

# AGENDA REQUEST FORM

**Return completed form and complete agenda item to the Clerk of the Board  
Yakima County Commissioners' Office, Room 232**

Prepared by:  
Lisa Freund

Department: Public Services

Requested Agenda Date: 03/17/2020

Presenting: \_\_\_\_\_

Document Title: \_\_\_\_\_

*Board of County Commissioners Record Assigned*  
BOCC Agreement  
#  
**072 - 2020**  
Yakima County, WA

**APPROVED FOR AGENDA:**  
 Consent       Regular  
*Board of County Commissioners Determined*

**Personal Services Agreement with AHS-EWU for cultural resources**

Action Requested: *Check Applicable Box*

PASS RESOLUTION       EXECUTE or AMEND **AGREEMENT** CONTRACT or GRANT  
 ISSUE PROCLAMATION     PASS ORDINANCE     OTHER \_\_\_\_\_

Describe Fiscal Impact:

Funds provided by a grant from Ecology (BOCC 222-2019 / WRYBIP-2019-YaCoPS-00006)

Background Information:

Consultant (Archaeological and Historical Services - Eastern Washington University, or AHS-EWU) was selected from the consultant services roster following the procedures provided by the BOCC in Section 4 of Resolution 140-2019.

Summary & Recommendation:

Execute personal services contract with AHS-EWU.

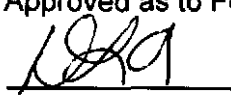
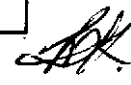
Motion:

\_\_\_\_\_

Department Head/ Elected Official

  
Signature

**AGREEMENT** Attached Is Approved as to Form  
Corporate Counsel Initial

*Late Agenda Requests Require BOCC Chairman Signature:*  
\_\_\_\_\_

## PERSONAL SERVICES AGREEMENT

072 - 2020

THIS AGREEMENT is entered into between YAKIMA COUNTY, Washington, hereinafter "County", whose address is 128 North 2<sup>nd</sup> Street, Yakima, Washington 98901, and "Consultant", more specifically identified as:

Name: Archaeological & Historical Services - Eastern Washington University  
 Street: 201 Isle Hall  
 City, State Zip: Cheney, WA 99004  
 Federal Tax I.D. #: 91-6000624  
 U.B.I. #: 321000780

**RECITALS:**

In consideration of the terms and conditions contained, the parties hereto agree as follows:

1. **Service and scope:** The Consultant will provide services to Yakima County for the following described work:

Consultant agrees to perform those services specified in and reasonably inferred by Exhibit A to support project FC3687, the Naches-Cowiche Flood Risk Reduction and Floodplain Restoration Project.

2. **Amendments.** This Agreement contains all terms and conditions agreed upon by the parties. No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing and executed by both parties.
3. **Compensation.** The maximum aggregate compensation paid to the Consultant shall not exceed: \$21,810.48 for the total of all work over the term of this Agreement, as may be extended, and shall be full compensation for all costs and expenses. The County makes no guarantee that work issued under this contract will total the maximum aggregate compensation identified above. The Consultant shall maintain a written record of all expenses and submit monthly detailed invoices to:

Yakima County Public Services  
 128 N 2<sup>nd</sup> Street, Fourth Floor Courthouse  
 Yakima, Washington 98901

The County shall pay the Consultant within 30 days of acceptable invoice receipt. All billings must be submitted by the Consultant within 60 days of the completion of the services.

4. **Independent Consultant.** For the purposes of this contract, the Consultant acknowledges they are not an officer, employee, or agent of Yakima County. The Consultant shall not hold out itself or any of its employees as, nor claim for itself if its employees any rights, privileges, or benefits, which would accrue to an employee of the County. The Consultant shall indemnify and hold harmless the County from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Consultants or its employees or assigns. The Consultant is solely responsible for payment of any statutory workers compensation or employer's liability insurance as required by state law.

