

# City of Ketchum, Idaho

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April 30, 2013

Mayor Hall and City Councilors  
City of Ketchum  
Ketchum, Idaho

## **Ketchum Recreation & Public Purposes Update:**

- **Maintenance/management assistance agreement between BLM and City**
- **Amended MOU between City, BLM**
- **NEPA Review Contractor (contractor procurement process, Statement of Work, Administrative Support Agreement)**
- **Federal, State, Local Agency Involvement**
- **River Park Final Design Process and Estimated Timeline**
- **S2o Contract Amendment Correction and Update**

Mayor Hall and City Councilors:

### Introduction/History

The City of Ketchum applied for a Recreation and Public Purposes (R&PP) patent in 2008 for an approximate total of 316 acres of land owned by the United States and administered by the Bureau of Land Management. Part of the yet to be adopted management plan for the patent includes creation of a River Park along the Big Wood River about two miles north of City limits adjacent to the Hulen Meadows subdivision.

The City's partner in the R&PP patent application is the Wood River Land Trust. Additionally, myriad stakeholders are engaged in multiple components of the patent including, but not limited to, recreation, habitat restoration, flood mitigation and accessibility.

The City undertook a formal master planning effort for an "area of intense study" within what is commonly known as the North Parcel in July 2011. S2o Design and Engineering, a Lyons, Colorado firm specializing in whitewater park and river recreation planning, was hired in January 2012 to provide professional design and engineering to create a master plan for a river park known as the River Park at Sun Peak. The River Park at Sun Peak is a focused area of recreational use

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while the remainder of the R&PP properties' uses will remain largely as they are today.

Between application for an R&PP patent in 2008 and 2011, City staff and BLM staff continued to work on the R&PP process. Important benchmarks have occurred thus far:

- The City of Ketchum applied for a “patent” in 2008 for two parcels of land described above. A potential well site at Sun Peak Picnic Site was included in the original application.
- Amendments to the original Ketchum R&PP occurred in 2009 including recreation enhancements adjacent to the Hulen Pond area. A white water park, a wheelchair accessible fishing pier, and a dog agility course were included. The dog agility course has since been removed.
- A “scoping open house” was performed by BLM in 2009.
- At the request of BLM, the City undertook a “master planning” effort for a
- The Ketchum R&PP and a land exchange between Wood River Land Trust and Blue Canyon Corporation were bifurcated in 2011 under the direction of the BLM State Director.

In late 2012/early 2013, BLM indicated to the City that it no longer had resources to continue with the Ketchum R&PP; staff and resource constraints due to mandatory attention to litigation within the state of Idaho dictated that the Ketchum R&PP would be designated a “discretionary action” and that the BLM could no longer provide resources or staff for Ketchum’s proposed federal land disposal action to which it was invited by BLM.

A Steering Committee was formed under the recommendation of the BLM’s State Director, Steve Ellis, following meetings wherein the City of Ketchum and its partner implored the BLM to continue the process citing significant contributed private philanthropy and local tax dollars spent in the form of payment for Environmental and Master Planning contractor work, and City staff time. The goal of the Steering Committee is to discover ways and means by which the Ketchum R&PP process could continue despite existing BLM constraints.

The Steering Committee, composed of City representatives Jen Smith (Director of Parks and Recreation), Cherese McLain (Associate Attorney, MSBT Law), and Jason Poulsen (Senior Natural Resource Scientist for the City’s EA contractor, GeoEngineers) and BLM representatives Jeffrey Foss (Deputy Director for Idaho State BLM) and Stephanie Balzarini (Attorney/Advisor, Pacific Northwest Region, Boise Field Office, Office of the Solicitor, USDO) and Mel Meier (District Supervisor, Twin Falls District BLM) has met three times since its inception and will meet again on May 1 (between the time of this writing and the May 6 City Council meeting).

The last Ketchum R&PP update to City Council was presented on March 4, 2013.

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## Current Report

### **Maintenance/management assistance agreement between BLM and City**

A formal Assistance Agreement (AA) was undertaken by BLM and the City in 2006 whereby BLM paid the City Parks Division to perform maintenance and management duties including trash pickup, restroom cleaning and stocking, and providing a “presence.” The AA was engaged so BLM did not have to send staff up from Shoshone at a frequency rate dictated by high use from July through October. The formal AA lasts for three years but an informal arrangement was continued because of cost savings to BLM and the high value of a local staff presence at these locations to the local community. The City was paid \$2,500 annually for this arrangement.

BLM has indicated to the Ketchum Parks & Recreation Department that sequestration prohibits BLM from paying the department to offer maintenance and management assistance for both the North and South Parcels associated with the Ketchum R&PP. BLM has not yet decided upon a level of service for maintenance and management of the Ketchum R&PP parcels; Shoshone District Recreation Planner, John Kurtz, is in contact with Ketchum’s Parks & Natural Resources Superintendent, Juerg Stauffacher, at the time of this writing regarding arrangements for maintenance and management. The Parks Division is currently actively providing maintenance and management assistance.

It is respectfully recommended that the Parks Division continue offering assistance to BLM as previously arranged free of charge. This recommendation is based on the best interests of the local community and on an act of good faith toward BLM for adequate level of service management and maintenance of the Ketchum R&PP properties.

### **Amended MOU between City, BLM**

In October 2012 the City and BLM signed a Memorandum of Understanding (MOU) regarding Environmental Assessment work being performed by S2o Design and Engineering sub-contractor, GeoEngineers. The City and its contractor had issues relative to overbearing restrictions on communication between them and then it was determined that several Code of Federal Regulations (CFR’s) citations were more appropriate for Environmental Impact Statement (EIS) work rather than EA work. Stephanie Balzarini from the Department of the Interior’s Solicitor’s Office and City Attorney, Cherese McLain, made corrections and language adjustments and present the attached MOU. An effort to include the United States Army Corps of Engineers (USACE) as a signatory on this document revealed that USACE prefers to have a separate agreement which will be in the form of a Letter of Intent.

The MOU is attached as Exhibit A.

