



Cowlitz Indian Tribe

Natural Resources Department

Request for Proposals (“RFP”)

Exhibit A

Hardy Creek Reach 5 Design Project Preliminary Engineering Design Services

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

Admin. Contact: Lacey Jacobs – Program Assistant
(ljacobs@cowlitz.org) 360-353-9425

Critical Dates:

- Mandatory Site Tour: June 13, 2024 – 10:00am PST
- Request for Clarification/Question Submittals by: June 20, 2024 – 6:00pm PST
- Response to Questions: June 25, 2024 – 6:00pm PST
- **Proposal Submission Deadline: July 2, 2024 – 2:00 pm PST**
- Tentative Award Selection: July 11, 2024
- Anticipated Project Timeline: July 15, 2024 – August 30, 2025

Attachments:

- Exhibit A – RFP
- Exhibit B – Contract
- Exhibit C – Bid Sheet
- Exhibit D – Price Sheet
- Exhibit E – Preliminary Maps and Photos

Overview

The Cowlitz Indian Tribe (Tribe) secured funding through Washington State Recreation and Conservation Office - Salmon Recovery Funding Board (SRFB) grant to develop a preliminary design to restore natural processes and sediment transport through 2,500 feet of Hardy Creek Reach 5, located on US Fish and Wildlife Service (USFWS); Pierce National Wildlife Refuge. During 2022, Tribe secured National Culvert Removal, Replacement, and Restoration Grant Program (Culvert Program) for the Hardy Creek Fish Passage Project. The development of the SRFB Hardy Creek Reach 5 preliminary design compliments the future removal of the BNSF fish passage barrier culvert crossing (WDFW Site ID#28.0295 0.10) and proposes the removal of a floodplain road prism and USFWS bridge over Hardy Creek. The Tribe, in collaboration with USFWS, requests assistance from a restoration design firm to conduct Stream Simulation and hydraulic/hydrologic modeling to create a design to restore sediment transport through the proposed BNSF bridge crossing and incorporates engineered log structures downstream to create a braided channel, reconnect the floodplain and sort mobile alluvium. These efforts will restore natural processes to benefit in-basin and out-of-basin populations of fall and spring chinook, coho, chum salmon and steelhead. These efforts are a continuation of the Tribe's broader aquatic restoration efforts in Columbia River Tributaries to improve salmonid habitat and aquatic functions downstream of Bonneville Dam.

Location

The Hardy Creek Reach 5 Project is located within Pierce National Wildlife Refuge on Hardy Creek, a tributary of the Columbia River (~142 RM), near North Bonneville, Washington. The 2,500-foot-long project reach starts at the US Fish and Wildlife Service Pierce National Wildlife Refuge access road bridge crossing, downstream through the BNSF railway crossing and a few hundred feet below the second USFWS bridge crossing on the refuge. The lower 600 feet of the project site is influenced by tidal fluctuation and Columbia River tailrace elevations regulated by Bonneville Dam.

To access the site from Stevenson, travel west on Highway 14 towards Mile Marker 36. Turn left onto the gravel road entrance into Pierce National Wildlife Refuge (coordinates 45.635277, -122.002159). After crossing the railroad tracks proceed to Reach 5 by turning left and follow the gravel road to the rail car bridge. The refuge is not open to the public, and the access road has 2 locked gates just south of the highway.

Project Goals and Contract Tasks

Hardy Creek, upstream of the BNSF crossing, is a steep, confined lower Columbia River Gorge tributary. The high-gradient headwaters of Hardy Creek transport sediment downstream to its alluvial fan at the confluence with the Columbia River floodplain. The historic alignment of lower Hardy Creek and the connection to its alluvial fan was severed during the early 1900s with the construction of the BNSF railroad and State Route Highway 14. The high stream power of Hardy Creek and concentrated flows created a significant drop below the BNSF culvert

crossing. The hydraulic power of the stream scoured a pool at the outfalls and created impassable conditions for native salmonids and deposited a wedge of bedload and woody material upstream of the BNSF culvert constriction.

