

Contractor's Bid Package

FOR

Cle Elum Pool Raise: Speelyi Shoreline Protection Tree Harvest

April 14, 2025

Addendum #2: May 1, 2025

**Bid Package Prepared by:
Yakama Nation- Yakima/Klickitat Fisheries Project
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ADVERTISEMENT FOR BIDS: NOTICE IS HEREBY GIVEN that bids will be received for a tree harvest and haul project by the Confederated Tribes and Bands of the Yakama Nation (hereafter “Yakama Nation”).

Bids must be received by 3:00 p.m. PST on **Tuesday, May 6, 2025.**

No proposals will be accepted after that time.

On Thursday, April 24, 2025, an in-person bid tour will be held for prospective bidders at 9:00 a.m. PST at the project site. Email Kelly Clayton at clak@yakamafish-nsn.gov for an invitation to the pre-bid meeting and access to bid package.

Bids should be submitted by emailing a signed .pdf version of the bid to Kelly Clayton at clak@yakamanfish-nsn.gov.

The successful **Contractor** will be required to comply with Yakama Nation’s Tribal Employment Rights Ordinance (“TERO”), Title 71 of the Revised Yakama Code and other applicable Yakama law. The Contractor must contact the Yakama Nation’s TERO office at (509) 314-6701 or TERO@yakama.com to establish compliance on federal and state construction contracts. **Contractors** are encouraged to contact TERO as early as possible.

The successful **Contractor** will be required to obtain a Yakama Nation Business License by contacting Yakama Nation’s Department of Revenue at (509) 865-5121 ext. 4650 or revenue@yakama.com. All Business Licenses expire December 31 and must be renewed annually. **Contractor** shall submit a copy of the license verifying such to the Yakama Nation’s Designated Representative upon signature of the applicable Contract, and a copy of the renewed license each year by January 31 during the performance period of the applicable Contract.

The Yakama Nation is exempt from state taxes on this project. The successful **Contractor** will receive signed copies of a Treaty Fishery Exempt Cover Letter and Treaty Fishery Exempt Certificate for their records.

This work is subject to the requirements of Davis Bacon and related acts, and Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

Yakama Nation will check the State and Federal Debarred List to ensure that the successful bidder and their subcontractors are not debarred.

I - GENERAL DESCRIPTION

Effective April 14, 2025, **Yakama Nation**, will be soliciting bids for a responsible **Contractor** for tree harvest, loading, and hauling around Cle Elum Dam in Kittitas County. Contingent upon the completion of permitting, the **Contractor** will be awarded the applicable Contract, beginning June 1, 2025 and ending December 31, 2025. The **Contractor** shall act under the supervision of the Yakama Nation's Designated Representative. The Designated Representative reserves the right to change or delay the work schedule at any time. The work is contingent on the Yakama Nation receiving all permits.

II - CONTRACTOR'S RESPONSIBILITIES

The **Contractor** shall be responsible to perform work described in this bidder package including any appendices in a timely, professional manner, and shall abide by all applicable local, state, and federal guidelines that govern this project as well as all project permits provided to the **Contractor** by the Designated Representative. The provisions of this bid package, inclusive of appendices and addenda, will be incorporated into the applicable Contract by reference.

Project work shall be conducted Monday through Friday unless otherwise specified by the Designated Representative. The project schedule allows the work to be completed without the use of overtime. If the **Contractor** anticipates needing overtime work and charging the project for that work, permission for such overtime needs to be requested of and granted by the Designated Representative in writing ahead of the overtime costs being incurred.

2.1 Safety

The **Contractor** is **solely responsible** for maintaining safe working conditions near their equipment and for the safe operation of their equipment. If at any time the **Contractor** or their operators determine that instructions given by the Designated Representative would create a potentially unsafe working condition or would jeopardize the equipment or any personnel, the **Contractor** shall **immediately** notify the Designated Representative. The Designated Representative will then work with the **Contractor** to find an acceptable alternative method to complete the required task.

The **Contractor's** responsibilities regarding safety include, but are not limited to the following;

- A. **Contractor** shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the work.
- B. In carrying out its responsibilities according to the applicable Contract Documents, **Contractor** shall protect the lives and health of employees performing the work and other

persons who may be affected by the work; prevent damage to materials, supplies and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. **Contractor** shall comply with chapter 296-800 Washington Administrative Code (“WAC”) and all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify the Designated Representative of adjacent property and utilities when the work may affect them.

- C. **Contractor** shall maintain an accurate record of exposure data on all incidents relating to the work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies or equipment. **Contractor** shall immediately report any such incident to the Designated Representative and appropriate jurisdictions. The Designated Representative shall, at all times, have a right of access to all records of exposure.
- D. Nothing provided in this section shall be construed as imposing any duty upon the Designated Representative with regard to, or as constituting any express or implied assumption of control or responsibility over, project site safety, or over any other safety conditions in relation to employees or agents of the **Contractor** or any of its subcontractors, or the public.

2.2. Protection of Property Resources

The **Contractor** shall assume full financial and legal responsibility for any damage caused by their machinery and/or crews including but not limited to the following:

- A. Any equipment becoming stuck due to unstable ground or operator error.
- B. Any equipment damaged due to unstable ground or operator error.
- C. Any environmental damage due to fluid leaks; or
- D. Any damage outside the project area to culverts, bridges, paved roads, utilities or other property caused during operations.

The Designated Representative has the right to cease operations when there is significant threat of resource damage. This includes, but is not limited to, wet weather or during periods of extreme fire danger.

The **Contractor** shall be responsible for knowing and complying with all applicable federal, state, county and local guidelines and regulations including fire safety precautions and fire prevention and shall take all reasonable measures to prevent and minimize the start and spread of fire on or adjacent to the project area. Measures shall include ensuring that all vehicles carry a fire extinguisher of at least a 5 B/C rating and a serviceable shovel, following State safety operating procedures which include compliance with WAC 332-24-301 (Industrial restrictions) and WAC 332-24-405 (Spark emitting requirements). **Contractor** shall abide by the Industrial Fire Precaution Levels and the Forest Fire Protection Requirements for Operations on or Near Forest Land. In addition, the **Contractor** shall provide a pump truck or trailer as defined therein.

The **Contractor** must abide by the Hydraulic Project Approval (“HPA”) for this project and all other permits for this project. The Designated Representative shall provide copies of the permits when available. This project is permitted under the federal lands Aquatic Restoration Biological

Opinion and Categorical Exclusion, and the **Contractor** must comply with the conservation measures included in the **PROJECT PLANS** (Appendix C). These permit requirements include, but are not limited to, the use of non-toxic biodegradable hydraulic fluid for any equipment working within the wetted channel and floodplain. Service and refueling areas will be located at least 150 feet away from flowing water and a spill containment kit will be located where equipment is stored and shall remain onsite at all times.

Before beginning any work, **Contractor** shall submit a Hazardous Spill Plan to the Designated Representative. The **Contractor** is solely responsible for all spills or leaks that occur during the performance of the applicable Contract, and shall clean up spills or leaks in a manner that complies with federal, state, and local laws and regulations. The **Contractor** must immediately notify the Designated Representative of all hazardous material spill and shall provide a written report form no later than 24 hours after the initial report that includes the following:

- A description of the item/substance spilled (including identity, quantity, and other identifying information);
- Whether the amount spilled is EPA or state reportable, and if so whether it was reported, and to whom;
- The exact time and location of spill, including a description of the area involved;
- The immediate containment procedures taken or to be taken by **Contractor**;
- A summary of any communications the **Contractor** had with news media, federal, state and local regulatory agencies and officials regarding the spill; and
- A description of clean-up procedures employed by **Contractor** at the site, including final disposition and disposal location of spill residue.

When available, **Contractor** shall provide copies of all spill related clean up and closure documentation and correspondence from regulatory agencies to the Designated Representative.

The **Contractor** shall not obstruct roads or take action that restricts the flow of traffic or use on roads without written permission from the Designated Representative. Personnel shall park so as to not obstruct roads. Traffic delays shall be 10 minutes or less. The **Contractor** will provide signing and flaggers as needed per the Manual for Uniform Traffic Control Devices (“MUTCD”).

The **Contractor** shall repair damage to the roads, trails or facilities arising out of its use to a condition equal to or better than their condition immediately prior to such use with the exception of damage caused through normal and prudent usage. During periods when a road, or portion thereof, is being used by the **Contractor**, that portion of the road so used shall be maintained and, at the termination of each period of such use, shall be left in a condition equal to or better than the condition of the road immediately prior to use.

The **Contractor** shall not destroy any land survey corner monuments or reference points. Any survey monuments disturbed by the **Contractor's** operations shall be replaced by a Professional Land Surveyor at the **Contractor's** expense.

The **Contractor** shall cut no timber, remove no valuable materials as defined in RCW 79.02.010, and not disturb any cultural, historical or paleontological (fossil) resources.

The **Contractor** shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the project area except in accordance with all applicable laws.

The **Contractor** shall **immediately** notify the Designated Representative if any live, dead, injured or sick specimens of species listed under the Endangered Species Act are located. Likely species include steelhead, bull trout, Northern spotted owl, marbled murrelet, and lynx.

2.3 Protection of Cultural Resources

If the **Contractor's** work brings them into contact with any of the following cultural resources:

- Native American cultural artifacts – flakes, arrowheads, stone tools, bone tools, pottery, etc.;
- Historic era artifacts – building foundations, homesteads, shipwrecks, mining camps, etc.; or
- Human skeletal remains and bone fragments; then

The **Contractor** shall **immediately**:

1. Stop any ground disturbing activity immediately. Secure the area of the find and protect it from further disturbance;
2. Contact the Designated Representative;
3. Not draw attention to the area with any obvious flagging or markers; and
4. Maintain confidentiality concerning the discovery of the cultural resource, and discuss the find only with the contact people listed below.

