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## Northwest Power and Conservation Council

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Montana

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Washington

January 6, 2015

### MEMORANDUM

**TO:** Council members

**FROM:** Tony Grover

**SUBJECT:** Decision to approve a contract with PJP Consulting, LLC, to provide Advisory Committee Facilitation and policy proposal services.

### BACKGROUND:

Presenter: Tony Grover

**Summary** The purpose of this agreement between the Northwest Power and Conservation Council (the Council) and PJP Consulting, LLC (Contractor) is to provide the Council with Wildlife Advisory Committee facilitation services and policy proposals development

**Budget** The contractor proposes to complete this work for \$40,800.

**Relevance** The Council's 2014 Program recognizes the ongoing difficulties in addressing wildlife operational losses. At the same time the Council recognizes the progress that has been made in addressing this issue as the result of pilot projects on the Kootenai River. To address this issue the Council has directed its Wildlife Advisory Committee to examine the existing options and alternatives for providing mitigation for wildlife operational losses and to provide a recommendation to the Council for resolving the issue by October 1, 2015. In addition, the committee has been charged to make recommendations on the following issues:

- The need for additional HEP reports and future HEP Team funding

- The diminishing need for HEP on new acquisitions as Bonneville completes construction and inundation mitigation
- Current regional need for follow-up HEP capacity to track project agreement compliance on many properties. That need may be influenced by (1) long-term settlements for operation and maintenance, (2) technology advances that may allow the region to more cost effectively track changes in habitat conditions using remote sensing or other techniques, and (3) species responses.
- The need for new methods to assess operational losses that incorporate the results of ongoing pilot projects. This could include technical testing and evaluation of operational loss models and methodologies, or other alternative habitat evaluation methods.

**Workplan:** This Task is an important component of the Council's 2014 Fish and Wildlife Program and is therefore a priority of the 2015 fish and wildlife division workplan, which is being developed now.

**Background:** The scope of this agreement includes assistance in the performance of the tasks described below.

A. Schedule, develop agendas and facilitate monthly Wildlife Advisory Committee (WAC) meetings.

B. Provide meeting minutes and draft deliverables to the Project Manager within one week after each monthly WAC meeting.

C. Deliver a recommendation from the WAC at the November 2015 Council meeting regarding the future use by Bonneville Power Administration and the Council of the Habitat Evaluation Procedure. The recommendation shall represent a consensus of the members of the wildlife managers participating in the WAC or, if a consensus is not attainable, a substantive majority of the membership.

D. Deliver a recommendation from the WAC at the November 2015 Council meeting regarding a best definition of hydropower wildlife losses resulting from operation of the Columbia Basin hydropower system. The recommendation shall represent a consensus of the members of the wildlife managers participating in the WAC or, if a consensus is not attainable, a substantive majority of the membership.

**More Info:** See attached proposed contract and page 75 of the prepublication version of the Council's 2014 Columbia Basin Fish and Wildlife program

## **CONTRACT**

**Between**

**Northwest Power and Conservation Council**

**and**

**PJP Consulting, LLC**

**CONTRACT NUMBER:** C2015-49

**TITLE OF PROJECT:** Advisory Committee Facilitation and policy proposal

This Contract is entered into by the Pacific Northwest Electric Power and Conservation Planning Council (Council) and PJP Consulting, LLC (Contractor). For good and valuable consideration, the Council and Contractor agree as follows:

1. **Statement of Work**

Contractor shall perform the work and shall deliver to the Council work products set forth in the attached Statement of Work (Exhibit A). Contractor shall deliver its work products in the form and according to the schedule set forth in the Statement of Work.

2. **Contract Price**

As consideration for Contractor's services, the Council will pay Contractor an amount not to exceed \$ 40,800 as shown in the Contract Budget which is incorporated as Exhibit B. Such sum shall constitute full and complete payment from the Council for all work to be performed under this Contract.

The Council will pay Contractor \$ 150 per hour for up to 260 hours of Contractor's time and travel costs not to exceed \$1,800. The Council and Contractor agree that the estimate of 260 hours is a reasonable estimate of the anticipated number of hours Contractor will need to complete all work set forth in this Contract and the Statement of Work over the duration of the contract period.

