

INTERGOVERNMENTAL AGREEMENT
between
ARIZONA DEPARTMENT OF TRANSPORTATION
and
NAVAJO TAX COMMISSION

Establishing Cooperative Fuel Tax Administration

1. **PARTIES:**

1.1 Arizona Department of Transportation
206 South 17th Avenue
Phoenix, AZ 85007
("ADOT")

1.2 Office of the Navajo Tax Commission
Navajo Nation
Post Office Box 1903
Window Rock, Navajo Nation (AZ) 86515
("ONTC")

2. **RECITALS:**

2.1 ADOT is an agency of the State of Arizona ("Arizona") and has been granted the authority to enter into intergovernmental agreements with Indian nations pursuant to A.R.S. §§ 28-401 and 11-951, *et seq.*

2.2 ONTC is an agency of the Navajo Nation, established as a part of the Executive Branch of the Navajo Nation government under 2 N.N.C. § 3351 (1995), and has been granted the authority to enter into this Intergovernmental Agreement on behalf of the Navajo Nation pursuant to section 127 of the Uniform Tax Administration Statute.

2.3 The Navajo Nation ("Nation") has governmental authority within Navajo Indian country in Arizona, Utah and New Mexico, a substantial part of which is located within the State of Arizona.

2.4 Arizona has amended its taxes on Motor Vehicle Fuel as defined by A.R.S. § 28-101 and on Liquid Use Fuel as defined by A.R.S. § 28-5701, which amendments state that such taxes "are conclusively presumed to be direct taxes on the consumer." A.R.S. §§ 28-5606(B), 5708(D). Federal law preempts the authority of Arizona to impose these taxes on certain Indian consumers for possessing, using or consuming the fuel within the consumer's Indian country as defined by 18 U.S.C. § 1151. Arizona has further amended its fuel tax laws to create exemptions from the motor vehicle fuel tax and the liquid use fuel tax when the fuel is sold within an Indian reservation to the Indian Nation or its members, as specified in A.R.S. § 28-5610.A.3 and 4 and in A.R.S. § 5716.A.3 and 4. ADOT and ONTC enter into this agreement to effect and secure

these exemptions in a manner that minimizes administrative burdens, in conformity with Arizona and Navajo law.

2.5 The Nation has determined that a serious physical infrastructure deficit exists within Navajo Indian country as compared with comparable non-Indian rural areas. The lack of adequate roads is a significant component of the Nation's infrastructure deficit, and is one factor which impedes economic development within Navajo Indian country. The Nation enters into this Intergovernmental Agreement to build its own tax program and to ameliorate or remedy this component of its infrastructure deficit.

2.6 Because the Nation straddles the Arizona/New Mexico and Arizona/Utah state lines and because of legal or practical limitations on the ability of Arizona to enforce its laws within Navajo Indian country, the possibility exists that persons or entities seeking to evade the lawful collection of taxes by Arizona may transport untaxed fuels into and through Navajo Indian country for the purpose of unlawful use or sale of such fuels to others without payment of lawful Arizona taxes. Arizona and the Nation have a shared interest in preventing and detecting such unlawful evasion of Arizona taxes and, if such activity is detected, in cooperating to the extent practicable so that such persons or entities are appropriately enjoined, punished, or otherwise dealt with in accordance with applicable law.

2.7 ADOT and ONTC seek to establish a mechanism to administer in an effective and efficient manner the collection of applicable taxes, the payment to the appropriate entity of taxes collected, and a cooperative audit, enforcement and investigation arrangement to ensure such collection and payment of taxes, to prevent tax evasion, and to detect and punish those who unlawfully evade collection, payment or reporting obligations under applicable law.

2.8 ADOT and ONTC intend this Intergovernmental Agreement to provide the basis for building a long-term and cooperative relationship to resolve on a local level issues of common concern for the two governmental agencies relating to the taxation of motor fuels within their respective jurisdictions.

2.9 This Agreement applies to MVF and LUF imported into the RESERVATION, as defined herein. If the Nation or any AUTHORIZED IMPORTER refines or otherwise manufactures MVF or LUF (or both) within Navajo Indian country, as defined by 18 U.S.C. § 1151, for distribution and sale within Navajo Indian country, ONTC and ADOT shall meet as soon as is practicable to determine if this Agreement or the formula set forth in Exhibit 2 to this Agreement should be amended.