The approach will leverage the future BNSF culvert removal project and create the designs to restore natural processes and restore the transport of sediment and wood to benefit the downstream reach, restore floodplain function, riparian function, and stream habitat diversity. This will be achieved by creating a design to remove channel constrictions at the BNSF culvert crossing and USFWS bridge crossing. The Tribe and BNSF plan to replace the concrete box culvert with a 108-foot bridge comprised of two 30' standard BNSF bridge decks (spans) and one 48' standard BNSF bridge deck. The bridge design allows for higher volume and greater channel width (40 feet) to reduce flow velocity for fish passage and meet climate resiliency criteria. Downstream of this crossing there is a USFWS road prism and bridge creating a channel constriction, that should be relocated to improve floodplain function within Reach 5.

The design will be developed to address and include these work elements:

- Assess sediment transport quantities and substrate sizes after the removal of the BNSF culvert. This data will inform all downstream recovery efforts and ensure the new cross remains passible;
- Model elevation and flow through the new crossing to ensure that it meets fish passage criteria, and these conditions will remain stable over time;
- Design a simulated stream bottom under the new railroad bridge that facilitates fish passage and habitat forming processes;
- Develop engineered log jams to enhance floodplain connectivity downstream of the BNSF crossing through Reach 5 as well as sort and store stream substrate within the system;
- Relocate and design USFWS crossing to reduce impact to natural processes;
- Estimate quantities of salvaged road prism material;
- Salvage stream bed sediment from a defunct chum channel restoration project, located adjacent to Reach 5.



View of BNSF railroad crossing on Hardy Creek



View of Hardy Creek stream channel in Reach 5.

The selected design team will develop a suite of restoration alternatives to achieve the project's work elements. The following general tasks are proposed. Consultant shall provide detailed approach for each task in their proposal:

Task 1: Field Investigation and Surveys

- 1.1 Conduct fieldwork and detailed surveys sufficient to facilitate Task 2 Hydrology and Hydraulics studies, modeling, and subsequent conceptual design alternatives. Field

investigation shall also include a wetland rapid-assessment, pebble counts, bank full widths, longitudinal profile, and estimate of sediment accumulated upstream of the BNSF crossing to inform fish passage design and to estimate sediment transport/conveyance to downstream reaches.

Task 2: Hydrology and Hydraulics Studies

2.1 The design team will construct a 1 or 2-D hydraulic model and watershed hydrology to assist in assessing design alternatives' ability to meet the project goals and Washington Department of Fish and Wildlife's fish passage criteria.

Task 3: Conceptual Design Alternatives

3.1 Prepare a suite of conceptual restoration alternatives for review by the Tribe, BNSF and USFWS staff. Tribe and USFWS staff will provide input based on their likely implementation costs, likelihood of achieving project goals, benefits to fish, and degree of floodplain habitat improvement.

Task 4: Preliminary Design and Report

4.1 Prepare a completed preliminary design set and Basis of Design (BoD) report describing the project reach, project alternative analysis, selection process, and construction cost estimate that conforms to the required deliverables listed in RCO Manual 18.

Task 5: Project Management & Coordination

5.1 Provide project management and coordination for the duration of the project. Provide quality assurance/quality control as needed. Ensure tasks and deliverables meet or exceed industry standards for restoration projects as per RCO Manual 18.

If consultant believes there are additional items that should be included or addressed to strengthen the preliminary design plan set and BoD, please include them in your proposal (including costs).

Project Timeline

For this preliminary design project Task 1 and Task 2 fieldwork, surveys, and modeling shall be completed in time to deliver Task 3 deliverables on or before 2/15/2025. Task 4 deliverables will be due on or before 8/15/2025, unless otherwise approved by CIT. The Cowlitz Tribe's Natural Resources Department is soliciting interest from qualified engineering firms and consultants who can work cooperatively with Tribe and USFWS staff and hit the ground running to meet the above schedule as required by project grant agreements.

Consultant's Obligations

The selected consultant shall furnish all supervision, labor, survey equipment and tools necessary to complete the work as outlined in the overview and tasks. The consultant shall maintain an adequate workforce at all times to ensure timely completion of the Conceptual Design/Alternatives Analysis and Preliminary Designs. The consultant shall comply with the requirements of any agreements granting the Tribe or consultant access to the project site.

