



PROFESSIONAL SERVICES AGREEMENT

This professional services agreement is dated as of [insert month, day and year], and is between the Confederated Tribes of the Umatilla Indian Reservation, a federally recognized Indian tribe acting through its [insert department name] (the “CONFEDERATED TRIBES”), and [insert name] (the “CONTRACTOR”).

1. Agreement

1.1 Scope of Work. The CONTRACTOR agrees to perform the services (“Services”) detailed in **Schedule A**.

1.2 Payment. The CONFEDERATED TRIBES agrees to pay the CONTRACTOR in accordance with the terms in **Schedule B**. Payment for Services is limited to a maximum of \$_____.

1.3 Availability of Funds. Another agreement between the CONFEDERATED TRIBES and a third party may authorize and limit this one. Consequently, reimbursement under section 1.2 (Payment) is subject to the availability of funds.

1.4 Term. This agreement commences on the date written above and terminates on [insert month, day and year] unless otherwise terminated earlier.

1.5 Designated Contact. The representative for the CONFEDERATED TRIBES is [insert name]. The representative for the CONTRACTOR is [insert name].

2. Personnel

2.1 Independent Contractor. The CONTRACTOR agrees to employ, at its own expense, all personnel reasonably necessary to perform the Services required by this agreement. These personnel are not employees of the CONFEDERATED TRIBES. The CONTRACTOR shall ensure that all personnel engaged in performing Services are fully qualified to undertake the work in accordance with applicable tribal, state, or federal laws. The CONTRACTOR is an independent contractor. The CONTRACTOR is not an agent or employee of the CONFEDERATED TRIBES. The CONTRACTOR and the CONFEDERATED TRIBES are not engaged in a joint venture or partnership. Neither party can represent or bind the other.

2.2 Subcontractors. The CONTRACTOR shall obtain written approval from the CONFEDERATED TRIBES before hiring a subcontractor.

2.3 TERO. The CONTRACTOR shall comply with the Tribal Employment Rights Office Code and execute a Compliance Agreement.

3. Representations and Warranties

3.1 Professional Work. The CONTRACTOR shall perform Services in a professional, thorough, and skillful manner consistent with their profession’s standards in the Pacific Northwest region.

3.2 Compliance with Laws. The CONTRACTOR shall comply with all applicable tribal, state, local, and federal laws. The CONTRACTOR represents that it has reviewed, and is familiar with, all laws relevant to the performance of Services under this agreement.

3.3 Safety. The CONTRACTOR shall perform all work in a safe manner.

3.4 Broad Protection. All representations and warranties are to be interpreted expansively to afford the broadest protection available to the CONFEDERATED TRIBES.

4. INDEMNIFICATION

4.1 INDEMNIFICATION. THE CONTRACTOR SHALL DEFEND, HOLD HARMLESS, AND INDEMNIFY THE CONFEDERATED TRIBES AND ITS OFFICERS, EMPLOYEES, AND AGENTS (THE “INDEMNIFIED PARTIES”) AGAINST ALL LOSSES, LIABILITIES, CLAIMS, DAMAGES, COSTS OR EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES AND EXPENSES (COLLECTIVELY, “CLAIM”) THAT ARE BROUGHT AGAINST THE INDEMNIFIED PARTIES ARISING OUT OF OR RELATED TO (1) ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE CAUSED BY ANY ACT, OMISSION, ERROR, FAULT, MISTAKE OR NEGLIGENCE OF THE CONTRACTOR OR ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS RELATED TO THIS AGREEMENT, (2) ANY ACT OR OMISSION BY THE CONTRACTOR THAT CONSTITUTES A NON-TRIVIAL (FROM THE PERSPECTIVE OF A REASONABLE PERSON IN THE POSITION OF THE INDEMNIFIED PARTIES) BREACH OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY MISREPRESENTATION OR BREACH OF WARRANTY, OR (3) THE INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT ARISING FROM DELIVERY, USE, OR PERFORMANCE OF THE SERVICES. THIS DUTY INCLUDES COSTS INCURRED BY THE INDEMNIFIED PARTIES IN ASSUMING THEIR OWN DEFENSE. THE CONTRACTOR’S OBLIGATION UNDER THIS SECTION SHALL NOT EXTEND TO ANY CLAIM PRIMARILY CAUSED BY (1) THE NEGLIGENT OR INTENTIONAL MISCONDUCT OF AN INDEMNIFIED PARTY, OR (2) THE CONFEDERATED TRIBES’ MODIFICATION OF GOODS WITHOUT THE CONTRACTOR’S APPROVAL AND IN A MANNER INCONSISTENT WITH THE PURPOSE AND PROPER USE OF THOSE GOODS.

