



# Nez Perce Tribe

## Department of Fisheries Resource Management

Administration • Enforcement • Habitat/Watershed • Harvest • Production • Research • Resident Fish

### WATERSHED DIVISION

PO Box 365 • Lapwai, Idaho 83540

Phone: (208) 983-1290 • Fax: (208) 983-0675

### Sally Ann Creek Culvert AOP Crossing Design

**Bid Process Overview:** The Nez Perce Tribe is accepting bids for the project titled Sally Ann Creek Aquatic Organism Passage (AOP) Crossing Design, which is described below. Bids must be emailed to [mirandag@nezperce.org](mailto:mirandag@nezperce.org) or mailed to the locations found in Section A. The bidding process is from April 3rd to May 8th; any bids received after 3:30 P.M. on the closing date will not be considered. Award of the contract is contingent upon funding, and one or both of the bid items may be awarded based upon funding and ability to meet the contract deadlines. This contract shall be subject to Title 9 of the Nez Perce Tribal Code, Tribal Employment Rights Act (TERO); the fee does not apply to this design contract. All other requirements will apply. Geotechnical surveys are not currently a requirement of this contract. This crossing is located on private property but visible from the Idaho County managed Sally Ann Creek Road; please contact Miranda Gordon if you would like to schedule a site visit.

**General:** The intent of this project is to survey and design a replacement structure for an existing private driveway crossing on Sally Ann Creek near Clearwater, Idaho (See Figures 1 and 2 and Exhibit 3). The existing culvert is undersized and impedes fish passage at various flows while contributing sediment to the stream. The structure poses a failure risk while reducing the instream fish quality of the stream and watershed. The purpose of the project is to improve habitat conditions and to provide fish passage for steelhead and resident fish at all life histories.

## SECTION A—OFFER FORM

<b>OFFER FORM</b>	1. SOLICITATION NO. Culvert Design	2. TYPE OF SOLICITATION Request For Proposals	3. DATE DUE 5/8/2023	PAGE OF PAGES 1 of 35 pages
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**IMPORTANT - The “offer” section on the reverse must be fully completed by offeror.**

4. MAIL OFFER TO			5. ADDRESS OFFER TO	
Nez Perce TRIBE DFRM Watershed Division Office Attn: Miranda Gordon P.O. Box 365 Lapwai, Idaho 83540			Delivered to:  DFRM Watershed Division Office 28764 Salmon Lane Lapwai, Idaho 83540	
6. FOR INFORMATION CALL:	A. NAME Miranda Gordon		B. TELEPHONE NO. (Include area code) 208-621-3547	

### SOLICITATION

NOTE: In RFP solicitations “offer” and “offeror” mean “bid” and “bidder.”

7. THE NEZ PERCE TRIBE REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (*Title., date*):

## Sally Ann Creek Culvert AOP Crossing Design Nez Perce TRIBE, DFRM Watershed IDAHO COUNTY, IDAHO

**FAXED OFFERS ARE NOT ACCEPTABLE.** OFFERS MUST BE RECEIVED BY May 8, 2023 AT 3:30 PM LOCAL TIME.

8. The Contract time shall begin on receipt of notice to proceed and the work shall be completed no later than January 20, 2024. This performance period is mandatory.

9. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Proposals to perform the work required are due at the place specified in Item 4 by **3:30 PM local time**. Envelopes containing offers shall be marked to show the offeror’s name and address. If hand delivering proposals, please deliver to the physical address listed above. If sending by mail, please address to the PO Box listed above.

# REQUEST FOR PROPOSALS (“RFP”) FOR CONTRACTOR SERVICES FOR THE NEZ PERCE TRIBE FISHERIES WATERSHED DIVISION

## 1. SERVICES AND PRICES

<b>Sally Ann Creek Culvert</b>				
<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Total Price</b>
<b>Sally Ann Culvert Design</b>				
1	Site Review and Investigation	1	Lump Sum	\$
2	Meetings, Coordination, and Project Management	1	Lump Sum	\$
3	15% Design Review	1	Lump Sum	\$
4	30% Design Review	1	Lump Sum	\$
5	80% Design Review	1	Lump Sum	\$
6	Final Designs, Cost Estimate, and Basis of Design Report	1	Lump Sum	\$
<b>Total Price</b>				<b>\$</b>
<b>Option 1 – Upstream Restoration Design</b>				
1	Site Review and Investigation	1	Lump Sum	\$
2	Meetings, Coordination, and Project Management	1	Lump Sum	\$
3	15% Design Review	1	Lump Sum	\$
4	30% Design Review	1	Lump Sum	\$
5	80% Design Review	1	Lump Sum	\$
6	Final Designs, Cost Estimate, and Basis of Design Report	1	Lump Sum	\$
<b>Option Price</b>				<b>\$</b>
<b>TOTAL PRICE</b>				<b>\$</b>

**BASIS OF AWARD-** Technical proposals are required to be submitted with your offer. See Section 8 for instructions and evaluation/award information.

**CRITICAL DATES-** See Section 6.1.8 for project schedule.

## 2. PURPOSE OF RFP

The Nez Perce Tribe Fisheries Watershed Division (TRIBE), is soliciting proposals from selected qualified engineering firms ("Offerors") to provide contract services ("Services") for the Sally Ann Creek Aquatic Organism Passage Design Project. Services include design, cost estimate, specifications, Basis of Design Report, and bid documents to fund a project seeing to address a partial fish passage barrier culvert. An optional bid item further seeks to design a habitat restoration plan immediately upstream of the identified culvert crossing.

The project sponsor seeks to produce a design for a partial fish passage barrier for the Sally Ann Creek culvert crossing and related habitat restoration plan so that the culvert will pass all life stages of ESA listed steelhead and other native aquatic species while improving the aquatic habitat.

### 3. BACKGROUND

This proposed project is located on a private driveway off of Sally Ann Creek Road, approximately 1.4 miles from the intersection with Highway 13 and west of the town of Clearwater, Idaho on Sally Ann Creek in Idaho County, Idaho. Project partners share a long-term vision involving the restoration of fisheries habitat where it can be beneficial to ESA listed steelhead and other native resident species. Agriculture (including grazing), logging, and the transportation system have increased sediment and water temperatures, decreased riparian condition, and caused major changes in channel form and function within the Sally Ann Creek watershed. The project design will seek to restore fish passage and pass high flows at this road crossing.

An optional bid item includes a riparian restoration design upstream of the existing crossing, approximately 0.5 acres in size. The severely undersized culvert coupled with upstream land management has led to high flood events that have altered the stream shape and function in this reach. Restoration upstream of the culvert will aim to help restore floodplain connectivity, streamflow regimes, and increase habitat and population diversity.

This Sally Ann Creek culvert is undersized as a 5.5 ft x 32 ft circular culvert with a perched outlet. The landowners have experienced extreme flood events in 4 of the last 5 years, presumably as a combination of upstream management activities, changes in weather patterns, and an undersized crossing. High flows overtop the culvert and driveway road surface, flooding and eroding the road prism. Additionally, the inability of the culvert to pass high flows, coupled with upstream watershed conditions, has caused significant changes to the stream channel upstream of the culvert. Large deposits of cobble are mobilized and deposited during high water events, the channel has become incised with rapid bank erosion, and water retention during low flows is nearly nonexistent without a healthy riparian floodplain.

The ultimate crossing replacement will increase the hydrologic capacity of the culvert and reduce the chances of failure in the future, prevent excess sediment from entering the Sally Ann Creek drainage into the South Fork Clearwater River and negatively impacting all life stages of aquatic species including juvenile spring Chinook and steelhead. The new structure will pass all aquatic organisms, including all life stages of anadromous and resident fish.



