Cowlitz Indian Tribe
Natural Resources Department

Request for Qualifications (‘‘RFQ’’)

Exhibit A
East Fork Grays River Restoration
Regulatory Permitting Assistance – Hourly T&M Contract

Technical Contact: Justin Isle – Restoration Ecologist/PM (jisle@cowlitz.org)
503-799-0934 cell
Peter Barber – Restoration Ecologist/PM (pbarber@cowlitz.org)
360-839-9299

Admin. Contact: Tiffini Johnson – Program Coordinator (tjohnson@cowlitz.org)
360-324-9485

Critical Dates:
- Request for Clarification/Question Submittals by: November 18, 2022 – 6:00pm PST
- Response to Questions: est. November 23, 2022 – 6:00pm PST
- Proposal Submission Deadline: Dec 2, 2022 – 2:00 pm PST
- Tentative Award Selection: est. December 9, 2022
- Anticipated Project Timeline: December 15, 2022 – December 31, 2023

Attachments:
- Exhibit A – RFP
- Exhibit B – Contract
- Exhibit C – Price Sheet
- Exhibit D – Draft Permit-Level Engineering Plan Sheets
Overview
The Cowlitz Indian Tribe (Tribe) has secured grant funding through the Washington Recreation and Conservation Office (RCO), from Washington Coastal Restoration and Resiliency Initiative (WCRRI), and the Salmon Recovery Funding Board (SRFB), specific for a large-scale 3.1 mile instream habitat restoration project on the East Fork Grays River and adjacent tributaries (Mitchell Creek & Left Bank Tributary) in Pacific County, Washington. The overall restoration project will include installation of over 100 large wood habitat structures and place up to 5000 pieces of large wood in the East Fork Grays River and tributaries using a combination of ground-based machinery and helicopter placement. Large wood has been purchased from Rayonier, and other local landowners, and decked and staged nearby to streamline materials acquisition and prepare for project construction during Summer 2023.

The project is currently in the final stages of engineering design development, and the Cowlitz Tribe’s Natural Resources Department is soliciting interest from qualified consultants to provide regulatory permitting assistance. Specifically, the Tribe is requesting assistance from firms with extensive experience in navigating Washington State and Federal permitting requirements associated with habitat restoration and instream large wood placement projects. The scope of services will be based on prior and recent correspondence between the Tribe and U.S. Army Corps of Engineers (USACE), Washington Department of Fish & Wildlife (WDFW), Washington Department of Natural Resources (DNR), and WA Department of Ecology (DOE) and may include preparation of permit applications, negotiation, and assistance with securing one or more of the following permits:

- Section 404 permit (e.g., NWP 27 for restoration)
- Joint Aquatic Resources Permit (JARPA) for Hydraulic Approval Permit (HPA)
- WA DOE 401 Water Quality Certification (e.g., SWPPP/WQMPP/ESC Plan if and as applicable)
- DNR Forest Practices Application (FPA) for temporary construction access routes

Tasks in the anticipated scope of work may include preparation and submission of:

- Coordination with USACE – Completion of a Wetland Assessment/Memo (restoration project is in headwaters reach – anticipate using 2-year flood recurrence -OHWM/Bankfull) information from design engineer.
- Joint Aquatic Resources Permit Application (JARPA) in the APPS database
  - [https://www.epermitting.wa.gov/site/alias_resourcecenter/9978/default.aspx](https://www.epermitting.wa.gov/site/alias_resourcecenter/9978/default.aspx)
- DOE ‘Request for Clean Water Act Section 401 Water Quality Certification’*
- Stormwater Pollution Prevention Plan / Erosion and Sedimentation Control Plan
- Development of a Water Quality Monitoring and Protection Plan
- WA DOE Pre-filing meeting request form - Clean Water Act Section 401
- SEPA (possible DOE requirement)
The Tribe will submit a WDFW Fish Habitat Enhancement Project streamlined application (per RCW 77.55.181) to streamline SEPA and county permit requirements. The Tribe also anticipates submitting a 4(d) Limit 8 application to secure Endangered Species Act Section 7 coverage. Natural Systems Design (NSD) is the engineering firm (draft permit-level engineering plans attached).

