Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

ADVERTISEMENT and NOTES FOR BIDS
Toppenish Dam Removals Project, Yakama Reservation

Dear Contractor: 11/12/2026

The Yakama Nation's Yakama Reservation Watersheds Project (YRWP) is requesting bids for a **Salmon Habitat Enhancement Project** along Toppenish Creek, a tributary of the Yakima River, from July 1 -October 31, 2026. The project will involve all work elements and specifications found in the Project Plans attached to this bid packet.

Bid Submission Instructions

By 4:00 PM PST on December 21st , 2026, each contractor that wishes to be considered must have completed and submitted to the Yakama Nation a signed copy of the Toppenish Creek Dam Removals project (Exhibit B) along with all required supporting documentation. Incomplete bid packages and bid packages received after the submission deadline cannot be considered. All competitive bid materials must be sent by parcel delivery service, postal mail, hand-delivered or emailed to:

Parcel Delivery
Yakama Nation Fisheries
Attn: Theresa Cripps
RE: Toppenish Dam Removals Project
PO Box 151
Shipping Address: 401 Fort Road
Toppenish, WA, 98948

Hand Delivery (Between the hours of 9 AM and 4 PM PST)
Attn: Theresa Cripps
RE: Toppenish Dam Removals Project
4690 WA-22
Toppenish WA, 98948

Email with the email subject as: "Toppenish Dam Removal Project Bid– Name of Firm"
Theresa Cripps (crit@yakamafish-nsn.gov)
Tana Hoptowit (hopt@yakamafish-nsn.gov)

DUE BY:
Tuesday December 21st, 2026 - 4:00 PM PDT

All contractors submitting bids for this project shall provide and/or demonstrate, at a minimum, the following:

- ***A list of experienced equipment operators that will be on-site during project construction. Please provide details of their work on in-stream passage improvement infrastructure within the past several years.***

- ***A detailed construction timeline of how you propose to get all project tasks completed within the stated project timeline.***

- ***A list of key pieces of heavy equipment that will be used in construction of the project and a daily standby rate for each piece of heavy equipment.***

- ***Experience and preferably examples of the ability to create de-watered work areas through the use of coffering techniques.***

- **A sheet pile cofferdam and surface water diversion plan. <u>The de-watering system plans, at a minimum, shall indicate the following.</u>**
    - **Size of pumps, discharge piping, and piping appurtenances.**
    - **Type of vibratory tool that will be used to install sheet pile.**
    - **The personnel responsible for monitoring the dewatering system and dewatered excavations. The contact person must be available at all times, or a designated person must be specified in their absence. Clearly list the relevant personnel's experience with installing sheet pile.**
    - **Provisions to confine fuel and oil spills in the event of their occurrence.**
    - **Plans to segregate construction water (contaminated with form oils, concrete residue, etc.) from clean water.**
    - **Plan to dispose of the construction water and residue solids.**
    - **A contingency plan must be provided as part of the approved plan that outlines the next steps if the initial plan does not work satisfactorily. This could include additional pumps, discharge of sediment laden water to areas further from the project area, or any other potential remedy if the initial de-watering plan is not adequate.**

Prospective bidders may not condition their bids. The award of this contract, if made, will be made to the highest quality, responsive, responsible, and qualified bidder as determined by the Yakama Nation and the Project Design Team if it is to the Yakama Nations' best interest to accept such a bid.

Any bid may be withdrawn prior to the RFB closing date or authorized postponement thereof. No bidder may withdraw a bid within 60 days after the RFB closing date. Should there be reasons why the contract cannot be

awarded within the specified period, the time may be extended by mutual agreement between Yakama Nation and the responsive and qualified bidder.

Bidders must satisfy themselves of the accuracy of the estimated quantities in the Exhibit B Budget by examination of the site and a review of the plans, specifications, quantities included in Exhibit B and addenda. After bids have been submitted, the successful bidder shall not assert that there was a misunderstanding concerning the scope of work or of the nature of the work to be done.

Questions

All technical questions regarding this project are to be submitted no later than **3:00 p.m., December 10th to Audrey Scott at scoa@yakamafish-nsn.gov** with the subject line reading, "Toppenish Dam Removals Project". All project specific questions and responses to answers for this project will be available on-line by 4:00pm on December 14, 2026. If further Addenda are required to be issued, the bid closing date will be postponed.

Pre Bid Site Tour

A STRONGLY SUGGESTED pre-bid site tour will be held for this project on **November 19th, 2026, at 1:00PM.** Please follow the google maps (https://maps.app.goo.gl/fVTUdMnWnYZceGjD9) for the meeting location on Lateral C Road, near Harrah, WA. The site tour is anticipated to take 2-3 hours and muck boots are recommended. Please RSVP via email with Audrey Scott (scoa@yakamafish-nsn.gov) no later than November 18th, 2026 at 3:00pm.

Project Delivery Requirements

This project will be completed between July 1 and October 31, 2027, to coincide with the permitted in-water work windows negotiated with NOAA and USFWS for this project. All elements of the project must be completed by October 31, 2027. The full project will occur when ESA-listed juvenile and adult salmon and steelhead may be present in or near the project area so turbidity control via cofferdam systems will be of the utmost importance. The successful bidder will understand the magnitude of this project and be equipped to perform all necessary elements for a project of this type within and adjacent to a critical habitat stream. The winning contractor will have extensive experience in the following: building cofferdams, de-watering construction areas following NMFS fish screening protocols, constructing log jams, constructing side channels and minimizing disturbance around regulated waterbodies, wetlands, and critical areas.

Laws, Ordinances, Rules, and Regulations

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply throughout the contract.

Tribal Employment Rights Ordinance (TERO)

TERO applies to this project. The successful bidder will be required to adhere to the TERO employment requirements, and upon project initiation will pay the TERO fee with budgeted project funds. The signed TERO agreement becomes a part of the contract and must be presented to the Yakama Nation TERO Directors before work can begin. An example TERO agreement is provided within the RFB bid package. The Tribe's TERO Office can be contacted by calling the TERO Director, Dailene Sampson, at 509-314-6707. Contractors are responsible for a 3% TERO fee. The TERO fee may not be included as part of the project bid.

Yakama Nation Business Licensing Application

Contractor and all subcontractors shall have a Yakima Nation Business license and a contractor's license to work in the State of Washington, prior to starting work on the project. To obtain a business license application and fee schedule contact:

Yakama Nation Department of Revenue
Confederated Tribes of the Yakama Nation
401 Fort Road Room #205
P. O Box 151, Toppenish, WA 98948
Attn: Kayla Ceja
revenue@yakama.com
509-865-5121, Ext. 6069

Please note:

- Davis Bacon Wages apply to this contract. The winning contractor will adhere to the Davis Bacon rules and comply and submit all necessary paperwork to the Yakama Nation.
- The Yakama Nation is exempt from state taxes on this project. Please see the attached Treaty Fishery Exempt Cover Letter and Treaty Fisheries Exempt Certificate. The winning contractor will receive signed copies for their records.
- This project has adopted by reference in the Engineer's Planset the 2025 Washington State Department of Transportation (WSDOT) Standard Specifications for Road, Bridge, and Municipal Construction. You can download a digital copy of the WSDOT 2025 Standard Specifications at: https://www.wsdot.wa.gov/publications/manuals/fulltext/M41-10/SS.pdf.
- The successful bidder will have all equipment cleaned and inspected prior to entering any portion of the project site.
- The awarded contractor must provide "sani-can" service.

