

**COOPERATIVE AGREEMENT
BETWEEN
NEZ PERCE TRIBE AND
JOHN P TOP**

This Cooperative Agreement (“Agreement”) is entered into between the Nez Perce Tribe, P.O. Box 305, Lapwai, ID, 83540 (“Tribe”), by and through the Department of Fisheries Resource Management Watershed Division; and John P Top (“Landowner”), individually “party” and collectively “parties.”

RECITALS

- A.** The Tribe is a federally-recognized Indian tribe with its own government, unique culture, and history.
- B.** Landowners are residents and owners of real property in Oregon where work will take place. Landowner certifies the ownership of where the work will be carried out.
- C.** The Tribe and Landowners wish to enter into this Agreement to assist with the stewardship and protection of the valuable fishery resources on Landowners’ property and in and around the Lostine River in Wallowa County, Oregon. The Agreement will apply to lands owned by the Landowners in Sections 10 & 15, Township 1S, Range 43E. The lands are identified by Wallowa County as tax lots 5400, 1700, 701, 1602, 1900, 1700, and 1800. A map showing the location is attached to and incorporated into this Agreement.
- D.** The purpose of this Agreement is to identify the terms, conditions, and obligations agreed upon between the Tribe and Landowners to jointly implement Chesnimnus Zone 4, Phase I Restoration Project (“Project”), Oregon Watershed Enhancement Board (“OWEB”) associated Grants.
- E.** The Tribe is the project sponsor and qualified to perform the services and associated tasks that are the subject of this Agreement. Project tasks include:

TASKS

- 1.) Install Wood Habitat Structure
- 2.) Channel Reconstruction
- 3.) Pool Development

PURPOSES

- Improve Fish Habitat/Physical Processes
- Improve Fish Habitat/Physical Processes
- Improve Fish Habitat

- | | |
|--|--|
| 4.) Levee Modification: Removal | Improve Physical Processes |
| 5.) Rebuild and Set Back Riparian Fences | Improve Riparian Vegetation |
| 6.) Excavate Side Channels | Improve Fish Habitat |
| 7.) Riparian Buffer Strip, Planting | Improve Riparian Vegetation |
| 8.) Restore Banklines with Large Wood | Improve Physical Processes/Erosion Control |

F. The foregoing recitals are hereby incorporated into and made an integral part of this Agreement.

TERMS

SECTION 1: General

The Tribe and Landowners mutually agree to perform the following respective obligations under the Agreement.

SECTION 2: Obligations of Tribe

2.1 **Work to be Performed.** The Tribe will implement the Work as described in Recital E and Attachment A attached hereto and incorporated into this Agreement (“Work”). The Tribe shall provide labor, materials, and other services necessary to perform and complete the Work including obtaining all applicable local, state, and federal permits. The Tribe shall have the sole responsibility for the Work performed and shall be responsible for directing and controlling its employees and contractors as to the manner and means of accomplishing the Work.

2.2 **Applicable Law and Regulation.** The Tribe will comply with all applicable health, safety, and environmental laws, directives, ordinances, regulations, or statutes applicable to the Work.

2.3 **Due Care and Best Efforts.** The Tribe shall use due care throughout construction of the Work and shall use its best efforts to avoid interfering with the Landowners’ use and enjoyment of the property.

2.4 **Restoration.** Upon completion of any and all activities contemplated by the Work, the Tribe will restore, as appropriate, all affected areas of Landowners’ property from damage, beyond normal wear and tear, caused by access to and from the Work site. The Tribe shall further clean up and remove all debris and materials generated by the Work on Landowners’ property.

2.5 **Property of Work.** The parties further agree that after completion of the Work, all grant funded improvements affixed to the land will become the property of the Landowners, provided that the terms of the Agreement are met.

SECTION 3: Obligations of Landowners

3.1 **Right of Entry.** The Landowners will provide the Tribe and its officers, agents, employees, contractors, and invitees reasonable property access to complete the Work, conduct monitoring activities and repairs, and complete maintenance if applicable of the Work as described. Said entry shall be at times reasonably agreeable to the Landowner for the duration of this Agreement. The landowner agrees to allow the Grantee (Nez Perce Tribe) access to carry out the work, or a portion of the work on the landowner's property.

3.2 **Management.** The Landowners will manage the property where the Work occurs in a manner to meet the purposes set forth in this Agreement. Livestock management must be conducted in the manner agreed upon by all parties in this agreement and include permanent rest in riparian areas as per agreed fencing specifications in final design.

