

Yakama Nation

Solicitation For Construction Services

Issue Date **November 8, 2024**

Yakama Nation Wildlife Program: Yakima River RM 89.5 Floodplain Restoration

Toppenish, Washington

Prepared by: Yakama Nation Wildlife Resources Management Program



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

This solicitation is issued by
Confederated Tribes and Bands of the Yakama Nation
Wildlife Resources Management Program
PO Box 151
Fort Road
Toppenish, Washington 98948

Bids are due on **December 13, 2024 at 5pm PDT**
Bid tour is scheduled for November 22, 2024 at 12 pm PDT

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SOLICITATION SUMMARY

The Yakama Nation (YN) is requesting price proposals (RFP) to complete the following work briefly summarized below:

Yakima River RM 89.5 Floodplain Restoration

- Excavate approximately 8,715 feet of new channel across 9 sections (alignments) of side channels within the Yakima River floodplain.
- Install two Large Wood Structures (LWD) at one location on the Yakima River.
- Re-vegetate through seeding and tree and shrub planting 21.5 acres.
- Transport and stabilize approximately 25,610 cubic yards of spoils material from channel excavation to one off-site disposal area.
- Transport and stabilize spoils material from channel excavation at multiple on-site disposal locations.
- Install 3 stone fords to provide long-term, stable areas for equipment to cross side channels.
- Enhance approximately 185 feet of Wapato Irrigation Project road and repair approximately 388 feet ditch berm (off-site).
- See specifications in Exhibit A and plans in Exhibit D for all details

The Yakima River RM 89.5 Floodplain Restoration site is located Toppenish, WA, Yakima County on the Yakama Nation Reservation. Access is by state, county, and Yakama Nation service roads. Site coordinates: (46.390617, -120.260717). See locations map for further details.

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 Wildlife Resources Management Program (YNWRMP) Contact Information:

Tom Elliott, Project Lead, 509 314-9703, ellt@yakamafish-nsn.gov

Estimated Price: This project amount is expected to range from **\$ 1.84 million to \$2 million.**

SITE VISIT: Yakama Nation Wildlife will be hosting a formal site visit at **12 p.m. PDT November 22, 2024.** per FAR 52.236-27.

Interested persons will meet off of Old McCoy Road approximately 0.24 miles east of the intersection of Old McCoy Road and North Meyers Road (Located at the bend in Old McCoy Road; 46.393106, -120.283178.)

Questions about the RFB are due Time and Date: 5 p.m. December 9, 2024. Questions may be submitted via email to Tom Elliott, ellt@yakamafish-nsn.gov.

Price Proposal due Time and Date: 5 p.m. December 13, 2024. The award will be made as soon as possible after this date.

Delivery of Price Proposals: Send price proposals by email or hand carry. “See Bid Package, Instructions, Certifications” for specifics.

Delivery Date/Delivery Requirements: Construction of the new facilities and removal of all contractor’s plant and temporary facilities, and all other listed and sundry work must be accomplished at each site by the dates stated below, in accordance to FAR 52.211-10, Commencement, Prosecution, and Completion of Work (Apr 1984).

Construction of the new facilities and removal of all contractor’s plant and temporary facilities, and all other listed and sundry work must be accomplished by December 31, 2025.

Allowable delivery/work hours: 6:00 a.m. to 7:00 p.m., Monday through Friday (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.

