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UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
ASSISTANCE AGREEMENT

1A. AGREEMENT NUMBER R21AV00012	1B. MOD NUMBER N/A	2. TYPE OF AGREEMENT Public Law 93-638, Title 1, Indian Self-Determination Act Construction Contract	3. CLASS OF RECIPIENT Tribal Government
4. ISSUING OFFICE Bureau of Reclamation Columbia-Pacific Northwest Region 1150 N. Curtis Rd. Boise, ID 83704-1234		5. RECIPIENT Confederated Tribes and Bands of the Yakama Nation PO Box 151 Toppenish, WA 98948 EIN #: 91-0576806 County: Yakima DUNS #: 803886399 Congress. Dist. WA-04	
6. RECIPIENT PROJECT MANAGER Mr. Tom Elliot Tributary Enhancement Special Project Leader Confederated Tribes and Bands of the Yakama Nation Physical Address: 61220 Highway 97 South Mailing Address, P.O. Box 151 Toppenish, WA 98948 Phone: 509-314-9703 Email: ellt@yakamafish-nsn.gov		7A. INITIAL AGREEMENT EFFECTIVE DATE: Upon Award of Contract	7B. MODIFICATION EFFECTIVE DATE: N/A
		8. COMPLETION DATE September 30, 2026	
9A. PROGRAM STATUTORY AUTHORITY Yavapai-Prescott Indian Tribe Water Settlement Act of 1994; P.L. 103-434, Section XII (Yakima River Basin Water Enhancement Plan Project)			9B. CFDA Number 15.531
10. FUNDING INFORMATION	NON-FEDERAL	RECLAMATION	TOTAL PROJECT COSTS
Total Estimated Amount of Agreement			
This Obligation			
Previous Obligation			
Total Obligation			
11. PROJECT TITLE Toppenish Creek Corridor Enhancement Plan			
12a. Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the above-named recipient BY: <u><i>Karina Del Toro</i></u> DATE: <u><i>9/2/2021</i></u>		13a. Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation KARINA DEL TORO Digitally signed by KARINA DEL TORO Date: 2021.09.08 15:13:10 -06'00' DATE: _____	
12b. NAME AND TITLE OF SIGNER <i>Delano Saluskin</i> Delano Saluskin Tribal Chairman		13b. NAME OF GRANTS OFFICER Karina Del Toro Awarding Official	

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Fisheries Resource Mgmt. Program

SELF-DETERMINATION CONSTRUCTION CONTRACT

between the
Department of the Interior, Bureau of Reclamation
and the
Confederated Tribes and Bands of the Yakima Nation

(a) **Authority and Purpose** (and Background)

- (1) **Authority.** This Self-Determination Construction Contract (hereinafter referred to as the "Contract") is entered into by the U.S. Department of the Interior (DOI), Bureau of Reclamation, for and on behalf of the Secretary of the Interior (hereinafter "Reclamation") pursuant to Yavapai-Prescott Indian Tribe Water Settlement Act of 1994; P.L. 103-434, Section XII (Yakima River Basin Water Enhancement Plan Project) and Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) (formerly 25 U.S.C. 450 et seq.) (hereinafter "ISDEAA") and by the Confederated Tribes and Bands of the Yakima Nation (hereinafter "Contractor") (collectively the "Parties") pursuant to Resolution No. T-082-19. The provisions of the ISDEAA (25 U.S.C. 5301 et seq.) (formerly 25 U.S.C. 450 et seq.) are hereby incorporated into this Contract. In accordance with 25 CFR 900.2(c), the provisions of 25 CFR part 900, and any amendment thereto, are also incorporated into this Contract and are binding on Reclamation and the Contractor except as otherwise specifically authorized by an attached waiver by the Assistant Secretary of Water and Science under section 107(e) of the ISDEAA (25 U.S.C. 5328(e) (formerly 25 U.S.C. 450k(e))).
- (2) **Purpose.** The primary objectives under this P.L. 93-638 contract include separating water diverted from the Yakima River and routed through the facilities of the Wapato Irrigation Project (Bureau of Indian Affairs) from the natural stream flow of Toppenish Creek, and restoring the channels, floodplains, and aquifers of Toppenish and Simcoe Creeks in and around the Toppenish alluvial fan and downstream reaches.

Each provision of the ISDEAA and of 25 CFR part 900, and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related construction services, activities, and programs (or portions thereof), that are otherwise contractible under section 102(a) of the ISDEAA (25 U.S.C. 5321(a)) (formerly 25 U.S.C. 450f(a)), including all related administrative functions, from Reclamation to the Contractor.

Nothing herein shall be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the affected tribe(s) or individual Indians. Reclamation, for and on behalf of the Secretary, shall act in good faith in upholding such trust responsibility.

- (3) **Background.** This funding agreement will be used for the implementation of the Toppenish Creek Corridor Plan (Plan) which was called for in the Yakima River Basin Water Enhancement Project Phase II (P.L. 103-434 Section 1204(c)) and was approved by the Yakama Tribal Council on April 2, 2019, by Resolution T-082-19. The Plan describes a set of ten priority actions, to be implemented over ten years, which aim to substantially restore aquatic habitat, water quality, and associated cultural resources on lower Toppenish Creek within the Yakama Reservation.

(b) **Terms, Provisions and Conditions.**

- (1) **Term.** Pursuant to section 105(c)(1) of the ISDEAA (25 U.S.C. 5324(c)(1) (formerly 25 U.S.C. 450j(c)(1))), the term of this Contract shall be five years. The period of this Contract shall be on the basis of a federal fiscal year, unless, pursuant to section 105(d)(1) of the ISDEAA (25 U.S.C. 5324(d)(1) (formerly 25 U.S.C. 450j(d)(1))), the Contractor elects a calendar year basis or Reclamation and the Contractor agree on a different period. Reclamation and the Contractor agree the terms of this contract shall be determined on the basis of a federal fiscal year.

(2) **Effective Date.** This Contract shall become effective on the date of execution by the Contractor and Reclamation, unless the Contractor and Reclamation agree on a different date as stated herein.

(3) **Contract standards.**

(A) **Administrative standards.** Pursuant to 25 CFR 900.36, the Contractor shall develop, implement and maintain systems to administer the programs, services, function and activities (or portions thereof) listed in subsection (a)(2) of this Contract which, at a minimum, incorporate the finance, procurement and property management standards contained in 25 CFR part 900, subpart F.

(B) **Federal laws and regulations applicable to design and construction activities.** In accordance with 25 CFR 900.125(b)(1), the Contractor agrees that any design or construction documents produced as part of the Contract will be produced in accordance with the Program of Requirements¹ and/or project scope of work. The Contractor shall also comply with all Federal laws, regulations, and Executive Orders applicable to the design and construction activities contracted by the Contractor under this Contract including the following:

- Indian Self-Determination and Education Assistance Act (P.L. 93-638, as amended) and 25 CFR Part 900
- Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646)
- Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671-2680) and related Department of Justice regulations in 28 C.F.R. Part 14
- 25 C.F.R. Part 169

Applicable Federal Environmental laws, regulations, and Executive Orders, including:

- Clean Water Act
- National Environmental Policy Act of 1969 (NEPA)
- Fish and Wildlife Coordination Act
- Resource Conservation and Recovery Act
- Federal Standard No. 313 for any hazardous materials to be utilized under this Agreement
- Bald Eagle Protection Act
- Executive Order 11990 – Protection of Wetlands
- Executive Order 12898 – Environmental Justice

Applicable Federal cultural resource laws, regulations and Executive Orders including:

- Archaeological Resource Protection Act of 1979 (P.L. 96-95)
- 25 C.F.R. Part 262 – Protection of Archaeological Resources
- National Historic Preservation Act of 1966, as amended
- Native American Graves Protection and Repatriation Act (P.L. 101-601)
- NAGPRA regulations at 43 C.F.R. Part 10
- 36 C.F.R. Part 800 – Protection of Historic and Cultural Properties
- 43 C.F.R. Part 7 – Protection of Archaeological Resources: uniform Regulations
- Executive Order 11593 – Protection and Enhancement of Cultural Environments
- Executive Order 13007 – Indian Sacred Sites

Applicable Federal labor laws, regulations, and Executive Orders as applicable to ISDEA construction contracts including:

- Occupational Safety and Health Administration (OSHA) (29 U.S.C. 61 et seq)
- Standards applicable to construction in 29 C.F.R. 1900 to end

¹ The Program of Requirements will be a Final Engineering Report (FER) or other appropriate planning document.

- Provisions of the Davis-Bacon Act (40 U.S.C. 276c and 18 U.S.C. 874), as applicable, for subcontracts except for work performed by tribal employees
- Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330)
- Department of Labor regulations 29 C.F.R. Part 5
- Copeland "Anti-Kickback Act" (18 U.S.C. 874 and 40 U.S.C. 276c) and 29 C.F.R. Part 3
- Contract Disputes Act of 1978 (41 U.S.C. 601 as amended)
- 43 C.F.R. 4.110-126, if a matter is submitted to the Interior Board of Contract Appeals
- Equal Access to Justice Act (5 U.S.C. 504 and 28 U.S.C. 2412 and regulations at 43 C.F.R. 4.601 through 619)

Reclamation and the Contractor will both make a good faith effort to identify any other Federal laws, Executive Orders, or regulations applicable to this Contract, share them with the other party and refer to them by written modification to this Contract. The Parties will also make a good faith effort to identify any tribal laws, ordinances and resolutions which may affect this Contract.

(C) **Design and Construction Standards.** All design and construction activities performed under this Contract shall be completed (1) in accordance with the requirements of 25 CFR 900.125(a)(1-4 and 8-9) and (2) in conformity with the most current versions of applicable subsections, parts, provisions or subdivisions of codes and standards listed below, to the extent that they are suitable and appropriate for design and construction of projects that are authorized under the Contract:

- National Electric Code
- Uniform Building Code
- Uniform Fire Code
- Uniform Mechanical Code
- Uniform Plumbing Code

In addition, the Nation shall comply with certain subsections, parts, provisions, or subdivisions of the published standards of the following organizations, as specifically identified in the approved project plans and specifications:

- American Association of State Highway and Transportation Officials (AASHTO)
- American Concrete Institute (ACI)
- American Institute of Steel Construction (AISC)
- American Iron and Steel Institute (ANSI)
- American Society for Testing and Materials (ASTM)
- American Water Works Associations (AWWA)
- American Welding Society (AWS)
- Concrete Reinforcing Steel Institute (CRSI)
- National Association of Corrosion Engineers (NACE)
- National Sanitation Foundation (NSF)
- Standard General Conditions of the Construction Contract, Engineers, Joint Contract Documents Committee (NSPE, ACEC, ASCE, CSI)
- Repair Concrete (USBR M-47)
- American Society of Mechanical Engineers (ASME)
- Commercial Item Description (CID)
- National Association of Pipe Fabricators (NAPF) Military Specifications (MIL) Quality Products List (QPL)
- National Fire Protection Association (NFPA)
- Institute of Electrical and Electronics Engineers (IEEE)
- Hydraulic Institute (HI)
- National Electrical Manufacturers Association (NEMA)
- Western Wood Products Association (WWPA)
- American Society of Civil Engineers (ASCE)

Reclamation and the Contractor will both make a good faith effort to identify any other standards and

codes applicable to this Contract, share them with the other party, and refer to them by written modification to this Contract. Further, in accordance with 25 CFR 900.126, Reclamation will accept Contractor proposed construction procedures, standards and methods which are consistent with or exceed Federal standards applicable to the contracted construction programs, services, functions or activities.

- (4) **Type of Contract.** This is a cost reimbursement contract.
- (5) **Funding Amount.** Subject to the availability of appropriations, Reclamation shall make available to the Contractor the total amount as specified in the applicable funding agreement(s) incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the ISDEAA (25 U.S.C. 5325) (formerly 25 U.S.C. 450j-1) and 25 CFR 900.128. The first year of funding under this Contract shall also include reimbursement of start-up costs and pre-award costs in accordance with subsections (b)(5)(B) and (b)(5)(C) below. Funding is not guaranteed in future years. The Contractor shall complete the activities specified in the scope of work with the level of funding provided in the AFA.
- (A) **Indirect Costs.** The allowable indirect cost rate, base, and limitations shall be those established in the current negotiated indirect cost rate agreement approved by the cognizant agency for indirect costs. Pursuant to section 106(h) of the ISDEAA (25 U.S.C. 5325(h)) (formerly 25 U.S.C. 450j-1(h)), in calculating the allowable indirect costs associated with this Contract, Reclamation shall take into consideration only those costs associated with administration of the Contract and shall not take into consideration those moneys actually passed on by the Contractor to construction contractors and subcontractors. Because the current negotiated indirect cost rate agreement expired September 30, 2020, Reclamation will use the current rate as a placeholder while a new rate is finalized by the cognizant agency.
- (B) **Allowance of start-up costs.** In accordance with 25 U.S.C. 5325(a)(5)) (formerly 25 U.S.C. 450j-1(a)(5)), start-up costs that have been or will be incurred on a one-time basis by the Contractor pursuant to this Contract during the initial year that this Contract is in effect, are authorized to the extent that the costs are reasonable, allowable and allocable to the Contract.
- (C) **Allowance of pre-award costs.** Pursuant to 25 U.S.C. 5325(a)(6)) (formerly 25 U.S.C. 450j-1(a)(6)), reasonable, allowable and allocable costs incurred by the Contractor before the effective date of this Contract may not be included in the amount required to be funded under paragraph (b)(5) if Reclamation does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.
- (6) **Payment.**
- (A) **In general.** Payments to the Contractor under this Contract shall: be made as expeditiously as practicable and
- (ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.
- (B) **Payment schedule.** For each fiscal year covered by this Contract, Reclamation shall make available to the Contractor the funds specified for the fiscal year in accordance with a payment schedule developed pursuant to 25 CFR 900.132. The applicable payment schedule is specified in the attached fiscal year Annual Funding Agreement (AFA) pursuant to subsection (f)(2) herein.
- (C) **Applicability of the Prompt Payment Act.** Chapter 39 of title 31, United States Code shall apply to the payment of funds due under this Contract and the AFA referred to in clause (B).
- (D) **Use of funds advanced.** Funds advanced to the Contractor shall be used only for purposes authorized under this Contract. The funds advanced cannot be used for any purpose other than an authorized project expenditure, even on a temporary basis.

Further, funds advanced pending disbursement for a purpose authorized under this Contract shall not be transferred to tribal accounts, lent to such tribal accounts, or expended for programs or purposes not specifically authorized under this Contract. Funds advanced, pending expenditure under this Contract, shall be placed in appropriate savings, checking or investment accounts. Such funds when invested or deposited shall be subject to the following:

- (i) Advanced funds not immediately spent for program activities may be invested only in obligations of the United States, in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed by the United States;
- (ii) If not invested, advanced funds must be deposited into accounts that are insured by an agency or instrumentality of the United States or must be fully collateralized to ensure protection of the funds, even in the event of a bank failure;
- (iii) Interest that accrues on any funds provided for by contract become the property of the Contractor pursuant to section 105(b) of the ISDEAA (25 U.S.C. 5324(b)).

Failure to maintain the integrity of contract funds shall result in imposition of one or more of the following sanctions, which shall remain in place until the Contractor provides assurance that the impropriety which resulted in the imposition of sanctions has been rectified and will not recur:

- (i) Pursuant to section 5(d) of the ISDEAA (25 U.S.C. 5305(d) (formerly 25 U.S.C. 450c(d)), funds paid to the Contractor and not used for the purposes for which they were paid shall be repaid to the Treasury of the United States and
 - (ii) Cancellation of advance payment methodology,
- (E) **Suspension, withholding, or delay of advance payment.** Pursuant to 25 CFR 900.132(e) and 900.170, Reclamation may suspend, withhold or delay a future advance payment allocation to the Contractor (1) if the Contractor is delinquent in submission of its allocation period progress reports and financial reports; or (2) Reclamation takes action to suspend or terminate the Contract in accordance with 25 CFR 900.131 (b)(11), (12) or (13).
- (7) **Limitations of Costs.** Pursuant to 25 CFR 900.130(e), the Contractor shall not be obligated to continue performance that requires an expenditure of more funds than are awarded under this Contract. If the Contractor has a reason to believe that the total amount required for performance of this Contract will be greater than the amount of funds awarded, it shall provide reasonable notice to Reclamation. If Reclamation does not increase the amount of funds awarded under the Contract, the Contractor may suspend performance of the Contract until sufficient additional funds are awarded.)
- (8) **Carryover.** Pursuant to section 8 of 25 U.S.C. 13a, any funds provided to the Contractor under this Contract but not expended by the Contractor during any fiscal year during the term of this Contract shall be carried over to the next fiscal year and applied to the completion of work authorized under the Contract.
- (9) **Successor Annual Funding Agreements.** Reclamation shall prepare and supply relevant information and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor AFA. Each successor AFA shall include, at a minimum, a scope of work, a revised project schedule and budget, the amount of fiscal year one-time funding to be transferred to the Contractor, and a payment schedule. Pursuant to 25 CFR 900.32, each successor AFA will be subject to the declination criteria and procedures in 25 CFR part 900 subpart E. Each successor AFA will be incorporated in its entirety into this Contract pursuant to subsection (f)(2) herein.
- (10) **Excess Funds.** Funds Remaining at the End of the Contract. Pursuant to 25 U.S.C. 5309 (formerly 25 U.S.C. 450e-2), where the actual costs of work under this contract are less than the estimated costs thereof, use of the

resulting excess funds shall be determined by Reclamation after consultation with the Contractor. **Access to contractor records.**

- (A) **In general.** Except for previously provided copies of tribal records that Reclamation demonstrates are clearly required to be maintained as part of the record keeping system of the Department of the Interior, records of the Contractor shall not be considered Federal records for purposes of Chapter 5 of Title 5, United States Code (25 U.S.C. 5329(b) (formerly 25 U.S.C. 4501(b); 25 CFR 900.2(d)).
- (B) **Record keeping system.** In accordance with sections 5(a) and (b) of the ISDEAA (25 U.S.C. 5305(a) and (b) (formerly 25 U.S.C. 450c(a) and (b)), the Contractor shall maintain a record keeping system and, upon reasonable advance request, provide access to such records to the Comptroller General, the Secretary of the Interior, Reclamation, or any of their duly authorized representatives until the expiration of three years after completion of all work authorized under this Contract.

(12) **Property.**

- (A) **In general.** The property management system standards and requirements specified in 25 CFR 900.51 – 900.60 and the property donation procedures at 25 CFR 900.85-900.107 shall apply to this Contract. A list of property, facilities, and equipment to be furnished by Reclamation under this Contract as Government-furnished property, as mutually agreed to and accepted by both Parties, shall be included as an attachment to this Contract. This list shall be kept current by the Contractor for the duration of this Contract and provided to Reclamation when requested.
- (B) **Excess and surplus property.** Pursuant to 25 CFR 900.104(a), the Contractor may request donation of excess and surplus Government property for its authorized use under this Contract. The Contractor may submit such a request to Reclamation's Awarding Official for coordination with the General Services Administration (GSA) and the Bureau of Indian Affairs (BIA).
- (C) **Real property.** The title to any real property acquired in whole or in part with Contract funds, or of any facilities or structures constructed with Contract funds, shall remain with the Federal government unless and until Congress specifically authorizes that the title to such property be transferred to the Contractor.

(13) **Procurement.**

- (A) **In general.** The Contractor shall follow the standards and requirements specified in 25 CFR 900.47 – 900.50 when procuring property or services for use in the performance of work authorized under this Contract with Contract funds. The Contractor shall not make an award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".
- (B) **Privity of contract.** Reclamation recognizes the contractual relationship between the Contractor and its subcontractors in the performance of this Contract. Reclamation shall not direct, advise or provide technical assistance to the Contractor's subcontractors without specific authorization or without a specific request to do so from an authorized official of the Contractor.
- (C) **Indian preference.** As provided in Section 7(b) and 7(c) of the ISDEAA (25 U.S.C. 5307(b) and (c) (formerly 25 U.S.C. 450e(b) and (c)), preference in procurement and employment shall be given to Indians to the greatest extent feasible. The Parties understand and agree that decisions regarding the extent to which preference in employment and procurement is feasible shall be governed by tribal law and determined at the sole discretion of the Contractor. The Contractor shall be solely responsible for developing and implementing preference criteria for subcontracts.
- (D) **Subcontract provisions.** Pursuant to 25 CFR 900.50, all subcontracts should contain a provision informing the subcontractor that its award is funded with Federal funds and that the subcontractor is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and executive orders, including but not limited to:

- (i) the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (19 CFR Part 3);
- (ii) the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5);
- (iii) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- (iv) the Miller Act (40 U.S.C. 270a-270f) with regard to performance and payment bonds;
- (v) all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1847h-7 et seq.; as amended); Section 508 of the Clean Water Act (33 U.S.C. 1251), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15);
- (vi) mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163);
- (vii) Federal Standard No. 313 (including revisions adopted during the term of the Contract) with regard to Hazardous Material Identification and Material Safety Data;
- (viii) the National Environmental Policy Act (42 U.S.C. 4321) and the National Historic Preservation Act (16 U.S.C. 470) and all other related environmental and cultural resource laws and regulations as they apply to this project;
- (ix) To the greatest extent practicable, ensure that all equipment and products purchased with Contract funds are American-made;
- (x) Retention of all required records for three (3) years after final payment and all other pending matters are closed; and
- (xi) Warranty that delivery of items or work required will be free of asbestos in any form whatsoever except for the use of asbestos cement pipe.

In addition, each subcontract shall contain provisions to ensure compliance with the ISDEAA (25 U.S.C. 5301 et seq.) (formerly 25 U.S.C. 450 et seq.) and the satisfactory completion of the project, including but not limited to:

- (i) Administrative, contractual, or legal remedies in instances where subcontractors violate or breach subcontract terms, and provide for such sanctions and penalties as may be appropriate;
- (ii) Termination for cause and for convenience including the manner by which it will be effected and the basis for settlement;
- (iii) Notice of the Contractor's requirements and regulations pertaining to reporting;
- (iv) Notice of the Contractor's requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such subcontract;
- (v) Notice of the Contractor's requirements and regulations pertaining to copyrights and rights in data; and
- (vi) Access by the Contractor, Reclamation, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the

subcontractor which are directly pertinent to the subcontract for the purpose of making audit, examination, excerpts, and transcriptions.

(14) **Disputes.**

- (A) **In general.** This Contract is subject to section 110 of the ISDEAA (25 U.S.C. 5331) (formerly 25 U.S.C. 450m-1). In the event that the Contractor elects to pursue an administrative appeal, such appeal shall be governed by 25 CFR Part 900 subpart L or subpart N, as applicable, depending on the nature of the dispute.
- (B) **Informal discussions.** Before a decision is issued by Reclamation on a modification or other matter over which Reclamation has authority under this Contract, the Contractor may request informal discussions to be held between the Parties in accordance with 25 CFR 900.153 or 900.217(a), as appropriate.
- (C) **Third-party mediation defined.** For the purposes of this Contract, the term "third-party mediation" means a form of mediation whereby Reclamation and the Contractor nominate a third party who is not employed by or significantly involved with Reclamation or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.
- (D) **Alternative procedures.** In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the ISDEAA (25 U.S.C. 5331) (formerly 25 U.S.C. 450m-1), the Parties to this Contract may jointly:
 - (i) submit disputes under this Contract to third-party mediation;
 - (ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;
 - (iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or
 - (iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5 of the United States Code.
- (E) **Effect of decisions.** Reclamation shall be bound by decisions made pursuant to the processes set forth in subparagraph (D), except that Reclamation shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States. **Obligations of the Contractor.** The Contractor is responsible for the successful completion of any design and/or construction phase activities contracted herein in accordance with the approved contract documents:
 - (1) **Contract performance.** The Contractor shall manage the day-to-day operations conducted under this Contract and perform the activities as described in the applicable AFA under subsection (f)(2) of this Contract.
 - (2) **Contracted activities.** Subject to the availability of appropriated funds, the Contractor shall administer the activities identified in this Contract and funded through the applicable AFA under subsection (f)(2).
 - (3) **Construction management services.** If this Contract is solely to perform construction management services, these services shall be limited to administrative support services; coordination; and monitoring oversight of the planning, design and construction process as defined in 25 CFR 900.113(b). The Contractor (or any subcontractors) shall not perform any construction project management or actual design phase or construction phase work in any capacity. In addition, pursuant to 25 CFR 900.118, the Contractor shall have no contractual relationship with or authority to direct construction contractors performing work under a separate contract.

- (4) **Design and construction responsibilities.** In accordance with 25 CFR 900.130(a), subject to the availability of funds, the Contractor is responsible for the successful completion of all engineering, design and construction activities contracted herein in accordance with the approved contract documents.

(A) **Design phase responsibilities.** For all design activities authorized under this Contract, the Contractor shall have the following responsibilities:

- (i) Pursuant to 25 CFR 900.125(b)(1), produce construction documents in accordance with the Program of Requirements (POR) and/or the scope of work. The POR is included in this Contract as Attachment 3; a scope of work is described in each AFA under subsection (f)(2) of this Contract.
- (ii) Pursuant to the requirements of 25 CFR 900.130(b)(1), subcontract with or provide the services of licensed and qualified architects, engineers and other consultants needed to accomplish the work under this Contract.
- (iii) Pursuant to the requirements of 25 CFR 900.130(b)(2), administer and disburse funds provided through this Contract in accordance with 25 CFR 900.42 – 900.45 and implement a property management system in accordance with 25 CFR 900.51 – 900.60.
- (iv) Pursuant to 25 CFR 900.130(b)(3), direct the activities of project architects, engineers, and other consultants.
- (v) Pursuant to 25 CFR 900.130(b)(4), direct the work of its subcontractors.
- (vi) Provide Reclamation opportunities to review, comment and approve project plans and specifications developed under this Contract in accordance with 25 CFR 900.130(b)(5) *or as otherwise negotiated* and specified in the funding agreement(s) incorporated into this Contract under subsection (f)(2).
- (vii) Pursuant to 25 CFR 900.130(b)(6), provide Reclamation with the plans and specifications after their final review so, if needed, Reclamation may obtain an independent government cost estimate in accordance with 25 CFR 900.131(b)(4) for the construction of the project.
- (viii) Pursuant to 25 CFR 900.130(b)(7), retain project records and design documents for a minimum of 3 years following completion of the Contract.

(B) **Construction phase responsibilities.** For all construction activities authorized under this Contract, the Contractor shall have the following responsibilities: Pursuant to 25 CFR 900.125(b)(2), perform all construction in accordance with the final construction documents produced as a part of the design phase of the project. Upon completion, the project documents, including plans and specifications, shall be attached to the applicable AFA.

- (ii) Pursuant to 25 CFR 900.130(c)(1), subcontract with or provide the services of licensed and qualified architects and other consultants as needed to accomplish the construction activities under this Contract.
- (iii) Pursuant to the requirements of 25 CFR 900.130(c)(2), administer and disburse funds provided through this Contract in accordance with 25 CFR 900.42 – 900.45 and implement a property management system in accordance with 25 CFR 900.51 – 900.60.
- (iv) Pursuant to 25 CFR 900.130(c)(3), subcontract with or provide the services of construction contractors or provide its own forces to conduct construction activities in accordance with the project construction documents or as otherwise negotiated and agreed to by the Parties.
- (v) Pursuant to 25 CFR 900.130(c)(4), direct the activities of project architects, engineers, construction contractors and other consultants.

- (vi) Pursuant to 25 CFR 900.130(c)(5), manage or provide for the management of day-to-day activities of this Contract, including issuances of change orders to subcontractors; except that, unless Reclamation agrees, the Contractor may not issue a change order to a construction subcontractor (i) that will cause the Contractor to exceed its budget as specified in the applicable funding agreement, (ii) that will cause the Contractor to exceed the performance period specified in the applicable funding agreement, or (iii) that is a significant departure from the scope or objective of the project, as identified in the applicable funding agreement.
- (vii) Pursuant to 25 CFR 900.130(c)(6), direct the work of its subcontractors so that work produced is provided in accordance with budget(s) and performance periods) as negotiated by the Parties and contained in the applicable AFA(s) under subsection (f)(2) this Contract.
- (viii) Pursuant to the requirements of 25 CFR 900.130(c)(8), maintain on the jobsite or at the project office, and make available to Reclamation during monitoring visits, the following: contracts, major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, testing reports, and current redline documents.
- (ix) Pursuant to 25 CFR 900.130(d), upon acceptance of each completed project feature, provide Reclamation with a reproducible copy of the record plans.

(5) Submission of Reports.

- (A) **Progress and financial status reports.** The Contractor shall provide to Reclamation progress and financial status reports in accordance with 25 CFR 900.130(c)(7) or as otherwise negotiated and specified herein or in the applicable annual funding agreement. See AFA for additional progress and financial status reporting information.
- (B) **Closeout report.** Pursuant to 25 CFR 900.130(d), as soon as practicable after the expiration of the performance period for each funding agreement under this Contract, the Contractor shall provide to Reclamation a contract closeout report. This report shall include, at minimum:
 - (i) a summary of work accomplished during the term of the funding agreement and the extent to which the goals and objectives of the project were accomplished;
 - (ii) any problems encountered and corrective actions taken; and
 - (iii) an accounting of amounts and purposes for which the Contract funds were expended.
- (C) **Single audit report.** The Contractor shall submit its single audit report in compliance with section 5(f)(1) of the ISDEAA (25 U.S.C. 5305(f)(1)) (formerly 25 U.S.C. 450c(f)(1)) and 2 CFR 200, subpart F—Audit Requirements. The Contractor agrees to provide a copy of its single audit report directly to Reclamation within 30 days of its completion. **Obligations of Reclamation.**

(1) Trust responsibility.

- (A) **In general.** The Secretary, acting through Reclamation on behalf of the United States, reaffirms the trust responsibility of the United States to the Confederated Tribes and Bands of the Yakama Nation Indian tribe(s) to protect and conserve the trust resources of the Indian tribe(s) and the trust resources of individual Indians.
- (B) **Construction of Contract.** Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to affected Tribe(s) or individual Indians. The Secretary, acting through Reclamation, on behalf of the United States shall act in good faith in upholding such trust responsibility.

(2) **Programs retained.** The United States hereby retains the programs, services, functions, and activities with respect to the Tribe that are not specifically assumed by the Contractor in the applicable Annual Funding Agreement under subsection (f)(2) of this Contract.

(3) **Construction management services.** Pursuant to 25 CFR 900.131(a), if this Contract is solely to perform construction management services, Reclamation will have the following responsibilities:

(A) Reclamation is responsible for the successful completion of the project in accordance with the approved Contract documents. Reclamation will consult with the Contractor on a regular basis *as negotiated* and specified in AFA(s) incorporated into this Contract in subsection (f)(2) to facilitate the exchange of information; and Reclamation will provide the Contractor with opportunities to review work produced by Reclamation in accordance with 25 CFR 900.131(a)(2) *or as otherwise negotiated* and specified in AFA(s) incorporated into subsection (f)(2). **Design and construction responsibilities.**

(A) **Design phase responsibilities.** For design activities being conducted by the Contractor under this Contract, Reclamation will have the following responsibilities:

- (i) Pursuant to 25 CFR 900.131(b)(2), make the final determinations under NEPA or other environmental laws to the extent that the design activities conducted by the Contractor are subject to these laws.
- (ii) Review and approve project plans and specifications for general compliance in accordance with 25 CFR 900.131(b)(5) no later than 21 calendar days from receipt of such documents from the Contractor, unless the Contractor agrees in writing to extend the time for review.
- (iii) Pursuant to the requirements of 25 CFR 900.131(b)(6), Reclamation reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use for Federal government purposes the copyright in any work developed under the Contract and any rights of copyright to which the Contractor or a subcontractor purchases ownership through this Contract.
- (iv) Pursuant to 25 CFR 900.131(b)(7), approve in advance any changes to any work specified under this Contract which require an increase to the negotiated Contract budget or performance period, or are a significant departure from the POR or the scope of the project, as identified in the applicable Funding Agreement.
- (v) Pursuant to 25 CFR 900.131(b)(8), review and comment on specific shop drawings, including design drawings, as negotiated and specified in the applicable Funding Agreement under subsection (f)(2) of this Contract.
- (vi) Pursuant to 25 CFR 900.131(b)(9), conduct on-site monitoring visits, or critical milestone on-site monitoring visits, as negotiated and specified in the applicable AFA under subsection (f)(2) of this Contract. If no time period is specified, Reclamation may conduct on-site monitoring visits monthly. Reclamation shall provide the Contractor reasonable notice of each visit.

