

REQUEST FOR PROPOSAL

Endangered Species Act Risk Assessment for Central Oregon Cities and Counties

CLOSE DATE: September 24, 2008

TIME: 4:30 p.m.

DESCRIPTION: Develop a take liability risk assessment for the cities and counties in the Upper Deschutes Basin in response to the ESA listing for Steelhead.

CONTACT: Katrina Van Dis, Program Coordinator, Central Oregon Intergovernmental Council (COIC)

PHONE: (541) 504-3307

FAX: (541) 548-9549

E-MAIL: kvandis@coic.org

LOCATION: The solicitation document may be reviewed at COIC, 2363 SW Glacier Place, Redmond, OR 97756

THIS IS A FORMAL PROCUREMENT. FAXED OR ELECTRONIC PROPOSALS WILL NOT BE ACCEPTED.

SINGLE POINT OF CONTACT: There will be only one point of contact for this Request for Proposal. The contact point is the person listed above, unless otherwise stated. Any questions or issues that may arise regarding the specifications, the proposal process, and/or the award process shall be directed to the Contact listed above.

AGENT FOR THE CITIES AND COUNTIES OF CENTRAL OREGON: The Cities of Bend, Prineville, Redmond, and Sisters and Crook, Deschutes and Jefferson Counties will be acting by and through the Central Oregon Intergovernmental Council (COIC) during this procurement process.

FOR MORE INFORMATION please refer to "Instructions to Proposers".

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INSTRUCTIONS TO PROPOSERS

A. PROPOSAL PREPARATION AND SUBMISSION:

- 1) **GENERAL INFORMATION:** The Central Oregon Intergovernmental Council ("COIC") is seeking proposals from qualified firms or individuals interested in providing professional consulting services for the purpose of assisting the Cities and Counties of Central Oregon ("Members") in evaluating whether or not current local government policies and practices are sufficiently protective of ESA listed fish species and their habitat to avoid "take" of Bull Trout or re-introduced Steelhead and potential ESA enforcement actions and/or third party lawsuits.

This Request for Proposal process will be led and managed by COIC on behalf of the Members. All materials must be submitted to COIC.

- 2) **PROPOSAL FORMAT:** Proposals shall be typewritten. No facsimile or electronic proposals shall be accepted.

Inquiries shall be directed to COIC by phone (541) 504-3307 or e-mail: kvandis@coic.org

Sealed proposals, containing one (1) original signed proposal response, seven (7) hardcopies plus one electronic copy on a CD shall be received and date and time-stamped by COIC prior to proposal closing. Proposals should be labeled with the following information:

ESA RISK ASSESSMENT
Central Oregon Intergovernmental Council
Attn. Katrina Van Dis
Program Coordinator
2363 SW Glacier Place
Redmond, OR 97756

Proposals submitted after that date and time will not be accepted. Faxed or e-mail submissions will NOT be accepted.

COIC is not responsible for the proper identification and handling of any proposal not submitted in a timely manner.

All proposals become part of the public file for the project, without obligation to COIC. COIC reserves the right to reject any or all proposals for good cause and in the public interest. Proposers responding to this RFP do so solely at their expense, and COIC is not responsible for any expenses associated with the preparation of the proposal.

3) **TENTATIVE SCHEDULE:**

Following is a proposed schedule for the proposal and contractor selection process.

- Request for Proposals Advertised Beginning August 26, 2008
- Deadline for Change Requests/Protests September 2, 2008
- Proposal Submittal Deadline September 24, 2008
- Staff Review/Proposal Scoring September 26 – October 3, 2008
- Notice of Intent to Award Issued October 6, 2008
- Contractor Selected and Issued Notice to Proceed October 10, 2008
- Project Completion April 18, 2008

- 4) **PROJECT BUDGET:** The preliminary budget for the contractor's Exhibit A statement of work items is not to exceed \$80,000 (see budget description in Statement of Work section F for more detail).

- 5) **PROPOSAL SUBMISSION:** All responses to this Request for Proposals shall be delivered to Katrina Van Dis, Program Coordinator, Central Oregon Intergovernmental Council, 2363 SW Glacier Place, Redmond, Oregon 97756, by 4:30 PM, Pacific Daylight Time, September 24, 2008.

Proposals will be opened at 8:30 AM Pacific Standard Time on September 25, 2008, at COIC, 2363 SW Glacier Place, Redmond, Oregon 97756.

- 6) **ACCEPTANCE OF PROPOSALS:** COIC reserves the right to cancel the procurement or reject any or all proposals in accordance with ORS 279B.100.

COIC reserves the right to withdraw this RFP at any time without prior notice and COIC makes no representations that any contract will be awarded to any firm or individual responding to this RFP.

- 7) **PROPOSAL FORMAT:** Proposals for this project should include a narrative that conveys your understanding of the project's goals, including the statement of work, and how your firm will assist COIC and the Members in meeting these goals. The description should demonstrate the firm's unique capabilities, innovative approaches, and problem-solving abilities to accomplish this project. The narrative should provide a description of how this project's goals will be met. Identify key personnel to be utilized for this project, their qualifications and areas of responsibility. Proposers must clearly indicate within their proposal any exceptions or recommended adjustments to the requested time frames or statement of work.

