

**RESOLUTION 06-070**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF KETCHUM AND PHARMER ENGINEERING, LLC FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE EFFLUENT FILTER PROJECT (PHASE III) IN AN AMOUNT NOT TO EXCEED \$168,000.

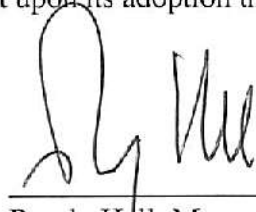
WHEREAS, the Wastewater Treatment Plant Expansion Project was authorized by the voters in February 2004; and

WHEREAS, the City of Ketchum accepted the bid from RSCI Construction, Inc. for the Effluent Filter Project (Phase III); and

WHEREAS, City of Ketchum Utilities Manager, Steve Hansen, has recommended the City contract with Pharmed Engineering for overseeing work performed by RSCI Construction, Inc.

NOW THEREFORE BE IT RESOLVED, that the Ketchum City Council hereby authorizes the Mayor to execute a contract between the City of Ketchum and Pharmed Engineering, LLC for construction management services for the Effluent Filter Project (Phase III) in an amount not to exceed \$168,000.

This Resolution will be in full force and effect upon its adoption this 5<sup>th</sup> day of June, 2006.



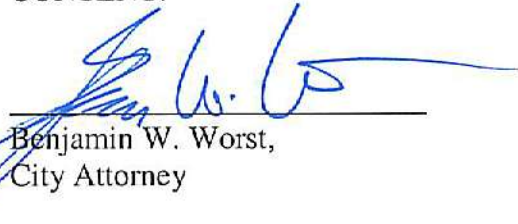
Randy Hall, Mayor

ATTEST:

APPROVED AS TO FORM AND CONTENT:



Sandra Cady, CMC  
City Treasurer/Clerk



Benjamin W. Worst,  
City Attorney



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## AGREEMENT FOR PROFESSIONAL SERVICES

### KETCHUM AND SUN VALLEY WASTEWATER TREATMENT FACILITY CONSTRUCTION SERVICES Effluent Filter Project

Date: 9<sup>th</sup> day of June, 2006

THIS AGREEMENT is between the **CITY OF KETCHUM, IDAHO** and the **SUN VALLEY WATER & SEWER DISTRICT**, hereinafter referred to as the "**OWNER**" and **PHARMER ENGINEERING, LLC**; an Idaho Corporation hereinafter referred to as "**CONSULTANT**". The **OWNER** and **CONSULTANT** in consideration of their mutual covenants herein agree as set forth below.

The wastewater improvement design authorized under a separate agreement with **CONSULTANT** the Effluent Filter project. This **AGREEMENT** for Construction Services applies to 2006 construction of the Effluent Filter project hereinafter referred to as "**PROJECT**".

#### **OWNER INFORMATION AND RESPONSIBILITIES**

**CONSULTANT** hereby requests and **OWNER** agrees to provide to **CONSULTANT** all associated project information including data prepared by others; soil borings, probings and subsurface explorations; hydrographic surveys; laboratory tests and inspection reports of samples, materials and equipment; studies and interpretations of all environmental assessment and impact statements; surveys of record; property descriptions; zoning, deed and other land use restrictions; other special data or consultations as may be available; all of which **CONSULTANT** may use and rely upon in performing services under this **AGREEMENT**.

The **OWNER** will obtain permission for **CONSULTANT** to enter upon public and private property as required for **CONSULTANT** to perform services under this **AGREEMENT**.

#### **SERVICES TO BE PERFORMED BY CONSULTANT**

**CONSULTANT** will provide the following generally described services under this **AGREEMENT**:

**Task No. 1 – Pre-Construction Meeting and Submittal Reviews:** **CONSULTANT** will conduct a pre-construction meeting to discuss project requirements and execution. **CONSULTANT** will provide reviews of the detailed shop drawings and other submitted documents required by the General Contractor (GC) for the **PROJECT**. Shop drawings are required for all equipment and materials to be used in the construction project. In addition, contract administration submittals are reviewed for accuracy and completeness. Submittal reviews will include the following general areas of work.

