



## Nason Creek Fish Passage Barrier Assessment

### Request for Proposals

June 20, 2019

**Columbia River**  
Honor. Protect. Restore.

**OFFICE**

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Yakama Nation Fisheries is seeking proposals from qualified engineering firms to award a fish passage barrier assessment contract in support of salmon habitat restoration activities taking place in Nason Creek in Chelan County, Washington. This barrier assessment will cover site investigation and hydraulic analysis of two suspected natural fish passage barriers upstream of the confluence of Whitepine Creek with Nason Creek at Rivermile 16. Based upon the proposals received under this solicitation the Confederated Tribes and Bands of the Yakama Nation will award an assessment services contract to the best quality bidder for the Scope of Work described within this RFP. Services rendered under this contract will be performed through December 31, 2019.

### Project Background

The upstream extent of anadromous fish use in Nason Creek is not well understood. The objective of this assessment is to analyze fish passage at two locations on Nason Creek to understand the fish passage dynamics at Gaynor Falls at RM 16.8, and to definitively find the end of anadromy in Nason Creek above Gaynor Falls. The Salmon, Steelhead, and Bull Trout Habitat Limiting Factors for the Wenatchee Subbasin Report (Andonaegui, 2001) states the following about passage barriers on Nason Creek:

- Nason Creek (45.0888). At RM 16.8 (Gaynor Falls) on Nason Creek there is a box canyon of bedrock falls and cascades that is a passage barrier to spring chinook and sockeye (USFS 1996).
- Nason Creek. At RM 20.5 on Nason Creek (at Bygone Byways, approximately 0.5 mile above Mill Creek), there is a bedrock falls and cascades that are a barrier to steelhead, bull trout and historically, coho (USFS 1996).

# Proposed Scope of Work

## *Phase 1 – Data Collection and Modelling*

### Task 1 –Existing data review

The contractor will review existing data that will aid in the fish passage assessment. It is assumed this data consists of fish habitat survey, stream flow data, historical air photos, geomorphic field survey, hydrology, and hydraulic analysis.

### Task 2 - Stream Reconnaissance

The location of the suspected barrier at Gaynor Falls is well understood and will be directly analyzed under this contract. The location of one or more fish barriers near Bygone Byways is not well understood and a reconnaissance level field assessment of up to eight miles of stream channel may need to be conducted to explore and define the potential end of anadromous fish access in Nason Creek.

Once the suspected barrier locations are better understood, stream reconnaissance around both suspected passage barriers should be completed by a fish biologist and geomorphologist, following a downstream-to-upstream orientation. Observations made during the reconnaissance should include land use effects, channel and floodplain features, infrastructure, streambank and general vegetation conditions, water temperatures, and channel morphology. Ground photos should be taken throughout the reconnaissance reaches to document conditions. Observations shall be recorded by field personnel and provided in digital form. Georeferenced ground photos should also be collected.

### Task 3 - Topographic Survey

Survey grade topographic and channel bathymetry data shall be collected at the two suspected fish passage barrier sites. Monumented survey control benchmarks will be located at each survey location to establish vertical and horizontal positions. The survey will be used for stream characterization and hydraulic modeling purposes. Survey point and cross section densities should be developed to inform a high precision 2D hydraulic model that can be used to evaluate local flow velocities and flow direction, lateral variation in velocity or hydraulic parameters, and flow direction and magnitude around channel obstructions within the channel, such as boulders.

### Task 4 - Hydrology and Hydraulics

Watershed hydrology will be developed using regional equations prepared for the Wenatchee region (WRIA #45). Basin metrics will be used in the regression model to calculate the minimum, mean, and maximum monthly flows which correspond to the fish migration timing in Nason Creek.

### Task 5 - Hydraulic Modeling

Existing hydraulic conditions at the two fish passage sites will be modeled using 2D modeling software such as the U.S. Bureau of Reclamations 2-dimensional model, SRH-2D, or equivalent. Steady-state flow, 2-dimensional hydraulics over a channel bed of fixed topography will be evaluated. Modeled flows with geomorphic and biological significance will be evaluated. Calibration of the 2D model will be based on surveyed water surface elevations and measured discharges collected during the field data collection.

## *Phase 2 – Assessment and Reporting*

### Task 6 - Fish Passage Barrier Analysis

The fish passage barrier analysis will include four primary elements. First, fish passage criteria for salmonids presented by Washington Department of Fish and Wildlife (WDFW) and the National Marine Fisheries Services (NMFS) will be reviewed. Secondly, fish passage performance metrics for steelhead, chinook, coho, and bull trout will be summarized from the literature. Next, topographic survey data collected in the field will be processed and analyzed to determine how channel slope and discrete vertical drops in the channel profile compare to fish passage criteria. Finally, the 2D model will be used to assess water surface profiles, vertical drops, and plunge pool depths at various flows. The hydraulic modeling results will be summarized and also used to compute the energy dissipation factor (EDF) in the pools downstream from the primary vertical drops.