The Proposal shall contain at minimum the following information:

- a) **Organizational Profile, Structure and Qualifications** - Provide a summary profile of the firm/organization, including:
- Firm name, address, contact information, and the name of the primary contact in reference to this proposal;
 - Information about your firm, including: the year founded and form of organization (corporation, partnership, sole proprietorship, non-profit organization, etc.), background, size, types of services provided, and types of engagements completed;
 - Any professional accreditations held by the firm/organization;
 - Number and location of offices; and
- b) **Key Personnel, Experience, and Education** – Identify who will be assigned to complete the work on this project, including:
- List of partners and key staff who will be assigned to the project for the six (6) month period and describe their roles;
 - Provide resumes with a description of educational background, degrees and certifications earned, and relevant work history and level of experience in pertinent subject areas for all staff performing professional work under the scope of work;
 - Submit a work plan with accompanying time schedule for each segment of work to be performed. Indicate the specific staff that will be assigned to each task. Include an estimate of total hours expected to be expended on this engagement;
 - Address the level of field staff, review staff and management continuity that COIC may reasonably expect over the length of the contract; and
 - Explain how COIC and Member personnel would be utilized to assist during the project, indicating an approximate time requirement for each function.
- (d) **Statement of Work** – Provide a summary of how the Applicant will meet the responsibilities as outlined in Exhibit A – Statement of Work, including:
- Provide a description of your community planning approach and work product delivered on similar engagements;
 - Provide a description of your approach to creative problem-solving and use of innovative ideas in addressing community issues in this or similar planning projects;
 - Provide information on the resources available to the Applicant to develop project products and outcomes within established time frame and schedules; and
 - Discuss organizational responsiveness and flexibility to address unforeseen issues, problems and complications that may arise during project development and implementation.
- (e) **Fee Estimate** – Include a price proposal for the work as described in the statement of work. The fee estimate will not be solely used to select the Applicant. COIC will seek the services of the most qualified contractor and project team for this project.

- Describe all estimated fees, including time, materials, travel, and related expenses that may be associated with the duties and obligations under this proposal;
- Include line items for contracted work (see budget description in Statement of Work section F for more detail); and
- Provide the fee structure your firm will use when charging COIC for any special requests, reports, additional services, or broadening of the scope of services, including any variation in fee based upon the staff classification requirements of the task.

(f) **Reference Page** – Include at least three (3) but no more than five (5) references. References can include government clients or private enterprise clients for whom your firm has performed similar services. COIC reserves the right to investigate the references and the past performance of any applicant with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, and its completion of a project on schedule.

(g) **Signature Page** – All proposals shall be signed and dated prior to submission deadline.

Questions – Any questions concerning the meaning, definition or interpretation of the contents of this Request for Proposal shall be submitted via letter, FAX or email to Katrina Van Dis, COIC. Responses to all questions will be faxed or emailed to all known prospective proposers.

8. **PROPOSAL MODIFICATION:** Modifications or erasures made before proposal submission shall be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing before the time and date set for proposal closing. Any modification shall be prepared on company letterhead, shall be signed by an authorized representative, and shall state that the new document supersedes or modifies prior proposal submissions and any other prior proposal modifications. Proposal modifications shall be submitted in a sealed envelope clearly marked "Proposal Modification," identifying the proposal name and closing date and time. Proposers may not modify proposals after proposal closing date and time.

9. **SOLICITATION ADDENDA:** COIC may change the Solicitation document by written addenda. COIC will fax, mail, or email notices of Addenda to all known prospective proposers. COIC may extend the closing if COIC determines that prospective proposers need additional time to review and respond to the Addenda.

10. **METHODS OF SEEKING CLARIFICATION, MODIFICATION OF THE RFP OR PROTEST:** Any Proposer requiring clarification of any provision of the RFP, contractual terms or specifications may submit to COIC a written request for clarification by FAX, mail or email. To be considered, the request for clarification shall be received by COIC by the deadline specified in Section 5 or any extension made by subsequent Addenda.

The appropriate means of seeking modifications to provisions of the RFP are through a written formal submittal of requests for changes to the RFP, contractual terms or specifications. The request shall include the reason for requested changes, supported by factual documentation, any proposed changes and shall contain all other information required by ORS 279B.405 and OAR 125-247-0730. Requests shall be received by COIC by the date and time specified in Section 5. This deadline may be extended by Addendum.

Proposers may submit to COIC a written protest of RFP, contractual terms or specifications. To be considered, Protests shall:

- Identify the Proposer's name and reference the RFP title;
- Contain evidence that supports the grounds on which the protest is based and specify the relief sought, including a statement of the proposed changes to the process or RFP provisions, requirements or terms and conditions that the Proposer believes shall remedy the grounds upon which the protest is based;
- Be signed by the Proposer's authorized representative;
- Be submitted to COIC by the Solicitation Protest due date specified in Section 5; and
- Be delivered or faxed to COIC at the address specified on the first page of the RFP.

COIC shall not consider solicitation protests that do not meet the requirements of this Section. COIC shall resolve all solicitation protests in accordance with OAR 125-247-0730. COIC is not responsible for the successful transmission of faxed protests. Unless this specific due date is extended by Addenda to the RFP, COIC shall not consider solicitation

protests to the originally-issued RFP submitted after the Solicitation Protest Deadline specified in Section 5. *Please note: Late or electronically transmitted (emailed) protests will not be accepted.*

COIC shall respond to each properly-submitted written request for clarification, request for change, and protest in accordance with ORS 279B.405. Where appropriate, COIC shall issue revisions and clarify RFP provisions via Addenda. COIC may also informally respond to Proposer questions. Informal responses, however, do not affect the provisions of the RFP. The RFP, contractual terms and specifications can only be changed via formal addenda issued by Agency.