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### **NEPA Review Contractor (contractor procurement process, Statement of Work, Administrative Support Agreement)**

Because of resource constraints on BLM's behalf which prohibit the agency from allowing an Interdisciplinary Team (team of BLM scientists who review EA documents) to review the as yet completed EA for the Ketchum R&PP, it was recommended that the City pay for a "NEPA Review Contractor." This contractor will be hired by BLM under its own guidelines and will be paid for by the City. The Ketchum City Council directed staff to proceed with this arrangement at the March 4, 2013 City Council meeting.

Procuring a NEPA Review Contractor requires either a lengthy Request For Proposals process or an issuance of a Statement of Work (SOW) to an existing list of qualified General Service Administration (GSA) contractors. These GSA contractors have met certain requirements relative to expertise according to BLM. The cost of this NEPA Review Contractor is estimated at between \$30,000 and \$50,000, the cost of which will be borne by the City of Ketchum under an Administrative Support Agreement with BLM (attached as Exhibit C). The Statement of Work is a document that will be revealed to the City of Ketchum when it is finalized by BLM and made available to the GSA list.

Private philanthropy has been raised to cover the cost of the NEPA Review Contractor. Once a firm has been chosen by BLM and approved by the City, a contract for work will be presented to City Council in June. A City of Ketchum budget opening will be required for this expenditure, though no City funds will be used.

### **Federal, State, Local Agency Involvement**

Jurisdictional involvement has been periodically ongoing since the City made formal application for the R&PP in 2008. More recently, a "Pre-agency meeting" was scheduled on July 20, 2012 and an invitation was extended to representatives from the following agencies: BLM, IDWR, USACE, ITD, Blaine County, IDFG, City of Ketchum, WRLT. The goal of the pre-agency meeting was to discover levels of involvement and/or permitting necessary to implement the Ketchum R&PP, and, specifically, with regard to the River Park at Sun Peak. This meeting included a site visit to the North Parcel.

As indicated previously, BLM suggested adding USACE as a signatory to the City/BLM MOU; however, USACE recently informed members of the Steering Committee that it prefers to have a separate agreement regarding EA work and implementation of proposed projects associated with the Ketchum R&PP.

As a final design process is initiated by the City for the River Park at Sun Peak, increased agency involvement will occur relative to proposed in-stream work.

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### **River Park Final Design Process and Estimated Timeline**

S2o Design and Engineering is the contracting firm associated with design and engineering of the proposed River Park at Sun Peak which is the focused area of activity within the North Parcel of the Ketchum R&PP application. A recommended plan of action was revealed along with the concept Master Plan for the River Park at Sun Peak.

S2o Design and Engineering recently reported that in order to accommodate the City's desire to commence construction of the River Park at Sun Peak in fall of 2014, a final design process must be initiated in June 2013. Discussions relative to estimated timeline and cost reveal that an estimate of \$155,000 in FY13 and an additional amount in FY14 will need to be expensed for the final design process.

A proposed DRAFT timeline is attached as Exhibit D and a cost estimate table is attached as Exhibit E.

### **S2o Contract Amendment Correction**

An amendment to the S2o Design and Engineering Master Plan contract was approved by City Council on September 17, 2012. City Clerk Sandy Cady noticed that the minutes from the September 17, 2012 City Council meeting do not accurately reflect the actual not-to-exceed amount for this contract amendment. Minutes reflect an amount \$1,000 lower than the actual contract amendment. The actual contract amendment should reflect a total NTE amount of \$101,240 and not \$100,240.

### **S2o Contract Update**

The City of Ketchum amended a contract with S2o Design and Engineering for Master Planning services relative to the River Park at Sun Peak to include necessary Environmental Assessment work. This contract is described in the paragraph above.

Several unanticipated meetings with BLM staff have occurred (including Steering Committee meetings) which have triggered change orders from S2o. Mayor Hall has approved six (6) change orders that total \$6,299.62 to date. Thus, the total revised budget for Environmental Assessment work is \$110,449.62 to date. S2o Design and Engineering invoices are submitted by the Director of Parks & Recreation along with detailed accounting memorandums. A current change order synopsis is attached as Exhibit F.

### Financial Requirement/Impact

Several financial considerations for City Council are associated with this report:

1. BLM has indicated to the Ketchum Parks & Recreation Department that sequestration prohibits BLM for paying the department to offer maintenance and management assistance for both the North and South

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- Parcels associated with the Ketchum R&PP. It is respectfully recommended that the Parks Division continue offering assistance to BLM as previously arranged free of charge. This recommendation is based on the best interests of the local community and on an act of good faith toward BLM for adequate level of service management and maintenance of the Ketchum R&PP properties.
2. The cost of a NEPA Review Contractor is estimated at between \$30,000 and \$50,000. This cost will be borne by the City of Ketchum and will require a budget opening once the contract is approved; however, stakeholders have procured private funding for this expenditure. Staff will return to City Council when a contracting firm is decided upon and a contract is drafted.
  3. S2o Design and Engineering has indicated that in order to accommodate the City's desired timeline for construction it must undertake a "final design process." The cost for this process is estimated at \$155,000 in the current fiscal year and an additional amount in fiscal year 2013-14. Early indications are that private philanthropy is available for the final design endeavor. The City's portion of this expenditure has yet to be determined and will be based on a percentage of the scope of work contents in Exhibit E.

#### Recommendation

1. It is respectfully recommended that City Council approve the attached Memorandum of Understanding between BLM and the City and authorize it for Mayor Hall's signature. At the time of this writing, an identification number for the MOU was not available. If approved for execution, Mayor Hall will sign a numbered document. *Motion below.*
2. It is respectfully recommended that City Council approve the attached Administrative Support Agreement between BLM and the City and authorize it for Mayor Hall's signature. At the time of this writing, an identification number for the MOU was not available. If approved for execution, Mayor Hall will sign a numbered document. *Motion below.*
3. It is respectfully recommended that City Council approve the Ketchum Parks Division's continuance of maintenance and management assistance to BLM free of charge through fiscal year 2012-13.
4. It is respectfully recommended that City Council direct staff to continue with plans regarding a final design process with S2o Design and Engineering with the anticipation that final costs for FY12-13 and FY13-14 will be brought back to City Council in early June along with an amended contract for S2o Design and Engineering for final design work.