Location
The project site is located on industrial timberland owned by Rayonier above the town of Grays River in Pacific County, Washington. The East Fork Grays River site is approximately 10 miles from the Fossil Creek Road intersection with Highway 4. From Highway 4, follow Fossil Creek (7000 Road) 7.75 miles to the 7200 Road intersection. Follow the 7200 Road 2 miles to the project site. Coordinates are Lat 46.439226°, Long -123.440277°.

The Tribe acquired a Right of Entry permit from Rayonier for this property. The consultant must comply with all conditions in the Tribe’s Right of Entry permit and must secure a gate key from Rayonier. CB Radios are required to safely navigate through the log truck traffic heading in-bound or out-bound on the 7000 and 7200 Roads. Do not attempt to access this privately-owned property unless permission is granted by Rayonier as the site is behind locked gates.

Project Timeline
Project construction is slated for the summer 2023 in-water work window (July 1-Sept 31); however, the Tribe also anticipates requesting in-water work extensions. The selected consultant will coordinate with the Tribe to verify scope of work and cost estimates for hourly contract. Consultant will support Tribe staff with permitting strategy, communication with regulatory agencies, completion of the JARPA and related permit submittals. These initial tasks are time sensitive and need to be completed ASAP. The Tribe is targeting JARPA and applicable permit submittal(s) on or before January 31, 2023 with potential follow-on support through construction during the in-water work window.

Consultant’s Obligations
The selected consultant shall furnish all supervision, labor, equipment and tools necessary to complete the work as outlined in the overview as refined during permit strategy meetings with Tribe staff. The selected consultant will coordinate with Rayonier for a gate key to access the project site and abide by Rayonier’s gate closed policy at all times. Consultant shall maintain an adequate work force at all times to ensure timely completion of the work. Crew members shall utilize appropriate safety equipment at all times, as per industry standard and Rayonier requirements. This includes Consultant compliance with all applicable state laws and Rayonier/DNR requirements including but not limited to those relating to safety and fire prevention. The project site is behind a locked gate; however, CIT and Rayonier assume no responsibility for damage to vehicles/equipment.
Payment Schedule and Contract
Prevailing wage rates do not apply to this professional services contract. The selected consultant may submit monthly invoices during the period of performance. Invoices shall detail and provide a daily record of hours worked and rate for each staff member as per the price sheet and contract (contract attached). CIT Project Manager will coordinate with selected consultant to define scope of services and budget for each applicable permitting task.

All work done under this contract is subject to grant agreements between the Tribe and Washington State’s Recreation and Conservation Office (“RCO”), with all associated requirements included as flow down provisions. Consultant must agree to and ensure compliance with RCO’s Standard Terms and Conditions and RCO Manuals, 7, 8, 5, 18, and 24. Applicable grant agreements will be included with the contract and are available upon request.

Suspension and Debarment
The Cowlitz Indian Tribe will not consider proposals from entities which have been suspended or debarred, and must present, if asked, certification regarding debarment, suspension and other responsibility matters.

Applicants may consult the System for Award Management (https://www.sam.gov) to access the federal list of active suspensions or debarments.

Proof of Insurance
As evidence of the insurance coverage required by this Contract, the Tribe will require the Consultant to furnish acceptable insurance certificates with coverage as detailed in the attached contract prior to commencing work. The certificate will specify all of the parties (e.g., tribe and landowner). If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the Tribe. The Consultant shall be financially responsible for all pertinent deductibles, self‐insured retentions and/or self-insurance. A certificate of insurance may be provided with proposal.

Submittals
Consultants are invited to respond to this RFQ at their own cost. The submittal is limited to a maximum of 12 pages (6 sheets if duplex‐printed) on 8.5” x 11” paper. The Tribe will not provide the selection committee with materials more than the 12‐page submittal limit. Note that staff resumes and the price sheet are not included in the maximum page count.