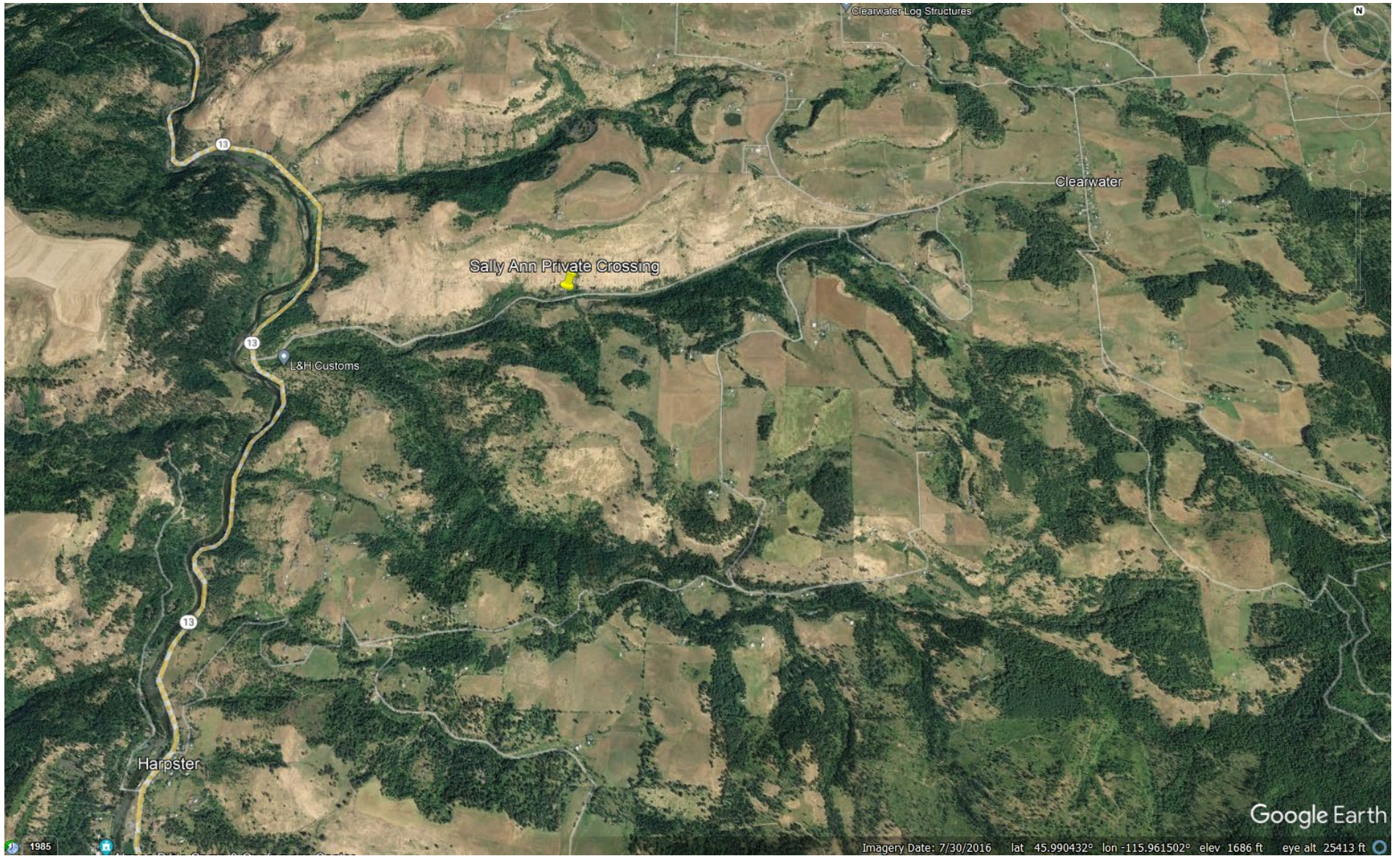


Figure 1. Project site location. 331 Sally Ann Creek Road, Clearwater, Idaho 83552



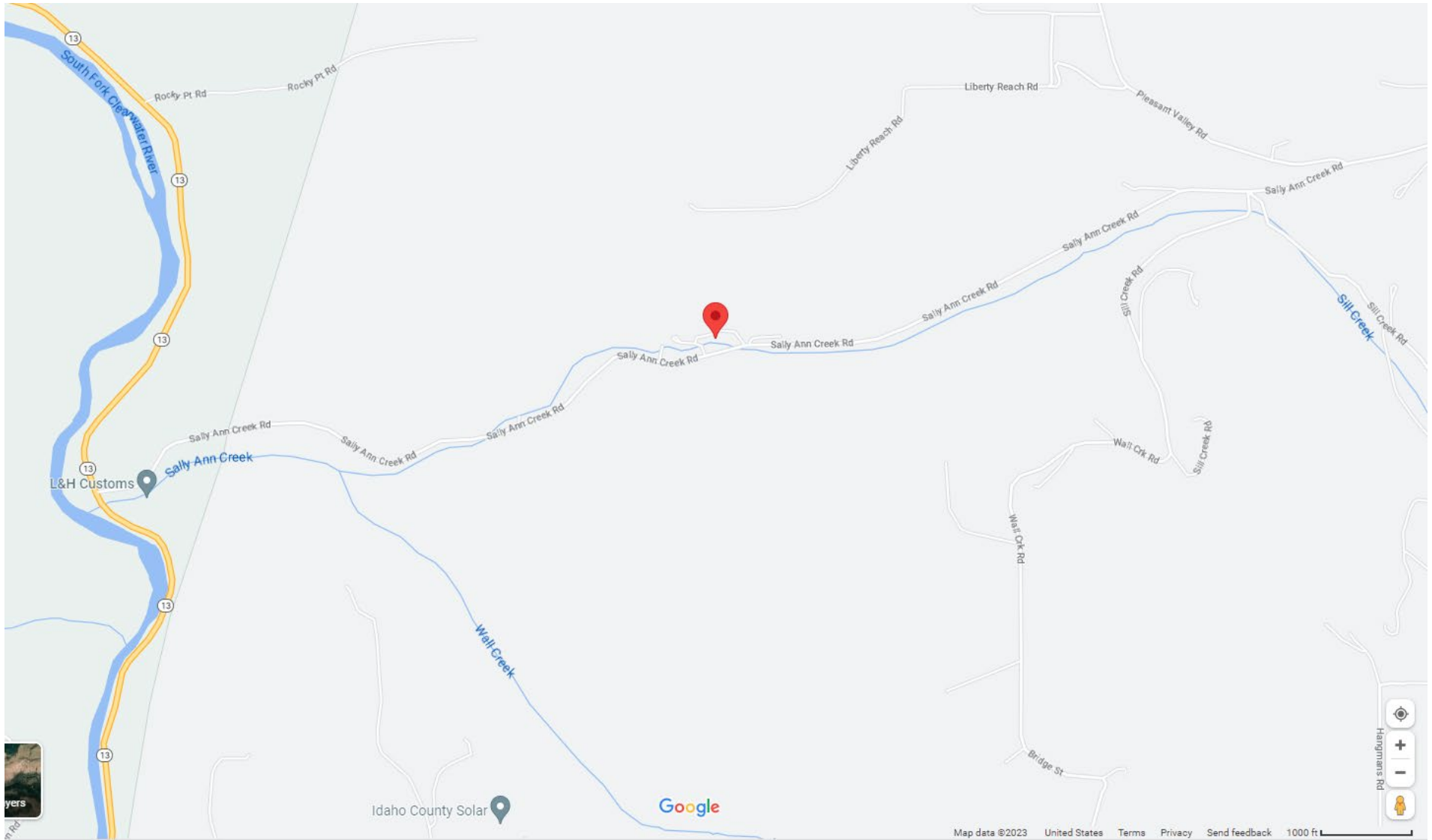


Figure 2. Project site location. 331 Sally Ann Creek Road, Clearwater, Idaho 83552



Figure 3. Option Item: Upstream riparian restoration, approximately 0.5 acre.

#### 4. SCOPE OF SERVICES

4.1 This contract requires data collection, analysis, and synthesis into a report, design, technical specifications, and cost estimate for the replacement of an undersized culvert with the option for the restoration of the aquatic habitat and floodplain immediately adjacent to and upstream of the crossing in compliance with its terms, specifications, and provisions. This includes the furnishing of all labor, equipment, supervision, transportation, operating supplies and incidentals (except those designated as Tribe-furnished).

The data collection and analysis will be used by the TRIBE and project partners in the National Environmental Policy Act (NEPA) process, detail existing condition, and complete the aquatics specialist reports. The required work-product for this contract is a final design including drawings, materials list, technical specifications, Basis of Design Report, and cost estimates.

The overall vision of the design(s) is to be consistent with the restoration goals in the watershed of:

1. Restoring river ecosystem functions and aquatic habitat to increase long-term salmon and steelhead productivity.
2. Restoring river ecosystem functions and aquatic habitats that are resilient to watershed disturbances, including the effects of climate change.

The restoration design, if awarded, should address and improve the following functional and habitat limitations:

1. Lack of complexity (structural and hydraulic), which results in simplified habitat for rearing fish.
2. Lack of soil and substrate stability due to high stream flows, which results in bank erosion and simplified habitat for fish.
3. The limited hyporheic exchange that negatively impacts primary and secondary production.

