

# Mad River Confluence Habitat Enhancement Project

Restoration Design and Engineering Services

## Request for Proposals

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

August 31<sup>st</sup>, 2022

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Yakama Nation Fisheries is seeking proposals from qualified engineering firms to award a design and engineering services contract in support of salmon habitat restoration activities taking place in the Mad River in Chelan County, Washington. Based upon the proposals received under this solicitation the Confederated Tribes and Bands of the Yakama Nation will award a design contract to the best quality bidder for the Scope of Work described within this RFP.

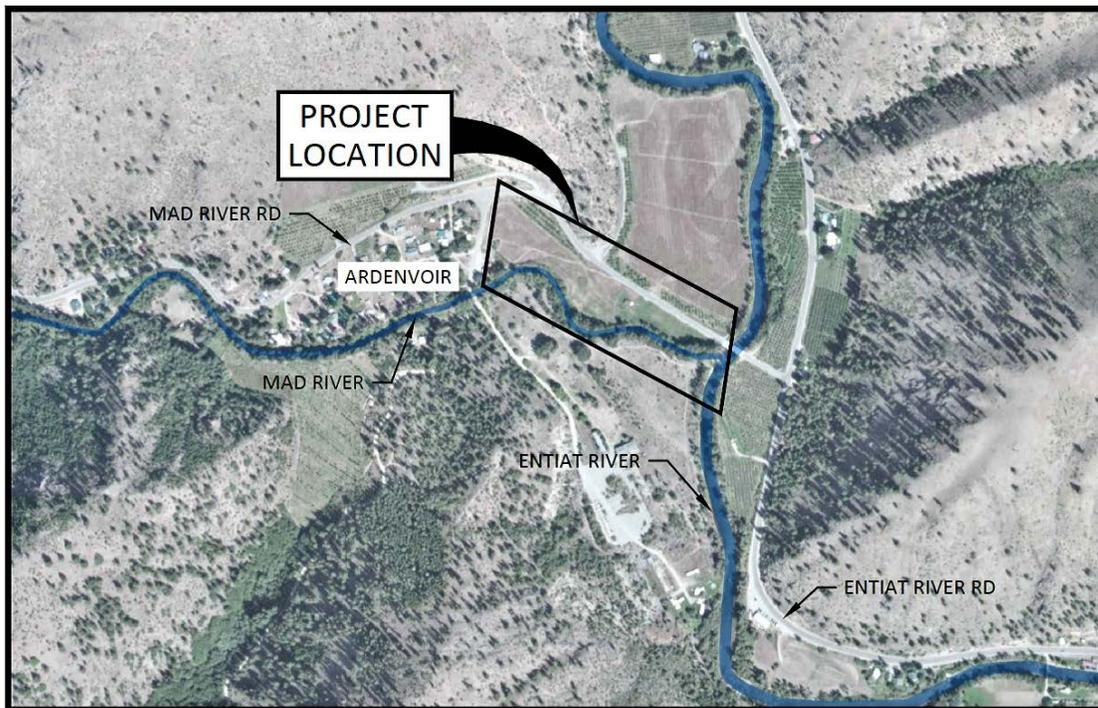
### Project Background

The Yakama Nation Fisheries is working with several private landowners to conduct a large scale salmon habitat project along the Mad River between river miles 0.0-0.3 (Mad River Confluence Project Area). In 2021 Yakama Nation Fisheries completed a rapid site assessment of the project area and produced a very limited set of conceptual plans based upon professional judgement and communication with landowners. No detailed topological survey or hydraulic model was completed to support the concepts proposed in the 2021 technical memo. The 2021 Mad River Confluence Concepts Memorandum is available to review on the RFP webpage at:

<https://yakamafish-nsn.gov/restore/projects/engineering-design-rfp-mad-river-confluence-conceptual-design>

The 2021 investigation identified that opportunities exist for floodplain reconnection, side channel enhancement, stream bank restoration, instream large wood enhancements and conversion of a concrete irrigation surface diversion to a subsurface groundwater well. The design contract awarded through this RFP will provide engineering services to Yakama Nation Fisheries to incorporate hydraulic modeling and Professional Engineer design into the habitat restoration concepts for the Mad River Confluence Project Area.

