

May 12, 2020



**Twisp River Scaffold Camp
Restoration Project**
Restoration Design and Engineering Services
Phases 1 and 2

Request for Proposals

Columbia River
Honor. Protect. Restore.

Dear Contractor:

OFFICE
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

PHONE
(509) 449-2091

FAX
(509) 423-7616

EMAIL
eckm@yakamafish-nsn.gov

WEB
Yakamafish-nsn.gov

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 Twisp River in Okanogan 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. Services rendered under this contract will be performed from contract start date (to be determined) through December 31, 2020.

Project Background

The Yakama Nation is developing salmon and steelhead habitat restoration projects throughout the Methow Subbasin and has identified the Upper Twisp River as a high priority area for increasing instream complexity and off channel habitat. In 2015 the UCHRP completed the Middle Twisp River Reach Assessment and preliminary restoration concepts for the Scaffold Camp Restoration site. In this area the historic Twisp River floodplain has been cut off by levees and private development. Project opportunities considered included side channel enhancements, levee/berm removal and large wood enhancements. The contract resulting from this RFP will be for development of a concept level design and an updated design report based upon existing preliminary design opportunities. The existing designs and conceptual design report can be reviewed using the following link:

<https://yakamafish-nsn.gov/restore/projects/engineering-and-design-rfp-twisp-river-scaffold-camp-restoration-project>

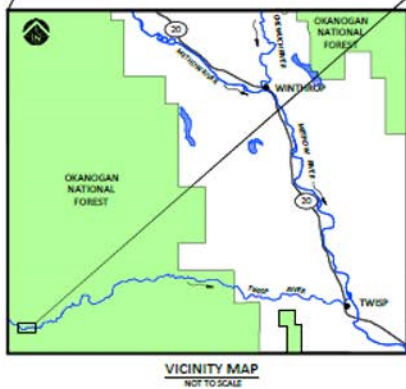
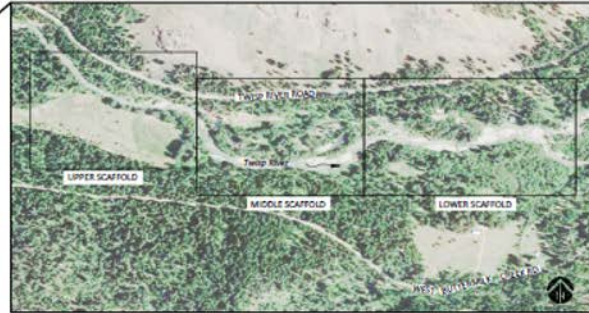
The focus of this RFP will be reconnecting the low flow side channel and floodplain on the right bank of the lower scaffold project area (page nine of the existing drawings). This project would also include at least one mainstem large wood structure, as well as large wood structures within the proposed side channel. All restoration plans will be designed to assist in the recovery goals for listed salmonids, identified for the Upper Twisp River in the Upper Columbia Biological Strategy (2017) for the Upper Twisp River. This part of the project is entirely on property owned by the Yakama Nation.

Project Location Map



Twisp River - Scaffold Camp Project

Okanogan County, Washington
April 8, 2015



Proposed Scope of Work

Phase 1 - Site investigation

Task 1 –Existing data review

The contractor will review existing data to be provided by Yakama Nation Fisheries or any other private or government entity that would aid future analysis and design. It is assumed this data consists of fish habitat survey, stream flow data, historical air photos, geomorphic field survey, hydrology, previously collected bathymetric/topographic survey data and the 2015 Middle Twisp River Reach Assessment.

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. Appropriate hydraulic cross sections will be identified and marked on maps and in the field for topographic survey.

A site 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.

Topographic and bathymetric survey will be completed on all lands from which ownership permission can be obtained by the Yakama Nation. Cross section survey and profile will be completed to develop a reach level hydraulic model. Survey will be based on an existing horizontal and vertical datum. A number of temporary

bench marks using wooden hubs will be established for reference during construction. River and floodplain cross sections will be surveyed to develop both 1 and 2 dimensional models of the entire reach. Obvious infrastructural elements such as riprap, levees, bridges, irrigation diversions, well heads, power lines, building foundations, and/or other such elements shall be surveyed.

Stream substrate size 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 design considerations of sediment continuity and stream stability.

Existing riparian vegetative composition will be noted including species and elevations with respect to the stream.

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

Task 3 – Hydrology

Peak stream flow frequencies will be estimated or obtained from previous BOR, USGS, and Yakama Fisheries work efforts. If necessary peak flow frequencies can be estimated using available gage data and/or using published regression equations appropriate for the site.

Task 4 – Hydraulic analysis

Hydraulic conditions will be modeled using both 1 dimensional and 2 dimensional models. The existing site survey data 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 for project conditions.