If human skeletal remains are encountered, the **Contractor** shall **immediately** contact the county medical examiner/coroner **and** local law enforcement.

Name	Title	Phone	Address
Nick Henderson	Kittitas County Coroner	509-856-4970	507 North Nanum St., Suite 113 Ellensburg, WA 98926
Clay Myers	Kittitas County Sheriff	509-962-7525	307 W Umptanum RD Ellensburg, WA 98926

If Native American or Historical Artifacts are encountered, the Designated Representative will contact Yakama Nation Cultural Resources staff **immediately**.

After the **Contractor** comes into contact with any cultural resources as listed above, the **Contractor** shall only continue project work at the direction of the Designated Representative in order for Yakama Nation to protect the artifacts and sites and to limit the liability of both the Designated Representative and the **Contractor**.

III - WORK OVERSIGHT

The Designated Representative will be available during normal business hours (Monday through Friday 7 a.m. – 5 p.m. PST) and will clarify directions or provide additional information as necessary for the **Contractor** to carry out the applicable Contract. The Designated Representative must pre-approve any deviation from the work described in this bidder package.

The Designated Representative has the authority to stop **Contractor** work at any time if they determine that the conditions of this bidder package are not being followed.

IV – WORK DESCRIPTION, MATERIALS, AND EQUIPMENT

Project Location

The project area is located at Cle Elum Dam, Speelyi Day Use Area in the Okanogan-Wenatchee National Forest in T20N R14E Section 2. The site access point is the Speelyi Day Use Area, located at approximately 47.252845, -121.063485, which is approximately 8 miles northwest of Cle Elum, WA via WA-903.

For additional site details, please refer to the figures in the appendix of this bid package, and the Drawings attached to the bid package.

Work Description

The goal of this project is to remove trees in preparation for the Bureau of Reclamation’s construction of shoreline protection along the eastern end of Cle Elum Lake. Approximately 2 acres with 157 trees will be harvested, with and without root wads intact. All harvested material, including racking material and conifer tree slash (no cottonwoods, shrubs, or brush), will be extracted from the site and hauled to the Howsen Gravel Pit staging area. This material is intended for future in-stream placement by others to support fish habitat enhancement and bank erosion mitigation efforts in the Upper Cle Elum River watershed. Root wad tipping will be preferred throughout the harvest area where conditions allow. Trees less than 18” diameter-at-breast-height (“DBH”) measured from base of the tree, four feet up the bole without the bark shall be cut into 40-ft lengths. A mixture of pieces shall be half with and half without the root wad intact, and **trees greater than 19” DBH shall be cut into 50-ft lengths with the root wad intact**. Limbs shall be removed from trees for transport. For trees that are cut, stumps shall remain left in place.

The **Contractor** shall always adhere to all permit requirements.

The **Contractor** shall provide equipment, labor, fuel and lubricants needed to do the work described in this bidder package. The **Contractor** will also provide all materials needed to do the work described in this bidder package.

The Designated Representative may reject an operator(s) if, in their opinion, the operator(s) is not sufficiently skilled to do the work. The **Contractor** will not be compensated for any expenses, delays or lost production time resulting from the **Contractor** mobilizing equipment not capable of performing the work described in this bidder package.

The **Contractor** may choose to utilize subcontractors provided those subcontractors are identified on the bid form. The **Contractor** is responsible to ensure that the subcontractors meet all conditions of this bidder package and appendices, including provisions of Davis Bacon and related laws and regulations and that documentation is provided to the Designated Representative.

The **Contractor's** equipment must be free of leaks and other mechanical deficiencies.

After award of this Bid, and prior to start of Construction, the **Contractor** shall submit the following submittals for review and approval by the Engineer and Designated Representative:

- A. Temporary Construction Access and Staging
- B. Traffic Control Plan
- C. Temporary Erosion and Sediment Control Plan
- D. Work Plan including project work schedule and timing/duration for construction of each of the project elements
- E. Hazardous Spill Plan

The Designated Representative reserves the right to re-order, exclude or eliminate any work from the **Contractor's** scope of work. The **Contractor's** scope of work includes the work described in this bid package and all appendices and attachments. Any changes to the Project Work performed by the **Contractor** pursuant to this bid package must be agreed to in writing and signed by both the Contractor and the Designated Representative as part of a change order. The Project Work includes the following elements:

4.1 Mobilization / Demobilization

Bid item includes all work to mobilize equipment to the site and demobilize all equipment from the site following completion. Shall not exceed 10% of total final contract price.

4.1.1 Temporary Construction Access and Staging

This work encompasses establishing temporary staging locations and access points to all locations where trees are to be removed. This shall include any necessary grading, compaction, maintenance, and other work as necessary to establish, maintain, and utilize the temporary staging areas, access routes, temporary crossings as shown on the Plans or approved alternative routes as approved by the Designated Representative.

This work shall consist of developing a draft and final Temporary Construction Access and Staging Plan, identifying, and installing staging areas and equipment and materials delivery access routes within the project with minimal disturbance to existing vegetation and soils. **Contractor** shall install access and staging areas as specified in the Contract Plans and as approved by Engineer. This work includes furnishing all materials, labor, and equipment necessary to locate, install, maintain and remove the access route(s) and staging areas. **Contractor** shall not be allowed to begin mobilization until a final Access and Staging Plan has been submitted that has been approved by the Engineer. **Contractor** shall comply with the equipment limitations specified on the Contract Plans and discussed herein.

The **Contractor** shall identify access routes within the project with minimal disturbance to existing vegetation and soils and make every effort possible to adjust temporary access routes shown on the Plans to avoid clearing of any trees greater than 6-inches DBH. The **Contractor** may fell trees only within areas marked on the Plans for clearing which are approved by the Designated Representative. Temporary Access Routes shall be field fit to avoid trees and existing vegetation to the extent practicable. The **Contractor** may not clear or trim any vegetation until the Temporary Access Routes has been approved, and only with permission from the Designated Representative. The **Contractor** shall stockpile cleared branches, stumps, limbs and other vegetative material cleared during access and staging for future use as racking or slash as described in the Plans or as directed by the Designated Representative or Engineer. Material equal to or less than 6-inches in diameter shall be stockpiled on-site in an identified staging area.

Removing or disposing of trees greater than 6-inches in diameter from any portion of the Project Site requires approval of the Designated Representative. All material shall remain on-site and largely intact. The Designated Representative may direct the **Contractor** to lop and scatter portions of trees larger than 6-inches in diameter but the main portion of the trunk will remain intact and be positioned on-site as directed by the Designated Representative.

The **Contractor** shall not decommission the Temporary Access Route. The access route shall be retained for use in the Bureau of Reclamation's construction of shoreline protection, which will be completed by others. Restoration activities including decommissioning of the Temporary Access Route, seeding and the placement of weed-free straw mulch are not part of this contract and shall not be included in the **Contractor's** bid.

Crossing of the wetted stream channel is required for access. The crossing shall be made in adherence to the permit requirements, and the details in the Plans. The **Contractor** must supply his/her own steel plate to cross or create a log crib, for the temporary stream crossing. A temporary culvert will not be allowed due to in-water work window.

To prevent the spread of invasive species and protect native plant communities, the following equipment cleaning protocols shall be strictly followed in accordance with USDA Forest Service (2005) Record of Decision (ROD) Standard 2. All mud, dirt, and plant parts must be removed from all heavy equipment prior to entering National Forest System lands. This includes service vehicles that remain on roadways but travel frequently in and out of the project area. All equipment must be cleaned prior to leaving the project site if it will be moved to uninfested areas. Equipment moving from weed-infested portions of the project area to weed-free portions must be cleaned as described above. The District Noxious Weed Coordinator or District Botanist will provide maps identifying weed-infested treatment units.

4.1.2. Traffic control

The Contractor shall submit a Traffic Control Plan for approval prior to the start of work. The Speelyi Day Use Area will remain open to the public throughout the duration of the project, and the Contractor is responsible for implementing and maintaining all necessary traffic control measures at the Speelyi Day Use Area boat ramp, including any short-term road closures required during tree tipping, felling, and trucking operations. All traffic control must prioritize

public safety and minimize disruption, and shall comply with applicable traffic management standards and regulations.

The Traffic Control Plan must include appropriate safety measures for the public, comply with all applicable traffic control standards and regulations, and incorporate the use of logging operation signage. High-visibility orange construction fencing shall be installed around the active work area to clearly delineate it from the public. This fencing is required to ensure public safety and prevent unauthorized or accidental entry into the work zone.

Site access for all construction activities shall be via the Speelyi Day Use Area public boat ramp, as shown on the Drawings. A flagger is required at the boat ramp during hauling operations to manage public interaction and maintain safe ingress and egress for both the public and construction traffic.

Access to the work area shall be by using the Speelyi Day Use Area public boat ramp as shown on the Drawings.

All access to the tree clearing area shall be from the federal land side (reservoir side) and not by private property.

4.1.3. Stakeout and Marking

The **Contractor** shall mark the boundary of the tree removal area with temporary stakes or lath, as described on the Drawings for approval by the Engineer. Tree removal operations shall not start until the Engineer approves the marked removal area.

The tree removal area boundary shall be marked by or under the direction of a Professional Land Surveyor, at an accuracy within tolerances for professional land surveying.

Stakes and markings for the tree removal area boundary shall be set at a distance such that trees identified for removal on the Drawings can clearly be identified in the field, and no greater than 100-feet between stakes.

The **Contractor** shall mark the boundary of the staging area as shown on the Drawings with lath or other temporary stakes, which shall remain in place for the duration of the **Contractor's** use of the staging area.

The **Contractor** shall mark trees to be removed within the approved clearing area with paint, or other physical/visual means for approval by the Designated Representative or the Engineer. Tree removal shall not start until the Designated Representative or the Engineer approves the trees marked for removal.

Additional trees within the approved clearing area that are not shown on the drawings may be designated and marked for removal as agreed upon by the Designated Representative and **Contractor**.

