



Columbia River
Honor. Protect. Restore.

ADVERTISEMENT and NOTES for DESIGN PROPOSALS
for
Lower Toppenish Creek Fish Passage and Ecosystem Restoration
Project
2/26/2024

NOTICE IS HEREBY GIVEN that emailed electronic bid proposals will be received by:

Yakama Nation Fisheries,
Yakama Reservation Watershed Project (YRWP)
Loverne George, geol@yakamafish-nsn.gov, (509) 865-5121 ext 6364
Email Subject: Lower Toppenish Design Proposal, [name of firm]

For technical questions regarding the RFP (do not email proposals to):

Kelsey Martin Harbick, hark@yakamafish-nsn.gov Ph: 509-506-5026

&

Tom Elliott, ellt@yakamafish-nsn.gov Ph: 509-314-9703

Email Subject: Lower Toppenish Design Proposal Question, [name of firm]

Please also notify Tom and Kelsey by email when you submit your proposal to facilitate internal YN coordination.

DUE BY:

12:00 P.M. Pacific Standard Time on March 26th 2024

Yakama Nation fisheries estimates design cost at approximately \$300,000.

No proposals will be accepted after the above-stated time. All firms who submit a proposal will receive email verification shortly after submission. Proposals not emailed to Loverne George will not be considered.

Critical Dates:

- **Bid Submission Deadline: March 26th 2024 – 12:00 pm**
- **Contractor selection: approximately April 8th, 2024.**
- **Contract and scope review with selected contractor: April 15th, 2024**
- **Contract is fully signed: approximately July 1st, 2024**

