



MONTANA FISH, WILDLIFE & PARKS

FWP#

Watercraft Inspection Station Operation Agreement between McCone Conservation District and Montana Fish, Wildlife & Parks

1. Parties. The parties to this Watercraft Inspection Station Operation Agreement (hereinafter "Agreement") are the State of Montana, Fish, Wildlife & Parks, ("MFWP") whose address is 1420 East 6th Avenue, Helena, MT 59601 and the McCone Conservation District ("MCD") whose address is PO Box 276, Circle, MT 59215.

2. Purpose. The purpose of this Agreement is to define the conditions under which MCD will operate a Watercraft Inspection Station (WIS) at Nashua, MT, as contemplated by HB553, 2015.

3. Background. Pursuant to its authority in Title 80, Part 7 of the Montana Code Annotated, MFWP administers a number of watercraft inspection stations throughout Montana. In 2015, the state legislature amended §80-7-1006, MCA to allow MFWP to grant authority to other entities to operate watercraft inspection stations in Montana. MCD wishes to operate a station at Nashua.

4. Responsibilities. MCD agrees to operate the Nashua watercraft inspection station, located at the town of Nashua on Hwy 2, inspecting westbound watercraft traffic from April 17, 2021 to October 24, 2021. The stations will be operated in accordance with terms of this agreement and with further direction provided by MFWP during the term of this agreement.

4.1 Training.

- a. MCD shall use MFWP protocols and inspectors and will be required to attend the MFWP inspector training or arrange with MFWP for an alternative training.
- b. MFWP shall work in coordination with MCD to provide the necessary training materials and training protocols.

4.2 Operation.

- a. MFWP retains oversight authority over the operation of the station. MFWP shall ensure that the station operates consistently with other MFWP stations. The local AIS Area Supervisor will provide the oversight.
- b. MCD shall hire and supervise station personnel and manage the day-to-day operation of the station including hiring, management, scheduling and payroll. MCD is responsible for staff oversight and quality control, ensuring staff adhere to MFWP watercraft inspection protocols and operate the station in a professional manner. Personnel and quality control issues will be addressed immediately to ensure the highest quality of station operation. The MCD station supervisor or other MCD management associates should be the only person in contact with MFWP staff.
- c. MCD shall hire a station supervisor to provide direct oversight over watercraft inspection station staff to ensure consistent proper implementation of watercraft inspection protocols.
- d. MCD shall coordinate with MFWP to ensure staff are available for refresher trainings periodically throughout the season.

- e. MCD shall use MFWP forms (Inspection Passport, High Risk) necessary to operate the station. MFWP shall supply the forms.
- f. MCD shall utilize the watercraft inspection data collection app and shall ensure data is accurately entered daily. MFWP will provide data tablets and training for data app use and data entry.
- g. MFWP shall supply station signage. If required, MCD shall set up and remove signs from the roadside daily.
- h. MFWP will supply MCD with a hot water wash unit and a lighted reader board sign for each station. MCD will reimburse MFWP for any lost or damaged items, excluding those damaged from normal operation.
 - i. Storage. MCD agrees to store any equipment provided by MFWP at the Inspection Station. If MCD desires to move the equipment to a place other than the storage location, it must obtain prior written approval from MFWP. MFWP reserves the right to check the equipment where it is installed or at the storage location. MCD is responsible for securing of the equipment on-site and must take reasonable steps to prevent vandalism or theft.
 - ii. Use. MCD will not use the equipment for any purposes other than those set forth in this Agreement, or as may be agreed to in writing by MFWP. MCD will not transfer or sublease the equipment without MFWP's written consent.
 - iii. Repairs and modification. MCD will not disassemble, repair, modify or adjust the equipment without MFWP's written consent. MCD is responsible for reporting equipment issues or maintenance needs in a timely manner.
 - iv. Return. MCD agrees that it will return the equipment to MFWP at the end of the term of this Agreement.
 - v. Risk of loss. MCD bears the entire risk of loss, theft, damage or destruction of the equipment unless caused by the actions of MFWP, its employees or agents. The loss, theft, damage or destruction of the equipment will not relieve MCD of any other obligation under this Agreement. In the event of damage to any item of equipment caused by MCD, MCD will immediately replace the same in good repair or bear all the costs associated with the repair of equipment. If MFWP determines that any item of equipment is lost, stolen, destroyed or damaged beyond repair as a result of MCD's action, MCD will replace the equipment with MCD funds, unless otherwise agreed to in writing by MFWP.
- i. The Nashua station shall begin operation on April 17, 2021 and close at the end of the day on October 24, 2021. The station will operate through designated dates unless otherwise determined by MFWP based on boater traffic and personnel availability.
- j. The Nashua station shall operate 7 days a week during daylight hours. If scheduling and staffing issues arise where it is not possible to operate on this schedule, this information should be communicated to MFWP as soon as possible.
- k. Following station closure on October 24th, the Nashua station may operate on an on-call basis where boaters can schedule inspections at the Nashua station. MCD will coordinate on-call logistics with inspectors and MFWP staff. On-call inspection operations may continue on an as-needed basis throughout the term of this agreement.