11. PROPOSAL WITHDRAWALS: Proposals may be withdrawn in writing on company letterhead signed by an authorized representative and received by COIC prior to proposal closing time. Proposals may also be withdrawn in person before proposal closing time upon presentation of appropriate identification.
12. SOLICITATION CANCELLATION: COIC reserves the right to cancel this solicitation at any time.
13. CONTRACT TERMS AND CONDITIONS: By submitting a proposal, the selected proposer agrees to be bound by the standard Terms and Conditions shown in the example Personal Service Contracts attached as Exhibit B.
14. USE OF RECYCLABLE MATERIALS: Contractors shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
15. SOLE PROPRIETORS: If a sole proprietor, submit a detailed business continuation plan. This plan should describe in detail who will complete the scope of work in the event of the sole proprietor's inability to do so. COIC's contract will remain with the initial contracting party and they must subcontract the firm or sole proprietor who will continue the scope of work. No alterations will be made to the contract amount or schedule to accommodate this change.

B. PROPOSAL EVALUATION AND AWARD:

1. MINIMUM REQUIREMENTS: Evaluation of proposals will be based on compliance with the terms and conditions of the Request for Proposal.

2. EXCEPTIONS: Any deviation from proposal specifications, terms and conditions may result in proposal rejection.

3. EVALUATION CRITERIA: The following Evaluation Factors will be used to evaluate proposals submitted (100 points total):

- a) Qualifications of Firm and Personnel (15 points).
 - Organization strength and stability
 - Experience and technical competence
 - Education and experience of project staff
 - Key personnel's level of involvement in performing and/or oversight of related work
 - Evaluations provided by previous clients
- b) Related Experience (15 Points)
 - Experience with projects similar in scope and size
 - Experience with the biological needs of salmonids, local government policies and activities, and application of the Endangered Species Act to salmonid populations
 - Experience working in small rural communities
 - Experience in working on projects where multiple jurisdictions are clients
 - Experience completing projects within established deadlines
- c) Scope of Work Proposal (35 points).
 - Completeness of proposal
 - Demonstration of understanding of the work to be performed
 - Approach to developing a process for engaging multiple jurisdictions
 - Approach to be taken in completing the assessment
 - Creativity and use of innovative ideas towards problem-solving and addressing community issues
 - Degree to which the proposal accomplishes the Statement of Work (Exhibit A)
 - Resources and flexibility to demonstrate ability to meet the project time frame and schedules
- d) Reasonableness of Cost and Price (35 points).
 - Reasonableness of the individual fixed price and/or competitiveness of quoted fixed prices with other proposals received
 - Adequacy of the data in support of figures quoted
 - Basis on which prices are quoted
 - Estimated total number of hours to be devoted to the project
 - Benefit and value provided for the cost
 - Fee structure for any additional services beyond the scope of the project engagement

4. EVALUATION COMMITTEE: An evaluation committee shall review, score, and rank all responsive proposals according to the evaluation criteria. The evaluation committee shall include, but not be limited to, one representative from each of the Central Oregon cities and counties participating in the project. The evaluation committee will be coordinated by COIC.

5. EVALUATION PROCESS: The outcome of the evaluation process may, at COIC and the Members' sole discretion, result in: (a) notice to a proposer(s) of selection for tentative contract negotiation and possible award; or (b) notification to proposers that the RFP is cancelled and either may be re-solicited or that COIC intends to take no further action with respect to the RFP.

6. INVESTIGATION OF REFERENCES: COIC reserves the right to investigate the references and the past performance of any proposer with respect to its successful performance of similar services, compliance with specifications and

contractual obligations, and its lawful payment of suppliers, subcontractors, and workers. COIC may postpone the award or execution of the contract after the announcement of the apparent successful proposer in order to complete its investigation.

7. DISCRIMINATION: A contractor shall not discriminate against state and federal protected classes. The contractor shall certify as part of the proposal submitted that the contractor has not and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

8. PROPOSAL REJECTION: COIC reserves the right to reject any and all proposals at any time.

9. CLARIFICATION AND NEGOTIATION: COIC, reserves the right to seek clarifications of each proposal, and the right to negotiate the Statement of Work described in this RFP.

10. NOTICE OF INTENT TO AWARD: COIC shall provide Notice of Intent to Award at least four (4) days prior to the formal proposal award by written notice mailed, e-mailed or faxed to all proposers. This shall serve as a notice to all proposers of COIC's intent to make the award to the most responsive proposer.

11. PROPOSAL RESULTS: Proposers may request tabulation of awarded proposals. Each request for the proposal tabulation must be written and must indicate the proposal name and the requestor's name and mailing address. Awarded proposal files are public records and available for review at COIC. Please contact Katrina Van Dis at (541) 504-3307 to make an appointment.

12. RIGHT TO PROTEST AWARD: An adversely affected or aggrieved proposer may submit to the COIC, a written protest of the COIC's intent to award within two (2) days after issuance of the notice of intent to award the contract. The proposer must specify the grounds upon which the protest is based, and shall otherwise comply with OAR 14-37-047-0740.

13. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS: Due to limited resources, COIC generally will not completely review or analyze any proposal response which on its face fails to comply with the requirements of the proposal documents or which clearly is not the best proposal, nor will COIC generally investigate the references or qualifications of those who submit such proposal responses. Therefore, the return of a proposal response or acknowledgment that the selection is complete shall not operate as a representation by COIC that a response was complete, sufficient, or lawful in any respect.

14. PROPRIETARY DATA/PUBLIC RECORD: This Request for Proposal, together with copies of all documents pertaining to the award of a contract, shall be kept by COIC and made a part of a file or record which shall be open to public inspection.

15. COMMENCEMENT OF WORK: Contractor shall commence no work under the contract to be awarded until all certificates of insurance, as required in Exhibit B, Standard Terms and Conditions for Professional Services Contracts have been provided; a contract has been executed; and a Notice to Proceed has been issued by COIC.