(B) **Construction phase responsibilities.** For construction activities performed by the Contractor under this Contract, Reclamation will have the following responsibilities:

- (i) Pursuant to 25 CFR 900(b)(2), make the final determinations under NEPA or other environmental laws to the extent that contracted construction activities are subject to these laws.
- (ii) Pursuant to 25 CFR 900.131(b)(7), approve in advance any changes to any work specified under this Contract which require an increase to the negotiated Contract budget or performance period, or are a significant departure from the POR or the scope of the project.
- (iii) Pursuant to 25 CFR 900.131(b)(9), conduct on-site monitoring visits, or critical milestone on-site monitoring visits, *as negotiated* and specified in the applicable AFA under subsection (f)(2) of this Contract. If no time period is specified, Reclamation may conduct on-site monitoring visits on a

monthly basis. Reclamation shall provide the Contractor reasonable advance written notice of each visit.

- (iv) Pursuant to 25 CFR 900.131(b)(10), conduct final project inspections jointly with the Contractor.
- (v) **Emergency Suspension of Construction Activities.** Notwithstanding the notice provisions for suspension of work of 25 CFR 900.131(b)(11)(ii), if Reclamation makes a determination that there is imminent occasion of harm or danger to safety, health, or the environment during construction, Reclamation may suspend construction activities immediately, to the limited extent necessary to protect safety, health, or the environment. If Reclamation issues an emergency suspension, Reclamation shall provide written notification to the Contractor immediately following the suspension and shall provide immediate technical assistance to the Contractor in an effort to resolve the cause for the suspension as quickly as possible. Reclamation shall issue a notice to proceed or to commence work immediately upon resolution. The Contractor shall have all other rights associated with suspension identified by 25 CFR 900.131(b)(11).

(5) **Suspension of work.** Except as provided in subsection (d)(4)(B)(v) of this Contract, Reclamation can require the Contractor to suspend work under this Contract only in accordance with 25 CFR 900.131(b)(11).

(6) **Termination of contract. For cause.** Reclamation may terminate work under this Contract for cause pursuant to 25 CFR 900.131(b)(12).

(B) **For convenience.** Reclamation may terminate work under this Contract for convenience for those reasons and utilizing those procedures described in 25 CFR 900.131(b)(13).

(7) **Technical assistance.**

(A) Reclamation will provide technical assistance to the Contractor, upon request, in accordance with section 103(d) of the ISDEAA (25 U.S.C. 5322(d)) (formerly 25 U.S.C. 450h(d)).

(B) In response to a specific request from an authorized representative of the Contractor, Reclamation will provide technical assistance to the Contractor, subject to the availability of appropriations and personnel resources. Such technical assistance may include the performance of specific project activities as negotiated and specified in the applicable AFA under subsection (f)(2) of this Contract.

(e) **Other Provisions.**

- (1) **Designated officials.** Senior officials and designated representatives of Reclamation and the Contractor will serve as representatives for notices, proposed amendments to the Contract and other purposes under this Contract. The senior officials and designated representatives of the Parties are as follows:

Contractor's Senior Official

Delano Saluskin
Yakama Nation Tribal Council Chairman
PO Box 151
Toppenish, WA 98948
Phone: (509) 865-5121 ext. 4340

Reclamation's Senior Official

Lorri Gray
Regional Director
Columbia-Pacific Northwest Region
1150 N Curtis Rd., Ste. 100
Boise, ID 83709
Phone: (208) 378-5012

Contractor Designated Technical Representative

Tom Elliot
Tributary Enhancement Project Leader
PO Box 151
Toppenish, WA 98948
Phone: (509) 314-9703
Email: ellt@yakamafish-nsn.gov

Reclamation Designated Awarding Official's Technical Representative

Janine Empel
Project Manager (Engineering)
1917 Marsh Rd.
Yakima, WA 98901-2058
Phone: (509) 573-8057
Email: jempel@usbr.gov

Reclamation Awarding Official

Karina Del Toro
1150 N. Curtis Rd., Ste. 100
Boise, ID 83705
Phone: (208) 378-5270
Email: kdeltoro@usbr.gov

(2) **Contract modifications or amendment.**

- (A) **In general.** Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and Reclamation provide written consent for the modification.
- (B) **Exception.** The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the AFA under subsection (f)(2), and the reduction of funds pursuant to section 106(b)(2) (25 U.S.C. 5325(b)(2)) (formerly 25 U.S.C. 450j-1(b)(2)), shall not be subject to subparagraph (A).
- (3) **Officials not to benefit.** No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.
- (4) **Covenant against contingent fees.** The Parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.
- (5) **Federal Tort Claims Act coverage.** In accordance with 25 CFR 900.186(a), for purposes of Federal Tort Claims Act coverage, the Contractor and its employees (including individuals performing personal services contracts with the contractor to provide health care services) are deemed to be employees of the Federal government while performing work under this Contract. This status is not changed by the source of funds used by the Contractor to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Contractor.
- (6) **Insurance and indemnification.** In the event that the Contractor elects to perform construction activities utilizing its own forces, the Contractor and Reclamation agree to discuss whether procurement of liability insurance is advisable and in the best interests of the Contractor and the project.
- (7) **Retrocession.** In accordance with 25 CFR 900.240 -900.245, the Contractor may return to Reclamation any contracted project under this Contract, in whole or in part, for any reason, before the expiration of the term of this Contract.
- (8) **Buy American Act.** To the greatest extent practicable, all equipment and products purchased with funds made available under this Contract should be American-made.

(9) **Lobbying Restrictions.** None of the funds provided to the Contractor under this Contract may be used in any way, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to members of Congress as described in section 1913 of title 18, United States Code.

(10) **Payments.** All payments under P.L. 93-638 contracts and agreements with Bureau of Reclamation (Reclamation) are made under the Department of Treasury Automated Standard Application for Payments (ASAP) payment system. ASAP is an electronic payment and information system for the request and delivery of pre-authorized P.L. 93-638 award funds.

ASAP is the only allowable method for requesting and receiving payments. The Awarding Official may determine that payment requests will be reviewed and approved prior to disbursement. Please note that ASAP enrollment is specific to each Agency and Bureau. If your organization has an existing ASAP account with another Federal agency or Department of the Interior bureau, but not with Reclamation, you must initiate and complete enrollment in ASAP through submission of Reclamation's enrollment form located at <http://www.usbr.gov/mso/aamd/asap.html>. For further information regarding ASAP enrollment, please visit Reclamation's website link at <http://www.usbr.gov/mso/aamd/asap.html> or contact the Reclamation ASAP Help Desk at BOR_ASAP_Enroll@usbr.gov.

To receive payment, your organization must:

- 1) Have an active registration in ASAP with Reclamation; and
- 2) Have a Data Universal Number System (DUNS) (see <http://fedgov.dnb.com/webform>); and
- 3) Have an active registration in GSA's System for Award Management (SAM) (<http://www.sam.gov>).

(11) **Administrative Requirements, Cost Principles, and Audit Requirements.** Effective December 26, 2014, the joint interim final rule (Federal Register/Vol. 79, No. 244/Friday, December 19, 2014) implemented for all Federal award-making agencies the final guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," published by the Office of Management and Budget (OMB) in 2 CFR part 200 (Uniform Guidance - available at 78 FR 78589). The Department of the Interior adopted 2 CFR 200 at 2 CFR 1402. Effective upon implementation of this final rule, OMB Circulars A-87 (2 CFR 225) and A-133 have been superseded by the requirements of 2 CFR 200, Subpart E (Cost Principles) and Subpart F (Audit Requirements), respectively, which currently apply to this Contract.

With the exception of 2 CFR 200, Subpart F, which is required by the Single Audit Act, in the event of a conflict between statutory and regulatory requirements of P.L. 93-638 (as contained in 25 USC 5301 et seq.) (formerly 25 U.S.C. 450 et seq.) and 25 CFR 900, respectively) and 2 CFR 200, Subpart E (Cost Principles) (and other 2 CFR 200 Subparts negotiated by the Parties as applicable under this Contract), P.L. 93-638 and its implementing regulations will govern.

(12) **Responsible Subcontractors.** Pursuant to 25 CFR 900.48(e), 25 CFR 900.50, and Executive Orders 12549 and 12689, the tribe or tribal organization shall ensure that contracts are awarded only to responsible entities. Contracts shall not be awarded to entities that are debarred, suspended, or otherwise excluded from participation in affected Federal programs. Entities listed in GSA's System for Award Management (SAM) website (<http://www.sam.gov>) as excluded parties have been declared ineligible to participate in affected Federal programs on the basis of statutory or other regulatory procedures and shall not be awarded contracts for the period set forth in the statute or regulations.

(f) **Attachments. -**

(1) **Approval of Contract.** The Confederated Tribes and Bands of the Yakama Nation Resolution No. T-082-19 authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as Attachment 1.

(2) **Annual funding agreements.**

- (A) **In general.** The Annual Funding Agreement (AFA) under this Contract shall contain: terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and
- (ii) such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by Reclamation), to which the Parties agree.
- (B) **Incorporation by reference.** Each AFA is hereby incorporated in its entirety in this Contract and attached to this Contract as Attachment 2.
- (3) **Program of Requirements.** The Program of Requirements (POR) is included as part of the AFA in Attachment 2.

Attachment 1 to Contract

TRIBAL RESOLUTION



RESOLUTION

T-082-19

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation of the Yakama Reservation by the authority delegated by the Resolution February of 1944 and Resolution T-38-56, and

WHEREAS, the Yakama Tribal Council has the duty and responsibility according to the Resolutions T-38-56 and T-10-61 to protect and preserve the Treaty Rights of the Yakama Nation, and

WHEREAS, from time immemorial the taking of and management of the fisheries resource in a responsible manner has been cultural tradition of the Yakama Nation to protect the welfare of the resident and anadromous fishery which was great cultural and religious importance to the Yakama people, and

WHEREAS, through the Treaty of 1855, the Yakama Nation explicitly reserved for itself and its members the right to maintain their cultural and traditions, including "the right of taking fish at all usual and accustomed places", and

WHEREAS, the Yakima River Basin Water Enhancement Project (YRBWEP)(Title XII of Public Law 103-434) was signed into law in 1994 and the Yakama Nation entered into a Cooperative Agreement by the adoption of T-141-95, and

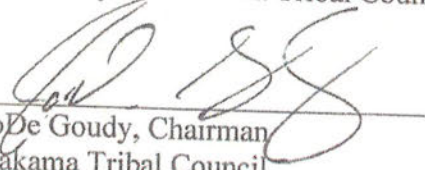
WHEREAS, the Yakama Nation entered into a Self-Determination Grant with the United States Bureau of Reclamation by the adoption of T-61-96 and Yakama Nation participates in the YRWEP process through T-53-91, and

WHEREAS, the approval of the Toppenish Creek Corridor Enhancement Project will provide direction for restoring the natural processes and functioning habitat for fisheries and wildlife resources and assist in modernizing the antiquated Wapato Irrigation Project delivery system.

NOW THEREFORE, BE IT RESOLVED, by the Yakama Tribal Council meeting in Regular Session at the Governmental Headquarters of the Confederated Tribes and Bands of the Yakama Nation, with a quorum being present, that the Toppenish Creek Corridor Enhancement Project is formally adopted and is approved for submittal of the Secretary of Interior.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish our Sovereign Immunity, whether expressed or implied, by virtue of this resolution for any and all administrative or legal action which may arise directly or indirectly from the same, nor does the Yakama Nation waive, alter or otherwise diminish our rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 2nd day of April, 2019 by the Yakama Tribal Council by a vote of 10 for, 0 against, and 0 abstentions:


JoDe Goudy, Chairman
Yakama Tribal Council

ATTEST:


Athena Sanchey, Secretary
Yakama Tribal Council

CC: file
f&w ca#114-2019

Attachment 2 to Contract

ANNUAL FUNDING AGREEMENT

Upon Award of Contract and Fiscal Year 2022 (October 1, 2021 – September 30, 2022)

(a) Authority and Purpose.

- (1) **Authority.** This agreement, denoted an Annual Funding Agreement (hereinafter "AFA"), is entered into by the Bureau of Reclamation (hereinafter "Reclamation") on behalf of the Secretary of the Interior, and by the Confederated Tribes and Bands of the Yakama Nation Tribe (hereinafter the "Contractor") (collectively hereinafter the "Parties"), pursuant to Self-Determination Contract No. R21AV00012 between the Parties (hereinafter the "Contract").
- (2) **Purpose.** The purpose of this AFA is to identify the specific activities to be performed upon award of contract and FY 2022, identify the funds to be provided to perform those activities, the time and method of payment, and such other provisions to which the Parties agree.

(b) Terms, Provisions, and Conditions.

- (1) **Effective date.** This AFA shall become effective upon approval and execution by authorized representatives of the Contractor and Reclamation.
- (2) **Activities covered by this AFA.** The following tasks will be completed under this AFA: Task #1 – Task #14.

Task #	Task
1	Coordination year 1
2	Project level monitoring year 1
3	Project level restoration design assessment
4	Pom Pom design
5	Pom Pom pre-monitoring
6	Pom Pom construction
7	Simcoe WWS design
8	Simcoe WWS pre-monitoring
9	3-Way pre-monitoring year 1
10	Upland Checks construction 1
11	Marion Checks 30% design
12	Marion Checks pre-monitoring Year 1
13	U2 re-reg 30% design
14	Alfalfa 60% design

(3) 

- (4) **Time and method of payment.** Payment to the Contractor shall be made as expeditiously as possible following the effective date of this AFA utilizing electronic funds transfer. Funds will be available in the ASAP system for the Contractor's access. ASAP authorized drawdown is intended for contractors to access funds. Payments will be made on a semi-annual basis upon progress and financial submission.

(c) Other Provisions.

- (1) Work plan, performance schedule and budget. Attachment A to this AFA incorporates the work plan or scope of work and contains a detailed description of the activities to be performed by the Contractor. Attachment B to this AFA incorporates the performance schedule, and Attachment C to this AFA incorporates the budget showing how the Contractor plans to allocate the funding transferred under the AFA. The work plan and schedule are subject to reasonable modification as deemed necessary and appropriate by the Contractor, as long as the stated goals and purposes of the Contract and this AFA are met. With respect to allocations within the approved budget, the Contractor may re-budget to meet contract requirements if such re-budgeting would not have an adverse effect on the performance of the contract.
- (2) The Management Standards System review was conducted by Bureau of Indian Affairs (BIA) in 2018. Within 60 days of award of this contract, Bureau of Reclamation intends on following up with BIA to determine the status of these recommendations.

(d) Progress and Financial Reporting Requirements

Required Reports	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within 2 CFR 200.328.	Summary of activities completed during the entire period of performance is required. See content requirements within 2 CFR 200.328.
Reporting Frequency	Semi-Annual	Final Report due within 120 days after the end of the period of performance.
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within 30 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of the project.
First Report Due Date	The first performance report is due for reporting period ending 3/31/2022.	N/A
Submit to:	Karina Del Toro, Awarding Official at bor-pnr-postaward@usbr.gov .	Karina Del Toro, Awarding Official at bor-pnr-postaward@usbr.gov .
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Semi-Annual	Final Report due within 120 days after the end of the period of performance or completion of the project.
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within 30 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of project.
First Report Due Date	The first Federal financial report is due for reporting period ending 3/31/2022.	N/A
Submit to:	Karina Del Toro, Awarding Officer t at bor-pnr-postaward@usbr.gov .	Karina Del Toro, Awarding Officer at bor-pnr-postaward@usbr.gov .

(e) Monitoring Plan

- (1) Monthly meetings will be held to discuss updates and the status of the remaining tasks. Field trips will be discussed with the Tribe at the first meeting and will depend on rate of progress made on the phases or tasks being completed. It is estimated that on-site field trips will be conducted twice per year once construction on the project begins.

Attachment A to AFA

WORK PLAN/SCOPE OF WORK

Tasks for work that will be done under this AFA are outlined below. Additional detailed information pertaining to the Work Plan is provided in the proposal.

- Task 1. Coordinate Toppenish Corridor Plan Implementation year 1.**
- Task 2. Project-level monitoring and adaptive management year 1.**
- Task 3. Project-level restoration design assessment for Action #10 "Restore incised reaches of Toppenish & Simcoe creeks".**
- Task 4. Design and Engineering for Pom Pom Road Habitat Restoration Project – Action # 10 "Restore incised reaches of Toppenish and Simcoe Creeks".**
- Task 5. Pre-project monitoring year 1 for Pom Pom Road Habitat Restoration Project – Action # 10 "Restore incised reaches of Toppenish and Simcoe Creeks".**
- Task 6. Construction of the Pom Pom Road project– Action # 10 Restore incised reaches of Toppenish & Simcoe creeks.**
- Task 7. Design and Engineering for Simcoe Creek at West White Swan Road Habitat Restoration Project – Action # 10 "Restore incised reaches of Toppenish and Simcoe Creeks".**
- Task 8. Pre-monitoring year 1 for Simcoe Creek at West White Swan Road Habitat Restoration Project – Action # 10 "Restore incised reaches of Toppenish & Simcoe creeks".**
- Task 9. Pre-monitoring year 1 for 3-way Phase 2 Habitat Restoration Project – Action # 3 "Restore diked reach".**
- Task 10. Install pilot upland check structures, monitor hydrological response, year 1 – Action #1 "Recharge Toppenish Creek Alluvial Fan".**
- Task 11. 30% design for Marion Drain check structures – Action 9 Raise water surface in lower Marion Drain.**
- Task 12. Pre-monitoring year 1 for Marion Drain check structures – Action 9 Raise water surface in lower Marion Drain.**
- Task 13. 30% design for the Unit 2 Reregulation Reservoir – Action 7, Unit 2 Conservation.**
- Task 14. 60% design for the Alfalfa Diversion– Action 8, divert lower Marion Drain directly to the Satus Unit.**

Attachment B to AFA

PERFORMANCE SCHEDULE

Task	Description	FY 2021				FY 2022			
		Q1 (DEC)	Q2 (MAR)	Q3(JUNE)	Q4(SEP)	Q1 (DEC)	Q2 (MAR)	Q3(JUNE)	Q4(SEP)
1	Coordination year 1				X	X	X	X	X
2	Project level monitoring year 1				X	X	X	X	X
3	Project level restoration design assessment				X	X	X	X	X
4	Pom Pom design				X	X	X	X	X
5	Pom Pom pre-monitoring year 1				X	X	X	X	X
6	Pom Pom construction						X	X	X
7	Simcoe WWS design				X	X	X	X	X
8	Simcoe WWS pre-monitoring year 1				X	X	X	X	X
9	3-Way pre-monitoring year 1				X	X	X	X	X
10	Upland Checks construction 1						X	X	X
11	Marion Checks 30% design				X	X	X	X	X
12	Marion Checks pre-monitoring year 1				X	X	X	X	X
13	U2 rereg 30% design				X	X	X	X	X
14	Alfalfa 60% design				X	X	X	X	X

Attachment C to AFA

BUDGET

Budget Item Description	AFA Year 1

Attachment D to AFA

TOPPENISH CREEK CORRIDOR ENHANCEMENT PROJECT PLAN, DECEMBER 2019

The Toppenish Creek Corridor Enhancement Plan provides an overview of the research that has been conducted over two decades in the Toppenish Creek Corridor and defines the major issues that impair the quality and vitality of the Corridor's myriad resources. The Corridor Plan describes previous and ongoing restoration efforts, presents actions that address these problems, and includes an implementation schedule and estimated budget for each action.

BOR Watersmart

UNITED STATES DEPARTMENT OF THE INTERIOR

ASSISTANCE AGREEMENT

R24AP00170

Between
Bureau of Reclamation

And

The Confederated Tribes and Bands of the Yakama Nation

For

Pom Pom Road at Toppenish Creek Habitat Restoration and Fish Passage Project

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I. OVERVIEW AND SCHEDULE

1. AUTHORITY

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (Reclamation) and *The Confederated Tribes and Bands of the Yakama Nation* (Recipient), pursuant to Section 40907 (“Multi-Benefit Projects to Improve Watershed Health”) of the Bipartisan Infrastructure Law (BIL) (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58 (the “Act”).

2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION

The *Pom Pom Road at Toppenish Creek Habitat Restoration and Fish Passage Project* (Project) achieves the public purpose of the Act by improving the health of fisheries, wildlife, and aquatic habitat through restoration and/or improved fish passage in a river basin adversely impacted by a Reclamation water project.

3. BACKGROUND AND OBJECTIVES

The U.S. Department of the Interior’s (Department) Aquatic Ecosystem Restoration Projects (AERP) provides a framework for Federal leadership and assistance to restore and protect aquatic ecosystems in support of the Department’s priorities. Through AERP, the Bureau of Reclamation (Reclamation) leverages Federal and non-Federal funding to work cooperatively with states, Tribes, and other entities as they study, design and construct aquatic ecosystem restoration projects that are collaboratively developed, have widespread regional benefits, and result in the improvement of the health of fisheries, wildlife, and aquatic habitat through restoration and improved fish passage.

The Yakama Nation will restore aquatic habitat and fish passage on Toppenish Creek, a tributary to the Yakima River in Yakima County, Washington. Irrigation diversions, roads, bridges, and agriculture have disconnected the creek’s main channel from its historic floodplain. As a result, federally-listed salmonid species have been cut-off from healthy floodplain spawning habitat, and groundwater recharge from the floodplain has been eliminated. When completed, the restoration project will provide 2.4 miles of complex high-quality rearing and spawning habitat for the federally threatened Columbia River steelhead and culturally important Pacific lamprey by routing stream flows back into of the historic channel. Installation of a new bridge and three box culverts will increase flow conveyance width by 270%, the creek will be reconnected to 100 acres of floodplain forests, restoring natural stream processes, and increasing flood water storage. This aquatic ecosystem restoration project is part the Toppenish Creek Corridor Plan and fits within the larger Yakima Basin Integrated Plan, a long-range water planning effort involving many stakeholders and partners to promote water supply reliability and improved ecological functions within the Yakima River Basin.

4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

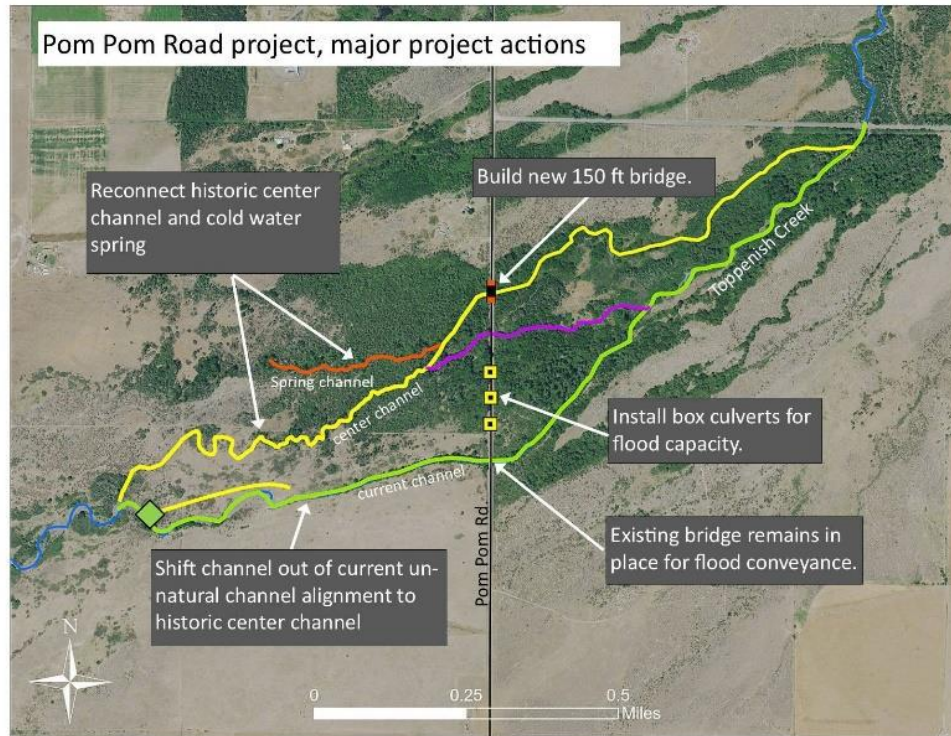
This Agreement becomes effective on the issue date shown in block 1 of the United States of America, Department of the Interior, Notice of Award (NOA). The Agreement's project period (period of performance) shall remain in effect through the date shown in block 6 of the NOA and may only be changed through written amendment of the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by a Reclamation GO. The total estimated project cost for this Agreement is [REDACTED] and the total estimated amount of federal funding is [REDACTED].

5. SCOPE OF WORK AND MILESTONES

Under this Agreement, the Recipient shall complete the construction and restoration activities described below along the Toppenish Creek between river miles 38.5 and 40.5 on the Yakama Reservation in Washington. Components of this project include:

- Reroute the mainstem channel of Toppenish Creek to occupy the historical North Channel and remove existing road plug in the North Channel
- Plug the existing culvert at the Center Channel to redirect flow onto the historical floodplain and flow route upstream of the road prism
- Plug the existing South Canal and reroute into historical flow routes
- Install three culverts in suitable locations to reconnected floodplain flow routing through Pom Pom Road.
- Construct new 150' bridge and raise approximately 0.45 miles of Pom Pom Road to accommodate the change in water surface elevations
- Complete surface grading to maximize inundation and minimize or deflect flow routing from artificially created routes.
- Install large wood structures to support channel function and provide aquatic habitat
- Revegetate area with native plants
- Install livestock exclusion fencing to exclude cattle during the wet season and direct cattle to the South Canal as an off-channel water source



In general, the Recipient will implement the project using the technical approach described in proposal Pom Pom Road at Toppenish Creek, Habitat Restoration and Fish Passage, submitted in response to funding opportunity announcement R23AS00106, which is incorporated by reference.

The project's geographic coordinates are 46.341043° N and -120.711665°W.

[illegible]

6. RESPONSIBILITY OF THE PARTIES

6.1 Recipient Responsibilities

6.1.1 The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

6.1.2 Interim Performance Reports. The Recipient shall prepare and submit to Reclamation interim Project performance reports (Interim Performance Reports) as required by Section I.10 of this Agreement. Each Interim Performance Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- A comparison of actual accomplishments to the milestones established by the financial assistance agreement for the reporting period
- The reasons why established milestones were not met, if applicable
- The status of milestones from the previous reporting period that were not met, if applicable
- Whether the Project is on schedule and within the original cost estimate
- Any additional pertinent information or issues related to the status of the Project

6.1.3 Final Project Report. The Recipient shall prepare and submit to Reclamation a final Project performance report (Final Project Report) as required by Section I.10 of this Agreement. The Final Project Report will include (but is not limited to) the information identified in paragraph I.10.3 and will discuss the following:

- Whether the project objectives and goals were met
- Discussion of the benefits achieved by the project, including information and/or calculations supporting the benefits
- How the project demonstrates collaboration
- A comparison of estimated costs vs. actual costs

Photographs documenting the project are also appreciated. Recipient understands that Reclamation may print photos with appropriate credit to Recipient. Recipient also understands that the Final Project Report is a public document and may be made available on Reclamation's website, www.usbr.gov/watersmart/.

6.2 Reclamation Responsibilities

6.2.1 Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight includes review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the SOW. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement.

7. BUDGET

7.1 Budget Estimate. The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this Agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this Agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this Agreement is the responsibility of the GO. Recipients are encouraged to direct any questions regarding allowability, allocability or reasonableness of costs to the GO for review prior to incurrence of the costs in question.

[illegible]

7.2 Cost Sharing Requirement

At least 35% non-Federal cost-share is required for costs incurred under this Agreement. If pre-award costs are authorized, reimbursement of these costs is limited to federal cost share percentage identified in this Agreement.

The Federal share of allowable costs shall not be expended in advance of the Recipient's non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the cost share percentage above shall occur concurrently. If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the GO prior to the expenditure. Recipient's may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

7.3 Pre-Award Incurrence of Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this Agreement are not allowable.

7.4 Allowable Costs

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following regulations, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR 200 Subpart E, "Cost Principles"

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs which are authorized for a period of up to 120 days following the project period are those strictly associated with closeout activities for preparation of the final reports.

7.5 Revision of Budget and Program Plans

In accordance with 2 CFR 200.308(h) the recipient must request prior written approval for any of the following changes:

- (a) A change in the approved scope of work or associated tasks, even if there is no associated budget revisions.
- (b) Revisions which require additional Federal funds to complete the project.

- (c) Revisions which involve specific costs for which prior written approval requirements may be imposed consistent with OMB cost principles listed in 2 CFR 200 Subpart E “Cost Principles”.

7.6 Amendments

Any changes to this Agreement shall be made by means of a written amendment. Reclamation may make changes to the Agreement by amendment to address changes in address, no-cost time extensions, changes to Key Personnel, the addition of previously agreed upon funding, administrative corrections which do not impact the terms and conditions of the Agreement, or it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR 200.340.

No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to amend, modify or otherwise effect the terms of the Agreement. Acceptance of an amendment is indicated by starting work, drawing down funds, or electronic acceptance.

All requests for amendment of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project period extension shall be made at least 45 days prior to the end of the project period of the Agreement or the project period date of any extension that may have been previously granted. Any determination to extend the project period or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

8. KEY PERSONNEL

8.1 Recipient’s Key Personnel.

The Recipient's Project Manager for this Agreement shall be:

Shawna Warehime
Habitat Biologist
PO Box 151
401 Fort Road
Toppenish, WA 98948
509-314-9703
wars@yakamafish-nsn.gov

9. LIMITATION OF AUTHORITIES

9.1 Grants Officer (GO).

The Reclamation GO is the only official with legal delegated authority to represent Reclamation. The Reclamation GO's responsibilities include, but are not limited to, the following:

- (a) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (b) Approve through formal amendment changes in the scope of work and/or budget;
- (c) Approve through formal amendment any increase or decrease in the period of performance of the Agreement;
- (d) Approve through formal amendment changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (e) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement; Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

9.2 Grants Management Specialist (GMS).

The Reclamation Grants Management Specialist (GMS) is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to amendments and prior approval, may only be granted, in writing, by a Reclamation GO. Please note that for some agreements, the Reclamation GO and the Reclamation GMS may be the same individual.

10. REPORTING REQUIREMENTS AND DISTRIBUTION

10.1 Noncompliance. Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 2 CFR 200.339-340.

10.2 Financial Reports. Federal Financial Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

10.3 Monitoring and Reporting Program Performance.

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also 2 CFR 200.332 Requirements for pass-through entities.
- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
 - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 120 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.
 - (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
 - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
 - (ii) The reasons why established goals were not met, if appropriate.
 - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in paragraph (b)(2) above.

10.4 Report Frequency and Distribution. The following table sets forth the standard reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.
Reporting Frequency	Semi-Annual	Final Report due within 120 days after the end of the period of performance.
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within 30 calendar days after the end of the Reporting Period	Final Report due within 120 days after the end of the period of performance or completion of the project.