5. **Nondiscrimination.** The Consultant agrees that it shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, sexual orientation, veteran status, pregnancy, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) or any other applicable state, federal or local law, rule or regulation. The Consultant and any subconsultants shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime consultants and subconsultants to employ and advance in employment qualified protected veterans and individuals with disabilities.
6. **Assignment.** The Consultant shall not assign or subcontract any portion of the contracted activities without obtaining prior written approval from the County.
7. **Termination.** Either party may terminate this contract upon thirty days' written notice sent by certified mail to the addresses listed above.

If the funds the County relied upon to establish this Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, the County may immediately terminate this Agreement by providing written notice to the Consultant. The termination shall be effective on the date specified in the termination notice.

8. **Indemnification and hold harmless.** The Consultant does hereby release, indemnify and provide to defend and save harmless Yakima County from and against any and all liability, loss, damage, expense, actions and claims, including costs and reasonable attorney's fees incurred by the County in defense thereof, asserted or arising directly on account of or out of acts or omissions of the Consultant and the Consultants agents, employees and consultants in the exercise of the rights herein; PROVIDED, this paragraph does not purport to indemnify the County against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of (a) County or County's agents or employees; and PROVIDED FURTHER, that if the claims or damages are caused by a result from the concurrent negligence of the County, its authorized agents, officers or employees and (b) Consultant its authorized agents, officers or employees or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Consultant or its authorized agents, consultants or employees. Nothing in this indemnification clause shall be construed to apply to any actions, proceedings, suits, or claims for inverse condemnation, or condemnation, arising under Title 8, Chapter 8.08, Sections 8.08.005 thru 8.08.130 of the Revised Code of Washington or otherwise.
9. **Liability insurance.** Commercial General Liability insurance at a limit of liability not less than \$2,000,000 Each Occurrence, and \$5,000,000 General Aggregate per project. Insurance shall be written on ISO occurrence form CG 00 01 or an alternate form providing equal or broader liability coverage. Such coverage shall not contain any endorsement(s) excluding or limiting Products Completed, Operations, or Contractual Liability Cross Liability. Yakima County, its officers, employees, agents, and volunteers shall be named as Additional Insureds under the coverage with respect to the work performed under this Agreement. Such insurance shall provide that Yakima County, its officers, employees, agents and volunteers are Primary Additional Insureds under such insurance. The coverage provided under such insurance for such Primary Additional Insureds shall be primary and not contributory to any other coverage that may be available to such Primary Additional Insureds. Business Automobile Liability insurance at a combined single limit of liability for bodily injury and property damage not less than \$2,000,000 Each Occurrence covering all Owned, Non-owned, Hired, and leased

automobiles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equal or broader liability coverage. In the event the Consultant does not own automobiles, Consultant agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. If necessary, the policy shall be endorsed to provide contractual liability coverage.

10. **Verification of coverage.** Prior to execution of this Agreement, Consultant shall furnish the County with original Certificates of Insurance and a copy of any amendatory endorsement, including without limitation, the Additional Insured endorsement, evidencing the insurance requirements.
11. **Consultants' Waiver of Employer's Immunity under Title 51 RCW:** The Consultant indents that its obligations to indemnify, defend, and hold harmless employee contributions set forth above in sections 4 and following section 9, shall operate with full effect regardless of any provision contrary in Title 51 RCW, Washington Industrial Insurance Act. Accordingly, the Consultant specifically assumes all potential liability for defense and payment of judgement in all actions brought to employees of the Consultant against the County and its officers, employees, and volunteers, and for the purposes of enforcing the Consultant's obligations to indemnify, defend, and hold harmless set forth above in section 4, the Consultant, specifically waives any immunity granted under the state industrial insurance law, Title 51 RCW. The parties have mutually negotiated this waiver. The Consultant shall similarly require that any subconsultant it retains in connection with its performance of this Agreement shall comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by employees of the subconsultant.
12. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement.
13. **Severability.** If any term of this Agreement is held invalid by any court, the remainder of the Agreement remains valid and in full force and effect.
14. **Records.** The Consultant agrees to maintain records and documents which accurately reflect all direct and indirect costs related to the delivery of contracted services. The Consultant further agrees to retain all fiscal and program records and other material relevant to this Agreement for at least seven years. Fiscal records must be retained until all audits are resolved.

