



On-Call Real Estate Appraisal Services

Request for Proposals

May 7, 2020

Columbia River Honor. Protect. Restore.

OFFICE
P.O. Box 151
401 Fort Road
Toppenish, WA 98948

PHONE
(509) 449-2091

FAX
(509) 865-6293

EMAIL
eckm@yakamafish-nsn.gov

WEB
Yakamafish-nsn.gov

Dear Contractor:

Yakama Nation Fisheries (YNF) is seeking proposals from certified general appraisers in the State of Washington to perform "Yellow Book" appraisals of multiple properties targeted for voluntary fee-simple acquisition in Chelan and Okanogan Counties, Washington, using funding provided by the Bonneville Power Administration (BPA) Fish and Wildlife Program. "Yellow Book" appraisals are appraisal reports specifically produced to meet the requirements of the Uniform Appraisal Standards for Federal Acquisitions (USASFLA).

The Bonneville Power Administration Fish and Wildlife Program provides explicit detail towards the definitions, references, and requirements for all appraisals submitted for funding. The updated documentation on BPA appraisal requirements is provided as an attachment to this RFP. The attached January 1, 2015 BPA Appraisal Requirements document will be included as a contract exhibit to which the appraisal contractor will be held responsible for achieving all listed requirements, when requested.

Based upon the proposals received under this solicitation the Confederated Tribes and Bands of the Yakama Nation will award a two year on-call contract to the best quality bidder for the Scope of Work listed below:

Scope of Work

1. Coordinate with YNF, BPA, landowners, and other YNF designees to gather the necessary information and documentation to perform the "Yellow Book" appraisal per BPA's requirements.
2. Discuss and seek pre-approval of appraisal methods with YNF, BPA, and landowner.
3. Conduct site reviews in support of producing the appraisal per BPA's requirements.
4. Conduct restrictive appraisals to determine the likely "Yellow Book" appraised value of a property under consideration for acquisition.
5. Produce appraisal report that meets all of BPA's requirements

As Yakama Nation staff proceeds with developing habitat restoration projects in Okanogan and Chelan Counties, individual project biologists may call upon the winning contractor as necessary to enact a portion or all of the described work tasks to assess and report on specific habitat restoration sites. The Contractor shall furnish all supervision, labor, equipment, and tools necessary to complete the Scope of Work.

Bid Directions

Each company seeking to be eligible for a contract award under this Request for Proposals must submit two hardcopies of their proposal in writing. Please be aware that due to COVID-19 related office closures and social distancing requirements, Yakama Nation Fisheries has changed the bid submittal directions from previous bid opportunities. Hand delivered and package delivery service cannot be accepted. **All proposals must be physically mailed using the United States Postal Service to:**

Yakama Nation Fisheries
Attn: Jackie Olney
RE: On-Call Real Estate Appraisal Services
PO Box 151
Toppenish, WA 98948

Proposals must be received in Toppenish by Close of Business, Thursday, May 28, 2020. Due to the ongoing COVID-19 pandemic only USPS mail delivery submittals will be accepted. It is recommended that all shipping and/or delivery confirmation receipts are retained past the proposal due date to ensure proof of submission.

In addition to the required physical bid submittals, we are also requesting contractors to provide digital copies of their completed bid documents through email submittal directly to Madeleine Eckmann at eckm@yakamafish-nsn.gov. We are encouraging digital copies to be emailed at the same time the physical bid package is mailed to the proper PO Box in Toppenish, WA. This will allow Yakama Nation Fisheries staff to know whether to expect that a hardcopy bid has been submitted, and will allow Yakama Nation Fisheries staff an opportunity to more quickly score and rank bids for the contract award process.

Please note that timely hardcopy bid submittals via the United States Postal Service are a requirement for a bid to be considered competitive. The additional digital email submission is requested but is not a performance requirement. Any digital submittal received with no associated hardcopy submittal to our PO Box by May 28 will be discarded as invalid.

Each proposal must include a Statement of Qualifications pertaining to the bidder's qualifications to produce the Scope of Work items listed in this Request for Proposals, including a roster of key personnel. Please provide a detailed schedule of fees detailing your company's invoicing rates for all personnel and items necessary to complete the proposed Scope of Work. Please include a signed cover letter on company letterhead that provides assurances that the submitted proposal will be valid for 180 days. Please also provide a description of how responsive your company can be to new work requests that may be issued during the contract period.

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

Project related questions should be directed to:

Madeleine Eckmann, UCHRP Habitat Biologist
Phone: 509-449-2091
E-mail: eckm@yakamafish-nsn.gov

Bid Scoring Categories and Weighting

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

- Demonstrated experience with this type of work –15%
- Demonstrated quality of work – 15%
- Cost – 15%
- Schedule – 10%
- Company integrity/references – 10%
- Demonstrated experience with permitting agencies in the Upper Columbia Region –10%
- Adequacy/quality of staff and equipment proposed – 15%
- Completeness of Proposal (Based on RFP Submission Requirements) –10%

Limitations

The Yakama Nation reserves the right to accept or reject any and all of the proposals received as a result of this request, or to cancel in part or entirely this request if it is in the best interest of the Yakama Nation to do so. This request does not commit the Yakama Nation to pay any costs incurred in the preparation of a proposal.

