



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

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## **Request for Proposals for the Olney Passage Improvements Project, Yakama Reservation**

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**January 26, 2026**

Dear Consulting Firm:

The Yakama Reservation Watershed Program (YRWP) is seeking proposals for the Olney Passage Improvements Project, located on the Yakama Nation Reservation within Toppenish Creek: a passage barrier assessment, hydrologic modelling, and investigation and design of an existing preferred alternative resulting in a construction-ready restoration design. The purpose of this project is to address existing fish passage barriers and floodplain connectivity surrounding the Olney Irrigation Diversion.

### **NOTICE IS HEREBY GIVEN:**

#### **Request for Proposal – MUST BE MAILED OR EMAILED TO BE CONSIDERED.**

Submissions may be received through one of the following ways:

**1. Please mail a hard copy of your proposal by certified mail, overnight or similar means to:**

Yakama Nation Fisheries  
C/O Carol Sue Martin  
ATTN: Theresa Cripps  
PO BOX 151  
Toppenish, WA 98948

**2. Please email electronic bid proposals with the email subject as: Olney Passage Improvements Proposal – Name of Firm**

Send to the following: Theresa Cripps, [crit@yakamafish-nsn.gov](mailto:crit@yakamafish-nsn.gov)  
and Tana Hoptowit, [hopt@yakamafish-nsn.gov](mailto:hopt@yakamafish-nsn.gov).

Email verification will be sent to confirm receipt of proposal submission.

**3. Please drop off hard copy of your proposal to Theresa Cripps the Yakama Nation Fisheries office at:**

4690 WA-22, Toppenish, WA 98948 – Office 106

Yakama Nation RFP for Olney Passage Improvements

**For technical questions ONLY regarding the RFP, document the email subject as: Olney Passage Improvements Proposal Question – Name of Firm**

Send to the following:

Rae Handy – [hanr@yakamafish-nsn.gov](mailto:hanr@yakamafish-nsn.gov)

Audrey Scott – [scoa@yakamafish-nsn.gov](mailto:scoa@yakamafish-nsn.gov)

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

Site Tour on **Thursday, 2/19 at 10 AM PST** for interested consultants to learn more about the project and ask questions. Please RSVP with [hanr@yakamafish-nsn.gov](mailto:hanr@yakamafish-nsn.gov) by **2/12 at 5 PM PST.**