16. METHOD OF AWARD: If a contract is awarded, COIC will award the contract to the responsible proposer whose proposal COIC and the Members determines is most advantageous to the Members. Award shall be made for the total of the items selected for award. Award shall be made to one proposer and one proposer only. COIC reserves the right to withdraw any item(s) from award consideration if it is in the best interest of COIC and the Members to do so.

17. CONTRACT TERM AND EXTENSION: The term of the contract to be awarded shall commence upon issuance of the notice to proceed and continue for six (6) months. COIC, at its option, may extend the contract for additional periods.

18. TOOLS, EQUIPMENT & SUPPLIES TO BE FURNISHED BY THE CONTRACTOR: The Contractor certifies itself as an independent contractor, and shall be responsible for: all costs and expenses of performing the services; equipment to perform the services; payment of all state and federal taxes required and providing adequate workers compensation coverage for Contractor and any assistants used.

19. CONTRACTOR'S RESPONSIBILITIES: The Contractor will be responsible solely to COIC for the scope of work of the contract to be awarded as outlined in Exhibit A, Statement of Work.

20. PAYMENT FOR CONTRACTOR'S SERVICES: No payment will be made for any services performed before the commencement date or after the expiration date of the contract to be awarded. Contractor shall not exceed, and COIC shall not pay any amount in excess of the pricing amounts established. The Contractor will submit billing for services rendered. Payments will be tied to completion and acceptance of work products, as defined within the Statement of Work schedule.

21. INSURANCE: Contractor shall provide certificates for all insurance coverage's required by the Professional Services Contract, attached as Exhibit B.

EXHIBIT A STATEMENT OF WORK

Endangered Species Act Risk Assessment for Central Oregon Cities and Counties

A. Background

Steelhead, which are listed as threatened under the Endangered Species Act (ESA), are being re-introduced into the Upper Deschutes Basin. The cities and counties of Central Oregon would like to evaluate whether current local government policies and practices are sufficiently protective of listed steelhead and their habitat to avoid “take” of re-introduced steelhead and potential ESA enforcement actions and/or third party lawsuits. The cities and counties seek to effectively and pro-actively respond to the re-introduction by participating in Habitat Conservation Planning, take limit certification under ESA Section 4(d), or other policy or programmatic processes as needed. The cities and counties want to support successful re-introduction efforts as well as to achieve regulatory predictability and protection from take liability for local governments. A review of local government policies and practices can inform city and county decision making and strategies for conserving steelhead in the upper Deschutes basin.

Broadly, the Central Oregon cities and counties seek to understand which local government activities may result in prohibited take of listed steelhead and bull trout. The focus of the analysis will be on steelhead and bull trout because these are the two fish species that are currently listed under the ESA in the upper Deschutes Basin. Land use planning, stormwater management, and transportation planning and operations will be examined for seven jurisdictions. Municipal water diversion, groundwater withdrawal, and wastewater discharge will also be examined for participating cities. Two jurisdictions, Jefferson County and Prineville, will only receive an initial assessment based on interviews as part of this project.

The cities and counties are aware of other activities which may pose a risk of incidental take but which they do not currently believe need to be addressed through this risk assessment project, including: railroad management, public facilities operations, hazardous waste management, public land pest management, and private forest and agricultural land management activities. The cities and counties believe these activities are addressed by state regulations and agencies or the Habitat Conservation Planning process, or are risks specific to only a few jurisdictions.

Guidance has already been developed to assist local governments in the Pacific Northwest to avoid unlawful take or to establish limits to the prohibition on take. These guidance resources include: ESA Section 4(d) rule take limits developed for other regions in Oregon, Washington, and California; ODOT and WS DOT road operations manuals; the Oregon Association of Clean Water Agencies ESA Manual for evaluating drinking water, stormwater, and wastewater programs; packages of Municipal, Residential, Commercial and Industrial development ordinances and plans that have already been approved by NOAA Fisheries; and Habitat Conservation Plans for other Pacific Northwest basins.

The selected sub-contractor will use these guidance materials, model programs, and other references to evaluate local government activities in Central Oregon in order to systematically identify areas of risk for incidental take for cities and counties. The sub-contractor will collect information on local government activities through meetings and interviews with city and county staff, questionnaires, review of policies, and/or review of field operations. Take liability risk will be identified and reported for each jurisdiction in each of the following areas: land use planning, stormwater management, road operations, municipal surface water diversion and groundwater withdrawal, and wastewater discharge. The sub-contractor will also provide recommendations and potential next steps for addressing key areas of risk. After the final report is complete, some of the cities and counties will likely request presentations on the report to their Councils and Commissions on an individual jurisdiction basis. Contracting and payment for these presentations will occur directly between the individual jurisdiction and the selected sub-contractor on an elective basis, outside of the scope of work and contract for this assessment project.

The cities and counties of Central Oregon will establish an ESA Working Group to guide and support this analysis. The Working Group will consist of staff and elected representatives of each of the participating jurisdictions and will be coordinated by a Program Coordinator of the Central Oregon Intergovernmental Council (COIC). The COIC Program Coordinator will serve as the point of contact for the selected sub-contractor and will convene project meetings in order for city and county representatives to provide input, ask questions, monitor the sub-contractors progress, and review draft and final products.

B. Timeline, Budget and Scope of Work

The overall length for this project will not exceed 6 months, beginning and running continuously from the day of Notice to Proceed issued by COIC. The amount available to the sub-contractor to perform this work will not exceed \$80,000.