3. AGREEMENT: NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS EXPRESSED HEREIN, IT IS MUTUALLY AGREED AS FOLLOWS:

3.1 Definitions. Solely for purposes on this Intergovernmental Agreement, unless the context otherwise requires:

- 3.1.1 "AUTHORIZED IMPORTER" means a person authorized by ONTC pursuant to the applicable laws of the Nation to manufacture, refine or import LUF and/or MVF within the RESERVATION.
- 3.1.2 "BULK PURCHASE" means the purchase of a quantity of fuel that is delivered to a storage tank owned or leased by the Nation and which is used solely for the purpose of fueling TRIBAL MOTOR VEHICLES.
- 3.1.3 "LIGHT CLASS MOTOR VEHICLE" means a motor vehicle that uses use fuel, but excludes a road tractor, a truck tractor, a truck having a declared gross vehicle weight of more than twenty-six thousand pounds or having more than two axles or a passenger carrying motor vehicle designed to seat more than twenty occupants.
- 3.1.4 "LUF" means liquid use fuel as defined by A.R.S. § 28-5701.
- 3.1.5 "LUF TAX" means the tax imposed on liquid use fuel pursuant to A.R.S. § 28-5708.
- 3.1.6 "LUF TAX DIFFERENTIAL" means the difference between the liquid use fuel tax rates for QUALIFYING MOTOR VEHICLES and USE CLASS MOTOR VEHICLES established by A.R.S. § 28-5708 which is nine cents a gallon effective January 1, 1998.
- 3.1.7 "MVF" means motor vehicle fuel as defined by A.R.S. § 28-101.
- 3.1.8 "MVF TAX" means the tax imposed on motor vehicle fuel pursuant to A.R.S. § 28-5606.
- 3.1.9 "PERSON" means a corporation, company, partnership, firm, association or society established in accordance with federal, state or tribal law as well as a natural person.
- 3.1.10 "QUALIFYING MOTOR VEHICLE" means a motor vehicle that meets the definition of light class pursuant to A.R.S. § 28-5701 or a motor vehicle that is exempt from the weight fee pursuant to A.R.S. § 28-5432.

- 3.1.11 "RESERVATION" means all Navajo Indian country, as defined by 18 U.S.C. § 1151, in Arizona, including all lands in Arizona within the recognized boundaries of the Navajo Indian Reservation and all lands held in trust by the United States for the Navajo Nation or its members outside the recognized boundaries of the Navajo Indian reservation in Arizona. Solely for purposes of this Intergovernmental Agreement, "RESERVATION" shall not include any lands in Arizona held in fee by the Navajo Nation or its members outside the recognized boundaries of the Navajo Indian Reservation. The "RESERVATION" is more fully described and depicted on the attached exhibits 3 and 4.
- 3.1.12 "RESIDENT TRIBAL MEMBER" means a person who is an enrolled member of the Navajo Nation and who resides within the RESERVATION or within Navajo Indian country, as defined in 18 U.S.C. § 1151, in New Mexico or Utah.
- 3.1.13 "TRIBAL MOTOR VEHICLE" means a motor vehicle owned or leased by the Nation or any of its agencies, enterprises or wholly-owned corporations, and operated by such owner/lessee for the sole benefit of such owner/lessee.
- 3.1.14 "TRIBAL MOTOR VEHICLE FUELING STATION" means a fuel storage and dispensing facility on the RESERVATION which is used exclusively to place fuel into the fuel tanks of individual TRIBAL MOTOR VEHICLES. A TRIBAL MOTOR VEHICLE FUELING STATION does not include any fuel storage or dispensing facility which dispenses fuel to tribal members or the general public.
- 3.1.15 "USE CLASS MOTOR VEHICLE" means a motor vehicle that uses use fuel on a highway in Arizona and that is a road tractor, a truck tractor, a truck having a declared gross vehicle weight of more than twenty-six thousand pounds or having more than two axles or a passenger carrying motor vehicle designed to seat more than twenty occupants.
- 3.1.16 "VENDING LOCATION" means a fuel storage and dispensing facility which sells motor vehicle fuel or liquid use fuel to tribal members, the general public, or both and delivers the motor vehicle fuel into the fuel tank of a motor vehicle. VENDING LOCATION does not include a fueling site used exclusively to fuel TRIBAL MOTOR VEHICLES.
- 3.1.17 "WEIGHT FEE" means the weight fee imposed pursuant to A.R.S. § 28-5433.

