



## City Council Staff Report

REPORT DATE: August 19, 2021

MEETING DATE: August 25, 2021

SUBJECT	<b>Contract with Intermountain Aquatics for Review of Mountainside Village's Wildlife Study</b>
ITEM TYPE	<input type="checkbox"/> Public Hearing <input type="checkbox"/> Work Session <input checked="" type="checkbox"/> Action Item
PRESENTER	Kimberly Kolner, AICP, Planning and Zoning Director

### APPLICABLE VICTOR VALUES

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|--|--|---|
| <input type="checkbox"/> Culturally Historic | <input type="checkbox"/> Sustainable     | <input type="checkbox"/> Connected to Nature            |
| <input type="checkbox"/> Small Town Feel     | <input type="checkbox"/> Family Friendly | <input checked="" type="checkbox"/> Administrative Need |

### PURPOSE & PROCESS

The purpose of this item is for Council to contact with the environmental consultants Intermountain Aquatics for the review and analysis of the Wildlife Study prepared by Biota and submitted by Mountainside Village for the proposed future development of their property and to approve the associated agreement.

Next Steps: Upon Council approval, the agreement will be fully executed, and the consultant will review the wildlife study and prepare a report of their analysis. Upon completion they will present the report and their findings to the Planning and Zoning Commission and/or City Council.

### BACKGROUND/ALTERNATIVES

As part of the concept review application process for Phase 4, Mountainside Village submitted a wildlife study prepared by Biota that analyzes the remainder of the undeveloped land owned by Mountainside Village. City staff does not have the expertise or knowledge to review the study for its accuracy or impact to the natural habitat of the subject property. By contacting with another qualified professional for the review the City will better understand and potential impacts to wildlife habitat and how it can be mitigated.

### ATTACHMENTS

Proposal Agreement with Intermountain Aquatics

### FISCAL IMPACT

Fiscal impact will be outlined in the proposal agreement.

#### STAFF IMPACT

Staff impact is minimal.

#### LEGAL REVIEW

The City Attorney will review the agreement.

#### RECOMMENDATION

Staff recommends Council contact with OPS Strategies to provide the services as outlined in the proposal and approve the associated agreement.

#### SUGGESTED MOTION

I move to contract with Intermountain Aquatics for the review and analysis of the Wildlife Study prepared by Biota and submitted by Mountainside Village for the proposed future development of their property and to approve the proposed agreement attached to the staff report, subject to minor changes approved by the City Attorney.

[Roll Call Vote]



**SOW 01 for Agreement to Perform Consulting Services to City of Victor**

<b>Date</b>	<b>Services Performed By:</b>	<b>Services Performed For:</b>
June 24, 2021	Intermountain Aquatics Inc. 116 Mustang Dr. P.O. Box 1115 Driggs, ID 83422	City of Victor [Client Address] [City, ST ZIP Code]

This Statement of Work (SOW) is issued between City of Victor (“Client”) and Intermountain Aquatics Inc. (“Consultant”) and is subject to the terms and conditions outlined in the attached General Stipulations and Invoicing and Payment Policies. This SOW outlines the consulting and other services that the Consultant will complete to review wildlife studies for Mountainside Village Development and provide professional recommendations to improve wildlife habitat avoidance and mitigation for future proposed development phases.

**Scope of Work:**

Intermountain Aquatics has received documents from the Client completed by a professional consultant for the Mountainside Village Development. We will peer review these materials for accuracy and sufficiency and make recommendations to the Client about wildlife avoidance and mitigation as they pertain to future phases of the development.

If permissible by the owner, IMA staff shall tour the subject property to become acquainted with ecological resources and wildlife habitats present. We intend also to work with State, Federal, and private partners to access additional data pertaining to wildlife habitats and use of the subject property.

**Deliverables:**

IMA will deliver a brief report to client outlining finding and recommendations of our review. Pending the flow of outside information and data IMA anticipates completing this project by September 1, 2021.

## Period of Performance

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The Services shall commence on August 6, 2021, and shall continue through project completion. The collection and review of publicly available and client supplied information and data has already started.

## Fee Schedule

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This engagement will be conducted on a Time and Materials basis and is based on our Professional Consulting rates and fee schedule (attached). Initial report review, site visit and brief summary report are estimated to cost \$2,500.