### Task 7 – Report and Data Deliverables

A technical report summarizing the findings from Phase 1 and the Fish Passage Barrier Analysis will be provided. The report will include a maximum 2 page summary chapter that concludes the likelihood of whether the suspected barriers at Gaynor Falls and Bygone Byways precludes passage for each anadromous species in Nason Creek. A draft report will be provided for review by Yakama Nation staff once all Phase 1 and Task 6 tasks are completed. The contractor will incorporate comments and edits provided by Yakama Nation staff to produce a final report that will be provided in both digital and hardcopy form. 5 hardcopies will be produced and provided to Yakama Nation Fisheries.

At the completion of the report, the contractor will also organize and provide to Yakama Nation Fisheries all field data, survey, hydraulic modeling, and fish passage computational worksheets in digital form.

### Task 8 – Meetings and Presentations

The contractor will assist in presenting the methods and findings of the Fish Passage Barrier Analysis to regional stakeholders. Project planning meetings will also be conducted in the Wenatchee area. The contractor will attend at least 3 project planning meetings and be prepared to provide two regional stakeholder presentations.

## *Anticipated Schedule*

Survey should be completed in August/September 2019. The draft report should be provided to Yakama Nation Fisheries by early November, 2019. Presentations will occur in November and December 2019.

## **Bid Directions**

Each firm seeking to be eligible for a contract award under this Request for Proposals must submit one hardcopy of their proposal in writing to:

Yakama Nation Fisheries  
Attn: Jackie Olney  
PO Box 151  
401 Fort Road (if using a shipping service)  
Toppenish, WA 98948

Proposals must be received by Close of Business, Wednesday, July 10, 2019. Only hand deliveries and/or mail or parcel delivery service submittals will be accepted. Please clearly state "Nason Headwaters Fish Barrier Assessment RFP" on the shipping envelope and the cover letter of the proposal. It is recommended that all shipping and/or delivery confirmation receipts are retained past the proposal due date to ensure proof of submission.

Each proposal must include a roster of key personnel proposed to work under this contract, including resumes. The key personnel roster should include the proposed fish biologist, at least one licensed geologist with expertise in fluvial geomorphology, and one licensed professional engineer. Provision of a separate roster of other non-key project personnel is also recommended. Please note that proposals dependent upon subcontracting will not be preferred.

Provision of a detailed cost proposal based upon the Scope of Work items and certified by signature as being valid for at least 180 days is required. A company fee schedule detailing all personnel billing rates is also required. Please also provide a schedule/timeline proposal for completing the described tasks by December 31, 2019.

Please review the attached Consultant Services Agreement template for typical Yakama Nation contracting terms and conditions including reporting/invoicing requirements.

### **Project related questions should be directed to:**

Jason Breidert, Fisheries Habitat Biologist II  
Phone: 509-860-5351  
E-mail: brej@yakamafish-nsn.gov

## **Bid Scoring Categories and Weighting**

The following categories will be used to evaluate the competitiveness of bids received.

- Demonstrated experience with this type of work – 15%
- Demonstrated quality of work – 15%
- Cost – 15%
- Schedule – 10%
- Company integrity/references – 10%
- Demonstrated experience with permitting agencies in the Upper Columbia Region – 10%
- Adequacy/quality of staff and equipment proposed – 15%
- Completeness of Proposal (Based on RFP Submission Requirements) – 10%

## **Limitations**

The Yakama Nation reserves the right to accept or reject any and all of the proposals received as a result of this request, or to cancel in part or entirely this request if it is in the best interest of the Yakama Nation to do so. This request does not commit the Yakama Nation to pay any costs incurred in the preparation of a proposal.

The contractor shall furnish all supervision, labor, equipment and tools necessary to complete the work as outlined in the Scope of Work.

## CONSULTANT SERVICES AGREEMENT

This consultant services agreement is between the CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION, a sovereign native nation with its governmental headquarters located at P.O. Box 151 / 401 Fort Road, Toppenish, WA 98948 on the Yakama Reservation (“**Yakama Nation**”), and [CONSULTANT’S NAME], EIN Number [REDACTED], with its primary place of business located at [address] (“**Consultant**”).

The Yakama Nation wants to obtain technical assistance to accomplish the project, task, study, or other work described in Exhibit A (Scope of Work) to this agreement.

Consultant states that it has the necessary technical expertise, skill, and capability to complete the Work for the Yakama Nation.

The parties therefore agree as follows:

### ARTICLE 1. STATEMENT OF SERVICES

1.01 **Work & Standard of Performance.** Consultant shall perform the work described in Exhibit A (Scope of Work) to this agreement (the “**Work**”). Consultant shall, at its sole expense, provide all labor, services, and equipment necessary to complete the Work timely and to the Yakama Nation’s satisfaction, except as expressly provided otherwise in this agreement. Consultant’s performance shall comply with applicable tribal, federal, state, and local law and policy, and be consistent with generally accepted professional best practices, both of which Consultant states it has knowledge of.

