

**MEMORANDUM OF AGREEMENT
BETWEEN THE
BUREAU OF LAND MANAGEMENT
AND THE
U.S. FOREST SERVICE
AND
ASCOT USA, INC.**

This is a modification of the Memorandum of Agreement (MOA) BLM-OR-936-1115 made and entered into by and between the United States Department of the Interior Bureau of Land Management (BLM), Oregon/Washington State Office (OR/WA), and the United States Department of Agriculture Forest Service, Pacific Northwest Region 6 (USFS) – hereinafter referred to together as the “Agencies” – and Ascot USA, Inc., (Ascot) a Washington State corporation. All of the aforementioned are referred to collectively hereinafter as the “Parties.”

I. PURPOSE AND OBJECTIVES

The purpose of this MOA is to document cooperation between the Parties; establish an understanding between them regarding the respective responsibilities, conditions, and procedures to be followed; and articulate the working arrangement, conditions, and requirements whereby a third-party contractor (Prime Consultant) will be supervised and directed by the BLM to conduct a Hydrogeologic Assessment (HA) of the project site and to modify the Goat Mountain Hardrock Prospecting Permit Applications Environmental Assessment (EA) of November 30, 2012, (DOI-BLM-OR-934-2012-0001-EA) pursuant to the National Environmental Policy Act of 1969, PL 91-190 (NEPA); its implementing regulations; the BLM’s Manual Handbook (H-1790-1); and the Opinion & Order and Summary Judgment of the U.S. District Court for Oregon (Court) issued on July 3, 2014, and August 6, 2014, respectively for Case No. 3:13-cv-00810-HZ.

II. SUMMARY OF PROPOSED PROJECT

Ascot has submitted two permit applications and a proposed plan of operations for hardrock prospecting to conduct exploratory drilling and related geotechnical work (Project) within an approximately 900-acre permit area on acquired lands encompassed by five adjoining Mineral Survey (MS) parcels within the Gifford Pinchot National Forest (GPNF) at Goat Mountain in northern Skamania County, Washington. The application area is more specifically situated on or adjacent to the south facing slope of Goat Mountain in Township 10 North, Range 6 East, of the Willamette Meridian, and includes parts of Sections 7, 8, 9, 16, 17, 18, and 19 near the head of the Green River drainage.

Based on the Project description and other information provided by Ascot, as well as various assessments of the permit area, the Agencies jointly prepared an EA in order to support the required administrative determinations, including whether an Environmental Impact Statement (EIS) is required or that a Finding of No Significant Impact (FONSI) is sufficient to support authorization of the hardrock prospecting permits. The EA was completed on November 30, 2012, and the Agency Decisions and FONSI were issued in December 2012. The decisions, but

not the EA, were subsequently vacated in a civil action before the Court in August 2014. To comply with the court order, the Agencies have agreed to undertake modification of the EA (MEA) in order to address the opinions of the Court.

III. STATEMENT OF AUTHORITIES

Subject to USFS consent, the BLM leases hardrock minerals on acquired lands within National Forests pursuant to Section 402 of Reorganization Plan No. 3 of 1946 and with various other statutes and regulations pertaining to specific lands and minerals. These statutes and their implementing regulations¹, orders, and notices authorize the BLM to issue prospecting permits and leases and to approve and administer any subsequent operations regarding exploration, development, production, and transportation of federally owned leasable minerals, including those within the National Forest System. The consent of the USFS and the BLM's leasing authorities are discretionary actions and must comply with the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 et seq., 1969; the Federal Land Policy and Management Act of 1976, as amended, PL 94-579; the Forest and Rangeland Renewable Resources Planning Act, PL 93-378, as amended by the National Forest Management Act, PL 94-588; and other applicable statutes, regulations, Executive Orders, manuals, handbooks, and land use plans (Legal Requirements).

The BLM is the lead agency and must comply with BLM NEPA regulations by approving a Decision Record (DR) and a FONSI for the MEA. The USFS, however, must first issue formal consent to the BLM for the issuance of the permits together with such terms and conditions as are necessary to protect other resources and to comply with applicable land use and forest management plans. The USFS decision rationale is based on the EA and explained in the Forest Service Decision Notice; both Agencies have Notice, Comment, Objection, and/or Appeal procedures that they must comply with.