Please review the attached template Construction Services Agreement for an overview of the Scope of Work to be incorporated into the awarded contract. Please make note of specific provisions provided in this Construction Services Agreement, including the detailed Exhibits, that will be in addition to the specifications and directions found in the Project Planset.

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

- *Demonstrated experience with this type of work – (1-5 pts)*
- *Demonstrated quality of work – (1-5 pts)*
- *Cost – (1-6 pts)*
- *Schedule – (1-5 pts)*
- *Company integrity/references – (1-3 pts)*
- *Demonstrated experience with permitting agencies in the region – (1-3 pts)*
- *Adequacy/quality of staff and equipment proposed – (1-5 pts)*
- *Completeness of Proposal (Based on RFB Submission Requirements) – (1-3 pts)*
- *Tribal Preference (Tribally Owned= 5, Non-Tribally Owned= 0)*

The Confederated Tribes and Bands of 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.

For questions regarding this project please feel free to contact me at the mobile number or email listed below.

Sincerely,



Audrey Scott
Project Manager,
(509)-790-8596
scoa@yakamafish-nsn.gov

DRAFT CONSTRUCTION SERVICES AGREEMENT

BETWEEN:

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

AND

[CONTRACTOR NAME]
Address Line 1
Address Line 1
Phone:
(HEREAFTER "CONTRACTOR")

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

1. TERM

The effective term of this Agreement shall be from May 1, 2027 , through December 31, 2027, absent a valid termination action in accordance with the express terms of this Agreement.

2. PERFORMANCE

Contractor agrees to perform the services set forth in the attached scope of work, Exhibit "A" (collectively, the "Services"), which is incorporated by reference in this Agreement.

3. COMPENSATION

A. *Maximum Compensation.* The **total compensation amount** approved by Yakama Nation for this Agreement is limited to, and ***shall not exceed*** **_____ ($_____);** which amount shall include any and all compensation for the Services as described herein and set forth in detail in the budget attached as Exhibit "B". If Exhibit "B" describes separate and specific maximum compensation amounts for services and expenses, then at the end of the term of this Agreement, any remaining balance in the amount allocated for expenses may be used by Yakama Nation, at its sole discretion, to cover fees for authorized services, so long as the total compensation amount set forth above is not exceeded.

B. *Invoicing, Progress Reports and Payment of Compensation.* Yakama Nation shall compensate Contractor according to the billing rate(s) and/or fee schedule(s) set forth in Exhibit "B" in an amount not to exceed that stated above. Contractor shall submit monthly invoices and appropriate supporting documentation to Yakama Nation, including a progress report that provides of brief summary of daily activities associated with services performed and completed by Contractor. Unless the Parties agree in writing to different terms, invoice periods shall begin on the first day of each month and end on the last day of each month. Invoices shall be submitted by Contractor to Yakama Nation's designated staff contact within fifteen (15) days after the end of the month in which the services were provided and/or expenses were incurred. Contractor waives the right to receive full payment on invoices submitted more than sixty (60) days following the end of the proper invoice period. If a question or concern arises regarding an item on an invoice, Yakama Nation shall notify Contractor of the question or concern. Within five (5) business days following such notification, Contractor shall take action to sufficiently explain or correct the item, or Contractor shall be deemed to have waived their right to demand payment for the item.

C. *Availability of Funds*. Notwithstanding any other provisions of this Agreement, Contractor understands and agrees that compensation for services and expenses under the terms of this Agreement shall be contingent upon the availability of funds (a) placed to the credit of Yakama Nation in the Treasury of the United States, (b) appropriated by Congress, or (c) from local funds maintained in the name of Yakama Nation.

D. *Federal & Grant Funds*. Contractor understands and agrees that agreements and contracts funded by federal funds or other grant funds may be subject to certain legal requirements. These may include, but are not limited to, those requirements set forth in the United States Office of Budget Management's Uniform Guidance, 2 C.F.R. Part 200, and/or the terms of an applicable source grant. Contractor agrees to comply with and utilize funds in accordance with all applicable laws, regulations, and guidelines, and with any applicable grant or contract terms, and further understands and agrees that the use of such funds may be subject to audit by the grantor agency. Contractor shall reimburse Yakama Nation for any costs of Contractor that are disallowed by a grantor.

4. PROPERTY DEVELOPED BY CONTRACTOR

Contractor agrees that it will retain no interest in the information, data, proposals, papers, copyrights, patents, or any other material or property developed, discovered, invented, and/or accumulated by Contractor in connection with the performance of this Agreement. Subject to applicable law, Contractor shall turn over such information, data, proposals, papers, copyrights, patents, discoveries, inventions, and other material or property to Yakama Nation upon the expiration or termination of this Agreement or upon request.

5. PUBLICATION OF INFORMATION

The dissemination or publication of documents, information material or other property developed or generated by Contractor during the course of this Agreement shall require the written approval of Yakama Nation.

6. RECORDS

A. *Access.* Subject to applicable law, Yakama Nation will provide Contractor with reasonable access to its personnel, facilities, and records necessary to the performance of this Agreement.

B. *Maintenance & Retention of Records; Financial Management for Accounting and Audits.* Contractor shall maintain and retain auditable records during the term of this Agreement and for a period of at least three (3) years following the expiration or termination of this Agreement. Contractor shall maintain its records to comply with the Audit Act of 1984, P.L. 98-502 (31 U.S.C. § 7501 et. seq., as amended) and the Office of Management and Budget's Uniform Guidance requirements set forth at, 2 C.F.R. part 200, Subpart F, as amended. Contractor shall adhere to a systematic accounting method that assures timely and appropriate resolution of audit findings and recommendations in compliance with the Uniform Guidance. Subject to applicable law, Contractor agrees that Yakama Nation, the grantor agency (if applicable), the Comptroller General of the United States, or any of their duly authorized representatives, shall have timely access to Contractor's records which are pertinent to the subject matter of this Agreement and the performance of obligations contained herein, for the purpose of conducting an audit and/or examination, and/or creating excerpts and/or transcriptions.

7. INDEPENDENT CONTRACTORS

Contractor shall employ, at is own expense, all personnel and equipment reasonably necessary to perform the Services called for by this Agreement. Such personnel shall not be considered Yakama Nation employees. Contractor shall be responsible to ensure that all personnel engaged in performing Services are fully qualified to undertake the work in accordance with applicable tribal, federal, state, and local laws. Contractor shall at all times in performance of this Agreement operate as, and have the status of, an independent contractor, and will not be an agent or employee of Yakama Nation; nor will Contractor or its personnel be entitled to any employee benefits provided by Yakama Nation. The Parties are not engaged in a joint venture or partnership. Neither party can represent or bind the other. Unless otherwise expressly agreed, Contractor shall be solely responsible to secure and pay for any necessary or appropriate permits, fees, licenses, inspections, or other prerequisites necessary for proper performance of the Services called for by this Agreement.

8. SUBCONTRACTING

A. Contractor shall not be permitted to hire a subcontractor to perform the Services called for by this Agreement without express prior written consent. Any unauthorized attempt by Contractor to subcontract for such Services shall be null and void, and Contractor shall be responsible for all expenses, fees, and costs associated with any such unauthorized subcontract.

