

# Yakama Nation

## Solicitation for Design-Build Services

Issue Date **9/25/2025**

### **Yakama Nation Fisheries Program: Pond 5 Reach Riparian Restoration Project**

Prepared by: Yakama Nation Fisheries Program

**This solicitation is issued by**  
Confederate Tribes and Bands of the Yakama Nation  
PO Box 151  
Toppenish, Washington 98948

Bids are due on **10/27/2025 at 5pm PDT**

Bid tour is scheduled for 10/10/2025 10 a.m. PDT



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## **SOLICITATION SUMMARY**

### **Goals:**

- 1) Increase riparian forest cover for fish and wildlife habitat to offset loss of forest due to flow regulation on the lower Yakima River.
- 2) Develop methods, techniques, and equipment to cost effectively and reliably establish new riparian forest in the active channel zone of the lower Yakima River.

### **Objectives:**

- 1) Establish new riparian forest and shrub cover over the maximum area that is feasible and sustainable within the project site.
- 2) Increase riparian interactions with river flow and sediment, such as sediment and propagule trapping, floodplain construction, and nutrient retention, by planting in frequently inundated areas.
- 3) Achieve sufficient post-project healthy live plant densities and adequate dispersion across the project site to put it on a trajectory towards functionally mature riparian forest.

### **Scope Summary:**

The Yakama Nation (YN) is requesting design-build proposals to complete the following work briefly summarized below:

#### **Pond 5 Reach Riparian Restoration Project**

- Produce designs and plans for weed control, planting, plant flow protection structures, plant maintenance, and 5-year post-project monitoring for the project. Engineer stamped plans are not required.
- Plant native riparian species within the maximum feasible and sustainable area within the 37 acre planting site by December 1, 2028.
- Implement weed control as necessary.
- Install any plant tags, location stakes, and other items necessary to enact the 5-year monitoring plan.
- Install plant flow protection structures per design.
- Provide construction oversight.
- Achieve target live plant densities and dispersion across planted areas. A warranty to meet these specifications is required and will be included in the contract.
- Monitor and maintain site from the end of planting until the end of the contract on March 1, 2029.
- Produce as built designs and post-project drone video and imagery.

The Pond 5 Reach Riparian Restoration site is located near Toppenish, WA, Yakima County on the Yakama Nation Reservation. Access is by state, county, and Washington Department of Fish and Wildlife service roads. Site coordinates: (46.43464, -120.35245). See maps herein for further details.

\*A shared folder with background documents pertinent to the project can be accessed at:  
<https://drive.google.com/drive/folders/15ZaWHO9v53egU6BmVFphJccaSggxevh8?usp=sharing>.

**Cultural Resources Permit and Limits of Disturbance**

- All work performed under this contract to be conducted according to a cultural resources permit and within limits of disturbance marked or indicated in the field by Yakama Nation. Cultural monitors may be present on worksite during any or all construction activities.

**Yakama Nation Contact Information (Contracting Officer):**

Tom Elliott, 509 314-9703, [ellt@yakamafish-nsn.gov](mailto:ellt@yakamafish-nsn.gov)

**Estimated Price:** This project amount is expected to range from **\$500,000 to \$700,000.**

**SITE VISIT:** Yakama Nation will be hosting a site visit at **10 a.m. PDT October 10, 2025.** Interested persons will meet in the parking lot of the I-82 Ponds 4 & 5 Unit of the Sunnyside Wildlife Area (<https://wdfw.wa.gov/places-to-go/wildlife-areas/i-82-ponds-wildlife-area-unit>), located at the end of Flint Road off of the Yakima Valley Highway; 46.44112, -120.34660.)

**Questions about the RFP are due Time and Date: 5 p.m. PDT October 20, 2025.** Questions may be submitted via email to Tom Elliott, [ellt@yakamafish-nsn.gov](mailto:ellt@yakamafish-nsn.gov). Questions and answers will be shared with all prospective bidders.

**Proposal due Time and Date: 5 p.m. PDT October 27, 2025.** Proposals received after this time and date will not be considered. The award will be made as soon as possible after this date

**Delivery of Proposals:** Please deliver proposals by email to [ellt@yakamafish-nsn.gov](mailto:ellt@yakamafish-nsn.gov)

**Delivery Date/Delivery Requirements:** All work, with the exception of post-project monitoring and maintenance, shall be complete by 12/1/2028. This includes installation of plants, flow protection structures, monitoring items, and any other more or less permanent component of the project.

Allowable delivery/work hours: 6:00 a.m. to 7:00 p.m., Monday through Saturday (excluding holidays) or as approved by the Contracting Officer. The successful bidder will provide all needed equipment, and sufficient work force to accomplish the work.

**This project is subject to:**

- The Yakama Nation Tribal Employment Rights Ordinance
- Indian Preference in contractor selection
- The Davis-Bacon Act for laborers and mechanics performing construction work
- Industrial Fire Precaution Level restrictions.

**Liquidated damages** will be assessed on this project. See the contract for specifics.

**Contract templates** for a Construction Services Agreement and a Consultant Agreement are attached. Yakama Nation is currently developing a design-bid agreement that will largely reflect provisions contained in the attached templates. The new design-build agreement will be used for this project.

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**EVALUATION FACTORS FOR AWARD:**

Award will be made to the responsible firm submitting a proposal which provides the best value as determined by the Contracting Officer. Best value will be based on the following four factors:

1. Technical quality of proposal narrative
2. Contractor team qualifications
3. Cost Proposal, consisting of an itemized budget for design elements and a bid sheet for construction elements
4. Professional references for work on similar projects.

The Yakama Nation alone will determine what constitutes a best value.

**PROPOSAL REQUIREMENTS**

Proposals shall be no more than 20 pages, including a cover letter and attachments, and must address the following:

*Qualifications & Relevant Experience:*

- Describe the overall experience of the team working on this type of project and working with Washington State Tribes.
- Identify the project team and each member's technical expertise, years of experience working on equivalent projects or aspects of projects, experience with arid-land riparian restoration, and relevant certifications and licenses. Identify the project manager and describe their relevant skills and experience.
- Demonstrated expertise in arid-land riparian restoration where plants are groundwater-dependent (phreatophytic), including site analysis and preparation, plant procurement, planting, maintaining, and quantitative post-project survival monitoring.
- Experience in designing and installing low-tech wood structures and/or engineered wood structures.
- Describe at least three completed projects that demonstrate experience in:
  - Riparian planting and restoration within the active channel zone of gravel-bed rivers, preferably in water limited, arid-zone climates.
  - Riparian restoration plan development
  - Designing and installing low tech and/or engineered wood structures.

\*Please provide references for these projects, including current contact information.

*Technical Approach:*

- Clearly and in detail, describe how your proposal addresses project goals, objectives, and specification. Describe your approach to accomplishing the proposed project activities and services, including site analysis, design and planning, plant procurement, planting, site maintenance, and monitoring.
- Describe how you would achieve sustained high plant survival in a water supply limited area, where root access to groundwater is critical, but groundwater can be deep below the ground surface
- Describe how hydrologic context will be incorporated into your design.
- Provide a time-line or Gantt chart showing major project actions and milestones.
- Identify any sub-contractors and the tasks they would perform.