4.2 The following Scope of Services shall be the basis for Qualification response by Offeror under this RFP. At the discretion of the TRIBE, certain additional services may be assigned to Contractor during the course of the Services. Any combination of the proposed bid items may be awarded based upon funding and the ability to meet the contract deadlines.

Sally Ann Creek Culvert, Private Driveway, (331 Sally Ann Creek Road, Clearwater, Idaho 83552. T 31 N, R 4 E Section 22 SE1/4 NE1/4, 46.014334°N, -115.936543°W)

- Stream simulation and fish passage required.
- Current channel hydrologic data, including peak flows (bankfull, Q2, Q5, Q10, Q25, Q50, and Q100), low flows, and fish migration flows required.
- Minimal hardened materials for natural stream simulation required.
- Summer work window will apply for implementation.
- A modular bridge may be a cost effective alternative dependent upon analyses.
- A Stream Diversion/Erosion Control plan will be required.
- Designs will meet current HIP 4 standards.
- Landowner access agreement will be provided.



### Optional Restoration Bid Item

- Stream simulation and fish passage required.
- Current and new channel hydrologic data, including peak flows (bankfull, Q2, Q5, Q10, Q25, Q50, and Q100), low flows, and fish migration flows required.
- An estimate for the locations, types, and amounts of new instream structures required for the stream, e.g. rock clusters, vortex rocks, or large woody debris placement. The fish habitat improvements should appear as natural as possible but not at the expense of safety or detracting from their function.
- Minimal hardened materials for natural stream simulation required.
- The report and design plans shall include current channel and floodplain shape and geometry; sediment transport capacity; substrate and cobble embeddedness; spawning, rearing, and overwinter habitat for steelhead; width to depth ratios; floodplain width and condition; riparian vegetation composition, condition, and canopy cover; and instream fish habitat including large woody debris and pool structure.
- Quantitatively summarize the ground and surface water interactions throughout project area. With a significant land management history in the area, the substrate is likely very coarse and inverted, possibly lacking fines, leaving behind larger cobble on the surface. If the substrate is indeed very permeable, the potential exists for channels to go subsurface during low-flow periods after construction.
- New channel shape and geometry (cross-sectional, plan, and profile criteria), substrate, width to depth ratios, stream bank slopes, floodplain width, instream habitat, and riparian vegetation composition. Channel shape and geometry for the channel will include the meander pattern, slope of new channel, pool frequency, and cross section geometry. The level of detail will be sufficient to provide supporting evidence that the channel improvements will function as designed, including provisions for bed load transport, bed scouring, bank erosion, and floodplain function if and when applicable. Any existing landforms, vegetation, or stream sections that are to remain in place are to be identified.
- Recommended areas for revegetation plantings shall be included. If topsoil is required for revegetation success, the amount needed and found on-site will be quantified in the report.
- Summer work window will apply for implementation.
- A Stream Diversion/Erosion Control plan will be required.
- Landowner access agreement will be required.

### Specifications:

**Road Design:** The existing roadway alignment shall be maintained with only minor adjustments to accommodate the new stream crossing structures. BMP improvements shall be incorporated to reduce the risk that sediment from road will reach the stream. The projects are not intended to improve speeds or promote additional traffic capacity and thus roadway design shall concentrate on preserving and protecting the facility and improving BMP's. This philosophy is the basis for the "Guidelines for Geometric Design of Very Low-Volume Local Roads" (VLVLR) shall be the design specification for this project. Other design references and specifications are:

- AASHTO's, A Policy on Geometric Design of Highways and Street.
- AASHTO's, Roadside Design Guide.

- Water Quality Best Management Practices.

**Bridge and Other Drainage Structures Design:** Bridges and other drainage structures shall be designed in accordance with AASHTO's LRFD Bridge Design Specifications, latest edition.

**Construction Specifications:** Construction specifications shall meet the most current version of the Idaho Standards for Public Works Construction (ISPWC) Manual. Drawings and specifications shall be in English units.

## **Design Criteria:**

### **Road Design**

- Roadway width: Match pre-flood conditions.
- Generally maintain existing vertical and horizontal alignment.
- Roadway Crown/Inslope: match existing.

### **Drainage Structures Design**

- Design Loadings: Per AASHTO.
- Aquatic Organism Passage and Hydraulics: All structures, bridges, bottomless arches and culverts, shall be designed to pass the 100-year flood event with adequate freeboard for debris passage. Hydraulic analysis shall be completed using a one dimensional, steady flow, water surface profile analysis and as a minimum shall model the  $Q_2$ ,  $Q_{10}$ , and  $Q_{100}$  flow volumes. The analysis shall include a comparison of the natural stream without any impacts of the existing crossing and proposed alternatives for the various flood events. Aquatic organism passage is also required. Stream velocities, depths, bedload transport, and hydraulic energy grade lines at the various flow volumes are of significant importance to maintaining natural stream features necessary for aquatic organism passage. The hydraulic analysis of all proposed alternatives must be comparable/compatible to the natural stream models.
- Structure Economics: Economical cost to the TRIBE shall be considered for all proposed alternatives but must meet the other criteria stated above. Low initial cost plus long-term maintenance shall be considered.
- Designs must be in accordance with HIP 4 guidelines and standards, the Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response: Fish and Wildlife Habitat Improvement Program (HIP 4) in Oregon, Washing and Idaho. The HIP IV can be found at [https://repository.library.noaa.gov/view/noaa/24206/noaa\\_24206\\_DS1.pdf?](https://repository.library.noaa.gov/view/noaa/24206/noaa_24206_DS1.pdf?) or made available upon request.

## **Surveys and Preliminary Design shall include:**

1. The survey and design shall include hydraulic analysis and development of alternatives and preliminary construction quantities and cost estimates for each individual site.
2. The Contractor shall prepare to meet with TRIBE, landowner, and potential project partners representatives to discuss the alternatives, merits, risks, estimated construction costs and issues. Preliminary design alternative drawings shall be presented illustrating roadway, stream and structure geometry and horizontal and vertical alignment, and summary of

- hydraulic analysis. The ultimate objective of the review meeting is to answer all questions and for the TRIBE and landowners to provide direction to the Contractor for final design.
3. After the review meeting, the Contractor shall prepare a memo documenting the meeting discussion and any decisions and direction given to the Contractor for final design.

### **Final Design**

Final design shall include calculations, final drawings, and special project specifications. Final design drawings shall be prepared in AutoCAD Release 2007 or later and utilize the Nez Perce Tribe and Bonneville Power Administration logos. Contractor shall prepare all special project specifications. The specifications shall be prepared in electronic format using Microsoft Word word-processing software. A 15%, 30% and 80% submittal will be required. The 30% and 80% submittal shall require in person or virtual meeting with the 30% being plan in hand.

**Conceptual Project Review (typically 15%):** The Project Sponsor will notify BPA at 15% or project concept stage and provide the opportunity for the BPA EC Lead to coordinate a site visit to review project concepts, goals, and objectives and confirm the direction and planning for subsequent phases of project design. Staff biologists from the NMFS and USFWS shall be invited to the site visit. A typical site visit will include the review of limiting factors and any pertinent studies or reports that document restoration targets for implementation and draft project concepts. Additional data that may be presented and reviewed include other data sources (e.g., high resolution aerial photography, topographic maps, soil maps, GIS/CAD data layers, or other resource data). If and when the site visit occurs, following the BPA EC Lead will collate and provide comments from BPA Technical Lead and interagency partners. Once comments are resolved, the BPA EC Lead will notify the Sponsor to proceed with the next design iteration.

**Initial Review of Plans and BDR (typically 30%):** Preliminary drawings, specifications, a draft Basis of Design Report, and other supporting documentation (profiles, details, cross sections, quantities, technical analyses/appendixes, etc.) for the preferred project alternative will be submitted for review. The 30% design should demonstrate incorporation of technical comments and recommendations from the previous review and shall address the design requirements outlined in Section 2.5 of the HIP 4. A BDR template addressing the HIP requirements is attached as Exhibit 2. In addition to BPA technical and functional reviews, a NMFS Engineering review may be required (see Section 2.6 of the HIP 4). The BPA EC Lead will collate comments from reviewers and interagency partners, and submit them to the Sponsor. The BPA EC Lead will notify the Sponsor to proceed to the 80% design plans once 30% comments are resolved.