- Critical Path Construction Schedule
- Payment Applications
- Shop Drawings (such as concrete and asphalt mix design, reinforcing steel layout, process equipment, piping, plumbing, heating/ventilation equipment, electrical and instrumentation equipment)

**Task No. 2 - Resident Project Representative:** CONSULTANT will provide a Resident Project Representative (RPR) for continuous construction observation. The RPR shall be on-site during all critical construction and be readily available at all other times required for construction observation. In general the RPR will be on-site at times the CONTRACTOR is on-site. The RPR's schedule will mirror the work days of construction, generally assumed to be Monday through Friday, for 40 hours per week. We have assumed that no over-time work will be required. The RPR will have schedule flexibility to match actual construction observation needs while managing time to provide optimum OWNER value. We will use the same RPR we provided for the previous two wastewater improvement projects in 2003/2004 and 2005, Mr. Mike Terhune/Galena Engineering.

The on-site inspector will document the construction activities and coordinate specific quality control tests. The on-site inspector will not be responsible for site safety. The RPR will review and monitor the progress schedule, conduct or attend meetings with Contractor and serve as CONSULTANT'S liaison with Contractor, working principally through Contractor's Superintendent. RPR will review all quality control tests to confirm Contractor conformance with the specifications. The on-site inspector will provide the CONSULTANT with weekly progress reports which will be copied to OWNER.

Digital communication is critical for a construction project. Therefore, a computer will be supplied to the field office trailer along with a fax machine. A phone line is provided by the GC along with a mobile construction office trailer for the CONSULTANT. The RPR will have a digital camera, an e-mail account and a cell phone. The RPR will also photograph document construction progress and activities. These photos will be digitally stored and provided to the OWNER at the conclusion of work.

It is intended that the on-site inspector will be observing construction through the course of five (5) months. The Aeration Basin project is scheduled for final construction work starting in late May 2006 and continuing into early July 2006. Approximately 300 hours of RPR budget remain for the Aeration Basin project. The Effluent Filter project is estimated to begin at about the same time. The overlap of the Effluent Filter project will result in no additional RPR time, therefore, we anticipate RPR time specifically on the Effluent Filter project will begin in July 2006. Substantial completion is scheduled for the end of December 2006.

We have assumed 75 - 100% RPR on-site inspection during July through November, for a total level-of-effort of 875 hours. With flexible RPR time management during slow construction periods, construction overlap and spot inspections, our goal is to stretch the RPR involvement through December 2006. The assumptions described above may change due to unforeseen contractor schedule issues. Therefore, the RPR fee may require adjustment based on the GC's schedule. Our monthly invoices will document the success of RPR time

management so the OWNER is fully aware of any potential budget adjustments.

**Task No. 3 - Project Manager:** The Project Manager (CONSULTANT) will be OWNER'S representative during the construction period. The duties and responsibilities are set forth in the Contract Documents. The CONSULTANT will conduct daily conference calls with the RPR and answer all construction related questions (Requests for Information, RFI's). The PM will be responsible for adjustments to the construction (and Contract Documents) through Field Orders and Change Orders. The CONSULTANT will manage all submittals and project correspondence and report directly to the OWNER'S representative. We have assumed this portion of the PM work will require about 15 hours/week, or about 60 hours per month for five (5) months.

Monthly meetings with OWNER and CONTRACTOR will be conducted by the CONSULTANT to review construction progress and discuss issues. The critical nature of early construction progress may require CONSULTANT to sometimes make two visits per month. These regular construction meetings will review past and future construction activities, observe construction quality, manage project financials, resolve conflicts and direct work to meet PROJECT goals. CONSULTANT will provide OWNER with a status report on the project detailing the progress completed to date, major goals and expected progress to be made the following month and review and recommendations on the Contractor's monthly partial payment request.

The Project Manager task includes interaction with Idaho Department of Environmental Quality (DEQ) in regards to regulatory review. The Manager's role will also include regular construction updates to the Ketchum City Council or Sun Valley Board.

**Task No. 4 – Electrical Coordination and Controls Integration:** The electrical and controls portions of this project will require specialized on-site assistance. Mr. Dan Lively/Power Engineers will support the CONSULTANT team on the electrical construction. Mr. Brett VanWagoner/Banyan Technology will support the CONSULTANT on controls integration. The subtasks include:

1. Occasional On-site Observation/Support: Dan Lively/Power Engr. will check on the electrical portion of work and assist the RPR in electrical observation. The support will be approximately 8 hours per month for five (5) months. We estimate the on-site electrical engineering effort to be approximately 40 hours.
2. Submittal Review: Review of contractor proposed electrical materials or equipment for compliance with Contract Documents and code. Assumed level-of-effort 20 hours.
3. Field and Change Orders: Preparation of electrical contract revisions and changes. Assumed level-of-effort 10 hours.
4. Attend Monthly Meetings: Attend three monthly meeting. Assumed level-of-effort 10 hours.
5. Final Electrical Inspections: Prepare punch-lists at the substantial completion stage of work and inspect for final completion. Assumed level-of-effort 24 hours.
6. Contractor Instrumentation Interface: Assumed level-of-effort eight hours.
7. SCADA Programming: Assumed level-of-effort 60 hours.