3.3 **Consultation with Tribe.** The Landowners will consult with the Tribe prior to undertaking any action or activity that may damage or compromise the integrity of the Work. Landowners will contact the Tribe's Department of Fisheries Resource Watershed Division at (541) 432-2506.

3.4 **Repair and Replacement.** The landowner's agree to maintain the project or allow maintenance of the project, over a time consistent with OWEB funding and application timelines. The Landowners will repair or replace Work that is damaged by an intentional action or activity by Landowners that compromises the purposes of the Work at the sole cost of the Landowners.

3.4.1 **Natural Events.** Repair or replacement of the Work due to natural events is not the responsibility of the Landowners under this Agreement.

3.5 **OWEB, Funder Right of Entry.** The Landowners agree to allow the OWEB Board, or other funding entities, and its representatives access to the site where the work is being carried out for inspection and evaluation.

3.6 **Public Information.** The Landowners will treat information relating to the Work, including grant funding and reporting documents as public record and therefore accessible by the public. The Landowners acknowledge that they are aware of funding applications to OWEB and that information relating to the work, and it's effectiveness monitoring data is public record.

3.7 **Sale of Landowners' Property.** During the term of this Agreement, the Landowners shall notify the Tribe within 90 days of any sale, foreclosure, or other transfer of the Landowners' property described in paragraph C above.

3.8 **Landowner Transferability.** This Agreement is not transferable with the property. In the event that the Landowner sells the property, this Agreement will be terminated under the termination clause in this Agreement.

SECTION 4: Timetable/Termination

4.1 The term of this Agreement shall begin when all parties sign this Agreement and is effective through December 31, 2045.

4.2 Construction of the Work is anticipated take five-seven field seasons, beginning on or around May 1, 2026, and ending on or before December 31, 2033.

4.3 This Agreement shall terminate at any time if funds cease to be available. If this Agreement is terminated pursuant to this subsection, the Tribe shall send written notice to Landowners.

SECTION 5: Indemnification

To the fullest extent permitted by law, the Tribe shall indemnify and hold harmless Landowners from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, or resulting from, the performance of this Agreement, provided that any such claim, damage, loss, or expense is not caused in whole or in part by any negligent act or omission of Landowners, anyone directly employed by Landowners, or anyone for whom Landowners may be liable.

SECTION 6: Officials, Agents, and Employees of the Tribe Not Personally Liable

In no event shall any official, officer, employee, or agent of the Tribe be personally liable or responsible for: any covenant, whether expressed or implied; any statement, representation, or warranty made in connection with this Agreement, or any provision thereof; or the performance of this Agreement.

SECTION 7: Binding Effect

This Agreement is for the benefit only of the parties hereto and shall inure to and bind the parties hereto and their respective heirs, legal representatives, successors, and assigns.

SECTION 8: Notice

Any notice under this Agreement shall be in writing and delivered in person or by public or private courier service including: the U.S. Postal Service Express Mail or certified mail, with return receipt

requested, or by email. Any notice shall be addressed to the parties at the following addresses or at such other addresses as the parties may, from time-to-time, direct in writing.

NEZ PERCE TRIBE:

Both Departmental and Tribal Notification are required.

Departmental Notification to:

Name: Kathryn Frenyea

Title: Project Leader IV

Address: P.O Box 909

Phone: 541-432-2506

Email: kathrynf@nezperce.org

Tribal Notification to:

Nez Perce Tribal Executive Committee

P.O. Box 305

Lapwai, ID 83540

Phone: (208) 843-2253

Email: NPTEC@nezperce.org

LANDOWNER:

Name: John P Top

Title: Owner

Address: 11820 Quail Run Rd

Phone: 509-840-0342

Email: john.topplive@gmail.com

Any notice shall be deemed to have been given on the earlier of (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day email delivery is verified. Actual notice, however and from whomever received, shall always be effective.

SECTION 9: Disputes

In the event of a dispute or controversy arising out of or in connection with this Agreement, the parties agree to use good faith efforts to resolve the dispute. If the parties are unable to resolve the dispute amongst themselves, the parties agree to submit the matter to mediation for resolution. Any single party may initiate mediation upon seven (7) calendar days' prior notice to the other parties. The parties will mutually agree upon the selection of the mediator. If the parties are unable to agree upon the selection of the mediator, the matter will be submitted to the Wallowa County Circuit Court for the appointment of a mediator. The costs of the mediators shall be equally shared by the parties.

SECTION 10: Sovereign Immunity

The Tribe hereby agrees to waive its sovereign immunity from suit for the sole and limited purpose of enforcement of the Agreement; provided however that (1) this waiver is limited to the recovery of not more than the amount of this Agreement, and (2) the payment of any amount shall not be paid with any real property belonging to the Tribe, and (3) this waiver does not extend to nor allow any award of punitive, exemplary, or other damages against the Tribe.