IV. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

Based on the Project description and other information provided by Ascot and on assessments of the proposed Project, the Agencies prepared an EA in order to make the required administrative determinations, including whether an EIS is required or that a FONSI is sufficient to support authorization of the hardrock prospecting permits. This determination was fulfilled by the EA of November 30, 2012, (DOI-BLM-OR-934-2012-0001-EA) and subsequent Agency Decisions and FONSIs issued in December 2012. The decisions, but not the EA, were subsequently vacated by

¹ Hardrock minerals: Including, but not limited to Section 402 of Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) transferred the functions of the Secretary of Agriculture for the leasing or other disposal of minerals to the Secretary of the Interior for lands acquired under the following statutes:

(i) The Act of March 4, 1917 (16 U.S.C. 520);
(ii) Title II of the National Industrial Recovery Act of June 16, 1933 (40 U.S.C. 401, 403(a) and 408);
(iii) The 1935 Emergency Relief Appropriation Act of April 8, 1935 (48 Stat. 115, 118);
(iv) Section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781);
(v) The Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (7 U.S.C. 1011(c) and 1018); and
(vi) Section 3 of the Act of June 28, 1952 (66 Stat. 285).

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the Court in August 2014 pursuant to civil case 3:13-cv-00810-HZ. To comply with the Court's order, the Agencies are undertaking a modification of the EA in order to address the opinions of the Court.

Throughout this process, the Parties will strive to optimize the prior work done on the NEPA process and the Project permitting by coordinating actions, detailing procedures, and defining the respective responsibilities of the Parties. The MEA will be prepared by a third-party Prime Consultant. The Prime Consultant's work product will be considered the BLM's work product that meets the Legal Requirements that apply to both of the Agencies. Acceptance of the final product is subject to approval by both the BLM and the USFS.

V. IN CONSIDERATION OF THE ABOVE, ALL PARTIES AGREE AS FOLLOWS:

- A. **ASSESSMENT AND MODIFICATIONS:** An HA of the Project site and modification of the 2012 EA necessary to comply with the Agencies' standards and protocols, changed conditions, and the opinions of the Court will be prepared by the Prime Consultant under the supervision and direction of the BLM and in a manner consistent with Legal Requirements and the stipulations of this MOA. These actions will largely consist of the following:
 - 1. Conduct of a hydrogeologic baseline assessment of the project area.
 - 2. Preparation of a supplemental environmental assessment covering the HA.
 - 3. Revision of the 2012 EA to address changed conditions, Agency Standards and Protocols, and issues identified in the Court's opinion, ruling, and final judgment.

- B. **PREPARATION:** The HA and MEA (Tasks) will be prepared by the Prime Consultant under contract to Ascot. The Prime Consultant will perform these actions under the direct supervision and control of the BLM in cooperation with the USFS. The Prime Consultant's work product must meet Legal Requirements that apply to both the BLM and the USFS in order to be acceptable to the BLM as a basis for the Agencies' decision process. Subject to prior approval by the Agencies, the Prime Consultant may obtain technical assistance or information from one or more independent, third-party subcontractors.

- C. **PRIORITY:** The Parties agree that field work and investigations supporting preparation of the Tasks will be given a high priority, will be initiated promptly, will utilize qualified resource specialists, and will focus on key environmental issues. Opportunity for participation by interested members of the public and governmental agencies will be determined by the BLM.

- D. **STAFFING:** All Parties will provide the necessary personnel and other resources to complete the Tasks in a thorough, timely, and professional manner.

- E. **PRIME CONSULTANT:** The Parties agree that the Prime Consultant shall be the URS Corporation of San Francisco, California, doing business out of Seattle, Washington. The Prime Consultant or any successor or replacement shall be subject to the selection criteria in Item VI.D.