The Consultant shall, at no cost, provide to the County and the Office of the State Auditor reasonable access to the Consultant's records. These inspection rights are intended to allow the County and the State Auditor to monitor, audit, and evaluate the Consultant's performance and compliance with applicable laws, regulations, and these Agreement terms. These inspection rights shall survive seven years following this Agreement's termination or expiration.

15. **Ownership of Material.** Material created by the Consultant and paid for by the County as part of this Agreement shall be owned by the County and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Consultant uses to perform the Program Agreement but is not created for or paid for by the County is owned by the Consultant and is not "work made for hire"; however, the County shall have a perpetual license to use this material for County internal purposes at no charge to

the County, provided that such license shall be limited to the extent which the Consultant has a right to grant such a license.

16. **Double Payment Prohibited.** The Consultant shall not bill the County for any services, in whole or in part, which have been reimbursed or will be reimbursed by another source. In the event payment is received from another source subsequent to receiving payment from the County, the Consultant shall deduct the amount from the next regular billing.
17. **Laws, venue, jurisdiction.** This Agreement shall be governed by the laws of the State of Washington. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought in the Superior Court for the State of Washington in Yakima County, Washington.
18. **Debarment Certification.** The Consultant, by signature to this Contract, certifies the Consultant, its Principles and any Subconsultants are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (debarred). The Consultant also agrees to include the above language notification requirement in any and all Subcontracts into which it enters. The Consultant shall immediately notify the County if, during the term of this Contract, the Consultant, its Principles or Subconsultants becomes debarred. The County may immediately terminate this Contract by providing the Consultant written notice if the Consultant becomes debarred during the term of this Contract.
19. **Term.** The term of this contract shall be from March 17, 2020 to December 31, 2021.

MAR 17 2020

This Agreement is entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and is executed with three original copies, of which one is to be delivered to the Consultant, one to the County Project Manager and one to the Public Services Accounting Office.

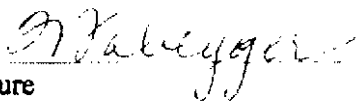
**CONSULTANT:**

**BOARD OF YAKIMA COUNTY COMMISSIONERS:**

Eastern Washington University

Company Name

Norm Childress, Chairman

  
Signature

\_\_\_\_\_  
Ron Anderson, Commissioner

**Toni Habegger, Associate VP & CFO**

Signer's name printed or typed

Vicki Baker, Commissioner

*Constituting the Board of County Commissioners  
for Yakima County, Washington*

**DATED:** 3/9/2020

Attest:

\_\_\_\_\_  
Melissa Paul, Clerk of the Board  
\_\_\_\_\_  
Linda Kay O'Hara, Deputy Clerk

Approved as to form:

  
Deputy Prosecuting Attorney

BOCC Agreement

**072-2020**

Yakima County, WA



March 2, 2020

Mr. Dale Meck  
Yakima County Water Resources Department  
128 N. 2nd Street  
Fourth Floor Courthouse  
Yakima, WA 98901

Re: Cultural Resources Survey for Yakima County's Naches – Cowiche Flood Risk Reduction and Floodplain Restoration Project.

Dear Mr. Meck:

This letter and enclosed budget in the amount of \$21,810.48 comprise AHS' proposal for conducting cultural resources identification survey of the approximately 198-acre project area in Yakima County, WA. Proposed cultural resources tasks are discussed below, first by project actions associated with Project Areas 1-3, and then as part of a future phase action. It is assumed that Yakima County will obtain right of entry/permissions for access to all of the land parcels within the project areas.