Exhibits A-C: Attached Below

Exhibit A: Scope of Work

Exhibit B: Yakama Nation Consultant Contract template

Exhibit C: Basis of Design Report Template

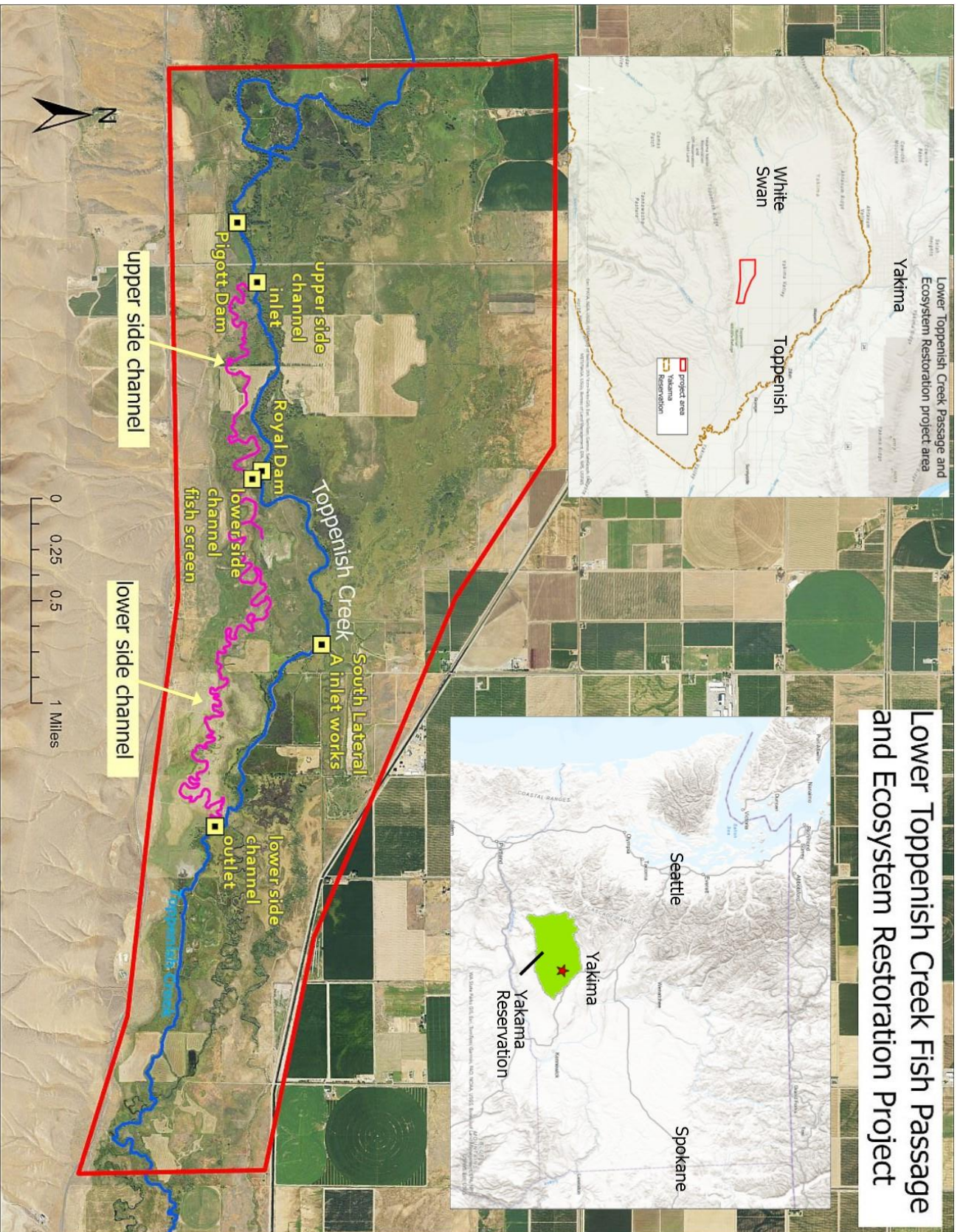


EXHIBIT A

STATEMENT OF WORK

Description of Project

The goals of this project are to improve fish passage and floodplain ecosystem function for ESA listed steelhead, lamprey, migratory waterfowl, wetland plants, and other species on Toppenish Creek. The project reach, approximately river mile 18 to 25, is part of a zone of extremely high juvenile steelhead outmigration mortality, totaling greater than 50%; therefore, juvenile steelhead mortality due to stranding or other factors is a major resource concern.

The project area lies entirely within the Yakama Reservation in central Washington state, about 10 miles southwest of the town of Toppenish (46.323818, -120.504869). This project has multiple elements (sub-projects) at different sites, as described in the following. We anticipate 2 years of construction, in summer/fall of 2025 and summer/fall of 2026. Please refer to the map on page 2 for locations. Full funding is in place for this design contract.

Project objectives:

1. Restore full fish passage in the project reach.
2. Maintain and enhance wetland function, including for migratory waterfowl and other fish and wildlife, and wetland plant species.
3. Reduce steelhead and lamprey stranding risk on floodplain.
4. Enhance side channel and floodplain winter rearing habitat for steelhead.

A google drive folder with additional background information and data is available here: <https://drive.google.com/drive/folders/1GebV312UVG0yEJhvHhNxnEX2LoeXFULI?usp=sharing> (you may have to copy and paste the link into your browser). Please note that boundary polygons for each project sub-element are provided; these are approximate and will be refined in the design process. Side channels should be considered an additional sub-project area with a buffer to allow for disturbance if necessary. Fish stranding risk should be considered throughout the larger project area to the extent allowed for by the budget. The information in the shared folder is the property of the Yakama Nation and should be deleted from company servers by firms that are not selected for the contract.

Project sub-Elements

Year 1 sites

1. Pigott Dam. Remove existing low-head dam and replace with fully fish passable structure. Maintain current water surface elevations in order to provide for wetland management. Assess flowpaths in adjacent wetlands for fish stranding risk and aquatic ecosystem function and develop re-contouring plan as appropriate.
2. Royal Dam. Remove existing low-head dam and replace with fully fish passable structure. Maintain current water surface elevations/and or wetland connectivity in

order to provide for wetland management. Assess flowpaths in adjacent wetlands for fish stranding risk and aquatic ecosystem function and develop re-contouring plan as appropriate.