Last day to submit questions: **Thursday, 2/26**

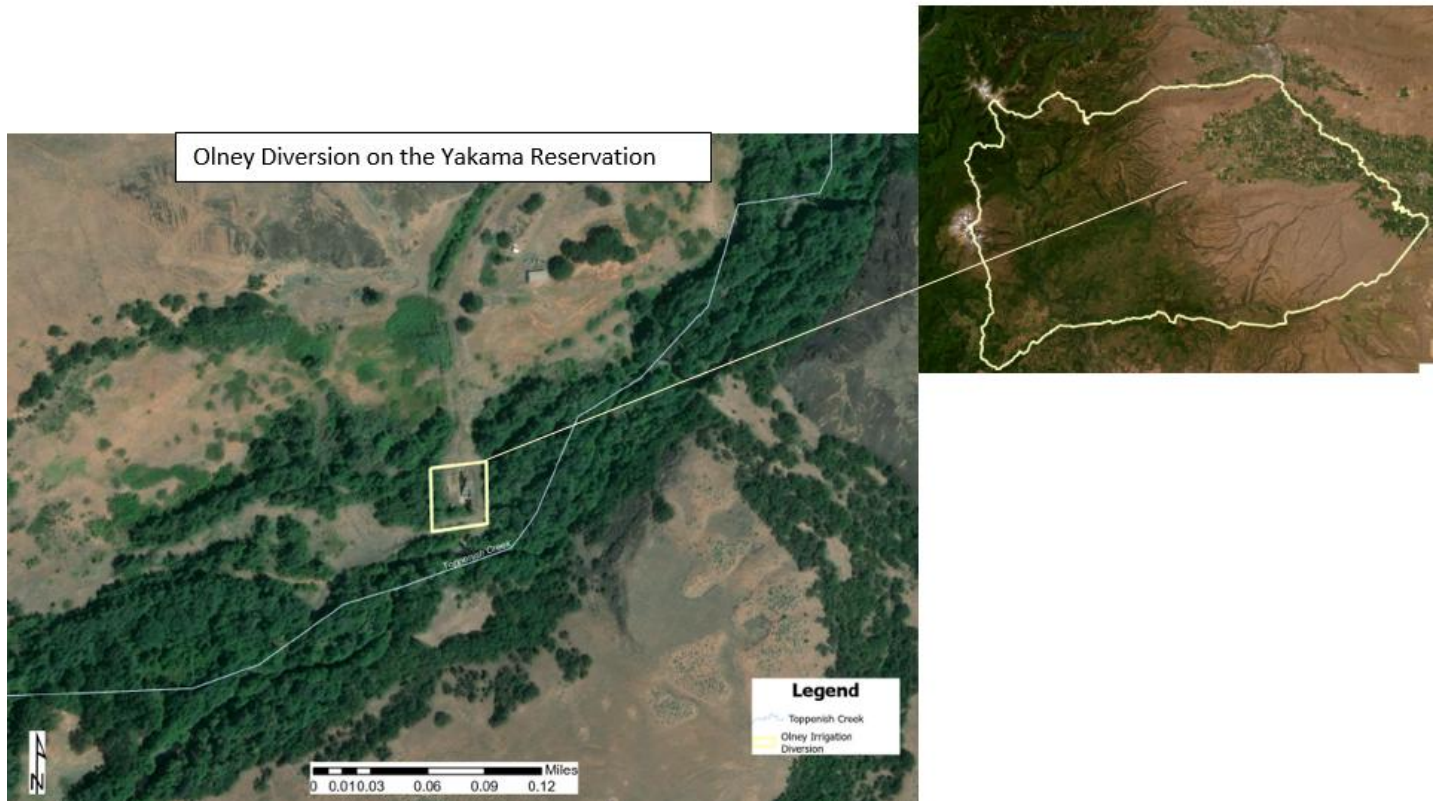
The deadline for submitting your proposal is **Thursday, March 5<sup>th</sup> at 5:00 PM PST.**

**Proposals will not be accepted after 3/5 at 5 PM PST.**

## Project Background and Scope of Work

### **Background & Project Site Descriptions**

The Yakama Reservation Watershed Program (YRWP) is launching the Olney Fish Passage Improvements project within Toppenish Creek, consisting of a passage barrier assessment and alternatives analysis resulting in a construction-ready restoration design. The purpose of this project is to address existing fish passage barriers and floodplain connectivity surrounding the Olney Irrigation Diversion (46.311658, -120.788489; see Figures 1 and 2). This will allow YRWP to implement a restoration design for fish habitat restoration actions in this project reach.

