

**SECOND MASTER AGREEMENT BETWEEN THE STATE OF MONTANA THROUGH
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AS ITS
DESIGNEE
AND
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION**

PREAMBLE

The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation (CSKT) is a sovereign nation. As such, CSKT has a unique government-to-government relationship between itself and the State of Montana (State). This Second Master Agreement (Agreement) demonstrates an ongoing commitment by the CSKT and the State of Montana through its administrative agency the Department of Natural Resources and Conservation (DNRC), to implement this government-to-government partnership. The State-Tribal Cooperative Agreements Act, § 18-11-101 et seq., MCA, promotes cooperation between State agencies and sovereign Tribal governments, and authorizes the State of Montana to enter into this Agreement with the CSKT.

WHEREAS the Parties have negotiated a water rights compact (the Compact) which was ratified by the Montana Legislature on April 24, 2015, and codified at Montana Code Annotated § 85-20-1901;

WHEREAS Article VI.A. of the Compact obligates the State to contribute \$55 million for the purposes of implementation of the Compact;

WHEREAS Article VI.A.1(a) – (c) of the Compact provides that \$12 million of the State's \$55 million contribution to settlement shall be allocated in \$4 million increments to water measurement, improving on-farm efficiency, and mitigation for loss of stock water deliveries by the Flathead Indian Irrigation Project (FIIP);

WHEREAS the State and the CSKT previously entered into a Master Agreement (First Master Agreement) to obligate the first \$3 million of the \$12 million allocated by Article VI.A.1(a) – (c) to water measurement, on-farm efficiency, and stock water mitigation. The scope of that agreement is limited to the \$3 million appropriated by the Montana Legislature in 2015. The First Master Agreement remains in force until its objectives and purposes are completed, the funds obligated by it are spent and no further Task Orders are contemplated pursuant to it, or it is otherwise terminated;

WHEREAS this Master Agreement is limited to the remaining \$9 million of the \$12 million allocated by Article VI.A.1(a) – (c) to water measurement, on-farm efficiency, and stock water mitigation;

WHEREAS the funds obligated by this Master Agreement shall be used to accomplish the objectives set forth in Appendices 3.4 and 3.5 of the Compact, and shall be disbursed through individual Task Orders implementing these provisions;

WHEREAS \$2.1 million of the remaining \$9 million allocated by Article VI.A.1(a) – (c) to water measurement, on-farm efficiency, and stock water mitigation has been appropriated at the time this

Master Agreement is executed. Of that amount \$900,000 shall be allocated for use in Fiscal Year 2019, and \$600,000 for use in Fiscal Years 2020 and 2021, respectively. Further allocations shall be no less than \$600,000 per fiscal year subject to authorization and appropriation by the Montana Legislature, and nothing in this agreement shall preclude disbursement in excess of \$600,000 per year, providing funds are available and not in excess of the \$12 million stipulated by Article VI.A.1(a) – (c) of the Compact.

WHEREAS Article IV.G. of the Compact establishes the process and timeline for the Compact Implementation Technical Team (CITT) to form and begin its work as set forth in Article IV.G and Appendices 3.4 and 3.5 of the Compact;

WHEREAS Article IV.G and Appendix 3.5 of the Compact define the scope and responsibilities of the CITT. The responsibilities of the CITT are those stated in Appendix 3.5.3. of the Compact, and are incorporated by reference as if fully stated herein;

WHEREAS the Parties to this Master Agreement contemplate that this Agreement sets forth the general parameters for the long-term accomplishment of the objectives set forth in Compact Appendices 3.4 and 3.5. The Parties further expect that these long-term objectives will be accomplished through project-specific planning by the CITT and advisory input by the Parties. Therefore, the Parties acknowledge that each Task Order implementing a specific objective or project will be incorporated as part of this Agreement;

WHEREAS the Parties agree to perform their respective duties and responsibilities under this Agreement in good faith and in a spirit of cooperation to accomplish the purpose of fulfilling the terms of the Compact.

THEREFORE, THE PARTIES ENTER INTO THE FOLLOWING AGREEMENT:

SECTION 1. PARTIES

This Agreement is entered into between the State of Montana, by and through the Montana Department of Natural Resources and Conservation (hereinafter the “Department” or the “State”) as its designee, whose address and phone number is 1539 Eleventh Ave. Helena, MT 59601, (406) 444- 2684 , and the CSKT whose address and phone number is Box 278, Pablo, MT, (406) 675-2700.

