

DEPARTMENT OF THE ARMY LICENSE

BONNEVILLE, THE DALLES and JOHN DAY LOCK AND DAM PROJECT(S)

MULTNOMAH, WASCO and SHERMAN COUNTIES, OREGON

SKAMANIA and KLICKITAT COUNTIES, WASHINGTON

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under authority of the general administrative authority of the Secretary, hereby grants to **THE COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION**, hereinafter referred to as the Grantee, a nonexclusive license for access across project lands for the purpose of access and use of the Bonneville Power Administration (BPA) owned Captive Broodstock Building (CBB) for holding of lamprey, and also for access and use of the Bonneville Adult Fish Facility (AFF) as an alternate holding location and the John Day Smolt Monitoring Facility (SMF) for alternative holding of lamprey and for temporary holding for transferring fish in order to conduct research in accordance with the Tribal Pacific Lamprey Restoration Plan for the Columbia River Basin, over, across, in and upon lands of the United States, as identified and described on **EXHIBIT "A"**, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term of **one (1)** year, beginning upon execution by the Department of the Army but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be the construction, operation and maintenance of the premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this license shall be addressed, if to the Grantee, to **Columbia River Inter-Tribal Fish Commission (CRITFC), 700 NE Multnomah Street, Suite 1200, Portland, Oregon 97232** and if to the United States, to the District Engineer, Attention: Chief of Real Estate, Portland District, PO Box 2946, Portland, Oregon 97208-2946; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid,

and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupancy of the premises shall be subject to the general supervision and approval of the District Engineer, Portland District, hereinafter referred to as said officer, and subject to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises.
- c. subject to other outgrants of the United States on the premises.
- d. personal to the Grantee, and this license, or any interest therein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The Grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the

use of the Grantee, including the Grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The Grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Grantee. The Grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. RESTORATION

On or before the expiration of this license or its termination by the Grantee, the Grantee shall vacate the premises, remove the property of the Grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the Grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

12. NON-DISCRIMINATION

a. To the extent required by federal law, the Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. To the extent required by federal law, the Grantee, by acceptance of this license, is receiving a type of Federal assistance and, therefore, hereby gives assurance that will comply with all legally applicable provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29

U.S.C. Section 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 195) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

13. TERMINATION

This license may be terminated by the Grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the Grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

14. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

c. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

15. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

16. EXECUTIVE ORDER 13658

It has been determined this contract is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order.

17. EXECUTIVE ORDER 13658 HOLD HARMLESS AND INDEMNIFICATION

If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

18. EXECUTIVE ORDER 13706

It has been determined this contract is not subject to Executive Order 13706 or the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order.

19. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the Grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC Section 403), and Section 404 of the Clean Waters Act (33 USC Section 1344).

20. SPECIAL CONDITIONS

a. The Grantee shall coordinate all activities with the U.S. Army Corps of Engineers' (Corps) Project representatives and provide copies of documents to the following points of contact (POCs):

All Projects: Darren Gallion, 541-374-3653, Darren.G.Gallion@usace.army.mil

And to the Research Coordinator at each Project (listed below)

Bonneville: Andrew Derugin, 541-374-3877, Andrew.G.Derugin@usace.army.mil

The Dalles: Jeff Randall, 541-506-7861, Jeffrey.W.Randall@usace.army.mil

John Day: Michael Lotspeich 541-506-7861,
Michael.D.Lotspeich@usace.army.mil

b. Condition no. 12, above, shall not be interpreted or applied in a manner that conflicts with exemptions, from the requirements of the equal opportunity clause, for Native American employment preference recognized under 41 C.F.R. § 60-1.5(a)(7).

c. All traps will be deployed in locations coordinated with and approved by the Project POC. Prior to beginning work Grantee will arrange a meeting with the Project POC to coordinate locations, access requirements, security badging, safety briefs, training, or any other requirements of project use and access as may be required. A project impact statement, job hazard analysis, copies of permits, and a personnel list will be submitted to the Project POCs prior to accessing the site for collection and holding purposes.

d. The care and safety of fish during collection, holding and transportation is the responsibility of the Grantee at all times while using the premises.

e. Grantee is responsible for obtaining all necessary Endangered Species Act (ESA), state and tribal permits that may be required. No work may begin until valid and current permits, or an explanation as to why permits are not required are on file with the Project representatives.

f. Due to COVID-19, access to the Projects may be limited. Communication between Corps and Grantee personnel will be ongoing throughout the season to comply with the most current safety practices. Access guidance is subject to change at any time during the season due to COVID-19 related safety measures. Grantee is responsible for staying updated on changes to guidance.

g. Grantee is required to comply with all requirements found in the current Project Fish Passage Operations and Maintenance (FPOM) fish research access requirements and access guides, which are hereby incorporated herein by reference. Documents can be found at:

