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Meeting Date: May 17, 2023  
Staff Contact: Mark Kelly, Water Resources Manager

**TITLE: C-23-13 – Memorandum of Understanding between The City of Albuquerque, Aquatic Conservation Facility, and the Albuquerque Bernalillo County Water Utility Authority**

**ACTION: Recommend Approval**

**SUMMARY:**

For the last 19 years the Water Authority has worked in partnership with the City of Albuquerque (City) to provide funding to the City Aquatic Conservation Facility (ACF) to rear and stock the Rio Grande Silvery Minnow (RGSM) to the Rio Grande.

The Rio Grande Silvery Minnow (RGSM) became listed as an endangered species in 1993 by the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act of 1973. The RGSM has been impacted by changes in flows, lack of historic flooding along the river's edge, impacts from non-native fish species, and by water quality degradation. Since the species listing in 1993, several designated facilities that rear and stock the RGSM have been developed. One of these designated facilities is the Aquatic Conservation Facility (ACF), located at the City of Albuquerque BioPark Zoo.

This Memorandum of Understanding (MOU) will continue the partnership with the City for the ACF to continue to produce anywhere between ten thousand (10,000) to fifty thousand (50,000) RGSM annually, and for the City to stock the reared RGSM in all reaches of the Middle Rio Grande in coordination with the USFWS. Additionally, the MOU includes maintenance of the facility, the acquisition of all necessary permits from the USFWS for operations, reporting requirements to the Water Authority, and for the continued participation of the ACF in the Middle Rio Grande Endangered Species Collaborative Program.

This MOU is effective upon the date of the signing of the last party hereto and shall continue until the fulfillment of ten (10) years of rearing.

**FISCAL IMPACT:**

\$165,000 per year and budgeted in the Water Resources Budget annually.

**Memorandum of Understanding**  
**Between**  
**The City of Albuquerque**  
**And**  
**The Albuquerque Bernalillo County Water Utility Authority**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Albuquerque, New Mexico, a municipal corporation (“City”), and the Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico (“Water Authority”), collectively (the “Parties”).

**RECITALS**

WHEREAS, the City is the owner and operator of a breeding and rearing facility for the Rio Grande Silvery Minnow (“RGSM”) known as the Aquatic Conservation Facility (“ACF”); and

WHEREAS, the Water Authority, in its mission statement, provides a reliable, safe, affordable, and sustainable water supply by transitioning to renewable supplies and minimizing long term environmental impacts on natural resources while ensuring the ability of the community to grow in a responsible manner; and

WHEREAS, the Water Authority wishes to continue financial support for the ACF in furtherance of the Water Authority’s active participation in the Middle Rio Grande Endangered Species Collaborative Program; and

WHEREAS, the Water Authority is operating the San Juan–Chama Project in compliance with a long-term Biological Opinion from the U. S. Fish and Wildlife Service, and that compliance includes continued involvement and support of the ACF; and

WHEREAS, the Water Authority desires to engage the City to render certain services, and the City is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. **Scope of Services.** The City shall perform the following services (“Services”) in a satisfactory and proper manner:

A. **City Responsibilities.** The City shall:

- i. Operate and maintain the ACF in conformance with the requirements of the Endangered Species Act of 1973 and any applicable Biological Opinions.
- ii. Produce as many as Fifty Thousand (50,000), but no less than Ten Thousand (10,000) RGSM annually, and ensure the genetic integrity of the produced RGSM

by verifying the purity of the RGSM through genetic monitoring. This amount may vary depending upon the first augmentation planning by the U.S. Fish and Wildlife Service.

- iii. Endeavor to assist in preventing extinction of RGSM through operation and maintenance of the ACF, including collection and holding of natural and captive RGSM eggs, juveniles, and adults.
- iv. In coordination with the Water Authority, ensure the continuation of the ACF's involvement with the Middle Rio Grande Endangered Species Collaborative Program and other related efforts on behalf of RGSM compliance with the San Juan–Chama Project long term Biological Opinion.
- v. Maintain proper permits as required by the U.S. Fish and Wildlife Services and the New Mexico Department of Game and Fish and provide to the Water Authority copies of any required permit reports.
- vi. Stock RGSM in accordance with the annual stocking request by the U.S. Fish and Wildlife Service for all reaches in the middle Rio Grande.
- vii. Provide the Water Authority with an annual summary performance report detailing efforts in support of the Water Authority's compliance with the San Juan–Chama Project long term Biological Opinion from the U. S. Fish and Wildlife Service.

