

**FUNDING AGREEMENT BETWEEN THE MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION, THE CONFEDERATED SALISH AND KOOTENAI
TRIBES, AND THE FLATHEAD RESERVATION WATER MANAGEMENT BOARD
(AGREEMENT)**

PREAMBLE

This Funding Agreement (this “Agreement”), dated as of May __, 2022, is entered into between the State of Montana through the Department of Natural Resources and Conservation (the “State” or “DNRC”), the Confederated Salish & Kootenai Tribes of the Flathead Reservation (the “Tribes”), and the Flathead Reservation Water Management Board (the “Board”).¹ The State, the Tribes, and the Board are sometimes referred to herein as the “Parties.”

WHEREAS, the Confederated Salish and Kootenai Tribes-Montana Compact (“Compact”) was passed by the Montana Legislature and signed into State law by the Governor of the State on April 24, 2015. The United States Congress passed the Montana Water Rights Protection Act² (the “Settlement Act”) on December 21, 2020, and the President of the United States signed the Settlement Act on December 27, 2020. The Tribes ratified both the Compact and the Settlement Act by Tribal Council Resolution on December 29, 2020. The U.S. Secretary of the Interior executed the Compact on September 17, 2021, which is the Effective Date of the Compact. Article II.28.

WHEREAS, the Compact establishes the Flathead Reservation Water Management Board (the “Water Management Board” or “Board”), which, as of the Effective Date of the Compact, is the exclusive regulatory body on the Flathead Indian Reservation (the “Reservation”) for the issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Uses, and for the administration and enforcement of all Appropriation Rights and Existing Uses. Compact, Article IV.I.1. The Board also has the exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation. *Id.* The Board has the authority to hire a Water Engineer to carry out the functions of the Board. Compact, Article IV.I.5.c.

WHEREAS, through the Compact, the State and the Tribes adopted the Unitary Administration and Management Ordinance, codified in State law at § 85-20-1902, MCA, and in the Tribal Ordinance 111-A (the “Ordinance,” “UMO,” or “Law of Administration”). Upon the Effective Date, the Ordinance governs all water rights, whether derived from tribal, state, or federal law, and shall control all aspects of water use, including all permitting of new uses, changes of existing uses, enforcement of water right calls, and all aspects of enforcement within the exterior boundaries of the Reservation. Ordinance, Section 1-1-101(3); § 85-20-1902, MCA.

WHEREAS, the Compact and the Ordinance provide that the expenses of the Board be shared equally between the State and the Tribes. Compact, Article IV.I.2.h; Ordinance, Section 1-2-105; § 85-20-1902, MCA.

WHEREAS the Parties to this Agreement recognize this Agreement is projected to be short term (3 months) in accomplishing the initial setup and formation of the Board. The Parties envision that they will enter into an annual or biennial funding agreement before this Agreement expires, and agree to work cooperatively to do so within the remaining months of the Agreement term.

¹ Nothing in this Memorandum of Agreement is intended to alter, mischaracterize, or change the content of the Compact or Settlement Act.

² Division DD of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 3008-38 (Montana Water Rights Appropriations Act) at Section 10

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.

AGREEMENT

SECTION 1. PURPOSE. The purpose of this agreement is to establish mutually agreeable terms and conditions, specifications, and requirements to provide funds to the Board for operational development pursuant to the State's and the Tribes' joint obligation to support the Compact and the Board under the Confederated Salish and Kootenai-Montana water rights compact and the Unitary Management Ordinance (Sections 85-20-1901, -1902, MCA).

SECTION 2. TERM. The effective date of this Agreement is the date of last signing. The Board shall have until July 31, 2022 to complete the work described in Sections 5 and 9.

SECTION 3. DNRC's ROLE. DNRC is administering funds awarded by the legislature to ensure that the funds are used according to the intent of the legislature and the purposes, objectives, and procedures of the CSKT-Montana water rights compact. DNRC will monitor project expenditures to ensure payment eligibility. DNRC assumes no responsibility for the Board's obligation to faithfully perform the tasks and activities necessary to implementation.

SECTION 4. TRIBES' ROLE. The Tribes are administering funds obtained from the U.S. Government pursuant to the Settlement Act specifically set aside by the Tribes for Compact implementation. The Tribes will monitor project expenditures to ensure payment eligibility. The Tribes assume no responsibility for the Board's obligation to faithfully perform the tasks and activities necessary to implementation.

SECTION 5. BOARD's ROLE and SCOPE of WORK. The Board shall use funds provided under terms of this Agreement exclusively for the formation and operation of the Board. The Board may use the funds for staff, office, insurance, travel, and contracted technical and legal expenses. These include, but are not limited to, securing a lease for the Office of the Engineer office space, contracting with independent legal counsel, etc. In accordance with § 1-2-110(4) of the Ordinance, the Board will submit future budget requests to DNRC and the Tribes on an agreed-upon schedule.

SECTION 6. BUDGET. Based on the attached draft budget, it is estimated that the expenses of the Board are likely to be \$100,000 from May 1, 2022 to July 31, 2022.

SECTION 7. AVAILABILITY OF FUNDS. The Board acknowledges and understands the State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (Section 18-4-313(4), MCA.)

