

**FUEL TAX AGREEMENT BETWEEN THE  
WALKER RIVER PAIUTE TRIBE  
AND THE STATE OF NEVADA**

THIS AGREEMENT is made and entered into on this 21<sup>st</sup> day of November, 2002, by and between the WALKER RIVER PAIUTE TRIBE, Schurz, Nevada, hereinafter referred to as the "Tribe" and the State of Nevada, Department of Motor Vehicles, hereinafter referred to as the "State."

The Tribe is recognized by the Federal Government as having a government-to-government relationship with the United States.

The Walker River Paiute Tribal Council is the Tribe's duly authorized governing body and is empowered to enter into this Agreement by Article VI of the Constitution and Bylaws of the Walker River Paiute Tribe of Nevada.

The State of Nevada is authorized pursuant to NRS 365.110, NRS 366.110, NAC 365 and NAC 366 to enter into agreements with Tribal Governments with respect to taxes on motor fuels, special fuels, aviation fuels, or fuel for jet or turbine powered aircraft. The State is charged with collecting State fuel taxes and shall notify the Tribe of any changes or amendments to these statutes, which the State believes, may impact this Agreement.

**THE TRIBE AND THE STATE AGREE AS FOLLOWS:**

**Purpose:**

The purpose of this Agreement is to insure the collection of fuel taxes in a fair and equitable manner.

**Government-To-Government Cooperation:**

The State of Nevada and the Walker River Paiute Tribe shall cooperate within:

1. The Tribe's laws with respect to the taxation and regulation of Tribal members and businesses that sell or deliver motor fuel, special fuel, aviation fuel or fuel for jet or turbine powered aircraft on lands where the Tribe exercises governmental jurisdiction; and
2. The State's laws, rules and regulations respecting the imposition and collection of its fuel taxes from all persons, except as provided under this Agreement, and the terms of the Agreement.

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### Taxable Sales:

The Tribe and the State agree that, under the existing conditions on the Walker River Paiute Reservation, motor fuels, special fuels, aviation fuels or fuel for jet or turbine-powered aircraft, sold at a retail outlet operating under Tribal jurisdiction, to non-tribal members, shall be subject to the appropriate taxes as provided under the authority of Nevada Revised Statutes Chapters 365, 366, 373, and the regulations issued thereunder, and provided that the tax collection system does not impose an undue burden upon the Tribe and its members.

### Administration and Collection of Taxes:

(Formula Option)

The State shall pre-collect the tax on all motor vehicles fuels, special fuels, aviation fuel or fuel for jet or turbine powered aircraft sold on Tribal lands by collecting this tax from the fuel wholesaler or distributor before it is sold at retail on Tribal lands. The State agrees to continue to allocate these pre-collected fuel taxes as determined by the formulas described below. The total amount of remittance distributed to the Tribe (monthly or in each calendar quarter) shall be as follows:

1. The Tribe shall be entitled to a refund based on the estimated average per capita motor fuels taxes paid by a person in Nevada multiplied by the number of Indians residing on Tribal lands. The parties agree that the calculation of such estimated average per capita motor fuels and the number of Indians residing on Tribal lands shall be based on the formula set forth in Attachment "A", which is signed by the parties and made a part of this agreement. Each party to this Agreement may request a reconsideration of the calculation by providing written notice to the other party, and the parties may agree to an alternative method of calculating the refund formula set forth in Attachment 'A'. Any agreed to adjustment or adjustment as stated in the refund formula set forth in Attachment "A" will apply to the next regularly scheduled payment. Payments will be made in 1/12 increments (monthly), beginning the last day of the month following execution of this Agreement. The first payment shall also include refund amounts for each month of 2002 prior to the current month. For example, if the check is issued on May 31, 2002, the refund will total the monthly payments times five, which accounts for the payments for January through May, 2002. In no event shall the amount of the refund calculated under this agreement exceed the amount of the taxes paid on fuel sold within the Tribe's Jurisdiction.
2. The State shall pay to the Tribe at the end of each quarter an amount equal to the special fuel taxes the Tribe paid during that quarter for use in Tribal governmental vehicles. The quarterly payment to the Tribe will be based on the number of gallons claimed for refund for the Tribal government

