



## Post-Implementation Monitoring of Habitat Restoration Project Conditions

Wenatchee, Entiat, & Methow Subbasins

Consultant Services

**Columbia River**  
**Honor. Protect. Restore.**

### **Request for Proposals**

April 23, 2025

OFFICE  
104 E. Ninth Street  
Wenatchee, WA 98801

PHONE  
(509) 860-5351

FAX  
(509) 423-7616

EMAIL  
[henl@yakamafish-nsn.gov](mailto:henl@yakamafish-nsn.gov)

WEB  
[Yakamafish-nsn.gov](http://Yakamafish-nsn.gov)

Yakama Nation Fisheries is seeking proposals from Professional Engineering firms to award an on-call post-implementation monitoring contract in support of salmon habitat restoration activities taking place in the Upper Columbia Region (including the Methow, Entiat, and Wenatchee Valleys) in Chelan and Okanogan Counties, Washington. Based upon the proposals received under this solicitation, the Confederated Tribes and Bands of the Yakama Nation will award a one-year on-call contract to the best quality bidder for the Scope of Work described within this RFP, with an option to renew for two additional years if funding is available. Services rendered under this contract will be performed from the contract start date (to be determined) through May 31, 2026.

As Yakama Nation staff proceed with implementing habitat restoration projects in Okanogan and Chelan Counties, individual project biologists will call upon the winning contractor as necessary to enact a portion or all of the work tasks described below. The Contractor shall furnish all supervision, labor, equipment, and tools necessary to complete the Scope of Work.

All Yakama Nation Fisheries habitat restoration projects in the Upper Columbia Basin require the creation of as-built designs and a post-implementation monitoring plan by the lead project Professional Engineer upon project completion. These “as-built” products are then used by Yakama Nation Fisheries staff to guide post-implementation monitoring needs on a project-by-project basis, resulting in the need for multiple areas of restoration to be assessed by Professional Engineers on an annual basis and after any threshold-exceeding event. An example of a suggested post-construction monitoring product is provided as an attachment to this RFP.

### **Proposed Scope of Work**

To complete this scope of work, Yakama Nation Fisheries staff will provide to the contractor all relevant as-built products and monitoring reports for each restoration site requiring monitoring during the calendar year. This can include monitoring on up to fifteen separate project sites ranging in size from a few acres to hundreds of acres and multiple stream miles in remote locations.

Monitoring at each project location will take place on a regular schedule and following any 5-year or greater

recurrence flood event based on relevant real time flows recorded at USGS gages within the Wenatchee, Entiat, and Methow watersheds. Monitoring activities will occur at years 1, 2, 3, and 5, however if minimal change is noted after year 3, or following one 5-year or greater event, the schedule may be relaxed and/or monitoring may be discontinued.

At each site, under the guidance of the project specific post implementation monitoring plan, and at the discretion of Yakama Nation Fisheries staff, the contractor will perform the following tasks:

## **Phase 1 – Site Investigation**

### **Task 1 – Hydrologic History**

Using publicly available USGS stream gage data within each watershed where restoration work has been performed, the contractor will provide a summary of maximum flows that occurred between monitoring events. Flows at the time of the monitoring effort should be summarized with a comparison to mean daily discharge. Effort will be made to conduct monitoring at similar flows to provide comparable observation efficiencies and photos.

### **Task 2 – Photo Points**

At each project site, locations have been identified in the as-built reports that visually document individual features, overall condition, and the associated physical habitat. Photos will be taken at those approximate locations for each subsequent monitoring year, unless vegetation growth necessitates relocating specific photo points to allow for suitable visual documentation of specific project elements needing to be monitored. If photo points are relocated, the new locations will be described and provided on a map. For each photo point, notes should be taken of the target project feature, photo orientation, and unique conditions or features the photographs are documenting. Effort should be made to produce high resolution photos of similar magnification and framing for easy visual comparison between monitoring years.

### **Task 3 – Field Sketches and Narrative**

At each constructed feature, a field sketch and narrative of any changes from prior monitoring conditions will be completed. Photographs from prior monitoring events will be compared to field conditions to estimate changes. Sketches will be as detailed as possible based on observations and simple measurements and should include a plan and elevation sketch at each location. The as-built reports provide construction plans for use as base graphics for sketches of locations and extents of erosion, scour and deposition areas, accumulation of debris, adjacent river bed and bank conditions and their approximate dimensions relative to the constructed feature. Substrate sizes in scour and deposition zones will be estimated on the percent composition using Wentworth scale metrics and noted on the sketch. Total number of woody material will be summarized to identify whether projects are gaining or losing material.