**Contractor agrees to manage his/her work and time in a manner that best enables him/her to fulfill the responsibilities set forth in the attached Statement of Work within the contract price.**



**The Contractor shall not submit invoices for, and the Council will not pay, any amount greater than the total contract price unless the Council and the Contractor have executed a written amendment to this Contract, pursuant to the procedures set out in Paragraph 7, Amendments. The Contractor shall be responsible for all costs exceeding the total contract price.**

3. Payment of Costs

To obtain payment for services under this Agreement, Contractor shall submit monthly invoices to the Council's accountant, Michael Osborne. All invoices must be submitted within 30 days of services performed. Invoices shall itemize the dates of service, hours devoted to the Contract work, and sufficient detail regarding the services rendered to allow the contract manager to determine the tasks completed and the tasks remaining. In the case of travel expenses, the times at which trips begin and end, telephone, parking and any other expenses authorized by the applicable travel regulations.

Payment must be made within 30 working days of receipt of Contractor's invoice.

**A final invoice must be submitted within 90 days of the close of the Contract.**

4. Key Personnel

The Council is securing the services of Peter Paquet under this Contract. No other person may be substituted for Peter Paquet without the Council's written permission.

5. Termination

The Council may terminate this Contract at any time, in whole or in part, without cause upon 10 days' written notice to Contractor. If the Council terminates part but not all of this Contract, Contractor shall diligently proceed with all work not subject to the notice of termination.

Upon termination, the Council's liability to Contractor shall be limited to Contractor's actual costs incurred through the effective date of termination, not to exceed the contract price specified in Section 2.

6. Independent Contractor

Contractor is an independent contractor to the Council, as defined by the Internal Revenue Service and will remain so throughout the performance of this Contract. Employees of the Contractor are not employees of the Council in the performance of this Contract. Contractor is not an agent of the Council and will not at any time represent to any person that it is an agent of the Council or that it has any authority to represent or bind the Council in any manner whatsoever.

Contractor will not be eligible for any Council benefits (including health insurance, retirement plans, sick leave or vacation time) or overtime pay, the Council will not withhold taxes. Contractor will be responsible for filing any tax information required by law for self-employed individuals.

By signing this agreement, a non-United States Contractor certifies that it is formally authorized to work in the United States.

7. Amendments

To ensure compliance with applicable federal and or state law, the Council may amend this Contract or any of the General Terms and Conditions by written notification to Contractor. Time is of the essence in the performance of this Contract.

If an amendment to this Contract becomes necessary, Contractor shall consult with the Project Manager. The Project Manager shall submit a request to the Contracting Officer. All amendments to the Contract must be in writing and signed by the Council and Contractor.

**The Council's Project Manager is not authorized to approve, whether orally or in writing, any amendments to this Contract.**

8. Waiver

The failure of either the Council or Contractor to exercise any right under this Contract shall not constitute a release or waiver of that right or a modification of the terms of this Contract.

9. Completed and Partially Completed Work

If this Contract is terminated, Contractor will transfer to the Council one copy of all files and work products associated with this work.

10. Disputes

(a) Contractor Claims. Any claim by Contractor against the Council relating to this Contract shall be in writing and shall be submitted to the Council's Contracting Officer for a decision. An authorized officer of Contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the amount for which Contractor believes the Council is liable.

Within 60 days from receipt of Contractor's claim, the Council's Contracting Officer shall issue a decision in writing, stating the reasons for the decision, or shall notify Contractor of the time within which the decision will be issued. The Council's



Contracting Officer's decision shall be issued within a reasonable time, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by Contractor. Any failure by the Council's Contracting Officer to issue a decision on a claim within the period specified will be deemed a decision denying the claim and will authorize the commencement of an appeal.

Within 90 days from the date of receipt of the Council's Contracting Officer's decision under this Section, Contractor may appeal the decision by filing a notice of appeal with the Council stating the specific reason or reasons for the appeal. The Council, in its discretion, may make its decision on the basis of written submissions alone or may hold a hearing on the appeal. The decision of the Council shall be issued in writing within 60 days from receipt of the notice of appeal. If the Council fails to issue a timely decision, the appeal will be deemed to have been denied.

