

AGREEMENT

FOR THE COLLECTION AND DISSEMINATION OF MOTOR FUELS TAXES

BETWEEN THE STATE OF NEBRASKA

AND THE WINNEBAGO TRIBE OF NEBRASKA

PREAMBLE

WHEREAS, the Winnebago Tribe of Nebraska (hereinafter sometimes referred to as the “Tribe”) is a federally recognized Indian Tribe with a governmental structure recognized by the Bureau of Indian Affairs, United States Department of Interior;

WHEREAS, the federal law of the United States of America provides that recognized Indian Tribes have certain governmental authority;

WHEREAS, the Tribe is situated on and occupies a federally established Indian Reservation situated in the northeastern part of the State of Nebraska (hereinafter sometimes referred to as the “Reservation”);

WHEREAS, the Tribe has established and currently maintains a tribal government, which government provides certain services to the Tribe and to Indians residing on the Reservation and within the Tribe’s Service Area;

WHEREAS, the provision of said services by the Tribe’s government to the Tribe and to Indians residing on the Reservation and within the Tribe’s Service Area, is in keeping with the policies and laws of the United States Federal Government regarding Indian tribal self-government and self-sufficiency;

WHEREAS, federal Indian law and federal Indian policy generally preempt state law and state policy as to activities by the Tribe and the enrolled members of the Tribe on the Reservation;

WHEREAS, the retail facilities on the reservation are provided for the convenience of the tribal members;

WHEREAS, the State believes that its excise taxes are applicable to transactions that occur on reservations involving sales of motor fuels to non-tribal members and not to transactions that occur on reservations involving such sales to tribal members;

WHEREAS, the Tribe believes that it has the exclusive right to tax transactions that occur on the Tribe's reservation involving sales of blended fuel to non-tribal members where the fuel blends are manufactured on the reservation, the blending and retail sales processes employ tribal members, and the tribe has substantial interests in the blending, distribution, and retail sales of blended fuels;

WHEREAS, the State is of the view that cooperation and negotiation between the State's governmental agencies and political subdivisions, and the governments of federally recognized Indian Tribes is more productive and beneficial to the interests of the State and the citizens of the State, including citizens of the State who are enrolled members of federally recognized Indian Tribes, and better serves those interests than engaging in costly and extensive litigation;

WHEREAS, the Tribe is of the view that cooperation and negotiation between the Tribe and the State is more productive and beneficial to the interests of the Tribe and its members, and better serves those interests than engaging in litigation;

WHEREAS, the State and the Tribe agree that it will serve the interests of both the State and the Tribe for the Tribe to be able to generate revenue for governmental purposes, through the collection of certain tribal taxes in accordance with this Agreement;

WHEREAS, LB 172, Sec. 11, duly enacted by the legislature of the State of Nebraska, and signed into law by the Governor of the State of Nebraska, authorizes the Governor or his designee to enter into Agreement(s) with the governing body of a federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any motor fuel tax on sales of motor fuel made on a federally recognized Indian reservation;

NOW THEREFORE, the State of Nebraska (hereafter sometimes referred to as "State") through Mike Johanns, Governor, and Mary Jane Egr, Nebraska Tax Commissioner, and the Tribe, through John Blackhawk, its Tribal Chairman, and Kenn Mallory, its Treasurer, properly authorized by a resolution of the Winnebago Tribal Council hereto attached as Exhibit A, do hereby enter into this Agreement for the mutual benefit of, and to avoid litigation between, the State of Nebraska and the Winnebago Tribe of Nebraska, to-wit:

#### Part I. INTRODUCTION

1. The State hereby recognizes that the Tribe enjoys, under United States federal law, as a federally recognized Indian Tribe situated on a federally recognized reservation, exemptions from the assessment of certain state taxes. For purposes of this Agreement,

“Tribe” refers both to the Winnebago Tribe of Nebraska and to any tribally-chartered corporations or entities wholly-owned by the Winnebago Tribe of Nebraska.