### **Task 4 – Action Triggers**

If monitoring activities detect undesirable performance or changes to the habitat work, a range of actions or responses may be initiated based on the professional opinion of the reviewing Professional Engineer:

- No action needed - change is noted in the monitoring report.

- Minor change in function - a flag may be placed in the monitoring report to watch and respond at a later time if the condition worsens.
- Moderate changes - may require a recommendation to engage in a planned intervention that will be developed by a Professional Engineer or qualified consultant under the guidance of Yakama Nation Fisheries staff.
- Serious changes that would negatively influence human safety, infrastructure, or the environment - may require immediate emergency interventions including rapid design and heavy equipment mobilization to remedy the issue.

All proposed action trigger recommendations will be discussed with Yakama Nation Fisheries staff to determine a course of action. The findings, recommendations, and decisions will be documented in each report year as it becomes necessary.

#### Task 5 – Revegetation Areas

The Contractor will identify deficiencies in the revegetation efforts for each site, which may include:

- Problems with plant species complexity
- Low plant vigor and/or high plant mortality
- Noxious and/or invasive plant species infestations

The degree of deficiency will be described based upon percent of the total project area affected, and the total area in acres of each specific problem. Noted deficiencies in vegetation re-establishment may prompt action triggers to improve site recovery.

## Phase 2 – Reporting

#### Task 6 – Monitoring Report

Following completion of each round of field monitoring, a report will be developed presenting the monitoring notes and photos. The report will include a description of methods, including any variation to the monitoring plan and reasons for variation, site conditions at the time of monitoring, and a summary of preceding flow conditions characterized by the record from the USGS gage with a focus on peak events that may have occurred prior to monitoring. The report will include a brief section for each monitored feature including representative photographs from each photo point and a narrative describing the conditions of the habitat feature, noting any changes to the structures or physical habitats between monitoring years. If extensive change is documented during the monitoring effort, the Contractor will provide updated as-built drawings depicting the changed conditions within the monitoring report.

## **Bid Directions**

Each company seeking to be eligible for a contract award under this Request for Proposals must submit one hardcopy of their proposal in writing to:

**Yakama Nation Fisheries**

**Attn: Annet Dillman**

**RE: On-Call Wetland Assessment Services RFP**

**PO Box 151**

**Toppenish, WA 98948**

**(Shipping address: 401 Fort Road, Toppenish, WA 98948)**

Proposals must be received in Toppenish by Close of Business, **Thursday, May 15, 2025**. It is recommended that all shipping and/or delivery confirmation receipts are retained past the proposal due date to ensure proof of submission.

In addition to the required physical bid submittals, we are also requesting contractors to provide digital copies of their completed bid documents through email submittal directly to the project manager at [HENL@yakamafish-nsn.gov](mailto:HENL@yakamafish-nsn.gov), and the lead bookkeeper [dila@yakamafish-nsn.gov](mailto:dila@yakamafish-nsn.gov). We are encouraging digital copies to be emailed at the same time the physical bid package is mailed to the proper address in Toppenish, WA. This will allow Yakama Nation Fisheries staff to know whether to expect that a hardcopy bid has been submitted, and will allow Yakama Nation Fisheries staff an opportunity to more quickly score and rank bids for the contract award process.

Please note that timely hardcopy bid submittals are a requirement for a bid to be considered competitive. The additional digital email submittal is requested, but is not a performance requirement. Any digital submittal received with no associated hardcopy submittal by the RFP deadline listed above will be discarded as invalid.

Each proposal must include a Statement of Qualifications pertaining to the bidder's qualifications to produce the Scope of Work items listed in this Request for Proposals. Proposals shall also include a roster of key personnel proposed to work under this contract, including resumes. Provision of a separate roster of additional non-key project personnel is also recommended. Please note that proposals dependent upon subcontracting will not be preferred.

Proposals shall provide a complete rate schedule that accurately describes the rates at which all personnel and direct costs will be billed to produce the Scope of Work items listed in this Request for Proposals. The schedule of fees should be submitted on company letterhead and certified by signature that the rates provided for competitive bidding will be valid for at least 180 days.

Please review the attached Consultant Services Agreement template for typical Yakama Nation contracting terms and conditions, including reporting/invoicing requirements.

