



Memorandum

May 28, 2010

To: Jim Dinley, Municipal Administrator
From: Christopher Brewton, Utility Director, Electric Department
Subject: **Professional Services Agreement – Wolfe Outdoor Services – Blue Lake & Takatz Lake Projects**

Request

I request Assembly approval to authorize the Municipal Administrator to sign a Professional Services Agreement (PSA) between Wolfe Outdoor Services (Contractor) and the City and Borough of Sitka (CBS) for professional services for the Blue Lake Hydroelectric Expansion and the Takatz Lake Feasibility Projects.

Background:

The CBS is undertaking two extensive hydroelectric projects, Blue Lake Expansion and Takatz Lake Feasibility that will require hydrological and biological field services as mandated by the Federal Energy Regulatory Commission (FERC) process. The services provided by Mr. Wolfe to date have been invaluable in completing requisite hydrologic and fisheries studies for the Blue Lake project. The purpose of this new contract is to update an existing contract that was approved in FY2003, include additional work for the Takatz Lake Feasibility Project, and update consultant insurance requirements.

Fiscal Note:

Sufficient funds are available for this contract and costs for each individual project will be charged separately to the appropriate capital account. Purchase orders in incremental amounts will be issued to manage these projects. Estimated annual costs are approximately \$150,000 for the project(s) duration, which is 2011 for Takatz and 2014 for Blue Lake. These projected costs may vary depending on resource agency and FERC requirements. Additional studies and/or monitoring for Blue Lake construction and advanced field studies for Takatz may be required.

Evaluation:

Mr. Wolfe has an excellent record of performance working for CBS the past several years and it is of great benefit to CBS to continue that relationship. Utilizing local talent for these critical tasks has provided continuity for the extensive collaboration required to move hydroelectric projects through the permitting process with FERC and other resource agencies. This has been achieved at substantial cost savings relative to hiring an outside consultant and has kept our project dollars in Sitka.

Recommended Motion:

I MOVE to authorize the Municipal Administrator to sign a Professional Services Agreement with Wolfe Outdoor Services to provide professional services for the Blue Lake Hydroelectric Expansion and Takatz Lake Feasibility Projects; and execute the Agreement on behalf of the Assembly of the City & Borough of Sitka.

AGREEMENT TO PROVIDE PROFESSIONAL SERVICES TO THE CITY AND BOROUGH OF SITKA

The **City and Borough of Sitka** (“**CBS**”) and **Wolfe Outdoor Services** (“**Contractor**”) individually referred to as “**Party**” and collectively referred to as “**Parties,**” enter into this “**Agreement to Provide Professional Services to the City and Borough of Sitka**” The terms, conditions, and consideration regarding this Agreement are set out below.

This Agreement consists of:

- Professional Services Agreement
- Appendix (A1): Scope of Work – Blue Lake Expansion
- Appendix (A2): Scope of Work – Takatz Lake Feasibility
- Appendix (B): Compensation
- Appendix (C): Communication
- Appendix (D): Work Products
- Appendix (E): Schedule

SECTION 1. DEFINITIONS

For the purpose of this Agreement, the terms used herein shall have the following meaning:

- A. The term “**CBS**” shall mean “**City and Borough of Sitka**”.
- B. The term “**Contractor**” shall mean “**Wolfe Outdoor Services**”.
- C. “**CBS**” Authorized Representative shall be the person listed in Section 21(B)(2) of this Agreement.
- D. “**Days**” shall mean calendar days.

SECTION 2. AGREEMENT TIME PERIOD

- A. This Agreement becomes effective when signed and dated by both Parties, and covers the time period when professional services are provided by Contractor.
- B. Contractor shall perform for and on behalf of CBS regarding the services set out in the Scope of

Services (attached as Appendix A). Except as expressly allowed under this Agreement, CBS need not grant the Contractor any extension in the time provided to complete the work under this Agreement. If the Contractor progress falls behind the project schedule, the Contractor shall commit additional resources to complete the work, or take such other additional steps as are reasonably necessary to assure the completion of the work at no additional cost to CBS.

- C. Contractor shall perform for and on behalf of CBS the scope of work in an expedient and reasonable manner.