Part II. TERM

2. This Agreement shall commence on the date it is executed by the parties. Its term shall be perpetual, subject to the provision for early termination set forth in Part V below.

PART III. GASOLINE OR MOTOR FUELS

3. Any gasoline or motor fuels, as defined under the laws of the State of Nebraska, sold by the Tribe within the boundaries of the Reservation shall be exempt from the imposition of the tax on these products as levied under the laws of the State of Nebraska.

4. The Tribal Council of the Tribe has enacted a resolution codified in the Winnebago Tribal Code imposing a tax on gasoline or motor fuels, as defined under the laws of the State of Nebraska, sold by the Tribe within the boundaries of the Reservation, which is and shall remain at the same rate and base of transaction as provided under the laws of the State of Nebraska. This resolution shall remain in effect as long as this Agreement is in effect, as a condition for the State granting an exemption on gasoline or motor fuels taxes. A copy of said resolution is attached hereto as Exhibit B.

5. All proceeds derived from the taxes imposed pursuant to the resolution referenced in Section 4 of this Agreement, except that portion remitted to the State of Nebraska pursuant to Section 9 of this Agreement shall be used for general governmental purposes including but not limited to road construction and maintenance, economic development, and general health and welfare programs and services for tribal members.

6. This exemption shall only apply to deliveries and sales of gasoline and motor fuels that occur at the Tribe's retail outlets located on the Reservation and within the boundaries of the Reservation as are set forth in the Preamble of this Agreement. This exemption shall not apply to transactions involving gasoline and motor fuels that occur at the Tribe's retail outlets outside the boundaries of the Reservation, nor will it apply to any activity by the Tribe as a motor fuel supplier, distributor, wholesaler, importer, or exporter.

7. The Winnebago Tribe of Nebraska agrees not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of this agreement.

8. In no event shall any refunds be allowed under Neb. Rev. Stat. 66-726(2) for any fuel purchased on the Reservation while this Agreement is in effect.

#### PART IV. REVENUE SHARING

9. The Winnebago Tribe of Nebraska shall remit on a quarterly basis no later than 25 days after the end of each quarter 25% of the taxes imposed pursuant to the resolution set forth in Section 4 of this Agreement to the State of Nebraska Department of Revenue. This percentage amount has been determined based upon good faith negotiations between the parties based upon the following formula: approximately one-half of the estimated percentage of residents living within the exterior boundaries of the reservation who are not tribal members (both the state and tribe agree that the state has no arguable claim to levy its motor fuels excise taxes on tribal members on the reservation). Upon written request by either party, but not more than once every ten years, this amount may be reviewed and adjusted under the same formula as set forth above.

10. The amount to be remitted quarterly shall be determined by calculating the total gross gallons of motor fuel product received by the Tribe's retail locations on the reservation, less any sales to the U.S. Government. The resulting gallons are multiplied by the state tax rate in effect at the time, and then 25% of the total tax is remitted to the State.

11. The Tribe shall file a Nebraska Motor Fuels Consumer's Use Tax Return, Form 74, for each quarter this Agreement is in effect. If either the form or payment are not provided by the 25<sup>th</sup> day of the month following the end of the quarter to which they relate, the Tribe shall be subject to the late payment and/or filing penalties provided in NEB. REV. STAT. 66-719 in addition to interest at the rate provided in NEB. REV. STAT. 45-104.02, as such rate may from time to time be adjusted, from the date the payment was due until the date it is actually received. The imposition of said penalties and interest by the State shall not waive any other remedies the State may have under this agreement with regard to late payments and/or late filings.

