

**CONFEDERATED SALISH & KOOTENAI TRIBES- MONTANA  
GASOLINE TAX  
AGREEMENT**

The Confederated Salish & Kootenai Tribes – Montana Gasoline Tax Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the State of Montana (“State”) and the Confederated Salish & Kootenai Tribes of the Flathead Reservation (“Tribe”).

The Confederated Salish and Kootenai Tribal Council (“Council”) is the governing body of the Tribe and is authorized to enter into this Agreement by Article VI of the Constitution and By-Laws of the Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation of Montana.

The State is authorized pursuant to Mont. Code Ann. § 15-70-234, *et seq.*, and the State-Tribal Cooperative Agreements Act, Mont. Code Ann. § 18-11-101, *et seq.*, to enter into this Agreement.

The State and the Tribe agree as follows:

1. General Purposes of Agreement. The purposes of this Agreement are to avoid legal controversy and possible litigation over the taxation of gasoline within the exterior boundaries of the Flathead Indian Reservation (“Reservation”), to avoid dual taxation of gasoline by both the Tribe and the State, to ensure that the same level of taxation is imposed on distribution of gasoline both within and outside the boundaries of the Reservation, and to provide an effective means by which revenues generated by the state and tribal taxes on gasoline may be shared and distributed. The Tribe agrees it will not participate in any litigation challenging state taxation of gasoline motor fuels on the Reservation for so long as payments are made hereunder. This section shall be interpreted consistent with the terms and conditions set forth in Section 14 of this Agreement.

2. Recitals. This Agreement is made by and between the Tribe, acting through its

Council, and the State. The parties hereto, having conferred together, desire to collect the gasoline license tax on all gallons of gasoline delivered onto the Reservation for the mutual benefit of all the people of Montana including the residents of the Reservation. The Tribe agrees to allow the Department of Transportation the authority to enforce state law in relation to taxation of gasoline motor fuels on the Reservation subject to the terms and conditions herein.

3. State Law. The State imposes a tax on gasoline distributed within the State's jurisdiction under Title 15, Chapter 70, Part 2, Montana Code Annotated. The State shall notify the Tribe in writing of any changes or amendments to state law which the State believes may impact this Agreement or necessitate an amendment to tribal law under this Agreement within sixty (60) days of any amendment to applicable state law.

4. Tribal Law. While this Agreement is in effect, the Tribal Council shall adopt an ordinance allowing for the imposition of taxes equal to the Montana gasoline license tax, which tax shall apply to gasoline sold to all persons within the Tribe's jurisdiction on the Reservation in a manner similar to the Montana taxes. The Tribe shall supply the State with a current copy of this ordinance as it may be amended from time to time within sixty (60) days of the enactment or amendment of the ordinance.

5. Collection, Administration, and Enforcement of Taxes. The State and the Tribe agree that gasoline sold on the Reservation shall not be subject to both the state tax and the tribal tax, but shall be subject to one tax. The State agrees to collect all gasoline taxes on gasoline sold on the Reservation and to remit to the Tribe a portion of the gasoline tax collected as determined by the formulas described below.

a. For each fiscal year, the Tribe shall receive an amount of gasoline license taxes collected for sales on the Reservation which approximates the sales to enrolled Confederated Salish & Kootenai Tribal members living on the Reservation. The amount of gasoline license taxes that the Tribe receives shall be determined by multiplying the Montana per capita

gasoline license tax times the number of enrolled Confederated Salish & Kootenai Tribal members living on the Reservation less a 1% administration fee. The Montana per capita gasoline license tax is based on the prior fiscal year's gross sum of gasoline license taxes collected, adjusted by any refunds, credits, corrections, and audits, minus a 16% set aside and divided by the Montana state population.