B. An award of this Agreement based on a bid or proposal naming specific subcontractors and identifying the portions of the work to be performed by the subcontractors shall constitute prior written consent to the hiring of the named subcontractor(s). Subcontractor selection and subcontractor employment shall be subject to applicable TERO and Indian Preference requirements described above. Contractor shall be responsible to ensure their subcontractors are in compliance with Yakama Nation TERO and Indian Preference requirements.

9. ASSIGNMENT OF INTEREST

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

10. INDEMNIFICATION

Contractor shall, at its sole expense, hold harmless, indemnify, and defend Yakama Nation and its officers, agents, employees, and assigns against any and all losses, costs, damages, expenses or other liabilities whatsoever, including reasonable attorney's fees and expenses, that arise out of or are connected with, directly or indirectly, Contractor's actions or omissions, or Contractor's agents' acts or omissions related to this Agreement, including, but not limited to, accidents or injuries to persons or property.

11. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

A. Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to:

(1) Conditions bearing upon transportation, disposal, handling, and storage of materials;
(2) The availability of labor, water, electric power, and roads;
(3) Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
(4) The conformation and conditions of the ground; and
(5) The character of equipment and facilities needed preliminary to and during work performance.

Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Yakama Nation and information available to the public from local government agencies, as well as from the drawings and specifications made a part of this Agreement. Any failure of Contractor to take the actions described and acknowledged in this paragraph will not relieve Contractor from responsibility for properly estimating the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Yakama Nation.

B. Yakama Nation assumes no responsibility for any conclusions or interpretations made by Contractor based on the information made available by Yakama Nation. Nor does Yakama Nation assume responsibility for any understanding reached or representation made concerning conditions that can affect the work by any of its officers or agents before the execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

12. PHYSICAL DATA

Data and information furnished or referred to below or in the attached exhibits is for Contractor's information. Yakama Nation shall not be responsible for any interpretation of or conclusion drawn from the data or information made available to Contractor. Further, Yakama Nation specifically does not warrant construction methodology that may be included in such documents.

(a) The indications of physical conditions on any drawings or specifications that have been provided are the result of general inspection of the site. *Please see the attached exhibits*

(b) n/a

13. SCHEDULE FOR CONSTRUCTION

A. *Construction Schedule.* Unless the construction schedule is specifically addressed elsewhere in this Agreement, Contractor shall, within five (5) days after the work commences on the Agreement or another period of time determined by Yakama Nation, prepare and submit to Yakama Nation three (3) copies of a practicable schedule showing the order in which Contractor proposes to perform the work, and the dates on which Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion each week during the Agreement period. If Contractor fails to submit a schedule within the time prescribed, Yakama Nation may withhold approval of progress payments until Contractor submits the required schedule. Should Contractor fall behind its schedule, a revised schedule shall be forwarded with the next Contractor's request for progress payment. Additional schedules shall be furnished to Yakama Nation as soon as practicable if so requested.

B. *Rate of Progress.* With any and each partial payment request, Contractor shall submit a copy of the last submitted schedule annotated to indicate actual progress made to date. If at any time, in the opinion of Yakama Nation, Contractor has fallen behind the schedule to an extent which would jeopardize timely completion, Contractor shall take the steps necessary to improve its progress, including those that may be required, to enable timely completion without additional cost to Yakama Nation. Such steps may include, but are not limited to, increasing the number of shifts, the amount of overtime, days of work per week, and/or the amount of construction plant being utilized. Contractor shall submit any supplementary schedules Yakama Nation deems necessary to demonstrate how the rate of progress necessary for timely completion will be regained.

C. *Breach.* Failure of Contractor to comply with the requirements of this section shall be considered a material breach and grounds for a determination by Yakama Nation that Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Agreement. Upon making this determination, Yakama Nation may terminate Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this Agreement.

14. DIFFERING SITE CONDITIONS

Contractor shall promptly, and before the conditions are disturbed, give a written notice to Yakama Nation of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent to the type of work provided for in the Agreement. Unless specifically identified in the Agreement, discoveries of archaeological or historical remains such as graves, fossils, skeletal materials and artifacts protected by the Archaeological Resources Protection Act (36 CFR 1214) are considered type 2 conditions.

15. LAYOUT OF WORK

Contractor shall lay out its work from Yakama Nation established base lines and bench marks indicated on the drawings or any other manner furnished by Yakama Nation. Contractor shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. Contractor shall be responsible for the execution of the work to the lines and grades that may be established or indicated by

Yakama Nation. Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by Yakama Nation until authorized to remove them. If such marks are destroyed by Contractor or through its negligence before their removal is authorized, Yakama Nation may replace them and deduct the expense of the replacement from any amounts due or to become due to Contractor.

16. SPECIFICATIONS, DRAWINGS AND MATERIAL SUBMITTALS

A. Omissions from any drawings and specifications that have been provided, or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or misdescribed details of the work. Work shall be performed as if fully and correctly set forth and described in the drawings and specifications.

B. Contractor shall check all drawings furnished by Yakama Nation prior to starting work and shall promptly notify Yakama Nation of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large-scale drawings shall in general govern small-scale drawings. Contractor shall compare all drawings and verify the figures before laying out the work, and will be responsible for any errors which might have been avoided thereby.

17. MATERIAL & WORKMANSHIP

A. *Materials.* All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement. Use of recycled materials for the manufacture of such products is encouraged. Equipment, material, or articles specified by trade name, make, or catalog number, shall be provided. Equivalent items are not acceptable unless specifically authorized in the specification.

B. *Professional Work.* All work under this Agreement shall be performed in a professional, thorough, skillful, and safe manner, and shall be consistent with relevant professional standards. Yakama Nation may require, in writing, that Contractor remove from the work any employee Yakama Nation deems incompetent, unsafe, or otherwise objectionable.

C. *Legally Compliant Work.* In performing its obligations under this Agreement, Contractor shall comply with all applicable tribal, federal, state and local laws, regulations, guidelines and policies in performance of services under this Agreement. Such laws may include, but are not limited to, the Davis Bacon Act and related federal labor law requirements associated with federally funded construction projects. Contractor represents that it has reviewed, and is familiar with, all laws relevant to the performance of services under this Agreement.

18. SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this Agreement, and until the work is completed and accepted, Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to Yakama Nation and has authority to act for Contractor.

19. PERMITS AND RESPONSIBILITIES

Unless otherwise provided in this Agreement, Contractor shall, without additional expense to Yakama Nation, be responsible for obtaining any and all necessary licenses and permits, and for complying with any tribal, federal, state, and municipal laws, codes, and regulations applicable to the performance of the work. Contractor shall also be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of Yakama Nation and others. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under this Agreement.

20. OTHER CONTRACTS

Yakama Nation may undertake or award other contracts for additional work, or may utilize in-house construction forces, at or near the site of the work. Contractor shall fully cooperate with such other contractors and Yakama Nation employees, and carefully adapt scheduling and performance of the work under this Agreement to accommodate simultaneous performance, heeding any direction that may be provided by Yakama Nation. Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractors or by Yakama Nation employees.

21. USE AND POSSESSION PRIOR TO COMPLETION

Yakama Nation shall have the right to take possession of or use any completed or partially completed part of the work call for by this Agreement. Before taking possession of or using any work, Yakama Nation shall furnish Contractor a list of items of work remaining to be performed or corrected on those portions of the work that Yakama Nation intends to take possession of or use. However, failure of Yakama Nation to list any item of work shall not relieve Contractor of responsibility for complying with the terms of this Agreement. Yakama Nation's possession or use shall not be deemed an acceptance of any work under this Agreement.