If Contractor is not satisfied with the decision of the Council, Contractor may submit the dispute to arbitration as provided in subsection (b).

(b) Other Claims. All disputes not settled under subsection (a), shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, or such other rules of arbitration or mediation as may be agreed to by the parties, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction. If an arbitration hearing is required, such hearing shall be held in Portland, Oregon.

(c) Continuation of Work. Contractor shall continue the performance of this Contract throughout the resolution of any dispute, unless otherwise requested by the Council. Such performance shall be in accordance with the decision of the Council's Contracting Officer, whether interim or final, and in accordance with the Council's Contracting Officer's decision as it may be modified by the Council on appeal.

#### 11. Financial Records

Contractor shall maintain satisfactory financial accounts, books, papers, documents and records relating to this Contract, and shall make them available to the Council or other appropriate audit agency if requested. Such financial accounts, books, papers, documents and records shall be retained by Contractor for three years following final payment and termination of this Contract. Contractor may use any generally accepted accounting system, provided such system meets the minimum requirements of the Federal Procurement Regulations.

#### 12. Conflict of Interests

Contractor is not aware of any circumstances that constitute a conflict of interest or that would otherwise impair Contractor's ability to provide objective assistance. Contractor agrees that if a conflict of interest with respect to this Contract exists or is



discovered, an immediate and full disclosure in writing shall be made to the Council's Contracting Officer, which shall include a description of the actions Contractor has taken or proposes to take to avoid or mitigate such conflict. In the event the Council's Contracting Officer determines that such action (or proposed action) is not (or would not be) sufficient to avoid or mitigate the conflict, the Council may terminate this Contract.

13. Indemnification

The Council does not assume any liability to third persons, nor will the Council reimburse Contractor for its liability to third persons, with respect to any intentional or negligent act or omission of Contractor, or any employee, agent, or contractor of Contractor, in the performance of this Contract.

Contractor shall indemnify, hold harmless, and defend the Council and its directors, officers, members, employees, and agents from and against all demands, claims, losses, damages, judgments, expenses and costs (including attorneys' fees) arising out or relating to the activities of Contractor, its agents, employees, or contractors while in the performance of any of the acts, duties, or obligations related to performance of this Contract; provided, however, that the Council provide Contractor with reasonable notice, authority and information to defend, and provided further that Contractor will have no such indemnification obligations to the extent that such demands, claims, losses, damages, judgments, expenses and costs are based on, or arise out of the Council's or Council staff's willful or negligent acts or omissions.

14. Exclusion of Certain Damages

In no event shall either party, its directors, officers, members, employees, or affiliates be liable for any indirect, consequential or, to the extent permitted by law, punitive damages relating to or arising out of this Contract or the services provided hereunder, whether in contract, tort (including negligence), strict liability, or otherwise, even if such party will have been advised of the possibility of such loss or damage.

15. Warranties

The Council does not assume any liability to third persons, nor will the Council reimburse Contractor for its liability to third persons, with respect to any intentional or negligent act or omission of Contractor, or any employee, agent, or contractor of Contractor, in the performance of this Contract.

Contractor shall indemnify, hold harmless, and defend the Council and its directors, officers, members, employees, and agents from and against all demands, claims, losses, damages, judgments, expenses and costs (including attorneys' fees) arising out or relating to the activities of Contractor, its agents, employees, or contractors while in the performance of any of the acts, duties, or obligations related to performance of this Contract; provided, however, that the Council provide Contractor with reasonable notice, authority and information to defend, and provided further that

Contractor will have no such indemnification obligations to the extent that such demands, claims, losses, damages, judgments, expenses and costs are based on, or arise out of the Council's or Council staff's willful or negligent acts or omissions.

16. Contract Duration

This Contract shall begin on January 15, 2015 and terminate at 5 p.m. Pacific Standard Time on November 30, 2015.

17. Contracting Officer and Notices

(a) The Contracting Officer for the Council with respect to this Contract is the Council's Administrative Officer.

(b) The Project Manager for the Council with respect to this Contract is Tony Grover.