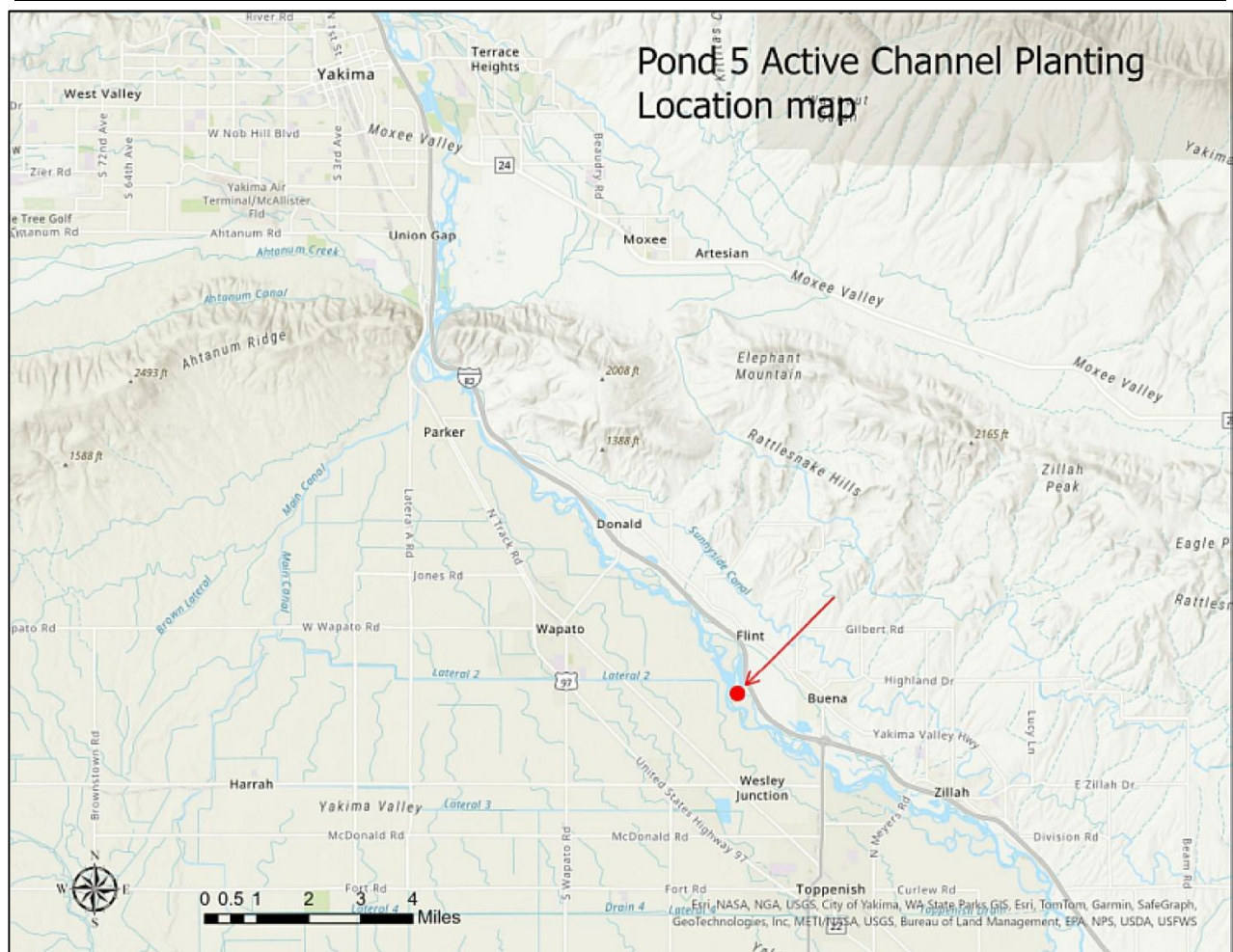
### *Budget, Scope and Schedule:*

The budget shall consist of two sections:

- Include an itemized budget for design, planning, and other non-construction elements of the project. Include a rate sheet and any sub-contractors by line item.
- Fill in the attached bid-sheet for construction elements of the project. Include any sub-contractor costs by bid item, and include the sub-contractor name.
- Include a grand total line that sums the non-construction and construction items.

### *Proposal term:*

Proposal cost shall be valid for 120 days after the bid due date.



*Map showing project site. This is also the pre-bid tour location.*

## **BID PACKAGE, INSTRUCTIONS, CERTIFICATIONS, AND FORMS**

### **Bidding Instructions**

#### **Bid Package:**

Submit all the following with the bid offer:

- Proposal narrative, team and qualifications, costs, and references as described above.
- Acknowledgment of any RFP Addendums
- List of Proposed Subcontractors (on bid schedule or budget table)
- List of Proposed Suppliers (on bid schedule or budget table)
- Bid Bond (Bid Guarantee) when the bid exceeds \$150,000

#### **The Contract:**

Submit all the following after the Contract Award is made:

- Yakama Nation Design-Build Agreement, Signed
- Performance and Payment Bonds when required based on price.
- Proofs of Insurance
- Tribal Employment Rights Ordinance (TERO) Compliance Plan
- Yakama Nation Business License
- Proof that contractor is licensed by Washington State
- Current form W-9 (IRS Taxpayer Identification Number and Certification)
- Contractor's stationary letterhead
- Name of any 3<sup>rd</sup> party inspection or testing firms and testing plan, as necessary, to be approved by Yakama Nation before start of work.

#### **Administrative Forms:**

Submit the following as specified in the contract language:

- Invoice Certification
- Release of Claims



## **Bid Conditions, Requirements, And Opening:**

- Bidders are responsible for inspecting the site and for reading and being thoroughly familiar with the RFP and Scope of Work, contract documents, and background information supplied by the owner. The failure or omission of any bidder to do the foregoing shall not relieve the bidder from any obligation in respect to its bid.
- The contract documents contain the provisions required for the work of the project. Information obtained from an officer, agent, or employee of the Government or any other person shall not affect the risks or obligations assumed by the bidder or relieve the bidder from fulfilling any of the conditions of the contract.
- Bids will be accepted by email. Bids must bear the bidder's name, address, and solicitation name. The email subject line must identify the bid as: “**Proposal for Pond 5 Reach Riparian Restoration**”.
- **Bids submitted via email; address to the following:** Tom Elliott at [ellt@yakamafish-nsn.gov](mailto:ellt@yakamafish-nsn.gov)
- Receipt of any Addenda must be noted on the email transmitting the bid.
- All bids must include a budget table and the BID SCHEDULE or a copy of it. All blank spaces for bid prices must be filled in using ink or be typewritten, and the BID SCHEDULE must be fully completed, signed, and dated when submitted.
- Prospective bidders may not condition their bids. The award will be made to the best value bidder, as ascertained exclusively by the Yakama Nation.
- Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between YNE and the selected bidder.
- Bidders must satisfy themselves of the accuracy of the estimated quantities in the BID SCHEDULE by examination of the site and a review of the specifications, including addenda. After bids have been submitted, the successful bidder shall not assert that there was a misunderstanding concerning the quantities of work or of the nature of the work to be done.
- Bids will be publicly opened as required by Yakama Nation Grants and Contracts Manual\_T117- 17.
- Bidders must be Washington State licensed contractors.
- Proposal cost must be valid for 120 days after the bid opening date.
- Notice to proceed is expected by mid-February 2026. Contractor is required to start work within 10 days of the notice to proceed.
- Bid tour route will include walking down a steep, uneven embankment and wading across a small side channel of the Yakima River. Tall, waterproof boots or hip waders are recommended.



**Rejection of Bids:** YN reserves the right to reject any or all bids and to not make an award. The award of the contract, if made, will be made to the responsive bidder submitting the best value proposal if it is to the YN's best interest to accept such bid. The right is reserved by the YN to waive any informalities or errors in the bid that, in the sole opinion of YN do not materially affect the bid.

**Notice to Proceed:** The Notice to Proceed to be issued after the execution (signing) of the Yakama Nation Construction Services Agreement by the Successful Contractor and the Yakama Nation.

The following documents must be in-place before the notice to proceed is issued:

- Signed Yakama Nation Construction Services Agreement between successful contractor and the Yakama Nation.
- TERO Compliance Plan with necessary signatures.
- Yakama Nation Business License.
- Payment and Performance Bonds
- Proofs of Insurance
- Proof that contractor is licensed by the State of Washington
- Form W-9
- Contractor's stationary with letterhead

Payment and Performance Bonds (when required) must be received at least 5 days prior to issuance of the Notice to Proceed.

**Laws, Ordinances, Rules, And Regulations:** All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply throughout the contract.

**Wage Rates:** This contract is subject to minimum wage requirements for work performed on-site under the Davis-Bacon Act and DAVIS BACON WAGE DECISION.

**TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO):** TERO applies on this project. The successful bidder will be required to adhere to the TERO employment requirements, and the TERO fee of 3% of total costs will be listed in the bid sheet as "other fees and charges". The signed TERO agreement becomes a part of the contract and must be presented to the Yakama Nation contracting officer before work can begin. The Tribe's TERO Office can be contacted by calling (509) 314-6701 or email: [tero@yakama.com](mailto:tero@yakama.com).

**Licenses and Permits:** The successful bidder shall acquire and/or possess all licenses and permits which may be required to fulfill obligations of the Contract. Owner shall provide ESA, NEPA, Clean Water Act (401 and 404), Yakama Nation Water Code, Wapato Irrigation Project, Cultural Resources (NHPA Section 106) permits, water withdrawals, and site access permits.