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. For lump sum bid tasks, invoices shall be based on approximate percent complete or as otherwise approved by the CIT Project Manager. If the CIT Project Manager requests additional follow-on tasks and additional grant funding is available, hourly rates from the price sheet shall be used. For these hourly tasks, invoices shall detail and provide a daily record of hours worked and rate for each staff member as per the bid sheet, price sheet and contract (contract attached).

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, and 18. 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 RFP at their own cost. The submittal is limited to a maximum of 16 pages (8 sheets if duplex-printed) on 8.5" x 11" paper. The Tribe will not provide the selection committee with materials more than the 16-page submittal limit. Note that staff resumes, bid sheet, 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. Proposed approach to all tasks and deliverables (site specificity; thoroughness; primary/subordinate and supporting tasks)
3. Key personnel qualifications and demonstrated experience/expertise with development of designs for engineered logjams, fish passage channels, and hydraulic modeling.
4. Estimate of availability, proposed schedule, and fees (e.g., budgets for lump sum bid items (with subordinate/supporting tasks details and costs)
5. Project and Client References: Include minimum of 3 recent examples of relevant prior habitat restoration, fish passage, and bridge/culvert projects with references. Please include project summary, bid cost/final contract cost, contract duration, and reference contact’s current phone and email contact information.
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, fish passage, bridge and culvert replacements and associated infrastructure, and flexibility/efficiency when providing desired deliverables.
7. Bid Sheet
8. Price Sheet
9. Staff resumes

Each proposal received will be scored on the criteria A - G listed below considering contractor responses to Items 1 through 9 (listed above).

	Criteria	Points
A.	Cover letter	5
B.	Proposal: Detailed approach to tasks and deliverables	30
C.	Key Personnel: qualifications for restoration design and permitting	15
D.	Proposed Schedule: Detailed schedule; estimate of availability and ability to respond to the Cowlitz Indian Tribe’s time sensitive schedule	10
E.	Project and Client References: minimum of 3 relevant projects with up to date client contact information	10

F.	Bid Sheet	25
G.	Price Sheet	5
Total Points Available:		100

The Tribe is interested in working with qualified consultants who have demonstrated expertise in the development of preliminary design plan sets and associated deliverables (per RCO Manual 18). The consulting firms should have a history of coordinating with Federal, State, and local regulatory agencies and success obtaining state and federal permits to support stream/habitat restoration as well as bridge/culvert infrastructure projects. To that end, Tribe staff may check references and research past completed projects to inform the contracting decision and scoring. The Tribe will review each proposal and proposed approaches to tasks/deliverables and compare pricing 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 consultants, 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, 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 (e.g., if costs exceed grant funding).

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. Responses to questions shall be sent via email to all consultants that have expressed interest in submitting a proposal. **A hard copy or electronic version (email preferred) of Contractor’s proposal must arrive at the following address before the proposal deadline:**

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

Emailed proposals are preferred. If delivering a proposal in person, please call in advance to confirm office hours and instructions.

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 July 15, 2024 through September 15, 2025 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 Exhibits A, C, D, and E (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:

Justin Isle

Phone:

503.799.0934

Email: **jisle@cowlitz.org**

Consultant's Staff Contact:

Phone:

Email:

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. Compensation.
 - 6.1. Maximum Compensation. The maximum total compensation amount approved by Tribe and payable to Consultant under this contract shall not exceed XXXXXXXXXXXXXXXX (\$_____); 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). If the Agreement 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 C and Exhibit D in an amount not to exceed that stated in Section 6.1 above.
 - 6.2.1. Rates are based on a Consultant utilizing a standard forty-hour week with its workforce. Nothing herein prevents the Consultant from setting its own

schedule and, consistent with the critical dates specified in the Agreement, Page 11 of 30 completing its work at an accelerated pace; however, Consultant agrees that overtime is not authorized by this Agreement and that hourly rates shall not be varied by virtue of the Consultant/Contractor having performed work in excess of a standard forty-hour week. The Consultant acknowledges and agrees that, when applicable, and consistent with the limitations specified in this section, it must comply with 40 U.S.C. 3701-3708.