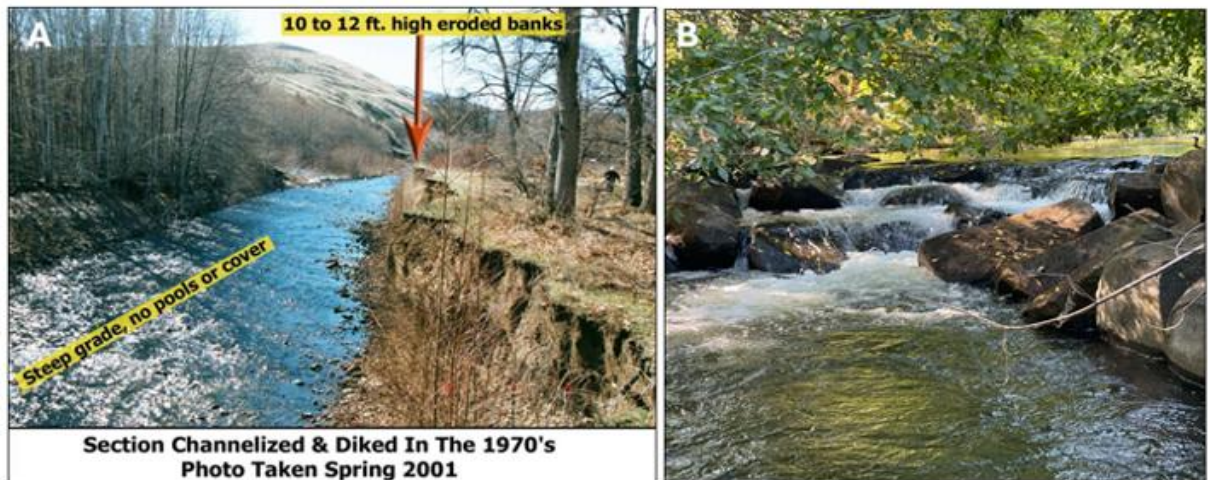


**Figure 1.** Olney Irrigation Diversion location within Yakama Reservation Boundary

Toppenish Creek contains critical habitat for Middle-Columbia River (MCR) steelhead within the Yakima Basin. The Toppenish watershed supports up to 40% of the annual adult steelhead run within the basin. Despite being a steelhead stronghold, declines in the overall MCR population and the listing of MC steelhead as Threatened under the Endangered Species Act have led to Toppenish Creek being closed to all steelhead fishing since the late 1990's. About a mile upstream of the Olney Diversion at RM 46, an artificial levee was built in the 1970s to confine Toppenish Creek to the southern side of the valley in addition to a series of about 15 boulder weirs built within the confined channel reach to stabilize the base level (see Figures 3 and 4). The main goal of this projects is to understand the magnitude of fish passage barriers present, concurrent degradation of channel conditions that reduce vital fish habitat quality and quantity, and identify barriers addressed within a restoration design.



**Figure 2.** Aerial photo of the Olney Diversion.



**Figure 3.** Photos of (A) Simplified channel confined against valley wall (from Reichmuth, 2007); (B) Example of one of the 15 boulder weir grade control structures built in 2000s



**Figure 4.** Existing boulder weir rock structures within the project site.

### Proposed Scope of Work

The Olney Improvements project aims to increase the survival of migrating salmon and steelhead smolts, as well as assess fish passage barrier issues, both upstream and downstream of the Olney Diversion. This will be done through a passage barrier assessment and alternatives analysis, culminating into a construction-ready design. This project will focus on assessing the severity and extent of passage barriers present in this project reach and produce a restoration design that will eliminate the identified passage barriers.

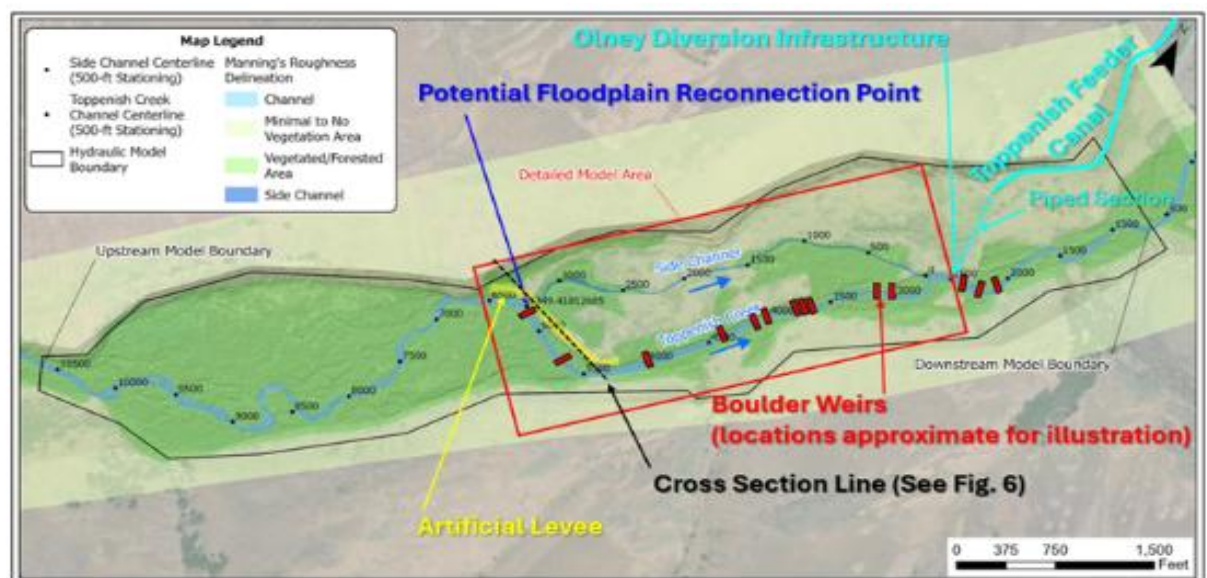
### Passage Barrier Assessment

YNF has determined that the rock grade control structures near Olney Diversion may be partial barriers to fish passage at low flows. Therefore, a fish passage barrier assessment is required to determine the severity of the barrier issues present within this project reach. The consultant will use WDFW standards to analyze fish passage barriers throughout the project reach.