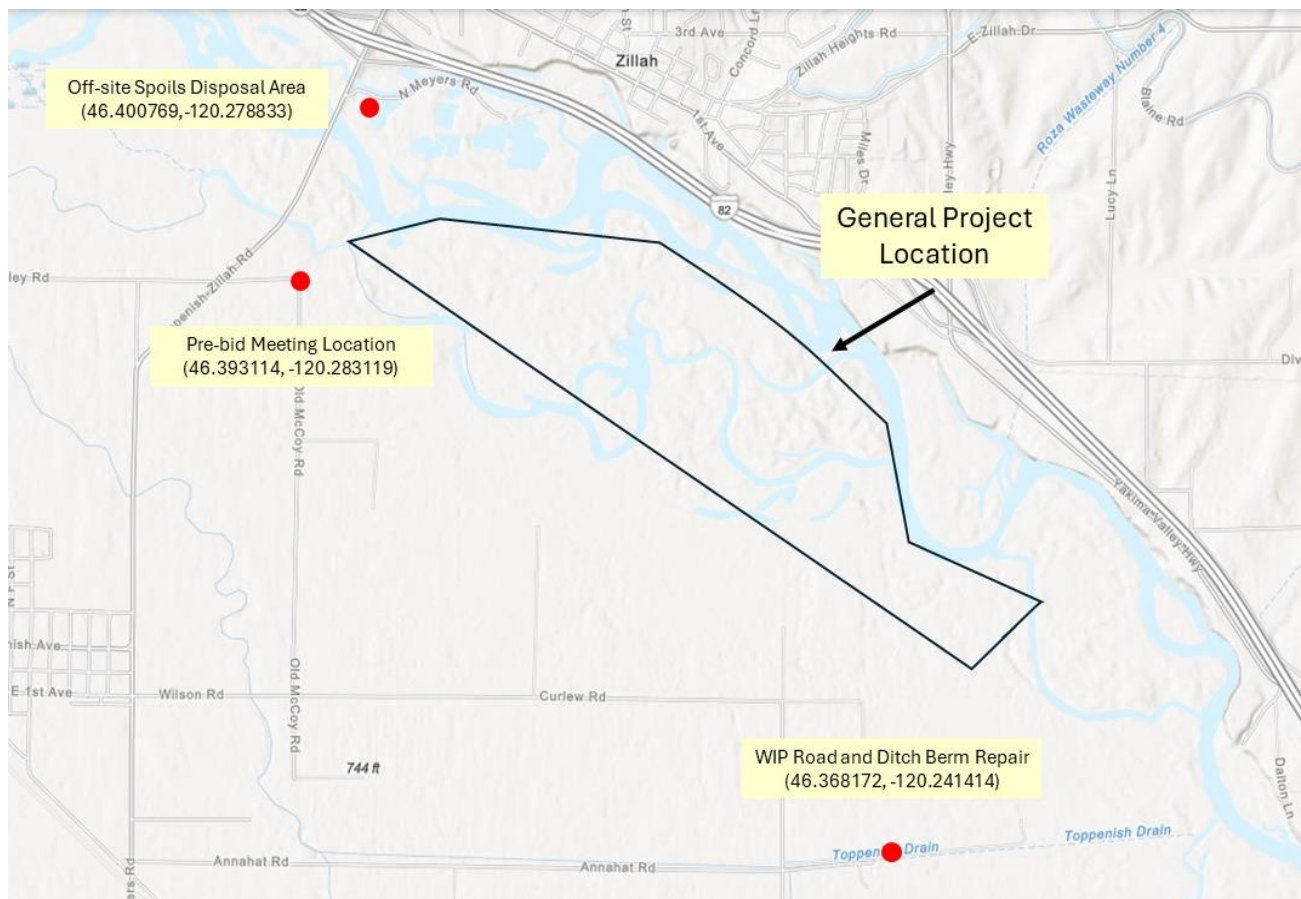
Liquidated damages will be assessed on this project. See the Special Provisions for specifics.

Evaluation Factors for Award:

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

1. Factor One: A narrative listing professional expertise and experience in excavation of stream channels, installation of Large Wood Structures, demonstrated experience by the prime bidder or subcontractor in re-vegetation using native seed, trees, and shrubs, installation of in-stream channel crossing structures, and earthwork projects, with a step-by-step description of the process contractor will use to perform the work. (See **BID PACKAGE** for a list of information that must be provided in the narrative.)
2. Factor Two: Cost Proposal (The Bid Schedule).
3. Professional references for work on similar projects.

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



Map showing pre-bid meeting location and two off-site project locations.