#### PART V. GENERAL PROVISIONS

12. The Tribe agrees to keep accurate records setting forth information in sufficient detail to allow for verification that the Tribe and Tribal-owned entities are collecting and distributing the correct amount of tax due pursuant to this Agreement. Upon reasonable request of the State, and subject to the confidentiality provisions of the State, the State may conduct an examination of the records of the Tribe and Tribal-owned entities for the sole purpose of verifying compliance with the requirements of this Agreement. Such examination shall be strictly limited to those enterprise activities of the Tribe or Tribal-owned entities which engage in motor fuels sales and may include examination of

summary reports, exemption certificates, ledgers, cash register tapes and similar records. Nothing in this section authorizes any examination of the records of any part of the Tribe or Tribal-owned entity which does not engage in motor fuels sales and nothing in this section authorizes any examination of any records that goes beyond what is needed to verify compliance with the requirements of this Agreement.

13. The right of examination or audit shall exist during the term of the Agreement and for a period of three years after the date of any termination or expiration of the Agreement.

14. Upon completion of an examination of records by the State pursuant to this Agreement, the State shall issue a report to the Tribe containing the results. If the report indicates a change in liability of the Tribe or a Tribal-owned entity, the Tribe may challenge that report by requesting a redetermination from the State. The request must be made in writing within 30 days following issuance of the report. If any dispute still exists between the parties, it shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association.

15. The execution of this Agreement by the Tribe shall not effect nor be a waiver of any other claim or right that the Tribe, or its enrolled members, has or may have to be exempt from the assessment from any other state sales tax for activities that occur on the Reservation.

16. The State certifies that this Agreement is entered into by the State voluntarily, and without coercion, and for the purposes of avoiding litigation as to the subject matter covered by this Agreement. Further, the execution of this Agreement by the State is not

and shall not be a release, waiver or compromise of any defense, claim or right of the State as to any of the Tribe's claims referred to in the paragraph above or otherwise.

17. The parties hereto represent that this instrument contains all of the terms, provisions and conditions of this Agreement and the subject matter covered thereby, that there are no unwritten agreements or oral understandings existing as to the subject of this Agreement, and that any amendment and/or modification of this Agreement shall not be effective until reduced to writing and properly executed by all parties hereto.

18. Notwithstanding any other provision of this Agreement, this Agreement shall immediately cease and terminate, without notice or other action, as follows:

- A. If the United States Federal Government, or its appropriate department or agency, rescinds or otherwise terminates the recognition of the Tribe as a federally recognized Indian Tribe; or
- B. If the Tribe 1) abandons or otherwise acts in a manner evidencing the fact that it has given up or terminated its status as a federally recognized Indian Tribe; or if a Court of Competent jurisdiction renders a judgment, and that judgment becomes final, declaring that the Tribe is not a federally recognized Indian Tribe, 2) has abandoned or otherwise terminated such status, 3) that such status has been rescinded or terminated or 4) has abandoned or given up or terminated its entitlement to the tax exemptions, or any of them, that are the subject of this Agreement.
- C. In the event that one of the parties to this agreement, or any employee, representative, or official of such a party fails to comply with any term, condition, covenant or requirement of this Agreement, or is otherwise in



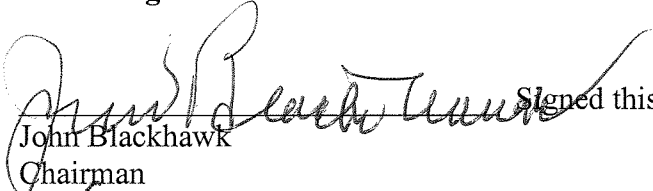
breach of this Agreement, the other party may declare this Agreement 1) suspended in whole or in part, or 2) terminated in whole or in part. Prior to suspending or terminating this Agreement, in whole or in part, a party hereto shall deliver a written-notice to the other party which identifies the conduct, action, and/or inaction that violates this Agreement. The party violating this Agreement shall have ninety (90) days from the date of receipt of such notice in which to cure the default or breach of this Agreement and to provide the other party hereto with written notice of such curing. At the end of such ninety (90) day period, if the default or breach complained of in said notice is not cured, then in that event this Agreement shall immediately be suspended or terminated accordingly to the terms of the said notice of default or breach.