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Suggested Motion(s)

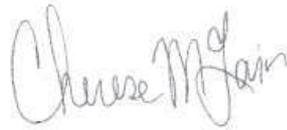
*Motion 1: "I move to authorize Mayor Hall to execute the attached amended Memorandum of Understanding between BLM and the City of Ketchum which indicates the relationship between the two jurisdictions for Environmental Assessment work for the Ketchum Recreation & Public Purposes application."*

*Motion 2: "I move to authorize Mayor Hall to execute the attached Administrative Support Agreement between BLM and the City of Ketchum which indicates an arrangement by which the City of Ketchum will pay for a NEPA Review Contractor to replace the BLM's Interdisciplinary Team for review of the Environmental Assessment for the Ketchum Recreation & Public Purposes application."*

Respectfully Submitted,



Jennifer L. Smith  
Director of Parks & Recreation



Cherese McLain  
Associate Attorney  
MSBT Law

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Exhibit A (re: staff report 4/30/13)  
(1 of 12)

BLM-MOU-ID-xxxx-xx  
AMENDMENT NO. 1

to

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
TWIN FALLS DISTRICT OFFICE  
AND THE  
CITY OF KETCHUM, IDAHO

I. INTRODUCTION

This amended Memorandum of Understanding (MOU) is between the United States Department of the Interior, Bureau of Land Management, Twin Falls District, Shoshone Field Office (herein referred as "BLM"), City of Ketchum (CITY), collectively referred to as the "Parties". This MOU supersedes and replaces that MOU between the BLM and the CITY approved by BLM on December 10, 2012.

II. PURPOSE

The CITY has filed application pursuant to the Recreation and Public Purposes Act (RPPA), 43 U.S.C. 869 et seq., to acquire two parcels of public land totaling 316 acres to be developed and managed for recreational activities, including a white water park; floodplain management; fish and wildlife habitat improvement; and public purposes, including emergency ingress/egress and the potential location of a water well (hereinafter referred to the PROJECT). The proposed PROJECT area is located on public lands administered by the BLM, Twin Falls District, Shoshone Field Office in central Idaho.

The BLM is responsible for compliance with the RPPA and the *National Environmental Policy Act of 1969, as amended* (NEPA; 42 USCA Sec. 4321 to 4370e) as well as all applicable regulations and laws passed subsequently, including Council on Environmental Quality (CEQ) regulations [*40 Code of Federal Regulations (CFR) 1500-1508*], USDI regulations (43 CFR 46) and requirements (*Department Manual 516, Environmental Quality* [USDI 2008]), BLM guidelines (*Handbook H-1790-1* [BLM 2008]) and *Considering Cumulative Effects under the National Environmental Policy Act* [CEQ 1997]. The scope (40 CFR § 1508.25) of the environmental documentation will be determined by the BLM, through the process defined by the CEQ regulations in 40 CFR § 1501.7.

The purpose of this MOU is to document the understandings between the BLM and the CITY regarding respective responsibilities, conditions, and procedures to be followed during the preparation of the environmental documentation, including both draft and final versions. The environmental documentation will disclose the existing environmental and potential impacts of the construction, operation, and maintenance of the CITY's proposed PROJECT, identified as Serial Number IDI-36276. At this time, the BLM anticipates that the preparation of a detailed Environmental Assessment (EA) will be required. However, if the EA demonstrates that the

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proposed PROJECT would have effects that are significant and cannot be mitigated to a level of non-significance, then either an Environmental Impact Statement (EIS) would be required to be completed or the CITY will reduce the scope and scale of the PROJECT, revise the PROJECT, or terminate the PROJECT to avoid significant impacts. The environmental documentation will serve to inform the decision-making official and the public. All documents released to the public must reflect the independent judgment of the BLM. The BLM is responsible for the adequacy and objectivity of all such documents. The CITY and CONTRACTOR will provide the BLM with the necessary support to meet that responsibility.

PROJECT components that must be analyzed in the NEPA compliance documentation (EA or EIS) shall include, but not be limited to:

The CITY proposed action - to acquire two parcels of public land totaling 316 acres to be developed and managed for recreational activities, including a white water park; floodplain management; fish and wildlife habitat improvement; and public purposes, including emergency ingress/egress and the potential location of a water well.

No Action - the PROJECT as proposed would not be approved across lands administered by the BLM.

Alternatives - a reasonable range of alternatives to the proposed action, determined by the BLM as a result of its evaluation of the PROJECT and public input.

To facilitate the completion of required environmental documents, the CITY has agreed to prepare an Environmental Assessment (EA) pursuant to 40 CFR 1506.5(b). *See also* 43 CFR 46.105, and BLM's NEPA Handbook H-1790-1 § 13.5. It is understood that the CITY will pay a contractor to prepare the EA. The CITY has retained the team of S2o Design and Engineering and GeoEngineers (hereinafter referred to as the CONTRACTOR) to assist the CITY with the NEPA document, including with the completion of any required environmental studies as well as to prepare a Draft and Final NEPA compliance document, including a project file, at the CITY's expense. Although the CITY will be preparing the EA pursuant to 40 CFR 1506.5(b), it is understood that the BLM is responsible for fulfilling the requirements of 40 CFR 1506.5 (a) and (b), including by making its own evaluation of the environmental issues and taking the responsibility for the scope and content of the EA.

The EA should move forward as expeditiously as possible within the parameters of NEPA. To facilitate this, the BLM will retain a NEPA review contractor (REVIEW CONTRACTOR) of its choice to be paid for by the CITY. The BLM and the CITY will execute a separate ADMINISTRATIVE SUPPORT AGREEMENT to provide for payment of these costs. If the estimated cost for the REVIEW CONTRACTOR exceeds the CITY's ability to pay or if the CITY runs out of the funds during the EA process, the CITY may notify the BLM and discontinue proceeding with the EA at that time.