3.2 ONTC Regulation of Importers of Fuels Sold Within the Reservation.

- 3.2.1 ONTC is directed to regulate the manufacture, refining, importation and sale of any and all LUF and MVF within the RESERVATION. Only AUTHORIZED IMPORTERS may manufacture or refine on or import LUF and/or MVF into the RESERVATION for sale within the RESERVATION at wholesale or retail, in bulk or otherwise, from any VENDING LOCATION within the RESERVATION.
- 3.2.2 ONTC shall by regulation require that AUTHORIZED IMPORTERS shall not knowingly manufacture or refine LUF or MVF on the RESERVATION, import LUF or MVF into Arizona, or purchase LUF or MVF in Arizona, for resale by said AUTHORIZED IMPORTER or by any other PERSON outside the RESERVATION in Arizona, unless said AUTHORIZED IMPORTER is also licensed by ADOT as a supplier under Arizona law. Nothing in this Agreement shall make ONTC liable for the payment of any Arizona excise tax due from an AUTHORIZED IMPORTER or other PERSON for fuel sold outside the RESERVATION.
- 3.2.3 All LUF and MVF imported into the RESERVATION (whether from a location within or outside of Arizona) by an AUTHORIZED IMPORTER for resale within the RESERVATION shall be treated as exempt from Arizona taxation, subject to payment by ONTC of the amounts calculated as provided in Exhibit 2.
- 3.2.4 ONTC shall by regulation require that on or before the twenty-seventh day of each month, an AUTHORIZED IMPORTER shall file with ONTC and ADOT a true and verified statement in a form prescribed by ONTC and ADOT showing:
- 3.2.4.1 The total number of gallons of MVF, LUF or aviation fuel blended, imported, exported or acquired during the preceding calendar month.
- 3.2.4.2 The number of gallons of MVF, LUF or aviation fuel sold or otherwise disposed of by the AUTHORIZED IMPORTER for use in each of the several counties of this state.
- 3.2.4.3 The total number of gallons of MVF that is included in this subsection and that is intended for use in aircraft.
- 3.2.4.4 Other information ONTC requires.

3.2.5 ONTC shall notify ADOT within ten days of licensing an AUTHORIZED IMPORTER and provide the name, street address, owner/principal of the AUTHORIZED IMPORTER and the name of a contact person.

3.3 Use of Navajo Nation Manifests.

3.3.1 ONTC shall issue manifests authorizing the importation of MVF and LUF into the RESERVATION only to AUTHORIZED IMPORTERS. Such manifests shall be in the form attached hereto as Exhibit 1.

3.3.2 Arizona shall be entitled to inspect at any of its Ports of Entry any tank truck or similar vehicle importing LUF or MVF into Arizona. Arizona shall honor any manifest issued by ONTC which is presented by the driver of such vehicle carrying MVF or LUF on behalf of an AUTHORIZED IMPORTER; provided, however, that if Arizona reasonably suspects that any manifest is being used by any PERSON for any purpose inconsistent with this Intergovernmental Agreement, ADOT shall immediately notify ONTC and may detain such PERSON, vehicle or both, so that ONTC and ADOT may determine if there is probable cause to believe that such person is so using such manifest. If either ONTC or ADOT so determines, either or both may notify the appropriate investigatory or law enforcement agency or agencies, and to the extent consistent with applicable law, either or both may further detain such PERSON until law enforcement officials arrive.

3.3.3 The law enforcement agencies of Arizona and its political subdivisions and the Nation shall, to the extent permitted by applicable law and any applicable joint powers or similar agreements, have authority to inspect tank trucks and similar vehicles on highways within the Reservation to determine whether MVF or LUF is being transported within the Reservation in conformity with the Nation's laws and this Agreement. If ADOT obtains information indicating that a person may be transporting MVF or LUF on a highway within the Reservation in violation of this Agreement, and that law enforcement intervention is appropriate, ADOT shall notify ONTC and ONTC shall notify the Navajo Nation Police Department.

3.4 Notice of Lack of Availability of Refund. ONTC shall by regulation require all PERSONS who operate a VENDING LOCATION on the RESERVATION to display prominently on each pump at each such VENDING LOCATION a sign or other written notice that informs persons purchasing MVF or LUF placed into the fuel supply tank of a motor vehicle that "NO REFUND OF ARIZONA FUEL TAXES IS AVAILABLE UNDER A.R.S. § 28-5610(A)(3) OR (4) OR A.R.S. § 28-5716(A)(3) OR (4)." To the extent practicable, and in consultation with

ADOT, ONTC shall provide to each VENDING LOCATION within the RESERVATION a means for including, by code or otherwise, or imprinting on each receipt evidencing the sale of such fuels at such locations, an identifiable and verifiable indication that such sale was consummated at a VENDING LOCATION within the RESERVATION subject to this Intergovernmental Agreement and shall take such other reasonable steps to deter erroneous or fraudulent refund claims for such sales and, if such claims are made, to ensure that erroneous or fraudulent refund claims are readily identifiable as such by ADOT.

