

**AGREEMENT  
CONCERNING TAXATION OF FUEL BETWEEN THE NOOKSACK INDIAN  
TRIBE AND THE STATE OF WASHINGTON**

**I. RECITALS**

1.1 The Nooksack Indian Tribe (hereinafter “Tribe”) enters into this Agreement with the State of Washington. The Tribe is a federally recognized Indian Tribe located on the Nooksack Indian Reservation within the State of Washington.

1.2 The State of Washington (“State”) is a state within the United States of America, possessed of full powers of a state government. The Department of Licensing is an agency of the State of Washington. The State of Washington and the Department of Licensing are referred to collectively in this Agreement as the “State.” RCW 82.38.310 allows the Governor to enter into an agreement with any federally recognized Indian tribe located on a reservation within the State regarding 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 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 chapter 82.38 RCW, the State imposes state fuel taxes on 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 fuel as defined herein, and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

1.6 By entering into this Agreement, the State does not concede that the Tribe has any immunity from the State's fuel tax and fuel tax collection provisions.

1.7 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 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 Tribal 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.

### **III. DEFINITIONS**

3.1 “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” has the meaning given in RCW 82.38.020(8), as it now exists or as amended in the future.

3.4 “Filling station” means a place of business open to the general public and operated for the purpose of delivering fuel into the fuel tanks of motor vehicles.

3.5 “Fuel” has the meaning given in RCW 82.38.020(14), 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 fuel as the means of propulsion.

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

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

3.9 “Supplier” has the meaning given in RCW 82.38.020(30), as it now exists or as amended in the future.

3.10 “Tribe” means the Nooksack Indian Tribe. “Tribe” has the same meaning as ¶ 1.1 of this Agreement.

3.11. "Tribal business" means a business that is wholly owned and operated by the Tribe or a separately administered entity wholly owned by the Tribe.

3.12 "Tribal Fuel Facilities" means a retail filling station that is owned and operated by the Tribe or by a Tribal business, and any facilities owned and operated by the Tribe or a Tribal business for bulk storage of fuel.

3.13 "Tribal member" means a person who is an enrolled member of the Tribe.

3.14 "Tribal member station" means a retail filling station located within the Reservation 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 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 fuel taxes in accordance with chapter 82.38 RCW, as it now exists or as it may hereafter be amended.

4.3 The Tribe agrees to

- a. Purchase fuel subject to this Agreement on which Washington 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 chapter 82.38 RCW as a fuel distributor, supplier, or blender, or from a tribal distributor, supplier, or blender lawfully doing business according to all applicable laws;
- b. Enact an ordinance requiring 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, supply, or blend fuel in accordance with chapter 82.38 RCW. Such ordinance shall become effective within six months of the execution of this Agreement.
- c. Before permitting Tribal members or Tribal member stations to sell fuel on the Reservation, enact an ordinance that requires those Tribal members and Tribal member stations to be licensed under the laws of the Tribe and to purchase fuel in compliance with the requirements in ¶ 4.3.a.
- d. Include the amount of the state fuel tax in the price of fuel sold at retail, and to require Tribal members and Tribal member stations to do the same.

4.4 Upon compliance with the procedures described in ¶ 6.1.b of this Agreement, the Tribe shall be entitled to and the State shall refund an amount equal to 75% of the tax paid to the State and included in the price on each gallon of fuel purchased by the Tribe, Tribal businesses or, if applicable, businesses operated by Tribal members

for resale. This ¶ 4.4 does not apply to refunds for fuel purchased by the Tribe as described in ¶ 4.5.

4.5 Upon compliance with the procedures described in ¶ 6.1.d of this Agreement, 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.

4.6 The Tribe, Tribal Fuel Facilities, or Tribal businesses may also be eligible for refunds under the provisions of RCW 82.38.080, RCW 82.38.180, and similar state fuel tax exemption statutes that may be later adopted, but only (1) to the extent such statutes apply to the Tribes and the Tribal business and to the particular use of fuel 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 fuel.