4.2 WRITTEN AUTHORIZATION. ANY LEGAL COUNSEL PURPORTING TO REPRESENT THE INTERESTS OF AN INDEMNIFIED PARTY SHALL FIRST OBTAIN WRITTEN AUTHORIZATION FROM THE CONFEDERATED TRIBES' OFFICE OF LEGAL COUNSEL. THE CONFEDERATED TRIBES, THROUGH ITS OFFICE OF LEGAL COUNSEL, MAY ASSUME THE DEFENSE OF AN INDEMNIFIED PARTY AT ANY TIME WHEN IT DETERMINES IN ITS SOLE DISCRETION THAT (1) PROPOSED COUNSEL IS PROHIBITED FROM THE PARTICULAR REPRESENTATION CONTEMPLATED; (2) COUNSEL'S REPRESENTATION IS INADEQUATE; (3) IMPORTANT TRIBAL INTERESTS ARE AT STAKE; OR (4) IT IS IN THE BEST INTEREST OF AN INDEMNIFIED PARTY.

5. Work Product

5.1 Definition. "**Work Product**" means any work papers, reports, information, drawings, or internal memoranda of any kind, including photographs, and any written or graphic material, or other materials, however produced, prepared by, collected, generated, or created by the CONTRACTOR in connection with its performance of the Services.

5.2 Ownership. The CONFEDERATED TRIBES owns all Work Product.

5.3 Confidential. All Work Product is confidential and the CONTRACTOR shall maintain that confidentiality.

5.4 Authorization. The CONTRACTOR shall not disclose any Work Product without prior written authorization from the CONFEDERATED TRIBES.

5.5 Employees. The CONTRACTOR shall only disclose Work Product to employees when necessary to perform the Services. The CONTRACTOR shall require all employees to maintain the Work Product's confidentiality.

5.6 Return of Work Product. The CONTRACTOR shall promptly deliver all Work Product to the CONFEDERATED TRIBES upon completion of the Services or termination of this agreement.

6. Insurance [Check the appropriate box]

6.1 Whether Required. Insurance ☐ IS ☐ IS NOT required. If unchecked, insurance is required.

6.2 Generally. If insurance is required under this agreement, CONSULTANT shall maintain the following insurance, naming the CONFEDERATED TRIBES as an additional insured:

- (a) Commercial General Liability Insurance in the amount of one million dollars each occurrence and two million dollars aggregate.
- (b) Commercial Automobile Liability Insurance in an amount equal to the greater of (1) one million dollars for all vehicles used in performance of the Services or (2) any other amount required by applicable law.
- (c) Worker's Compensation Insurance, Disability Benefits Insurance and any insurance required by applicable law.

6.3 Delivery of Certificates. If insurance is required, the CONTRACTOR shall deliver certificates of insurance showing

the foregoing insurance coverage within 10 days of the start of work.

6.4 No Subrogation. The CONTRACTOR waives all subrogation rights against the CONFEDERATED TRIBES and any of its contractors, subcontractors, agents, officers, employees, or companies.

7. Termination

7.1 For Convenience. Either party may terminate this agreement by giving to the other party 10 days' prior written notice. The notice shall specify the effective date of termination. Termination will not alter payment terms or give rise to any equitable claim for reimbursement.

7.2 Breach of Agreement. The CONFEDERATED TRIBES may immediately terminate this agreement by written notice following a breach by the CONTRACTOR.