(c) All notices and invoices under this Contract shall be sent to the parties at the following addresses:

Michael Osborne  
Northwest Power and Conservation Council  
851 S.W. Sixth Avenue, Suite 1100  
Portland, Oregon 97204-1348

PJP Consulting, LLC  
335 Ninth Street  
Lake Oswego, Oregon 97034

Unless actual notice or delivery is required, all notices and invoices under this Contract shall be deemed to be delivered as of the date of postmark if they are deposited in the United States Mail, postage prepaid, addressed as provided in this subsection, and actually received within 7 days of the date of postmark.



16. Entire Agreement

This Contract and any attachments constitute the entire agreement between the parties and supersede any prior negotiations or agreements either written or oral. No amendment or modification changing the terms of this Contract shall have any force or effect unless it is in writing and signed by both parties.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**NORTHWEST POWER AND CONSERVATION  
COUNCIL**

BY \_\_\_\_\_  
Stephen L. Crow, Executive Director

**PJP CONSULTING, LLC**

BY \_\_\_\_\_

Tax ID No. \_\_\_\_\_

Date \_\_\_\_\_, 2015.

**ADVISORY COMMITTEE FACILITATION AND POLICY PROPOSAL  
DELIVERABLES FOR THE NORTHWEST POWER AND CONSERVATION COUNCIL  
WILDLIFE ADVISORY COMMITTEE**

**STATEMENT OF WORK  
C2015-49**

**Purpose and Objective:** The purpose of this agreement between the Northwest Power and Conservation Council (the Council) and PJP Consulting, LLC (Contractor) is to provide the Council with committee facilitation services and policy proposals as described below.

**Statement of Work:** The scope of this agreement includes assistance in the performance of the tasks described below, plus additional services, as defined by agreement between the Project Manager and the Contractor.

- A. Schedule, develop agendas and facilitate monthly Wildlife Advisory Committee (WAC) meetings.
  - 1. Scheduling and agenda development for monthly WAC meetings are to be done in consultation with the Project Manager.
  - 2. Draft meeting agenda must be forwarded to the Project Manager for review and approval at least 7 days prior to a scheduled meeting.
  - 3. Meeting agendas shall be available to the public not later than 5 days prior to the meeting.
- B. Provide meeting minutes and draft deliverables to the Project Manager within one week after each monthly WAC meeting.
- C. Deliver a recommendation from the WAC at the November 2015 Council meeting regarding the future use by Bonneville Power Administration and the Council of the Habitat Evaluation Procedure. The recommendation shall represent a consensus of the members of the wildlife managers participating in the WAC or, if a consensus is not attainable, a substantive majority of the membership.
- D. Deliver a recommendation from the WAC at the November 2015 Council meeting regarding a best definition of hydropower wildlife losses resulting from operation of the Columbia Basin hydropower system. The recommendation shall represent a consensus of the members of the wildlife managers participating in the WAC or, if a consensus is not attainable, a substantive majority of the membership.



- E. Be present at the Council offices two days per month for consultation, review and other assistance related to the activities of the Fish and Wildlife Division. The office days shall be coordinated with the Project Manager ahead of time.

## **EXHIBIT B**

### **ADVISORY COMMITTEE FACILITATION AND POLICY PROPOSAL DELIVERABLES FOR THE NORTHWEST POWER AND CONSERVATION COUNCIL**

#### **BUDGET C2015-49**

Upon performing the tasks and deliverables described above, the Council agrees to pay the Contractor the sum of \$150.00 per hour, up to 260 hours, and travel costs not to exceed \$1,800, for a maximum of \$40,800 for the period of performance described above.

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**Wildlife Advisory Committee**

The Council recognizes the ongoing difficulties in addressing wildlife operational losses. At the same time the Council recognizes the progress that has been made in addressing this issue as the result of pilot projects on the Kootenai River. To address this issue the Council has directed its Wildlife Advisory Committee to examine the existing options and alternatives for providing mitigation for wildlife operational losses and to provide a recommendation to the Council for resolving the issue by October 1, 2015. In addition, the committee has been charged to make recommendations on the following issues:

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- The need for new methods to assess operational losses that incorporate the results of ongoing pilot projects. This could include technical testing and evaluation of operational loss models and methodologies, or other alternative habitat evaluation methods.