1.02 **Term.** This agreement will be effective on the date when both parties have signed it, and will terminate as set forth below, unless terminated earlier in accordance with Article 9 of this agreement (if neither option is selected, Option B shall be the default):

*Option A:* On \_\_\_ December 31 \_\_\_, 2019 \_\_\_

*Option B:* Upon Consultant’s satisfactory performance of the Work.

1.03 **Prior Performance.** If the Consultant has performed any Work prior to the start date of this agreement, then this agreement will govern such prior performance. Except that the Consultant’s invoicing obligations, and the Yakama Nation’s associated payment obligations, as set forth in Exhibit C (Payment Terms), will not arise until the start date of this agreement.

1.04 **Key Personnel.** If any of Consultant’s employees or agents are specifically identified in Exhibit A (Scope of Work) as the employee(s) or agent(s) expected to perform the Work, they will be considered “**Key Personnel**” for purposes of this agreement. Consultant shall ensure that Key Personnel

continue to be assigned to the Work until its completion, unless Consultant obtains the Yakama Nation Project Manager's written consent to a staff substitution.

## ARTICLE 2. COMPENSATION

2.01 **Maximum Compensation.** The maximum total compensation approved by the Yakama Nation and payable to Consultant for Work under this agreement is \$\_\_\_\_\_. The Yakama Nation shall not pay Consultant more than this maximum amount for the Work. Consultant acknowledges that this maximum amount (a) is sufficient to perform the Work and (b) includes all eligible expenses associated with Consultant's performance of the Work.

2.02 **Rates/Fees/Payments.** The Yakama Nation shall make payments to Consultant according to the billing rate(s) and/or fee schedule(s) and the invoicing and payment terms described in Exhibit B (Budget) and Exhibit C (Payment Terms) to this agreement.

2.03 **Expenses.** The Yakama Nation shall only compensate Consultant for eligible expenses directly associated with the performance of the Work. Consultant acknowledges that eligible expenses are limited to those reasonable expenses incurred with the prior written approval of the Yakama Nation, for which the Consultant provides a reasonably detailed receipt or other proper proof. The Yakama Nation shall pay eligible expenses, including any authorized travel expenses, consistent with applicable tribal and federal law and policy.

2.04 **Federal or Grant Funds.** Consultant acknowledges that federal or grant funds utilized to compensate Consultant may be subject to certain requirements and restrictions, which may include, but are not limited to 2 C.F.R. Part 200. Consultant shall utilize funds in accordance with applicable funding requirements and restrictions, and shall reimburse the Yakama Nation for any expenses that are paid by the Yakama Nation but subsequently disallowed by the federal agency or other grantor.

## ARTICLE 3. PROJECT MANAGEMENT

3.01 **Project Managers.** Each party will designate an internal project manager to facilitate the completion of the Work. Being designated as a party's project manager does *not* endow the representative with any legal authority to bind that party. Either party may change their project manager by giving notice to the other party.

(a) The Yakama Nation's Project Manager is [Name]. S/he may be reached at [Phone], or [email].

(b) The Consultant's Project Manager is [Name]. S/he may be reached at [Phone], or [email].

## ARTICLE 4. LEGAL NOTICE

4.01 **Valid Notice.** For a notice under this agreement to be valid, it must be in writing, properly addressed to the party's current legal contact, and delivered (a) by a national transportation company with all fees prepaid and receipt signature required, or (b) by USPS certified mail, return receipt requested, postage prepaid. Notice will be effective upon the date of receipt. Either party may change its designated address or recipient for legal notice by giving the other party reasonable notice of such change.

4.02 **Notice to the Yakama Nation.** Notice to the Yakama Nation must be sent to the Tribal Council Chairman at P.O. Box 151 / 401 Fort Road, Toppenish, WA 98948, with courtesy copies to the Yakama Nation's Project Manager electronically at their email address listed above in section 3.01(a), and to the Yakama Nation Office of Legal Counsel at P.O. Box 150 / 401 Fort Road, Toppenish, WA 98948.

4.03 **Notice to Consultant.** Notice to Consultant must be sent to \_\_\_\_\_ at \_\_\_\_\_.

## ARTICLE 5. RECORDS, ACCOUNTING & AUDITS

5.01 **Recordkeeping.** Consultant shall maintain auditable records during the term of this Agreement and for a period of at least three (3) years following the termination of this Agreement. Consultant shall comply with the Audit Act of 1984, P.L. 98-502 (31 U.S.C. § 7501 et. seq.), as amended, and the Office of Management and Budget's Uniform Guidance requirements set forth at, 2 C.F.R. Part 200, Subpart F, as amended, in maintaining its records.

5.02 **Accounting.** Consultant shall adhere to a systematic accounting method in performing the Work to ensure timely and appropriate resolution of audit findings and recommendations, and compliance with the Office of Management and Budget's Uniform Guidance requirements set forth at, 2 C.F.R. Part 200, Subpart F, as amended.

5.03 **Audits.** Except as prohibited by law, the Yakama Nation, the United States (if applicable), and any grantor agency (if applicable), or their duly authorized representative(s), may audit, examine, request, or make copies of Consultant's records that concern or are relevant to the subject matter of this agreement or to Consultant's performance of its obligations under this agreement. Consultant shall provide such authorized auditors with timely access to its records.