**Bonneville Power Administration
Fish and Wildlife Program**

**DEFINITIONS, REFERENCES, AND REQUIREMENTS
FOR ALL APPRAISALS SUBMITTED FOR FUNDING
TO THE BONNEVILLE POWER ADMINISTRATION
FISH AND WILDLIFE PROGRAM**

**Effective:
January 1, 2015**

**DEFINITIONS, REFERENCES AND REQUIREMENTS
FOR ALL APPRAISALS SUBMITTED
FOR FUNDING TO THE BONNEVILLE POWER ADMINISTRATION (BPA) FISH
AND WILDLIFE PROGRAM**

I. COMPLIANCE DATE FOR THE ENCLOSED REQUIREMENTS AND GUIDELINES

The requirements and guidelines set forth in this transmittal take effect on January 1, 2015. Appraisal reports under contract before the effective date will be accepted for review by the BPA under the previous version of this document.

II. COMPLIANCE WITH FEDERAL REQUIREMENTS AND GUIDELINES

All appraisal work must be in compliance with the following appraisal requirements and guidelines:

1. Uniform Appraisal Standards for Federal Land Acquisitions [(UASFLA) “Yellow Book”]
<http://www.justice.gov/enrd/land-ack/Uniform-Appraisal-Standards.pdf>
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (“Uniform Act”) (42 U.S.C. §§ 4601 *et seq.*, Public Law 91-646), and its implementing regulations (49 C.F.R. Part 24).
http://www.fhwa.dot.gov/real_estate/uniform_act/legs_regs/
3. The Uniform Standards of Professional Appraisal Practice (USPAP)
<https://netforum.avectra.com/eWeb/DynamicPage.aspx?Site=TAF&WebCode=USPAP>

III. SPECIFIC MINIMUM APPRAISAL REPORT COMPLIANCE ITEMS REQUIRED IN ALL REPORTS PREPARED FOR BPA USE

1. Written notice to the landowner regarding BPA’s intent to acquire the real property and the basic protections provided to the landowner under the Uniform Act and its regulations, and a written invitation to the landowner or the landowner’s designated representative to accompany the appraiser during the property inspection, must be included in the body and certification of each appraisal report. Verification of the contact information can be included as a separate section/heading in the body of the report or in the appraiser’s Certification. *49 CFR § 24.102(b) and (c), Basic Acquisition Policies; UASFLA “The Yellow Book”, Section D-14 Pages 100-101; and BPA requirement.*
2. Definition of “Market Value”. *UASFLA “The Yellow Book”, Section A-9 Page 13.*
3. Highest and Best Use must be based on an economic use. *UASFLA “The Yellow Book”, Section A-14 Page 18.*

4. The appraisal valuation conclusion must be based on an economic use and not a Public (e.g., conservation, natural lands, preservation use, etc.) or Special Interest Use Value premise. *BPA requirement.*
5. A ten-year sales history of the subject property(ies), and any listings or prior offers within the ten-year time period if available, and the last sale of the property, irrespective of the date. *UASFLA "The Yellow Book", Section A-13e Page 15.*
6. Note: "Comparison of USPAP and the Uniform Appraisal Standards for Federal Land Acquisitions". *UASFLA "The Yellow Book", Section D-1 Pages 77-79.*
7. Reference linking the "Estimate of Value to a Specific Exposure Time" shall not be included in the appraisal report. *UASFLA "The Yellow Book", Section A-9 Page 13, Section D-1(b) Page 78.*
8. Scope of Work: The applicability of all standard approaches to value shall be discussed and the exclusion of any approach to value shall be explained. *UASFLA "The Yellow Book" Section A-8 Page 12.*
9. All comparable sale data shall comply with the UASFLA "The Yellow Book" requirements cited under B-4 pages 37-40 and Section A-17 pages 20 to 22.
10. Comparable sales (to and/or for other government agencies) requiring Extraordinary Verification and Treatment must be addressed in an appropriate manner. *UASFLA "The Yellow Book", Section D-9 Page 84.*
11. The Date of Value shall be the last Date of Physical Inspection of the subject property by the appraiser. *BPA requirement.*
12. Submit appraisal report(s) to the BPA for review and approval through the BPA Realty Group at: F&WAppraisals@bpa.gov
13. The larger parcel shall be identified and the impact of the acquisition on the larger parcel needs to be analyzed. *UASFLA "The Yellow Book" Section B-11, Pages 47 through 41 and Section B-13, Pages 53 through 55.*
14. Color photographs of the subject and all comparable properties, together with a location map clearly exhibiting all sales in relation to the subject, must be included in all copies of the appraisal report. The photo caption should identify the subject of the photo, name of person taking the photo and date taken. *UASFLA "The Yellow Book" Section A-17, Pages 21-22.* The location map must have appropriate distinguishing landmarks to assist the appraiser during a field inspection. *BPA requirement.*
15. A GPS coordinate or Quarter Section, Township, Range, legal description is required for the subject property(s) as well as for all comparable sales used in the report. The BPA will be using these coordinates and/or legal descriptions in completing a field review of the report. *BPA requirement.*

