

WASTEWATER SERVICE AGREEMENT

This Wastewater Service Agreement (hereinafter referred to as the “Agreement”) is entered into on this ____ day of _____, 2022 (the “Effective Date”), by and between the CITY OF WHITE SALMON and the CITY OF BINGEN (which may hereinafter be referred to collectively as the “Cities”), and TRIBAL FISHCO LLC, (which may hereinafter be referred to as “FISHCO”) (sometimes hereinafter referred to individually as a “Party” or together as the “Parties”).

WHEREAS, the Parties agree as follows:

1. The CITY OF BINGEN owns and operates a publicly owned Wastewater Treatment Plant (WWTP) and associated wastewater conveyance system. The CITY OF BINGEN has adopted a municipal code governing the discharge of wastewater to the WWTP and use of the conveyance system in Chapter 13 Article II – “Sewers”.
2. The CITY OF WHITE SALMON owns and operates a wastewater conveyance system that transports wastewater from the location of FISHCO to the CITY OF BINGEN’s wastewater conveyance system. The CITY OF WHITE SALMON has adopted a municipal code governing the use of the conveyance system in Title 13 – PUBLIC SERVICES, Chapter 13.12 – “Sewer System”, and Chapter 13.16 – “Water and Sewer Rates and Charges”.
3. FISHCO is a Limited Liability Company formed in the State of Washington by the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe, and operates and maintains the federally owned fish-processing facility located at 65335 Highway 14, White Salmon, WA 98672 through an Indian Self-Determination and Education Assistance Act agreement with the Bureau of Indian Affairs. FISHCO’s operations may include offloading of salmon, packaging for offsite processing, and on-site processing that may include heading and gutting, filleting, and roe recovery.
4. The State of Washington Department of Ecology issued, on November 2, 2021, a Notice of Temporary State Waste Discharge Permit No. ST0501337 for East White Salmon Fish Processing Plant, effective October 9, 2021. It is the responsibility of FISHCO to ensure that they have a current, active State Waste Discharge permit from the State of Washington Department of Ecology.
5. The Cities agree to accept industrial and domestic wastewaters from FISHCO into the Cities’ sewer system.
6. FISHCO shall not discharge salted slush ice to the plant. FISHCO may discharge flake ice, used for icing of fish, to the plant. FISHCO will be required to monthly analyze samples for TDS and sodium during the first operating year and provide documentation to the Cities of Bingen and White Salmon.

7. FISHCO will provide a list of chemical and cleaning agents utilized in the sanitation products to the CITY OF BINGEN for prior approval of their use.
8. Wastewater discharge will be monitored, and the wastewater collection and treatment system will be operated per this agreement and a Quality Assurance Project Plan (QAPP). A QAPP will be prepared by FISHCO or its consultant and submitted to the Cities for approval. The QAPP will be submitted to the Cities for review by prior to operations beginning in 2022. If any changes are made to the QAPP by FISHCO, the QAPP shall be submitted for review prior to implementation of any changes.
9. The Cities and FISHCO agree on the following discharge limitations:
 - A. 75 lbs./day of 5-day biochemical oxygen demand (BOD₅) and 10 lbs./day of total suspended solids (TSS)
 - B. Fats, oil, and grease (FOG) concentration will be limited to 100 mg/liter.
 - C. pH will be kept within the range of 6 to 9.5.
 - D. Maximum flow rate is limited to 60 gallons per minute subject to revision by Bingen Treatment Plant Manager based on impacts to treatment plant. Total flow rates shall be limited to a maximum of 10,350 gallons per day and a monthly average of 4,140 gallons per day. Monthly averages shall be calculated using the number of calendar days in the month.
 - E. At the request of the City of Bingen, the limits above are less than the limits in the State of Washington Department of Ecology temporary permit. The Parties to this agreement agree, upon evaluation of the data from 2022, assuming that enough fish is processed to obtain legitimate data, to reassess these limits in March and April of 2023 to determine whether limits may be increased or decreased, within the Ecology permit parameters. All parties must agree to any modification of the discharge limits.
10. The Cities and FISHCO further agree on the following more stringent targets during the initial three weeks of operation (these are targets, not limitations) These apply in cases where the plant has not been discharging to the WWTP for a period of eight weeks or greater, per Paragraphs 11 and 12, below):
 - A. 20 lbs./day of BOD₅ and 2.5 lbs./day of TSS the first week of operation after the plant has not been operating for a period of eight weeks or greater.
 - B. 37 lbs./day of BOD₅ and 5 lbs./day of TSS the second week of operation after the plant has not been operating for a period of eight weeks or greater.
 - C. 57 lbs./day of BOD₅ and 7.5 lbs./day of TSS the third week of operation after the plant has not been operating for a period of eight weeks or greater.
 - D. 75 lbs./day of BOD₅ and 10 lbs./day of TSS thereafter.

