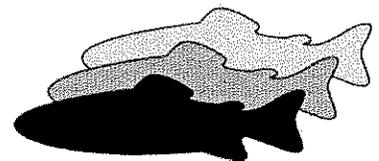

Big Creek Fish Passage Project Construction Contract

Yakama Nation
P.O. Box 151
Toppenish, WA 98948

August 2014



Fisheries Engineers, Inc.
Brier, WA

Big Creek Fish Passage Project

Table of Contents

Construction Contract Agreement

Exhibit A Scope of Work (General Requirements & Specifications)

Exhibit B Budget (Bid Form)

Exhibit C Drawings (bound separately @ 11x17 size)

- 1 Project Location & Drawing List
- 2 Site Preparation & Work Sequence
- 3 Fish Passage Project Site Plan
- 4 Roughened Channel Profile & Details
- 5 Roughened Channel Sections
- 6 Construction Project Notes

Exhibit D Release

Exhibit E Davis-Bacon and Related Acts

Exhibit F TERO Compliance Plan (example)

CONSTRUCTION AGREEMENT
Between the YAKAMA NATION
And
[Contractor's Name]

THIS AGREEMENT is entered into on the date shown below between the **Confederated Tribes and Bands of the Yakama Nation** and **[Contractor's Name]**.

TERMS AND CONDITIONS

1. **TERM**

The period of this agreement will be from _____ to _____

2. **PERFORMANCE**

The Contractor agrees to perform the services contemplated by this agreement, which are in the attached scope of work (Exhibit A), and as listed on the Bid Form (Exhibit B), and as shown on contract drawings (Exhibit C). The Yakama Nation agrees to compensate the Contractor for services provided in the amounts and under the terms and conditions set forth below. Request for final payment by contractor shall be accompanied by a Release (Exhibit D) filled in as indicated.

3. **COMPENSATION**

The total amount of this contract will not exceed \$_____ that includes compensation for construction services as further broken down below and set forth in detail in the attached: Exhibit A (Scope of Work), Exhibit B (Budget = Bid Form), and Exhibit C (Drawings).

- a. The rate of compensation for Contractor's services will be as shown in the attached Exhibit B. NOTE: Procurement by the Yakama Nation of habitat improvement or restoration activities is undertaken by the Yakama Nation as part of Treaty Fisheries Management pursuant to the Treaty with the Yakama of 1855 (12 Stat. 951). Treaty fisheries management purchases by the Yakama Nation are not subject to Washington State sales or use tax. In addition, any TERO compliance fees are the obligation of the Contractor and are not payable to the Contractor as an item on any invoice submitted for payment pursuant to this Paragraph 3.
- b. The maximum allowable amount of compensation for Contractor's services will be in accordance with Exhibit B.
- c. Payment for mileage or reimbursement for travel expenses is not applicable.
- d. The Contractor will not be reimbursed for any costs except those set forth in Exhibit B unless they were incurred with the prior written approval of the Yakama Nation or its designated representative (i.e. change orders).
- e. For payment to the Contractor made pursuant to this agreement, the Contractor shall submit an invoice(s) and its supporting documentation, including the Contractor's work associated with the tasks identified in Exhibits A, B and C to the Yakama Nation. Unless the parties agree to

different terms, such an invoice(s) shall be submitted about the 25th day of the month in which the services are being provided. The billing cycle will approximately represent the calendar month in which work was performed from the 25th to 25th of each month. Subject to the approval of the Yakama Nation, billing cycles may overlap into adjacent months. Upon the Yakama Nation's request, the Contractor will provide oral reports and presentations to the Yakama Tribal Council.

4. **MAINTENANCE AND RETENTION OF AUDITABLE RECORDS**

The Contractor shall maintain and retain auditable records during the term of this agreement and for a period of at least three (3) years following the expiration or termination of this agreement. Subject to applicable law, the Contractor agrees that the Yakama Nation, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor, which are directly pertinent to the subject matter of this agreement and the performance obligations contained herein, for the purpose of making audit, examination, excerpts, and transcriptions.

5. **FINANCIAL MANAGEMENT FOR ACCOUNTING SYSTEMS AND AUDITS**

Notwithstanding the requirements of Paragraph 4 above, any and all of the Contractor's accounting records and/or financial reports shall be subject to audit and shall be maintained so as to comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. OMB Circular A-133, Audits of States, local Governments, and Non-Profit Organizations is issued under the authority of sections 503, 1111, and 7501 et seq. of title 31, United States Code, and Executive Orders 8248 and 11541.

The Contractor, as a recipient or sub-recipient of funds, shall also adhere to a systematic accounting method which will assure the timely and appropriate resolution of audit findings and recommendations. To determine the reasonableness allowability and allocability of costs the Contractor shall comply with the administrative requirement set forth in:

- a. 2 CFR Part 225, Cost Principles for State, Local and Indian Tribal Governments; and,
- b. 48 CFR Parts 31.2 and 931.2, Contracts with Commercial Organizations.

6. **PROPERTY DEVELOPED BY CONTRACTOR**

The Contractor agrees that it will retain no interest in the information, data, proposals, papers, copyrights, patents, or any other material or property developed, discovered, invented, and/or accumulated by the Contractor in connection with the performance of this agreement. Subject to applicable law, the Contractor shall turn over such information, data, proposals, papers, copyrights, patents, discoveries, inventions, and other material or property to the Yakama Nation upon the expiration or termination of this agreement or upon request.

7. **PUBLICATION OF INFORMATION**

The dissemination or publication of documents, information, material or other property developed or generated by the Contractor during the course of this agreement shall require the written approval of the

Yakama Nation. This paragraph shall not be construed to prohibit or impair the transfer of information within the scope of paragraphs 4, 5 and 6 of this Agreement.

8. **ACCESS TO RECORDS, PERSONNEL AND FACILITIES**

Subject to applicable law, the Yakama Nation will provide the Contractor access to the work site as necessary for the performance of this agreement. Further, the Yakama Nation will ensure that its officials and employees reasonably cooperate with the Contractor and will make prompt decisions on matters which affect the progress of the Contractor's work.

9. **INDEPENDENT CONTRACTORS**

At all times during the course of this agreement, the Contractor shall act as an independent contractor, and shall not receive any benefits to which employees of the Yakama Nation are entitled. Unless expressly agreed to in paragraph 3 herein, the Yakama Nation shall not be responsible for the payment of any taxes, permits, licenses or other expenses incurred by the Contractor during the performance of this agreement.

10. **SUBCONTRACTING**

The Contractor shall be permitted to hire subcontractor(s) to perform portions of the construction services contemplated by this agreement, subject to Contractor compliance with its TERO agreement with the Yakama Nation's contract with the funding agency.

11. **ASSIGNMENT OF INTEREST**

The Contractor shall not assign its interest in this contract, or any part thereof, including its right to receive payment for services performed, to another party.

12. **INDEMNIFICATION**

The Contractor shall hold harmless and indemnify the Yakama Nation and its officers and employees against any and all losses, costs, damages, expenses or other liabilities whatsoever, arising out of or connected with, directly or indirectly, the Contractor's performance of its duties under this agreement, including, but not limited to, accidents or injuries to persons or property.

13. **TERMINATION OF AGREEMENT**

- a. The Yakama Nation may terminate this agreement, without cause, upon 30 days written notice or sooner. Upon such termination, the liability of the parties for the further performance of this agreement shall cease, but the parties shall not be relieved of the duty to perform their obligations up to the date of termination.
- b. The Yakama Nation may terminate this agreement at any time in the event of a breach or violation of any of the terms and provisions of this agreement.
- c. Upon such breach, violation, or termination of this agreement, the Yakama Nation, to the extent permitted by applicable law, shall be entitled to enforce its rights under this Agreement, and recover its court costs and reasonable attorney's fees, as determined by the court. The

foregoing shall not in any way limit or restrict any right or remedy at law or equity which would otherwise be available to the Yakama Nation, including, but not limited to, the right to contract with other qualified persons to complete the performance of services identified in or contemplated by this agreement. Termination or expiration of this agreement shall not relieve any party of its obligations set forth in paragraphs 4, 5, 6, 7, and 12 above.