16. Discussion relative to the comparable properties used in the appraisal report shall include individual narrative comments and adjustment conclusions as to the value each comparable property indicates for the subject, together with an overall summary conclusion. If an adjustment grid tabulation is used, it shall be clearly presented containing all adjustments and supported through market sources. *UASFLA "The Yellow Book" Section A-17, Pages 21-22.*
17. The Appraisal Certification shall include a statement indicating the contract appraiser has personally inspected the appraised property and all comparable sale properties used in arriving at the estimate of value. In addition, the Appraiser shall state their opinion of the market value of the property appraised and the date of valuation. The appraisal will be rejected if these items are not present. *UASFLA "The Yellow Book" Section A-4, Page 10; BPA requirement.*
18. The appraisal employment contract including the appraisal instructions for appraisal services must be included in the addenda of the appraisal report. *BPA requirement.*
19. The enclosed checklist must be filled out and located in the addenda of the appraisal report. Failure to include this completed checklist may cause immediate rejection of this report. *BPA requirement.*
20. The appraiser shall examine and comment on the subject property's title report in the body of the appraisal report. A copy of the title report shall be included in the addenda of the appraisal report. *BPA requirement.*
21. The appraiser shall examine and consider any and all water or mineral (oil, gas, sand, gravel, precious/heavy metals, etc.) rights and state any and all findings, conclusions and valuation impacts in the report. The appraiser shall check outside of the title report for records specially held by water resources or mineral resources agencies. *BPA requirement.*
22. The appraiser shall consider any management plans and/or conservation easements either proposed or in existence that affect the subject and/or comparable sales. An analysis of these plans or easements needs to be explained in the report. *BPA requirement.*

IV. DOCUMENTATION

The appraiser(s) will provide to the BPA one hard copy and one electronic PDF copy of any appraisal report submitted to the BPA for consideration. The electronic copy shall be sent to: F&WAppraisals@bpa.gov.

The BPA needs to be listed as either the client or an intended user of the report. It is further recommended that the phrase "For the United States Government Agencies and Bureaus use (Attention: The Bonneville Power Administration)" be used when applicable. The BPA Appraisal Department will accept appraisals with dates of value within six months of the time of

receipt in the department. Reports with dates of value exceeding six months may or may not be accepted. Appraisal report updates are acceptable for reports dating back two years.

V. APPRAISER REQUIREMENTS

The principle appraiser must be a Certified General Appraiser in the State where the subject property is located or hold a Certified General Appraiser license in another state that will be granted reciprocity by the state licensing agency governing the location of the subject property(s).

All appraisers providing easement-related appraisals for the BPA Fish and Wildlife program **will** be required to show proof of attendance and passing a Valuation of Conservation Easement course of study with a Certificate Program approved by BPA's Chief Appraiser. In addition, **all** appraisers are required to have taken a UASFLA "The Yellow Book" course/seminar and passed the appropriate examinations. Proof of attendance and passing the appropriate examinations must be included by verifiable reference or exhibit in the report.

VI. VALUATION METHODS TO BE USED

Valuation Methods to be used are determined by the appraiser(s) and must be consistent with the prior referenced Federal Requirements in Section I. If conflicts arise between the requirements of UASFLA "The Yellow Book", the Uniform Act (42 U.S.C. §§ 4601 et seq., Public Law 91-646) and its implementing regulations (49 C.F.R. Part 24), and USPAP, the BPA appraisal staff assigned to the project will instruct the appraiser(s) regarding which requirements are to be followed. The BPA appraisal staff is available to respond to questions by the appraiser(s) regarding appraisal methodology and procedures.

VII. UPDATES AND/OR REVISIONS

The Definitions, References and Requirements set forth in this document will be reviewed annually and updated/revised when changes occur in Federal and/or USPAP Requirements, Regulations, and Guidelines. In the event the BPA Appraisal Department experiences high incidents of appraisal rejection due to substandard appraisal practices that are permeating the appraisal industry, BPA's Chief Appraiser may require additional changes to these definitions, references, and requirements prior to the annual review. Notification of these changes will be provided to the project sponsors in a timely manner.