The Tribe will evaluate proposal submittals for a Time and Materials (hourly) award based on the following required proposal submittals:
1. Cover letter
2. Brief proposed project approach to address potential permitting tasks
3. Key personnel qualifications and demonstrated restoration permitting experience in requested areas of expertise
4. Estimate of availability, proposed schedule, and fees (e.g., anticipated budget range associated with the potential/listed permitting tasks)
5. Project and Client References: Include a minimum of 3 recent examples of relevant prior permitting projects with references (include contact phone, email and summary)
6. Describe ability to respond to the Cowlitz Indian Tribe’s time-sensitive schedule, demonstrated ability to work successfully with owners/representatives and regulatory staff on prior stream restoration, bridge/culvert replacements, or mitigation projects and flexibility in terms of providing desired deliverables at the least cost possible.
7. Price Sheet: Hourly rates for staff
8. Staff resumes

The Tribe is interested in working with qualified consultants who have demonstrated expertise in facilitating regulatory agency approvals and obtaining state and Federal permits to support stream and habitat restoration projects. To that end, Tribe staff will check references and research past completed projects to inform the contracting decision and consultant scoring. The Tribe will review each proposal, proposed approach and compare the time and materials pricing (hourly rates and cost estimate ranges) to identify the first-choice consultant offering the “best value to the Tribe” and then enter into negotiation with the first-choice consultant to award the contract. If agreement cannot be reached on budget, Tribe staff will enter negotiations with the lower ranked consultant, in ranked order, until agreement is reached. The Tribe reserves the right to accept or reject any or all bids, enter into contracts with more than one consultant if needed, and use selected consultant and contract rates on more than one project. The Tribe reserves the right to waive any formal defects or irregularities in the proposals/bids, or to not award the project if deemed to be in the interest of the Tribe or funding agencies.

Materials submitted in response to this competitive procurement shall become the property of the Cowlitz Indian Tribe and will not be returned. All questions regarding this request for proposals shall be made via e-mail to Justin Isle at jisle@cowlitz.org and Peter Barber at pbarber@cowlitz.org. Responses to questions shall be sent via email to all consultants that have expressed interest in submitting a proposal. No inquiries will be answered if received after 6:00 PM on Nov 18, 2022. A hard copy or electronic version (email preferred) of Consultant’s proposal must arrive at the following address no later than 2:00 PM on Dec 2, 2022:

Justin Isle - Restoration Ecologist
Cowlitz Indian Tribe
1055 9th Avenue, Suite A
Longview, WA 98632
Telephone Number (503) 799-0934 Cell, or email jisle@cowlitz.org

If delivering proposal in person, please call in advance for office hours and directions.
EXHIBIT B

CONSULTANT AGREEMENT

Between:

The Cowlitz Indian Tribe on behalf of its Natural Resources Department
P.O. Box 2547
Longview, WA 98632
General Phone: (360) 577-8140
Department Phone: (360) 353-9509
(Hereinafter “Tribe”)

CONSULTANT NAME
ADDRESS
ADDRESS
Phone:
(Hereinafter “Consultant”)

This Consultant Agreement (“Agreement”) is executed by and between Consultant and the Tribe, a federally recognized sovereign nation pursuant to 65 Fed. Reg. 8436 (Feb. 18, 2000). Consultant and Tribe may be collectively referred to herein as the “Parties”, and each may be referred to as a “Party”.

TERMS & CONDITIONS

1. Term. The effective term of this Agreement shall be December 1, 2022 through December 31, 2023 absent a valid termination action in accordance with the express terms of this Agreement.

2. Consultant Obligations. The Consultant agrees to perform services as set forth below and detailed in the attached “Exhibit A — Scope of Work” (collectively, the “Services”)

3. Designated Staff Contacts. The following Staff Contacts shall act as the primary points of contact for the Parties during the term of this Agreement. Tribe and Consultant agree that these Staff Contacts are designated for purposes of technical communication and service coordination only, and shall have no authority to authorize any changes, modifications, or addendums to this Agreement. The Parties may from time to time change their designated Staff Contact by giving the other party reasonable notice of such change.