Required Reports	Interim Reports	Final Report
First Report Due Date	The first performance report is due for reporting period ending 09/30/2024	N/A
Submit to:	<u>sha-dro-faoperations@usbr.gov</u> or GrantSolutions	<u>sha-dro-faoperations@usbr.gov</u> or GrantSolutions
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Semi-Annual	Final Report due within 120 days after the end of the period of performance or completion of the project.
Reporting Period	October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	Within 30 calendar days after the end of the Reporting Period	Final Report due within 120 days after the end of the period of performance or completion of project.
First Report Due Date	The first performance report is due for reporting period ending 09/30/2024	N/A
Submit to:	<u>sha-dro-faoperations@usbr.gov</u> or GrantSolutions	<u>sha-dro-faoperations@usbr.gov</u> or GrantSolutions

11. REGULATORY COMPLIANCE

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from a Reclamation GO that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.339-340 up to and including unilateral termination of this agreement.

12. TITLE TO IMPROVEMENTS

If the activities funded under this Agreement result in an infrastructure improvement to a federally owned facility, the Federal Government shall continue to hold title to the facility and improvements to the facility.

13. OPERATION AND MAINTENANCE COSTS

The non-Federal share of the cost of operating, maintaining, replacing, or rehabilitating the project funded through this Agreement shall be 100 percent.

14. BUY AMERICA DOMESTIC PROCUREMENT PREFERENCE

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at:

www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.

11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

Questions pertaining to waivers should be directed to the financial assistance awarding officer.

Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

15. DAVIS-BACON WAGE ACT COMPLIANCE

Section 41101 of the Bipartisan Infrastructure Law requires that all laborers and mechanics employed by contractors or subcontractor in the performance of construction, alteration, or repair work on a project assisted in whole or in part by funding made available under the Bipartisan Infrastructure Law (P.L. 117-58) shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (commonly referred to as the Davis-Bacon Act).

16. AGENCY REVIEW OF PAYMENTS WITHIN AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

Payment requests by the recipient through the ASAP system will require review and approval of the payment request by a Reclamation Grants Officer prior to disbursement. The Recipient must provide documentation of actual costs incurred (including any applicable cost-share) to the Grants Specialist prior to requesting drawdown of funds within the ASAP system to support the payment request.

This specific condition is imposed due to Material Weakness in Single Audit for Fiscal Year 2020 including missing or incorrect reporting, procurement and suspension and debarment and activities and costs allowed or unallowable. In order for this specific condition to be removed from this agreement, the Recipient must provide a request for removal of this term, in writing, to the Grants Officer. The request must include a description of the action(s) taken by the Recipient (and corresponding supporting documentation) to address the reason(s) identified above that led to the imposition of this specific condition. If the Grants Officer finds that the Recipient has fully addressed the reason(s) for the imposition of this specific condition, the Grants Officer will remove the term through formal amendment of the agreement.

II. RECLAMATION STANDARD TERMS AND CONDITIONS

1. REGULATIONS

The regulations at [2 CFR Subtitle A, Chapter II, Part 200](#) “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

2. PAYMENT

2.1 Payment (2 CFR 200.305).

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

- (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
- (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
 - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
 - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used,

and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

- (3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
- (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §200.208, subpart D of this part, including §200.339, or one or more of the following applies:
 - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
 - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified

date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

- (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.343.
 - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.
 - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:
- (i) The non-Federal entity receives less than \$250,000 in Federal awards per year.
 - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
 - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - (iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Bureau of Reclamation through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.
- (i) For returning interest on Federal awards paid through ASAP, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) List the ASAP Account
 - (C) List the Federal award number(s) for which the interest was earned; and

- (D) Make returns payable to: Bureau of Reclamation.
- (ii) For returning interest on Federal awards not paid through ASAP, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) List the Federal award number(s) for which the interest was earned; and
 - (C) Make returns payable to: Bureau of Reclamation
- (10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:
 - (i) Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, PMS, or another Federal agency payment system.
 - (ii) Relevant ASAP account numbers.
 - (iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)
- (11) When returning funds or interest to Reclamation you must include the following as applicable:
 - (i) For ACH Returns:
 - ABA Routing Number: 051036706
 - Account number: 312018
 - Bank Name and Location: Credit Gateway, Federal Reserve Bank, Richmond, VA
 - Agreement Number: Reclamation Grant or Cooperative Agreement Number
 - (ii) For Fedwire Returns¹:
 - ABA Routing Number: 021030004
 - ABA Short Name: TREAS NYC
 - Account number: 14060905
 - Beneficiary Name: Bureau of Reclamation
 - Bank Name and Location: Federal Reserve Bank, 33 Liberty Street, Federal Reserve Post Office Station, New York, NY 10045
 - Agreement Number: Reclamation Grant or Cooperative Agreement Number
- ¹Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.
- (iii) For International ACH Returns:
 - Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
 - Bank: Citibank N.A. (New York)
 - Swift Code: CITIUS33
 - Account Number: 36838868

Bank Address: 388 Greenwich Street, New York, NY 10013 USA
Payment Details (Line 70): Agency Name (abbreviated when possible) and
Agency Locator Code (ALC): 75010501

- (iv) For recipients that do not have electronic remittance capability, please make check payable to: “Bureau of Reclamation” and **include** the award number and ASAP account number in the memo lines of the check.

Please note it can take up to three weeks to process once received.

Mail (by USPS only) the check to Treasury approved lockbox:
DOI-BOR-Region: Denver
P.O. Box 6200-21
Portland, OR
97228-6200

2.2 Payment Method.

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2)(3) the Recipient shall “Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and provide its unique entity identifier in each application or plan it submits to the Federal awarding agency. If the Recipient allows their SAM registration to lapse, the Recipient’s accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327)

§200.317 Procurements by States.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

§200.318 General procurement standards.

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
 - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
 - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 200.212 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
 - (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
 - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to

- define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

§200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
- (1) Micro-purchases—(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- (iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold

established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

- (iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
 - (A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
 - (v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) Small purchases—
- (i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
 - (ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the

simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

- (1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.
 - (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- (c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract amendments. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract amendment changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
 - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in [appendix II](#) to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014, and 85 FR 49506]

4. EQUIPMENT (2 CFR 200.313)

See also §200.439 Equipment and other capital expenditures.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
 - (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
 - (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.
- (b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) Use.
 - (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
 - (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
 - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
 - (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for

which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

- (3) Notwithstanding the encouragement in 200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
 - (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

- (2) Except as provided in 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

5. SUPPLIES (2 CFR 200.314)

See also 200.453 Materials and supplies costs, including costs of computing devices.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See 200.313 Equipment, paragraph (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

6. INSPECTION

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

7. AUDIT REQUIREMENTS (2 CFR 200.501)

- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.331 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

- (h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 200.332 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339)

200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances.

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

9. TERMINATION (2 CFR 200.340)

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions,

including the effective date and, in the case of partial termination, the portion to be terminated;

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 200.344 Closeout and 200.345 Post-closeout adjustments and continuing responsibilities.

10. DEBARMENT AND SUSPENSION (2 CFR 1400)

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.

11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the

Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)

Trafficking in persons.

- (a) *Provisions applicable to a recipient that is a private entity.* You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not
 - (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procure a commercial sex act during the period of time that the award is in effect; or
 - (3) Use forced labor in the performance of the award or subawards under the award.
- (b) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment

and Suspension (Nonprocurement),” as implemented by our agency at 2 *CFR part 1400*.

(c) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- (1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 *CFR part 180*, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 *CFR part 1400*.

(d) *Provisions applicable to any recipient.*

- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
- (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

(e) *Definitions.* For purposes of this award term:

- (1) “Employee” means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (2) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(3) “Private entity”:

- (i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

(ii) Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(B) A for-profit organization.

(4) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18)

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or amendment of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 *et seq.*)

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing

sellers, it is not anticipated that Reclamation funds will result in any “displaced persons,” as defined under the URA.

- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. 4651.
- (c) Exemptions to the URA and 49 CFR Part 24
 - (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as “voluntary transactions.” Such “voluntary transactions” are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR 24.101(b)(1)(i)-(iv).
 - (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:
 - (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
 - (ii) inform the owner in writing of what it believes to be the market value of the property
- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR 24.104. Such reviews may be conducted by the Department of the Interior’s Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

17. SYSTEM FOR AWARD MANAGEMENT and Universal Identifier Requirements (2 CFR 25, Appendix A)

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward has the meaning given in 2 CFR 200.1.
5. Subrecipient has the meaning given in 2 CFR 200.1.

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-

owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).
2. **Where and when to report.**
 - i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. **What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

- e. Definitions. For purposes of this award term:
1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
 2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization; and,
 - iv. A domestic or foreign for-profit organization
 3. Executive means officers, managing partners, or any other employees in management positions.
 4. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
 5. Subrecipient means a non-Federal entity or Federal agency that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
 6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

[85 FR 49526, Aug. 13, 2020]

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.

- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (APPENDIX XII to 2 CFR Part 200)

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

22. CONFLICTS OF INTEREST

(a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- (2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.

(b) Requirements.

- (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- (2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
- (3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

(c) Notification.

- (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- (2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(d) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

(e) Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

- (f) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

23. DATA AVAILABILITY

- (a) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- (b) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (c) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
 - (i) The scientific data relied upon;
 - (ii) The analysis relied upon; and
 - (iii) The methodology, including models, used to gather and analyze data.

24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY

- (a) The recipient must—
 - (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through [2 CFR 180.300](#) prior to issuing a subaward or contract and;
 - (2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.
- (b) The recipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

- (c) The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

25. ADDITIONAL ACCESS TO RECIPIENT RECORDS

- (a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.
- (b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

26. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Federal award recipients are prohibited from using government funds to enter contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services as described in section 889 of the 2019 National Defense Authorization Act. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.

III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND CONDITIONS

The Department of the Interior (DOI) Standard Award Terms and Conditions found at <https://www.doi.gov/grants/doi-standard-terms-and-conditions> are hereby incorporated by reference as though set forth in full text. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on this Agreement. Recipient acceptance of this Agreement carries with it the responsibility to be aware of and comply with all DOI terms and conditions applicable to this Agreement. The Recipient is responsible for ensuring their subrecipients and contractors are aware of and comply with applicable statutes, regulations, and agency requirements.

Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected in this Agreement can result in the DOI taking one or more of remedies described in 2 Code of Federal Regulations parts 200.339 and 200.340. The DOI will notify the recipient whenever terms and conditions are updated to accommodate instances in the passage of a regulation or statute that requires compliance. Also, DOI will inform the Recipient of revised terms and conditions in the action of an Agreement amendment adding additional Federal funds. Reclamation will make such changes by issuing a Notice of Award amendment that describes the change and provides the effective date. Revised terms and conditions do not apply to the Recipient's expenditures of funds or activities the Recipient carries out before the effective date of the revised DOI terms and conditions.



COOPERATIVE AGREEMENT

Contract ID
Contract Release
Contract Modification
Terms

00096709

Net 15

BPA CA 96709

Mail Invoice To:
fwinvoices@bpa.gov
F & W Invoices - EWB-4
P. O. Box 3621
Portland OR 97208-3621

Please Direct Inquiries To:

KAREN T WOLFE
ktwolfe@bpa.gov
Title CONTRACT SPECIALIST
Phone: (503) 230-3448
Fax (503) 230-4508

Vendor:

CONFEDERATED TRIBES AND BANDS OF THE
YAKAMA INDIAN NATION
PO BOX 151
TOPPENISH WA 98948

Title

1996-035-01 EXP YAKAMA RESERVATION WATERSHED PROJECT

Contract Value

Total Value		** NOT TO EXCEED **
Pricing Method	COST, NO FEE	Start Date 04/01/2025
Contract Type	COOPERATIVE AGREEMENT	End Date 03/31/2026





DEPARTMENT OF ENERGY
Bonneville Power Administration
P.O. BOX 3621 • PORTLAND, OREGON 97208-3621



CONTINUATION PAGE

COOPERATIVE AGREEMENT NO. 96709
TITLE: 1996-035-01 EXP YAKAMA RESERVATION WATERSHED PROJECT
RECIPIENT: CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

(BPA) DUNS No. 043003334
BPA Federal Customer Treasury Fund Account Symbol: 89X4045
BPA Agency Location Code: 89001401; BPA Tax ID: 93-0334712

Contracting Officer's Representative (COR)	Chad Baumler	503-230-2590	cebaumler@bpa.gov
Contracting Officer (CO)	Karen Wolfe	503-230-3448	ktwolfe@bpa.gov

This award is hereby executed under the terms and conditions of between the Bonneville Power Administration (BPA) and the Confederated Tribes and Bands of the Yakama Nation.

- This agreement is issued as follows and consists of:
 - Signature page
 - Continuation page
 - Terms and Conditions
 - Project Description (SOW)
 - Budget
 - Construction Wage Rates for Yakima County, WA (Heavy & Highway)
- The performance period is from 04/01/2025 – 03/31/2026.
- Funding in the amount of [REDACTED] is awarded.
- Refer to Clause C-31M, Reimbursement Payment and Financial Reporting Requirements, for instructions on reimbursement and financial reporting.
- Invoice and Submittal Instructions: Submit requests for reimbursement and required reports marked with the grant number to the COR at the email address provided herein including a copy to fwinvoices@bpa.gov.
- Property inventory is transferred to this cooperative agreement from the previous award 94526.
- A COR designation memo is forwarded to all parties involved in this agreement as reference to responsibilities and authorities.

ATTACHMENT – TERMS AND CONDITIONS

CLAUSES INCORPORATED BY REFERENCE

This award incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at the following address:

Bonneville Financial Assistance Instructions Manual clauses: <https://www.bpa.gov/energy-and-services/customers-and-contractors/financial-assistance-instructions-manual>

Clause 1 Regulations Applicable To BPA Financial Assistance (JUL 2017)
Clause 2 Legal Authority And Effect (JUL 2017)
Clause 3 Non-assignability (JUL 2017)
Clause 4 Compliance With Federal, State, And Municipal Law (JUL 2017)
Clause 5 Inconsistency With Federal Law (JUL 2017)
Clause 7 Contracting Officer's Representative (OCT 2018)
Clause 10 Federal Stewardship (OCT 2018)
Clause 11 Substantial Involvement (OCT 2018)
Clause 12 Nondisclosure And Confidentiality Agreements Assurances (JUL 2017)
Clause 13 Foreign Work and Travel (JUL 2021)
Clause 14 Purchases (JUL 2017)
Clause 15 Lobbying Restrictions (JUL 2017)
Clause 16 Export Controls (JUL 2017)
Clause 18 Extensions Of Period Of Performance (JUL 2017)
Clause 19 Property Trust Relationship & Insurance Coverage (JUL 2017)
Clause 21 Property – Supplies And Equipment (JUL 2017)
Clause 22 Title To And Disposition Of Property (OCT 2018)
Clause 23 Record Retention (JUL 2021)
Clause 24 Audits (OCT 2018)
Clause 25 Suspension Or Termination (JUL 2017)
Clause 26 Claims, Disputes, And Appeals (JUL 2017)
Clause 27 Reporting Program Performance (JUL 2021)
Clause 29 Payment Requests (JUL 2017)
Clause 31 Reimbursement Payment & Financial Reporting Requirements (OCT 2018)
Clause 32 Budget Changes (JUL 2021)
Clause 34 Insolvency, Bankruptcy Or Receivership (OCT 2018)
Clause 35 Nondiscrimination In Federally Assisted Programs (JUL 2017)
Clause 36 Environmental Protection (JUL 2021)
Clause 37 Endangered Species Act Requirements (JUL 2021)
Clause 38 NEPA Requirements (JUL 2021)
Clause 39 Felony Conviction And Federal Tax Liability Assurances (JUL 2017)
Clause 40 Drug-Free Workplace Requirements For Financial Assistance Awards (JUL 2017)
Clause 42 Rights In Data (OCT 2018)
Clause 43 Indemnity (OCT 2018)
Clause 44 Environmental, Safety, And Health (OCT 2018)
Clause 45 Small Unmanned Aircraft (UAS) (JUL 2021)
Clause 46 Closeout (JUL 2021)
Clause 47 National Historic Preservation Act Requirements (JUL 2021)
Clause 50 Buy America Requirement For Infrastructure Projects (FEB 2023)

CLAUSES INCORPORATED BY FULL TEXT

CLAUSE 17 PUBLICATIONS (JUL 2017)

BPA encourages the Recipient to publish or otherwise make publicly available the results of work performed under this Award. The Recipient is required to include the following acknowledgement in publications arising out of or relating to work performed under this Award:

Acknowledgment: "The information, data, or work presented herein was funded in part by the Bonneville Power Administration under Award Number **96709**. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

STATUTORY AND NATIONAL POLICY REQUIREMENTS

Financial assistance awards are subject to the following statutory and national policy requirements below. By signing or accepting the funds under the financial assistance award, the recipient agrees that it will comply with applicable provisions below.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
NONDISCRIMINATION				
On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by: DOE at 10 CFR Part 1040	All	All	All	Requirements flow down to subrecipients.
On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR Part 60 and EPA at 40 CFR Parts 7 and 12.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."	All	Awards under which construction is to be done.	Requirements flow down to construction subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.). DOE at 10 CFR Part 1040	All	Education al institution [for sex discrimination, excepts all Institution controlled by religious organization, when inconsistent with the organization's religious tenets].		
On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90. DOE at 10 CFR Part 1040	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	All	All	Requirements flow down to subrecipients.
On the basis of handicap, in: 1. Section 504 of the Rehabilitation Act of 1973 (29 USC 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DOE at 10 CFR Part 1040.	Grants, cooperative agreements, and other awards included in "Federal financial assistance"	All	All	Requirements flow down to subrecipients.
2. The Architectural Barriers Act of 1968 (42 USC 4151, et seq.).	Grant or loan	All	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
3. Americans with Disabilities Act. 42 USC 12101 et. seq	All	All		
LIVE ORGANISMS				
For human subjects:				
For human subjects, the Common Federal Policy for the Protection of Human Subjects. Codified by the: DOE at 10 CFR Part 745	All	All	Research, development, test, or evaluation involving live human subjects.	Requirements flow down to subrecipients

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
P.L. 104-191 Health Insurance Portability and Accountability Act (HIPAA)	As applicable	Covered Entities	As applicable	Limits uses of protected health information (PHI) collected or maintained by researchers within a covered entity or access to PHI from a covered entity. Research uses do not require Business Associate Agreements (defined at 45 CFR part 164.504 (e)(1) between collaborating institutions. Guidance available at http://privacyruleandresearch.nih.gov/
For animals:	All	All		Requirements flow down to subrecipients.
Rules on animal acquisition, transport, care, handling, and use in: (i) 9 CFR Parts 1-4, Department of Agriculture rules that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156). Public Health Service Agencies must follow requirements in the PHS Policy on Humane Care and Use of Laboratory Animals, which implements PL 99-158, Sec. 495. NASA requirements for animal welfare are set forth at 14 CFR Part 1232 EPA at 40 CFR Part 40. For USDA/CSREES, "In the case of domestic farm animals housed under farm conditions, the institution should adhere to the principles stated in the Guide for the Care and Use of Agricultural Animals in Agriculture and Teaching, Federation of Animal Science Societies, 1999."	All	All	Research, experimentation, or testing involving the use of animals USDA regulations exempt birds, most rats and mice bred for research, and farm animals used for agricultural research.	
Rules of the Departments of Interior (50 CFR Parts 10-24) and Commerce (50 CFR Parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	All	All	Activities which may involve or impact wildlife and plants.	
ENVIRONMENTAL STANDARDS				

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. Seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799]. EPA at 40 CFR Part 6	All	All	All, for Clean Air Act, Clean Water Act, and Executive Order 11738.	Requirements flow down to subrecipients.
The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process. DOE at 10 CFR Part 1021				
Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas. DOE at 10 CFR Part 1022	All	All	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. Parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders 11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.
All existing or proposed components of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.). EPA at 40 CFR Part 6	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	All	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	Requirements flow to subrecipients.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3). EPA at 40 CFR Part 6	All	All	Construction in All area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for all projects that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.
Resource Conservation and Recovery Act 42 USC 6901	All	Awards to states or a political subdivision of a state (which for this purpose includes state and local institutions of higher education or hospitals)		
HEALTH & SAFETY GUIDELINES				
Applicable OSHA Standards in Laboratories 29 CFR 1910.1030 Bloodborne Pathogens; 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories	All	All	Research involving use of hazardous chemicals or bloodborne pathogens	
Handling and transport of etiologic agents Procedures for Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents, 1994 (3rd ed.), H5a3doc.75, National Committee for Clinical Laboratory Standards	All	All	Research involving etiologic agents	
Hotel and Motel Fire Safety Act of 1990 - P.L. 101-39 40 USC 327-333	Conference or meeting support	All	Alterations and Renovations > \$500,000	
Labor Standards under Federally Assisted Construction: Construction Work Hours and Safety Standards Act 40 USC 327-333	All	All	Alterations and Renovations > \$500,000	
Text Messaging While Driving - EO 13513	All	All	When performing work for or on behalf of government	Adopt and enforce policies that ban text messaging while driving.

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Increasing Seat Belt Use in the United States Executive Order 13043, Increasing Seat Belt Use in the United States, dated, April 16, 1997	All	All		In accordance with the Executive Order, "grantees are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles."
NATIONAL SECURITY GUIDELINES				
Executive Order 13224, Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism, dated September 23, 2001.	All			
GENERAL/MISCELLANEOUS REQUIREMENTS				
Drug Free Workplace 41 USC 701 et seq. DOE at 10 CFR Part 607	All	All		
Civil False Claims Act 31 USC 2739	All	All	All	
Criminal False Claims Act 18 USC 287 and 1001 31 USC 3801, 45 CFR 79	All	All	All	
Government-wide Debarment and Suspension (Nonprocurement) DOE at 10 CFR 1036	All	All		

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Lobbying Prohibitions 31 USC 1352, stipulates that (1) No Federal appropriated funds have been paid or will be paid, any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit the SF Form LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. DOE at 10 CFR Part 601	All			Requirements flow down to construction subrecipients.
Metric System 15 USC 205 and Executive Order 12770	All	All	All	
Misconduct in Science Policies and responsibilities associated with prevention, detection, and handling of misconduct in science allegations as stipulated in regulations: DOE at 10 CFR Part 733 [Federal Register: December 6, 2000 (Volume 65, Number 235)] [Notices] [Page 76260-76264]	All	All	All	

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
National Historic Preservation The recipient agrees to identify to the awarding agency all property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide all the help the awarding agency may need, with respect to the award. 16 USC 470f	All	All	All	
Paperwork Reduction Act 44 USC 3501	All	All	When data is collected from respondents using a questionnaire or other survey instrument. See, however, M-11-07 dated 12/9/10 entitled, "Facilitating Scientific Research by Streamlining the Paperwork Reduction Act Process." https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2011/m11-07.pdf	Data collection activities, if any, performed under this project are the responsibility of the recipient, and awarding agency support of the project does not constitute approval of any survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data are being collected for or in association with Bonneville without the specific written approval of the Bonneville CO. However, this requirement is not intended to preclude mention of Bonneville support of the project in response to an inquiry or acknowledgment of such support in any publication of these data.
U.S. Flag Air Carriers 49 USC 40118 See also General Services Administration amendment to the Federal Travel Regulations, Federal Register (Vol. 63, No. 219, 63417-63421)	All	All	Any air transportation to, from, between, or within a country other than the U.S. of persons or property, the expense of which will be assisted by Federal funding, must be performed by or under a code-sharing arrangement with a U.S.-flag air carrier if service provided by such a carrier is available (see Comp Gen. Decision B-240956, dated September 25, 1991).	

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Trafficking in Persons By signing or accepting funds under the agreement, the recipient agrees that it will comply with Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)) as implemented by 2 CFR 175.	All	175.15 (b)l.a. applies to private entities 175.15(b) l.b. applies to other than private entities if award includes subrecipient award to a private entity 117.15(b)l.c. applies to all recipients		Requirements flow down to subrecipients.
Whistleblower Protection Awardees are notified of the applicability of 41 U.S.C. § 4712, as amended by P.L. 112-239, providing protection for whistleblowers.	All	All	All	
Use of United States Flag Vessels 46 CFR 381	All	All		
Patents, Trademarks and Copyrights 35 USC 202-204 and 37 CFR 401	All	Awards to non-profits and small businesses		
Privacy Act 5 USC 552a	All	All		
Pro Children Act 20 USC 7183	All	All	All awards performed in facilities where children are served.	
Uniform Relocation Assistance and Real Property Acquisition Policies Act 42 USC 4601 and 49 CFR 24	All	All		
Constitution Day PL 108-447	All	Educational Institutions		
Copeland Act 40 USC 4135	All	All		
Davis Bacon Act 40 USC 3141 et seq	All	All		

Description	Type of Award	Type of Recipient	Specific Situation	Flow Down Requirements
Earthquake Hazards Reduction Act 42 USC 7701 et seq., EO 12699	All	All	Construction awards within applicable geographic areas	
Freedom of Information Act 5 USC 552	All	All		
Hatch Act 5 USC 7321-7328	All	State or Local Governments		
Limited English Proficiency EO 13166	All	All		
Native American Graves Protection and Repatriation 25 USC 3001-3013	All	All		



Statement of Work Report

Data Current as of: 03/18/2025

Report Printed: 03/18/2025

Project Title: Yakama Reservation Watershed Project
Project #: 1996-035-01
Contract Title: 1996-035-01 EXP YAKAMA RESERVATION WATERSHED PROJECT
Contract #: 96709
Province: Columbia Plateau **Subbasin:** Yakima
Workorder Task(s): WO: 00188520
Task: 1
Perf. Period Budget: [REDACTED] **Perf. Period:** 4/1/2025 - 3/31/2026
Contract Type: Coop **Pricing Type:** Cost Reimbursement (CNF)
Contractor(s): Yakama Confederated Tribes (Prime - YAKINDNA00)
BPA Internal Ref: 96709

SOW Validation: Last validated 03/12/2025 with 0 problems, and 0 reviewable items

Contract Documents: [Transmittal Memo \(03/13/2025\)](#) Transmittal Memo for CR-375392
[Property Inventory \(01/14/2025\)](#) Property Inventory
[Budget - Contract \(03/07/2025\)](#) CR-375392 BPA FY 25-26_2-20-25

Contract Description:

The Yakama Reservation Watershed Project has completed numerous restoration actions since 1996 in the Satus, Toppenish, and Ahtanum Watersheds-- all tributaries of the Yakima River. These actions targeted ESA listed Middle Columbia Steelhead as well as other anadromous and resident fish species. Under this contract, we intend to design and implement projects to further enhance fish habitat.

In FY2025 we plan to implement two major project, Pom Pom and Three Way, and to install a fish screen on the Lawrence Ditch.

Contacts:

Name	Role	Organization	Phone/Fax	Email	Address
Debbie Azure	Interested Party	Yakama Confederated Tribes	(509) 865-5121 6334 / NA	azud@yakamafish-nsn.gov	PO BOX 151 TOPPENISH WA 98948
Brandon Rogers	Interested Party	Yakama Confederated Tribes	(509) 949-4109 / NA	rogb@yakamafish-nsn.gov	
Shannon Adams	Interested Party	Yakama Confederated Tribes	(509) 945-0754 / NA	adas@yakamafish-nsn.gov	
Karen Wolfe	Contracting Officer	Bonneville Power Administration	(503) 230-3448 / NA	ktwolfe@bpa.gov	P.O. Box 3621, Mailstop - NSSP-4 Portland OR 97208-3621
Loverne George	Administrative Contact	Yakama Confederated Tribes	(509) 865-5121 6364 / NA	geol@yakamafish-nsn.gov	
Jackie Olney	Administrative Contact	Yakama Confederated Tribes	(509) 865-5121 6311 / NA	olnj@yakamafish-nsn.gov	P.O. Box 151 Toppenish WA 98948



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Tana Hoptowit	Administrative Contact	Yakama Confederated Tribes	(509) 865-5121 6318 / (509) 865-6293	hopt@yakamafish-nsn.gov	P.O. Box 151 Toppenish WA 98948
Tim Resseguie	Technical Contact	Yakama Confederated Tribes	(509) 945-7409 / NA	rest@yakamafish-nsn.gov	
Tom Elliott	Supervisor	Yakama Confederated Tribes	(509) 865-5121 6308 / NA	ellt@yakamafish-nsn.gov	PO Box 151 Toppenish WA 98948
Jesse Wilson	F&W Approver	Bonneville Power Administration	(503) 230-4506 / NA	jcwilson@bpa.gov	P.O. Box 3621 Mailstop - EWL-4 Portland OR 97208-3621
Madeleine Eckmann	Interested Party	Yakama Confederated Tribes	(509) 449-2091 / NA	eckm@yakamafish-nsn.gov	2 Johnson Lane Winthrop WA 98862
Jessica Power	CO Assistant	Bonneville Power Administration	(503) 230-4023 / NA	jcpower@bpa.gov	P.O. Box 3621 NSSP-4 Portland OR 97208-3621
Dallas Reed	Technical Contact	Yakama Confederated Tribes	(509) 790-8596 / NA	reed@yakamafish-nsn.gov	
Shawna Warehime	Interested Party	Yakama Confederated Tribes	(509) 945-1259 / NA	wars@yakamafish-nsn.gov	
Catherine Clark	Env. Compliance Lead	Bonneville Power Administration	(503) 230-4240 / NA	cmclark@bpa.gov	
Chad Baumler	COR	Bonneville Power Administration	(630) 461-5871 / NA	CEBaumler@bpa.gov	
Audrey Scott	Contract Manager	Yakama Confederated Tribes	(509) 790-8596 / NA	scga@yakamafish-nsn.gov	

Work Element Budget Summary:

Work Element - Work Element Title

EC Needed*

Estimate

(%)

- A : 162. Analyze/Interpret Data - Wakish Small Contract
- B : 119. Manage and Administer Projects - Manage Restoration Projects
- C : 165. Produce Environmental Compliance Documentation - Environmental Compliance
- D : 99. Outreach and Education - Conduct Field Education - Restoration - Salmonid Life Histories
- E : 114. Identify and Select Projects - Select habitat improvement actions and identify possible projects for next fiscal year
- F : 160. Create/Manage/Maintain Database - Update Project Database
- G : 161. Disseminate Raw/Summary Data and Results - Create informal summary reports and maps





H : 122. Provide Technical Review and Recommendation - Input to various Tribal planning and policy efforts	
I : 157. Collect/Generate/Validate Field and Lab Data - Operate rotary screw traps for steelhead	*
J : 157. Collect/Generate/Validate Field and Lab Data - Conduct steelhead and bull trout spawner surveys	*
K : 157. Collect/Generate/Validate Field and Lab Data - Collect water temperature data	*
L : 157. Collect/Generate/Validate Field and Lab Data - Collect discharge measurements	*
M : 162. Analyze/Interpret Data - Analyze redd count data	
N : 162. Analyze/Interpret Data - Analyze Steelhead Outmigrant Data	
O : 186. Operate and Maintain Habitat/Passage/Structure - Assist with the operation of diversions and screens on Ahtanum Creek	*
P : 186. Operate and Maintain Habitat/Passage/Structure - Assist with operation of diversions and screens on Toppenish Creek	*
Q : 186. Operate and Maintain Habitat/Passage/Structure - Maintain stock tanks/livestock fences/improved springs	*
R : 198. Maintain Vegetation - Maintain vegetation	*
S : 175. Produce Design - 3-Way Phase II Levee Removal - Design Continuation	*
T : 180. Enhance Floodplain/Remove, Modify, Breach Dike - 3way phase II Levee Removal	*
U : 29. Increase Aquatic and/or Floodplain Complexity - 3way phase II Levee Removal	*
V : 47. Plant Vegetation - 3way phase II Levee Removal	*
W : 30. Realign, Connect, and/or Create Channel - 3way phase II Levee Removal	*
X : 100. Construction Management - Pom Pom RM 40 Bridge and Channel Construction - Construction Management	
Y : 30. Realign, Connect, and/or Create Channel - Pom Pom RM 40 Bridge Construction and Channel Alignment	*
Z : 85. Remove/Breach Fish Passage Barrier - Pom Pom RM 40 Bridge Construction and Channel Alignment	*
AA : 47. Plant Vegetation - Pom Pom Revegetation	*
AB : 174. Produce Plan - On Call Services - Engineering Support	*
AC : 174. Produce Plan - Satus Reach Assessment	*
AD : 175. Produce Design - Toppenish Wood Loading RM 45 - 51- Produce Designs	*
AE : 208. Irrigation Infrastructure Construction or Replacement - Lawrence Ditch Fish Screening	*
AF : 175. Produce Design - Satus RM 23 LWD	*
AG : 185. Produce CBFish Status Report - Periodic Status Reports for BPA	



AH : 132. Produce Progress (Annual) Report - Produce Project
Annual Report for FY23 Mar23-Feb24

Total: [REDACTED]

* Environmental Compliance (EC) needed before work begins.