22. CLEANING UP

A. Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the owner of the underlying real property. Upon completing the work, Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to Yakama Nation.

B. Unless specifically set forth in the Agreement, Contractor shall not burn any material on site, on the right-of-way or on the access roads to the sites. All material and debris shall be hauled to an appropriate disposal site.

23. ROAD MAINTENANCE

Contractor shall maintain all roads used by it, and upon completion of the job shall leave them in as good a condition as when first used. A road-grading machine (not a bulldozer) shall be used for maintenance and final

grading. In no event shall Contractor interfere with the property owner's use of roads existing prior to Contractor's entry.

24. STOP WORK ORDER

A. Yakama Nation may order Contractor to suspend all or any part of the work call for by this Agreement for the period of time that Yakama Nation determines appropriate for the convenience of Yakama Nation.

B. Contractor shall immediately comply with Yakama Nation's order and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order.

25. PROTECTION OF EXISTING VEGETATION, STRUCTURES, AND IMPROVEMENTS

A. Contractor shall preserve and protect all structures, equipment, utilities, other improvements, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Agreement. Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this Agreement, or by the careless operation of equipment, or by workers, Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Yakama Nation's representative.

B. If Contractor fails or refuses to repair the damage promptly, Yakama Nation may have the necessary work performed and charge the cost to Contractor.

26. INSURANCE

A. The following minimum kinds and amounts of insurance are applicable in the performance of the work under this Agreement. Contractor shall (subject to applicable law) maintain such insurance, naming Yakama Nation as an additional insured:

(1) *Workers' compensation and employer's liability*. Contractor is required to comply with applicable Federal and State workers compensation and occupational disease statutes. Employer's liability coverage of at least $100,000 shall be required.

(2) *General liability.* Contractor shall provide general liability insurance of at least $1,000,000 per occurrence/$2,000,000 aggregate. Any policy aggregate limits which apply, shall be modified to apply to each location and project. The policy shall name Yakama Nation, its officials, officers, employees and agents, as insureds with respect to Contractor's performance of services.

(3) *Automobile liability.* Contractor shall provide automobile liability insurance covering the operation of all automobiles used in the performance of this Agreement. Policies shall provide limits of at least $1,000,000 per accident and include coverage for all owned, non-owned and hired automobiles. Contractor's policy shall be primary to any insurance of Yakama Nation.

(4) *Environmental impairment liability.* Contractor shall provide environmental impairment liability insurance of at least $1,000,000 per occurrence. Such insurance will include coverage for the clean up, removal, storage, disposal, transportation and/or use of pollutants. The insurance policy shall name Yakama Nation, its officials, officers, employees and agents as insured. Contractor's policy shall be primary to any insurance of Yakama Nation.

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

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

27. INSPECTION - SERVICES AND CONSTRUCTION

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

B. If any of the services do not, in Yakama Nation's sole reasonable opinion, conform with the requirements of this Agreement, or with applicable laws, regulations or governmental policies, then Yakama Nation may require the Contractor to perform the services again in conformity at no cost to Yakama Nation. When the defects in services cannot be corrected by re-performance, Yakama Nation may deduct from the Agreement payments an amount which reflects the reduced value of the services performed. Further, and without limiting any other remedies that Yakama Nation may have under this contract or at law, Yakama Nation may, at its sole discretion, withhold up to 10% of the total contract amount as a retainage where: (i) the total amount of this contract is $250,000 or more, or (ii) Yakama Nation in its sole discretion is concerned that satisfactory progress is not being made, or (iii) Yakama Nation is reasonably concerned that Consultant's work is not being performed in conformance with this Agreement. At its discretion, Yakama Nation may, as applicable, hold such retainer either until the entire project is substantially completed by Contractor or until Yakama Nation's concerns about Contractor's performance have been resolved.

C. Neither inspection, lack of inspection, acceptance, nor payment shall relieve the Contractor of any of its obligations under this Agreement. Yakama Nation's actions to exercise its rights under this Agreement, or to support the completion of the project consistent with the terms of this Agreement, shall not relieve the Contractor of any of its obligations under this Agreement. Contractor's duty to re-perform non-conforming work is intended to survive the expiration of this Agreement's term, and shall apply even where non-conformance is discovered following its expiration.

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

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

28. WARRANTY - CONSTRUCTION

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

B. This warranty shall continue for a period of three (3) years from the date of final acceptance of the work. If Yakama Nation takes possession of any part of the work before final acceptance, this warranty shall continue for a period of three (3) years from the date Yakama Nation takes possession.

C. Contractor shall remedy at Contractor's expense any failure to conform, or any defect. In addition, Contractor shall remedy at Contractor's expense any damage to Yakama Nation-owned or controlled real or personal property, when that damage is the result of:

(1) Contractor's failure to conform to applicable law or contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished by Contractor.

D. Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. Contractor's warranty with respect to work repaired or replaced will run for three (3) years from the date of repair or replacement.

E. Yakama Nation shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

F. If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Yakama Nation shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Contractor's expense.

G. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Contractor shall:

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of Yakama Nation, if directed by Yakama Nation; and

(3) Enforce all warranties for the benefit of Yakama Nation, if directed by Yakama Nation.

H. Unless a defect is caused by the negligence of Contractor or subcontractor or supplier at any tier, Contractor shall not be liable for the repair of any defects of material or design furnished by Yakama Nation nor for the repair of any damage that results from any defect in Yakama Nation-furnished material or design.

(1) This warranty shall not limit Yakama Nation's rights under the Inspection and Acceptance clause of this Agreement with respect to latent defects, gross mistakes, or fraud.

29. TAXES

The compensation for Services performed under this Agreement shall include all applicable Tribal, Federal, State, and local taxes and duties. Depending on the location and nature of the Services provided, when applicable, Yakama Nation shall provide Contractor a single use Tax Exemption Certificate.

30. TERMINATION

A. *Notice.* Yakama Nation may terminate all or any part of this Agreement, at any time, with or without cause, upon written notice to Contractor. Upon receipt or the termination notice, Contractor shall promptly stop work on the terminated portion of the Agreement. Contractor obligations shall be consistent with those set forth above in the Stop Work Order clause of this Agreement.

B. *Breach.* In the event of termination for breach or violation of the terms and provisions of this Agreement, Yakama Nation, to the extent permitted by applicable law, shall be entitled to enforce its rights under this Agreement, and recover its court costs and reasonable attorney's fees, as determined by the court. The foregoing shall not in any way limit or restrict any right or remedy at law or equity which would otherwise be available to Yakama Nation, including, but not limited to, the right to contract with other qualified persons to complete the performance of services identified in or called for by this Agreement.

C. *Termination By Tribal Council Executive Committee.* Notwithstanding anything herein to the contrary, Contractor understands and agrees that the Yakama Nation Tribal Council Executive Committee may immediately terminate this Agreement by written notice.

D *Effect of Complete Termination.* Upon the complete termination of this Agreement, the liability of the Parties for the further performance of this Agreement shall cease, but the Parties shall not be relieved of the duty to perform their obligations up to the date of termination.