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The BLM shall have reasonable opportunity for contemporaneous review of the EA prior to its completion. It is also understood that the BLM or its REVIEW CONTRACTOR may coordinate

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directly with the CITY or its CONTRACTOR as needed to obtain project data or resolve any issues that arise.

REVIEW CONTRACTOR should anticipate receiving the document a few chapters at a time, and should plan to begin their review of those chapters received immediately. REVIEW CONTRACTOR shall complete its review in accordance with the Statement of Work. BLM shall strive to complete its final review within forty five (45) days from the date BLM/REVIEW CONTRACTOR received the complete document from the CONTRACTOR.

In addition, all parties shall ensure that communications between the parties are consistent with the roles and responsibilities stated in this MOU and required by regulations and agency guidance. This includes ensuring that points of contact are established and used for communications between the parties.

### III. AUTHORITIES

- A. The authorities for the BLM to enter into this agreement include, but are not limited to, the following:
  - 1. *National Environmental Policy Act (NEPA)*, 42 U.S.C. 4321, *et seq.*
  - 2. *Federal Land Policy and Management Act of 1976 (FLPMA)*, 43 U.S.C. 1701, *et seq.*
  - 3. *Recreation and Public Purposes Act (RPPA)*, 43 U.S.C. 869 *et seq.*
  
- B. The authorities for the CITY to enter into this agreement include, but are not limited to, the following:
  - 1. Idaho Code Title 50 - Municipal Corporations, Chapter 3 Powers, Section 50-301.
  - 2. Idaho Code Title 50 – Municipal Corporations, Chapter 3 Powers, Section 50-303.
  - 3. Idaho Code Title 50 – Municipal Corporations, Chapter 3 Powers, Section 50-323.

Nothing in this MOU alters or supersedes the authorities and responsibilities of the Parties on any matter under their respective jurisdictions.

### IV. ROLES AND RESPONSIBILITIES

- A. The BLM or its agent, REVIEW CONTRACTOR, roles and responsibilities include:
    - 1. The BLM will be identified as the lead agency for the environmental documentation and is responsible to determine the adequacy of the NEPA compliance documents for public land administered by the BLM and for ensuring compliance with the requirements of NEPA, the CEQ regulations, and other pertinent federal laws and regulations, including the RPPA; consultations required by Section 7 of the Endangered Species Act of 1973, as amended; and Section 106 of the National Historic Preservation Act of 1966, as amended for the proposed PROJECT.
    - 2. The BLM will select and oversee the REVIEW CONTRACTOR paid for by the CITY, to review the environmental documents prepared by the CITY's CONTRACTOR consistent with the agreement between the REVIEW
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CONTRACTOR and the BLM with respect to the scope of work, work-product, and budget. The BLM will designate a sole point of contact for all matters related to the review of the environmental documents by the REVIEW CONTRACTOR.

3. The REVIEW CONTRACTOR, in coordination with the BLM, will provide oversight of the NEPA process to verify that the CONTRACTOR considers existing data, environmental descriptions, and analysis available from the CITY, BLM, and other sources, and that the CONTRACTOR does not duplicate work already completed unless BLM or the REVIEW CONTRACTOR determines that the existing work is not adequate for the purposes of the environmental documentation. The BLM and the REVIEW CONTRACTOR will jointly assess whether existing work must be modified or redone for purposes of compliance with NEPA, RPPA, and other applicable laws, regulations and policies. The BLM requires that the CONTRACTOR provide adequate copies of all maps, reports, and draft documents to the REVIEW CONTRACTOR to allow for a timely review contemporaneously with each chapter's preparation, and upon completion of a full draft.
  4. The BLM is responsible for all costs associated with the preparation, reproduction, and mailing of the associated decision documentation.
  5. The BLM will prepare, or ensure the preparation of, and issue all notices and other publications for the Federal Register and newspapers. In doing so, the BLM shall coordinate with the CITY to assure notice is disseminated to the broadest audience possible.
  6. BLM will maintain the official case file. In general, a BLM case file is a compilation of documents that includes the decision-making documents, as well as relevant documents generated or received in the course of the decision-making process. The case file should document the process the BLM used in reaching its final decision to demonstrate it followed the required procedures, as provided by statute, regulation, and any applicable BLM policies, and must explain and rationally support the BLM's decision. The case will include the NEPA project record prepared by the CONTRACTOR. If litigation is filed, the BLM case file will be part of the administrative record.
  7. All documents and NEPA project records used or developed by the CONTRACTOR or REVIEW CONTRACTOR to support the NEPA process will be part of the case file and of the administrative record if a lawsuit or appeal is ever filed. These documents and records will be given to the BLM when the REVIEW CONTRACTOR's involvement in the PROJECT is completed, by the REVIEW CONTRACTOR and by the CONTRACTOR as specified in Part IV.B.9. or as requested by the Authorized Officer and in a format/media acceptable by the BLM, including 508 compliant documents.
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8. When requested to do so by the CITY, BLM will treat specific data provided by the CITY as confidential and proprietary to the extent permitted by law. This

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responsibility extends to internal, REVIEW CONTRACTOR, and CONTRACTOR use of the information.

9. The BLM will make all information accessible upon request pursuant to the rules and exceptions of the Freedom of Information Act (FOIA). In the event that any confidential and proprietary information provided by the CITY is required by FOIA to be released by BLM, the CITY shall be provided written notice prior to the release of the information.
10. The BLM will make a final determination on the inclusion or deletion of material from the environmental documentation in all instances involving questions as to the content of any material (including all data, analysis, and conclusions).
11. During the NEPA process, the BLM or its REVIEW CONTRACTOR may provide input on draft environmental documents, including how the CONTRACTOR will consider existing data, environmental descriptions, and analyses available from all sources including the BLM.