## Project Location Map



(Note that project work for this RFP ranges from river mile 0.0-0.3.)

## Proposed Scope of Work

### Phase 1 – Site Investigation

#### *Task 1 – Existing Data Review*

The contractor will review existing data to be provided by the Yakama Nation Fisheries or any other private or government entity that would aid future analysis and design. It is assumed that this data may consist of fish habitat survey, stream flow data, historical aerial photos and existing designs.

#### *Task 2 – Geomorphic Field Investigation and Site Survey*

To gain a perspective of river process, including fluvial geomorphology and sediment continuity, the river will be walked within the site boundaries and sufficient distances up and downstream to gain a reach level understanding of conditions. Air photos will be used during this investigation. An overview of reach conditions will be documented with general field notes and photos. Existing riparian vegetative composition will be noted including species and elevations with respect to the stream. During the geomorphic walk through future hydraulic cross sections will be identified and marked on maps and in the field to inform the topographic survey.

Stream substrate size at the project locations will be documented by collection of pebble counts. Pebble count locations of representative bed load materials will be determined in the field. The data will be used in future design considerations of sediment continuity and stream stability design.

Topographic survey will be completed on all lands from which ownership permission can be obtained by the Yakama Nation. Topographic survey will be conducted using a total station or survey grade GPS to collect survey data required for hydraulic analysis, conceptual designs and drawings. LIDAR data may be used in floodplain areas to complete hydraulic cross sections where appropriate. Sufficient cross section, profile, and floodplain data will be completed to be useful in developing both 1 and 2 dimensional reach level hydraulic models. Survey will be based on an existing horizontal and vertical datum if readily available. Temporary bench marks using wooden hubs will be established for future reference during later design and construction phases. The location of infrastructural elements such as riprap, levees, bridges, irrigation diversions, well heads, power lines, building foundations, campsites, roads, and/or other such elements shall be surveyed.

When design direction is known and agreed upon with Yakama Nation Fisheries staff, additional survey necessary for project feasibility analysis may be completed. Pump tests, piezometer data and subsurface test pit information will be collected to inform the conceptual design effort.

All field and survey data will be downloaded into and summarized in appropriate software (i.e. Excel, AutoCAD).

#### Assumptions:

- Consent for access will be provided
- Stream flows will be low enough to wade safely.

#### *Task 3 – Hydrology*

Peak stream flow frequencies will be estimated or obtained from previous BOR, Yakama Nation, and/or USGS documentation, or developed using available gage data and published regression equations appropriate for the site.

#### *Task 4 – Hydraulic Analysis*

Hydraulic conditions will be modeled using both 1 dimensional and 2 dimensional models. Site survey collected in Task 2 will be used to build an existing conditions model. Manning's n values will be estimated from reference literature, professional experience and opinion. In support of the alternatives analysis and design tasks, the existing conditions model will be copied and modified to predict project effects on hydraulic condition.

The U.S. Army Corps of Engineer's one-dimensional HEC-RAS hydraulic model will be used to consider and certify FEMA flood impacts and rise implications. Two-dimensional modeling will be used to estimate surface flow behaviors at various stream discharges, including analyzing for changes in flow direction, sheer stress, and bed mobility based on the proposed conditions.

## **Phase 2 – Concept Development**

### *Task 5 – Development of Conceptual Report and Drawings*

Based on Site Investigation findings, the contractor will provide restoration/enhancement strategies and options to improve adult and juvenile salmonid habitats at a range of discharges and including seasonal low flow river stages. Restoration strategies shall be developed with consideration of the 2017 and 2021 UCRTT Biological Strategy and the 2019 Mad River Reach Assessment. The contractor will work closely with Yakama Nation UCHRP staff to ensure restoration designs address top priority ecological concerns in the project reach.

Task deliverables will include a robust report of findings from Phases 1 and 2, drawing set of conceptual restoration designs, planning estimates, and a power point presentation for stakeholder meetings. The conceptual report will be compiled in a manner consistent with BPA's Habitat Improvement Program General Project and Data Summary Requirements.