- F. **NON-DISCRIMINATION:** In carrying out the terms of this MOA, there shall be no discrimination against any person because of race, creed, color, sex, national origin, or other protected class under Federal or state law. The following statement shall be included in any printed or audio/visual or electronic media for public distribution developed or printed with Federal funding: "In accordance with Federal law, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability."
- G. **TIME SCHEDULE:** Based upon a review of the Project and the information developed to date, the Agencies and the Prime Consultant will establish a Task timeframe. The schedule may be modified as necessary for events or conditions beyond the control of the Parties. In that event, the Agencies and Ascot will agree, in writing, to a new timeframe.
- H. **MEETINGS:** Meetings in person or via telecommunication between Ascot and/or the Agencies and/or the Prime Consultant for the purpose of exchanging facts, information, or direction and for updating the status of the Tasks will occur regularly and as requested by any of the Parties subject to reasonable availability constraints.
- I. **COMMUNICATIONS:** The meetings specified in this MOA will not limit the communications between Ascot and the Agencies regarding procedural matters, scope of the Tasks, technical feasibility, mitigation, or other matters that, in the Agencies' judgment, require input from Ascot. All such meetings will generally include the Agencies' Project Managers (see Item VI.B. below) and the principal contact for Ascot.
- J. **CONDUCT OF PROCESS:** The dependent nature of the Tasks creates the need to conduct them with integrity. The Agency Project Managers will establish the process for the efficient flow of communication between the Prime Consultant, Ascot, and the Agencies. Oral and written communications between Parties will be protected from disclosure to preserve the integrity of the deliberative process. Individuals who disclose such deliberative information to the public and/or to Ascot without the authorization of the BLM Project Manager will be excluded from further participation in the Tasks.
- K. **RELEASE OF INFORMATION:** Data provided or developed pursuant to this MOA may contain proprietary or pre-decisional agency or Ascot information. All records or information requested of any Party to this MOA will be reviewed by the other Parties prior to release. To the extent permissible under law, any recipient of proprietary or pre-decisional information agrees not to disclose this information to the public or other parties nor to transmit or otherwise divulge this information without approval from the Agencies in consultation with Ascot.
- L. **CONTACT WITH THE PRIME CONSULTANT:** Contact between Ascot and the Prime Consultant will be limited to matters of budget, scheduling, and transfer of relevant information.

- M. **ROLES OF THE PARTIES:** The complexity and nature of the Tasks require a common understanding of the roles of the Agencies, Ascot, the Prime Consultant, and any sub-contractors and other interested persons, agencies, and organizations. The role of Ascot is the same as it would be if the process were being entirely performed by agency personnel with no proponent financing.
- N. **RESPONSIBILITIES OF THE PARTIES:** The Parties will handle their own activities and utilize their own resources, including expenditure of funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner. Furthermore, this MOA is not intended to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person. Nothing in this MOA is intended to alter, limit, or expand the Agencies' statutory and regulatory authority.
- O. **ADMINISTRATIVE RECORD:** Information and data collected by the Prime Consultant and any subcontractors may be inserted in the Administrative Record prepared by the Prime Consultant at the discretion of the Agencies.
- P. **NOTICE OF LITIGATION HOLD:** If a litigation hold notice is issued by the U.S. Department of Justice or by the U.S. Department of Agriculture's Office of the General Counsel or by the U.S. Department of the Interior's Office of the Solicitor, such litigation notice shall be provided to both Ascot and the Prime Consultant, both of whom will take all reasonably necessary steps to comply with all of the terms of that notice.
- Q. **LEGAL CHALLENGE:** If there is a legal challenge to the Agencies' NEPA compliance for this Project, Ascot, the Prime Consultant, and any subcontractors must make information relevant to the Tasks, as requested by the Agencies, available to the Agencies at Ascot's expense.
- R. **INFORMATION DISCLOSURE:** Ascot, the Prime Consultant, and any subcontractors shall respond to all agency requests for information and testify at depositions or trials regarding any aspect of the Tasks about which Ascot, the Prime Consultant, or any subcontractors possess information, all at Ascot's expense. Notwithstanding the foregoing, no provision of this MOA shall be construed as a waiver of attorney-client privileged information or the confidentiality of patent, trade secret, or other proprietary or confidential information, all in conformance with applicable law. Information deemed confidential or proprietary by Ascot shall not be disclosed to the public or third parties unless required by applicable law beyond Ascot's and the Prime Consultant's obligations to provide such information to the Agencies. Neither Ascot nor the Prime Consultant shall be obligated to defend or pay for defending a legal action against one or more of the Agencies as the result of information disclosure. Likewise, the Agencies shall retain sole responsibility in determining the appropriate Federal response to any administrative appeals or legal actions that may occur in association with the Project.

