



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

I move to authorize the Mayor to sign Agreement #23166 with Rio ASE, LLC for 60% design work for creek restoration at the Warm Springs Preserve (WSP) subject to final negotiations and revisions by staff and the city attorney.

Reasons for Recommendation:

- During the master planning process for WSP, the City contracted solely with Superbloom, with Rio acting as subcontractor under that agreement.
- For the creek and floodplain restoration design to continue and reach 60% drawings, a separate contract is required.
- As owners of the property, the City will serve as the 'client'. Per the City's MOU with the Wood River Land Trust (WRLT), the WRLT will serve as the financier and is thus responsible for fully reimbursing the City for 60% design drawings. The WRLT has the funds available.

Policy Analysis and Background (non-consent items only):

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Sustainability Impact:

None OR state impact here: Pursuant to restoration efforts in the master plan.

Financial Impact:

None OR Adequate funds exist in account:	The cost proposal is not-to-exceed \$94,041.29. Adequate funds exist and will be fully reimbursed by the WRLT.
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Attachments:

1. Agreement #23166
2. PO #23166

Professional Services Agreement



3380 Americana Terrace, Ste 390, Boise, Idaho 83706

Rio ASE Project ID: 010-077-003-02

This Professional Services Agreement ("Agreement") is made effective on the day of last signature of this Agreement by and between the following Parties (each a "Party" and collectively the "Parties"):

"Rio ASE"			
Name:	Rio ASE, LLC		
Address:	3380 Americana Terrace Ste 390 Boise, ID 83706		
Representative:	Rob Richardson	Email:	rob@rioase.com
Phone:	208-559-4615		
"Client"			
Name:	City of Ketchum (c/o Wood River Land Trust Company, Client's representative ("WRLT"))		
Address:	119 E. Bullion St., Hailey, ID 83333		
Phone:	208-788-3947		
Representative:	WRLT, Cory McCaffrey	Email:	cory@woodriverlandtrust.org
Phone:	208-788-3947		

PROJECT NAME (THE "PROJECT"): WARM SPRINGS PRESERVE 60% DESIGN

This Agreement and its associated Exhibits represent the entire and integrated agreement between Client and Rio ASE and supersedes all prior communications, negotiations, representations, or agreements, either written or oral between the Parties. No agreement or understanding varying or extending the Agreement shall bind either party, other than by a subsequent written agreement mutually agreed upon and signed by Client and Rio ASE. In consideration of the mutual benefits and obligations set forth in this Agreement, the Client and Rio ASE agree as follows:

1. Term:

The term of this Agreement (the "Term") begins as of the day of last signature of this Agreement and shall remain in full force and effect until the completion of the Services (as defined below) or until the end date of **December 31, 2023**, whichever occurs first, and is subject to early termination as provided in Paragraph 4 of this Agreement. The Agreement end date identifies the date by which all Services shall be completed. This Agreement may be extended only by mutual written agreement of the Parties.

2. Scope of Services:

Rio ASE shall perform the professional services described in **Exhibit A** ("Services") in accordance with this Agreement. If, during the Project, additional services beyond those identified in Exhibit A are requested by Client or otherwise warranted for any reason, Rio ASE will negotiate terms with Client and, if agreed to in writing by Client, shall undertake the additional services.

3. Price and Payment:

All Services will be charged on a time and materials basis in accordance with Rio ASE's cost proposal and schedule that is included in Exhibit A, not to exceed **\$94,041.29** (the "Ceiling Price") unless modified by written agreement signed by the Parties. The cost proposal and schedule included in Exhibit A is an estimate. The actual amount and percentage of cost incurred per task, per person, and/or per period of time may vary from the estimate. Monthly invoices shall be submitted by Rio ASE to Client based on the services performed and cost incurred by Rio ASE. The invoice amount shall be computed by multiplying the appropriate hourly Billing Rate prescribed in Exhibit A by the number of direct labor hours performed plus the gross total of reasonable expenses incurred during the invoice period. Reasonable expenses include but are not limited to costs incurred for subcontracts, travel, lodging, meals, equipment rentals, and special fees or licenses specific to the Services performed under this Agreement. Unless otherwise noted, the cost estimates in this Agreement do not include any value added, sales, or other taxes that may be applied by any government entity on fees for services. Such taxes will be added to all invoices as required. Invoices shall be paid in full with US Dollars within 30 calendar days of invoice date, after which time accounts will accrue interest at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest allowable. In addition to any past due amount, Client will pay all reasonable expenses incurred by Rio ASE for collection of any past due amounts including, but not limited to, attorneys' fees and expenses, filing fees, lien costs, and staff time. Payment to Rio ASE for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. Failure to make any payment when due is a material breach of this Agreement and will entitle Rio ASE, at its option, to suspend or terminate this Agreement and the provision of the Services.