<http://pweb.crohms.org/tmt/documents/FPOM/2010/NWP%20Research/Research.html>

h. Grantee shall remain in contact with the Project POC while present at a Project. There are many researchers and contractors working in the area, so Grantee shall work to ensure good communication and cooperation between agencies and organizations.

i. Grantee is responsible for securing access permissions from the Bonneville Power Administration (BPA) to utilize the BPA-owned Captive Broodstock Building (CBB) for holding of lamprey. Prior to accessing the CBB, Grantee shall provide a copy of BPA's access permission document to the U.S. Army Corps of Engineers' Real Estate Contracting Officer at the address specified in Condition no. 3 "Notices."

j. Bonneville Project Specific Requirements. Grantee shall comply with the following requirements for access to, and use of, the premises at Bonneville Project:

(1) CRITFC will be responsible for setting and checking of traps, both behind picket leads and within the Adult Fish Facility (AFF) ladder. Tribal access for deploying traps and collecting, holding, and transporting Lamprey is granted only to the following areas:

- AFF
- Washington Shore Auxiliary Water Supply (AWS)
- Bradford Island AWS
- Cascade Island AWS, to include the newly constructed trap and existing winch operated tube traps
- Powerhouse 2 north monolith Lamprey Flume Structure (LFS) if operated

(2) Grantee shall coordinate AFF holding tank use through the Bonneville POC to avoid conflict with other groups using the facility.

(3) Grantee shall complete Project-specific access documents for Bonneville Project, including a work plan, an Activity Hazard Analysis (AHA), and an Accident Prevention Plan (APP). The current version of the Corps' Engineer Manual (EM) 385-1-1 Safety and Health Requirements Manual will be used as the reference for all safety planning. Instructions for these documents are found in the Bonneville Research Guide available on the FPOM website or from Project Biologists.

k. The Dalles Project Specific Requirements. Grantee shall comply with the following requirements for access to, and use of, the premises at The Dalles Project:

(1) CRITFC will be responsible for setting and checking of traps behind picket leads. Tribal access for deploying traps and collecting and transporting Lamprey is granted only to the following areas:

- East Count Station
- North Count Station

(2) Grantee shall complete Project-specific access documents for The Dalles Project, including a work plan, an AHA, and an APP. The current version of the Corps' EM 385-1-1 Safety and Health Requirements Manual will be used as the reference for all safety planning. Instructions for these documents are found in The Dalles Research Guide available on the FPOM website or from Project Biologists.

I. John Day Project Specific Requirements: Grantee shall comply with the following requirements for access to, and use of, the premises at John Day Project:

(1) The preferred method for accessing the NFL lamprey passage system is by elevator. The elevator is outdated and frequently out of service. The alternative method to transport fish is by stairs that cover 100' in elevation. Carrying fish up the stairs is very difficult on personnel and on fish. Additionally, during the COVID pandemic (or unforeseen conditions), it may be necessary for Grantee personnel to collect fish with little or no assistance from John Day Project personnel. CRITFC will be responsible for setting and checking of traps. Any equipment, other than Government-owned equipment, must be approved by Project personnel before use.

(2) Grantee shall complete Project-specific access documents for John Day Project, including a work plan, an AHA, and an APP. The current version of the Corps' EM 385-1-1 Safety and Health Requirements Manual will be used as the reference for all safety planning. Instructions for these documents are found in the John Day Research Guide available on the FPOM Website or from Project Biologists.

m. The Grantee shall provide to the Project POCs a roster of individuals, by name, authorized to access the premises to participate in the research program contemplated under this License prior to such individuals accessing the premises.

{Signature Pages Follow}

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 15th day of June, 2022.

AMANDA J. DETHMAN
Chief of Real Estate
Real Estate Contracting Officer

THIS LICENSE is also executed by the Grantee this 26 day of May, 2022.

**COLUMBIA RIVER INTER -TRIBAL
FISH COMMISSION**

Aja K. DeCoteau
Aja K. DeCoteau
Executive Director
CRITFC

CERTIFICATE OF AUTHORITY

I, Jonathan E. Matthews, certify that I am the Chief Financial Officer
(Name) (Title)
Of The Columbia River Inter-Tribal Fish Commission, that **Aja K. DeCoteau** who signed
the foregoing instrument on behalf of the Grantee was then Executive Director of The
Columbia River Inter-Tribal Fish Commission. I further certify that the said officer was
acting within the scope of powers delegated by the governing body of the Grantee in
executing said instrument.

**COLUMBIA RIVER INTER -TRIBAL
FISH COMMISSION**

Date: 5/25/2022

Jonathan E. Matthews, CFO

Clerk or Appropriate Official