As used herein, "Parties" refers to the CSKT and the State.

SECTION 2. PURPOSE

The purpose of this Master Agreement is to set forth the general terms, definitions, and conditions by which the Parties intend to perform their further duties and responsibilities under Article IV.G. and Appendices 3.4 and 3.5 of the Compact. The Parties agree to cooperate as sovereigns under this Agreement and through each Sovereign’s member representative on the CITT in planning and implementing Compact duties and responsibilities.

SECTION 3. TERM OF AGREEMENT

- A. The execution date of this Agreement is the date of last signing. Unless terminated under the provisions of this Agreement, this Agreement will terminate upon completion of the objectives and purposes stated above and when no additional Task Orders are contemplated.
 - a. Task Orders. The term of each Task Order entered under this Agreement shall be set forth in each respective sequential Task Order. Any Task Order that the Parties have executed within the term of this Agreement that extends beyond the termination date of this Agreement is deemed to have been authorized by the Parties and shall be completed as provided by the most recent existing terms of this Agreement. Nothing in this Agreement precludes multiple Task Orders being in effect at the same time.
 - b. Extension of Task Order Term. Task Orders may be extended in accordance with their terms. Notwithstanding the foregoing, Task Orders remain in effect until completed or upon mutual termination of the Task Order.
- B. Each party, after termination of this Agreement, remains subject to and obligated to comply with all legal and continuing contractual obligations and separate Task Orders arising from the Agreement including, but not limited to, legal and contractual obligations regarding record retention, audits, indemnification, insurance, the protection of confidential information, recipient grievances and appeals and property ownership and use.

SECTION 4. DISBURSEMENTS.

Disbursements shall occur for each task order according to the terms specified in the task order.

SECTION 5: REPORTS, AUDITS, AND INSPECTIONS

- A. During the term of the Agreement, the CSKT shall submit quarterly reports to the DNRC, due no later than the first Friday after each calendar quarter during the term of the Agreement and extending through the completion of any Task Order(s) outstanding at the time the Agreement is terminated or expires. Quarterly Reports must be provided on or before April 30th to cover the January 1 – March 31 reporting period, July 31st to cover the April 1 – June 30 reporting period, October 31st to cover the July 1 – September 30 reporting period, and January 31st to cover the October 1 – December 31 reporting period. These reports must describe the status of the activities set forth in any Task Order(s), costs incurred, funds remaining, and projected completion date.
- B. The Parties, in accordance with §18-4-311, MCA and any other applicable authority, must maintain for the purposes of this Agreement an accounting system that conforms to Generally Accepted Accounting Principles (GAAP).
- C. The Parties or any other legally authorized governmental entity or their authorized agents may at any time during or after the term of this Agreement conduct, in accordance with §§ 5-13-304 and 18-1-118, MCA and any other applicable authority, audits for the purposes of ensuring the appropriate administration and expenditure of the monies provided through this Agreement and

to ensure the appropriate administration and delivery of services provided through this Agreement.

- D. The Parties, for purposes of audit and other administrative activities, in accordance with §18-1-118, MCA and any other applicable authority, must provide each other and any other legally authorized governmental entity or their authorized agents, access at any time to all records, materials and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided under this Agreement from the execution date of this Agreement until the expiration of three years from the completion date of this Agreement.
- E. The Parties and any other legally authorized governmental entity or their authorized agents may record any information and make copies of any materials necessary for the conduct of an audit or other necessary administrative activity.
- F. The Parties must comply with the accounting and audit requirements of Federal Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit organizations" and the provisions OMB Circular A-87 "Cost Principles for State and Local Governments and Indian Tribal Governments" concerning the use of the funds provided under this Agreement unless there is a conflict with the State's accounting requirements. State accounting requirements shall prevail if there is a conflict, and the State shall provide the CSKT with an enumeration of all such conflicts upon execution of this Agreement. The State shall promptly provide the CSKT with all changes to the enumerated list of conflicts as they become known to the State.