For the entire project area, AHS will conduct background research including a search of site files housed at the Washington State Department of Archaeology and Historic Preservation (DAHP), in Olympia, to identify previously recorded cultural resources in or adjacent to the project area. All proposed shovel tests excavations, discussed below, will consist of 40-centimeter diameter shovel tests excavated to approximately one meter in depth where ground-disturbing activities are planned.

### **Project Area 1**

- 1) Conduct a 100 percent pedestrian survey of the entire Project Area 1 in 30-meter or less transects in approximately eight (8) privately-owned acres, which will require landowner permission. Up to 13 shovel tests (ST) will be excavated at 30-meter intervals along the new levee setback. Up to six (6) STs at 30-meter intervals will be excavated along the area proposed for new flood control measures along the Naches - Cowiche Ditch. The Naches – Cowiche Ditch has been recently recorded and does not require update. The existing Historic Property Inventory (HPI) form for property 709470, the Powerhouse Road Bridge spanning Cowiche Creek, will be updated with an eligibility recommendation for listing the resource in the National Register of Historic Places (NRHP). An additional HPI form will be prepared documenting the existing right bank levee proposed for removal, including an eligibility recommendation for listing the resource in the NRHP.

Two (2) historic residential resources are in Project Area 1. Parcel 18130942011, owned by the Naches and Cowiche Canal Co. contains an historic-are dwelling, and the adjacent parcel

18130942010, the Garretson property, also contains an historic-age dwelling. Each will be recorded on HPI forms, with eligibility recommendations for listing the resources in the NRHP.

- 2) Portions of the APE that are close to one previously-recorded archaeological site, 45YA1105, will be visually inspected. If site cultural materials/features are found to extend into the APE, the Archaeological Site Inventory (ASI) form for the resource may be updated. No further work is required if a site boundary is verified as outside the APE.

### **Project Area 2**

- 1) Conduct a 100 percent pedestrian survey of the entire Project Area 2 in 30-meter or less transects on land owned by the Flood Control District. Much of the portion of Project Area 2 where ground disturbance is planned underwent systematic shovel test and hand auguring excavations in 2016, at approximately 80-meter intervals across the parcel. However, the specific route of the new seasonal side channels were not subjected to shovel testing and up to 17 shovel tests at 60 – meter intervals will be excavated along the proposed route of the new side channels. Along the proposed new power line corridor, up to 10 shovel tests will be excavated at pole locations. Based on the current DAHP guidelines, it does not appear that the extant power line corridor, to be relocated, will require HPI recordation.
- 2) The previously-recorded archaeological site 45YA1609 will be visually inspected and the existing ASI form may be updated per DAHP requirements. Previous investigations have recommended the site as ineligible for listing in the NRHP.

### **Project Area 3**

- 1) Pedestrian survey of the entire Project Area 3, owned by the City of Yakima and the Washington Department of Transportation. No shovel tests are currently planned in this area but will likely be warranted after the final U.S. Route 12 Bridge (Bridge #12/329 spanning Cowiche Creek) design has been chosen. Both the extant U.S. Route 12 Bridge and the historic-age City of Yakima Settling Pond will be recorded on separate HPI forms and each will include eligibility recommendations for listing the resource in the NRHP.

### **Cultural Resources Investigations for Future Phase Actions**

- 1) Conduct a 100 percent pedestrian survey of the broader future phase actions APE, outside the boundaries of Project Area 1-3, in 30-meter or less transects. Privately-owned acreage will require landowner permission. Up to five (5) STs will be excavated along the proposed route of the reconnection of the Cowiche Creek and the Naches River. Much of the area associated with the reconnection was shovel tested in 2013 as part of the Lower Cowiche Realignment Project,



and a small number of additional shovel tests are planned in areas that were not previously sampled.

