

**COST-SHARING AGREEMENT BETWEEN
CITY OF WHITE SALMON AND YAKAMA NATION**

This Cost-Sharing Agreement (“Agreement”) is between the Confederated Tribes and Bands of Yakama Nation (“Yakama Nation”), a sovereign native nation with its primary place of business located at 401 Fort Road / P.O. Box 151, Toppenish, WA 98948, and the City of White Salmon (“City”), a Washington Municipal Corporation with its primary place of business at 100 N. Main Street, White Salmon, WA 98672.

Whereas, the Yakama Nation’s staff has participated for several years in an advisory group exploring alternatives to the City’s municipal withdrawals from Buck and Jewett Creeks due to concerns over impacts to culturally and ecologically significant aquatic resources and the terrestrial resources that depend upon them; and

Whereas, the Yakama Nation, the City, and other members of an advisory group, through a preliminary appraisal funded by the Washington Dept. of Ecology’s (“Ecology”) Office of Columbia River, selected as a preferred alternative a new surface water diversion project, or Preferred Alternative 5A (“Project”), on the White Salmon River to supply an alternative and reliable domestic water source for the City and protect stream flow in Buck and Jewett Creeks; and

Whereas, the Yakama Nation and the City desire to collaborate for cost sharing purposes on a feasibility study (“Study”) to evaluate the Project and its potential benefits on the Yakama Nation’s instream aquatic resources and the City’s water delivery capabilities; and

Whereas, the City has funds available for the Study through a grant from Ecology’s Office of Columbia River and Water Resources; and

Whereas, the Yakama Nation has funds available for the Study through a Pacific Coastal Salmon Recovery Fund (“PCSRF”) grant (Buck Creek Flow Restoration, 16-Yaka-03); and

Whereas, the Yakama Nation’s role in the Study is to provide payment to the City, from the Yakama Nation’s PCSRF grant, so that the City may complete the Study;

Whereas, the City will have overall responsibility for the Study and the Project including, but not limited to, hiring any consultants, overseeing any contractors, and timely execution of work; and

Whereas, the shared goal of the City and Yakama Nation in this Study is to facilitate the furtherance of an alternative municipal water source for the City that provides reliability and redundancy while protecting and enhancing the streamflow in flow-limited tributary streams and, by extension, the quantity and quality of aquatic habitat.

The Yakama Nation and the City therefore agree as follows:

ARTICLE 1. Term and Scope.

1.01. Effective Date. This Agreement is effective on the date when both parties have signed it.

- 1.02. Term.** The initial term of this Agreement September 30, 2021, unless terminated by either party consistent with the provisions of this Agreement. This Agreement may be extended only by mutual written agreement executed by the authorized representatives of both parties.
- 1.03. Scope.** This Agreement shall apply to Study expenses incurred by the City between June 1, 2020 and the end of this Agreement. The aggregate amount of the Yakama Nation’s reimbursements under this Agreement (“Total Obligated Amount”) may not exceed twenty thousand dollars (\$20,000).

Article 2. Designated Representatives.

- 2.01.** Designated Representatives will facilitate communication and coordination between the parties. The following individuals will serve as Designated Representatives for his or her respective party:
- Bill Sharp
Research Scientist
Yakima-Klickitat Fisheries Project
P.O. Box 215, Klickitat, WA 98628
(509) 945-3167
bill_sharp@yakama.com
 - Jan Brending
Clerk Treasurer
City of White Salmon
PO Box 2139, White Salmon WA 98672
509-493-1133 #205
janb@ci.white-salmon.wa.us
- 2.02.** Designated Representatives do not have legal authority to bind their respective party.
- 2.03.** Either party may change its Designated Representative by providing notice to the other party.

Article 3. The City’s Obligations.

- 3.01.** The City shall, with funding contributed through this Agreement and Ecology’s Office of Columbia River and Water Resources, execute an agreement directly with the consultants necessary to complete the Study and shall be responsible for their performance. Tasks for completing the Study are described in the “Tasks” section of the attached “Exhibit A – Scope of Work,” which is expressly incorporated by reference into this Agreement.
- 3.02.** The City shall provide to the Yakama Nation a completed W-9 form from its consultants contracted to complete the Study. If the City contracts with consultants to complete the Study subsequent to execution of this Agreement, the City shall promptly provide to the Yakama Nation a completed W-9 form for those consultants.
- 3.03.** The City shall ensure that its consultants provide certification that they are not debarred, suspended, or otherwise prohibited by a federal or state agency from performing work covered by this Agreement, and provide the Yakama Nation with documentation of certification.