vehicles for Federal fuel tax purposes on Internal Revenue Service (IRS) claim form 8849. The time period to which the IRS claim form corresponds will be adjusted accordingly to calculate the quarterly payment. For example, if the Tribe submits its IRS claim form on a quarterly basis, no adjustment will be required. But if the Tribe submits its IRS claim form on a yearly basis than the number of gallons stated on the form will need to be divided by four. The number of gallons used by the Tribe each quarter as determined from the IRS claim form shall be multiplied by the state fuel tax rate in effect in Mineral County to arrive at a dollar amount to be refunded to the Tribe. The Tribe shall provide to the State a copy of each of the Tribe's IRS form 8849 filed with the IRS. The quarterly payments will be due on March 31, June 30, September 30 and December 31 of each year. The amount of the first payment will be based on the Tribe's most recently filed IRS claim forms. Each subsequent payment will be based upon the latest IRS claim form filed by the Tribe. Within two weeks of execution of this agreement, or the date on which the Tribe provides to the State a copy of its latest IRS claim form, whichever is later, the State shall pay to the Tribe all payments that should have been made during 2002. For example, if the first payment is due on September 30, 2002, the State will pay the Tribe the payments that would have been due on March 31, June 30 and September 30, 2002.

3. At this time, no retailer on the Reservation sells aviation fuels or fuel for jet or turbine powered aircraft. This Agreement will be amended accordingly if and when such sales begin.
4. The remittance amounts payable to the Tribe shall be in the form of a check issued by the State payable to the Tribe and mailed to the Chairman of the Tribe.

**State Law:**

The State and its political subdivisions impose taxes on motor vehicle fuels distributed within the State's jurisdiction pursuant to Chapters 365, 366, and 373, of the Nevada Revised Statutes (hereafter "State Tax"). The State shall notify the Tribe in writing of any significant changes or amendments to these statutes which the State believes necessitate an amendment to this Agreement.

**Term and Termination:**

This Agreement shall have perpetual existence but may be voluntarily terminated, with or without cause, by either party upon providing the other party ninety (90) days prior notice in writing by certified mail addressed to the following:

Tribal Chairman  
Walker River Paiute Tribe  
P. O. Box 220  
Schurz, Nevada 89427

Department of Motor Vehicles  
555 Wright Way  
Carson City, Nevada 89711

In the event of termination by the State, the State shall be obligated to remit the Tribe's allocated share of tax revenues up to the effective date of the termination. Any notices issued by either party to the other under this Agreement shall be issued in the same manner as set forth above.

**Reservation of Rights:**

Notwithstanding anything to the contrary, the parties to this Agreement reserve all of their statutory and inherent rights and nothing in this Agreement waives their respective sovereignty, or immunity from suit. Nothing in this Agreement alters, or is intended to alter, existing law defining the scope of civil jurisdiction or taxation within Indian Country. Nothing in this Agreement is intended to alter or prejudice, nor shall be used to alter or prejudice, the rights or jurisdiction of either party under existing law or in future disputes or litigation.

**Future Agreements and Amendments:**

This Agreement contains all of the provisions agreed to by the parties and no amendments to the Agreement are valid unless agreed to in writing by the Tribal Chairman of the Tribe and Director of the Department of Motor Vehicles.

**Dispute Resolution:**

Neither the Tribe, nor the State, nor officers acting on either government's behalf may petition any court to enforce this Agreement unless:

1. The dispute resolution process described in subparagraphs (1) and (b) below has been followed in good faith to completion without successful resolution, or unless:
2. The other party fails to enter into a dispute resolution process or terminates the process before its completion.

Should a dispute arise between the Walker River Paiute 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 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 step 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 subparagraph (a). The representatives of each government shall come to the meeting with the authority to settle the dispute.
- (c) After completion of the process in (a) and (b), either party may terminate this Agreement in the manner described in the paragraph "Term and Termination".

**Implementation:**

The State and the Tribe, not less than one year after the execution of this Agreement, shall confer on a government-to-government basis, to evaluate the effectiveness of this Agreement and to mutually agree upon solutions to any problems that may have arisen.

Should any third party, in an action brought against the State or against its agencies, officials, employees, or agents, allege that the Tribe lacks authority to enter into this Agreement or to adopt or enforce the laws described in this Agreement, the Tribe shall appear in the action and defend its authority.

This Agreement addresses only the taxation and regulation of motor vehicle fuel, special fuel, aviation fuel, or fuel used in jet or turbine powered aircraft and shall not be construed as affecting any other area of Tribal or State taxation or regulation.

**Severability:**

If a court of competent jurisdiction holds any provision of the Agreement, or its application to any person or factual circumstance, invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application and to this end, the provisions of the Agreement are severable.