Additional hazard trees immediately adjacent to the approved tree removal area may be marked for removal by as agreed upon between the Designated Representative and **Contractor** if they can be safely removed to reduce the safety hazard for the work site.

4.1.4. Measurement

No unit of measurement shall apply to the lump sum price for “Temporary Construction Access and Staging”.

4.1.5. Payment

The lump sum price for “Temporary Construction Access and Staging” shall constitute full payment for all materials, including hog fuel, gravel or spalls to stabilize temporary access route, labor, and equipment necessary to locate, install, maintain, remove and decompact the staging areas and access route(s) for equipment and material delivery methods, survey of construction limits, survey of access routes, survey of staging areas, survey of design elements, flagging, site clearing, tree protection, and salvage/incorporation of clearing material as directed by the Engineer or the Designated Representative.

Temporary traffic control and road rehabilitation shall be incidental to this bid item and no separate payment shall be made. A detailed breakdown of items shall be submitted with each lump sum Bid Item. Payment shall be made based on percent complete of each individual line item.

4.2. Temporary Erosion and Sediment Control

The **Contractor** shall prepare a temporary erosion and sediment control (“TESC”) plan which includes all project areas. The TESC plan shall indicate the proposed access route(s) and staging areas on-site during the project. The method of maintaining dry working conditions throughout the project shall be fully described, as well as approach to protecting the site and water quality in the case of a rainstorm. Stormwater best management practices (“BMPs”) shall be installed along the downhill perimeter of the work area consisting of either wattles of minimum 9-inch diameter, or silt fence. All stormwater BMPs shall be removed on job completion. The TESC plan shall be submitted to the Engineer for review and approval. No materials shall be brought into the staging area(s) or construction area until the TESC plan has been approved.

The **Contractor** shall prepare a detailed Spill Prevention Control and Countermeasures (“SPCC”) Plan, which will identify all the contingencies in the event of an accidental spill of any hazardous material, the SPCC Plan will be incidental to the Temporary Erosion and Sediment Control bid item.

Equipment will be refueled in a designated area at least 150 feet from the Cle Elum Reservoir or other sensitive areas (i.e., wetlands), with absorbent pads in place and spill containment equipment present to reduce the potential for contaminants to reach the water should any sort of accidental spill or leakage occur.

The Contractor shall inspect all heavy equipment prior to operating each day during Project construction work. All heavy equipment shall be deemed clean and free of external oil, fuel, or other potential pollutants prior to operating and performing construction activities, particularly in-water work. Hydraulic fluid in all heavy machinery operating in water must be vegetable-based hydraulic oil. A hazardous material spill kit will be maintained on-site by the **Contractor**.

4.2.1. Measurement

No unit of measurement shall apply to the lump sum price for “Temporary Erosion and Sediment Control.”

4.2.2. Payment

The lump sum price for “Temporary Construction Access and Staging” shall constitute full payment for all materials, labor, and equipment necessary to locate, install, maintain, and remove all materials necessary for managing water and sediment throughout the Project Site. This includes the TESC plan, SPCC Plan, hazardous material spill kit, any pumps/sumps/generators and equipment/labor to maintain any dewatering, erosion control along staging routes, and monitoring and reporting. Payment shall be made based on percent complete of the Project.

4.3 Tree Harvest/Removal

The **Contractor** shall remove the trees marked within the approved removal area, preferably with intact root wads, and with an objective to maintain majority of bole of trees and slash. Do not remove trees with the root wad intact in any location that could risk damage to private property by using this removal method. Slash shall be conifer tree debris only. No cottonwoods, brush or bushes shall be delivered to the Howsen Gravel Pit staging area.

The **Contractor** shall recontour holes created from tipping trees to blend with existing topography and ensure positive drainage such that they drain toward reservoir and do not create areas that could potentially trap fish.

4.3.1. Slash

Slash shall consist of dense vegetative debris from conifer tree species including, but not limited to, small trees, blasted or pushed-out stumps, chunks, broken tops, limbs, branches, brush or saplings. Slash shall be any native conifer species. Length of individual pieces of slash may vary between 5-10 ft, with 50% of the material at a length of 6 ft or longer. Thickness of slash pieces as measured at the butt (larger) end may vary from 3/4” – 4” diameter, with 55% of the pieces between 2” – 3” diameter as noted in the table below. Slash shall be compacted during installation to ensure that voids no larger than 3” exist within the compacted slash layer. A compacted cubic yard of slash must weigh approximately 570 lbs per CY.

Table 1. Slash composition

Distribution	Diameter
30%	3/4” – 2”
55%	2” – 3”
15%	3” – 6”



Figure 1. Photo example of acceptable slash.

4.3.2. Racking

Racking shall be trees 6” – 11” diameter-at-breast-height (“DBH”) cut between 20 ft – 40 ft lengths with a mixture of half with and without the root wad intact. Limbs shall be removed from trees for transport. For trees that are cut, stumps shall remain left in place.

4.3.3. Logs

Trees less than 18” DBH (measured from base of the tree, four feet up the bole without the bark) shall be cut into 40-ft lengths. A mixture of pieces shall be half with and half without the root wad intact. Limbs shall be removed from trees for transport. For trees that are cut, stumps shall remain left in place.

Trees greater than 19” DBH (measured from base of the tree, four feet up the bole without the bark) shall be cut into 50-ft lengths with the root wad intact (“RW”). Limbs shall be removed from trees for transport.

Tree quantities provided are an estimate for reference. If the actual quantity of the trees to be removed varies within more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the **Contractor** may request, in writing, an extension of time, to be received by the Designated Representative within 10 days from the beginning of the delay, or within such further period as may be granted by the Designated Representative before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Designated Representative shall ascertain the facts and

make an adjustment for extending the completion date as, in the judgement of the Designated Representative, is justified.

Trees for which removal with the root wad intact would pose a risk to private property shall be removed by means that minimizes risk to private property.

Existing driftwood on the beach that interferes with tree removal operations may be moved by the **Contractor** as necessary to complete the work. Upon completion of the tree removal work the driftwood shall remain scattered on the beach and not stockpiled.

Existing constructed fish structure log revetments near the boat ramp shall not be disturbed.

Tree size classes planned for removal are as follows:

Size Class	Minimum Lengths	Number of trees
Less than 6" DBH	Slash	0
6" – 11" DBH	Racking (20'-40') mixture	47
12" – 18" DBH	40' mixture	69
19" – 24" DBH	50' RW	26
Larger than 24" DBH	50' RW	15
Total		157

Table 2. Tree size classes for removal

The **Contractor** shall provide exact quantities for each tree size class to the Designated Representative for the fish habitat enhancement project (to be completed by others).

4.3.5. Measurement

“Tree Removal and Salvage”: shall be measured per each for the felling, trimming, and removal from/delivery to the identified location.

4.3.6. Payment

The unit price per each for “Tree Removal and Salvage” shall constitute full payment for all costs incurred for salvaging trees as shown on the Plans. The unit price includes all equipment, tools, and labor necessary for removing the trees from the site and delivering them to the location listed above. Payment shall be issued when all trees have been delivered.

4.4 Tree Hauling

The **Contractor** shall haul all trees, including racking material and slash, removed to the Howsen Gravel Pit staging area, located at approximately 47.376173, -121.092732, which is approximately 10 miles north of the Speelyi Day Use Area. Travel from the Speelyi Day Use Area north on 903, turn right (east) on National Forest Road 128 and the pit access will be on the left.

The **Contractor** shall unload trees at staging area, while minimizing damage to any surrounding infrastructure. Trees shall be decked by size class in the staging area.

The **Contractor** is responsible for repairing any damages to existing infrastructure resulting from hauling operations.

Haul loads for trees greater than 19” DBH must be a minimum 50 ft length with the root wad intact for payment to meet the spec for the fish habitat enhancement project.

Site access for all construction activities shall be via the Speelyi Day Use Area public boat ramp, as shown on the Drawings. A flagger is required at the boat ramp during hauling operations to manage public interaction and maintain safe ingress and egress for both the public and construction traffic.

4.5 Staging Area Sorting

The **Contractor** shall maintain a comprehensive tally of all trees transported to the Howsen Pit staging area. This tally must include:

- A. All newly delivered trees, and
- B. All pre-existing trees currently at the Howsen Pit staging area,

categorized by size class as defined in Table 1. The inventory shall be made available upon request for verification and inventory for the future fish habitat enhancement project in the Upper Cle Elum River watershed.



Figure 2. Howsen Gravel Pit Staging Area

4.6 Permit (in progress)

The Designated Representative is in the process of obtaining the following permits, approvals, and certifications:

- i. Hydraulic Project Approval (“HPA”)
- ii. Clean Water Act Section 401 Water Quality Certification
- iii. Clean Water Act Section 404 Nationwide Permit
- iv. Section 106 - National Historic Preservation Act
- v. National Pollutant Discharge Elimination System (“NPDES”) Construction Stormwater General Permit (“CSWGP”)

The **Contractor** is responsible for obtaining the following permits, approvals, and certifications:

- (i) National Pollutant Discharge Elimination System (“NPDES”) Construction Stormwater General Permit (“CSWGP”)

A Construction Stormwater General Permit application will be submitted by the **Contractor** through the U.S. Environmental Protection Agency (“EPA”) federal permit pathway on behalf of the Bureau of Reclamation for their Cle Elum Pool Raise: Speelyi Shoreline Protection Tree Harvest. The ownership of this permit will be the **Contractor**. The **Contractor** will comply with the CSWGP conditions and prepare the project Stormwater Pollution Prevention Plan (“SWPPP”). Ownership and compliance with the permit will remain the **Contractor’s** responsibility through project completion.

4.7 Final Permits

The Designated Representative will provide copies of the final permits to the **Contractor** prior to the start of construction. The **Contractor** is required to have copies of the permitting documents on site at all times during construction. The **Contractor** shall be solely responsible for compliance with these permits. The **Contractor** shall abide by the Industrial Fire Precaution Levels and the Forest Fire Protection Requirements for Operations on or Near Forest Land.