- S. NOTICES: Any communications affecting the Tasks covered by this agreement given by the Agencies or Ascot is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax to the addresses specified in this agreement. Notices are effective when delivered in accordance with this provision or on the date of the notice, whichever is later.
- T. PARTICIPATION IN SIMILAR ACTIVITIES: This MOA in no way restricts the Agencies or Ascot from participating in similar activities with other public or private agencies, organizations, and individuals.
- U. ENDORSEMENT: Ascot's contributions made under this MOA do not, by direct reference or implication, convey the Agencies' endorsement of Ascot's products or activities.
- V. MEMBERS OF U.S. CONGRESS: Pursuant to 41 U.S.C. 22, no United States member of or United States delegate to Congress shall be admitted to any share or part of this MOA or the benefits that may arise therefrom, either directly or indirectly.
- W. USE OF USFS INSIGNIA OR BLM EMBLEM: In order for the cooperator Agencies or Prime Consultant to use the USFS insignia and/or the BLM emblem on any published media, such as a Web page, printed materials, or audio-visual production, written permission must be granted from the USFS Office of Communications and/or from the BLM Office of Communication in the Oregon State Office.
- X. NONBINDING AGREEMENT: This MOA creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The Parties shall manage their respective resources and activities in a separate but coordinated and mutually beneficial manner to meet the purposes of this MOA. Nothing in this MOA authorizes any of the Parties to obligate or transfer anything of value.
- Y. OTHER AGREEMENTS: Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to another party require the execution of separate agreements and are contingent upon numerous factors, including as applicable but not limited to: availability of agency appropriated funds and other resources; availability of cooperator funds and other resources; agency and cooperator administrative and Legal Requirements, including agency authorization by statute; etc. This MOA neither provides nor meets these criteria. If the Parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any agency obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable laws.

- Z. REGULATORY AUTHORITY: Nothing in this MOA is intended to alter, limit, or expand the Agencies' statutory and regulatory authority.
- AA. TERMINATION: Any of the Parties, in writing, may terminate this MOA in whole or in part at any time before the date of expiration.
- BB. MODIFICATIONS: Modifications within the scope of this MOA must be made by mutual consent of the Parties by the issuance of a written modification signed and dated by all properly authorized, signatory officials prior to any changes being performed. Requests for modification should be made in writing at least 30 days prior to implementation of the requested change.
- CC. COMMENCEMENT/EXPIRATION DATE: This MOA is executed as of the date of the last signature and is effective through completion of the Tasks, including formal acceptance of the MEA by the BLM, and for no more than five (5) years from the date of last signature at which time, it will expire, unless extended by an executed agreement, signed and dated by all properly authorized signatory officials.
- DD. PRINCIPAL CONTACTS: Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal Ascot USA, Inc., Contacts		
	Program Contact	Legal Administrative Contact
Name:	Bob Evans	Kirk Maag
Address:	#202, 15388 24 th Ave.	900 SW Fifth Ave., Suite 2600
City, State, Zip:	Surry, B.C., Canada, V4A212	Portland, OR 97204
Telephone:	(604) 684-8977	(503) 294-9546
Fax:		(503) 220-2480
E-mail:	bobevans55@gmail.com	kbmaag@stoel.com

Principal U.S. Forest Service Contact	
	Program Contact
Name:	John Dryden
Address:	10600 NE 51 st Circle
City, State, Zip:	Vancouver, WA 98682
Telephone:	360-891-5050
Fax:	360-891-5045
E-mail:	jdryden@fs.fed.us

Principal U.S. Bureau of Land Management Contacts		
	Program Contact	Administrative Contact
Name:	Eric Hoffman Contract Geologist	Chris DeWitt Chief, Minerals Section
Address:	1220 SW 3 rd Ave.	1220 SW 3 rd Ave.
City, State, Zip:	Portland, OR 97204	Portland, OR 97204
Telephone:	503-808-6378	503-808-6446
Fax:	503-808-6425	503-808-6425
E-mail:	ehoffman@blm.gov	cdewitt@blm.gov

Principal URS Corporation Contact	
	Prime Consultant Contact
Name:	Keith O'Connell Project Manager
Address:	1501 4 th Ave., Suite 1400
City, State, Zip:	Seattle, Washington 98101
Telephone:	206-438-2150
Cell:	
E-mail:	keith.oconnell@urs.com

VI. THE AGENCIES SHALL AGREE THAT:

- A. **LEAD FEDERAL AGENCY:** The BLM shall be designated as the Lead Federal Agency. In this role, the BLM will provide direction and supervision to the Prime Consultant on behalf of the BLM and the USFS. The USFS, as the Surface Managing Agency, has jurisdiction and special expertise relative to the Project area. The Agencies will work cooperatively to ensure that their legal, regulatory, and policy requirements are met throughout completion of the Tasks. The USFS will be shown as a "Cooperating Agency" on the MEA.
- B. **PROJECT MANAGERS:** Each agency will designate a Project Manager as the principal point of contact on all matters relating to the Tasks. The duties of the BLM Project Manager shall include oversight of all analyses; facilitation of communications between the Agencies, Ascot, the Prime Consultant, and any subcontractors to ensure a timely and thorough exchange of relevant information; government-to-government consultation; and public involvement.
- C. **USE OF EXISTING INFORMATION:** The Agencies shall, to the fullest extent possible, utilize existing information, inventories, studies, and reports to support the analysis provided that such information can be verified as accurate by the Agencies.
- D. **SELECTION OF THIRD-PARTY PRIME CONSULTANT:** The BLM, in cooperation with the USFS, has selected the URS Corporation as the Prime Consultant based on past experience, technical competence, availability of resources needed to perform the work, cost factors, and an absence of conflict of interest. The BLM, in cooperation with the USFS, will review and approve the

