

**AGREEMENT
CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL
BETWEEN THE LOWER ELWHA KLALLAM TRIBE AND THE STATE OF
WASHINGTON**

I. RECITALS

1.1. The Lower Elwha Klallam Tribe is a federally recognized Indian tribe organized in accordance with its Constitution and By-laws, approved by the Secretary of the Interior on April 29, 1968; the Indian Reorganization Act of June 18, 1934; and the Treaty of Point-No-Point of January 26, 1855 that is possessed of the full inherent sovereign powers of a government (“Tribe”). The Tribe occupies, governs and exercises jurisdiction over the Lower Elwha Klallam Reservation and lands held in trust for the Tribe and its members by the United States of America in Clallam County, 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 82.36.450 and RCW 82.38.310 allow the Governor to enter into an agreement with any federally recognized Indian tribe located on a reservation within the State regarding motor vehicle and special fuel taxes. The Governor has delegated this authority to the director of the Department of Licensing.

1.3. The Tribe and the State (collectively “the parties”) have conferred and engaged in government-to-government negotiations in a mutual, good faith effort to reach an arrangement in regard to state fuel taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Reservation. Each party to this Agreement respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship.

1.4. The parties acknowledge that, pursuant to chapters 82.36 and 82.38 RCW, the State imposes state fuel taxes on motor vehicle fuel suppliers and importers and special fuel suppliers and importers, the revenue from which is used exclusively for highway purposes. The parties further acknowledge that the Tribe has authority to impose certain taxes respecting fuel used in motor vehicles. 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.

1.6. The Tribe and the State shall confer regarding regulation of filling stations operating within the jurisdiction of the Tribe to ensure such regulation is consistent with the intent and spirit of this Agreement. However, nothing in this Agreement shall be construed as modifying the regulatory jurisdiction of either party.

1.7. By entering into this Agreement, the State does not concede that the Tribe has any immunity from the State's fuel tax and tax collection provisions and the Tribe does not concede that the State can enforce its fuel tax or tax collection provisions upon it.

1.8. This Agreement is not intended, and will not be construed to confer a benefit or create any right on a third party, or the power or right of any third party to bring an action to enforce any terms of this Agreement.

II. PURPOSE AND OBJECTIVES

2.1. This Agreement addresses the establishment of a cooperative framework for taxation and regulation by and between the Tribe and the State respecting the distribution, sale, transfer, use or possession of motor vehicle fuel and special fuel when such fuel is distributed, sold, transferred, used, or possessed within the Reservation. In general the Parties intend this Agreement to facilitate the on-reservation retail sale of fuel products to Tribal member and non-Tribal member customers at prices competitive with surrounding retail sellers.

2.2. The parties intend that this Agreement completely resolve, as between them, all issues related to motor vehicle fuel taxes and special fuel taxes within the Reservation, and that this Agreement be binding upon the parties and upon persons subject to regulation by either party.

2.3. Nothing in this Agreement is intended to increase, decrease or otherwise affect either parties' statutory and regulatory law or authority to regulate or tax motor vehicle fuel and special fuel and such statutory and regulatory laws shall remain in full force and effect during the term of this Agreement.

2.4. 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 amended in the future.

3.8. “Reservation” means all lands within the exterior boundaries of the Lower Elwha Klallam Reservation together with lands held in trust for the Tribe by the United States of America in Clallam County, Washington over which the Tribe exercises jurisdiction and 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” means the Lower Elwha Klallam Tribe.

3.13. “Tribal business” means a business that is owned and operated 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 Lower Elwha Klallam Tribe.

IV. AGREEMENT

Government-To-Government Cooperation

4.1. The State of Washington 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 Tribal members, non-tribal filling stations, tribal filling stations and businesses that sell or deliver

- motor vehicle or special fuel within the Reservation, and Tribal trust lands where the Tribe exercises governmental authority;
- b. the State's laws and rules respecting the imposition and collection of its fuel taxes from all persons except as provided under this Agreement; and
 - c. The terms of this Agreement.

Framework for Taxation and Regulation

4.2. The Department shall collect Washington State motor vehicle and special fuel taxes in accordance with chapters 82.36 and 82.38 RCW, as they now exist or as they may hereafter be amended. The Tribe agrees to purchase only fuel on which applicable state taxes have been paid.

