

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-5

DATE: January 22, 2009

SUBJECT: Contract for Consulting Service with EMEC

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to authorize the Mayor to sign a professional services contract (Attachment A) with EMEC Earth & Environmental, Inc. not to exceed \$5,000.

STAFF RECOMMENDATION:

Review the scope of work and proposed contract. Authorize the Mayor to execute a contract for services with EMEC to review the Public Utility District No.1 of Snohomish County (PUD) preliminary license proposal as outlined in the scope of work.

SUMMARY:

The City Council discussed the PUD relicensing process and recently issued preliminary license proposal (PLP) at its January 8, 2009 Council meeting. The City Council directed staff to return with a consultant contract and scope of work to review the PLP.

Under the proposed contract, EMEC will provide the City with comments and recommended mitigation measures on proposed actions in the PLP including fish habitat, hydrology, flood storage, recreation and safety issues that might conceivably affect the City's interests.

City staff discussed reviewing the PLP with Snohomish County staff and a number of engineering and legal consultants in the region. Because of the size of the project it is difficult to find qualified consultants who are not already working on the project for other stakeholders or PUD.

Mike Wert, the lead staff person proposed for this contract, and the other EMEC staff have the technical experience to review the PLP and provide recommendations to the City of Sultan. Mr. Wert is a former PUD employee and has provided technical

expertise to PUD on the Jackson Project. A copy of his resume is provided as Attachment B.

BACKGROUND:

PUD has filed its preliminary license proposal with the Federal Energy Regulatory Commission (FERC) for the Jackson Hydroelectric Project on December 31, 2008. Comments on the PLP must be filed with FERC by March 31, 2009. The PLP is posted on the PUD's relicensing web site at:

<http://www.snopud.com/Content/External/Documents/relicensing/Relicense/PLP123108.pdf>

This will be the first opportunity for stakeholders including the City of Sultan to submit comments as part of the official record and lay the ground work for any future appeals through the relicensing process with FERC.

City staff recommend the Council retain a consultant to review the PLP and prepare comments for submittal to PUD and FERC.

FISCAL IMPACT:

The proposed contract is not to exceed \$5,000. This work is not budgeted in the 2009 budget. City staff recommend dividing the funding equally between the General Fund (Community Development Professional Services), Water Operating Fund and Sewer Fund. Expenditures on other projects will be reduced to accommodate this unanticipated expense. No work will begin until a contract is approved.

ALTERNATIVES:

1. Discuss the staff recommendation, Determine the need to review and comment on the preliminary license proposal. Authorize the Mayor to sign a professional service contract with EMEC not to exceed \$5,000. This alternative would provide staff with comments and recommended mitigation measures to submit to PUD during the PLP comment period.
2. Discuss the staff recommendation. Determine that there is no need to retain the services of consultant to review the PLP and do not authorize the Mayor to sign a professional services agreement with EMEC not to exceed \$5,000.
3. Discuss the staff recommendation and identify any areas of concern. This may include a decision to conduct a competitive selection process prior to making a final decision to contract with EMEC. Direct staff as necessary to meet the Council's desired outcome(s).

RECOMMENDED ACTION:

Authorize the Mayor to execute a contract for services with EMEC to review the Public Utility District No.1 of Snohomish County (PUD) preliminary license proposal as outlined in the scope of work.

ATTACHMENTS:

A – Proposed contract and scope of work with EMEC

B – Resume for Michael Wert

**AGREEMENT FOR SERVICES
BETWEEN THE CITY OF SULTAN AND
AMEC EARTH & ENVIRONMENTAL (AMEC)**

THIS AGREEMENT, is made this 26th day of January, 2009, by and between the City of Sultan (hereinafter referred to as “City”), a Washington Municipal Corporation, and AMEC Earth & Environmental, Inc. (hereinafter referred to as “Service Provider”), doing business at 11810 North Creek Parkway North, Bothell, WA 98011.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider to review and make recommendations to respond to the Preliminary License Proposal prepared by Snohomish County PUD #1 for relicensing the Jackson Hydroelectric Project with the Federal Energy Regulatory Commission, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

- 1. Description of Work.** Service Provider shall perform work as described in Exhibit A, Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.

- 2. Payment.**
 - A. The City shall pay Service Provider the fee set forth in Exhibit A but not more than a total of five thousand dollars (\$5,000) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.

 - B. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed. Travel time, meals and meetings are included in the cost of services and shall not be billed separately.

 - C. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the

invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.

- 3. Relationship of Parties.** The parties intend that an independent contractor - client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that Service Provider performs hereunder.
- 4. Project Name.** Preliminary License Proposal – Jackson Hydroelectric Project
- 5. Duration of Work.** Service Provider shall complete the work described in Attachment A on or before June 1, 2009.
- 6. Termination.**

 - A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.
 - B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Attachment A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.
 - C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.
- 7. Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any

person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

- 8. Indemnification / Hold Harmless.** The Service Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

- 9. Insurance.** The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- B. Minimum Amounts of Insurance. Service Provider shall maintain the following insurance limits:
1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
- C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:
1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.
 2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. Verification of Coverage. Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.
- F. Subcontractors. Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
- 10. Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

- 11. City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent contractor in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.
- 12. Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
- 13. Ownership of Products and Premises Security.**

 - A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
 - B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
- 14. Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
- 15. Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
- 16. Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
- 17. Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

18. Resolution of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF SULTAN

SERVICE PROVIDER

By: _____
Carolyn Eslick, Mayor

By: _____
Title: _____
Taxpayer ID #: _____

CITY CONTACT

SERVICE PROVIDER CONTACT

City of Sultan
319 Main Street, Suite 200
Sultan, WA 98294
Phone: 360-793-2231
Fax: 360-793-3344