### Alternative Analysis and Construction-ready Restoration Design

The selected consultant will conduct an assessment of Alternative 3 and produce a construction-ready restoration design based on this concept alternative evaluation and the passage barrier assessment. In 2024, Yakama Nation Fisheries (YNF) hired Waterways Consulting to assess 23 miles of Toppenish, Simcoe, Agency, and Wahtum Creeks. In addition to this assessment, YNF requested further hydraulic, sediment transport, and engineering analyses for a project near the Olney Diversion. Waterways developed three alternatives, with Alternative 3 selected by YNF (Figure 5). This alternative identifies existing rock grade control structures near Olney Diversion as potential fish passage barriers at low flows, warranting further analysis and design. The concept Alternative 3 involves removing artificial levees and excavating to reconnect remnant distributary channels among other tasks. It also includes six constructed riffles at boulder weir locations, one apex jam at the levee flow split, and re-grading the side channel entrance to match the Toppenish Creek bed, allowing bedload transport. Modeling suggests this approach would restore sediment supply, promoting gravel deposition, improved spawning habitat, and more diverse channel morphology over time. The alternative concepts memo that Waterways produced will be included with this request for proposals.

**Figure 5.**  
Snapshot of  
Alternative  
3 Existing  
Conditions  
in Potential  
Project  
Areas and  
Proposed  
Modeling  
Extent



### **Project Goals and Objectives**

The Olney Passage Improvements Project aims to identify and address fish passage barriers to improve habitat for adult and juvenile MCR steelhead present near the Olney Irrigation Diversion on Toppenish Creek. This goal will be achieved through the following project objectives:

- 1. Passage Barrier Assessment:** Conduct fish passage barrier assessment above and below Olney Diversion on Toppenish Creek. Hydrologic modeling will be utilized to further inform the assessment results, which will aid the consultant in producing a restoration design that addresses the identified fish passage barriers.
- 2. Alternative Analysis:** Conduct an assessment of Waterway's Alternative 3 and produce a construction-ready restoration design informed by the passage barrier assessment and hydrologic modeling.
- 3. Construction Ready Restoration Designs**
  - a. Redesign check structure system to improve passage.
  - b. Restore floodplain connectivity by side channel enhancement and levee reconfiguration.

### **Scope of Work**

The proposed scope of work, including a cost estimate, should reflect the following components to produce a restoration design to remedy the identified fish passage barriers downstream of Olney Diversion:

#### **1. Project Initiation and Kick-off**

##### **1.1 Acquisition and Review of Available Data**

- Yakama Nation (YN) Fisheries will provide all relevant available data (literature review).
- Consultant to undertake search and acquisition of relevant publicly available documents.
- Consultant to create and maintain a project bibliography and reference list of relevant reports, literature, and data used for each project.
- Consultant to create and maintain a password protected file share for the project.

##### **1.2 Kick-off Meeting**

- Confirm overall project approach and scope of work with respect to objectives, tasks, communication, review periods, and schedule.

#### **2. Passage Barrier Assessment**

##### **2.1 Identify severity of each fish passage barrier**

- Consultant will use WDFW standards to analyze fish passage barriers throughout project reach.

##### **2.2 Technical Memo**

- Produce a technical memo that reports on barriers found, provided to YN Technical team for review.
- This memo should provide passage improvement recommendations and a description of each identified passage barrier.

### **3. Hydrologic and Hydraulic Modeling**

#### **3.1 Comprehensive hydrologic and hydraulic modeling**

- 1D HEC-RAS Modeling: Develop a one-dimensional HEC-RAS model to simulate inundation patterns under variable flow conditions. This component is optional if the two-dimensional model sufficiently captures inundation dynamics.
- 2D HEC-RAS Modeling: Construct a two-dimensional HEC-RAS model to assess spatial variations in stream energy across a range of flow scenarios, including but not limited to Bankfull, 50%, 10%, and 1% annual-chance events.
  - Reference Waterways report
  - Consultant may build off of Waterway's hydraulic 2D model

#### **3.2 Hydrologic Data Integration**

- Utilize existing flow datasets where available. In areas lacking sufficient data, apply USGS StreamStats or other appropriate regional hydrologic tools to estimate flow parameters.