4. Termination:

- a. Either party may terminate this Agreement upon at least 15 calendar days written notice in the event of substantial failure by the other party to perform in accordance with this Agreement through no fault of the terminating party. Such termination is not effective if the failure is resolved before expiration of the period specified in the written notice. Upon termination for cause by either party, all invoices for services performed up to the date of termination are immediately due and payable.
- b. Either party may terminate this Agreement for convenience upon 10 calendar days written notice to the other. If Client requests early termination of Services for convenience, Rio ASE reserves the right to complete such analyses and records as are necessary to place its files in order and to complete a report on the Services performed to-date. Charges for these termination activities ("Termination Fees") are in addition to all charges incurred up to the date of termination. Upon termination for convenience by either party, all invoices for Services performed up to the date of termination, plus Termination Fees are immediately due and payable.

5. Suspension of Services:

If the Project is suspended for more than 30 calendar days in the aggregate, Rio ASE shall be compensated for all Services performed prior to receipt of the notice of suspension. Rio ASE shall have no liability to Client for delay or damage caused Client because of a suspension of services. In addition, upon resumption of services, the Client shall compensate Rio ASE for expenses incurred as a result of the suspension and resumption of its services, and the schedule and fees for the remainder of the project shall be equitably adjusted, as determined by Rio ASE in its sole discretion. If the Project is suspended for more than 90 calendar days, Rio ASE may, at its option, terminate this agreement pursuant to Paragraph 4. In the event of a suspension, Rio ASE shall have no liability to the Client, and the Client hereby expressly waives the right to make any claim against Rio ASE for any delay or damage as a result of such suspension.

6. Force Majeure:

For the purposes of this Agreement, the term “Force Majeure” shall mean: labor strikes, riots, war, terrorist activity, acts of governmental authorities, unusually severe weather conditions or other natural catastrophic events, or any other similar event beyond the reasonable control or contemplation of either party. If either party considers that any circumstance of Force Majeure has occurred that may affect materially the performance of its obligations, then that party shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event. Neither party shall be considered to be in default of its obligations under the Agreement to the extent that it can establish that the performance of such obligations is prevented by any circumstance of a Force Majeure that arises after the date of the Agreement and which was not foreseeable at the date of the Agreement.

7. Rio ASE’s Responsibilities & Limitations of Warranties:

- a. Rio ASE will endeavor to perform its professional services with that degree of care and skill ordinarily exercised under similar conditions by professional consultants practicing in the same discipline at the same time and location. This standard of care is the sole and exclusive standard of care that will be applied to measure Rio ASE’s performance. No warranty or guarantee, either expressed or implied, is made or intended by this Agreement or by any report, opinion, or other instrument of Service provided pursuant to this Agreement.
- b. Rio ASE shall be solely responsible for: (i) completing the Project in accordance with Exhibit A; (ii) supervising Rio ASE’s employees and subcontractors on the Project; (iii) keeping accurate records obtained during the course of the Project including daily field records and other records that are usual for the type of project conducted; (iv) obtaining and maintaining proper licenses for Rio ASE’s Services; and (v) complying with laws and regulations pertaining to Rio ASE’s employees’ wages, hours, fair employment practices, worker’s compensation insurance, and similar employer responsibilities.
- c. Rio ASE specifically disclaims any authority or responsibility, and Rio ASE does not have authority, responsibility, or liability for the means, methods, techniques, sequences, or procedures of construction elected by any contractor or subcontractor (“Contractors”); for safety precautions and programs in connection with or incident to the work of any Contractors; or any failure of any Contractors to perform their work or to comply with laws, rules, regulations, ordinances, codes, or other applicable to Contractors performing their work.
- d. Unanticipated Conditions: Actual site conditions may vary spatially and/or temporally from the time and place of the specific surveys, explorations, or observations made by Rio ASE prior to and during this Agreement. Furthermore, professional interpretations and recommendations can only be based on information reasonably available to Rio ASE. Practical and reasonable limitations on available data will result in some level of uncertainty, and therefore risk, with respect to the interpretation of environmental and geologic conditions even when following the standard of care. If unanticipated conditions adversely affect Rio ASE’s performance of Services as contemplated by the Agreement, then (i) Rio ASE shall be permitted to terminate its Services after notifying the Client of such unanticipated conditions, and (ii) if Client wishes Rio ASE to continue performance of its Services, the scope of the Services and associated fees provisioned under the Agreement shall be equitably adjusted as determined by Rio ASE to reflect the cost and schedule impact of such conditions.
- e. Rio ASE shall perform its Services as expeditiously as is consistent with skill and care but shall not be responsible for delays that may occur beyond Rio ASE’s reasonable control.