3.5 ONTC to Collect and Remit Taxes on Non-Exempt Fuel; Net-Out Procedure.

- 3.5.1 ONTC shall calculate, collect and remit to ADOT the amount of Arizona excise taxes from the sale or consumption of such fuels within the RESERVATION that are not exempt from such taxes under Arizona or federal law as determined under section 3.5.3.
- 3.5.2 ADOT shall require an AUTHORIZED IMPORTER of LUF or MVF to obtain an Arizona license as a fuel supplier only to the extent that the AUTHORIZED IMPORTER engages in the business of a supplier of LUF or MVF outside of the RESERVATION. ONTC shall assist ADOT in assuring that any AUTHORIZED IMPORTER that acquires LUF or MVF from a terminal or refinery located in Arizona and outside the RESERVATION pursuant to a two party exchange becomes an Arizona-licensed supplier for purposes of any such acquisition of LUF or MVF.
- 3.5.3 ONTC shall calculate, based on records maintained and provided by AUTHORIZED IMPORTERS and using the formula set forth in Exhibit 2, the amount of taxes owed under section 3.5.1 above. ONTC shall collect and remit to ADOT the amount of taxes so calculated for a calendar quarter not later than the 15th day of the second month after the close of the calendar quarter. If ONTC fails to remit the amount of taxes and interest due when payable, ONTC shall collect and remit interest on the unpaid taxes at the rate of one per cent per month or portion of a month from the due date until paid. If a payment required by this paragraph is transmitted through the United States mail and is not received by ADOT until after the date on which the payment was required to be made and if the envelope in which the payment is enclosed has a post office cancellation mark dated on or before that date, on receipt of the envelope, ADOT shall treat the payment as if it had been received on the required date. In the event this agreement is terminated, the final installment shall be disbursed not later than 75 days after the date on which the termination becomes effective.

3.5.4 ONTC shall by regulation require AUTHORIZED IMPORTERS to authorize their out-of-state supplier(s) of LUF or MVF to provide ADOT with records of sales of LUF or MVF to AUTHORIZED IMPORTERS comparable to the records AUTHORIZED IMPORTERS shall provide ONTC under section 3.9.2 below.

3.5.5 ADOT and ONTC shall confer during November of each year to determine the formula set forth in Exhibit 2 for the upcoming calendar year. Unless ADOT and ONTC agree on a different amount before February first of the current year, the amount established for the prior year shall continue to be used for the current year.

3.5.6 If sales of LUF in the RESERVATION may reasonably be expected to exceed the threshold figure stated in the attached Exhibit 2, ONTC shall notify ADOT of that expectation at least three months before such threshold is reached or exceeded. Upon such notice and at the discretion of ADOT, the parties shall meet to negotiate any mutually acceptable and appropriate modifications to either this agreement or the formula attached hereto.

3.6 Arizona Distribution Formula and Other Expenditures.

3.6.1 Nothing in this Intergovernmental Agreement is intended to alter or otherwise affect the distribution of Arizona fuel excise tax revenues as provided in otherwise applicable laws and regulations.

3.6.2 Nothing in this Intergovernmental Agreement is intended to alter or otherwise affect the duties of Arizona or any of its political subdivisions to provide services to RESIDENT TRIBAL MEMBERS as those duties have been or may be defined by law.

3.7 Determination of Amount of Refund Due for Fuel Used in TRIBAL MOTOR VEHICLES.

3.7.1 ADOT shall not be responsible for any refunds which otherwise might be due to the Nation based on purchases of LUF or MVF consummated within the RESERVATION on which Arizona fuel taxes are not imposed pursuant to this Agreement.

3.7.2 Pursuant to A.R.S. § 28-5610.A.4 and § 28-5716.A.4, ADOT shall refund the MVF and LUF TAXES on fuel used in TRIBAL MOTOR VEHICLES based on the actual amount of each type of fuel placed in the fuel tanks of

TRIBAL MOTOR VEHICLES and purchased outside the RESERVATION for which such taxes were actually paid.

3.7.3 The amount of fuel placed into the fuel tanks of TRIBAL MOTOR VEHICLES shall be determined by records including vendor invoices, credit card statements, and records reflecting reimbursement to employees for purchases paid for in cash for fuel purchased in Arizona outside the RESERVATION for TRIBAL MOTOR VEHICLES.