   Tribe’s Staff Contact:
   Phone:
4. Notice; Designated Legal Contacts. Any and all legal notice required by or issued pursuant to this Agreement must be provided in writing, and shall be delivered postage pre-paid via certified mail or a reputable overnight courier to the following Legal Contacts:

4.1. Legal notice to Consultant shall be at the address set forth on page one of this Agreement, and care of the Consultant’s designated staff contact identified above.

4.2. Legal notice to the Tribe shall be to the Cowlitz General Council Chair at the address set forth on page one of this Agreement, with courtesy copies sent to the Tribe’s designated Staff Contact listed above, and to the Tribal Attorney of the Cowlitz Indian Tribe Legal Department at P.O. Box 2547 Longview, WA 98632.

4.3. Either party may from time to time change its designated address for legal notice, or designated Legal Contact(s) for notice, by giving the other party reasonable notice of such change in writing.

5. Change Orders. Consultant understands and agrees that any material changes, modifications, or addendums to this Agreement and/or the underlying Project must be authorized in writing by the Cowlitz Tribal Council, acting through its designated representative and executed by an individual to whom the Tribe has delegated signature authority.


6.1. Maximum Compensation. The maximum total compensation amount approved by Tribe and payable to Consultant under this contract shall not exceed $XXXXXXXXXXX (XXX,XXX); which amount shall include any and all compensation for Services and “Eligible Expenses” (including but not limited to mileage, travel, and payment or reimbursement of direct actual costs and expenses), as further described below and set forth in detail in the attached “Exhibit A — Scope of Work”. If Exhibit A 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 Tribe, at its sole discretion, to cover fees for authorized Services, so long as the total compensation amount set forth above is not exceeded.

6.2. Rates. Tribe shall compensate Consultant according to the billing rate(s) and/or fee schedule(s) set forth in Exhibit A in an amount not to exceed that stated in Section 6.1 above.
6.3. Eligible Expenses. Consultant may only seek reimbursement for Eligible Expenses, which are those reasonable expenses incurred with the prior written approval of Tribe or its designated representative. For Eligible Expenses, Consultant must provide a receipt or other proper proof of expense to receive reimbursement from Tribe.

6.3.1. Travel Expenses. Subject to applicable law, Tribe shall evaluate and determine the reasonableness and allowability of travel expenses in accordance with the standards set forth in 41 C.F.R. Subtitle F, Chapter 301, as amended. Provided, however, that where such standards conflict with any Cowlitz Indian Tribe law or policy, the Cowlitz Indian Tribe law or policy shall govern.

6.3.2. Ownership of Expensed Items. Tribe shall retain sole and exclusive ownership of all property — real, movable, and/or intellectual — for which Tribe has provided any reimbursement to Consultant under this Agreement. Consultant shall promptly deliver to Tribe any Cowlitz Indian Tribe property upon request, or at the completion or termination of this Agreement.

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

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

6.6. Invoicing & Payment. Consultant shall submit invoices and appropriate supporting documentation to Tribe in accordance with Exhibit A. Unless the Parties agree in writing to different terms, invoice periods shall begin on the first day of each month and end on the last day of each month. Invoices shall be submitted by Consultant to Tribe’s designated Staff Contact within fifteen (15) days after the end of the month in which the Services were provided and/or expenses were incurred. Consultant waives the right to receive full payment on invoices submitted more than sixty days following the end of the proper invoice period.

6.6.1. Progress Reports. At Tribe’s request, or as otherwise agreed upon by the Parties in writing, Consultant shall submit a progress report along with its monthly invoice. Such progress reports should generally include, as attached exhibits, copies of all work product prepared or created by Consultant during the relevant invoice period(s). In addition, at Tribe’s request, Consultant will
provide oral reports and presentations to the Cowlitz Tribal Council and/or General Council.

6.6.2. Invoice Issues. If a question or concern arises regarding an item on an invoice, Tribe shall notify Consultant of the question or concern. Within five (5) business days following such notification, Consultant shall take action to sufficiently explain or correct the item, or Consultant shall be deemed to have waived their right to demand payment for the item.