8. Client’s Responsibilities:

Client shall be solely responsible for: (a) providing right of entry and any authorizations needed for Rio ASE and its partners or subcontractors to enter upon property to perform the Services under this Agreement;

(b) locating and assuming responsibility for any features to be avoided or protected during the course of the Agreement including but not limited to underground and overhead utilities, buildings and other structures on or adjacent the project site, and known or suspected hazardous materials storage or residing locations (Rio ASE will not be responsible for damage to items not so located); (c) maintaining overall supervision including safety requirements of the Project and personnel beyond the immediate scope of Rio ASE's Services and employees; (d) making available to Rio ASE all Client's information regarding existing and proposed conditions of the site germane to the Services (Client will immediately transmit to Rio ASE any relevant new information that becomes available); (e) as necessary, locating for Rio ASE the property boundaries and being responsible for accuracy of boundaries and markers; (f) retaining ownership of, and responsibility for, all contaminated material Rio ASE located on site or found as a result of the Project; and (g) obtaining all required and necessary approvals and permits required for the performance of any services by Rio ASE. Rio ASE shall be entitled to reasonably rely upon the accuracy and completeness of information, reports, tests, data, and recommendations provided by or on behalf of Client.

9. Independent Contractors:

Each Party shall act solely as an independent contractor, and nothing in this Agreement shall be construed to give either Party the power or authority to act for, bind, or commit the other Party in any way.

Nothing herein shall be construed to create the relationship of partners, principal and agent, or joint-venture partners between the Parties. **The Parties agree WRLT is Client's authorized representative.**

10. Confidentiality:

- a. Except as provided in paragraph (b) below, each of the Parties hereto shall keep confidential, and not disclose or use for a purpose other than the fulfillment of this Agreement, any confidential and proprietary information of the other Party that is designated as "Confidential" by such Party (the "Protected Party"), including this Agreement and all of the terms and conditions hereof (collectively, "Confidential Information").
- b. Paragraph (a) hereof shall not restrict a Party from disclosing Confidential Information (subject to the limitations of applicable Law) as follows:
 - i. To the extent consented to by the Protected Party;
 - ii. To the extent required by a discovery request in a court, arbitration, or administrative proceeding, provided that such Party shall have first provided the Protected Party with prompt written notice of such discovery request so that the Protected Party may seek a protective order or other appropriate remedy, and in the event such protection or other remedy is not obtained, such Party shall exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information;
 - iii. To accountants, auditors, attorneys, and tax or financial advisors who have been informed of and have agreed with such party to abide by the terms of this Section, or who are otherwise bound by confidentiality obligations with such party; or
 - iv. To the extent necessary to enforce such party's rights under this Agreement.
- c. Notwithstanding the foregoing, Rio ASE may use the Client's name, logo, and a description of the Services provided in connection with identifying its prior customers and projects. Rio ASE shall also have the right to include photographic or artistic representations of the product of the services rendered for promotional and professional materials, and Rio ASE shall be given reasonable access to projects completed based on designs or recommendations from Rio ASE to make such representations. However, Rio ASE's materials shall not include the Client's Confidential Information if the Client has previously advised Rio ASE in writing of the specific information considered by the Client to be confidential or proprietary. The Client shall provide professional credit for Rio ASE in the Client's promotional materials for the Project.

11. Insurance:

- a. Rio ASE represents that it carries and will continue during the term of this Agreement to carry at its sole cost Worker's Compensation, Commercial General Liability, Automobile Liability, and Professional Liability insurance.
- b. Certificates of all insurance required of Rio ASE under this Agreement will be furnished to Client upon request.

12. Indemnification:

- a. Subject to the limitation of liability set forth in paragraph 13 below, Rio ASE shall indemnify and hold harmless Client from and against any claims, liabilities, damages, and costs (including reasonable attorney fees and costs of defense) arising out of death or bodily injury to persons or damage to property to the extent proven to be caused by or resulting from the sole negligence or willful misconduct by Rio ASE, its agents, or its employees. Rio ASE shall not be responsible for any liability based upon willful misconduct or negligence of Client or upon use of or reliance on information supplied by Client or on behalf of Client to Rio ASE in preparation of any report, study, or other written document. In no event shall Rio ASE be responsible for any form of consequential damages, including, but not limited to, loss of sales, loss of profits, and attorney fees thereon.
- b. Client shall defend, indemnify, and hold harmless Rio ASE, including its subsidiaries and affiliates, from and against any and all claims (including without limitation, claims by third parties and claims for economic loss) damages, liabilities, costs and expenses, fines, including but not limited to reimbursement for reasonable attorneys' fees and cost of defense arising out of or in any way related to this project or this Agreement. Client shall not be responsible for any liability based upon the proven willful misconduct or negligence of Rio ASE nor for any form of consequential damages, including, but not limited to, loss of sales, loss of profits, and attorney fees resulting therefrom.
- c. For purposes of this Paragraph, the duty to indemnify does not include the duty to pay for or to provide an upfront defense against unproven claims or allegations.
- d. Where any claim results from the joint negligence, gross negligence, willful misconduct, or breach of any provision of this Agreement by Client and Rio ASE, the amount of such damage for which Client or Rio ASE is liable as indemnitor under this Paragraph shall equal the proportionate part that the amount of such claim attributable to such indemnitor's negligence, gross negligence, willful misconduct, or breach bears to the amount of the total claim attributable to the joint negligence, gross negligence, willful misconduct, or breach at issue.