**Final Project Review (typically 80%):** The 80% project drawings will be submitted to the BPA EC Lead. Technical, functional, and interagency reviews will take place. The 80% design should demonstrate complete incorporation of technical comments and recommendations developed at the previous design review. The 80% design submittals should include near-final drawings and specifications, including specific site locations, site plans, profiles, cross sections, details, construction quantities, implementation resource plans, and design technical analyses as summarized in a Basis of Design Report. If HIP requirements are not met, additional review



iterations may be necessary. Once the BPA EC Lead and BPA Technical Lead have approved the final design, the BPA EC Lead will proceed with final agency approval and notifications.

The TRIBE and landowner review of the design work at the various submittals shall be for overall conformance with the project scope of work, design criteria, and generally accepted practices of design and drawing preparation. Contractor is responsible for the quality and accuracy of their work.

The Contractor shall provide the following deliverables during this Contract:

- 2 sets of 30% and 80% design package.
- 2 hardcopy and 1 electronic sets of design calculations and hydrologic analysis including BDR Report.
- 2 hardcopy and 1 electronic sets of final construction documents.
- Hardcopy documents are only required for in-person meetings, otherwise electronic is acceptable.
- 1 electronic copy of the (georeferenced/projected) stakeout points adequate for construction staking (.DWG or .GDB)

**Agreements:**

**Landowner Agreements:** The TRIBE will provide a written landowner agreement.

**AWARD STATEMENT**

Award will be made to that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Nez Perce Tribe. The Nez Perce Tribe reserves the right to make cost/technical trade-offs that are in the best interest and to the advantage of the TRIBE. Award of contract is contingent upon funding.

Award may be made without further negotiations. Proposals should be submitted initially on the most favorable terms, from a price and technical standpoint, which the offeror can submit to the Nez Perce Tribe. However, the TRIBE may, after evaluation of proposals, conduct further oral or written discussions as appropriate, with all offerors whose proposals are within a competitive range.

**5. INFORMATION CONCERNING RFP AND PROJECT**

5.1 All correspondence pertaining to this RFP, including submittal of proposals, should be directed to:

Miranda Gordon  
Nez Perce Tribe  
Department of Fisheries Resources Management – Watershed Division  
(208) 621-3547  
Mirandag@nezperce.org

5.2 Offerors are cautioned not to make any assumptions as to the implied meaning or intent of any part of the RFP. Offerors should request clarification or additional information concerning the RFP in writing as soon as possible. ANY CORRECTIONS OR CLARIFICATIONS MADE IN ANY MANNER OTHER THAN BY A WRITTEN ADDENDUM WILL NOT BE BINDING ON TRIBE, AND OFFERORS SHALL NOT RELY THEREON.

5.3 Any prospective Offeror who contends that the terms and conditions of this RFP, the Contract or any aspect of the selection process (1) will encourage favoritism in the award of the Contract for Services; (2) will substantially diminish competition; (3) will violate any other statute, regulation, or law of any kind; or (4) is ambiguous, insufficient, or unfair for any reason, must file a written protest to this RFP. Failure to deliver a written protest to the address provided in “Address Offer To” box in the cover page of this RFP by the time specified in Section 6.1.2 of this RFP will be deemed a waiver of any claim by an Offeror that the selection process violates any of the items (1)-(4) of the foregoing sentence.

5.4 TRIBE reserves the right to (1) reject any or all proposals or (2) cancel the RFP if doing either would be in the best interest as determined by TRIBE.

## **6. SCHEDULE OF EVENTS**

6.1 The following schedule of events shall be followed for this RFP unless otherwise modified By TRIBE:

- 6.1.1 Inquiries for clarification or additional information as described in Section 5.2 must be received by TRIBE no later than 12:30 P.M. on the date specified in the table in Section 6.1.8.
- 6.1.2 Protests of the RFP, the Contract or any aspect of the selection process as set forth in Section 5.3 must be received by TRIBE no later than 12:30 P.M. on the date that is three (3) calendar days before the due date for proposals.
- 6.1.3 Proposals must be received by TRIBE no later than 3:30 P.M. on the date specified in the table in Section 6.1.8 Proposals submitted after this time will be rejected.
- 6.1.4 The Qualification Based Selection (QBS) process defined in Section 10.6 will be used to select the Contractor, if any.
- 6.1.5 A Contractor will be selected, if at all, no later than the date specified in the table in Section 6.1.8. However, Contractors will not be notified until the Nez Perce Tribal Executive Committee approves the decision. This could take up to five weeks from the time of selection. The unsuccessful Offerors will be notified once the final selection has been approved.
- 6.1.6 Any protests of the selection decision must be received no later than 12:30 P.M. on the date that is seven (7) calendar days after the TRIBE issues the selection notice.
- 6.1.7 The TRIBE intends to enter into a Contract with the selected Contractor within 45 calendar days after the due date for proposals, unless TRIBE, in its sole discretion, elects to extend the deadline.
- 6.1.8 Tentative Table of Timelines

The anticipated project schedule is as follows:

- RFP announcement April 3, 2023
- Clarification requests due by May 1, 2022
- Bids due May 8, 2023 at 3:30 P.M.
- Anticipated Notice to Proceed– July 4, 2023
- Prewrite meeting - TBD
- 15% submittal - September 15, 2023, anticipated
- 30% submittal - October 16, 2023, anticipated
- 80% submittal - December 15, 2023, anticipated
- Final submittal - January 15, 2024

## **7. NO REIMBURSEMENT FOR PROPOSAL**

Offerors responding to this RFP do so solely at their own expense. Under no circumstances whatsoever will TRIBE be responsible or reimburse Offerors for any costs incurred in the preparation and presentation of their proposals, negotiation of the Contract and cost proposal by the Offeror, or for any related expenses or consequential damages of any kind.

## **8. CONTENT OF PROPOSALS**

- 8.1 Identify any confidential information that the Offeror contends is exempt from disclosure. TRIBE will endeavor in good faith to honor appropriate requests for exemption from disclosure, but TRIBE reserves exclusive discretion to determine whether information qualifies for a statutory exemption. TRIBE's obligation under this Section 8 shall survive selection of the Contractor.
- 8.2 Identify the Offeror's experience, capabilities, and technical competence. Transportation engineering and fish passage experience are required.
- 8.3 Describe the Offeror's proposed approach (work plan and methodology) for providing the Services, including a description of tasks that will be performed by each member of the project team. The proposal should address how the Offeror would implement the Services.
- 8.4 Identify the Offeror's resources committed to perform the work and the proportion of the time that the Offeror's staff would spend on the project, including time for specialized services, within the applicable time limits.
- 8.5 Provide the Offeror's record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration.
- 8.6 Provide the Offeror's ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses.
- 8.7 Provide the Offeror's availability to the project locale.
- 8.8 Provide the Offeror's familiarity with the project locale.



8.9 Provide the Offeror's proposed project management techniques.

8.10 Include a proposed schedule for performing the Services and identify any constraints that could affect the Offeror's ability to perform the Services promptly and efficiently. The initial schedule expectation is receipt of 15% drawings and final drawings by the dates specified in the table in Section 6.1.8.

8.11 If the Offeror believes there are additional services not identified in this RFP that are necessary for successful completion of the Project, include a description of the additional services recommended by the Offeror, describe how the additional services would benefit TRIBE and Company, and describe the Offeror's ability to provide the additional services.

## **9. CONTRACT**

9.1 The Offeror, if any, selected by TRIBE will be required to enter into a written contract in the form attached as Exhibit 1 to this RFP.

9.2 The proposal should indicate acceptance of the Contract provisions but may – in addition to and not in lieu of TRIBE's Contract – suggest reasonable alternatives that do not substantially impair TRIBE's rights under the Contract. Silence shall be deemed acceptance of the standard form of Contract.

9.3 If inclusion of any of TRIBE's proposed contract provisions will result in higher costs for the services, such costs must be specifically identified in the proposal by the Offeror during cost negotiations and prior to selection of the Offeror as the Contractor.

## **10. EVALUATION OF PROPOSALS**

10.1 Certified Indian Owned Business (CIB): Certified Indian Owned businesses registered with the Nez Perce Tribe will be given preference. Please note if you are a registered CIB with the Nez Perce Tribe.

10.2 Proposals that do not adhere to all terms and conditions of this RFP or that are otherwise non-responsive may, in the sole discretion of TRIBE, be rejected or given a lower rating in the evaluation process.

10.3 TRIBE reserves the right to reject any and all proposals or to waive irregularities or deficiencies in a proposal if TRIBE determines that such waiver is in the best interests of TRIBE.