## **INDIAN PREFERENCE**

a. 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, provides the best value to the Yakama Nation. Provided that if there are multiple responsive best value bids from responsible bidders, Yakama Nation will give preference to and select the best value bid received from:

i. A 100% Yakama owned business; or if there are no such bidders, then

- ii. A certified Indian owned business that is at least 51% Indian-owned; or if there are no such bidders, then
- iii. A non-Indian owned business.

**Yakama Nation Business Licensing Application:** To obtain a business license application and fee schedule contact:

Yakama Nation Department of Revenue  
Confederated Tribes of the Yakama Nation  
401 Fort Road Room #205  
P. O Box 151, Toppenish, WA 98948  
Attn: Kayla Ceja  
[revenue@yakama.com](mailto:revenue@yakama.com)  
509-865-5121, Ext. 6109

**Disqualification of Bidders:** The Yakama Nation may, at its discretion, determine that a bidder is not responsible and reject their proposal for any of the following reasons:

- A. More than one Proposal submittal on the same project from a bidder under the same or different name;
- B. Evidence of collusion on prior or present bid process;
- C. Bidder not qualified for the work involved or to the extent of his bid;
- D. Unsatisfactory performance record, judged from the standpoint of conduct of work, workmanship or progress as shown by past or current work for the Yakama Nation;
- E. Incomplete work, whether for the Yakama Nation or otherwise, which might hinder or prevent the prompt completion of the work bid upon;
- F. Failure to pay or settle bills for labor or materials on any former or current contracts;
- G. Bidder has previously defaulted in the performance of or failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract;
- H. Any other inability, financial or otherwise, to perform the work;
- I. Active or previous litigation between the Yakama Nation and Bidder; or
- J. For any other reasons deemed proper by the Yakama Nation.

**Funding and terms of funding:**

*RCO Funding.* Contractor's Work under this Agreement is being funded under Washington State Recreation and Conservation Office ("RCO")–Yakama Nation Tribal Grant Agreement No. 24-1719 ("RCO Agreement"), attached at Exhibit E.

- Contractor acknowledges that the Yakama Nation's obligation to compensate Contractor for Work performed under this Agreement is entirely dependent and conditioned upon such funds being made available to the Yakama Nation by RCO for this Work.
- Contractor shall comply with any and all requirements applicable to contractors set forth in the RCO Agreement, including but not limited to the additional insured and indemnification requirements set forth in RCO Agreement Section 5. If Contractor is authorized under this Agreement to hire any subcontractors, Contractor shall ensure their subcontracts include a requirement for compliance with these terms.
- Contractor hereby represents that it has reviewed the terms of the RCO Agreement (in the shared online folder) and is able and willing to comply with its provisions applicable to contractors.

**EXHIBIT A**  
**Scope of Work and Specifications for Pond 5 Reach Riparian Restoration**

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The Yakama Nation (YN) is requesting best value proposals to complete the work described below. Please note that Yakama Nation staff have produced several preliminary plans that are contained in the shared online folder. These plans are meant as informational sources, and may be used by contractors, to the extent desired, to inform their proposals. There is no requirement to use this information, and bidders are free to develop their own concepts and plans to best address the project goals, objectives, and specifications.

- 1) Produce designs and plans that address goals, objectives, and specifications. Plans should include step by step methods and design drawings as necessary to implement the following project elements. A draft of each plan or design document shall be submitted to the Yakama Nation for review. Yakama Nation will provide comments within 3 weeks of receipt of draft. Final plans shall incorporate Yakama Nation comments and input. Actions and designs shall include:
  - a) Weed control plan and methods
  - b) Map of area to be planted, including planting zones as delineated by the contractor, and types and numbers of plants by zone.
  - c) Planting plan and methods, including a plant species list with plant types and numbers by planting zone, and any plant protection devices or structures. Planting plan shall take into account variation across the project site in inundation frequency, flood energy, depth to groundwater, height above summer baseflow, soil type and composition, existing vegetation, and other factors important for plant survival.
  - d) Designs, plans, and water source for irrigation systems, if any are included in the proposal. Include volume of water applied, irrigation schedule, and total water used.
  - e) Designs for flow protection structures. These are envisioned as small log structures that protect plants from moderate river flows as plants are getting established. Contractors may recommend other types of structures. Stamped designs are not required, however drawings should show the number, location, size and number of logs (or of other material), assembly steps and methods, and demonstrate expected stability under up to 10 year flows.
  - f) Plant maintenance plan and methods.
  - g) 5-year post-project monitoring plan for the project. Monitoring methods shall be adequate to reliably detect a 10% change in healthy live plant densities over each 1/8 acre (500 square meters) within the planted area. Monitoring plan shall include methods to accurately track numbers of plants installed, per planting zone. Density of live plants installed shall be the baseline for density monitoring.
  - h) Timeline showing major project actions and milestones. Please note: average annual river flows allow for reliable site access and good planting conditions from June through November, although flow conditions in a given year may greatly differ from the average, so that access and work may be possible earlier or later than expected. Yakama Nation anticipates that site access and planting will likely be possible during 2 seasons, June through November 2027 and June through November 2028, depending on flow conditions. However, it is contractor's responsibility to monitor river flow conditions and determine the access and work windows. Due to a higher risk of flooding, planting and construction work

- within the site using machinery shall be completed each year by December 1, unless an extension is approved by the Yakama Nation. Maintenance and monitoring work may continue year round.
- i) Site access plan describing times and frequency of vehicle and machinery use of the access route. Include types of machinery and vehicles.
  - j) Plans and designs shall conform to the specifications. The specification template in Exhibit E is similar to what will be included in the contract, with some minor changes possible.
- 2) Procurement of native plant species.
- a) All plant cuttings, seeds, or other propagules shall be obtained from the lower Yakima Valley along the mainstem Yakima River floodplain, downstream of Union Gap and upstream of the confluence with the Columbia River.
  - b) All plant species shall be native to the lower Yakima Valley riparian and floodplain zones, as defined above.
  - c) Plant materials may consist of nursery grown container plants, bare root seedlings, seeds, live cuttings, or other types of plant material. However, see note about live cuttings in “Anticipated challenges” below.
- 3) Plant native riparian species across the maximum feasible and sustainable area within the 37 acre project site. All planting work shall be completed by **December 1, 2028**. Plants shall be planted in such a manner as to have root or stem (for cuttings) contact with the water table or the capillary fringe during the summer low flow period. Planting plans shall demonstrate root contact with groundwater or capillary fringe to Yakama Nation’s satisfaction. Planting shall be at sufficient density and dispersion to meet objectives and specifications.
- 4) Target planting densities and planting zones. In order to achieve project objectives, plant densities, species, planting layout and pattern, and material type are expected to vary according to frequency and depth of flood flows, and depth to ground water across the site. In particular, in areas that experience inundation on a 5-year or less interval, objective 2 of increasing the interaction between riparian plants and water and sediment flow applies and plant density should be higher. Planting densities, as described in the planting plan, shall reflect variation across the site in inundation frequency and other factors mentioned above.
- 5) Record number, species, and plant material type for each mapped planting zone, in such a way that facilitates implementation of the monitoring plan.
- 6) Implement weed control as necessary for the plantings to meet specifications. All weed control actions shall conform to Bonneville Power Administration HIP 4 requirements (see shared drive).
- 7) Install plant tags, location stakes, and other items necessary to enact the monitoring plan by Yakama Nation personnel for 5 years post-contract.
- 8) Install plant flow protection structures per design. These structures are meant to protect new plantings from moderate flows while the plants are establishing. These structures are not intended to be permanent or to withstand flows larger than the 10-year annual recurrence flood.
- 9) Provide construction oversight.
- 10) Plant density warranty. A 1-year plant density warranty shall be applied by higher and lower density areas, as described above in number 4. Density refers to number of healthy live plants per area planted, as mapped in the planting plan, not to the entire area of the project site. Target plant reflect an expectation that 75% of plants will survive the first year after planting, and 50% will survive the first 5 years after planting. The 1-year warranty to meet density specifications is required and will be included in the contract. This warranty will cover plant loss from poor plant

material quality, improper planting methods, inappropriate species for site conditions, desiccation, improper irrigation, herbivore damage, and other events and causes within the control of the contractor. Plant loss and damage from large floods, fires, or other Acts of God or natural events beyond the control of Yakama Nation or contractor will be excluded from the warranty.

- a) In higher density zones, at the end of the warranty period, density of healthy live plants per each 100 square meters shall be 20 at minimum, and 43 on average, across the entire planted area per designs and plans.
- b) In lower density zones, at the end of the warranty period, density of healthy live plants per each 100 square meters shall be 8 at minimum, and 17 on average, across the entire planted area per designs and plans.