## **Bid Scoring Categories and Weighting**

The following categories will be used to evaluate the competitiveness of bids received.

- Demonstrated experience with this type of work – 15%
- Demonstrated quality of work – 15%

- Cost – 15%
- Schedule – 10%
- Company integrity/references – 10%
- Demonstrated experience with permitting agencies in the Upper Columbia Region – 10%
- Adequacy/quality of staff and equipment proposed – 15%
- Completeness of Proposal (Based on RFP Submission Requirements) – 10%

## **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.

## **Project related questions should be directed to:**

Lindsay Henning  
Fisheries Habitat Biologist  
Phone: (509) 860-5351  
E-mail: [HENL@yakamafish-nsn.gov](mailto:HENL@yakamafish-nsn.gov)

## CONSULTANT SERVICES AGREEMENT

This consultant services agreement is between the CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION, a sovereign native nation with its governmental headquarters located at P.O. Box 151 / 401 Fort Road, Toppenish, WA 98948 on the Yakama Reservation (“**Yakama Nation**”), and CONSULTANT’S NAME], EIN Number [REDACTED], with its primary place of business located at [address] (“**Consultant**”).

The Yakama Nation wants to obtain technical assistance to accomplish the project, task, study, or other work described in Exhibit A (Scope of Work) to this agreement.

Consultant states that it has the necessary technical expertise, skill, and capability to complete this work for the Yakama Nation.

The parties therefore agree as follows:

### ARTICLE 1. STATEMENT OF SERVICES

1.01 **Work & Standard of Performance.** Consultant shall perform the work described in Exhibit A (Scope of Work) to this agreement (the “**Work**”). Consultant shall, at its sole expense, provide all labor, services, and equipment necessary to complete the Work timely and to the Yakama Nation’s satisfaction, except as expressly provided otherwise in this agreement. Consultant’s performance shall comply with applicable tribal, federal, state, and local law and policy, and be consistent with generally accepted professional best practices, both of which Consultant states it has knowledge of.

1.02 **Term.** This agreement will be effective on the date when both parties have signed it, and will terminate as set forth below, unless terminated earlier in accordance with Article 9 of this agreement (if neither option is selected, Option B shall be the default):

☒ *Option A:* On May 31, 2026

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

1.03 **Prior Performance.** If the Consultant has performed any Work prior to the effective date of this agreement, then this agreement will govern such prior performance. Except that the Consultant’s invoicing obligations, and the Yakama Nation’s associated payment obligations, as set forth in Exhibit C (Payment Terms), will not arise until after the effective date of this agreement.

1.04 **Key Personnel.** If any of Consultant’s employees or agents are specifically identified in Exhibit A (Scope of Work) as the employee(s) or agent(s) expected to perform the Work, they will be considered Consultant’s “**Key Personnel**” for purposes of this agreement. Consultant shall ensure that

Key Personnel continue to be assigned to the Work until its completion, unless Consultant obtains the Yakama Nation Project Manager's written consent to a staff substitution.

## **ARTICLE 2. COMPENSATION**

2.01 **Maximum Compensation.** The maximum total compensation approved by the Yakama Nation and payable to Consultant for Work under this agreement is \$\_\_\_\_\_. The Yakama Nation shall not pay Consultant more than this maximum amount for the Work. Consultant acknowledges that this maximum amount (a) is sufficient to perform the Work consistent with the terms and conditions of this agreement and (b) includes all eligible expenses associated with Consultant's performance of the Work.

2.02 **Payment.** The Yakama Nation shall pay Consultant according to the invoicing and payment terms described in Exhibit B (Budget) and Exhibit C (Payment Terms) to this agreement.

2.03 **Expenses.** The Yakama Nation shall only compensate Consultant for eligible expenses directly associated with the performance of the Work. Consultant acknowledges that "eligible expenses" means reasonable, allocable, and allowable expenses that are incurred by Consultant in performance of the Work with the prior written approval of the Yakama Nation, for which the Consultant provides a reasonably detailed receipt or other proper proof. The Yakama Nation shall pay eligible expenses, including any authorized travel expenses, consistent with applicable tribal and/or federal law and policy.

