

LUMMI INDIAN BUSINESS COUNCIL

2665 KWINA ROAD BELLINGHAM, WASHINGTON 98226 (360) 312-2000

DEPARTMENT Office of the Reservation Attorney DIRECT NO.(360) 312-2125

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DIRECTOR'S OFFICE
DEPARTMENT OF LICENSING

April 18, 2016

Director Pat Kohler
Department of Licensing
PO Box 9020
Olympia WA 98504

Dear Director Kohler,

Enclosed with this letter are three original copies of the final Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel Between the Lummi Nation and the State of Washington signed by the Chairman of the Lummi Indian Business Council, Tim Ballew II. Once you have counter signed please return one original to the Lummi Nation at:

Lummi Indian Business Council
Office of the Reservation Attorney
2665 Kwina Road
Bellingham, WA 98226.

If you have any questions please do not hesitate to contact me at 360-312-2164.

Sincerely,

Mary Neil
Reservation Attorney

**AGREEMENT
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL
BETWEEN THE LUMMI NATION AND THE STATE OF WASHINGTON**

I. RECITALS

1.1 The Lummi Indian Business Council is the governing body of the Lummi Nation of the Lummi Reservation, a federally recognized Indian tribe, whose lands are located within the exterior boundaries of Whatcom County, State of Washington. The Lummi Nation or Lummi Indian Business Council will be referred to in this Agreement as the “Tribe”.

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. 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 of Washington 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 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 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 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. By entering into this Agreement, neither party concedes the other party's authority regarding fuel taxation and this Agreement is not intended nor shall it be used for that purpose. It is solely for the purpose of establishing a mutually acceptable and beneficial agreement between the State and the Tribe.

1.6 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, transferred, 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 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 The parties recognize that, effective July 1, 2016, chapters 82.36 and 82.38 of the Revised Code of Washington will be merged into a single chapter 82.38 that covers both motor vehicle fuel and special fuel, and that the numbering of some statutory provisions will change as of that date. Laws of 2013, ch. 225; Laws of 2015, ch. 228, § 40. The parties intend that references herein to particular sections of chapters 82.36 and 82.38 RCW will be understood to refer to their counterparts in the version of RCW 82.38 that takes effect on July 1, 2016.

III. DEFINITIONS

3.1 “Blender” shall be used in this Agreement to refer to either a Motor Vehicle Fuel Blender or a Special Fuel Blender. “Motor Vehicle Fuel Blender” has the meaning given in RCW 82.36.010(13), as it now exists or as amended in the future. Special Fuel “Blender” has the meaning given in RCW 82.38.020(2), as it now exists or as amended in the future.

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 it now exists or as amended in the future.

3.4 “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.

3.5 “Importer” shall be used in this Agreement to refer to either a Motor Vehicle Fuel Importer or a Special Fuel Importer. “Motor Vehicle Fuel Importer” has the meaning given in

RCW 82.36.010(16), as it now exists or as amended in the future. “Special Fuel Importer” has the meaning given in RCW 82.38.020(26), as it now exists or as amended in the future.

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 Lummi 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.

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

3.11 “Supplier” shall be used in this Agreement to refer to either a Motor Vehicle Fuel Supplier or a Special Fuel Supplier. “Motor Vehicle Fuel Supplier” has the meaning given in RCW 82.36.010(17), as it now exists or as amended in the future. “Special Fuel Supplier” has the meaning given in RCW 82.38.020(27), as it now exists or as amended in the future.

3.12 “Tribe” has the same meaning as ¶ 1.1 of this Agreement.

3.13 “Tribal business” means a business that is wholly owned and operated by the Tribe or a separately administered entity wholly owned by the Tribe.

3.14 “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.

3.15 “Tribal member” means a person who is an enrolled member of the Tribe.

3.16 “Tribal member station” means a retail filling station located within the Reservation and wholly owned and operated by a Tribal member, under license from the Tribe.

IV. AGREEMENT

Government-To-Government Cooperation

4.1 The State 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 the purchasing, delivery and sale of 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, Regulation and Refunds

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.

4.3 The Tribe agrees to:

- a. Purchase fuel subject to this Agreement on which state fuel tax has been paid and to purchase fuel only from persons or companies operating lawfully and who are properly licensed in Washington State to distribute fuel in accordance with chapters 82.36 and 82.38 RCW 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;

- b. unless otherwise mutually agreed with the State, if the Tribe permits Tribal members to sell fuel on the Reservation, prior to authorizing such activity, the Tribe shall enact a law that requires those Tribal members to be licensed under the laws of the Tribe and to purchase fuel in compliance with the requirements in ¶ 4.3a.
- c. include the amount of the state fuel tax in the price of fuel sold at retail, and if applicable, to require Tribal member stations to do the same.