11) Produce as built designs and post-project drone video and imagery.

12) Site access. Access is through a Washington Department of Fish and Wildlife area used heavily for recreation. To increase safety and reduce nuisance to wildlife area users, contractor should limit machinery and vehicle usage of the access route to the extent possible.

**13) Note that the in-water work window is August 1<sup>st</sup> to September 30<sup>th</sup>.**

A note on plant irrigation:

Contractors may wish to irrigate plantings in order to achieve plant density specifications. Yakama Nation does not object to properly implemented riparian plant irrigation. However, a potential concern is the use of shallow irrigation that impedes the development of deep roots that are critical to long-term plant survival. This could potentially cause a sudden die-off after irrigation water is no longer being applied. Irrigation systems and schedules shall be designed and implemented to promote deep root development. As part of the design review, Yakama Nation staff will carefully evaluate plant irrigation proposals, and Yakama Nation may require changes if we believe the proposed system is detrimental to long-term plant health and sustainability.

### **Deliverables**

- 1) Design drawings showing planting plan, plant numbers, species, type, and planting methods by zone, and design and construction instructions for flow protection structures
- 2) Design report as per statement of work above. Design report shall be succinct, and describe how the proposal will address project goals, objectives, and specifications, providing a clear rationale for each project element, action, and method proposed.
- 3) Monitoring plan, providing a sampling protocol and analysis method with clear, step-by-step instructions to accurately, consistently, and efficiently measure plant density.
- 4) As-built planting plan and drone imagery of site after the final planting
- 5) Final report describing the implementation of the project, with special attention to lessons learned, challenges, and recommendations to improve the cost-effectiveness and outcome of similar projects in the future.

## Anticipated challenges for the project

The project site offers substantial challenges due to its location in the arid lower Yakima River Valley, and its position in the active channel zone of the flow regulated Yakima River. Yakama staff have identified the following challenges. This list is meant as precautionary information, and is not all-inclusive. It is the responsibility of the contractor to be familiar with all site conditions that are relevant to meeting project objectives and specifications, including but not limited to concerns listed here.

- Extreme summer low flows due to irrigation diversions. Summer flows at the project site are about 2/3 lower than estimated pre-development conditions. This reduces the summer water supply available to plants. In addition, flows drop very rapidly in June due to upstream reservoir operations.
- Low summer water table. Because of the low flows mentioned above, and lack of large spring floods, the summer water table is artificially low. In some areas the summer water table may be 6 feet or more below ground surface.
- Abundant Herbivores. There are plentiful beavers and deer in and around the project area that are known to consume riparian plantings.
- Arid climate. The project site receives 7 inches of precipitation per year on average. Riparian plants rely exclusively on the riparian water table for moisture. Summertime temperatures frequently exceed 90 degrees Fahrenheit for extended periods, with very low relative humidity and high evapotranspiration rates.
- Use of live cuttings or stakes. Use of live stakes is a standard practice for revegetation and is very cost efficient in some situations. However, the experience of Yakama Nation and partners in the Yakima Valley has been that live stakes suffer from high rates of mortality due to harsh site conditions, and end up not being cost efficient on a live plant basis 1 or 2 years post planting.
- Recreational river users. The site is adjacent to a Washington Wildlife Area with high fishing use, and potential recreational uses of the project site.

**EXHIBIT B**  
**Key Milestones and Dates**

Date	Milestone
2/13/2026	Contract signed and Notice to Proceed
3/1/2026	Contractor begins work
8/1/2026	Draft designs and plans submitted
9/1/2026	Final designs and plans submitted
12/1/2027	Planting season 1 is complete.
12/1/2027	Plant maintenance and monitoring begins
12/1/2028	Planting season 2 is complete.
12/1/2028	1 year plant density warranty begins
12/1/2029	1 year plant density warranty ends
3/1/2029	Plant maintenance and monitoring by contractor ends (with the exception of any work required under the 1-year warranty)
3/1/2029	As-built plans and final report are due



**EXHIBIT C**  
**Bid Sheet for Construction Elements of the Project**

Item	Specification	Description	Quantity	Unit	Unit Price (\$)	Subtotal (\$)
1.	WA DOT 1-09	Mobilization and Demobilization	1	LS		
2.	WSDOT 2-04	Site Access	1	LS		
3.	WSDOT 8-01	Erosion and Sediment Control/Spill Prevention Control and Counter Measures	1	LS		
4.	WSDOT 1-07	Site Restoration at completion of project	1	LS		
5.	Designed by contractor	Plant flow protection structures-materials	Estimated by contractor	EA		
6.	Designed by contractor	Plant flow protection structures-installation	Estimated by contractor	EA		
7.	See SOW and specifications	Plant material type 1-procurement	Estimated by contractor	EA		
8.	See SOW and specifications	Plant material type 2-procurement	Estimated by contractor	EA		
9.	See SOW and specifications	Plant material type 3-procurement	Estimated by contractor	EA		
10.	See SOW and specifications	Plant material type 4-procurement	Estimated by contractor	EA		
11.	See SOW and specifications	Plant material type 5-procurement	Estimated by contractor	EA		
12.	See SOW and specifications	Plant material type 1-installation	Estimated by contractor	EA		
13.	See SOW and specifications	Plant material type 2-installation	Estimated by contractor	EA		
14.	See SOW and specifications	Plant material type 3-installation	Estimated by	EA		

Item	Specification	Description	Quantity	Unit	Unit Price (\$)	Subtotal (\$)
			contractor			
15.	See SOW and specifications	Plant material type 4-installation	Estimated by contractor	EA		
16.	See SOW and specifications	Plant material type 5-installation	Estimated by contractor	EA		
17.	Designed by contractor	Irrigation system, materials, installation, and operation				
18.	Designed by contractor	Plant Herbivory protection	Estimated by contractor	EA		
19.	Designed by contractor	Fencing	Estimated by contractor	LF		
20.	WSDOT 8-02	Seeding	Estimated by contractor	AC		
21.	BPA HIP 2025	Weed control	Estimated by contractor	AC		
22.	See SOW and specifications	Site maintenance	Estimated by contractor	LS		
23.	See SOW and specifications	Monitoring set up and initial monitoring	Estimated by contractor	LS		
24.	As needed					
25.	As needed					
26.	As needed					
27.	Other fees and charges	Miscellaneous	1	LS	3% of total cost	
<b>Total</b>						

**EXHIBIT D**  
**Contents of Shared Google Drive Folder**

<https://drive.google.com/drive/folders/15ZaWHO9v53egU6BmVFphJccaSggxevh8?usp=sharing>

- Wapato Reach Riparian Assessment
- Pond 5 Riparian Enhancement Plan
- Pond 5 Preliminary Design
- Yakima RM 80 Riparian Restoration Final Report
- BPA 2025 HIP Guidelines. (Use for herbicide application specifications only, pages 96-104.)
- Terms of RCO funding agreement
- 2024 lidar data, upper Wapato Reach of Yakima River
- 2024 high resolution imagery of upper Wapato Reach

## **EXHIBIT E**

### **Specifications**

#### **IN-WATER WORK PERIODS**

CONTRACTOR WORK SHALL OCCUR DURING THE PERMITTED IN-WATER WORK PERIOD: AUGUST 1 - SEPTEMBER 30. WORK DURING OTHER TIME PERIODS MAY BE ALLOWED UNDER A WAIVER FROM PERMIT AGENCIES.

#### **SOILS**

FLOODPLAIN COMPOSITION IS A VARIABLE MIX OF COARSE SAND, GRAVEL, COBBLES AND SILTY LOAM.

#### **UTILITIES**

THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR HAVING UTILITIES LOCATED PRIOR TO CONSTRUCTION ACTIVITIES.

THE CONTRACTOR SHALL CALL (800-424-5555) FOR UTILITY LOCATE PRIOR TO CONSTRUCTION

THE CONTRACTOR SHALL IMMEDIATELY CONTACT THE AFFECTED UTILITY SERVICE TO REPORT ANY DAMAGED OR DESTROYED UTILITIES.

THE CONTRACTOR SHALL PROVIDE EQUIPMENT AND LABOR TO AID THE AFFECTED UTILITY SERVICE IN REPAIRING DAMAGED OR DESTROYED UTILITIES AT NO ADDITIONAL COST.