3.8 Refund Procedures for Fuel Used in TRIBAL MOTOR VEHICLES. To obtain the refund of MVF and LUF TAXES on fuel consumed in TRIBAL MOTOR VEHICLES, the Nation or ONTC shall submit a claim in a form that includes the following categories: 1) BULK PURCHASES, 2) credit card purchases, 3) open account purchases, 4) cash reimbursement to tribal employees and 5) other. The summary information supplied by the Nation or ONTC on the form shall be supported by detailed records which shall be available for inspection and verification by ADOT pursuant to paragraph 3.12.1 of this agreement.

3.9 Navajo Nation Laws.

3.9.1 The Nation may, in its sole discretion, enact LUF or MVF excise or other tax laws in any amount that it deems prudent. The enactment or not of such tax laws shall not affect the validity, terms or construction of this Intergovernmental Agreement.

3.9.2 ONTC shall by regulation require all AUTHORIZED IMPORTERS and vendors of aviation fuel, MVF and LUF on the RESERVATION to prepare and maintain the same books and records pertaining to their fuel business as must be prepared and maintained by licensed suppliers and vendors in the rest of Arizona pursuant to the provisions of A.R.S. Title 28.

3.9.3 ONTC shall obtain for ADOT access and the opportunity to examine the books and records of all AUTHORIZED IMPORTERS and vendors located on the RESERVATION when requested to do so by ADOT.

3.10 LUF Vending on the RESERVATION.

3.10.1 ONTC shall require by regulation all VENDING LOCATIONS on the RESERVATION to issue invoices which meet the criteria established by this Intergovernmental Agreement and in A.R.S. § 28-5731 to purchasers of LUF which is dispensed into the fuel supply tank of a USE CLASS MOTOR VEHICLE and to maintain a copy of said invoice for four years.

3.10.2 ONTC shall by regulation require VENDING LOCATIONS on the RESERVATION who dispense LUF into LIGHT CLASS MOTOR VEHICLES to maintain the documentation to support the following information:

3.10.2.1 The quantity of fuel purchased and date and place of the sale.

3.10.2.2 The quantity of fuel sold which was placed into LIGHT CLASS MOTOR VEHICLES.

3.10.2.3 Other information as ONTC and ADOT may agree on.

3.10.3 No operator of a VENDING LOCATION on the RESERVATION may require payment of, or submit a refund claim to ADOT for, the LUF TAX DIFFERENTIAL for any QUALIFYING MOTOR VEHICLE.

3.11 Refund Provisions Exclusive.

3.11.1 This Intergovernmental Agreement contemplates an allowance against taxable volumes as the appropriate formula or method for refund of fuel taxes on the sale or consumption of fuel within the RESERVATION which is exempt from state taxation. ONTC will collect, report and remit only those taxes deemed by ADOT and ONTC to be imposed on taxable sales or consumption of fuel within the RESERVATION. Therefore, PERSONS purchasing LUF or MVF within the RESERVATION who would otherwise be eligible to claim a refund under A.R.S. § 28-5610(A)(3) or A.R.S. § 28-5716(A)(3) will not pay any Arizona fuel excise tax and no refunds are due on those purchases.

3.11.2 The refund of fuel taxes on sales of fuel for use in TRIBAL MOTOR VEHICLES shall be available only as provided for by section 3.7 above, concerning purchases of such fuel outside the RESERVATION.

3.12 Record Keeping and Audit Procedures.

3.12.1 To support refund claims for fuel used in TRIBAL MOTOR VEHICLES and purchased outside the RESERVATION, the Nation or ONTC shall maintain purchase invoices, store receipts, documentation of open account purchases, credit card invoices, and records of reimbursement to tribal employees for cash purchases, as applicable.

