

MEMORANDUM OF UNDERSTANDING – LOAN OF STATE-OWNED EQUIPMENT
 BETWEEN
 THE STATE OF WASHINGTON
 DEPARTMENT OF FISH AND WILDLIFE
 AND

RECIPIENT

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by and between the DEPARTMENT OF FISH AND WILDLIFE, PO Box 43135, Olympia, WA 98504-3135, hereinafter referred to as "WDFW" and the **RECIPIENT** hereinafter referred to as "the Contractor."

THE PURPOSE OF THIS MOU is:

WDFW was approved for a contract (19-12471) from Bureau of Reclamation (Reclamation) to purchase Clean-Drain-Dry-Dispose or "CD³" systems to distribute within the Columbia River basin area of Washington State. CD³ systems are designed to empower boaters to meet national clean-drain-dry standards at the source of a potential infestation. Use of these systems provide critical resources for boaters that are not currently present at boat launches, are excellent education and outreach tools, and encourage real-time application of national Clean-Drain-Dry practices. Establishing this type of infrastructure prior to a zebra/quagga mussel infestation fits into our state's overall strategy to prevent their inadvertent spread prior to detection, which can often take months or even years from original introduction.

The CD³ systems are self-contained, low-maintenance and solidly built units with a user life of 7-10 years when modular internal components will likely need to be replaced for extended life. The value of this system is that they are self-service units (no staff costs) that are simply, but efficiently designed to be used by the general public. They are also built with an integrated data collection and upload program that automatically notifies the owner if maintenance on the unit is required and will provide boater use data that will be used for assessing pilot effectiveness. Results of CD³ pilot testing will help to guide a comprehensive and long-term statewide approach to empowering boaters to meet national Clean-Drain-Dry best management practices.

Item Description	Serial #	WDFW Property #	Estimated Value
CD ³ Trailered Unit	B00033	FW025600	\$30,000

THEREFORE, IT IS MUTUALLY AGREED THAT:

1. Responsibility to deliver and return equipment shall be the Contractor unless WDFW agrees to deliver and return equipment.
2. The Contractor shall surrender all loaned equipment to WDFW immediately upon expiration of this agreement, unless a new agreement has been signed.
3. Any WDFW property furnished to the Contractor under this agreement shall, unless other provided hererin, be used by the Contractor only for the performance of this agreement and shall remain the property of WDFW
4. The Contractor accepts the property in its current condition and waives any claims against WDFW if it does not work properly or malfunctions. WDFW makes no representation or warranty as to the equipment's use or function.

5. The Contractor shall be responsible for the proper care and maintenance of all loaned equipment and to maintain it in the same condition it was in when loaned to the Contractor less normal wear and tear.
6. The Contractor shall bear responsibility to reimburse WDFW for any loss or damage to WDFW property which results from the negligence of the Contractor, or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
7. Should any WDFW property be damaged, destroyed or lost, the Contractor shall notify the WDFW's Aquatic Invasive Species (AIS) Lead and Washington Invasive Species Council (WISC) Executive Coordinator within 10 working days, and shall take all reasonable steps to protect that property from further damage. Should any WDFW property be stolen or vandalized, the Contractor shall provide a police report and shall report the theft immediately (by the next regular business day) to the AIS Lead and WISC Executive Coordinator.
8. Each party shall defend, protect and hold harmless the other party from and against all claims, suits, and/or actions arising from any negligent or intentional act or omission of that party's employees, agents and/or subcontractors while performing this agreement.
9. This agreement shall be governed in all respects by the laws and statutes of the State of Washington and of the United States of America.

RESPONSIBILITIES OF WDFW

1. Coordinate use of equipment.
2. Train Contractor how to use equipment.
3. Inspect equipment for safe and proper condition once returned.

RESPONSIBILITIES OF THE CONTRACTOR

1. Operate equipment in safe and proper condition.
2. Return equipment in same condition.
3. Abide by all conditions in this agreement.

PERIOD OF PERFORMANCE

Two years, subject to its other provisions, the period of performance of this MOU shall commence on «EffectiveDate», and be completed on «EndDate», unless terminated sooner or extended, as provided herein.

MOU CHANGES, MODIFICATIONS AND AMENDMENTS

This MOU may be changed, modified or amended by written agreement executed by both parties.

ASSIGNMENT

The work to be provided under this MOU, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

CONTRACT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this MOU:

The Program Manager/AIS Lead for WDFW is: Jesse Schultz Environmental Specialist 5 (360) 480-2105 jesse.schultz@dfw.wa.gov

The WISC Executive Coordinator is: Justin Bush (360) 704-0973 justin.bush@rco.wa.gov

The Program Manager for the Contractor is:

DISPUTES

In the event that a dispute arises under this MOU, it shall be determined by a Dispute Board in the following manner: Each party to this MOU shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, MOU terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto.

GOVERNANCE

This MOU is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this MOU shall be construed to conform to those laws. In the event of an inconsistency in the terms of this MOU, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. The terms and conditions in this MOU; and
- c. Any other provisions of the MOU, including materials incorporated by reference.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this MOU shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

RECORDS MAINTENANCE

The parties to this MOU shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this MOU will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this MOU to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

SEVERABILITY

If any provision of this MOU or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this MOU, which can be given effect without the invalid provision if such remainder conforms to the requirements of applicable law and the fundamental purpose of this MOU, and to this end the provisions of this MOU are declared to be severable.

TERMINATION

Either party may terminate this MOU upon 30-days' prior written notification to the other party. If this MOU is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this MOU prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this MOU, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15-working days. If failure or violation is not corrected, this MOU may be terminated immediately by written notice of the aggrieved party to the other.

WAIVER

A failure by either party to exercise its rights under this MOU shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this MOU unless stated to be such in a writing signed by an authorized representative of the party and attached to the original MOU.

ALL WRITINGS CONTAINED HEREIN

This MOU contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this MOU.

STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

RECIPIENT

Signature

Signature

Title

Date

Title

Date