The U.S. Army Corps of Engineer's one-dimensional HEC-RAS hydraulic model will be used to consider and certify FEMA flood impacts. 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 benefit adult and juvenile salmonid habitats at range of discharges and where possible low summer river stage. Restoration strategies shall be developed with consideration of the 2017 UCSRB RTT Biological Strategy and the 2015 Middle Twisp 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 report of findings from Phases 1 and 2, a drawing set of conceptual restoration designs, planning estimates, and a power point presentation for stakeholder meetings. The conceptual design report will be compiled in a manner consistent with BPA's HIP III General Project and Data Summary Requirements (see attachment).

Task 6 - Stakeholder Meetings and Communications

Following conceptual report completion, the contractor will present such findings to landowners and agency stakeholders. The presentation will focus on existing river processes, future trends, project benefits, relative project costs, project risks, future river processes as they relate to each project opportunity and how each potential project fits within existing and likely future conditions.

Proposal Requirements:

Selected proposal will have and demonstrate the following:

- Field survey capabilities by in-house and local (Washington/Oregon/Idaho based) design engineers
- Ability to effectively model hydraulics using HEC-RAS
- Ability to effectively model inundation and hydraulics using a program like Flow 2-D (or similar)
- Ability to provide a professional engineered stamped report and drawings of findings
- Have on staff (not subcontracted) a Geologist, Hydrologist, and a Professional Engineer with at least 10 years of experience designing instream restoration projects. The Geologist and Engineer will be certified to work in the state of Washington and License numbers will be provided with the proposal
- Completion of at least 15 successful Large Woody Debris installation projects in the last 5 years

Bid Directions

Each company seeking to be eligible for a contract award under this Request for Proposals must submit two hardcopies of their proposal in writing. Please be aware that due to COVID-19 related office closures and social distancing requirements, Yakama Nation Fisheries has changed the bid submittal directions from previous bid opportunities. Hand delivered and package delivery service cannot be accepted. **All proposals must be physically mailed using the United States Postal Service to:**

Yakama Nation Fisheries
Attn: Jackie Olney
RE: Scaffold Camp Restoration Project
PO Box 151
Toppenish, WA 98948

Proposals must be received in Toppenish by Close of Business, Thursday, June 4, 2020. Due to the ongoing COVID-19 pandemic only USPS mail delivery submittals will be accepted. 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 submittals, we are also requesting contractors to provide digital copies of their completed bid documents through email submittal directly to Madeleine Eckmann at eckm@yakamafish-nsn.gov. We are encouraging digital copies to be emailed at the same time the physical bid package is mailed to the proper PO Box in Toppenish, WA. This will allow Yakama Nation Fisheries staff to know whether to expect that a hardcopy bid has been submitted, and will allow Yakama Nation Fisheries staff an opportunity to more quickly score and rank bids for the contract award process.

Please note that timely hardcopy bid submittals via the United States Postal Service are a requirement for a bid to be considered competitive. The additional digital email submission is requested but is not a performance requirement. Any digital submittal received with no associated hardcopy submittal to our PO Box by June 4 will be discarded as invalid.

Each proposal must include a Statement of Qualifications pertaining to the bidder's qualifications to produce the Scope of Work items listed in this Request for Proposals, including a roster of key personnel. Please provide a detailed schedule of fees detailing your company's invoicing rates for all personnel and items necessary to complete the proposed Scope of Work. Please include a signed cover letter on company letterhead that provides assurances that the submitted proposal will be valid for 180 days. Please also provide a description of how responsive your company can be to new work requests that may be issued during the contract period.

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:

Madeleine Eckmann, UCHRP Habitat Biologist
Phone: 509-449-2091
E-mail: eckm@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%

P.P.

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.

HIP III General Project and Data Summary Requirements

Chapter 2: Required Information (GPDSR).

Planning and design documentation of conservation practices should effectively communicate that appropriate planning, analysis, design, and resulting construction documentation are met. The project documentation should provide other persons the means of quickly following the rationale used in determining all features of a design including the design objective(s), data, criteria, assumptions, procedures, and decisions used in the designs, specifications and details.

A design report should be included as part of any engineering design contract. It is not an additional or separate action. Monitoring and Adaptive Management Plans, however, can be a separate additional item but should not be very expensive because we have templates available and most of the information is copied directly out of the design report.

The GPDSR (General Project and Data Summary Requirements) serves as the design submittal framework that is needed to assess and evaluate the adequacy of the proposed project. The GPDSR criteria were developed using the River Restoration Analysis Tool (RiverRAT) and address the 16 overarching questions proposed within the RiverRAT Framework.