BID PACKAGE, INSTRUCTIONS, CERTIFICATIONS, AND FORMS

Bidding Instructions

Bid Package:

Submit all the following with the bid offer:

- Bid Schedule
- Acknowledgment of Addendum
- Narrative of Past Performance, Resources, Project Sequence
- List of Proposed Subcontractors (on bid schedule)
- List of Proposed Suppliers (on bid schedule)
- Bid Bond (Bid Guarantee) when the bid exceeds \$150,000
- 52.203-2 Certificate of Independent Price Determination (Apr 1985)
- Representations, Certifications, and Other Statements of Bidders:
 - 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Sept 2007)
 - 52.209-5 Certification Regarding Responsibility Matters (Dec 2008)

The Contract:

Submit all the following after the Contract Award is made:

- Yakama Nation Construction Services 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 3rd party compaction testing firm and testing plan, 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 contract documents. 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 or hand carried. Bids must bear the bidder's name, address, and solicitation number. Bids must be addressed to Yakama Nation Wildlife and identified as: “**Bid for Yakima River RM 89.5 Floodplain Restoration**”

Bids submitted via email; address to the following: Tom Elliott at ellt@yakamafish-nsn.gov

Hand Delivered Bids: Inside of a cover envelope, submit the bid in a second sealed envelope marked with “**Bid for Yakima River RM 89.5 Floodplain Restoration**” and the bidder's name and address and deliver the bid to:

Yakama Nation Wildlife Office
Attn: Leon Ganuelas
4690 S.R. 22
Toppenish, WA 98948

Receipt of any Addenda must be noted on the email transmitting the bid, or on the bottom left corner of the sealed envelope containing the bid when mailed or hand carried.

All bids must be made on the BID SCHEDULE or on 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 lowest responsive bidder.

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 lowest responsive 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.

The successful bidder shall supply the names and addresses of major material suppliers and subcontractors with the bid.

Bidders must be Washington State licensed contractors.

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 paid directly to the TERO by the successful bidder. The signed TERO agreement becomes a part of the contract and must be presented to the Engineer before work can begin. The Tribe's TERO Office can be contacted by calling TERO Director George Selam at 509-945-0026 or email: 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, and Cultural Resources (NHPA Section 106) 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, is the lowest in price. Provided that if there are multiple responsive low bids from responsible bidders, Yakama Nation will give preference to and select the low bid received from:

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
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.

CONSTRUCTION SERVICES AGREEMENT

BETWEEN:

THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

on behalf of its DNR Engineering Program
P.O. Box 151 / 401 Fort Road
Toppenish, WA 98948
General Phone: (509) 865-5121
Program Phone: 509-865-5121 ext. 6733
(HEREAFTER "YAKAMA NATION")

AND

CONTRACTOR TO BE NAMED.

CONTRACTOR ADDRESS

CONTRACTOR ADDRESS

CONTRACTOR 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 March 1, 2025, through March 15, 2026, 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 XXX***; 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 “B” 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 the contractor's 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.

(b) n/a.

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 clean up, removal, storage, disposal, transportation and/or use of pollutants. The insurance policy shall name Yakama Nation, its officials, officers, employees and agents as insured. Contractor's policy shall be primary to any insurance of Yakama Nation.

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

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

27. INSPECTION - SERVICES AND CONSTRUCTION

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

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

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

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

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

28. WARRANTY - CONSTRUCTION

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

B. This warranty shall continue for a period of one (1) year 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 one (1) year 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 one (1) year 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 Name
Contractor Company Name
Contractor Address
Contractor Address

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:	Tom Elliott, Yakama Nation Fisheries
Address:	PO Box 151, Toppenish, WA 98948
Phone:	509-314-9703
Email:	ellt@yakamafish-nsn.gov

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” – Statement/Scope of Work and Specifications
- Exhibit “B” – Budget/BID Schedule
- Exhibit “C” – Payment
- Exhibit “D” – Drawings

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. *Wage Rates.* Wages paid under this contract are subject to the Davis Bacon Act and related federal labor law requirements associated with federally funded construction projects.

B. *Federal Acquisition Clauses.* This contract adopts certain Federal Acquisition Clauses of the Federal Acquisition Regulations System (“FAR”) for its contract language. Therefore, any literal reference to the United States or agents thereof in the FAR clauses must be taken as a reference to the Yakama Nation and its comparable agents.