SECTION 11: Compensation.

No compensation is associated with this Agreement.

SECTION 12: Severability

If any terms of this Agreement are deemed to be illegal, void, or unenforceable, the remainder of the provisions herein shall remain valid and enforceable.

SECTION 13: Force Majeure

If the Tribe is unable to perform its duties as described herein, in whole or in part, due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the Tribe, the parties shall negotiate in good faith to reach an amicable settlement.

SECTION 14: Representations

- 14.1 Tribe and Landowners represent and warrant that they have the full right and legal authority to enter into and fully perform its duties under this Agreement, in accordance with this Agreement's terms, without violating the rights of any third party and that it has all governmental licenses, permits, or other authorizations necessary to perform the duties herein described.
- 14.2 The individuals executing this Agreement on behalf of the Tribe represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of the Tribe in accordance with the Tribe's Revised Constitution and By-Laws adopted by the General Council of the Nez Perce Tribe on May 6, 1961, and approved by the Acting Commissioner of Indian Affairs on June 27, 1961.

SECTION 15: Insurance

Tribe shall obtain and maintain comprehensive general liability insurance in an aggregate amount equal to or exceeding \$1,000,000, which includes the type of work being performed by the Tribe and Tribe's employees and agents under this Agreement.

SECTION 16: Warranties

The Tribe shall perform work in a professional, thorough, and skillful manner consistent with its profession's standards in the Pacific Northwest region. The Tribe warrants that all of Tribe's employees or agents are properly certified to perform the work described herein and that Tribe and its employees or agents shall comply with all applicable laws, licenses, and other requirements.

SECTION 17: Entire Agreement/Amendment

This Agreement constitutes the entire understanding between the parties with respect to the subject matter herein and shall not be amended except by agreement signed by the parties' authorized representatives. If an amendment results in an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Agreement, a mutually satisfactory adjustment shall be made, in writing, or via the delivery schedule.

IN WITNESS WHEREOF, the parties agree to the provisions set forth herein as evidenced by the signatures of their authorized representatives below:

NEZ PERCE TRIBE:

Shannon F. Wheeler, Chairman
Nez Perce Tribal Executive Committee

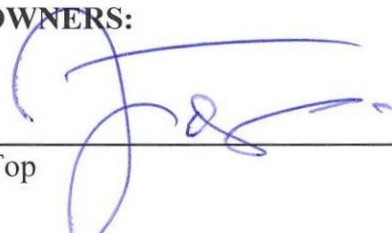
Date

Rachel P. Edwards, Secretary
Nez Perce Tribal Executive Committee

Date

LANDOWNERS:

John P Top



Date

11/5/25

ATTACHMENT A

Project Description

Background

The current project reach is located on private land along Chesnimnus Creek, a tributary to Joseph Creek, roughly 35 miles northeast of Enterprise, OR. The upstream property boundary abutts USFS land. The project reach has been straightened, incised, and confined, resulting in a lack of floodplain connectivity. Combined with a homogenous channel bed and seasonally limited stream flow, the project reach provides little quantity and quality habitat value to juvenile steelhead. Chesnimnus Creek is a designated Major Spawning Area for the Joseph Creek Steelhead Population - the most viable wild steelhead population within the Snake River Basin.

Engineered designs have been developed for the entire 5.5-mile property, which will be phased and implemented in four distinct Zones (1-4). This agreement pertains to the implementation of all four zones. Contingent on securing funds and all required permits, implementation is slated to occur according to the following schedule:

2026-2027 2.27-mile reach located immediately below the ranch house, extending to the downstream end of the property.

Project designs aim to:

- Restore hydraulic processes, floodplain connection, and habitat structure
- Protect and enhancing existing riparian vegetation
- Restore riparian processes
- Protect and enhance existing beaver habitat and area of influence

2027-2028 Remaining 2.7-mile reach located immediately upstream of the ranch house, extending to the upstream FS Boundary.

Project designs aim to:

- Restore hydraulic processes, floodplain connection, and habitat structure
- Protect and enhancing existing riparian vegetation
- Restore riparian processes
- Protect and enhance existing beaver habitat and area of influence
- Repair or retrofit Pine Crk bridge
- Relocate USFS road at upstream extent of Top property

2028-2033-

- Complete any uncompleted riverine, riparian or infrastructure work as approved, permitted, and planned as per the final design set
- Restore riparian processes
- Complete noxious weed assessments and treatments as recommended by local practitioners, experts, and landowner preference.