8. General Terms

8.1 Choice of Law. The laws of the Confederated Tribes of the Umatilla Indian Reservation govern this agreement.

8.2 Severability. Any provision of this agreement held to be unenforceable will not affect the enforceability of any other provision.

8.3 Terminology. The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation to". The word "or" is not exclusive. Headings are provided for convenience and do not affect meaning. Any reference to a time of day is to the time in Pendleton, Oregon.

8.4 Notices. Notices must be in writing. Delivery occurs when the other party receives notice through certified mail or a reputable overnight courier. Representative addresses are as follows:

The CONFEDERATED TRIBES:

CTUIR
46411 Timine Way
Pendleton, Oregon 97801
Attention: [staff person's name]
Telephone: (541) 276-3165
Facsimile: (541) 276-3095

The CONTRACTOR:

[CONTRACTOR'S Name]
[ADDRESS]
Attention:
Telephone:
Facsimile:

8.5 Entire Agreement. This agreement supersedes all prior or contemporaneous oral or written agreements between the parties.

8.6 Amendments. No change, amendment or modification of this agreement is valid unless it is in writing and executed by the parties.

8.7 Assignment. This agreement is not assignable by the CONTRACTOR and binds any successor.

8.8 Survival. The requirements of Sections 3, 4 and 5 survive termination of this agreement.

8.9 No General Waiver. The waiver or failure to enforce, insist upon, or comply with any term in this agreement does not constitute a general waiver or relinquishment of that term.

8.10 No Construction Against Drafter. Each party has participated in negotiating and drafting this agreement. If any ambiguity or question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.

8.11 Additional Certifications. The CONTRACTOR shall execute the following certifications, which are attached to this contract: **[Delete this section if no additional certifications need to be completed by the contractor].**

This agreement is signed as of the date stated in the introductory clause and may be executed in counterparts or by facsimile.

**CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION**

[INSERT CONTRACTOR'S NAME]

By: _____
Debra L. Croswell
Interim-Executive Director

By: _____
[Name, Title]

Attachments:

**Schedule A, Scope of Work
Schedule B, Project Budget**

SCHEDULE A: Scope of Work

Break the Scope of Work into four parts: background, scope, applicable documents, and requirements. When relevant, include a statement identifying any known problems, obstacles, or previously tried ineffective techniques in the background section. Consider identifying industry standards to be followed. If none exist, create a process to assess compliance and the adequacy of deliverables. This can be built into the requirements section.

1. Background.

The background statement sets the project in context. Discuss why the project is needed and how it relates to previous, ongoing, or future projects. If the project is being performed under a separate overarching grant, agreement, or project mention that here.

Example:

1.1 The CONFEDERATED TRIBES is the recipient of a grant from XYZ government agency. The intent of the grant is to provide habitat restoration to XYZ watershed. The CONFEDERATED TRIBES has developed an overall restoration plan which includes noxious weed control along XYZ tributary to be performed by XYZ date. This Agreement is intended to fulfill that aspect of the habitat restoration plan.

2. Scope.

This section briefly describes the purpose of the work and the end results you expect. Be specific about the end result. This is a big picture statement so leave the technical terms and details for the “Requirements” section. Summarize the actions to be performed and the expected results of those actions.

Example:

2.1 The goal of this project is to suppress XYZ noxious weed along XYZ tributary by applying the non-toxic chemical XYZ only to those weeds. The following specific objectives are to be performed:

2.1.1 An on-site survey of the XYZ tributary area to identify the amount of XYZ noxious weed growth within 50 feet of each bank, which shall be used to determine both the amount of chemicals needed and where spraying is to occur. This survey shall be conducted by XYZ date.

- 2.1.2 XYZ chemical shall be applied, but only in those areas where XYZ noxious weed is found being sure to limit damage to the surrounding habitat. Application shall be completed by XYZ date.
- 2.1.3 A report detailing how much chemical was used and where it was applied shall be delivered to CONFEDERATED TRIBES by XYZ date for use by CONFEDERATED TRIBES in its compliance report to XYZ agency under the XYZ grant.