1. Use the Draft Conservation and Recovery Plan for Oregon Steelhead Populations in the Mid-Columbia River Distinct Population Segment, the Deschutes Sub basin Plan, and other existing references to summarize baseline biological conditions and potential activities that may adversely affect baseline conditions for listed fish species (i.e., steelhead and bull trout) within the Central Oregon planning area. Description of baseline biological condition will include current and projected distribution and abundance of listed fish and limiting factors.
2. Conduct stakeholder interviews to determine city and county activities that may be at risk of “incidental take” (as described by the ESA) of steelhead and bull trout.
 - a. Up to 12 stakeholder interviews (total) with city and county public works, planning, development, and transportation departments (or combinations thereof) for the following jurisdictions:
 - i. Crook County
 - ii. Deschutes County
 - iii. Bend
 - iv. Redmond
 - v. Sisters
 - b. Conduct two stakeholder interviews per jurisdiction with public works and planning staff from Jefferson County and Prineville to identify activities that may be at risk of incidental take. Jefferson County and Prineville will not receive a formal individual jurisdiction review in Tasks 5 through 11 the way the other jurisdictions will. Provide a general technical memorandum to Jefferson County and Prineville based on the two interviews outlining areas of potential risk for the jurisdictions to explore further.
3. Review Section 4(d) take limit guidance, ESA-compliant ODOT and WS DOT road manuals, OR ACWA ESA Manual, and other guidance materials. Identify relevant thresholds, criteria, and guidance measures that may be relevant to the Deschutes Basin when determining which activities may be at risk for incidental take and which activities pose no risk.
4. Develop an “easy to use” guidance document that defines those activities that would constitute a risk under the ESA and those activities that would likely be compliant with the ESA. Provide draft of guidance document to the local government ESA Working Group for comments and review. Finalize guidance document with feedback.
5. Apply the guidance document when reviewing local rules, regulations, policies and practices and their adequacy or inadequacy in complying with the Endangered Species Act. Sub-contractor will collect information from local jurisdictions through questionnaires, interviews, and meetings, and reviews of relevant written policies, rules, regulations, and plans. COIC staff can provide some assistance in collecting documents from cities and counties for the reviews. Review of actual field operations may be helpful in reviewing local government activities.
6. Conduct a land use plan and zoning code audit of each of the jurisdictions identified above to assess any shortcomings in plans or codes that may create the potential for incidental take of steelhead or bull trout if land use actions are approved.
 - a. Coordinate with jurisdiction planning departments to gather adopted codes and application process information.
 - b. Review and audit comprehensive plan, and development code language for the jurisdictions identified above.
 - c. Compile a list of relevant permitting agencies that private riparian landowners should consult about land use and development activities prior to undertaking activities. Identify the names and types of permits issued by each agency.
7. Conduct a review and risk analysis of stormwater management rules, regulations and policies of each of the jurisdictions identified above to assess any shortcomings in the rules, regulations, or policies and practices that

may create the potential for incidental take of steelhead or bull trout. Review Central Oregon Stormwater Manual to assess whether facilities designed and constructed using Manual guidance will be adequately protective of listed fish and their habitat.

8. Conduct a review and risk analysis of transportation rules, regulations and policies of each of the jurisdictions identified above to assess any shortcomings in the rules, regulations, or policies and practices that may create the potential for incidental take of steelhead or bull trout.
9. Conduct a review and risk analysis of municipal water supply diversion and wastewater discharge programs using ACWA ESA Manual and other resources for participating cities identified above to assess potential for incidental take. Identify any shortcomings in rules, regulations, policies, or operations and practices.
10. Conduct a review and risk analysis of municipal groundwater pumping activities for participating cities identified above to assess potential for incidental take. Identify any shortcomings in rules, regulations, policies, or operations and practices.
11. Draft a summary report of the findings of the risk analyses. The report will identify potential liability or enforcement exposure under the Endangered Species Act based on current local jurisdiction rules, regulations, policies, and practices and anticipated distribution and abundance of steelhead and bull trout within each jurisdiction. The document will be organized by risk factors common to all jurisdictions (if applicable) and unique to particular jurisdictions. Provide a summary matrix noting compliance and risks by city and county.
12. In conjunction with the summary report, develop a strategies document that identifies potential next steps for filling the gaps where any potential ESA compliance shortcomings are found. Next steps may include, but are not limited to, developing model ordinances and best management practices for road development, sedimentation and erosion control, and stormwater management. If the sub-contractor identifies any existing local programs that can be viewed as regional models for achieving regulatory compliance during the review, these should be highlighted in the summary report. In addition, the report will identify model programs from outside of Central Oregon that local cities and counties can learn from.

Finalize the report. The draft report will be provided to participating jurisdictions for review and for addition of any relevant information that was not captured in the first round of information collection. Then the final summary report will be provided to the Working Group for approval. Sub-contractor will provide COIC with 50 hardcopies of the report and electronic copies in Word and PDF.

All data first produced in the performance of this contract shall be the sole property of COIC. The contractor agrees not to assert any rights of common law or equity, or establish claim to statutory copyright in such data. The contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of COIC, until such time the data has been released to the public.

The contractor hereby grants to COIC jurisdictions a royalty-free, nonexclusive, and irrevocable license throughout the work to: 1) Publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract, but which are incorporated in the work furnished under this contract; and 2) Authorize others to do so.

C. Inspection and Acceptance

COIC or its appointed representatives (ESA Working Group members) will inspect and approve all phases of this project. Inspections will be performed in a manner that will not unduly delay work. The contractor shall, without charge, correct workmanship not conforming to contract requirements. If the contractor fails to promptly correct or rectify performance items in this contract, COIC may reduce the contract price to reflect the reduced value of the work performed or terminate the contract for default. Work is considered complete and payments authorized upon acceptance by COIC.