Statement of Work Report

Work Element Details

A: 162. Analyze/Interpret Data

Title: Wakish Small Contract
Description: David Lind with Wakish will have a small contract to assist Yakama Nation and Tim Resseguie with data analysis and reporting.

Specific scope of work is as follows:

- 1 - Assist YRWP with analysis of juvenile fish movement in Toppenish and Satus Creeks using PIT tag data
- 2 - Assist YRWP with analysis of juvenile fish survival in Toppenish and Satus Creeks using PIT tag data
- 3 - Assist YRWP with reporting on the analysis.

Billing hours as needed for his time to perform tasks 1 - 3.

Deliverable Specification: An error-checked data set and metadata will be stored consistent with the database(s) and protocol documented in contract. (Optional: This includes the following methods: (List methods).) Data will be publicly accessible, with stipulations for limitations of use and data generator attribution. Additional implementation notes and analysis will be in the Annual Report, or attached to the protocol as implementation notes.
The data file/s will be stored in the data repository/ies specified in the contract. In your annual report (WE 132), you are required to provide a link to your data set with a file name in the report's first appendix. If not web accessible, provide instructions (e.g., file name, directory, or position title) for accessing data.

Work Element Budget: [REDACTED]

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Population Status
- * Primary R, M, and E Type : Status and Trend Monitoring
- * Secondary R, M, and E Type : Project Feasibility/Development Monitoring
- * Secondary R, M, and E Focal Strategy : Multiple Strategies

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: NPCC Subbasin:

State: HUC5 Watershed:

County: HUC6 Name:

Salmonid ESUs Present:

Study Plan: YRWP Juvenile steelhead outmigration (1996-035-01) v1.0

Study Plan Owner: Tim Resseguie

Protocol: YRWP Juvenile steelhead outmigration (1996-035-01) v1.0

Protocol State: Finalized

Protocol Owner: Tim Resseguie

Sample Design: Analyze PIT tag detections at downstream detection facilities to estimate survival - Yakama Confederated Tribes v1.0

Methods:

ID	Title	Type	Optional	Customized Based On	Status
485	Cormack-Jolly-Seber (CJS) Model v1.0	Data Analysis/Interpretation	No	N/A	Finalized
1734	Fish wet weight v1.0	Data Collection	No	N/A	Finalized
4041	Measuring Fish Length: Fork length v2.0	Data Collection	No	N/A	Finalized
1736	PIT tag marking procedures v1.0	Data Collection	No	N/A	Finalized



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133	Rotary Screw Trap Deployment and Operation v1.0	Data Collection	No	N/A	Finalized
5519	Rotary Screw Trap Mark-Recapture Salmonid Outmigration Abundance Estimate v1.0	Data Analysis/Interpretation	No	N/A	Finalized
134	Trap Efficiency Testing v1.0	Data Collection	No	N/A	Finalized

Metrics:

Title	Category	Subcategory	Subcategory focus 1	Subcategory focus 2
Fish length	Fish	Length: Fish Species (ID: 75)	Fish Life Stage: Juvenile - Migrant	NA
Fish weight	Fish	Weight: Fish (ID: 206)	Fish Life Stage: Juvenile Fish	Fish Origin: Natural
Rotary screw trap juvenile steelhead daily catch	Fish	Abundance of Fish (ID: 46)	Fish Life Stage: Juvenile - Migrant	Fish Origin: Natural

Data Repositories:

PTAGIS Website	(http://www.ptagis.org/)
Yakima-Klickitat Fisheries Project website	(http://www.ykfp.org)
Status and Trends Annual Reporting Project [STAR]	(http://dashboard.yakamafish-star.net/)
Yakama Nation Dashboard	

Area of Inference:

Name	Value
Steelhead Summer-Winter Interior Columbia Pop. Name	Toppenish

Note:

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Review, revise, & finalize Study Plan sample design protocol and methods in monitoringResources.org	8/15/2025	3/31/2026	Inactive	The Study Plan's Sample Design, Protocol and Methods for this work element are stored at MonitoringResources.org and need to be completed (i.e., "Finalized" through MonitoringResources.org), preferably prior to data analysis but must be completed upon submittal of your annual report. Preparations for contract renewals must include reviewing any previously finalized Sample Designs, Protocols & Methods to ensure that they are consistent with how work will be done in any subsequent contract.
Deliverable: B. Deliverable: An accessible, error-checked data set with metadata		3/31/2026	Inactive	<i>See the Deliverable Specification above</i>

B: 119. Manage and Administer Projects

Title: Manage Restoration Projects

Description: Covers work by YN to manage this contract. This includes administrative work in support of BPA's programmatic requirements such as metric reporting, and financial reporting (accruals), invoice submittal, and updating of WE budget. YN will provide oversight of the project as needed and manage time in order to meet contract deliverables. Respond to BPA as requested, providing financial, contractual, and administrative documents. Development of a contract renewal package (includes SOW, budget, and property inventory).

Deliverable Specification: Travel and Training under this work element will be to attend trainings, workshops, conferences and symposiums related to stream habitat restoration science and techniques as may occur during the course of this contract period. Provide effective implementation and administration: a) evaluate current workload and monitor implementation progress; b) develop work plan consistent with expected budget availability and potential tasks or projects; c) integrate and manage planning, permitting, environmental compliance, and coordinated implementation of contract actions; and (d) provide contract's financial status report at least once a year attached in contract Documents.

Work Element Budget: [REDACTED]



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Milestone Title	Start Date	End Date	Status	Milestone Description
A. Attach a FISMA attestation in CBFish each Jan 31st	12/1/2025	2/1/2026	Inactive	The Contract Manager will attach an attestation of compliance as a "FISMA" attachment type in CBFish associated with WE 119 by January 31st each year. Use the required file-naming convention: "FISMA [entity] CY:xxxx". (Ex.: "FISMA Smithy Inc. CY2024" where 2024 is the Calendar Year in which the document is due to be uploaded) BPA has reviewed information collected, and determined this SOW is in a "Low" Category. Consistent with that Category, the awardee must provide one of the following signed attestations that confirms that it is protecting BPA information: a) with NIST 800-53 rev5, or NIST 800-171 rev2 (the latter is effective July 1, 2023), b) for some private organizations, use ISO-27001:2022 (ISO/IEC 27001:2022 – Information technology – Security techniques – Information security management systems – Requirements), or c) should a pre-existing, higher FISMA standard Category (Moderate or High) attestation have been required for other federal awards, that yearly attestation may be attached instead
B. Error-check & update actual WE budget spending w/in 4 months (reflect contract close-out value)	4/1/2025	7/1/2025	Inactive	No later than 4 months after the end of the previous contract, (a) open the prior-year contract SOW at the "WE Budget" tab; and (b) enter "Updated" WE budget amounts to reflect the final contract close-out amount actually spent by the contractor.
C. Begin drafting contract renewal documents and conduct internal review as needed	6/28/2025	11/1/2025	Inactive	Your statement of work, line-item budget, and (if required) property inventory for your next contract are due to BPA at least 5 months prior to the contract start date (longer if your internal processes require more time to get the contract signed and in place prior to the start date).
D. Submit contract renewal package (SOW, Excel budget, property inventory) to BPA COR	9/2/2025	11/1/2025	Inactive	Once your statement of work (SOW) in CBFish is complete, and you have attached your line-item budget (LIB) and property inventory (PI) (if required), click the "Submit" button on the SOW tab to notify your COR the package is ready for review.
E. Address comments and revise SOW, LIB, and PI as needed to get BPA manager approval	12/2/2025	1/30/2026	Inactive	Once your COR and his or her BPA manager have reviewed your contract renewal package and returned any comments to you, you will need to provide responses and changes as needed to achieve approval from the BPA manager, who will then forward the package to the Contracting Officer. This should be concluded at least five months prior to the next contract start date.
F. Return signed contract to BPA's Contracting Officer within 30 days	1/1/2026	2/28/2026	Inactive	Respond to the CO and COR indicating any problems with the contract within 20 days, or return the signed contract to the BPA Contracting Officer (CO) within 30 days.
G. Submit final invoice for prior contract within 90 days to facilitate contract closeout	4/1/2025	12/31/2025	Inactive	Within 90 days of the last day of the PRIOR contract, the contractor shall issue a final invoice. In instances where more than 90 days is needed (e.g., because subcontractors have not invoiced), the contractor shall: 1. review records, 2. estimate all outstanding costs, and 3. provide BPA with a single, cumulative estimate of all completed, but uninvoiced work. This amount shall be emailed to FWinvoices@bpa.gov and the COR.
H. Submit Financial Status Report	4/1/2025	3/31/2026	Inactive	Submit a financial status report to the COR via email a minimum of once per contract period. COR will upload to cbfish following review and approval.
I. Facilitate inputting Cost Share information into CBFish at the Project level	9/30/2025	11/14/2025	Inactive	Cost share is not required; however, cost share information can be input anytime during the contract (e.g., concurrent with quarterly status reports) but no later than November 15 for each fiscal year. (a) I am the sole contractor under this project. I will enter previous federal FY's Cost Share information on the Project's Cost Share tab by Nov 15. (Milestone starts Sep. 30 and ends Nov. 15)
J. Comply with all applicable federal, state, tribal and local safety requirements, including reporting	4/1/2025	3/31/2026	Inactive	As described in the contract's Terms and Conditions, the contract manager and contractor shall comply with all applicable federal, state, tribal and local safety laws, rules, regulations and requirements.
K. Revise Line Item Budget to incorporate	1/1/2026	3/28/2026	Inactive	Work with the COR to revise the Line Item Budget and update indirect rate if the rate changes during the contract period. This is required if the new indirect rate



change in indirect rate for the remaining contract period				is to be applied for the remainder of the contract period.
L. Review Approved BPA Vehicle Use Policy	4/1/2025	5/1/2025	Inactive	On at least a yearly basis, Contract Manager shall review with all staff funded under this award, the appropriate use of all vehicles, rented, leased, purchased or authorized to be used to complete the work. This review shall include, but not limited to: the definition of "Official Use Only", the safe operational procedures, limitations on use required under any temporary use agreement (e.g., government leases, awarder fleet or airport rental from a private rental company) as well as all additional awarder policies, procedures and guidance as to vehicle use, regardless of source of the vehicle, to comply with the Terms and Conditions for this award. Use of the term vehicle shall include all mechanized modes of transport including, but not limited to: commercial vehicles, busses, sedans, trucks, SUVs, vans, boats, tractors, ATVs, snowmobiles, carts, scooters, motorcycles, motorized and non-motorized bicycles, and UAVs (Unmanned Aerial Vehicles).
M. Travel for meetings to Portland	4/1/2025	12/31/2025	Inactive	Contract manager will travel to Portland when needed for meetings.
Deliverable: N. Effective implementation management and timely contract administration		3/31/2026	Inactive	See the Deliverable Specification above

C: 165. Produce Environmental Compliance Documentation

Title: Environmental Compliance

Description: Assemble, gather, acquire, or prepare documents in support of obtaining environmental compliance from BPA (such as providing maps, drafting a Biological Assessment, obtaining permits, conducting public involvement activities, completing an archaeological survey, etc.).

Deliverable Specification: For all WEs requiring Environmental Compliance, YRWP staff will complete those processes before implementation begins.

Work Element Budget:

Planned Metrics:

* Are herbicides used as part of work performed under this contract?: No

* Will water craft, heavy equipment, waders, boots, or other equipment be used from outside the local watershed as part of work performed under this contract?: Yes

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Discuss HIP ESA coverage with Bonneville EC lead	4/1/2025	2/1/2026	Inactive	The EC Lead will determine if work under this work element may be able to have ESA-coverage (NMFS & USFWS) under the current version of the Habitat Improvement Program Biological Opinions (HIP BiOps). Work that qualifies must comply with conservation measures in the HIP Handbook. Medium to high risk projects will require a technical review by the Bonneville Engineering Technical Services. Before conceptual design commences, contact the EC lead for HIP applicability, instructions and information requirements. The HIP activity categories and risk criteria are located in the "Note" section of the work element background page here: https://www.cbfish.org/WorkElement.mvc/Summary/165
B. Use Best Management Practices to stabilize soils and prevent spread of noxious weeds	4/1/2025	3/31/2026	Inactive	Use applicable BMPs to retain existing vegetation and achieve re-establishment of vegetation in disturbed areas to at least 70% of pre-disturbance levels. For example, see "Shrub-Steppe and Grassland Restoration Manual For the Columbia River Basin" (http://wdfw.wa.gov/publications/01330/wdfw01330.pdf), or "Revegetation for Stream Restoration and Fish Passage Projects" (https://www.wsdot.wa.gov/publications/manuals/fulltext/M25-30/830.pdf) for guidance on re-vegetation in the Columbia River Basin.
C. Provide BPA EC Lead with calendar year 2025 actual herbicide use form.	4/1/2025	1/31/2026	Inactive	Contractor submits any actual herbicide use on an approved form to the BPA Environmental Compliance Lead. The BPA EC Lead will send the form out in December of each year; it will be due January 31. Use this milestone only when you are using BPA funding to apply herbicides as part of your work. Data is reported to NOAA on a calendar year basis.



Milestone Title	Start Date	End Date	Status	Milestone Description
D. Determine if contract work could adversely affect Pacific lamprey	4/1/2025	2/1/2026	Inactive	Contractor will review work proposed under this contract and determine the following: 1) Will field work take place in any area where lamprey may be present? (Any tributary or subbasin where anadromous fish exist is also accessible Pacific lamprey habitat.) 2) Are there any stream disturbing activities or instream activities that could adversely impact Pacific lamprey? Examples of activities posing a threat to lamprey may include (this list is not intended to be all-inclusive): aquatic habitat improvements, fish passage improvements, culvert replacements, water diversions, altered management of water flows, dewatering of any portions of streams, or alteration of irrigation practices. If the answer is yes to BOTH 1 and 2, the contractor must follow guidance from USFWS "Best Management Guidelines for Native Lampreys During In-water Work" at https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm
E. Report lamprey observation and catch data to USFWS by Feb. 15	4/1/2025	2/15/2026	Inactive	All contractors doing instream work (e.g., surveys, habitat improvements, electrofishing, screwtraps, etc.) in anadromous fish areas are required to annually report lamprey observations or catch, including zero, by Feb 15 for the previous calendar year's work. A data template is available at: (https://www.cbfish.org/EfwDocument.mvc/DownloadFile/11) As per instructions on the form, email your data to christina_wang@fws.gov at US Fish and Wildlife Service and CC your COR. For identification of lamprey life stages see USFWS "Best Management Guidelines for Native Lampreys During In-water Work" at https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm
F. Inspect water craft, waders, boots, etc. to be used in or near water for aquatic invasive species	4/1/2025	3/31/2026	Inactive	Aquatic invasive Species Guidance: Uniform Decontamination Procedures: http://www.aquaticnuisance.org/wordpress/wp-content/uploads/2009/01/Recommended-Protocols-and-Standards-for-Watercraft-Interception-Programs-for-Dreissenid-Mussels-in-the-Western-United-States-September-8.pdf -- Best management guidance for boaters: http://www.westernais.org -- Aquatic Nuisance Species newsletter: http://www.aquaticnuisance.org/newsletters -- State Aquatic Invasive Species Management Plans: Oregon: http://www.aquaticnuisance.org/wordpress/wp-content/uploads/2009/01/Recommended-Protocols-and-Standards-for-Watercraft-Interception-Programs-for-Dreissenid-Mussels-in-the-Western-United-States-September-8.pdf -- Washington: http://www.wdfw.wa.gov/publications/pub.php?id=00105 -- Montana: http://www.anstaskforce.gov/Montana-FINAL_PLAN.pdf -- Idaho: http://www.anstaskforce.gov/stateplans.php
G. Inspect and, if necessary, wash vehicles and equipment infested with terrestrial invasive species	4/1/2025	3/31/2026	Inactive	Prevent spread of invasive species by identifying and removing invasive species from work vehicles and equipment. Consult resources such as the Plants Database (http://plants.usda.gov/index.html) or the NatureServe Explorer (http://www.natureserve.org/explorer/) with assistance identifying invasive plants. Other resources include state natural resource offices (https://www.fws.gov/offices/statelinks.html) or a local U.S. Fish and Wildlife Service Office (https://www.fws.gov/offices/).
H. Participate in ESA Consultation	4/1/2025	3/31/2026	Inactive	Work may include drafting BA (or other ESA documentation), completing HIP forms, submitting high risk project designs to the EC Lead, providing copies of Section 10, 4(d), or 6 permits, etc., or submitting Hatchery Genetic Management Plan to BPA for review and ESA consultation initiation, and providing input for the ensuing consultation. Once the program has completed Section 7 consultation and has obtained relevant permits or authorizations (Section 10, 4 (d), etc), be familiar with and follow all terms and conditions, including annual reporting, associated with the ESA consultation or permit. Notify BPA immediately of any instances when take has been exceeded or terms and conditions or conservation measures have been violated.
I. Provide information for Section 106 Cultural review	4/1/2025	3/31/2026	Inactive	Email EC Lead detailed project description, map, and shapefiles so that BPA can initiate Section 106 review.
J. Plan for field inventory	4/1/2025	3/31/2026	Inactive	Coordinate with EC Lead and BPA archaeologist to determine appropriate approach and methodology for field inventory, if determined necessary by BPA archaeologist.
K. Cultural resource surveys	4/1/2025	3/31/2026	Inactive	Coordinate with EC Lead to schedule cultural resources surveys if required by BPA archaeologist.
L. Provide EC Lead with the status of RM&E ESA Permit(s)	4/1/2025	3/31/2026	Inactive	Provide EC Lead with the status of RM&E ESA permits: type of permit(s) [e.g. Sec 4(d), 7 or 10] required by the Services (NMFS, USFWS), when applied, permit status, responses from the Services. Once final permit(s) is received, forward a copy or copies to EC Lead for review and documentation of completion of ESA for WE.
M. Obtain/Renew	4/1/2025	3/31/2026	Inactive	Work done to obtain permits such as Sec. 401 or 404 (including RGP process),



applicable local, state, federal and tribal environmental permits				shoreline, NPDES, or any other required federal, state, or local permits. Send copies of final permits to EC Lead as requested.
Deliverable: N. Complete Environmental Compliance Documentation		3/31/2026	Inactive	<i>See the Deliverable Specification above</i>

D: 99. Outreach and Education

Title: Conduct Field Education - Restoration - Salmonid Life Histories
Description: Project Staff will work with local educators at high schools, colleges (Heritage primarily), Washington Conservation Corps, local Job Corps, and Natural Resource Departments that have student interns, to develop curriculum (salmonid life history etc.) and field opportunities to learn about habitat restoration and protocols of implementation.

Staff generally conducts 6 of these sessions a year.

Deliverable Specification: Out reach performed

Work Element Budget:

Planned Metrics:
 * # of students reached: 30
 * # of general public reached: 20
 * # of teachers reached: 2

Locations:

Country: US

State: WA

County: Yakima

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

NPCC Subbasin: Yakima

HUC5 Watershed: Multiple

HUC6 Name: Multiple

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Work with local educators and public as opportunities allow.	4/1/2025	3/31/2026	Inactive	When requested staff will meet with LaSalle school district along with other school districts to discuss project intent and goals.
B. Work with LaSalle High School	4/1/2025	12/31/2025	Inactive	YN will cooperate and provide demonstrations for LaSalle High School in Union Gap. LaSalle students and teachers have opportunities throughout the year to run the screw trap with Yakama Nation staff and learn to identify outmigrating steelhead.
C. Work with Heritage University	4/1/2025	12/31/2025	Inactive	YN will cooperate and provide demonstrations for Heritage University. Heritage University Students have opportunities to work with Yakama Nation Staff on projects such as beaver dam analogues, plantings, and fencings, while learning about how these elements aid in restoration for Steelhead.
Deliverable: D. Out reach performed		3/31/2026	Inactive	<i>See the Deliverable Specification above</i>

E: 114. Identify and Select Projects

Title: Select habitat improvement actions and identify possible projects for next fiscal year
Description: Identify, prioritize, and select potential projects for implementation through staff discussion, watershed assessment, subbasin review, public outreach, landowner contact, interagency communication, and personal observation. Projects may include stabilizing stream banks, dike removal, channel reconnection, vegetation planting, fence building, channel alignment, developing alternative stock water sources, conducting controlled burns, etc.

Deliverable Specification: Provide a list of prioritized habitat projects (including acquisitions) you are likely to implement in the next 2-3 years. Priority projects are those evaluated and selected on the basis of criteria derived from a conceptual strategy, restoration framework or implementation work plan. A project list template is available from your COR. You may use an alternative reporting template providing it conveys the required detail.

Upload to CBFish (use Attachment Type: "Communication") and email the COR, Habitat Area Lead, and EC-lead that it has been uploaded.

Work Element Budget:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS



Milestone Title	Start Date	End Date	Status	Milestone Description
A. Determine priority areas and actions (projects) based on the most current empirical data	4/1/2025	12/18/2025	Inactive	Prioritize areas and actions (projects) at the site, reach, or watershed level based on the most current biological and physical data (e.g., habitat and fish data).
B. Review proposed near-term habitat work before drafting a SOW for the subsequent contract (CR)	7/1/2025	10/15/2025	Inactive	Communicate with the COR and EC-lead; to check in and discuss the near-term list of prioritized projects (next 12-mos). Complete a conference call with BPA's Environmental Compliance (EC) staff about which projects the contractor is likely to design and permit, or implement, in the next contract period. Your communication should include: what Work Elements to use in the SOW with guidance from COR/EC, the applicability of EC review requirements and timelines (especially for activities that include ground-disturbing work) and work plan, before you start editing your subsequent SOW. (milestone end-date is 6-mos before contract end).
C. For Habitat Projects: Discuss prioritized list w COR, Habitat Lead, EC Lead.	7/1/2025	10/15/2025	Inactive	Coordinate with the BPA COR, Habitat Area Lead (HAL) and EC Lead for large, complex, or multi-year habitat restoration projects before including the project in the SOW, or developing a design. Coordination for these types of projects could include holding coordination meetings; leading site visits; and/or including the COR and EC Lead at annual reviews, solicitation meetings, or other sponsor-lead evaluations. Assure that project design review and approval, and funding commitments, are fully vetted with BPA staff; timely environmental compliance clearance for planned work requires the earliest possible coordination.
D. Project prioritization list	4/1/2025	11/30/2025	Inactive	Attach in CB Fish and notify COR and Habitat Area Lead (HAL.)
Deliverable: E. Develop or update (out-year) prioritized Habitat Project list: Upload to CBFish		3/31/2026	Inactive	See the Deliverable Specification above

F: 160. Create/Manage/Maintain Database

Title: Update Project Database

Description: Manage and maintain YRWP databases. Databases include: stream discharge, Large Woody Debris, stream temperature, habitat surveys, salmonid redd locations (spatial), fence locations (spatial), snorkel surveys, sediment inventories, photopoints, stock wells (spatial) restoration project location (spatial.) These databases are used on a daily basis to make resource management decisions like instream flow amounts and prioritization of restoration projects. Programs are often getting updated and managed from flow measurements to adding groundwater gauges to monitor the effectiveness of restoration projects.

Responsible Proponent Tim Resseguie

Deliverable Specification: Database updated

Work Element Budget:

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Population Status
- * Secondary R, M, and E Focal Strategy : Multiple Strategies

Study Plan:

Study Plan Owner:

Protocol:

Protocol State:

Protocol Owner:

Data Repositories:

- Yakima-Klickitat Fisheries Project website (<http://www.ykfp.org>)
- Status and Trends Annual Reporting Project [STAR] (<http://dashboard.yakamafish-star.net/>)
- Yakama Nation Dashboard (<http://www.ynwildlife.org/index.php>)
- Yakama Nation Wildlife website



Yakama Nation Fisheries Website (<http://www.yakamafish-nsn.gov/>)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Update the various Project databases as needed.	4/1/2025	3/31/2026	Inactive	Staff will enter field data into the appropriate databases as needed. Tim Resseguie is the primary to do this work element, and the data repositories include Yakima-Klickitat Fisheries Project Website, Status and Trends Annual Reporting Project (STAR), Yakama Nation Dashboard, and PITAGIS.
Deliverable: B. database updated		3/31/2026	Inactive	See the Deliverable Specification above

G: 161. Disseminate Raw/Summary Data and Results

Title: Create informal summary reports and maps

Description: Disseminate data in raw or informal form to various agencies. Project staff typically are asked to disseminate information in some form, on average of 2 time per month. Data requests vary from biological data from Biologic Assessment documents to stream flow data for determining irrigation intake amounts. Data is provided to various agencies including Yakima County NOAA Fisheries, Washington Dept. of Fish and Wildlife, Yakima Tributary Access and Habitat Project, Yakima Klickitat Fisheries Project, Yakima County and other Tribal Programs.

Staff have an all-hands meeting where they present on completed projects, and status of ongoing projects in design or construction.

Deliverable Specification: UCHRP will create informal data summaries to disseminate raw/provisional data.

Work Element Budget:

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Population Status
- * Secondary R, M, and E Focal Strategy : Multiple Strategies

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Staff disseminate raw data in the form of GIS derived maps and informal reports and email summary	4/1/2025	3/31/2026	Inactive	This is done on a bi-monthly basis as data is collected.
Deliverable: B. Informal summaries created		3/31/2026	Inactive	See the Deliverable Specification above

H: 122. Provide Technical Review and Recommendation

Title: Input to various Tribal planning and policy efforts

Description: Project staff provide technical review and input into Tribal, local and regional planning and policy efforts including: the Yakima Basin Sub Basin Plan, Ahtanum Creek Flood Plan, Yakima Basin Salmon Recovery Plan, Yakama Nation Water Code permit review, Yakama Nation Inter Disciplinary Team participation and review of presented project plans, Yakama Nation Tribal Council technical information and review. YRWP staff's input into these planning and permitting efforts is critical because these efforts will directly impact fish and streams in the various watersheds. The YRWP has more knowledge of these watersheds than any other entity and we must apply that knowledge to these efforts in order that the most benefit to fish and streams are received. Our input into Tribal planning and permitting efforts allows us to steer various activities, like logging in the upper watershed or bridge building in the lower watershed, in the best direction for stream and fish health.

Deliverable Specification: YRWP staff will provide technical assistance and expertise to ongoing Tribal water policy processes. These processes may be larger issues, such as how the Tribal Water Code is administered from a fisheries perspective, and may also include smaller issues such as providing fisheries expertise on fish screen operation.

Work Element Budget:

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Input to Tribal water policy	4/1/2025	3/31/2026	Inactive	Objective is to maintain instream flows in the Toppenish, Satus, and Ahtanum Watersheds, with a goal of maintaining instream flow throughout the year.



Milestone Title	Start Date	End Date	Status	Milestone Description
Deliverable: B. Participation in Tribal water policy process		3/31/2026	Inactive	See the Deliverable Specification above

I: 157. Collect/Generate/Validate Field and Lab Data

Title: Operate rotary screw traps for steelhead

Description: Juvenile Smolt Traps: Juvenile smolt traps (4 foot rotary screw traps) are operated continuously on Satus and Ahtanum Creeks downstream from all known steelhead spawning habitat between mid-November and mid-June when flows are favorable and outmigration is occurring. Traps are checked each day (including weekends). Fish are measured and weighed. A target number of juveniles over 80 mm are PIT tagged. Scale samples are collected from a subsample of PIT tagged fish. PIT tagged juveniles are released upstream to determine the trap efficiency. DNA samples are collected and provided to researchers in WDFW for stock identification project and CRITFC for Kelt reconditioning project. Data collected are used to estimate outmigration numbers for each population. Timing is described. Interrogations of PIT tagged smolts from downstream passage facilities are used to estimate survival and migration timing. Lengths, weights and ages describe the physical characteristics and condition factor of outmigrating smolts.
Range for number of fish tagged in 200-800 steelhead juveniles. All traps are installed on October 15 and fished until June 1.

Deliverable Specification: Outmigration estimate, timing, and other demographics data from screw traps at the mouths of Satus and Ahtanum Creeks

In your annual report (WE 132), you are required to provide a link to your data set with a file name in the report's first appendix. If not web accessible, provide instructions (e.g., file name, directory, or position title) for accessing data. Any derived data will be produced under work element 162, Analyze Data.

Work Element Budget:

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Population Status
- * Primary R, M, and E Type : Status and Trend Monitoring
- * Secondary R, M, and E Type : Action Effectiveness Monitoring
- * Secondary R, M, and E Focal Strategy : Tributary Habitat

Locations:

Primary Focal Species:

Country:

State:

County:

Salmonid ESUs Present:

Study Plan:

Study Plan Owner:

Protocol:

Protocol State:

Protocol Owner:

Sample Design:

Methods:

Steelhead (O. mykiss) - Middle Columbia River DPS

US

WA

Yakima

Middle Columbia River Steelhead DPS (Accessible)

[YRWP Juvenile steelhead outmigration \(1996-035-01\) v1.0](#)

Tim Resseguie

[YRWP Juvenile steelhead outmigration \(1996-035-01\) v1.0](#)

Finalized

Tim Resseguie

Collect Juvenile Steelhead - Yakama Confederated Tribes v1.0

NPCC Subbasin:

HUC5 Watershed:

HUC6 Name:

Yakima

Toppenish Creek

Snake Creek-Toppenish Creek

ID	Title	Type	Optional	Customized Based On	Status
485	Cormack-Jolly-Seber (CJS) Model v1.0	Data Analysis/Interpretation	No	N/A	Finalized
1734	Fish wet weight v1.0	Data Collection	No	N/A	Finalized
4041	Measuring Fish Length: Fork length v2.0	Data Collection	No	N/A	Finalized
1736	PIT tag marking procedures v1.0	Data Collection	No	N/A	Finalized
133	Rotary Screw Trap Deployment and Operation v1.0	Data Collection	No	N/A	Finalized
5519	Rotary Screw Trap Mark-Recapture Salmonid Outmigration Abundance Estimate v1.0	Data Analysis/Interpretation	No	N/A	Finalized



134	Trap Efficiency Testing v1.0	Data Collection	No	N/A	Finalized
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Metrics:

Title	Category	Subcategory	Subcategory focus 1	Subcategory focus 2
Fish length	Fish	Length: Fish Species (ID: 75)	Fish Life Stage: Juvenile - Migrant	NA
Fish weight	Fish	Weight: Fish (ID: 206)	Fish Life Stage: Juvenile Fish	Fish Origin: Natural
Rotary screw trap juvenile steelhead daily catch	Fish	Abundance of Fish (ID: 46)	Fish Life Stage: Juvenile - Migrant	Fish Origin: Natural

Data Repositories:

PTAGIS Website (<http://www.ptagis.org/>)
 Yakima-Klickitat Fisheries Project website (<http://www.ykfp.org>)
 Status and Trends Annual Reporting Project [STAR] (<http://dashboard.yakamafish-star.net/>)
 Yakama Nation Dashboard

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Review, revise, and finalize study plan sample design protocol and methods in MonitoringResources.org	4/1/2025	10/1/2025	Inactive	The Study Plan's Sample Design, Protocol and Methods for this work element are stored at MonitoringResources.org and need to be completed (i.e., "Finalized" through MonitoringResources.org), preferably prior to data collection. Preparations for contract renewals must include reviewing any previously finalized Sample Designs, Protocols & Methods to ensure that they are consistent with how work will be done in any subsequent contract.
C. Implement Study Plan	4/1/2025	3/28/2026	Inactive	Implement the study plan's protocols and sample design consistent with the WE description and methods in the SOW. The start date of this milestone is used to set the completion date for the EC milestone.
D. Secure data back-up	4/1/2025	3/31/2026	Inactive	Minimum requirements: Hard copies of field sheets and original dataloggers secured against fire and flood. At least daily data back-up of electronic data on a separate hard drive. Secure cloud-based or off-site location data back-up to preclude catastrophic data loss at least weekly. More frequent cloud/off-site back-up is greatly encouraged. [Timing guidance: from beginning to end of contract]
E. Yearly upload of error-checked datasets	4/1/2025	3/31/2026	Inactive	Upload datasets with associated metadata to a publicly accessible site each year as soon as they have been QA/QC checked. This generally happens within 6 months for direct field-to-database input, but may be longer if laboratory analysis is required (e.g., scale reading or genetic analyses). If data is not QA/QCed within 1 year, data must be made accessible with acknowledgement of QA/QC limitations. Periods for dataset collection should be no longer than a year, and coincide with the logical biology of the data collection, which may not be on a calendar year. Example of a dataset: redd counts for one species for one season for a particular brood year. Dataset upload requirements apply to both original and derived data, which should be at a level of quality suitable for release to resource co-managers to make decisions – not the rigor required as if you were going to use the data for a peer-reviewed publication.
F. Remove screw traps	4/1/2025	6/1/2025	Inactive	Screw traps will be removed for the season.
G. Collect scale samples	4/1/2025	3/31/2026	Inactive	Scale samples are collected from a subsample of PIT tagged fish. 100 fish each from Satus, and Ahtanum Creeks.
H. Collect Field Data for MY 25 juveniles	4/1/2025	7/1/2025	Inactive	Operate rotary screw trap during the steelhead smolt outmigration season April through June. lengths, weights, PIT tag
I. Collect Field Data for MY 26 juveniles	10/1/2025	3/31/2026	Inactive	Operate rotary screw trap during the steelhead smolt outmigration season October through March. Length, Weight, PIT tag
J. Install screw traps	10/15/2025	10/15/2025	Inactive	Screw traps are installed for the season.