- 2) Two (2) previously-recorded structures are within the project APE, the Fruitvale Irrigation Diversion Naches River Source Channel and Clover Lane Culvert Bridge (property 672852) and the Clover Lane Orchards Bridge (farm bridge; property 672855). Given the planned removal of the resources, each will require updated HPI forms and eligibility recommendations for listing the resources in the NRHP.
- 3) Two (2) historic-age roads within the project APE, Clover Lane and U.S. Route 12, will each require HPI form recordation and eligibility recommendations for listing the resources in the NRHP. Based on updated guidelines provided by DAHP (January 2020) regarding historic-age road recordation, smaller identifiable segments of roads may be recorded instead of the entire thoroughfare. For the project-associated portion of U.S. Route 12, the approximately 16-mile segment of the road between its intersection with SR 410 and its intersection with I-82/US 97 will be recorded.
- 4) The Steeppass Fishway and associated grade control structures, and the Old Union Canal and associated screening facility, both proposed for removal, will each require HPI form recordation and eligibility recommendations for listing the resources in the NRHP.

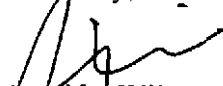
AHS will prepare, as necessary, Washington State Archaeological Site Forms. AHS will submit a professional report of findings including all new and updated ASI and HPI forms, satisfying Executive Order 05-05 and Section 106 of the National Historic Preservation Act to Yakima County for review and comment, prior to preparation of the final report for distribution to review agencies.

#### **Tentative Project Schedule**

After a contract is in place, AHS can schedule the fieldwork within two weeks. A draft report will be submitted to Yakima County within 30 calendar days of fieldwork completion. After receiving comments on the draft, AHS will prepare the final report including the required DAHP coversheet within five (5) business days.

Do not hesitate to contact me if you have any questions. Thank you for the opportunity to submit this proposal.