### **2.04 Federal, State, or Privately Granted Funds.**

(a) *Compliance.* Consultant acknowledges that federal, state, or grant funds utilized to compensate Consultant may be subject to certain laws, regulations, requirements and restrictions, which may include, but are not limited to, 2 C.F.R. Part 200. Consultant shall utilize funds in accordance with applicable funding requirements and restrictions, and shall reimburse the Yakama Nation for any expenses that are paid by the Yakama Nation but subsequently disallowed by the federal or state agency or other grantor.

(b) *Availability of Funds.* Consultant acknowledges that where the Work is funded by federal, state, or other external sources, Yakama Nation's payment obligations to Consultant for Work under this Agreement are entirely dependent and conditioned upon Yakama Nation receiving the funds from such agency or agencies.

## **ARTICLE 3. PROJECT MANAGEMENT**

3.01 **Project Managers.** Each party will designate an internal project manager to facilitate the completion of the Work. Being designated as a party's project manager does *not* endow the representative with any legal authority to bind that party. Either party may change their project manager by giving notice to the other party.

(a) The Yakama Nation's Project Manager is Lindsay Henning. She may be reached at (509) 860-5351, or HENL@yakamafish-nsn.gov.

(b) The Consultant's Project Manager is [Name]. S/he may be at [Phone], or [email].

#### ARTICLE 4. LEGAL NOTICE

4.01 **Valid Notice.** For a notice under this agreement to be valid, it must be in writing, properly addressed to the party's current legal contact, and delivered (a) by a national transportation company with all fees prepaid and receipt signature required, or (b) by USPS certified mail, return receipt requested, postage prepaid. Notice will be effective upon the date of receipt. Either party may change its designated address or recipient for legal notice by giving the other party reasonable notice of such change.

4.02 **Notice to the Yakama Nation.** Notice to the Yakama Nation must be sent to the Tribal Council Chairman at P.O. Box 151 / 401 Fort Road, Toppenish, WA 98948, with courtesy copies to the Yakama Nation's Project Manager electronically at their email address listed above in section 3.01(a), and to the Yakama Nation Office of Legal Counsel at P.O. Box 150 / 401 Fort Road, Toppenish, WA 98948.

4.03 **Notice to Consultant.** Notice to Consultant must be sent to \_\_\_\_\_ at \_\_\_\_\_.

#### ARTICLE 5. RECORDS, ACCOUNTING & AUDITS

5.01 **Recordkeeping.** Consultant shall maintain auditable records during the term of this Agreement and for a period of at least three (3) years following the termination of this Agreement. Consultant shall comply with the Audit Act of 1984, P.L. 98-502 (31 U.S.C. § 7501 et. seq.), as amended, and the Office of Management and Budget's Uniform Guidance requirements set forth at, 2 C.F.R. Part 200, Subpart F, as amended, in maintaining its records.

5.02 **Accounting.** Consultant shall adhere to a systematic accounting method in performing the Work to ensure timely and appropriate resolution of audit findings and recommendations, and compliance with the Office of Management and Budget's Uniform Guidance requirements set forth at, 2 C.F.R. Part 200, Subpart F, as amended.

5.03 **Audits.** Except as prohibited by law, the Yakama Nation, the United States (if applicable), and any grantor agency (if applicable), and/or their duly authorized representative(s), may audit, examine, request, or make copies of Consultant's records that concern or are relevant to the subject matter of this agreement or to Consultant's performance of its obligations under this agreement. Consultant shall provide such authorized auditors with timely access to its records.



5.04 **Access to Yakama Nation Records, Personnel & Facilities.** Except as prohibited by law, the Yakama Nation shall provide Consultant with reasonable access to its personnel, facilities, and records necessary for Consultant's performance of this agreement.

5.05 **Confidential Information.** If the Yakama Nation provides Consultant with documents or information typically maintained as confidential by the Yakama Nation ("**Confidential Information**"), Consultant shall make all reasonable efforts, and take all reasonable precautions, to prevent the disclosure of that Confidential Information to non-parties, except as may be required by law or court order. Consultant shall not use Confidential Information for any purpose except the performance of this agreement.

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

## **ARTICLE 6. WORK PRODUCT**

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

6.02 **Ownership.** Consultant acknowledges that all Work Product it produces pursuant to this agreement will be works for hire, which the Yakama Nation will own, and which Consultant will not retain any interest in or rights to. Consultant shall give all its Work Product to the Yakama Nation promptly upon the termination of this agreement or upon request in a format acceptable to the Yakama Nation.