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 assures 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. **Performance.**

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.* Consultant expressly agrees to pay and administer all federal, state and local taxes, permits, licenses, permits, duties, and other expenses incurred or payable in connection with the Services. The foregoing agreement includes, without limitation, payment of taxes based on or related to Consultant's or its Subcontractors' or vendors' labor or income (collectively, "Consultant Taxes"); provided, however, that if Consultant is responsible for payment of the Tribe's taxes under applicable law, unless otherwise instructed by the Tribe or the Tribe is contesting such taxes, Consultant must pay such taxes and Tribe must reimburse Consultant therefor upon submission of evidence of payment. Consultant must promptly provide Tribe with reports or other evidence reasonably acceptable to Tribe showing the payment of Consultant taxes by Consultant. Consultant must cooperate with Tribe to endeavor to minimize any taxes payable Tribe. Consultant must make available to Tribe and claim all applicable sales and/or use or excise tax exemptions, credits or deductions relating to the Services. To the extent Consultant is required by applicable law to collect sales tax from Tribe, Consultant must identify applicable taxes within their budgets and provide evidence of payment or invoice for the sales tax before collecting sales tax from Tribe on materials physically incorporated as part of the Services. Consultant must promptly provide Tribe with evidence reasonably acceptable to Tribe showing the payment of any sales tax by Consultant. Taxes paid by the Tribe hereunder are included within the Maximum Compensation allowed under paragraph 6.1 of this Agreement. Consultant agrees to 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. Representations & Warranties.

- 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. Work Product.

- 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 and United States Forestry Service (if required) 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 – RFP**
- **Exhibit B – Contract**
- **Exhibit C – Bid Sheet**
- **Exhibit D – Price Sheet**
- **Exhibit E– Hardy Creek Reach 5 Design Project – Preliminary Maps and Photos**
- **Exhibit F – Consultant Proposal/Bid**
- **Exhibit G - Tribe’s Q&A Responses / Addenda**
- **Exhibit H – Grant Agreements (redacted)**

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 forgoing 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 23-1193 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 23-1193'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:

Exhibit C
Bid Sheet

**Hardy Creek Reach 5 Design Project RFP
for Preliminary Design Services
Exhibit C.1: Bid Sheet**

Cowlitz Indian Tribe - Natural Resources Department
31320 NW 41st Avenue, Ridgefield, WA 98642



Bid Item	Item Description	Total Quantity	Unit	Unit Price	Total Bid Price
1	Task 1 - Fieldwork/Data Collection (Total including all labor, equipment, & all incidentals)	1	JOB	Lump Sum	\$
2	Task 2 - Hydrology and Hydraulics (Total including all labor, equipment, & all incidentals)	1	JOB	Lump Sum	\$
3	Task 3 - Conceptual Design Alternatives (Total including all labor, equipment, & all incidentals)	1	JOB	Lump Sum	\$
4	Task 4 - Preliminary Design & Reporting (Total including all labor, equipment, & all incidentals)	1	JOB	Lump Sum	\$
5	Task 5 - Project Management & Coordination (Total including all labor, equipment, & all incidentals)	1	JOB	Lump Sum	\$
SUBTOTAL					
6	Clark County Tax (State 6.5%, County 1.3%)			7.80%	
TOTAL BID					\$

Signature: _____
Name (print): _____
Title: _____

Date: _____

Exhibit D
Price Sheet

**Hardy Creek Reach 5 Design Project RFP
for Preliminary Design Services
Exhibit C.2: Price Sheet - Hourly Rates for Potential
Follow-On Tasks**



Cowlitz Indian Tribe - Natural Resources Department
31320 NW 41st Avenue, Ridgefield, WA 98642

Items	Staff Name	Title/Level/Position (as applicable)	Unit	Hourly Rate (loaded rate for qualified staff)
1	Staff			
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$
			Hourly	\$

Notes: Price sheet for potential follow-on tasks (if and as needed at direction of CIT Project Manager)