SECTION 8. DISBURSEMENT. The Tribes and DNRC shall disburse to the Board \$50,000 each (\$100,000 total) upon the execution of this Agreement. The Tribes shall deduct from its contribution amounts paid for specific line items in the attached draft budget, namely insurance in the amount of \$698 and the security deposit and first month's rent for the office space (\$3900 + \$1950 = \$5,850).

SECTION 9. REPORTS. A report for the period ending July 31, 2022, shall be submitted to DNRC and the Tribes by August 31, 2022. The report will provide status information for each project and will include, at a minimum, costs incurred, funds remaining and projected completion dates.

SECTION 10. RECORDS AND AUDITS. The Board will maintain appropriate and adequate records showing complete entries of all receipts, disbursements and other transactions relating to the project. The Tribes, DNRC, the Legislative Audit Division or the Legislative Fiscal Division may, at any reasonable time, audit all records, reports and other documents that the Board maintains under or in the course of this Agreement to ensure compliance with its terms and conditions.

SECTION 11. PROJECT MONITORING AND ACCESS FOR INSPECTION AND MONITORING. DNRC, the Tribes or their agents may monitor aspects of the Board's performance to determine compliance with Sections 5.0 and 9.0, Project Scope, and other technical and administrative requirements in this Agreement, including the adequacy of records and accounts. DNRC and the Tribes may present specific areas of concern to the Board providing the Board the opportunity to better accomplish the goals and objectives of the Agreement and conditions of this Agreement.

Because this Agreement is from public funds, public access to records must be available. The Board shall accommodate requests for public access to the site and records with due consideration for safety, private property rights, and convenience of everyone involved.

SECTION 12 . EMPLOYMENT STATUS AND WORKER'S COMPENSATION. This funding is for the benefit of the Board. The Tribes and DNRC are not members of the Board and the Tribes and DNRC do not control the work activities of the Board or any contractors that might be engaged for completion of the project. The Board is independent from and is not an employee, officer, or agent of the Tribes or DNRC. The Board, its employees, and contractors are not covered by the Workers' Compensation laws applicable to the Tribes and DNRC as an employer. The Board is responsible for making sure that its employees are covered by Workers' Compensation Insurance and that its contractors are in compliance with the coverage provisions of the Workers' Compensation Act.

SECTION 13. EQUAL EMPLOYMENT. Any hiring of employees under this Agreement shall be on the basis of merit and qualifications, and there shall be no discrimination on the basis of race, color, religion, creed, sex, national origin, age, disability, marital status, or political belief. "Qualifications" mean qualifications as are generally related to competent performance of the particular occupational task.

SECTION 14. INDEMNITY AND LIABILITY. The Board shall defend, indemnify, and hold harmless the Tribes and DNRC and the State of Montana and their agents from and against any and all claims, demands, or actions for damages to property or injury to persons or other damages to persons or entities arising out of or resulting from the performance of the work or services funded by this Agreement. This Agreement is not intended to relieve a liable party of financial or legal responsibility.

SECTION 15. INSURANCE. The Board must maintain primary general liability insurance coverage. The general liability coverage must include claims for injuries to persons or damage to property. The Tribes and DNRC, their officers, employees and volunteers are to be covered as additional insured's for all claims arising out of the use of proceeds provided by the Tribes and DNRC.

The Board must provide general liability coverage inclusive of bodily injury, personal injury, and property damage. The general liability insurance coverage must be obtained with combined single limits of \$1,000,000 per occurrence and \$2,000,000 aggregate per year.

SECTION 16. COMPLIANCE WITH APPLICABLE LAWS. All work must be in accordance with all federal, tribal, state and local law, statutes, rules and ordinances.

SECTION 17. FAILURE TO COMPLY. If the Board fails to comply with the terms and conditions of this Agreement, or reasonable directives or orders from the Tribes and DNRC, the Tribes or DNRC may terminate the Agreement and refuse disbursement of any additional funds under the Agreement.

SECTION 18. ASSIGNMENT AND AMENDMENT. This Agreement is not assignable. Amendment may be accomplished only by express written agreement of the parties. Amendments will be attached as an integral component of the Agreement.

SECTION 19. MONTANA LAW AND VENUE. Any action or judicial proceeding for enforcement of the terms of this Agreement shall be instituted only in the courts of Montana and shall be governed by the laws of Montana. Venue shall be in the First Judicial District, Lewis and Clark County, Montana.

The Board hereby accepts this Agreement according to the above terms and conditions.

I hereby certify that the information and all statements in the funding application are true, complete and accurate to the best of my knowledge and that the project or activity complies with all applicable state, local, tribal and federal laws and regulations.

I further certify that this project will comply with applicable statutory and regulatory standards. I further certify that I am authorized to enter into and sign a binding agreement with the Tribes and the Department of Natural Resources and Conservation.

By: _____ Date _____
(signature)

Print name and title Clayton Matt, Chairman

For: Flathead Reservation Water Management Board

Tax ID Number: _____

By: _____ Date _____

For: The Montana Department of Natural Resources and Conservation

By: _____ Date _____

For: The Confederated Salish & Kootenai Tribes