19. The parties hereto covenant and agree that any declarations contained herein by either party are for the purposes solely of this Agreement and are not and shall not be deemed admissions, concessions or a waiver of any claims or defenses that might be available to either party in any lawsuit or proceeding that may be commenced or filed by either party hereto or by some other person or entity not a party hereto, nor shall this Agreement be competent evidence in any judicial or administrative proceeding or suit other than a proceeding or suit involving the specific subject covered by this Agreement.

20. The State declares that in addition to the considerations herein above expressed, it has negotiated and entered into this Agreement, and has agreed to the terms and conditions contained herein, based substantially on the factual situation and circumstances of the Winnebago Tribe of Nebraska, including but not limited to such

matters as: location of the Tribe's lands in Trust, the proximity of those Lands in Trust to highways, towns, and non-tribal populations, the size of the Tribe's Service Area, the Tribe's reservation population, economic development in the area of the reservation, the prospects for the Tribe's further economic development on its Lands in Trust, and the anticipated volume of sales of the items subject to the taxes for which exemptions are herein and hereby granted. Accordingly, no provision of this Agreement shall in any manner be binding upon, or set a precedence upon any other Agreement with any other Tribe.

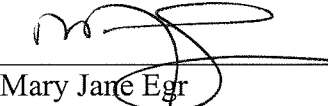
**Winnebago Tribe of Nebraska**

 Signed this 16<sup>th</sup> day of June, 2002  
John Blackhawk  
Chairman

 Signed this 16 day of Jan, 2002  
Kenn Mallory  
Treasurer

**State of Nebraska**

 Signed this 24 day of Jan, 2002  
Mike Johanns  
Governor

 Signed this 27<sup>th</sup> day of December, 2001.  
Mary Jane Egr  
State Tax Commissioner

# WINNEBAGO TRIBE of NEBRASKA

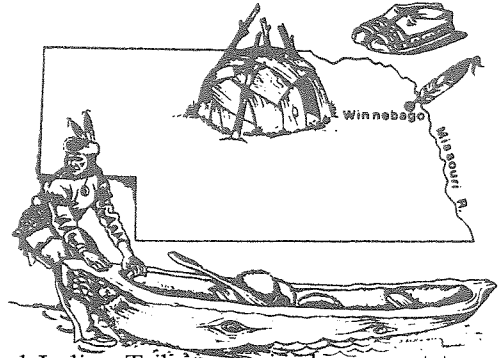
RECEIVED

WINNEBAGO TRIBAL COUNCIL P.O. BOX 687 WINNEBAGO, NEBRASKA 68071

2002 JAN 23 AM 10 18

B.I.A. WINNEBAGO AGENCY  
WINNEBAGO, NE 68071

## RESOLUTION #02-45 (Motor Fuels Taxes Agreement) Amending Resolution #02-40



WHEREAS; the Winnebago Tribe of Nebraska is a Federally recognized Indian Tribe organized pursuant to Section 16 of the Act of June 18, 1934 (48 Stat 984), (25 USC 476) as amended by the Act of June 15, 1935, (49 Stat 378), and

WHEREAS; pursuant to Article IV, Section 1 (q) of the Constitution and Bylaws of the Winnebago Tribe of Nebraska, the Tribal Council has the power to promulgate and enforce statues governing the conduct of persons located within or passing through the reservation and providing for maintenance of law and order and the administration of justice; and

WHEREAS; pursuant to Article IV, Section 2 of the Constitution and Bylaws of the Winnebago Tribe of Nebraska, the Tribal Council has the power, subject to the express limitations in the Constitution or in federal law, to legislate or act upon any subject upon which the tribe is empowered to act; and

WHEREAS; the Tribal Council believes with respect to motor fuel taxes, cooperation between the tribe and states it is in the best interests of the tribe; and

WHEREAS; the attached Agreement for the Collection and Dissemination of Motor Fuels Taxes between the State of Nebraska and the Winnebago Tribe of Nebraska has been negotiated between the State of Nebraska and the Winnebago Tribe of Nebraska and the Tribe believes this Agreement to be in the best interest of the tribe and its members.