- 3.04.** The City shall comply, and ensure that its consultants comply with prevailing wage rates, Davis Bacon Act standards, and related requirements, where applicable to the City's performance under this Agreement, and shall provide the Yakama Nation with documentation of compliance.
- 3.05.** The City shall obtain all necessary permits and permissions necessary to complete the Study.
- 3.06.** The City shall submit to the Yakama Nation invoices for allowable expenses that comply with Article 5 no more frequently than monthly.
- 3.07.** The City shall keep the Yakama Nation informed of Study progress by completing the progress reports described in the "Progress Reports" section of Exhibit A.
- 3.08.** The City shall give appropriate credit to the Yakama Nation and PCSRF in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding the Yakama Nation's financial support for the Study and Project and provide the Yakama Nation with copies of the same.
- 3.10.** The City shall comply, and ensure that its consultants comply, with all applicable requirements regarding the use of federal funds including, without limitation, the Office of Management and Budget Uniform Guidance (2 C.F.R. Part 200); the Whistleblower Protection Act (41 U.S.C. § 4712); and the Copeland Anti-Kickback Act (18 U.S.C. § 874).
- 3.09.** The City shall comply, and ensure that its consultants comply, with all applicable requirements of the National Oceanic Atmospheric Administration's ("NOAA") guidelines on scientific integrity, included in section III of the attached "Exhibit B – NOAA Financial Assistance Administrative Terms," which is expressly incorporated by reference into this Agreement.
- 3.11.** The City shall be responsible for its own legal and administrative expenses.
- 3.12.** The City shall furnish all materials, equipment, and supplies necessary to perform its obligations under this Agreement.

Article 4. The Yakama Nation's Obligations

- 4.01.** The Yakama Nation shall promptly review the invoices received from the City for compliance with Article 5 and, within ten calendar days of receipt of an invoice from the City, inform the City of any errors or ineligible expenses.
- 4.02.** The Yakama Nation shall reimburse the City for allowable invoiced expenses within thirty calendar days of receipt of an invoice from the City that complies with Article 5.
- 4.03.** The Yakama Nation shall give appropriate credit to the City in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding the Study and Project and provide the City with copies of the same.
- 4.04.** The Yakama Nation shall be responsible for its own legal and administrative expenses.

- 4.05. The Yakama Nation shall furnish all materials, equipment, and supplies necessary to perform its obligations under this Agreement.

ARTICLE 5. Invoices.

- 5.01. **Contents.** Invoices must include the dates of work; a description of the work; the total amount due; and the Total Obligated Amount remaining after the amount due.
- 5.02. **Allowable Expenses.** Invoices must include only expenses for tasks provided for in the Scope of Work.
- 5.03. **Expense Limits.** The total amount claimed as due under all invoices must not exceed the remaining Total Obligated Amount. If the City anticipates that it will exceed the Total Obligated Amount, then the parties must amend this Agreement, consistent with Section 11.02, prior to reimbursement of any additional amounts.

ARTICLE 6. Record Keeping and Audits.

- 6.01. **Records.** The City shall retain systematic records of all expenditures related to this Agreement including, without limitation, bills, invoices, cancelled checks, etc., for 6 years after submission of the final invoice. If litigation, claims, audits, negotiations, or other actions related to this Agreement occur within the 6-year period, then each party shall retain such records until the later of either 6 years after submission of the final invoice by either party or resolution of all such litigation, claims, audits, negotiations, or other actions.
- 6.02. **Inspection and Audit.** The City shall make the records described in Section 6.01 available for inspection or audit by the Yakama Nation during regular business hours and following reasonable notice. The Yakama Nation may, at its own expense, audit or have audited such records. The City shall also make such records available to any federal or state agencies or officials who may have a right to such audit pursuant to an applicable funding source agreement.
- 6.03. **Disallowed Costs.** The City shall reimburse the other party for any expenditure they invoiced and were paid for, which is subsequently found to be a disallowable cost by an auditing party due to non-compliance with any provision of this Agreement or under the terms of an applicable funding agreement, law, or regulation.