2. **Term.** This MOU shall commence on the date the Agreement is executed, and shall be undertaken and performed on an ongoing basis throughout the term of the Agreement. The Agreement shall remain in effect, unless amended or terminated, until the fulfillment of Ten (10) years of rearing activities as agreed to by the Water Authority in the Biological Opinion from the U.S. Fish and Wildlife Service, entered June 29, 2020.

3. **Compensation and Method of Payment.**

A. **Compensation.** For annually performing the Services specified in Section 1 hereof, the Water Authority agrees to annually pay the City One Hundred Sixty-Five Thousand Dollars (\$165,000) for the operating and maintenance costs of the ACF. By mutual agreement, this amount can be adjusted during the term of the agreement.

4. **Liability.** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, ' 41-4-1 et seq., NMSA 1978, as amended.

5. **Discrimination Prohibited.** In performing the Services required hereunder, the Parties shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

6. **ADA Compliance.** In performing the Services required hereunder, the Parties agree to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations, which are imposed directly on the Parties.

7. **Reports and Information.** At such times and in such forms as the Parties may require, there shall be furnished to the requesting party such statements, records, reports, data and information, as the City and the Water Authority may request pertaining to matters covered by this Agreement.
8. **Establishment and Maintenance of Records.** Records shall be maintained individually by both the City and Water Authority in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Such records shall be maintained for a period of three (3) years after termination or expiration of this Agreement.
9. **Audits and Inspections.** The Water Authority and the City shall permit the other party to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Parties understand and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. R.O.A. 1994 and the Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agree to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.
10. **Compliance With Laws.** In performing the Services required hereunder, the Parties shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments.
11. **Changes.** The Parties may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the compensation or consideration, which are mutually agreed upon by the Parties, shall be incorporated in written amendments to this Agreement.
12. **Assignability.** The Parties shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the both parties.
13. **Termination for Cause.** If, through any cause, either the Water Authority or the City shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Water Authority or the City shall violate any of the covenants, agreements, or stipulations of this Agreement, the aggrieved party shall thereupon have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. If the Water Authority terminates as provided herein, the City will be paid for its costs incurred in the Services completed prior to the date of termination notice.
14. **Termination for Convenience.** The Parties may terminate this Agreement at any time by giving at least a thirty (30) day notice in writing to the other party. If the Water Authority terminates as provided herein, the City will be paid for its costs incurred in the Services performed.

15. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

17. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

18. **Approval Required.** This Agreement shall not become effective or binding until approved by the City's Director of Arts and Culture and the Water Authority Executive Director Chief Operations Officer.

IN WITNESS WHEREOF, the City and the Water Authority have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

ALBUQUERQUE BERNALILLO  
COUNTY WATER UTILITY AUTHORITY

Approved By:

Approved By:

\_\_\_\_\_  
Dr. Shelle VanEtten de Sanchez, Director  
Department of Arts and Culture

\_\_\_\_\_  
Mark S. Sanchez, Executive Director  
Albuquerque Bernalillo County Water  
Utility Authority

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved By:

\_\_\_\_\_  
Jennifer Bradley  
Chief Procurement Officer

Date: \_\_\_\_\_

# **Memorandum of Understanding (MOU) between the City of Albuquerque (Aquatic Conservation Facility) and Water Authority**