Year 2 sites

3. Upper side channel reconnection. Design inlet structure to increase sustained hydrologic connectivity to the upper side channel. Design for adequate conveyance and connectivity to provide enhanced side-channel fish habitat and to minimize fish stranding. Do not increase flood risk for neighboring residences.
4. Lower side channel reconnection. Design lower side channel inlet and fish screen to keep fish out of the lower side channel but provide sufficient flow for wetland function. Design for sufficient flow conveyance in side channel, and potentially for an outlet back to Toppenish Creek at the downstream end. Minimize fish stranding risk in side channel.
5. South Lateral A Wildlife Area inlet works. Design replacement fish screen and inlet works for the South Lateral A Wildlife area. The current structure is defunct and obsolescent. Designs need to prevent fish entry but allow for sufficient flows to support full wetland function.

Scope of Work

The proposed scope of work, including a cost estimate, should reflect the following design and budget components. Funding is from the USFWS and potentially other federal funders. Designs shall include full fabrication drawings for fish screens and other pre-fabricated project components. Design schedule and deliverables may be split into 2 timelines, a faster track for year 1 projects and a longer schedule for year 2 projects.

1. Collect and review existing information about the watershed and project area.
2. Site survey and other field data collection.
3. Provide concept designs (~15-30%) to Yakama Nation for review.
4. Provide preliminary (60%) designs for review.
5. Provide permit ready (80 to 90%) designs for review.
6. Provide final, construction ready plans for final review.
7. Provide basis of design report following Bonneville Power Administration HIP 4 format (attached to RFP as Exhibit C).
8. Project management for design of project (this proposal).
9. Construction oversight for projects in this proposal.
10. As-built designs.
11. Wetland delineation and report, if necessary. This task may be performed by US. Fish and Wildlife Service staff. Please provide a cost estimate as a contingency.

Provisions

- YNF will provide contractor with all data that is reasonably available. 2018 and earlier lidar is available for the area at <https://lidarportal.dnr.wa.gov/>, and streamflow gauging records are available on request.

- YNF will arrange for site access and site access approval.
- Yakama Nation and US Fish and Wildlife Service will obtain necessary permits and approvals for all project activity.
- In-water construction fish window is July 15th through October 31st.
- The bidder to whom this contract is awarded must comply with Yakama Nation's Tribal Employment Rights Ordinance (TERO), including all applicable fees and Indian-preference subcontracting and hiring requirements, as stated in the contract template. It is the contractor's responsibility to work directly with the TERO to ensure compliance. TERO office contacts can be found here: <https://www.yakama.com/employment/tero/>. The Yakama Nation TERO ordinance is here: <https://www.yakama.com/wp-content/uploads/2021/10/Tribal-Employment-Rights-Ordinance-September-09-2020.pdf>. We strongly recommend that the contractor contact TERO immediately upon selection. Work or contracting delays resulting from lateness in contacting TERO will be the contractor's responsibility.
- A Yakama Nation Business License is required to enter into a contract with Yakama Nation. Please contact the Yakama Nation Revenue office at (509) 865-5121 ext. 4650 or revenue@yakama.com for application instructions. This is the contractor's responsibility; we recommend contacting the Revenue Office several months ahead of time.
- Design plans must conform to US Fish and Wildlife Service ESA permitting requirements. Please review the Contractor's Handbook v 1.3 at: <https://drive.google.com/file/d/1GenVR1iarB9EyyCcoQqE6XI6otMd6i3K/view?usp=sharing>. It is the contractor's responsibility to ensure that designs are permissible using the criteria and standards described in the Handbook referenced above. This provision also pertains to other guidelines incorporated by reference in the Contractor's Handbook.
- We have attached the Yakama Nation consultant contract template (Exhibit B) for reference. Contract terms can be altered by negotiation with the Yakama Nation. However, changes to the template can prolong the contracting process considerably and it is preferred to use the template as is. There may be minor changes to this contract between now and final contracting, however it will remain substantively unchanged.
- Sub-contracting must be approved prior to contract execution and be clearly described in the proposed scope of work and budget.
- Please note that various Federal laws and statutes are incorporated by reference into the contract template: it is the contractor's responsibility to exercise due diligence regarding these provisions. Please see the Terms and Conditions of the award, and links to more general Federal requirements, here: https://drive.google.com/file/d/1Gw3DxCfoQoo6rTlQdufY4F3QwtLKfBm_/view?usp=sharing.
- Yakama Nation and the U.S. Fish and Wildlife Service will strive for a 2 to 3 week turn-around interval for review and comments at each design phase.