The work to obtain all remaining permit documents, including the NPDES and CSWGP, is contained in the bid item “Permits”.

V. FEDERAL FUNDING & WAGE LAWS

5.1 Davis Bacon Act Compliance

This Project is being funded by federal funds. In particular, this Project is being funded, in part with Indian Self-Determination Act funds. As such, this work is subject to the requirements of Davis Bacon and related acts. The requirements include the following:

The **Contractor**, and every sub-contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the work in accordance with the Federal Davis-Bacon Act (40 U.S.C., sec. 276a-7).

- A. The schedule of prevailing wage rates for the locality of the work is determined by the Industrial Statistician of the Department of Labor and Industries. Davis Bacon wage and fringe benefit rates for Heavy Construction Projects for Kittitas County, Washington State, are available on-line at: beta.sam.gov. It is the **Contractor's** responsibility to verify the applicable Davis-Bacon Wage rates.

B. Before commencing the work, the **Contractor** shall file a statement under oath with Yakama Nation Fisheries and with the Washington State Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the work by the **Contractor** and subcontractors. Such rates of hourly wage shall not be less than the Davis Bacon wage rate.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in the applicable Contract.

VI –WORK SCHEDULE

Project work shall be conducted Monday through Friday. Due to heavy recreational use of the area, no work shall be permitted between June 30, 2025, and July 4, 2025. The Contractor shall plan all activities accordingly to avoid site presence, construction operations, or equipment mobilization during this period. Timing for harvest will rely on soil conditions. Work should occur while soil is moist to reduce dust issues, but dry enough to minimize impacts from equipment. Work is anticipated to begin June 15, 2025. Trees shall be hauled to the staging area prior to the start of the fish habitat enhancement project (to be completed by others), which is anticipated to begin July 16, 2025. If that project is delayed until 2026, the trees shall be hauled to the staging area by September 30, 2025.

The Designated Representative reserves the right to change or delay the work schedule at any time. **NO WORK SHALL BEGIN WITHOUT THE WRITTEN APPROVAL OF THE DESIGNATED REPRESENTATIVE.** If the **Contractor** fails to begin work within five days of the Designated Representative’s written notice to proceed, the Designated Representative has the right to avoid further delay by terminating the applicable Contract or hiring an alternate **Contractor**. The **Contractor** will work with the Designated Representative to schedule the work. The **Contractor** shall notify the Designated Representative at least six days but not more than twelve days prior to the start of instream work.

The **Contractor** has five days to sign the applicable Contract once it has been provided by the Designated Representative. After executing the applicable Contract, the **Contractor** shall provide proof of insurance to the Designated Representative. If the **Contractor** fails to timely sign the applicable Contract or provide proof of insurance, the bid deposit shall be forfeited and the Designated Representative shall be released from the Contract’s obligations. In which case, another **Contractor** shall be selected. If the **Contractor** experiences circumstances beyond their control that prevent return of the applicable Contract documents within five working days after the Award date, the Designated Representative may extend the deadline for return of the documents, provided the Designated Representative determines, in writing, that the circumstances warrant it. The applicable Contract shall only become effective when signed by the Designated Representative. Prior to the Designated Representative’s signature, any and all costs incurred shall be the sole responsibility of the bidder. At the mutual agreement of the parties, additional work may be added to the applicable Contract.

VI - INSURANCE

The **Contractor** shall maintain the following insurance and shall submit certificates verifying such to the Designated Representative by June 1, 2025 prior to commencing any work hereunder:

- (1) A bid bond at 5% of the total contract amount;
- (2) Performance bonds at 100% of the original contract price for construction contracts exceeding \$150,000;
- (3) Payment bonds at 100% of original contract price if **Contractor** plans to subcontract work;
- (4) Applicable Federal and State workers' compensation and occupational disease liability coverage of at least \$100,000;
- (5) Commercial automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits;
- (6) Commercial general liability insurance covering claims for injuries arising out of any negligent act or omission of the **Contractor** or of any of its employees, agents, or subcontractors, with \$1,000,000 combined single limits; and Yakama Nation Fisheries as an additional insured; and
- (7) Environmental impairment liability insurance of at least \$1,000,000 per occurrence, including coverage for the clean up, removal, storage, disposal, transportation and/or use of pollutants; and naming Yakama Nation, its officials, officers, employees and agents as additional insured. The **Contractor's** policy shall be primary to any insurance of Yakama Nation.

All insurance certificates must state that the insurance carrier will provide thirty (30) days notice of any cancellation of the policies. To Yakama Nation Tribal Leadership.

VII - BIDS, BID SELECTION & INQUIRIES

7.1 Bid Procedures

- a) Additive Bid Items is a supplemental unit of work or group of bid items identified separately in the Bid Proposal, which may, at the discretion of the Contracting Agency, be awarded in addition to the base bid.
- b) Bidder shall fill out the attached Bid Form, subject to the Bid Quantities as summarized in the attached Bid Tabulation Sheet.

All bids shall include a breakdown of line items included in the unit price for lump sum Bid items. All bids must be signed in ink or via electronic signature. In addition to all of the requirements stated herein, each proposed bid shall also be governed by the conditions contained in the appendices attached hereto. **Bids must be submitted by sending a signed .pdf version of the bid to clak@yakamafish-nsn.gov prior to 3:00 p.m. PST on Tuesday, May 6, 2025. No bids will be accepted after that time.** The **Contractor** shall submit an electronic copy of the bid bond. Any standard bid form is acceptable. An email confirmation of receipt will be provided as soon as possible following Yakama Nation's receipt of a bid.

7.2 Bid Tour

A bid tour will be held on-site on **Thursday, April 24, 2025 at 9:00 a.m. PST** for prospective bidders. Email Kelly Clayton at clak@yakamafish-nsn.gov for an invitation to the meeting location and access to the full bid package.

7.3. Inquiries

Prospective bidders may request clarification concerning information contained in this bid package by submitting a written statement or question to the Designated Representative **no later than 1:00 p.m. on Monday, April 28, 2025**. Such questions should be submitted by email to clak@yakamafish-nsn.gov.

The statement/question shall be answered in writing by the Designated Representative **no later than 4:00 p.m. on Wednesday, April 30, 2025**. The Designated Representative's response shall become an addenda to this Bid Package by this reference, and also shall be sent by e-mail to all potential bidders that have requested a copy of this Bid Package. Prospective bidders must provide e-mail addresses to receive any possible response. Failure to receive any such addenda shall not relieve such Bidder of fulfilling any contract modifications contained therein. The Bidder shall be responsible to ascertain that all addenda issued have been received prior to submittal of a bid.

7.4. Withdrawal of Bid

In the event a bidder discovers an error in its bid, the Bidder may request to withdraw their bid by providing written notification via email to Yakama Nation Fisheries at clak@yakamafish-nsn.gov by **Wednesday, May 7, 2025 at 3:00 p.m. PST**.

7.5. Indian Preference

Yakama Nation will award the Project contract to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Provided that if there are multiple responsive low bids from responsible bidders, Yakama Nation will give preference to and select the low bid received from:

1. A certified 100% Yakama owned business ("Yakama Preference Contractor"); or if there are no such bidders, then
2. A certified Indian owned business that is at least 51% Indian-owned ("Indian Preference Contractor"); or if there are no such bidders, then
3. A non-Indian owned business.

To be given preference as a Yakama Preference Contractor or Indian Preference Contractor, Contractor's bid package must include a certification of such status issued by the Yakama Nation Tribal Employment Rights Office.

In addition, as a condition of the award, the Bidder must agree to verify that all subcontractors are also in compliance with the "responsibility" criteria as specified in RCW 36.06.

7.6. Responsive Criteria

A Bidder's responsiveness will be determined in part by a review of: (i) the completeness of their bid; (ii) their bid's compliance with all Bid Package requirements; (iii) whether their bid includes all required information; and (iv) whether their bid includes any modifying conditions.

7.7. Responsibility Criteria and Appeals

The responsibility of the Bidder will be evaluated by applying required and supplemental criteria.

7.7.1. Required Criteria.

Pursuant to the directives contained in RCW 39.04, proof of compliance with the following criteria must be provided by the Bidder for there to be a determination that the bid is acceptable as being a “responsible” bid:

- (a) the Bidder must have a certificate of registration in compliance with Chapter 18.27 RCW;
- (b) the Bidder must have a current state Unified Business Identifier number;
- (c) the Bidder must have industrial insurance coverage for the bidder’s employees working in Washington as required in Title 51, RCW, an Employment Security Department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW, unless proof is provided that these items are not required of the bidder; and
- (d) the Bidder must not be debarred or disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

7.7.2. Supplemental Criteria.

The determination of whether a Bidder is “responsible,” is subject to supplemental criteria, which will include consideration of the Bidder’s reputation, experience, track record, integrity, and resources.

The Bidder should address all of these items in their bid. In the event a determination is made that the lowest responsive Bidder is not “responsible,” or does not meet all the required and supplemental criteria, a written explanation for the reasons for this determination will be sent to the Bidder’s address.

The bidder may appeal any adverse determination on the issue of “responsibility.” Any such appeal must be submitted in writing, received by Yakama Nation Fisheries within fourteen (14) calendar days of the date noted on the written determination. The Bidder appealing this determination may provide additional information in their written appeal. A final determination on the Bidder’s appeal will be issued prior to the execution of any contract. The applicable Contract may be awarded to another bidder if the appeal is denied.

VIII - NON-DISCRIMINATION

The **Contractor** shall not discriminate on the grounds of race, color, sex, age, or national origin, and in the selection and retention of employees and subcontractors, including, but not limited to, services for procurement of materials and leases of equipment. Notwithstanding the foregoing, the **Contractor** shall comply with TERO laws (see Bid Package page 1).

