

OFFER FORM	1. SOLICITATION NO. Wallowa	2. TYPE OF SOLICITATION SEALED BID	3. DATE ISSUED 10/22/2025	PAGE OF PAGES 1 of 25 pages
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IMPORTANT - The “offer” section on the next page must be fully completed by offeror.

4. MAIL OFFER TO		5. ADDRESS OFFER TO
Nez Perce Tribe Department of Fisheries Resources Management Watershed Division PO Box 909 Joseph, OR 97846		Delivered to: Watershed Division Attn: Katie Frenyea 500 North Main Street Joseph, OR, 97846

6. FOR INFORMATION CALL:	A. NAME Katie Frenyea	B. TELEPHONE NO. (Include area code) (541) 432-2506
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SOLICITATION

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

7. THE NEZ PERCE TRIBE REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (*Title, identifying no., date*):

Design of the Wallowa River/Wilson and Dorrance Fish Passage Project



**Nez Perce Tribe, DFRM Watershed Division
Wallowa County, OR**



FAXED OFFERS WILL NOT BE ACCEPTED.

ALL OFFERS MUST BE DELIVERED IN PERSON OR VIA CERTIFIED MAIL. EMAIL SUBMISSIONS WILL BE ACCEPTED, HOWEVER, IF AN EMAIL FAILS TO SEND, THE BIDDER MUST HAVE A HARD COPY SUBMITTED TO BE CONSIDERED FOR THE BID AWARD. BIDS MUST BE RECEIVED BY 4:00 P.M. November 17, 2025.

BID OPENING: Bid Opening at the NPT Joseph Field Office, 4:00 P.M. November 17, 2025.

8. The Contract time shall begin upon receipt of notice to proceed, and the work shall be completed no later than June 1, 2029. This performance period is mandatory.

9. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 1 copy to perform the work required are due at the place specified in Item 4 by **4:00 P.M. local time November 17, 2025**. Sealed envelopes containing offers shall be marked to show the offeror’s name and address. If hand delivering RFP, 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

Item	Description	Quantity	Unit	Total Price
1	Site Review and Investigation	1	Lump Sum	\$
2	Meetings, Coordination, and Project Management	1	Lump Sum	\$
3	Design Engineering and Basis of Design Report	1	Lump Sum	\$
4	Environmental Permitting	1	Lump Sum	\$
5	Prepare Bidding and Contract Documents	1	Lump Sum	\$
6	Quality Assessment and Control Plan	1	Lump Sum	\$
7	Construction Oversight	1	Lump Sum	\$
8	Construction Stakeout	1	Lump Sum	\$
9	As-built Documentation	1	Lump Sum	\$
		Total Price		\$

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 6.1.10 for project schedule.

2. PURPOSE OF RFP

The Nez Perce Tribe Fisheries Watershed Division (NPT), with a satellite office located in Joseph, Wallowa County, Oregon is soliciting proposals from selected qualified engineering firms ("Offerors") to provide contract services ("Services") for the Wallowa River Wilson and Dorrance Diversions Fish Passage Designs. Services include design, specification, environmental permitting, project stakeout, construction oversight, and bid support to replace the current structures at two separate irrigation diversions on the Wallowa River east of Joseph, OR. Both diversions are identified by ODFW Priority Fish Passage Barrier List (2019) and the Oregon Fish Passage Barrier Data Standard dataset (2020) as priority partial fish passage barriers impacting passage for various life-stages of ESA listed salmon and trout. This project would produce implementation-ready, engineer-stamped, regulatory-agency reviewed plans and specification in accordance with State and Federal fish passage criteria to pass Chinook and Sockeye Salmon, Pacific Lamprey, Bull trout, and steelhead, as well as all environmental compliance for the Wilson and Dorrance diversion fishway replacements.

The Offeror, if any, who is selected through the Qualification Based Selection process (the “Contractor”) shall sign a contract with NPT in the form set forth as Exhibit 1 to this RFP (the “Contract”).

3. BACKGROUND

The Dorrance diversion is located at RM 40.6 (45.374675°, -117.248656°) and the Wilson diversion is located at approximate RM 42.4 (45.353044°, -117.236800°) on the Wallowa River, Wallowa County, Oregon – approximately 2 miles NW and 0.4 miles SW of the town of Joseph, respectively. These diversions are two of eight irrigation diversions planned for restoration on the Wallowa River leading up to the Wallowa Lake Dam.