Milestone Title	Start Date	End Date	Status	Milestone Description
Deliverable: K. Use data from screwtrap to produce accessible, error-checked datasets		3/31/2026	Inactive	See the Deliverable Specification above

J: 157. Collect/Generate/Validate Field and Lab Data

Title: Conduct steelhead and bull trout spawner surveys

Description: Spawning surveys: Three pass Redd Count Surveys are conducted on Satus and Ahtanum watersheds for steelhead. (Toppenish Creek is covered under the BiOp M&E Toppenish Creek contract under this project.) Surveys are typically performed between mid-March and mid-May. 114 miles of stream (Satus = 82 miles, Ahtanum=32 miles) are surveyed (during each pass) including most known steelhead spawning habitat. At this time redd counts are the most reliable way to assess trends in steelhead spawning escapement and are critical to evaluating the success of this project. Ahtanum surveys will be completed only if staff and volunteers are available and conditions permit. We will use a portable instream PIT tag array located above the confluence on the mainstem Ahtanum Creek to estimate adult escapement to spawning habitat and determine the number of adult steelhead per redd in the mainstem Ahtanum Creek steelhead spawning habitat. All adult steelhead that enter the Denile fish trap at Prosser Dam on the Yakima River are now PIT tagged by the Yakama Nation (10 to 20 percent of the Yakima MPG run). A total count at the dam is obtained with video counting equipment. YN is able to disaggregate the total Prosser count into separate populations by detecting the number passing different points where antennae are installed. In addition to an adult steelhead escapement estimate we will use this estimate of adult abundance to determine the number of fish/redd. Fish per redd and fish per spawner will be used to evaluate freshwater productivity of the Ahtanum population. Assist other agencies Bull Trout (3 miles upper South Fork Ahtanum) in the Ahtanum watershed.

Deliverable Specification: Redd counts for Satus, Toppenish, and Ahtanum Creeks for Steelhead and bull trout.

Notes:

1. In your annual report (WE 132), you are required to provide a link to your data set with a file name in the report's first appendix. If not web accessible, provide instructions (e.g., file name, directory, or position title) for accessing data.
2. Any derived data will be produced under work element 162, Analyze Data.

Work Element Budget:

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Population Status
- * Primary R, M, and E Type : Status and Trend Monitoring
- * Secondary R, M, and E Type : Action Effectiveness Monitoring
- * Secondary R, M, and E Focal Strategy : Tributary Habitat

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US **NPCC Subbasin:** Yakima

State: WA **HUC5 Watershed:** Simcoe Creek

County: Yakima **HUC6 Name:** Agency Creek

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Study Plan: YRWP Adult steelhead abundance (1996-035-01) v1.0

Study Plan Owner: Tim Resseguie

Protocol: YRWP Adult steelhead abundance (1996-035-01) v1.0

Protocol State: Finalized

Protocol Owner: Tim Resseguie

Sample Design: Conduct steelhead spawning surveys in Toppenish Creek - Yakama Confederated Tribes v1.0

Methods:

ID	Title	Type	Optional	Customized Based On	Status
195	Estimating Adult Spawner Abundance v1.0	Data Collection	No	N/A	Finalized
402	Fish per redd v1.0	Data Analysis/Interpretation	No	N/A	Finalized
131	Redd Count Survey v1.0	Data Collection	No	N/A	Finalized
4112	Redd Density v1.0	Data Analysis/Interpretation	No	N/A	Finalized



Metrics:

Title	Category	Subcategory	Subcategory focus 1	Subcategory focus 2
adult steelhead abundance	Fish	Abundance of Fish (ID: 46)	Fish Life Stage: Adult Fish	Fish Origin: Natural
Steelhead redd count (an index of adult spawner abundance)	Fish	Abundance of Fish (ID: 46)	Fish Life Stage: Adult - Spawner	Fish Origin: Natural

Data Repositories:

Status and Trends Annual Reporting Project (STAR) [\(http://dashboard.yakamafish-star.net/\)](http://dashboard.yakamafish-star.net/)
 Yakama Nation Dashboard
 Yakima-Klickitat Fisheries Project website <http://www.ykfp.org>

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Review, revise, and finalize study plan sample design protocol and methods in MonitoringResources.org	4/1/2025	11/1/2025	Inactive	The Study Plan's Sample Design, Protocol and Methods for this work element are stored at MonitoringResources.org and need to be completed (i.e., "Finalized" through MonitoringResources.org), preferably prior to data collection. Preparations for contract renewals must include reviewing any previously finalized Sample Designs, Protocols & Methods to ensure that they are consistent with how work will be done in any subsequent contract.
C. Implement Study Plan	4/1/2025	11/1/2025	Inactive	Implement the study plan's protocols and sample design consistent with the WE description and methods in the SOW. The start date of this milestone is used to set the completion date for the EC milestone.
D. Secure data back-up	4/1/2025	3/31/2026	Inactive	Minimum requirements: Hard copies of field sheets and original dataloggers secured against fire and flood. At least daily data back-up of electronic data on a separate hard drive. Secure cloud-based or off-site location data back-up to preclude catastrophic data loss at least weekly. More frequent cloud/off-site back-up is greatly encouraged. [Timing guidance: from beginning to end of contract]
E. Yearly upload of error-checked datasets	4/1/2025	3/31/2026	Inactive	Upload datasets with associated metadata to a publicly accessible site each year as soon as they have been QA/QC checked. This generally happens within 6 months for direct field-to-database input, but may be longer if laboratory analysis is required (e.g., scale reading or genetic analyses). If data is not QA/QCed within 1 year, data must be made accessible with acknowledgement of QA/QC limitations. Periods for dataset collection should be no longer than a year, and coincide with the logical biology of the data collection, which may not be on a calendar year. Example of a dataset: redd counts for one species for one season for a particular brood year. Dataset upload requirements apply to both original and derived data, which should be at a level of quality suitable for release to resource co-managers to make decisions – not the rigor required as if you were going to use the data for a peer-reviewed publication.
F. Conduct redd count surveys for steelhead	4/1/2025	3/31/2026	Inactive	Complete 3 pass redd counts in Satus Creek including GPS locations of all redds. Conduct surveys in Ahtanum Creek if conditions allow.
G. Assist other Agencies with bull trout surveys	9/1/2025	10/16/2025	Inactive	Assist WDFW with Survey on the South Fork Ahtanum creek with Bull trout surveys.
Deliverable: H. Complete 3 pass surveys in Ahtanum and Satus Creeks		3/31/2026	Inactive	See the Deliverable Specification above

K: 157. Collect/Generate/Validate Field and Lab Data

Title:

Collect water temperature data

Description:

Water Temperature: Hobo temp dataloggers are deployed at 40 sites annually between April and October (some are in place year round). Some sites are used for long term monitoring and others are established to monitor the effects of specific restoration projects (e.g. Mid Toppenish Grade Control Project) or management actions (e.g. water withdrawal at the Olney Lateral Diversion) on in-stream water temperatures. Restoration projects near temperature



monitoring sites: Panther Creek road crossing meadow restoration, Graves culvert removal, Mid Toppenish Grade Control Project, Satus Side Channel, Salus Dam Removal, Lincoln Meadows Restoration, Lakebeds Road Rehabilitation, Ahtanum Side Channel Instream flow compliance at most diversions

Deliverable Specification: Water temperature data for 3 watersheds.

Notes:

1. In your annual report (WE 132), you are required to provide a link to your data set with a file name in the report's first appendix. If not web accessible, provide instructions (e.g., file name, directory, or position title) for accessing data.
2. Any derived data will be produced under work element 162, Analyze Data.

Water temperature data had been uploaded to the NorWeST database. However, they have not maintained it, and newer data is not available, but is kept by Yakama Nation Staff.

Work Element Budget:

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Tributary Habitat
- * Primary R, M, and E Type : Status and Trend Monitoring
- * Secondary R, M, and E Type : Action Effectiveness Monitoring
- * Secondary R, M, and E Focal Strategy : Population Status

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US **NPCC Subbasin:** Yakima

State: WA **HUC5 Watershed:** Multiple

County: Klickitat | Yakima **HUC6 Name:** Multiple

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Study Plan: YRWP continuous temperature monitoring (1996-035-01) v1.0

Study Plan Owner: Tim Resseguie

Protocol: Assessing limiting factors for steelhead production v1.0

Protocol State: Finalized

Protocol Owner: Tim Resseguie

Sample Design: Collect water temperature data - Yakama Nation_7 v1.0

Methods:

ID	Title	Type	Optional	Customized Based On	Status
6575	Calculating stream temperature metrics for trout streams v1.0	Data Analysis/Interpretation	No	N/A	Finalized
1451	Stream Cross-sectional Discharge Measurement (wading) v1.0	Data Collection	No	N/A	Finalized
319	Water Temperature - Data Logger v1.0	Data Collection	No	N/A	Finalized

Metrics:

Title	Category	Subcategory	Subcategory focus 1	Subcategory focus 2
Continuous water temperature	Water Quality	Water Temperature (ID: 162)	NA	NA
stream discharge	Hydrology/Water Quantity	Flow (ID: 104)	NA	NA

Data Repositories:

NorWeST Regional Stream Temperature Database
https://data.fs.usda.gov/geodata/edw/datasets.php?xmlKeyword=norwest_temperature
 StreamNet Data Store
https://app.streamnet.org/datastore_search_classic.cfm
 STORET Data Warehouse
<http://www.epa.gov/storet/dbtop.html>

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.



Milestone Title	Start Date	End Date	Status	Milestone Description
B. Review, revise, and finalize study plan sample design protocol and methods in MonitoringResources.org	4/1/2025	2/28/2026	Inactive	The Study Plan's Sample Design, Protocol and Methods for this work element are stored at MonitoringResources.org and need to be completed (i.e., "Finalized" through MonitoringResources.org), preferably prior to data collection. Preparations for contract renewals must include reviewing any previously finalized Sample Designs, Protocols & Methods to ensure that they are consistent with how work will be done in any subsequent contract.
C. Implement Study Plan	4/1/2025	2/28/2026	Inactive	Implement the study plan's protocols and sample design consistent with the WE description and methods in the SOW. The start date of this milestone is used to set the completion date for the EC milestone.
D. Secure data back-up	4/1/2025	3/31/2026	Inactive	Minimum requirements: Hard copies of field sheets and original dataloggers secured against fire and flood. At least daily data back-up of electronic data on a separate hard drive. Secure cloud-based or off-site location data back-up to preclude catastrophic data loss at least weekly. More frequent cloud/off-site back-up is greatly encouraged. [Timing guidance: from beginning to end of contract]
E. Yearly upload of error-checked datasets	4/1/2025	3/31/2026	Inactive	Upload datasets with associated metadata to a publicly accessible site each year as soon as they have been QA/QC checked. This generally happens within 6 months for direct field-to-database input, but may be longer if laboratory analysis is required (e.g., scale reading or genetic analyses). If data is not QA/QCed within 1 year, data must be made accessible with acknowledgement of QA/QC limitations. Periods for dataset collection should be no longer than a year, and coincide with the logical biology of the data collection, which may not be on a calendar year. Example of a dataset: redd counts for one species for one season for a particular brood year. Dataset upload requirements apply to both original and derived data, which should be at a level of quality suitable for release to resource co-managers to make decisions – not the rigor required as if you were going to use the data for a peer-reviewed publication.
F. Deploy and retrieve dataloggers	4/15/2025	3/31/2026	Inactive	Launch and deploy at the beginning of the season and retrieve at the end of the season or download loggers in the field.
G. Process and report data	10/16/2025	1/15/2026	Inactive	Process the data using available software and generate descriptive statistics and metrics for each site.
Deliverable: H. Water temperature record		3/31/2026	Inactive	See the Deliverable Specification above

L: 157. Collect/Generate/Validate Field and Lab Data

Title: Collect discharge measurements

Description: Discharge measurements: Manual discharges are measured at 37 sites in Ahtanum, Toppenish and Satus creeks. Most sites are permanent and measured weekly throughout the year providing valuable information to assess restoration projects that aim to improve stream function, and in turn, flow regime (i.e. greater summer base flows). Discharge measurements are invaluable for instream flow maintenance and water management. Measurements are used to develop and manage minimum instream flows in Ahtanum, Simcoe, and Toppenish Creeks. Manual discharges are also used to generate rating curves for stream gages, staff gages, and weir blades. Additional sites in the Satus watershed will be monitored as staff time permits.

Deliverable Specification: Weekly discharge measurements from at least 37 sites in the Satus, Toppenish, and Ahtanum Creeks.

Notes:

1. In your annual report (WE 132), you are required to provide a link to your data set with a file name in the report's first appendix. If not web accessible, provide instructions (e.g., file name, directory, or position title) for accessing data.
2. Any derived data will be produced under work element 162, Analyze Data.

Work Element Budget:**Planned Metrics:**

- * Primary R, M, and E Focal Strategy : Multiple Strategies
- * Primary R, M, and E Type : Status and Trend Monitoring
- * Secondary R, M, and E Type : Action Effectiveness Monitoring
- * Secondary R, M, and E Focal Strategy : Tributary Habitat

Locations:

37

Primary Focal Species:Steelhead (*O. mykiss*) - Middle Columbia River DPS**Country:**

US

NPCC Subbasin:

Yakima

State:

WA

HUC5 Watershed:

Multiple



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County: Klickitat / Yakima
Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)
Study Plan: YRWP discharge measurements (1996-035-01) v1.0
Study Plan Owner: Tim Resseguie
Protocol: Stream discharge measurements (1996-035-01) v1.0
Protocol State: Draft
Protocol Owner: Tim Resseguie
Sample Design: Collect discharge measurements - Yakama Confederated Tribes v1.0
Methods:

ID	Title	Type	Optional	Customized Based On	Status
1451	Stream Cross-sectional Discharge Measurement (wading) v1.0	Data Collection	No	N/A	Finalized

Metrics:

Title	Category	Subcategory	Subcategory focus 1	Subcategory focus 2
Stream discharge	Hydrology/Water Quantity	Flow (ID: 104)	NA	NA

Data Repositories: Yakima-Klickitat Fisheries Project website (<http://www.ykfp.org>)
Status and Trends Annual Reporting Project [STAR] (<http://dashboard.yakamafish-star.net/>)
Yakama Nation Dashboard (<http://waterdata.usgs.gov/nwis>)
USGS National Water Information System (NWIS) database

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Review, revise, and finalize study plan sample design protocol and methods in MonitoringResources.org	4/1/2025	2/28/2026	Inactive	The Study Plan's Sample Design, Protocol and Methods for this work element are stored at MonitoringResources.org and need to be completed (i.e., "Finalized" through MonitoringResources.org), preferably prior to data collection. Preparations for contract renewals must include reviewing any previously finalized Sample Designs, Protocols & Methods to ensure that they are consistent with how work will be done in any subsequent contract.
C. Implement Study Plan	4/1/2025	2/28/2026	Inactive	Implement the study plan's protocols and sample design consistent with the WE description and methods in the SOW. The start date of this milestone is used to set the completion date for the EC milestone.
D. Secure data back-up	4/1/2025	3/31/2026	Inactive	Minimum requirements: Hard copies of field sheets and original dataloggers secured against fire and flood. At least daily data back-up of electronic data on a separate hard drive. Secure cloud-based or off-site location data back-up to preclude catastrophic data loss at least weekly. More frequent cloud/off-site back-up is greatly encouraged. [Timing guidance: from beginning to end of contract]
E. Yearly upload of error-checked datasets	4/1/2025	3/31/2026	Inactive	Upload datasets with associated metadata to a publicly accessible site each year as soon as they have been QA/QC checked. This generally happens within 6 months for direct field-to-database input, but may be longer if laboratory analysis is required (e.g., scale reading or genetic analyses). If data is not QA/QCed within 1 year, data must be made accessible with acknowledgement of QA/QC limitations. Periods for dataset collection should be no longer than a year, and coincide with the logical biology of the data collection, which may not be on a calendar year. Example of a dataset: redd counts for one species for one season for a particular brood year. Dataset upload requirements apply to both original and derived data, which should be at a level of quality suitable for release to resource co-managers to make decisions – not the rigor required as if you were going to use the data for a peer-reviewed publication.
F. Collect periodic manual discharge measurements	4/1/2025	3/31/2026	Inactive	We will collect wading discharge measurements weekly for sites critical to monitoring instream flows and periodically for other sites of interest.



Milestone Title	Start Date	End Date	Status	Milestone Description
Deliverable: G. Discharge measurements		3/31/2026	Inactive	See the Deliverable Specification above

M: 162. Analyze/Interpret Data

Title: Analyze redd count data

Description: We will evaluate the distribution of redd gps waypoints and generate adult abundance index.

Deliverable Specification: Redd distribution and adult abundance index
Data will be publicly accessible, with stipulations for limitations of use and data generator attribution. Additional implementation notes and analysis will be in the Annual Report, or attached to the protocol as implementation notes. A link to the data set with a file name in the report's first appendix will be in the Annual Report. If not web accessible, provide instructions (e.g., file name, directory, or position title) for accessing data.

Work Element Budget: [REDACTED]

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Population Status
- * Primary R, M, and E Type : Status and Trend Monitoring
- * Secondary R, M, and E Type : Action Effectiveness Monitoring
- * Secondary R, M, and E Focal Strategy : Tributary Habitat

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: NPCC Subbasin:

State: HUC5 Watershed:

County: HUC6 Name:

Salmonid ESUs Present:

Study Plan: YRWP Adult steelhead abundance (1996-035-01) v1.0

Study Plan Owner: Tim Resseguie

Protocol: YRWP Adult steelhead abundance (1996-035-01) v1.0

Protocol State: Finalized

Protocol Owner: Tim Resseguie

Sample Design: Analyze redd count data - Yakama Confederated Tribes v1.0

Methods:

ID	Title	Type	Optional	Customized Based On	Status
195	Estimating Adult Spawner Abundance v1.0	Data Collection	No	N/A	Finalized
402	Fish per redd v1.0	Data Analysis/Interpretation	No	N/A	Finalized
131	Redd Count Survey v1.0	Data Collection	No	N/A	Finalized
4112	Redd Density v1.0	Data Analysis/Interpretation	No	N/A	Finalized

Metrics:

Title	Category	Subcategory	Subcategory focus 1	Subcategory focus 2
adult steelhead abundance	Fish	Abundance of Fish (ID: 46)	Fish Life Stage: Adult Fish	Fish Origin: Natural
Steelhead redd count (an index of adult spawner abundance)	Fish	Abundance of Fish (ID: 46)	Fish Life Stage: Adult - Spawner	Fish Origin: Natural

Data Repositories: Salmon Population Indicators (<https://catalog.data.gov/dataset/wdfw-salmonid-population-indicators-database-spi-metrics-and-indicators>)
Status and Trends Annual Reporting Project (STAR) (<http://dashboard.yakamafish-star.net/>)
Yakama Nation Dashboard
CAP Fish HLIs (CAX) (<https://cax.streamnet.org/>)
SalmonScape (<https://apps.wdfw.wa.gov/salmonscape/>)



Area of Inference:

Name
Steelhead Summer-Winter Interior Columbia Pop. Name
Value
Satus Creek
Toppenish
Naches River
Note:

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Review, revise, & finalize Study Plan sample design protocol and methods in monitoringResources.org	4/1/2025	2/28/2026	Inactive	The Study Plan's Sample Design, Protocol and Methods for this work element are stored at MonitoringResources.org and need to be completed (i.e., "Finalized" through MonitoringResources.org), preferably prior to data analysis but must be completed upon submittal of your annual report. Preparations for contract renewals must include reviewing any previously finalized Sample Designs, Protocols & Methods to ensure that they are consistent with how work will be done in any subsequent contract.
B. Analyze redd count distribution data.	4/1/2025	10/31/2025	Inactive	Assess steelhead spawner abundance and map spatial distribution of steelhead redds.
Deliverable: C. Redd distribution and adult abundance index		3/31/2026	Inactive	See the Deliverable Specification above

N: 162. Analyze/Interpret Data

Title: Analyze Steelhead Outmigrant Data
Description: Generate smolt outmigration estimates using screw trap catch data, assess timing and survival.
Deliverable Specification: Generate smolt outmigration estimates using screw trap catch data, assess timing and survival. Data will be publicly accessible, with stipulations for limitations of use and data generator attribution. Additional implementation notes and analysis will be in the Annual Report, or attached to the protocol as implementation notes. The data file/s will be stored in the data repository/ies specified in the contract. In your annual report (WE 132), you are required to provide a link to your data set with a file name in the report's first appendix. If not web accessible, provide instructions (e.g., file name, directory, or position title) for accessing data.

Work Element Budget:

Planned Metrics:

- * Primary R, M, and E Focal Strategy : Population Status
- * Primary R, M, and E Type : Status and Trend Monitoring
- * Secondary R, M, and E Type : Action Effectiveness Monitoring
- * Secondary R, M, and E Focal Strategy : Tributary Habitat

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS
Country: NPCC Subbasin:
State: HUC5 Watershed:
County: HUC6 Name:
Salmonid ESUs Present:
Study Plan: YRWP Juvenile steelhead outmigration (1996-035-01) v1.0
Study Plan Owner: Tim Resseguie
Protocol: YRWP Juvenile steelhead outmigration (1996-035-01) v1.0
Protocol State: Finalized
Protocol Owner: Tim Resseguie
Sample Design: Analyze smolt outmigration data - Yakama Confederated Tribes v1.0
Methods:

ID	Title	Type	Optional	Customized Based On	Status
485	Cormack-Jolly-Seber (CJS) Model v1.0	Data Analysis/Interpretation	No	N/A	Finalized
1734	Fish wet weight v1.0	Data Collection	No	N/A	Finalized
4041	Measuring Fish Length: Fork length v2.0	Data Collection	No	N/A	Finalized



1736	PIT tag marking procedures v1.0	Data Collection	No	N/A	Finalized
133	Rotary Screw Trap Deployment and Operation v1.0	Data Collection	No	N/A	Finalized
5519	Rotary Screw Trap Mark-Recapture Salmonid Outmigration Abundance Estimate v1.0	Data Analysis/Interpretation	No	N/A	Finalized
134	Trap Efficiency Testing v1.0	Data Collection	No	N/A	Finalized

Metrics:

Title	Category	Subcategory	Subcategory focus 1	Subcategory focus 2
Fish length	Fish	Length: Fish Species (ID: 75)	Fish Life Stage: Juvenile - Migrant	NA
Fish weight	Fish	Weight: Fish (ID: 206)	Fish Life Stage: Juvenile Fish	Fish Origin: Natural
Rotary screw trap juvenile steelhead daily catch	Fish	Abundance of Fish (ID: 46)	Fish Life Stage: Juvenile - Migrant	Fish Origin: Natural

Data Repositories: WDFW - JMX (<http://www.wdfw.wa.gov/>)
CAP Fish HLLs (CAX) (<https://cax.streamnet.org/>)

Area of Inference: Name Value
NPPC Subbasins YAKIMA
HUC4 - Sub Basin LOWER YAKIMA
Note:

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Review, revise, & finalize Study Plan sample design protocol and methods in monitoringResources.org	4/1/2025	12/29/2025	Inactive	The Study Plan's Sample Design, Protocol and Methods for this work element are stored at MonitoringResources.org and need to be completed (i.e., "Finalized" through MonitoringResources.org), preferably prior to data analysis but must be completed upon submittal of your annual report. Preparations for contract renewals must include reviewing any previously finalized Sample Designs, Protocols & Methods to ensure that they are consistent with how work will be done in any subsequent contract.
B. Analyze steelhead outmigrant abundance and timing	4/1/2025	3/31/2026	Inactive	Generate smolt outmigration estimates using screw trap catch data, assess timing and survival.
Deliverable: C. Steelhead outmigration metrics		3/31/2026	Inactive	See the Deliverable Specification above

O: 186. Operate and Maintain Habitat/Passage/Structure

Title: Assist with the operation of diversions and screens on Ahtanum Creek
Description: YRWP staff assist with the operation of the Wapato Irrigation Project's (WIP) upper and lower canals on Ahtanum Creek and monitor other canals. Project staff monitor the amount of intake into the diversion as well as instream flow. The purpose of this work is to assure the the YN's minimum instream flow criteria is met throughout the irrigation season. Staff collect information to support operation and do not physically operate the headgate. Staff manage the operation by making diversion amount change requests to WIP based on stream and canal flow measurements we take (wading discharge measurements.) Stream flow measurements are taken at 4 sites, and involve reading staff gages. Generally this takes 2 people 6hrs including the travel time. It is often necessary to take this series of measurements twice a week. These measurements are taken from April through the end of irrigation in October. The instream flow provided by this work affects 16 miles of Ahtanum Creek, and benefits both the rearing and adult life stages of steelhead, bulltrout, chinook and coho.

Deliverable Specification: Diversions regulated and screens maintained

Work Element Budget:

Planned Metrics: * # of miles of streambank protected by fence maintenance: 0.00
* # of acres protected by fence maintenance: 0.00

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS



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Country: US
 State: WA
 County: Yakima
 Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

NPCC Subbasin: Yakima
 HUC5 Watershed: Ahtanum Creek
 HUC6 Name: Multiple

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff
B. Ensure that any O&M follows recommendations to minimize adverse impacts to lamprey	4/15/2025	10/15/2025	Inactive	Contractors should plan operations and maintenance to minimize negative impacts to lamprey by following guidance from these documents: Best Management Guidelines for Native Lampreys During In-water Work, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Pacific Lamprey Habitat Restoration Guide, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Exploring Techniques to Reduce Lamprey and Salmonid Entrainment into Canals, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Dredging white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Entrainment white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm
C. Removal of silt and/or gravel	4/1/2025	3/31/2026	Inactive	Ensure that any removal of substrate or sediment follows guidelines to protect lamprey. Dredging or removal of substrate can remove and kill multiple year classes of lamprey larvae and juveniles. Where lamprey are present, contractors should follow operation and maintenance guidelines from these documents: Best Management Guidelines for Native Lampreys During In-water Work, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Pacific Lamprey Habitat Restoration Guide, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Exploring Techniques to Reduce Lamprey and Salmonid Entrainment into Canals, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Dredging white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Entrainment white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Lamprey presence can be determined from this Data Basin map, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm , however this map does not show distribution everywhere due to limited data, so pre-project lamprey surveys should be done (as described in the USFWS lamprey Guidelines document) if the map does not show presence.
D. Make irrigation diversion amount change requests	4/1/2025	3/31/2026	Inactive	Recommend instream flow to Water code before irrigation season begins.
E. Collect stream and diversion discharge data to determine diversion amount	4/1/2025	3/31/2026	Inactive	Stream flow measurements are taken at 4 sites and involve reading staff gages. Generally, this takes 2 people 6hrs including the travel time. It is often necessary to take this series of measurements twice a week.
Deliverable: F. Diversions regulated and screens maintained		3/31/2026	Inactive	See the Deliverable Specification above



P: 186. Operate and Maintain Habitat/Passage/Structure

Title: Assist with operation of diversions and screens on Toppenish Creek

Description: Project staff collect information to support operation of 6 diversions in the Toppenish Creek watershed. Staff provide Wapato Irrigation Project and Tribal Water Code personnel flow measurements and recommendations on minimum instream flows. Project staff also coordinate with landowners to insure that diversions are run as efficiently as possible. Project staff monitor the amount of intake into the lateral as well as the instream flow throughout the summer irrigation season, however Wapato Irrigation Project staff actually operate the headgate during those months. The purpose of YRWP's involvement is to maintain an instream minimum flow and to insure that excess water from the Olney Lateral is not dumped as tailwater into Simcoe Creek, thus causing a false attraction of Toppenish steelhead into Simcoe Creek. Although no irrigation occurs during the winter months, the Olney Lateral is used by cattlemen for stock water year-round. Since the inception of the instream minimum flow in 2003, Project staff have found the habitat it creates (2.5 miles of previously dried up streambed) hold a significant number of juvenile steelhead. Staff also assist with maintenance of fish screens and notify water code when they are not operating properly.

Deliverable Specification: UCHRP staff will assist Wapato Irrigation Project, Bureau of Reclamation and Yakama Nation Water Code with the operation of fish screens on Toppenish Creek. This may include sharing discharge data, review of proposed operations changes and maintenance of the facilities themselves.