B. The CITY or its agent, CONTRACTOR, roles and responsibilities include:

1. The CITY shall designate a single-point of contact for the BLM on all matters relating to the preparation of the environmental documentation for the PROJECT. The CITY will be responsible for developing and executing a contract with the CONTRACTOR. The CITY will be responsible for all costs and any continuing costs incurred by that CONTRACTOR, and the BLM's REVIEW CONTRACTOR, until terminated by the CITY.
  2. The CONTRACTOR, S2o Design and Engineering and GeoEngineers have already signed a "No Conflict of Interest" or "Disclosure Statement" stating that the CONTRACTOR does not have any interest, financial or otherwise, in the outcome of the PROJECT. A copy of the signed statements has been provided to the BLM.
  3. The CITY will keep the BLM and the REVIEW CONTRACTOR informed of any scheduled meetings.
  4. The CITY is not limited to the use of environmental and other information developed by the CONTRACTOR to prepare the governmental permit application(s), perform related procedures, or design the PROJECT and alternative sites for PROJECT facilities with the CONTRACTOR in the future. The CITY may also enter into new or modify existing contracts with the CONTRACTOR to obtain environmental or other information needed for PROJECT design, alternative site evaluation, or other PROJECT related information.
  5. The CONTRACTOR is responsible for complying with NEPA procedures and implementing regulations including, but not limited to: document contents, project record (including documentation of rationale and supporting information), and public
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review of the NEPA compliance documentation. The CITY shall ensure that the NEPA compliance documentation presents a range of reasonable alternatives and includes relevant environmental/social/economic issues and impacts, including cumulative impacts.

6. The CONTRACTOR will be the recipient for all public comments regarding the NEPA compliance documentation. The CONTRACTOR will prepare the responses for review by the REVIEW CONTRACTOR and BLM, and will be responsible for responding to public comments and will, in coordination with the CITY, and the REVIEW CONTRACTOR or BLM, determine necessary modifications to the NEPA compliance documentation as a result of public comments. The public comment period will be initiated when the NEPA compliance documentation is released to the public.
7. The CONTRACTOR will maintain the NEPA project record in accordance with the BLM Planning Handbook. The CONTRACTOR will be responsible for design, organization, preparation, indexing, and maintenance of the NEPA project record for the PROJECT.
8. All documents and records used or developed by the CONTRACTOR to support the NEPA process will be part of the NEPA project record. On a monthly basis, unless otherwise specified by the BLM /REVIEW CONTRACTOR, the CONTRACTOR will send any documents added to the project record to the BLM for inclusion in the official case file. Remaining project documents and records will be given to the BLM when the CONTRACTOR's involvement in the process is completed, or as requested by the Authorized Officer. All documents in the project record will be provided in a format/media acceptable by the BLM/REVIEW CONTRACTOR, including 508 compliant documents.
9. In the event of a legal challenge (administrative or judicial) of the BLM's Decision, the CITY will be responsible for all costs associated with preparation of the administrative record which will be filed with the adjudicating body.
10. The CITY will comply with all applicable Federal, State, and local laws and regulations.

C. The joint roles and responsibilities of the Parties include:

1. All Parties are responsible for ensuring the project record is complete and accurate.
  2. The Parties will keep each other informed on the progress of their respective responsibilities and immediately inform each other of any need for changes, modifications, or potential delays. This information sharing will occur on at least a monthly basis. The parties will invite each other and the REVIEW CONTRACTOR and CONTRACTOR to attend meetings with federal, state, regional, and local agencies and other groups throughout the NEPA process.
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3. The Parties will respond to data requests and provide review comments (e.g. on the description of the proposed PROJECT and changes thereto) within a reasonable time frame. If a party fails to meet the tentative schedule agreed by the Parties, the schedule may be adjusted. Such responses are normally transacted through the CONTRACTOR.
4. The CONTRACTOR will develop project key dates and provide those to the BLM/REVIEW CONTRACTOR for concurrence. Should a party not be able to meet the agreed upon schedule, advance notification shall be given to the other parties. The notification shall include an alternative schedule. All parties will use best efforts to adhere to, and assist each other in adhering to the schedule.
5. The BLM or REVIEW CONTRACTOR will participate, at a minimum, in monthly conference calls, or more frequently as necessary, with the CITY and the CONTRACTOR to assure the time schedule is met. Cooperating agencies and affected landowners may be invited to participate in calls when topics discussed are pertinent to their interests.
6. In cooperation with the CITY and the CONTRACTOR, the BLM will prepare a mailing list for distribution of the EA and/or PROJECT notices to the public.
7. The Parties will work together to further develop the statement of the proposed action and purpose and need for inclusion in the City's environmental documentation. This joint process is intended to improve the PROJECT description to avoid, mitigate, or otherwise address adverse impacts.
8. The Parties agree that scoping has been completed to proceed with the EA. The BLM will provide a thirty (30) day public comment period upon completion of the EA
9. The CONTRACTOR, in coordination with the CITY, the REVIEW CONTRACTOR, and the BLM will determine necessary modifications to the NEPA compliance documentation as a result of public comments or protest.
10. Following completion of the NEPA analysis and if a determination is made by the BLM that the proposal is in the public interest pursuant to the RPPA, the BLM will be in a position to publish a Notice of Realty Action (NORA) in the Federal Register in accordance with 43 CFR 2741.5(h). *See* BLM Handbook H-2740-1. The NORA must specify that the public lands are classified as suitable for lease or conveyance under the RPPA and must allow a 45-day period, following publication of the NORA for comments to both the classification decision and the decision to issue the lease and/or conveyance. If no adverse comments are received, the classification becomes final, effective 60 days after publication of the NORA.

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## V. GENERAL PROVISIONS

### A. Representatives

The Parties will designate a primary representative and backup representative as specified in Exhibit A, attached hereto, to ensure coordination during the implementation of this MOU. The Parties may change their points of contact at any time by providing a revised Exhibit A to the other Party. Any revisions must be added to the official file.

### B. Funding

1. This MOU shall not obligate any partner to expend funds or involve the agencies in any contract or other obligations for the payment of money.
2. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. This MOU does not establish authority for noncompetitive awards of any contract or other agreement. Any contract or agreement for other services must fully comply with all applicable requirements for competition.