#### **CONSTRUCTION STAKING**

CONTRACTOR WILL PROVIDE STAKING OF PROJECT LIMITS, GRADE STAKES, AND ELEVATION CONTROL POINTS. SOME FIELD ADJUSTMENTS TO THE LINES AND GRADES ARE TO BE EXPECTED.

CONTRACTOR SHALL MEET WITH THE OWNER AND OWNER'S REPRESENTATIVE TO DEFINE AND MARK LIMITS OF DISTURBANCE PRIOR TO MOBILIZATION OF EQUIPMENT OR MATERIALS ONTO THE SITE.

THE CONTRACTOR SHALL REPLACE DAMAGED OR DESTROYED CONSTRUCTION STAKES AT NO ADDITIONAL COST.

#### **CONSTRUCTION MATERIALS**

ALL CONSTRUCTION MATERIALS TO BE PROVIDED BY CONTRACTOR

#### **CONSTRUCTION ACCESS/TRAFFIC CONTROL**

CONTRACTOR SHALL SUBMIT AN ACCESS, STAGING, AND STOCKPILE PLAN TO THE OWNER'S REPRESENTATIVE FOR APPROVAL PRIOR TO MOBILIZATION.

THE CONTRACTOR IS SOLELY RESPONSIBLE FOR OBTAINING ANY REQUIRED TRAFFIC CONTROL OR ACCESS PERMITS.

THE CONTRACTOR IS SOLELY RESPONSIBLE FOR PROVIDING ANY REQUIRED TRAFFIC CONTROL INCLUDING, BUT NOT LIMITED TO, SIGNAGE AND FLAGGERS.

ALL EXISTING SAPLINGS AND TREES TO BE TRANSPLANTED OR REMOVED SHALL BE CLEARLY MARKED AND APPROVED BY THE OWNER AND OWNER'S REPRESENTATIVE.

ALL EQUIPMENT, MATERIALS AND PERSONNEL SHALL REMAIN WITHIN THE LIMITS OF DISTURBANCE.

THE CONTRACTOR SHALL KEEP THE WORK AREAS IN A NEAT AND SIGHTLY CONDITION FREE OF DEBRIS AND LITTER FOR THE DURATION OF THE PROJECT.

CONTRACTOR SHALL IMPLEMENT MEASURES TO CONTROL AND MINIMIZE WIND BLOWN DUST FROM THE SITE AND ACCESS ROUTES.

AT PROJECT COMPLETION, ROADS AND ACCESS ROUTES SHALL BE CLEANED AND RESURFACED TO PRE-PROJECT CONDITION PER WASHINGTON DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATION. CLEANING SHALL BE INCIDENTAL TO MOBILIZATION/DEMOBILIZATION.

ALL DISTURBED AREAS INCLUDING, BUT NOT LIMITED TO: ROADS, DRIVEWAYS, TEMPORARY ACCESS ROUTES, STAGING AREAS AND STRUCTURE LOCATIONS NEED TO BE RESTORED TO PRE-PROJECT CONDITION OR BETTER. THIS WILL INCLUDE, BUT IS NOT LIMITED TO ANY GRADING/BLADING OF DISTURBED AREAS AS WELL AS REMOVAL OF ANY TRASH AND DEBRIS. THE OWNER'S REPRESENTATIVE WILL CONDUCT A FINAL WALK THROUGH WITH THE CONTRACTOR PRIOR TO DEMOBILIZATION.

ALL DISTURBED AREAS OUTSIDE THE LIMITS OF DISTURBANCE SHALL BE RESTORED TO ORIGINAL CONDITION OR BETTER AT NO ADDITIONAL COST.

CHANNEL CONSTRUCTION SHALL BE COMPLETED FROM WITHIN THE DEFINED CHANNEL ALIGNMENT WHEN CONDITIONS (WETTING) ALLOW, ACCESSED BY IDENTIFIED ROUTES.

### **SPILL POLLUTION AND PREVENTION PLAN (SPCC)**

REFUELING SHALL NOT OCCUR WITHIN 150 FT OF WATERBODIES. REFUELING ONLY IN DESIGNATED AREAS, UNLESS APPROVED BY OWNER OR OWNER'S REPRESENTATIVE.

THE CONTRACTOR SHALL PREPARE AND IMPLEMENT A PROJECT-SPECIFIC SPILL PREVENTION, CONTROL, AND COUNTER MEASURES PLAN (SPCC PLAN) FOR THE DURATION OF THE PROJECT. THE CONTRACTOR SHALL SUBMIT THE PLAN TO THE OWNER'S REPRESENTATIVE NO LATER THAN THE DATE OF THE PRE-CONSTRUCTION CONFERENCE. NO ON-SITE CONSTRUCTION ACTIVITIES MAY COMMENCE UNTIL THE OWNER ACCEPTS AN SPCC PLAN FOR THE PROJECT.

EXCAVATORS AND OTHER EQUIPMENT SHALL BE FITTED WITH BIODEGRADABLE HYDRAULIC FLUID.

### **EROSION CONTROL**

CONTRACTOR SHALL BE SOLELY RESPONSIBLE, AT OWN EXPENSE, FOR PROVIDING AND MAINTAINING ALL NECESSARY EROSION CONTROL FACILITIES TO COMPLY WITH APPLICABLE EROSION CONTROL REGULATIONS AND TO MAINTAIN CLEAN ACCESS ROUTES FOR DURATION OF PROJECT.

### **EROSION/SEDIMENTATION CONTROL PLAN**

THE EROSION AND SEDIMENT CONTROL (ESC) PLAN PROVIDED IS FOR INFORMATIONAL PURPOSES ONLY, THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR PROVIDING EROSION CONTROL MEASURES TO COMPLY WITH APPLICABLE REGULATIONS.

THE RECOMMENDATIONS FOR AN ESC PLAN INCLUDED HEREIN WILL PROVIDE A GUIDELINE FOR THE CONTRACTOR TO DEVELOP AND IMPLEMENT AN ESC PLAN.

- A. THE IMPLEMENTATION OF AN ESC PLAN AND THE CONSTRUCTION, MAINTENANCE, REPLACEMENT, AND UPGRADING OF THESE ESC FACILITIES IS THE RESPONSIBILITY OF THE CONTRACTOR UNTIL ALL CONSTRUCTION IS COMPLETED AND APPROVED AND VEGETATION/LANDSCAPING IS ESTABLISHED.
- B. THE BOUNDARIES OF THE CLEARING LIMITS SHOWN ON THE PLAN SHALL BE CLEARLY FLAGGED IN THE FIELD PRIOR TO CONSTRUCTION. DURING THE CONSTRUCTION PERIOD, NO DISTURBANCE BEYOND THE FLAGGED CLEARING LIMITS SHALL BE PERMITTED. THE FLAGGING SHALL BE MAINTAINED BY THE CONTRACTOR FOR THE DURATION OF CONSTRUCTION.
- C. ESC FACILITIES, AS APPROXIMATELY SHOWN ON THE PLANS, ARE TO BE CONSTRUCTED PRIOR TO CLEARING AND GRADING ACTIVITIES IN SUCH A MANNER AS TO ENSURE THAT SEDIMENT AND SEDIMENT-LADEN

WATER DO NOT ENTER SURFACE WATERS, THE DRAINAGE SYSTEM, OR VIOLATE APPLICABLE WATER STANDARDS.

- D. THE ESC FACILITIES SHOWN ON THIS PLAN ARE THE MINIMUM REQUIREMENTS FOR ANTICIPATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD, THESE ESC FACILITIES SHALL BE UPGRADED AS NEEDED AT NO ADDITIONAL COST FOR UNEXPECTED STORM EVENTS AND TO ENSURE THAT SEDIMENT AND SEDIMENT-LADEN WATER DO NOT LEAVE THE SITE.
- E. THE ESC FACILITIES SHALL BE INSPECTED DAILY BY THE CONTRACTOR AND MAINTAINED AS NECESSARY TO ENSURE THEIR CONTINUED FUNCTIONING.
- F. THE ESC FACILITIES ON INACTIVE SITES SHALL BE INSPECTED AND MAINTAINED A MINIMUM OF ONCE A MONTH OR WITHIN THE 24 HOURS FOLLOWING A STORM EVENT GREATER THAN 0.5 INCHES OF RAIN PER 24 HOUR PERIOD AND AFTER EVENTS EXCEEDING 2 HOURS DURATION.
- G. STABILIZED CONSTRUCTION ENTRANCES AND ADDITIONAL MEASURES MAY BE REQUIRED AND SHALL BE MAINTAINED FOR THE DURATION OF THE PROJECT TO ENSURE ALL ACCESS ROADS ARE KEPT CLEAN AT NO ADDITIONAL COST.