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


8.1 Independent Contractor. Consultant shall employ, at its own expense, all personnel reasonably necessary to perform the Services contemplated by this Agreement. Such personnel shall not be considered Tribe’s employees. Consultant shall be responsible to ensure that all personnel engaged in performing Services are fully qualified to undertake the work in accordance with applicable tribal, federal, state, and local laws. Consultant shall at all times in performance of this Agreement operate as, and have the status of, an independent contractor, and will not be an agent or employee of Tribe; nor will Consultant or its personnel be entitled to any employee benefits provided by the Tribe. The Parties are not engaged in a joint venture or partnership. Neither party can represent or bind the other.

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

8.2.1. Indian Preference. Notwithstanding the above, Consultant shall, for all work performed on or near the Cowlitz Indian Reservation pursuant to this Agreement, and consistent with Section 703(i) of the 1964 Civil Rights Act, give preference in employment (including any authorized subcontracts) to equally qualified Indians regardless of their handicap, age, religion or sex. To the extent feasible and consistent with the efficient performance of this Agreement, the Consultant shall provide employment and training opportunities to Indians that
are not fully qualified to perform under this Agreement, regardless of their handicap, age, religion or sex. Further, the Consultant shall comply with any applicable Indian preference laws and requirements established by the Cowlitz Indian Tribe.

8.3 Taxes, Permits, Fees. Unless expressly agreed to herein, the Tribe shall not be responsible for the payment of any taxes, permits, licenses or other expenses incurred by Consultant during the performance of this Agreement. Consultant shall be solely responsible to secure and pay for any necessary or appropriate permits, fees, licenses, inspections, or other prerequisites necessary for proper performance of the Services contemplated by this Agreement.

8.4 Subcontractors. Consultant shall not be permitted to hire a subcontractor to perform the Services contemplated by this Agreement without the Tribe’s express prior written authorization. Any unauthorized attempt by Consultant to subcontract for such Services shall be null and void, and Consultant shall be responsible for all expenses, fees, and costs associated with any such unauthorized subcontract.

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


9.1. Professional Work. Consultant shall perform Services in a professional, thorough, skillful, and safe manner, consistent with the relevant standard of care expected from professionals with similar credentials and experience, and in accordance with the usual and customary standards accepted in Consultant’s profession for similar projects. Consultant shall notify Tribe of any inconsistencies or errors in Consultant’s work that do not meet the aforementioned standards as soon as possible.

9.2. Compliance with Applicable Laws. Consultant shall comply with all applicable tribal, federal, state and local laws, regulations, guidelines and policies in performance of Services and fulfillment of duties and obligations pursuant to this Agreement. Consultant represents that it has reviewed, and is familiar with, all laws relevant to the performance of Services under this Agreement.

9.3. Project Conflicts. Consultant shall not accept work from any third party during the term of this Agreement that creates a conflict of interest or the appearance of a conflict of interest with the Services.

9.4. Broad Protection. All representations and warranties set forth in this section, or memorialized elsewhere in this Agreement and its Exhibits, shall be interpreted expansively to afford the broadest protection available to Tribe.

10. Access to Records, Personnel, and Facilities. Subject to applicable law, Tribe will provide Consultant with reasonable access to its personnel, facilities, and records necessary to the performance of this Agreement.
10.1 Confidential Information. Where Consultant receives any documents or
information typically maintained in confidence by the Tribe (“Confidential
Information”), Consultant will, subject to applicable law, make all reasonable efforts
to prevent the disclosure of such Confidential Information to any and all third
parties. Further, Consultant shall not use the Confidential Information for any
purposes other than performance of this Agreement.


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

11.2. Ownership. Tribe shall own all Work Product associated with this Agreement; and
Consultant agrees that it will not retain any interest in such work product, and shall, in
accordance with any and all applicable law, turn over any and all Work Product property
to Tribe upon the expiration or termination of this Agreement or upon request.

11.3. Confidentiality. All Work Product shall be considered highly confidential, and
Consultant shall take all necessary measures to maintain that confidentiality, and shall
not disclose, publish, or disseminate any Work Product without the express prior
written authorization from Tribe. Internally, Consultant shall only disclose Work
Product to employees when necessary to perform the Services contemplated by this
Agreement; and Consultant shall require all employees to maintain the Work Product’s
confidentiality.