The RRT will review submitted GPDSR documents to determine if the technical deliverables provided are:

1. Adequate for functionality (adherence to HIP III Conservation Measures), and
2. Adequate for technical quality (competent execution of design and project plans – contract documents).

A GPDSR basis of design report template is available and follows the outline below.

Project Background.

1. Name and titles of sponsor, firms, and individuals responsible for design
2. List of project elements that have been designed by a licensed Professional Engineer
3. Identification and description of risk to infrastructure or existing resources
4. Explanation and background on fisheries use (by life stage - period) and limiting factors addressed by project
5. List of primary project features including constructed or natural elements
6. Description of performance/sustainability criteria for project elements, assessment of risk of failure to perform, potential consequences, and compensating analysis to reduce uncertainty
7. Description of disturbance including timing, areal extent, as well as potential impacts associated with implementation of each project element

Resource Inventory and Evaluation.

1. Description of past and present impacts on channel, riparian, and floodplain conditions
 2. Instream flow management and constraints in the project reach
 3. Description of existing geomorphic conditions and constraints on physical processes
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HIP III General Project and Data Summary Requirements

4. Description of lateral connectivity to floodplain and historical floodplain impacts
5. Tidal influence in project reach and influence of structural controls (dikes or gates)

Technical Data.

1. Incorporation of HIP III activity-specific conservation measures for all included project elements
2. Summary of site information and measurements (survey, bed material, etc.) used to support assessment and design
3. Summary of hydrologic analyses conducted, data sources, and period of record; include a list of design discharge (Q) and return interval (RI) for each design element
4. Summary of sediment supply and transport analyses conducted; include data sources; and sediment size gradation used in streambed design
5. Summary of hydraulic modeling/analyses conducted, outcomes, and implications relative to proposed design
6. Stability analyses/computations for project elements and a comprehensive project plan
7. Description of how preceding technical analysis has been incorporated into the project designs
8. For projects that address profile discontinuities (e.g., grade stabilization, small dam and structure removals), a longitudinal profile of the stream channel thalweg for 20 channel widths upstream and downstream of the structure shall be used to determine the potential for channel degradation.
9. For projects that address profile discontinuities (e.g., grade stabilization, small dam and structure removals), a minimum of three cross-sections (one downstream of the structure, one through the reservoir area upstream of the structure, and one upstream of the reservoir area outside of the influence of the structure) shall be used to characterize the channel morphology and quantify the stored sediment.

Construction – Contract Documentation.

1. Incorporation of the HIP III General and Construction Conservation Measures
 2. Design – construction plan set including, but not limited to: plan, profile, section and detail sheets that identify all project elements and construction activities of sufficient detail to facilitate project bidding and implementation
 3. List of all proposed project materials and quantities
 4. Description of BMPs that will be implemented and resource plans including:
 - a) Site Access Staging and Sequencing Plan with description
 - b) Work Area Isolation and Dewatering Plan with description of how aquatic species within the action area will be affected/protected
 - c) Erosion and Sediment Control Plan
 - d) Spill, Pollution, Prevention Control Plan
 - e) Site Reclamation and Restoration Plan
 - f) List Proposed Equipment and Fuels Management Plan
 5. Calendar schedule for construction/implementation procedures
Site- or project-specific environmental compliance monitoring
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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

1.1 **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.

1.2 **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 _____, 2020

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

1.3 **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.

1.4 **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

2.1 **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.

2.2 **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.

2.3 **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.

2.4 **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

4.1 **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.

4.2 **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

5.1 **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.

5.2 **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.

5.3 **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.

5.4 **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.

5.5 **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.

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

ARTICLE 6. WORK PRODUCT

6.1 **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.

6.2 **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

7.1 **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.)

7.2 **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.

7.3 **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.

7.4 **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.

7.5 **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.

7.6 **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

8.1 **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'.

8.2 **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

9.1 **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.

9.2 **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.

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

9.4 **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

10.1 **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.

10.2 **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.

10.3 **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).

10.4 **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.

10.5 **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.

10.6 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.

10.7 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.

10.8 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.

10.9 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_Mod_01-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_Mod_01-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.