Suggested Work Schedule (contractor may propose alternate schedule; dates in red are firm)

- 7/1/2024 contract is signed.
- 7/1/2024 through 10/1/2024 wetland delineation and report for full project, if needed.
- 9/30/2024 submit concept level designs for full project.

Year 1 Projects-Pigott and Royal dams

- 12/2/2024 submit 60% designs and basis of design report.
- 1/27/2025 submit 80-90% designs and basis of design report.
- 2/11/2025 submit final plans and basis of design report for year 1 tasks. **Hard date to allow for construction contracting in time for construction in summer of 2025 for year 1 projects.**
- 7/15/2025 through 10/31/2025 fish window for year 1 construction.

Year 2 Projects-side channels and South Lateral A inlet works

- 5/1/2025 submit 60% designs and basis of design report.
- 8/1/2025 submit 80-90% designs and basis of design report.
- 11/1/2025 submit final plans and basis of design report. **Hard date to allow for construction contracting in time for construction in summer of 2026 for year 2 projects.**
- 7/15/2026 through 10/31/2026 fish window for construction.
- December 2026 project close-out is completed.

Minimum Qualifications for a responsive proposal

- Proposal submittal content
- Qualifications and experience
- Project approach
- Personnel roster with qualifications
- Relevant past projects and references
 - *Provide three recent references who can be contacted concerning your firm's RFP. In listing the references, include the name of the client, telephone number, e-mail address, contact person, and the specific work your firm did for the client. The Yakama Nation reserves the right to contact references other than those submitted by the respondent.
- Budget breakdown, including:
 - Billing rate schedule by position classification and estimated hours per task
 - Vehicle, lodging, and other travel expenses
 - Charges for equipment, printing, or other costs
 - Direct expenses (if applicable)
 - Cost proposal certified by signature as being valid for at least 180 days is required.
- Proposed schedule and timeline.

Evaluation and Selection Process

Bids will be evaluated and scored by YN staff on the following basis:

1. Quality, clarity, and completeness of the proposal.
2. Cost and value. Preference will be given to lower costs and higher value per cost, all other factors being equal.
3. Timeline, with a preference for quicker delivery of the final plans and report.
4. Experience designing similar and relevant projects.
5. Adequacy and quality of staff and methods proposed.
6. References
7. **Please note that Tribally owned firms are preferred.**
 - a. YN Fisheries will award the Project contract to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Provided that if there are multiple responsive low bids from responsible bidders, Fisheries will give preference to and select the low 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.

Limitations

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

Contractors Obligation

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

EXHIBIT B
SAMPLE CONTRACT

[SAMPLE] 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:	

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**
- **Exhibit C – Payment Terms**

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. Consultant's work under this agreement is being funded under Cooperative Agreement F23AC01697-00 between the Yakama Nation and the U.S. Fish and Wildlife Service. Consultant acknowledges that Yakama Nation's obligation to compensate Consultant for Work performed under this agreement is entirely dependent and conditioned upon such funds being made available to the Yakama Nation by U.S. Fish and Wildlife Service for this work. \

20.2. Consultant shall comply with any and all requirements applicable to subcontractors set forth in Cooperative Agreement F23AC01697-00. If Consultant is authorized under this Agreement to hire any subcontractors, Consultant shall ensure that their subcontracts include a requirement for compliance with these terms. The Cooperative agreement terms can be accessed at: XXXXX. Consultant hereby states and certifies that it has read the Cooperative Agreement and agrees to be bound by the applicable terms. Consultant further states that it has the capacity to comply with the Cooperative Agreement's applicable terms.