13. Limitation of Liabilities:

Notwithstanding any other provision in the Agreement, the Client understands and that Rio ASE's liability for its negligence, errors or omissions relating to or arising out of this Agreement or the Services shall not exceed the total amount of fees paid to Rio ASE for all Services rendered under this Agreement or the applicable limits of any insurance required under this Agreement, whichever is less. Any claim, suit, demand, or action brought under this Agreement shall be directed and/or asserted only against Rio ASE and not against any of Rio ASE's employees, shareholders, officers, partners, or directors. Rio ASE's liability with respect to any claims arising out of this Agreement shall be limited as provided herein to direct damages arising out of the performance of the Services and Rio ASE shall not be held responsible or liable whatsoever for any consequential damages, injury, or damage incurred by the actions or inactions of the Client, including but not limited to claims for loss of use, loss of profits, and loss of markets.

14. Dispute Resolution Procedures:

- a. If any dispute or difference whatsoever in connection with or arising out of the Agreement is presented in writing by either party to the other, the Parties shall first seek to resolve the matter between themselves within a period of 30 calendar days from the first date of the written request for such a meeting. The Managing Director or equivalent person of both Parties shall be the nominated officer responsible for seeking a mutually-satisfactory resolution.
- b. If the matter cannot be resolved informally between the Parties within a period of 30 calendar days, the Parties shall enter structured non-binding negotiations with the assistance of a mediator ("Mediation"). The mediator shall be appointed by agreement of the Parties. In the event the Parties cannot agree on a mediator, then each Party shall appoint one mediator who shall then select a third mediator to act as the mediator for the Mediation. The cost of Mediation shall be divided equally between the Parties.
- c. If the matter cannot be resolved through Mediation, the Parties may elect to exercise their rights to pursue resolution through litigation. Rio ASE's right to record a lien or bond claim or to prosecute a lien or bond claim shall not be stayed, limited or delayed by the mediation process.
- d. Client and Rio ASE irrevocably submit to the jurisdiction of any court of competent jurisdiction within the State of Idaho. Client further agrees to comply with all requirements necessary to give such court in personal jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested. Client and Rio ASE further, to the extent permitted by applicable law, waive and agree not to assert, by way of motion, as a defense or otherwise, in any such proceeding brought in any of the above-named courts, any claim that it is not subject personally to the jurisdiction of such court, that its property is exempt or immune from attachment or execution, that such proceeding is brought in an inconvenient forum, that the venue of such proceeding is improper, or that this Agreement, or the subject matter hereof or thereof, may not be enforced in or by such court; and
- e. Waiver of jury trial and consequential, punitive and exemplary damages. To the fullest extent permitted by law, client and Rio ASE knowingly, voluntarily, and intentionally waive the right to a jury trial in any action, proceeding, or litigation related to, concerning, or in any way connected with this agreement, the services, and any other document executed in connection herewith or incidental hereto or the negotiations and discussions concerning such agreement and services (whether based on contract, tort, intentional misconduct or any other theory of liability) (each being referred to herein as a "dispute"), and waive the right to a jury trial of any defense, claim, cross-claim, counterclaim, claim of set-off, or similar claim of any nature that any party could or may assert against the other in connection with a dispute, and agree that any such action, proceeding, litigation shall be tried before a court and not before a jury. Client and Rio ASE each agree that it shall not have the remedies of consequential damages, punitive damages or exemplary damages against the other in any dispute and each hereby waives, to the fullest extent permitted by law, any right or claim to consequential, punitive or exemplary damages that such party now has or which such party may have in the future in connection with any dispute. The provisions of this paragraph are a material inducement to the parties to enter into this transaction.
- f. Client expressly agrees that before Client can bring a claim or cause of action against Rio ASE as provided above, based on professional negligence or breach of the professional standard of care, Client will obtain the written opinion of a licensed or registered professional practicing in the same licensing jurisdiction as the matter in dispute. The professional who prepares the written opinion must be licensed or registered in the discipline or technical specialty that is the basis for the dispute. The

written opinion of the licensed or registered professional must indicate that, in the professional opinion of the writer, Rio ASE violated the prevailing standard of care in the delivery of its services. Further, the written opinion must describe the basis for that opinion and a conclusion that the alleged failure to comply with the standard of care was the cause of all or part of the alleged damages. The written opinion must be made available to Rio ASE for review and comment at least 10 calendar days before the claim or cause of action can be submitted to litigation. The Parties agree that this clause was mutually negotiated and is an integral part of the consideration for this agreement.