E. *Effect of Partial Termination.* The compensation amount shall be revised as a result of a partial termination under this section. On fixed-price contracts the revised amount shall not exceed the pre-termination contract price plus reasonable termination expenses. On cost-reimbursement contracts the revised amount shall not exceed the total of allowable and allocable costs of performance prior to termination plus termination expenses plus an adjustment of the fee on the terminated portion of the Agreement. No payment will be made

for anticipated profits on the terminated portion, or consequential damages, of this Agreement. Contractor shall submit a settlement proposal within thirty (30) days of the notice of termination.

31. FORCE MAJEURE

This Agreement is subject to force majeure, and is contingent on strikes, accidents, acts of God, weather conditions, fire regulations, the actions of any government, including funding and/or budgetary decisions, and other circumstances which are beyond the control of the parties. If the terms and conditions of this Agreement are unable to be performed as a result of any cause of force majeure, then this Agreement shall be void, without penalty to any party for such non-performance.

32. NOTICE

Notice to Contractor shall consist of a letter, delivered postage prepaid, addressed to:

[Contractor's Legal Agent's Name]
[Contractor Name]
[Address No. 1]
[Address No. 2]

Notice to Yakama Nation shall consist of a letter, delivered postage prepaid, addressed to:

Gerald Lewis, Chairman
Yakama Tribal Council
PO Box 151 / 401 Fort Road
Toppenish, WA 98948

With courtesy copies to Yakama Nation's Designated Representative detailed below, and the Lead Attorney of Yakama Nation's Office of Legal Counsel at P.O. Box 150, Toppenish, WA 98948.

Either party may from time to time change its designated address for notice, or designated contact(s) for notice, by giving the other party reasonable notice of such change.

33. SUPERVISION OF CONTRACTOR/DESIGNATED REPRESENTATIVE

Contractor shall act under the supervision of the following Designated Representative of Yakama Nation in performing services under this Agreement:

Name:	Audrey Scott, Yakama Reservation Watersheds Special Project Leader
Address:	PO Box 151, Toppenish, WA, 98948
Phone:	(509) 790-8596
Email:	scoa@yakamafish-nsn.gov

The Designated Representative is designated for project management purposes only, and does not have authority to authorize any changes, modifications or addendums to this Agreement, nor does the Designated Representative have signing authority on behalf of Yakama Nation. Yakama Nation shall provide Contractor reasonable notice if there is a change in the Designated Representative.

34. COMPLIANCE PROVISIONS

A. *Discrimination.* Contractor shall not discriminate against any employee or applicant for employment because of handicap, race, age, religion, or sex. Contractor will take affirmative steps to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their handicap, race, age, religion, or sex.

B. *Indian Preference.* Notwithstanding the above, Contractor shall, for all work performed on or near the Yakama Reservation pursuant to this Agreement, and consistent with Section 703(i) of the 1964 Civil Rights Act, give preference in employment (including any authorized subcontracts) to equally qualified Indians regardless of their handicap, age, religion or sex. To the extent feasible and consistent with the efficient performance of this Agreement, Contractor shall provide employment and training opportunities to Indians that are not fully qualified to perform under this Agreement, regardless of their handicap, age, religion or sex. Further, Contractor shall comply with any and all applicable Indian preference laws and requirements established by Yakama Nation, including those set forth in the Yakama Nation Tribal Employment Rights Ordinance ("TERO"), as amended (Yakama Revised Law & Order Codes, Title 71).

35. JURISDICTION & VENUE

The validity, interpretation, and performance of this Agreement, and any and all written instruments, agreements, specifications and other writings of whatever nature which relate to or are part of this Agreement, shall be governed by and construed in accordance with the laws of Yakama Nation. Both Parties understand and agree that this Agreement establishes a consensual business relationship between the Parties for purposes of Yakama Tribal Court jurisdiction. Venue of any court action filed to enforce or interpret the provisions of this Agreement shall be exclusively in Yakama Nation Tribal Court(s). In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees and expenses in addition to any other relief allowed.

36. DISPUTE RESOLUTION

A. *Meet and Confer Meeting.* In the event that a dispute arises between the Parties over the performance, interpretation, or enforcement of this Agreement, the Parties in the first instance shall attempt in good faith to resolve the dispute informally by mutual Agreement in a face-to-face meet and confer meeting. All offers, promises, conduct and statements, whether oral or written, made in the course of the meet and confer meeting by any of the Parties, their agents, employees, experts and attorneys shall be considered confidential, privileged and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the meet and confer meeting.

B. *By Tribal Council Chairman.* If the Parties are unable to resolve the dispute during the meet and confer meeting, the aggrieved party shall submit the matter, in writing, to the Chairman of the Yakama Nation Tribal Council. A copy of the aggrieved party's submission shall be served upon the other party in accordance with the notice provisions of this Agreement. The Chairman shall promptly convene a meeting of the Parties, which shall be held in Toppenish, Washington, to resolve the matter. The decision of the Chairman shall be final and binding upon both Parties. Provided, however, that nothing shall operate to limit or prohibit Yakama Nation

from otherwise enforcing its rights under this Agreement. In the event that the Chairman has a conflict of interest that would prevent her/him from hearing the dispute, s/he may, at her/his sole discretion, either decline to hear the dispute, or appoint an alternate Tribal Leader or Elder to serve in his/her place.

C. Nothing in this section shall operate to prohibit Yakama Nation from enforcing its rights under this Agreement in a court of appropriate jurisdiction. Yakama Nation may at its own election seek recovery of monetary damages from Contractor's breach of any terms in this Agreement.

37. GENERAL TERMS

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

B. *Severability.* If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

C. *Changes to the Agreement.* No change, amendment, modification, or addendum to this Agreement shall be valid unless it is in writing and executed by authorized representatives of both Parties.

D. *Additional Services*. Except as otherwise provided in this Agreement, no payment for additional services shall be made unless such services and the price therefore have been requested and authorized in advance in writing by Yakama Nation.

E. *Survival.* The requirements of Section 4 (Property Developed by Contractor), Section 6 (Maintenance & Retention of Records; Financial Management for Accounting & Audits), Section 10 (Indemnification), Section 28 (Warranty-Construction) and Section 36 (Dispute Resolution) of this Agreement shall survive termination of this Agreement.

F. *No General Waiver.* Any waiver or failure of the Parties to enforce or insist upon any term in this Agreement does not constitute a general waiver or relinquishment of that term.

G. *No Construction Against Drafter.* Each party has participated in negotiating and drafting this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against one party because it was responsible for drafting one or more provisions.

H. *Execution.* This Agreement may be executed in counterparts, electronically, or by facsimile.

38. ENTIRE AGREEMENT

This Agreement incorporates all the agreements, covenants and understandings between the Parties. No agreement or understanding, verbal or otherwise, of the Parties regarding their responsibilities under this Agreement shall be valid or enforceable unless embodied in this Agreement.

The following Exhibits are incorporated by reference into this Agreement:

- Exhibit "A" – Project Overview and Scope of Work
- Exhibit "B" – Budget
- Exhibit "C" – Payment
- Exhibit "D" – Funding Agency Provisions
- Exhibit "E" – Project Planset

39. SOVEREIGN IMMUNITY

Notwithstanding any other terms or provisions of this Agreement, Contractor understands and agrees that Yakama Nation, by entering into this Agreement, does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty with the Yakamas of 1855 (12 Stat. 951).