4.3 Decontamination.

- a. MCD shall notify MFWP immediately if mussels are detected on a watercraft. MFWP will provide specific training, protocols and contact information for mussel detection on watercraft.
- b. If MFWP law enforcement personnel are required, MCD will follow established protocols.
- c. Communications related to non-compliant mussel fouled vessels should be limited to the those outlined in established mussel detection contact protocols, plus other

relevant federal or local law enforcement personnel. In the event other appropriate law enforcement personnel are contacted by MCD staff, this information will be immediately forwarded to MFWP AIS staff.

5. Payment, Financial Reporting & Billing.

- a. Payment - **The amount of this Agreement shall not exceed \$140,000.** This funding is only to be used for expenses related to the operation of the Nashua Watercraft Inspection Station.
- b. Indirect costs are allowable under this Agreement. The Contractor must provide documentation of its negotiated indirect cost agreement to claim indirect cost reimbursement.
- c. Reduction of Funding. The State must by law terminate this Agreement if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Agreement in a subsequent fiscal period. (18-4-313(4), MCDA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Agreement (whether at an initial Agreement payment level or any Agreement increases to that initial level) in subsequent fiscal periods, the State shall terminate this Agreement as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the Agreement not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.
- d. Financial Reporting and Billing- MCD will provide a monthly billing to MFWP that specifies the timeframe of the expenses incurred and separates and details these costs to run the AIS inspection station. The following costs are allowable and must be itemized in an invoice using the form provided (Attachment A).

6. Allowable costs include:

- Labor
- Fringe benefits, such as health insurance and worker's compensation insurance
- Rental equipment and machinery (on approved items)
- Charges for small miscellaneous tools
- Rental charges for portable toilets, storage pods, trailers, canopies, and campsites (Items must be preapproved)
- Administrative charges
- Fuel for travel, pressure washers and for heaters
- Utility costs for the site
- Phone charges for station communication.
- Paper, pens, pencils, and other small miscellaneous office supplies
- Flashlights and batteries
- Lodging, per diem and other costs associated with required MFWP watercraft inspection training.
- Other station operation costs with written permission from MFWP

7. The following is a non-exhaustive list of unallowed expenditures:

- Meals and refreshments

- Printing or publication of regional invasive species booklets or calendars
- Expenses such as cash awards, prizes, water bottles, or other such items
- Employee incentives and bonuses
- Accountant, audit, or payroll software fees
- Unauthorized or non-itemized fuel expenditures
- Unauthorized wireless data charges
- Newspaper ads
- Drug Tests
- Vehicle Maintenance
- Activities other than those state and federal agencies are required to perform.
- Activities not identified in the agreement
- Fines and penalties due to violations of, or failures to comply with, federal, state, or local law
- Interest on bonds, interim financing and associated costs to finance projects
- Legal expenses
- Lobbying or expenses associated with lobbying
- Ordinary operating expenses of state or local government
- Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration

8. Invoice should be sent to: Montana Fish, Wildlife & Parks
 1420 E. Sixth Ave.
 Helena, Mt. 59620-0701
 Attn: Beth Morgan-Giddings
 begiddings@mt.gov

9. Liaisons and Communication. Phone contact is necessary for urgent situations. If a phone contact is made, it should be followed by an email to Zach Crete. For these purposes, urgency determinations are based on the level of risk posed by the vessel, plans for launching, and cooperativeness of vessel owner.

The local AIS Area Supervisor, Sean Flynn, is the main MFWP point of contact for station logistical questions. Contact Beth Giddings for procedural questions regarding this Agreement.

If the situation is urgent contact the MFWP Fisheries office. For urgent issues during non-business hours, contact the on-call number.

Email communications related to compliant mussel-fouled vessels should be limited to MCD personnel working at the station and their supervisor and MFWP AIS staff. Sharing information beyond these people shall not occur until the information has been shared within this group and acknowledged by MFWP, which should occur no later than 2 business days.

Email contact or notification to Zach Crete is acceptable for less urgent situations, zcrete@mt.gov.