ARTICLE 7. Risk Management.

- 7.01. **Insurance Policies.** Each party shall, at their own sole expense, maintain the following insurance policies:
- 7.0.1.01. Worker's compensation in the maximum amounts required by applicable law.
 - 7.0.1.02. Automobile liability insurance with bodily limits of at least \$1,000,000 per accident that includes coverage for both bodily injury and property damage.
 - 7.0.1.03. Commercial general liability insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate that includes coverage for both bodily injury, death, and property damage.

- 7.02. Proof of Insurance.** Each party shall promptly provide the other party with documentation of its insurance coverage following the execution of this Agreement.
- 7.03. No Subrogation.** Each party waives its subrogation insurance rights against the other party and the other party's officers, agents, employees, governmental entities, contractors, and subcontractors.

ARTICLE 8. Termination.

- 8.01. For Cause.** Either party may terminate this Agreement for reasonable cause by providing the other party with written notice of termination. Reasonable cause includes, without limitation, a material breach of this Agreement by the other party or, with respect to the Yakama Nation, loss of grant funding necessary for reimbursement of the City. A termination for cause due to a loss of funding will be effective immediately upon written notice to the other party; while a termination due to a material breach will not be effective unless the breaching party fails to act to cure such breach for 30 days following the date of notice.
- 8.02. By Tribal Council.** The Yakama Nation may immediately terminate this Agreement for any reason by providing the City with no fewer than 10 days' prior written notice.
- 8.03. Effect of Termination.** The parties shall remain responsible for their obligations which arose prior to termination.

ARTICLE 9. Dispute Resolution.

- 9.01. Negotiation.** If the parties disagree about the performance, interpretation, or enforcement of this Agreement, they shall first attempt to resolve their disagreement informally through dialogue between their Designated Representatives. If the disagreement cannot be resolved by the Designated Representatives, the parties shall hold face-to-face negotiations between their leaders, which must be held in Toppenish, WA. If the parties cannot resolve their disagreement after taking these steps, the disagreement will be deemed a "dispute."
- 9.02. Mediation.** The parties shall endeavor to resolve any disputes through non-binding mediation before resorting to any other dispute resolution procedure. Such mediation must take place at a mutually agreeable location in Toppenish or Yakima, Washington. Any party demanding mediation shall do so consistent with the notice requirements set forth in Section 11.09. The parties shall share equally the costs of hiring a mediator and securing a suitable location for the mediation proceedings. Any applicable statutes of limitation will be considered tolled until the conclusion of the mediation process.
- 9.03. Survival.** The parties' dispute resolution obligations will survive termination of this Agreement.

ARTICLE 10. Intellectual Property.

- 10.01. Non-Proprietary Information.** The parties shall make any non-propriety information developed under this Agreement publicly available.

- 10.02. Project Designs.** Any project design developed by one of the parties will remain the intellectual property of that party.
- 10.03. Logos.** Neither party may use the other party's name, logo, or other identifying information without permission.
- 10.04. Creative Work.** Any creative work developed by a party under this Agreement, including all written, graphic, audio, visual and any other materials, contributions, applicable work product and production elements contained therein, whether on paper, disk, tape, digital file or any other media ("Creative Work"), will remain the intellectual property of that party. Each party shall grant the other party a perpetual, royalty-free, non-exclusive right to copy, distribute, use, and prepare derivative work from its Creative Work for any purpose in non-commercial use.

ARTICLE 11. General Terms.