5.04 **Access to Yakama Nation Records, Personnel & Facilities.** Except as prohibited by law, the Yakama Nation shall provide Consultant with reasonable access to its personnel, facilities, and records necessary for Consultant's performance of this agreement.

5.05 **Confidential Information.** If the Yakama Nation provides Consultant with documents or information typically maintained as confidential by the Yakama Nation ("**Confidential Information**"), Consultant shall make all reasonable efforts, and take all reasonable precautions, to prevent the



disclosure of that Confidential Information to non-parties, except as may be required by law or court order. Consultant shall not use Confidential Information for any purpose except the performance of this agreement.

5.06 **Continuing Obligation.** Consultant's obligations under Article 5 of this agreement are intended to survive the termination of this agreement.

#### ARTICLE 6. WORK PRODUCT

6.01 **Definition.** "Work Product" includes, but is not limited to, all papers, reports, information, drawings, internal memoranda, files, proposals, papers, copyrights, patents, photographs, data, and all written or graphic material, or any other material or property, whether stored electronically or in hard copy, in any format including native formats, and however produced, prepared, collected, generated, or created by the Consultant in connection with this agreement.

6.02 **Ownership.** Consultant acknowledges that all Work Product it produces pursuant to this agreement will be works for hire, which the Yakama Nation will own, and which Consultant will not retain any interest in or rights to. Consultant shall give all its Work Product to the Yakama Nation promptly upon the termination of this agreement or upon request.

#### ARTICLE 7. RISK MANAGEMENT

7.01 **Insurance Requirement.** Consultant shall be required to purchase and maintain insurance during the term of this agreement, as set forth in Section 7.02 below:  YES  NO. (If neither box is checked, insurance is required.)

7.02 **Insurance Coverage.** If insurance is required under Section 7.01, Consultant shall, at its own expense, maintain the following minimum insurance coverage during the term of this agreement and for a period of three years following the completion of the Work:

(a) Either Commercial General Liability Insurance OR Professional Liability Insurance, including errors and omissions insurance, in the amount of at least one million dollars per occurrence and two million dollars aggregate.

(b) If the performance of the Work requires Consultant to use one or more automobiles, Commercial Automobile Insurance coverage for all vehicles used in performance of the Work in an amount equal to the greater of either (i) one million dollars, or (ii) any other amount specified by applicable law.

(c) Any other insurance coverage required by applicable law, which may include (but may not be limited to) workers compensation insurance or disability benefits insurance.

7.03 **Additional Insured.** Consultant shall name the Yakama Nation as an additional insured on its applicable insurance policies, and at the Yakama Nation's request shall provide the Yakama Nation with certificates of insurance and copies of the relevant policies.

7.04 **No Subrogation.** Consultant hereby waives for insurance purposes all subrogation rights it may have against the Yakama Nation and any of the Yakama Nation's officers, agents, employees, governmental entities, contractors, or subcontractors.

7.05 **Indemnification.** Consultant shall, at its expense, indemnify and (at the Yakama Nation's discretion, and with counsel acceptable to the Yakama Nation) defend the Yakama Nation and its officers, agents, employees, and assigns (each and all considered the "Yakama Nation" for purposes of this Section 7.02) against *any* claim, demand, judgment, loss, cost, damage, expense or other liability whatsoever, including legal fees and expenses, which are incurred by or claimed against the Yakama Nation and arise, either directly or indirectly, from any error, action, omission, or breach of contract by Consultant or its officers, agents, employees, or subcontractors. The requirements of this Section 7.05 are intended to survive the termination of this agreement.

7.06 **Injunctive Relief.** Consultant acknowledges that its breach or threatened breach of Article 5 or Article 6 of this agreement would cause irreparable injury to the Yakama Nation, which could not be adequately compensated by money damages. Consultant further acknowledges that injunctive relief to enforce Articles 5 & 6 of this agreement would be proper.

#### **ARTICLE 8. DISPUTE RESOLUTION**

8.01 **Negotiation.** If the parties disagree about the performance, interpretation, or enforcement of this agreement, they shall first attempt to resolve their disagreement informally through (a) dialogue between their project managers, and then (b) face-to-face negotiations between their leaders, which must be held in Toppenish, WA. If the parties cannot resolve their disagreement after taking these steps, it will be deemed a 'dispute'.

8.02 **Mediation.** The parties shall endeavor to resolve any disputes through non-binding mediation before resorting to any other dispute resolution procedure. Such mediation must be held at a mutually agreeable location in Yakima, Washington. Any demand for mediation must be made in writing and delivered to the other party in accordance with the provisions of Article 4 (Notice) of this agreement. The parties shall share equally the costs of hiring a mediator and securing a suitable location for the mediation proceedings. The requirements of this Section 8.02 are intended to survive the termination of this agreement.

#### **ARTICLE 9. TERMINATION**

9.01 **For Convenience.** Either party may terminate this agreement by giving to the other party at least 90 days prior written notice. The notice must specify the effective date of termination.