D. Performance Period

Contract time will begin on the effective date of the Notice to Proceed. It is anticipated the Notice to Proceed will be issued by September 26, 2008. All aspects of the contract are expected to be completed by March 31, 2009. Contract time will run continuously from the Notice to Proceed date. There is no suspension of contract time for periods when no work is performed.

E. Report Review

Review of all written submissions will be coordinated by COIC. COIC will consolidate reviewer comments for a single response to contractor. The following time periods, which begin on the day after receipt of contractually required written documents, are allowed for review:

All Written Reports and Presentations – 21 days

F. Progress Payments

Progress Payments are authorized following submission and acceptance of deliverables per the schedule agreed upon between the contractor and COIC. Ten percent (10%) of the total contract price shall be retained until completion and acceptance of all deliverables. Ten percent (10%) may be authorized for submission and acceptance of the Plan of Work.

G. Award of Contract

Award will be made based on Evaluation Criteria and total points as specified in Section I. Instructions to Proposers. COIC will carefully consider whether each proposal 1) Adequately accomplishes the work described in the RFP; and 2) is technically sound and whose technical soundness and cost relationship is most advantageous to COIC. COIC reserves the right to make technical and price tradeoffs that are in the best interest and to the advantage of COIC.

H. Subcontractors

All subcontract agreements shall contain all applicable terms and conditions of the original contract. The contractor shall promptly notify COIC upon entering into a subcontract arrangement. Notification shall include at minimum: 1) Name, address, telephone number, and email address of the subcontractor; 2) Date that subcontract was entered into and its duration; 3) Detailed description of work being subcontracted; and 4) Documentation of the subcontractor's field representative and authority.

I. Personnel

The Project Team assembled by the contractor should possess demonstrated ability and professional experience with:

The biological needs of salmonids and the focus species (steelhead, bull trout)
The full range of local government policies and activities
Application of the Endangered Species Act to anadromous fish populations

The contractor should have the expertise needed to understand and adapt fish and habitat conservation approaches to the unique hydro-geologic and semi-arid conditions of the Central Oregon region.

The participation of key personnel in the work described in the response to this RFP is an obligation of the contractor in performance of this work. If substitutions are proposed, the contractor shall submit in writing sufficient information to permit COIC to evaluate the qualifications and experience of the proposed substitute personnel. COIC will have to ratify such a substitution in writing prior to implementation.

Exhibit B –Professional Service Contract

[*See attached.*]

PROFESSIONAL SERVICES AGREEMENT

This Agreement made on the _____ day of _____, 20____, between:

xxxxx
address
city, state, zip
("City")

and

[CONSULTANT]
[Address]
[Phone #]
[Fax #]
("Consultant")

Consultant agrees to provide professional services to COIC pursuant to this Agreement. Such services are authorized by and are subject to the terms and conditions of this Agreement.

The "Project":

[Describe Project]

[Include nature of project and budget/time parameters.]

Consultant has reviewed COIC's description of the Project and has conducted initial inquiries with the Members and local regulatory agencies regarding the Project. Consultant represents that Consultant is competent and willing to undertake professional services in connection with the Project and is capable of performing such professional services within the time allotted herein.

1. Consultant's Responsibilities

1.1. Consultant will provide professional services for COIC during all phases of the Project to which this Agreement applies, serve as COIC's professional representative for the Project as set forth below, and will give professional consultation to COIC during the performance of services hereunder.

1.2. Consultant will provide all professional services customarily furnished and reasonably necessary within the Scope of Services set out at **Exhibit A**, attached. Time is of the essence for this Agreement. COIC and Consultant will develop a project schedule consistent with requirements of the Scope of Services and Consultant will complete each phase of the services in accord with the project schedule. COIC must approve sub-consultants. Consultant will contract directly with and will pay such sub-consultants.

1.3. Consultant will pay all royalties and license fees which may be due by reason of materials or methods employed by Consultant or its sub-consultants or by reason of the necessary inclusion of protected materials or methods in the Project except to the extent such materials or methods are included with the informed consent or at the direction of the COIC. Consultant will defend all suits or claims for infringement of patent, trademark, or copyright for which Consultant is responsible pursuant to this paragraph, which may be brought against the COIC, and Consultant will be liable to the COIC for all losses arising therefrom, including costs, expenses, and attorney fees.

1.4. Consultant will not be relieved of responsibility for errors or omissions or other defects in any other documents prepared by Consultant for COIC's review and approval.

1.5. Consultant will keep any real property involved in the Project free from all liens by reason of its services and will defend, indemnify and hold harmless COIC from the operation and effect of any such lien or encumbrance that may be claimed by any person by reason of Consultant's services. If Consultant fails to remove any lien or adjust any other claim relating to Consultant's services, by bonding or otherwise, COIC may, without recourse by Consultant, pay the lien or claim and charge such payments, with costs incurred, to Consultant.

1.6. All services provided by Consultant will be performed in a prompt manner and will be in accordance with the professional standards of care and diligence applicable to such services performed by recognized Consultants in the locale and on the type of project contemplated at the time such services are performed. Consultant will be responsible for all services provided whether such services are provided directly by Consultant or by sub-consultants engaged by Consultant. Consultant will make all decisions called for promptly and without unreasonable delay.

1.7. Consultant will perform only the services authorized. Additional services will be compensated only as authorized in writing by COIC. To the extent additional services are made necessary by any fault or error of Consultant in the performance of Consultant's duties, responsibilities, or obligations, the services will not be compensated.