Work Element Budget: [REDACTED]

Planned Metrics:

- * # of miles of streambank protected by fence maintenance: 0.00
- * # of acres protected by fence maintenance: 0.00

Locations: 6

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US **NPCC Subbasin:** Yakima

State: WA **HUC5 Watershed:** Multiple

County: Yakima **HUC6 Name:** Multiple

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/1/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Ensure that any O&M follows recommendations to minimize adverse impacts to lamprey	4/1/2025	3/1/2026	Inactive	Contractors should plan operations and maintenance to minimize negative impacts to lamprey by following guidance from these documents: Best Management Guidelines for Native Lampreys During In-water Work, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Pacific Lamprey Habitat Restoration Guide, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Exploring Techniques to Reduce Lamprey and Salmonid Entrainment into Canals, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Dredging white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Entrainment white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm
C. Assist with the operation and maintenance of irrigation diversions and fish screens.	4/1/2025	3/31/2026	Inactive	Project staff will assist with the operation of irrigation diversions by taking discharge measurements and assisting YN Watercode and WIP with maintenance to ensure compliance with minimum instream flows. They will also maintain, repair, and clean the 4 fish screens installed by the YRWP project and assist with maintenance of other screens in the Toppenish watershed.
Deliverable: D. Assist with operations of diversions and screens on Toppenish Creek		3/31/2026	Inactive	See the Deliverable Specification above

Q: 186. Operate and Maintain Habitat/Passage/Structure

Title: Maintain stock tanks/livestock fences/improved springs

Description: Project staff maintains approximately 16 miles of riparian fence. Most of the range unit fencing is located along the



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perimeter of the Project's leased range units. The riparian fence is distributed as follows: 10 miles in the Ahtanum watershed, 3 miles in the Toppenish Watershed and 3 miles in the Satus Watershed. Stock wells and their maintenance are necessary because meeting the instream minimum fish flow often necessitates the shutting down of the various irrigation ditches associated with Ahtanum and Toppenish Creeks. As the ditches are shut down, cattlemen still need water for stock, thus the need for stock wells. These wells were purchased through BPA funds and constructed in 2002. Range unit fencing and its maintenance is necessary because of the Project's lease of several important Range Units in the Satus and Loggy Creek Watersheds. If the range unit fences fall into disrepair, cattle from adjoining Range Units will be able to enter our units, and negatively impact those watersheds. Staff constantly monitor the various structures for condition and functionality. This includes site visits to all stock wells and stock tanks and visual review of all fencing. Structures not functioning are repaired or replaced as needed. Most if not all the work is done with Project employees. Major repairs or upgrades may be performed during down time in the off season (winter.) Structures will be in good repair and functioning during the times of year they are in use. If structures malfunction or break during times of use, Staff will repair them in a timely manner.

Deliverable Specification: Fences maintained.

Work Element Budget:

Planned Metrics: * # of miles of streambank protected by fence maintenance: 16.00
* # of acres protected by fence maintenance: 100.00

Locations: 30

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US **NPCC Subbasin:** Yakima

State: WA **HUC5 Watershed:** Multiple

County: Yakima **HUC6 Name:** Multiple

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Ensure that any O&M follows recommendations to minimize adverse impacts to lamprey	4/1/2025	3/31/2026	Inactive	Contractors should plan operations and maintenance to minimize negative impacts to lamprey by following guidance from these documents: Best Management Guidelines for Native Lampreys During In-water Work, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Pacific Lamprey Habitat Restoration Guide, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Exploring Techniques to Reduce Lamprey and Salmonid Entrainment into Canals, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Dredging white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Entrainment white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm
C. Procure parts and supplies for pump installations	4/1/2025	3/31/2026	Inactive	Project may need to procure parts to maintain installations throughout the fiscal year.
D. Provide Final Metrics	4/1/2025	12/31/2025	Inactive	Verify implemented work is consistent with approved design plans and planned metrics and update final metrics in CB Fish.
E. Turn on livestock pumps and prepare installations for use	2/1/2026	3/31/2026	Inactive	Initial startup procedures followed at beginning of grazing season (Feb 1 - April 1) to be sure pumps and associated facilities are operating properly.
F. Maintain livestock fencing	4/1/2025	3/31/2026	Inactive	Staff will maintain range unit and riparian fencing throughout all three watersheds.
Deliverable: G. fences and maintained		3/31/2026	Inactive	See the Deliverable Specification above

R: 198. Maintain Vegetation



Title: Maintain vegetation

Description: Project staff maintain planted or pre-existing vegetation through physical and mechanical activities such as scalping, installing mats or mulch, mowing, and irrigating to prevent or reduce animal damage ten years after implementation. This work element is on each fiscal year to care for and maintain vegetation of restoration projects implemented using BPA funds.

If low survival occurred after the first year of planting, more plants will be added the second year and will be repeated as such until established. Project staff collect large numbers of willow, dogwood, and cottonwood cuttings for planting. Locations include all past restoration project sites where plantings were established as well as established monitoring sites.

Three-Way: year 6 of 10
Shaker Church: year 7 of 10
Simcoe West White Swan: Year 2 of 10

Deliverable Specification: Vegetation maintained

Work Element Budget:

Planned Metrics:

- * # of riparian miles treated: 0.75
- * # of acres of riparian wetland habitat treated: 2.70
- * # of years treated: 1
- * # of acres maintained: 23.00
- * Biological plant removal: No
- * Herbicide plant removal: No
- * Mechanical plant removal: Yes
- * Conduct controlled burn: No

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US

NPCC Subbasin: Yakima

State: WA

HUC5 Watershed: Multiple

County: Yakima

HUC6 Name: Multiple

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Maintain planted or pre-existing vegetation-Simcoe West White Swan	4/1/2025	3/31/2026	Inactive	Project staff maintain planted or pre-existing vegetation through physical and mechanical activities such as scalping, installing mats or mulch, mowing, and irrigating to prevent or reduce animal damage. Each past restoration project site is inspected annually and weeds removed mechanically if needed. For example at the 3 way levee removal project, the setback levee is inspected and vegetation removed if it affects its integrity. Project inspected for 10 years after completion. Simcoe West White Swan, Year 2 of 10. Additional trees and willows are to be planted, re-seeding if needed.
C. Maintain planted or pre-existing vegetation-Three Way Phase One	4/1/2025	3/31/2026	Inactive	Project staff maintain planted or pre-existing vegetation through physical and mechanical activities such as scalping, installing mats or mulch, mowing, and irrigating to prevent or reduce animal damage. Each past restoration project site is inspected annually and weeds removed mechanically if needed. For example at the 3 way levee removal project, the setback levee is inspected and vegetation removed if it affects its integrity. Project inspected for 10 years after completion. Three-Way Phase One: year 6 of 10 is to be observed, but may not receive additional treatments, however, it may involve some mechanical pulling of weeds.



Milestone Title	Start Date	End Date	Status	Milestone Description
D. Maintain planted or pre-existing vegetation-Shaker Church	4/1/2025	3/31/2026	Inactive	Project staff maintain planted or pre-existing vegetation through physical and mechanical activities such as scalping, installing mats or mulch, mowing, and irrigating to prevent or reduce animal damage. Each past restoration project site is inspected annually and weeds removed mechanically if needed. For example at the 3 way levee removal project, the setback levee is inspected and vegetation removed if it affects its integrity. Project inspected for 10 years after completion. Shaker Church: Year 7 of 10, mechanical pulling anticipated, no additional planting and seeding.
Deliverable: E. Vegetation maintained		3/31/2026	Inactive	See the Deliverable Specification above

S: 175. Produce Design

Title:

3-Way Phase II Levee Removal - Design Continuation

Description:

Yakama Nation Staff is working with NRCS on section 106 as they have been identified as the lead agency. It is recognized that BPA may need to complete independent NEPA analysis. A formal lead agency determination is pending. The BPA COR and HAL will be provided design iterations as they are developed and at EC will be provided the 60% to facilitate NEPA clearance. There is the potential that BPA funds may be used for implementation in 2025, therefore these designs will be provided to assure alignment.

Most of the design costs are covered by other funding sources and are being used as cost share.

This is a continuation from FY24 94506 WE Y, because the cultural resource program has identified the area has high risk, and requested additional time for review, surveys, and comment period on design iterations. Therefore, the project will continue to be designed in FY25, with implementation slated for 2025.

Project Description:

Toppenish Creek is important for listed aquatic species like steelhead (*Oncorhynchus mykiss*) and as a corridor through a semi-arid landscape for terrestrial and avian species within the Yakima watershed. A levee constructed in the 1970s limits the productivity of the floodplain and aquatic habitat at that location.

Levee removals/set-backs/breaching are an important and beneficial component of floodplain and side-channel reconnection projects. These projects are rarely limited to the simple removal of a levee and then leaving the river to passively recover. River channels adjust to the presence of levees in complex ways, and the effects often extend up and downstream. Levees can have a profound effect on flood conveyance, sediment transport, channel migration, large wood processes, vegetation conditions, and aquatic habitat. Just as the presence of levees affects these components, so does their removal or breaching. It is therefore critical to understand the consequences of levee modifications and to address those as part of design. This is typically performed via hydraulic modeling, sediment transport analysis, and fluvial geomorphological investigations. Inter-Fluve has performed these assessments, designs, and implementation for many levee modifications in the region, including the Phase I Toppenish 3-Way levee removal in 2019.

Engineered designs are needed to remove the levee safely and effectively on Toppenish Creek.

Deliverable Specification: Designs complete

Work Element Budget:



Locations:

1

Primary Focal Species:

Steelhead (*O. mykiss*) - Middle Columbia River DPS

Country:

US

NPCC Subbasin:

Yakima

State:

WA

HUC5 Watershed:

Toppenish Creek

County:

Yakima

HUC6 Name:

Olney Creek-Toppenish Creek

Salmonid ESUs Present:

Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	8/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.



Milestone Title	Start Date	End Date	Status	Milestone Description
B. Reduce or Eliminate Impacts to Native Mussels (Genera Anodonta, Margaritifera, and Gonidea)	4/1/2025	8/1/2025	Inactive	(If the project involves in water work and Native Freshwater Mussels are potentially present in the project area use this milestone.) Incorporate into the plan/design methods and considerations to reduce, minimize or avoid harm to Native Freshwater Mussels. Follow Best Management Practices when developing these plans found in the "Mussel-Friendly Restoration" guide (https://xerces.org/sites/default/files/publications/19-013.pdf) and "Conserving the Gems of Our Waters" Best Management Practices Manual (https://xerces.org/sites/default/files/2018-05/18-001_01_XercesSoc_Protecting-Native-Western-Freshwater-Mussels-BMPs_web.pdf).
C. Provide projected construction start date to BPA COR and EC	4/1/2025	7/1/2025	Inactive	Provide month and year of projected construction start date to assist in project planning, environmental compliance, planning and design review timelines. Provide during conceptual design stage and no later than 15% design. Include in WE description if possible.
D. Determine cost estimate, permitting, construction, and M&E	5/1/2025	7/1/2025	Inactive	All designs shall include an engineer's construction estimate (including, but not limited to): volume of materials and cost per volume, hours and rates for each person, equipment hours and rates, delivery costs, travel and per diem costs, and supplies
E. Cultural resource clearance obtained	4/1/2025	8/1/2025	Inactive	If planning or design work requires ground disturbance including but not limited to geotechnical surveys, ground water monitoring, or well exploration, obtain appropriate cultural resources consultation prior to any ground disturbance. Notify EC Lead well in advance of ground disturbing work. On-the-ground work associated with this work element may not proceed until this milestone is concluded. Milestone is concluded when BPA environmental compliance staff provides final documentation.
F. NEPA clearance obtained	6/12/2025	8/1/2025	Inactive	Project shall not proceed without NEPA sign-off from BPA EC Lead.
G. Upload final design set	6/12/2025	8/1/2025	Inactive	Upload final approved design plan set and basis of design to the contract documents and notify COR and EC lead when complete.
H. Subcontractor hired for implementation	7/1/2025	8/1/2025	Inactive	Sponsors shall follow their own procurement process, so long as there is no conflict of interest. Provide BPA COR the updated subcontract budget.
Deliverable: I. Designs complete		8/1/2025	Inactive	See the Deliverable Specification above

T: 180. Enhance Floodplain/Remove, Modify, Breach Dike

Title:

3way phase II Levee Removal

Description:

Toppenish Creek is important for listed aquatic species like steelhead (*Oncorhynchus mykiss*) and as a corridor through a semi-arid landscape for terrestrial and avian species within the Yakima watershed. A levee constructed in the 1970s limits the productivity of the floodplain and aquatic habitat at that location.

Levee removals/set-backs/breaching are an important and beneficial component of floodplain and side-channel reconnection projects. These projects are rarely limited to the simple removal of a levee and then leaving the river to passively recover. River channels adjust to the presence of levees in complex ways, and the effects often extend up and downstream. Levees can have a profound effect on flood conveyance, sediment transport, channel migration, large wood processes, vegetation conditions, and aquatic habitat. Just as the presence of levees affects these components, so does their removal or breaching. It is therefore critical to understand the consequences of levee modifications and to address those as part of design. This is typically performed via hydraulic modeling, sediment transport analysis, and fluvial geomorphological investigations. Inter-Fluve has performed these assessments, designs, and implementation for many levee modifications in the region, including the Phase I Toppenish 3-Way levee removal in 2019.

Removal of 0.4 miles of levee on Toppenish Creek at River Mile 42 and the construction of new channels a and floodplain to restore conditions prior to the construction of the levee in the mid 1970s

Deliverable Specification:

UCHRP staff will complete 0.4 miles of levee removal.

Work Element Budget:

Planned Metrics:

- * # of miles of habitat accessed to the next upstream barrier(s) or likely limit of habitable range: 0.00
- * # of acres of riparian non-wetland habitat treated: 40.00
- * # of acres of habitat treated by full dike removal in the Riparian zone: 20.00
- * # of acres of habitat treated by full dike removal in the Estuarine zone: 0.00
- * # of acres of habitat treated by full dike removal in the Freshwater Non-Tidal zone: 0.00
- * # of acres of habitat treated by dike breaching in the Riparian zone: 0.00



- * # of acres of habitat treated by dike breaching in the Estuarine zone: 0.00
- * # of acres of habitat treated by dike breaching in the Freshwater Non-Tidal zone: 0.00
- * # of acres of habitat treated by dike setbacks in the Riparian zone: 0.00
- * # of acres of habitat treated by dike setbacks in the Estuarine zone: 0.00
- * # of acres of habitat treated by dike setbacks in the Freshwater Non-Tidal zone: 0.00
- * # of miles of dike removed or modified by Full removal in the Riparian zone: 0.40
- * Full dike removal: Yes
- * Partial dike removal: No
- * Dike breaching: No
- * Dike setback: No
- * Dike height reduction: No
- * # of miles of dike removed or treated: 0.40

Locations:

Primary Focal Species:

Country:

State:

County:

Salmonid ESUs Present:

Steelhead (O. mykiss) - Middle Columbia River DPS

US

WA

Yakima

Middle Columbia River Steelhead DPS (Accessible)

NPCC Subbasin:

Yakima

HUC5 Watershed:

Toppenish Creek

HUC6 Name:

Mill Creek-Toppenish Creek

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	8/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Supplies/materials/equipment delivered	4/1/2025	8/1/2025	Inactive	Materials necessary for completion of restoration actions acquired and staged onsite.
C. Implement approved habitat design	8/1/2025	10/31/2025	Inactive	Implement habitat actions in accordance with approved plan set. Milestone dates include staging and site cleanup and all in-water work will be conducted during the approved in-water work window.
D. Seed or stabilize areas disturbed by construction activities	8/1/2025	3/31/2026	Inactive	Seed or stabilize disturbed areas with native seed mix in accordance with designs and permit requirements.
E. Excess spoils disposed of in accordance with approved designs	8/1/2025	3/31/2026	Inactive	Spoils from levee/berm/dike modification will be disposed of in accordance with approved design set.
Deliverable: F. Completed Three Way Phase II habitat restoration project		3/31/2026	Inactive	See the Deliverable Specification above

U: 29. Increase Aquatic and/or Floodplain Complexity

Title:

3way phase II Levee Removal

Description:

Toppenish Creek is important for listed aquatic species like steelhead (*Oncorhynchus mykiss*) and as a corridor through a semi-arid landscape for terrestrial and avian species within the Yakima watershed. A levee constructed in the 1970s limits the productivity of the floodplain and aquatic habitat at that location.

Following levee removal aquatic and floodplain complexity will be enhanced through the addition of 600 individual pieces of LWD, channel spanning jams, 3 apex jams, 87 meander jams, resulting in the creation of 20 pools. Complexity will be enhanced along 1 miles of main and side channel and 20 acres of floodplain is expected to be activated at 240 cfs flow.

Aquatic and floodplain complexity will be completed by 11/1/2025

Deliverable Specification:

90 log jam structures installed and as built uploaded to cbfish.

Work Element Budget:

[REDACTED]

Planned Metrics:

- * # of miles of stream with improved complexity: 1.00
- * Start latitude of treated stream reach: 46.329061
- * End latitude of treated stream reach: 46.320371



* Start longitude of treated stream reach: -120.770000
 * End longitude of treated stream reach: -120.777429
 * # of logjam structures installed for only complexity: 90
 * # of pools created for only complexity: 20
 1
Locations:
Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS
Country: US **NPCC Subbasin:** Yakima
State: WA **HUC5 Watershed:** Toppenish Creek
County: Yakima **HUC6 Name:** Mill Creek-Toppenish Creek
Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	8/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Acquire/harvest woody material	4/1/2025	8/1/2025	Inactive	Large wood material and slash meeting the design specification will be purchased and staged onsite in the approved staging areas.
C. Implement approved habitat design	8/1/2025	10/31/2025	Inactive	Implement habitat actions in accordance with approved plan set. Milestone dates include staging and site cleanup and all in-water work will be conducted during the approved in-water work window or extension. If an extension is granted it shall be uploaded to the contract documents and e-mailed to the COR and EC lead.
D. Materials for structure composition obtained (logs, boulders, ect.)	4/1/2025	10/31/2025	Inactive	Materials necessary for completion of structures acquired and staged onsite.
E. Provide final metrics	4/1/2025	3/31/2026	Inactive	Verify implemented work is consistent with planned metrics and update final metrics in cbfish.
Deliverable: F. Floodplain Enhancement Complete		3/31/2026	Inactive	See the Deliverable Specification above

V: 47. Plant Vegetation

Title: 3way phase II Levee Removal
Description: Toppenish Creek is important for listed aquatic species like steelhead (*Oncorhynchus mykiss*) and as a corridor through a semi-arid landscape for terrestrial and avian species within the Yakima watershed. A levee constructed in the 1970s limits the productivity of the floodplain and aquatic habitat at that location.

 After removal, planting will occur on flood plain, area where dike is

 500 PLANTS/TREES/SHRUBS will be planted on 10 acres consisting of cottonwood, willow, alder, wild rose etc. and native grasses

Deliverable Specification: PLANTING/SEEDING will be completed by SUBCONTRACTOR.
 10 acres of habitat reseeded and planted with native vegetation.

Work Element Budget:

Planned Metrics:
 * # of riparian miles treated: 0.50
 * # of acres of upland non-wetland habitat treated: 3.00
 * # of acres of upland wetland habitat treated: 3.70
 * # of acres of riparian non-wetland habitat treated: 2.00
 * # of acres of riparian wetland habitat treated: 3.00

Locations: 1
Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS
Country: US **NPCC Subbasin:** Yakima
State: WA **HUC5 Watershed:** Toppenish Creek
County: Yakima **HUC6 Name:** Mill Creek-Toppenish Creek
Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)



Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	7/31/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Fall tree and shrub planting	8/1/2025	11/28/2025	Inactive	Plant trees and shrubs in accordance with approved plan set. Milestone dates should include a planting window appropriate to assure reasonable plant survival.
C. Herbaceous Seeding	8/1/2025	11/28/2025	Inactive	Seed areas with native seed in accordance with the approved plan set to enhance herbaceous cover of grasses and forbs. Milestone dates should include a planting window appropriate to assure reasonable plant survival.
D. Provide Final Metrics	12/1/2025	3/31/2026	Inactive	Verify implemented work is consistent with approved design plans and planned metrics and update final metrics in cbfish. Only the initial planting and seeding efforts for the purpose of enhancing degraded areas shall be reported. Metrics reporting shall include seeding for vegetation enhancement but shall not include post construction seeding with the sole purpose of stabilizing soils disturbed by construction. Planting area acreage shall only be reported in the plant vegetation metrics once even if replanting or multiple methods (planting and seeding) are utilized on the same acreage.
Deliverable: E. Revegetation completed		3/31/2026	Inactive	See the Deliverable Specification above

W: 30. Realign, Connect, and/or Create Channel**Title:** 3way phase II Levee Removal**Description:** Toppenish Creek is important for listed aquatic species like steelhead (*Oncorhynchus mykiss*) and as a corridor through a semi-arid landscape for terrestrial and avian species within the Yakima watershed. A levee constructed in the 1970s limits the productivity of the floodplain and aquatic habitat at that location.

After removing the levee on site we will create a 3/4 mile of new meandering channel to replace 1/2 mile of straightened channel. Additionally, 4 high flow side channels that will activate approximately a mile during late spring/early summer and 2 alcoves will be created.

Deliverable Specification: Meanders in main channel and 4 high flow side channels created.**Work Element Budget:****Planned Metrics:**

- * Start latitude of treated stream reach: 46.328922
- * End latitude of treated stream reach: 46.319267
- * Start longitude of treated stream reach: -120.771010
- * End longitude of treated stream reach: -120.778116
- * # of acres of freshwater non-wetland habitat treated: 20.00
- * # of miles of side channel treated in the freshwater non-tidal zone: 0.00
- * # of miles of main channel treated in the freshwater non-tidal zone: 0.50
- * # of miles of side channel created in the freshwater non-tidal zone: 1.00
- * # of miles of main channel created in the freshwater non-tidal zone: 0.50

Locations:**Primary Focal Species:** Steelhead (*O. mykiss*) - Middle Columbia River DPS**Country:** US**NPCC Subbasin:** Yakima**State:** WA**HUC5 Watershed:** Toppenish Creek**County:** Yakima**HUC6 Name:** Mill Creek-Toppenish Creek**Salmonid ESUs Present:** Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	8/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Conduct fish salvage	8/1/2025	10/31/2025	Inactive	Conduct fish salvage within any reaches directly impacted by construction or that will be dewatered as flow is moved to new channel segments.
C. Conduct out of water channel grading	8/1/2025	10/31/2025	Inactive	Conduct channel grading activities that are isolated from stream flows and can be completed outside of the in-water work window.



Milestone Title	Start Date	End Date	Status	Milestone Description
D. Fill old channel segments and complete in-water work	8/1/2025	10/31/2025	Inactive	Fill old channel segments upon the completion of fish salvage and dewatering efforts in accordance with approved design plan.
E. Implement approved habitat design	8/1/2025	10/31/2025	Inactive	Implement habitat actions in accordance with approved plan set. Milestone dates include staging and site cleanup and all in-water work will be conducted during the approved in-water work window or extension.
F. Introduce stream flows to new main/side channel (s)	8/1/2025	10/31/2025	Inactive	Route flow into new main and perennial side channel segments in a controlled and metered manner that minimizes downstream turbidity due to the wetting of the new channel segments.
G. Provide final metrics	8/1/2025	3/31/2026	Inactive	Verify implemented work is consistent with planned metrics and update final metrics in cbfish.
H. Begin construction	8/1/2025	10/31/2025	Inactive	[ENTER INFORMATION ON CONSTRUCTION SPECIFICS HERE] Start date is the planned earliest date that you will be implementing on the ground work. End date is latest date that construction could begin during in-water work window.
Deliverable: I. Completed channel construction		3/31/2026	Inactive	See the Deliverable Specification above

X: 100. Construction Management

Title:

Pom Pom RM 40 Bridge and Channel Construction - Construction Management

Description:

Construction management will include technical and contractual oversight for the implementation of [Pom Pom RM 40 Bridge and Channel Construction] as outlined in the milestones. KPFF and Interfluve project staff will provide construction oversight, contract administration, and assure the project is completed in accordance with the BPA approved designs for the bridge/culverts and restoration, respectively. BPA approved designs shall not be altered without cause and communication. If modifications are required to approved design elements or elements are significantly altered or not implemented due to unanticipated site conditions approval shall be obtained in writing from the BPA COR as soon as possible and prior to contractor demobilization. Documentation of alterations and approvals shall be uploaded to the contract documents.

The design engineers, KPFF and Interfluve, will be subcontracted to provide technical oversight during construction in addition to the construction oversight provided by project staff. Engineering oversight will include being on site during installation of the bridge, water main, and three culverts at a minimum, but may also include oversight for channel construction, or their subcontractor Indicator will be present.

Deliverable Specification:

1) Collect and review construction logs; 2) Review/approve change order requests (Contractor shall consult with BPA CO (in consultation with BPA COR) on any desired change orders before directing the construction contractor to make them); 3) Review subcontractor's requests for payments.

Work Element Budget:



Primary Focal Species:

Steelhead (O. mykiss) - Middle Columbia River DPS

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Engineering construction oversight	8/1/2025	3/31/2026	Inactive	The design engineers will be subcontracted to provide technical oversight during construction as outlined in the work element description.
B. Advertise construction contracts	5/1/2025	7/1/2025	Inactive	YN will competitively advertise (following federal contracting guidelines) contracts for 1) construction of the Pom Pom roadway/bridge, and 2) the Toppenish Creek restoration actions.
C. Award construction contracts	6/1/2025	8/31/2025	Inactive	YN will award contracts to selected contractors for 1) construction of the Pom Pom roadway/bridge, and 2) the Toppenish Creek restoration actions.
D. Provide construction inspection	9/1/2025	3/31/2026	Inactive	YN will work with Engineering contractor(s) to oversee and inspect ensure project is constructed according to plans and in compliance with permitting and funding requirements. YN will notify BPA CO and COR when construction inspection is complete.
E. As-built survey	2/3/2026	3/31/2026	Inactive	An as-built survey will be completed upon project completion and approval and uploaded to the contract documents. The COR will be notified upon completion.



Milestone Title	Start Date	End Date	Status	Milestone Description
F. Oversee demobilization and site cleanup	3/3/2026	3/31/2026	Inactive	Upon completion of the work and contract manager approval the construction contractor will demobilize equipment, remove temporary access roads and staging areas, clean and stabilize disturbed areas and submit final invoices for approval.
G. Approve implemented work	8/1/2025	3/31/2026	Inactive	Ensure all work is completed as designed and adjustments made within the in-stream work window. The BPA COR and EC Lead shall be notified if there are deviations from the BPA approved design and prior to completion.
H. Engineering construction oversight	8/1/2025	3/31/2026	Inactive	The design engineers (KPFF and Interfluve) will be subcontracted to provide technical oversight during construction as outlined in the work element description.
I. Project stake-out	8/1/2025	11/29/2025	Inactive	The project will be staked out just prior to construction. If alterations to the approved project design are required the COR, HAL, and EC will be contacted to discuss the proposed changes.
J. Assure implementation is in accordance with BPA approved designs	8/1/2025	3/31/2026	Inactive	BPA approved designs shall not be altered without cause and communication. If modifications are required to approved design elements or elements are significantly altered or not implemented due to unanticipated site conditions approval shall be obtained in writing from the BPA COR as soon as possible and prior to contractor demobilization.
K. Oversee Mobilization and staging	8/1/2025	9/30/2025	Inactive	Oversee construction contractor mobilization of equipment and material staging within approved staging areas. Oversight shall include assuring that sourced materials meet specifications.
Deliverable: L. Construction Management Complete		3/31/2026	Inactive	See the Deliverable Specification above

Y: 30. Realign, Connect, and/or Create Channel

Title:

Pom Pom RM 40 Bridge Construction and Channel Alignment

Description:

Pom Pom RM 40 construction will be phased over a two-year period, provided revised specifications under the 150' bridge meet HIP requirements. Yakama Nation will bid out the construction for the bridge and culverts, and any replanting / revegetation associated with it once the ESA and NEPA obligations are satisfied. The first phase of the project will include the installation of a new bridge and creation of the 200 feet of new channel alignment, UNDER the bridge, that will be activated during the second phase of the project. Three high flow culverts will also be installed to facilitate floodplain connectivity realized in phase 2 of the project. The second phase of the project will be partially completed in 2025, with completion in 2026. Additional funding and will be included in a future agreement.

In the line-item budget, Yakama nation staff has put elements that are aligned with channel reconstruction, planting, and revegetation. The rest of the construction elements for the bridge, culverts, and water main are to be funded with Yakama Nation Transportation Funds, a Water-Smart grant, and the Toppenish Creek Corridor Enhancement Project.

In the event that designs need to be altered, or a biological assessment pursued, Yakama Nation will work with BPA staff for a re-alignment of funds during the agreement performance period.

HIGH LEVEL PRIORITIZATION

Location RM40 near Pom Pom Road this reach was selected after Interfluve conducted an assessment of Upper Toppenish Creek to determine levels of degradation and limiting habitat factors. Pom Pom area was identified as an area of high concern due to the high level of incision (10 - 15 feet deep) and lack of floodplain connectivity. It appeared the channel was mechanically moved at some point in the past thus abandoning up to 1 river mile of complex habitat, established riparian vegetation, and braided channel network. The abandoned channel to the north also has a spring line that feeds the channel supplying year-round cold water that is critical for steelhead juveniles when rearing during the summer months.

There is little to no riparian vegetation in the current channel alignment to provide stability to the soils and provide shade for steelhead, there is no instream large wood for habitat complexity for staging and rearing, and due to this area being highly degraded, adult steelhead have not used it for spawning for a decade. The riparian vegetation that was present before the Slide Ranch Fire burned the project area in 2024, was largely destroyed by the high intensity burn. This 2025/2026 restoration project will also focus on restoring the riparian and floodplain vegetation communities.

Toppenish Creek is critical for Middle Columbia Steelhead, and reconnecting Toppenish Creek to existing complexity habitats and the spring line to the north will be benefit to all life stages of Steelhead for spawning, rearing, holding, and protection. Habitat complexity will increase with the addition of instream woody debris, removal of fish passage barriers, and availability of spawning gravels, while reconnecting the historic floodplain and healthy riparian corridor.

Deliverable Specification:

Subcontractor will complete phase 1 of channel construction (work in the dry).



Work Element Budget:

Planned Metrics:

- * Start latitude of treated stream reach: 46.341100
- * End latitude of treated stream reach: 46.341411
- * Start longitude of treated stream reach: -120.712304
- * End longitude of treated stream reach: -120.710858
- * # of acres of freshwater non-wetland habitat treated: 0.00
- * # of miles of main channel treated in the freshwater non-tidal zone: 0.00
- * # of miles of main channel created in the freshwater non-tidal zone: 0.00

Locations:

Primary Focal Species:

Country:

State:

County:

Salmonid ESUs Present:

Steelhead (O. mykiss) - Middle Columbia River DPS

US

WA

Yakima

Middle Columbia River Steelhead DPS (Accessible)

NPCC Subbasin:

Yakima

HUC5 Watershed:

Toppenish Creek

HUC6 Name:

Mill Creek-Toppenish Creek

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	6/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Initiate Implementation of approved habitat design	8/1/2025	3/31/2026	Inactive	Initiate Implementation habitat actions in accordance with approved plan set. Milestone dates include staging and site cleanup and all in-water work will be conducted during the approved in-water work window or extension.
C. Initiate out of water channel grading	9/1/2025	3/1/2026	Inactive	Initiate channel grading activities that are isolated from stream flows and can be completed outside of the in-water work window.
D. Provide final metrics	3/1/2026	3/31/2026	Inactive	Work will not be completed until the end of 2026 so there will be no completed metrics during this contracting period.
Deliverable: E. Completed phase 1 of channel construction		3/31/2026	Inactive	See the Deliverable Specification above

Z: 85. Remove/Breach Fish Passage Barrier

Title:

Pom Pom RM 40 Bridge Construction and Channel Alignment

Description:

This work will provide perennial access to groundwater fed habitat with much greater hydraulic complexity than the existing channel which is severely incised and seasonally disconnected from groundwater fed springs. This will be accomplished through the removal of a fish passage barrier (perched culvert) and the strategic placement of a bridge over the improved floodplain habitat.

Barrier removal will be completed by a subcontractor following the construction designs completed by the subcontractor KPFF. The bridge and culverts will be constructed in 2025, but will not be connected to the restored channel habitat until the restoration is completed in 2026.

Deliverable Specification:

Bridge Installation Complete and as built uploaded to Cbfish.