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the State of Washington encourages participation in all of its contracts by Minority and Women’s Business Enterprises (“MWBE”) firms certified by the Office of Minority and Women’s

Business Enterprises. Participation may be either on a direct basis in response to this invitation or as a subcontractor to a bidder. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the applicable Contract documents, no preference will be included in the evaluation of bids, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the applicable Contract documents will apply.

IX - INVOICE & PAYMENT

The **Contractor's** invoice(s) should be sent via email to Yakama Nation at clak@yakamafishnsn.gov. The **Contractor** will not invoice more frequently than monthly. Payments will be made for work performed and materials furnished under the applicable Contract, according to the prices in the bid form. The Designated Representative will make payment(s) to the **Contractor** as soon as possible and within sixty (60) days of receipt of the **Contractor's** invoice. Invoices will be subject to a five percent (5%) retainage until final inspection and approval of the work.

XI – BID FORM

Bid forms that are incomplete may be deemed non-responsive. Attach additional pages as needed or any supplemental information that will help us evaluate your bid.

CONTRACTOR:

ADDRESS: _____

LICENSE NUMBER: _____

FEDERAL IDENTIFICATION

#: _____

Is your firm an LLC? _____ YES _____ NO

Phone No.: _____ Cell Phone: _____

E-mail _____

REFERENCES – List stream restoration projects you have successfully completed.

- 1) Job Name: _____ Organization: _____
Contact Name: _____ Phone #: _____

- 2) Job Name: _____ Organization: _____
Contact Name: _____ Phone #: _____

- 3) Job Name: _____ Organization: _____
Contact Name: _____ Phone #: _____

MACHINERY – List machinery and equipment to be used.

Equipment:	Make:	Model:	Machine Hours:
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Describe your experience harvesting, loading and hauling trees while retaining root wads:

List any subcontractors and provide license numbers. Describe what work will be subcontracted:

As part of the bid process, could you please confirm whether you have contacted the Tribal Employment Rights Office (TERO) for compliance regarding the project? This is an essential step in ensuring all necessary requirements are met.

Table of Bid Item Costs

Table 1. Bid Tabulation Table

Base Bid Items – Speelyi Shoreline Protection Tree Harvest						
Item #	Item Description	Specification Section	Quantity	Unit	Unit Price (\$)	Amount (\$)
1	Mobilization	4.1	1	LS	\$	\$
2	Temporary construction access and Staging	4.1.1	1	LS	\$	\$
3	Stakeout and Marking	4.1.3	1	LS	\$	\$
4	Temporary erosion and sediment control	4.2	1	LS	\$	\$
5	Tree Harvest	4.3	157 trees	EA	\$	\$
6	Hauling Trees	4.4	1	LS	\$	\$
7	Hauling Slash and Racking	4.4	1	LS	\$	\$
8	Staging Area Sorting	4.5	1	LS	\$	\$
9	Permits	4.6	1	LS	\$	\$
	Base Bid Total					\$

*Mobilization cost must include the following items: a water tanker or equivalent to be onsite for fire suppression and/or dust abatement. A portable toilet to meet WAC 296-155-140 requirements.

All prices bid herein shall remain in effect through December 31, 2025.

Sales tax should not be included in the bid prices.

I, _____, certify that I am available to meet the work timeline as outlined in this bidder package, and that I have the experience and equipment necessary for providing quality services as described in this bidder package.

Contractor shall be required to comply with the requirements as stated in the attached **CONTRACTOR'S BID PACKAGE**.

BID SUBMITTED BY:

Typed or printed name

Title

SIGNATURE:

Date:

APPENDIX A.

CONSTRUCTION SERVICES AGREEMENT

BETWEEN:

THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

on behalf of its program or department

P.O. Box 151 / 401 Fort Road

Toppenish, WA 98948

General Phone: (509) 865-5121

Program Phone:

(HEREAFTER "YAKAMA NATION")

AND

[CONTRACTOR NAME]

Address Line 1

Address Line 1

Phone:

(HEREAFTER "CONTRACTOR")

This Construction Services Agreement ("Agreement") is executed by and between Contractor and Yakama Nation, a federally recognized sovereign Nation pursuant to the Treaty with the Yakamas of 1855 (12 Stat. 951). Contractor and Yakama Nation may be collectively referred to herein as the "Parties," and each may be referred to as a "Party."

1. TERM

The effective term of this Agreement shall be from _____, through _____, absent a valid termination action in accordance with the express terms of this Agreement.

2. PERFORMANCE

Contractor agrees to perform the services set forth in the attached scope of work, Exhibit "A" (collectively, the "Services"), which is incorporated by reference in this Agreement.

3. COMPENSATION

A. *Maximum Compensation.* The **total compensation amount** approved by Yakama Nation for this Agreement is limited to, and **shall not exceed** _____ (\$_____); which amount shall include any and all compensation for the Services as described herein and set forth in detail in the budget attached as Exhibit "B". If Exhibit "B" describes separate and specific maximum compensation amounts for services and expenses, then at the end of the term of this Agreement, any remaining balance in the amount allocated for expenses may be used by Yakama Nation, at

its sole discretion, to cover fees for authorized services, so long as the total compensation amount set forth above is not exceeded.

B. *Invoicing, Progress Reports and Payment of Compensation.* Yakama Nation shall compensate Contractor according to the billing rate(s) and/or fee schedule(s) set forth in Exhibit “C” in an amount not to exceed that stated above. Contractor shall submit monthly invoices and appropriate supporting documentation to Yakama Nation, including a progress report that provides of brief summary of daily activities associated with services performed and completed by Contractor. 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. Invoices shall be submitted by Contractor to Yakama Nation’s designated staff contact within fifteen (15) days after the end of the month in which the services were provided and/or expenses were incurred. Contractor waives the right to receive full payment on invoices submitted more than sixty (60) days following the end of the proper invoice period. If a question or concern arises regarding an item on an invoice, Yakama Nation shall notify Contractor of the question or concern. Within five (5) business days following such notification, Contractor shall take action to sufficiently explain or correct the item, or Contractor shall be deemed to have waived their right to demand payment for the item.

C. *Availability of Funds.* Notwithstanding any other provisions of this Agreement, Contractor understands and agrees that compensation for services and expenses under the terms of this Agreement shall be contingent upon the availability of funds (a) placed to the credit of Yakama Nation in the Treasury of the United States, (b) appropriated by Congress, or (c) from local funds maintained in the name of Yakama Nation.

D. *Federal & Grant Funds.* Contractor understands and agrees that agreements and contracts funded by federal funds or other grant funds may be subject to certain legal requirements. These may include, but are not limited to, those requirements set forth in the United States Office of Budget Management’s Uniform Guidance, 2 C.F.R. Part 200, and/or the terms of an applicable source grant. Contractor agrees to comply with and utilize funds in accordance with all applicable laws, regulations, and guidelines, and with any applicable grant or contract terms, and further understands and agrees that the use of such funds may be subject to audit by the grantor agency. Contractor shall reimburse Yakama Nation for any costs of Contractor that are disallowed by a grantor.

4. PROPERTY DEVELOPED BY CONTRACTOR

Contractor agrees that it will retain no interest in the information, data, proposals, papers, copyrights, patents, or any other material or property developed, discovered, invented, and/or accumulated by Contractor in connection with the performance of this Agreement. Subject to applicable law, Contractor shall turn over such information, data, proposals, papers, copyrights, patents, discoveries, inventions, and other material or property to Yakama Nation upon the expiration or termination of this Agreement or upon request.

5. PUBLICATION OF INFORMATION

The dissemination or publication of documents, information material or other property developed or generated by Contractor during the course of this Agreement shall require the written approval of Yakama Nation.

6. RECORDS

A. *Access.* Subject to applicable law, Yakama Nation will provide Contractor with reasonable access to its personnel, facilities, and records necessary to the performance of this Agreement.

B. *Maintenance & Retention of Records; Financial Management for Accounting and Audits.* Contractor shall maintain and retain auditable records during the term of this Agreement and for a period of at least three (3) years following the expiration or termination of this Agreement. Contractor shall maintain its records to 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. Contractor shall adhere to a systematic accounting method that assures timely and appropriate resolution of audit findings and recommendations in compliance with the Uniform Guidance. Subject to applicable law, Contractor agrees that Yakama Nation, the grantor agency (if applicable), the Comptroller General of the United States, or any of their duly authorized representatives, shall have timely access to Contractor's records which are pertinent to the subject matter of this Agreement and the performance of obligations contained herein, for the purpose of conducting an audit and/or examination, and/or creating excerpts and/or transcriptions.

7. INDEPENDENT CONTRACTORS

Contractor shall employ, at its own expense, all personnel and equipment reasonably necessary to perform the Services called for by this Agreement. Such personnel shall not be considered Yakama Nation employees. Contractor shall be responsible to ensure that all personnel engaged in performing Services are fully qualified to undertake the work in accordance with applicable tribal, federal, state, and local laws. Contractor shall at all times in performance of this Agreement operate as, and have the status of, an independent contractor, and will not be an agent or employee of Yakama Nation; nor will Contractor or its personnel be entitled to any employee benefits provided by Yakama Nation. The Parties are not engaged in a joint venture or partnership. Neither party can represent or bind the other. Unless otherwise expressly agreed, Contractor shall be solely responsible to secure and pay for any necessary or appropriate permits, fees, licenses, inspections, or other prerequisites necessary for proper performance of the Services called for by this Agreement.

8. SUBCONTRACTING

A. Contractor shall not be permitted to hire a subcontractor to perform the Services called for by this Agreement without express prior written consent. Any unauthorized attempt by Contractor to subcontract for such Services shall be null and void, and Contractor shall be responsible for all expenses, fees, and costs associated with any such unauthorized subcontract.