14. **FORCE MAJEURE**

This agreement is subject to force majeure, and is contingent on strikes, accidents, acts of God, weather conditions, fire regulations, the actions of any government, including funding and/or budgetary decisions, and other circumstances which are beyond the control of the parties. If the terms and conditions of this agreement cannot be performed as a result of any cause of force majeure, then this agreement shall be void, without penalty to any party for such non-performance. Such an event shall not relieve any party of its obligations set forth in paragraphs 4, 5, 6, 7, and 12 above, to the extent that the Contractor has undertaken any performance under this agreement prior to the occurrence of the force majeure.

15. **SEVERABILITY**

If any term or provision of this agreement is held invalid, the remaining provisions shall not be affected and shall remain in full force and effect.

16. **NOTICE**

Notice to the Contractor shall consist of a letter, delivered postage prepaid, addressed to:

[Contractor's Address]

Notice to the Yakama Nation shall consist of a letter, delivered postage prepaid, addressed to:

**JoDe Goudy, Chairman
Yakama Tribal Council
P.O. Box 151, Toppenish, WA 98948**

with a copy to the Yakama Nation's designated representative.

17. **SUPERINTENDENCE OF CONTRACT PERFORMANCE AND DESIGNATED REPRESENTATIVE**

At all times during performance of this contract, and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Yakama Nation and has authority to act for the Contractor. All work under this contract shall be performed in a skillful and workmanlike manner. The Yakama Nation may require, in writing, that the Contractor remove from the work any employee the Yakama Nation deems incompetent, unsafe, or otherwise objectionable. The Contractor shall coordinate performance of the contract work in consultation with the following designated representative(s) of the Yakama Nation in performing services under this agreement:

Melvin R. Sampson, Project Analyst/Project Coordinator

Kelly Clayton, Project Manager

Engineer designated in writing by the Yakama Nation

18. **COMPLIANCE PROVISIONS**

a. Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of handicap, race, age, religion, or sex. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their handicap, race, age, religion, or sex.

b. Indian Preference

Notwithstanding the provisions of paragraph 18(A) above, for all work performed under this agreement, including work subcontracted to other parties, the Contractor and its subcontractors shall give preference in employment, including subcontracts there under, to qualify Indians regardless of their handicap, age, religion or sex. To the extent feasible and consistent with the efficient performance of this agreement, the Contractor shall provide employment and training opportunities to Indians that are not fully qualified to perform under this agreement, regardless of their handicap, age, religion or sex. A TERO Compliance Agreement shall be entered into between the Contractor and Yakama Nation and appended to this Contract prior to final signature by the Yakama Nation. The Contractor shall comply with any Indian preference requirements established by the Yakama Nation Tribal Employment Rights Office as established in the executed TERO Compliance Agreement.

An example TERO Compliance Agreement is included in Exhibit F for Contractor reference.

c. Applicable Law

The Contractor shall comply with all the laws of the Yakama Nation and all applicable Federal laws and regulations, including the Davis-Bacon Act and the Copeland (Anti-Kickback) Act.

19. **PENALTY FOR THEFT, EMBEZZLEMENT AND/OR FRAUD**

By law, any officer, director, agent, employee or such other person connected in any capacity with this agreement or any subcontract there under that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through this agreement shall be fined not more than \$10,000 or imprisoned for not more than two years, or both. If the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, such person shall be fined not more than \$1,000 or imprisoned not more than one year or both. These penalties are not exclusive.

20. **ENTIRE AGREEMENT**

This agreement incorporates all the agreements, covenants and understandings between the parties. No agreement or understanding, verbal or otherwise, of the parties regarding their responsibilities under this contract shall be valid or enforceable unless embodied in this agreement.

21. **DISPUTE RESOLUTION**

In the event a dispute arises between the Contractor and the Yakama Nation relating to the performance or interpretation of this agreement, the aggrieved party shall submit the matter, in writing, to the Chairman of the Yakama Tribal Council within ten (10) days of its occurrence. A copy of the aggrieved party's submission shall be served upon the other party. The Chairman shall immediately convene a meeting of the parties which shall be held in Toppenish, Washington, to resolve the matter. The decision of the Chairman shall be final and binding upon both parties.

Nothing herein this paragraph shall operate to prohibit the Yakama Nation from enforcing its rights under this agreement, including, but not limited to, those set forth in paragraphs 2 and 8.

22. **SOVEREIGN IMMUNITY**

The Yakama Nation, by entering into this agreement, does not waive its sovereign immunity from suit. This Agreement shall be governed by the laws of the Yakama Nation and shall become effective on the first day written above.

23. **CONTRACT CHANGES**

Except as otherwise provided in this contract, no payment for additional services shall be made unless such services and the price therefore have been requested and authorized in advance in writing by the Yakama Nation.

24. **SPECIAL PROVISIONS**

This contract includes construction services provided by the Contractor. Contractor's labor and wages and subcontracting practices for work performed under this contract are subject to the provisions of the Davis-Bacon Act (WA 20130074) incorporated herein by reference (see Exhibit E).

This contract is subject to compliance with Yakama Nation Cultural Resources Program requirements. The Contractor is responsible for contacting the Yakama Nation Cultural Resources Program regarding measures necessary for protection and conservation of cultural resources during the performance of contract work..

Funds for compensation of the Contractor for services rendered to the Yakama Nation under this agreement are provided by the Bonneville Power Administration ("Bonneville") through an intergovernmental contract implementing the YKFP-Yakima Side Channels Project #1997-51-00. The intergovernmental contract requires that contractors of the Yakama Nation shall comply with certain terms and conditions. The intergovernmental contract is incorporated by reference in this Agreement. The Yakama Nation's obligation under this Agreement to reimburse the Contractor is conditional upon the continued effectiveness of the intergovernmental contract terms making the necessary funds available to the Yakama Nation. Work pursuant to this agreement shall not commence until such funding or other written authorization to incur expenses has been obtained by the Yakama Nation from Bonneville. Failure of Bonneville to provide such funding within the contract term shall void this contract and Contractor shall have no cause of action to enforce the terms of this agreement against the Yakama Nation. Notwithstanding any other provisions of this Contract or specifications included in it, no equitable adjustments to increase the Contract amounts set out in Exhibit B

shall be made without prior written concurrence by Bonneville that such adjustments are reasonable, allowable, and allocable to the project in accordance with 2 CFR Part 225.

25. **INSPECTION - SERVICES AND CONSTRUCTION**

In addition to any inspection requirements set forth in Exhibit A to the agreement, the following provisions apply to the performance of the work:

- a. The Yakama Nation may inspect the work called for by the contract at any time and place. The Yakama Nation will perform inspections in a manner that will not unduly delay the work.
- b. If any of the services do not conform to contract requirements, the Yakama Nation may require the Contractor to perform the services again in conformity with the contract at no cost to the Yakama Nation. When the defects in services cannot be corrected by re-performance, the Yakama Nation may deduct from the contract payments an amount which reflects the reduced value of the services performed.
- c. Neither inspection, lack of inspection, acceptance, nor payment shall relieve the Contractor of any of its obligations under this contract.
- d. If the Contractor does not promptly replace or correct rejected work, the Yakama Nation may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, and may (2) terminate for default the Contractor's right to proceed.

26. **STOP WORK ORDER**

- a. The Yakama Nation may order the Contractor to suspend all or any part of the work of this contract for the period of time that the Yakama Nation determines appropriate for the convenience of the Yakama Nation.
- b. The contractor shall immediately comply with the Yakama Nation's order and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order.

27. **WARRANTY - CONSTRUCTION**

- a. In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- b. This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Yakama Nation takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Yakama Nation takes possession.

- c. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Yakama Nation-owned or controlled real or personal property, when that damage is the result of:
 - (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished by the Contractor.
- d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- e. The Yakama Nation shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- f. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Yakama Nation shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of the Yakama Nation, if directed by the Yakama Nation; and
 - (3) Enforce all warranties for the benefit of the Yakama Nation, if directed by the Yakama Nation.
- h. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Yakama Nation nor for the repair of any damages that result from any defect in Yakama Nation-furnished material or design.
- i. This warranty shall not limit the Yakama Nation's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

28. INSURANCE/BONDING

Required Insurance: Contractor, at its sole cost and expense (including the cost of all deductibles), shall procure and maintain in force while performing services for Yakama Nation the following insurance:

- a. Workers Compensation Insurance, covering applicable statutory benefits in the State where the work is being performed; Employer's Liability Insurance in an amount of not less than \$1,000,000 and (when applicable) the policy will be endorsed to cover benefits.