40. SPECIAL PROVISIONS

In addition to the forgoing terms and conditions, the following requirements are agreed to and shall apply to this Agreement:

A. Funds for compensation of Contractor for the Services rendered to the Yakama Nation under this Agreement are provided by various state and federal funding agencies. The Yakama Nation's obligation under this Agreement to reimburse the Contractor is conditioned upon these necessary funds being made available to the Yakama Nation. Failure of the applicable state and federal funding agencies to provide such funding within the effective term shall, at the Yakama Nation's option, void this Agreement and Contractor shall have no cause of action against the Yakama Nation.

B. Contractor certifies and warrants that, to the best of Contractor's knowledge and belief, Contractor and his or her principals: (i) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any state or federal department or agency; (ii) have not within the three-year period preceding the effective date of this Agreement had a criminal conviction or civil judgment rendered against them for commission of fraud in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) contract, including violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses set forth above in this certification; and (iv) have not had one or more public contracts (federal, state, or local) terminated for cause or default within the three-year period preceding the effective date of this Agreement.

   If Contractor is authorized under this Agreement to hire any subcontractors, Contractor shall ensure that their contracts include requirements that are substantively the same as provided for in this Section 40.B.

C. During the performance of this Agreement, Contractor agrees to comply with all applicable federal and state nondiscrimination laws and policies.

   If Contractor is authorized under this Agreement to hire any subcontractors, Contractor shall ensure that their contracts include requirements that are substantively the same as provided for in this Section 40.C.

D. *Constructed Habitat Element Performance Requirements.* Owner and Contractor agree that it is critical for this salmon habitat restoration project to be constructed in a manner that meets the intended biological performance criteria for which the project was designed so that the project can be useful in its intended purpose as an improvement to specific salmon habitat conditions. The Final Stamped Engineer's Plan Set (Exhibit F) for this salmon habitat restoration project contains all of the adequate and relevant construction level detail to ensure each constructed habitat feature will meet the intended biological performance criteria. Types of constructed habitat features that need to meet intended biological performance criteria include, without limitation: habitat log placements, large wood structures, excavated pools, customized channel bed forms, side channel inlets, side channel outlets, regraded floodplain surfaces, fabric encapsulated soil lifts, rock/boulder cover features, constructed wetlands, and/or similar biologically or geomporphically important features that are specifically identified to improve specific salmon habitat conditions. Minor fit in the field modifications of any constructed habitat feature as directed by the Owner and/or Project Engineer to further enhance biological performance based on site conditions during construction are allowed. However, the Contractor shall not cause any constructed habitat features to significantly deviate from the Final Stamped Engineer's Plan Set without previous direct authorization and approval from the Owner. The Yakama Nation may, at its sole discretion, withhold payment from the Contractor consistent with Section 27.B of this Agreement if it has a reasonable concern that constructed habitat features are being completed in a manner that materially deviates from the Final Stamped Engineer's Plan Set. In addition to mandatory weekly check-ins, Contractor may request, or Owner may at its discretion require, additional check-in meetings directly prior to the construction of a particular project habitat feature, to ensure that the biological performance criteria for such feature is clearly and consistently understood by Contractor, Owner, and any other involved contractors or subcontractors.

E. *Project Access Routes and Construction Project Boundary Performance Requirements.* Owner and Contractor agree and understand that this salmon habitat restoration project is taking place near critical and sensitive habitat areas, and on properties owned by third parties that have graciously agreed to allow restoration actions to occur. Adherence by the Contractor to the specific Access Route and Construction Project Boundary details contained within the Final Stamped Engineer's Plan Set (Exhibit F) are critical to ensuring landowner property rights are protected and unanticipated impacts to critical and sensitive habitat areas do not occur. Minor deviations in Access Routes and Construction Project Boundaries may be allowed if approved in advance by the Owner based on unexpected site conditions during construction. However, Yakama Nation may, at its sole discretion, withhold payment from the Contractor consistent with Section 27.B of this Agreement if the Access Route and Construction Project Boundary specifications of the Final Stamped Engineer's Plan Set are not otherwise strictly followed. If any such deviations result in damage to landowner property and/or critical and sensitive habitat areas, Contractor understands it will have indemnification obligations consistent with the indemnification terms of this Agreement.

IN WITNESS WHEREOF, we set our hands and seals:

[Signature page(s) to follow.]

EXHIBIT A

Project Overview and Statement of Work

Toppenish Creek Dam Removals Project

1. Background:

Yakama Nation Fisheries (Owner) is constructing a salmon habitat restoration project along Toppenish Creek (RM 25 and RM 27) known as the "Toppenish Creek Dam Removals Project". This project is funded through the United States Fish and Wildlife Service with additional funding from BOR and NRCS, for the purpose of protecting and improving salmonid habitat in natal tributaries of the Yakama Reservation.

Project details including technical specifications, engineered plan sheets, material standards and quantities are contained or referenced within Exhibit E, the "Project Planset and Specifications". All work on this project will be directed by the Owner's Designated Representative(s) and the Professional Engineer(s) that produced the stamped Construction Planset. No deviations from the Project Planset will be allowed without prior approval from the Owner's Designated Representative(s).

Taken together, multiple accompanying exhibits to this Exhibit A provide the full Scope of Work to be executed. Exhibit B provides the bid sheet which is referred to as the specific work tasks defined in the Special Provisions found in Exhibit E. Exhibit C provides a payment schedule and invoicing terms that will be included in the contract. Exhibit D provides terms and conditions applicable to the Contractor from governing funding agreements. Exhibit E provides the Construction Planset and Special Provisions certified by the Project Engineer. Exhibit F provides the updated Davis Bacon Wage Decision.

2. Location

The project is located on the Yakama Nation Reservation along Toppenish Creek, a tributary of the Yakima River. The project is broken into two separate work sites (figure 1).

Piggott Dam Site: -120.5321663, 46.3235680

Piggot Dam Site: -120.5227626, 46.3233022

Royal Dam Site: -120.5066259, 46.3234164

Royal Dam Site: -120.4922509, 46.3285379

3. Project Tasks

All tasks will be completed as per Exhibit E. Major project elements include but are not limited to the following:

1. MOBILIZATION
2. TEPORARY ACCESS ROADS AND STAGGING AREAS
3. TEMPORARY STREAM CROSSING
4. DEWATERING AND WATER MANAGEMENT
5. FURNISH SHEET PILES
6. FURNISH ALL THREAD ROD
7. FURNISH RIFFLE MATERIAL
8. FURNISH CATEGORY 1 ROCK
9. FURNSIH CATEGORY 2 ROCK
10. FURNISH STREAMBED MATERIAL
11. FURNISH PIT RUN SUBGRADE MATERIAL
12. REMOVE AND DISPOSE OF EXISTING STRCUTURE
13. CONSSTRUCT ROUGHENED CHANNEL
14. PIOT CHANNEL GRADING AND FILL PLACMENT
15. INSTALL VEGETATED WOOD MATRIX
16. FURNISH WILLOW CUTTINGS
17. INSTALL LARGE WOOD STRUCTURES
18. INSTALL RIPARIAN FLOODPLAIN SEEDING
19. INSTALL UPLAND AREA SEEDING
20. INSTALL RIPAIRAN FLOODPLAIN PLANTINGS
21. INSTALL UPLAND AREA PLANTINGS
22. DECOMISSION ACCESS ROADS, STAGGING AREAS, AND TEMPORARY CROSSING
23. DEMOBILIZATION

***All wood and plant material will be supplied by the owner. The Contractor will be responsible for installation. ***

4. Project Schedule and Key Deliverables

Environmental permits for this project require some work be performed during the normal in-water work window for Toppenish Creek to avoid adverse impacts to spawning redds, young of the year fish, and migrating adults. All out of water work (work done out of the water) can be completed before the in-water work window. The in-water work window for Toppenish Creek is July 1st -October 31st , 2026.