APPRAISAL REQUIREMENTS CHECK LIST

BPA REQ. #	APPRAISAL REPORT PAGE(S) / #	MINIMUM / SPECIFIC APPRAISAL REQUIREMENTS
III-01	_____	Documentation of the landowner contact
III-02	_____	Market Value Definition
III-03	_____	Highest and Best Use
III-05	_____	Subject Sales History
III-07	_____	Exposure Time is not to be included in the report
III-08	_____	Scope of Work
III-10	_____	Use of Extraordinary Verification of Sales
III-11	_____	Date of Value
III-13	_____	Larger Parcel Identification
III-14	_____	Subject Photos
III-14	_____	Comparable Photos
III-14	_____	Sale Map
III-15	_____	BPA GPS/Legal Description Requirements
III-16	_____	Sales Data Compliance with UASFLA
III-16	_____	Sales Analysis
III-16	_____	Adjustment Grid
III-16	_____	Adjustment Analysis
III-17	_____	Appraisal Certification with UASFLA Requirements including Personal Inspection Criteria
III-18	_____	Appraisal Contract
III-20	_____	Title Report
III-21	_____	Water or Mineral Rights
III-22	_____	Management Plans and/or Conservation Easements
V	_____	Valuation Conservation Easement Certificate

CONSULTANT SERVICES AGREEMENT

This consultant services agreement is between the CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION, a sovereign native nation with its governmental headquarters located at P.O. Box 151 / 401 Fort Road, Toppenish, WA 98948 on the Yakama Reservation (“**Yakama Nation**”), and [CONSULTANT’S NAME], EIN Number [REDACTED], with its primary place of business located at [address] (“**Consultant**”).

The Yakama Nation wants to obtain technical assistance to accomplish the project, task, study, or other work described in Exhibit A (Scope of Work) to this agreement.

Consultant states that it has the necessary technical expertise, skill, and capability to complete the Work for the Yakama Nation.

The parties therefore agree as follows:

ARTICLE 1. STATEMENT OF SERVICES

1.01 **Work & Standard of Performance.** Consultant shall perform the work described in Exhibit A (Scope of Work) to this agreement (the “**Work**”). Consultant shall, at its sole expense, provide all labor, services, and equipment necessary to complete the Work timely and to the Yakama Nation’s satisfaction, except as expressly provided otherwise in this agreement. Consultant’s performance shall comply with applicable tribal, federal, state, and local law and policy, and be consistent with generally accepted professional best practices, both of which Consultant states it has knowledge of.

1.02 **Term.** This agreement will be effective on the date when both parties have signed it, and will terminate as set forth below, unless terminated earlier in accordance with Article 9 of this agreement (if neither option is selected, Option B shall be the default):

Option A: On ___ May 31 ____, 2022__

Option B: Upon Consultant’s satisfactory performance of the Work.

1.03 **Prior Performance.** If the Consultant has performed any Work prior to the start date of this agreement, then this agreement will govern such prior performance. Except that the Consultant’s invoicing obligations, and the Yakama Nation’s associated payment obligations, as set forth in Exhibit C (Payment Terms), will not arise until the start date of this agreement.

1.04 **Key Personnel.** If any of Consultant’s employees or agents are specifically identified in Exhibit A (Scope of Work) as the employee(s) or agent(s) expected to perform the Work, they will be considered “**Key Personnel**” for purposes of this agreement. Consultant shall ensure that Key Personnel

continue to be assigned to the Work until its completion, unless Consultant obtains the Yakama Nation Project Manager's written consent to a staff substitution.

ARTICLE 2. COMPENSATION

2.01 **Maximum Compensation.** The maximum total compensation approved by the Yakama Nation and payable to Consultant for Work under this agreement is \$_____. The Yakama Nation shall not pay Consultant more than this maximum amount for the Work. Consultant acknowledges that this maximum amount (a) is sufficient to perform the Work and (b) includes all eligible expenses associated with Consultant's performance of the Work.

2.02 **Rates/Fees/Payments.** The Yakama Nation shall make payments to Consultant according to the billing rate(s) and/or fee schedule(s) and the invoicing and payment terms described in Exhibit B (Budget) and Exhibit C (Payment Terms) to this agreement.

2.03 **Expenses.** The Yakama Nation shall only compensate Consultant for eligible expenses directly associated with the performance of the Work. Consultant acknowledges that eligible expenses are limited to those reasonable expenses incurred with the prior written approval of the Yakama Nation, for which the Consultant provides a reasonably detailed receipt or other proper proof. The Yakama Nation shall pay eligible expenses, including any authorized travel expenses, consistent with applicable tribal and federal law and policy.

2.04 **Federal or Grant Funds.** Consultant acknowledges that federal or grant funds utilized to compensate Consultant may be subject to certain requirements and restrictions, which may include, but are not limited to 2 C.F.R. Part 200. Consultant shall utilize funds in accordance with applicable funding requirements and restrictions, and shall reimburse the Yakama Nation for any expenses that are paid by the Yakama Nation but subsequently disallowed by the federal agency or other grantor.

ARTICLE 3. PROJECT MANAGEMENT

3.01 **Project Managers.** Each party will designate an internal project manager to facilitate the completion of the Work. Being designated as a party's project manager does *not* endow the representative with any legal authority to bind that party. Either party may change their project manager by giving notice to the other party.