### C. Disputes

If a dispute arises between the Parties throughout the process identified in this MOU, the Points of Contact identified herein shall endeavor to resolve the disagreement. If the Points of Contact are unable to reach a consensus, the issue may be elevated to the Steering Committee for consideration. If the Steering Committee is unable to resolve the matter, the issue may be raised internally within each party's respective organization for further consideration of the issues by the appropriate officials.

## VI. RECORDS

Any records or documents generated as a result of this MOU shall become part of the official BLM project file maintained in accordance with applicable BLM Records Management policies. The Parties have entered into a Data Sharing Agreement and this Agreement shall not be read to conflict with said Agreement. Any request for release of records associated with the implementation of this MOU outside the Parties must be determined by BLM based on applicable laws, including the Freedom of Information Act and the Privacy Act. Documents under the CITY's control are subject to disclosure pursuant to state and local public records laws.

## VII. RESERVED RIGHTS

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In executing this MOU and taking any other action contemplated hereby, the CITY reserves the right to contest, in any administrative or judicial proceedings, any and all decisions

concerning issues in the EA, or any other Federal requirements related to the proposed PROJECT. The CITY recognizes that nothing in this MOU commits the BLM to permit the PROJECT or otherwise take action favorable to the CITY upon all or any part of the proposal.

#### VIII. TRIBAL CONSULTATION

The BLM shall engage in government-to-government consultation with affected Indian Tribe(s) during all phases of this process, in accordance with applicable Federal statutes, regulations, and other authorities, including Executive Order 131175 on consultation with Indian Tribes and Executive Order 13007 on Indian Sacred Sites. This MOU in no way affects the responsibility of the BLM and the authority of the affected Tribe(s) to engage in these government-to-government consultations. To the extent the BLM receives any Indian Trust data as a function of the requirement to conduct government-to-government consultations with affected Indian Tribe(s), the BLM certifies that it will accord such data all necessary protection and security pursuant to applicable statutes, regulations, and policies, including those set forth in the context of any applicable litigation.

#### IX. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS; SEVERABILITY CLAUSE

This MOU is subject to all applicable Federal laws, regulations, and rules, whether now in force or hereafter enacted or promulgated. Nothing in this MOU shall be construed as in any way impairing the general powers of the BLM under such applicable laws, regulations, and rules. If any term or provision of this MOU is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions. Meeting the terms of this MOU shall not excuse any failure to comply with all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

#### X. ENTIRETY OF THE AGREEMENT: NO THIRD PARTY BENEFICIARIES

- A. This MOU and its attachments, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements concerning the PROJECT, whether written or oral.
  - B. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU must not be constructed so as to create such status. The rights, duties, and obligations contained in this MOU operate only between the Parties to this MOU, and inure solely to the benefit of the Parties of this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU. The Parties to this MOU intend and expressly agree that only Parties signatory to this MOU will have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.
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## XI. ADMINISTRATIVE TERMS

- A. In carrying out the terms of this MOU, there shall be no discrimination against any person because of race, creed, color, sex, or national origin.
- B. The terms of this MOU are effective only to the extent BLM is authorized to take actions, and to the extent funds are appropriated or otherwise made available.
- C. All documents released to the public must reflect the independent judgment of the BLM. The BLM is responsible for the adequacy and objectivity of all such documents. The CITY and CONTRACTOR will provide BLM with the necessary support to meet that responsibility.

## XII. TERM, AMENDMENTS, AND TERMINATION

### A. Term of MOU:

- 1. This MOU becomes effective upon the date last signed and executed by the duly authorized representative of the Parties to this MOU.
- 2. This MOU shall remain in effect until a decision on the PROJECT is issued by the BLM unless terminated, whichever occurs first.

### B. Amendments:

- 1. The Parties may request changes to this MOU, which shall be effective only upon the written agreement of all Parties.
- 2. Any changes, modification, revisions, or amendments to this MOU shall be incorporated by written instrument, executed and signed by all Parties, and will be effective in accordance with the terms and conditions contained herein.

### C. Termination:

- 1. This MOU may be unilaterally terminated at any time by any one of its participants, following at least 30 days written notice to the other participants.
  - 2. In the event of termination of the MOU, and at the request of the CITY, the BLM will initiate preparation of any remaining analysis and documentation covered by this MOU consistent with staff and budget limitations. The CITY will be required to submit to the BLM all information and records held by the CITY and the CONTRACTOR that were used and/or created in association with the NEPA process up to the point of MOU termination, as well as all information and records held by the CITY and the CONTRACTOR needed to support continued preparation of the environmental documentation.
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XIII. SIGNATURES

All signatories have the appropriate delegation of authority to sign this MOU.  
The Parties hereto have executed this MOU on the dates shown below.

For the CITY of Ketchum, ID:

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title

For the Bureau of Land Management:

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title

Attachment:  
Exhibit A

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Exhibit A

The principal contacts for this MOU are:

For the CITY of Ketchum, ID:

Name City Attorney, Attn: Susan Buxton, Cherese  
McLain  
Address 950 W. Bannock Ste. 520, Boise, ID 83XXX  
Phone No. 208-331-1800  
Fax No. 208-331-1202  
Email [cdm@msbtlaw.com](mailto:cdm@msbtlaw.com)

For the Bureau of Land Management:

Name Katherine Farrell  
Address 2536 Kimberly Road  
Twin Falls, ID 83301  
Phone No. 208-732-7410  
Fax No. 208-732-7415  
Email [kfarrell@blm.gov](mailto:kfarrell@blm.gov)

For the CONTRACTOR:

Name GeoEngineers Attn: Jason Poulson, Wayne Wright  
Address 1525 South David Lane, Boise, ID 83705  
Phone No. 208-433-8098  
Fax No. 208-433-8092  
Email [jpoulsen@geoengineers.com](mailto:jpoulsen@geoengineers.com)

Any party may designate a different point of contact by notifying the other party in writing of such change.

