CONTRACT BETWEEN

NEZ PERCE TRIBE AND

(<CONTACTOR>)

For the

Big Elk Creek Culvert Replacement Project

This Contract ("Contract") is entered into between the Nez Perce Tribe, P.O. Box 305, Lapwai, ID, 83540 ("Tribe"), by and through Nez Perce Tribe, and <CONTACTOR> ("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 a Contractor to provide the following services for the Tribe. All items and terms listed in this contract and associated bid documents as provided by the Nez Perce 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 contracted services as described in the RFP for the Big Elk Creek Culvert Replacement project.

**2.2** Contractor agrees to provide the following deliverables (as described in the RFP, Section 3.0 and as described in the Supplemental Specifications):

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| ***ITEM NO.*** | ***DESCRIPTION*** | ***UNIT*** | ***QUANTITY*** | ***PRICE*** | ***AMOUNT*** |
| 15101 | Mobilization | Lump Sum | ALL |   |   |
| 15221 | Construction Survey and Staking | Lump Sum | ALL |   |   |
| 15601 | Construction Detour (Includes Detour Structure) | Lump Sum | ALL |   |   |
| 15713 | Soil Erosion and Pollution Control | Lump Sum | ALL |   |   |
| 20301 | Removal of Existing Corrugated Metal Culverts | Lump Sum | ALL |   |   |
| 20806 | Structure Excavation & Backfill | Lump Sum | ALL |   |   |
| 25101 | Placed Riprap, Class 4 | Cubic Yard | 133 |   |   |
| 27250 | Geocell Abutment Stabilization, 6 Inch Depth | Square Yard | 115 |   |   |
| 30207 | Aggregate Surface Course, 1"- Minus, Compaction Method 1 | Cubic Yard | 92 |   |   |
| 40301 | Hot Asphalt Concrete Pavement, Grading C, PG 58-28 | Ton | 97 |   |   |
| 553A01 | Precast Concrete Member, Stemwall w/Footings | Lump Sum | ALL |   |   |
| 60304 | Steel Structural Plate Arch, 20'-0" Span, 6'-4" Rise, 0.140" Thickness | Linear Foot | 60 |   |   |
| 62201a | Hydraulic Excavator with Thumb | Hour | 4 |   |   |
| 62201b | Large Dump Truck | Hour | 4 |   |   |
| 62501 | Seeding, Dry Method | Lump Sum | ALL |   |   |
| 62601 | Stream Bank Revegetation | Square Yard | 18 |   |   |
| 64808 | Channel Excavation and Embankment | Linear Foot | 10 |   |   |
| 64809 | Fish Rest Stop Rock | Each | 10 |   |   |
|   | **TOTAL** |   |   |  |
| **TERO Fee 3.5%** |   |  |
| **Project Total** |   |   |  |

**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**

Following the signing of this Contract by both parties, the Contractor shall perform the duties described in Section 2 by no later than **October 15, 2025.**

**SECTION 4**: **Term/Termination/Suspension of Work**

**4.1** As described in Section 3, the term of this Contract shall begin when both parties sign this Contract and shall end on **October 15, 2025.** This Contract may be terminated by the Tribe without cause upon thirty (30) days written notice to Contractor, or sooner if both parties agree.

**4.2** 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.

**4.3**  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 or not completed on time. If required, the costs incurred by the Tribe in hiring a replacement contractor shall be deducted from the Contract amount.

**4.4** This Contract shall terminate at any time if Tribal funds cease to be available.

**4.5** 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.

 **4.6** No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

 **4.7** A claim under this clause shall not be allowed:

 **4.7.1** For any costs incurred more than 20 days before the Contractor shall have notified the Project Manager in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

 **4.7.2** Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

**SECTION 5: Payment**

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 **$ (Fixed Price).** This amount shall be paid as follows: **Invoices are to be submitted to:**

Jenifer Harris, Project Manager

416 West Main, St 2

Grangeville, ID 83530

jeniferh@nezperce.org

for review, approval and payment.

This project has federal funding sources and is subject to the Davis-Bacon Wage Act. All employees of the prime contractor or subcontractor(s) shall be paid wages as per Davis-Bacon Act. It is the responsibility of the contractor to determine applicable wage determinations

(<https://www.dol.gov/agencies/whd/government-contracts/construction>).

**5.1 Idaho Worker’s Compensation Law.** Prior to award of any contract subject to Idaho Workers' Compensation Laws, the Contractor must provide a completed State of Idaho Certificate of Verification of Workers’ Compensation Insurance form to the Tribe. This form will be submitted to the Idaho Industrial Commission by the Tribe in order to assure that the Contractor in line for award has the required worker’s compensation coverage or is exempt from the requirement for coverage.