Signature: _____
 Name (print): _____
 Title: _____

Date: _____

Exhibit E
Hardy Creek Reach 5 – Preliminary Maps
and Photos

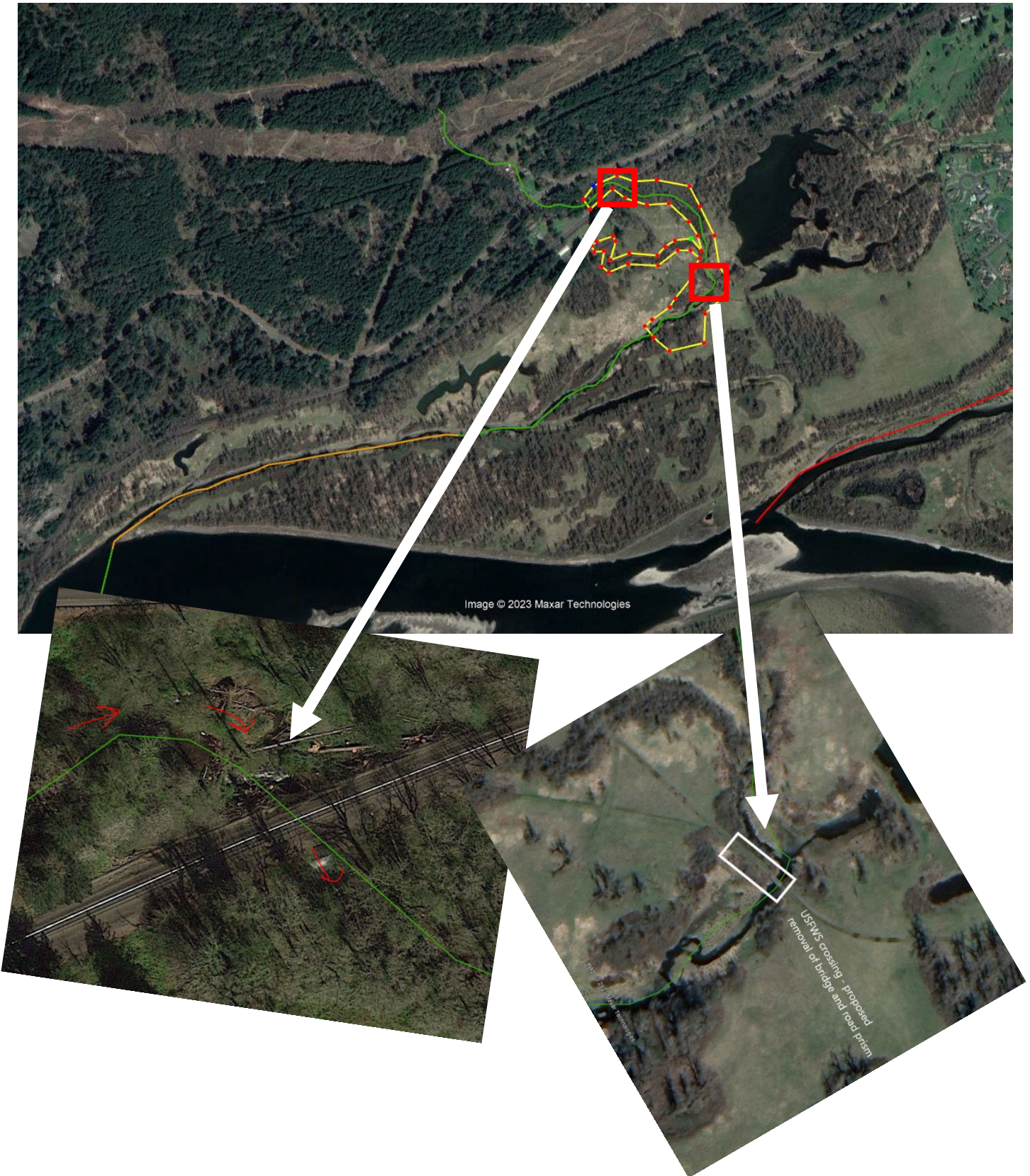
Hardy Creek Reach 5 Design – Project area map