## **ARTICLE 7. RISK MANAGEMENT**

7.01 **Insurance Requirement.** Consultant shall be required to purchase and maintain insurance during the term of this agreement, as set forth in Section 7.02 below: ☒ YES ☐ NO. (If neither box is checked, insurance is required.)

7.02 **Insurance Coverage.** If insurance is required under Section 7.01, Consultant shall, at its own expense, maintain the following minimum insurance coverage during the term of this agreement and for a period of three years following the completion of the Work:

(a) Either Commercial General Liability Insurance OR Professional Liability Insurance, including errors and omissions insurance, in the amount of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

(b) If the performance of the Work requires Consultant to use one or more automobiles, Commercial Automobile Insurance coverage for all vehicles used in performance of the Work in an amount equal to the greater of either (i) one million dollars (\$1,000,000), or (ii) any other amount specified by applicable law.

(c) Any other insurance coverage required by applicable law, which may include (but may not be limited to) workers compensation insurance or disability benefits insurance.

**7.03 Additional Insured.** Consultant shall name the Yakama Nation as an additional insured on its applicable insurance policies, provide the Yakama Nation with certificates of insurance, and at the Yakama Nation's request, provide Yakama Nation with copies of the relevant policies. The additional insured coverage provided by Consultant to Yakama Nation shall be on a primary and noncontributory basis.

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

**7.05 Indemnification.** Consultant shall indemnify, hold harmless, and (at the Yakama Nation's discretion, and with counsel acceptable to the Yakama Nation) defend the Yakama Nation and its officers, agents, employees, and assigns (each and all considered the "Yakama Nation" for purposes of this Section) against any claim, demand, judgment, loss, cost, damage, expense or other liability whatsoever, including legal fees and expenses, which are incurred by or claimed against the Yakama Nation and arise, either directly or indirectly, from any action, omission, error or breach of contract by Consultant or its officers, agents, employees, or subcontractors. The requirements of this Section 7.05 are intended to survive the termination of this agreement.

**7.06 Injunctive Relief.** Consultant acknowledges that its breach or threatened breach of Article 5 (Records, Accounting, Audits) or Article 6 (Work Product) of this agreement would cause irreparable injury to the Yakama Nation, which could not be completely compensated by money damages, and that injunctive relief to enforce Articles 5 or 6 of this agreement would be proper.

## **ARTICLE 8. DISPUTE RESOLUTION**

**8.01 Negotiation.** If the parties disagree about the performance, interpretation, or enforcement of this agreement, they shall first attempt to resolve their disagreement informally through (a) dialogue between their project managers, and then (b) face-to-face negotiations between their leaders, which must be held in Toppenish, WA. If the parties cannot resolve their disagreement after taking these steps, it will be deemed a 'dispute'.

**8.02 Mediation.** The parties shall endeavor to resolve any disputes through non-binding mediation before resorting to any other dispute resolution procedure. Such mediation must be held at

a mutually agreeable location in Yakima, Washington. Any demand for mediation must be made in writing and delivered to the other party in accordance with the provisions of Article 4 (Notice) of this agreement. The parties shall share equally the costs of hiring a mediator and securing a suitable location for the mediation proceedings. The requirements of this Section 8.02 are intended to survive the termination of this agreement.

## **ARTICLE 9. TERMINATION**

9.01 **For Convenience.** Either party may terminate this agreement by giving to the other party at least 90 days prior written notice. The notice must specify the effective date of termination.

9.02 **For Breach.** Either party may immediately terminate this agreement by written notice following a material breach by the other party. The parties acknowledge that the terms of Article 5 (Records, Accounting & Audits), Article 7 (Risk Management), and Section 1.04 (Key Personnel) are material terms. Consultant acknowledges that time is of the essence for performance of the Work.

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

9.04 **Effect.** Termination of this agreement will not relieve either party of any liabilities or obligations that arise under this agreement before the agreement is terminated. Termination will not limit the Yakama Nation's rights or remedies at law or equity, including, but not limited to, the right to contract with other qualified persons to complete the Work.

## **ARTICLE 10. GENERAL TERMS**

10.01 **Independent Contractor.** Consultant acknowledges that it is an independent contractor and not an agent or employee of the Yakama Nation for purposes of this agreement. The parties state that they are not engaged in a joint venture or partnership. Neither party may speak for or bind the other.

10.02 **Conflicts.** During the term of this agreement, Consultant shall not accept work from any non-party, which would create a real or apparent conflict of interest with Consultant's performance of the Work for the Yakama Nation.