Sincerely,



Jennifer Wilson  
Director

Enclosure

-----Exhibit A-----

AHS Project Estimate

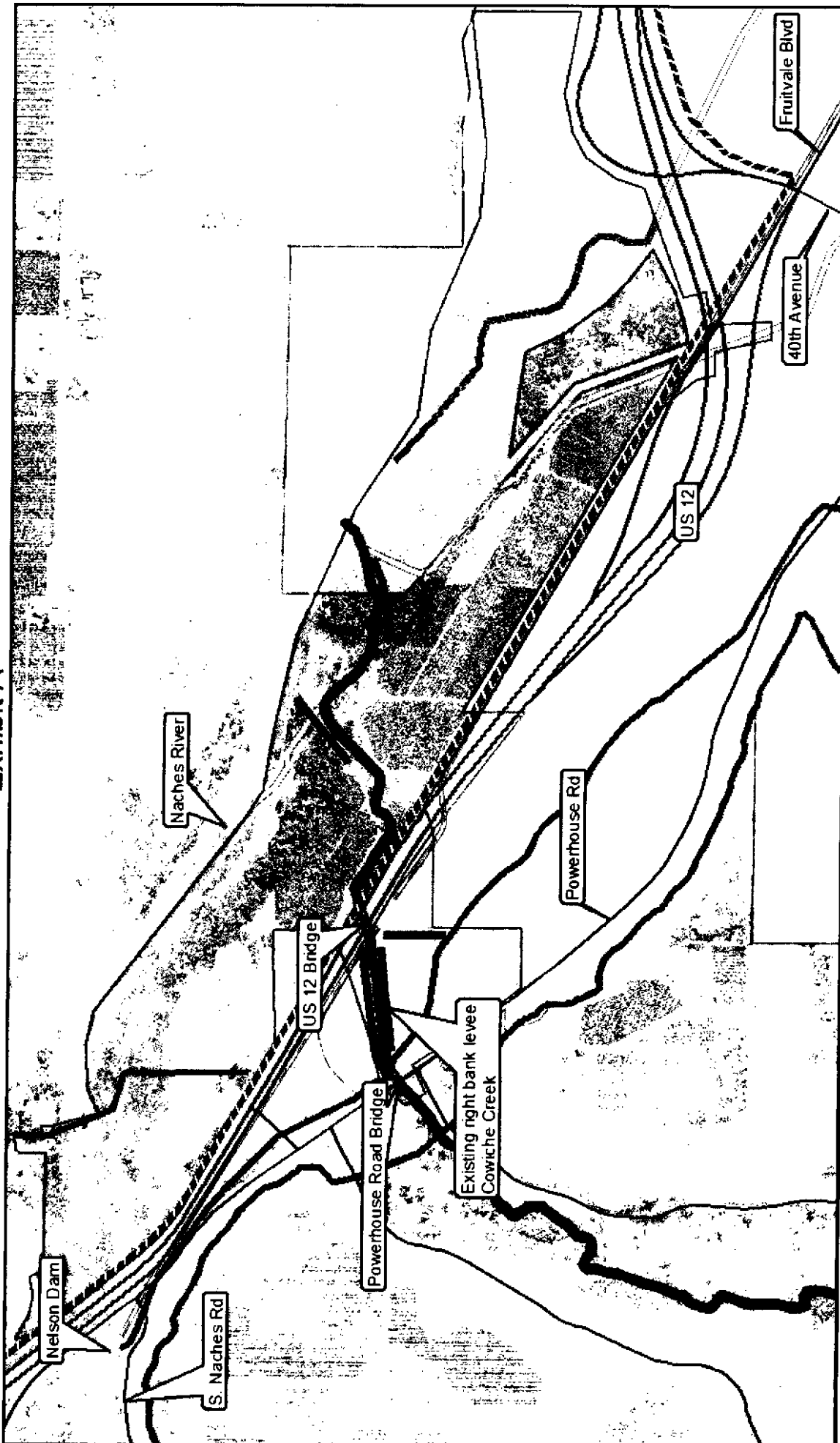
Contractor: Yakima County

Project: Naches - Cowlitz Flood Risk Reduction and Floodplain Restoration Project

Date: February 26, 2020

Part I - Salaries, Benefits, and Indirect Costs			\$19,160.88
Part II - Goods and Services			
copying, phone, postage, etc.			\$137.61
Part III - Travel			
per diem (3 people, 5 days at \$55/day, 4 nights at \$96/night)	\$1,977.00		
motor pool (5 days @ \$71/day)	\$355.00		
mileage (450 @ \$0.40/mi)	\$180.00		
			\$2,512.00
Part IV - Contractual Services			\$0.00
Not To Exceed Amount			\$21,810.48

-----Exhibit A-----



Naches-Cowiche Flood Risk Reduction and Floodplain Restoration Project

AHS-EWU Contract APE Map

Code: FC3687

Map Prepared By: dhm, 3-5-2020



Water Resources Division

Area of Potential Effect (APE)

Existing Power Lines (to Relocate)

Existing Levee/Berm

US 12

Major Roads

City of Yakima

Cowiche Creek

2019 Aerial Photo

Yakima Greenway Path

City General Pipeline (Irr.)

Old Union Canal

Yakima Valley Canal

Fruitvale Canal

Naches-Cowiche Canal



1 inch = 800 feet

Feet

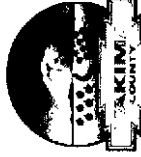
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-----Exhibit A-----



-----Exhibit A-----



Water Resources Division

**Project Title:**  
Naches-Cowiche Flood Risk Reduction and Floodplain Restoration Project

**Floodplains by Design Application (2021-2023)**

**Figure 3 - Future Phases**

Map Prepared by: dhm  
Map Prepared: 1-24-2020

2019 Aerial Photo

Future phase actions are schematic and intended to illustrate how proposed actions within this pre-application fit in the overall scope of the Project

1 inch = 540 feet

0 500 1,000 Feet