- 3.12.2 To aid in the determination of the amount of funds to be collected and remitted to ADOT for taxable fuel, ONTC shall maintain records of purchase invoices and bills of lading for fuel delivered to VENDING LOCATIONS operated on the RESERVATION.
- 3.12.3 ADOT shall be entitled to examine all of the records required to be kept by this agreement. ONTC agrees to make the records available for examination at a mutually agreeable time; provided however that ADOT shall be allowed to examine the records within 30 days of when such request is made unless ADOT voluntarily agrees to a longer period. ONTC shall by regulation require all AUTHORIZED IMPORTERS to provide ADOT with access to their books and records that pertain to fuel acquisition and usage for a period of four years after the payment of taxes on non-exempt sales.
- 3.12.4 ONTC shall by regulation require all AUTHORIZED IMPORTERS to send to ADOT copies of the bills of lading and purchase invoices for all purchases which exceed one thousand gallons per delivery. The documents shall be sent to ADOT not later than the last day of the month following the month in which the delivery was made.
- 3.12.5 At the request of either ONTC or ADOT, and consistent with their respective schedules, ONTC and ADOT may conduct joint audits of AUTHORIZED IMPORTERS, wholesalers and retailers of MVF and LUF located within the RESERVATION to determine compliance with this Agreement and applicable tribal and state tax laws. For any such audit conducted, ONTC and ADOT will issue separate final audit reports and assessments, as appropriate. If the audited entity has executed a waiver of confidentiality or applicable law otherwise allows, then ONTC and ADOT will share with each other information including audit workpapers and audit reports. A protest of an ADOT action or assessment will be addressed through the ADOT appeal procedure and a protest of an ONTC action or assessment will be addressed through the ONTC appeal procedure. Collection of any tribal tax by an audit will be distributed to ONTC and collection of any state tax will be distributed to ADOT.
- 3.12.6 If either ONTC or ADOT performs an audit of a PERSON doing business within the RESERVATION and the results of the audit could impact taxes owed to ONTC or ADOT, the audit report and results will be shared with the other party, if such PERSON has executed a waiver of confidentiality or applicable law otherwise allows.

- 3.12.7 At the request of either ADOT or ONTC, joint compliance visits by ADOT staff and ONTC staff may be made to wholesale and retail operations located on the RESERVATION to examine inventory and review accounting records as they pertain to MVF and LUF. ONTC will share information with ADOT relating to any separate compliance visits conducted by ONTC.
- 3.12.8 ADOT and ONTC will share information related to the identification of assets and the ability of a PERSON doing business within the RESERVATION to pay any assessment, if such PERSON has executed a waiver of confidentiality or applicable law otherwise allows. If any PERSON is delinquent in the payment of any tax imposed by the Nation, the ONTC will enforce collection. At the request of either ADOT or ONTC, joint collection efforts by ADOT staff and ONTC staff may be made to ensure taxes are paid.
- 3.12.9 ADOT and ONTC may share information relating to tax administration and enforcement under this Agreement to the extent allowed by law. Such information will be utilized only for the enforcement of state and/or tribal tax laws. Information developed by or in support of civil inspections and criminal investigations relating to administration and enforcement of taxes on MVF or LUF may be made available to either party upon written request, as applicable law allows.
- 3.12.10 To the extent the laws of the Nation or the laws of Arizona may conflict with any provision of this Agreement, the laws of the Nation and Arizona shall control.

3.13 Data Gathering for Future Agreements.

- 3.13.1 ADOT and ONTC agree to improve the existing data gathering points and develop additional data gathering points to help determine the amount of taxable and exempt fuel for purposes of refining the variables used in the formula included in Exhibit 2.
- 3.13.2 The Nation and ONTC shall allow ADOT to conduct such reasonable inspections, surveys, studies and sampling within the RESERVATION to become informed about any matter relevant to the proper calculation of the variables upon reasonable notice to and consultation with ONTC; provided, however, that ADOT shall share its data, methodology and results with ONTC. ADOT and ONTC shall use all reasonable efforts to cooperate in any such inspections, surveys, studies and sampling to reduce

the costs to both parties and to obviate later disagreements about the reliability of the results.

3.13.3 The parties shall meet and confer not later than July 31, 1999 to discuss the progress at developing additional data collection points and improve the accuracy of the current data collection points.

3.14 Finality of Distribution of Amount Remitted to ADOT for Non-Exempt Fuel. Subject to the provisions of paragraph 3.15, the amount remitted to ADOT for non-exempt fuel in accordance with Exhibit 2 shall be final, except to correct errors in computation. Neither party shall be entitled to modify retroactively the percentage stated in the attached Exhibit 2, as it may be changed from time to time under paragraph 3.5.5.

3.15 Hold Harmless. ONTC agrees to reimburse ADOT for any LUF or MVF excise taxes that ADOT is ordered, by final and binding administrative order or judgment, to refund to any PERSON who establishes those taxes were paid on a purchase or purchases of LUF or MVF from any VENDING LOCATION within the RESERVATION, provided that ONTC shall have been given notice of the refund claim and, to the extent permitted by law, an opportunity to participate as an interested party in any hearing on the claim. In lieu of such an order, ADOT and ONTC may determine jointly that such refund request would result in such an order, and in that event ONTC would similarly reimburse ADOT for the appropriate amount of such refund. In either event, ONTC agrees to make such reimbursement to ADOT within sixty days of the order or joint determination.