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 A
STATEMENT OF WORK

EXHIBIT B
BUDGET

EXHIBIT C

PAYMENT TERMS

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

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

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

☐ *C. Alternative Schedule:* The Consultant shall invoice as follows: _____.

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

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

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

Invoice #: _____
 Pages attached: _____

FY 24 BILLING FORM FOR CONSULTANT/CONTRACTOR

DATE: _____

CONSULTANT: _____ EIN: _____

ADDRESS: _____ CONTRACT: _____

PROJECT #: _____

PO #: (we provide you a PO #)

VENDOR #: our finance system ID#

FOR BILLING PERIOD: _____ to _____

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

Signature _____ date _____

DESCRIPTION OF SERVICES PROVIDED[illegible]

Expenses

[illegible]

This page should list the detail of expenses for requested reimbursement. Please attach original detailed receipts. Reimbursement for expenses are limited to approved budget amounts.

Travel/Mileage

[illegible]

This bill is submitted within the time-frame required by the applicable Consultant/Construction Agreement. Description of services, purpose of travel, expenses, mileage and hours are reported to the best of my knowledge and all receipts from expenses have been attached for Yakama Nation records.

Consultant

date

EXHIBIT C
BASIS OF DESIGN REPORT TEMPLATE FROM HIP 4

Project Background

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

Resource Inventory and Evaluation

- 1) Description of past and present impacts on channel, riparian and floodplain conditions.
- 2) Instream flow management and constraints in the project reach.
- 3) Description of existing geomorphic conditions and constraints on physical processes.
- 4) Description of existing riparian condition and historical riparian impacts.
- 5) Description of lateral connectivity to floodplain and historical floodplain impacts.
- 6) Tidal influence in project reach and influence of structural controls (dikes or gates).

Technical Data

- 1) Incorporation of HIP specific Activity Conservation Measures for all included project elements.
- 2) Summary of site information and measurements (survey, bed material, etc.) used to support assessment and design.
- 3) Summary of hydrologic analyses conducted, including data sources and period of record including a list of design discharge (Q) and return interval (RI) for each design element.
- 4) Summary of sediment supply and transport analyses conducted, including data sources including sediment size gradation used in streambed design.
- 5) Summary of hydraulic modeling or analyses conducted and outcomes – implications relative to proposed design.
- 6) Stability analyses and computations for project elements, and comprehensive project plan.
- 7) Description of how preceding technical analysis has been incorporated into and integrated with the construction – contract documentation.
- 8) For projects that address profile discontinuities (grade stabilization, small dam and structure removals): A longitudinal profile of the stream channel thalweg for 10 channel widths upstream and 10 channel widths downstream of the structure shall be used to determine the potential for channel degradation.

- 9) For projects that address profile discontinuities (grade stabilization, small dam and structure removals): A minimum of three cross-sections – one downstream of the structure, one through the reservoir area upstream of the structure, and one upstream of the reservoir area outside of the influence of the structure) to characterize the channel morphology and quantify the stored sediment.

Construction – Contract Documentation

- 1) Incorporation of HIP General and Construction Conservation Measures
- 2) Design – construction plan set including but not limited to plan, profile, section and detail sheets that identify all project elements and construction activities of sufficient detail to govern competent execution of project bidding and implementation.
- 3) List of all proposed project materials and quantities.
- 4) Description of best management practices that will be implemented and implementation resource plans including:
 - a) Site Access Staging and Sequencing Plan with description
 - b) Work Area Isolation and Dewatering Plan with description of how aquatic organisms within the action area will be treated / protected.
 - c) Erosion and Pollution Control Plan.
 - d) Site Reclamation and Restoration Plan
 - e) List proposed equipment and fuels management plan.
- 5) Calendar schedule for construction/implementation procedures.
- 6) Site or project specific monitoring to support pollution prevention and/or abatement.