- b. Commercial General Liability Insurance, on a per occurrence basis, endorsed to cover on the premises operations, products/completed operations, personal injury and the contractual indemnity obligations of this agreement with limits of not less than \$2,000,000 per occurrence.
- c. Automobile Liability Insurance, including Liability insurance coverage for vehicles which may be used by Contractor in connection with this contract, with Limits of Liability of not less than \$1,000,000 per occurrence.

The Workers Compensation/Employers Liability Insurance Policy will be endorsed to waive all rights of subrogation against the Yakama Nation.

The aforesaid policies will be endorsed to provide the Yakama Nation thirty (30) days written notice prior to cancellation or reduction in coverage required by this agreement. The insurance policy shall be issued by insurance companies with a Best rating of "B" or better or equivalent and shall be subject to Buyer's approval, such approval not to be unreasonably withheld.

Contractor shall require all Subcontractors performing services under this contract to maintain in force insurance of the types and amounts specified herein.

**CONFEDERATED TRIBES AND BANDS
OF THE YAKAMA NATION**

CONTRACTOR:

JoDe Goudy Chairman **DATE**
Yakama Tribal Council

Contractor's Name **DATE**

Exhibit A
Scope Of Work
(General Requirements & Specifications)

Big Creek Fish Passage Project

Technical Specifications

Division 0 - Introduction

These general requirements and technical specifications for construction of the roughened channel (fish passage project) are modeled on the Washington State Department of Transportation's Standard Specifications for Road, Bridge, and Municipal Construction 2014 (WSDOT Standard Specifications), as amended as of the effective date of this Contract. Pertinent WSDOT Standard Specifications that shall govern the work are listed below, with revisions and/or additions as required for the work. Unless listed below, provisions of the WSDOT Standard Specifications shall not be applicable to the Contract or the Work.

Payment to Contractor shall only be for payment items listed on the Bid Form. Work items shown on the Plans or described in the Specifications, but not listed on the Bid Form, are considered "incidental" to other work items. The Contractor shall include costs for "incidental items" in pay items listed on the Bid Form.

A bid bond is required for submittal of bids. However, a contract bond (performance bond) will be required prior to contract signature. The project is subject to the Davis-Bacon Act for wages and fringe benefits paid to workers.

On-site work shall begin as soon as possible after the issuance by the Yakama Nation representative of a notice to proceed, to allow as many construction days as possible during the low-flow month of September.

There may be some duplicate clauses between the Yakama Nation Construction Agreement (preceding section) and the specifications included in this Exhibit A. Where any duplication, possible differences, etc. exist, the Yakama Nation's Construction Agreement text shall prevail over narrative included in this Exhibit A or incorporated by reference to the WSDOT Standard Specifications.

Division 1 – General Requirements

1-01 Definitions and Terms

1-01.1 General

Include as written in WSDOT Standard Specifications.

1-01.2 Abbreviations

Include as written in the WSDOT Standard Specifications.

1-01.3 Definitions

Include only the following definitions from the WSDOT Standard Specifications: Addendum, Award, Bid, Bidder, Bid Documents, Call for Bids, Completion Date, Contract, Contract Bond, Contract Form, Contractor, Contract Provisions, Engineer, Inspector, Plans, Special Provisions, Specifications, Subcontractor, Work.

All references to Contracting Agency herein shall mean the Yakama Nation. All references to Proposal Form herein shall mean the Bid Form.

1-02 Bid Procedures and Conditions

1-02.2 Plans and Specifications

Yakama Nation shall provide one copy of each contract document (Contract Book, Drawings) to Contractor for project bidding purposes. After contract award, Yakama Nation shall supply Contractor with two Contract Books (includes Contract Agreement, General Requirements, Technical Specifications, Bid Form, Release, and Davis-Bacon Act information) and three sets of Drawings including one set of Drawings on Write-in-Rain paper. Contractor shall make all other copies of contract documents needed for bidding and/or completion of Contractor's work.

1-02.3 (Estimated Quantities) through 1-02.6 (Preparation of Proposal)

Include as written in the WSDOT Standard Specifications.

Add the following to Section 1-02.6 (Preparation of Proposal):

- Bid submittals shall include the Bid Form.
- Confirmation of addenda is required (if any are issued during bid period). To confirm receipt of addenda, write "Addendum No. X" on the Bid Form and initial.
- The Bid Form must be filled out completely, with extension of all Unit Costs to the Total Cost column, and summed for the "Total Construction Cost" (bid). The Total Construction Cost will be used for determination of "lowest responsible bidder" and contract award (all math will be verified by Yakama Nation with Unit Costs considered accurate).

1-02.7 Bid Deposit

Include as written in the WSDOT Standard Specifications.

1-02.12 (Public Opening of Proposals) through 1-02.15 (Pre-Award Information)

Include as written in the WSDOT Standard Specifications.

1-03 Award and Execution of Contract

1-03.1 Consideration of Bids

Include as written in the WSDOT Standard Specifications.

After receipt and checking of bids (for possible math errors), the Yakama Nation will verify the "Total Construction Cost" amounts submitted by each Contractor on the Bid Form. Project award will be made to the responsible bidder.

1-03.2 Award of Contract

Include as written, except in the WSDOT Standard Specification, replace "45 calendar days" with "30 calendar days".

1-03.3 Execution of Contract

Within 15 calendar days after the award date, the successful bidder shall return the signed Contracting Agency-prepared contract, a Contract Bond (1-03.4), any required TERO Compliance Agreement, and an insurance certification as required by Item 28 of the Yakama Nation's Construction Agreement.

1-03.4 Contract Bond

Include as written in the WSDOT Standard Specifications. A Contract Bond (Performance and Payment Bond) for the full contract amount is required for this contract.

1-04 Scope of Work

Include the WSDOT Standard Specifications (Year 2014) as written.

1-05 Control of Work

Include as written in the WSDOT Standard Specifications.

1-07 Legal Responsibilities

1-07.1 Laws to be Observed

The Contractor shall always comply with all Federal, State, tribal, or local laws, ordinances, and regulations that affect Work under this Contract. The Contractor shall indemnify, defend, and hold harmless the Contracting Agency against any claims that may arise because the Contractor (or any employee of the Contractor or subcontractor or material person) violated a legal requirement.

The Contractor shall be responsible to immediately report to the Engineer any deviation from the Contract provisions pertaining to environmental compliance, including but not limited to spills, unauthorized fill in waters of the State including wetlands, water quality standards, noise, air quality, etc.

The Contractor shall be solely responsible for the safety of all workers and shall comply with all appropriate state safety and health standards, codes, rules and regulations, including but not limited to those promulgated under the Washington Industry Safety and Health Act RCW 49.17 (WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). In particular the Contractor's attention is drawn to the requirements of WAC 296.800 which requires employers to provide a safe workplace. More specifically, WAC 296.800.11025 prohibits alcohol and narcotics from the workplace. The Contractor shall likewise be obligated to comply with all federal safety and health standards, codes, rules, and regulations that may be applicable to the Contract Work.

Upon awareness of a violation of a legal requirement, the Engineer will notify the Contractor in an effort to achieve compliance. The Engineer may also notify the agency responsible for enforcement if the Engineer deems that action is necessary to achieve compliance with legal requirements. The Engineer will also assist the enforcement agency to obtain Contractor compliance to the extent such assistance is consistent with the provisions of the Contract.

The Contracting Agency will not adjust payment to compensate the Contractor for changes in legal requirements.

1-07.4 Sanitation

1-07.4(1) General

The Contractor shall provide employees with all accommodations required by the State Department of Health, and other agencies. These accommodations shall be kept clean, neat, and sanitized, and shall not create any public nuisance.

1-07.4(2) Health Hazards

Biological hazards and associated physical hazards may be present at the worksite. The Contractor shall take precautions and perform any necessary work to provide and maintain a safe and healthful worksite in accordance with applicable laws. Payment for Work necessary to provide and maintain a safe worksite will be incidental to associated items on Contract Work unless the Contract includes provisions to the contrary.

1-07.5 Environmental Regulations

Throughout the Work, the Contractor shall comply with all current rules of the resource agencies having jurisdiction over the affected areas.

1-07.6 Permits and Licenses

Environmental permits required for the work will be obtained by Yakama Nation. The Engineer believes that all permit requirements are either shown on project drawings, listed in the technical specifications (e.g. use pumps to control water infiltrating into the work area), or are "normal work requirements" (e.g. park heavy equipment overnight on flat ground at least 50' away from the stream channel).