contract between Ascot and the Prime Consultant to ensure its compliance with this MOA. A qualified Prime Consultant for this Project has the following skills and experience:

1. Demonstrated knowledge of geotechnical/hydrogeologic methods for mineral exploration on disseminated and/or porphyritic deposits.
2. Demonstrated capability to expeditiously prepare an environmental analysis/modification of the proposed geotechnical/hydrogeologic mineral prospecting within environmentally sensitive areas.
3. Demonstrated experience for working with Federal agencies to prepare environmental assessments/modification for actions requiring official authorization in order to proceed upon public lands.
4. Ability to effectively communicate with governmental agencies, the public, and a wide range of special interest groups and organizations including local, state, and tribal governments.

- E. DIRECTION TO THE PRIME CONSULTANT: The BLM, in cooperation with the USFS, will meet with the Prime Consultant throughout the completion of the Tasks to provide direction and make ultimate decisions regarding, at a minimum, the following topics:
1. Modifications to the EA required by the opinions of the Court as outlined in the scope of work (see Memorandum of Instructions).
 2. Modifications to the EA required by agency standards and protocol as outlined in the scope of work
 3. Modifications to the EA required by any changed conditions since the date of the original EA as outlined in the scope of work.
- F. SCOPE AND CONTENT: The Prime Consultant will work under the supervision of the BLM Project Manager who will make the final determinations, in consultation with the USFS, concerning the scope and content of the Prime Consultant's work.
- G. INTERDISCIPLINARY TEAM SUPPORT: The Agencies shall convene a joint BLM/USFS Interdisciplinary (ID) Team as required by 40 CFR 1500 to oversee the Tasks. It is anticipated that the ID Team will function principally as a review team, providing technical guidance to the Project Manager, Prime Consultant, and any subcontractors regarding the issues and alternatives to be addressed. The ID Team will provide input and guidance on the adequacy of existing data and studies and such additional matters as are useful to the prompt and efficient completion of the Tasks in compliance with the Legal Requirements. Every effort will be made to avoid duplication of work between the Project Manager, Prime Consultant, any subcontractors, and ID Team members and to focus the Tasks on important issues. The Prime Consultant is an important part of the interdisciplinary process and will aid and support the ID Team.
- H. ALTERNATIVES: The BLM, in cooperation with the USFS, will address proposed alternatives and respond to procedural and substantive comments by any of the Parties during completion of the Tasks. As required by NEPA, the Agencies

will give full consideration to a “No Action Alternative” and other alternatives identified by the ID Team that are technically and economically feasible and that respond to the Agencies’ determination of purpose and need for the Project based on consultation with Ascot. Ascot’s financing of this Analysis will have no bearing on the consideration given to the “No Action” or any other alternatives.

- I. GOVERNMENT PROVIDED INFORMATION: The Agencies shall furnish copies of the following information to:
1. The Prime Consultant and/or Ascot have or shall be provided with the agreed-upon schedule of work between the Agencies and Ascot.
 2. The Prime Consultant and/or Ascot shall be provided with an outline of the format to be used for completion of the Tasks as specified at 40 CFR 1500-1508 and 36 CFR 220.
 3. The Prime Consultant and/or Ascot have been provided a copy of the relevant Forest Plan, Forest Plan environmental analysis, and Record of Decision with all amendments to those documents as reflected in the administrative record for the 2012 EA.
 4. The Prime Consultant and/or Ascot have been provided copies of the statutes, regulations, Executive Orders, and agency manuals and handbooks that control or guide the preparation of the EA as reflected in the administrative record for the 2012 EA.
 5. The Prime Consultant shall be provided with written comments or reports prepared by the joint BLM/USFS ID Team.
 6. The Prime Consultant shall be provided with copies of letters, comments, and other relevant materials received by the Agencies during completion of the Tasks.
- J. PROJECT SUPERVISION: The BLM, in cooperation with the USFS, will oversee the completion of the Tasks in compliance with Legal Requirements including but not limited to ensuring public review of the analysis and review of public comments. In exercising this responsibility, the BLM, in cooperation with the USFS, will endeavor to foster cooperation among other relevant agencies and to integrate NEPA requirements with other environmental review and consultation requirements in order to avoid, to the fullest extent possible, duplication of efforts (40 CFR 1500.5(g)-(h), 1501.2(d)(2), 1506.2). The BLM will not delegate to any other agency authority over the scope and content of the HA or MEA or approval of the Project.
- The BLM, in cooperation with the USFS, will provide direction to the Prime Consultant for preparing, organizing, indexing, and maintaining documents regarding the completion of the Tasks. The BLM will ensure that the Prime Consultant uses documents provided by the Agencies and as developed by the Prime Consultant consistent with the Legal Requirements to create and designate the official Administrative and Project Record.
- K. COMMUNICATIONS WITH PROJECT PROPONENT: The BLM, in cooperation with the USFS, will keep Ascot regularly informed of the status of completion of

