

**MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT
BETWEEN THE CITY OF YAKIMA AND
MID-COLUMBIA FISHERIES ENHANCEMENT GROUP
(Floodplain and Riparian Restoration Project)**

THIS MEMORANDUM OF UNDERSTANDING AND ENGAGEMENT is made and entered into by the City of Yakima (hereinafter the "City") and the Mid-Columbia Fisheries enhancement Group, a non-profit corporation (hereinafter "MCFEG").

WHEREAS, the City is a municipal corporation of the State of Washington, with City Hall being located at 129 North 2nd Street, Yakima, Washington, 98901; and

WHEREAS, MCFEG is a non-profit corporation duly formed and existing under the laws of the State of Washington, with offices in White Salmon, Washington, and a mailing address of P.O. Box 2211, White Salmon, Washington, 98672; and

WHEREAS, the City operates a Wastewater Treatment Plant as part of its Public Works Department, which is generally located at 2220 East Viola Avenue in Yakima, Washington (tax parcel numbers 191329-44003, 191328-32006, 191333-23001, 191329-44003, 191333-23002, and 191332-14001), along the Yakima River; and

WHEREAS, the City desires to allow access to MCFEG to provide support for maintenance and monitoring of floodplain, riparian and wetland restoration sites on City property (a Scope of Work description is attached hereto as Exhibit A and fully incorporated herein); and

WHEREAS, MCFEG has the experience and ability to conduct such restoration and associated maintenance and any other assistance as funding allows; and

WHEREAS, the parties have negotiated this Memorandum of Understanding and Engagement for the activities specifically mentioned or incorporated herein;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, it is agreed by and between the City and MCFEG as follows:

1. **Scope of Services.** MCFEG agrees to perform the project and maintenance responsibilities outlined in the Scope of Work attached hereto as Exhibit "A" and fully incorporated herein through this reference, which will provide support for maintenance and monitoring at floodplain, riparian, and wetland restoration sites on City property and enhance the environment for the benefit of the City of Yakima and its residents, as well as protect, restore and maintain habitat areas along the Yakima River.

2. **Access to Property.** In order to facilitate MCFEG's performance of the Scope of Work, City hereby allows MCFEG and its authorized contractors, subcontractors, work crews, employees and volunteers access to the site during the City's regular business hours to implement, inspect, maintain, monitor complete and conduct such other activities as agreed by and between the parties to implement the floodplain and riparian restoration. City hereby assigns all Project monitoring and maintenance responsibilities to MCFEG, and agrees that the City will not intentionally compromise the integrity of the project.

3. **Landowner Agreement.** This Agreement shall commence upon execution hereof and shall continue for a period of ten (10) years following completion of the project as described herein and in Exhibit A. The parties agree that this Agreement shall constitute a "Landowner Agreement" to wit:

The City hereby allows and authorizes MCFEG, its authorized officers, contractors, subcontractors, work crews, employees and volunteers, to access and enter upon the City property subject to the project described herein, for the purposes of project implementation, inspection, maintenance and monitoring for a period of ten (10) years.

4. Consideration. City agrees to pay MCFEG compensation for services rendered as set forth in the attached Scope of Work. The parties may amend this Agreement to include additional work and compensation, provided that any such amendment will be reduced to writing, executed by both parties, and appended to this Agreement.

5. Additional Obligations of City. In addition to the terms and conditions above, the City also agrees to the following:

- a. Provide MCFEG, or their employees, agents, representatives or assignees the right to enter the land, at reasonable times, and upon reasonable notice. Entry is solely for Project implementation and management purposes, to inspect completed work, and to monitor long-term success of the completed project. Except in case of emergency, reasonable notice shall be given at least 48 hours prior to entry.
- b. Keep MCFEG informed of plans for development in the Project area.
- c. Not intentionally compromise the integrity of the Project.
- d. Inform MCFEG of any known safety hazards on the property other than general hazards associated with undeveloped land adjacent to waterways and banks of waterways which can be unstable.

6. Additional Obligations of MCFEG. In addition to the terms and conditions above, MCFEG also agrees to the following:

- a. Be responsible for the design and installation of the project, and the conduct and activities of its staff, agents and representatives.
- b. Provide the City with a timeline of estimated dates of project activities, including start and completion dates, and to keep the City informed of progress.
- c. Complete all permitting, including cultural resources permitting, for the project activities.
- d. Conduct the project-related activities described herein and in Exhibit A.
- e. Leave all remaining portions of the property in as near pre-project condition as reasonable, or as otherwise agreed upon in writing with the City.
- f. Inform the City of project completion and the dates for this Agreement.
- g. Hold harmless the City from any liability associated from injuries or damages occurring to workers, agents or volunteers implementing the project.
- h. Identify the specific maintenance and/or monitoring activities that will be provided by MCFEG and provide that information in writing upon completion of the project to the City.