9.02 **For Breach.** Either party may immediately terminate this agreement by written notice following a material breach by the other party. The parties acknowledge that the terms of Article 5 (Records, Accounting & Audits), Article 7 (Risk Management), Section 1.04 (Key Personnel), and Section 2.02 (Rates/Fees/Payment) are material terms. Consultant acknowledges that time is of the essence for performance of the Work.

9.03 **By Tribal Council Executive Committee.** The Yakama Nation Tribal Council Executive Committee may immediately terminate this agreement upon written notice to Consultant.

9.04 **Effect.** Termination of this agreement will not relieve either party of any liabilities or claims against it that arise under this agreement before the agreement is terminated. Termination will not limit the Yakama Nation's rights or remedies at law or equity, including, but not limited to, the right to contract with other qualified persons to complete the Work.

## ARTICLE 10. GENERAL TERMS

10.01 **Independent Contractor.** Consultant acknowledges that it is an independent contractor and not an agent or employee of the Yakama Nation for purposes of this agreement. The parties state that they are not engaged in a joint venture or partnership.

10.02 **Conflicts.** During the term of this agreement, Consultant shall not accept work from any non-party, which would create a real or apparent conflict of interest with Consultant's performance of the Work for the Yakama Nation.

10.03 **Subcontractors.** Consultant shall not hire a subcontractor to perform any portion of the Work for this Agreement, except as expressly authorized in writing by the Yakama Nation. Where the Yakama Nation has authorized Consultant's hiring of a subcontractor, Consultant shall require the subcontractor to comply with all relevant terms and conditions of this agreement in performing their portion of the Work. Any unauthorized attempt by Consultant to subcontract the Work must be null and void, and Consultant shall be responsible for all expenses, fees, and costs associated with the unauthorized subcontract(s).

10.04 **Fair Employment Practices.** Consultant shall not discriminate against any employee or applicant for employment because of handicap, race, age, religion, sex, gender, or sexual orientation. Consultant shall take affirmative steps to ensure that applicants and employees are treated fairly during hiring and employment.

10.05 **Indian Preference Employment.** When Consultant performs Work within the boundaries of the Yakama Reservation, or on Yakama property outside the boundaries of the Yakama Reservation, Consultant acknowledges that it is subject to and shall comply with applicable Indian preference employment laws of the Yakama Nation, including its Tribal Employment Rights Ordinance (Yakama Revised Law & Order Code, Title 71, as amended) ("**TERO**"). Consultant further acknowledges

that under Section 703(i) of the 1964 Civil Rights Act, it may implement an Indian Preference hiring policy for all work performed near (within reasonable commuting distance from) an Indian reservation. Consultant hereby adopts the TERO and its associated policies as its Indian preference hiring policy for all Work it performs near the Yakama Reservation, and shall publicize the same.

**10.06 Permits and Approvals; Taxes and Fees.** The Consultant shall, at its expense, obtain any and all permits, approvals, or authorizations from local, state, federal or tribal authorities necessary or required for the completion of the Work. Unless the parties have expressly agreed otherwise in this agreement, Consultant shall pay any taxes or fees applicable to or associated with its completion of the Work.

**10.07 Force Majeure.** The parties' obligations under this agreement are subject to force majeure. If acts of God, severe weather conditions, fire, or unforeseen catastrophic events caused by nonparties which are beyond the control of the parties, prevent the parties from performance, such non-performance must not be considered a breach of this agreement.

**10.08 Entire Agreement.** This agreement constitutes the entire understanding between the parties with respect to the subject of this agreement, and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. The parties acknowledge that they each participated in negotiating this agreement, and that they have read, understood, and approved its terms. Headings are provided in this agreement for convenience, and are not intended to affect the meaning of the provisions to which they are affixed.

**10.09 Exhibits Incorporated by Reference.** This agreement includes any terms or documents incorporated by reference, as well as those exhibits listed below. If the terms of an exhibit or incorporated document conflict with the terms of the body of this agreement, the terms in the body of this agreement must prevail.

- (i) Exhibit A – Scope of Work
- (ii) Exhibit B – Budget
- (iii) Exhibit C – Payment Terms
- (iv) Exhibit D – Intergovernmental Master Agreement 56662 ("IG-MA 56662"). The full text of IG-MA 55562 can be reviewed at:
  - [http://yakamafish-nsn.gov/sites/default/files/projects/Master\\_Agreement\\_56662\\_Original-Terms-and-Conditions.pdf](http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Original-Terms-and-Conditions.pdf)

- [http://yakamafish-nsn.gov/sites/default/files/projects/Master\\_Agreement\\_56662\\_Mod\\_01-Terms-and-Conditions.pdf](http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_01-Terms-and-Conditions.pdf)
- [http://yakamafish-nsn.gov/sites/default/files/projects/Master\\_Agreement\\_56662\\_Mod\\_02-Terms-and-Conditions.pdf](http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_02-Terms-and-Conditions.pdf)

10.10 **Change Orders.** Change orders must be in writing and authorized by an appropriate representative of the Yakama Nation as follows:

(a) **Material Changes.** Any material changes to this agreement or the Work to be performed must be authorized in writing and signed by the Yakama Nation Tribal Council Chair as modifications or addendums to this agreement. Material changes are (i) any changes which require an increase in the maximum 'not to exceed' contract amount set forth in Section 2.01 of this agreement, or (ii) any changes to *what* Work is to be performed.