the Tasks and will discuss with Ascot any additional data needs and any necessary changes to the terms of Ascot's contract with the Prime Consultant. The BLM, in cooperation with the USFS, shall invite Ascot to attend meetings with Federal, state, regional, and local agencies and the public whenever possible and as appropriate (e.g., discussions on procedural matters; physical, biological, and social issues; the proposed action and alternative actions; impacts and their mitigation; and other compliance requirements). The BLM, in cooperation with the USFS, shall meet with Ascot as needed to discuss components of the Tasks and to determine mitigation measures necessary to avoid or acceptably minimize adverse impacts.

- L. PUBLIC REVIEW: The BLM, in cooperation with the USFS, will maintain responsibility for coordination of public review of the modified EA in accordance with agency administrative review processes, evaluation of public comments, and distribution of documents pursuant to Legal Requirements and the BLM's NEPA Handbook H-1790-1, §§ 8.2, 8.4.2. The BLM will arrange, announce, and conduct any necessary meetings and recordation of comments and information provided by the public and ensure that all substantive comments received are addressed during the NEPA process.
- M. PUBLIC COMMENT: The BLM will receive all public comments on the modified EA and, in cooperation with the USFS, determine any necessary actions for completion of the Tasks as a result of public input.
- N. REVIEW AND ACCEPTANCE OF PRODUCTS: The BLM, in cooperation with the USFS, will evaluate the information and reports submitted by the Prime Consultant, subcontractors, Ascot, or others and will maintain responsibility for the accuracy of that information (40 CFR 1506.5). The BLM will make the final determination regarding inclusion or exclusion of material from the MEA.
- O. PRODUCTS: All work products created pursuant to this MOA, including but not limited to all data and analyses, shall become the property of the BLM.
- P. TERMINATION: The BLM will retain the sole responsibility for making decisions, with the concurrence of the USFS, regarding the acceptability of the MEA. The BLM reserves the right to terminate the Tasks at its sole discretion and for any reason, including for the lack of performance or poor work quality by the Prime Consultant and/or its subcontractors. A request for termination by the USFS shall be considered a valid reason.
- Q. NON-FUND OBLIGATING DOCUMENT (Agencies): Nothing in this MOA shall compel the Agencies to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the Agencies will require execution of separate agreements and will be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

- R. NON-FUND OBLIGATING DOCUMENT (Parties): This agreement is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the Parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.
- S. TERMS AND FUNDING: The terms of this MOA are effective only to the extent that the Agencies are authorized by law to take actions and to the extent funds are appropriated or otherwise made available. Nothing in this MOA shall obligate a participating agency to appropriate funds for its activities or responsibilities pursuant to this MOA.
- T. THIRD PARTY BENEFICIARY RIGHTS: The Agencies do not assume liability for any third-party claims for damages arising out of implementation of this MOA.
- U. RECORDS MANAGEMENT: The Agencies own the rights to all data/records produced as part of this agreement. All records (in all media, paper and electronic) created or produced in part or in whole are to be maintained for the duration of the agreement, made available upon request, and, upon termination of the agreement, will be turned over to the BLM for inclusion in the Administrative and Project Records. The Parties shall not retain, use, sell, or disseminate copies of any data that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.
- V. PUBLIC RECORDS: Any information furnished to any of the Parties is subject to the Freedom of Information Act (5 U.S.C. 552) and state public records laws.
- W. FREEDOM OF INFORMATION ACT (FOIA): Public access to this MOA or Administrative and Project Records will not be limited, except when such records must be kept confidential and would have been excepted from disclosure pursuant to the FOIA (5 U.S.C. 552) and applicable law and regulations. The BLM will have control of the official administrative record for the project and will control the release of information subject to FOIA requests in accordance with 5 U.S.C. 552 and the Privacy Act, 5 U.S.C. 552a, regarding the Tasks. If Ascot, the Prime Consultant, or any subcontractors have provided the Agencies with proprietary or confidential business information that would be responsive to a FOIA or Privacy Act request, the Agencies will provide Ascot, the Prime Consultant, or any subcontractors with prompt notification of any request for that information under the FOIA. Ascot, the Prime Consultant, or any subcontractors will be given reasonable time to assert privilege on information or records considered proprietary under the FOIA. Ascot, the Prime Consultant, or any subcontractors will be notified of the Agencies' determination regarding disclosure of such records prior to