Work Element Budget:

Planned Metrics:

- * # of miles of habitat accessed to the next upstream barrier(s) or likely limit of habitable range: 0.00
- * # of culvert partial passage barriers removed in the freshwater non-tidal zone: 1

Locations:

Primary Focal Species:

Country:

State:

County:

Salmonid ESUs Present:

Steelhead (O. mykiss) - Middle Columbia River DPS

US

WA

Yakima

Middle Columbia River Steelhead DPS (Accessible)

NPCC Subbasin:

Yakima

HUC5 Watershed:

Toppenish Creek

HUC6 Name:

Mill Creek-Toppenish Creek



Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	7/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Implement approved bridge/culvert designs.	7/1/2025	3/31/2026	Inactive	Construction of approved bridge/culvert designs in accordance with approved plan set. This will require little or no in-water work and will be completed by a subcontractor.
C. Provide final metrics	7/1/2025	3/31/2026	Inactive	Verify implemented work is consistent with approved design plans and planned metrics and update final metrics in cbfish. Since the new bridge/culverts will not be connected to the new channel until the restoration is complete in 2026, there will be no completed metrics for this work element in 2025.
D. Supplies/materials/equipment delivered	7/1/2025	12/31/2025	Inactive	Materials necessary for completion barrier removal acquired and staged onsite.
E. Conduct fish salvage	7/1/2025	10/31/2025	Inactive	Conduct fish salvage within any reaches directly impacted by construction or that will be dewatered to complete construction. This may or may not be necessary depending on water levels at the time of construction.
F. Construct three culverts	7/1/2025	3/31/2026	Inactive	Three culverts will be constructed across the floodplain, between the newly constructed 150' bridge and an existing 80' bridge to the south according to the designs created by KPFF. The culverts are meant for flood relief across the floodplain, to protect the road, and prevent washing out of the new bridge and old bridge.
G. Construct 150' Bridge	7/1/2025	3/31/2026	Inactive	New 150' bridge will be constructed in accordance with the approved design sets completed by KPFF. A new water main will also be part of this structure, and road grading to meet elevation of the bridge. The bridge and streambed design will protect footings of the bridge, and reflect stream conditions upstream and downstream as provided in the designs provided by Interfluv.
Deliverable: H. Bridge Installation Complete		3/31/2026	Inactive	See the Deliverable Specification above

AA: 47. Plant Vegetation

Title: Pom Pom Revegetation

Description: Planting at this site will address re-establishing riparian and upland vegetation following the 2024 Slide Ranch Fire that burned the project area. Additionally, any construction related impacts will be revegetated.

Approximately 70 acres of upland will be reseeded with a mix of Blue wildrye, Bluebunch wheatgrass and other native grasses. Approximately 80 acres of riparian will be seeded with a mix of Blue wildrye, wheatgrass. The entire project area will be planted with native shrubs and trees including cottonwood, willow, dogwood and other native shrubs.

Replanting in areas that will not be heavily impacted by construction, but were burned in the slide ranch fire, starting in the fall of 2025. The revegetation work will not be completed until the fall of 2026.

Deliverable Specification: Seeding initiated in upland and riparian areas of burn scar.

Work Element Budget:

Planned Metrics:

- * # of riparian miles treated: 0.00
- * # of acres of upland non-wetland habitat treated: 80.00
- * # of acres of upland wetland habitat treated: 0.00
- * # of acres of riparian non-wetland habitat treated: 0.00
- * # of acres of riparian wetland habitat treated: 70.00

Locations:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US

NPCC Subbasin: Yakima

State: WA

HUC5 Watershed: Toppenish Creek

County: Yakima

HUC6 Name: Mill Creek-Toppenish Creek

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)



Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	10/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Tree and shrub planting	10/1/2025	3/31/2026	Inactive	Plant trees and shrubs in accordance with approved plan set.
C. Herbaceous Seeding	10/1/2025	3/31/2026	Inactive	Seed areas with native seed in accordance with the approved plan set to enhance herbaceous cover of grasses and forbs.
D. Provide Final Metrics	3/1/2026	3/31/2026	Inactive	Verify implemented work is consistent with approved design plans and planned metrics and update final metrics in cbfish. Only the initial planting and seeding efforts for the purpose of enhancing degraded areas shall be reported since this work will be completed in the fall of 2026.
E. Purchase and/or gather plants/seeds	10/1/2025	3/31/2026	Inactive	Order native plants/seeds/weed free straw to be distributed during plantings in 2025 and 2026.
Deliverable: F. Phase one of revegetation completed		3/31/2026	Inactive	<i>See the Deliverable Specification above</i>

AB: 174. Produce Plan

Title:

On Call Services - Engineering Support

Description:

This WE supports an on-call conceptual engineering subcontract that will allow Yakama Nation Fisheries to quickly evaluate and produce conceptual designs for new project areas being developed during landowner outreach activities within priority restoration assessment units and areas that have reach assessments completed.

The ability to opportunistically survey, model, and draft concepts for new projects opportunities helps provide a more informed discussion with our partners in the Upper Columbia, and reduces confusion and conjecture that often surrounds a potential project. Assumptions built into the subcontract will include survey, modeling, and draft concept development on multiple project sites from June 1, 2023 to May 31, 2024.

Potential Project Areas include: Lower Toppenish Creek, Wapato Reach of the Yakima River, Lower and Middle Satus Creek, Ahtanum Creek

Deliverable Specification: Upon completion the plan shall be uploaded to Cbfish.

Work Element Budget:



Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	6/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Discuss HIP ESA coverage with BPA EC Lead and obtain risk determination	4/1/2025	8/30/2025	Inactive	FOR HABITAT ACTIONS ONLY: The EC Lead will determine if work under this work element may be able to have full ESA-coverage (NMFS & USFWS) under the Habitat Improvement Program Biological Opinion (HIP). The HIP has expanded coverage for projects that may pose a moderate to high risk of impacting an ESA-listed species or critical habitat that would normally require a Biological Assessment. For work that qualifies, projects will undergo a review by the EC Lead and Engineering Technical Services (ETS) team. Before conceptual design commences, contact the EC Lead for HIP consideration, instruction, and information needs and requirements for coverage eligibility.
C. Finalize Construction Plan Set	4/1/2025	7/31/2025	Inactive	Finalize Construction Plan Set
Deliverable: D. Upload Plan to Cbfish		3/31/2026	Inactive	<i>See the Deliverable Specification above</i>

AC: 174. Produce Plan

Title:

Satus Reach Assessment

Description:

Satus Creek exhibits degradation throughout numerous reaches due to current and past land-use actions and



ecological disturbance. Abnormally high fire frequency due to the proximity of HWY-97 produces low riparian complexity, low LWD recruitment opportunity, high summer temperatures, and the establishment of invasive species. Furthermore, cattle grazing and a lack of sediment capture associated with low abundance of LWD and well-established roots results in significant incision throughout several reaches. Importantly, many reaches would benefit from riparian plantings; however, anthropogenic influences to the hydrologic system result in uncertainty in regard to groundwater availability and interactions within the hyporheic zone.

In 2026 a riparian restoration project secured through a separate funding source is proposed to take place near RM 12 and RM 32 on Salus Creek to increase the abundance of native tree species. However, prior to implementing riparian restoration actions we require a better understanding of riparian processes, hydraulic interactions and instream habitat conditions. Therefore, in 2025 we plan to conduct a reach assessment two miles upstream and downstream of the proposed restoration sites, totaling to 8 rivermiles (10-14 and 29.5-33.5). The first component of this assessment is an analysis of ecological interactions between riparian plant communities and the stream (i.e., groundwater measurements, 1D flow modeling, landscape-unit characterization, etc.), which will be facilitated by a separate funding source. The second aspect of the assessment, which will be funded through the BPA cooperative agreement, will characterize current habitat conditions and geomorphic processes so that future in-stream restoration projects may be identified and prioritized. The proposed assessment sites border the RM 23 project that is scheduled for implementation this year and will identify ways to enhance the priority watershed.

The purpose of this assessment is to identify potential habitat restoration opportunities that best address key ecological concerns. This will be done through the collection of a variety of field based data (i.e., geomorphic, biological, and Forest Service Level II habitat data) and detailed analysis of hydrologic interactions. Reach Based Ecosystem Indicators (REIs), restoration strategies, and a project prioritization list will be produced to allow YRWP to plan and prioritize implementation of future fish habitat restoration actions throughout Lower Salus Creek. This is significant because it will allow YN to make informed decisions on restoration actions based on landscape-level ecological interactions and it will ensure that proposed riparian restoration projects will not interfere with future habitat enhancement projects.

Deliverable Specification: Upon completion the plan shall be uploaded to CBfish.

Work Element Budget:

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	12/31/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Discuss planning scope with BPA COR, HAL, and ETS	5/1/2025	12/31/2025	Inactive	Prior to solicitation discuss the planning scope with the BPA COR, HAL, and ETS. This discussion should include a summary of past nearby habitat work, prior BPA funding of that work. Scheduled a follow-up site visit if requested and of value to assure BPA, YN, and contractor alignment.
Deliverable: C. Upload Plan to CBfish		1/31/2026	Inactive	See the Deliverable Specification above

AD: 175. Produce Design

Title:

Description:

Toppenish Wood Loading RM 45 - 51- Produce Designs

Yakama Nation (YN) will complete final design (per Manual 18 Appendix D) for a restoration project to increase the instream channel complexity by supplementing instream wood in a reach of Toppenish Creek upstream from Willy Dick Creek from River Mile 45.2 up to River mile 51.0. This reach has low levels of large wood due to past logging and road building activities. YN will hire a consultant to complete an assessment, design wood structures, and determine placement. The goal of this project is to increase steelhead production in the lower canyon of Toppenish Creek

This project is located in the mainstem Toppenish Creek from approximately River Mile 45 (Lat. 46.301195; Lon. -120.812579) to River mile 51 (Lat. 46.268430 -120.889136). Toppenish Creek is a tributary of the Yakima River

The designs for this project are scheduled to be completed in 2025. Implementation will occur in 2026. We will attempt to coordinate with other helicopter wood projects in the Yakima Basin if possible

Selection Criteria:



DIVISION OF FISH AND WILDLIFE

The Toppenish Creek steelhead population is one of the four populations in the Yakima Basin major population group which is part of the middle Columbia steelhead DPS. Although, not specifically identified in the Yakima Basin Steelhead Recovery Plan, this project will support Basin Actions 11, 12 and 13 on pages 151 and 152. It may support Toppenish action 1: "Rehabilitate alluvial fan and downstream floodplain of Toppenish Creek". Page 184, depending on how downstream floodplain is designed.

This project will fit into a larger project to supplement large wood in the lower canyon and upper alluvial fan of Toppenish Creek. One of the five sections to receive wood supplementation have been completed. The first section was completed in 2018 with 800 logs distributed by helicopter to an approximately 5 mile reach. Yakama Nation completed this work, under the BPA project, RELEASE 178.

Deliverable Specification: Designs completed for an unanchored wood supplementation project on 4 to 5 miles of Toppenish Creek.

Work Element Budget:

Locations: 1
Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS
Country: US
State: WA
County: Yakima
Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

NPCC Subbasin: Yakima
HUC5 Watershed: Toppenish Creek
HUC6 Name: Olney Creek-Toppenish Creek

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	3/31/2026	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Provide projected construction start date to BPA COR and EC	10/1/2025	10/31/2025	Inactive	Provide month and year of projected construction start date to assist in project planning, environmental compliance, planning and design review timelines. Provide during conceptual design stage and no later than 15% design. Include in WE description if possible.
C. Submit 15% Design	4/1/2025	4/30/2025	Inactive	Submit 15% Design for BPA review and comments.
D. Develop and submit preferred alternative (typically 30%) for review	5/1/2025	6/30/2025	Inactive	Develop preferred alternative design and cost estimate. Submit plans, draft Basis of Design Report (BDR), and other supporting documentation (profiles, details, cross sections, quantities, technical analyses/appendixes, etc.) to the COR and EC Lead. Schedule time for review (typically one month for NOAA/USFWS and BPA review). The 30% design should incorporate technical comments and recommendations from previous review and shall address design requirements provided by BPA in the BDR template.
E. Determine cost estimate, permitting, construction, and M&E	9/6/2025	2/28/2026	Inactive	All designs shall include an engineer's construction estimate (including, but not limited to): volume of materials and cost per volume, hours and rates for each person, equipment hours and rates, delivery costs, travel and per diem costs, and supplies
F. Submit completed landowner agreement	4/1/2025	10/31/2025	Inactive	Submit landowner agreement to BPA that documents acknowledgement/approval of project. The COR can provide an agreement template.
G. Cultural resource clearance obtained	4/1/2025	2/28/2026	Inactive	If planning or design work requires ground disturbance including but not limited to geotechnical surveys, ground water monitoring, or well exploration, obtain appropriate cultural resources consultation prior to any ground disturbance. Notify EC Lead well in advance of ground disturbing work. On-the-ground work associated with this work element may not proceed until this milestone is concluded. Milestone is concluded when BPA environmental compliance staff provides final documentation.
H. NEPA clearance obtained	4/1/2025	1/31/2026	Inactive	Project shall not proceed without NEPA sign-off from BPA EC Lead.
I. Upload final design set	1/1/2026	2/28/2026	Inactive	Upload final approved design plan set and basis of design to the contract documents and notify COR and EC lead when complete.
J. Provide construction schedule and in-water work window	9/6/2025	1/31/2026	Inactive	Provide schedule to BPA outlining construction schedule and in-water work windows. Should unforeseen circumstance arise, notify BPA immediately of resulting changes in schedule and cost.
K. HIP coverage obtained	4/1/2025	1/31/2026	Inactive	Complete HIP Project Notification Form and document ESA coverage in coordination with EC Lead.



Milestone Title	Start Date	End Date	Status	Milestone Description
L. Subcontractor hired for implementation	1/1/2026	3/28/2026	Inactive	Sponsors shall follow their own procurement process, so long as there is no conflict of interest. Provide BPA COR the updated subcontract budget.
M. Develop and submit permit-ready designs (typically 60% to 80%) for review	9/6/2025	2/28/2026	Inactive	Develop and submit permit ready designs to the COR and EC Lead. Schedule time for review, typically one month for NOAA/USFWS and BPA review. Provide 80% designs for final technical, functional, and NMFS/USFWS review. The 80% design shall incorporate technical comments and recommendations from previous design reviews. 80% design submittals should include near-final drawings and specifications, 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 technical requirements are not met, additional review may be necessary.
Deliverable: N. Designs completed		3/31/2026	Inactive	See the Deliverable Specification above

AE: 208. Irrigation Infrastructure Construction or Replacement

Title: Lawrence Ditch Fish Screening

Description: The goal with this project is to prevent steelhead and lamprey entrainment into an agricultural ditch that branches off of Toppenish Creek (46.331796, -120.537527), and to maintain wetland function in about 100 acres downstream. A PIT array installed and over the last 2 years showed no tagged juvenile steelhead that have entered the ditch have been detected downstream.

YN will install a fish screen in the Lawrence Ditch (46.331807, -120.537458). This ditch diverts water from Toppenish Creek near Harrah Road and has been shown by PIT tag data to entrain juvenile steelhead. Yakama Nation Fisheries desires to screen the diversion while maintaining flow to important wetlands supplied by the ditch. The fish screen will allow for a maximum ditch flow of 8cfs.

A partner working with YN on this project is the Washington Department of Fish and Wildlife Screen shop.

Deliverable Specification: YRWP staff will ensure all billing for this line item is complete and no further documentation is required for YN internal review.

Work Element Budget:

Planned Metrics: In known/potential lamprey habitat, does screen meet the following conditions:: Yes

Locations: 1

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US

NPCC Subbasin: Yakima

State: WA

HUC5 Watershed: Toppenish Creek

County: Yakima

HUC6 Name: Snake Creek-Toppenish Creek

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete.	4/1/2025	7/1/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Integrate lamprey guidelines in design and specifications for irrigation infrastructure	4/1/2025	7/15/2025	Inactive	Irrigation diversion canals, pumps and associated infrastructure can harm Pacific lamprey, especially juveniles and larvae. To minimize impacts such as screen impingement, entrainment in canals, sediment dredging, etc., follow guidance in the following links: Best Management Guidelines for Native Lampreys During In-water Work, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Pacific Lamprey Habitat Restoration Guide, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm Dredging white paper, https://www.fws.gov/pacificlamprey/BPALampreyGuidanceDocuments.cfm
C. Work with AquaSystems 2000 to design, fabricate, and ship the fish screen.	4/1/2025	7/15/2025	Inactive	Work with screen shop to complete final designs, fabricate, and ship the fish screen. Coordinate between Fisheries Engineers and AquaSystems 2000 to ensure we have all materials needed to install the fish screen once it arrives.



Milestone Title	Start Date	End Date	Status	Milestone Description
D. Submit designs to BPA for review	6/3/2025	7/31/2025	Inactive	BPA EC Lead & ETS will review AquaSystems designs for fish screen to ensure it adheres to HIP risk levels. The final designs (100%) were approved by BPA and currently the PNF is being produced.
E. Determine if work is included in BPA AquaSystems Screens contract for metric reporting	6/1/2025	8/30/2025	Inactive	Work with COR to determine if work is included in other BPA/AquaSystems 2000 screens contract and assure metrics are only reported once.
F. Update Planned Metrics	4/1/2025	3/31/2026	Inactive	Work with COR to update planned metrics once details are available. This shall include the completion of all relevant planned metrics.
G. Install Lawrence Ditch Fish Screen	9/1/2025	3/31/2026	Inactive	Work will be completed in Fall, won't be in stream. The ditch will be de-watered to avoid any in-water work. Install concrete with gate and screen and pump.
H. Complete BPA Snapshot of project	9/1/2025	3/31/2026	Inactive	Complete BPA snapshot and upload to CB Fish.
Deliverable: I. Complete final billing and YN internal closeouts.		3/31/2026	Inactive	<i>See the Deliverable Specification above</i>

AF: 175. Produce Design

Title: Satus RM 23 LWD

Description: This WE covers ongoing design work on the Satus RM 23 project, which will focus on adding LWD to the active channel and potentially reconnecting several side channels. Plans are currently at 60% and will be brought to 100% by the end of August. BPA has been aware of these designs and we will continue to provide updates and seek comments as we near completion.

The Project aims to improve habitat for Endangered Species Act (ESA)-listed steelhead, and secondarily to benefit Pacific lamprey, in a section of Satus Creek, a tributary to the Yakima River. Although Satus Creek is one of the most productive tributaries in the Yakima River basin for steelhead, it is also heavily impacted by multiple factors that have reduced salmonid production, such as heavy grazing, beaver removal, loss of large woody debris, widespread conversion of the riparian forest cover, and the development of a regional highway corridor.

YRWP considers that improving steelhead habitat capacity and quality in Status Creek will lead to more steelhead production on Reservation lands. The section of Satus Creek immediately downstream of Logy Creek was identified as the highest priority reach for habitat improvements, and this reach was designated as the Satus Creek RM 20 to 25 Restoration Project area. YRWP envisions that design and implementation of restoration of this 5-milelong reach will proceed in phases, with later phases benefitting from the lessons learned from earlier phases. Approximately 3 to four more phases could be designed for the other reaches ranked 2nd, 3rd, 4th, and 5th, after this reach.

Deliverable Specification: UCHRP staff will oversee the production of a complete design set for the Satus RM23 LWD project.

Work Element Budget:

Locations:

1

Primary Focal Species: Steelhead (O. mykiss) - Middle Columbia River DPS

Country: US

NPCC Subbasin: Yakima

State: WA

HUC5 Watershed: Lower Status Creek

County: Yakima

HUC6 Name: Poisel Butte-Status Creek

Salmonid ESUs Present: Middle Columbia River Steelhead DPS (Accessible)

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Environmental compliance requirements complete	4/1/2025	12/31/2025	Inactive	On-the-ground work associated with this work element cannot proceed until this milestone is complete. Milestone is complete when final documentation is received from BPA environmental compliance staff.
B. Determine Native Mussel (Genera Anodonta, Margaritifera, and Gonidea) Presence in Project Area	4/1/2025	5/1/2025	Inactive	[If the project involves in water work, use this milestone.] Follow the "Mussel-Friendly Restoration" guide (https://xerces.org/sites/default/files/publications/19-013.pdf) and "Conserving the Gems of Our Waters" Best Management Practices Manual (https://xerces.org/sites/default/files/2018-05/18-001_01_XercesSoc_Protecting-Native-Western-Freshwater-Mussels-BMPs_web.pdf) to determine the presence and extent of freshwater mussels in the project area.



Milestone Title	Start Date	End Date	Status	Milestone Description
C. Reduce or Eliminate Impacts to Native Mussels (Genera Anodonta, Margaritifera, and Gonidea)	4/1/2025	5/1/2025	Inactive	[If the project involves in water work and Native Freshwater Mussels are potentially present in the project area use this milestone.] Incorporate into the plan/design methods and considerations to reduce, minimize or avoid harm to Native Freshwater Mussels. Follow Best Management Practices when developing these plans found in the "Mussel-Friendly Restoration" guide (https://xerces.org/sites/default/files/publications/19-013.pdf) and "Conserving the Gems of Our Waters" Best Management Practices Manual (https://xerces.org/sites/default/files/2018-05/18-001_01_XercesSoc_Protecting-Native-Western-Freshwater-Mussels-BMPs_web.pdf).
D. Provide projected construction start date to BPA COR and EC	12/1/2025	2/2/2026	Inactive	Provide month and year of projected construction start date to assist in project planning, environmental compliance, planning and design review timelines. Provide during conceptual design stage and no later than 15% design. Include in WE description if possible.
E. Determine cost estimate, permitting, construction, and M&E	8/1/2025	11/1/2025	Inactive	All designs shall include an engineer's construction estimate (including, but not limited to): volume of materials and cost per volume, hours and rates for each person, equipment hours and rates, delivery costs, travel and per diem costs, and supplies
F. Develop and submit permit-ready designs (typically 60% to 80%) for review	4/1/2025	6/1/2025	Inactive	Develop and submit permit ready designs to the COR and EC Lead. Schedule time for review, typically one month for NOAA/USFWS and BPA review. Provide 80% designs for final technical, functional, and NMFS/USFWS review. The 80% design shall incorporate technical comments and recommendations from previous design reviews. 80% design submittals should include near-final drawings and specifications, 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 technical requirements are not met, additional review may be necessary.
G. HIP coverage obtained	4/1/2025	3/31/2026	Inactive	Complete HIP Project Notification Form and document ESA coverage in coordination with EC Lead.
H. NEPA clearance obtained	4/1/2025	3/31/2026	Inactive	Project shall not proceed without NEPA sign-off from BPA EC Lead.
I. Upload final design set	8/1/2025	10/1/2025	Inactive	Upload final approved design plan set and basis of design to the contract documents and notify COR and EC lead when complete.
Deliverable: J. Completed Design Set for Satus RM 23 LWD		3/31/2026	Inactive	See the Deliverable Specification above

AG: 185. Produce CBFish Status Report

Title: Periodic Status Reports for BPA

Description: The Contractor shall report on the status of milestones and deliverables in CBFish. Reports shall be completed monthly, quarterly, or as negotiated with the BPA COR. In each report, when the work reaches a terminal status, additional data (actual metrics, updated budgets, final locations, etc.) may be required upon submitting the report to the BPA COR.

Deliverable Specification:

Work Element Budget: [REDACTED]

Milestone Title	Start Date	End Date	Status	Milestone Description
A. Apr-Jun 2025 (4/1/2025 - 6/30/2025)	7/1/2025	7/15/2025	Inactive	
B. Jul-Sep 2025 (7/1/2025 - 9/30/2025)	10/1/2025	10/15/2025	Inactive	
C. Oct-Dec 2025 (10/1/2025 - 12/31/2025)	1/1/2026	1/15/2026	Inactive	
D. Final Jan-Mar 2026 (1/1/2026 - 3/31/2026)	3/17/2026	3/31/2026	Inactive	



AH: 132. Produce Progress (Annual) Report

Title: Produce Project Annual Report for FY23 Mar23-Feb24

Description: Produce Annual Report for prior year. Annual report should include details on where the data collected is stored and address all the work elements in the contract.

Deliverable Specification: The Deliverable is considered concluded when the final report is published. It usually takes BPA 30-45 days to publish the final PDF version of a report. This milestone's end date should therefore be 45 days after the final version is uploaded in CBFish. You will receive an email from BPA confirming your report has been published to the web. If you do not receive such an email after 45 days, contact your COR.

Work Element Budget: [REDACTED]

Planned Metrics:

- * Start date of reporting period : 3/1/2023
- * End date of reporting period : 2/28/2024

Milestone Title	Start Date	End Date	Status	Milestone Description
A. RM&E Technical Report Guidance Review	8/1/2025	9/14/2025	Inactive	Contractors should review Progress (Annual) Report guidance and templates before starting the first draft of their technical report. Please follow BPA required format for technical reports at https://www.cbfish.org/EfwDocument.mvc/DownloadFile/62 . BPA Fish and Wildlife project sponsors who have the following work elements, 156 Develop RM&E Methods and Designs, 157 Collect/Generate/Validate Field and Lab Data, 158 Mark and Tag Animals, and/or 162 Analyze/Interpret Data, in their contracts are required to upload a RM&E technical report. (Milestone start/end: August 1 - September 14)
B. RM&E Technical Report Draft	9/15/2025	1/15/2026	Inactive	Upload your draft RM&E report into the CBFish contract's "Documents" tab in a MS Word document format as a "Progress (Annual) Report" and subtype "Technical, Draft" for BPA review. BPA will review the draft RM&E report and may provide comments for consideration for your final document. Alternative formats like PDFs may be accepted if approved by the COR. If your file is too big to be uploaded, contact CBFish Support (support@cbfish.org). (Milestone start/end: September 15 - January 15)
C. RM&E Technical Report Final	1/16/2026	3/16/2026	Inactive	Address any BPA comments, if provided, from a draft or previous report, then finalize your report for submission to BPA. Upload your Progress (Annual) Report as a "Technical, Final" in a MS Word document format to the contract's "Documents" tab in CBFish. During the upload you will be asked to validate that your title page matches BPA requirements. Alternative formats like PDFs may be accepted if approved by the COR. If your file is too big to be uploaded, contact CBFish Support (support@cbfish.org). (Note: The milestone will be concluded once the report is published and the file accepted by the COR is uploaded. If the report is returned, you will need to address comments and select "Edit" to resubmit a revised report.) (Milestone start/end: Jan 16 - Mar 15)
D. Non-Technical Draft Progress (Annual) Report	10/1/2025	2/1/2026	Inactive	[DELETE THIS MILESTONE IF YOUR PROJECT INCLUDES ANY RM&E WORK ELEMENTS AND USE RM&E TECHNICAL REPORT MILESONES] Upload your draft report into the CBFish contract's "Documents" tab in a MS Word document format as a "Progress (Annual) Report" and subtype "Non-Technical, Draft" for BPA review. BPA will review the draft RM&E report and may provide comments for consideration for your final document. If your file is too big to be uploaded, contact CBFish Support (support@cbfish.org). (Milestone start/end: September 15 - January 15)
Deliverable: E. Completed Progress (Annual) Report		3/16/2026	Inactive	See the Deliverable Specification above

Inadvertent Discovery Instructions

BPA is required by section 106 of the National Historic Preservation Act (NHPA) to consider the effects of its undertakings on historic properties (16 USC 470). Prior to approving the expenditure of funds or conducting a federal undertaking, BPA must follow the section 106 process as described at 36 CFR 800. Even though BPA has completed this process by the time an undertaking is implemented, if cultural materials are discovered during the implementation of a project, work within the immediate area must stop and the significance of the materials must be evaluated and adverse effects resolved before the project can continue (36 CFR 800.13(b)(3)). The Inadvertent Discovery of Cultural Resources Procedure form outlines the steps to be taken and notifications to be made. If the undertaking takes place on tribal lands (16 USC 470w), BPA must also "comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action" (36 CFR 800.13(d)).



Inadvertent Discovery of Cultural Resources Procedure form:

<https://www.bpa.gov/efw/FishWildlife/InformationforContractors/IFCDocuments/InadvertentDiscoveryProcedure.pdf>

BOR YTAP

NOTICE OF AWARD



AUTHORIZATION (Legislation/Regulations)

Fish and Wildlife Coordination Act of 1934, Public Law 85-624, as amended; as limited and delegated by the Secretary of the Interior

1. DATE ISSUED <i>MM/DD/YYYY</i>		1a. SUPERSEDES AWARD NOTICE dated <i>MM/DD/YYYY</i> except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
09/13/2021			
2. CFDA NO. 15.517 - Fish and Wildlife Coordination Act			
3. ASSISTANCE TYPE Project Grant			
4. GRANT NO. R21AP10178-00 Originating MCA #		5. TYPE OF AWARD Other	
4a. FAIN R21AP10178		5a. ACTION TYPE New	
6. PROJECT PERIOD <i>MM/DD/YYYY</i> From 09/13/2021		Through 12/31/2023	
7. BUDGET PERIOD <i>MM/DD/YYYY</i> From 09/13/2021		Through 12/31/2023	
8. TITLE OF PROJECT (OR PROGRAM) Yaloma River and Tributary Habitat Restoration Phase 2			

9a. GRANTEE NAME AND ADDRESS Confederated Tribes and Bands of the Yakama Nation, The PO BOX 151 Toppenish, WA 98948-0151	9b. GRANTEE PROJECT DIRECTOR Phil Rigdon 401 Fort Rd Grants and Contracts Toppenish, WA 98948 Phone: 509-865-5121 x4655
10a. GRANTEE AUTHORIZING OFFICIAL Mr. Delano Saluskin 401 Fort Rd PO Box 151 Toppenish, WA 98948	10b. FEDERAL PROJECT OFFICER Ms. Michele J McGinnis 1150 N Curtis RD Bureau of Reclamation Boise, ID 83704-1234 Phone: 208-378-5038

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from Item 11m) \$	
II Total project costs including grant funds and all other financial participation		b. Less Unobligated Balance From Prior Budget Periods \$	
a. Salaries and Wages	\$	c. Less Cumulative Prior Award(s) This Budget Period \$	
b. Fringe Benefits	\$	d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$	
c. Total Personnel Costs	\$	13. Total Federal Funds Awarded to Date for Project Period \$	
d. Equipment	\$	14. RECOMMENDED FUTURE SUPPORT	
e. Supplies	\$	(Subject to the availability of funds and satisfactory progress of the project):	
f. Travel	\$	YEAR	TOTAL DIRECT COSTS
g. Construction	\$	a. 2	\$
h. Other	\$	b. 3	\$
i. Contractual	\$	c. 4	\$
j. TOTAL DIRECT COSTS	\$	YEAR	TOTAL DIRECT COSTS
k. INDIRECT COSTS	\$	d. 5	\$
l. TOTAL APPROVED BUDGET	\$	e. 6	\$
m. Federal Share	\$	f. 7	\$
n. Non-Federal Share	\$	15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:	
		a. DEDUCTION	
		b. ADDITIONAL COSTS	
		c. MATCHING	
		d. OTHER RESEARCH (Add / Deduct, Option)	
		e. OTHER (See REMARKS)	
		16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDOING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:	
		a. The grant program legislation	
		b. The grant program regulations	
		c. This award notice including terms and conditions, if any, noted below under REMARKS	
		d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.	
		In the event these are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	

REMARKS (Other Terms and Conditions Attached -

NA

Costs outlined in the budget table under Section 11, of this Notice of Award are not reflective of the amount that was approved for total project costs over the five years of this award. The amount listed in this table only reflects the amount that is to be obligated on this award under this action. To view total project cost approval, please look at Section 6 of the Agreement Terms and Conditions.

GRANTS MANAGEMENT OFFICIAL:

Michele J McGinnis, Grants Management Specialist
1150 N Curtis RD
Boise, ID 83704-1234
Phone: 208-378-5038

17. VENDOR CODE			18. DUNS			19. CONG. DIST.
0070038935			803886399			04
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION
1	0051008153-00010	\$1,270,016.00	08/13/2021	12/31/2023	6880	Yakima R & Trib Habitat Restoration II

AWARD ATTACHMENTS

Confederated Tribes and Bands of the Yakama Nation, The

R21AP10178-00

1. DRAFT AGREEMENT

UNITED STATES DEPARTMENT OF THE INTERIOR

ASSISTANCE AGREEMENT

R21AP10178

Between
Bureau of Reclamation
And
Confederated Tribes and Bands of the Yakama Nation (The Nation)
For
Yakima River and Tributary Habitat Restoration Phase 2

Acceptance of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of The Confederated Tribes and Bands of the Yakama Nation (The Nation).