The Tribe, through affidavit (in the form attached hereto as Exhibit A) of the Tribe's Enrollment Office established by the Tribal Council, shall certify to the State by March 31 of each calendar year during the term of this Agreement the number of all enrolled members of the Tribe physically then residing within the Reservation's boundaries ("Total Resident Enrollment"). In the event the Tribal Enrollment Office does not issue a certification by March 31 of any year subsequent to 2012, the State will use the previous year's number unless evidence exists to demonstrate that the certified number has decreased or increased. In such case, the parties shall meet and negotiate the certified number before July 1 of such calendar year, utilizing the best evidence available. The Tribe authorizes the State to review and verify the enrollment records, voting records, and other records as appropriate that are maintained by the Tribe, and any other information the Tribe uses, should the State wish to verify the Total Resident Enrollment for the calendar year. If there is a dispute between the State and the Tribe regarding the proper actual Total Resident Enrollment for any year, the Tribe and the State shall have 30 days to resolve the issue by agreement. If the issue is not so resolved within 30 days, the State may use the Total Resident Enrollment figure used for the prior calendar year until a revised Total Resident Enrollment figure is agreed on by both Parties. Any such adjustment to the Total Resident Enrollment figure shall be retroactively applied from January 1<sup>st</sup> of the current calendar year and, to account for the adjustment, a one-time payment adjustment will be made in the payment due for the next full calendar quarter payment. The beginning enrollment number for the Tribe will be \_\_\_\_\_.

b. The State shall distribute one-fourth of the monies due to the Tribe under this Agreement no later than thirty (30) days from the end of each calendar quarter after the effective date of this Agreement. The State will include with each distribution a statement showing how the distribution was determined for that quarter. Distributions shall continue until the expiration or the termination of this Agreement as provided in Section 10 or required by law. For the purposes of this Agreement a calendar quarter begins on January 1, April 1, July 1 and October 1 of each year.

c. The remittance amount payable to the Tribe shall be remitted to the Council.

d. The Tribe and State agree to cooperatively enforce the gasoline license tax as provided in Title 15, Chapter 70, Part 2, Montana Code Annotated. Enforcement procedures, if needed, will be established by mutual written agreement.

6. Term. This Agreement shall be for a term of ten (10) years, commencing \_\_\_\_\_ 1, 2012, and terminating \_\_\_\_\_, \_\_\_ 2022, subject to the conditions precedent and the renewal provision below.

7. Audits. Either party may examine or audit the records of the other party to determine the accuracy of the statements or representations called for in this Agreement. The right of examination or audit shall exist during the term of the Agreement and for a period of one year after the date of any termination or expiration of this Agreement. To the extent permitted by applicable law, the parties agree to maintain the confidentiality of any confidential information obtained from the other party.

8. Effective Date. This Agreement is effective \_\_\_\_\_, \_\_\_\_\_, so long as the following conditions precedent are met: The Tribe has adopted and provided a copy to the State an ordinance as required by Section 4 above, which ordinance will be adopted for the duration of the Agreement; the Agreement has received the final approval of the Council;; the Agreement has been reviewed by the State's Revenue and Taxation Interim Committee pursuant to §15-70-234, MCA; the Agreement has been approved by the State Attorney

General as required by § 18-11-105, MCA; and a public meeting, as required by § 18-11-103, MCA, has been held and comments received and considered.

9. Amendments, Renegotiation and Renewal.

a. This Agreement may be amended only by written instrument signed by both parties.

b. Six months prior to expiration of the initial term provided in this Agreement, the parties shall meet to negotiate in good faith a renewal of the Agreement for an additional ten (10) year term, and thereafter shall meet to negotiate successive ten (10) year renewals of the Agreement.

The parties in each negotiation of a renewal term shall seek to agree on a distribution of tax revenues on substantially the same basis as the one provided above, in light of the circumstances existing at that time. If this Agreement expires because the term has run, the parties agree that all of its terms, except provision 10, will remain in full force and effect until a new agreement is reached or either party gives 30 days written notice that it is cancelled.

10. Termination. This Agreement may be terminated by either party upon five (5) years written notice to the other party for circumstances not constituting cause, or upon thirty (30) days written notice for circumstances constituting cause. "Cause" means any material change in circumstances that alters or affects the terms of the Agreement, whether express or implied, foreseen or unforeseen.

11. Representations and Warranties. The parties represent and warrant to each other as follows:

a. That each has the authority to enter into and fully perform all of the terms and conditions of this Agreement in accordance with all applicable tribal, state, and federal law,

b. That the individuals executing this Agreement are duly authorized to do so on behalf of each party.