the disclosure date. The Agencies retain the right and authority to determine what is releasable in accordance with the FOIA. Ascot, the Prime Consultant, or any subcontractors will be promptly notified of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information (7 CFR 1.12).

- X. **TEXT MESSAGING WHILE DRIVING:** In accordance with Executive Order (EO) 13513, Federal Leadership on Reducing Text Messaging While Driving, any and all text messaging by Federal employees is banned: (1) while driving a Government-owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business or (2) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Parties, the Prime Consultant, and any subcontractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased, or rented vehicles; POVs; or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.

VII. ASCOT SHALL AGREE THAT:

- A. **POINT OF CONTACT:** Ascot will establish a principal point of contact for Ascot that the Agencies and the Prime Consultant may contact on all matters relating to the Tasks. Until further notification, such contact shall be Kirk Maag, Stoel Rives LLP, at the address listed in V.DD above.
- B. **DEBARMENT AND SUSPENSION:** Ascot shall immediately inform the BLM and the USFS if it or any of its principals are presently excluded, debarred, or suspended from entering into covered transactions with the Federal Government according to the terms of 2 CFR Part 180. Additionally, should Ascot or any of its principals receive a transmittal letter or other official Federal notice of debarment or suspension, the BLM and USFS shall be notified without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- C. **THIRD-PARTY PRIMARY CONSULTANT:** Ascot will enter into a contract with the Prime Consultant that meets all of the following requirements, or in such other form as is approved by the BLM:
1. Identification by the Prime Consultant of its principal point of contact that the Agencies and Proponent may contact for all matters relating to the analysis.
 2. Execution of a disclosure statement by the Prime Consultant, each of the Prime Consultant's professional personnel, and any of the Prime Consultant's subcontractors as well as the subcontractor's professional personnel stating that the Prime Consultant, the Prime Consultant's professional personnel, the Prime Consultant's subcontractors, and the subcontractor's professional personnel have no financial interest in the outcome of the analysis. (40 CFR 1506.5(c))
 3. A statement that the Prime Consultant's work product will be considered the BLM's work product, owned by the BLM. All work will be prepared under BLM supervision and is intended to meet Legal Requirements that apply to both the BLM and USFS and to the subject lands. Subject to the BLM's

approval, the Prime Consultant may obtain technical assistance or information from one or more independent, third-party subcontractors.

4. Acknowledgment that Ascot is solely responsible for all Prime Consultant and subcontractor fees, costs, and expenses, and the Prime Consultant and subcontractors shall make no claim against the Agencies for such fees, costs, and expenses.
5. A provision that states that neither the Prime Consultant nor any subcontractors may conduct public surveys or questionnaires without prior approval of the BLM.
6. Acknowledgment that the Prime Consultant will be under the supervision of the BLM and that the BLM will make the final determination concerning the scope and content of the Prime Consultant's work.
7. A requirement that the Prime Consultant conduct the Tasks in full compliance with all Legal Requirements.
8. A requirement that the Prime Consultant and its subcontractors (if any) document all of their work, including any sampling, testing, field observations, literature searches, analyses, recommendations, letters, e-mails, and other work that supports the analysis. The Prime Consultant shall maintain a master index of all documents it receives or generates that are directly or indirectly considered in the decision-making process or that demonstrate compliance with laws, regulations, or policies. The term "document" as used in this paragraph includes data of any sort, including but not limited to electronic media, planning data, maps, files, reports, e-mails, computer audio or video tapes and disks, and other records.
9. A requirement that the index will show, at a minimum, the date, author, addressee, source document, document number and page number, and subject matter of the document. The Prime Consultant and any subcontractors shall also document all of the Agencies' applicable records in a similar and compatible manner. The index shall be an appendix to the analysis and shall be used to incorporate, by reference, the items listed in the index to the EA. The index shall be updated throughout the completion of the Tasks. The index may form part of the Administrative Record compiled and designated by the Agencies.
10. A requirement that the Prime Consultant and any subcontractors comply with the communications plan and an acknowledgment that all communications regarding the project will be part of the Agencies' deliberative process regarding the Project.
11. A requirement that the Prime Consultant will regularly meet with and brief the Agencies with pertinent information to facilitate their direction and guidance regarding the process on the following topics:
 - a. Modifications to the EA required by the opinions of the Court as outlined in the scope of work (see Memorandum of Instructions).
 - b. Modifications to the EA required by agency standards and protocol as outlined in the scope of work
 - c. Modifications to the EA required by any changed conditions since the date of the original EA as outlined in the scope of work.