11810 North Creek Parkway North
Bothell, Washington 98011
Phone: _____
Fax: _____

ATTEST/AUTHENTICATED

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Office of the City Attorney

Exhibit A
Scope of Services and Fee

SCOPE OF SERVICES

The City of Sultan (City) is interested in participating in review of the Preliminary License Proposal (PLP) for the Henry M. Jackson Hydroelectric Project that was recently drafted by Public Utility District No.1 of Snohomish County (PUD). Regulated by the Federal Energy Regulatory Commission (FERC), the Jackson project affects the flow regime and shoreline resources of the Sultan River. The City of Sultan, which is located at the confluence of the Sultan and Skykomish Rivers, has a history of flooding that has negatively affected residential, commercial, and city-owned properties along the lower river including many properties in the central business district. Operation of the Jackson project under the terms of a new license may influence the frequency and magnitude of flooding, fish habitat, river hydrology, recreation opportunities and the safety of life and property in the Sultan community.

- AMEC Earth & Environmental (AMEC) staff will assemble and conduct a limited review of select reports and background information pertaining to the Jackson Project as described below.
- AMEC will review the PLP and provide the City with comments and recommended mitigation measures on proposed actions in the PLP including fish habitat, hydrology, flood storage, recreation and safety that might conceivably affect the City's interests.
- AMEC will provide a brief letter report (maximum length, 10 pages) no later than February 28, 2009 summarizing the results of its findings.
- The report will include recommendations for further negotiations with the PUD for mitigating the effects of the Jackson Project on land uses and riparian habitat in the lower river.
- The review, comments and recommended mitigation measures will be sufficient in detail and scope to allow the City to prepare and submit formal comments to the PUD on the Preliminary License Proposal.
- In addition, limited follow up consultation will be provided to the City to facilitate the City's responses to the PUD on the PLP.

AMEC's review of background information and the PLP will be completed no later than February 19, 2009. Written comment and recommendations will be provided to the City no later than February 28, 2009.

In support of AMEC's review of the PLP and recommended mitigation measures, the City of Sultan will assemble select reports and background information pertaining to hydrologic/hydraulic conditions in the Sultan and Skykomish Rivers, in particular those affected by the Jackson Project. The following documentation will be provided to AMEC by the City of Sultan:

- Recent hydrologic analysis conducted by Northwest Hydraulic Consultants;

Exhibit A
Scope of Services and Fee

- Preliminary Hydraulic Analysis and Floodplain Mapping of river and shoreline areas within the City;
- Federal Emergency Management Agency's (FEMA) Lower Snoqualmie and Skykomish Rivers Flood Insurance Study;
- National Oceanic and Atmospheric Administration's (NOAA) Biological Opinion on the FEMA National Flood Insurance Program (NFIP);

AMEC will assemble and conduct a limited review of other select reports and background information pertaining to the Jackson Project including but not limited to:

- Background reports, data, and maps on historic flooding and shoreline resources;
- Other related information as time and budget allow.

FEE

The City will pay EMEC not more than a total of five thousand dollars (\$5,000) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.



Michael A. Wert

Manager, Natural Resources & Planning Services

Michael Wert is a Senior Scientist and Manager of the Natural Resources & Planning Department in AMEC's Kirkland, Washington office. For the past 28 years, Mr. Wert has conducted or managed environmental efforts involving natural resource investigations, mitigation design development, permitting, and construction oversight for infrastructure and utility projects in the Pacific Northwest. Typically, this has included medium- to large-scale public works and commercial projects related to roads and bridges, hydroelectric facilities, water supply, wastewater operations, marinas, and flood control facilities. Assignments often focus on fisheries and aquatic resource baseline investigations, feasibility studies, environmental studies for SEPA/NEPA environmental impact statements, permit acquisitions, and small- to large-scale mitigation programs. He has been responsible for the acquisition of a comprehensive range of federal, state, and local permits for high-profile projects related to transportation, water resources, and commercial developments and has developed, refined, and implemented permitting programs for public and private clients.

Education

M.S., Fisheries Biology,
University of Washington

B.S., Biology, Central
Michigan University

Professional Qualifications

AMEC E&E Certified Project
Manager

Relevant Experience

Henry M. Jackson (sultan river) hydroelectric project FERC licensing, Snohomish County, Wa. As a consulting biologist to snohomish county public utility district no. 1, Mr. Wert managed and conducted a variety of environmental-related task orders associated with the FERC licensing of this 112 MW hydroelectric project. Tasks included planning and management of anadromous fish and terrestrial resource baseline studies; aerial surveys of salmon spawning activities and bald eagle nesting and roosting sites; instream flow studies; co-authorship of environmental licensing exhibits for SEPA and NEPA; negotiation with resource agencies and tribes on instream flows; development of project design alternatives; and development of a comprehensive aquatic resources mitigation program.

Evaluation of Studies Related to the Mortality of Fish Passing Through Hydraulic Turbines. Funded by Electric Power Research Institute, Mr. Wert co-authored this report which reviewed and evaluated numerous turbine mortality studies conducted throughout the world. The report described factors contributing to the mortality of fish as they pass through conduits and hydraulic turbines of several designs. Problems and merits associated with various methods used to assess fish mortality were evaluated and described in cooperation with fish experts Milo Bell and George Eicher.



Hydraulic Model Evaluation of a Passive Pressure Screen Fish Bypass System for Hydroelectric Turbine Intakes. Funded by the Electric Power Research Institute, Mr. Wert served as principal investigator of this research project designed to evaluate the effectiveness of inclined parallel bar wedgewire screen for bypassing fish through pressurized conduits. Results of the study indicated the ability to successfully screen turbine intakes from downstream migrating fish in a cost-effective and practical manner.