10.03 **Subcontractors.** Consultant shall not hire a subcontractor to perform any portion of the Work for this Agreement, except as expressly authorized in writing by the Yakama Nation. Where the Yakama Nation has authorized Consultant's hiring of a subcontractor, Consultant shall require the subcontractor to comply with all relevant terms and conditions of this agreement in performing their portion of the Work. Any unauthorized attempt by Consultant to subcontract the Work will be null and void, and Consultant shall be responsible for all expenses, fees, and costs associated with the unauthorized subcontract(s).

**10.04 Fair Employment Practices.** Consultant shall not discriminate against any employee or applicant for employment because of handicap, race, age, religion, sex, gender, or sexual orientation. Consultant shall take affirmative steps to ensure that applicants and employees are treated fairly during hiring and employment. This provision is not intended to prevent Consultant from implementing a lawful Indian preference employment policy.

**10.05 Indian Preference Employment.** When Consultant performs Work within the boundaries of the Yakama Reservation, or on Yakama trust property outside the boundaries of the Yakama Reservation, Consultant acknowledges that it is subject to and shall comply with applicable Indian preference employment laws of the Yakama Nation, including its Tribal Employment Rights Ordinance (Yakama Revised Law & Order Code, Title 71, as amended) ("**TERO**"). Consultant further acknowledges that under Section 703(i) of the 1964 Civil Rights Act, it may implement an Indian Preference hiring policy for all work performed near (within reasonable commuting distance from) the Yakama Reservation. Consultant hereby adopts the TERO and its associated policies as its Indian preference hiring policy for Work it performs near the Yakama Reservation, and shall publicize the same.

**10.06 Permits and Approvals; Taxes and Fees.** The Consultant shall, at its expense, obtain any and all permits, approvals, or authorizations from local, state, federal or tribal authorities necessary or required for the completion of the Work. Unless the parties have expressly agreed otherwise in this agreement, Consultant shall pay any taxes or fees applicable to or associated with its completion of the Work.

**10.07 Force Majeure.** The parties' obligations under this agreement are subject to force majeure. If acts of God, severe weather conditions, fire, or unforeseen catastrophic events caused by nonparties which are beyond the control of the parties, prevent the parties from performance, such non-performance must not be considered a breach of this agreement.

**10.08 Entire Agreement.** This agreement constitutes the entire understanding between the parties with respect to the subject of this agreement, and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. The parties acknowledge that they each participated in negotiating this agreement, and that they have read, understood, and approved its terms. Headings are provided in this agreement for convenience, and are not intended to affect the meaning of the provisions to which they are affixed.

**10.09 Exhibits Incorporated by Reference.** This agreement includes any terms or documents incorporated by reference, as well as those exhibits listed below. If the terms of an exhibit or incorporated document conflict with the terms of the body of this agreement, the terms in the body of this agreement must prevail.

- (i) Exhibit A – Scope of Work
- (ii) Exhibit B – Budget

(iii) Exhibit C – Payment Terms

**10.10 Change Orders.** Change orders must be in writing and authorized by an appropriate representative of the Yakama Nation as follows:

(a) *Material Changes.* Any material changes to this agreement or the Work to be performed must be authorized in writing and signed by the Yakama Nation Tribal Council Chair as modifications or addendums to this agreement. Material changes are (i) any changes which require an increase in the maximum ‘not to exceed’ contract amount set forth in Section 2.01 of this agreement, or (ii) any changes to *what* Work is to be performed.

(b) *Immaterial Changes.* The Yakama Nation’s Project Manager may authorize immaterial changes in writing. Immaterial changes are those that concern *how* the Work will be accomplished, but do *not* change the scope of what Work will be performed, or the overall contract payment amount.

**10.11 Amendments; Waiver.** The parties may amend this agreement by a written instrument signed by the authorized representatives of both parties. No waiver of a right or obligation under this agreement will be effective unless it is in writing and signed by an authorized representative of the party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions.

**10.12 Execution.** If the parties sign this agreement in several counterparts, each will be deemed an original, but all counterparts together will constitute one instrument. The parties may sign and deliver this agreement (and any ancillary documents) to each other electronically, and the receiving party may rely on the electronic document as if it was a hard-copy original.