12. Jurisdiction and Venue. The parties agree and stipulate that venue and jurisdiction for enforcement of the terms hereof lie in the United States District Court, or, if the

U.S. District Court lacks jurisdiction, a Montana state district court. In the event of a breach by either party of any of the terms hereof, upon written notice to the breaching party of the substance of the alleged breach and the remedies sought, the non-breaching party shall be entitled to suspend any of the non-breaching party's obligations hereunder to the extent of the breach and petition the court for the appropriate relief. Appropriate relief shall be limited to monetary judgment against the breaching party, including costs and attorney's fees, arising from the breach, and such other relief as is necessary to put the non-breaching party in the same position they would have been in had the breaching party fully performed. The failure to pursue a remedy for one or more breaches is not a waiver of any right to enforce a subsequent breach of the same or a different term hereof.

13. Mutual Limited Waiver of Sovereign Immunity. The State has waived its sovereign immunity from suit for contract actions arising under the Agreement, see, Title 18, chapter 1, part 4, MCA, and for tort actions, see Title 2, chapter 9, part 1, MCA. The Tribe expressly grants a limited waiver of sovereign immunity from suit for litigation pertaining to this Agreement, provided that the Tribe's waiver shall be no more extensive than the State's waiver pursuant to Title 18, chapter 1, part 4, MCA, and Title 2, chapter 9, part 1, MCA, and shall only extend to the State and no other parties. Neither party waives its sovereign immunity except as provided in this Agreement.

14. Reservation of Rights and Negative Declaration. The State and Tribe have entered into this Agreement in part to resolve any potential legal disputes and avoid litigation regarding Montana gasoline motor fuels taxation of fuels sold on the Reservation. For so long as this Agreement remains in effect, the parties will not engage in litigation over this subject. The parties agree that by entering into this Agreement, neither the State nor the Tribe shall be deemed to have waived any rights, arguments or defenses available in litigation on any subject except as specifically provided in this Agreement. This Agreement is specifically not intended to reflect or be viewed as reflecting in this or any context either 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 except to the extent necessary to implement and effectuate the Agreement's terms. This Agreement, conduct pursuant thereto, or conduct in the negotiations or renegotiations of this Agreement, shall not be offered as evidence, otherwise referred to in any present or future litigation, or used in any way to further either party's equitable or legal position in any litigation except as specifically provided in this Agreement. By entering into this Agreement, neither the State nor the Tribe is forfeiting any legal rights to apply their respective taxes except as specifically set forth in this Agreement. This Agreement does not apply to any state tax collected other than the gasoline license tax as provided in Mont. Code Ann. §§ 15-70-201 through 15-70-236, 1999 *et seq.* It does not apply to any other taxes or fees of any nature collected by the State. This Agreement does not apply to any other tax collected by any other agency or subdivision of the State.

15. Notices. All notices and other communications required to be given under this Agreement by the Tribe and the State shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

(i) To the Tribe:

Chairman  
Confederated Salish & Kootenai Tribes  
P.O. Box 278  
Pablo, MT 59855

(ii) To the State:

Governor's Office  
P.O. Box 200801  
State Capitol  
Helena, MT 59620-0801

With Copies to:

Director of Transportation

Department of Transportation  
2701 Prospect Avenue  
Helena, MT 59620-1001

Attorney General of the State of Montana  
215 North Sanders  
Helena, MT 59620-1401

Notice shall be considered given on the date of mailing.

This Contract consists of eight (8) pages.

DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**STATE OF MONTANA**

**CONFEDERATED SALISH & KOOTENAI  
TRIBES OF THE FLATHEAD  
RESERVATION**

\_\_\_\_\_  
Brian Schweitzer  
Governor

\_\_\_\_\_  
Joe Durglo, Chairman  
Confederated Salish & Kootenai  
Tribal Council

\_\_\_\_\_  
Tim Reardon, Director  
Department of Transportation

Approved pursuant to Mont. Code Ann. § 18-11-105

\_\_\_\_\_  
Steve Bullock  
Attorney General