3.16 Expenses. Each party shall bear its own costs and expenses incurred in connection with this agreement.

3.17 Duration and Termination.

3.17.1 This agreement shall be effective until termination by either ONTC or ADOT. Either party may terminate this agreement with or without cause upon sixty days written notice. Further, this agreement may be canceled upon non-compliance with any terms of this agreement by either party. The agreement will be effective upon filing with the Arizona Secretary of State and the Nation's Department of Records and Communications.

3.17.2 The parties agree that when this agreement becomes effective, the provisions of paragraph 3.12.3 as they pertain to the Navajo Nation Oil and Gas Company shall apply to periods after June 30, 1998.

3.18 Dispute Resolution. Applicable laws of the State, Federal and Navajo Nation government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes

relating to this agreement, consistent with applicable laws and regulations of the State, Federal and Navajo Nation government, and acceptable to the ADOT and the Nation. Such process shall include a provision for arbitration.

3.19 Other Authorities, Rights, and Duties Unaffected. Nothing in this agreement shall be construed to expand or diminish the authorities, rights, duties or obligations granted to or imposed on either party by other applicable law. Nothing in this agreement shall be construed to create or extinguish any rights or obligations of third parties who are not signatories to this agreement.

3.20 Exhibits. Exhibits 1 through 4 attached to this Agreement are subject to modification by written consent of the parties.

3.21 Addresses.

3.21.1 Payments from ONTC to ADOT shall be delivered in person or sent by mail addressed as follows:

Tax Administrator, Mail Drop 530M
Arizona Department of Transportation
1801 West Jefferson Street
Phoenix, AZ 85007

3.21.2 The submission of information pursuant to paragraphs 3.2.4, 3.2.5, 3.7 and 3.12.4 of this Intergovernmental Agreement from ONTC to ADOT shall be delivered in person or sent by mail addressed as follows:

Tax Administrator, Mail Drop 530M
Arizona Department of Transportation
1801 West Jefferson Street
Phoenix, AZ 85007

3.21.3 All notices or demands upon any party relating to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

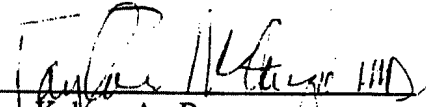
Tax Administrator, Mail Drop 530M
Arizona Department of Transportation
1801 West Jefferson Street
Phoenix, AZ 85007

Executive Director
Office of the Navajo Tax Commission

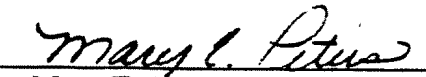
Post Office Box 1903
Window Rock, Navajo Nation (AZ) 86515

IN WITNESS THEREOF, the parties have caused this agreement to be executed.

THE NAVAJO NATION

By:  5/10/99
Kelsey A. Begaye
President Date

ARIZONA DEPARTMENT OF
TRANSPORTATION

By:  May 3, 1999
Mary E. Peters
Director Date

INTERGOVERNMENTAL AGREEMENT DETERMINATION

Attorney General Contract No. TAX _____, which is an agreement between the Navajo Tax Commission and the Arizona Department of Transportation, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to Parties to the Agreement represented by the Attorney General.

Dated this _____ day of _____, 1999.

Janet Napolitano
Attorney General

By: _____
Assistant Attorney General

ADDENDUM
to
INTERGOVERNMENTAL AGREEMENT
between
ARIZONA DEPARTMENT OF TRANSPORTATION
and
NAVAJO TAX COMMISSION

Establishing Cooperative Fuel Tax Administration


The following provision is added to the Intergovernmental Agreement between the Arizona Department of Transportation and the Office of the Navajo Tax Commission:

Paragraph 3.17 is supplemented by adding paragraph 3.17.3 which reads as follows:

3.17.3 Notwithstanding the provisions of paragraph 3.17.1, the following paragraphs of this agreement shall not be effective until 1 September 1999: 3.5.1, 3.5.3, 3.7.2, 3.7.3 and 3.8.

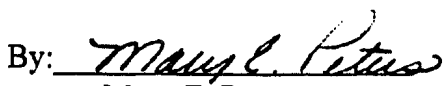
IN WITNESS THEREOF, the parties have caused this addendum to be executed.