SECTION 6. PROPERTY ACQUISITION AND DISPOSITION

Title to any real property or capital equipment acquired in whole or in part as provided in this Agreement or any Task Order will vest upon acquisition by the CSKT. Property is to be used for the purposes of carrying out the duties and responsibilities of this Agreement and any associated Task Order. The CSKT may not transfer title to any real property or capital equipment acquired in whole or in part with the funds provided under this Agreement without first receiving the State's written approval of the transfer, which shall not be unreasonably withheld.

SECTION 7. HOLD HARMLESS / INDEMNIFICATION

- A. The CSKT agrees to indemnify, defend, and hold harmless the State of Montana, its officials, agents, and employees from any breach of this Agreement, from any matters arising from the performance of this contract, or from the CSKT's failure to comply with any Federal, State, or local law, regulation or ordinance applicable to the services or work to be provided under this Agreement.
- B. The State Agrees to indemnify, defend, and hold harmless the State of Montana, its officials, agents, and employees from any breach of this agreement, from any matters arising from the performance of this contract, or from the State's failure to comply with any Federal, State, or

local law, regulation or ordinance applicable to the services or work to be provided under this Agreement.

- C. This indemnification applies to all claims, obligations, liabilities, costs, attorney's fees, losses or suits resulting from any acts, errors, omissions or negligence, whether willful or not, of the Parties, their employees, agents, subcontractors or assignees and any other person, firm, or corporation performing work, services or providing materials under this contract.

SECTION 8. COMPLIANCE WITH LAWS

- A. The CSKT must, in performance of work under this Agreement and any associated Task Order, fully comply with all applicable federal, state, and tribal laws, rules, policies, regulations, and ordinances.
- B. The Parties agree to comply with all applicable federal, state and tribal laws, rules and policies as they apply to each Task Order. The Parties will provide appropriate guidance to each other as requested by providing copies of such regulations, statutes, standards and policies, as well as essential interpretations thereof, that are to be complied with under this Agreement and any associated Task Order(s).
- C. It shall be the CSKT's responsibility to obtain all permits, licenses or authorizations that may be required from any government authority prior to initiation of a project, or required to be obtained prior to the initiation of work or by the time of completion of a project. or required to be eligible for reimbursement of funds under this Agreement.

SECTION 9. AGREEMENT TERMINATION

- A. Notwithstanding the terms and settlement agreed to in the Compact, the Department may immediately terminate the whole or any part of this Agreement or any individual Task Order for failure to perform the Task Order in accordance with the terms of this Agreement and other governing authorities.
 - 1. If there is no exigency or risk of harm to persons from continued nonperformance, the Department shall provide notice to the CSKT of the failure to perform and allow the CSKT 30 days during which to cure the failure;
 - 2. Failure to perform includes, but is not limited to, failure to:
 - i. perform any of the requirements under this Agreement or associated Task Order(s); or
 - ii. comply with any applicable Federal law or regulation.
- B. Either Party may terminate this Agreement or any associated Task Order(s) without cause. The Party terminating this Agreement must give notice of termination to the other Party at least thirty (30) days prior to the effective date of termination.

- C. Notice of termination must be given in writing.
- D. Neither Party may revoke a notice of termination once given, without the express consent of the other Party.

SECTION 10. LIAISON AND SERVICES OF NOTICES

- A. Each Task Order associated with this Agreement shall identify the specific individuals from each Party who will serve as the primary contact for that Task Order.
- B. All written notices, reports and other information required to be exchanged between the parties on each individual Task Order must be directed to the person(s) designated as the liaisons for the Task Order.

SECTION 11. MUTUAL LIMITED WAIVER OF SOVEREIGN IMMUNITY

The State has waived its sovereign immunity from suit for contract actions arising under this Agreement. See Montana Code Annotated, Title 18, Chapter 1, part 4. The State recognizes and agrees that the CSKT is not a "contractor" of a "contracting agency of the State of Montana" for purposes of §18-1-402, MCA due to the nature of the government-to-government relationship between the State and the CSKT.

For purposes of this Agreement, the CSKT expressly grant a limited waiver of sovereign immunity for the sole purpose of enforcement the Agreement. The Parties to this contract agree that no word, phrase, sentence, paragraph, or section, in whole or in part, separate or together, contained in this Agreement may be interpreted as an express or implied waiver generally of the sovereign immunity of the CSKT beyond the limited waiver contained and for the purposes described herein.