Mark Kelly, PE  
May 17<sup>th</sup>, 2023

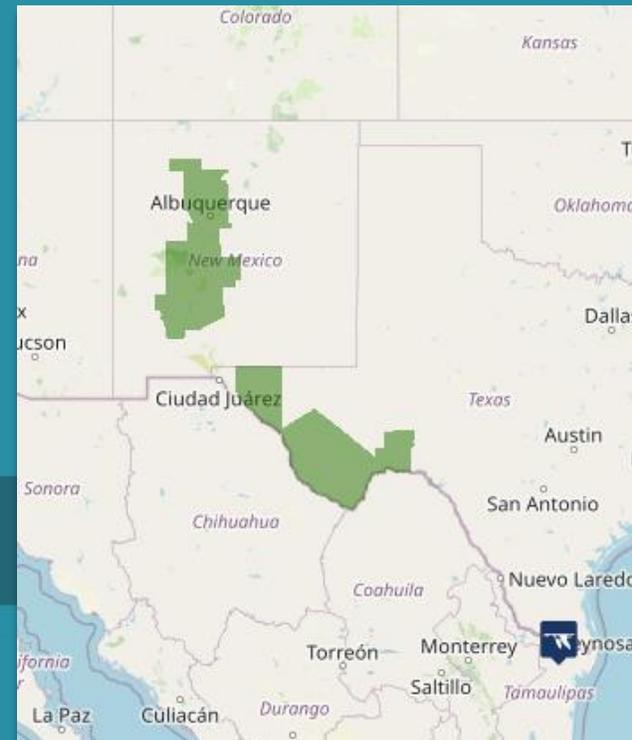


# Rio Grande Silvery Minnow (RGSM)

- RGSM listed as an endangered species in 1993 by the U.S. Fish and Wildlife Service (USFWS; March 1, 1993; 58 FR 11821).
- The RGSM currently occupies 7% of historic range.
- USFWS's goal is to stabilize and enhance the population in its current habitat, and to reestablish the species in at least two other areas in its native range.



[ABQ BioPark releases 48,000 Rio Grande silvery minnows this fall — City of Albuquerque \(cabq.gov\)](#)



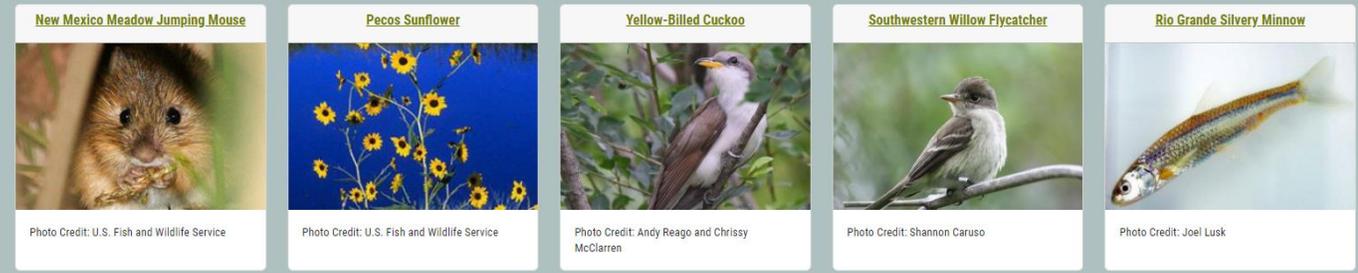
# Water Authority Endangered Species Conservation

- The Water Authority supports the USFWS efforts for the RGSM by:
  1. Working with the City Aquatic Conservation Facility to supplement the RGSM population.
  2. Participating in the Middle Rio Grande Endangered Species Collaborative Program (Collaborative Program) to support endangered species.



## Species of Interest

The MRGESP supports activities that focus on the following listed species in the Middle Rio Grande:



# Aquatic Conservation Facility - BioPark

- City ACF is one of three facilities in New Mexico that breed and stock the RGSM to the Rio Grande.
- The City ACF collects RGSM eggs, spawns, rears, and tags fish, and stocks fish.
- The City ACF releases an average of over 44,000 RGSM annually to the Rio Grande to supplement the population, since 2000.



# Collaborative Program

- Since 2004, the Water Authority has participated in the Collaborative Program to addressing concerns for endangered species in the Middle Rio Grande.
  - Habitat Restoration
  - RGSM Monitoring
  - RGSM Rescue
- The Water Authority supports the Collaborative Program in various ways.
  - Executive Committee
    - Non-Federal Co-Chair
  - Technical Working Groups
  - Research



# MOU between the Water Authority and City of Albuquerque

- The Water Authority has supported the City of Albuquerque BioPark Aquatic Conservation Facility (ACF) since 2004.
- With the Water Authority's support, the ACF has produced and released over 975,000 RGSM (2004 – 2022).



# MOU Scope of Services

- The City ACF agrees to produce between 10,000 - 50,000 RGSM annually.
- Stock RGSM to the Middle Rio Grande in coordination with the USFWS.
- Maintenance of the facility.
- Acquisition of permits from the USFWS for operations.
- Reporting requirements to the Water Authority.
- Participation in the Collaborative Program.



