RESOLUTION

WHEREAS, the Nez Perce Tribal Executive Committee has been empowered to act for and on behalf of the Nez Perce Tribe, pursuant to the 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; and

WHEREAS, the Nez Perce Tribe (Tribe) maintains a Cultural Resources Program (CRP) that addresses cultural resource concerns of the Tribe; and

WHEREAS, the Tribe’s CRP received an Interlocal Agreement from the Asotin County Public Utilities District #1 (PUD) 1500 Scenic Way, PO Box 605, Clarkston, Washington 99403 to provide Historic and Archaeological Study Services for streambank stabilization on Alpowa Creek and a livestock watering improvement on Stember Creek; and

NOW, THEREFORE, BE IT RESOLVED, that the Nez Perce Tribal Executive Committee (NPTEC) hereby approves the Interlocal Agreement with Asotin County for the CRP to provide Historic and Archaeological Monitoring Services for an amount not to exceed $5,727.64 effective upon signature through May 30, 2014; and

BE IT FINALLY RESOLVED, that the NPTEC Chairman and Secretary are hereby authorized to sign all necessary correspondence and the NPTEC Treasurer is hereby authorized to distribute funds accordingly.

CERTIFICATION

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee meeting in Regular Session, November 12, 2013 in the Richard A. Halfmoon Council Chambers, Lapwai, Idaho, a quorum of its Members being present and voting.

BY: Anthony D. Johnson, Secretary

ATTEST:

Silas C. Whitman, Chairman
NEZ PERCE TRIBE
CONTRACT REVIEW AND RECOMMENDATION CHECKLIST

All contracts in which the Nez Perce Tribe is a party must have this form attached and completed prior to presentation to the NPTEC Chairman for signature.

Contract Subject: Stumbo Creek Project
Contractor Name: Morton County PUD #1
Contractor EIN/SS No.: 

Program Presenting Contract: Cultural Resources

Individual Responsible: Vera Sonneck Phone Ext. 3847

Does contract require in-kind contribution or a tribal match? Yes ___ No ____ (if yes, how much? $ __________)
Are matching funds included in the approved budget for this fund? Yes ___ No ____ (if no, source _________)

____ For contracted work involving federal funds, please initial this line indicating that you have determined that the contractor is not on the EPLS (Excluded Parties List System) by visiting www.SAM.gov.

Finance Department

Received by Finance 10/1/13 Review By: GMB
Review Completed 11/1/13 Changes recommended? Yes ___ No ___
Changes Recommended: NONE

Office of Legal Counsel

Received by OLC 11/1/13 Review By: MC
Review Completed 11/4/13 Changes recommended? Yes ___ No ___
Changes Recommended: 

Changes Made: By:
Changes Reviewed: By:

Subcommittee

Presented to Subcommittee __________________________
Approved w/no changes Changes Recommended 

Changes Made: By:

Nez Perce Tribal Executive Committee

Presented to NPTEC NPTEC Action Reso. NP14-045, 11/2/13
Approved w/no changes Changes Recommended 

Changes Made: By:

Revised: September 2012
INTERLOCAL AGREEMENT
Agreement Number: 2013-05

This Contract ("Contract") is entered into between the Nez Perce Tribe, P.O. Box 305, Lapwai, ID, 83540, ("Tribe"), by and through the Nez Perce Tribe’s Cultural Resources Program, and Public Utility District No. 1 of Asotin County, 1500 Scenic Way; PO Box 605; Clarkston, WA 99403, ("PUD").

1. Work to be Performed

A. Public Utility District No. 1 of Asotin County hereby enters into an agreement with the Tribe to provide Historic and Archeological Study Services subject to the approval of the Nez Perce Tribe, described in the attached Scope of Work (Exhibit A).

B. The Tribe shall provide time, materials, and equipment necessary for the execution of the work requested by Public Utility District No. 1 of Asotin County.

C. Any changes or alterations of the services described above require express approval of Public Utility District No. 1 of Asotin County.

2. Term of Contract: This agreement shall be in effect for from the date of its execution and shall terminate on the 30th of May, 2014.

3. Compensation: Public Utility District No. 1 of Asotin County hereby agrees to reimburse the Tribe for the costs of the work performed in an amount not to exceed $5,727.64.

   Payment shall be made upon presentation of the billing(s) by the Tribe, and within thirty (30) days after Public Utility District No. 1 of Asotin County has received each billing.

4. Termination of Contract: This Agreement may be terminated, in full or in part, by either party with ten (10) days written notice of its intent to terminate said Agreement, or part thereof. Provided, further that such termination of this Agreement does not relieve Public Utility District No. 1 of Asotin County from its contractual obligations for work performed by the Nez Perce Tribe prior to termination. Notice to other party of such intent to terminate shall be effectuated by certified or registered mail to the other party at the following addresses:

   Patrick Baird, Archaeologist
   Cultural Resources Program
   Nez Perce Tribe
   P.O. Box 365
   Lapwai, ID 83540

   Bradley Johnson, Watershed Program Director
   Public Utility District No. 1 of Asotin County
   PO Box 605
   Clarkston, WA 99403

5. Assignment: The Tribe shall not assign or delegate any duties under this contract without the prior written authorization of Public Utility District No. 1 of Asotin County.
6. **Modification or Amendment of Contract:** Any modifications or amendments of this contract agreed to by the parties shall be in writing, signed by the parties attached hereto.

7. **Limited Waiver of Sovereign Immunity:** The Nez Perce Tribe hereby agrees to waive its sovereign immunity from suit for the sole and limited purpose of enforcement of the terms of this Contract, provided, however, that (1) this waiver is limited to the recovery of no more than the amount of this Contract, and (2) the payment of any amount shall be paid with funds from the (contracting program) budget and not with any real property belonging to the Nez Perce Tribe, (3) this waiver does not extend to nor allow any award of punitive, exemplary or other damages against the Nez Perce Tribe; (4) this waiver is expressly limited to the adjudication of lawsuits before the Nez Perce Tribal Court pursuant to the agreement of the parties to this Contract with regard to jurisdiction.