10.4 If two or more Offerors are equally qualified, and one of the offerors is a CIB, TRIBE will give preference to a Certified Indian Owned Business.

10.5 If TRIBE and the highest ranked Offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to TRIBE, TRIBE shall, either orally or in writing, formally terminate negotiations with the highest ranked Offeror. TRIBE may then negotiate with the next most qualified Offeror. The negotiation process may continue in this

manner through successive Offerors until an agreement is reached or TRIBE terminates the Contractor contracting process.

10.6 Proposal selection will be completed by a review team. The following selection criteria, listed in a descending order of importance, will be used to evaluate the content of the written proposals:

### **EVALUATION FACTORS**

Technical Evaluation Factors: The technical proposals will be evaluated on the basis of the following factors, which are approximately equal in importance:

- Licensed Engineer in State of Idaho.
- Past Performance.
- Proposed Schedule.
- Experience in Similar Work.
- Cost of Project.
- Understanding of the Project Goals.
- Ability to Meet the Contract Deadlines.

10.7 TRIBE retains exclusive discretion and reserves the right to determine:

10.7.1 Whether a proposal is complete and complies with the provisions of this RFP.

10.7.2 Whether an Offeror should be allowed to submit supplemental information.

10.7.3 Whether an Offeror will be interviewed by TRIBE. Occasionally the top three candidates will be interviewed.

10.7.4 Whether irregularities or deficiencies in a proposal should be waived.

10.7.5 Whether to seek clarifications of each proposal or request additional information necessary to permit TRIBE to evaluate, rank, and select the most qualified Offeror.

## **11. SELECTION BY TRIBE**

11.1 The Contract will be awarded to the Offeror who, in TRIBE's judgment, has submitted a proposal that best meets TRIBE's requirements and successfully completes scoping and fee negotiations with TRIBE. Any combination of the proposed sites may be awarded based upon funding and the ability to meet the contract deadlines.

11.2 If there are disagreements with the outcome or questions about the selection process, Offerors must submit protests in writing to TRIBE within seven (7) calendar days after the selection has been made. TRIBE will either uphold or deny the protest, and a written response will be issued for all properly submitted protests within seven (7) business days. If the protest is denied, TRIBE will proceed to award the Contract.

11.3 Final award will be subject to execution of the Contract. Negotiation of the Contract will include the scope of services and fees for services. TRIBE reserves the right to negotiate a final Contract that is in the best interest of TRIBE. If permitted by TRIBE, in its sole discretion, negotiation of the Contract may include one or more of the proposed alternate terms and conditions, if any, in the selected Contractor's proposal. Award of the Contract may be withdrawn if the Contract negotiations are not timely concluded, as determined by TRIBE in its sole discretion.

11.4 If TRIBE and the Offeror initially selected by TRIBE are unable to negotiate a Contract, TRIBE reserves the right to select another Offeror and negotiate a Contract with that Offeror in accordance with this Section 11.

## **12 EXHIBITS**

Exhibits to this RFP include:

1. Contract Form
2. Basis of Design Report Example
3. Photographs and Locator Map
4. BPA Contract Clauses



## **EXHIBIT 1 CONTRACT FORM**

### **Agreement for Contractor Services**

This Contract (“Contract”) is entered into between the Nez Perce Tribe, P.O. Box 365, Lapwai, ID, 83540 (“Tribe”), by and through the Department of Fisheries Resource Management, and [Click here to](#) . (“Contractor”), individually “party” and collectively “parties.”

### **RECITALS**

- A. The Tribe is a federally-recognized Indian tribe with its own government, unique culture, and history.
- B. The Tribe wishes to retain Contractor to provide the following services for the Tribe.
- C. Contractor is qualified to perform the services that are the subject of this Contract.
- D. The foregoing recitals are hereby incorporated into, and made an integral part of, this Contract.

### **TERMS**

#### **SECTION 1: General**

Contractor agrees to perform such professional services as are set forth in this Contract, and the Tribe agrees to pay such amounts as are specified in this Contract, all upon the following terms and conditions.

#### **SECTION 2: Scope of Work/Deliverables**

- 2.1 Contractor agrees to: Provide contract services for the Sally Ann Creek AOP Culvert Design Fish Passage Project. Due to a lack of passage and poor instream habitat conditions, potential habitat for salmonid rearing and spawning is severely limited. Services contemplated are to include a design to restore passage and improve aquatic habitat for all life stages of ESA-listed species in the project area. This project would produce implementation-ready, engineer-approved, regulatory-agency reviewed plans and specification for the Sally Ann Creek crossing replacements.
- 2.2 Contractor agrees to provide the following deliverables (as described in Solicitation, Section 4):

<b>Sally Ann Creek Culvert</b>				
<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Total Price</b>
<b>Sally Ann Culvert Design</b>				
1	Site Review and Investigation	1	Lump Sum	\$
2	Meetings, Coordination, and Project Management	1	Lump Sum	\$
3	15% Design Review	1	Lump Sum	\$
4	30% Design Review	1	Lump Sum	\$
5	80% Design Review	1	Lump Sum	\$
6	Final Designs, Cost Estimate, and Basis of Design Report	1	Lump Sum	\$
<b>Total Price</b>				<b>\$</b>
<b>Option 1 – Upstream Restoration Design</b>				
1	Site Review and Investigation	1	Lump Sum	\$
2	Meetings, Coordination, and Project Management	1	Lump Sum	\$
3	15% Design Review	1	Lump Sum	\$
4	30% Design Review	1	Lump Sum	\$
5	80% Design Review	1	Lump Sum	\$
6	Final Designs, Cost Estimate, and Basis of Design Report	1	Lump Sum	\$
<b>Option Price</b>				<b>\$</b>
<b>TOTAL PRICE</b>				<b>\$</b>

2.3 Contractor shall not vary from the description of work described herein, unless Contractor receives specific, prior written authorization from the TRIBE.

### **SECTION 3: Timetable Term/Termination**

- 3.1 As described in Section 4, the term of this Contract shall begin when both parties sign this Contract and shall end on January 20, 2024. This Contract may be terminated by the TRIBE without cause upon thirty (30) days written notice to Contractor, or sooner if both parties agree.
- 3.2 Either party may terminate this Contract at any time upon a breach by the other. If required, the costs incurred by the TRIBE in hiring a replacement contractor shall be deducted from the Contract amount.
- 3.3 The TRIBE may terminate this Contract without penalty or cost at any time if the work performed by Contractor is determined by the TRIBE, in its sole discretion, to not be reasonably satisfactory. If required, the costs incurred by the TRIBE in hiring a replacement contractor shall be deducted from the Contract amount.
- 3.4 This Contract shall terminate at any time if Tribal funds cease to be available.

- 3.5 If this Contract is terminated pursuant to this Section, the terminating party shall send written notice to the other party. Contractor shall receive payment for the reasonable value of any work completed prior to termination.

#### **SECTION 4: Payment**

At the date of signature of this agreement and attached appendices, the total amount to be paid under this Contract, contingent upon the TRIBE's acceptance of Contractor's work as reasonably satisfactory, shall not exceed [\\$Click here to enter text](#). Payments for the expenses associated with fulfilling of the terms and conditions of this contract will be made within 45 days of receipt of invoices. The contract cost shall be based on a monthly invoice submitted for the work completed. The TRIBE will make payment based upon completion of work by Contractor and acceptance by department representative.

Monthly invoices will be provided upon completion of work to Miranda Gordon, South Fork Clearwater River Project Leader, for approval and submission to TRIBE Finance for payment. Only contractual services completed before the termination of this contract or January 20, 2024, will be paid; work done after January 20, 2024 will not be compensated unless otherwise written approval.

#### **SECTION 5: Personnel**

- 5.1 Independent Contractor. Contractor shall act as an independent contractor in the performance of its duties under this Contract. Contractor shall be responsible for payment of all applicable taxes including federal, state, and local taxes arising from its activities under this Contract. Contractor shall also be responsible for obtaining all necessary federal, state, or local permits in order to perform work under this Contract. The TRIBE assumes no responsibility for damage to property of Contractor or for any injuries to Contractor's employees. Contractor and the TRIBE are not engaged in a joint venture or partnership. Neither party can represent or bind the other.

#### **SECTION 6: Indemnification**

Contractor agrees to indemnify and hold the TRIBE and Tribal staff harmless from and against any and all liability and expense from suits and costs to the extent arising from the negligent acts, errors or omissions or willful misconduct of contractor in the performance of this Agreement. For claims arising from the Contractor's professional services, Contractor's defense obligation under this indemnity paragraph shall include only the reimbursement of reasonable defense costs to the extent of Contractor's actual, proportional indemnity obligation hereunder.