15. Access to Records:

- a. Client, or its duly authorized representatives, will have access at all reasonable times during the performance of any of the Services for a period of 2 years thereafter, to Rio ASE's books, records, and all other documentation pertaining to Rio ASE's Services under this Agreement. Rio ASE shall be reimbursed for all personnel labor, materials, and copying costs incurred for any client inspection or audit.
- b. Rio ASE will preserve for a period of 2 years after completion or termination of the Services under this Agreement all relevant documents pertaining to Rio ASE's Services under this Agreement.

16. Ownership of Documents:

- a. All documents, in any format or media, prepared by or on behalf of Rio ASE in connection with the Services prescribed under this Agreement are instruments of service for the execution of the Agreement. Rio ASE shall retain any and all intellectual and property rights in these documents, whether or not the Services associated with this Agreement are completed. Payment to Rio ASE for the Services rendered and pursuant to the payment terms under this Agreement shall be a condition precedent to the Client's right to use any of the documentation prepared by Rio ASE. Such documents may not be reused for any other purpose without the prior written consent of Rio ASE. Rio ASE is not responsible for such reuse, and Client will indemnify and hold harmless Rio ASE, its partners, officers, employees, consultants, and from and against any claims or damages arising from the reuse or modification of said documents.
- b. Data stored in electronic media format can deteriorate or be modified inadvertently or otherwise. Rio ASE shall not be responsible for maintaining documents stored in electronic media. When transferring documents in electronic media format, Rio ASE makes no representations as to the long-term compatibility, usability, or readability of documents and/or data resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Rio ASE.
- c. Rio ASE shall not be responsible for any interpretations, alterations, modifications, or additions made in the instruments of service, including electronic files, by any party other than Rio ASE. All instruments of service remain the property of Rio ASE, may not be used for any purpose other than that for which they were intended according to this Agreement, and are not to be released to any third party without Rio ASE's prior written consent. Rio ASE cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). The Client hereby agrees to release, indemnify, and hold harmless Rio ASE, its partners, officers, employees, consultants, and agents from and against any claims or damages arising from the use of said Electronic Files.

17. Notices:

Any notices or written statements hereunder shall be deemed to have been given when mailed by certified or registered mail or via email, with receipt of reply, to the party entitled thereto at its address noted at

the top of this Agreement or at such other latest address as it may designate in writing to the other party for this purpose.

18. Assignment:

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither this Agreement, nor any right, duty or obligation of any party hereunder, may be assigned or delegated by any party, in whole or in part, without the prior written consent of the other Parties hereto. Any purported assignment of rights or delegation of obligations in violation of this Section will be void. References to a party in this Agreement and in any financial transaction also refer to such party's successors and permitted assigns.

19. Hazardous Materials:

- a. "Hazardous Materials" shall be defined as any toxic substances, chemicals, radioactivity, pollutants, or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous Materials include, but are not limited to, those substances defined, designated, or listed in any federal, state, or local law, regulation, or ordinance concerning hazardous wastes, toxic substances, or pollution.
- b. Client will specifically identify and describe to Rio ASE all releases of hazardous substances known or reasonably believed to have occurred which are relevant to the Services to be performed by Rio ASE. Client will furnish any additional information requested by Rio ASE including but not limited to: existing reports, plans, surveys, water and soil test data, and permits issued by agencies of government. Client authorizes Rio ASE to use all information supplied, including incorporating the information by copying or direct reference into reports prepared by Rio ASE.
- c. If any Services to be provided under this Agreement involve or relate to Hazardous Materials, it is further agreed that Client shall indemnify and hold harmless Rio ASE from and against damages, liabilities, costs, and expenses incurred, including reimbursement of reasonable attorneys' fees, arising out of or resulting from the performance of work by Rio ASE, or claims against Rio ASE arising from the work of others related to Hazardous Materials. This release and indemnification provision extends to claims against Rio ASE which arise out of, are related to, or are based upon the disbursement, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, or any other material, irritant, contaminant, or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface of (i) soil, (ii) water or water courses, (iii) objects, or (iv) any tangible or intangible matter, whether sudden or not.
- d. Hazardous Materials encountered by Rio ASE shall be deemed to have been generated by and the property of others and not the responsibility or property of Rio ASE. Rio ASE shall incur no liability whatsoever with respect to such Hazardous Materials except where such liability arises out of its own willful misconduct or wanton negligence. Rio ASE shall not be responsible for selection of transporters and disposal or treatment of Hazardous Materials. Rio ASE does not claim to be a Hazardous Materials expert, and expressly disclaims any such claim or representation, and shall not be held responsible for failure to identify a hazardous material if encountered during the course of its Services pursuant this Agreement. If unanticipated hazardous materials are identified and encountered by Rio ASE, Rio ASE shall contact Client as soon as reasonably possible to notify Client of said hazardous materials.
- e. Client hereby agrees to comply with all requirements of federal, state, and local laws, regulations, and ordinances governing notifications of hazardous substance releases immediately upon notification by Rio ASE that a release, threatened release, or other reportable event has occurred and that