8. **Signatures:** Both parties agree to the provisions set forth herein as evidenced by their signatures, or the signatures of their authorized representatives.

IN WITNESS WHEREOF, the undersigned has executed this contract the date and year first above written.

**NEZ PERCE TRIBE**

[Signature]

Silas C. Whitman, Chairman, NPTEC

**PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY**

[Signature]

Tim Simpson, General Manager

[Signature]

Anthony Johnson, Secretary, NPTEC
Stember and Alpowa Creeks Project for
Public Utility District No. 1 of Asotin County
Cultural Resource Survey Scope of Work
Patrick Baird
Nez Perce Tribe Cultural Resource Program
October 31, 2013

Undertaking Description
In an effort to reduce sediment in anadromous fish habitat in streams in Garfield County, the Public Utility District No. 1 of Asotin County (PUD) proposes to assist a private land owner to develop 2 stock tanks, a water storage tank, a well, 3,546 ft. of buried pipeline, and 1,988 ft. of barbed wire fencing on Stember Creek (Area 1) and stabilize 1,000 discontinuous feet of stream banks along approximately a 2 mile stretch of Alpowa Creek (Area 2), located about 5 miles southwest of Area 1. The purpose of the instream habitat restoration is to help stabilize the mainstem of Alpowa Creek where active erosion has been taking place.

Proposed Ground Disturbing Activities
Ground disturbing activities in the Stember Creek (Area 1) would include 1) Use of machinery to remove surface vegetation and level ground as needed for 2 stock tanks and a storage tank, 2) Digging holes and/or pounding posts for a perimeter fence, 3) Mechanically trenching for underground pipeline to a depth of two feet, and 4) Excavating where a subterranean storage tank will be placed to a depth of 5 feet, to prevent freezing.

The Alpowa Creek (Area 2) streambank stabilization project will have 3 inch diameter wood posts driven below the ordinary high water mark and placing dead Christmas trees and possibly some larger sized logs lined in behind the posts to protect actively eroding dirt banks. The in-water work is unlikely to cause significant impacts, though staging and access activities might result surface impacts to archaeological resources. All staging activities will occur on the west bank of Alpowa Creek.

Survey Methodology
A. Intensive Survey. An intensive survey will be needed for cultural compliance on this project.

B. National Register. Any identified cultural resources will be evaluated for eligibility for listing on the National Register of Historic Places.

C. Cultural Resource Details. Identify, document, and evaluate any prehistoric or historic resources in the project area. This shall be done in accordance with Section 106 of the National Historic Preservation Act as implemented by 36 CFR 800, using the revised 1999 regulations from the Advisory Council on Historic Preservation (ACHP).

D. Cultural Resource Investigation. The investigation shall include file background checks prior to commencing fieldwork to identify previous surveys and previously recorded sites in the area. The field survey and subsequent survey report shall follow Department of Archaeology and Historic Preservation guidelines.
In Area 1, at least 8 subsurface test probes (STPs) will be excavated and screened through 1/8 inch hardware cloth to determine the presence or absence of buried resources. The location of the STPs will be decided upon based on ground visibility, slope, and the probability of buried cultural resources along the proposed pipeline and possibly the proposed locations for the troughs and water storage tank. These locations need to be flagged or marked prior to the cultural survey.

In Area 2, an intensive pedestrian survey will be conducted along the two miles of Alpowa Creek to be rehabilitated. The stratigraphy of cut stream banks will be examined for exposed cultural deposits and features. At least 15-30 least 8 STPs will be excavated and screened through 1/8 inch hardware cloth to determine the presence or absence of buried resources. STP locations will be excavated in areas staging areas and stabilization areas with intact soils with potential for buried cultural deposits. The proposed rehabilitation activities are discontinuous, making the placement of shovel test probes problematic unless flagging is placed prior to field work, so that a sampling of the stabilization areas can be tested prior to the undertaking.

The project budget assumes recordation of 1 archaeological site. If more than 1 site is identified, additional work may be required.

E. Field Technique. No collection of surface artifacts shall be made during the survey. Artifacts shall be recorded in the field (applicable mapping, measuring, photographing, etc.) and left in-situ. Each site identified shall be fully documented to provide data on location, dimensions, content, age, context, and integrity for an assessment of National Register eligibility.

NOTE: If more than one archeological site is found during the survey, more time will be needed to document the site(s) than is listed on the proposed budget. The budget will be renegotiated at that point.

F. Cultural Resource Investigation Reporting. The Cultural Resource Investigation shall be reported using Department of Archaeology and Historic Preservation guidelines and forms.

K. Test Investigations. If test investigations are necessary (i.e., a major EA, or EIS that involves several alternatives and cultural resources are a factor) this may be negotiated separately after the extent of the cultural resource impact is known. A proposal for testing shall be developed in consultation with SHPO and the Nez Perce Tribal Archaeologist.

L. Other Items. Archaeological data recovery, etc., shall be negotiated separately, if warranted.

M. Report Preparation. The report shall include recommendations regarding eligibility and applicable prehistoric or historic site forms, architectural forms, etc. Upon acceptance of the report, the Tribal Archaeologist will provide copies of the report to the report to the SHPO for concurrence with Determinations of Eligibility of sites recorded.

Minimum Deliverables (as required per project type):
- Draft Cultural Resource Survey Report (2 copies)
- Final Cultural Resource Survey Report (2 copies)
### Stember and Alpowa Creeks Budget

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