(a) The Yakama Nation's Project Manager is [Name]. S/he may be reached at [Phone], or [email].

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

ARTICLE 4. LEGAL NOTICE

Consultant Services Agreement btw. Yakama Nation and _____

4.01 **Valid Notice.** For a notice under this agreement to be valid, it must be in writing, properly addressed to the party's current legal contact, and delivered (a) by a national transportation company with all fees prepaid and receipt signature required, or (b) by USPS certified mail, return receipt requested, postage prepaid. Notice will be effective upon the date of receipt. Either party may change its designated address or recipient for legal notice by giving the other party reasonable notice of such change.

4.02 **Notice to the Yakama Nation.** Notice to the Yakama Nation must be sent to the Tribal Council Chairman at P.O. Box 151 / 401 Fort Road, Toppenish, WA 98948, with courtesy copies to the Yakama Nation's Project Manager electronically at their email address listed above in section 3.01(a), and to the Yakama Nation Office of Legal Counsel at P.O. Box 150 / 401 Fort Road, Toppenish, WA 98948.

4.03 **Notice to Consultant.** Notice to Consultant must be sent to _____ at _____

_____.

ARTICLE 5. RECORDS, ACCOUNTING & AUDITS

5.01 **Recordkeeping.** Consultant shall maintain auditable records during the term of this Agreement and for a period of at least three (3) years following the termination of this Agreement. Consultant shall comply with the Audit Act of 1984, P.L. 98-502 (31 U.S.C. § 7501 et. seq.), as amended, and the Office of Management and Budget's Uniform Guidance requirements set forth at, 2 C.F.R. Part 200, Subpart F, as amended, in maintaining its records.

5.02 **Accounting.** Consultant shall adhere to a systematic accounting method in performing the Work to ensure timely and appropriate resolution of audit findings and recommendations, and compliance with the Office of Management and Budget's Uniform Guidance requirements set forth at, 2 C.F.R. Part 200, Subpart F, as amended.

5.03 **Audits.** Except as prohibited by law, the Yakama Nation, the United States (if applicable), and any grantor agency (if applicable), or their duly authorized representative(s), may audit, examine, request, or make copies of Consultant's records that concern or are relevant to the subject matter of this agreement or to Consultant's performance of its obligations under this agreement. Consultant shall provide such authorized auditors with timely access to its records.

5.04 **Access to Yakama Nation Records, Personnel & Facilities.** Except as prohibited by law, the Yakama Nation shall provide Consultant with reasonable access to its personnel, facilities, and records necessary for Consultant's performance of this agreement.

5.05 **Confidential Information.** If the Yakama Nation provides Consultant with documents or information typically maintained as confidential by the Yakama Nation ("**Confidential Information**"), Consultant shall make all reasonable efforts, and take all reasonable precautions, to prevent the

disclosure of that Confidential Information to non-parties, except as may be required by law or court order. Consultant shall not use Confidential Information for any purpose except the performance of this agreement.

5.06 **Continuing Obligation.** Consultant's obligations under Article 5 of this agreement are intended to survive the termination of this agreement.

ARTICLE 6. WORK PRODUCT

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

6.02 **Ownership.** Consultant acknowledges that all Work Product it produces pursuant to this agreement will be works for hire, which the Yakama Nation will own, and which Consultant will not retain any interest in or rights to. Consultant shall give all its Work Product to the Yakama Nation promptly upon the termination of this agreement or upon request.

ARTICLE 7. RISK MANAGEMENT

7.01 **Insurance Requirement.** Consultant shall be required to purchase and maintain insurance during the term of this agreement, as set forth in Section 7.02 below: YES NO. (If neither box is checked, insurance is required.)

7.02 **Insurance Coverage.** If insurance is required under Section 7.01, Consultant shall, at its own expense, maintain the following minimum insurance coverage during the term of this agreement and for a period of three years following the completion of the Work:

(a) Either Commercial General Liability Insurance OR Professional Liability Insurance, including errors and omissions insurance, in the amount of at least one million dollars per occurrence and two million dollars aggregate.

(b) If the performance of the Work requires Consultant to use one or more automobiles, Commercial Automobile Insurance coverage for all vehicles used in performance of the Work in an amount equal to the greater of either (i) one million dollars, or (ii) any other amount specified by applicable law.

(c) Any other insurance coverage required by applicable law, which may include (but may not be limited to) workers compensation insurance or disability benefits insurance.

7.03 **Additional Insured.** Consultant shall name the Yakama Nation as an additional insured on its applicable insurance policies, and at the Yakama Nation's request shall provide the Yakama Nation with certificates of insurance and copies of the relevant policies.

7.04 **No Subrogation.** Consultant hereby waives for insurance purposes all subrogation rights it may have against the Yakama Nation and any of the Yakama Nation's officers, agents, employees, governmental entities, contractors, or subcontractors.