Upon completion of this Performance Period, Contractor and Client will have the option to renew this agreement for an additional then-stated number of hours at the then-current hourly rate for those resources identified.

## Invoicing Schedule

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IMA will invoice for all services upon completion of report.

## Completion Criteria

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Contractor shall have fulfilled its obligations when any one of the following first occurs:

- Contractor accomplishes the Contractor activities described within this SOW, including delivery to Client of the materials listed in the Section entitled “Deliverables,” and Client accepts such activities and materials without unreasonable objections.
- Contractor and/or Client has the right to cancel services or deliverables not yet provided with [20] business days advance written notice to the other party.

## Assumptions

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- Client will secure permission from the current landowner for IMA staff to access and tour the subject property.

## Project Change Order Procedure

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The following process will be followed if a change to this SOW is required:

- A project Change Order (CO) will be the vehicle for communicating change. The CO will be written by the Contractor, describe the change, the rationale for the change, and the effect the change will have on the project deliverables, price and schedule.

- The Client will review the proposed change and approve it or reject it. If the change is authorized, the Client will sign the CO, which will constitute approval for the changes. Contractor will invoice Client for any such charges associated with the CO.
- A written Change Order must be signed by both parties to authorize implementation of the changes.

**IN WITNESS WHEREOF**, the parties hereto have caused this SOW to be effective as of the day, month and year first written above.

City of Victor

Intermountain Aquatics  
Inc.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**GENERAL STIPULATIONS**

1. **Extra Services:** Any costs incurred by schedule delays changes in plans, or additional work, which delays, changes in work, or additional work are not the fault of Intermountain Aquatics, shall be billed as extra services.
2. **Written Approval Required for Extra Services:** No extra services shall be provided unless the Client has authorized such services in writing. All written proposals for extra services shall describe the extra services in detail and shall provide itemized cost and/or method of billing for such services.
3. **Client Responsibilities:** The Client is responsible for the following: compliance with local, state and federal requirements appropriate to this project, excepting the work undertaken by Intermountain Aquatics hereunder to implement the project (provided, however, the Client remains responsible for overall compliance with all applicable permits); security of the project site; damages resulting from vandalism; and damages and/or delay resulting from acts of God. Actions outside the control of Intermountain Aquatics which reduce the likelihood of success of the project during any required monitoring period shall be the responsibility of the Client to remedy.
4. **Subcontractors allowed:** Intermountain Aquatics reserves the right to retain subconsultants or subcontractors for all or any portion of this work; provided, however, Intermountain Aquatics shall remain responsible to Client for the satisfactory performance of such services.
5. **Client agrees:** to provide, at its expense and in a timely manner, the cooperation of its personnel and such additional information with respect to the project as may be required from time to time for the performance of Intermountain Aquatics' services hereunder.
6. **Access to site:** Intermountain Aquatics employees and subcontractors or subconsultants shall have access to the project site at all reasonable times and shall be permitted to photograph the project during the performance of services and upon completion, for its records and future use.
7. **Termination:** This agreement may be terminated by either party by giving written notice to the other at least thirty (30) days prior to the date of termination. In the event of such termination, Client shall pay Intermountain Aquatics for services rendered and reimbursable expenses incurred up to the date of termination, plus all reasonable costs and expenses directly attributable to such termination for which Intermountain Aquatics is not otherwise compensated.
8. **Mediation:** If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation within sixty (60) days, following written notice to the opposing party, before resorting to litigation or some other dispute resolution procedure. In the event that the parties are unable to agree on a mediator, a JAMS mediator shall be appointed. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider. The parties shall be obligated to submit to at least one seven-hour (including lunch) mediation session, unless they mutually agree to continue their participation beyond this time-period. The parties shall

share the mediator's fee and any mediation expenses equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

9. **Governing Law/Venue:**

The parties agree that Driggs, Idaho, shall be the venue for any mediation between/among the parties related to the performance of this Agreement. The state courts of Idaho shall be the venue for any related litigation. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Idaho, exclusive of conflict or choice of law rules.