#### **3.3 Flow Regime Assessment**

- Identify and characterize hydrologic impairments and anthropogenic modifications affecting the natural flow regime within the study area.

#### **3.4 Field Survey and Data Collection**

- Perform detailed topographic surveys of the stream channel, adjacent floodplain, and infrastructure features.
- Establish channel cross-sections and longitudinal profiles at intervals sufficient to support model calibration and validation.
- Document existing infrastructure within the reach, including dimensions, elevations, and hydraulic characteristics of culverts, weirs, and other flow-control structures.

#### **3.5 Model Validation**

- Calibrate the model using observed flow and stage data, where available. Validate model performance against independent datasets or high-water marks from known events.
- Conduct sensitivity testing on key model parameters (e.g., Manning's n, boundary conditions) to evaluate model robustness and identify potential sources of uncertainty.
- Provide a technical memorandum summarizing model setup, calibration/validation results, assumptions, limitations, and recommendations for future refinement.

### **4. Conceptual Designs and Alternative Analysis (15%)**

#### **4.1 Site Survey**

- Geomorphic investigation and topographic survey as needed of the project area (see task 3.4 for field work associated with the HEC-RAS model).
- Field survey of proposed features in Waterways' Alternative 3.
- Pebble count surveys and soil descriptions as necessary to inform design analysis.

#### **4.2 Concept and Alternative Drawings**

- Work with YN to develop design criteria.
- The Consultant will utilize Waterways' Alternative 3 as a guiding document while developing conceptual designs.



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- Organize and lead a workshop with YN and project partners to identify three alternative designs.
- Develop three alternatives to a 15% level and provide plan-view drawings for each alternative
- Designs should integrate information from tasks 1-3.
- Provide example photos and designs from previous projects as needed
- YN will facilitate all stakeholder engagement.
- Conceptual designs may include illustrations and other media to assist with design comprehension; however, they will also include a set of CAD drawings that depict the above specifications.

### 4.3 Cost-Benefit Analysis

- Evaluate each alternative based on physical, biological, and engineering feasibility.

### 4.4 Design Alternative Technical Memo

- Brief description of the design alternatives and cost/ benefit analysis.
- Summary of hydrologic analyses and selection of design flows.
- Summary of hydraulic model development.
- Summary of existing and proposed hydraulic conditions for each alternative.
- Discussion of how project objectives will be met through the design.
- Meeting with YN to workshop alternatives.
- YN will choose a preferred alternative and approve advancement to preliminary designs.

## 5. Preliminary Design Report and CAD Drawings (30%)

### 5.1 Design Survey

- Gather additional topographic data points necessary to further advance designs and modeling for the preferred alternative.

### 5.2 Preliminary Design Planset

- Review and address YN and NOAA comments on conceptual designs.
- Advance designs to draft design drawings for the extent of the project area.

### 5.3 Preliminary Basis of Design Report

- Produce a draft/preliminary basis of design (BOD) report to include field survey results, description of restoration treatments, applicable design calculations, and hydraulic modeling results.

### 5.4 Preliminary Design Workshop Meeting

- Meet with YN to present design updates and answer technical questions.
- Implement feedback from the meeting into the next iteration of designs.

## 6. Permit-ready Design (60-80%), CAD Drawings, and Preliminary Basis of Design (BOD) Report

### 6.1 Draft Final Design (60-80%, permit-ready)

- Incorporate comments from YN and NOAA and move the draft design plans to a first draft of the final designs.
- Develop construction specifications.

### 6.2 Draft Final BOD report

- Revise BOD report as needed to align with design development.