1-07.7 Load Limits

Include as written in the WSDOT Standard Specifications.

1-07.8 High Visibility Apparel

Include as written in the WSDOT Standard Specifications.

1-07.9 Wages

The fish passage construction project is subject to the Federal Davis-Bacon Act wage requirements. Exhibit E includes some wage information and wage rates for the convenience of contractors. The Contractor is solely responsible for complying with all laws and procedures relevant to Davis-Bacon Act requirements.

1-07.13 (Contractor's Responsibility for Work) through 1-07.17 (Utilities and Similar Facilities)

Include as written in the WSDOT Standard Specifications, except delete 1-07.15(1) – Spill Prevention, Control, and Countermeasures Plan.

1-08 Prosecution and Progress

1-08.1 (Subcontracting) through 1-08.4 (Prosecution of Work)

Include as written in the WSDOT Standard Specifications.

1-08.5 Time for Completion

- On-site work shall be scheduled to commence September 15 (+/-), so project organization and scheduling by contractor shall precede contract signature with YN. YN intends to sign the construction contract ASAP after bid opening, pending submittals from the contractor (TERO Compliance Agreement, insurance certificate, contract bond).
- All contract work (including upland work) shall be completed by October 18 (Saturday).

1-08.6 (Suspension of Work) through 1-08.8 (Extensions of Time)

Include as written in the WSDOT Standard Specifications.

1-08.9 Liquidated Damages

Include as written in the WSDOT Standard Specifications, and add the following.

The number of days used as time (T) in calculation of Liquidated Damages shall be 15 days. This will set the Liquidated Damages = 1.0% of the total contract amount for each day the on-site work extends beyond the time limits listed above.

1-08.10 (Termination of Contract)

Include as written in the WSDOT Standard Specifications.

1-09 Measurement and Payment

1-09.1 (Measurement of Quantities) through 1-09.8 (Payment for Material on Hand)

Include as written in the WSDOT Standard Specifications, and add the following:

The Contractor is advised that all volume measurements listed on the Bid Form (CY = cubic yard) are based on "neat-line" AutoCAD estimates, and the Contractor (for bidding) needs to consider that some materials have a high in-place density (existing soils) or shall be compacted (backfill and new crushed rock). On-site excavation of soils will result in "swell" of the excavated materials, and the Contractor's haul count (to on-site stockpiles and/or disposal) may exceed the Bid Form quantity by 10% to 30% volume. Similarly, the Contractor's "haul" volume for materials to be compacted on-site may exceed the Bid Form amounts by 10% to 30% since the density of some hauled materials (e.g. native soils for backfill) will be less than in-place compacted density. For all excavation

and/or backfill of native soils, or supply of crushed rock if measured by the cubic yard (to be compacted), the Contractor shall assume that "haul" (loose materials) may exceed the listed quantity by up to 30% without additional payment.

1-09.9 Payments

The basis of payment will be the actual quantities of work performed according to the contract and as specified for payment, unless the specifications indicate that "estimated quantity" shall be used for payment as listed on the Bid Form. Payments will be made for work and labor performed and materials furnished under the contract according to the price in the proposal (Bid Form) unless otherwise provided. Final payment shall not be made until written acceptance of all work by the Contracting Agency.

1-09.9(1) Retainage

The Yakama Nation will not retain any portion of progress payments made to Contractor.

Division 2 – Earthwork

2-00 Surveying

2-00.1 Description

This section covers surveying for vertical and horizontal control of the fish passage project. The Engineer will accomplish most of the required survey work, for routine and real-time definition of the roughened channel's alignment, profile, and dimensions. Contractor operation of a laser level, and survey assistance to the Engineer (e.g. hold the prism pole) would be required time-to-time. The services of a Professional Licensed Surveyor (PLS) would not be needed for the on-site survey work.

2-00.2 Materials and Construction

Vertical control for the project will be referenced to an on-site "benchmark" that will be established by the Engineer. The Engineer will show the Contractor exactly where and what this reference elevation is at the project site. The Contractor shall independently survey for vertical control for project construction (e.g. operate a laser level) time-to-time, for intermittent checks of the Engineer's survey work.

Horizontal control for roughened channel construction will be provided by the Engineer, who will place wood stakes at the bottom channel edges, outside (top) channel edges, and meander line @ 20' on-center spacing, and possibly other locations (as needed). The Engineer will also set "offset stakes" from these

design locations to preserve the construction locations and alignment during project excavation work.

The Engineer will mark the clearing limits at the site, and will assist the Contractor with "staking" of cut and fill slopes, edges of excavation, and other on-site controls for the work.

Tolerances for horizontal control for the project shall be 2 feet. Tolerances for vertical control for roughened channel construction varies from 6" (at channel meander) to 1' (channel surface; see Drawing 4).

2-00.3 Payment

Payment for Surveying for shall be "Lump Sum" as listed on the Bid Form.

2-01 Clearing, Grubbing, and Roadside Cleanup

Include only Section 2-01.1 of the WSDOT Standard Specifications. The areas to be cleared at the project site will be clearly marked (flagged) in the field. These areas include the West Bank of Big Creek, and access route on East Bank (see Drawing 2). All vegetation within the clearing limits shall be completely removed. All clearing and grubbing debris shall be disposed "on-site" at a location selected by the Ensign Ranch (see note on Drawing 2). All plants outside the Clearing Limits shall be protected by the Contractor.

Payment for this item shall be Lump Sum for "Clearing and Grubbing" including removal of all plant materials within the clearing limits, and haul and disposal at the on-site location.

2-02 Removal of Structures and Obstructions

A small amount of concrete rubble is visible just downstream of the existing concrete sill; this may be debris from apparent failure of a small concrete fishway. Visible concrete junk shall be removed by contractor, hauled off-site and disposed. This minor work item is considered incidental to the project, due to the small amount of concrete (or other man-made junk) to be retrieved from the creek and hauled away.

2-09 Structure Excavation

Include this section of the WSDOT Standard Specifications to cover general requirements for excavation, sorting and stockpile of suitable backfill materials, backfill with native materials, and on-site placements (disposal) of excess (and/or unsuitable for backfill) material. The following summaries shall over-ride comparable portions of the Standard Specification.

All clearing, grubbing, and water control shall be completed prior to excavation; see Drawing 2 and Specifications 2-01, 2-15 and 2-20. The project

site has limited space for stockpiles, sorting of materials, etc. and work will need to be carefully staged and sequenced.

Hydraulic excavators used within the Big Creek channel shall have vegetable oil to replace petroleum-based hydraulic fluid for all hydraulic lines for the boom and bucket.

Streambed excavation (cobbles, gravel & sand) would be as follows:

- The first 120 CY (all quantities listed are +/-) would be moved upstream to fill the existing plunge pool below the existing concrete sill. These streambed materials will form the subgrade for roughened channel construction.
- Stockpile of 160 CY streambed materials would be required near the work site, and there are some flat grassy areas just east of the project where these stockpiles could be placed. The Contractor would need to strip these areas of topsoil (set aside), and re-grade the areas with topsoil after the streambed materials stockpiles are incorporated into the work.
- Remaining streambed materials, some portion of the estimated surplus excavated materials for the project, would be hauled to somewhere on Ensign Ranch, placed, and spread to match surrounding land contours.

Streambank excavation (miscellaneous soils) would be as follows:

- Stockpile 80 CY on-site for fill along the top edges of the completed roughened channel, and soil transitions to existing ground.
- Remaining streambank excavation, some portion of the estimated surplus excavated materials for the project, would be hauled to somewhere on Ensign Ranch, placed, and spread to match surrounding land contours.

Payments for all items within this specification shall be based on the estimated quantity listed on the Bid Form. The Contractor is advised that all volume measurements listed on the Bid Form (CY) are based on "neat-line" AutoCAD estimates, and the Contractor (for bidding) needs to consider that some materials have a high in-place density (e.g. existing soils). On-site excavation of the streambed and soils will result in "swell" of the excavated materials, and the Contractor's count of "haul" (to on-site stockpiles and/or disposal) may exceed the Bid Form quantity by up to 30% volume without consideration of a variation in quantities (per the Bid Form estimates). For all excavation of native streambed and soils, the Contractor shall assume that "haul" (loose materials) may exceed the listed quantity by up to 30% without additional payment.