### CONTRACTOR'S ESC RECORD

WEEKLY REPORTS SUMMARIZING THE SCOPE OF INSPECTIONS, THE PERSONNEL CONDUCTING THE INSPECTION, THE DATE(S) OF THE INSPECTION, MAJOR OBSERVATIONS RELATING TO THE IMPLEMENTATION OF THE CONTRACTOR'S EROSION AND SEDIMENT CONTROL PLAN, AND ACTIONS TAKEN AS A RESULT OF THESE INSPECTIONS SHALL BE PREPARED AND RETAINED ON SITE BY THE CONTRACTOR. IN ADDITION, A RECORD OF THE FOLLOWING DATES SHALL BE INCLUDED IN THE REPORTS:

- 1. WHEN MAJOR PROJECT ACTIVITIES OCCUR
- 2. DATES OF RAINFALL EVENTS EITHER EXCEEDING 2 HOURS DURATION OR MORE THAN 0.5 INCHES/24 HOURS
- 3. WHEN CONSTRUCTION ACTIVITIES TEMPORARILY OR PERMANENTLY CEASE ON SITE, OR ON A PORTION OF THE SITE
- 4. WHEN STABILIZATION MEASURES ARE INITIATED FOR PORTIONS OF THE SITE.

ESC RECORDS SHALL BE MADE AVAILABLE TO THE OWNER AND OWNER'S REPRESENTATIVE ON REQUEST AND SHALL BE PROVIDED FOR REVIEW AND APPROVAL PRIOR TO APPLICATION FOR PAYMENT.

### STABILIZE SOILS AND PROTECT SLOPES

ALL EXPOSED SOILS SHALL BE PROTECTED FROM EROSION BY APPROVED MEASURES WITH IDENTIFIED NATIVE SEED MIXES (SEE REVEGETATION SEEDING SPECIFICATIONS). SOILS SHALL BE STABILIZED BEFORE A WORK SHUTDOWN, HOLIDAY OR WEEKEND IF NEEDED BASED ON THE WEATHER FORECAST. SOIL STOCKPILES MUST BE STABILIZED AND PROTECTED WITH SEDIMENT TRAPPING MEASURES. HYDROSEED ALL DISTURBED AREAS NOT INDICATED IN THE CONTRACT DOCUMENTS FOR OTHER PERMANENT STABILIZATION MEASURES AS SOON AS PRACTICAL.

DESIGN, CONSTRUCT, AND PHASE CUT AND FILL SLOPES IN A MANNER THAT WILL MINIMIZE EROSION. REDUCE SLOPE VELOCITIES ON DISTURBED SLOPES BY PROVIDING TEMPORARY BARRIERS. STORMWATER FROM OFF SITE SHOULD BE HANDLED SEPARATELY FROM STORMWATER GENERATED ON SITE.

### AFTER FINAL SITE STABILIZATION

ALL TEMPORARY EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE REMOVED WITHIN 30 DAYS AFTER FINAL SITE STABILIZATION IS ACHIEVED OR AFTER THE TEMPORARY BEST MANAGEMENT PRACTICES (BMPs) ARE NO LONGER NEEDED. TRAPPED SEDIMENT SHALL BE REMOVED FROM THE SITE OR INCORPORATED INTO FINISHED GRADING. DISTURBED SOIL AREAS RESULTING FROM REMOVAL SHALL BE PERMANENTLY STABILIZED.

## WATERS OF THE US

THE ORDINARY HIGH WATER (OHW) LINES DISPLAYED IN THIS DESIGN PACKAGE WERE DETERMINED BY INTER-FLUVE STAFF. THESE LINES ARE BASED UPON ANALYSIS, MODELING, AND BEST PROFESSIONAL JUDGMENT.

THESE DO NOT NECESSARILY REPRESENT JURISDICTIONAL BOUNDARIES. WITHIN THE STATE OF WASHINGTON, THE ARMY CORPS OF ENGINEERS AND THE DEPARTMENT OF ECOLOGY HAVE THE FINAL AUTHORITY IN DETERMINING WATERS BOUNDARIES AND REGULATIONS.

## RIVER DIVERSION & DEWATERING

DIVERSION MAY BYPASS THE RIVER AROUND SMALLER WORK AREAS AT CONTRACTOR'S DISCRETION.

DEWATERING OF IN-CHANNEL WORK AREA(S) SHALL OCCUR CONCURRENT WITH FISH RESCUE. CONTRACTOR SHALL COORDINATE WITH THE YAKAMA NATION FISHERIES FOR FISH RESCUE. CONTRACTOR SHALL PROVIDE YAKAMA FISHERIES AMPLE TIME TO SCHEDULE FISH RESCUE. IF DIVERSION FAILS DUE TO CONTRACTOR NEGLIGENCE, FISH RESCUE SHALL BE REPEATED BY YAKAMA FISHERIES CREWS AT CONTRACTOR'S EXPENSE.

## FISH RESCUE

ALL FISH RESCUE EFFORTS SHALL BE PERFORMED BY A YAKAMA NATION FISHERIES/AQUATIC BIOLOGIST EXPERIENCED WITH THE COLLECTION AND HANDLING OF AQUATIC SPECIES FROM CONSTRUCTION SITES.

ALL FISH TRAPPED IN RESIDUAL POOLS WITHIN THE PROJECT AREA WILL BE CAREFULLY COLLECTED BY SEINE AND/OR DIP NETS AND PLACED IN CLEAN TRANSFER CONTAINERS WITH ADEQUATE VOLUME OF FRESH RIVER WATER.

CAPTURED FISH SHALL BE IMMEDIATELY RELEASED TO ADJACENT WATERS.

## REVEGETATION

ALL WOODY PLANT MATERIAL AND NATIVE SEED MATERIAL TO BE PROVIDED BY OWNER.

PRIOR TO CONSTRUCTION, CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING DELIVERY OF SEED AND PLANT MATERIAL AND MAINTAINING IT ON SITE IN A HEALTHY CONDITION UNTIL INSTALLATION.

## REVEGETATION PERFORMANCE STANDARDS

### TREE AND SHRUB PLANTING

AT THE END OF THE 1-YEAR WARRANTY PERIOD, EACH PLANTING ZONE BY WORK AREA SHALL HAVE HEALTHY LIVE PLANT DENSITIES IN ACCORDANCE WITH THE WARRANTY DESCRIPTION IN THE SCOPE OF WORK IN THIS REQUEST FOR PROPOSALS.

ANTICIPATED ACTIONS TO ACHIEVE THE PERFORMANCE STANDARD MAY INCLUDE, BUT ARE NOT LIMITED TO, RE-SEEDING, IRRIGATION, MOWING, TRIMMING, HAND-PULLING OF NUISANCE VEGETATION, AND HERBICIDE APPLICATIONS. ANY ACTIVITIES REQUIRED TO ACHIEVE THE PERFORMANCE STANDARD SHALL BE CONSIDERED INCIDENTAL TO THE COST OF THE PLANT INSTALLATION AND SHALL COMPLY WITH APPLICABLE SPECIFICATIONS.

THE CONTRACTOR SHALL CONTINUE MANAGEMENT ACTIONS UNTIL PERFORMANCE STANDARDS ARE MET, AS DETERMINED BY THE OWNER OR THEIR REPRESENTATIVE.



**EXHIBIT F**  
**CONSULTANT AGREEMENT**

BETWEEN:

THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

on behalf of its .....program  
P.O. Box 151 / 401 Fort Road  
Toppenish, WA 98948  
General Phone: (509) 865-5121  
Program Phone:  
(HEREAFTER "YAKAMA NATION")

AND

[CONSULTANT NAME]

Address Line 1  
Address Line 2  
Phone:  
(HEREAFTER "CONSULTANT")

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

**TERMS & CONDITIONS**

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. **Consultant Obligations.** The Consultant agrees to perform services as set forth below and detailed in the attached "Exhibit A – Statement of Work" (collectively, the "Services").
3. **Designated Staff Contacts.** The following Staff Contacts shall act as the primary points of contact for the Parties during the term of this Agreement. Yakama Nation and Consultant agree that these Staff Contacts are designated for purposes of technical communication and service coordination only, and shall have no authority to authorize any changes, modifications, or addendums to this Agreement. The Parties may from time to time change their designated Staff Contact by giving the other party reasonable notice of such change.