4.4 Upon compliance with the procedures described in ¶ 6.1 of this Agreement, the Tribe shall be entitled to and the State shall refund an amount equal to 75% of the tax paid and included in the price on each gallon of motor vehicle fuel or special fuel purchased by the Tribe, Tribal businesses or, if applicable, businesses operated by Tribal members for resale. This paragraph does not apply to refunds for fuel purchase by the Tribe in ¶ 4.5.

4.5 The Tribe shall be entitled to and the State shall refund 100% of the state fuel tax included in the price of fuel purchased for uses that are eligible for the Federal fuel tax exemptions for Indian Tribal government entities. The amount of refund is limited to the number of gallons claimed for credit or refund 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 Tribe. A copy of the IRS Form 4136 shall accompany the refund request.

4.6 The Tribe, Tribal Fuel Facilities, or 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 Tribe, Tribal Fuel Facilities, or Tribal businesses and to the particular use of motor vehicle and special fuels and (2) to the extent a refund was not made to the Tribe under ¶ 4.4 or ¶ 4.5 of this Agreement for those specific gallons of motor vehicle and special fuels.

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 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 ¶ 4.8, 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 ¶ 4.8.

Records and Audit Provisions

- 4.9 The Tribe
- a. shall maintain invoices showing the invoice date, name of seller, the amount of State motor vehicle fuel and special fuel taxes paid or included in the price of fuel and number of gallons of motor vehicle fuel and special fuel purchased by the Tribe for resale at Tribal Fuel Facilities;

- b. shall, if applicable, maintain any invoices provided to the Tribe by Tribal members showing the information required on invoices in the preceding paragraph.
- c. shall maintain records to document the use of fuel tax proceeds or their equivalent for the purposes identified in ¶ 4.8 of this Agreement, including funds carried forward;
- d. shall provide Internal Revenue Service (IRS) Form 4136 and detail schedules reflecting the number of gallons claimed for credit or refund for Federal fuel tax purposes identified in ¶ 4.5 of this Agreement; and
- e. shall, if applicable, maintain copies of licenses issued for the operation of each Tribal member station.
- f. shall maintain such records for a minimum of three years or for such time as necessary to demonstrate that credited amounts were used or carried forward as agreed in ¶ 4.8.

4.10 The Tribe 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 certify (a) the number of gallons of motor vehicle and special fuel purchased by the Tribe for re-sale at Tribal Fuel Facilities, and the amount of State fuel tax included in the price of the fuel purchased by the Tribe, and if applicable, (b) the number of gallons of motor vehicle and special fuel purchased for re-sale at Tribal member stations, and the amount of State fuel tax included in the price of the fuel purchased by the Tribal member station. The auditor shall also certify the fuel tax proceeds or an equivalent amount was expended by the Tribe for the purposes identified in ¶ 4.8 above, and the

audit report shall list the expenditures by the categories listed in ¶ 4.8. The period under review for the audit, or audit cycle, shall be the prior Tribal fiscal year. The auditor may only review records for earlier years only as necessary for an internal reconciliation of the tribal books. However, records prior to the audit cycle are not open to review for each annual audit. The Auditor shall provide the Director of the State Department of Licensing a compliance report that will certify that the Auditor finds the Tribe to be in compliance with the terms of the Agreement. The State may review a full audit report at the Tribe's offices but may not copy the same.

4.11 If any audit required by Paragraph 4.10 is not performed, or if the compliance report is not delivered to the Director within the time period agreed to by the parties, the Tribe shall be entitled to no further refunds until the audit is performed and the report delivered.

4.12 If the auditor is unable to make any certification required by ¶ 4.10, either party may invoke the dispute resolution process under ¶ 5.1.

4.13 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

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 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 are necessary to resolve the dispute.
- 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 sooner 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 so long as an Amendment to this Agreement is not required to resolve the dispute.

d. (1) If the Tribe demands mediation, the State will continue to issue refunds in accordance with §§ 4.4, 4.5, and 6.1 of this Agreement during the mediation period unless the parties mutually agree otherwise.

(2) If the State demands mediation, the following procedures will apply unless the parties mutually agree otherwise. During the mediation period, the Tribe will continue to submit copies of invoices and IRS Forms 4136 to the Department in accordance with §§ 6.1.b and 4.9.d of this Agreement. The Department will hold and maintain the invoices and IRS forms but will not remit refunds during the mediation period. If the dispute is resolved and the parties mutually agree that the Tribe is entitled to some portion of the tax shown on the invoices submitted during the mediation period, the Department will promptly remit to the Tribe the agreed-upon amount. After the dispute is resolved, the Department will resume remitting refunds to the Tribe in accordance with §§ 6.1.c and 6.1.d of this Agreement. If the dispute is not resolved, the Tribe will not be entitled to refunds under §§ 4.4 or § 4.5 after the date of the mediation demand.

e. After completion of the process in §§ 5.1.a-d 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 Tribe or the Director of the Department of Licensing.