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
Title: Tribal Council Chairman

Date

[CONSULTANT]:

EIN #:

By:
Title:

Date

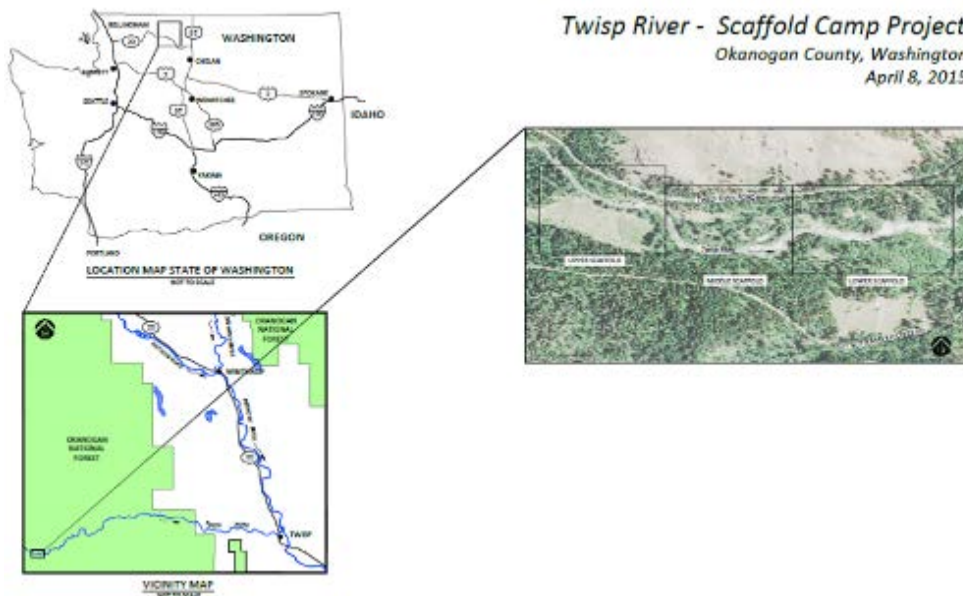
EXHIBIT A – SCOPE OF WORK

Background

Yakama Nation Fisheries is developing a salmon and steelhead habitat restoration project in the Twisp River Subbasin in Okanogan County, WA, known as the Twisp River Scaffold Camp Restoration Project. Under a previous consultant agreement a suite of restoration actions were developed for this reach, as well as a draft basis of design report. The contractor will refine and further develop a concept level plan and report.

Project Location

The Twisp River Scaffold Camp Project is located in the Middle Twisp River reach of the Twisp River between river miles (RM) 15.6 – 15.8.



Work Tasks

The contractor shall perform the following activities:

Phase 1 - Site investigation

Task 1 –Existing data review

The contractor will review existing data to be provided by Yakama Nation Fisheries or any other private or government entity that would aid future analysis and design. It is assumed this data consists of fish habitat survey, stream flow data, historical air photos, geomorphic field survey, hydrology, previously collected bathymetric/topographic survey data and the 2015 Middle Twisp River Reach Assessment.

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. Appropriate hydraulic cross sections will be identified and marked on maps and in the field for topographic survey.

A site 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.

Topographic and bathymetric survey will be completed on all lands from which ownership permission can be obtained by the Yakama Nation. Cross section survey and profile will be completed to develop a reach level hydraulic model. Survey will be based on an existing horizontal and vertical datum. A number of temporary bench marks using wooden hubs will be established for reference during construction. River and floodplain cross sections will be surveyed to develop both 1 and 2 dimensional models of the entire reach. Obvious infrastructural elements such as riprap, levees, bridges, irrigation diversions, well heads, power lines, building foundations, and/or other such elements shall be surveyed.

Stream substrate size 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 design considerations of sediment continuity and stream stability.

Existing riparian vegetative composition will be noted including species and elevations with respect to the stream.

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

Task 3 – Hydrology

Peak stream flow frequencies will be estimated or obtained from previous BOR, USGS, and Yakama Fisheries work efforts. If necessary peak flow frequencies can be estimated using available gage data and/or using published regression equations appropriate for the site.

Task 4 – Hydraulic analysis

Hydraulic conditions will be modeled using both 1 dimensional and 2 dimensional models. The existing site survey data 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 for project conditions.

The U.S. Army Corps of Engineer's one-dimensional HEC-RAS hydraulic model will be used to consider and certify FEMA flood impacts. 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 benefit adult and juvenile salmonid habitats at range of discharges and where possible low summer river stage. Restoration strategies shall be developed with consideration of the 2017 UCSRB RTT Biological Strategy and the 2015 Middle Twisp 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 report of findings from Phases 1 and 2, a drawing set of conceptual restoration designs, planning estimates, and a power point presentation for stakeholder meetings. The conceptual design report will be compiled in a manner consistent with BPA's HIP III General Project and Data Summary Requirements (see attachment).

Task 6 - Stakeholder Meetings and Communications

Following conceptual report completion, the contractor will present such findings to landowners and agency stakeholders. The presentation will focus on existing river processes, future trends, project benefits, relative project costs, project risks, future river processes as they relate to each project opportunity and how each potential project fits within existing and likely future conditions.

EXHIBIT C – PAYMENT TERMS

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
TOTAL AMOUNT OF BILLING	\$0.00

Signature _____ date _____