11. Based on pilot testing conducted in 2011, 2012, and 2015 by Alan Ismond of Aqua-Terra Consultants, the estimated BOD₅ loading per 1,000 lbs. of salmon processed is 0.8 to 1.9 lbs. BOD₅/1,000 lbs., and the estimated flow per 1,000 lbs. of salmon processed is 210 to 270 gallons.
12. Prior estimates for loading related to filleting and roe recovery in addition to offloading and heading and gutting were 2.7 lbs. BOD₅ and 370 gallons of wastewater per 1,000 lbs. of salmon.
13. If only offloading and heading and gutting are conducted, based on the worst-case estimated loading rates from Paragraph 11, the following processing targets are established:
 - A. First week of operation: 10,000 lbs./day salmon.
 - B. Second week of operation: 19,000 lbs./day salmon.
 - C. Third week of operation: 30,000 lbs./day salmon.
 - D. 38,000 lbs./day thereafter.
 - E. Monthly average and daily maximum flow limits may necessitate lower processing rates if water production rates match pilot test results.
 - F. These values are targets and if wastewater quality is better than the worst-case loading rates, processing rates may be higher while still meeting the effluent limitations in this agreement.
14. If filleting and roe recovery are also conducted, based on the worst-case estimated loading rates from Paragraph 12, the following processing targets are established:
 - A. First week of operation: 7,000 lbs./day salmon.
 - B. Second week of operation: 14,000 lbs./day salmon.
 - C. Third week of operation: 21,000 lbs./day salmon.
 - D. 27,000 lbs./day thereafter.
 - E. Monthly average and daily maximum flow limits may necessitate lower processing rates if water production rates match pilot test results.
 - F. These values are targets and if wastewater quality is better than the worst-case loading rates, processing rates may be higher while still meeting the effluent limitations in this agreement.
15. FISHCO will monitor flow in gallons per day (gpd) and collect representative wastewater samples during the discharge to the WWTP per this agreement and CITY OF WHITE SALMON Municipal Code Title 13.16. The Department of Ecology temporary permit requires two samples per month for measurement of pH, BOD₅, TSS, TS, and FOG. Composite sampling will be completed per the QAPP. FISHCO is responsible for

contracting a third party to collect samples to be sent to an accredited lab for BOD₅, FOG, TS, TSS, and pH testing.

16. Grab samples of wastewater may be collected at any time by CITY OF BINGEN staff while the plant is discharging to the WWTP.
17. The CITY OF BINGEN has the right to temporarily discontinue receiving wastewater from FISHCO and/or revise the discharge limits if, in the opinion of the CITY OF BINGEN Treatment Plant Manager or his designee, the wastewater discharged to the WWTP may cause a significant upset to the treatment plant or wastewater conveyance system. The discontinuance will continue until the problem is resolved.
18. **Failure to Comply:** In the event that FISHCO fails to comply with the terms and conditions of this Agreement or any applicable city, state or federal law, ordinance or regulation, or the conditions and limitation of the CITY OF BINGEN'S NPDES Permit, the City may, without making an election of remedies:
 - A. Discontinue wastewater treatment service and/or:
 - B. Require pretreatment to an acceptable condition for discharge to the City sewer; and/or
 - C. Require further control over the quantities and rates of discharge.

These remedies are not cumulative and are not in derogation of any other remedy the City may have with respect to the breach of this Agreement or violation of law.

19. The discharge of FISHCO wastewater to the WWTP will comply with the Cities' respective municipal codes and ordinances and all applicable state and federal regulations.
20. The CITY OF WHITE SALMON has established, in its Municipal Code Title 13 Chapter 13.16.055 Section B, an "Alternate approach to determination of rates". Sewer discharge rates will be based on this alternate approach, and FISHCO shall comply with all requirements of this approach. The approach is paraphrased as follows:
 - A. **Metering.** The wastewater flow will be metered at the point where the facility discharges wastewater into the CITY OF WHITE SALMON system. The totalizer reading shall also be recorded daily. At the end of each month, the average daily flow during the month shall be determined by using all the valid data collected during the month (total flow divided by days of operation).
 - B. **Sampling and Lab Testing.** While the facility discharges to the CITY OF WHITE SALMON sewer system, a representative composite sample shall be collected weekly using an automated sampler. (After a period of one year, the city may reduce the frequency of monitoring to twice per month, per the frequency required by the Department of Ecology temporary permit.) Composite samples shall be analyzed for BOD₅, FOG, TSS, and pH. Fees for the required analyses shall be paid by the

facility. The facility shall have all analyses done by a lab that is certified by the Washington State Department of Ecology to perform the required analysis. Sodium testing shall be performed monthly for the first year, at a minimum.