7. Status of MCFEG. MCFEG and the City understand and expressly agree that MCFEG is an independent contractor in the performance of each and every part of the Agreement. MCFEG and its officers, contractors, subcontractors, employees and volunteers shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, and/or retirement.

8. Taxes and Assessments. MCFEG is solely responsible for compensating its employees and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, income which may be required by law or assessed

against either party as a result of this Agreement. In the event that the City is assessed a tax or assessment as a result of this Agreement, MCFEG shall pay the same before it becomes due.

9. **Nondiscrimination.** During the performance of this Agreement, MCFEG shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of race, color, sex, religion, national origin, creed, marital status, political affiliation, the presence of any sensory, mental or physical handicap, or any other protected class under federal, state and/or local law. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

10. **Compliance with Law.** MCFEG agrees to perform the activities and services listed herein and attached hereto in full compliance with any and all applicable laws, rules and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

11. **No Insurance.** It is understood that the City does not maintain liability insurance for MCFEG and/or its employees.

12. **Assignment.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by MCFEG to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of MCFEG stated herein.

13. **Termination.** Either party may terminate this Agreement upon thirty (30) days advance written notice of such termination.

14. **Ownership.** This Agreement does not authorize MCFEG to assume jurisdiction over, or any ownership interest in, any City property. The City retains the sole responsibility for taxes, assessments, and all other responsibilities associated with property ownership. The City also retains all benefits and enjoyment of the rights of ownership, except as are specifically provided in this Agreement.

15. **Indemnification and Insurance.**

a. At no expense to the City, MCFEG shall defend against and indemnify fully and fully hold harmless the City of Yakima and its elected and appointed officials, employees and agents, from any and all liability, damages, suits, claims, actions, judgments or decrees, including all expenses incidental to the investigation and defense thereof and including reasonable attorneys' fees, based on or arising from the occupancy or use of the property at issue in this Agreement by MCFEG, its servants, employees, agents, invitees, independent contractors, volunteers or any entity, person, firm or corporation acting on behalf of MCFEG or under its direction, whether such claim shall be by MCFEG or a third party.

b. MCFEG agrees to reimburse the City for any damage to City property, including the leased premises, caused by the use of MCFEG, its employees, agents, servants, invitees, independent contractors, volunteers or any person acting on behalf of MCFEG or under its direction.

c. On or before the effective date of this Agreement, MCFEG shall provide the City proof of liability insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence combined bodily injury and property damage and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall state who the provider is, the amount of coverage, the policy number and when the policy and provisions provided are in effect. The policy shall name the City, its elected and appointed officials,

officers, agents, and employees as additional insureds. The insured shall not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

If subcontractors will be used, the same terms and limits of coverage will apply and a certificate will be required per the instructions above. In lieu of such certificate, MCFEG and/or a subcontractor, as applicable, may provide confirmation in writing from their insurance broker that their insurance policy does not contain a subcontract exclusion or an exclusion relating to the work of others.

16. Severability. If any portion of this Agreement is changed per mutual agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

17. Survival. Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. Notices. All notices and demands shall be in writing and sent by certified mail, return receipt requested, or hand delivered, to the parties to their addresses as follows:

TO CITY: Marc Cawley
 Wastewater Superintendent
 2220 E. Viola Ave.
 Yakima, WA 98901

COPY TO: Robert Harrison
 City Manager
 129 North 2nd Street
 Yakima, WA 98901

TO MCFEG: Mid-Columbia Fisheries Enhancement Group
 P.O. Box 2211
 White Salmon, WA 98672

19. Records.

a. The records relating to the actions taken and work done pursuant to this Agreement shall, at all times, be subject to inspection by the City. MCFEG shall provide the City sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities. MCFEG's records relating to this Agreement will be provided to the City upon the City's request.

b. MCFEG shall promptly furnish the City with such information and records which are related to this Agreement as may be requested by the City. Until the expiration of six (6) years after completion of the terms and conditions of this Agreement, or for a longer period if required by law or by the Washington State Secretary of State's record retention schedule, MCFEG shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of MCFEG's books, documents, papers and records which are related to this Agreement.

c. All records relating to MCFEG's activities under this Agreement must be made available to the City, and also produced to third parties, if required pursuant to the Washington Public

Records Act, Chapter 42.56 RCW or by law. All records relating to this Agreement must be retained by MCFEG for the minimum period of time required pursuant to the Washington State Secretary of State's record retention schedule.