*Yakama Nation's Staff Contact:*

Name:	
Address:	
Phone:	

Email:	
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*Consultant's Staff Contact:*

Name:	
Address:	
Phone:	
Email:	

4. **Notice; Designated Legal Contacts.** Any and all legal notice required by or issued pursuant to this Agreement must be provided in writing, and shall be delivered postage pre-paid via certified mail or a reputable overnight courier to the following Legal Contacts:

- 4.1. Legal notice to Consultant shall be at the address set forth on page one of this Agreement, and care of the Consultant's designated staff contact identified above.
- 4.2. Legal notice to the Yakama Nation shall be to the Yakama Nation Tribal Council Chairman at the address set forth on page one of this Agreement, with courtesy copies sent to the Yakama Nation's designated Staff Contact listed above, and to the Lead Attorney of the Yakama Nation Office of Legal Counsel at P.O. Box 150, Toppenish, WA 98948.
- 4.3. Either party may from time to time change its designated address for legal notice, or designated Legal Contact(s) for notice, by giving the other party reasonable notice of such change in writing.

5. **Change Orders.** Consultant understands and agrees that any material changes, modifications, or addendums to this Agreement and/or the underlying Project must be authorized in writing by the Yakama Tribal Council, acting through its designated representative Committee via duly authorized Committee Action, and executed by the Yakama Tribal Council Chairman.

6. **Compensation.**

- 6.1. *Maximum Compensation.* The **maximum total compensation amount** approved by Yakama Nation and payable to Consultant under this contract is limited to, and ***shall not exceed*** \_\_\_\_\_ (\$\_\_\_\_\_); which amount shall include any and all compensation for Services and "Eligible Expenses" (including but not limited to mileage, travel, and payment or reimbursement of direct actual costs and expenses,) as further described below and set forth in detail in the attached "Exhibit B – Budget." 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.
- 6.2. *Rates.* Yakama Nation shall compensate Consultant according to the billing rate(s) and/or fee schedule(s) set forth in Exhibit B in an amount not to exceed that stated in Section 6.1 above.
- 6.3. *Eligible Expenses.* Consultant may only seek reimbursement for Eligible Expenses, which are those reasonable expenses incurred with the prior written approval of Yakama Nation or its designated representative. For Eligible Expenses, Consultant must provide a receipt or other proper proof of expense to receive reimbursement from Yakama Nation.

- 6.3.1. *Travel Expenses.* Subject to applicable law, Yakama Nation shall evaluate and determine the reasonableness and allowability of travel expenses in accordance with the standards set forth in 41 C.F.R. Subtitle F, Chapter 301, as amended. Provided, however, that where such standards conflict with any Yakama Nation law or policy, the Yakama Nation law or policy shall govern.
- 6.3.2. *Ownership of Expensed Items.* Yakama Nation shall retain sole and exclusive ownership of all property – real, movable, and/or intellectual – for which Yakama Nation has provided any reimbursement to Consultant under this Agreement. Consultant shall promptly deliver to Yakama Nation any Yakama Nation property upon request, or at the completion or termination of this contract.
- 6.4. *Availability of Funds.* Notwithstanding any other provisions of this Agreement, Consultant 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 the Yakama Nation.
- 6.5. *Federal & Grant Funds.* Consultant understands and agrees that 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. Consultant agrees to comply with and utilize funds in accordance with all applicable laws, regulations, and guidelines, and in accordance with any applicable grant or contract terms. Consultant understands and agrees that the use of such funds may be subject to audit by the grantor. Consultant shall reimburse Yakama Nation for any costs of the Consultant that are disallowed by a grantor.
- 6.6. *Invoicing & Payment.* Consultant shall submit monthly invoices and appropriate supporting documentation to Yakama Nation, including, but not limited to, expense receipts and a brief summary of daily activities associated with Services performed by Consultant. 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 Consultant 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. Consultant waives the right to receive full payment on invoices submitted more than sixty days following the end of the proper invoice period.
- 6.6.1. *Progress Reports.* At Yakama Nation’s request, or as otherwise agreed upon by the Parties in writing, Consultant shall submit a progress report along with its monthly invoice. Such progress reports should generally include, as attached exhibits, copies of all work product prepared or created by Consultant during the relevant invoice period(s). In addition, at Yakama Nation's request, Consultant will provide oral reports and presentations to the Yakama Nation Tribal Council and/or General Council.
- 6.6.2. *Invoice Issues.* If a question or concern arises regarding an item on an invoice, Yakama Nation shall notify Consultant of the question or concern. Within five (5) business days following such notification, Consultant shall take action to sufficiently explain or correct the item, or Consultant shall be deemed to have waived their right to demand payment for the item.
7. **Maintenance & Retention of Records; Financial Management for Accounting and Audits.** Consultant 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. Consultant 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. Consultant 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, Consultant agrees that the 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 Consultant'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 making copies.

## **8. Performance.**

- 8.1. *Independent Contractor.* Consultant shall employ, at its own expense, all personnel reasonably necessary to perform the Services contemplated by this Agreement. Such personnel shall not be considered Yakama Nation employees. Consultant 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. Consultant 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 Consultant or its personnel be entitled to any employee benefits provided by the Yakama Nation. The Parties are not engaged in a joint venture or partnership. Neither party can represent or bind the other.
- 8.2. *Discrimination.* Consultant shall not discriminate against any employee or applicant for employment because of handicap, race, age, religion, or sex. Consultant 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.
- 8.2.1. *Indian Preference.* Notwithstanding the above, Consultant 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, the Consultant 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, the Consultant shall comply with any applicable Indian preference laws and requirements established by the Yakama Nation, including those set forth in the Yakama Nation Tribal Employment Rights Ordinance, as amended (Yakama Revised Law & Order Code, Title 71).
- 8.3. *Taxes, Permits, Fees.* Unless expressly agreed to herein, the Yakama Nation shall not be responsible for the payment of any taxes, permits, licenses or other expenses incurred by Consultant during the performance of this Agreement. Consultant 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 contemplated by this Agreement.
- 8.4. *Subcontractors.* Consultant shall not be permitted to hire a subcontractor to perform the Services contemplated by this Agreement without the Yakama Nation's express prior written authorization. Any unauthorized attempt by Consultant to subcontract for such Services shall be null and void, and Consultant shall be responsible for all expenses, fees, and costs associated with any such unauthorized subcontract.

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

## 9. **Representations & Warranties.**

9.1. *Professional Work.* Consultant shall perform Services in a professional, thorough, skillful, and safe manner, consistent with the relevant standard of care expected from professionals with similar credentials and experience, and in accordance with the usual and customary standards accepted in Consultant's profession for similar projects. Consultant shall notify Yakama Nation of any inconsistencies or errors in Consultant's work that do not meet the aforementioned standards as soon as possible.

9.2. *Compliance with Applicable Laws.* Consultant shall comply with all applicable tribal, federal, state and local laws, regulations, guidelines and policies in performance of Services and fulfillment of duties and obligations pursuant to this Agreement. Consultant represents that it has reviewed, and is familiar with, all laws relevant to the performance of Services under this Agreement.

9.3. *Project Conflicts.* Consultant shall not accept work from any third party during the term of this Agreement that creates a conflict of interest or the appearance of a conflict of interest with the Services.

9.4. *Broad Protection.* All representations and warranties set forth in this section, or memorialized elsewhere in this Agreement and its Exhibits, shall be interpreted expansively to afford the broadest protection available to Yakama Nation.

10. **Access to Records, Personnel, and Facilities.** Subject to applicable law, Yakama Nation will provide Consultant with reasonable access to its personnel, facilities, and records necessary to the performance of this Agreement.

10.1. **Confidential Information.** Where Consultant receives any documents or information typically maintained in confidence by the Yakama Nation ("Confidential Information"), Consultant will, subject to applicable law, make all reasonable efforts to prevent the disclosure of such Confidential Information to any and all third parties. Further, Consultant shall not use the Confidential Information for any purposes other than performance of this Agreement.

## 11. **Work Product.**

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

11.2. *Ownership.* Yakama Nation shall own all Work Product associated with this Agreement; and Consultant agrees that it will not retain any interest in such work product, and shall, in accordance with any and all applicable law, turn over any and all Work Product property to Yakama Nation upon the expiration or termination of this Agreement or upon request.