**10.13 Choice of Law and Venue.** Yakama law governs the validity and interpretation of this agreement, and any adversarial proceedings brought by one party against the other party arising out of this agreement. Any court action filed to enforce or interpret this agreement must be in the Yakama Tribal Courts. Consultant acknowledges that this agreement will be considered to have been executed at the Yakama Nation governmental headquarters in Toppenish, WA, and that this agreement establishes a consensual business relationship between the parties for purposes of Yakama Tribal Court jurisdiction. Consultant shall not raise any personal jurisdiction objections to Tribal Court jurisdiction.

**10.14 Severability.** If any term of this agreement is found to be illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability. All other terms 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 that comes closest to expressing the parties’ original intention.

**10.15 Sovereign Immunity.** In entering into this agreement, the Yakama Nation is not waiving its sovereign immunity from suit, and is not waiving, altering, or otherwise diminishing its rights, privileges, remedies, or services guaranteed by the U.S. Treaty with the Yakamas of June 9, 1855.

**10.16 Special Terms & Conditions.** In addition to the forgoing terms and conditions, the following requirements will apply to this Agreement:

(a) Consultant's Work under this agreement is being funded under Intergovernmental Master Agreement 56662 ("IG-MA 56662"), as amended, between the Bonneville Power Administration (hereafter "BPA") and the Yakama Nation, and its applicable funding release ("Release"). 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 BPA for this Work. Failure of BPA to provide such funding within the contract term shall void this Agreement and Consultant shall have no cause of action against the Yakama Nation.

(b) Consultant shall comply with any and all requirements applicable to subcontractors set forth in the IG-MA 56662 and any associated BPA funding Release(s). The IG-MA 56662 can be accessed using a web browser at the following address: <http://yakamafish-nsn.gov/restore/projects/bpa-master-agreement-terms-and-conditions>. When prompted, enter "YN Fish1855" as the webpage password to access the IG-MA 56662 and its modifying amendments. Consultant hereby states and certifies that it has read the Master Agreement and agrees to be bound by the applicable terms. Consultant further states that it has the capacity to comply with the Master Agreement's applicable terms. 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.

**[Signature pages follow.]**

**Each party is signing this agreement on the date stated opposite that party's signature:**

**THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION:**

By: Gerald Lewis (or authorized designee)

\_\_\_\_\_

Date

Title: Tribal Council Chairman

**Consultant's Name:**

EIN #: XX-XXXXXXX

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

\_\_\_\_\_

Date

Title:

## EXHIBIT A – SCOPE OF WORK

---

### Overview and Background:

Yakama Nation Fisheries requires the services of licensed Professional Engineers to conduct post implementation monitoring of completed salmon habitat restoration projects in the Upper Columbia Basin. All Yakama Nation Fisheries habitat restoration projects require the creation of as-built designs and a post-implementation monitoring plan by the lead project Professional Engineer upon project completion. The monitoring plan details the type of monitoring that is necessary to ensure that the structural integrity of the project is maintained after exposure to various high water and disturbance events. These “as-built” products are used by Yakama Nation Fisheries staff to guide post-implementation monitoring needs on a project-by-project basis, resulting in the need for multiple areas of restoration to be assessed by Professional Engineers on an annual basis.

### Project Location(s)

Post-implementation monitoring services will be performed in remote areas of the Methow, Entiat, and Wenatchee Subbasins, including at project sites where access may be challenging for licensed highway vehicles. The Contractor shall furnish all supervision, labor, equipment, and tools necessary to complete the Scope of Work.

### Scope of Work

Yakama Nation Fisheries staff will provide to the contractor all relevant as-built products and monitoring reports for each restoration site requiring monitoring during the calendar year.

Monitoring at each project location will take place on a regular schedule and following any 5-year or greater recurrence flood event based on relevant real time flows recorded at USGS gages within the Wenatchee, Entiat, and Methow watersheds. Monitoring activities will occur at years 1, 2, 3, and 5, however if minimal change is noted after year 3, or following one 5-year or greater event, the schedule may be relaxed and/or monitoring may be discontinued.

At each site, under the guidance of the project specific post implementation monitoring plan, and at the discretion of Yakama Nation Fisheries staff, the contractor will perform the following tasks:

#### *Phase 1 – Site Investigation*

##### Task 1 – Hydrologic History

Using publicly available USGS stream gage data within each watershed where restoration work has been performed, the contractor will provide a summary of maximum flows that occurred between monitoring events. Flows at the time of the monitoring effort should be summarized with a



comparison to mean daily discharge. Effort will be made to conduct monitoring at similar flows to provide comparable observation efficiencies and photos.