10. **Limitation of Liability:** Notwithstanding any other provision in the Agreement, the Client agrees to strictly limit Intermountain Aquatics' liability under this Agreement arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, to the lesser of the fees paid to Intermountain Aquatics for the Services or the maximum of insurance provided. No claim may be brought against Intermountain Aquatics in contract or tort more than two (2) years after the cause of action arose. Any claim, suit, demand or action brought under this Agreement shall be directed and/or asserted only against Intermountain Aquatics and not against any of Intermountain Aquatics's employees, shareholders, officers, partners, or directors. Intermountain Aquatics'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 Intermountain Aquatics 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.

11. **Complete Agreement:** This Agreement, including all attachments, constitutes the entire agreement between the parties. Any additions to or variations from the same must be approved in writing by Client and Intermountain Aquatics.

12. **Headings:** The section headings contained in this agreement are for reference purposes only and shall not affect the meaning or interpretation of this agreement.

13. **Media:** Intermountain Aquatics retains the right to use photos taken at the project location for its project profiles and marketing purposes. Use of identifying ownership or place names will be omitted at Client's request.

## EXHIBIT B

### INTERMOUNTAIN AQUATICS INVOICING AND PAYMENT POLICIES

1. Invoices are submitted monthly by Intermountain Aquatics or upon completion of major phases of the project. Client shall notify Intermountain Aquatics in writing of any and all objections, if any, to an invoice within ten (10) days of the date the invoice is sent and telefaxed to Client at the address and numbers provided in the agreement between the parties. Otherwise, the invoice shall be deemed proper and accepted by the Client. Amounts invoiced are due and payable upon receipt. Client's account shall be considered delinquent if Intermountain Aquatics does not receive full payment within forty-five (45) days after the invoice date. An account will not be delinquent as to any portion thereof objected to by Client within the 10-day period set forth above. In the event of an objection to an invoice by Client made within the 10-day period set forth above, there shall be no interest charged on the amount disputed until the matter has been resolved by agreement of the parties or by final determination of the arbitrator or arbitrators.
2. A contractor management fee of 15% will be added to all bills from subcontractors who perform work for this Statement of Work and paid for by Intermountain Aquatics.
3. A material acquisition fee of 15% will be added to all materials purchased for the execution of this Statement of Work and paid for by Intermountain Aquatics.
4. A service charge shall be applied to delinquent accounts at the rate of 1.5% per month. Payment thereafter shall be applied first to accrued interest and then to unpaid principal. Client shall pay all costs and expenses, including without limitation, reasonable attorney's fees, incurred by Intermountain Aquatics in connection with collection of delinquent accounts of Client.
5. If a delinquency occurs, Intermountain Aquatics may choose to suspend work upon ten (10) days written notice to Client. Intermountain Aquatics shall recommence work once such delinquency is completely cured and any and all attendant collection costs, fees, or other amounts required to be paid by Client under this contract are paid in full. If a delinquency by Client occurs and Intermountain Aquatics chooses not to suspend work, no waiver or estoppel shall be implied. Client agrees and understands that if Intermountain Aquatics suspends its work pursuant to this paragraph, Intermountain Aquatics shall not be liable for any costs or damages, including but not limited to delay and consequential damages to the Client, other owner of the property where such work is being performed, or any other third party, that may arise from or be related to such work suspension. Client agrees to indemnify and hold Intermountain Aquatics harmless from and against any and all damages, costs, attorney's fees, and/or other expenses which Intermountain Aquatics may incur as a result of any claim by any person or entity arising out of such suspension of work.
6. If any litigation, arbitration, or any other legal action arising out of this contract is instituted, the prevailing party shall be entitled to, without limitation, reasonable attorney's fees, expenses, expert fees and costs.
7. When non-standard billing is requested by Client, time spent by office administrative personnel in preparation of such billing shall be considered an extra cost to the project and shall be billed as such.



**2021 Employee Rate Sheet**

<b>Employee</b>	<b>Title</b>	<b>\$/hr</b>
Jeff Klausmann	Principal, Owner	\$135.00
Katie Salisbury	Principal, Owner	\$135.00
Eric August	Professional Engineer	\$135.00
Paul Hook, PhD	Senior Scientist	\$135.00
Emma Voutour	Project Manager	\$115.00
Ginny Robbins	Field Scientist	\$115.00
Jason Chircop	Project Manager	\$115.00
Jenny Jensen	Bookkeeper, Human Resources	\$65.00
Lane Dahl	Field Manager	\$75.00
Sarah Dorman	Asst. Field Manager	\$65.00
Crew Member		\$40.00