2. COIC's Responsibilities

2.1. COIC will designate a representative fully knowledgeable about the Project and with the authority to review and approve all project work.

2.2. COIC will furnish Consultant with information regarding requirements for the Project, including programs setting forth COIC and the Member's objectives, schedules, constraints and criteria.

2.3. COIC will render its own decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services.

2.4. COIC will furnish Consultant with all necessary information in its possession regarding the Project.

3. Materials

3.1. All materials and documents prepared by Consultant pursuant to this Agreement will be complete and unambiguous and in compliance with all applicable codes, ordinances, statutes, regulations and laws, except to the extent expressly and specifically otherwise stated in detail in writing by Consultant at the time of such submission.

3.2. Consultant will assign all original studies, reports, data, documents or materials of any kind produced pursuant to this Agreement to COIC upon completion or termination of services under this Agreement. Consultant's work will be made available not only in paper format, but also in electronic format.

3.3. All copies of the above materials provided to COIC will become the property of COIC who may use them without Consultant's permission for any proper purpose relating to the Project, including, but not limited to, additions to or completion of the Project.

3.4. Consultant will maintain complete and accurate records of all services performed and all documents produced under **Exhibit A** for a period of five (5) years after completion or abandonment of the Project. Such records will be made available, in full, to COIC upon reasonable notice.

4. Payments to the Consultant

4.1. For the period of this Agreement, Consultant will provide invoices and be paid for services at the rates and on the schedule set forth on **Exhibit B**, attached, subject to the terms of this Agreement. **Exhibit B** shall also set forth the preauthorized reimbursable expenses that may be recovered by Consultant.

4.2. Consultant's labor rates shall be inclusive of, without limitation: labor costs; taxes, including FICA, state, local, social security/old age; unemployment insurance, worker's compensation insurance, and state disability insurance (if required); benefits including holiday, vacation, sick and personal absence pay, pension, medical, dental, wellness programs, company provided vehicles, and company provided tools; overhead including liability insurance, office space and expense, computer equipment, software, plotters and printers, non-project specific support services, non-billable time, and administration and management costs and expenses; and profit.

4.3. Each Consultant invoice will include a statement of the authorized services rendered and authorized reimbursable expenses incurred during the applicable time period.

4.4. Consultant's invoices will include a summary of (i) the services provided, (ii) reimbursable expenses, and (iii) authorized additional services, all in accordance with the compensation provisions of this Agreement, as well as an estimate of the percent of services completed as of the invoice date.

4.5. Invoices for reimbursable expenses will be accompanied by appropriate supporting documentation. For reimbursable expenses authorized under this Agreement, COIC will reimburse Consultant at the rate specified on **Exhibit B**. For unscheduled reimbursement items, Consultant will be reimbursed at Consultant's direct cost, provided, however, all unscheduled reimbursement items must be approved by COIC in writing, in advance.

4.6. COIC's payments to Consultant will be made on the schedule set forth on **Exhibit B**.

4.7. Consultant will not be compensated for the cost of services provided in excess of any guaranteed maximum price or fixed price amount that has been established for such services unless authorized by written scope change.

4.8. Consultant will maintain up-to-date records, including timesheets, rate schedules, and third-party invoices necessary to support Consultant's invoices for time and materials, additional services, and expenses. Consultant's records will be maintained in accordance with sound accounting practices and will be

retained by Consultant for a period of two (2) years following completion or abandonment of the Project. Such records will be available to the COIC for inspection, copying and/or audit during normal business hours.

4.9. Invoices for authorized additional services will outline and identify the services performed and by whom, the number of hours each person worked, and the applicable pay rates.

5. Termination

5.1. COIC may terminate this Agreement for convenience and without cause by giving written notice of such termination to Consultant. Upon receipt of such notice, Consultant will immediately cease further performance except that Consultant may perform such services and incur such reimbursable expenses as are reasonably necessary to preserve work that has been completed or is in progress and to achieve an orderly termination. Upon such termination, the COIC will pay Consultant, pursuant to the payment provisions of this Agreement for all authorized services or reimbursable expenses up to the date established in the notice of termination. Authorized reimbursements will include those costs necessarily and reasonably incurred by Consultant for organizing and carrying out the termination. The COIC will not be obligated to reimburse Consultant for any continuing contractual commitments to others or for penalties or damages arising from the cancellation of such contractual commitments.

5.2. Within a reasonable time after termination of this Agreement or of any **Exhibit A** work, Consultant will deliver to COIC all materials and equipment and documentation, including raw or tabulated data and work in progress upon payment pursuant to paragraph 5.1 above.

5.3. Termination of this agreement by COIC will not constitute a waiver or termination of any rights, claims, or causes of action COIC may have against Consultant under this Agreement.

5.4. Upon a determination by a court or an arbitrator that any termination by COIC of Consultant or its successor in interest was wrongful, such termination will be deemed converted to a termination for convenience as set forth above and Consultant's remedy will be so limited.

6. Insurance

6.1. Consultant will maintain throughout the period of this Agreement, as extended from time to time, and for a period of two (2) years after completion of the Project, the following minimum levels of insurance:

- (a) Workers' compensation coverage as required by law.
- (b) Employer's liability with limits of not less than \$1 million per occurrence, and \$2 million in the aggregate.
- (c) Commercial general liability for damages as a result of death or bodily injury to any persons or destruction or damage to any property with limits of not less than \$1 million per occurrence, and \$2 million in the aggregate.
- (d) Comprehensive automobile liability insurance for at least \$1 million per occurrence, and \$2 million in the aggregate.
- (e) Errors and omissions insurance with limits of not less than \$1 million. Consultant will require that any sub-consultants engaged or employed by Consultant carry and maintain similar insurance with reasonably prudent limits and coverages in light of the services to be rendered by such sub consultant.

