

RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION

- WHEREAS, the Tribal Chairman had directed the Tribe's Legal Department to negotiate an Intergovernmental Agreement with the Arizona Department of Transportation ("ADOT") to obtain a portion of the fuel tax revenues collected by the State of Arizona from the sale of motor vehicle fuel within the Reservation; and
- WHEREAS, such revenues are needed by the Tribe for its roadway related expenses arising from the vast roadway system within the Reservation, including the cost of law enforcement; and
- WHEREAS, the proposed Agreement has been completed and has been presented to the Tribal Council for review; and
- WHEREAS, the Agreement provides tax revenues to the Tribe from the sale of motor vehicle fuel which is not lawfully subject to the State of Arizona fuel tax pursuant to the State law, and as largely consistent with the prevailing federal common law; and
- WHEREAS, under the terms of the Agreement, the Tribe, each month, would receive its share of revenues, based upon records of fuel sales for Tribal government vehicles, and based upon census data, agreed upon by ADOT and the Tribe, used to establish the number of vehicles within the reservation owned by resident Tribal members; and
- WHEREAS, under the Agreement, the Tribe and ADOT would agree to meet in July, 1998, to review the accuracy of the sales and census data, and other matters pertaining to the operation of the Agreement; and
- WHEREAS, to coordinate the mutual taxing authority of the Tribe and the State, the Tribe has enacted into law amendments to its fuel tax ordinance which are consistent with the key provisions of the Arizona fuel tax law; and
- WHEREAS, all tax revenues collected by the Tribe would be dedicated to roadway related expenses, including the cost of law enforcement and other matters of public safety; and
- WHEREAS, the Agreement between the Tribe and ADOT is an improvement upon the prior

fuel tax collection and distribution structure in Arizona, wherein all tax revenues from the sale or delivery of motor vehicle fuel within the Reservation were formerly retained by the State of Arizona for State roadway expenses, and yet the proportion of roadway miles maintained by the State within the Reservation is small, amounting to no more than 127 miles of the more than 6,300 mile roadway system within the Reservation; and

**WHEREAS**, prior to this Agreement, the Tribe had pursued other measures to remedy the inequities in the fuel tax collection and distribution structure, including the establishment in October, 1996, of a Tribal Fuel Tax and Tribal fuel delivery manifest to regulate the delivery of fuels to the Reservation which were lawfully not subject to the State of Arizona fuel tax; and

**WHEREAS**, under authority of that Tribal tax the Tribe realized fuel tax revenues for its expenditure on roadway related obligations from the sale of motor vehicle fuel at the Hon Dah gas station, until the current State tax law was enacted and made effective at the beginning of calendar year 1998; and

**WHEREAS**, other measures taken by the Tribe include the Tribal Chairman's testimony in March, 1997, before the State Senate Transportation Committee concerning the impact of the State fuel tax structure on Tribal governments; and

**WHEREAS**, the State's new fuel tax legislation does not include a reservation-wide exemption sought by the Tribal Chairman, however it does provide certain exemptions for sales made to Indian tribes and to tribal members within Indian reservations, and such terms have been incorporated into the Intergovernmental Agreement; and

**WHEREAS**, the negotiations between the Tribe and ADOT which have resulted in the Agreement are consistent with other cooperative efforts between the two parties, which are beneficial for all users of the regional roadway system, including the assignment of ISTEA funds by the Tribe for roadway projects undertaken by ADOT, the maintenance and snow removal efforts by ADOT to allow winter travel and access through the Reservation, including to Sunrise Park Resort during the busy ski season, and the rights of way and maintenance areas granted at no cost by the Tribe to ADOT.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the Intergovernmental Agreement, attached herein and incorporated by this reference, between the White Mountain Apache Tribe and the Arizona Department of Transportation for the return of specified fuel tax revenues to the Tribe.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that all proceeds from the Agreement with ADOT shall be used for roadway related expenses within the Reservation, including the cost of law enforcement and other matters of public safety.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman, or in his absence the Vice Chairman, to execute the Intergovernmental Agreement on behalf of the Tribe.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it delegates authority to the Tribal Treasurer's Office to coordinate the collection and exchange of data and other information provided for in the Intergovernmental Agreement, and as consistent with the Tribe's fuel tax ordinance.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby extends its appreciation to the Arizona Department of Transportation for its cooperation in negotiating this Agreement with the Tribe.