B. An award of this Agreement based on a bid or proposal naming specific subcontractors and identifying the portions of the work to be performed by the subcontractors shall constitute prior written consent to the hiring of the named subcontractor(s). Subcontractor selection and subcontractor employment shall be subject to applicable TERO and Indian Preference requirements described above. Contractor shall be responsible to ensure their subcontractors are in compliance with Yakama Nation TERO and Indian Preference requirements.

9. ASSIGNMENT OF INTEREST

Contractor shall not assign its interest in this Agreement, or any part thereof, including its right to receive payment for services performed, to another party. Any attempt by Contractor to assign any obligations, rights, or fees under this Agreement will be null and void, and Contractor shall be responsible for all expenses, fees, and or costs associated with any unauthorized assignment.

10. INDEMNIFICATION

Contractor shall, at its sole expense, hold harmless, indemnify, and defend Yakama Nation and its officers, agents, employees, and assigns against any and all losses, costs, damages, expenses or other liabilities whatsoever, including reasonable attorney's fees and expenses, that arise out of or are connected with, directly or indirectly, Contractor's actions or omissions, or Contractor's agents' acts or omissions related to this Agreement, including, but not limited to, accidents or injuries to persons or property.

11. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

A. Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

- (1) Conditions bearing upon transportation, disposal, handling, and storage of materials;
- (2) The availability of labor, water, electric power, and roads;
- (3) Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- (4) The conformation and conditions of the ground; and
- (5) The character of equipment and facilities needed preliminary to and during work performance.

Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Yakama Nation and information available to the public from local government agencies, as well as from the drawings and specifications made a part of this Agreement. Any failure of Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for properly estimating the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Yakama Nation.

B. Yakama Nation assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Yakama Nation. Nor does Yakama Nation assume responsibility for any understanding reached or representation made concerning conditions that can affect the work by any of its officers or agents before the execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

12. PHYSICAL DATA

Data and information furnished or referred to below or in the attached exhibits is for Contractor's information. Yakama Nation shall not be responsible for any interpretation of or conclusion drawn from the data or information made available to Contractor. Further, Yakama Nation specifically does not warrant construction methodology that may be included in such documents.

(a) The indications of physical conditions on any drawings or specifications that have been provided are the result of general inspection of the site. [if applicable, insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probing, test tunnels, etc.].

(b) [Write "n/a" or insert other pertinent information].

13. SCHEDULE FOR CONSTRUCTION

A. *Construction Schedule.* Unless the construction schedule is specifically addressed elsewhere in this Agreement, Contractor shall, within five (5) days after the work commences on the Agreement or another period of time determined by Yakama Nation, prepare and submit to Yakama Nation three (3) copies of a practicable schedule showing the order in which Contractor proposes to perform the work, and the dates on which Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion each week during the Agreement period. If Contractor fails to submit a schedule within the time prescribed, Yakama Nation may withhold approval of progress payments until Contractor submits the required schedule. Should Contractor fall behind its schedule, a revised schedule shall be forwarded with the next Contractor's request for progress payment. Additional schedules shall be furnished to Yakama Nation as soon as practicable if so requested.

B. *Rate of Progress.* With any and each partial payment request, Contractor shall submit a copy of the last submitted schedule annotated to indicate actual progress made to date. If at any time, in the opinion of Yakama Nation, Contractor has fallen behind the schedule to an extent which would jeopardize timely completion, Contractor shall take the steps necessary to improve its progress, including those that may be required, to enable timely completion without additional cost to Yakama Nation. Such steps may include, but are not limited to, increasing the number of shifts, the amount of overtime, days of work per week, and/or the amount of construction plant being utilized. Contractor shall submit any supplementary schedules Yakama Nation deems necessary to demonstrate how the rate of progress necessary for timely completion will be regained.

C. *Breach.* Failure of Contractor to comply with the requirements of this section shall be considered a material breach and grounds for a determination by Yakama Nation that Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Agreement. Upon making this determination, Yakama Nation may terminate Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this Agreement.

14. DIFFERING SITE CONDITIONS

Contractor shall promptly, and before the conditions are disturbed, give a written notice to Yakama Nation of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent to the type of work provided for in the Agreement. Unless specifically identified in the Agreement, discoveries of archaeological or historical remains such as graves, fossils, skeletal materials and artifacts protected by the Archaeological Resources Protection Act (36 CFR 1214) are considered type 2 conditions.

15. LAYOUT OF WORK

Contractor shall lay out its work from Yakama Nation established base lines and bench marks indicated on the drawings or any other manner furnished by Yakama Nation. Contractor shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. Contractor shall be responsible for the execution of the work to the lines and grades that may be established or indicated by Yakama Nation. Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by Yakama Nation until authorized to remove them. If such marks are destroyed by Contractor or through its negligence before their removal is authorized, Yakama Nation may replace them and deduct the expense of the replacement from any amounts due or to become due to Contractor.

16. SPECIFICATIONS, DRAWINGS AND MATERIAL SUBMITTALS

A. Omissions from any drawings and specifications that have been provided, or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or misdescribed details of the work. Work shall be performed as if fully and correctly set forth and described in the drawings and specifications.

B. Contractor shall check all drawings furnished by Yakama Nation prior to starting work and shall promptly notify Yakama Nation of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Contractor shall compare all drawings and verify the figures before laying out the work, and will be responsible for any errors which might have been avoided thereby.

17. MATERIAL & WORKMANSHIP

A. *Materials.* All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement. Use of recycled materials for the manufacture of such products is encouraged. Equipment, material, or articles specified by trade name, make, or catalog number, shall be provided. Equivalent items are not acceptable unless specifically authorized in the specification.

B. *Professional Work.* All work under this Agreement shall be performed in a professional, thorough, skillful, and safe manner, and shall be consistent with relevant professional standards.

Yakama Nation may require, in writing, that Contractor remove from the work any employee Yakama Nation deems incompetent, unsafe, or otherwise objectionable.

C. *Legally Compliant Work.* In performing its obligations under this Agreement, Contractor shall comply with all applicable tribal, federal, state and local laws, regulations, guidelines and policies in performance of services under this Agreement. Such laws may include, but are not limited to, the Davis Bacon Act and related federal labor law requirements associated with federally funded construction projects. Contractor represents that it has reviewed, and is familiar with, all laws relevant to the performance of services under this Agreement.

18. SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this Agreement, and until the work is completed and accepted, Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to Yakama Nation and has authority to act for Contractor.

19. PERMITS AND RESPONSIBILITIES

Unless otherwise provided in this Agreement, Contractor shall, without additional expense to Yakama Nation, be responsible for obtaining any and all necessary licenses and permits, and for complying with any tribal, federal, state, and municipal laws, codes, and regulations applicable to the performance of the work. Contractor shall also be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of Yakama Nation and others. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under this Agreement.

20. OTHER CONTRACTS

Yakama Nation may undertake or award other contracts for additional work, or may utilize in-house construction forces, at or near the site of the work. Contractor shall fully cooperate with such other contractors and Yakama Nation employees, and carefully adapt scheduling and performance of the work under this Agreement to accommodate simultaneous performance, heeding any direction that may be provided by Yakama Nation. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractors or by Yakama Nation employees.

21. USE AND POSSESSION PRIOR TO COMPLETION

Yakama Nation shall have the right to take possession of or use any completed or partially completed part of the work call for by this Agreement. Before taking possession of or using any work, Yakama Nation shall furnish Contractor a list of items of work remaining to be performed or corrected on those portions of the work that Yakama Nation intends to take possession of or use. However, failure of Yakama Nation to list any item of work shall not relieve Contractor of responsibility for complying with the terms of this Agreement. Yakama Nation's possession or use shall not be deemed an acceptance of any work under this Agreement.

22. CLEANING UP

A. Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the owner of the underlying real property. Upon completing the work, Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to Yakama Nation.

B. Unless specifically set forth in the Agreement, Contractor shall not burn any material on site, on the right-of-way or on the access roads to the sites. All material and debris shall be hauled to an appropriate disposal site.

23. ROAD MAINTENANCE

Contractor shall maintain all roads used by it, and upon completion of the job shall leave them in as good a condition as when first used. A road-grading machine (not a bulldozer) shall be used for maintenance and final grading. In no event shall Contractor interfere with the property owner's use of roads existing prior to Contractor's entry.

24. STOP WORK ORDER

A. Yakama Nation may order Contractor to suspend all or any part of the work call for by this Agreement for the period of time that Yakama Nation determines appropriate for the convenience of Yakama Nation.

B. Contractor shall immediately comply with Yakama Nation's order and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order.

25. PROTECTION OF EXISTING VEGETATION, STRUCTURES, AND IMPROVEMENTS

A. Contractor shall preserve and protect all structures, equipment, utilities, other improvements, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Agreement. Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this Agreement, or by the careless operation of equipment, or by workers, Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Yakama Nation's representative.

B. If Contractor fails or refuses to repair the damage promptly, Yakama Nation may have the necessary work performed and charge the cost to Contractor.

26. INSURANCE

A. The following minimum kinds and amounts of insurance are applicable in the performance of the work under this Agreement. Contractor shall (subject to applicable law) maintain such insurance, naming Yakama Nation as an additional insured:

Cle Elum Pool Raise: Speelyi Shoreline Protection Tree Harvest

(1) *Workers' compensation and employer's liability.* Contractor is required to comply with applicable Federal and State workers compensation and occupational disease statutes. Employer's liability coverage of at least \$100,000 shall be required.

(2) *General liability.* Contractor shall provide general liability insurance of at least \$1,000,000 per occurrence. Any policy aggregate limits which apply, shall be modified to apply to each location and project. The policy shall name Yakama Nation, its officials, officers, employees and agents, as insureds with respect to Contractor's performance of services.

(3) *Automobile liability.* Contractor shall provide automobile liability insurance covering the operation of all automobiles used in the performance of this Agreement. Policies shall provide limits of at least \$1,000,000 per accident and include coverage for all owned, non-owned and hired automobiles. Contractor's policy shall be primary to any insurance of Yakama Nation.