(b) **Immaterial Changes.** The Yakama Nation's Project Manager may authorize immaterial changes in writing. Immaterial changes are those that concern *how* the Work will be accomplished, but do not change the scope of what Work will be performed, or the overall contract payment amount.

10.11 **Amendments; Waiver.** The parties may amend this agreement by a written instrument signed by the authorized representatives of both parties. No waiver under this agreement will be effective unless it is in writing and signed by an authorized representative of the party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions.

10.12 **Execution.** If the parties sign this agreement in several counterparts, each will be deemed an original, but all counterparts together will constitute one instrument. The parties may sign and deliver this agreement (and any ancillary documents) to each other electronically, and the receiving party may rely on the electronic document as if it was a hard-copy original. The parties each state that they have the necessary legal authority to enter into and sign this agreement, and to perform their obligations under this agreement.

10.13 **Choice of Law and Venue.** Yakama law governs the validity and interpretation of this agreement, and any adversarial proceedings brought by one party against the other party arising out of this agreement. Any court action filed to enforce or interpret this agreement must be in the Yakama Tribal Courts. Consultant acknowledges that this agreement will be considered to have been executed at the Yakama Nation governmental headquarters in Toppenish, WA, and that this agreement establishes a consensual business relationship between the parties for purposes of Yakama Tribal Court jurisdiction. Consultant shall not raise any personal jurisdiction objections to Tribal Court jurisdiction.

10.14 **Sovereign Immunity.** In entering into this agreement, the Yakama Nation is not waiving its sovereign immunity from suit, and is not waiving, altering, or otherwise diminishing its rights, privileges, remedies, or services guaranteed by the U.S. Treaty with the Yakamas of June 9, 1855 (12 Stat. 951).

10.15 **Special Terms & Conditions.** In addition to the forgoing terms and conditions, the following requirements will apply to this Agreement:

(a) Consultant shall comply with any and all requirements of the Intergovernmental Master Agreement No. 56662 (hereafter the "Master Agreement" or "IG-MA 56662"), as amended, between the Yakama Nation and the Bonneville Power Administration (hereafter "BPA") applicable to subcontractors. If Consultant is authorized under this Agreement to hire any subcontractors, Consultant shall ensure that their contracts also include requirements for compliance with the terms of the Master Agreement applicable to subcontractors. Consultant is responsible for reviewing the Master Agreement to determine which terms apply to Consultant's work.

The full text of the Master Agreement may be reviewed at:

- [http://yakamafish-nsn.gov/sites/default/files/projects/Master\\_Agreement\\_56662\\_Original-Terms-and-Conditions.pdf](http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Original-Terms-and-Conditions.pdf)
- [http://yakamafish-nsn.gov/sites/default/files/projects/Master\\_Agreement\\_56662\\_Mod\\_01-Terms-and-Conditions.pdf](http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_01-Terms-and-Conditions.pdf)
- [http://yakamafish-nsn.gov/sites/default/files/projects/Master\\_Agreement\\_56662\\_Mod\\_02-Terms-and-Conditions.pdf](http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_02-Terms-and-Conditions.pdf)

Consultant hereby states and certifies that it has read the Master Agreement and agrees to be bound by the applicable terms. Consultant further states that it has the capacity to comply with the Master Agreement's applicable terms.

(b) Funds for compensation of Consultant for the Services rendered to the Yakama Nation under this agreement are provided by BPA through a particular IG-MA 56662 Funding Release. The Yakama Nation's obligation under this Agreement to reimburse the Consultant is conditioned upon these necessary funds being made available to the Yakama Nation. Failure of BPA to provide such funding within the contract term shall void this Agreement and Consultant shall have no cause of action against the Yakama Nation.

(c) Per the terms of the particular IG-MA 56662 Funding Release, Consultant shall comply with any and all requirements of the Funding Release applicable to subcontractors. If Consultant is authorized under this Agreement to hire any subcontractors, Consultant shall ensure that their contracts also include requirements for compliance with the terms of the Funding Release applicable to subcontractors. These requirements include, without limitation:

- i. The Dept. of Labor Davis Bacon Act General Decision No. WA180090, WA90, Heavy Construction Projects (including sewer/water line), Chelan County, WA;
- ii. The Dept. of Labor Davis Bacon Act General Decision No. WA180079, WA79, Heavy Construction Projects (including sewer/water line), Okanogan County, WA;
- iii. The Dept. of Labor Service Labor Standards, Wage Determination Nos. 2015-5542, Revision 7, 12/26/2018, Chelan County, WA;
- iv. The Dept. of Labor Service Labor Standards, Wage Determination Nos. 2015-5558, Revision 9, 12/26/2018, Okanogan County, WA;
- v. The Dept. of Labor Service Labor Standards, Wage Determination Nos. 2015-5543, Revision 7, 12/26/2018, Yakima County, WA; and
- vi. Bonneville Purchasing Instructions Contract Clause 10-16 – Affirmative Action Compliance Requirements for Construction (10-16). Bonneville Purchasing Instructions may be reviewed at <https://www.bpa.gov/Doing%20Business/purchase/BPI/BPI-18-1-Parts-1-35.pdf>.