notification is required. If Client or Client's agent is unavailable to make such required report or otherwise fails to do so, Client hereby authorizes Rio ASE to make reports on its behalf.

- f. In the event of the discovery of unanticipated Hazardous Materials that the Client has not expressly identified as present and whose existence is not reasonably anticipated, or any other condition rendering future work pursuant to this Agreement unsafe, in violation of law, or reasonably believed to exceed the scope of work agreed to, Rio ASE reserves the right to suspend work and notify Client. Client agrees to negotiate in good faith with Rio ASE on revised terms for completion of original agreement or additional services as recommended by Rio ASE. Notwithstanding the outcome of such negotiations and during such negotiations, Rio ASE shall perform services as it deems necessary to secure the site and comply with applicable laws and regulations on behalf of Client and shall be compensated by Client as specified herein.

20. Construction Observation:

The conclusions and recommendations for construction in reports and engineering drawings produced by Rio ASE are based on limited subsurface sampling and the conditions of the project area at the time the Services were performed. It is understood and agreed upon by Client and Rio ASE that site conditions are subject to change and those conditions not directly observed by Rio ASE are unknown, both of which may affect timing, feasibility, and/or cost of construction. Therefore, conclusions and recommendations resulting in construction activities shall be deemed preliminary unless or until Rio ASE is requested by Client to validate said assumptions and finalize the conclusions and recommendations observing actual construction on site. If the scope of the Services does not include construction observation, then any reliance by Client or any other party on our preliminary assumptions, conclusions, or recommendations is at the risk of that party and without liability Rio ASE. Construction observation performed by Rio ASE does not change any agreement between Client and any other party. Only Client has the right to reject or stop work of its contractors or agents. Construction observation performed by Rio ASE does not in any way guarantee the completion, quality, or performance of the work by any other party retained by Client to provide field or construction services. Rio ASE is not responsible for, and does not have control or charge of, the specific means, methods, techniques, sequences, or procedures selected by any contractor or agent of Client, or any third party to this Agreement. Further, a duty to provide contract administration or contract management services may not be imputed from Rio ASE's professional actions or affirmative conduct when on the construction site.

21. Waiver:

The waiver by either Party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions. In addition, Client expressly waives any and all claims against Rio ASE for any liquidated damages liability that may be incurred by or assessed against Client.

22. Governing Law:

This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, and enforced in accordance with, the internal laws of the State of Idaho, including its statutes of limitations.

23. Claims Assistance for Client:

If a construction contractor or other party files a claim against Client, relating to Services performed by Rio ASE, and Client requires additional information or assistance to evaluate or defend against such claims, Rio ASE will make personnel available for consultation with Client and for testimony if necessary upon reasonable notice from Client and Client will reimburse Rio ASE for such consultation or testimony, including travel costs, at the rates that apply for other services under this Agreement. Rio ASE will provide services in connection with any such claims pursuant to a written supplement, if necessary, extending this Agreement.

24. Third Party Rights:

Nothing in this Agreement or as a consequence of any of the Services provided gives any rights or benefits to anyone other than Client and Rio ASE. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of Client and Rio ASE and not for the benefit of any other party. No third party shall have the right to rely on the product of Rio ASE's services without Rio ASE's prior written consent and the third party's agreement to be bound to the same terms and conditions as the Client.


25. Survival:

The terms and conditions of this Agreement survive the completion of the Services under this Agreement and the termination of this Agreement, whether for cause or for convenience.

26. Severability:

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof. Client and Rio ASE agree that they will attempt in good faith to replace any unenforceable provision with one that is valid and enforceable and which conforms as closely as possible with the original intent of any unenforceable provision. If such provision is not or cannot be replaced by mutual agreement of Client and Rio ASE, this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed in their respective names by their duly authorized representatives.

Acknowledgement & Acceptance		Acknowledgement & Acceptance	
City of Ketchum		Rio ASE, LLC	
Signature		Signature 	
Name:		Name:	Rob Richardson
Title:		Title:	Principal Geomorphologist
Date:		Date:	5/3/23

Disclaimer: Any electronic form, facsimile, or hard copy of the original document (email, text, table, and/or figure), if provided, and any attachments are only a copy of the original document. The original document is stored by Rio ASE, LLC, and will serve as the official document of record.