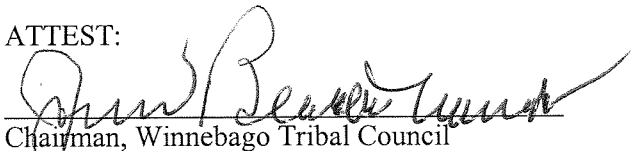
NOW, THEREFORE, BE IT RESOLVED that the Winnebago Tribe of Nebraska hereby approves the attached Agreement for the Collection and Dissemination of Motor Fuels Taxes between the State of Nebraska and the Winnebago Tribe of Nebraska and directs the Chairman and Treasurer to execute said Agreement on behalf of the Tribe.

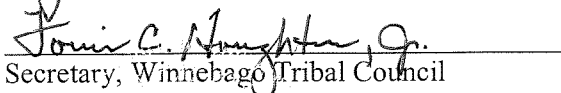
### CERTIFICATION

We, the undersigned Officers of the Winnebago Tribal Council, hereby certify that on the 15<sup>th</sup> day of January, 2002 at a meeting duly convened by the Winnebago Tribal Council, voted to adopt the above Resolution by a vote 4 for, 0 against, with 0 abstentions and 4 member (s) not voting.

DATED THIS 15th DAY OF JANUARY, 2002.

ATTEST:

  
Chairman, Winnebago Tribal Council

  
Secretary, Winnebago Tribal Council

RECEIVED:  
~~Concurrence:~~

  
Acting BIA Superintendent

RESOLUTION  
of the  
WINNEBAGO TRIBE OF NEBRASKA

RESOLUTION No. 94-125

'94 SEP 23 P4:12

WHEREAS, the Winnebago Tribe of Nebraska is a federally recognized Indian tribe pursuant to § 16 of the Act of June 18, 1934 (48 Stat. 984) (25 U.S.C. § 476), as amended by the Act of June 15, 1935 (49 Stat. 378); and

WHEREAS, pursuant to Article IV. Section 1(o) of the Tribal Constitution, and its inherent powers of self-government, the Tribal Council has the power to, inter alia, "To charter subordinate organizations for economic or political purposes and to regulate the activities of cooperative associations"; and

WHEREAS, pursuant to the Winnebago Tribe of Nebraska Business Corporation Code, the Tribal Council may charter a corporation which is wholly owned by the Winnebago Tribe of Nebraska

WHEREAS, the Tribal Council desires to charter a corporation which is wholly owned by the Winnebago Tribe of Nebraska.


NOW, THEREFORE, BE IT RESOLVED that the Tribal Council hereby approves the Articles of Incorporation (see attached) of a corporation wholly owned by the Winnebago Tribe of Nebraska which shall be known as "Ho-Chunk, Inc."

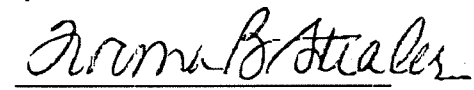
BE IT FURTHER RESOLVED that the Tribal Council authorizes John Blackhawk, the Tribal Chairman, to serve as the incorporator of Ho-Chunk, Inc.

CERTIFICATION


We, the undersigned officers of the Winnebago Tribal Council hereby certify that on the 15 day of September, 1994, at a meeting duly convened, the Winnebago Tribal Council voted to adopt the above resolution by a vote of 5 for, 0 against, with 0 abstentions.

Dated this 15 day of Sept., 1994.

  
CHAIRMAN, Winnebago Tribe  
of Nebraska

  
SECRETARY, Winnebago Tribe  
of Nebraska

ATTEST:  
RECEIVED:

  
SUPERINTENDENT, Winnebago Agency