7.05 **Indemnification.** Consultant shall, at its expense, indemnify and (at the Yakama Nation's discretion, and with counsel acceptable to the Yakama Nation) defend the Yakama Nation and its officers, agents, employees, and assigns (each and all considered the "Yakama Nation" for purposes of this Section 7.02) against *any* claim, demand, judgment, loss, cost, damage, expense or other liability whatsoever, including legal fees and expenses, which are incurred by or claimed against the Yakama Nation and arise, either directly or indirectly, from any error, action, omission, or breach of contract by Consultant or its officers, agents, employees, or subcontractors. The requirements of this Section 7.05 are intended to survive the termination of this agreement.

7.06 **Injunctive Relief.** Consultant acknowledges that its breach or threatened breach of Article 5 or Article 6 of this agreement would cause irreparable injury to the Yakama Nation, which could not be adequately compensated by money damages. Consultant further acknowledges that injunctive relief to enforce Articles 5 & 6 of this agreement would be proper.

ARTICLE 8. DISPUTE RESOLUTION

8.01 **Negotiation.** If the parties disagree about the performance, interpretation, or enforcement of this agreement, they shall first attempt to resolve their disagreement informally through (a) dialogue between their project managers, and then (b) face-to-face negotiations between their leaders, which must be held in Toppenish, WA. If the parties cannot resolve their disagreement after taking these steps, it will be deemed a 'dispute'.

8.02 **Mediation.** The parties shall endeavor to resolve any disputes through non-binding mediation before resorting to any other dispute resolution procedure. Such mediation must be held at a mutually agreeable location in Yakima, Washington. Any demand for mediation must be made in writing and delivered to the other party in accordance with the provisions of Article 4 (Notice) of this agreement. The parties shall share equally the costs of hiring a mediator and securing a suitable location for the mediation proceedings. The requirements of this Section 8.02 are intended to survive the termination of this agreement.

ARTICLE 9. TERMINATION

9.01 **For Convenience.** Either party may terminate this agreement by giving to the other party at least 90 days prior written notice. The notice must specify the effective date of termination.

9.02 **For Breach.** Either party may immediately terminate this agreement by written notice following a material breach by the other party. The parties acknowledge that the terms of Article 5 (Records, Accounting & Audits), Article 7 (Risk Management), Section 1.04 (Key Personnel), and Section 2.02 (Rates/Fees/Payment) are material terms. Consultant acknowledges that time is of the essence for performance of the Work.

9.03 **By Tribal Council Executive Committee.** The Yakama Nation Tribal Council Executive Committee may immediately terminate this agreement upon written notice to Consultant.

9.04 **Effect.** Termination of this agreement will not relieve either party of any liabilities or claims against it that arise under this agreement before the agreement is terminated. Termination will not limit the Yakama Nation's rights or remedies at law or equity, including, but not limited to, the right to contract with other qualified persons to complete the Work.

ARTICLE 10. GENERAL TERMS

10.01 **Independent Contractor.** Consultant acknowledges that it is an independent contractor and not an agent or employee of the Yakama Nation for purposes of this agreement. The parties state that they are not engaged in a joint venture or partnership.

10.02 **Conflicts.** During the term of this agreement, Consultant shall not accept work from any non-party, which would create a real or apparent conflict of interest with Consultant's performance of the Work for the Yakama Nation.

10.03 **Subcontractors.** Consultant shall not hire a subcontractor to perform any portion of the Work for this Agreement, except as expressly authorized in writing by the Yakama Nation. Where the Yakama Nation has authorized Consultant's hiring of a subcontractor, Consultant shall require the subcontractor to comply with all relevant terms and conditions of this agreement in performing their portion of the Work. Any unauthorized attempt by Consultant to subcontract the Work must be null and void, and Consultant shall be responsible for all expenses, fees, and costs associated with the unauthorized subcontract(s).

10.04 **Fair Employment Practices.** Consultant shall not discriminate against any employee or applicant for employment because of handicap, race, age, religion, sex, gender, or sexual orientation. Consultant shall take affirmative steps to ensure that applicants and employees are treated fairly during hiring and employment.

10.05 **Indian Preference Employment.** When Consultant performs Work within the boundaries of the Yakama Reservation, or on Yakama property outside the boundaries of the Yakama Reservation, Consultant acknowledges that it is subject to and shall comply with applicable Indian preference employment laws of the Yakama Nation, including its Tribal Employment Rights Ordinance (Yakama Revised Law & Order Code, Title 71, as amended) ("**TERO**"). Consultant further acknowledges

that under Section 703(i) of the 1964 Civil Rights Act, it may implement an Indian Preference hiring policy for all work performed near (within reasonable commuting distance from) an Indian reservation. Consultant hereby adopts the TERO and its associated policies as its Indian preference hiring policy for all Work it performs near the Yakama Reservation, and shall publicize the same.