#### **SECTION 7: Officials, Agents, and Employees of the TRIBE Not Personally Liable**

In no event shall any official, officer, employee, or agent of the TRIBE be personally liable or responsible for: any covenant, whether expressed or implied; any statement, representation, or warranty made in connection with this Contract, or any provision thereof; or the performance of this Contract.

## **SECTION 8: Assignment and Delegation/Subcontracting**

Contractor may not assign the rights or delegate the duties described under this Contract, or subcontract any part of the work to be performed pursuant to this Contract, without the TRIBE's prior written authorization. The TRIBE may attach any reasonable conditions or limitations to the employment of any subcontractor.

## **SECTION 9: TERO Compliance**

This contract shall be subject to Title 9 of the Nez Perce Tribal Code, Tribal Employment Rights Act (TERO).

Native American preference related to contracting and subcontracting for this project is required in accordance with the Nez Perce Tribal Code (TRIBEC) Title 9, §§ 9-1-1 through 9-4-5. Bidders shall comply with Title 9 and applicable federal and state laws and guidelines, to give preference to Indians in hiring, promotions, training and all other aspects of employment. For more information, please see the attached document, Frequently Asked Questions about the Nez Perce Tribe's Tribal Employment Rights Office (TERO), or contact the TERO at (208) 843-7363.

## **SECTION 10: Binding Effect**

This Contract is for the benefit only of the parties hereto and shall inure to and bind the parties hereto and their respective heirs, legal representatives, successors, and assigns.

## **SECTION 11: Notice**

Any notice under this Contract shall be in writing and delivered in person or by public or private courier service including: the U.S. Postal Service Express Mail or certified mail, with return receipt requested, or by email. Any notice shall be addressed to the parties at the following addresses or at such other addresses as the parties may, from time-to-time, direct in writing.

### **NEZ PERCE TRIBE:**

*Both Departmental and Tribal Notification are required.*

#### **Departmental Notification to:**

Name: Miranda Gordon  
Title: SF Clearwater River Project Leader  
P.O Box 365  
Lapwai, Idaho 83540  
Phone: 208-621-3547  
Email: [Mirandag@nezperce.org](mailto:Mirandag@nezperce.org)

#### **Tribal Notification to:**

Samuel N. Penney  
Nez Perce Tribal Executive Committee  
P.O. Box 305 Lapwai, ID 83540  
Lapwai, Idaho 83540  
Phone: (208) 843-2253  
Email: [TRIBEEC@nezperce.org](mailto:TRIBEEC@nezperce.org)

## **CONTRACTOR:**

Name:  
Title:  
Address:

Phone:

Email:

Any notice shall be deemed to have been given on the earlier of (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day email delivery is verified. Actual notice, however and from whoever received, shall always be effective.

## **SECTION 12: Forum**

The forum for any dispute concerning this Contract shall be the Nez Perce Tribal Court. This Contract shall be construed in accordance with the contract laws of the TRIBE, as applicable. In the absence of such laws, the laws of the state of Idaho may be used as guidelines by the trier of fact.

## **SECTION 12: Sovereign Immunity**

Nothing in this Contract shall be construed as a waiver or diminishment of the TRIBE's inherent sovereign immunity.

## **SECTION 13: Severability**

If any terms of this Contract are deemed to be illegal, void, or unenforceable, the remainder of the provisions herein shall remain valid and enforceable.

## **SECTION 14: Non-Waiver of Breach**

The delay or failure of the TRIBE to exercise any of its rights under this Contract for a breach by Contractor shall not be deemed to be a waiver of such rights and shall not be deemed to be a waiver of any subsequent breach by Contractor, either of the same provision or otherwise.

## **SECTION 15: Force Majeure**

If Contractor is unable to perform its duties as described herein, in whole or in part, due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Contractor, the parties shall negotiate in good faith to reach an amicable settlement.

## **SECTION 16: Representations**

Contractor represents and warrants that it has the full right and legal authority to enter into and fully perform its duties under this Contract, in accordance with this Contract's terms, without violating the rights of any third party and that it has all governmental licenses, permits, or other authorizations necessary to perform the duties herein described. The individuals executing this Contract on behalf of the TRIBE represent and warrant that they are duly authorized to execute and deliver this Contract on behalf of the TRIBE in accordance with the TRIBE's Revised Constitution and By-Laws adopted by the General Council of the Nez Perce Tribe on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961.



## **SECTION 17: Insurance**

- 17.1 Contractor warrants that workers' compensation insurance is purchased for all agents or employees of Contractor engaged in the performance of work under this Contract and shall provide the TRIBE with a certificate of insurance to verify the same prior to the execution of this Contract. Any changes in the status of such workers' compensation insurance shall be immediately reported to the TRIBE.
- 17.2 Contractor shall obtain and maintain comprehensive general liability insurance in an aggregate amount equal to or exceeding \$1,000,000, which includes the type of work being performed by Contractor and Contractor's employees and agents under this Contract. This requirement may be satisfied by obtaining appropriate endorsement from an umbrella policy provider for the work being performed by Contractor under this Contract. Contractor shall provide the TRIBE with proof of such coverage prior to the execution of this Contract. Any changes in the status of such comprehensive general liability insurance shall be immediately reported to the TRIBE.

## **SECTION 18: Warranties**

Contractor shall perform work in a professional, thorough, and skillful manner consistent with its profession's standards in the Pacific Northwest region. Contractor warrants that all of Contractor's employees or agents are properly certified to perform the work described herein and that Contractor and its employees or agents shall comply with all applicable laws, licenses, and other requirements without cost to the TRIBE. The TRIBE shall notify Contractor of any violation of this warranty within one (1) year of completion of work under this Contract. Otherwise, such warranty expires. All representations and warranties are to be interpreted expansively to afford the broadest protection available to the TRIBE.

## **SECTION 19: Proprietary Rights and Confidentiality**

- 19.1 All material produced as a result of this Contract is the property of the TRIBE for the sole beneficial use of the TRIBE and shall not be reproduced without written permission from the TRIBE.
- 19.2 Contractor shall not disclose to any third party, or use for any purposes other than the performance of its duties under this Contract, any document or information designated by the TRIBE, orally or in writing, as "confidential" or "proprietary," without express, prior written authorization from the TRIBE. The receiving party shall treat the TRIBE's confidential or proprietary documents and information as it would treat its own confidential or proprietary documents or information, and, in no event, shall it use less than a reasonable degree of care.

## **SECTION 20: Entire Agreement/Amendment**

This Contract constitutes the entire understanding between the parties with respect to the subject matter herein and shall not be amended except by agreement signed by the parties' authorized representatives. If an amendment results in an increase or decrease in the cost of, or the time required for, the

performance of any part of the work under the Contract, a mutually satisfactory adjustment shall be made, in writing, in the payment or delivery schedule.

IN WITNESS WHEREOF, the parties agree to the provisions set forth herein as evidenced by the signatures of their authorized representatives below:

