

**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 (the State). This Agreement demonstrates a commitment by the CSKT and the State of Montana through 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 Master Agreement (Master Agreement or 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 pursuant to Article VI.A. of the Compact, the State is obligated to contribute \$55 million for the purposes of implementation of the Compact;

WHEREAS pursuant to Article VI.A.1, (a)(b) and (c) of the Compact, \$12 million of the State's \$55 million contribution shall be allocated specifically to water measurement activities, improving on-farm-efficiency, and mitigating any loss of Stock Water deliveries from the Flathead Indian Irrigation Project (FIIP);

WHEREAS this Master Agreement makes available the first \$3 million of the \$12 million allocated under Article VI.A.1. (a), (b) and (c) for water measurement activities, improving on-farm efficiency, and mitigating any loss of Stock Water deliveries from the FIIP;

WHEREAS this Master Agreement and accompanying Task Orders is limited to the first \$3 million of the State's \$12 million contribution under Article VI.A.1.(a), (b) and (c), and future Master Agreements and Task Orders shall be entered into for the disposition of the remaining \$9 million obligation under the foregoing provisions;

WHEREAS Article IV.G.(2). and (3) of the Compact establish the process and timeline for a Compact Implementation Technical Team (CITT) to form, and begin its work in considering and recommending improvements in its planning function under the Compact;

WHEREAS the Compact establishes as part of an overall Adaptive Management process, a set of activities including Operational Improvements that define the scope of the CITT. The responsibilities of the CITT are those stated in Appendix 3.5.3. of the Compact, here incorporated by reference as if fully stated herein;

WHEREAS the Parties to this Master Agreement recognize this Agreement is projected to be long-term in accomplishing the objectives generally set forth in Appendices 3.4 and 3.5 of the Compact, the Parties also recognize that the long-term objectives are best met through more specific annual planning and implementation of tasks resulting from CITT planning and advisory input. Therefore, the Parties envision that the whole of this Agreement will be the Master Agreement covering and guiding the long-term goals and objectives of the Compact, plus each incremental, detailed Task Order implementing the specifics of the CITT planning authorized by the Compact;

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. The Parties agree that the respective duties each Party is mutually premised on carrying forward the implementation of the Compact 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 CITT recommendations.

SECTION 3: TERM OF AGREEMENT

A. The effective 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 further Task Orders are contemplated.

1. 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, but extends beyond the termination date of this Agreement, is deemed to have been authorized by the Parties, and shall be completed under the then existing terms of this Agreement.
 2. Extension. Task Orders may be extended in length of term in accordance with the provisions of each Task Order. Nothing in this Agreement should be construed to preclude more than one Task Order to be in effect at any point in time.
- 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 in relation to its duties and responsibilities that may arise under the Master Agreement including, but not limited to: record retention; audits; indemnification; insurance; the protection of confidential information; recipient grievances and appeals; and property ownership and use. Task Orders remain in effect until completed, or upon mutual termination of the Task Order.

SECTION 4. DISBURSEMENTS.

DNRC shall disburse to the CSKT the sum associated with each Task Order upon the execution of the Task Order.

SECTION 5. REPORTS, AUDITS, AND INSPECTIONS

- A. During the term of the Agreement, the CSKT will submit quarterly reports to the DNRC, due no later than the first Friday after each calendar quarter. Quarterly Reports must be provided on or before: April 30 to cover the January 1 – March 31 reporting period; July 31 to cover the April 1 – June 30 reporting period; October 31 to cover the July 1 – September 30 reporting period; and January 31 to cover the October 1 – December 31 reporting period. These reports must describe the status of the activities set forth in each Task Order, including costs incurred, funds remaining, and projected completion date.
- B. The Parties, in accordance with §18-4-311, MCA, and other authorities, must maintain, for the purposes of this Agreement, an accounting system of procedures and practices 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 an inspection and audit during normal business hours, in accordance with §§ 5-13-304 and 18-1-118, MCA, 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 other authorities, must provide each other, and any other legally authorized governmental entity or their authorized agents, access at any time during normal business hours of all of their respective records, materials and information, including any and all audit reports with supporting materials and work documents, pertinent to the services provided under 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 provided in the terms of this Agreement or any 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 will 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 corresponding 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 Task Order under this Agreement
- C. It shall be the CSKT's responsibility to obtain all permits, licenses or authorizations that may be required from any government authorities with jurisdiction over the subject matter 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 performance, the Department shall provide notice to the CSKT of the failure to perform and allow the CSKT thirty (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
 - ii. comply with any applicable Federal law or regulation.
- B. Either Party may terminate this Master Agreement, or any Task Order entered pursuant to this Master Agreement, 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 individual Task Order shall identify the specific individuals from each Party that will serve as the primary contact for that specific 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 the purposes of this Agreement, the CSKT expressly grant a limited waiver of sovereign immunity for the sole purpose of enforcement of 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, other than expressly provided in this provision, as an express or implied waiver generally of the sovereign immunity of the CSKT.

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 first meet and confer for the purpose of resolving any disputes that may arise under this Agreement.
- 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 with regard to this Agreement, each Party agrees to continue performance under this Agreement 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 eight numbered pages. This constitutes the entire Agreement between the Parties.
- B. No statements, promises, or inducements made by either Party or their agents are valid or binding if not contained herein.
- C. The headings to the sections of this Agreement are for convenience of reference and do not modify the terms and language of the provisions to which they are headings.
- 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. No retention period shall be less than ten (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 has been entered into to set forth the terms, definitions, conditions, and responsibilities of the Parties, with regard to the general provisions of any Task Order entered into under this Master Agreement. It is not intended to reflect, or be viewed as reflecting in any other context, any Party's position with respect to the jurisdictional authority of the other. Nothing in this Agreement or in any conduct undertaken pursuant thereto shall be deemed as enlarging or diminishing the jurisdictional authority of either Party. Neither this Agreement, nor conduct pursuant thereto, 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 parties' 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 out below.

STATE OF MONTANA

By: 

Date October 5, 2016

This Agreement is legally sufficient and is approved pursuant to the terms of the Compact, and Mont. Code Ann. § 18-11-105.

STATE ATTORNEY GENERAL

By: 

Date 26 October 2016

CONFEDERATED SALISH AND KOOTENAI TRIBES

By: 

Date 10-11-16