(4) *Environmental impairment liability.* Contractor shall provide environmental impairment liability insurance of at least \$1,000,000 per occurrence. Such insurance will include coverage for the clean up, removal, storage, disposal, transportation and/or use of pollutants. The insurance policy shall name Yakama Nation, its officials, officers, employees and agents as insured. Contractor's policy shall be primary to any insurance of Yakama Nation.

B. Contractor may, with the approval of Yakama Nation, maintain a self-insurance program; provided that, with respect to workers' compensation, Contractor is qualified pursuant to statutory authority.

C. Before commencing work under this Agreement, Contractor shall provide to Yakama Nation certificates of insurance from the insurance company stating the insurance required has been obtained and is in force. The certificate(s) shall identify Contractor and the contract(s) for which coverage is provided, and shall contain a statement that the insurer will give notice of cancellation or any material change to Yakama Nation at least thirty (30) days before the effective date. In addition, Contractor shall provide certificates as the policies are renewed throughout the period of this Agreement. If Contractor's insurance does not cover the subcontractors involved in the work, Contractor shall provide certificates stating that the required insurance has been obtained by the subcontractors.

27. INSPECTION - SERVICES AND CONSTRUCTION

A. Yakama Nation may inspect the work called for by this Agreement at any time and place. Where possible and practicable, Yakama Nation will perform inspections in a manner that will not unduly delay the work.

B. If any of the services do not conform with the requirements of this Agreement, or with applicable laws, regulations or governmental policies, Yakama Nation may require the Contractor to perform the services again in conformity at no cost to Yakama Nation. When the defects in services cannot be corrected by re-performance, Yakama Nation may deduct from the Agreement payments an amount which reflects the reduced value of the services performed.

C. Neither inspection, lack of inspection, acceptance, nor payment shall relieve the Contractor of any of its obligations under this Agreement. Contractor's duty to re-perform non-conforming work is intended to survive the expiration of this Agreement's term, and shall apply even where non-conformance is discovered following its expiration.

D. If Contractor does not promptly replace or correct rejected work, Yakama Nation may (without limiting any other legal or equitable remedies available to it) (1) by contract or otherwise, replace or correct the work and charge the cost to Contractor, and may (2) terminate this Agreement for default.

E. Unless otherwise specified in the Agreement, acceptance by Yakama Nation will be in writing and shall be made as promptly as practicable after completion and inspection of all work called by this Agreement or that portion of the work Yakama Nation determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, non-compliance with applicable law, or Yakama Nation's rights under any warranty or guarantee.

28. WARRANTY - CONSTRUCTION

A. In addition to any other warranties in this Agreement, Contractor warrants, except as provided in paragraph (H)(1) of this clause, that work performed by it and/or its subcontractors under this Agreement conforms to applicable law and to the contract requirements, and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor or any subcontractor or supplier at any tier.

B. This warranty shall continue for a period of three (3) years from the date of final acceptance of the work. If Yakama Nation takes possession of any part of the work before final acceptance, this warranty shall continue for a period of three (3) years from the date Yakama Nation takes possession.

C. Contractor shall remedy at Contractor's expense any failure to conform, or any defect. In addition, Contractor shall remedy at Contractor's expense any damage to Yakama Nation-owned or controlled real or personal property, when that damage is the result of:

- (1) Contractor's failure to conform to applicable law or contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished by Contractor.

D. Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. Contractor's warranty with respect to work repaired or replaced will run for three (3) years from the date of repair or replacement.

E. Yakama Nation shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

F. If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Yakama Nation shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Contractor's expense.

G. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Contractor shall:

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of Yakama Nation, if directed by Yakama Nation; and
- (3) Enforce all warranties for the benefit of Yakama Nation, if directed by Yakama Nation.

H. Unless a defect is caused by the negligence of Contractor or subcontractor or supplier at any tier, Contractor shall not be liable for the repair of any defects of material or design furnished by Yakama Nation nor for the repair of any damage that results from any defect in Yakama Nation-furnished material or design.

- (1) This warranty shall not limit Yakama Nation's rights under the Inspection and Acceptance clause of this Agreement with respect to latent defects, gross mistakes, or fraud.

29. TAXES

The compensation for Services performed under this Agreement shall include all applicable Tribal, Federal, State, and local taxes and duties. Depending on the location and nature of the Services provided, when applicable, Yakama Nation shall provide Contractor a single use Tax Exemption Certificate.

30. TERMINATION

A. *Notice.* Yakama Nation may terminate all or any part of this Agreement, at any time, with or without cause, upon written notice to Contractor. Upon receipt of the termination notice, Contractor shall promptly stop work on the terminated portion of the Agreement. Contractor obligations shall be consistent with those set forth above in the Stop Work Order clause of this Agreement.

B. *Breach.* In the event of termination for breach or violation of the terms and provisions of this Agreement, Yakama Nation, to the extent permitted by applicable law, shall be entitled to enforce its rights under this Agreement, and recover its court costs and reasonable attorney's fees, as determined by the court. The foregoing shall not in any way limit or restrict any right or remedy at law or equity which would otherwise be available to Yakama Nation, including, but not limited to, the right to contract with other qualified persons to complete the performance of services identified in or called for by this Agreement.

C. *Termination By Tribal Council Executive Committee.* Notwithstanding anything herein to the contrary, Contractor understands and agrees that the Yakama Nation Tribal Council Executive Committee may immediately terminate this Agreement by written notice.

D *Effect of Complete Termination.* Upon the complete termination of this Agreement, the liability of the Parties for the further performance of this Agreement shall cease, but the Parties shall not be relieved of the duty to perform their obligations up to the date of termination.

E. *Effect of Partial Termination.* The compensation amount shall be revised as a result of a partial termination under this section. On fixed-price contracts the revised amount shall not exceed the pre-termination contract price plus reasonable termination expenses. On cost-reimbursement contracts the revised amount shall not exceed the total of allowable and allocable costs of performance prior to termination plus termination expenses plus an adjustment of the fee on the terminated portion of the Agreement. No payment will be made for anticipated profits on the terminated portion, or consequential damages, of this Agreement. Contractor shall submit a settlement proposal within thirty (30) days of the notice of termination.

31. FORCE MAJEURE

This Agreement is subject to force majeure, and is contingent on strikes, accidents, acts of God, weather conditions, fire regulations, the actions of any government, including funding and/or budgetary decisions, and other circumstances which are beyond the control of the parties. If the terms and conditions of this Agreement are unable to be performed as a result of any cause of force majeure, then this Agreement shall be void, without penalty to any party for such non-performance.

32. NOTICE

Notice to Contractor shall consist of a letter, delivered postage prepaid, addressed to:

[Contractor's Legal Agent's Name]
[Contractor Name]
[Address No. 1]
[Address No. 2]

Notice to Yakama Nation shall consist of a letter, delivered postage prepaid, addressed to:

Gerald Lewis, Chairman
Yakama Tribal Council
PO Box 151 / 401 Fort Road
Toppenish, WA 98948

With courtesy copies to Yakama Nation's Designated Representative detailed below, and the Lead Attorney of Yakama Nation's Office of Legal Counsel at P.O. Box 150, Toppenish, WA 98948.

Either party may from time to time change its designated address for notice, or designated contact(s) for notice, by giving the other party reasonable notice of such change.

33. SUPERVISION OF CONTRACTOR/DESIGNATED REPRESENTATIVE

Contractor shall act under the supervision of the following Designated Representative of Yakama Nation in performing services under this Agreement:

Name:	[First] [Last], [Job Title]
Address:	
Phone:	
Email:	

The Designated Representative is designated for project management purposes only, and does not have authority to authorize any changes, modifications or addendums to this Agreement, nor does the Designated Representative have signing authority on behalf of Yakama Nation. Yakama Nation shall provide Contractor reasonable notice if there is a change in the Designated Representative.

34. COMPLIANCE PROVISIONS

A. *Discrimination.* Contractor shall not discriminate against any employee or applicant for employment because of handicap, race, age, religion, or sex. Contractor will take affirmative steps to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their handicap, race, age, religion, or sex.

B. *Indian Preference.* Notwithstanding the above, Contractor shall, for all work performed on or near the Yakama Reservation pursuant to this Agreement, and consistent with Section 703(i) of the 1964 Civil Rights Act, give preference in employment (including any authorized subcontracts) to equally qualified Indians regardless of their handicap, age, religion or sex. To the extent feasible and consistent with the efficient performance of this Agreement, Contractor shall provide employment and training opportunities to Indians that are not fully qualified to perform under this Agreement, regardless of their handicap, age, religion or sex. Further, Contractor shall comply with any and all applicable Indian preference laws and requirements established by Yakama Nation, including those set forth in the Yakama Nation Tribal Employment Rights Ordinance (“TERO”), as amended (Yakama Revised Law & Order Codes, Title 71).

35. JURISDICTION & VENUE

The validity, interpretation, and performance of this Agreement, and any and all written instruments, agreements, specifications and other writings of whatever nature which relate to or are part of this Agreement, shall be governed by and construed in accordance with the laws of Yakama Nation. Both Parties understand and agree that this Agreement establishes a consensual business relationship between the Parties for purposes of Yakama Tribal Court jurisdiction. Venue of any court action filed to enforce or interpret the provisions of this Agreement shall be exclusively in Yakama Nation Tribal Court(s). In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees and expenses in addition to any other relief allowed.

36. DISPUTE RESOLUTION

A. *Meet and Confer Meeting.* In the event that a dispute arises between the Parties over the performance, interpretation, or enforcement of this Agreement, the Parties in the first instance shall attempt in good faith to resolve the dispute informally by mutual Agreement in a face-to-face meet and confer meeting. All offers, promises, conduct and statements, whether oral or written, made in the course of the meet and confer meeting by any of the Parties, their agents, employees, experts and attorneys shall be considered confidential, privileged and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the meet and confer meeting.