SECTION 3. RESPONSIBILITY OF THE CONTRACTOR

At all times during the Contractor's performance under this Agreement, the Contractor shall possess and exercise the level of competence, knowledge and skill presently maintained by other practicing members of the profession in good standing in the same or similar localities.

Contractor must certify that the firm is authorized to do business in Alaska and provide proof of insurance and licensing.

SECTION 4. SCOPE OF SERVICE

The services to be performed by the Contractor shall include all services required to complete the scope of work set forth in Appendix A,C & D and shall be in accordance with all applicable statutes, ordinances, rules and regulations.

SECTION 5. OWNERSHIP OF DOCUMENTS

All plans, drawings, calculations, supporting data and specifications, originals and tracings,(Work Products) Appendix D shall become the property of CBS. Such documents shall be transmitted to CBS prior to the time of final payment for the work under this Agreement. The Contractor shall be entitled to retain and reference record copies and electronic files of all documents.

All designs, drawings, specifications, notes, artwork, computer programs, reports and other work developed with Energy Authority grant funds are public domain. In particular, the following language is in place: "Except as otherwise specifically agreed, and without limiting any Intellectual Property requirements of a federal funding agency, the Energy Authority shall have unlimited rights to use and to disseminate any data produced or delivered in the performance of the contract."

SECTION 6. TERMINATION

This Agreement may be terminated:

- A. By mutual consent of the Parties;

- B. For the convenience of CBS, provided that CBS notifies the Contractor of its intent to terminate under this paragraph in writing at least 10 days prior to the effective date of the termination; or
- C. For cause, by either Party where the other Party fails in any material way to perform its obligation under this Agreement; provided, however, that as a condition of the exercise of its right of termination under this subsection, the terminating Party shall notify the other Party of its intent to terminate this Agreement in writing, state with reasonable specificity the grounds, and allow the defaulting Party to cure the default within thirty (30) days of receiving the notice.
- D. Termination pursuant to this Section shall not affect the Parties continuing obligations under this Agreement.

SECTION 7. DUTIES UPON TERMINATION

- A. If CBS terminates this Agreement for convenience, CBS shall pay the Contractor the reasonable value of any services satisfactorily rendered prior to termination. Payment under this Section shall never exceed the total compensation possible under Section 9. CBS may terminate the work upon ten (10) days written notice to Contractor. Within ten (10) days after the Agreement terminates, Contractor shall deliver to CBS all finished and unfinished notes, reports, drawings and materials prepared by the Contractor which shall become the property of CBS.
- B. If this Agreement is terminated for cause, CBS shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by CBS because of the Contractor's failure to perform satisfactorily. Any finished or unfinished documents or materials shall become the property of CBS at its option. Under no circumstances shall payment under this Section exceed the total compensation possible under Section 9.
- C. If the Contractor has received payments prior to termination in excess of the amount to which he is entitled under Subsection A or B of this Section, the excess amount shall be remitted to CBS within 30 days after receipt of CBS's notice to that effect.
- D. The Contractor shall not be entitled to compensation under this Section until the Contractor has delivered to CBS all documents, records, work products, materials and equipment owned by CBS, related to this Agreement and/or requested by CBS, as provided in Subsection A and B of this Section.
- E. CBS need not recognize any claim by the Contractor for reimbursable expenses or costs incurred after the time which the Contractor receives notice of termination under this Section.

SECTION 8. INDEMNIFICATION

- A. The Contractor shall indemnify, defend, save, and hold CBS harmless from any claims, lawsuits or liability, including attorney's fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor occurring during the course of or as a result of the Contractor's performance pursuant to this Agreement.
- B. The Contractor shall not indemnify, defend, save, and hold CBS harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising from wrongful or negligent acts, errors or omissions solely by the City and Borough of Sitka occurring during the course of or as a result of the performance of this Agreement.
- C. Where claims, lawsuits, or liability, including attorney's fees and costs, arise from wrongful or negligent acts of both CBS and the Contractor, the Contractor shall indemnify, defend, save and hold CBS harmless from only that portion of claims, lawsuits or liability, including attorney's fees and costs, which result from the Contractor's wrongful or negligent acts occurring during the course of or as a result of the Contractor's performance pursuant to this Agreement.