"Excavation (store materials as needed)" on the Bid Form includes streambed, streambank, and soil excavation, and haul to stockpile areas for the

specified materials and volumes. Solid rock is not expected within any excavation, and this would be a change order if encountered. Stockpiled materials do not need to be protected from rain.

“Backfill w/ Native Streambed Materials” includes haul of stockpiled streambed materials and placement as shown on drawings (various uses). Streambed materials placed for the channel subgrade shall be track-compacted. Streambed materials placed over the roughened channel surface shall be spread more-or-less uniformly, but would not require any compaction.

“Backfill w/ Native Soils” includes haul of these stockpiled materials to the top edges of the roughened channel, placing and spreading for ground transitions (see drawings). These soils shall be lightly tamped with an excavator bucket, then the soil surfaces lightly raked with bucket teeth.

“Haul & Dispose Excess Materials (on-site)” includes the estimated volume (neat-line AutoCAD) of native streambed and soils that will be surplus to construction. These materials shall be hauled, placed, and spread at upland locations to be identified by Ensign Ranch. All destinations for these materials would be accessible to trucks and heavy equipment. In some areas, Ensign Ranch staff may instruct that the top 12” topsoils (+/-) be stripped prior to placement of coarser fill materials (e.g. streambed cobbles and gravel), then the topsoils spread over the top of placed fill. Stripping and spreading topsoil at these disposal sites (when required) shall be considered incidental to other project work.

2-15 Water Pumping & Control

2-15.1 Description

This specification covers de-watering of isolated stream pools, that would be required prior to any in-channel excavation (see Drawing 2). Water control that may be needed during channel excavation and fill is also included, except the sluicing of gravel & sand into rock voids (described in Specification 9-40).

Surface flows in Big Creek would need to be isolated from project work, but are not expected (do not include in bid) if all in-channel work would be completed during September. Surface flow during September (if this happens) would require flow diversion and/or water quality protection measures that would be added by change order. Contractor in-channel work after September would be permitted (but not advised), and any water control and/or diversion measures would be considered incidental to the project in October.

The following work items are included in the Lump Sum payment within this specification.

- Supply and operate two 2"-dia. gas-powered trashpumps to gradually de-water isolated stream pools, see Drawing 2. Water with visibility greater than 1' shall be discharged downstream of the project, in the Big Creek channel. When pool drawdowns result in turbid water (visibility less than 1'), discharge hoses shall be re-located to upland areas, for infiltration of turbid water into the ground.
- Supply and operate the trashpumps as needed during channel excavation and fill, to prevent muddy water from draining downstream and/or to allow equipment work in shallow water (water less than 1' deep). Muddy water would be pumped to an upland area for discharge. Overnight pumping would not be required.

2-20 Temporary Culvert (access route)

2-20.1 Description

Supply, placement, and retrieval of the culvert required for the access route (Drawing 2) is included with this specification. All work shall be paid Lump Sum as listed on the Bid Form.

Division 8 – Miscellaneous Construction

8-30 Erosion Control Seed

8-30.1 Description

The following land areas shall have erosion-control seeds applied after completion of construction, and shall then have straw spread over the soils:

- ✓ All soils disturbed during construction that are outside road and/or road shoulder surfaces, and landward of the rough channel bottom edges.
- ✓ All on-site stockpile areas (after replacement of topsoils), and the temporary access route.

Areas where surplus soils and/or streambed materials are placed outside of the immediate project area are not included for seed or straw applications.

Soils at the project site shall be seeded just before placing straw mulch, near the end of construction. Seed shall be native eastern Washington grasses and forbs (herbaceous plants) mixed specifically for erosion control. Seed shall be spread by hand or hand-operated machine at the approximate application rate of 2 pounds seed per 1,000 ft² area. Payment for Erosion Control Seed will be by the pound as listed on the Bid Form.

8-40 Straw Mulch

8-40.1 Description

Straw bales shall be provided by Contractor at the project site with quantity as listed in the Bid Form. Contractor shall spread straw over all soils on which erosion-control seed was applied (above).

8-40.2 Materials

Straw bales shall be approximately 14" x 14" x 3'-long, which is intended to be the dimensions of "normal size" straw bales. Bales shall be dry when delivered to the site.

8-40.3 Construction

Spread straw more-or-less evenly over soils, at an application rate of 1 bale per 400 ft² soil area, more-or-less.

8-40.4 Payment

Payment for straw bales shall be for "Each" (each bale) including supply and spreading of straw.

Division 9 - Materials

9-03 Aggregates

9-03.1 Description

This section specifies Crushed Surfacing Base Course (crushed rock) that it is assumed will be required (after project completion) to restore Ensign Ranch roads to pre-existing conditions. The quantity listed on the Bid Form is mainly intended to set a unit price, that would be applied (by change order) regardless of the amount of crushed rock required for road re-surfacing, if the amount of crushed rock would be between 0 and 300 tons.

The tons, unit price, and extension of cost for crushed rock will be included in evaluation of bids.

9-03.2 Materials

Crushed Surfacing Base Course shall comply with WSDOT Standard Specification 9-03.9(3). This is a 1¼"-minus crushed rock material.

9-03.3 Construction

Crushed Surfacing Base Course (crushed rock) shall be used to re-surface existing roads disturbed by project construction; this work will be determined by the Engineer and Contractor after project completion. Crushed rock shall be evenly spread over road surfaces, then compacted by vibratory plate or roller.

9-03.4 Payment

Payment for crushed surfacing base course (Crushed Rock) will be per ton delivered to the work site and incorporated into the project. Truck tickets shall be provided to verify the tons supplied.

9-13 Riprap, Quarry Spalls, etc.

9-13.1 Description

This section specifies the 24" to 48"-size rocks for channel construction.

9-13.2 Materials

Large rocks for the roughened channel streambed and banks shall be angular or semi-angular rocks with at least one dimension 24" to 48" length each rock. A random assortment of rocks within this particle size range shall be supplied for channel construction. Rocks shall not have any dimension (e.g. thickness) less than 12". Large rock shall be hard, and shall not be substantially fractured or weathered within each large rock.

9-13.3 Construction

The limited on-site space for stockpiling large rocks will probably require dump trucks to deliver these rocks as they are incorporated into the work, rather than being able to mobilize all rock to the site prior to channel construction. Trucks may be able to back into the channel after subgrade preparation, and end-dump within the de-watered channel for excavator placement of large rocks. Construction of a gradual ramp into the stream channel (see Drawing 2) is considered incidental to the work (as well as re-construction of this bank). If subgrade materials would not support truck traffic (unknown), it may be necessary to dump rocks into the channel at the access route location; this would not be considered a change order item.

Large rocks for the roughened channel shall be placed one-at-a-time, with each rock individually fit for channel construction. The Engineer has a tried-and-true method for rock placements to correct grade, etc. using tall metal stakes, rope lines for equipment operator guidance, a spotter (from Contractor) shall be shown the Engineer's methods for rock placement, etc. Rocks are

conventionally set almost as fast as the equipment can deliver them, and something like $\frac{3}{4}$ of the rocks are only placed once; maybe $\frac{1}{4}$ of the rocks need to be moved or adjusted after initial placement.

The Engineer and Contractor shall work closely together for all phases of roughened channel construction to apply the Engineer's experience with this fish passage technology. The Engineer will assist with subgrade definition and setting elevations; on-site visual indications for top of rock surfaces (similar to string-lines); verification of large rock placement for the required slopes and elevations; and then follow-through with assistance for the method(s) for filling voids with 2"-minus materials.

9-13.4 Payment

Payment for the large rock shall be per ton delivered to the work site and incorporated into the project, as shown on drawings. Truck tickets shall be provided to verify the tons of rock supplied.

9-40 Gravel & Sand

9-40.1 Description

This specification covers the Gravel & Sand mix shown for the fish passage project, to fill voids between large rocks placed for the new armored streambed (roughened channel).

9-40.2 Materials

At the gravel pit source, mix the following three materials at 1/3 volume each (e.g. by loader bucket):

- Washed gravel 1" to 2"-size +/-.
- Pea gravel.
- Washed sand.

9-40.3 Construction

Place Gravel & Sand as shown on drawings, and see the construction notes on Drawing 4. The on-site trashpump(s) shall be used to sluice these materials into voids between large rocks, to completely fill the voids with these small-sized materials for the bottom of the channel. Sluicing water shall be recycled within the project, and shall not be released downstream.