- a. The Tribe shall by ordinance require all filling stations under its jurisdictional authority, located on the Reservation, to purchase only fuel on which state fuel tax has been paid, and to purchase fuel only from persons or companies operating lawfully in accordance with RCW 82.36 and RCW 82.38 as a motor vehicle or special fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws. Such ordinances shall become effective within 6 months of the execution of this Agreement, or unless otherwise agreed.
- b. The Tribe agrees to pass on to the retail customer the state fuel tax included in the price of fuel.

4.3. Upon compliance with the procedures described in this Agreement, the Tribe shall be entitled to a refund equal to 75% of the tax paid on each gallon of motor vehicle fuel or special fuel purchased by the Tribe.

4.4. 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.

4.5. The Tribe, Tribal Fuel Facilities, Tribal members, 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 Tribes, the Tribal Fuel Facility, the Tribal member, or the Tribal business, and to the particular use by them of motor vehicle and special fuels and (2) to the extent a refund was not made to the Tribe under ¶ 4.3 or ¶ 4.4 of this Agreement.

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

4.7. The Tribe agrees to expend fuel tax amounts refunded by the State or amounts equivalent thereto on: Planning, construction, and maintenance of roads, bridges, boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes. 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 Section 4.7, 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 Section 4.7.

Records and Audit Provisions

- 4.8. The Tribe shall
- a. maintain invoices showing the number of gallons of motor vehicle fuel and special fuel purchased by the Tribe for resale at tribal retail stations;
 - b. maintain records to document the use of fuel tax proceeds or their equivalent for the purposes identified in paragraph 4.7 of this Agreement, and
 - c. maintain Internal Revenue Service (IRS) Form 4136 and detail schedules reflecting the number of gallons claimed for credit or refund for Federal fuel tax purposes.

The Tribe 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 4.7.

4.9. The Tribe shall cause an audit to be performed annually or at such other interval as shall be agreed by the parties, by an independent third party auditor who shall be a certified public accountant licensed under RCW 18.04 and in good standing, to review such records as are necessary to certify the number of gallons of motor vehicle and special fuel purchased by the Tribe for re-sale at Tribal filling stations, the amount of State fuel tax included in the price of the fuel purchased by the Tribe. The auditor shall also certify the Fuel Tax proceeds or an equivalent amount was expended by the Tribe for the purposes identified in 4.7 above, and the audit report shall list the expenditures by the categories listed in 4.7. The Tribe shall deliver a copy of the final written report of such audit to the Director of the State Department of Licensing.

4.10. The State agrees to treat as personal information under RCW 42.56.230(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

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 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.

- d. (1) If the Tribe demands mediation, the State will continue to issue refunds in accordance with ¶¶ 4.3, 4.4, and 6.3 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 ¶ 6.3.b and 4.8.c 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 ¶¶ 6.3 of this Agreement. If the dispute is not resolved, the Tribe will not be entitled to refunds under ¶ 4.3 or ¶ 4.4 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. In any action filed by a third party challenging either the Tribe's or the State's authority to enter into or enforce this Agreement, the Tribe and the State each agree to support the Agreement and defend their authority to enter into and implement this Agreement.

VI. EFFECTIVE DATE, IMPLEMENTATION AND AMENDMENT

6.1. This Agreement will become effective immediately upon signing by all parties.

6.2. 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, or (b) the Agreement is terminated pursuant to ¶ 5.1.e.

6.3. The following provisions 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 Tribal Fuel Facilities and Tribal businesses, the State shall remit monthly to the Tribe an amount equal to 75% of the state motor vehicle and diesel fuels tax actually paid on all such fuel delivered to the Tribal Fuel Facilities and Tribal

businesses in the preceding month, in accordance with paragraphs 6.3.b and 6.3.c.

b. The Tribe shall submit copies monthly of invoices for fuel delivered to Tribal Fuel Facilities and Tribal businesses, which invoices shall include the invoice date, name of the seller, and the amount of State motor vehicle fuel and special fuels taxes paid or included in the price of the fuel.

c. Within 30 days of receiving an invoice, the State shall remit to the Tribe 75% of the state motor vehicle fuel and special fuels tax actually paid or included in the price of the fuel delivered to the Tribal Fuel Facilities and Tribal businesses, as shown on the invoice.

d. Within 30 days of receiving documents in accordance with ¶ 4.8.c, the State shall remit monthly to the Tribe an amount equal to 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.

e. 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.

f. If informal dispute resolution efforts are unsuccessful, the dispute resolution provisions 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. If at any time in the future the State enters an agreement, compact or consent decree with any other federally recognized Indian Tribe, of or relating to the collection and reimbursement of state fuel taxes, and in the event such agreement or compact contains terms more favorable to the other Indian Tribe than the terms contained herein, the State agrees to make such terms and conditions available to the Tribe, at its option. Provided, however, that if this clause is exercised

by the Tribe, all 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 any modification or replacement terms.