SECTION 9. PAYMENT

- A. For the Contractor's services, as described in Appendix (A), (C) & (D) of this Agreement, compensation will be paid on a time and expense basis, as defined in Appendix (B) unless otherwise mutually agreed upon by both Parties prior to commencing additional work.
- B. The Contractor shall present invoice(s) to the CBS's Authorized Representative at 100 Lincoln St. Sitka Alaska 99835. Such invoice(s) shall describe the work for which payment is sought and shall document expenses and fees to the satisfaction of the CBS's Authorized Representative. Invoices shall not be submitted more frequently than once every 15 days.
- C. CBS's Authorized Representative shall approve, or not approve, and make payment on invoices within 15 days of receipt of invoice. If invoice is not approved the CBS must notify the consultant and may withhold payment on the portion not approved, payment must be made on the approved portion.
- D. The Contractor shall be entitled to no compensation under this Agreement beyond the amount of the CBS's express obligation under Subsection A above.
- E. For the purposes of Section 9 the invoices shall be presented to the CBS designated contacts.

SECTION 10. AUDIT: ACCESS TO RECORDS

- A. The Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Agreement. CBS's Authorized Representatives shall have the right to examine such records and accounting procedures and practices.
- B. CBS's Authorized Representative shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing and performance Agreement, and any change or modification for the purpose of evaluating the accuracy, completeness and currency of the data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the data, computations and projections used.
- C. The materials described in this Section shall be made available at the business office of the Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of three (3) years from the date of final payment under this Agreement and for such longer period, if any, as may be required by applicable statute or other provisions of this Agreement.
- D. If this Agreement is completely or partially terminated, records relating to the services terminated shall be made available to CBS by the Contractor for a minimum of three (3) years from the date of any resulting final settlement.
- E. Records which relate to claims or litigation or the settlement of claims arising out of the performance of this Agreement shall be made available to CBS by the Contractor until such claims or litigation have been concluded.

SECTION 11. RELATIONSHIP OF PARTIES

The Contractor shall perform the obligations in this Agreement as an independent Contractor of CBS. CBS may administer the Agreement and monitor the Contractor's compliance with its obligations. CBS shall not supervise or direct the Contractor other than as provided in this Section.

SECTION 12. ASSIGNMENTS

Unless otherwise allowed by this Agreement or in writing by CBS, any assignment by the Contractor of its interest in any part of this Agreement or any delegation of duties under this Agreement shall be void, and any attempt by the Contractor to assign any part of its interest or delegate duties under this Agreement shall give CBS the right immediately to terminate this Agreement without any liability for work performed.

CBS reserves the right to approve all sub-consultant agreements.

SECTION 13. NONDISCRIMINATION

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color religion, national origin, ancestry, age, sex or marital status or mental or physical handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, or marital status or mental or physical handicap. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions for this nondiscrimination clause.
- B. The Contractor shall state in all solicitations or advertisements for employees to work on jobs relating to this Agreement, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, or marital status or mental or physical handicap.
- C. The Contractor shall include the provisions of Subsection A of this Section in every subcontract or purchase order under this Agreement, so as to be binding upon every such subcontractor or vendor of the Contractor under this Agreement.
- D. The Contractor shall comply with all applicable Federal, State and Municipal laws concerning the prohibition of discrimination.

SECTION 14. COPYRIGHTS AND RIGHTS IN DATA

All documentation, including notes, drawings, reports and other technical information, hereinafter referred to as work products, produced under this Agreement, except items which have pre-existing copyrights, are the property of the CBS. Payments to the Contractor for services hereunder include full compensation for all work products produced by the Contractor and its subcontractor.

All such subject data furnished by the Contractor pursuant to this Agreement are instruments of the Contractor's services in respect to this particular project. It is understood that the Contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the CBS reuses the subject data without the Contractor's specific written verification of adaption, such reuse will be at the risk of CBS, without liability to the Contractor. Any such verification of adaption requested in writing by CBS at CBS' s sole option will entitle the Contractor to further compensation at rates agreed upon by CBS and Contractor.