Form revised 12/21/2022

Exhibit A: Scope of Services

Memorandum



3380 Americana Terrace, Ste 390, Boise, Idaho 83706

To: Cory McCaffrey, Wood River Land Trust, Client Representative
From: Rob Richardson, Rio ASE
Date: 5/3/2023
Subject: Warm Springs Preserve 60% Design Proposal

Background

Rio ASE has been working in conjunction with a landscape architect (Superbloom), the City of Ketchum, and the Wood River Land Trust over the past year developing a Master Plan and 30% design for the Warm Springs Preserve in Ketchum, ID. The design includes extensive stream and floodplain restoration. The Wood River Land Trust has requested Rio ASE advance the stream and floodplain design to a 60% level (i.e. permit-ready) to support permitting the project and advance the design sufficiently to accommodate a proposed summer 2024 construction date. Provided below is a summary of the proposed scope, schedule, and budget to complete a 60% design for the Warm Springs Preserve stream and floodplain restoration effort.

Task 1: Project Management & Coordination (\$9,204)

- Internal and external coordination of project tasks, schedules, and budget; monthly invoicing
- Limited coordination (13 hrs maximum) with FEMA in preparation for a likely CLOMR to be completed during the final design phase (not part of this scope)
- Support the stream- and floodplain-related permitting process by providing requested data and supporting information not otherwise included in the Basis of Design Report (see Task 3 below); Participate in meetings and/or coordination calls with regulators as needed/reasonable; Permits to be coordinated and completed by others
- Limited coordination (4 hours maximum) with design team regarding geotechnical requirements for the project; assuming no geotechnical data will be required, or existing geotechnical data can be obtained and used, and no geotechnical exploration or analysis will be required

Task 2: Site Visit & Data Collection (\$13,113)

- Visit site to collect additional topographic and bathymetric survey needed to improve hydraulic modeling (especially near the confluence with the Big Wood River) and to refine the grading limits particularly along the existing Warm Springs Creek bank in an effort to preserve as much mature riparian vegetation as possible
 - 2 people travelling for 3 days, 2 nights (plus field prep and data download); 1 vehicle

Task 3: Draft 60% Design & BDR (\$42,638)

- Advance 30% design to draft 60% level of completeness suitable for permitting (to be completed by others)
- Pertinent design rationale, calculations, and supporting information, including updated hydraulic modeling results, will be included in a draft 60% basis of design report. This report will include details to facilitate permitting requirements
- Update the existing construction cost estimate to reflect the draft 60% design
- Deliver draft 60% Design and Basis of Design Report as PDFs for stakeholder review
- Deliver in-person presentation of draft 60% Design to solicit feedback from key stakeholders
 - 1 person travelling for 1 day; no overnight; 1 vehicle
 - Wood River Land Trust to coordinate and organize the meeting including relevant attendees

Task 4: Final 60% Design & BDR (\$12,274)

- Finalize 60% Design and Basis of Design Report based on stakeholder feedback from Task 3
- Deliver as Final PDF
- Revise cost estimate to reflect the final 60% Design

Task 5: Diversion Structure Design – subvendor (\$4,950)

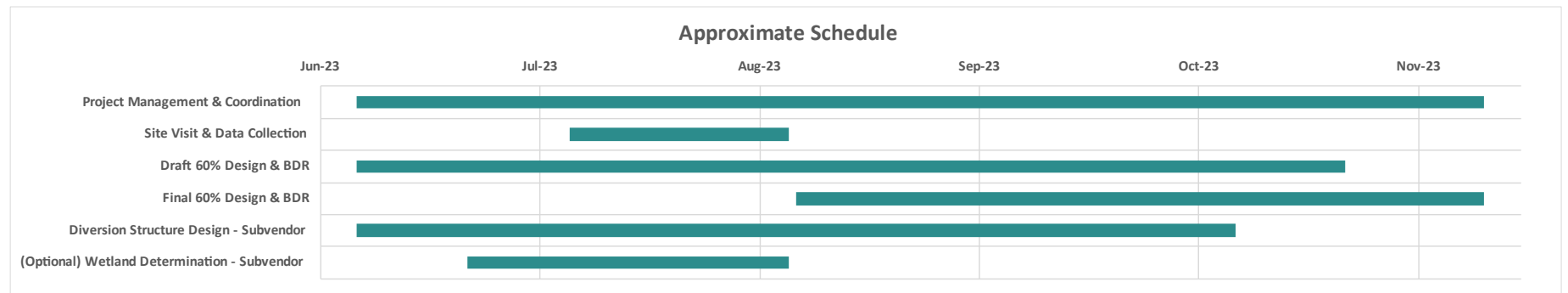
- To be completed by QRS (recent merger of Quadrant Consulting and River Structures)
- Assume off-the-shelf design can be applied to the project site