6.6. The State and the Tribe shall confer 5 years after the effective date of this Agreement to evaluate the effectiveness of the Agreement.

6.7. The contact person for the Tribe, for any changes or concerns about this Agreement, shall be: Chief Executive Officer, Lower Elwha Klallam Tribe, 2851 Lower Elwha Road, Port Angeles, WA 98363, (360) 452-8471, with a copy to General Counsel, Lower Elwha Klallam Tribe, 2851 Lower Elwha Road, Port Angeles, WA 98363, (360) 452-8471, ext. 7435. 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, pkohler@dol.wa.gov (360) 902-4042.

6.8. The Tribe shall provide the State with a list of the name and physical location (address) of each retail outlet operated by the tribe and covered by this Agreement. No later than 30 days after any new retail outlet is opened, the same information will be provided to the State.

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

6.10. In the event the Tribe proposes to blend fuel, the Tribe agrees to abide by all applicable Federal laws related to the blending and sale of motor vehicle and diesel fuel. The parties agree to meet and discuss the application of this Agreement to fuel blended by the tribe, before any such blending begins. If the tribe begins blending fuel without compliance with this paragraph, the State may terminate this Agreement on 30 days' notice.

DATED this 28th day of
March, 2016.

TRIBE

Francis W. Charles
Chairperson, Lower Elwha Klallam Tribe

Approved as to Form

[Signature]
Tribe's General Counsel

DATED this 1 day of
April, 2016.

DEPARTMENT OF LICENSING

Pat Kohler
Director, Department of Licensing

Frona Woods
Assistant Attorney General



RESOLUTION NO. 36-16

APPROVAL OF AGREEMENT CONCERNING TAXATION OF MOTOR VEHICLE FUEL AND SPECIAL FUEL BETWEEN THE LOWER ELWHA KLALLAM TRIBE AND THE STATE OF WASHINGTON

WHEREAS, the Lower Elwha Community Council is the governing body of the Lower Elwha Tribal Community in accordance with its Constitution and By-laws, approved by the Secretary of the Interior on April 29, 1968; the Indian Reorganization Act of June 18, 1934; and the Treaty of Point-No-Point of January 26, 1855; and

WHEREAS, the Lower Elwha Klallam Tribal Business Committee of the Lower Elwha Community Council is the duly elected representative body of the Tribe, and is responsible for ensuring the health, safety, education, welfare, social and economic development, law and order, judicial services, and housing of its tribal citizens; and to preserve and protect the culture, treaty rights, natural resources, and otherwise promoting the welfare and interests of its tribal citizens; and

WHEREAS, the Tribe has the inherent sovereign right and authority to regulate commerce and to impose taxes and regulations within its jurisdiction; and

WHEREAS, under Article IV, Section 1 of the Tribe's Constitution, the Tribe possesses the governmental authority to enter into agreements with other governments, including the State of Washington; and

WHEREAS, the State of Washington is authorized by RCW 82.36.450 and RCW 82.38.310, through 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; and

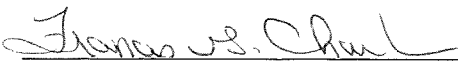
WHEREAS, the Tribe and the State have conferred and engaged in government-to-government negotiations in a mutual, good faith effort to reach an arrangement in regard to state fuel taxes on the distribution, sale, transfer, use, or possession of motor vehicle fuel and special fuel within the Reservation, and each respects the sovereignty of the other and desires to work within the framework of a government-to-government relationship; and

WHEREAS, the Tribe and the State have negotiated the attached agreement addressing the taxation and regulation of motor vehicle fuel and special fuel.


Therefore Let it be Resolved, that the Tribe approves the attached Agreement Concerning Taxation of Motor Vehicle Fuel and Special Fuel between the Lower Elwha Klallam Tribe and the State of Washington and authorizes the Chairwoman, France Charles, and in her absence the Vice-Chair, Russell Hepfer, to sign and execute the Agreement.

CERTIFICATION

The foregoing resolution was presented at a duly called meeting of the Lower Elwha Klallam Business Committee held on the 28th day of March 2016, at which 4 members were present, constituting a quorum, and the Business Committee voted to adopt by a vote of 3 FOR, 0 AGAINST, and 1 ABSTENTIONS.



Frances G. Charles, Tribal Chair



Council Member