10.06 Permits and Approvals; Taxes and Fees. The Consultant shall, at its expense, obtain any and all permits, approvals, or authorizations from local, state, federal or tribal authorities necessary or required for the completion of the Work. Unless the parties have expressly agreed otherwise in this agreement, Consultant shall pay any taxes or fees applicable to or associated with its completion of the Work.

10.07 Force Majeure. The parties' obligations under this agreement are subject to force majeure. If acts of God, severe weather conditions, fire, or unforeseen catastrophic events caused by nonparties which are beyond the control of the parties, prevent the parties from performance, such non-performance must not be considered a breach of this agreement.

10.08 Entire Agreement. This agreement constitutes the entire understanding between the parties with respect to the subject of this agreement, and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. The parties acknowledge that they each participated in negotiating this agreement, and that they have read, understood, and approved its terms. Headings are provided in this agreement for convenience, and are not intended to affect the meaning of the provisions to which they are affixed.

10.09 Exhibits Incorporated by Reference. This agreement includes any terms or documents incorporated by reference, as well as those exhibits listed below. If the terms of an exhibit or incorporated document conflict with the terms of the body of this agreement, the terms in the body of this agreement must prevail.

- (i) Exhibit A – Scope of Work
- (ii) Exhibit B – Budget
- (iii) Exhibit C – Payment Terms
- (iv) Exhibit D – Intergovernmental Master Agreement 56662 ("IG-MA 56662"). The full text of IG-MA 55562 can be reviewed at:
 - http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Original-Terms-and-Conditions.pdf

- http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_01-Terms-and-Conditions.pdf
- http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_02-Terms-and-Conditions.pdf

10.10 **Change Orders.** Change orders must be in writing and authorized by an appropriate representative of the Yakama Nation as follows:

(a) **Material Changes.** Any material changes to this agreement or the Work to be performed must be authorized in writing and signed by the Yakama Nation Tribal Council Chair as modifications or addendums to this agreement. Material changes are (i) any changes which require an increase in the maximum 'not to exceed' contract amount set forth in Section 2.01 of this agreement, or (ii) any changes to *what* Work is to be performed.

(b) **Immaterial Changes.** The Yakama Nation's Project Manager may authorize immaterial changes in writing. Immaterial changes are those that concern *how* the Work will be accomplished, but do not change the scope of what Work will be performed, or the overall contract payment amount.

10.11 **Amendments; Waiver.** The parties may amend this agreement by a written instrument signed by the authorized representatives of both parties. No waiver under this agreement will be effective unless it is in writing and signed by an authorized representative of the party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions.

10.12 **Execution.** If the parties sign this agreement in several counterparts, each will be deemed an original, but all counterparts together will constitute one instrument. The parties may sign and deliver this agreement (and any ancillary documents) to each other electronically, and the receiving party may rely on the electronic document as if it was a hard-copy original. The parties each state that they have the necessary legal authority to enter into and sign this agreement, and to perform their obligations under this agreement.

10.13 **Choice of Law and Venue.** Yakama law governs the validity and interpretation of this agreement, and any adversarial proceedings brought by one party against the other party arising out of this agreement. Any court action filed to enforce or interpret this agreement must be in the Yakama Tribal Courts. Consultant acknowledges that this agreement will be considered to have been executed at the Yakama Nation governmental headquarters in Toppenish, WA, and that this agreement establishes a consensual business relationship between the parties for purposes of Yakama Tribal Court jurisdiction. Consultant shall not raise any personal jurisdiction objections to Tribal Court jurisdiction.

10.14 **Sovereign Immunity.** In entering into this agreement, the Yakama Nation is not waiving its sovereign immunity from suit, and is not waiving, altering, or otherwise diminishing its rights, privileges, remedies, or services guaranteed by the U.S. Treaty with the Yakamas of June 9, 1855 (12 Stat. 951).

10.15 **Special Terms & Conditions.** In addition to the forgoing terms and conditions, the following requirements will apply to this Agreement:

(a) Consultant shall comply with any and all requirements of the Intergovernmental Master Agreement No. 56662 (hereafter the "Master Agreement" or "IG-MA 56662"), as amended, between the Yakama Nation and the Bonneville Power Administration (hereafter "BPA") applicable to subcontractors. If Consultant is authorized under this Agreement to hire any subcontractors, Consultant shall ensure that their contracts also include requirements for compliance with the terms of the Master Agreement applicable to subcontractors. Consultant is responsible for reviewing the Master Agreement to determine which terms apply to Consultant's work.

The full text of the Master Agreement may be reviewed at:

- http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Original-Terms-and-Conditions.pdf
- http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_01-Terms-and-Conditions.pdf
- http://yakamafish-nsn.gov/sites/default/files/projects/Master_Agreement_56662_Mod_02-Terms-and-Conditions.pdf

Consultant hereby states and certifies that it has read the Master Agreement and agrees to be bound by the applicable terms. Consultant further states that it has the capacity to comply with the Master Agreement's applicable terms.