**7. Final Construction-ready Restoration Project Design (100%), CAD Drawings, and Final Basis of Design (BOD) Report**

**7.1 Final Restoration Project Design (100%, construction-ready)**

- Complete detailed revisions as necessary to move plans to final, construction-ready designs.
- Stamped design drawings
- Stamped technical specifications

**7.2 Final BOD Report**

- Completed and stamped final BOD report, technical reports, and calculation packages to accompany construction-ready designs

**7.3 Final Project Poster**

**Deliverables:**

- Initial meeting with YN staff to discuss the project scope, timeline, data needs, and data availability.
- Check-in meetings with YN staff to discuss progress and updates during the project.
- All reports and data collected from tasks 2-7.
- Preliminary draft reports for YN and partner review.
- **Passage barrier assessment and hydrologic modeling**
- **Analysis of Waterways Alternative 3**
- **Final, construction-ready restoration project design** informed by the passage barrier assessment, hydrologic modeling, and analysis of Waterways Alternative 3 to address these fish passage barriers present in the project reach.
- **Final Basis of Design (BOD) Report**, including any databases, geospatial data, bibliographies, modeling or other data developed as part of the contract for both upstream and downstream projects.
- **Final project poster**
- Any and all geospatial data developed as part of this contract delivered in geodatabase format.

**Assumptions:**

- YN will assist with site access in the assessment area.
- YN will provide relevant data to the consultant on request within a reasonable time frame, assuming it is readily available.
- YN will provide reviews and comments in a reasonably timely fashion in response to drafts of deliverables submitted by the consultant.
- YN will designate a project lead who will maintain close communication and coordination with the consultant for this work.
- The Consultant will assess performance under both low-flow and high-flow (100-year) events at all stages of design. This will allow for evaluation of specific hydraulic criteria to ensure project features are passable at low-flows and stable during high flow events.

## **Proposal Evaluation and Selection Process**

### **Proposal Evaluation by YN**

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

- Cost and value. Preference will be given to lower costs and higher value per cost, all other factors being equal.
- Timeline, with a preference for quicker delivery of the final report.
- Quality and completeness of the proposal.
- Experience and disciplinary breadth and diversity of the contractor project team.
- The quality and relevance of previous projects completed by the applicant.
- Familiarity with Toppenish Creek and Columbia Basin anadromous salmonid biology and habitat requirements.
- References.

**Please note that Tribally owned firms are preferred.**

## Yakama Nation RFP for Olney Passage Improvements

### Provisions

- YNF will provide the contractor with all data that is reasonably available. 2018 and earlier Lidar is available for the area at <https://lidarportal.dnr.wa.gov/>, and streamflow gauging records are available on request.
- YNF will arrange for site access and site access approval.
- Yakama Nation and U.S. Fish and Wildlife Service will obtain necessary permits and approvals for all project activity.
- In-water construction fish window is July 15<sup>th</sup> through October 31<sup>st</sup>.
- A Yakama Nation Business License is required to enter into a contract with Yakama Nation. Please contact the Yakama Nation Revenue office at (509) 865-5121 ext. 4650 or [revenue@yakama.com](mailto:revenue@yakama.com) for application instructions. This is the contractor's responsibility; we recommend contacting the Revenue Office several months ahead of time.
- Design plans must conform to National Oceanic and Atmospheric Administration (NOAA) ESA permitting requirements. It is the contractor's responsibility to ensure that designs are permissible using the criteria and standards described in the Handbook referenced above. This provision also pertains to other guidelines incorporated by reference in the Contractor's Handbook.
- We have attached the Yakama Nation consultant contract template for reference (see Sample Contract section). Contract terms can be altered by negotiation with the Yakama Nation; However, changes to the template can prolong the contracting process considerably and it is preferred to use the template as is. There may be minor changes to this contract between now and final contracting, however it will remain substantively unchanged.
- Sub-contracting must be approved prior to contract execution and be clearly described in the proposed scope of work and budget.
- Please note that various Federal laws and statutes are incorporated by reference into the contract template: it is the contractor's responsibility to exercise due diligence regarding these provisions.
- The contractor will be responsible for utilizing the templates provided in the contract for invoicing purposes. Direct expenses without proper documentation will be rejected.

# Yakama Nation RFP for Olney Passage Improvements

## Budget Table

A completed budget table should be included within the proposal to ensure that cost-value analysis during the YN bid evaluations process is consistent amongst all proposals.