The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

- Goals for minority participation: 7.2% for both counties
- Goals for female participation: 6.9% for both counties

**Each party is signing this agreement on the date stated opposite that party's signature:**

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

By: JoDe Goudy

Date

Title: Tribal Council Chairman

**[CONSULTANT]:**

EIN #:

By:

Date

Title:



## EXHIBIT A – SCOPE OF WORK

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### Overview

The upstream extent of anadromous fish use in Nason Creek is not well understood. The objective of this assessment is to analyze fish passage at two locations on Nason Creek to understand the fish passage dynamics at Gaynor Falls at RM 16.8, and to definitively find the end of anadromy in Nason Creek above Gaynor Falls. The Salmon, Steelhead, and Bull Trout Habitat Limiting Factors for the Wenatchee Subbasin Report (Andonaegui, 2001) states the following about passage barriers on Nason Creek:

- Nason Creek (45.0888). At RM 16.8 (Gaynor Falls) on Nason Creek there is a box canyon of bedrock falls and cascades that is a passage barrier to spring chinook and sockeye (USFS 1996).
- Nason Creek. At RM 20.5 on Nason Creek (at Bygone Byways, approximately 0.5 mile above Mill Creek), there is a bedrock falls and cascades that are a barrier to steelhead, bull trout and historically, coho (USFS 1996).

This barrier assessment will cover site investigation and hydraulic analysis of two suspected natural fish passage barriers upstream of the confluence of Whitepine Creek with Nason Creek.

### Scope of Work

#### Phase 1 – Data Collection and Modelling

##### Task 1 –Existing data review

The contractor will review existing data that will aid in the fish passage assessment. It is assumed this data consists of fish habitat survey, stream flow data, historical air photos, geomorphic field survey, hydrology, and hydraulic analysis.

##### Task 2 - Stream Reconnaissance

The location of the suspected barrier at Gaynor Falls is well understood and will be directly analyzed under this contract. The location of one or more fish barriers near Bygone Byways is not well understood and a reconnaissance level field assessment of up to eight miles of stream channel may need to be conducted to explore and define the potential end of anadromous fish access in Nason Creek.

Once the suspected barrier locations are better understood, stream reconnaissance around both suspected passage barriers should be completed by a fish biologist and geomorphologist, following a downstream-to-upstream orientation. Observations made during the reconnaissance should include land use effects, channel and floodplain features, infrastructure, streambank and general vegetation conditions, water temperatures, and channel morphology. Ground photos should be taken throughout

the reconnaissance reaches to document conditions. Observations shall be recorded by field personnel and provided in digital form. Georeferenced ground photos should also be collected.

### Task 3 - Topographic Survey

Survey grade topographic and channel bathymetry data shall be collected at the two suspected fish passage barrier sites. Monumented survey control benchmarks will be located at each survey location to establish vertical and horizontal positions. The survey will be used for stream characterization and hydraulic modeling purposes. Survey point and cross section densities should be developed to inform a high precision 2D hydraulic model that can be used to evaluate local flow velocities and flow direction, lateral variation in velocity or hydraulic parameters, and flow direction and magnitude around channel obstructions within the channel, such as boulders.

### Task 4 - Hydrology and Hydraulics

Watershed hydrology will be developed using regional equations prepared for the Wenatchee region (WRIA #45). Basin metrics will be used in the regression model to calculate the minimum, mean, and maximum monthly flows which correspond to the fish migration timing in Nason Creek.

### Task 5 - Hydraulic Modeling

Existing hydraulic conditions at the two fish passage sites will be modeled using 2D modeling software such as the U.S. Bureau of Reclamations 2-dimensional model, SRH-2D, or equivalent. Steady-state flow, 2-dimensional hydraulics over a channel bed of fixed topography will be evaluated. Modeled flows with geomorphic and biological significance will be evaluated. Calibration of the 2D model will be based on surveyed water surface elevations and measured discharges collected during the field data collection.

## **Phase 2 – Assessment and Reporting**

### Task 6 - Fish Passage Barrier Analysis

The fish passage barrier analysis will include four primary elements. First, fish passage criteria for salmonids presented by Washington Department of Fish and Wildlife (WDFW) and the National Marine Fisheries Services (NMFS) will be reviewed. Secondly, fish passage performance metrics for steelhead, chinook, coho, and bull trout will be summarized from the literature. Next, topographic survey data collected in the field will be processed and analyzed to determine how channel slope and discrete vertical drops in the channel profile compare to fish passage criteria. Finally, the 2D model will be used to assess water surface profiles, vertical drops, and plunge pool depths at various flows. The hydraulic modeling results will be summarized and also used to compute the energy dissipation factor (EDF) in the pools downstream from the primary vertical drops.