3. Applicable Documents.

You may not need an “Applicable Documents” section. However, if the scope of work involves use of, or reference to, outside documents, list them here. Identify each document with relative precision, including relevant subsections. Remember to make adherence to the documents mandatory in the “Requirements” section.

Example:

- 3.1 Tribal Documents. The following Tribal documents are hereby incorporated into this agreement and contractor acknowledges receipt thereof:
 - 3.1.1 The Environmental Health and Safety Code of the Confederated Tribes of the Umatilla Indian Reservation, including but not limited to, Chapter 6 (On-Site Sewage Disposal), Chapter 7 (Solid Waste Management), and Chapter 17 (Safety).
 - 3.1.2 The Tribal Employment Rights Office Code of the Confederated Tribes of the Umatilla Indian Reservation, including but not limited to, Chapter 3, Section B (Compliance Agreement), and Section G (Contractors and Subcontractors).
- 3.2 Federal Documents. The following Federal documents are hereby incorporated into this agreement and contractor acknowledges receipt thereof:
 - 3.2.1 Agreement Between the Confederated Tribes of the Umatilla Indian Reservation and the Bonneville Power Administration, Contract # XYZ, dated XYZ.
- 3.3 State Documents. The following State of Oregon documents are hereby incorporated into this agreement and contractor acknowledges receipt thereof:

3.3.1 2007 Multnomah County Road Design and Construction Standards.

4. Requirements.

This is the heart of your statement of work. Here you tell the contractor exactly what you expect of them. Use any format you prefer, so long as it is clear, precise, and gives a comprehensive description of the work to be performed. This will take time to develop. Review and incorporate relevant provisions of any Request for Proposals that may have been issued for the project, along with the contractor's response to the request. Remember, the attorney reviewing this contract is not likely to have the special technical knowledge needed to ensure the description given in this section is sufficient to accomplish the goals of the project and the interests of the Confederated Tribes.

Indicate the minimum requirements that a particular item, service, or material must meet to be acceptable. This is to ensure the goods or services provided are suitable for their intended purpose. Make the requirements reasonable and within applicable industry standards. If no industry standards apply, consider detailing a process whereby the Confederated Tribes review the work for suitability at various intervals or stages of the project.

Address the specific tasks to be performed by the contractor and the time frame in which to accomplish them. Do not assume the contractor already knows what you want. Be precise and comprehensive when describing the tasks. Consider listing the steps and actions the contractor must take to achieve a particular task, but don't micromanage the work through the descriptive requirements.

Make certain the end product is clearly identified including the time frame by which it is to be produced. Describe what the Confederated Tribes is going to use the end product for.

Example:

4.1 Nuisance Weed Identification and Treatment Methods.

- 4.1.1 Contractor shall apply herbicides to all weeds listed on the 'A List' of XYZ document for both Oregon and Washington. Also included are those weeds listed on Washington's 'B List' for plants in Walla Walla County, Washington that are referenced as in '...need of control' in XYZ document.
- 4.1.2 The area in which Contractor is to apply herbicides is XYZ, and is further documented in red on the attached aerial map.

4.1.3 Contractor shall treat relevant weeds with the appropriate herbicide at the appropriate application rates deemed most effective in accordance with those treatments. Appropriate herbicides and application rates are listed in document ABC.

4.1.4 If the Contractor identifies problem areas of weed species that are not common to the area, the Contractor shall detail specific locations of the occurrence in a written report for future management decisions by the Confederated Tribes.

4.1.5 All work under this Agreement, including all reporting requirements, shall be completed by XYZ date.

4.2 Herbicide Application and Methods.

4.2.1 Contractor shall apply all herbicides in accordance with Oregon Revised Statute (ORS) 570.505, Washington's applicable statutes, and the federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and implementing regulations.

4.2.2 The Confederated Tribes will coordinate all pertinent access along with State and Federal clearances and permits.

4.2.3 Contractor will provide all necessary equipment to carry out the objectives of the Agreement including, but not limited to, a tractor and boom, backpack sprayer, ATV mounted sprayer, and wicking applicators.