The foregoing resolution was on April 8, 1998 duly adopted by a vote of ten for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (h), (i), (o), (s), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
\_\_\_\_\_  
Chairman of the Tribal Council

  
\_\_\_\_\_  
Secretary of the Tribal Council

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
ARIZONA DEPARTMENT OF TRANSPORTATION  
AND  
WHITE MOUNTAIN APACHE TRIBE  
ESTABLISHING FUEL TAX REFUND PROCEDURES

1. PARTIES:

- 1.1. Arizona Department of Transportation  
206 South 17th Avenue  
Phoenix AZ 85007 "ADOT"
- 1.2. White Mountain Apache Tribe  
PO Box 700  
Whiteriver AZ 85941 "WMAT"

2. RECITALS:

- 2.1. ADOT is an agency of the State of Arizona and has been granted the authority to enter into intergovernmental agreements with Indian tribes pursuant to Arizona Revised Statutes, Section 28-5703 and Section 11-951 *et. seq.*
- 2.2. WMAT is a federally recognized Indian tribe residing on the Fort Apache Indian Reservation (hereinafter "FAIR"). The WMAT has the authority to enter into this Intergovernmental Agreement pursuant to the WMAT's constitution. The WMAT Tribal Council by resolution, a copy of which is attached hereto and made a part hereof, has authorized the undersigned to execute this agreement on behalf of the WMAT.
- 2.3. WMAT has imposed a tax on the acquisition on its reservation of MVF and LUF which is exempt from Arizona excise tax on MVF and LUF. The State of Arizona exempts from taxation certain sales of MVF and LUF to Indian tribes and tribal members, as set forth in A.R.S. § 28-5610.A.3 and 4 and §28-5716.A.3 and 4.
- 2.4. ADOT and WMAT want to establish a mechanism to administer in an effective and efficient manner the collection of the tribal taxes and the refund to WMAT of funds remitted to ADOT by suppliers on fuel which is exempt from the MVF tax pursuant to

A.R.S. § 28-5610.A.3 and 4 and the LUF tax pursuant to §28-5716.A.3 and 4.

3. **AGREEMENT: NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS EXPRESSED HEREIN, it is mutually agreed as follows:**

3.1. Definitions.

In this agreement, unless the context otherwise requires:

- 3.1.1. "Bulk purchase" means the purchase of a quantity of fuel that is delivered to a storage tank owned or leased by WMAT and which is used solely for the purpose of fueling tribal motor vehicles.
- 3.1.2. "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.
- 3.1.3. "LUF" means liquid use fuel as defined by A.R.S. § 28-5701.
- 3.1.4. "LUF tax" means the tax imposed on liquid use fuel pursuant to A.R.S. § 28-5708.
- 3.1.5. "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.
- 3.1.6. "MVF" means motor vehicle fuel as defined pursuant to A.R.S. § 28-101.
- 3.1.7. "MVF tax" means the tax imposed on motor vehicle fuel pursuant to A.R.S. § 28-5606.
- 3.1.8. "Resident tribal member" means a person who is an enrolled member of the WMAT and who resides on the FAIR.
- 3.1.9. "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.

- 3.1.10. "Tribal motor vehicle" means a motor vehicle owned or leased by WMAT and operated by WMAT for the sole benefit of the WMAT.
- 3.1.11. "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.
- 3.1.12. "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.
- 3.1.13. "Weight fee" means the weight fee imposed pursuant to A.R.S. § 28-5433.

3.2. Methodology to Determine the Amount of MVF and LUF Tax That Will be Collected by Suppliers in a Calendar Year on Fuel That Is Exempt pursuant to A.R.S. § 28-5610.A.3 and §28-5716.A.3.

- 3.2.1. The amount of MVF and LUF tax that will be collected by suppliers in a calendar year on fuel that is exempt from State of Arizona tax pursuant to A.R.S. § 28-5610.A.3 and A.R.S. § 28-5716.A.3 and attributable to the FAIR shall be calculated in accordance with the methodology set forth in attachment A hereto which is incorporated by this reference as if fully set forth herein.
- 3.2.2. The parties shall confer during November of each year to determine the values of the variables for the upcoming calendar year in the formula set forth in Attachment A. Unless the parties agree on a different amount before February first, the amount established for the prior year shall continue to be used for the current year.

3.2.3. ADOT will distribute the amount calculated for a calendar year in accordance with the provisions set forth in paragraphs 3.2.1 and 3.2.2 in twelve equal monthly installments. The installment for January of each calendar year shall be disbursed by ADOT to WMAT not later than March 15th of the same year. The installment for each successive month shall be disbursed by the 15th day of the second month that follows it. 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.

3.2.4. The LUF taxes included in the amount established in accordance with the methodology set forth in paragraphs 3.2.1 and 3.2.2 of this IGA represent the base LUF tax rate of eighteen cents only. Customers who purchase LUF for qualifying motor vehicles shall not be charged the LUF differential by the vendor.