SECTION 15. NOTICES

Any notice required pertaining to this Agreement shall be in writing and either personally delivered or mailed by prepaid, first class, registered or certified mail, return receipt requested, to the following addresses:

CITY AND BOROUGH OF SITKA:

Attn: James Dinley
City and Borough of Sitka
100 Lincoln Street
Sitka, Alaska 99835

CONTRACTOR:

Attn: Karl F. Wolfe
Wolfe Outdoor Services
P.O. Box 2796
Sitka, Alaska 99835

SECTION 16. CLAIMS AND DISPUTES

If the Contractor becomes aware, or reasonably should have become aware, of any act or occurrence which may form the basis of a claim, the Contractor shall immediately notify in writing the CBS's Authorized Representative. If the matter cannot be resolved within seven (7) days, the Contractor shall, within the next fourteen (14) days, submit a written notice of the claim. The Contractor shall, in presenting the claim, include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Agreement under which the claim is made. This procedure covers all claims by the Contractor for additional compensation or any extension of the time for performance or any dispute regarding a question of fact or interpretation of this Agreement. The Contractor agrees that unless these written notices are provided, the Contractor shall have no entitlement to additional time nor compensation for such act, event or condition.

SECTION 17. SUCCESSORS AND ASSIGNS

CBS and the Contractor each bind himself, his partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Agreement.

SECTION 18. INSURANCE

- A. The Contractor shall at all times during the term of this Agreement, maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Agreement, the Contractor shall furnish the CBS with proof of insurance in accordance with Subsection B of this Section in a form acceptable to the CBS; such proof of insurance shall be incorporated as Appendix C of this Agreement.

B. Type of coverage:

1.	<u>General Liability</u>	\$1,000,000
2.	<u>Workman's Compensation</u>	Statutory
3.	<u>Comprehensive Automotive Liability</u>	\$300,000
4.	<u>Professional Errors and Omissions</u>	Exempt

C. Insurance Notes

1. CBS shall be named as an additional named insured on the required general liability. CBS shall also be granted a full waiver of any rights of subrogation under all required policies including Workmen's Compensation policy. These requirements extend to all subcontractors.
2. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to CBS by certified mail.

SECTION 19. PERMITS, LAWS AND TAXES

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to its performance under this Agreement. All actions taken by the Contractor under this Agreement shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Agreement.

SECTION 20. NON-WAIVER

The failure of either Party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part of the Agreement, or the right of such Party to enforce each and every provision of the Agreement.

SECTION 21. AMENDMENT

A. This Agreement shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Agreement as an Appendix.

B. For the purposes of any amendment, modifications or change to the terms and conditions of this

Agreement, the only authorized representatives of the Parties are:

1. For Contractor – Karl F. Wolfe, Principal
2. For CBS – Jim Dinley, Municipal Administrator

C. Any attempt to amend, modify or change this Agreement by either an unauthorized representative or unauthorized means, shall be void.

SECTION 22. SEVERABILITY

Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Agreement.

SECTION 23. JURISDICTION - CHOICE OF LAW

Any civil action rising from this Agreement shall be brought in the Alaska Superior Court First Judicial District at Sitka. The law of the State of Alaska shall govern the rights and obligations of the Parties under this Agreement.

SECTION 24. INTEGRATION

This Agreement and all appendices and amendments embody the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained in this Agreement.

This Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the Parties.

IN WITNESS, the Parties execute this Agreement in duplicate on the date shown below, and by their signatures, confirm they are authorized to sign this Agreement.

CITY AND BOROUGH OF SITKA

CONTRACTOR

James Dinley, City Administrator

Karl F. Wolfe, Principal

Date: _____

Date: _____

EIN NO. _____

ATTEST:

CERTIFIED FUNDS AVAILABLE:

Colleen Pellett, MMC
Municipal Clerk

Fund Number: _____

Account Number: _____

Date: _____

Amount of Contract: **NTE \$150,000**
(renewable as required by the CBS)

David L. Wolff, Finance Director

APPROVAL OF CONTRACT FORM

Date: _____

Theresa Hillhouse
Municipal Attorney

Date: _____

Professional Services Agreement
Wolfe Outdoor Services
Appendices A-E
May 2010

Appendix (A1): Scope of Work – Blue Lake Expansion

The CBS intends to expand the Blue Lake Hydroelectric Project by increasing the generation capacity and raising the Blue Lake Dam collectively known as the Blue Lake Expansion Project. Because this project will result in substantive changes to the plant a Federal Energy Regulatory Commission (FERC) license amendment will be required. The CBS is contracting the services of Wolfe Outdoor Services to assist with conducting, monitoring and completing related environmental, biological, and resource studies as required to complete the requisite FERC license amendment and project construction.