The following FAR are incorporated into the contract by reference or in full text. For the full text of the clauses incorporated by reference visit [Part 52—Solicitation Provisions and Contract Clauses](https://www.acquisition.gov/far/html/FARTOCP52.html) at <https://www.acquisition.gov/far/html/FARTOCP52.html>

These, herein, listed FAR clauses compliment, and augment the numbered paragraphs of this Agreement. In those cases where there are discrepancies between FAR and the Agreement, the interpretation most favorable to the Yakama Nation will supersede and apply.

1. *Liquidated Damages.* Liquidated damages will be assessed per FAR 52.211-12 at the rate of **\$500.00** per day from the completion date cited in Section 1 Term of the construction service agreement.

C. Yakama Nation approves of sub-contracting for certain tasks as specified in the attached Scope of Work and budget.

DELIVERIES OR PERFORMANCE

52.211-10 Commencement, Prosecution, and Completion of Work (Apr 1984)

The Contractor shall be required to

- (a) commence work under this contract within **10 (ten)** calendar days after the date the Contractor receives the notice to proceed,
- (b) prosecute the work diligently, and
- (c) complete the entire work ready for use not later than **See Section No. 1 Term in Construction service agreement.** The time stated for completion shall include final cleanup of the premises.

52.228-1 -- Bid Guarantee (Sep 1996)

- Per Far 52.228-1(c) -- Bid Guarantee (Sep 1996) The amount of the bid guarantee shall be TWENTY (20) percent of the bid price or \$100,000.00, whichever is less.

52.228-15 Performance and Payment Bonds—Construction. (Oct 2010)

- Payment and Performance Bonds when required based on value of contract per FAR 52.228-15.
 - Amount of Required bonds per FAR 28.102-2
 - For Contracts values less than \$35,000, no bonds required
 - For Contracts values between \$35,000 and \$150,000, payment bonds required.
 - For Contracts values \$150,000 and higher, payment and performance bonds required.

52.236-27 Site Visit (Construction). (Feb 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

Alternate I (Feb 1995). If an organized site visit will be conducted, substitute a paragraph substantially the same as the following for paragraph (b) of the basic provision:

- (b) An organized site visit has been scheduled for—
10 am PDT on Wednesday November 22, 2024.
- (c) Participants will meet at—
Old McCoy Road approximately 0.24 miles east of the intersection of Old McCoy Road and North Meyers Road (Located at the bend in Old McCoy Road; 46.393106, -120.283178.)

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 TO BE NAMED

EIN # XX-XXXXXXX

By: _____

Date: _____

Name: **TO BE NAMED**

Title: President

EXHIBIT A

Scope of Work and Specifications

SCOPE OF WORK

The Yakama Nation (YN) is requesting price proposals (RFP) to complete the following work briefly summarized below:

Yakima River RM 89.5 Floodplain Restoration

- Excavate approximately 8,715 feet of new channel across 9 sections (alignments) of side channels within the Yakima River floodplain.
- Install two Large Wood Structures (LWD) at one location on the Yakima River.
- Re-vegetate through seeding and tree and shrub planting 21.5 acres.
- Transport and stabilize approximately 25,610 cubic yards of spoils material from channel excavation to one off-site disposal area.
- Transport and stabilize spoils material from channel excavation at multiple on-site disposal locations.
- Install 3 stone fords to provide long-term, stable areas for equipment to cross side channels.
- Enhance approximately 185 feet of Wapato Irrigation Project road and repair approximately 388 feet ditch berm (off-site).
- See specifications in Exhibit A and plans in Exhibit D for all details

The Yakima River RM 89.5 Floodplain Restoration site is located Toppenish, WA, Yakima County on the Yakama Nation Reservation. Access is by state, county, and Yakama Nation service roads. Site coordinates: (46.390617, -120.260717). See locations map for further details.

Please note: Specifications and design plans for this project include site and work elements that are not included in the work under this contract or were completed under a previous phase. Yakama Nation attempted to clearly mark plans and indicate on the bid sheet which plan sheets and actions and which specifications apply to this contract. However it is the contractors responsibility to review, understand, and adhere to all relevant plan details and specifications for the work under this contract.