#### Task 7 – Report and Data Deliverables

A technical report summarizing the findings from Phase 1 and the Fish Passage Barrier Analysis will be provided. The report will include a maximum 2 page summary chapter that concludes the likelihood of whether the suspected barriers at Gaynor Falls and Bygone Byways precludes passage for each anadromous species in Nason Creek. A draft report will be provided for review by Yakama Nation staff once all Phase 1 and Task 6 tasks are completed. The contractor will incorporate comments and edits provided by Yakama Nation staff to produce a final report that will be provided in both digital and hardcopy form. 5 hardcopies will be produced and provided to Yakama Nation Fisheries. At the completion of the report, the contractor will also organize and provide to Yakama Nation Fisheries all field data, survey, hydraulic modeling, and fish passage computational worksheets in digital form.

#### Task 8 – Meetings and Presentations

The contractor will assist in presenting the methods and findings of the Fish Passage Barrier Analysis to regional stakeholders. Project planning meetings will also be conducted in the Wenatchee area. The contractor will attend at least 3 project planning meetings and be prepared to provide two regional stakeholder presentations.

#### **Anticipated Schedule**

Survey should be completed in August/September 2019. The draft report should be provided to Yakama Nation Fisheries by early November, 2019. Presentations will occur in November and December 2019.

#### **Limitations**

The contractor shall furnish all supervision, labor, equipment and tools necessary to complete the work as outlined in the Scope of Work.

## EXHIBIT B – BUDGET

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**1. Project Budget:**

**2. Applicable Rate Schedule.** Consultant shall invoice, and the Yakama Nation shall pay, according to the following billing rates: .

## EXHIBIT C – PAYMENT TERMS

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**1. Schedule.** The Consultant shall invoice for work performed in accordance with the following schedule [if no schedule is selected, invoicing shall occur per Option A – Monthly Time & Materials]:

**A. Monthly Time & Materials:** The Consultant shall invoice monthly on a time and materials basis for actual Work completed during the invoice period. Unless the parties agree in writing to different terms, invoice periods shall begin on the first day of each month and end on the last day of each month.

**B. Progress:** The Consultant shall invoice following the completion of each major Work task identified in Exhibit A (Scope of Work). A Work task will not be considered complete until it has been reviewed and accepted by Yakama Nation’s Project Manager.

**C. Alternative Schedule:** The Consultant shall invoice as follows: \_\_\_\_\_.

**2. Invoicing Requirements.** Invoices must include appropriate supporting documentation, which may include, but is not limited to, detailed expense receipts and a brief summary of activities associated with the Work performed by Consultant. Consultant shall submit invoices to the Yakama Nation’s designated Project Manager within 15 days after the end of the invoice period in which the Work was performed and/or expenses were incurred. Consultant hereby waives the right to receive full payment on invoices submitted more than 60 days following the end of the invoice period. (The ‘end’ of the invoice period for progress payments will be considered the last day of the calendar month in which the Work task was completed.) Sample invoice, expense, and travel forms are attached/available upon request for Consultant’s review and convenience.

If a question or concern arises regarding an invoice, Yakama Nation shall promptly notify Consultant of the question or concern. Within 15 business days following such notification, Consultant shall take action to sufficiently explain or correct the issue, or Consultant will be deemed to have waived their right to demand payment for the associated Work or expense.

**3. Payment.** The Yakama Nation shall pay all approved invoices within 60 days following the date of invoice.

SAMPLE FY19 BILLING FORMS FOR CONSULTANT/CONTRACTOR

Invoice #: \_\_\_\_\_  
 Pages attached: \_\_\_\_\_

FY19 BILLING FORM FOR CONSULTANT/CONTRACTOR

DATE: \_\_\_\_\_  
 CONSULTANT: \_\_\_\_\_ EIN: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ CONTRACT: \_\_\_\_\_  
 PROJECT #: \_\_\_\_\_  
 PO #: (we provide you a PO #)  
 VENDOR #: our finance system ID#  
 FOR BILLING PERIOD: \_\_\_\_\_ to \_\_\_\_\_

Total Time _____ hrs _____ (rate per hr) See pg 2 DESCRIPTION OF SERVICES PROVIDED	
Total Expenses _____ See pg 3 ITEMIZED EXPENSES Please attach detailed receipts to billing Expenses should be listed on page 3. Expenses such as telefax, copies, telephone may be reimbursed at actual cost (subject to limits in approved budget). Authorized travel expenses subject to Federal Travel Regulations & Yakama Policies	\$0.00
Total Mileage _____ miles x \$ _____ (\$/mi.) See pg 4 TRAVEL/MILEAGE Please show purpose of travel, odometer readings, total miles. and travel time spent traveling. Provide expenses such as lodging and airfare to page three	\$0.00
<b>TOTAL AMOUNT OF BILLING</b>	<b>\$0.00</b>

Signature \_\_\_\_\_ date \_\_\_\_\_

Consultant Services Agreement btw. Yakama Nation and \_\_\_\_\_