### *Task 6 – Stakeholder Meetings and Communications*

During and following the conceptual report completion, the contractor will present project findings to landowners and agency stakeholders. Presentations will focus on existing river processes, future trends, project benefits, relative project costs, project risks, and other topics requested by Yakama Nation Fisheries staff. It is estimated that up to three stakeholder meetings will be conducted under this contract.

## **Relevant Guiding Documents**

- Bonneville Power Administration Habitat Improvement Program Guidance - <https://www.fws.gov/sites/default/files/documents/2014HIPIIIHandbookVer2.6.pdf> (Updated versions provided upon request)
- UCRTT Biological Strategy 2017 – <https://www.ucsr.org/?mdocs-version=20180316%20-%20Upper%20Columbia%20Revised%20Biological%20Strategy%202017.pdf-v1.0&mdocs-file=12497&mdocs-url=false>
- UCRTT Biological Strategy 2021 – <https://www.ucsr.org/mdocs-posts/upper-columbia-biological-strategy/> & <https://www.ucsr.org/science-resources/prioritization/>
- Yakama Nation 2019 Mad River Reach Assessment - [https://dashboard.yakamafish-star.net/sites/default/files/2020-03/LowerMadRiverRA\\_2018.pdf?current=/DataQuery/Reports](https://dashboard.yakamafish-star.net/sites/default/files/2020-03/LowerMadRiverRA_2018.pdf?current=/DataQuery/Reports)
- February 14, 2022 Mad River Confluence Concepts Memorandum (provided upon request)

## **Bid Directions**

Each company 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: Annet Dillman  
RE: Mad River Confluence RFP  
PO Box 151  
Toppenish, WA 98948

Proposals must be received in Toppenish by Close of Business, **Thursday, September 22nd, 2022**. Due to the effects of the COVID-19 pandemic only USPS mail delivery submittals will be accepted at this time. It is recommended that all shipping and/or delivery confirmation receipts are retained past the proposal due date to ensure proof of submission. In addition to the required physical bid submittal, we are also requesting contractors to provide digital copies of their completed bid documents through email submittal directly to Annet Dillman at [dila@yakamafish-nsn.gov](mailto:dila@yakamafish-nsn.gov). Please note that timely hardcopy bid submittals via the United States Postal Service are a requirement for a bid to be considered competitive. Any digital submittal received with no associative hardcopy submittal to our PO Box by September 22nd, 2022 will be discarded as invalid.

Each proposal should include a Statement of Qualifications pertaining to the bidder's qualifications to produce the Scope of Work items listed in this Request for Proposals. Proposals must include a roster of key personnel proposed to work under this contract, including resumes. The key personnel roster should include the Project Manager, a Professional Engineer, and a licensed Geologist specializing in fluvial geomorphology. 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.

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

## **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.

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

Chris Clemons

UCHRP Habitat Biologist II

Phone: 509-881-5746

E-mail: [clec@yakamafish-nsn.gov](mailto:clec@yakamafish-nsn.gov)

## 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 this 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 \_\_\_\_\_

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

1.03 **Prior Performance.** If the Consultant has performed any Work prior to the effective 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 after the effective 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 Consultant’s “**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 \$ [REDACTED]. 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 consistent with the terms and conditions of this agreement and (b) includes all eligible expenses associated with Consultant's performance of the Work.

2.02 **Payment.** The Yakama Nation shall pay Consultant according to 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" means reasonable, allocable, and allowable expenses that are incurred by Consultant in performance of the Work 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/or federal law and policy.

### 2.04 **Federal, State, or Privately Granted Funds.**

(a) *Compliance.* Consultant acknowledges that federal, state, or grant funds utilized to compensate Consultant may be subject to certain laws, regulations, 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 or state agency or other grantor.

(b) *Availability of Funds.* Consultant acknowledges that where the Work is funded by federal, state, or other external sources, Yakama Nation's payment obligations to Consultant for Work under this Agreement are entirely dependent and conditioned upon Yakama Nation receiving the funds from such agency or agencies.

## 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 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), and/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 in a format acceptable to the Yakama Nation.