9-40.4 Payment

Payment for "Gravel & Sand" shall be by ton delivered to the site and properly placed, per actual quantity delivered to the site (Contractor to provide truck tickets) (estimated quantity on Bid Form).

Batches of approximately 200 tons each shall be mixed at the source, then incorporated into the work prior to the next batch mix. An incremental mixing of these materials will allow real-time adjustment of the final quantity to be transported to the site, prior to mixing.

Exhibit B
Budget
(Bid Form)

**Big Creek Fish Passage Project
Bid Form**

Contractor: _____

Spec.	Item	Qty	Unit	Unit Cost	Total Cost
1-09	Mobilization	1	LS		
2-00	Surveying	1	LS		
2-01	Clearing and Grubbing (on-site disposal)	1	LS		
2-09	Excavation (store materials as needed)	980	CY		
2-09	Backfill w/ Native Streambed Materials	280	CY		
2-09	Backfill w/ Native Soils (channel edges)	380	CY		
2-09	Haul & Dispose Excess Materials (on-site)	320	CY		
2-15	Water Pumping & Control	1	LS		
2-20	Temporary Culvert (access route)	1	LS		
8-30	Erosion Control Seed	10	LB		
8-40	Straw Mulch	20	BALE		
9-03	Crushed Rock	100	TN		
9-13	Large Rocks (24" to 48"-size)	1,700	TN		
9-40	Gravel & Sand Mix (2"-minus sluiced)	700	TN		
Total Construction Cost (bid): _____					

CY = cubic yard
EA = each
LB = pound

LS = lump sum
TN = ton

Exhibit D

Release

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That _____ Contractor's Name _____
Of _____ Company's Name _____ hereinafter called CONTRACTOR, hereby acknowledges receipt of payment by ___Yakama Nation___, hereinafter called OWNER, of the Total sum of ___Total dollar amount _____ (\$ ___dollar amt ___) and does hereby accept such sum in full payment, satisfaction and discharge of all amounts due and owing to the CONTRACTOR under that certain contract between The CONTRACTOR and the OWNER dated ___Date___, and any amendments, changes, or additions thereto and for all extra work in connection with said contract, or arising out of or in connection with

In consideration of said payment and other good and valuable consideration, CONTRACTOR hereby releases and forever discharges the OWNER, his officers, agents, servants, and employees of and from any and all claims, demands, actions, causes of action, obligations, and liabilities of every kind and character whatsoever, in law or equity, arising from this Agreement, which CONTRACTOR may have or assert against the OWNER, his officer, agents, servants, and employees.

In further consideration of said payment and other good and valuable consideration, CONTRACTOR hereby undertakes and agrees to indemnify and hold harmless the OWNER, his officers, agents, servants, and employees, of and from any and all claims, demands actions, and causes of actions for damages to property or injury to persons, debts, liens, obligations, and liabilities of every kind and character whatsoever, in law and equity, which any person or persons, corporation, partnership, or association may have or assert against the OWNER, his officers, agents, servants, and employees, arising out of, resulting from, or in connection with the performance of said work by the CONTRACTOR, or any act or omission by CONTRACTOR in the performance of the aforesaid Agreement.

Contractor

LICENSE NUMBER DATE

Exhibit E

Davis-Bacon and Related Acts

Federal Contracts-Working Conditions: Prevailing Wages in Construction Contracts

- [Who Is Covered](#)
- [Basic Provisions/Requirements](#)
- [Employee Rights](#)
- [Recordkeeping, Reporting, Notices and Posters](#)
 - [Notices and Posters](#)
 - [Recordkeeping](#)
 - [Reporting](#)
- [Penalties/Sanctions](#)
- [Relation to State, Local, and Other Federal Laws](#)
- [Compliance Assistance Available](#)
- [DOL Contacts](#)

[Return to Table of Contents](#)

Related Information

Compliance Assistance By Law

- [The Davis-Bacon and Related Acts \(DBRA\)](#)

DOL Agency Assistance

- [Wage and Hour Division DBRA Page](#)
- [Wage Determinations On-Line](#)

Updated: September 2009

Davis-Bacon and Related Acts

(40 USC §276a<http://www.dol.gov/whd/regs/statutes/dbra.htm>); **29 CFR Parts 1, 3, 5, 6**
(http://www.dol.gov/dol/cfr/Title_29/Chapter_1.htm) **and 7**(<http://www.dol.gov/cgi-bin/leave-dol.asp?exiturl=http://s.dol.gov/60&exitTitle=www.ecfr.gov&fedpage=yes>)

Who is Covered

The Davis-Bacon and Related Acts (DBRA) are administered by the Wage and Hour Division. These Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

Basic Provisions/Requirements

The Davis-Bacon Act requires that all contractors and subcontractors performing on federal contracts (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area. Davis-Bacon labor standards clauses must be included in covered contracts.

Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department.

Contractors and subcontractors on prime contracts in excess of \$100,000 are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek. Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.

Employee Rights

The Davis-Bacon and Related Acts provide laborers and mechanics on covered federally financed or assisted construction contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the Department of Labor, for the type of work performed. The [Wage and Hour Division](http://www.dol.gov/whd/) and respective federal contracting agencies accept complaints of alleged Davis-Bacon violations.

Recordkeeping, Reporting, Notices and Posters

Notices and Posters

Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 "[Employee Rights Under the Davis-Bacon Act](http://www.dol.gov/whd/programs/dbra/wh1321.htm)" poster (<http://www.dol.gov/whd/programs/dbra/wh1321.htm>) at the site of the work in a prominent and accessible place where it may be easily seen by employees. There is no particular size requirement. The wage determination must be similarly posted.

Recordkeeping

Under the DBRA, covered contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work and for a period of three years thereafter. Records to be maintained include:

- Name, address, and Social Security number of each employee
- Each employee's work classifications
- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
- Daily and weekly numbers of hours worked
- Deductions made
- Actual wages paid
- If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected
- If applicable, detailed information regarding approved apprenticeship or trainee programs

Some of the records required to be kept under the law are also required under the Fair Labor Standards Act. See Wage and Hour Division [Fact sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act \(FLSA\)](http://www.dol.gov/whd/regs/compliance/whdfs21.pdf) (<http://www.dol.gov/whd/regs/compliance/whdfs21.pdf>).

Reporting

Each covered contractor and subcontractor must, on a weekly basis, provide the federal agency a copy of all payrolls providing the information listed above under "Recordkeeping" for the preceding weekly payroll period. Each payroll submitted must be accompanied by a "Statement of Compliance." The contractor, subcontractor or the authorized officer or employee of the contractor or subcontractor who supervises the payment of wages must sign the weekly statement. Statements of Compliance are to be made on the form [WH-347 "Payroll \(For Contractors Optional Use\)"](http://www.dol.gov/whd/forms/wh347instr.htm) (<http://www.dol.gov/whd/forms/wh347instr.htm>) or on any form with identical wording. This must be completed within seven days after the regular pay date for the pay period.

Contractors may also be asked to submit, via survey, wage data that may be used by the Wage and Hour Division to determine the locally prevailing wage rates that will apply to workers on Davis-Bacon and DBRA-covered projects. The submission of wage data is encouraged, but voluntary. Contractors and others may use the [WD-10 Form, Report of Construction Contractor's Wage Rates](http://www.dol.gov/whd/programs/dbra/wd10/index.htm) (<http://www.dol.gov/whd/programs/dbra/wd10/index.htm>).

Penalties/Sanctions

Contractors or subcontractors found to have disregarded their obligations to employees, or to have committed aggravated or willful violations while performing work on Davis-Bacon covered projects, may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages that result from overtime violations of the Contract Work Hours and Safety Standards Act (CWHSSA).

Contractors and subcontractors may challenge determinations of violations and debarment before an Administrative Law Judge. Contractors and subcontractors may appeal decisions by Administrative Law Judge's with the Department's Administrative Review Board. Final Board determinations on violations may be appealed to and are enforceable through the federal courts.

Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

Relation to State, Local, and Other Federal Laws

Since 1931, Congress has extended the Davis-Bacon prevailing wage requirements to some 60 related Acts which provide federal assistance for construction through loans, grants, loan guarantees, and insurance. These Acts include by reference the requirements for payment of the prevailing wages in accordance with the Davis-Bacon Act. Examples of the related Acts are the American Recovery and Reinvestment Act of 2009, the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

The Copeland "Anti-Kickback" Act (<http://www.dol.gov/whd/regs/statutes/copeland.htm>) prohibits contractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment, and requires contractors to submit a weekly statement of the wages paid to each employee performing DBRA covered work.