8. SCADA Startup & Testing: Assumed level-of-effort 40 hours.

**Task No. 5 - Startup and O&M Update:** CONSULTANT shall be present during major equipment startup and training to assist the OWNER in effective transition from the construction phase to operations phase. This task will also involve updating the existing Ketchum Operations Manual with updated information for the newly integrated construction.

**Task No. 6 - Substantial Completion, Final Inspection, Contract Closeout and Record Drawings:**

A site visit will be made by CONSULTANT when CONTRACTOR considers the entire work ready for its intended use, i.e. substantial completion. CONSULTANT will inspect work and determine the status of completion. CONSULTANT will prepare a tentative certificate of substantial completion with a tentative list of items to be completed or corrected before final payment ("punch list"). The punch lists shall identify substandard workmanship or incomplete construction items required to be done before contract closeout, initiation of 1 year warranty and final payment. Substantial completion is anticipated in late December.

Upon notice from Contractor that the work is complete, CONSULTANT will make a final inspection with OWNER. The inspection will reveal any incomplete or defective work. If complete Contractor shall apply for final payment and contract closeout including all documentation as specified.

CONSULTANT will incorporate CONTRACTOR red-line drawings into AutoCAD digital format. The drawings will be printed and sealed for "Record Drawing". These drawings are required to be submitted to Idaho DEQ within 30 days of completion of work.

**BUDGET ESTIMATES**

CONSULTANT agrees that in no event shall CONSULTANT fees total more than \$168,200 for Construction Engineering Services related to Effluent Filter project unless the parties agree in writing before such amount is exceeded.

Budget Estimated fees for services by CONSULTANT are based on the following breakdown:

*Table 1*  
*Engineering Fees*

<b>Item</b>	<b>Labor</b>	<b>Expenses</b>	<b>Total</b>
Task 1 - Submittal Review	\$17,100	\$1,300	\$18,400
Task 2 - Resident Project Rep.	\$69,300	\$2,200	\$71,500
Task 3 - Project Management	\$37,500	\$2,400	\$39,900
Task 4 - Electrical & Instrumentation	\$22,300	\$600	\$22,900
Task 5 - Startup and O&M Preparation	\$8,900	\$900	\$9,800
Task 6 - Project Closeout	\$4,900	\$800	\$5,700
<b>TOTAL</b>	<b>\$160,000</b>	<b>\$8,200</b>	<b>\$168,200</b>

**BASIS OF FEE AND BILLING SCHEDULE**

The OWNER will pay CONSULTANT for services provided under this AGREEMENT as follows: Compensation will be made for all labor charges and direct expenses expended during the performance of work described above. Labor charges are the product of actual time charged to the PROJECT multiplied by the billing rate for that employee classification as shown on the 2006 Fee Schedule, Attachment A (Said Attachment A may be amended during the term of this PROJECT if work extends into the following calendar year). Expenses are the sum of all expenditures or charges attributable to the PROJECT that are not CONSULTANT labor charges, including Subconsulting fees. The fees described and estimated above are only estimates; the final amount billed for this work shall include all time, at stated bill rates, plus all direct expenses with markup.

**EXTENT OF AGREEMENT**

This AGREEMENT represents the entire and integrated AGREEMENT between the OWNER and CONSULTANT and supersedes all prior negotiations, representations or agreements, written or oral. The AGREEMENT may be amended only by written instrument signed by both OWNER and CONSULTANT.

Notice to Proceed, either verbal or written, shall constitute acceptance of this AGREEMENT by the OWNER. THE TERMS AND CONDITIONS ARE PART OF THIS AGREEMENT. THE OWNER AGREES TO SAID TERMS AND CONDITIONS. IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**OWNER:** CITY OF KETCHUM

**OWNER:** SUN VALLEY WATER & SEWER DISTRICT

**ADDRESS:** P.O. Box 2315  
Ketchum, ID 83340

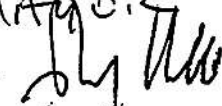
**ADDRESS:** P.O. Box 2410  
Sun Valley, ID 83353