11.3. *Confidentiality.* All Work Product shall be considered highly confidential, and Consultant shall take all necessary measures to maintain that confidentiality, and shall not disclose, publish, or disseminate any Work Product without the express prior written authorization from Yakama Nation. Internally, Consultant shall only disclose Work Product to employees when necessary to perform the Services contemplated by this Agreement; and Consultant shall require all employees to maintain the Work Product's confidentiality.

11.4. *Injunctive Relief.* Consultant acknowledges that the breach or threatened breach by Consultant of the terms and provisions of this Section would cause irreparable injury to the Yakama Nation, which could not be adequately compensated by money damages. Thus, Consultant agrees that Yakama Nation may obtain a restraining order and/or injunction prohibiting Consultant's breach or threatened breach of these provisions in addition to any other legal or equitable remedies. Consultant agrees that this provision is fair and necessary to protect the Yakama Nation's unique political and cultural interests, rights, and confidential information.

## 12. **Insurance.**

12.1. *Whether Required.* Insurance ☐ IS ☐ IS NOT required. (If unchecked, insurance is required.)

12.2. *Generally.* If insurance is required, Consultant shall (subject to applicable law) maintain, at a minimum, the following insurance throughout the term of this Agreement and for a period of three (3) years following substantial completion or termination of the Project, naming Yakama Nation as an additional insured:

- Commercial General Liability Insurance in the amount of at least one million dollars per occurrence and two million dollars aggregate.
- Commercial Automobile Liability Insurance in an amount equal to the greater of either (a) one million dollars for all vehicles used in performance of Services pursuant to this Agreement, or (b) any other amount required by applicable law.
- Worker's Compensation Insurance, Disability Benefits Insurance, and any other insurance required by applicable law.

12.3. *Delivery of Certificates.* If insurance is required, Consultant shall deliver certificates of insurance showing the foregoing coverage within ten days of the start of the work.

12.4. *Cancellation, Termination, and/or Lapse of Insurance.* Consultant agrees to provide Yakama Nation with at least thirty (30) days prior notice of Consultant's intent to cancel, terminate, or allow any insurance policy required herein to lapse during term of this Agreement, and for a period of three (3) years following the expiration or termination of this Agreement.

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

13. **Indemnification.** Consultant agrees to, at its sole expense, hold harmless, indemnify, and (at Yakama Nation's sole discretion) defend the Yakama Nation and its officers, agents, employees, and assigns against any and all claims, demands, judgments, losses, costs, damages, expenses or other liabilities whatsoever, including court costs and reasonable attorney's fees and expenses, incurred by or claimed against the Yakama Nation, its officers, agents, employees, and/or assigns, that arise out of or are based upon, whether directly or indirectly, Consultant's and/or Consultant's employee's, officers', or agents' errors, actions,



omissions, and/or breach of contract related to this Agreement, including, but not limited to, accidents or injuries to persons or property.

#### **14. Termination.**

- 14.1. *For Convenience.* Either party may terminate this Agreement by giving to the other party at least ninety (90) days prior written notice. The notice shall specify the effective date of termination.
- 14.2. *For Breach.* Either party may immediately terminate this Agreement by written notice following a material breach by the other party.
- 14.3. *By Tribal Council Executive Committee.* Notwithstanding anything herein to the contrary, Consultant understands and agrees that the Yakama Nation Tribal Council Executive Committee may immediately terminate this Agreement by written notice.
- 14.4. *Effect.* Upon termination, the obligations of the Parties for the further performance of this Agreement shall cease, but the Parties shall not generally be relieved of the duty to perform their obligations arising up to the date of termination. Termination shall in no 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 contemplated by this agreement.

#### **15. Dispute Resolution.**

- 15.1. *Negotiation.* 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 through face-to-face negotiations. These negotiations shall take place at the Yakama Nation governmental headquarters in Toppenish, Washington, unless otherwise agreed upon in writing by the Parties. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the Parties, their agents, employees, experts and/or attorneys shall be considered confidential, privileged and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties. Provided, however, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiations.
- 15.2. *By Tribal Council Chairman.* If the Parties are unable to resolve the dispute through negotiation, 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.
  - 15.2.1. *Conflict of Interest.* 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.

#### **16. General Terms.**

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



16.2. *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.

16.3. *Entire Agreement.* This Agreement incorporates all of the agreements, covenants and understandings between the Parties, and supersedes all prior or contemporaneous oral or written agreements 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 the Agreement.

16.3.1. *Attachments.* The following documents are hereby incorporated by this reference and made part of this Agreement:

- **Exhibit A – Statement of Work**
- **Exhibit B – Budget**
- 

16.4. *Amendments.* 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.

16.5. *Survival.* The requirements of Section 7 (Maintenance & Retention of Records; Financial Management for Accounting & Audits), Section 11 (Work Product), Section 13 (Indemnification), and Section 15 (Dispute Resolution) of this Agreement shall survive termination of this Agreement. Further, provisions that, by their nature, are reasonably expected by the Parties to be performed after the expiration or termination of this Agreement shall survive and be enforceable. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement, shall survive the expiration or termination of this Agreement.

16.6. *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.

16.7. *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.

16.8. *Conflicts.* In the event of a conflict between the terms and conditions of this Agreement and those of a Statement of Work or other exhibit or attachment to this Agreement, the terms and conditions of this Agreement shall be controlling.

16.9. *Execution.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and any ancillary documents may be executed and/or delivered by electronic means by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed or delivered as if the original had been received.

17. **Force Majeure.** This Agreement is subject to force majeure, and is contingent on strikes, accidents, acts of God, weather conditions, fire, and other circumstances that 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.
18. **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 the Yakama Nation. This Agreement is deemed executed in Toppenish, Washington. 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 the 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.
19. **Sovereign Immunity.** Notwithstanding any other terms or provisions of this Agreement, Consultant 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 sovereign rights, privileges, remedies, or services guaranteed by the Treaty with the Yakamas of 1855 (12 Stat. 951).
20. **Special Provisions.** In addition to the forgoing terms and conditions, the following requirements are agreed to and shall apply to this Agreement:
- 20.1. [This Section purposefully left blank]

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

**[CONSULTANT NAME]:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

**EXHIBIT G**  
**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:

(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 cleanup, 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-OF CONTRACT TEMPLATE

### Project Overview

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#### 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.]

## **EXHIBIT B-OF CONTRACT TEMPLATE**

### **Statement/Scope of Work**

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[This Scope of Work section is where you will tell the Contractor exactly what you expect of them. Use any format you prefer, so long as it is clear, precise, and gives a comprehensive description of the work to be performed.]

[Indicate any minimum requirements that a particular item, service, or material must meet to be acceptable.]

[Address the specific tasks to be performed by the Contractor and the time frame in which they should accomplish them.]

[Consider listing any critical steps and actions the Contractor should take in achieving key tasks.]

[List and attach any and all drawings, plan sets, etc.]

## **EXHIBIT C-OF CONTRACT TEMPLATE**

### **Budget**

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[Attach the budget for the work to be performed. The total compensation amount shown in this budget must be consistent with the total compensation amount listed in Section 3 of the Agreement.]

[If there are separate subtotal amounts allocated for services and expenses, make sure to note these, along with any applicable hourly rate expectations, or item/activity cost expectations.]



## EXHIBIT D-OF CONTRACT TEMPLATE

### Payment

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#### 1. Payment Schedule

- ☐ **Progress:** The Contractor shall submit a separate bill for each major project task element after the work has been completed, reviewed and accepted by Yakama Nation's Designated Representative. The Contractor is encouraged to invoice monthly when payment is necessary.
- ☐ **Percentage:** The Contractor shall invoice monthly and will be allowed to submit a bill for percentage of work completed after the work has been reviewed and accepted by Yakama Nation's Designated Representative.
- ☐ **Actual Work Completed:** The Contractor shall invoice monthly and will be allowed to submit a bill for actual work completed.
- ☐ **Alternative Schedule:** The Contractor shall invoice and be allowed to submit a bill as follow: [alternate payment plan description, e.g., 30% deposit with balance due after work has been reviewed and accepted by Yakama Nation's Designated Representative ]

#### 2. Tax Exempt Certificate

Due to the location and nature of the Services being provided by Contractor:

- ☐ The Contractor **has not** been given a Tax Exemption Certificate
- ☐ The Contractor **has** been given a single use Tax Exemption Certificate. Due to the nature of this Agreement, as set forth below, the Contractor should be allowed to use the tax-exempt certificate that is included with this document.