Wolfe Outdoor Service's scope for the Blue Lake Expansion project includes:

- Temperature studies for Sawmill Creek and Blue Lake.
- Conduct biological surveys for Blue Lake and tributaries.
- Hydrologic and plunge pool assessments.
- Develop instream flow models and resource evaluations.

Appendix (A2): Scope of Work – Takatz Lake Feasibility

Wolfe Outdoor Services shall provide field and biological support services as required for CBS to prepare the FERC License Application documents for the Takatz Lake Project. Services shall use existing studies and technical information where possible.

Services shall be structured to provide adequate descriptions and reports of the field studies, consistent with the requirements of the FERC licensing process.

Wolfe Outdoor Service's scope for the Takatz Lake Feasibility project includes:

- Fisheries surveys for the FERC designated Area of Potential impacts.
- Data collection, sampling, and reports for all approved biological study plans.
- Coordinate with CBS for all required resource agency study plan review, meetings, and final study plans.
- Provide progress reports on field studies and activities.
- Provide additional sub-contractor services as needed to conduct remote field work.

Appendix (B): Compensation

Compensation for Wolfe Outdoor Services will be based on actual hours, expenses and the cost of third party services.

- 1) Hourly rates for Karl Wolfe are \$80.00/hr which is expressed in US dollars. Rates will be adjusted to include an annual 2.5% increase effective each year, with the first increase occurring on January 1, 2011.
- 2) Overtime will be billed at straight time rate.
- 3) Internal expenses, such as IT (computer, standard software, etc.) are included in the hourly rate and will not be charged separately.
- 4) External expenses (express mail, travel, specialized software, etc.) billed at cost plus 5% mark-up.
- 5) Sub-contractor's hourly rates will be billed at \$60/hr and will be billed at a straight time rate. Rates will be adjusted to include an annual 2.5% increase effective each year, with the first increase occurring on January 1, 2011.
- 6) Compensation during field services requiring housing, subsistence, and travel to the remote Takatz Lake site will be provided by the CBS.
- 7) Equipment and materials required for field studies, such as data loggers, marine transport, and other related supplies will be provided by CBS.
- 8) Reimbursement of approved expenses for which receipts are provided and not purchased by the CBS.

Appendix (C): Communication

Communications between the Contractor and the CBS shall include the Blue Lake Project Manager, Dean Orbison, and Utility Director, Christopher Brewton for the CBS and Karl Wolfe for the Contractor.

All communications regarding scope, schedule or budget shall be directed to the CBS's designated contacts. All communications requesting agreement or confirmation of technical decisions or conclusions shall be directed to the CBS's designated contacts.

Communications directly between the Contractor, resource agencies, CBS staff or the CBS's individual consultants may take place, provided that all such communications are appropriately copied to the CBS's designated contacts.

Direction of Work

Contractor's work shall be directed and requested by the CBS's designated contacts. Requests and direction will be submitted to the contractor in writing usually by e-mail. The contractor shall acknowledge each request and provide a short proposal to perform the work and timetable to complete it.

Reporting

Contractor shall provide a monthly report summarizing work performed during the month, and status of the work in progress.

Appendix (D): Work Products

Work performed under this contract need not be stamped by a professional engineer.

All deliverables must be submitted in the electronic format that it was generated (i.e. WORD, Excel, ACAD), so that it may be modified, a Adobe Acrobat .pdf format for publication, and paper copies when and as requested by the CBS. Progress submittals shall also be submitted in Adobe Acrobat .pdf format. As needed, the underlying documents shall be edited as needed to provide easily readable Adobe Acrobat .pdf format documents.

Use of Deliverables

The CBS retains the right to use all work products paid for by the CBS to continue the development and construction of the associated projects. The work products may be released to third parties to continue the work if necessary.

Appendix (E): Schedule

The Scope of Work will be performed as the Project progresses to completion. The Blue Lake Project is scheduled for completion in 2014 and the Takatz Lake Feasibility Project is scheduled for completion in 2011.

Contractor will be available for an average of 80 hours /month.