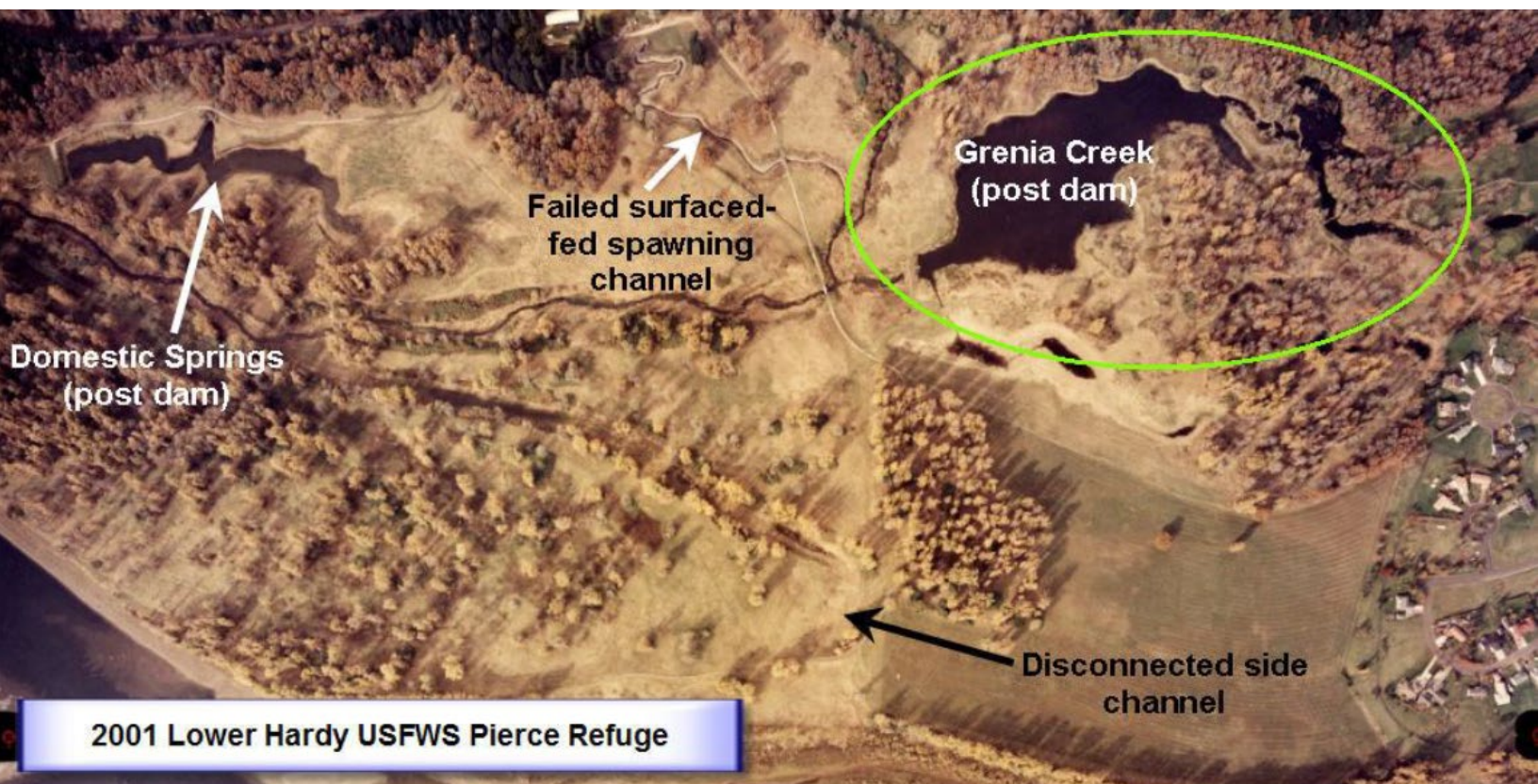