(b) Funds for compensation of Consultant for the Services rendered to the Yakama Nation under this agreement are provided by BPA through a particular IG-MA 56662 Funding Release. The Yakama Nation's obligation under this Agreement to reimburse the Consultant is conditioned upon these necessary funds being made available to the Yakama Nation. Failure of BPA to provide such funding within the contract term shall void this Agreement and Consultant shall have no cause of action against the Yakama Nation.

(c) Per the terms of the particular IG-MA 56662 Funding Release, Consultant shall comply with any and all requirements of the Funding Release applicable to subcontractors. If Consultant is authorized under this Agreement to hire any subcontractors, Consultant shall ensure that their contracts also include requirements for compliance with the terms of the Funding Release applicable to subcontractors.

Each party is signing this agreement on the date stated opposite that party's signature:

THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION:

By: Delano Saluskin
Title: Tribal Council Chairman

Date

[CONSULTANT]:

EIN #:

By:
Title:

Date

EXHIBIT A – SCOPE OF WORK

Overview

The Yakama Nation's (YN) Upper Columbia Habitat Restoration Program (UHRP) requires Yellow Book appraisals of multiple properties targeted for voluntary fee-simple acquisition in Chelan and Okanogan Counties, Washington, using funding provided by the Bonneville Power Administration (BPA) Fish and Wildlife Program. The intent of this contract is to provide "Yellow Book" appraisals per BPA's requirements.

Project Locations

- **Wenatchee** - All of Wenatchee River from Confluence State Park to Lake Wenatchee, Nason Creek, Peshastin Creek, Mission Creek, Chumstick Creek, Eagle Creek, Chiwaukum Creek, Chiwawa River, White River, Napeequa River and Little Wenatchee River.
- **Entiat** - All of Entiat River from confluence with the Columbia River to Entiat Falls including Mad River.
- **Methow** - The Chewuch, Methow and Twisp Rivers including Libby and Gold Creek.

Scope of Work

1. Coordinate with YN, BPA, landowners, and other YN designees to gather the necessary information and documentation to perform the "Yellow Book" appraisal per BPA's requirements.
2. Discuss and seek pre-approval of appraisal methods with YN, BPA, and landowner.
3. Conduct site reviews in support of producing the appraisal per BPA's requirements.
4. Conduct restrictive appraisals to determine the likely "Yellow Book" appraised value of a property under consideration for acquisition.
5. Produce appraisal report that meets all of BPA's requirements

Key Personnel

EXHIBIT B – BUDGET

1. Project Budget:

2. Applicable Rate Schedule. Consultant shall invoice, and the Yakama Nation shall pay, according to the following billing rates: .

EXHIBIT C – PAYMENT TERMS

1. Schedule. The Consultant shall invoice for work performed in accordance with the following schedule [if no schedule is selected, invoicing shall occur per Option A – Monthly Time & Materials]:

A. Monthly Time & Materials: The Consultant shall invoice monthly on a time and materials basis for actual Work completed during the invoice period. Unless the parties agree in writing to different terms, invoice periods shall begin on the first day of each month and end on the last day of each month.

B. Progress: The Consultant shall invoice following the completion of each major Work task identified in Exhibit A (Scope of Work). A Work task will not be considered complete until it has been reviewed and accepted by Yakama Nation’s Project Manager.

C. Alternative Schedule: The Consultant shall invoice as follows: _____.

2. Invoicing Requirements. Invoices must include appropriate supporting documentation, which may include, but is not limited to, detailed expense receipts and a brief summary of activities associated with the Work performed by Consultant. Consultant shall submit invoices to the Yakama Nation’s designated Project Manager within 15 days after the end of the invoice period in which the Work was performed and/or expenses were incurred. Consultant hereby waives the right to receive full payment on invoices submitted more than 60 days following the end of the invoice period. (The ‘end’ of the invoice period for progress payments will be considered the last day of the calendar month in which the Work task was completed.) Sample invoice, expense, and travel forms are attached/available upon request for Consultant’s review and convenience.

If a question or concern arises regarding an invoice, Yakama Nation shall promptly notify Consultant of the question or concern. Within 15 business days following such notification, Consultant shall take action to sufficiently explain or correct the issue, or Consultant will be deemed to have waived their right to demand payment for the associated Work or expense.

3. Payment. The Yakama Nation shall pay all approved invoices within 60 days following the date of invoice.

SAMPLE FY19 BILLING FORMS FOR CONSULTANT/CONTRACTOR

Invoice #: _____
 Pages attached: _____

FY19 BILLING FORM FOR CONSULTANT/CONTRACTOR

DATE: _____
 CONSULTANT: _____ EIN: _____
 ADDRESS: _____ CONTRACT: _____
 PROJECT #: _____
 PO #: (we provide you a PO #)
 VENDOR #: our finance system ID#
 FOR BILLING PERIOD: _____ to _____

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

Signature _____ date _____

Consultant Services Agreement btw. Yakama Nation and _____