4.7 No refund of 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, and 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 shall maintain the following records:
- a. invoices showing the invoice date, name of seller, the amount of State fuel taxes paid to the State and included in the price of fuel and number of gallons of fuel purchased by the Tribe for resale at Tribal Fuel Facilities;
  - b. invoices, if any, provided to the Tribe by Tribal members or Tribal member stations showing the information required on invoices in the preceding ¶ 4.9.a;
  - c. 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. Internal Revenue Service (IRS) Forms 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. copies of any tribal licenses issued for the operation of each Tribal member station.

4.10 The Tribe shall maintain the records described in ¶ 4.9 for a minimum of three years or for such time as necessary to demonstrate that credited amounts were used as agreed in ¶ 4.8.

4.11 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 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, (b) if the Tribe has sought refunds under ¶ 6.1.b(2), the number of gallons of fuel purchased by Tribal members for re-sale at Tribal member stations operating under license from the Tribe at the time of the purchase, and the amount of State fuel tax included in the price of the fuel so purchased. 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 Tribe 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 ¶ 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 Tribe 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 ¶ 4.11, either party may invoke the dispute resolution process under ¶ 5.1. If the parties are unable to resolve the dispute through that process, either party may terminate this Agreement in accordance with ¶ 5.1.e.

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**

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 6.1.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 This Agreement takes effect on the date that the last party signs it. This Agreement shall remain in effect for ten (10) years, 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 within that time frame, or (b) the Agreement is terminated pursuant to ¶ 5.1.e. The Agreement shall automatically renew for an additional ten (10) year period unless either party provides written notice to the other, no later than 60 days before the expiration of the ten (10) year period, that they wish to modify the terms 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 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 fuel on which the State fuel tax already has been collected prior to delivery to the Tribal Fuel Facilities, Tribal businesses, and Tribal member stations, the State shall remit monthly to the Tribe an amount equal to 75% of the state 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 ¶¶ 6.1.b and 6.1.c. This ¶ 6.1.a does not apply to refunds for fuel purchased by the Tribe as described in ¶ 6.1.d.
  - b. (1) Each month, the Tribe shall submit to the Department copies of invoices for fuel delivered to Tribal Fuel Facilities and Tribal businesses, which invoices shall include the invoice date, name of the seller, and the amount of State fuel taxes paid and included in the price of the fuel.  
(2) The Tribe may also submit copies of invoices for 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 fuel taxes paid and included in the price of the fuel.

- c. Within 30 days of receiving an invoice under ¶ 6.1.b, the Department shall remit to the Tribe 75% of the state fuel tax actually paid to the State and included in the price of the fuel delivered to the Tribal Fuel Facilities, Tribal businesses, and Tribal member stations, as shown on the invoice.
- d. Each month, the Tribe shall submit to the Department copies of invoices for fuel purchased for uses that are eligible for the Federal fuel tax exemptions for Indian Tribal government entities, along with a copy of the IRS Form 4136 and detail schedules. Within 30 days of receiving such documents, the Department shall remit monthly to the Tribe an amount equal to 100% of the tax included in the price of the fuel, as shown on the invoices.

6.2 If any audit required by ¶ 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 Tribe shall be entitled to no further remittances until the audit is performed and the report delivered.

6.3 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. If informal dispute resolution efforts are unsuccessful, the dispute resolution provisions in Part V of this Agreement shall apply.

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

6.5 The contact person for the Tribe, for any changes or concerns about this Agreement, shall be:

Office of Tribal Attorney  
5047 Mt. Baker Hwy.  
P.O. Box 63  
Deming, WA 98244

The contact person for the State, for any changes or concerns about this Agreement, shall be: Teresa Berntsen, 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.

6.6 The Tribe shall provide the State with a list of the name and physical location (address) of each retail filling station operated by the Tribe 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 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 by mutual agreement.

DATED this 3rd day of July, 2018

DATED this 11th day of July, 2018

NOOKSACK INDIAN TRIBE

DEPARTMENT OF LICENSING

Ross Cline SR  
Chairman

Teresa Bernholm  
Director

Approved as to Form

CE W RM  
Tribal Attorney

Tonda Woods  
Assistant Attorney General