EXHIBIT B
Budget/Bid Schedule 1

Item	Specification	Description	Quantity	Unit	Unit Price (\$)	Subtotal (\$)
1.	WA DOT 1-09	Mobilization and Demobilization	1	LS		
2.	WSDOT 8-31	Dewatering and Water Control	1	LS		
3.	WSDOT 2-04	Site Access and Temporary Haul Roads	1	LS		
4.	WSDOT 2-01	Clearing and Grubbing	1	LS		
5.	WSDOT 8-01	Erosion and Sediment Control/Spill Prevention Control and Counter Measures	1	EA		
6.	WSDOT 2-03	Channel Excavation and Final Grading (P)	26,320	CY		
7.	WSDOT 2-04	Off-Site Spoils Disposal (P)	25,610	CY		
8.	WSDOT 1-07	Site Restoration	1	LS		
9.	See Plans	Large Wood Structure (LWD)	2	EA		
10.	See Plans	Fabric Encapsulated Soil (FES)	180	LF		
11.	WSDOT 8-30	Ford – Alignment 1A	1	EA		
12.	WSDOT 8-30	Ford – Alignment 1B	1	EA		
13.	WSDOT 8-30	Ford – Existing near Alignment 1F	1	EA		
14.	See Plans	Beaver Dam Enhancement	5	EA		
15.	See Plans	WIP Road Enhancement	120	CY		
16.	See Plans	WIP Ditch Improvement	590	CY		
17.	WSDOT 8-02	Seeding – Wetland Fringe Zone (Plant Selection Including Plant Establishment – Materials provided by Owner)	4.9	AC		
18.	WSDOT 8-02	Seeding – Riparian Zone (Plant Selection Including Plant Establishment – Materials provided by Owner)	8.7	AC		

Item	Specification	Description	Quantity	Unit	Unit Price (\$)	Subtotal (\$)
19.	WSDOT 8-02	Seeding – Transitional zone (Plant Selection Including Plant Establishment – Materials provided by Owner)	7.9	AC		
20.	WSDOT 8-02	Tree and Shrub Planting – Wetland Fringe Zone (Plant Selection Including Plant Establishment – Materials provided by Owner)	6,846	EA		
21.	WSDOT 8-02	Tree and Shrub Planting – Riparian Zone (Plant Selection Including Plant Establishment – Materials provided by Owner)	12,295	EA		
22.	WSDOT 8-02	Tree and Shrub Planting – Transitional Zone (Plant Selection Including Plant Establishment – Materials provided by Owner)	11,317	EA		
Total						

Alternate Bid Item No. 1 – On-site Disposal of Spoils Materials (Multiple Locations)

Contractor will be responsible for stockpiling spoils materials from channel excavation at one or more locations on-site, as shown on the drawings or designated by the Owner. Stockpiling includes shaping of spoils materials, applying temporary seed mix, mulch, and providing erosion perimeter control. Contractor should assume the minimum volume at each location will be no less than 2,000 cubic yards.

Unit Cost (\$/CY) -

*Specifications in the Bid Schedule are provided for convenience only. Contractor is responsible for reading and following all relevant specifications for the contracted work whether or not they are shown in the Bid Schedule.

Acknowledgement of Addendum

The bidder acknowledges receipt of the following addendum:

Addendum No.	Addendum Issue Date.

Company Name:

Company Representative:

Signature:

Date:

Past Performance, Resources and Project Sequence

On a separate sheet(s), provide a narrative of past performance by the bidder and subcontractors on similar projects involving Large Wood Structures and channel excavation, resources, and project sequence. Bidder or subcontractor shall provide examples of past experience (Project name, Client name/contact information) in projects involving re-vegetation using native tree and shrub species and native seed mixes.