**NEZ PERCE TRIBE:**

_____	_____
Samuel N. Penney, Chairman	Date
Nez Perce Tribal Executive Committee	

_____	_____
Shirley J. Allman, Secretary	Date
Nez Perce Tribal Executive Committee	

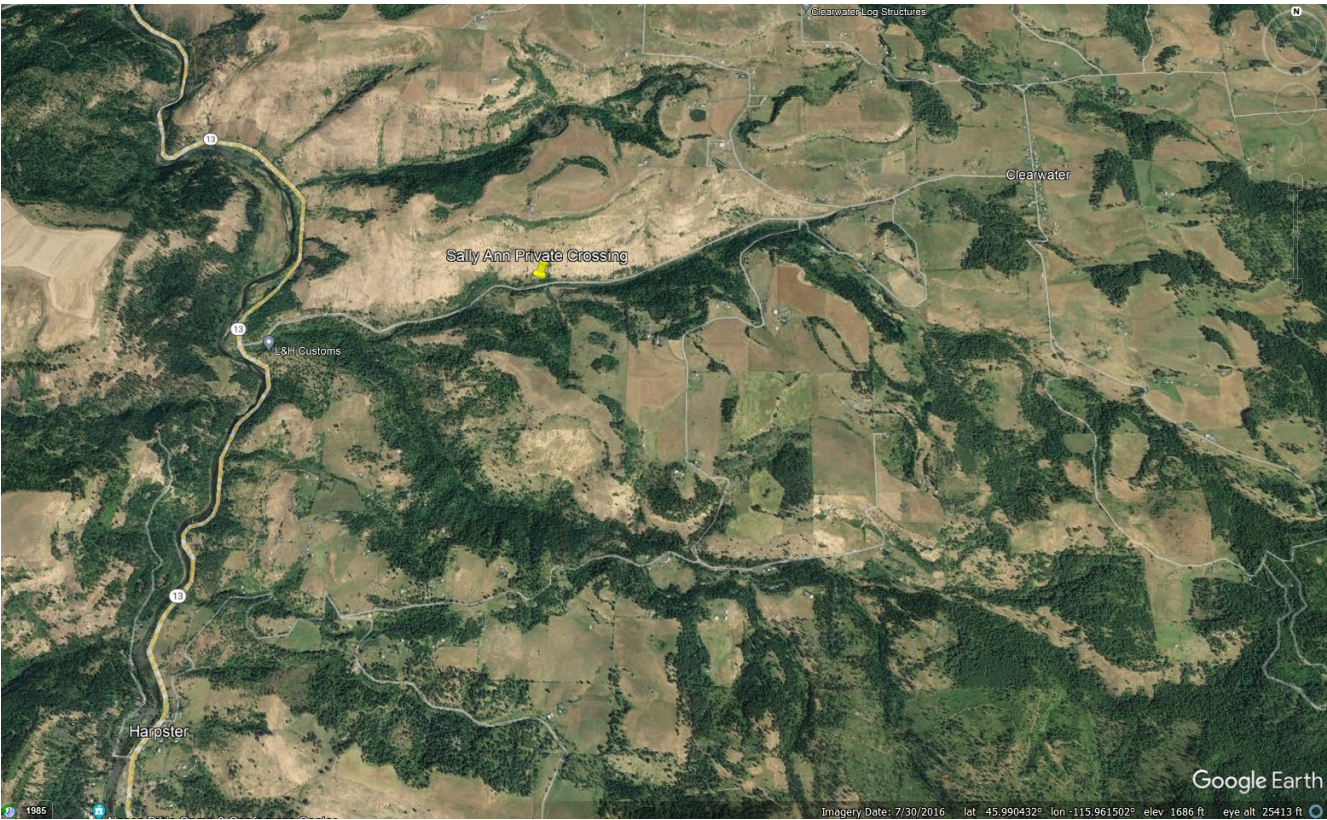
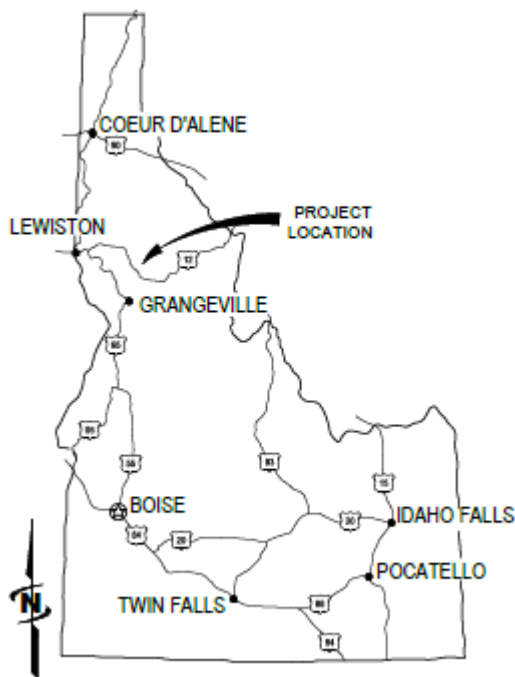
**CONTRACTOR:**

_____	_____
<b>Company:</b>	Date
Name:	
Title:	

**EXHIBIT 2**  
**BASIS OF DESIGN REPORT TEMPLATE**

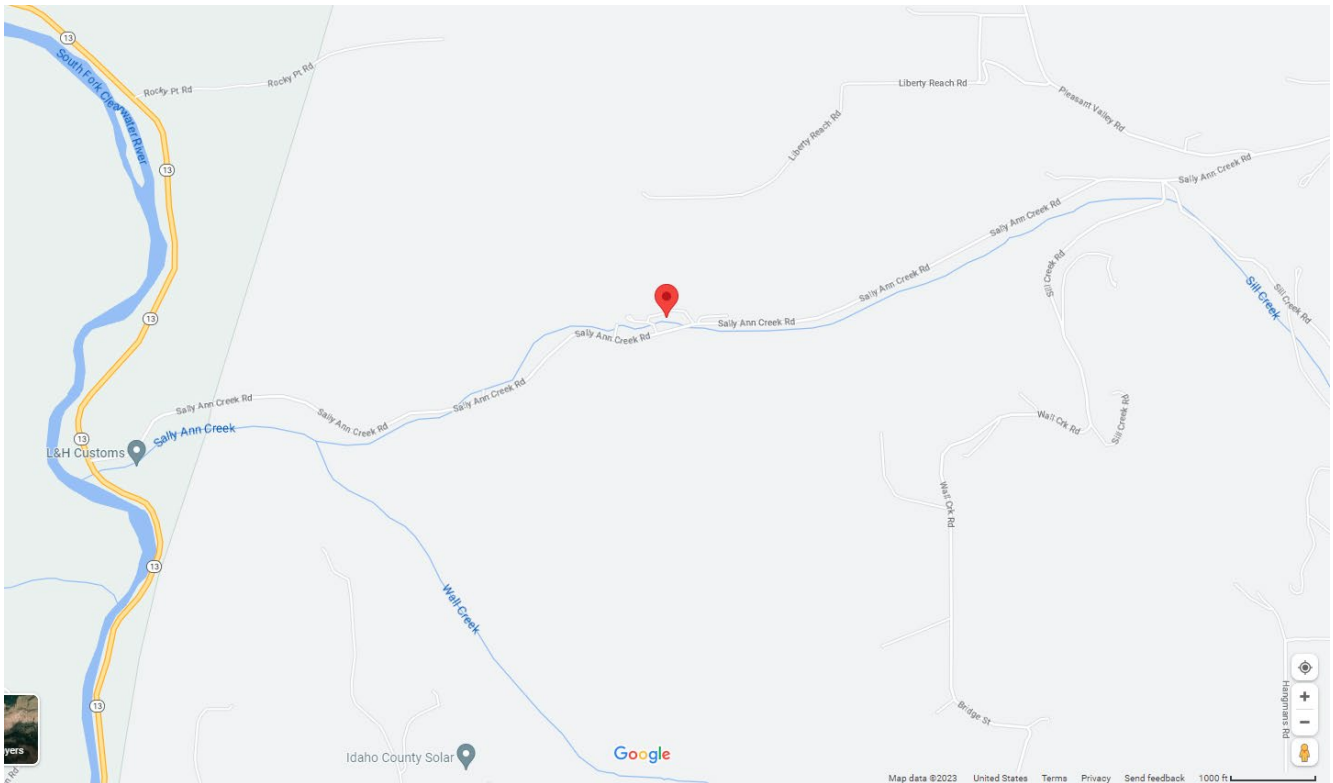
**See attached document**

**EXHIBIT 3. LOCATIONS AND PHOTOS OF EXISTING CONDITIONS**



Project Location Map. 331 Sally Ann Creek Road, Clearwater, Idaho 83552





Project Location Map. 331 Sally Ann Creek Road, Clearwater, Idaho 83552



Option Item: Upstream riparian restoration, approximately 0.5 acre.





Undersized culvert inlet. The 5.5 ft x 32 ft culvert becomes completely inundated at high flows and tops the driveway in the photo.



The culvert is undersized and the high flows overtop the driveway, rapidly eroding the streambank, the driveway surface, and the road fill.



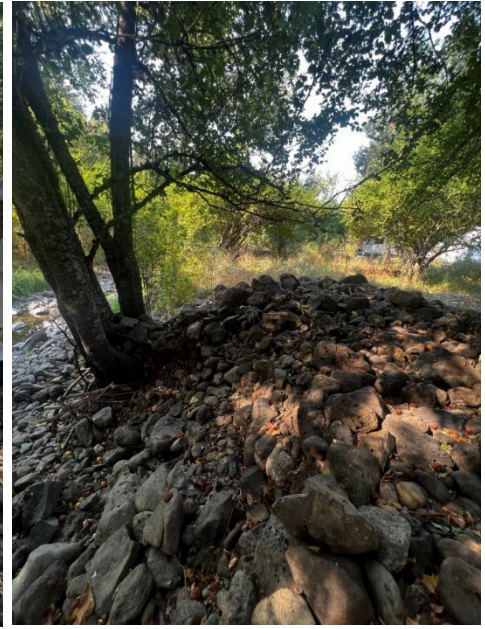


The high velocities at the outlet have created some scour and erosion. The road fill has eroded and the riprap to armor the fill and bank has washed downstream.