In the Wallowa County Atlas Restoration Prioritization plan the Wallowa River is identified by the local implementation team and regional experts as Tier 1 High Priority for restoration. The Wallowa Atlas plan cites anthropogenic barriers and water quantity among the primary limiting factors to population productivity, abundance, and distribution for all existing listed species. The Grande Ronde Subbasin Plan (Nowak 2004) indicates that restoration of the upper Wallowa, lower Lostine and mid-Wallowa geographic areas has the greatest potential to increase abundance and productivity of the Wallowa-Lostine Spring Chinook Salmon population.

This project seeks to restore passage through the removal of the existing Dorrance and Wilson diversion structures and creation of roughened channel diversions to allow unimpeded upstream migration for anadromous and native fish while maintaining legal irrigation withdrawals for associated landowners. The roughened channel concept would also benefit the instream habitat immediately upstream and downstream of the project area.

4. SCOPE OF SERVICES

4.1 The following Scope of Services shall be the basis for Qualification response by Offeror under this RFP. At the discretion of the NPT certain additional services may be assigned to Contractor during the course of the Services.

4.1.1 Site Review and Investigation:

Contractor responsibilities will include but not be limited to:

- Kickoff Meeting/Site Visits
- Review and understand site histories and project constraints
- Obtain necessary surveys and conduct data breakdown and review
- Determine environmental compliance needs
- Landowner/Agency Coordination

4.1.2 Meetings, Coordination, and Project Management:

Contractor shall meet and/or coordinate with NPT and resource agency contacts as required during the course of the work. Contractor shall be responsible for all project management and coordination necessary to complete the Services and

shall assign professional staff time to this aspect of the Services. Services under this Scope item shall include but not be limited to:

- Communications (written, verbal, and email)
- Meeting coordination, notes, and attendance
- Design development progress review meetings
- Contractor staff or sub-Contractor staff assignments and coordination
- Regular invoicing as required by the funding agent

4.1.3 Design Engineering:

Contractor responsibilities will include but not be limited to:

- Hydrology Analysis
- Hydraulic Analysis/HECRAS Modeling
- Prepare Preliminary Designs (15%)
- Prepare Draft Design Drawings and Draft Basis of Design Reports (BDR) at 30%
- Prepare Draft Design Drawings and Updated BDRs at 80%
- Prepare Draft 100% Design Drawings and Technical Specifications
- Prepare Cost Estimates
- Prepare Final Drawings and Technical Specifications

4.1.4 Environmental Permitting:

Contractor responsibilities will include but not be limited to:

- Gathering Data
- Analyzing Impacts
- Fill/Removal Quantities
- Preparation and submittal of State, Federal, and County environmental permits (Joint Permit Application)
- Execute appropriate ESA environmental compliance if needed (BPA's HIP IV assumed)
- Agency and Landowner Coordination

4.1.5 Prepare Bidding and Contract Documents

Contractor shall provide bidding and contract documents that meet the requirements of the Nez Perce Tribe's Office of Legal Counsel, Finance

Department, Grant's and Agreements Office, TERO, and that can be approved by the Nez Perce Tribal Executive Committee. Contractor will be advised by NPT personnel in the drafting of these documents.

4.1.6 Quality Assessment and Quality Control

Contractor shall provide a quality assessment and quality control program for its work and shall adhere to that program through the course of the work. Matters such as survey data acquisition and datum control, internal and external design review protocol, and other related QA/QC shall be included in the program.

4.1.7 Construction Oversight

This task assumes that the engineer of record, or approved representative, will be onsite between both diversions for a total of 15 days, comprising one trip per week for a 5-week construction period from July 15 to Aug 15. Contractor will be available during construction for up to 8 hours to answer questions by phone or email.

Assumptions:

- Observation trips will occur each week of construction and will include a minimum of 3 full days on site (between both diversions), plus travel.

Deliverables:

- Daily Observation Reports

4.1.8 Construction Stakeout

Contractor will install a network of vertical control points in the project area to be utilized during construction. Contractor will provide pre-construction staking and layout of project elements including constructed channels, extents of fill footprints, and locations of any other proposed features.

Assumptions:

- Contractor will not utilize machine control

Deliverables:

- Pre-construction stakeout points, in CSV format.
- Vertical control points, in CSV format.

4.1.9 As-Built Documentation

As-built drawings shall be prepared of the completed projects (both diversions) by documenting post restoration actions on the contract drawings. Substantial departures in design layout, locations, elevations, and details will be recorded on the drawings and supplemented with photographs. Preferably, drone aerial photographs will be collected to document as-built conditions, including both

oblique images and an ortho-mosaic. A brief as-built report will be submitted along with the as-built drawings.