#### 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 (\$1,000,000) per occurrence and two million dollars (\$2,000,000) 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 (\$1,000,000), 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, provide the Yakama Nation with certificates of insurance, and at the Yakama Nation's request, provide Yakama Nation with copies of the relevant policies. The additional insured coverage provided by Consultant to Yakama Nation shall be on a primary and noncontributory basis.

**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 indemnify, hold harmless, 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) 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 action, omission, error 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 (Records, Accounting, Audits) or Article 6 (Work Product) of this agreement would cause irreparable injury to the Yakama Nation, which could not be completely compensated by money damages, and that injunctive relief to enforce Articles 5 or 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), and Section 1.04 (Key Personnel) 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 obligations 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. Neither party may speak for or bind the other.

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 will 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. This provision is not intended to prevent Consultant from implementing a lawful Indian preference employment policy.

**10.05 Indian Preference Employment.** When Consultant performs Work within the boundaries of the Yakama Reservation, or on Yakama trust 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) the Yakama Reservation. Consultant hereby adopts the TERO and its associated policies as its Indian preference hiring policy for 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

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 of a right or obligation 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.

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 **Severability.** If any term of this agreement is found to be illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability. All other terms shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable that comes closest to expressing the parties’ original intention.

10.15 **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.

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

(a) Consultant's Work under this agreement is being funded under Intergovernmental Master Agreement 56662 ("IG-MA 56662"), as amended, between the Bonneville Power Administration (hereafter "BPA") and the Yakama Nation, and its applicable funding release ("Release"). Consultant acknowledges that Yakama Nation's obligation to compensate Consultant for Work performed under this agreement is entirely dependent and conditioned upon such funds being made available to the Yakama Nation by BPA for this Work. 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.

(b) Consultant shall comply with any and all requirements applicable to subcontractors set forth in the IG-MA 56662 and any associated BPA funding Release(s). The IG-MA 56662 can be accessed using a web browser at the following address: <http://yakamafish-nsn.gov/restore/projects/bpa-master-agreement-terms-and-conditions>. When prompted, enter "YN Fish1855" as the webpage password to access the IG-MA 56662 and its modifying amendments. 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. If Consultant is authorized under this Agreement to hire any subcontractors, Consultant shall ensure that their subcontracts include a requirement for compliance with these terms.

**[Signature pages follow.]**

**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: Delano Saluskin (or authorized designee)

Date

Title: Tribal Council Chairman

**[CONSULTANT]:**

EIN #:

By:

Date

Title:

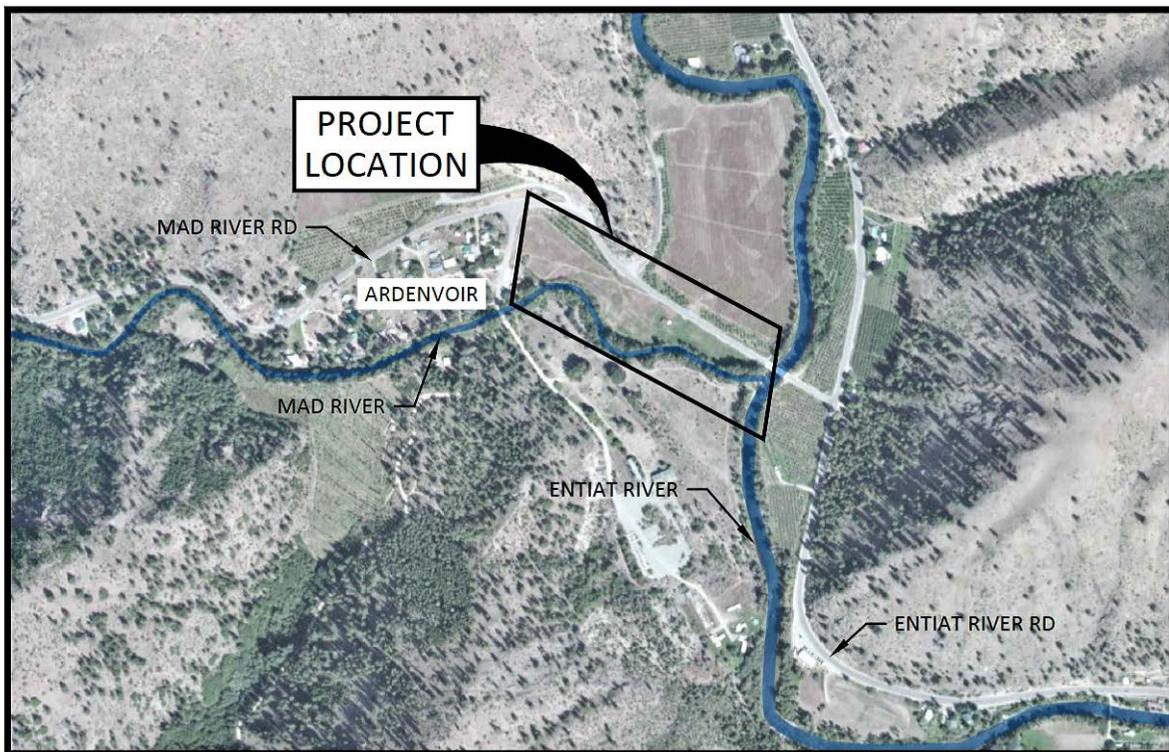
## EXHIBIT A – SCOPE OF WORK

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### Overview and Background:

In coordination with several private landowners the Yakama Nation’s (YN) Upper Columbia Habitat Restoration Project (UHRP) is developing a salmon habitat restoration project along the Mad River in Chelan County, Washington between river miles 0.0-0.3. The UHRP recently conducted a reach assessment and rapid project site assessment that resulted in a very basic set of Conceptual Designs for this project area which will form the foundation of salmon habitat restoration designs moving forward. Identified restoration opportunities include floodplain reconnection, side channel enhancement, stream bank restoration, instream large wood enhancements and conversion of a concrete irrigation surface diversion to a subsurface groundwater well. This contract will provide engineering and design services to the UHRP to further develop a suite of conceptual salmon habitat restoration actions that can be used to coordinate future restoration activities with landowners, permitting agencies, and project funders.

### Project Location



## Scope of Work

At the direction of Yakama Nation Fisheries staff the Consultant shall perform the following work tasks:

### Phase 1 – Site Investigation

#### *Task 1 – Existing Data Review*

The contractor will review existing data to be provided by the Yakama Nation Fisheries or any other private or government entity that would aid future analysis and design. It is assumed that this data may consist of fish habitat survey, stream flow data, historical aerial photos and existing designs.

#### *Task 2 – Geomorphic Field Investigation and Site Survey*

To gain a perspective of river process, including fluvial geomorphology and sediment continuity, the river will be walked within the site boundaries and sufficient distances up and downstream to gain a reach level understanding of conditions. Air photos will be used during this investigation. An overview of reach conditions will be documented with general field notes and photos. Existing riparian vegetative composition will be noted including species and elevations with respect to the stream. During the geomorphic walk through future hydraulic cross sections will be identified and marked on maps and in the field to inform the topographic survey.

Stream substrate size at the project locations will be documented by collection of pebble counts. Pebble count locations of representative bed load materials will be determined in the field. The data will be used in future design considerations of sediment continuity and stream stability design.

Topographic survey will be completed on all lands from which ownership permission can be obtained by the Yakama Nation. Topographic survey will be conducted using a total station or survey grade GPS to collect survey data required for hydraulic analysis, conceptual designs and drawings. LIDAR data may be used in floodplain areas to complete hydraulic cross sections where appropriate. Sufficient cross section, profile, and floodplain data will be completed to be useful in developing both 1 and 2 dimensional reach level hydraulic models. Survey will be based on an existing horizontal and vertical datum if readily available. Temporary bench marks using wooden hubs will be established for future reference during later design and construction phases. The location of infrastructural elements such as riprap, levees, bridges, irrigation diversions, well heads, power lines, building foundations, campsites, roads, and/or other such elements shall be surveyed.

When design direction is known and agreed upon with Yakama Nation Fisheries staff, additional survey necessary for project feasibility analysis may be completed. Pump tests, piezometer data and subsurface test pit information will be collected to inform the conceptual design effort.

