

**INTERAGENCY AGREEMENT BETWEEN
WYOMING GAME AND FISH COMMISSION
AND
WYOMING WATER DEVELOPMENT COMMISSION**

1. **Parties.** The parties to this Interagency Agreement (Agreement) are the Wyoming Game and Fish Commission (WGFC), whose address is: 5400 Bishop Boulevard, Cheyenne, Wyoming, 82006, and the Wyoming Water Development Commission (WWDC), whose address is: 6920 Yellowtail Road, Cheyenne, Wyoming, 82002.
2. **Purpose of Agreement.** The purpose of this Agreement is to set forth the terms and conditions under which the WGFC shall provide funds to the WWDC to use for the Upper Wind River Instream Flows 2019 Level I study as well as the responsibilities of the WWDC and WGFC.
3. **Term of Agreement.** This Agreement is effective when all parties have executed it (Effective Date). The term of this Agreement is from the Effective Date through June 30, 2022. All services shall be completed during this term. There is no right or expectation of extension and any extension will be determined at the discretion of the WGFC.
4. **Payment.**
 - A. The WGFC (Funding Agency) agrees to pay the WWDC (Receiving Agency) for the services described in Section 5 below. The WGFC agrees to pay the WWDC within twenty (20) days after the WGFC receives and approves an invoice from the WWDC. Invoices submitted to the WWDC as part of the Upper Wind River Instream Flow 2019, Level I study will be forwarded to the WGFC after the WWDC receives and approves the invoice from Biota Research & Consulting, Inc (Consultant).
 - B. In no event shall the total amount paid to the WWDC by the WGFC under this Agreement exceed sixty-four thousand and four hundred dollars (\$64,400). No payment shall be made for services performed prior to the Effective Date.
5. **Responsibilities of WWDC.** The WWDC agrees to:
 - A. Conduct and manage the Upper Wind River Instream Flows 2019, Level I study.
 - B. Receive invoices from Biota Research & Consulting, Inc. for services related to the Upper Wind River Instream Flows 2019, Level I study.
 - C. Following review and approval of each invoice, the WWDC will submit said invoice to the WGFC.
 - D. After receipt of payment from the WGFC, the WWDC will pay Biota Research & Consulting, Inc.

6. **Responsibilities of WGFC.** The WGFC agrees to:

- A. Pay the WWDC in accordance with Section 4 above.

7. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed by all parties to this Agreement.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Agreement as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Availability of Funds.** Each payment obligation under this Agreement is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for payment, this Agreement may be terminated by the Funding Agency at the end of the period for which funds are available. The Funding Agency shall notify the Receiving Agency at the earliest possible time if this Agreement will or may be affected by a shortage of funds. No liability shall accrue to the Funding Agency in the event this provision is exercised, and the Funding Agency shall not be obligated or liable for any future payments as a result of termination under this section.
- D. **Entirety of Agreement.** This Agreement, consisting of five (5) pages represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- E. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

- F. Indemnification.** Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- G. Notices.** All notices arising out of, or from the provisions of this Agreement shall be in writing and given to the parties at the addresses provided under this Agreement, either by regular mail or delivery in person.
- H. Prior Approval.** This Agreement shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Agreement has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information's Procurement Office and approved by the Governor of the State of Wyoming or his designee if required by Wyo. Stat. § 9-2-1016(b)(iv).
- I. Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- J. Sovereign Immunity.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming, the WGFC and the WWDC expressly reserve sovereign or governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available to them. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.
- K. Termination of Agreement.** This Agreement may be terminated, without cause, by either party upon thirty (30) days written notice. This Agreement may be terminated immediately for cause if either party fails to perform in accordance with the terms of this Agreement.
- L. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- M. Time is of the Essence.** Time is of the essence in all provisions of the Agreement.
- N. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

- O. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- P. Counterparts.** This Agreement may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Agreement.

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- 9. **Signatures.** By signing this Agreement, the parties certify that they have read and understood it, that they agree to be bound by the terms of the Agreement, and that they have the authority to sign it.

The Effective Date of this Agreement is the date of the signature last affixed to this page.

WYOMING GAME AND FISH COMMISSION

 John Kennedy, Deputy Director
 Wyoming Game and Fish Department

Date

 Meredith Wood, Chief Fiscal Officer
 Wyoming Game and Fish Department

Date

WYOMING WATER DEVELOPMENT COMMISSION

 Laurance Suchor, Chairman

Date

 Michael K. Purcell, Secretary

Date

ATTORNEY GENERAL’S OFFICE: APPROVAL AS TO FORM

 Margaret A. Schwartz, Assistant Attorney General
 Representing the Wyoming Game and Fish Commission

Date

 Tyler M. Renner, Assistant Attorney General
 Representing the Wyoming Water Development Commission

Date