Exhibit C (re: staff report 4/30/13)  
(1 of 4)

ADMINISTRATIVE SUPPORT AGREEMENT  
Between the  
UNITED STATES DEPARTMENT OF THE INTERIOR (USDI)  
BUREAU OF LAND MANAGEMENT (BLM)  
And the  
CITY OF KETCHUM, IDAHO

This agreement is hereby made and entered into by and between the USDI BLM, from this point forward referred to as BLM, and the CITY OF KETCHUM, IDAHO (CITY) under the provisions of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. § 1737 (a)) and (43 U.S.C. § 1737 (c)).

**BACKGROUND:**

The BLM and the CITY have entered into Amendment No. 1 to a Memorandum of Understanding (MOU) dated \_\_\_\_\_ (MOU-ID-\_\_\_\_\_), to document the understandings between the BLM and the CITY regarding respective responsibilities, conditions, and procedures to be followed during the preparation of the environmental documentation, including both draft and final versions associated with an application pursuant to the Recreation and Public Purposes Act (RPPA), 43 U.S.C. 869 et seq., to acquire two parcels of public land totaling 316 acres to be developed and managed for recreational activities, including a white water park; floodplain management; fish and wildlife habitat improvement; and public purposes, including emergency ingress/egress and the potential location of a water well (hereinafter referred to the PROJECT). The proposed PROJECT area is located on public lands administered by the BLM, Twin Falls District, and Shoshone Field Office in central Idaho, identified as BLM Serial Number IDI-36276.

To facilitate the completion of required environmental documents, the CITY has agreed to prepare an Environmental Assessment (EA) pursuant to 40 CFR 1506.5(b). *See also* 43 CFR 46.105, and BLM's NEPA Handbook H-1790-1 § 13.5. It is understood that the CITY will pay a contractor to prepare the EA. To further facilitate expeditious processing of the environmental documents the CITY has agreed to allow BLM to engage a NEPA review contractor (REVIEW CONTRACTOR) of its choice to be paid for by the CITY.

**PURPOSE:**

This Administrative Agreement details the terms and conditions of support to be provided by the CITY to the BLM in its processing of the above mentioned R& PP application.

**BLM SHALL:**

1. Deposit all funds received under the terms of this agreement to a BLM Contributed Trust Account to be used for the specific purpose of reimbursing the REVIEW CONTRACTOR, to review the environmental documents prepared by the CITY's CONTRACTOR consistent with the agreement between the REVIEW CONTRACTOR and the BLM with respect to the scope of work.

2. The BLM Indirect Administrative Cost Rate Assessment for this agreement will be five (5) percent. This rate will remain in effect for the term of the agreement. A Description of Direct and Indirect Costs for this agreement is attached as Exhibit A.
3. Issue a Courtesy Statement to the CITY prior to the solicitation or award of a contract for the REVIEW CONTRACTOR, to ensure adequate funds are available to pay for the services received from the REVIEW CONTRACTOR. Courtesy Statements will be sent to:

City Attorney, Attn: Susan Buxton, Cherese McLain  
950 W. Bannock Ste. 520  
Boise, Idaho 83702
4. The amount of the Courtesy Statement will be determined based on the following:

The government's internal cost estimate (GICE) for the services specified in the REVIEW CONTRACTOR Statement of Work (SOW). Subsequent Courtesy Statements will be issued if additional funds are needed for services outside, or in addition to those described in the SOW. After confirming all invoices have been received and paid and the project is complete, any funds remaining in the account will be refunded to the CITY.
5. Submit a copy of all bills received from the REVIEW CONTRACTOR to the CITY.

**CITY SHALL:**

1. Notify BLM of its acceptance of the GICE to facilitate BLM issuing the Courtesy Statement to ensure adequate funds are available for BLM to pay the REVIEW CONTRACTOR.
2. Pay all Courtesy Statements within 30 days of receipt to ensure adequate funding is available to maintain prompt payment of REVIEW CONTRACTOR bills received by the BLM.

**IT IS MUTUALLY AGREED AND UNDERSTOOD BY ALL PARTIES THAT:**

1. Modifications within the scope of the instrument shall be made by mutual consent of the parties by the issuance of a written modification signed and dated by all parties prior to any changes being performed.
2. The BLM is not obligated to fund any changes not properly approved in advance.
3. Funds authorized for use by the BLM which are not spent or obligated for the specific purpose identified under the terms of this agreement will be refunded to the CITY unless written instruction stating otherwise is provided by the CITY.

4. The CITY has the legal authority to enter into this instrument and the institutional, managerial and financial capability to ensure proper planning, management, and completion of the agreement.
5. This instrument in no way restricts the BLM from participating in similar activities with other public or private agencies, organizations, and individuals.
6. This instrument is executed as of the date of the last signature and is effective through **September 30, 2017**, at which time it will expire unless extended or terminated.
7. Any of the parties involved, in writing, may terminate this agreement in whole or in part at any time before the date of the expiration. The effective date for such a termination will be 30 days from the date of the written notification.
8. Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.
9. The principal contacts for this instrument are:

Susan Buxton City Attorney, City of Ketchum 950 W. Bannock Ste. 520 Boise, ID 83702 Voice: 208-331-1800 FAX: 208-331-1202 Email: <a href="mailto:cdm@msbtlaw.com">cdm@msbtlaw.com</a>	Ginny (Virginia) Hoffman BLM, Idaho State Office 1387 S Vinnell Way Boise, ID 83709-1657 Voice: 208-373-4035 FAX: 208-373-3807 Email: <a href="mailto:vhoffman@blm.gov">vhoffman@blm.gov</a>
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10. The BLM will bill the CITY via Courtesy Statements for funds sufficient to cover the estimated costs for the REVIEW CONTRACTOR.
11. The BLM shall not be liable to the CITY for any damage incident to the performance of this agreement.