All field and survey data will be downloaded into and summarized in appropriate software (i.e. Excel, AutoCAD).

Assumptions:

- Consent for access will be provided
- Stream flows will be low enough to wade safely.

### *Task 3 – Hydrology*

Peak stream flow frequencies will be estimated or obtained from previous BOR, Yakama Nation, and/or USGS documentation, or developed using available gage data and published regression equations appropriate for the site.

### *Task 4 – Hydraulic Analysis*

Hydraulic conditions will be modeled using both 1 dimensional and 2 dimensional models. Site survey collected in Task 2 will be used to build an existing conditions model. Manning's n values will be estimated from reference literature, professional experience and opinion. In support of the alternatives analysis and design tasks, the existing conditions model will be copied and modified to predict project effects on hydraulic condition.

The U.S. Army Corps of Engineer's one-dimensional HEC-RAS hydraulic model will be used to consider and certify FEMA flood impacts and rise implications. Two-dimensional modeling will be used to estimate surface flow behaviors at various stream discharges, including analyzing for changes in flow direction, shear stress, and bed mobility based on the proposed conditions.

## **Phase 2 – Concept Development**

### *Task 5 – Development of Conceptual Report and Drawings*

Based on Site Investigation findings, the contractor will provide restoration/enhancement strategies and options to improve adult and juvenile salmonid habitats at a range of discharges and including seasonal low flow river stages. Restoration strategies shall be developed with consideration of the 2017 and 2021 UCRTT Biological Strategy and the 2019 Mad River Reach Assessment. The contractor will work closely with Yakama Nation UCHRP staff to ensure restoration designs address top priority ecological concerns in the project reach.

Task deliverables will include a robust report of findings from Phases 1 and 2, drawing set of conceptual restoration designs, planning estimates, and a power point presentation for

stakeholder meetings. The conceptual report will be compiled in a manner consistent with BPA's Habitat Improvement Program General Project and Data Summary Requirements.

#### *Task 6 – Stakeholder Meetings and Communications*

During and following the conceptual report completion, the contractor will present project findings to landowners and agency stakeholders. Presentations will focus on existing river processes, future trends, project benefits, relative project costs, project risks, and other topics requested by Yakama Nation Fisheries staff. It is estimated that up to three stakeholder meetings will be conducted under this contract.

### **Consistent Satisfactory Progress**

Consistent satisfactory progress in this project will be required. Satisfactory progress will be measured by both the quality and quantity of work. If for any reason no work is performed, the Consultant may be given a notice of contract cancellation. Consistent satisfactory progress will also be determined by the Consultant's demonstrated ability to perform all work tasks described in the Scope of Work. If it appears that the Consultant is unable to complete the project tasks the Consultant may be given a notice of contract cancellation. The Yakama Nation's designated representative will monitor progress closely.

### **Key Personnel**

### **Relevant Guiding Documents**

- Bonneville Power Administration Habitat Improvement Program Guidance - <https://www.fws.gov/sites/default/files/documents/2014HIPHHandbookVer2.6.pdf> (Updated versions provided upon request)
- UCRTT Biological Strategy 2017 – <https://www.ucsr.org/?mdocs-version=20180316%20-%20Upper%20Columbia%20Revised%20Biological%20Strategy%202017.pdf-v1.0&mdocs-file=12497&mdocs-url=false>
- UCRTT Biological Strategy 2021 – <https://www.ucsr.org/mdocs-posts/upper-columbia-biological-strategy/> & <https://www.ucsr.org/science-resources/prioritization/>
- Yakama Nation 2019 Mad River Reach Assessment - [https://dashboard.yakamafish-star.net/sites/default/files/2020-03/LowerMadRiverRA\\_2018.pdf?current=/DataQuery/Reports](https://dashboard.yakamafish-star.net/sites/default/files/2020-03/LowerMadRiverRA_2018.pdf?current=/DataQuery/Reports)
- February 14, 2022 Mad River Confluence Concepts Memorandum (provided upon request)

## 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 rate schedule:

## 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 and 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 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.** Subject to the terms of this Agreement, the Yakama Nation shall pay all approved invoices within 60 days following the date of invoice.

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 \_\_\_\_\_