5.2 Once executed, this Agreement shall remain in effect unless (a) the parties mutually agree in writing that the Agreement should be vacated or terminated and superseded by a new agreement between the parties, (b) the Agreement is terminated pursuant to ¶ 5.1.e, or (c) the Agreement is terminated without cause upon provision of 30 days prior written notice to the other party. The State and the Tribe shall confer 5 years after the effective date of the agreement to evaluate the effectiveness of the agreement.

5.3 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.

5.4 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, and in the event such agreement or compact contains terms more favorable to the other Indian tribe than the terms in this Agreement, the State agrees to make such terms and conditions available to the Tribe, at its option, and if so agreed to by the Tribe, all the terms in this Agreement are open to re-negotiation, and the state shall be entitled to insist that any other terms 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 or replacement terms in this Agreement.

5.5 This agreement supersedes all other fuel tax agreements between the State and the Tribe.

VI. PROCEDURES, IMPLEMENTATION, AMENDMENTS

- 6.1 The following procedures for tax remittance shall apply:
- a. For any motor vehicle or special fuel on which the State fuel tax already has been collected prior to delivery to the Tribe, Tribal Fuel Facilities, Tribal businesses, and if applicable, Tribal member stations, the State shall remit monthly to the Tribe an amount equal to 75% of the state motor vehicle and special fuels tax actually paid and included in the price on all such fuel delivered to the Tribe, Tribal Fuel Facilities, Tribal businesses and, if applicable, Tribal member stations in the preceding month, in accordance with §§ 6.1.b, and 6.1.c.
 - b. Each month the Tribe shall submit to the Department copies of invoices recording sales of motor vehicle fuel and special fuel pursuant to § 4.9.a or if applicable § 4.9.b.
 - c. Within 30 days of receiving invoices identified in the previous paragraph, the State shall remit to the Tribe 75% of the state motor vehicle fuel and special fuels tax actually paid and included in the price of the fuel delivered to the Tribe, Tribal Fuel Facilities, Tribal businesses, and if applicable, Tribal member stations, as shown on the invoice.
 - d. Within 30 days of receiving documents in accordance with § 4.9.d, the State shall remit monthly to the Tribe an amount equal to 100% of the tax included in the price of fuel purchased for uses that are eligible for the Federal Fuel tax exemptions for Indian Tribal government entities.
 - e. If any audit required by § 4.10 is not performed, or if the final written compliance report is not delivered to the Director within the time period agreed to by the

parties, the Tribe shall be entitled to no further remittances until the audit is performed and the report delivered.

f. 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.

g. 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: Chairman, Lummi Indian Business Council, 2665 Kwina Road, Bellingham, WA 98228. The contact person for the State, for any changes or concerns about this Agreement, shall be: 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.

6.4 The Tribe shall provide the State with a list of the name and physical location (address) of each Tribal Fuel Facilities covered by this Agreement, and, if applicable, each Tribal member station covered by this Agreement. No later than 30 days after any new retail filling station is opened, the same information will be provided to the State. If any retail filling station covered by this Agreement closes or is no longer licensed by the Tribe, the Tribe shall notify the State within 30 days of the change.

VII. SIGNATURES

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 ¶ 5.1, or ¶ 5.2, or by mutual agreement.

DATED this 5 day of
April, 2016.

DATED this 26 day of
April, 2016.

LUMMI NATION

DEPARTMENT OF LICENSING

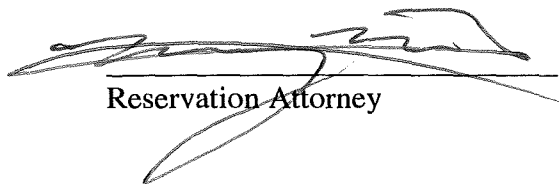


Timothy Ballew II, Chairman
Lummi Indian Business Council

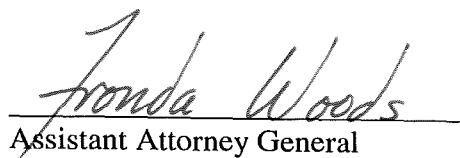


Pat Kohler, Director
Department of Licensing

Approved as to Form



Reservation Attorney



Assistant Attorney General