A copy of the State of Idaho Certificate of Verification of Workers' Compensation Insurance form has been provided for use (as an attachment) and shall be completed and submitted as part of the offer.

This certificate of verification shall be fully executed by the Contractor and signed by the Industrial Commission Compliance Officer prior to issuance of the Notice to Proceed.

5.2 Wage Rate Requirements (Construction). Wage Rate Requirements statute regulates the pay of minimum wages and benefits to employees working under this contract. The Wage Rate Determination is provided in an Exhibit.

**SECTION 6**: **Personnel**

**6.1** **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.

**6.2** **TERO Compliance**. Contractor shall comply with all regulations and policies of the Tribal Employment Rights Office ("TERO") Title 9: Indian Preference in Employment and Contracting, including executing a Compliance Agreement prior to initiating work under this Contract. Contact the TERO at (208) 843-7363 for further information.

 **6.3** **Project Manager**. The Project Manager (PM) is designated by the Tribe, to provide on-the-ground administration for the Tribe. The PM will be designated in writing and a copy of the designation will be furnished to the Contractor before or at the prework conference. **The Contractor is cautioned to read the PM designation because certain authority under the contract is reserved solely for the PM.** The term "Project Manager" as used throughout the Specifications, shall be interpreted to include the Project Manager’s designated representative(s) acting within the limits of their delegation of authority.

 **6.4 Inspectors**. The Tribe will designate inspectors from the Tribe and the Forest Service, in writing. The Contractor is cautioned to read the Inspector designation because certain authority under the contract is reserved solely for the PM.

**SECTION 7: Indemnification**

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Tribe and the Tribe's officers, guests, agents, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, or resulting from, the performance of this Contract, provided that any such claim, damage, loss, or expense is not caused

in whole or in part by any negligent act or omission of the Tribe, anyone directly employed by the

Tribe, or anyone for whom the Tribe may be liable.

**SECTION 8: 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 9: 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 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: Tribal Notification to:**

Name: Jenifer Harris

Title: Project Manager

Address: 416 West Main, Ste 2

Phone: 208-983-1290

Email: jeniferh@nezperce.org

Nez Perce Tribal Executive Committee

P.O. Box 305

Lapwai, 10 83540

Phone: (208) 843-2253

Email: NPTEC@nezperce.org

 **Contractor Notification to:**

 Name:

 Company:

 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 whomever 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 13**: **Sovereign Immunity**

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

**SECTION 14:** **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 15**: **Nonwaiver 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 16:** **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 17**: **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 18**: **Insurance**

**18.1** 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.

**18.2** 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 19**: **Bonding**

*Definition*. "Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

*Amount of required bonds*. Unless the resulting contract price is $150,000 or less, the successful offeror shall furnish performance and payment bonds to the Project Manager as follows:

**19.1 Performance bonds.** The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

**19.2 Payment Bonds.** The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

**19.3 Additional bond protection.**  The Tribe may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

**19.4 Furnishing executed bonds.** The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified by the Contracting Officer, but in any event, before starting work.

**19.5 Surety or other security for bonds.** The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

 U.S. Department of Treasury

 Financial Management Service

 Surety Bond Branch

 3700 East West Highway, Room 6F01

 Hyattsville, MD 20782

 Or via the internet at [*http://www.fms.treas.gov/e570/*](http://www.fms.treas.gov/e570/)

**19.6 Notice of subcontractor waiver of protection**. Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

**SECTION 20:** **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 21:** **Inspection**

Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Tribe. All work shall be conducted under the general direction of the Project Manager and is subject to Forest Service inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

Tribe inspections and tests are for the sole benefit of the Tribe and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Tribe after acceptance of the completed work under this contract.

The presence or absence of a Tribal or Forest Service inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Project Manager’s written authorization.

The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by

the Project Manager. The Tribe may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Tribe shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract. The Tribe has the sole discretion to accept or reject the work performed.

The Contractor shall, without charge, replace or correct work found by the Tribe not to conform to contract requirements, unless in the public interest the Tribe consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

If the Contractor does not promptly replace or correct rejected work, the Tribe may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

If, before acceptance of the entire work, the Tribe decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements by the Project Manager, the Tribe shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

Unless otherwise specified in the contract, the Tribe shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Project Manager determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Tribe's rights under any warranty or guarantee.

**SECTION 22:** **Proprietary Rights and Confidentiality**

**22.1** 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.

**22.2** 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 23:** **Entire Agreement/Amendment**

This Contract (including the RFP and response) constitutes the entire understanding between the parties with respect to the subject matter here in 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**:

**Shannon F. Wheeler, Chairman Date**

**Nez Perce Tribal Executive Committee**

**Rachel P. Edwards, Secretary Date**

**Nez Perce Tribal Executive Committee**

**CONTRACTOR:**

**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**