- C. C.BOD₅ and TSS. At the end of each month, the average BOD₅ and TSS during the month shall be determined by using all the valid data collected during the month.
- D. Records. The facility shall maintain records of all monitoring activities and provide them upon request by the CITY OF BINGEN and CITY OF WHITE SALMON including:
 1. Daily discharge flow meter totalizer readings;
 2. The date, exact place, method, and time of sampling;
 3. The names of persons taking the sample;
 4. The date the analysis was done;
 5. The names of persons doing the analysis;
 6. The analytical techniques used; and
 7. The results of the analysis.
- E. Reporting. FISHCO is required to submit monthly discharge monitoring reports, which will include flow readings and analytical results, to the State of Washington Department of Ecology per the temporary permit. These DMRs, along with the pounds of fish processed each day and total for the month, shall also be supplied to the CITY OF WHITE SALMON and the CITY OF BINGEN by the 15th of the following month.
- F. Calculation of Maintenance and Operation Expenses. The data collected shall be used by the CITY OF WHITE SALMON to calculate the share of the total WWTP maintenance and operation expenses which shall be charged to the facility. The method of calculation of maintenance and operation expenses to be charged shall be as follows:
 1. Operations and maintenance charge to the facility during billing period = cost factor x monthly treatment facility operations and maintenance cost.
 2. Cost factor = $(V_f/V_c)(0.2 + 0.4 \text{ BOD}_f/\text{BOD}_c + 0.4 \text{ TSS}_f/\text{TSS}_c)$ where:
 - V_f = Average daily wastewater flow (in gallons) from the facility during billing period.
 - V_c = Average daily wastewater flow for the CITY OF WHITE SALMON wastewater treatment facility plant during billing period (gallons).
 - BOD_f = Average daily BOD₅ concentration of wastewater from the facility during billing period.
 - BOD_c = Average daily BOD₅ concentration of total plant wastewater during billing period.

- TSSf = Average daily TSS concentration of wastewater from the facility during billing period.
- TSSc = Average daily TSS concentration of wastewater of total plant during billing period.

In addition, a service charge based on the CITY OF WHITE SALMON Municipal code 13.16.055 Sewer Rate, Commercial, Inside – High Strength (1 unit) will be charged monthly when the operations and maintenance charge is billed to FISHCO. During the months processing takes place and the operations and maintenance charge is invoiced, the CITY OF WHITE SALMON will discontinue billing FISHCO the base sewer fee and any associated overages (normally calculated based on the amount of water used during the billing period).

The CITY OF WHILE SALMON will transmit the “operations and maintenance charge” to the CITY OF BINGEN upon receipt from FISHCO. The CITY OF WHITE SALMON will retain the service charge and will not transmit any ERU payments to the CITY OF BINGEN during FISHCO processing.

- G. Operation. The Cities shall have free access to the facility and the records of operation and maintenance. The records of operation and maintenance shall be kept at the facility and shall be made available to the Cities during any site visit. The Cities shall have access to the facility, when it is operating, at reasonable hours without prior notice. Prior notice is preferred.
21. The CITY OF WHITE SALMON will bill FISHCO monthly. Tribal FISHCO LLC shall pay the invoice per WSMC 13.16.065(B) by the twentieth of the month following the billing period.
 22. In addition to the charges in Paragraph 20(F) above, FISHCO shall pay the CITY OF BINGEN the hourly rates for testing and additional hours that the CITY OF BINGEN wastewater treatment plant employee is required to be on site outside of his regularly scheduled hours (40 hours per week). If the CITY OF BINGEN wastewater treatment plant employee is required to work after hours or on weekends, FISHCO will be billed the appropriate salary/benefit rate as required by the CITY OF BINGEN’s union contract.
 23. Discharge to the Cities under this Agreement requires no fees, such as connection fees or reserve capacity fees or other one-time fees, to be paid by FISHCO aside from the monthly fees described in Paragraphs 20 and 22 above.
 24. FISHCO shall designate an Operations Manager who will remain on site at times fish is being processed. The Operations Manager’s qualifications to act as the party responsible for understanding the requirements of the Department of Ecology temporary permit and this Agreement shall be reviewed by and must be approved by FISHCO’s consultant, who shall be a State-of-Washington-licensed Professional Engineer.