11.4. Injunctive Relief. Consultant acknowledges that the breach or threatened breach by
Consultant of the terms and provisions of this Section would cause irreparable injury to
the Tribe, which could not be adequately compensated by money damages. Thus,
Consultant agrees that Tribe may obtain a restraining order and/or injunction
prohibiting Consultant’s breach or threatened breach of these provisions in addition to
any other legal or equitable remedies. Consultant agrees that this provision is fair and
necessary to protect the Tribe’s unique political and cultural interests, rights, and
confidential information.

12. Insurance.

12.1. Whether Required. Insurance ☐ IS ☐ IS NOT required. (If unchecked, insurance is
required.)

12.2. Generally. If insurance is required, Consultant shall (subject to applicable law)
maintain, at a minimum, the following insurance throughout the term of this Agreement
and for a period of three (3) years following substantial completion or termination of the
Project, naming Tribe as an additional insured:

• Commercial General Liability Insurance in the amount of at least one million
dollars per occurrence and two million dollars aggregate.
- Commercial Automobile Liability Insurance in an amount equal to the greater of either (a) one million dollars for all vehicles used in performance of Services pursuant to this Agreement, or (b) any other amount required by applicable law.
- Worker’s Compensation Insurance, Disability Benefits Insurance, and any other insurance required by applicable law.

12.3. **Delivery of Certificates.** If insurance is required, Consultant shall deliver certificates of insurance showing the foregoing coverage within ten days of the start of the work.

12.4. **Cancellation, Termination, and/or Lapse of Insurance.** Consultant agrees to provide Tribe with at least thirty (30) days prior notice of Consultant’s intent to cancel, terminate, or allow any insurance policy required herein to lapse during term of this Agreement, and for a period of three (3) years following the expiration or termination of this Agreement.

12.5. **No Subrogation.** Consultant waives all subrogation rights it may have against the Tribe and any of the Tribe’s contractors, subcontractors, agents, officers, employees or entities.

13. **Indemnification.** Consultant agrees to, at its sole expense, hold harmless, indemnify, and at Tribe’s sole discretion defend the Tribe and its officers, agents, employees, and assigns against any and all claims, demands, judgments, losses, costs, damages, expenses or other liabilities whatsoever, including court costs and reasonable attorney’s fees and expenses, incurred by or claimed against the Tribe, its officers, agents, employees, and/or assigns, that arise out of or are based upon, whether directly or indirectly, Consultant’s and/or Consultant’s employee’s, officers’, or agents’ errors, actions, omissions, and/or breach of contract related to this Agreement, including, but not limited to, accidents or injuries to persons or property.

The Tribe agrees to, at its sole expense, hold harmless, indemnify, and at Consultant’s sole discretion defend the Consultant and its officers, agents, employees, and assigns against any and all claims, demands, judgments, losses, costs, damages, expenses or other liabilities whatsoever, including court costs and reasonable attorney’s fees and expenses, incurred by or claimed against the Consultant, its officers, agents, employees, and/or assigns, that arise out of or are based upon, whether directly or indirectly, the Tribe’s and/or the Tribe’s employee’s, officers’, or agents’ errors, actions, omissions, and/or breach of contract related to this Agreement, including, but not limited to, accidents or injuries to persons or property.

14. **Termination.**

14.1. **For Convenience.** Either party may terminate this Agreement by giving to the other party at least ninety (90) days prior written notice. The notice shall specify the effective date of termination.
14.2. **For Breach.** Either party may immediately terminate this Agreement by written notice following a material breach by the other party.

14.3. **By Tribal Council Executive Committee.** Notwithstanding anything herein to the contrary, Consultant understands and agrees that the Cowlitz Tribal Council Executive Committee may immediately terminate this Agreement by written notice.

14.4. **Effect.** Upon termination, the obligations of the Parties for the further performance of this Agreement shall cease, but the Parties shall not generally be relieved of the duty to perform their obligations arising up to the date of termination. Termination shall in no way limit or restrict any right or remedy at law or equity which would otherwise be available to Tribe, including, but not limited to, the right to contract with other qualified persons to complete the performance of Services identified in or contemplated by this agreement.