Deliverables:

- Drone aerial photos, including a georeferenced ortho-mosaic, provided in tif format (preferred).
- Contract drawings (paper copy) with as-built notes.
- A brief as-built report.
- A scaled drawing, accurate to 1-foot elevation, clearly showing finished contours of the site, and approximate tax lot and right-of-way boundaries.

5. INFORMATION CONCERNING RFP AND PROJECT

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

Katie Frenyea
Nez Perce Tribe
Department of Fisheries Resources Management – Watershed Division
(541) 432-2506
kathrynf@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 NPT, 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** NPT reserves the right to (1) reject any or all proposals or (2) cancel the RFP if doing either would be in the public interest as determined by NPT.

6. SCHEDULE OF EVENTS

- 6.1** The following schedule of events shall be followed for this RFP unless otherwise modified by NPT:

- 6.1.1** Inquiries for clarification or additional information as described in Section 5.2, if any, must be received by NPT no later than 4:00 p.m. on the date specified in the table in Section 6.1.10.
- 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 NPT no later than 4:00 p.m. on the date that is three (3) calendar days before the due date for proposals.
- 6.1.3** A site visit by potential Contractors is scheduled for the date specified in the table in Section 6.1.10 and is required.
- 6.1.4** Proposals must be received by NPT no later than 4:00 p.m. on the date specified in the table in Section 6.1.10. Proposals submitted after this time will be rejected.
- 6.1.5** The Qualification Based Selection (QBS) process defined in Section 10.6 will be used to select the Contractor, if any.
- 6.1.6** A Contractor will be selected, if at all, no later than the date specified in the table in Section 6.1.10. However, Contractors will not be officially notified until the Nez Perce Tribal Executive Committee approves the decision. This could take up to three weeks from the time of selection. The unsuccessful Offerors will be notified once the final selection has been approved.
- 6.1.7** Any protests of the selection decision must be received no later than 4:00 p.m. on the date that is seven (7) calendar days after the NPT issues the selection notice.
- 6.1.8** Any hearing on a protest will be held no later than seven (7) calendar days after NPT receives a protest.
- 6.1.9** The NPT intends to enter into a Contract with the selected Contractor within 60 calendar days after the due date for proposals, unless NPT, in its sole discretion, elects to extend the deadline.

6.1.10 Table of Timelines

1	Site Visits -	11/3/25, 1:00 pm
2	Inquiries for Clarification Deadline	11/10/25
3	Bids Due	11/17/25
4	Open Bids	11/17/25
5	Select Contractor	11/25/25
6	Notice to Proceed	1/26/26
7	Kick off Meeting	To be scheduled by Contractor

8	15 % Design	To be scheduled by Contractor
9	30% Design	To be scheduled by Contractor
10	80 % Design	9/28/26
11	100 % Design	1/18/27
12	Permitting Complete	3/1/27
13	Bid Documents Complete	3/1/27
14	Contract Termination	6/1/29

7. NO REIMBURSEMENT FOR PROPOSAL

Offerors responding to this RFP do so solely at their own expense. Under no circumstances whatsoever will NPT 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. NPT will endeavor in good faith to honor appropriate requests for exemption from disclosure, but NPT reserves exclusive discretion to determine whether information qualifies for a statutory exemption. NPT's obligation under this Section 8 shall survive selection of the Contractor.
- 8.2** Identify the Offeror’s experience, capabilities, and technical competence.
- 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 6.1.10.
- 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 NPT and Company, and describe the Offeror's ability to provide the additional services.

9. CONTRACT

- 9.1** The Offeror, if any, selected by NPT 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 NPT's Contract – suggest reasonable alternatives that do not substantially impair NPT's rights under the Contract. Silence shall be deemed acceptance of the standard form of Contract.
- 9.3** If inclusion of any of NPT'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 NPT, be rejected or given a lower rating in the evaluation process.
- 10.3** NPT reserves the right to reject any and all proposals or to waive irregularities or deficiencies in a proposal if NPT determines that such waiver is in the best interests of NPT.
- 10.4** If two or more Offerors are equally qualified, and one of the offerors is a CIB, NPT will give preference to a Certified Indian Owned Business.
- 10.5** If NPT and the highest ranked Offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to NPT, NPT shall,

either orally or in writing, formally terminate negotiations with the highest ranked Offeror. NPT 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 NPT 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:

10.6.1 Offeror's experience, capabilities, and technical competence as it relates to the above Scope of Services. (20 Points)

10.6.2 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 and how the Offeror would implement the Services. (20 Points)

10.6.3 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. (15 Points)

10.6.4 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. (10 Points)

10.6.5 Offeror's proposed schedule for performing the Services and any constraints that could affect the Offeror's ability to perform the Services promptly and efficiently. (10 Points)

10.6.6 Lowest price will be considered as it relates to the above Scope of Services. (20 Points)

Other – factors not covered by other above criteria (5 points)

10.7 NPT 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 NPT. 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 NPT to evaluate, rank, and select the most qualified Offeror.