3.3. Determination of Amount of Refund Due for Fuel Used in Tribal Motor Vehicles.

3.3.1. Pursuant to A.R.S. § 28-5610.A.4 and § 28-5716.A.4, ADOT shall refund to WMAT 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.

3.3.2. The amount of fuel placed into the fuel tanks of tribal motor vehicles shall be determined by records maintained by the WMAT including vendor invoices, credit card statements, and records reflecting reimbursement to employees of WMAT for purchases paid for in cash for fuel purchased for tribal motor vehicles, bills of lading and delivery manifests for fuel delivered to tribal motor vehicle fueling stations, and fuel dispensing records prepared at the tribal motor vehicle fueling stations.

3.4. Refund Procedures for Fuel Used in Tribal Motor Vehicles.

3.4.1. To obtain the refund of MVF and LUF taxes on fuel consumed in tribal motor vehicles, WMAT 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 WMAT on

the form shall be supported by detailed records which shall be available for inspection and verification by ADOT pursuant to paragraph 3.9.3 of this agreement.

3.4.2. Refunds for LUF purchased at vending locations and placed in the fuel tank of a qualifying motor vehicle shall be limited to eighteen cents a gallon.

3.5. Tribal Tax.

3.5.1. WMAT shall keep in effect a tax whose legal incidence is the acquisition of MVF and LUF on the reservation which is exempt from Arizona excise tax on MVF and LUF. The tax rate per gallon shall be equal to or greater than the corresponding tax under Title 28, Arizona Revised Statutes. The tribal law shall provide that the funds refunded by ADOT shall constitute a credit against the tax obligation imposed by the WMAT.

3.5.2. WMAT shall require all vendors of aviation, motor vehicle and liquid use fuel on the reservation to prepare and maintain the same books and records pertaining to their fuel business as must be prepared and maintained by vendors in the rest of Arizona pursuant to the provisions of Title 28, Arizona Revised Statutes.

3.5.3. WMAT shall obtain for ADOT access and the opportunity to examine the books and records of all vendors located on the reservation when requested to do so by ADOT.

3.6. LUF Vending on the FAIR.

3.6.1. WMAT shall provide in tribal law that operators of vending locations on the FAIR, including the WMAT itself, who dispense LUF into use class motor vehicles shall issue invoices which meet the criteria established in A.R.S. § 28-5731 and shall maintain a copy of said invoice for three years. The invoice shall be issued whether or not the motor vehicle otherwise qualifies for an exemption from the LUF tax differential.

3.6.2. WMAT shall provide in tribal law that operators of vending locations on the FAIR, including the tribe itself, who dispense LUF into light class motor vehicles shall



maintain the documentation to support the following events:

- 3.6.2.1. The quantity of fuel purchased with evidence that the LUF tax was included in the purchase price.
- 3.6.2.2. The quantity of fuel sold which was placed into light class motor vehicles.

If the vending location has separate storage tanks for LUF to be sold with and without the LUF tax differential, the fuel acquisition documents must show the storage tank into which the fuel was delivered. Invoices and sales documentation must support sales for the claimed refund amount.

3.7. Refund of LUF Tax Differential on LUF used in Qualifying Motor Vehicles.

Operators of vending locations on the FAIR, including the WMAT itself, may submit a refund claim to ADOT for the LUF tax differential on LUF sold on the reservation in the same manner as vendors located off the reservation.

3.8. MVF Refund Exclusion.

WMAT shall not be eligible for refunds of MVF or LUF tax (less the LUF tax differential) for purchases that are delivered to vending locations located on the reservation which resell the fuel to tribal members, the general public or both, except as provided in paragraphs 3.2, 3.3 and 3.4 of this agreement.

3.9. Record-keeping.

3.9.1. To support refund claims for fuel used in tribal motor vehicles, WMAT shall maintain the following records.

- 3.9.1.1. Purchase invoices and bills of lading pertaining to loads of fuel delivered to the tribal motor vehicle fueling stations.
- 3.9.1.2. Storage tank inventory records for each Tribal Motor Vehicle Fueling Station which detail the physical inventory of fuel contained in each storage tank on the first business day of each

month and records of the withdrawals from the storage tanks during the month.