Contractors on projects subject to DBRA labor standards may also be subject to additional prevailing wage and overtime pay requirements under State and local laws. Also, overtime work pay requirements under CWHSSA and the Fair Labor Standards Act (<http://www.dol.gov/whd/flsa/index.htm>) may apply.

Compliance Assistance Available

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Davis-Bacon and Related Acts, such as the DBRA Forms page (<http://www.dol.gov/whd/programs/dbra/forms.htm>). Other compliance assistance related to the Act — including the Davis-Bacon and Related Acts (DBRA) Web Page (<http://www.dol.gov/whd/programs/dbra/index.htm>) and regulatory and interpretive materials — is available on the Compliance Assistance "By Law" (<http://www.dol.gov/compliance/laws/comp-dbra.htm>) Web page. Also, the Wage Determinations OnLine (<http://www.wdol.gov/>) (WDOL) Web site provides a single location for federal contracting officers to obtain Davis-Bacon wage determinations for use in covered contracts. The WDOL Web site library provides a variety of links that relate to compliance with the prevailing wage laws that apply to federal and federally assisted contracts.

DOL Contacts

Wage and Hour Division (<http://www.dol.gov/whd/>)
Contact WHD (<http://www.dol.gov/whd/contactform.asp>)
Tel: 1-866-4USWAGE (1-866-487-9243); TTY: 1-877-889-5627

The Employment Law Guide is offered as a public resource. It does not create new legal obligations and it is not a substitute for the U.S. Code, Federal Register, and Code of Federal Regulations as the official sources of applicable law. Every effort has been made to ensure that the information provided is complete and accurate as of the time of publication, and this will continue. Later versions of this Guide will be offered at www.dol.gov/compliance or by calling our Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365) (1-866-487-2365).

[Table of Contents](#)

General Decision Number: WA140074 07/04/2014 WA74

Superseded General Decision Number: WA20130074

State: Washington

Construction Type: Heavy
including water and sewer line construction

County: Kittitas County in Washington.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).

Modification Number	Publication Date
0	01/03/2014
1	06/06/2014
2	06/13/2014
3	07/04/2014

CARP0770-002 07/01/2013

	Rates	Fringes
CARPENTER (Including Formwork)...	\$ 26.43	12.85
MILLWRIGHT.....	\$ 38.30	12.60

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - ALL CLASSIFICATIONS EXCEPT MILLWRIGHTS AND PILEDRIVERS

Hourly Zone Pay shall be paid on jobs located outside of the free zone computed from the city center of the following listed cities:

Seattle	Olympia	Bellingham
Auburn	Bremerton	Anacortes
Renton	Shelton	Yakima
Aberdeen-Hoquiam	Tacoma	Wenatchee
Ellensburg	Everett	Port Angeles
Centralia	Mount Vernon	Sunnyside
Chelan	Pt. Townsend	

Zone Pay:

0 -25 radius miles	Free
26-35 radius miles	\$1.00/hour
36-45 radius miles	\$1.15/hour
46-55 radius miles	\$1.35/hour
Over 55 radius miles	\$1.55/hour

(HOURLY ZONE PAY: WESTERN AND CENTRAL WASHINGTON - MILLWRIGHT AND PILEDRIVER ONLY)

Hourly Zone Pay shall be computed from Seattle Union Hall, Tacoma City center, and Everett City center

Zone Pay:

0 -25 radius miles	Free
26-45 radius miles	\$.70/hour

Over 45 radius miles \$1.50/hour

 ELEC0077-001 02/01/2013

	Rates	Fringes
Line Construction:		
LINEMEN.....	\$ 45.62	4%+12.90

 * ELEC0112-014 06/01/2014

	Rates	Fringes
ELECTRICIAN.....	\$ 38.05	17.82

 ENGI0302-007 06/01/2014

	Rates	Fringes
Power equipment operators:		
Group 1A.....	\$ 38.39	17.39
Group 1AA.....	\$ 38.96	17.39
Group 1AAA.....	\$ 39.52	17.39
Group 1.....	\$ 37.84	17.39
Group 2.....	\$ 37.35	17.39
Group 3.....	\$ 36.93	17.39
Group 4.....	\$ 34.57	17.39

Zone Differential (Add to Zone 1 rates):

Zone 2 (26-45 radius miles) - \$1.00

Zone 3 (Over 45 radius miles) - \$1.30

BASEPOINTS: Aberdeen, Bellingham, Bremerton, Everett, Kent,
 Mount Vernon, Port Angeles, Port Townsend, Seattle,
 Shelton, Wenatchee, Yakima

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1AAA - Cranes-over 300 tons, or 300 ft of boom
 (including jib with attachments)

GROUP 1AA - Cranes 200 to 300 tons, or 250 ft of boom
 (including jib with attachments); Tower crane over 175 ft
 in height, base to boom; Excavator/Trackhoe, Backhoes: Over
 90 metric tons

GROUP 1A - Cranes, 100 tons thru 199 tons, or 150 ft of boom
 (including jib with attachments); Loaders-overhead, 8 yards
 and over; excavator/Trackhoe, backhoes: over 50 metric tons
 to 90 metric tons

GROUP 1 - Cranes 45 tons thru 99 tons, under 150 ft of boom
 (including jib with attachments); Crane-overhead, bridge
 type, 45 tons thru 99 tons; Derricks on building work
 Excavator/Trackhoe, backhoes: over 30 metric tons to 50
 metric tons; Loader- overhead 6 yards to, but not including
 8 yards; Dozer D-10

GROUP 2 - Cranes, 20 tons thru 44 tons with attachments;

Crane-overhead, bridge type-20 tons through 44 tons;
 Excavator/Trackhoe, backhoe: 15 to 30 metric tons;
 Loaders-overhead under 6 yards; Mechanic; Grader (finishing)

GROUP 3 - Cranes-thru 19 tons with attachments; A-frame crane over 10 tons; Dozers-D-9 and under; Roller-Plant Mix; Excavator/Trackhoe, backhoe: under 15 metric tons; Forklift: 3000 lbs and over with attachments; Oiler; Grader (non-finishing); Boom Truck over 10 tons

GROUP 4 -Cranes-A frame-10 tons and under; Roller-other than plant mix; Forklift: under 3000 lbs with attachments; Boom Truck 10 tons and under

IRON0086-013 07/01/2013

	Rates	Fringes
IRONWORKER.....	\$ 31.60	21.35

LABO0348-001 06/01/2014

ZONE 1:

	Rates	Fringes
Laborers:		
GROUP 2.....	\$ 21.76	10.30
GROUP 3.....	\$ 23.85	10.30
GROUP 4.....	\$ 24.43	10.30
GROUP 5.....	\$ 24.85	10.30

ZONE DIFFERENTIAL (ADD TO ZONE 1 RATES):
 ZONE 2 - \$1.00
 ZONE 3 - \$1.30

BASE POINTS: BELLINGHAM, MT. VERNON, EVERETT, SEATTLE, KENT, TACOMA, OLYMPIA, CENTRALIA, ABERDEEN, SHELTON, PT. TOWNSEND, PT. ANGELES, AND BREMERTON

ZONE 1 - Projects within 25 radius miles of the respective city hall
 ZONE 2 - More than 25 but less than 45 radius miles from the respective city hall
 ZONE 3 - More than 45 radius miles from the respective city hall

LABORERS CLASSIFICATIONS

GROUP 2: Flagger

GROUP 3: General or Common Laborer; Mason
 Tender-Cement/Concrete; Chipping Guns (Under 30 lbs)

GROUP 4: Grade Checker; Pipe Layer; Chipping Guns (Over 30 lbs)

GROUP 5: Mason Tender-Brick

PAIN0005-010 04/15/2013

	Rates	Fringes
Painters: (Brush, Roller and Spray).....	\$ 15.58	10.23

SUWA2009-040 08/07/2009

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 17.21	0.00
LABORER: Landscape.....	\$ 14.67	0.00
OPERATOR: Drill.....	\$ 28.15	8.20
PIPEFITTER.....	\$ 25.98	3.98
TRUCK DRIVER: Dump Truck.....	\$ 19.67	0.00
TRUCK DRIVER: Water Truck.....	\$ 24.36	8.30
TRUCK DRIVER: 10 Yard Truck.....	\$ 24.61	8.34

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination.