**Proposals with incomplete budget tables will not be considered.**

**Table 1.** Budget sheet for tasks 1-7

#	Task Description	Budget Allocation	Estimated Timeline
<b>1</b>	<b>Project Initiation and Kick-off</b>		
1.1	Acquisition and review of available data		
1.2	Kick-off Meeting		
<b>2</b>	<b>Passage Barrier Assessment</b>		
2.1	Identify severity of each fish passage barrier		
2.2	Technical Memo		
<b>3</b>	<b>Hydrologic and Hydraulic Modeling</b>		
3.1	Comprehensive hydrologic and hydraulic modeling		
3.2	Hydrologic Data Integration		
3.3	Flow Regime Assessment		
3.4	Field Survey and Data Collection		
3.5	Model Validation		
<b>4</b>	<b>Conceptual Designs and Alternative Analysis (15%)</b>		
4.1	Site Survey		
4.2	Concept and Alternative Drawings		
4.3	Cost-Benefit Analysis		
4.4	Design Alternative Technical Memo		

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<b>5</b>	<b>Preliminary Design Report and CAD Drawings (30%)</b>		
5.1	Design Survey		
5.2	Preliminary Design Planset		
5.3	Preliminary BOD Report		
5.4	Preliminary Design Workshop Meeting		
<b>6</b>	<b>Permit-ready Design (60-80%), CAD Drawings, and Preliminary Basis of Design (BOD) Report</b>		
6.1	Draft Final Design (60-80%, permit-ready)		
6.2	Draft Final BOD Report		
<b>7</b>	<b>Final Construction-ready Restoration Project Design (100%), CAD Drawings, and Final Basis of Design (BOD) Report</b>		
7.1	Final Restoration Project Design (100%, construction-ready)		
7.2	Final BOD Report		
7.3	Final Project Poster		



## Yakama Nation RFP for Olney Passage Improvements

**Table 2.** Budget sheet for direct expenses. Please include total project cost including all tasks and direct expenses.

<b>Direct Expenses Allocation</b>	
Office Expenses	
Field Supplies	
Mileage	GSA Rate
Lodging	GSA Rate
Per Diem	GSA Rate
Direct Expenses Subtotal	
Total Project Cost (all tasks and direct expenses)	

### References

Reichmuth, D.R., Potter, A.S., Reichmuth, M.G. 2007. Toppenish Basin Geomorphology. Report prepared by Geomax P.C., April 2007. 195 p.

## CONSULTANT SERVICES AGREEMENT EXAMPLE

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], Tax ID 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:*

☐ *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

## Yakama Nation RFP for Olney Passage Improvements

**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.** The Work is being funded utilizing the following type(s) of funds:

☐ Yakama Nation:

☒ Federal: National Oceanic and Atmospheric Administration

☐ State:

☐ Other:

(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

## Yakama Nation RFP for Olney Passage Improvements

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 Rae Handy. She may be reached at (509) 864-1142, or [hanr@yakamafish-nsn.gov](mailto:hanr@yakamafish-nsn.gov)

(b) The Consultant's Project Manager is [Name]. S/he may be reached 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 [redacted] at

[redacted]

[redacted]

### 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.

## Yakama Nation RFP for Olney Passage Improvements

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) worker’s 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



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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 Dispute Resolution.** The aggrieved Party shall submit the dispute, 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. 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.

### 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.

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**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.

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**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

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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:

[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  
Title: Tribal Council Chairman

\_\_\_\_\_  
Date

### [CONSULTANT]:

EIN #:

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

\_\_\_\_\_  
Date

**EXHIBIT A – SCOPE OF WORK**

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Please reference the scope of work found on pages 6 -14 within the RFP.



**EXHIBIT B – BUDGET**

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- 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

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**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.)

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.

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Invoice #: \_\_\_\_\_  
Pages attached: \_\_\_\_\_

## FY 24 BILLING FORM FOR CONSULTANT/CONTRACTOR

DATE: \_\_\_\_\_

CONSULTANT: \_\_\_\_\_ EIN: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CONTRACT: \_\_\_\_\_

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

PO #: (we provide you a PO #)

VENDOR #: our finance system ID#

FOR BILLING PERIOD: \_\_\_\_\_ to \_\_\_\_\_

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

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

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page 2

**DESCRIPTION OF SERVICES PROVIDED**[illegible]

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page 3

## Expenses

[illegible]

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



### Travel/Mileage

[illegible]

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

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Consultant

date