- 3.9.1.3. Purchase invoices, store receipts, documentation of open account purchases, credit card invoices, and records of reimbursement to tribal employees for cash purchases, as applicable.
- 3.9.2. To aid in the determination of the amount of funds to be refunded to WMAT for fuel exempt pursuant to A.R.S. § 28-5610.A.3 and A.R.S. § 28-5716.A.3, WMAT shall maintain the following records.
  - 3.9.2.1. Purchase invoices and bills of lading for fuel delivered to vending locations operated by WMAT.
  - 3.9.2.2. Manifests and tax reporting forms that operators of vending locations not operated by WMAT shall be required to file with the WMAT.
- 3.9.3. ADOT shall be entitled to examine all of the records required to be kept by this agreement. WMAT 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. WMAT shall provide ADOT with access to its books and records that pertain to fuel acquisition and usage for a period of three years after the issuance of a refund payment.
- 3.9.4. In addition to the foregoing, the WMAT shall 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.
- 3.10. Data Gathering for Future Agreements.
  - 3.10.1. ADOT and WMAT agree to improve the existing data gathering points and develop additional data gathering points to help determine the amount of fuel purchased by resident tribal members on the reservation for

purposes of calculating the amount of MVF and LUF tax refund.

3.10.2. The parties shall meet and confer not later than July 31, 1998 to discuss the progress at developing additional data collection points and improve the accuracy of the current data collection points.

3.11. Finality of Distribution of Amount Refunded to WMAT For Fuel Exempt Pursuant to A.R.S. § 28-5610.A.3 and A.R.S. § 28-5716.A.3.

Subject to the provisions of paragraph 3.13, the amount refunded to WMAT for fuel exempt pursuant to A.R.S. § 28-5610.A.3 and A.R.S. § 28-5716.A.3. shall be final. Neither party shall be entitled to modify retroactively the amounts established in accordance with the methodology set forth in paragraphs 3.2.1 and 3.2.2.

3.12. Presumption of Pre-collected Tax Fuel.

It is anticipated that all fuel delivered to and sold on the FAIR will have been distributed previously by a licensed Arizona supplier who pre-collected either the MVF or LUF fuel tax, as appropriate. If any fuel is offered for sale on the FAIR on which the Arizona taxes were not pre-collected by a licensed Arizona supplier or paid to ADOT pursuant to A.R.S. § 28-5607, WMAT agrees to pay to ADOT the Arizona fuel tax on said fuel at the applicable rate.

3.13. Hold Harmless.

WMAT agrees to reimburse ADOT for any taxes paid to WMAT under this agreement which ADOT is required to refund to any Tribal Member; provided such refund by ADOT to a Tribal Member is made pursuant to a binding administrative order, or on the basis of a request for refund which, in the opinion of both parties to this Agreement, would result in such an Order. WMAT agrees to make such reimbursement to ADOT within sixty days of being requested to do so.

3.14. Expenses.

Each party shall bear its own costs and expenses sustained in connection with this agreement.

3.15. Duration and Termination.

This agreement shall be effective until termination by either party. 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.

3.16. Dispute Resolution.

Applicable laws of the State, Federal and Tribal 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, compliant with applicable laws and regulations of the State, Federal and Tribal government, and acceptable to the ADOT and WMAT. Such process shall include a provision for arbitration.

3.17. ADDRESSES.

3.17.1. Payments from ADOT to WMAT shall be delivered in person or sent by mail addressed as follows

Office of the Tribal Treasurer  
White Mountain Apache Tribe  
Box 700  
Whiteriver AZ 85941.

3.17.2. The submission of information pursuant to paragraphs 3.4 and 3.7 of this IGA from WMAT to ADOT shall be delivered in person or sent by mail addressed as follows:

Motor Vehicle Division, Mail Drop 521M  
Arizona Department of Transportation  
1801 West Jefferson Street  
Phoenix AZ 85007

3.17.3. The submission of information pursuant to paragraph 3.9.4 of this IGA from WMAT to ADOT shall be delivered in person or sent by mail addressed as follows:

Tax Administrator, Mail Drop 200B  
Arizona Department of Transportation  
206 South 17th Avenue  
Phoenix AZ 85007

3.17.4. 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 200B  
Arizona Department of Transportation  
206 South 17th Avenue  
Phoenix AZ 85007

Office of the Tribal Treasurer  
White Mountain Apache Tribe  
Box 700  
Whiteriver AZ 85941

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

White Mountain Apache Tribe

\_\_\_\_\_ Date

By

  
\_\_\_\_\_

Ronnie Lupe  
Tribal Council Chairman

Arizona Department of Transportation

\_\_\_\_\_ Date

By

\_\_\_\_\_ Mary E. Peters  
Director

APPROVED AS TO FORM:

\_\_\_\_\_  
ATTORNEY FOR TRIBE

\_\_\_\_\_  
Date

INTERGOVERNMENTAL AGREEMENT DETERMINATION

Attorney General Contract No. \_\_\_\_\_, which is an agreement between the White Mountain Apache Tribe 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 March, 1998.

Grant Woods  
Attorney General

by \_\_\_\_\_  
Assistant Attorney General