The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

Exhibit F

TERO Compliance Plan (example)

EXEMPLAR

http://www.yakamanation-nsn.gov/TERO_.php
TRIBAL EMPLOYMENT RIGHTS COMMISSION COMPLIANCE PLAN
BETWEEN:
THE CONFEDERATED TRIBES AND BANDS OF THE
YAKAMA NATION
HEREIN CALLED "TERO"
AND

HEREIN CALLED "EMPLOYER"

To Be Implemented on:

NOTE: ANY EMPLOYER, CONTRACTOR OR SUBCONTRACTOR WHO FAILS TO SUBMIT AN ACCEPTABLE COMPLIANCE PLAN MAY BE DENIED THE RIGHT TO COMMENCE OR CONTINUE TO CONDUCT BUSINESS WITHIN OR IN IMMEDIATE PROXIMITY TO THE EXTERIOR BOUNDARIES OF THE YAKAMA NATION.

A. COMPLIANCE PLAN RESPONSIBILITIES: Pursuant to Section 9.1 of the Yakama Nation Tribal Employment Rights Ordinance: As of the effective date of this Ordinance no employer may commence work on the Yakama Reservation until they have consulted with the TERO Commission or its appointed representative on meeting their obligations under this Ordinance.

B. COVERAGE: The intent of the Yakama Nation Tribal Employment Rights Ordinance is to employ a Local Indian Preference Work Force which will inevitably strengthen the reservations economy. All positions will be cleared through the TERO Compliance Office and hiring criteria filed for each craft, before project initiation.

C. HIRING: A **minimum** rate of 50% local Indian Preference employment by work force hours is required. Qualified local Indian Preference applicants will fill all skilled craftsmen and laborer positions that require the use of hand tools, power tools, and equipment. Therefore, partnership(s)/owner(s) shall be allowed in management and/or supervisory positions only. Specialized skills that require only limited crews or schedules will be considered for approval on a case-by-case basis.

D. HIRING HALL: Employer agrees to utilize the TERO Hiring Hall to meet all work force needs other than the contractors certified core crew. Core Crew shall not exceed 25% of total work force hours. The employer may utilize other sources of personnel to fill vacancies only in the event that the TERO Office has certified in writing that they are unable to provide a qualified eligible referral. If the TERO Office waives a position it may be included in the required 50% of work force hours unless it becomes vacant again, when TERO will make another attempt to fill the position.

E. PAYROLL HOURS: The TERO Office reserves the right to review employers' payroll records to insure that Local Indian Preference is in effect. A minimum of 50% of the total work force hours is required for Indian Preference Employees.

F. TRAINING: Training ratios shall be as stated in the project specifications.

G. TRAINING PROGRAMS: Training Programs shall be developed and administered by the employer with the assistance of the TERO Office when possible.

H. QUALIFICATION OF INDIAN PREFERENCE EMPLOYEES: Minimum standards will be developed and hiring criteria (in written form) filed with the TERO Office prior to the employers request for a referral in that skill. NOTE: Employers are prohibited from using job qualification criteria or personnel requirements that present artificial barriers to local Indian Preference employment or training unless such criteria can be proven to be of either safety or business necessity.

(a) The TERO Compliance Office and individual employers have the responsibility of deciding if an employee is qualified for a job or in a craft. (b) The burden of proof shall be on the TERO Office in all disputes of minimal qualifications standards and on termination of Indian Preference Employees based on lack of qualifications.

I. PROMOTIONS: Employer shall give Indian Preference Employees consideration for promotion opportunities and shall encourage Indian employees to pursue such opportunities. Indian Preference Employees shall be considered first in each craft or skill, when promotions are plausible. Selection of non-Indian individuals for promotion will require a written justification. If an Indian Preference Employee fails to meet job requirements and is demoted the employer shall provide

TERO with written documentation justifying the action. Indian Preference Employees declining a promotion opportunity shall verify such denial in writing.

J. REFERRALS : The TERO Office shall be given a twenty-four (24)-business hour time period (minimum) to furnish a qualified referral.

K. COUNSELING: Employer shall effectively utilize the TERO Office for the job counseling needs of the Indian Preference Employees. Prior to termination of any Indian Preference Employee the employer shall give TERO the opportunity for counseling.

L. INDIAN PREFERENCE - FEDERAL FUNDS UTILIZED: When federal or State funds are utilized, Local Indian Preference language shall prevail. In order for an applicant or employee to qualify under local Indian Preference he/she must live on or near the Yakama Nation and provide the following information to the TERO Office: 1. Name of Tribal Affiliation and Identification number 2. Name of Agency where individual is registered or enrolled.

M. CONTRACTING AND SUBCONTRACTING: Contractors and Subcontractors claiming Indian Preference shall provide certification of such status to the TERO Office to ensure that their business is a legitimate Indian-owned and Indian controlled firm. In order for a firm or joint venture to qualify for Indian Preference it must be 51% or more Indian owned and must be able to demonstrate the following: 1. Formal Ownership - That an Indian(s) own(s) 51% or more of the partnership, corporation, joint venture, or other arrangement for an entity. Such ownership must be embodied in the firm's organic documents, such as its stock ownership- or partnership agreement. Ownership includes: (a) Financial Ownership and (b) control. 2. Value -- Indian owner(s) shall have ownership of at least 51% of equipment, real property, or similar assets commensurate with the value of his or her ownership share. 3. Profit - That the Indian owner(s) will receive 51% or more of all profits. 4. Management Control - That the Indian(s) must be substantially involved in management and control of daily activity.

Failure to provide such certification shall constitute grounds for the TERO Commission to issue a stop-work order or to prevent contractor/subcontractor from commencing work on the Yakama Reservation.

N. PRIME CONTRACTOR: It shall be the prime contractor's responsibility to ensure to the TERO Commission that preference in subcontracting shall be given to Indian Preference certified firm.

O. REVIEW, REPORTING AND ON-SITE MONITORING VISITS: It shall be within TERO rights to require employer to provide payroll information necessary to ensure that the agreed upon 50% or more of the total work force hours are earned by Local Indian Preference Employees. Such information may be requested on a daily, weekly, bi-weekly, or monthly basis and shall include:

- 1. Personal Data Sheet (TERO Application)
- 2. Wage and hour report (supported by certified payroll)
- 3. New hires, date of entrance and wage rate
- 4. Termination, date and written justification
- 5. Disciplinary action taken (documentation)
- 6. Promotion opportunities
- 7. Indian Preference Employees in training status

The TERO Office reserves the right to monitor the project through on-site visits, citing any violations of the TERO Ordinance that will be reported directly to the TERO Commission. On-site visits will be conducted in a manner that causes minimum interruption to the work force and the project.

P. TERO FEE PAYMENT: As stated in Section 6 of the TERO Ordinance employer is required to pay a fee equaling 3% (0.03) of the total contract amount. This fee will be paid to the Confederated Tribes and Bands of the Yakama Nation credited to the TERO Fee Account.

The Prime Contractor will pay 3% of the total bid of _____ in one payment. This payment of \$ _____ will be due prior to project initiation. Any adjustment to bid price (project cost) will require immediate (within 30 days) adjustment to the TERO Fee payment, making all fee payments due within 30 days of project completion.

THE YAKAMA TRIBAL EMPLOYMENT RIGHTS FEE PAYMENT SCHEDULE IS DETERMINED AT THE DISCRETION OF THE TERO OFFICE.

Q. CERTIFICATION AND ACCEPTANCE: On behalf of _____ hereby certify that I have received and reviewed the Yakama Nation's Tribal Employment Rights Ordinance; and understand it is within the Yakama

Nation's sovereign rights to impose Local Indian Preference on work conducted within or in immediate proximity to the exterior boundaries of the Yakama Nation. Therefore, I agree to accept the obligations and responsibilities imposed upon my firm by this Compliance Plan on this _____ day of _____ 2014.

SIGNATURE: _____

TITLE: _____

On behalf of the Yakama Nation's Tribal Employment Rights Office, I hereby attest to the agreed upon compliance plan and will enforce compliance to this agreement through the powers vested to me by the TERO Commission.

SIGNATURE _____

TITLE: TERO Director

APPROVED: — _____

TITLE: Chairman TERO COMMISSION