SECTION 12. CHOICE OF LAW AND REMEDIES

- A. The Parties agree that this Agreement shall be governed and interpreted according to applicable Federal laws and regulations, and applicable laws and regulations of the CSKT and the State of Montana.
- B. The Parties agree to meet and confer for to resolve any disputes that may arise under this Agreement before seeking other recourse or forum for dispute resolution.
- C. If resolution is not possible, the Parties agree and stipulate that venue for enforcement of the terms hereof lies in a court of competent jurisdiction.
- D. In the event of a dispute regarding this Agreement, each Party agrees to continue performance under this Agreement pending dispute resolution unless the other party explicitly waives performance in writing.
- E. Any remedies provided by this Agreement are not exclusive and are in addition to any other remedies provided by law.

SECTION 13. SCOPE, AMENDMENT AND INTERPRETATION OF AGREEMENT

- A. This Agreement consists of seven numbered pages. This constitutes the entire Agreement between the Parties at the time of execution. Every task order entered pursuant to this Agreement shall be incorporated into the Agreement.
- B. No statements, promises, or inducements made by either Party or their agents are valid or binding if not contained herein or contained in a Task Order associated with this Agreement.
- C. The headings to the sections of this Agreement are descriptive and do not modify any substantive terms of the Agreement.
- D. This Agreement, except as may be otherwise provided by the terms of this Agreement, may not be enlarged, modified or altered except by written amendment signed by the Parties to this Agreement.
- E. If any provision of this Agreement is determined by a competent court of jurisdiction to be invalid legally, all other provisions of this Agreement remain in effect and are valid and binding on the parties.

SECTION 14. CREATION AND RETENTION OF RECORDS

The CSKT agrees to create and maintain records of the services covered by this Agreement, including financial records, supporting documents and such other records as are required by law and authority as set forth in any Task Order or quarterly report. No retention period shall be less than 10 years from the date of a record's creation.

The State of Montana shall comply with Montana law for all applicable records and retention periods that may apply in performing its obligations under this Agreement.

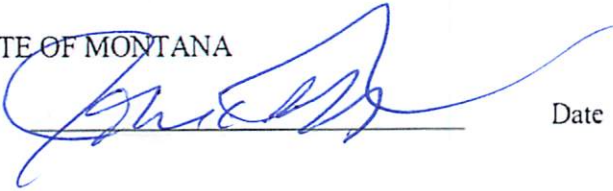
SECTION 15. LIMITING DECLARATION

This Agreement sets forth the terms, definitions, conditions and responsibilities of the Parties with regard to the general provisions of any Task Order entered into pursuant to this Agreement. It is not intended to reflect or be viewed as reflecting in any other context either Party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken pursuant to it shall be deemed as enlarging or diminishing the jurisdictional authority of either Party. Nothing in the Agreement shall be construed as reason or authority to substitute any Federal, Tribal, or State statute as a basis for any civil or administrative claim which names the state of Montana or the CSKT, or any of their respective agencies as a named party, or which may involve the State of Montana or the CSKT or any of their respective agencies as a named, impleaded, or necessary third party. Neither this Agreement nor conduct pursuant to it shall be offered as evidence, otherwise referred to in any present or future litigation unrelated to the subject matter of the Agreement, or used to further either party's equitable or legal position in any litigation unrelated to the subject matter of

the Agreement. Each Party reserves all rights, arguments and defenses that are available to it under the law, and nothing in this Agreement shall be interpreted or construed as an express or implicit waiver of any such right, argument or defense, except as provided above.

The Parties through their authorized agents have executed this Agreement on the dates set forth below.

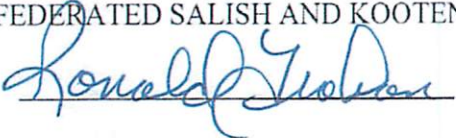
STATE OF MONTANA

By: 

Date

6-24-19

CONFEDERATED SALISH AND KOOTENAI TRIBES

By: 

Date

6-25-19

This Agreement is legally sufficient and is approved as to form pursuant to Mont. Code Ann. § 18-11-105.

By: 

Date

6-21-2019

Tim Fox, Attorney General