A mandatory coordination meeting at the project site will take place in the month prior to mobilization. The TESC and SPCC plan will be provided by the Contractor in digital format prior to that time.

Key deliverables are completion of Project Tasks as outlined above.

5. Contractor Obligations

The Contractor shall furnish all supervision, labor, equipment and tools necessary to complete the project as described in Exhibit E. The Contractor will be responsible for all damages to merchantable timber, ground vegetation, environmentally sensitive area, trails, roads, and other built infrastructure caused by contracted activities if such damages are not pre-approved as part of the Final Stamped Engineer's Plan Set.

6. Consistent Satisfactory Progress

Consistent satisfactory progress in this project will be required. Satisfactory progress will be measured by both the quality and quantity of work. If for any reason no work is performed, the Contractor may be given a notice of contract cancellation. Consistent satisfactory progress will also be determined by the Contractor's demonstrated ability to perform all work tasks described in **Exhibit E.** If it appears that the Contractor is unable to complete the project tasks within the permitting work window, the Contactor may be given a notice of contract cancellation. The Owner's Designated Representative(s) and the Professional Engineer(s) will monitor progress closely.

7. Fish Removal

In-water construction activities will require fish removal of all isolated in-water work sites. Fish removal will be conducted in a timely manner by the Owner's Designated Representatives and the time taken to implement proper fish removal protocols will be considered incidental to the Contractor's work tasks.

8. Industrial Fire Precaution Level (IFPL)

This project is located in IFPL zone 675. The Contractor will be familiar with and prepared for the requirements associated with IFPL Level II & III and the restrictions associated with those. There will not be an IFPL waiver granted for this project. If an IFPL level III is issued the Contractor is expected to work within designated hours (8:00pm-1:00pm). If an IFPL level IV is issued, the project will stop, as per the order, and the Contractor will meet with the owner to determine how to move forward. Costs associated with obtaining or adhering to the terms of an IFPL level II or III shut down will be considered incidental to the Contractor's work tasks.

9. Utilities Location

The Contractor will locate all utilities prior to any excavation.

10. Communication with Landowners

The Contractor expressly agrees that the Contractor's staff and personnel will not communicate with project area landowner(s) in any manner, whether it be in regard to the project or otherwise, without express permission from, or in the presence of the Owner's Designated Representative.

11. Exclusivity

During the term of the Agreement, including time taken for mobilization and demobilization of construction equipment, Contractor shall not conduct any work on the property designated in this Agreement unless so directed by the Designated Representative. Contractor shall require in all contracts with subcontractors that subcontractors no conduct any work on the property designated in this Agreement unless so directed by the Designated Representative. Any additional work conducted on the property designated in this Agreement by Contractor without the express consent of the Designated Representative shall constitute a material breach of this Agreement, thereby relieving the Yakama Nation from all payment obligations to the Contractor.

12. Applicable Documents

This project has adopted by reference in the Engineer's Planset the 2025 Washington State Department of Transportation (WSDOT) standard Specifications for Road, Bridge, and Municipal Construction.

The Contractor is expected to construct the project in compliance with the Programmatic Restoration Opinion for Joint Ecosystem Conservation by the Services (PROJECTS) Version 1.4 produced by the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS).

EXHIBIT B: Bid Sheet

Bid Sheet 1: Piggott Dam Project Site

11/12/2026 SWCA		2026/2027 Lower Toppenish Dam Removals - Piggott Dam Site		
BID ITEM	**DESCRIPTION**	**ESTIMATED QUANTITY**	**UNIT**	**TOTAL PRICE**
1	Mobilization	1	LS	
2	Develop Temporary Access Roads and Staging Areas	7715	LF	
3	Develop Temporary Stream Crossing	1	LS	
4	Dewatering and Water Management	1	LS	
5	Furnish Sheet Piles	140	LF	
6	Furnish All-Thread Rod	210	LF	
7	Furnish Riffle Material	192	CY	
8	Furnish Category 1 Rock	160	EA	
9	Furnish Category 2 Rock	92	EA	
10	Furnish Streambank Material	128	CY	
11	Furnish Pit Run Subgrade Material	192	CY	
12	Remove and Dispose of Existing Structure	1	LS	
13	Construct Roughened Channel	290	LF	
14	Pilot Channel Grading and Fill Placement	547	CY	
15	Vegetated Wood Matrix	535	LF	
16	Furnish Willow Cuttings	4,545	EA	
17	Install Large Wood Structures	8	EA	
18	Install Riparian Floodplain Seeding	2.49	AC	
19	Install Upland Area Seeding	1.40	AC	
20	Install Riparian Floodplain Plantings	1.08	AC	
21	Install Upland Area Plantings	1.40	AC	
22	Decommission Access Roads, Staging Areas, and Temporary Crossing	1	LS	
23	Demobilization	1	LS	
			TOTAL BID PRICE: ($)	

Bid Sheet Two: Royals Dam Project Site

11/12/2026	SWCA	2026/2027 Lower Toppenish Dam Removals - Royal Dam Site		
BID ITEM	**DESCRIPTION**	**ESTIMATED QUANTITY**	**UNIT**	**TOTAL PRICE**
1	Mobilization	1	LS	
2	Develop Temporary Access Roads and Staging Areas	19,948	LF	
3	Develop Temporary Stream Crossing	1	LS	
4	Dewatering and Water Management	1	LS	
5	Furnish Sheet Piles	120	LF	
6	Furnish All-Thread Rod	140	LF	
7	Furnish Riffle Material	200	CY	
8	Furnish Category 1 Rock	150	EA	
9	Furnish Category 2 Rock	80	EA	
10	Furnish Streambank Material	115	CY	
11	Furnish Pit Run Subgrade Material	2,860	CY	
12	Furnish 3/4"Crushed Material	670	CY	
13	Remove and Dispose of Existing Structure	1	LS	
14	Construct Roughened Channel	218	LF	
15	Pilot Channel and Bypass Channel Grading	1,535	CY	
16	Corn Field Channel Grading	500	CY	
17	Bullrush Channel Grading	2,700	CY	
18	Southern Channel Grading	1,950	CY	
19	Meander Channel Grading	1,570	CY	
20	Install Vegetated Wood Matrix	450	LF	
21	Furnish Willow Cuttings	4,250	EA	
22	Install Large Wood Structures	11	EA	
23	Small Culvert Removal and Disposal	3	EA	
24	Raise Existing Access Road	3,330	CY	
25	Install Riparian Floodplain Seeding	8.97	AC	
26	Install Upland Area Seeding	4.79	AC	
27	Install Riparian Floodplain Plantings	3.00	AC	
28	Furnish and Install Cattle Fence	250	LF	
29	Furnish and Install Cattle Gate	4	EA	
30	Decommission Access Roads, Staging Areas, and Temporary Crossing	1	LS	
31	Demobilization	1	LS	
			TOTAL BID PRICE: ($)	

Piggot Site Bid:	Royals Site Bid:	Total Bid:

Printed Name and Title Signature

RATE SCHEDULE FOR STANDBY TIME

Rate Schedule for Standby Time

Missed work hours associated with conditions outside of the Contractor's control may be charged at an approved standby rate upon approval by the designated representative. All standby requests must include a justification memo explaining why a standard workday was not possible. Standby time will be addressed on a case-by-case basis.

