURTHER RESOLVED**, that effective immediately, the Fish Wildlife Law and Order Committee shall require any Yakama member or non-member owned business who engages in fuel-related commerce under the Fuel Tax Agreement, or otherwise on the Yakama Reservation, to obtain a business license from the Yakama Nation before further engaging in any such commerce; and for any such business engaged in fuel distribution, to by the end of each month starting on October 31, 2013, provide a designated official copies of all invoices recording the sale of any fuel to any Yakama filling station, which invoices shall include the invoice date, the names of the filling station, and the amount of state fuel taxes included in the price of the fuel.

**BE IT FURTHER RESOLVED**, that effective immediately and until such time as the Yakama Nation's new tax department begins to operate, a designated official shall be responsible for communicating with the Washington State Department of Licensing regarding fuel tax collection and refunds, and he or she shall report to the Tribal Council about the status of those activities during each Tribal Council Regular Session, starting in November 2013.


**BE IT FURTHER RESOLVED**, that effective immediately, the Fish, Wildlife, Law and Order Committee shall devise a comprehensive set of new Yakama tribal laws and regulations concerning Yakama taxation and regulation of the sale of motor vehicle and special fuel on the Yakama Reservation and elsewhere in Yakama Indian Country, including revisions to Title 30 of the Revised Yakama Nation Law and Order Code, as may be necessary to make Yakama law consistent with the Fuel Tax Agreement; as such, within sixty days of the passage of this Resolution, the Committee shall draft a proposed set of those new Yakama tribal laws and regulations and shall present them to the Tribal Council for consideration by no later than during the Council's January 2014 Regular Session.

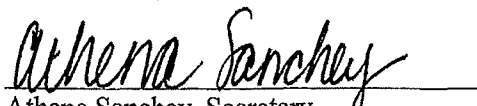
**BE IT FURTHER RESOLVED**, that effective immediately and until that comprehensive set of new Yakama tribal laws and regulations are considered by the Tribal Council, the 5.5 cents per gallon tax on fuel purchases by enrolled Yakama members on the Yakama Reservation, is rescinded.

**BE IT FINALLY RESOLVED**, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied; or intend to preclude, waive or estop any Yakama Treaty or inherent sovereignty claims in the future, by virtue of this Yakama Tribal Council Resolution, the Settlement Agreement or Fuel Tax Agreement with the State of Washington, any federal, Tribal or other court order language, or any action which may arise directly or indirectly from the same; nor does the Yakama Nation waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty of 1855.

**DONE AND DATED** on this 2<sup>ND</sup> day of October, 2013, by the Yakama Tribal Council by a vote of 10 for, 0 against, 0 abstentions.

ATTEST:

  
Harry Smiskin, Chairman  
Yakama Tribal Council

  
Athena Sanchez, Secretary  
Yakama Tribal Council

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