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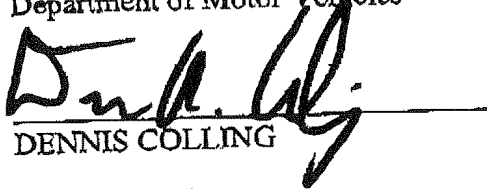
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IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed on the day and in the year first written above.

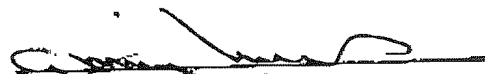
WALKER RIVER PAIUTE TRIBE

  
Chairman, Tribal Council

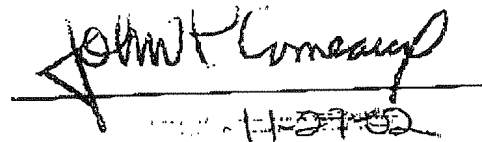
CHIEF OF ADMINISTRATION  
Department of Motor Vehicles

  
DENNIS COLLING

STATE OF NEVADA  
Department of Motor Vehicles

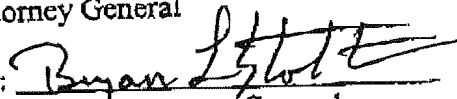
  
GINNY LEWIS, Director

BOARD OF EXAMINERS

  
JOHN P. COMAS

APPROVED AS TO FORM:

FRANKIE SUE DEL PAPA  
Attorney General

By:   
Deputy Attorney General

## ATTACHMENT "A"

### REFUND FORMULA

For the purpose of the attached Intergovernmental Agreement, the parties agree as follows:

1. The average gallons of motor vehicle fuels consumed by a passenger vehicle in Nevada are assumed to be 1,432 gallons per year. This amount is based upon the total number of gallons of gasoline sold in Nevada for private and commercial use and the number of registered vehicles in the State. This calculation shall use the numbers reported annually by the State to the Federal Highway Administration. The parties acknowledge that the final number from this calculation is lower than the actual number would be for vehicles on the Walker River Paiute Reservation due to the Reservation being located in a rural area and that the residents of the Reservation on average use more gallons of gasoline per year than residents in urban areas. The parties also acknowledge that the final number does not account for sales to non-Nevada residents. The parties agree that these two variables cancel each other out and therefore agree not to make any adjustments to the final number. The latest figures as reported by the Federal Highway Administration that will be used upon commencement of this Agreement are reported for the year 2000 as follows: (1) total motor fuel use for private and commercial use was 925,017,000 gallons (910,323,000 + 14,694,000), and (2) number of registered vehicles was 645,736. Therefore the average gallons of motor vehicle fuels consumed by a passenger vehicle in Nevada are  $925,017,000 \div 645,736 = 1,432$  gallons per vehicle. This number shall be adjusted each year based upon the most recent numbers reported to the Federal Highway Administration.
2. The estimated number of passenger vehicles serving the resident Indian population of the Walker River Paiute Reservation in 2002 is assumed to be 513. Source: Nevada Department of Transportation calculates estimated number of vehicles by multiplying the population by 0.728. The resident Indian population for 2000 was 691 as determined by the 2000 U.S. Census. The population number used in this calculation shall be adjusted at the beginning of every year to reflect an estimated population increase of 1%. Therefore, the population number used for the first year of this agreement (2002) shall be 705 which is calculated as follows:  $691 \times 1.01 \times 1.01 = 705$ . The number used in this calculation for 2003 shall equal  $705 \times 1.01 = 712$ . The estimated number of passenger vehicles serving the resident Indian population for 2002 is calculated as follows:  $705 \times 0.728 = 513$ . The resident Indian population utilized in this

calculation shall be adjusted accordingly upon completion of the next official U.S. Census.

3. All sales are presumed to take place in Mineral County. If the total State tax rate on motor vehicle fuels in Mineral County increases above 0.324 cents per gallon, this formula shall be amended to reflect this increase.

Therefore, the monthly rebate the Tribe is entitled to for each month in 2002 under the formula set forth in the Intergovernmental Agreement for motor fuels shall be \$19,835. Calculated as follows:

$$1432 \text{ gallons/vehicle/year} \times 513 \text{ vehicles} \times 0.324 \text{ cents/gallon} = \$238,016$$

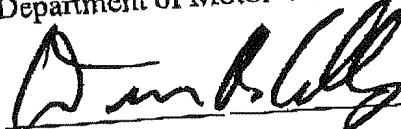
$$\$238,016 \div 12 = \$19,835$$

WALKER RIVER PAIUTE TRIBE

  
Chairman, Tribal Council

Date: 11.8.02

STATE OF NEVADA  
Department of Motor Vehicles



Date: 11-21-02