15. **Dispute Resolution.**

15.1. **Negotiation.** In the event that a dispute arises between the Parties over the performance, interpretation, or enforcement of this Agreement, the Parties in the first instance shall attempt in good faith to resolve the dispute informally through face-to-face negotiations. These negotiations shall take place at the Cowlitz Indian Reservation in Ridgefield, Washington, unless otherwise agreed upon in writing by the Parties. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the Parties, their agents, employees, experts and/or attorneys shall be considered confidential, privileged and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties. Provided, however, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiations.

16. **General Terms.**

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

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

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

16.3.1. **Attachments.** The following documents are hereby incorporated by this reference and made part of this Agreement:

- Exhibit A – RFQ
16.4. **Amendments.** No change, amendment, modification, or addendum to this Agreement shall be valid unless it is in writing and executed by authorized representatives of both Parties.

16.5. **Survival.** The requirements of Section 7 (Maintenance & Retention of Records; Financial Management for Accounting & Audits), Section 11 (Work Product), Section 13 (Indemnification), and Section 15 (Dispute Resolution) of this Agreement shall survive termination of this Agreement. Further, provisions that, by their nature, are reasonably expected by the Parties to be performed after the expiration or termination of this Agreement shall survive and be enforceable. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement, shall survive the expiration or termination of this Agreement.

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

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

16.8. **Conflicts.** In the event of a conflict between the terms and conditions of this Agreement and those of a Scope of Work or other exhibit or attachment to this Agreement, the terms and conditions of this Agreement shall be controlling.

16.9. **Execution.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement and any ancillary documents may be executed and/or delivered by electronic means by any of the Parties to any other Party and the receiving Party may rely on the receipt of such document so executed or delivered as if the original had been received.

17. **Force Majeure.** This Agreement is subject to force majeure, and is contingent on strikes, accidents, acts of God, weather conditions, fire, and other circumstances that are beyond the control of the Parties. If the terms and conditions of this Agreement are unable to be performed as a result of any cause of force majeure, then this Agreement shall be void, without penalty to any party for such non-performance.

18. **Jurisdiction & Venue.** The validity, interpretation, and performance of this Agreement, and any and all written instruments, agreements, specifications and other writings of whatever nature which relate to or are part of this Agreement, shall be governed by and construed in accordance with the laws of the State of Washington. This Agreement is deemed executed at the Cowlitz Indian Reservation in Ridgefield, Washington. Venue of any court action filed to enforce or interpret the provisions of this Agreement shall be exclusively
in the courts of Clark County, Washington. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees and expenses in addition to any other relief allowed.

19. **Sovereign Immunity.** Notwithstanding any other terms or provisions of this Agreement, Consultant understands and agrees that the Tribe, by entering into this Agreement, does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its sovereign rights, privileges, remedies, or services guaranteed by federal law.

20. **Special Provisions.** In addition to the foregoing terms and conditions, the following requirements are agreed to and shall apply to this Agreement:

20.1. Compensation under this Agreement is dependent upon availability of funds to the Tribe under agreements numbered 20-1358 and 20-1177 between the Washington State Recreation and Conservation Office and the Tribe, the contract clauses of which are attached hereto and incorporated by reference herein. In addition to compliance with the other terms of this Agreement, Consultant shall comply with all requirements set forth in agreements numbered 20-1358 and 20-1177’s clauses that are applicable to subcontractors by its terms.

IN WITNESS WHEREOF, we set our hands and seals:

[Signature page(s) to follow.]
Cowlitz Indian Tribe:

By: _________________________________

Date: _________________________________

Name:
Title:

Consultant:

By: _________________________________

Date: _________________________________

Name:
Title:
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Note: Project grant funding allows for mileage and per diem reimbursements at the applicable federal rates.

By signing and submitting this form you are agreeing to honor the completed hourly rate schedule for a period of up to 1-year from date below.

Printed Name & Title:       Signature:       Date:
Exhibit D
Draft Permit-Level Engineering Plan Sheets