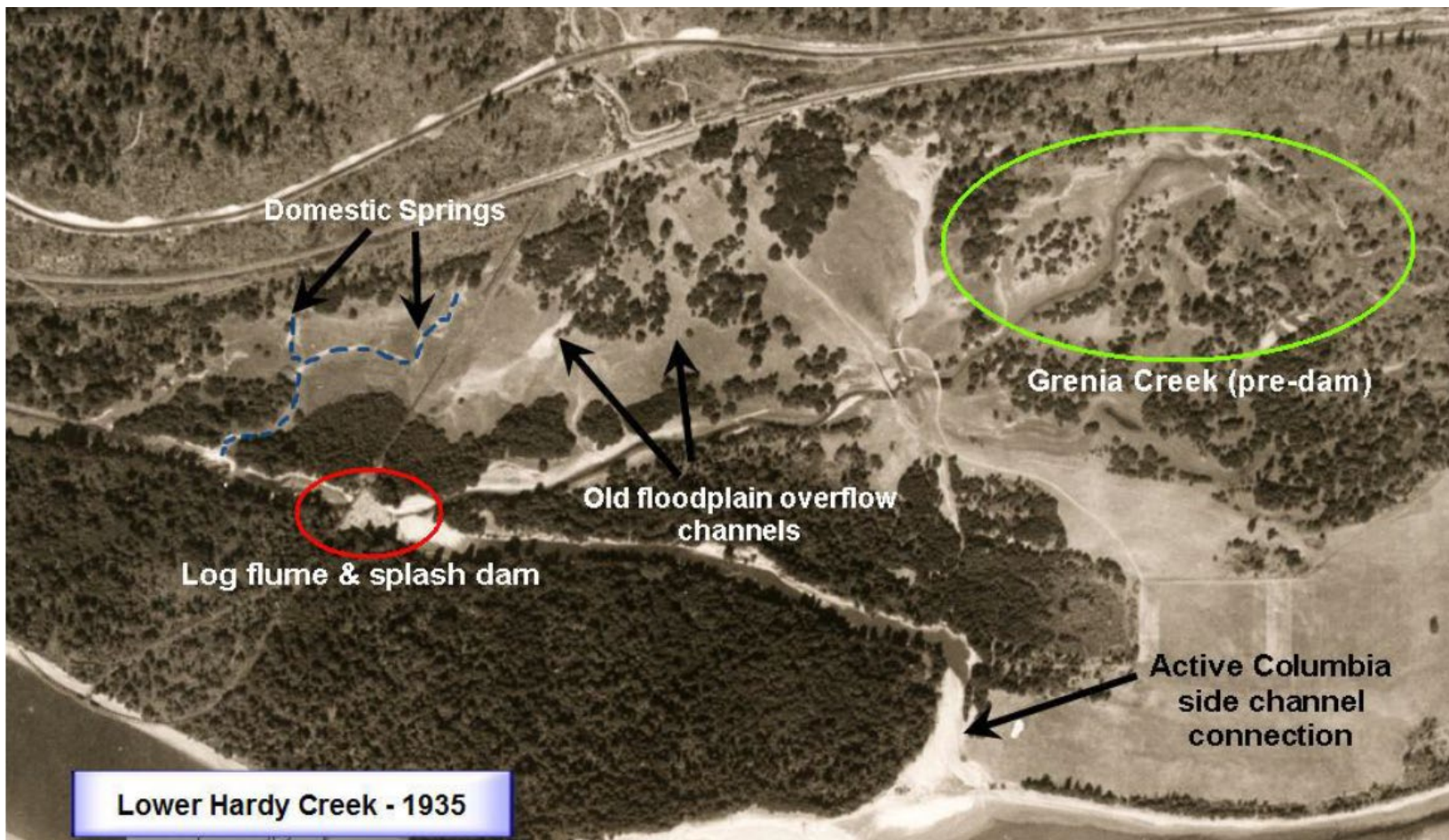
Landowner: USFWS & BNFS