\_\_\_\_\_  
Susan Buxton  
City Attorney, City of Ketchum

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mel M. Meier  
District Manager, Twin Falls District BLM

\_\_\_\_\_  
Date

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## Exhibit A

### Description of Direct and Indirect Costs

**Direct costs** are those costs which can be specifically identified with producing a specific product or service. Examples of direct costs include, but are not limited to, personnel costs in the form of wages paid to BLM personnel working on producing the specific product or service, including allowances provided for fringe benefits and leave surcharge rate and any overtime associated with producing the specific product or service; vehicle and travel expenses directly attributed to work on producing the specific product or service; purchased services, if necessary, such as printing, automated data processing services and photographic reproduction; and any miscellaneous supplies and equipment of a specialized nature, the use of which is directly applicable to producing the specific product or service.

**Indirect costs** are those which cannot be directly identified with producing a specific product or service, but can be shown to bear some relationship to result from or be in support of the product or service. Indirect costs include, but are not limited to, a portion of the costs for capitalized and non-capitalized equipment; space rental; telephone services; postage; personnel transfer costs; budget and program development; administrative and clerical support; safety management; public information, inquiries and reports; cartography and basic series mapping; aviation management; telecommunications; maintenance of equipment and tools; and systems design and implementation.

Excluded from indirect costs and not attributable to producing the specific product or service are costs for managerial work; evaluations of field office activities; program coordination; technical program direction; environmental education; interagency planning; studies and research; preparation of environmental documents relating to general program planning; costs associated with administrative or judicial adjudication of protests, appeals, lawsuits or claims of third parties, law enforcement, and firefighting.

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EXHIBIT D re: staff report 4/30/13

From Scott Shipley email dated 4/18/2013:

Please see our most recent project schedule pasted below. I know that from a risk management standpoint it seems wiser to run the EA and Design process in-series, as opposed to in-parallel, but we had anticipated this overlapping permitting and design requirement as we wrapped up the Master Plan phase and it has been a part of our plan throughout. Many of the permits that are required on this project will need a more advanced level of design than the Master Plan and we are also on a tight schedule to meet the City's objective of beginning construction in the fall of 2014. This schedule was created to address these two issues. There is ample time in the interim—between preliminary design and final design/construction documents—to allow for changes as needed following the permitting process.

- **May 1, 2013** – GeoEngineers receives the Final Purpose and Need Statement from the City, BLM and USACE and begins preparation of the draft EA document.
- **June 1, 2013** – BLM, USACE and City identify an agreed upon firm to review the EA.
  - BLM and USACE initiate a 30 day public scoping review period.
  - GeoEngineers can begin sharing portion of the EA with the NEPA reviewer.
  - Contract with S2O design team to initiate preliminary design and permitting activities.
- **July 1, 2013** – GeoEngineers provides all sections of the draft EA to the reviewer.
- **August 1, 2013** – EA review complete with comments for GeoEngineers revisions.
- **September 1, 2013** – GeoEngineers completes EA revisions and submits the final draft to the EA reviewer and BLM for final determination.
- **October 1, 2013** - S2O design team complete preliminary design package.
- **November 1, 2013** – Receive BLM/USACE final record of decision/finding of no significant impact (FONSI).
- **December 1, 2013** – Joint application permit package is submitted to USACE, Idaho Department of Water Resources (IDWR), Idaho Department of Environmental Quality (IDEQ), Idaho Department of State Lands (IDSL), City of Ketchum and Blaine County, Idaho.
- **March 1, 2014** - Receive final permits from all applicable jurisdictional agencies.
- **May 1, 2014** - S2O design team completes final design and construction bid package. The Design is put out for bid.
- **June 1, 2014** - Award contractor and negotiate construction contract.
- **July 15, 2014** - Begin upland construction activities.
- **August 1, 2014** – Begin in-water construction activities.
- **October 15, 2014** – Construction complete.





S/C mtgs: 1/24, 2/21, 3/21, 5/1



Exhibit F - Change Orders

(re: staff report 4/30/13)

March 12, 2013

Ms. Jennifer Smith  
The City of Ketchum  
Parks and Recreation Department  
PO Box 2315, 900 Third Avenue North  
Ketchum, ID 83340

Change Order #6

This confirms Change Order No. 6 between The City of Ketchum ("Client") and S2O Design and Engineering for support and assistance with the upcoming March 21, 2013 Steering Committee meeting with the Bureau of Land Management (BLM) that will be held at the office of Moore Smith Buxton & Turke (MSBT) in Boise, Idaho, regarding the Ketchum River Park project. This change order was requested on February 21, 2013 by Cherese McClain of MSBT and the City of Ketchum, Idaho.

The additional services provided by S2o Design and Engineering will consist of the following:

Description	Estimated Fees
Meeting Attendance (March Steering Committee meeting with the BLM)	\$ 780.00
<b>Subtotal for Change Order #6</b>	<b>\$ 780.00</b>
Subtotal for Change Order #5	\$ 780.00
Subtotal for Change Order #4 (Feb. Steering Committee Mtg)	\$ 675.00
Subtotal for Change Order #3 (Jan. Steering Committee Mtg)	\$ 675.00
Subtotal for Change Order #2 (Contract Amend. #2 - BLM Mtg)	\$ 6,299.62
Original Authorized Budget (Contract Amendment for EA)	\$ 101,240.00
<b>Total Revised Budget</b>	<b>\$ 110,449.62</b>

The professional services listed above will be provided in accordance with the terms in our General Conditions, previously provided to you in our original proposal dated December 22, 2011 and executed on February 13, 2012. The fee for the additional services described above will be determined on a lump sum basis.

By signature below, Client accepts the scope of services and all terms described herein. In addition, Client's signature shall constitute as authorization to proceed on the date listed below Client's printed/typed name, unless such authorization has been separately provided verbally or in writing.

The City of Ketchum

\*Authorizing Signature

Mayor Randy Hall

Typed or printed name

3/19/13

Date

\*Individual with Contracting Authority

318 McConnell Dr. Lyons, CO, 80540 303.819.3985

S2o Design and Engineering

\*Authorizing Signature

Scott Shipley

Typed or printed name

3/21/2013

Date