12. A requirement that, if Ascot or the Agencies terminate this MOA, the Prime Consultant will submit a written report on work performed for completion of the Tasks and such analyses that it or its subcontractor(s) performed prior to the date of termination, as well as copies of all work product gathered or created by the Prime Consultant or its subcontractor(s) prior to the date of termination.
 13. A requirement that the Prime Consultant work closely with the Agencies on the following actions:
 - a. Developing a Project Record.
 - b. Participating, as requested, with the Agencies in public government-to-government meetings relevant to completion of the Tasks.
 - c. Designing visual aids for meetings including maps, handouts, poster boards, mailings, and any other required preparation for the meetings or open houses.
 - d. Developing a mailing list of persons and entities who have expressed interest in the Project.
 - e. Preparing draft responses to comments for consideration by the Agencies and conducting and completing all necessary studies, inventories, and suitable reports for all resources that may be impacted by completion of the Tasks.
 - f. Preparing relevant correspondence, coordination of internal review comments, and related documents.
 - g. Assisting the Agencies in responding to FOIA requests by providing all relevant information to the request.
 14. A requirement that, if there is an administrative or judicial legal challenge to the arising from completion of the Tasks, the Prime Consultant and any subcontractors, must make available to the Agencies all information requested by the Agencies or their legal counsel. The contract must also require the Prime Consultant to respond to all requests for information by the Agencies and testify at deposition and/or trial regarding any aspect of the Project about which the Prime Consultant possesses information.
- D. **PROPONENT PROVIDED INFORMATION.** Ascot shall provide to the Prime Consultant and to the Agencies all technical or environmental information deemed necessary or relevant by the Agencies that is needed for or may have relevance to the completion of the Tasks. Pursuant to this obligation, Ascot shall:
1. Respond to all data requests by the Agencies and review comments (such as a description of the Project and changes thereto) within a reasonable time set by the Agencies. If Ascot fails to provide requested materials on schedule, the task completion schedule may be adjusted by the Agencies.
 2. Provide information about the feasibility of design criteria, mitigation measures, and related agreements as requested by the Agencies.
 3. Compile technical, environmental, and socio-economic information in its possession related to the Tasks and, to the extent that such information is not restricted by confidentiality agreements, provide such information that is necessary for review or input into the Tasks, associated Administrative Record, or other parts of the Task documentation.

- E. PUBLICATIONS: Ascot will fund all reproduction, printing, and distribution of the MEA including the agency decision and FONSI, unless otherwise agreed to in writing by the Agencies.
- F. FOIA: Ascot will provide information and documents to the Agencies in response to all to FOIA, 5 U.S.C. 552, and Privacy Act, 5 U.S.C. 552(a), requests regarding the Project and EA within the timeframes established by the Agencies.
- G. MITIGATION: Ascot shall participate in the preparation of appropriate mitigation measures to resolve or lessen adverse impacts of the project.

VIII. AUTHORIZED REPRESENTATIVES:

By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOA. In witness whereof, the Parties hereto have executed this MOA as of the last date written below.



Robert A. Evans
Director and Secretary
Ascot USA, Inc.

March 9 2015

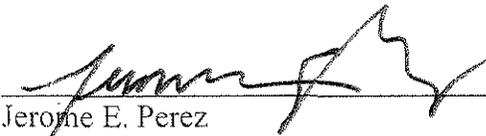
Date

for 

Janine Clayton
Forest Supervisor, Gifford-Pinchot National Forest
US Forest Service, Department of Agriculture

2-5-2015

Date



Jerome E. Perez
State Director, Oregon/Washington
Bureau of Land Management, Department of the Interior

January 24, 2015

Date