4.3 Documentation.

4.3.1 Contractor shall provide documentation detailing application methods, chemicals, active ingredients, adjuvants used and other parameters such as volumes of all liquids included on the XYZ form. All documentation must be sufficient to comply with the requirements of XYZ grant and ABC implementation plan.

4.3.2 An XYZ form shall serve as the Contractor's project report. The Contractor will be provided with an electronic version of the XYZ form in Microsoft Word format.

4.3.3 Contractor shall be required to edit, modify, or otherwise correct any information in their final report that the Confederated Tribes deems insufficient to carrying out the objectives of this Agreement.

COMPLETE SCOPE OF WORK EXAMPLE:

1. Background

1.1 This work is being conducted under a contractual agreement with the Bonneville Power Administration, contract number 32047. That contract relates to enhancement of the Umatilla anadromous fish habitat. All conditions contained in that agreement apply to this project. The Contractor will be provided with a copy of contract 32047 upon request.

2. Scope

2.1 CONTRACTOR shall drill two wells on the B & G Resources property adjacent to the Umatilla River near RM 38, west of Pendleton, Oregon, near Yoakum. The location of the well is as follows and is shown on the attached drilling area map: Umatilla County Tax Lot 5400, Township 2N, Range 31E, Section 7.

2.2 The purpose of this effort is to provide water for livestock outside of the fenced riparian zone which is enrolled in the U.S. Department of Agriculture's CREP program. The TRIBES and CONTRACTOR have authorization to access the private-owned property to perform habitat restoration measures, including the drilling of a well under this Agreement.

3. Applicable Documents

3.1 NRCS Water Well Standard, Code 642.

4. Requirements

4.1 CONTRACTOR shall drill a well in the flood plain on each side of the Umatilla River in the location indicated above. The exact location of each well will be in the vicinity of the area shown on the attached map(s), but the location must ultimately be approved by the landowner and TRIBES before drilling.

4.2 The well shall be capable of at least 3 gallons of water per minute (GPM), using 6" casing to be capped upon conclusion.

4.3 Drilled, dug, driven, bored, or jetted wells must comply with the NRCS Water Well Standard, Code 642, and applicable law/regulations administered by the Oregon Water Resources Department(OWRD).

4.4 This work shall be completed by January 31, 2008. Since this work is being performed in accordance with funding under BPA contract 32047, time is of the essence.

SCHEDULE B: Project Budget

I. PAYMENT TERMS. *[Detail the terms of reimbursement here.]*

For Example:

The CONFEDERATED TRIBES shall reimburse the CONTRACTOR according to the following terms, **which amount is limited to a maximum of \$4000.**

Item/Activity	Hours	\$/Hour	Amount
Site Inspection	10	\$35	\$350
Maps and Reports	60	\$50	\$3000
Supplies/Materials			\$450
Presentation to Staff	5	\$40	\$200
Total Contractor Budget:			\$4000

II. PAYMENT PROCEDURES.

- A. CONTRACTOR shall submit invoices for reimbursement of work performed on a monthly basis to:

CTUIR _____
ATTN: _____
46411 Timine Way
PENDLETON, OR 97801

- B. Invoices must conspicuously indicate they are for cost center: _____.
- C. Invoices must be complete and accurate to qualify for reimbursement.
- D. CONTRACTOR shall submit a progress report with each invoice. The progress report must include a summary of results or activities for each task identified in the Scope of Work and any major problems encountered in accomplishing those tasks.
- E. Final invoices must be submitted by *[insert final date of invoice.]*
- F. The CONFEDERATED TRIBES will reimburse the CONTRACTOR for correctly submitted invoices within thirty-five (35) days of receipt.
- G. Invoices needing correction will be reimbursed within thirty-five (35) days of receipt of the corrected invoice.
- H. Payment on disputed invoices will be delayed until the dispute has been resolved to the CONFEDERATED TRIBES' satisfaction.