#### Task 2 – Photo Points

At each project site, locations have been identified in the as-built reports that visually document individual features, overall condition, and the associated physical habitat. Photos will be taken at those approximate locations for each subsequent monitoring year, unless vegetation growth necessitates relocating specific photo points to allow for suitable visual documentation of specific project elements needing to be monitored. If photo points are relocated, the new locations will be described and provided on a map. For each photo point, notes should be taken of the target project feature, photo orientation, and unique conditions or features the photographs are documenting. Effort should be made to produce high resolution photos of similar magnification and framing for easy visual comparison between monitoring years.

#### Task 3 – Field Sketches and Narrative

At each constructed feature, a field sketch and narrative of any changes from prior monitoring conditions will be completed. Photographs from prior monitoring events will be compared to field conditions to estimate changes. Sketches will be as detailed as possible based on observations and simple measurements and should include a plan and elevation sketch at each location. The as-built reports provide construction plans for use as base graphics for sketches of locations and extents of erosion, scour and deposition areas, accumulation of debris, adjacent river bed and bank conditions and their approximate dimensions relative to the constructed feature. Substrate sizes in scour and deposition zones will be estimated on the percent composition using Wentworth scale metrics and noted on the sketch. Total number of woody material will be summarized to identify whether projects are gaining or losing material.

#### Task 4 – Action Triggers

If monitoring activities detect undesirable performance or changes to the habitat work, a range of actions or responses may be initiated based on the professional opinion of the reviewing Professional Engineer:

- No action needed - change is noted in the monitoring report.
- Minor change in function - a flag may be placed in the monitoring report to watch and respond at a later time if the condition worsens.
- Moderate changes - may require a recommendation to engage in a planned intervention that will be developed by a Professional Engineer or qualified consultant under the guidance of Yakama Nation Fisheries staff.
- Serious changes that would negatively influence human safety, infrastructure, or the environment - may require immediate emergency interventions including rapid design and heavy equipment mobilization to remedy the issue.

All proposed action trigger recommendations will be discussed with Yakama Nation Fisheries staff to determine a course of action. The findings, recommendations, and decisions will be documented in each report year as it becomes necessary.

#### Task 5 – Revegetation Areas

The Contractor will identify deficiencies in the revegetation efforts for each site, which may include:

- Problems with plant species complexity
- Low plant vigor and/or high plant mortality
- Noxious and/or invasive plant species infestations

The degree of deficiency will be described based upon percent of the total project area affected, and the total area in acres of each specific problem. Noted deficiencies in vegetation re-establishment may prompt action triggers to improve site recovery.

#### *Phase 2 – Reporting*

#### Task 6 – Monitoring Report

Following completion of each round of field monitoring, a report will be developed presenting the monitoring notes and photos. The report will include a description of methods, including any variation to the monitoring plan and reasons for variation, site conditions at the time of monitoring, and a summary of preceding flow conditions characterized by the record from the USGS gage with a focus on peak events that may have occurred prior to monitoring. The report will include a brief section for each monitored feature including representative photographs from each photo point and a narrative describing the conditions of the habitat feature, noting any changes to the structures or physical habitats between monitoring years. If extensive change is documented during the monitoring effort, the Contractor will provide updated as-built drawings depicting the changed conditions within the monitoring report.

#### **Consistent Satisfactory Progress**

Consistent satisfactory progress in this project will be required. Satisfactory progress will be measured by both the quality and quantity of work. If for any reason no work is performed, the Consultant may be given a notice of contract cancellation. Consistent satisfactory progress will also be determined by the Consultant's demonstrated ability to perform all work tasks described in the Scope of Work. If it appears that the Consultant is unable to complete the project tasks the Consultant may be given a notice of contract cancellation. The Yakama Nation's designated representative will monitor progress closely.

#### **Key Personnel**

## EXHIBIT B – BUDGET

---

**1. Project Budget:**

**2. Applicable Rate Schedule.** Consultant shall invoice, and the Yakama Nation shall pay, according to the following rate schedule:

## 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: \_\_\_\_\_

TEMPLATE 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
<b>TOTAL AMOUNT OF BILLING</b>	<b>\$0.00</b>

\_\_\_\_\_  
 Signature date

[illegible]

[illegible]

Consultant Services Agreement btw. Yakama Nation and

### 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

Consultant Services Agreement btw. Yakama Nation and