Upstream of the crossing, Sally Ann Creek has become channelized and is eroding the streambank, encroaching on the county road.





Immediately upstream of the inlet, high flow events deposit large amounts of material. The culvert has reduced the sediment transport capacity of the stream.

## **EXHIBIT 4. Bonneville Power Administration Clauses**

### **Bonneville Power Administration Applicable Contract Clauses**

This project is being funded partially through BPA funds secured by the Nez Perce Tribe. The TRIBE is required by the BPA to apply the following contract clauses to all Tribal contracts / subcontracts. The word Government and TRIBE shall be used interchangeably. The “Contractor” in these clauses refers to the Nez Perce Tribe. These clauses are incorporated into this solicitation/contract and must be complied with by the awarded construction firm.

#### **EMPLOYMENT ELIGIBILITY VERIFICATION (10-18) (OCT 14) (BPI 10.1.8.3)**

(a) “Employee assigned to the contract,” as used in this clause, means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause as prescribed by 10.7.3. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract. (b) E-Verify enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at the time of the contract award, the

Contractor shall:

(A) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(B) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (a) (3) of this section); and

(C) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (a)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(A) All new employees.

(i) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (a)(3) of this section); or

(ii) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph)(3) of this section); or

(B) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (4) of this section).

(3) If the Contractor is an institution of higher education; a state or local government, or the government of a federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a federal agency pursuant to a performance bond, the Contractor may choose to verify only employees

assigned to the contract. The Contractor shall follow the applicable verification requirements at (a)(1) or (a)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(A) Enrollment in the E-Verify program; or

(B) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(A) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a Department of Energy suspension or debarment official.

(B) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

- (1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
- (2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
- (3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for:

(A) Services other than commercial services that are part of the purchase of a commercial-off-the-shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item; (B) Construction.

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

#### SUBCONTRACTING WITH DEBARRED OR SUSPENDED ENTITIES (11-7) (JUL 13) (BPI 11.8.1; BPI 25.1.1)

(a) “Commercially available off-the-shelf (COTS) item,” as used in this clause means any item of supply (including construction material) that is:

(1) A commercial item (as defined in BPI 1.8);

(2) Sold in substantial quantities in the commercial marketplace; and

(3) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

(b) The Government suspends or debar Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended by the Federal Government.



(d) The Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended (see [www.sam.gov](http://www.sam.gov)).

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that exceed \$30,000 in value and is not a subcontract for commercially available off-the-shelf items

#### CONTRACTOR SAFETY AND HEALTH (15-12) (APR 14) (BPI 15.2.4.1)

a) The Contractor shall furnish a place of employment that is free from recognized hazards that cause or have the potential to cause death or serious physical harm to employees; and shall comply with occupational safety and health standards promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91-598). Contractor employees shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to their own actions and conduct.

(1) All construction contractors working on contracts in excess of \$100,000 shall comply with Department of Labor Contract Work Hours and Safety Standards (40 U.S.C. § 3701 et seq.). (2) The Contractor shall comply with

- (i) National Fire Protection Association (NFPA) National Fire Codes for fire prevention and protection applicable to the work or facility being occupied or constructed;
- (ii) NFPA 70E, Standard for Electrical Safety in the Workplace;
- (iii) American Conference of Governmental Industrial Hygiene Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices; and,
- (iv) Any additional safety and health measures identified by the Contracting Officer.

This clause does not relieve the Contractor from complying with any additional specific or corporate safety and health requirements that it determines to be necessary to protect the safety and health of employees.

(b) The Contractor bears sole responsibility for ensuring that all contractor's workers performing contract work possess the necessary knowledge and skills to perform the work correctly and safely. The Contractor shall make any training and certification records necessary to demonstrate compliance with this requirement available for review upon request by BPA.

(c) The Contractor shall hold BPA and any other owners of the site of work harmless from any and all suits, actions, and claims for injuries to or death of persons arising from any act or omission of the Contractor, its subcontractors, or any employee of the Contractor or subcontractors, in any way related to the work under this contract.

(d) The Contractor shall immediately notify the Contracting Officer (CO), the Contracting Officer's Technical Representative (COTR), and the Safety Office by telephone at (360) 418-2397 of any death, injury, occupational disease or near miss arising from or incident to performance of work under this contract.

(1) The BPA Safety Office business hours are 7:00 AM to 4:00 PM Pacific Time. If the Safety Office Officials are not available to take the phone call the contractor shall leave a voicemail that includes the details of the event, and the Contractor's contact information. The Contractor shall periodically repeat the phone call to the Safety Office until the Contractor is able to speak directly with a BPA Safety Official.

(2) The Contractor shall follow up each phone call notification with an email to [SafetyNotification@BPA.gov](mailto:SafetyNotification@BPA.gov) immediately for any fatality or within 24 hours for non-fatal events.

(3) The Contractor shall complete BPA form 6410.15e Contractor's Report of Personal Injury, Illness, or Property Damage Accident and submit the form to the CO, COTR, and Safety Office within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.

(4) In the case of a Near Miss Incident that does not involve injury, illness, or property damage, the Contractor

shall complete BPA Form 6410.18e Contractor's Report of Incident/Near Miss and submit the form to the CO, COTR, and Safety Office within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.

(e) Notification of Imminent Danger and Workers Right to Decline Work

(1) All workers, including contractors and BPA employees, are responsible for identifying and notifying other workers in the affected area of imminent danger at the site of work. Imminent danger is any condition or practice that poses a danger that could reasonably be expected to cause death or severe physical hardship before the imminence of such danger could be eliminated through normal procedures.

(2) A contract worker has the right to ask, without reprisal, their onsite management and other workers to review safe work procedures and consider other alternatives before proceeding with a work procedure. Reprisal means any action taken against an employee in response to, or in revenge for, the employee having raised, in good faith, reasonable concerns about a safety and health aspect of the work required by the contract.

(3) A contract worker has the right to decline to perform tasks, without reprisal, that will endanger the safety and health of themselves or of other workers.

(4) The Contractor shall establish procedures that allow workers to cease or decline work that may threaten the safety and health of the worker or other workers.

(f) BPA encourages all contractor workers to raise safety and health concerns as a way to identify and control safety hazards. The Contractor shall develop and communicate a formal procedure for submittal, resolution, and communication of resolution and corrective action to the worker submitting the concern. The procedure shall 1.) encourage workers to identify safety and health concerns directly to their supervisor and employer using the employer's reporting process; and 2.) inform workers that they may raise safety concerns to BPA or the State OSHA. Workers may notify the Safety Office at (360) 418-2397 if the employer's work process does not resolve the worker's safety and health concern. BPA may coordinate the response to a contractor worker's health and safety concerns with the State OSHA when necessary to facilitate resolution.

(g) BPA employees may direct the contractor to stop a work activity due to safety and health concerns. The BPA employee shall notify the Contractor orally with written confirmation, and request immediate initiation of corrective action. After receipt of the notice the Contractor shall immediately take corrective action to eliminate or mitigate the safety and health concern. When a BPA employee stops a

work activity due to a safety and health concern the Contractor shall immediately notify the CO, provide a description of the event, and identify the BPA employee that halted the work activity. The Contractor shall not resume the stopped work activity until authorization to resume work is issued by a BPA Safety Official. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule when BPA stops a work activity due to safety and health concerns that occurred under the Contractor's control.

(h) The Contractor shall keep a record of total monthly labor hours worked at the site of work. The Contractor shall include a separate calculation of the monthly total labor hours for each subcontractor in the contractor's monthly data. Upon request by the CO, COTR or BPA Safety Office, the Contractor shall provide the total labor hours for a completed month to BPA no later than the 15th calendar day of the following month. The requestor shall identify the required reporting format and procedures.

(i) The Contractor shall include this clause, including paragraph (i) in subcontracts. The Contractor may make appropriate changes in the designation of the parties to reflect the prime contractor--subcontractor arrangement. The Contractor is responsible for enforcing subcontractor compliance with this clause.