Project sponsor: Cowlitz Indian Tribe

SRFB # 23-1193

Highlights two locations: 1) BNSF crossing and sediment plug upstream; 2) USFWS road prism and bridge crossing





LiDAR image of Reach 5 Project area

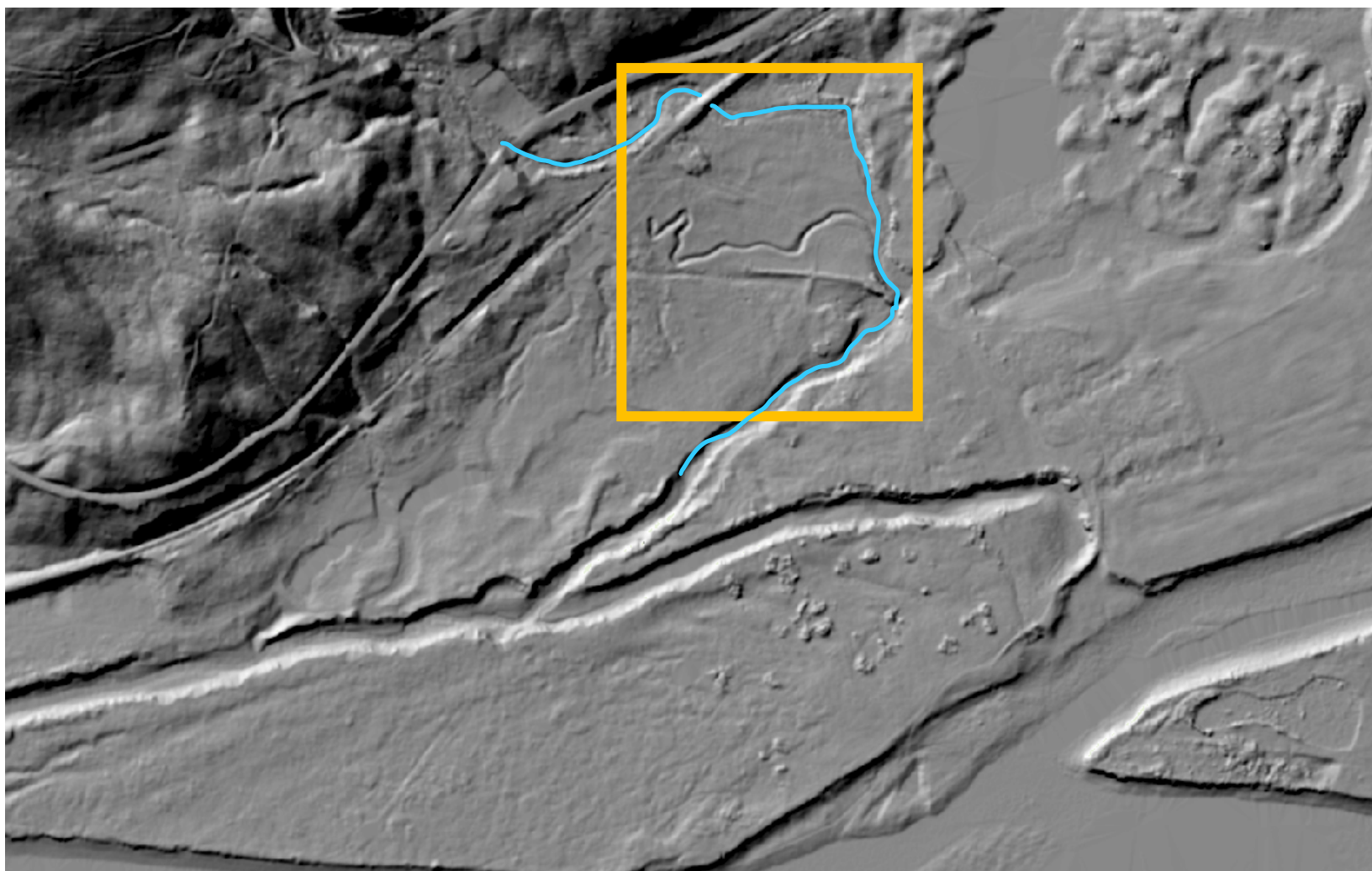


Exhibit F
Consultant Proposal/Bid

(Reserved for incorporation into the Contract Documents upon award and subsequent negotiations)

Exhibit G
Tribe's Q&A Responses / Addenda

(Reserved for incorporation into the Contract Documents upon award and subsequent negotiations)

Exhibit H
Grant Agreements (redacted)

(Reserved for incorporation into the Contract Documents upon award and subsequent negotiations)