FWP AIS STAFF	Office	Work Cell
FWP Fisheries	406-444-2449	
Beth Morgan-Giddings	406-444-7815	
Jessi Gudgel		406-465-4705
Zach Crete	406-444-5383	406-546-3847
Sean Flynn		406-230-1746

On Call Number (non-business hrs.)		406-444-5500
Thomas Woolf	406-444-1230	
McCone County Conservation District Contacts		
McCone CD office	406-485-2744 ext. 100	
Dianne Black	406-485-2744 ext. 100	

10. Liability. MFWP agrees to hold harmless, indemnify and defend MCD and MCD's employees, agents and contractors from and against all liabilities, including environmental liabilities penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorney's fees, arising from or connected with injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related in any manner to services performed or otherwise occurring pursuant to this Agreement as a result of MFWP's negligence, or willful or wanton misconduct in exercising its rights under the terms of this Agreement.

MCD agrees to hold harmless, indemnify and defend MFWP and MFWP's employees, agents and contractors from and against all liabilities, including environmental liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorney's fees, arising from or connected with injury to or death of any person, physical damage to any property, resulting from any act, omission, condition or other matter related in any manner to services performed or otherwise occurring pursuant to this Agreement as a result of MCD's negligence, or willful or wanton misconduct in exercising its rights under the terms of this Agreement.

11. Notice to MCD Regarding Its Tax Duties and Liabilities. MCD understands that it is responsible to pay its income tax in accordance with federal and state law. The MCD further understands that it may be liable for Social Security taxes, to be paid in accordance with all applicable laws.

12. Insurance. MCD shall maintain insurance of the types and in the amounts reasonably satisfactory to the MFWP, including, but not limited to the following:

- a. **General Requirements.** Contractor shall maintain for the duration of this Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- b. **Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- c. **Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of **\$1,000,000** per occurrence and **\$2,000,000** aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision

of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

- d. Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- e. Compliance with Workers' Compensation Act.** Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire Agreement term and any renewal. Upon expiration, a renewal document must be sent to Montana Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701.

13. Enforcement. MFWP will enforce the regulations associated with the operation of the station per protocols and standard operating procedures.

14. Term of Agreement. This Agreement shall commence on the date of last signature by the duly authorized representative of the parties to this Agreement and shall remain in effect until November 30, 2021.

15. Modification Procedures: This agreement may be modified as necessary by mutual consent in writing by both parties at any time. Liaisons for MFWP and MCD will meet and discuss any changes that are needed for the agreement.

16. Termination Procedures: This agreement may be terminated by either party with 30 days written notice.

17. SIGNATURE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT: Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

**STATE OF MONTANA
Fish, Wildlife & Parks
PO Box 200701
Helena, MT 59620-0701**

**McCone County Conservation District
PO Box 276
Circle, MT 59215
Federal ID#: 81-0383955**

BY: _____
(Name/Title)

BY: _____
(Name/Title)

(Signature)

(Signature)

DATE: _____

DATE: _____

Approved as to Fish, Wildlife & Parks Legal Content:

(Legal Counsel Signature)

Approved as to Form:

Procurement Officer (Date)
Fish, Wildlife & Parks

18. FEDERAL AID ADDENDUM

Contractor agrees to comply with the following:

1. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees.)
2. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair.)
3. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.)
4. Compliance with notice of awarding federal agency requirements and regulations pertaining to reporting.
5. Compliance with notice of awarding federal agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
6. Compliance with awarding federal agency requirements and regulations pertaining to copyrights and rights in data.
7. Compliance with 41 U.S.C. 4712, Enhancement of Recipient and Subrecipient Employee Whistle Protection: (a) This award, related subawards and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies established at 41 USC 4712. (b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712. (c) The recipient shall insert this clause, including this paragraph, in all subawards and in contracts over the simplified acquisition threshold related to this award.
8. Reduce Text Messaging While Driving. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department encourages recipients and subrecipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
9. Compliance with equal opportunity to participate in and benefit from programs described is available to all individuals without regard to their race, color, religion, national origin or ancestry, sex, age, handicap, disability, sexual orientation, gender identity, military or veteran status or political affiliation. Complaints of discrimination should be sent to the Office of Human Resources, Montana Department of Fish, Wildlife & Parks, 1420 E. Sixth Avenue, Helena, Montana 59601.

10. Compliance with all applicable provisions of the Federal Funding Accountability and Transparency Act of 2006. 2 C.F.R. § 170.100.

11. Compliance with all applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Act of 2014. 2 C.F.R. 200.

CONTRACTOR

DATE

DRAFT