OFFICE of the NAVAJO TAX COMMISSION

By: 
(Kelsey A. Begaye)
President
Navajo Nation

5/17/99
Date

ARIZONA DEPARTMENT OF TRANSPORTATION

By: 
Mary E. Peters
Director
Arizona Department of Transportation

May 3, 1999
Date

EXHIBITS

- | <u>No.</u> | <u>Description</u> |
|------------|--|
| 1. | Form of Navajo Nation manifests [3.3.1] |
| 2. | Formula for calculating non-exempt fuel taxes [2.9, 3.2.3, 3.5.3, 3.5.5., 3.5.6, 3.13.1, 3.14] |
| 3. | Metes and bounds description of boundaries of the RESERVATION [3.1.11] |
| 4. | Map showing boundaries of the RESERVATION [3.1.11]. |

Office of the Navajo Tax Commission
P.O. Box 1903
Window Rock, Navajo Nation 86515

NAVAJO NATION FUEL MANIFEST

MANIFEST NUMBER **11984**

DISTRIBUTOR'S INVOICE NUMBER:

DISTRIBUTOR'S NAVAJO NATION
DISTRIBUTOR'S NUMBER: 100

DISTRIBUTOR/SUPPLIER RESPONSIBLE FOR IMPORT
Name: Navajo Nation Oil & Gas Company, Inc
Address: P.O. Box 4439
City: Window Rock
State: Arizona Zip: 86515

BILL OF LADING NUMBER:

PURCHASER SECTION

Date: _____ Gallons Received: _____
Delivered to: _____
For Whom Received: _____
Received By: _____
(Signature)

CARRIER SECTION

Name of Carrier: _____
Signature for Carrier: _____
Rail Car Number: _____
Motor Vehicle Plate Number (Truck): _____
Motor Vehicle Plate Number (Trailer): _____
Vehicle Unit Number: _____
Carrier's Navajo Nation Distributor's Number: _____

PRODUCT

GAS - UNLEADED REGULAR
GAS - UNLEADED MIDGRADE
GAS - UNLEADED PREMIUM
AVIATION
DIESEL
OTHER:
OTHER:

NET GALLONS

DISTRIBUTOR'S CERTIFICATION

By my signature affixed hereto, I certify that I am duly licensed as a Navajo Nation Fuel Distributor and that all information contained on this manifest is true and correct to the best of my knowledge.

(Signature of Distributor)

CARRIER'S CERTIFICATION

By my signature affixed hereto, I certify that all information contained on this manifest is true and correct to the best of my knowledge.

(Signature of Carrier)

STATE PORT INSPECTOR'S VALIDATION (Optional)

Import

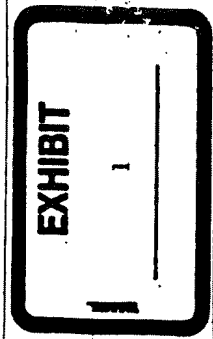
Export

I certify that the above motor fuel has been checked by me and is found to be as represented

I certify that the above motor fuel has been checked by me and is found to be as represented

Date: _____ Time: _____
Station Number: _____ Location: _____
Signature & Badge #: _____

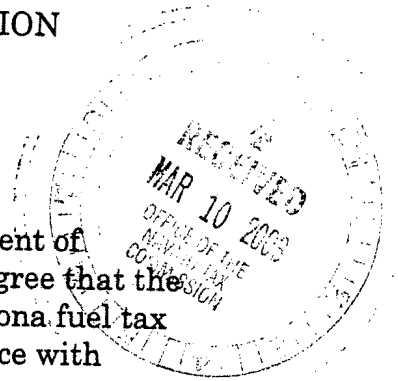
Date: _____ Time: _____
Station Number: _____ Location: _____
Signature & Badge #: _____



INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE ARIZONA DEPARTMENT OF TRANSPORTATION
AND
THE OFFICE OF NAVAJO TAX COMMISSION

Exhibit 2

The Office of Navajo Tax Commission and the Arizona Department of Transportation, after reviewing and analyzing available data, agree that the following formulae shall be used to calculate the amount of Arizona fuel tax revenue that has been collected by ONTC for ADOT in accordance with paragraph 3.5.1 of this agreement:



A. Total number of gallons of MVF imported and sold within the RESERVATION times a factor of 4.5 per centum times the Arizona tax rate (currently 18 cents per gallon).

B. The first 150,000 gallons of LUF imported and sold within the RESERVATION per month times a factor of 4.5 per centum times the Arizona tax rate attributable to QUALIFYING MOTOR VEHICLES (currently 18 cents per gallon).

C. Total number of gallons of LUF imported and sold within the RESERVATION in excess of 150,000 gallons per month times 25 per centum times the Arizona LUF tax rate attributable to QUALIFYING MOTOR VEHICLES (currently 18 cents per gallon) plus total number of gallons of LUF imported and sold within the RESERVATION in excess of 150,000 gallons per month times 75 per centum times the Arizona LUF tax rate (currently 26 cents per gallon).

These formulae shall be used for gallons imported and sold after the 31st day of December 2002 in accordance with paragraph 3.5.6 of this Intergovernmental Agreement.