Specifically, Bidder or subcontractors shall demonstrate at least five (5) years of experience working in Oregon and Washington Rivers in the following areas:

1. Stream/river restoration including the installation and construction of large wood jams and log placements, including in submerged environments.
2. Stream/river restoration including construction of riffles or side channels.
3. Successful installation of erosion control measures.
4. Excavation and grading in areas with soft, saturated soils.
5. Excavation and grading in areas with limited construction access areas located in or adjacent to environmentally sensitive areas including, but not limited to wetlands, waterways, riparian zones and floodplains.
6. Re-vegetation using native plant species (seeding and planting) in challenging planting conditions with varied soils and alluvium.
7. Management actions associated native vegetation establishment for a period of 1 to 5 years following installation.
8. Re-vegetation using native plant species in arid or semi-arid riparian and wetland environments

EXHIBIT C

Payment

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.

- X 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 follows: [alternate payment plan description, e.g., 30% deposit with balance due after work has been reviewed and accepted by the 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

X 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. [Provide a description of how the Services to be performed justifies use of tax-exempt certificate]

3. Forms to be submitted with all request for payments.

- Invoice Certification: The Contractor must include with each submitted invoice an Invoice Certification form.
- Release of Claims: The Contractor must include with the final invoice.

Invoice Certification

INVOICE # ____AMOUNT REQUESTED _____PERIOD ENDING: _____
FINAL INVOICE ____yes ____no. If "yes" include Release of Claims form.

1. CONTRACTOR CERTIFICATION

I hereby certify to the best of my knowledge and belief that (1) the amounts requested are only for performance in accordance with the specifications, terms and conditions of the contract (2) payments to Subcontractors and suppliers have been made from previous payment received under this contract and timely payments will be made from the proceeds of the payment covered by this certification in accordance with the contract agreements and the requirements of Chapter 39, of Title 31, United States Code; and (3) this request for progress payments does not include any amounts which the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of this contract.

According to the best of my knowledge and belief, I certify that all items and amounts shown on the invoice are correct, that all work has been performed and/or material supplied in full accordance with the requirements of the referenced project and/or duly authorized deviations, substitutions, alterations and/or additions that the foregoing is a true and correct statement of the contract amount up to and including the last day of the period covered by this period estimate; that no part of the "Balance Due This Estimate" has been received; and that the undersigned and subcontractors have -- (Check applicable Line).

A. ☐ Complied with all labor provisions of said contract.

B. ☐ Complied with all the labor provisions of said contract except in those instances where an honest dispute exists with respect to said labor provisions. Briefly describe the nature of the dispute below.

Business Name

Signature/Title of Subcontractor

Date

2. TRIBAL REPRESENTATIVES CERTIFICATION

I certify that I have checked and verified the above and foregoing Invoice, that to the best of my knowledge and belief, it is true and correct statement of the work performed and/or quantities of material supplied by the Contractor, payment of the amount due for the period of this report is hereby recommended.

Signature (YN Wildlife Project Lead)

Date

3. APPROVAL AND AUTHORIZATION FOR PAYMENT:

Payment in the amount of \$ _____ is hereby approved for payment.

Signature YN Wildlife Program Manager

Date

Release of Claims

Contract: Yakima River RM 89.5 Floodplain Restoration Solicitation

Whereas, the terms of the above identified contract entered into by the Yakama Nation, and the Contractor, whose name appears on the contract, provide that after completion of all work, and prior to final payment, the Contractor will furnish the Yakama Nation with a release of claims:

Now therefore, in consideration of the above premises and the payment by Yakama Nation to the Contractor of the amount now due under the contract in the sum of \$_____, as final payment, the Contractor hereby remises, releases and forever discharges the Yakama Nation its officers, agents, and employees of and from all manner of debt, dues, liabilities, obligations, accounts, claims, and demands whatsoever, in law and equity, under or by virtue of the said, except:

Contractor's Name _____

Address _____

City, State, Zip _____

Telephone # _____

Signature and Title of Authorized Official(s)

Print Name & Title: _____

I CERTIFY that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature: _____

Title: _____

My appointment expires: _____

Affix Stamp Here

List Proposed Sub-contractors by Bid Schedule Item Number.

Subcontractor	Bid Schedule Item Number

List Proposed Suppliers by Bid Schedule Item Number.

Proposed Supplier	Bid Schedule Item Number