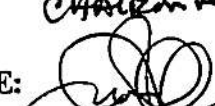
**BY:** Randy Hall

**BY:** Jim Lord

**TITLE:** Manager

**TITLE:** Chairman

**SIGNATURE** 

**SIGNATURE:** 

**DATE:** 6/9/06

**DATE:**  5.15.06

**CONSULTANT:** PHARMER ENGINEERING, LLC

**ADDRESS:** 671 E. River Park Lane, Suite 140, Boise, ID 83706

**BY:** Robert D. Pharmed, P.E.

**TITLE:** President

**SIGNATURE:** 

**DATE:** 4-16-06

## TERMS AND CONDITIONS

1. **STANDARD OF CARE.** *Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession under similar circumstances at the time and in the locality where the services are performed. Professional services are not subject to, and Consultant does not provide, any warranty or guarantee, express or implied. Any warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by Owner are void and not binding upon Consultant.*
2. **CHANGE OF SCOPE.** *The Scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Owner. For some projects involving conceptual or process development services scope may not be fully definable during initial phases. As the project progresses, facts discovered may indicate that scope must be redefined. Consultant will promptly provide Owner with a written amendment to this Agreement to recognize such change, which shall be deemed accepted if not objected to within 15 days of receipt by Owner.*
3. **HAZARDOUS ENVIRONMENTAL CONDITIONS.** *Unless expressly stated otherwise in the Scope of Services of this Agreement, Consultant's scope of services does not include any services relating to a Hazardous Environmental Condition, including but not limited to the presence at the Project site of asbestos, PCBs, Petroleum, Hazardous Substances or any other pollutant or contaminant, as those terms are defined in pertinent federal, state and local laws. In the event Consultant or any other party encounters a Hazardous Environmental Condition, Consultant may at its option suspend performance of services until Owner: a) retains appropriate consultant(s) or contractor(s) to identify and remediate or remove the Hazardous Environmental Condition; and b) warrants that the Project site is in full compliance with all applicable environmental laws.*
4. **SAFETY.** *Unless specifically included as services to be provided under this Agreement, Consultant specifically disclaims any authority or responsibility for general job site safety and safety of persons other than Consultant employees.*
5. **DELAYS.** *If performance of Consultant's Services is delayed through no fault of Consultant, Consultant shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.*
6. **TERMINATION/SUSPENSION.** *Either party may terminate this Agreement upon 30 days written notice to the other party. Owner shall pay Consultant for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination. In the event either party defaults in its obligations under this Agreement (including Owner's obligation to make the payments required hereunder), the non-defaulting party may, after giving seven days written notice, suspend performance under this Agreement. The non-defaulting party may not suspend performance if the defaulting party commences to cure such default within the seven-day notice period and completes such cure within a reasonable period of time. Consultant may terminate this Agreement upon seven days written notice if: a) Consultant believes that Consultant is being requested by Owner to perform services contrary to law or Consultant's responsibilities as a licensed professional; or b) CONSULTANT's Services for the Project are delayed, suspended or interrupted for a period of at least 90 days for reasons not attributable to CONSULTANT's performance of Services; or c) Owner has failed to pay any amount due and owing to Consultant for a period of at least 60 days. Consultant shall have no liability to Owner on account of such service termination.*
7. **OPINIONS OF CONSTRUCTION COST.** *Any opinion of construction costs prepared by CONSULTANT is supplied for the general guidance of the Owner only. Since CONSULTANT has no control over competitive bidding or market conditions, CONSULTANT cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Owner.*
8. **RELATIONSHIP TO CONTRACTORS.** *CONSULTANT shall serve as Owner's professional representative for the Services, and may make recommendations to Owner concerning actions relating to Owner's contractors. CONSULTANT specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by Owner's contractors. CONSULTANT neither guarantees the performance of any construction contractor nor assumes responsibility for any contractor's failure to perform in accordance with the construction contract documents.*



9. **CONSTRUCTION REVIEW.** For projects involving construction, Owner acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. Owner agrees to hold CONSULTANT harmless from any claims resulting from performance of construction-related services by persons other than CONSULTANT.

10. **CONSTRUCTION CHANGE ORDERS:** The CONSULTANT shall design, and prepare drawings and specifications, exercising ordinary and reasonable judgement, or "Standard of Care". For projects involving construction, CITY acknowledges that change orders to construction contracts may be issued to the contractor and paid by CITY as a normal course of construction activities and that such change orders are issued to resolve, rectify, change or clarify issues and/or deficiencies found during construction to this Standard of Care.