Task 6: (Optional) Wetland Determination – subvendor (\$11,861)

- To be completed by Ecosystem Sciences upon written notice to proceed from the Wood River Land Trust
- Limited pre-application consultation with the Army Corps of Engineers to confirm approach
- Wetland Determination based on clear hydrologic and vegetation; additional field work and analysis proposed for the Southern Floodplain area
 - 2 people travelling 3 days, 2 nights; 1 vehicle

Proposed Budget and Schedule

Warm Springs Preserve 60% Design: Scope, Schedule, and Budget			Team Member: (Affiliation)		Rob Richardson (Rio ASE)	Jeff Fealko (Rio ASE)	Joe Young (Rio ASE)	Mark Pacold (Rio ASE)	Tim Sickles (Rio ASE)	Zach Sudman (Rio ASE)	Erin Murray (Rio ASE)	Tim Maguire (Ecosystem Sciences)	Derek Risso (Ecosystem Sciences)	Zach Hill (Ecosystem Sciences)	Zack Herzfeld (Ecosystem Sciences)	Project Manager (QPS)	EIT (QPS)	Cost (\$)
			Billing Rate (\$/hr):		\$157.00	\$157.00	\$157.00	\$130.00	\$108.00	\$108.00	\$92.00	\$141.75	\$141.75	\$141.75	\$110.25	\$150.00	\$105.00	
Task	Start Date	End Date	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs		
1: Project Management & Coordination	6/16/23	11/17/23	20	8	16	16	0	2	0	0	0	0	0	0	0	0	\$9,204.00	
2: Site Visit & Data Collection	7/15/23	8/14/23	0	0	40	40	0	0	0	0	0	0	0	0	0	0	\$11,480.00	
3: Draft 60% Design & BDR	6/16/23	10/29/23	16	12	42	100	44	120	8	0	0	0	0	0	0	0	\$42,438.00	
4: Final 60% Design & BDR	8/15/23	11/17/23	2	4	28	32	0	24	2	0	0	0	0	0	0	0	\$12,274.00	
5: Diversion Structure Design - Subvendor	6/16/23	10/14/23	0	0	0	0	0	0	0	0	0	0	0	0	5	40	\$4,950.00	
6: (Optional) Wetland Determination - Subvendor	7/1/23	8/14/23	0	0	0	0	0	0	0	0	0	40	0	40	0	0	\$10,080.00	
Labor Subtotals:			38	24	126	188	44	146	10	0	40	40	0	40	5	40	\$90,426.00	
Task	Expenses															Units	Rate	Cost (\$)
2: Rio ASE - 60% Site Visit (Mileage; 2 people, 1 vehicle)																306	\$0.66	\$200.43
2: Rio ASE - 60% Site Visit (Lodging; 2 people, 2 nights)																4	\$275.00	\$1,100.00
2: Rio ASE - 60% Site Visit (Meals; 2 people, 3 days)																6	\$55.50	\$333.00
3: Rio ASE - 60% in-person presentation (out and back mileage; no overnight)																306	\$0.66	\$200.43
6: Ecosystem Sciences - 60% Wetland Survey/Delineation (Mileage; 2 people,																306	\$0.66	\$200.43
6: Ecosystem Sciences - 60% Wetland Survey/Delineation (Lodging; 2 people,																4	\$275.00	\$1,100.00
6: Ecosystem Sciences - 60% Wetland Survey/Delineation (First/Last Day Meals; 2 people,																6	\$55.50	\$333.00
6: Ecosystem Sciences - 60% Wetland Survey/Delineation (Full Day Meals; 2 people,																2	\$74.00	\$148.00
Expenses Subtotal:																		\$3,615.29
Grand Total:																		\$94,041.29





CITY OF KETCHUM
PO BOX 2315 * 191 5TH ST. * KETCHUM, ID 83340
Administration 208-726-3841 (fax) 208-726-8234

PURCHASE ORDER

BUDGETED ITEM? ____ Yes ____ No

PURCHASE ORDER - NUMBER: 23116

To: 5850 RIO APPLIED SCIENCE, & ENGINEERING 2601 W WOODLAWN AVE BOISE ID 83702	Ship to: CITY OF KETCHUM PO BOX 2315 KETCHUM ID 83340
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P. O. Date	Created By	Requested By	Department	Req Number	Terms
06/29/2023	KCHOMA	KCHOMA		0	

Quantity	Description	Unit Price	Total
1.00	WARM SPRINGS PRESERVE RIVER & FLOOD 93-4900-5910	95,000.00	95,000.00
	SHIPPING & HANDLING		0.00
	TOTAL PO AMOUNT		95,000.00

Authorized Signature