25. A State-of-Washington-licensed Professional Engineer or their agent shall be present on site for the first two weeks of operations for crew training and observation. After the first two weeks of operation, this person shall be available for consultation full time, remotely or on site, as FISHCO and the CITY OF BINGEN Wastewater Treatment Plant Manager deems necessary. A State-of-Washington-licensed Professional Engineer or their agent shall be responsible for regular collection and analysis of composite samples and communicating these results with the CITY OF BINGEN Wastewater Treatment Plant Manager in a manner that allows for efficient management of the FISHCO discharge.
26. In the event of an accidental discharge or spill that may interfere with operation of the Wastewater Treatment Plant, FISHCO shall immediately and without delay upon discovery contact the CITY OF BINGEN Wastewater Treatment Plant Manager. Notification shall include location of discharge, type of waste, concentration and volume of discharge if known, and corrective actions taken by FISHCO. In the event the City is or becomes aware of any such discharges, it shall promptly, upon discovery, notify FISHCO of the nature and amount of discharge.
 - A. Within 10 business days following occurrence, FISHCO shall provide the Wastewater Supervisor with a detailed written report describing the cause of the discharge and measures taken by FISHCO to prevent similar future occurrences.
27. FISHCO shall provide a certificate of insurance in the amount of \$2,000,000.00 (two million dollars) naming both the CITY OF WHITE SALMON and the CITY OF BINGEN as additional insured.
28. Dispute Resolution.
 - A. In case of any dispute between the Parties concerning the rights and duties of any Party under this contract, there shall first be informal negotiations attempted between the principals of the Parties. A good faith attempt to engage in an informal negotiation shall be a condition precedent for any party filing a lawsuit.
 - B. In the event of a dispute concerning this Agreement or a default thereof, the prevailing Party shall be entitled to reimbursement of its attorney fees, costs, and disbursements at trial and on appeal, except that nothing herein shall operate or be construed as an authorization or consent by FISHCO for placement of any lien on personal or real property, and no Party shall be entitled to payment for punitive, consequential, or indirect damages.
 - C. This Agreement shall be governed by applicable federal law, and if no such federal applies, then by the laws of the State of Washington. Venue for any disputes shall be in the appropriate federal court, or if federal court jurisdiction does not apply, then in the Superior Court of Klickitat County, Washington.
29. If any provision of this Agreement is held invalid under any applicable statute or rule of law, such invalidity shall not affect other provisions, and to this end the provisions of this

Agreement are declared severable. Notwithstanding the above, such invalid provision or clause shall be construed, to the extent possible, in accordance with the original intent of the Parties.

30. Sovereign Immunity. The Parties agree to waive their sovereign immunity from suit only for the limited purpose of enforcing this Agreement. Nothing in this Agreement is intended to or shall be interpreted as an express or implied waiver of the sovereign immunity of Tribal FishCo, LLC's member Tribes—the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe. This section shall survive termination of this Agreement.
31. Interlocal Cooperation Act Representations. As between the two Cities, this is an Interlocal Agreement under RCW Ch. 39.34. Pursuant thereto, the Parties state as follows:
 - A. Duration. The Agreement shall remain in effect until otherwise agreed to by the Parties.
 - B. Organization. No new entity will be created to administer this Agreement.
 - C. Purpose. The purpose is to enable FISHCO to use the Cities' wastewater collection and treatment works with the approval of the Cities.
 - D. Manner of Financing. The Cities intend to finance this Agreement through allocations between General Fund revenue and enterprise funds as determined by the City Administrators.
 - E. Termination of Agreement. Any Party to this Agreement may terminate the Agreement with ninety (90) days written notice to the other Parties stating the reason for termination. If, during the ninety-day period the other Parties, individually or collectively, are unable to address or resolve, to the terminating Party's satisfaction, the defect or issue that led to the termination notice, then this Agreement shall terminate at the end of the notice period.
 - F. Other. All terms are covered by this Agreement. No additional terms are contemplated.
 - G. Selection of Administrator. The CITY OF WHITE SALMON shall be the Administrator for this Interlocal Agreement.
 - H. Manner of Acquiring Property. This Agreement will not result in the acquisition of any property.

DATED this _____ day of _____, 2022.

TRIBAL FISHCO, LLC

Ken Hall, President, Tribal FISHCO LLC

Attest:

CITY OF WHITE SALMON

Marla Keethler, Mayor

Attest:

Jan Brending, Clerk Treasurer

Approved as to Form:

Kenneth B. Woodrich, City Attorney

CITY OF BINGEN

Catherine Kiewit, Mayor

Attest:

Krista Loney, City Administrator

Approved as to Form:

Chris Lanz, City Attorney