20. Integration. This written document constitutes the entire Agreement between the City and MCFEG. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

22. Venue. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Yakima County. The parties agree that prior to filing suit for any action to enforce or interpret this Agreement they will attempt to settle any differences through mediation or similar alternative dispute resolution.

CITY OF YAKIMA

**MID-COLUMBIA FISHERIES
ENHANCEMENT GROUP**

By: _____
Robert Harrison

By: Glenn Miller
Glenn Miller, President

Date: _____

Date: 07/22/2021

ATTEST:

By: _____
Sonya Claar Tee, City Clerk

EXHIBIT A

Scope of Work

City of Yakima Wastewater Treatment Plant

Floodplain and Riparian Restoration Maintenance and Monitoring

The City of Yakima Wastewater Treatment Plant requested assistance from Mid-Columbia Fisheries Enhancement Group to provide support for maintenance and monitoring at floodplain, riparian and wetland restoration sites on City property. Following are deliverables and costs for this work for anticipated conditions and work. Costs are not to exceed annual projected costs in this scope of work unless approved by City of Yakima Wastewater Treatment Plant.

Unexpected site changes may occur during the duration of this agreement. MCFEG may request approval for additional funds to address unforeseen site conditions (ie, drought, herbivory or similar event) not to exceed \$30,000 during the term of this agreement.

Deliverables

Existing Floodplain Restoration Site

- Maintenance of 41-acre floodplain previously revegetated in floodplain bunchgrasses using post-seeding broadcast weed treatment that are specific for use in grasses. Maintenance is anticipated to require two treatments per year in 2021 through 2023 seasons; one treatment per year or the equivalent is anticipated in 2024 and 2025.
- Control of noxious weeds using spot-treatment is anticipated to require two treatments per year in 2021-2025.
- Plant and maintain 500 sagebrush seedlings per year to initiate colonization into poor soil areas in 2021-2025.

Existing Riparian Sites

- Maintenance of four riparian subsites totaling approximately 1 acre that were previously revegetated with native trees and shrubs and fenced to reduce herbivory. Maintenance is anticipated to require manual and mechanical weed control around plantings and fence maintenance; 5 one-day treatments are anticipated in 2021-2025.
- Control of noxious wetland weeds using spot-treatment chemical applications. Two treatments per year are anticipated in 2021-2025.
- Replace unsuccessful plantings with 150 plants per year, including protection from vole herbivory, soil amendment (topsoil), and wood mulch for weed suppression and moisture retention.

Design Review of Future Restoration Sites

- Participate in planning and design review of future restoration sites not to exceed 30 hours per year.

Cost Estimate

Item	Year 1	Year 2	Year 3	Year 4	Year 5
Maintenance of existing floodplain and riparian restoration sites	\$35,745	\$35,745	\$35,745	\$25,055	\$25,055
Provide design review for new riparian/floodplain restoration projects	\$1,350	\$1,350	\$1,350	\$1,350	\$1,350
Travel (1000 miles/yr at \$0.545/mile; yr 1 at 3000 miles/yr for COVID)	\$1635	\$545	\$545	\$545	\$545
Contract management (4 hrs/yr at \$50/hr)	\$200	\$200	\$200	\$200	\$200
Bookkeeping (20 hrs/yr at \$40/hr)	\$800	\$800	\$400	\$800	\$800
Indirect (10%)	\$3,973	\$3,864	\$3,864	\$2,795	\$2,795
Annual estimated costs	\$43,703	\$42,504	\$42,504	\$30,745	\$30,745

Timeline

Site	Task	Year 1	Year 2	Year 3	Year 4	Year 5
Existing floodplain site	Weed control	x	x	x	x	x
Existing floodplain site	Plant sagebrush	x	x	x	x	x
Existing riparian site	Spot weed treatment	x	x	x	x	x
Existing riparian site	Weed control around plantings	x	x	x	x	x
Existing riparian site	Replacement of trees and shrubs	x	x	x		
Existing riparian site	Maintain fencing	x	x	x	x	x