ITEM	DESCRIPTION	UNIT	UNIT PRICE
1	Standby Rate	Hour	

PAYMENT SCHEDULE

Ten percent (10%) of the amount billed shall be retained until a **final release** has been signed by the **contractor** and delivered to the **Yakama Nation** and all work has been completed as outlined above.

1. **Payment Schedule**

- ☐ **Progress:** The Contractor shall submit a separate bill for each major project task element after the work has been completed, reviewed and accepted by Yakama Nation's Designated Representative. The Contractor is encouraged to invoice monthly when payment is necessary.

- ☒ **Percentage:** The Contractor shall invoice monthly and will be allowed to submit a bill for percentage of work completed after the work has been reviewed and accepted by Yakama Nation's Designated Representative.

- ☐ **Actual Work Completed:** The Contractor shall invoice monthly and will be allowed to submit a bill for actual work completed.

- ☐ **Alternative Schedule:** The Contractor shall invoice and be allowed to submit a bill as follow:

2. **Tax Exempt Certificate**

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

- ☐ The Contractor **has not** been given a Tax Exemption Certificate

- ☒ The Contractor **has** been given a single use Tax Exemption Certificate. Due to the nature of this Agreement, as set forth below, the Contractor should be allowed to use the tax-exempt certificate that is included with this document.

    - Fisheries Management Through Salmon Habitat Restoration

EXHIBIT D: Funding Agency Provisions

The following provisions may be applicable to this Agreement pursuant to funding agreements between the Yakama Nation and federal agencies.

- USFWS F23AC01697
- BOR R21AV0012- Toppenish Creek Corridor Plan
- NRCS RCPP 4391

"General Decision Number: WA20250135 09/19/2025

Superseded General Decision Number: WA20240135

State: Washington

Construction Type: Heavy

County: Yakima County in Washington.

HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	☐ Executive Order 14026 generally applies to the contract. ☐ The contractor must pay all covered workers at least $17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or	☐ Executive Order 13658 generally applies to the contract. ☐ The contractor must pay all

extended on or after January 30, 2022:	covered workers at least $13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at http://www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2025
1	02/07/2025
2	05/23/2025
3	06/06/2025
4	06/27/2025
5	07/18/2025
6	08/08/2025
7	09/12/2025
8	09/19/2025

ELEC0077-002 02/01/2024

	Rates	Fringes
Line Construction:		
LINE PERSON	$ 64.17	23.58+1.5%

ELEC0077-003 02/01/2023

	Rates	Fringes

TREE TRIMMER: Ground Person.....$ 22.60 16.37
TREE TRIMMER.....$ 42.57 17.97

ELEC0077-005 02/01/2024

	Rates	Fringes
Line Construction:		
EQUIPMENT OPERATOR	$ 55.19	20.11+1.5%

ELEC0112-010 06/01/2025

	Rates	Fringes
ELECTRICIAN	$ 60.00	27.78

ENGI0302-106 06/01/2025

COUNTY WHICH LIES WEST OF THE 120TH MERIDIAN

	Rates	Fringes
OPERATOR: Bulldozer		
D9 & under	$ 59.23	27.57
OPERATOR: Drill		
Drilling Machine	$ 60.67	27.57
Horizontal/Directional Drill Locator	$ 59.88	27.57
Horizontal/Directional Drill Operator	$ 59.23	27.57

ENGI0302-110 06/01/2025

WEST OF THE 120TH MERIDIAN

	Rates	Fringes
(East of the 120th Meridian)		
Operator: Loader		
Overhead 4 yards including 8 yards	$ 40.69	22.45
Overhead under 4 yards	$ 40.18	22.45
Operator: Mechanic	$ 38.96	22.45

Operator: Paver (Asphalt, Aggregate, and Concrete)....	$ 40.69	22.45
Operator: Roller.....	$ 38.91	22.45
Operator: Screed.....	$ 40.69	22.45
(West of the 120th Meridian)		
Operator: Loader		
Overhead 6 yards but not including 8 yards.....	$ 60.67	27.57
Overhead under 6 yards.....	$ 59.88	27.57
Operator: Mechanic.....	$ 61.56	27.57
Operator: Paver (Asphalt, Aggregate, and Concrete)....	$ 60.67	27.57
Operator: Roller		
Other than Plant Mix.....	$ 55.43	27.57
Plant Mix or Multi-Lift Materials.....	$ 59.23	27.57
Operator: Screed.....	$ 60.67	27.57

ENGI0302-111 07/07/2025

COUNTY WHICH LIES WEST OF THE 120TH MERIDIAN

	Rates	Fringes
OPERATOR: Concrete Pump		
Mounted or Trailer High Pressure Line Pump, Pump High Pressure.....	$ 59.23	27.57
Truck Mount with Boom Attachment Over 42M.....	$ 60.67	27.57
Truck Mount with Boom Attachment Up to 42M.....	$ 59.88	27.57
OPERATOR: Oiler		
Drill Oilers: auger type, truck or crane mount.....	$ 59.88	27.57
Truck Crane Oiler/Driver: 100 tons and over.....	$ 59.23	27.57
OPERATOR: Scraper		
Self propelled under 45 yards.....	$ 59.88	27.57

LABO0242-010 06/01/2025

	Rates	Fringes
LABORER: Nozzle Person	$ 52.31	17.01

* LABO0348-010 06/01/2025

	Rates	Fringes
LABORER: Pipelayer	$ 37.80	16.90

PAIN0300-002 07/01/2025

	Rates	Fringes
PAINTER	$ 41.24	14.70

TEAM0313-001 06/01/2025

	Rates	Fringes
TRUCK DRIVER: Asphalt Mix	$ 55.43	27.52

* UAVG-WA-0011 03/01/2024

	Rates	Fringes
OPERATOR: Crane	$ 54.11	18.14

SUWA2018-035 03/01/2024

	Rates	Fringes
CARPENTER, Excludes Form Work	$ 29.72	0.00
CEMENT MASON/CONCRETE FINISHER	$ 39.33	0.00
FORM WORKER	$ 37.16	14.74
GRADE CHECKER	$ 37.54	0.00
IRONWORKER	$ 43.29	25.63
LABORER: Asphalt, Includes		

Raker, Shoveler, Spreader and Distributor	$ 37.63	11.25
LABORER: Common or General	$ 34.41	0.00
LABORER: Concrete Saw Chain	$ 37.30	4.30
LABORER: Hod Carrier	$ 35.06	10.94
LABORER: Mason Tender - Cement/Concrete	$ 38.46	0.00
LABORER: Fence Erector	$ 30.21	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 48.70	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 43.60	0.00
OPERATOR: Forklift	$ 45.93	19.20
OPERATOR: Grader/Blade	$ 40.28	16.17
TRAFFIC CONTROL: Flagger	$ 27.75	11.15
TRAFFIC CONTROL: Laborer-Cones/ Barricades/Barrels - Setter/Mover/Sweeper	$ 30.61	10.89
TRUCK DRIVER: Dump Truck	$ 34.94	15.63
TRUCK DRIVER: Water Truck	$ 31.62	16.84

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the

Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council

number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date

for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"