B. *By Tribal Council Chairman.* If the Parties are unable to resolve the dispute during the meet and confer meeting, the aggrieved party shall submit the matter, in writing, to the Chairman of the Yakama Nation Tribal Council. A copy of the aggrieved party's submission shall be served upon the other party in accordance with the notice provisions of this Agreement. The Chairman shall promptly convene a meeting of the Parties, which shall be held in Toppenish, Washington, to resolve the matter. The decision of the Chairman shall be final and binding upon both Parties. Provided, however, that nothing shall operate to limit or prohibit Yakama Nation from otherwise enforcing its rights under this Agreement. In the event that the Chairman has a conflict of interest that would prevent her/him from hearing the dispute, s/he may, at her/his sole discretion, either decline to hear the dispute, or appoint an alternate Tribal Leader or Elder to serve in his/her place.

C. Nothing in this section shall operate to prohibit Yakama Nation from enforcing its rights under this Agreement in a court of appropriate jurisdiction. Yakama Nation may at its own election seek recovery of monetary damages from Contractor's breach of any terms in this Agreement.

37. GENERAL TERMS

A. *Headings.* Headings are provided for convenience and do not affect the meaning of the provisions to which they are affixed.

B. *Severability.* If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof 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 and that comes closest to expressing the intention of such invalid or unenforceable term.

C. *Changes to the Agreement.* No change, amendment, modification, or addendum to this Agreement shall be valid unless it is in writing and executed by authorized representatives of both Parties.

D. *Additional Services.* Except as otherwise provided in this Agreement, no payment for additional services shall be made unless such services and the price therefore have been requested and authorized in advance in writing by Yakama Nation.

E. *Survival.* The requirements of Section 4 (Property Developed by Contractor), Section 6 (Maintenance & Retention of Records; Financial Management for Accounting & Audits), Section 10 (Indemnification), Section 28 (Warranty-Construction) and Section 36 (Dispute Resolution) of this Agreement shall survive termination of this Agreement.

F. *No General Waiver.* Any waiver or failure of the Parties to enforce or insist upon any term in this Agreement does not constitute a general waiver or relinquishment of that term.

G. *No Construction Against Drafter.* Each party has participated in negotiating and drafting this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against one party because it was responsible for drafting one or more provisions.

H. *Execution.* This Agreement may be executed in counterparts, electronically, or by facsimile.

38. ENTIRE AGREEMENT

This Agreement incorporates all the agreements, covenants and understandings between the Parties. No agreement or understanding, verbal or otherwise, of the Parties regarding their responsibilities under this Agreement shall be valid or enforceable unless embodied in this Agreement.

The following Exhibits are incorporated by reference into this Agreement:

- Exhibit "A" – Project Overview
- Exhibit "B" – Statement/Scope of Work
- Exhibit "C" – Budget
- Exhibit "D" – Payment
-

39. SOVEREIGN IMMUNITY

Notwithstanding any other terms or provisions of this Agreement, Contractor understands and agrees that Yakama Nation, by entering into this Agreement, does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty with the Yakamas of 1855 (12 Stat. 951).

40. SPECIAL PROVISIONS

In addition to the forgoing terms and conditions, the following requirements are agreed to and shall apply to this Agreement:

A. [Mark as n/a, or insert special provision text.]

IN WITNESS WHEREOF, we set our hands and seals:

[Signature page(s) to follow.]

CONFEDERATED TRIBES & BANDS OF THE YAKAMA NATION:

By: _____

Date: _____

Name: Gerald Lewis (or authorized designee)

Title: Yakama Nation Tribal Council Chairman

CONTRACTOR NAME:

EIN #

By: _____

Date: _____

Name:

Title:

EXHIBIT A

Project Overview

1. Background:

[The background statement identifies the project and the Contractor's work in context. Discuss the purpose of the project, why the project/work is needed, and how it relates to previous, ongoing, or future projects/work.]

[If the project/work is being performed under a separate overarching grant, agreement, or project, mention that here.]

Exhibit B provides the actual Scope of Work to be completed, **Exhibit C** provides the contract Line Item Budget which is referenced to the work tasks described in the **Exhibit B**, and **Exhibit D** provides a payment schedule and requirements.

2. Location

[Identify each location where the project will be performed. As needed, provide a specific description of the location, e.g., southwest corner of parcel commonly referred as....]

3. Designated Representative:

The Yakama Nation's Designated Representatives for this project include:

- [named representative from main contract]
- [additional name(s) if applicable]

4. Project Tasks:

All tasks will be completed as per **Exhibit B**. Major project elements include but are not limited to the following:

[Summary of tasks to be performed; detail to follow in Exhibit B].

5. Project Schedule and Key Deliverables:

[Describe the deliverables / work product which the Contractor is expected to produce, and the time frame by which such work product is to be produced.]

6. Contractor Obligations:

The Contractor shall furnish all supervision, labor, equipment and tools necessary to complete the project as described in **Exhibit B**.

7. 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 Contractor may be given a notice of contract cancellation. Consistent satisfactory progress will also be determined by the Contractor's demonstrated ability to perform all work tasks described in **Exhibit B**. If it appears that the Contractor is unable to complete the project tasks within the permitting work window, the Contractor may be given a notice of contract cancellation. The Yakama Nation's designated representative will monitor progress closely.

8. Applicable Documents:

[This is an optional section, which you may not need to include in your Project Overview. However, if the work involves the use of, or is subject to the terms of outside documents, you should list them here, and attach them to the Contract Agreement.]

[Use this space to insert other sections or information, if necessary.]

APPENDIX B.

PROJECT LOCATION

Speelyi Beach Tree Removal Area Overview



Figure 1: Overview harvest area.

Howsen Pit Staging Area Overview

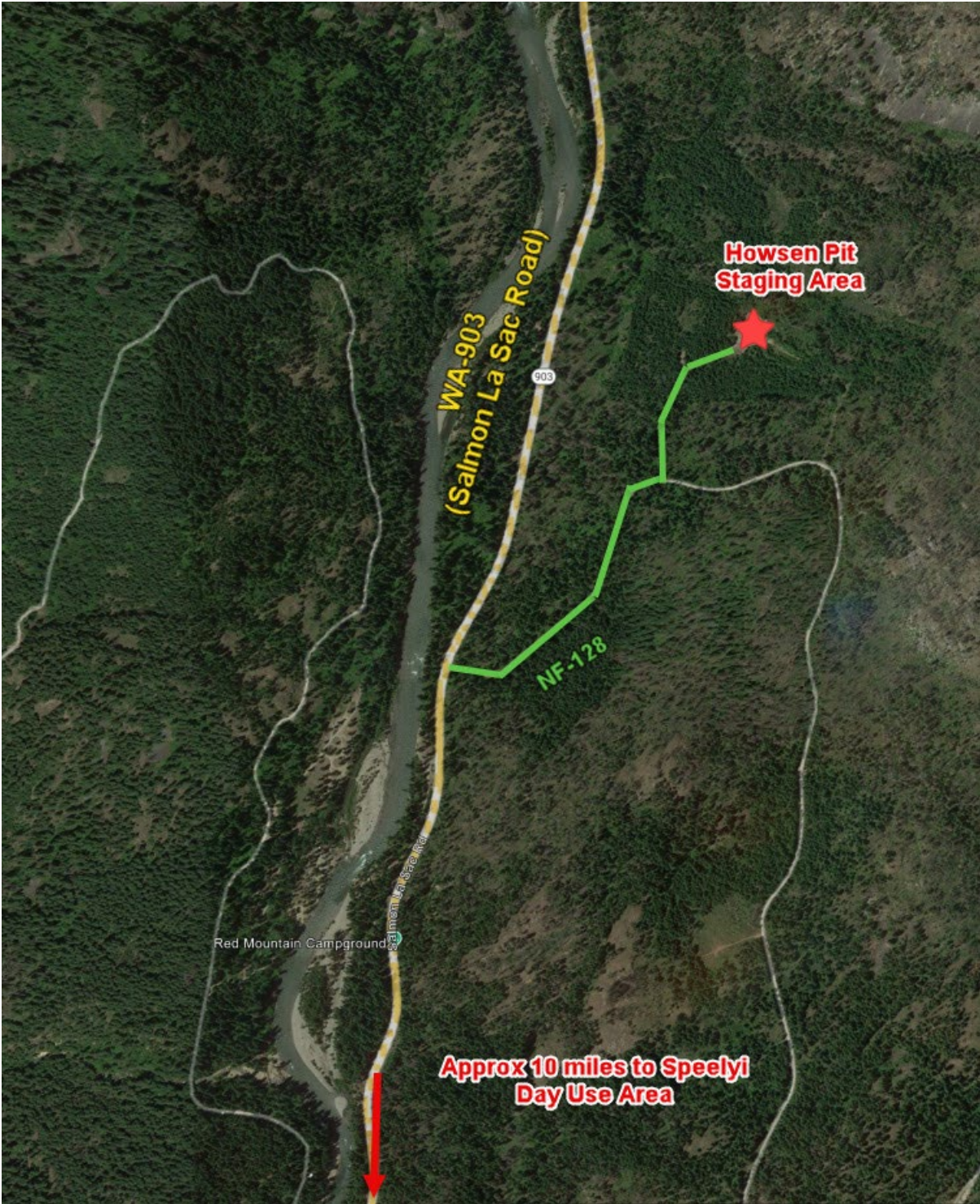


Figure 2: Overview of the Howsen Pit staging area.



Site Photo 1: Speelyi Day Use boat ramp which will be used for access, looking toward the reservoir.



Site Photo 2: Typical conditions of shoreline where trees are to be removed.



Site Photo 3: Shows typical conditions and trees to be removed along the edge of the reservoir.



Site Photo 4: Shows a typical hazard tree to be removed that may be encountered.

APPENDIX C.

PROJECT PLANS