6.2. Consultant's insurance will be primary and any insurance carried by COIC will be excess and noncontributing. The insurance required by Section 6.1 will name COIC as an additional insured and contain

a severability of interest clause. Workers' compensation coverage will contain a waiver of subrogation in favor of the COIC. All required coverage will be with companies rated A-/V or better by A.M. Bests Rating Service and Consultant will provide COIC with thirty (30) days notice of material change, expiration, or cancellation of such coverage.

6.3. Prior to commencement of any services under this Agreement, Consultant will furnish COIC with Certificates of Insurance evidencing coverage and provisions as required. In the event Consultant fails to maintain insurance as required, COIC will have the option, but will not have the obligation, to obtain such coverage with costs to be reimbursed by Consultant.

7. Delay

Neither party will be responsible to the other for its failure to perform on time when such failure is due to causes beyond the party's reasonable control such as acts of God, fire, theft, war, riot, embargoes, or acts of civil or military authorities. If Consultant's services are delayed by such contingencies, Consultant will immediately notify COIC in writing and COIC may either (1) extend time of performance, or (2) terminate the uncompleted portion of Consultant's services at no cost to COIC.

8. Independent Contractor

Consultant is an independent contractor and nothing in this Agreement will be construed as forming a partnership or joint venture between the parties. Neither party to this Agreement may assign any rights in nor delegate any obligations under this Agreement without the written consent of the other except that it is expressly understood that COIC is the intended beneficiary of Consultant's performance. COIC will not withhold any taxes from any payments made to Consultant, and Consultant will be solely responsible for paying all taxes arising out of or resulting from the performance of the services related to the Project, including but not limited to income, social security, worker's compensation, and employment insurance taxes.

9. Notices

Any notice required under this Agreement will be deemed properly given if directed by prepaid mail, certified return receipt requested, or delivered in hand to the parties at the address as specified on the face page of this Agreement.

10. Indemnity

The Contractor shall indemnify and hold harmless COIC and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which COIC or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of COIC, where applicable, including appellate proceeding, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

11. Mediation

Consultant and COIC agree that any dispute that may arise under this Agreement will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to the commencement of litigation or arbitration. Such mediation will occur at Bend, Deschutes County, Oregon, and the mediator's fees and expenses will be shared equally by the parties who agree to exercise their best efforts in good faith to settle all disputes.

12. Arbitration

Consultant and COIC agree to submit all complaints, disputes and controversies that may arise out of or in connection with this Agreement or services provided, and which are not resolved through mediation, to binding arbitration under the laws of the State of Oregon, and in accordance with the Construction Industry Arbitration Rules of the Portland Arbitration Association in effect at the time. Notwithstanding any rule to the contrary, either party will have the option to initiate arbitration according to the Arbitration Service of Portland in effect at the time. The decision of the arbitrator(s) will be final and binding upon both parties.

13. Attorney Fees

In the event suit or action is instituted to enforce any provision of this Agreement, the prevailing party will be entitled to recover its costs and disbursements together with reasonable attorney's fees to be fixed by the arbitrator or court at trial or on appeal.

14. Governing Law

This Agreement and all services performed hereunder will be interpreted under the laws of the State of Oregon and the exclusive venue for any lawsuit or action will be in Deschutes County, Oregon.

15. Public Contract Requirements

This Agreement is subject to the terms and applicable public contracting requirements of ORS 279B.220 to 279B.235.

16. Severability

If any term, condition or provision of this Agreement or the application thereof to any circumstance is determined to be invalid or unenforceable to any extent, the remaining provisions of this Agreement will not be affected but will instead remain valid and fully enforceable.

17. Article Headings

All article headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

COIC REPRESENTATIVE:

By: _____

Title: _____

CONSULTANT:

[CONSULTANT NAME]

By: _____

Title: _____

**EXHIBIT A
SCOPE OF SERVICES**

[Please see attached.]

**EXHIBIT B
RATES AND PAYMENT SCHEDULE**

[To be completed following contract award.]

EXHIBIT C
STATUTORY TERMS AND CONITIONS
(ORS 279B.220 to 279B.235)

- (1) Consultant shall make payments promptly, as due, to all persons supplying to the Consultant labor or material for the performance of the work provided for in this Agreement.
- (2) Consultant shall pay all contributions or amounts due the Industrial Accident Fund from the Consultant or any subcontractor incurred in the performance of this Agreement.
- (3) Consultant shall not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or materials furnished.
- (4) Consultant shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- (5) Consultant shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any agreement for the purpose of providing or paying for the services.
- (6) Consultant is either an employer that will comply with ORS 656.017 or an employer that is exempt under ORS 656.126.
- (7) A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases designated under ORS 279A.055, the employee shall be paid at least time and a half pay:
 - (a) For all overtime in excess of eight hours in any one day or 40 hours in one week when the work week is five consecutive days, Monday through Friday; or
 - (b) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - (c) For all work performed on Saturday and on any legal holiday specified in ORS 279.020.
- (8) Consultant must give notice in writing to employees who work on a public agreement, either at the time of hire or before commencement of work on the agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- (9) Employees shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one work, except for individuals who are excluded under ORS 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- (10) (a) Consultant's employees shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 249B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.
 - (b) Consultant shall give notice in writing to employees either at the time of hire or before commencement of work on this agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.