11. SELECTION BY NPT

11.1 The Contract will be awarded to the Offeror who, in NPT's judgment, has submitted a proposal that best meets NPT's requirements and successfully completes scoping and fee negotiations with NPT.

11.2 If there are disagreements with the outcome or questions about the selection process, Offerors must submit protests in writing to NPT within seven (7) calendar days after the selection has been made. NPT 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, NPT 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. NPT reserves the right to negotiate a final Contract that is in the best interest of NPT. If permitted by NPT, 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 NPT in its sole discretion.

11.4 If NPT and the Offeror initially selected by NPT are unable to negotiate a Contract, NPT 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. Locator Map and Photographs

EXHIBIT 1

CONTRACT

This Contract (“Contract”) is entered into between the Nez Perce Tribe, P.O. Box 305, Lapwai, ID, 83540 (“Tribe”), by and through **the Department of Fisheries Resource Management**, and **Contractor to be determined**. (“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. **Contractor.**
- 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 restoration of fish passage and continued delivery of irrigation water at the Dorrance and Wilson diversions on the Wallowa River. Services contemplated are to design the replacement of the Dorrance and Wilson ditch diversion fishways. The Dorrance diversion consists of one approximately 0.35-meter-tall cement irrigation dam. The Wilson diversion consists of a two-step structure. All dams span the river channel providing the water elevation for irrigation intakes and diversion ditches. These diversion structures are partial barriers to native fish passage seasonally. This project would produce implementation-ready, engineer-stamped,

regulatory-agency reviewed and permitted plans and specification, construction oversight, staking, and bid support for the Dorrance and Wilson diversions fishway replacements.

2.2 Contractor agrees to provide the following deliverables (as described in Solicitation, Section 4):

Bid Item	Description	Quantity/Unit	Price	Amount to be awarded
1	Site Review and Investigation	1/Lump Sum	\$	\$
2	Meetings, Coordination, and Project Management	1/Lump Sum	\$	\$
3	Design Engineering and Basis of Design Report	1/Lump Sum	\$	\$
4	Environmental Permitting	1/Lump Sum	\$	\$
5	Prepare Bidding and Contract Documents	1/Lump Sum	\$	\$
6	Quality Assessment and Control Plan	1/Lump Sum	\$	\$
7	Construction Oversight	1/Lump Sum	\$	\$
8	Construction Staking	1/Lump Sum	\$	\$
9	As-built Documentation	1/Lump Sum	\$	\$
	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

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 **June 1, 2029**. 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 exhibits, 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 \$ _____.00. Invoices shall be paid as follows: **Upon completion of work the contractor will provide invoices to Kathryn Freneyea, NEOR/SEWA Project Leader, for approval and submission to NPT Finance for payment.**

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: 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 10: 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: Kathryn Frenyea
Title: NEOR/SEWA Project Leader
Address: P.O Box 909
Joseph, OR 97846
Phone: 541-432-2506
Email: kathrynf@nezperce.org

Tribal Notification to:

Shannon F Wheeler
Nez Perce Tribal Executive Committee
P.O. Box 305
Lapwai, ID 83540
Phone: (208) 843-2253
Email: NPTEC@nezperce.org

CONTRACTOR:

Name:
Title:
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 11: 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

- 18.1 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. Unless otherwise specifically noted, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the work under the Contract. Contractor further warrants that all materials and equipment incorporated in the work under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in strict conformance with the work described in Exhibit 2. All work not so conforming to these standards will be considered defective. The Contractor shall remedy at the Contractor's expense any failure to conform to, or any defect in, the requirements under this Contract. The Tribe shall notify Contractor of any violation of this warranty within one (1) year of completion of work under this Contract. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of the Tribe's notice, the Tribe shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense. 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 (**including: Exhibit 2 – Map and photos**) 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:

Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee

Date

Rachel P. Edwards, Secretary
Nez Perce Tribal Executive Committee

Date

CONTRACTOR:

Contractor Name

Date

Name:

Title:

EXHIBIT 2 – Maps and Photos

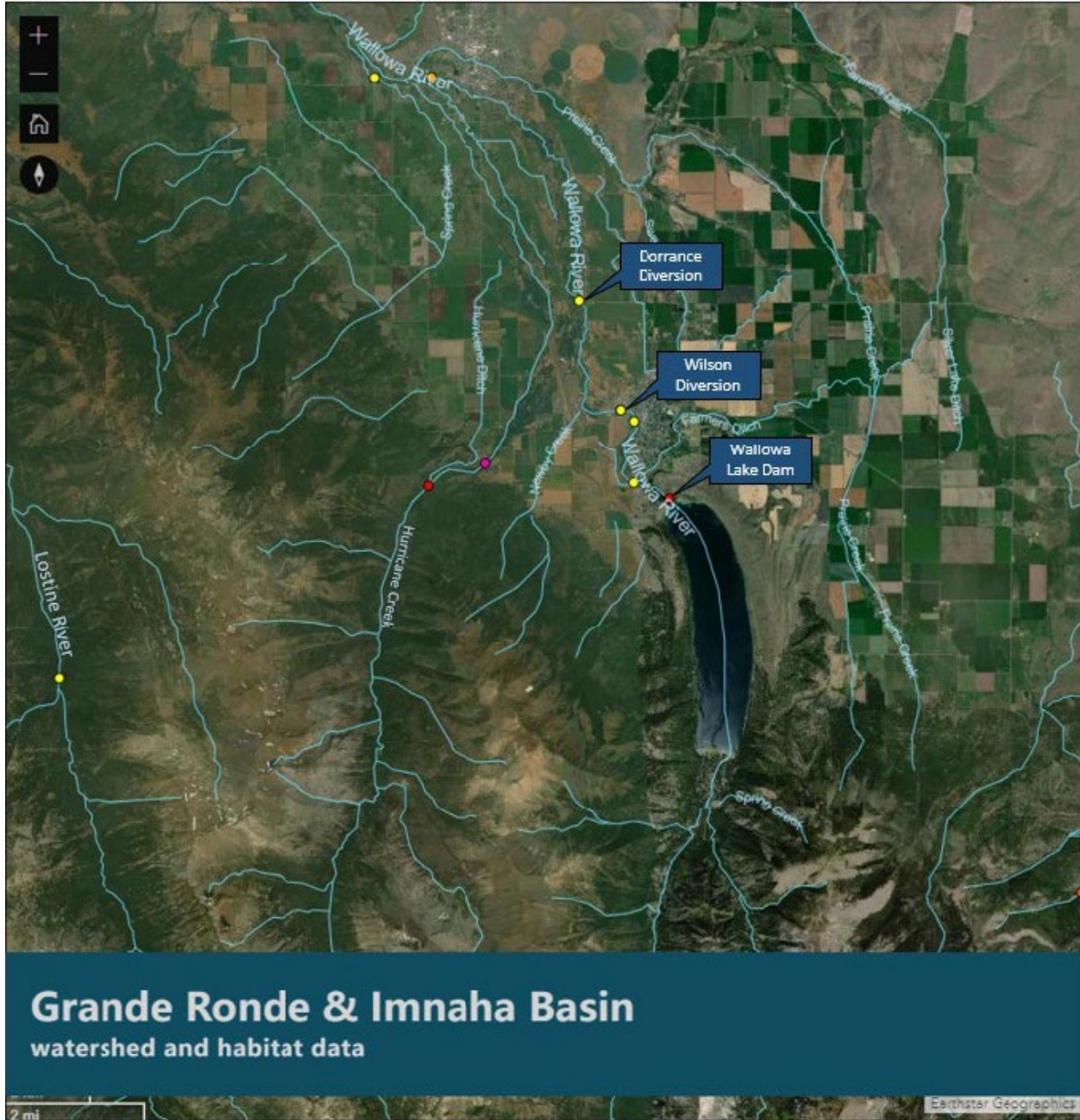




Photo taken looking downstream from Dorrance Lane Bridge at the diversion structure, with the irrigation intake, ditch, and drum fish screen located on the river right bank (September 2021).



Photo taken from river right bank immediately downstream of the Dorrance irrigation intake, looking upstream at the diversion dam structure (September 2021).



Photo taken looking upstream (east) from river left (Nez Perce Tribe's Am'sáaxpa property) at Wilson Diversion's upstream check dam and intake structure (January 2023).



Photo taken looking upstream (east) from river left (Nez Perce Tribe's Am'sáaxpa property) at Wilson Diversion's downstream and upstream check dams and intake structure (January 2023).



Photo taken looking upstream (south) from West Wallowa Avenue bridge at Wilson Diversion's downstream and upstream check dams structures (January 2023).