- 11.01. Certification.** Each party certifies that neither it nor its council, board, or agents, are debarred, suspended, or otherwise prohibited by a federal or state agency from performing work covered by this Agreement
- 11.02. Amendments.** The parties cannot amend this Agreement except by a written instrument signed by the authorized representatives of both parties. Neither party will have a reimbursement obligation for work covered by an amendment until the amendment is properly signed by both parties.
- 11.03. Legal Relationship.** The Yakama Nation and the City are independent entities. This Agreement does not create a partnership or joint venture and the parties will not have authority to represent each other or to enter into contracts or other legal commitments on behalf of the other party.
- 11.04. Third-Party Rights.** This Agreement is not intended to create any third-party rights. Neither party will be responsible for the acts or omissions of entities or individuals not party to this Agreement.
- 11.05. Non-Assignability.** Neither party shall assign this Agreement without the express written consent of the other party.
- 11.06. Excusable Delay.** Each party shall excuse the other for any delay in the performance of obligations under this Agreement that result from any event or circumstance, regardless of foreseeability, not caused by and beyond the reasonable control of the non-performing party. The non-performing party shall, as soon as possible after it has knowledge of the event or circumstance that will or may result in delay, give notice and a full written description of the event or circumstance to the other party. Both parties shall then consult to determine the best course of action for resuming the Study.

Each party shall, at all times, take all reasonable steps to prevent excusable delay affecting the performance of its obligations under this Agreement; mitigate the effect of any excusable delay; and comply with its obligations under this Agreement notwithstanding an event or circumstance that results in excusable delay.

- 11.07. Entire Agreement.** This Agreement, including any documents expressly incorporated by reference, constitute the entire understanding of the parties on the subject matter of this Agreement. The parties

do not agree to any terms, conditions, or obligations except as provided in this Agreement or documents incorporated into this Agreement by reference.

- 11.08. Severability.** If any term of this Agreement is to any extent illegal, incapable of being enforced, or otherwise invalid, the term will be excluded to the extent of such illegality, unenforceability, or invalidity. All other terms in this Agreement will remain in full force and effect. To the extent permitted and possible, the illegal, unenforceable, or invalid term will be deemed replaced by a term that is legal, enforceable, or valid and that comes closest to expressing the intention of the illegal, unenforceable, or invalid term.
- 11.09. Notice Requirements.** Notice under this Agreement must be in writing, properly addressed to the party, and delivered by a national transportation company with all fees prepaid and receipt signature required or by USPS certified mail, return receipt requested, postage prepaid. Notice will be effective upon the date of receipt. Either party may change its designated address or recipient for legal notice by giving the other party reasonable notice of such change.
- 11.10. Notice to the Yakama Nation.** Notice to the Yakama Nation must be sent to the Tribal Council Chairman at P.O. Box 151 / 401 Fort Road, Toppenish, WA 98948, with courtesy copies to the Yakama Nation's Designated Representative electronically at the email address listed in Article 2 and to the Yakama Nation Office of Legal Counsel at P.O. Box 150 / 401 Fort Road, Toppenish, WA 98948.
- 11.11. Notice to the City.** Notice to the City must be sent to the City of White Salmon, PO Box 2139, White Salmon, WA 98672.
- 11.12. Execution.** If the parties sign this Agreement in several counterparts, each copy will be deemed an original, but all counterpart copies together will constitute one instrument. The parties may sign and deliver this Agreement (and any ancillary documents) to each other electronically, and the receiving party may rely on the electronic document and signature as if it was a hard-copy original. The parties each state that they have the necessary legal authority to enter into and sign this Agreement, and to perform their obligations under this Agreement.
- 11.13. Choice of Law and Venue.** Yakama law governs the validity and interpretation of this Agreement, and any adversarial proceedings brought by one party against the other party arising out of this Agreement. Any court action filed to enforce or interpret this Agreement must be in the Yakama Tribal Courts. The Parties each acknowledge that this Agreement will be considered to have been executed at the Yakama Nation governmental headquarters in Toppenish, WA, and that this Agreement establishes a consensual business relationship between the parties for purposes of Yakama Tribal Court jurisdiction. The City shall not raise any personal jurisdiction objections to Tribal Court jurisdiction.
- 11.14. Sovereign Rights & Immunities.** In entering into this Agreement, the Yakama Nation is not waiving its sovereign immunity from suit, and is not waiving, altering, or otherwise diminishing its rights, privileges, remedies, or services guaranteed by the U.S. Treaty with the Yakamas of June 9, 1855 (12 Stat. 951). Nothing in this Agreement should be construed as contractually subjecting the Yakama Nation to any state, local, or federal jurisdiction to which it would not otherwise be subject.

[Signature page to follow]