11. **INSURANCE:** CONSULTANT will maintain Professional, Commercial, General, Automobile, Worker's Compensation and Employer's Liability insurance in amounts in accordance with legal and CONSULTANT's business requirements. Certificates evidencing such coverage will be provided to Owner upon request. For projects involving construction, Owner agrees to require its construction contractor, if any, to include CONSULTANT as an additional insured on its policies relating to the Project. CONSULTANT's coverages referenced above shall, in such case, be excess over contractor's primary coverage.

12. **INDEMNIFICATION:** CONSULTANT shall indemnify and save harmless Owner from and against loss, liability and damages sustained by Owner due to bodily injury or death to persons or damage to tangible property to the extent caused by the willful misconduct or negligence of CONSULTANT, its agents or employees. To the fullest extent permitted by law, Owner shall defend, indemnify and save harmless CONSULTANT, its agents, employees, and representatives from and against loss, liability and damages (including reasonable litigation costs) arising from or relating to CONSULTANT's Services under this Agreement, except to the extent that such loss, liability or damages is caused by the willful misconduct or negligence of CONSULTANT, its agents or employees. Owner also agrees to require its construction contractor, if any, to include CONSULTANT as an: a) indemnitee under any indemnification obligation to Owner; and b) additional insured under its Commercial General Liability policy. To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Consultant, its employees, agents and representatives, and CONSULTANT's consultants, from and against any loss, liability and damages caused by, arising out of or resulting from the presence at the Project site of asbestos, PCBs, Petroleum, Hazardous Substances or any other pollutant or contaminant, as those terms are defined in pertinent federal, state and local laws, except to the extent that the loss, liability or damages is caused solely by the willful misconduct or negligence of Consultant, its agents or employees.

13. **LIMITATIONS OF LIABILITY:** No employee or agent of CONSULTANT shall have individual liability to Owner; and Owner covenants and agrees not to sue any employee or agent of CONSULTANT in connection with the Services under this Agreement. Owner agrees that, to the fullest extent permitted by law, Consultant's total liability to Owner for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, or breach of contract, shall not exceed the total compensation received by CONSULTANT under this Agreement. If Owner desires a limit of liability greater than that provided above, Owner and CONSULTANT shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to CONSULTANT for assumption of such additional risk. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL CONSULTANT BE LIABLE TO OWNER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.

14. **OWNERSHIP AND REUSE OF PROJECT DOCUMENTS.** All documents and other deliverables prepared by or on behalf of CONSULTANT in connection with this Agreement shall remain the property of CONSULTANT. Owner shall not reuse any such documents or other deliverables, including electronic media, pertaining to the Project for any purpose other than that for which such documents or deliverables were originally prepared. Owner shall not cause or allow the alteration of such documents or deliverables without written verification and approval by CONSULTANT for the specific purpose intended, and any such authorized alteration by Owner shall be at the

Owner's risk. Owner agrees to defend, indemnify and hold harmless CONSULTANT from all claims, damages and expenses (including reasonable litigation costs), arising out of such reuse or alteration by Owner or others acting through Owner.

15. **ELECTRONIC MEDIA.** Copies of documents that may be relied upon by Owner are limited to printed copies that are signed and sealed by CONSULTANT. Files or information in electronic media are furnished by CONSULTANT to Owner solely for convenience of Owner. If there is a discrepancy between electronic files and printed copies, the printed copies govern. Because data stored in electronic media format can deteriorate or be modified, the Owner agrees to perform acceptance tests within 60 days. CONSULTANT will not be responsible to correct any errors or for maintenance of documents in electronic media format after the acceptance period.

16. **AMENDMENT.** This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties, except as provided in Paragraph 2.

17. **SUCCESSORS, BENEFICIARIES AND ASSIGNEES.** This Agreement shall be binding upon and inure to the benefit of the owners, administrators, executors, successors, and legal representatives of the Owner and CONSULTANT. The rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assignees.

18. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of any third party, including Owner's construction contractors, if any.

19. **STABILITY OF LIMITATION.** To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

20. **DISPUTE RESOLUTION.** Owner and CONSULTANT shall provide written notice of a dispute within a reasonable time and after the event giving rise to the dispute. Owner and CONSULTANT agree to negotiate any dispute between them in good faith for a period of 30 days following such notice. Owner and CONSULTANT may agree to submit any dispute to mediation or binding arbitration, but such mediation or arbitration shall not be required or a prerequisite to initiating a lawsuit to enforce this Agreement.

21. **CONTROLLING LAW.** This Agreement is governed by the law of the state in which the Project is located.

22. **NO WAIVER.** No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

23. **SEVERABILITY.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

24. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

25. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

*End of Terms and Conditions*