BY: *Delano Saluskin*

DATE: *9/19/2021*

NAME AND TITLE OF SIGNER

Delano Saluskin
Yakama Nation Tribal Council Chairman

Award of this Assistance Agreement in accordance with the terms and conditions contained herein is hereby made on behalf of the United States of America, Department of the Interior, Bureau of Reclamation

BY: **JENNIFER CARRINGTON**

Digitally signed by JENNIFER CARRINGTON
Date: 2021.09.13 12:00:28 -06'00'

NAME AND TITLE OF SIGNER

Lorri J. Gray
Regional Director

Acting for:

RECEIVED

SEP 22 2021

Agreement Template
(01/2021)

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**Financial Assistance Agreement
Between
Bureau of Reclamation
And
Confederated Tribes and Bands of the Yakama Nation (The Nation)
For
Yakima River and Tributary Habitat Restoration Phase 2**

I. OVERVIEW AND SCHEDULE

1. AUTHORITY

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of the Interior, Bureau of Reclamation (Reclamation) and **Confederated Tribes and Bands of the Yakama Nation** (Recipient or The Nation), pursuant to pursuant to The Fish and Wildlife Coordination Act, 16 U.S.C. § 661, as delegated to Reclamation under Departmental Manual 255 DM 1. The following section, provided in full text, authorizes Reclamation to award this financial assistance agreement:

The Fish and Wildlife Coordination Act, 16 U.S.C. § 661, authorizes the Secretary of the Interior:

For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation for the purposes of sections 661 to 666c of this title in the United States, its Territories and possessions, the Secretary of the Interior is authorized (1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes,

As delegated to Reclamation by Departmental Manual Part 255 DM 1:

1.1 Delegation. Subject to the exceptions in Section 1.2, the Commissioner of Reclamation (Commissioner) is delegated the authority of the Assistant Secretary – Water and Science to:

B. Take the following actions, either directly or by providing financial assistance to non-Federal parties, pursuant to the Conservation of Wild Life, Fish and Game Act of March 10, 1934 (Pub. L. 73-121; 48 Stat. 401) as amended by the Fish and Wildlife Coordination Act of August 14, 1946 (Pub. L. 85-624; 72 Stat. 563; 16 U.S.C. 661-666c); Section 5 of the Endangered Species Act of 1973, December 28, 1973 (Pub. L. 93-205; 87 Stat. 884; 16 U.S.C. 1534); and Section 7(a) of the Fish and Wildlife Coordination Act of 1956, August 8, 1956 (70 Stat. 1122; 16 U.S.C. 742f(a)), regarding the construction and/or continued operation and maintenance of any Federal reclamation project:

- (1) plan, design, and construct, including acquiring lands or interest therein as needed for
 - (a) fish passage and screening facilities at any non-Federal water diversion or storage project; or
 - (b) projects to create or improve instream habitat.
- (2) acquire or lease water or water rights from willing sellers or lessors; or
- (3) monitor and evaluate the effect of Reclamation actions on Endangered Species Act-listed species.

2. PUBLIC PURPOSE OF SUPPORT OR STIMULATION

The Public purpose and benefits that support the projects include:

- Improving instream flows by enhancing headwater and floodplain water storage and restoring longitudinal and lateral floodplain connectivity.
- Improving fish habitat and complexity (rearing and spawning) by enhancing main and side channel habitats, restoring riparian forests and improving water quality; and,
- Removing fish passage barriers providing greater access to quality habitats.

These action in conjunction with past and future restoration efforts will increase population resiliency in the face of climate change for Mid-Columbia Steelhead, Summer Chinook and Pacific Lamprey.

3. BACKGROUND AND OBJECTIVES

Through this grant agreement Reclamation is working with the Yakama Nation and Ecology who are part of the Yakima Basin Integrated Plan (YBIP) partners to restore Yakima Basin Steelhead which are listed under the Endangered Species Act (ESA). Additionally, the projects are on tribal ground and it is part of the Yakama Nation's cultural belief to protect and continue the recovery efforts for the Steelhead fish species along with continuing to implement the action plan for water supply, ecological restoration projects, habitat enhancement, and increase fish populations.

The primary YBIP partners for this project include the Yakama Nation, Reclamation, and Ecology. Reclamation and Ecology can help fund this project through this grant agreement with the Yakama Nation.

4. PERIOD OF PERFORMANCE AND FUNDS AVAILABILITY

This Agreement becomes effective on the date shown in block 1 of the United States of America, Department of the Interior, Notice of Award (NOA). The Agreement shall remain in effect through the date shown in block 6 of the NOA. The project period for this Agreement may only be changed through written amendment of the Agreement by a Reclamation Grants Officer (GO).

No legal liability on the part of the Government for any payment may arise until funds are made available, in writing, to the Recipient by a Reclamation GO. The total estimated project cost for this Agreement is [REDACTED] and the total estimated amount of federal funding is [REDACTED]. The initial amount of federal funds available is limited to [REDACTED] as indicated by "Amount of Financial Assistance This Action" within block 12 of the NOA. Subject to the availability of Congressional appropriations, subsequent funds will be made available for payment through written amendments to this Agreement by a Reclamation GO.

5. SCOPE OF WORK AND MILESTONES

Project 1. Toppenish Creek at Pom Pom Road (RM 40) Restoration

Task 1. Project Implementation and Monitoring

Implement selected restoration strategies that may include road and culvert adjustments or removal, utilities adjustments within the project reach, and implementing restoration actions to re-engage the northern side channel and floodplain. The tasks will also include upkeep and maintenance post construction monitoring.

Project 2. Simcoe Creek Fish Passage Enhancement

Task 1. Start Design Development to completion

Design development will focus on fish passage barriers on Simcoe Creek until completed.

Task 2. Project Implementation and Monitoring

- Implement selected restoration strategies that include addressing two fish passage barriers (two-celled box culverts) and install fish passages.
- In-stream habitat actions needed to prevent further degradation.
- Implementation, construction monitoring, and post-construction monitoring will be supported.

Project 3. Wapato Reach Riparian Forest Phase II

Task 1. Create final design plans for West Pasture and Pond 5 Side Channel sites.

- Create and finalize conceptual designs for two riparian restoration sites in the Wapato Reach Floodplain. Designs will include a detailed planting plan, weed

control, maintenance and monitoring plan, plant list and specifications, and installation specifications.

- The West Pasture site planted will be a 6-acres area, while the Pond 5 Side Channel site planted will be smaller overall to compensate for the increased difficulty of planting in an active channel migration zone. Plantings in the Pond 5 Side Channel area will also be in 4-6 patches distributed throughout the overall site, rather than in one continuous area.
- Planting plans and maintenance plans for both sites will consist of two phases to complete.

Task 2. Implement planting projects at West Pasture and Pond 5 Side Channel sites.

- Implement the selected restoration strategies for both sites will include planting live stakes and container-grown plants, and direct seeding.
- A local native plant nursery will grow 5,000 cottonwood, willow, and other native riparian species from seeds and cuttings. The native plants will be used for the prepared restoration project sites. The restoration projects will include specifications on the number, species, and type (potted, bare root, etc.) of all native plants needed for the revegetation efforts.
- Selected contractor(s) will have experience with native riparian planting techniques and working in central Washington ecosystems to complete the engineered site preparation prior to planting, construct engineered structures for plant protection, and post-planting monitoring.

Project 4. Toppenish Creek Uplands- Low Head Check Structures.

Task 1. Design Low Head Check Structures in Hunt Creek.

Design at least three low head check structures on Hunt Creek. Check structures will comply with Natural Resources Conservation Service (NRCS) standard and will be no higher than 10 feet or larger than 20 acre-feet.

Task 2. Construction of Low Head Check Structures in Hunt Creek.

Installation of at least three low head check structures in Hunt Creek will be constructed, completed, and inspected.

Task 3. Monitoring of Low Head Check Structures in Hunt Creek.

The Yakama Nation will instrument and monitor the check structures to quantify groundwater infiltration. The project will be monitored by the installation of a staff gauge and transducer for water level measurement above and below the project site. Additional flow measurements will be conducted following the United States Geological Survey stream flow measurement protocol during periods of runoff. Monitoring will be utilized to calculate infiltration rates, using a standard mass balance approach.

Milestones

No.	Project Name	Design Plans Completed	Start Date	Project Complete
1	Toppenish Creek at Pom Pom Road Habitat	December 31, 2021	July 1, 2021	December 31, 2023
2	Simcoe Creek Fish Passage Enhancement	December 31, 2021	September 30, 2022	December 31, 2023
3	Wapato Reach Riparian Restoration	December 31, 2021	January 1, 2022	December 31, 2023
4	Toppenish Creek Uplands-Low Head Check Structures	December 31, 2021	January 1, 2022	December 31, 2023

6. RESPONSIBILITY OF THE PARTIES

6.1 Recipient Responsibilities

6.1.1 The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, state, and local laws, regulations, and codes, as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owners and operators.

6.2 Reclamation Responsibilities

6.2.1 Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight include review and approval of financial status and performance reports, payment requests, and any other deliverables identified as part of the SOW. Additional monitoring activities may include site visits, conference calls, and other on-site and off-site monitoring activities. At the Recipient's request, Reclamation may also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement.

7. BUDGET

7.1 Budget Estimate. The following is the estimated budget for this Agreement. As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purposes only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this Agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this Agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this Agreement is the responsibility of the GO. Recipients are encouraged to direct any questions regarding

allowability, allocability or reasonableness of costs to the GO for review prior to incurrence of the costs in question.

BUDGET ITEM DESCRIPTION	
Salaries and Wages	
Fringe Benefits	
Vehicle - GSA Rental	
Supplies/Materials	
Construction/Contracts	
TOTAL DIRECT COSTS	
Indirect Rate 20.99%	
Total Estimated Costs	

7.2 Cost Sharing Requirement

Non-Federal cost-share is not required for this Agreement.

FUNDING SOURCES	
RECIPIENT FUNDING	
RECLAMATION FUNDING	
TOTALS	

7.3 Pre-Award Incurrence of Costs

The Recipient is not authorized to incur costs prior to the award of this Agreement. Costs incurred prior to the award of this agreement are not allowable.

7.4 Allowable Costs

Costs incurred for the performance of this Agreement must be allowable, allocable to the project, and reasonable. The following regulations, codified within the Code of Federal Regulations (CFR), governs the allowability of costs for Federal financial assistance:

2 CFR 200 Subpart E, "Cost Principles"

Expenditures for the performance of this Agreement must conform to the requirements within this CFR. The Recipient must maintain sufficient documentation to support these expenditures. Questions on the allowability of costs should be directed to the GO responsible for this Agreement.

The Recipient shall not incur costs or obligate funds for any purpose pertaining to operation of the program or activities beyond the expiration date stated in the Agreement. The only costs

which are authorized for a period of up to 120 days following the project period are those strictly associated with closeout activities for preparation of the final reports.

7.5 Revision of Budget and Program Plans

In accordance with 2 CFR 200.308(c)-(f) the recipient must request prior written approval for any of the following changes:

- (a) A change in the approved scope of work or associated tasks, even if there is no associated budget revisions.
- (b) Change in key personnel specified in section 8 "Key Personnel" of this Agreement.
- (c) Changes in the approved cost-sharing or matching outlined within this Agreement in section 7.2 "Cost Share requirements"
- (d) Inclusion of pre-award costs or reimbursement for pre-award costs which are not included in the initially approved budget and included in section 7.3 "Pre-Award Incurrence of Costs" of this Agreement.
- (e) Extensions to the project period identified in block 6 of the NOA.
- (f) The transfer of funds between direct cost categories, functions, and activities for which the expected transfer amount is to exceed 10 percent of the total approved budget.

7.6 Amendments

Any changes to this Agreement shall be made by means of a written amendment. Reclamation may make changes to the Agreement by means of a unilateral amendment to address changes in address, no-cost time extensions, changes to Key Personnel, the addition of previously agreed upon funding, or administrative corrections which do not impact the terms and conditions of this agreement. Additionally, a unilateral amendment may be utilized by Reclamation if it should become necessary to suspend or terminate the Agreement in accordance with 2 CFR 200.340.

All other changes shall be made by means of a bilateral amendment to the Agreement. No oral statement made by any person, or written statement by any person other than the GO, shall be allowed in any manner or degree to amend, modify or otherwise effect the terms of the Agreement.

All requests for amendment of the Agreement shall be made in writing, provide a full description of the reason for the request, and be sent to the attention of the GO. Any request for project period extension shall be made at least 45 days prior to the end of the project period of the Agreement or the project period date of any extension that may have been previously granted. Any determination to extend the project period or to provide follow-on funding for continuation of a project is solely at the discretion of Reclamation.

8. KEY PERSONNEL

8.1 Recipient's Key Personnel.

The Recipient's Project Manager for this Agreement shall be:

Phil Rigdon
Superintendent of Natural Resources
Confederated Tribes and Bands of the Yakama Nation (The Nation)
Department of Natural Resource
Fisheries Resources Management
PO BOX 151
Toppenish, WA 98948
Phone: 509-865-5121 ext. 4655
Email: phil_rigdon@yakama.com

9. LIMITATION OF AUTHORITIES

9.1 Grants Officer (GO).

The Reclamation GO is the only official with legal delegated authority to represent Reclamation. The Reclamation GO's responsibilities include, but are not limited to, the following:

- (a) Formally obligate Reclamation to expend funds or change the funding level of the Agreement;
- (b) Approve through formal amendment changes in the scope of work and/or budget;
- (c) Approve through formal amendment any increase or decrease in the period of performance of the Agreement;
- (d) Approve through formal amendment changes in any of the expressed terms, conditions, or specifications of the Agreement;
- (e) Be responsible for the overall administration, management, and other non-programmatic aspects of the Agreement including, but not limited to, interpretation of financial assistance statutes, regulations, circulars, policies, and terms of the Agreement; Where applicable, ensures that Reclamation complies with the administrative requirements required by statutes, regulations, circulars, policies, and terms of the Agreement.

9.2 Grants Management Specialist (GMS).

The Reclamation Grants Management Specialist (GMS) is the primary administrative point of contact for this agreement and should be contacted regarding issues related to the day-to-day management of the agreement. Requests for approval regarding the terms and conditions of the agreement, including but not limited to amendments and prior approval, may only be granted, in

writing, by a Reclamation GO. Please note that for some agreements, the Reclamation GO and the Reclamation GMS may be the same individual.

10. REPORTING REQUIREMENTS AND DISTRIBUTION

10.1 Noncompliance.

Failure to comply with the reporting requirements contained in this Agreement may be considered a material noncompliance with the terms and conditions of the award. Noncompliance may result in withholding of payments pending receipt of required reports, denying both the use of funds and matching credit for all or part of the cost of the activity or action not in compliance, whole or partial suspension or termination of the Agreement, recovery of funds paid under the Agreement, withholding of future awards, or other legal remedies in accordance with 2 CFR 200.340.

10.2 Financial Reports. Federal Financial Reports shall be submitted by means of the SF-425 and shall be submitted according to the Report Frequency and Distribution schedule below. All financial reports shall be signed by an Authorized Certifying Official for the Recipient's organization.

10.3 Monitoring and Reporting Program Performance.

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also 2 CFR 200.332 Requirements for pass-through entities.
- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
 - (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 120 calendar days after the period of performance end date. If a justified request is

submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

- (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
 - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
 - (ii) The reasons why established goals were not met, if appropriate.
 - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
 - (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for Construction agreements shall meet the same minimum requirements outlined in paragraph (b)(2) above.

10.4 Report Frequency and Distribution. The following table sets forth the reporting requirements for this Agreement. Please note the first report due date listed for each type of report.

Required Reports	Interim Reports	Final Report
Performance Report		
Format	No specific format required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.	Summary of activities completed during the entire period of performance is required. See content requirements within Section 10.3 and any program specific reporting requirements identified in Section 6.1 of this Agreement.
Reporting Frequency	Semi-Annual	Final Report due within 120 days after the end of the period of performance.
Reporting Period	For Semi-Annual Reporting: October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	For Semi-Annual Reporting: Within 30 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of the project.
First Report Due Date	The first performance report is due for reporting period ending 03/31/2022	N/A
Submit to:	Bor-pnr-postaward@usbr.gov GMS mmcginnis@usbr.gov or GrantSolutions	Bor-pnr-postaward@usbr.gov GMS mmcginnis@usbr.gov or GrantSolutions
Federal Financial Report		
Format	SF-425 (all sections must be completed)	SF-425(all sections must be completed)
Reporting Frequency	Semi-Annual	Final Report due within 120 days after the end of the period of performance or completion of the project.
Reporting Period	For Semi-Annual Reporting: October 1 through March 31 and April 1 through September 30.	Entire period of performance
Due Date	For Semi-Annual Reporting: Within 30 days after the end of the Reporting Period.	Final Report due within 120 days after the end of the period of performance or completion of project.
First Report Due Date	The first Federal financial report is due for reporting period ending 03/31/2022	N/A
Submit to:	Bor-pnr-postaward@usbr.gov GMS mmcginnis@usbr.gov or GrantSolutions	Bor-pnr-postaward@usbr.gov GMS mmcginnis@usbr.gov or GrantSolutions

11. REGULATORY COMPLIANCE

The Recipient agrees to comply or assist Reclamation with all regulatory compliance requirements and all applicable state, Federal, and local environmental and cultural and paleontological resource protection laws and regulations as applicable to this project. These may include, but are not limited to, the National Environmental Policy Act (NEPA), including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office. If the Recipient begins project activities that require environmental or other regulatory compliance approval prior to receipt of written notice from a Reclamation GO that all such clearances have been obtained, then Reclamation reserves the right to initiate remedies for non-compliance as defined by 2 CFR 200.340 up to and including unilateral termination of this agreement.

II. RECLAMATION STANDARD TERMS AND CONDITIONS

1. REGULATIONS

The regulations at [2 CFR Subtitle A, Chapter II, Part 200](#) "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", are hereby incorporated by reference as though set forth in full text. Failure of a Recipient to comply with any applicable regulation or circular may be the basis for withholding payments for proper charges made by the Recipient and/or for termination of support.

2. PAYMENT

2.1 Payment (2 CFR 200.305).

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies".

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

- (1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.
- (2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.
 - (i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.
 - (ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used,

and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

- (3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per §200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.
- (4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.
- (5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.
- (6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of §200.208, subpart D of this part, including §200.339, or one or more of the following applies:
 - (i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.
 - (ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables." Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified

date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

- (iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with §200.343.
 - (iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
- (7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.
- (i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.
 - (ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.
- (8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:
- (i) The non-Federal entity receives less than \$250,000 in Federal awards per year.
 - (ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
 - (iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - (iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.
- (9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.
- (i) For returning interest on Federal awards paid through PMS, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) List the PMS Payee Account Number(s) (PANs);

- (C) List the Federal award number(s) for which the interest was earned; and
- (D) Make returns payable to: Department of Health and Human Services.
- (ii) For returning interest on Federal awards not paid through PMS, the refund should:
 - (A) Provide an explanation stating that the refund is for interest;
 - (B) Include the name of the awarding agency;
 - (C) List the Federal award number(s) for which the interest was earned; and
 - (D) Make returns payable to: Department of Health and Human Services.
- (10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:
 - (i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.
 - (ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.
 - (iii) The reason for the return (e.g., excess cash, funds not spent, interest, part interest part other, etc.)
- (11) When returning funds or interest to PMS you must include the following as applicable:
 - (i) For ACH Returns:
 - Routing Number: 051036706
 - Account number: 303000
 - Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN
 - (ii) For Fedwire Returns¹:
 - Routing Number: 021030004
 - Account number: 75010501
 - Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

¹Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.
 - (iii) For International ACH Returns:
 - Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
 - Bank: Citibank N.A. (New York)
 - Swift Code: CITIUS33
 - Account Number: 36838868
 - Bank Address: 388 Greenwich Street, New York, NY 10013 USA
 - Payment Details (Line 70): Agency Locator Code (ALC): 75010501
 - Name (abbreviated when possible) and ALC Agency POC

- (iv) For recipients that do not have electronic remittance capability, please make check² payable to: "The Department of Health and Human Services."

Mail Check to Treasury approved lockbox:

HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353-0231

²Please allow 4-6 weeks for processing of a payment by check to be applied to the appropriate PMS account.

- (v) Questions can be directed to PMS at 877-614-5533 or PMSSupport@psc.hhs.gov.

2.2 Payment Method.

Recipients must utilize the Department of Treasury Automated Standard Application for Payments (ASAP) payment system to request advance or reimbursement payments. ASAP is a Recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. ASAP is the only allowable method for request and receipt of payment. Recipient procedures must minimize the time elapsing between the drawdown of Federal funds and the disbursement for agreement purposes.

In accordance with 2 CFR 25.200(b)(2) the Recipient shall "Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. If the Recipient allows their SAM registration to lapse, the Recipient's accounts within ASAP will be automatically suspended by Reclamation until such time as the Recipient renews their SAM registration.

3. PROCUREMENT STANDARDS (2 CFR 200.317 through 200.327)

§200.317 Procurements by States.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

§200.318 General procurement standards.

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- (c)
 - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
 - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also 200.212 Suspension and debarment.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
 - (1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
- (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing

for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

§200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in §200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

- (1) Micro-purchases—(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- (iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
- (iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-

certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
- (v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) Small purchases—(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
- (ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
- (1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

- (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
 - (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

- (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- (c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
 - (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract amendments. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract amendment changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
 - (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
 - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in [appendix II](#) to this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014, and 85 FR 49506]

4. EQUIPMENT (2 CFR 200.313)

See also 200.439 Equipment and other capital expenditures.

- (a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further obligation to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:
 - (1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.
 - (3) Use and dispose of the property in accordance with paragraphs (b), (c) and (e) of this section.
- (b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (c) Use.
 - (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
 - (i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
 - (ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
 - (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
 - (3) Notwithstanding the encouragement in 200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to

provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

- (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.
- (d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
 - (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
 - (4) Adequate maintenance procedures must be developed to keep the property in good condition.
 - (5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:
- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
 - (2) Except as provided in 200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the

non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

5. SUPPLIES (2 CFR 200.314)

See also 200.453 Materials and supplies costs, including costs of computing devices.

- (a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See 200.313 Equipment, paragraph (e)(2) for the calculation methodology.
- (b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

6. INSPECTION

Reclamation has the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If Reclamation performs inspection or evaluation on the premises of the Recipient or a sub-Recipient, the Recipient shall furnish and shall require sub-recipients to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

7. AUDIT REQUIREMENTS (2 CFR 200.501)

- (a) Audit required. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
- (b) Single audit. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with

200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

- (c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
- (d) Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- (e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- (f) Subrecipients and Contractors. An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section 200.331 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.
- (g) Compliance responsibility for contractors. In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.
- (h) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also 200.332 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014; 85 FR 49571, Aug. 13, 2020]

8. REMEDIES FOR NONCOMPLIANCE (2 CFR 200.339)

200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances.

- (a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate the Federal award.
- (d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- (e) Withhold further Federal awards for the project or program.
- (f) Take other remedies that may be legally available.

9. TERMINATION (2 CFR 200.340)

- (a) The Federal award may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award

or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

- (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

- (b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 200.344 Closeout and 200.345 Post-closeout adjustments and continuing responsibilities.

10. DEBARMENT AND SUSPENSION (2 CFR 1400)

The Department of the Interior regulations at 2 CFR 1400—Governmentwide Debarment and Suspension (Nonprocurement), which adopt the common rule for the governmentwide system of debarment and suspension for nonprocurement activities, are hereby incorporated by reference and made a part of this Agreement. By entering into this grant or cooperative Agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 1400, Subpart C, and agrees to include a similar term or condition in all lower-tier covered transactions. These regulations are available at <http://www.gpoaccess.gov/ecfr/>.

11. DRUG-FREE WORKPLACE (2 CFR 182 and 1401)

The Department of the Interior regulations at 2 CFR 1401—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), which adopt the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq, as amended) applicable to grants and cooperative agreements, are hereby incorporated by reference and made a part of this agreement. By entering into this grant or cooperative agreement with the Bureau of Reclamation, the Recipient agrees to comply with 2 CFR 182.

12. ASSURANCES AND CERTIFICATIONS INCORPORATED BY REFERENCE

The provisions of the Assurances, SF 424B or SF 424D as applicable, executed by the Recipient in connection with this Agreement shall apply with full force and effect to this Agreement. All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, and cooperative Agreements, loans, and other forms of Federal assistance. The Recipient shall comply with Title VI or the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and any program-specific statutes with anti-discrimination requirements. The Recipient shall comply with civil rights laws including, but not limited to, the Fair Housing Act, the Fair Credit Reporting Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act.

Such Assurances also include, but are not limited to, the promise to comply with all applicable Federal statutes and orders relating to nondiscrimination in employment, assistance, and housing; the Hatch Act; Federal wage and hour laws and regulations and work place safety standards; Federal environmental laws and regulations and the Endangered Species Act; and Federal protection of rivers and waterways and historic and archeological preservation.

13. COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by the Recipient for the purpose of securing Agreements or business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement amount, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. TRAFFICKING VICTIMS PROTECTION ACT OF 2000 (2 CFR 175.15)

Trafficking in persons.

- (a) *Provisions applicable to a recipient that is a private entity.* You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not
 - (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procure a commercial sex act during the period of time that the award is in effect; or
 - (3) Use forced labor in the performance of the award or subawards under the award.
- (b) We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - (1) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1400.
- (c) *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- (1) Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 - (i) Associated with performance under this award; or
 - (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1400.
- (d) *Provisions applicable to any recipient.*
- (1) You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - (2) Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.
 - (3) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- (e) *Definitions.* For purposes of this award term:
- (1) "Employee" means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - (2) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - (3) "Private entity":
 - (i) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

(ii) Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

(B) A for-profit organization.

(4) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

15. NEW RESTRICTIONS ON LOBBYING (43 CFR 18)

The Recipient agrees to comply with 43 CFR 18, New Restrictions on Lobbying, including the following certification:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or amendment of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (c) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

16. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42 USC 4601 *et seq.*)

- (a) The Uniform Relocation Assistance Act (URA), 42 U.S.C. 4601 *et seq.*, as amended, requires certain assurances for Reclamation funded land acquisition projects conducted by a Recipient that cause the displacement of persons, businesses, or farm operations. Because Reclamation funds only support acquisition of property or interests in property from willing

sellers, it is not anticipated that Reclamation funds will result in any “displaced persons,” as defined under the URA.

- (b) However, if Reclamation funds are used for the acquisition of real property that results in displacement, the URA requires Recipients to ensure that reasonable relocation payments and other remedies will be provided to any displaced person. Further, when acquiring real property, Recipients must be guided, to the greatest extent practicable, by the land acquisition policies in 42 U.S.C. 4651.
- (c) Exemptions to the URA and 49 CFR Part 24
 - (1) The URA provides for an exemption to the appraisal, review and certification rules for those land acquisitions classified as “voluntary transactions.” Such “voluntary transactions” are classified as those that do not involve an exercise of eminent domain authority on behalf of a Recipient, and must meet the conditions specified at 49 CFR 24.101(b)(1)(i)-(iv).
 - (2) For any land acquisition undertaken by a Recipient that receives Reclamation funds, but does not have authority to acquire the real property by eminent domain, to be exempt from the requirements of 49 CFR Part 24 the Recipient must:
 - (i) provide written notification to the owner that it will not acquire the property in the event negotiations fail to result in an amicable agreement, and;
 - (ii) inform the owner in writing of what it believes to be the market value of the property
- (d) Review of Land Acquisition Appraisals. Reclamation reserves the right to review any land appraisal whether or not such review is required under the URA or 49 CFR 24.104. Such reviews may be conducted by the Department of the Interior’s Appraisal Services Directorate or a Reclamation authorized designee. When Reclamation determines that a review of the original appraisal is necessary, Reclamation will notify the Recipient and provide an estimated completion date of the initial appraisal review.

17. SYSTEM FOR AWARD MANAGEMENT and Universal Identifier Requirements (2 CFR 25, Appendix A)

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward has the meaning given in 2 CFR 200.1.
5. Subrecipient has the meaning given in 2 CFR 200.1.

18. PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING

Executive Order 13513, *Federal Leadership On Reducing Text Messaging While Driving*, was signed by President Barack Obama on October 1, 2009 (ref: <http://edocket.access.gpo.gov/2009/pdf/E9-24203.pdf>). This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles, government-

owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

19. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION (2 CFR 170 APPENDIX A)

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).
2. **Where and when to report.**
 - i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. **What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. **Applicability and what to report.** You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. The total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 CFR 170.320;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- d. Exemptions.
- If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
- i. Subawards, and
 - ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization; and,
 - iv. A domestic or foreign for-profit organization
3. Executive means officers, managing partners, or any other employees in management positions.
4. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
5. Subrecipient means a non-Federal entity or Federal agency that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

[85 FR 49526, Aug. 13, 2020]

20. RECIPIENT EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub.L. 112-239).
- (b) The Award Recipient shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C 4712.

- (c) The Award Recipient shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold. 48 CFR 52.203-17 (as referenced in 48 CFR 3.908-9).

21. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE (APPENDIX XII to 2 CFR Part 200)

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
 - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - (4) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - (1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

[80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020]

22. CONFLICTS OF INTEREST

(a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.**
- (2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.**

(b) Requirements.

- (1) Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.**
- (2) In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.**
- (3) No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.**

(c) Notification.

- (1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.**
- (2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.**

(d) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

(e) Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

- (f) **Enforcement.** Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

23. DATA AVAILABILITY

- (a) **Applicability.** The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- (b) **Use of Data.** The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (c) **Availability of Data.** The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
 - (i) The scientific data relied upon;
 - (ii) The analysis relied upon; and
 - (iii) The methodology, including models, used to gather and analyze data.

24. PROHIBITION ON PROVIDING FUNDS TO THE ENEMY

- (a) The recipient must—
 - (1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through [2 CFR 180.300](#) prior to issuing a subaward or contract and;
 - (2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.
- (b) The recipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

- (c) The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

25. ADDITIONAL ACCESS TO RECIPIENT RECORDS

- (a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.
- (b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.

26. PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Federal award recipients are prohibited from using government funds to enter contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services as described in section 889 of the 2019 National Defense Authorization Act. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services.

III. DEPARTMENT OF THE INTERIOR STANDARD AWARD TERMS AND CONDITIONS

The Department of the Interior (DOI) Standard Award Terms and Conditions found at <https://www.doi.gov/sites/doi.gov/files/uploads/doi-standard-award-terms-and-conditions-effective-december-2-2019-revised-june-19-2020.pdf> are hereby incorporated by reference as though set forth in full text. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions or restrictions reflected on this Agreement. Recipient acceptance of this Agreement carries with it the responsibility to be aware of and comply with all DOI terms and conditions applicable to this Agreement. The Recipient is responsible for ensuring their subrecipients and contractors are aware of and comply with applicable statutes, regulations, and agency requirements.

Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected in this Agreement can result in the DOI taking one or more of remedies described in 2 Code of Federal Regulations parts 200.338 and 200.339. The DOI will notify the recipient whenever terms and conditions are updated to accommodate instances in the passage of a regulation or statute that requires compliance. Also, DOI will inform the Recipient of revised terms and conditions in the action of an Agreement amendment adding additional Federal funds. Reclamation will make such changes by issuing a Notice of Award amendment that describes the change and provides the effective date. Revised terms and conditions do not apply to the Recipient's expenditures of funds or activities the Recipient carries out before the effective date of the revised DOI terms and conditions.