RESOLUTION NUMBER 03-045

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SERVICES AGREEMENT WITH THE SUN VALLEY-KETCHUM CHAMBER & VISITORS BUREAU, INC., FOR THE PROVISION OF VISITOR INFORMATION AND MARKETING SERVICES FOR THE 2003-2004 FISCAL YEAR.

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho;

WHEREAS, Ketchum is a destination resort city, as defined by Idaho Code § 50-1044, because it derives the major portion of its economic well-being from businesses catering to recreational needs and the needs of people traveling to Ketchum for an extended period of time;

WHEREAS, pursuant to Idaho Code §§ 50-301, 50-302, and 50-303, Ketchum has the authority to enter into contracts and to take such steps as are reasonably necessary to maintain the peace, good government and welfare of the City and its trade, commerce, and industry. Accordingly, Ketchum has the power as conferred by the State of Idaho to provide directly for certain promotional activities to enhance the trade, commerce, industry, and economic well being of the City;

WHEREAS, the voters of Ketchum approved Ketchum Ordinance Number 712, which imposes a one percent (1%) non-property tax on the sales price of certain property, goods, and services sold or otherwise transferred in Ketchum and an additional one percent (1%) hotel-motel room occupancy sales tax, and an additional one percent (1%) liquor by-the-drink sales tax, all which is sold or otherwise transferred in Ketchum. Pursuant to the provisions of this ordinance, revenues derived therefrom shall be used, among other things, for the promotion and marketing of the City, special events, and visitor information.

WHEREAS, the Chamber is a non-profit corporation duly organized and operating under the laws of the State of Idaho;

WHEREAS, the Chamber is highly skilled, has unique public relations abilities and is experienced in providing advertising and marketing services for the advancement of the trade, commerce, and industry of the tourism-based economy of Ketchum;

WHEREAS, among the Organizational Goals of the Chamber is the goal to create a strong economic climate, provide tourism marketing, and to provide the best possible information and service to Ketchum area visitors. These goals are consistent with the purposes and findings included in Ordinance No. 712;

WHEREAS, it is in the best interest of the public health, welfare, and prosperity of the City to provide general information to and encourage tourists to visit Ketchum area by means

of marketing and promotion and to participate in lawful activities which promote and enhance the trade, commerce, and industry of the City. These activities are determined to be ordinary and necessary expenses for the economic well-being of Ketchum and its residents and guests;

WHEREAS, Ketchum desires to contract with the Chamber for professional services to provide visitor information and the promotion and marketing of the City and its special events; and

WHEREAS, the Chamber desires to contract with Ketchum to provide said professional services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho:

1. That the City Council of the City of Ketchum hereby finds that said contract for services is in the best interest of said City and the inhabitants thereof in order to maintain the peace, good government and welfare of the City and its trade, commerce, and industry; and, that said Agreement is in accordance with and authorized by the laws of the State of Idaho.

2. The City Council of the City of Ketchum, Idaho, hereby authorizes and instructs the Mayor of said City to execute an Agreement with the Sun Valley-Ketchum Chamber & Visitors Bureau, Inc., for the provision of Visitor Information and Marketing Services for the 2003-2004 fiscal year.

DATED this 6th day of October 2003.

CITY OF KETCHUM

By _____
EDWARD SIMON
Mayor

ATTEST:

Sandra E. Cady, CMC
City Clerk

CONTRACT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF KETCHUM AND THE SUN VALLEY-KETCHUM CHAMBER & VISITORS BUREAU

THIS CONTRACT, is made and entered into this 6th day of October, 2003, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (hereinafter referred to as "Ketchum") and the SUN VALLEY-KETCHUM CHAMBER & VISITORS BUREAU, INC., an Idaho non-profit corporation (hereinafter referred to as "Chamber"), in contemplation of the following recitals:

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho;

WHEREAS, Ketchum is a destination resort city, as defined by Idaho Code § 50-1044, because it derives the major portion of its economic well-being from businesses catering to recreational needs and the needs of people traveling to Ketchum for an extended period of time;

WHEREAS, pursuant to Idaho Code §§ 50-301, 50-302, and 50-303, Ketchum has the authority to enter into contracts and to take such steps as are reasonably necessary to maintain the peace, good government and welfare of the City and its trade, commerce, and industry. Accordingly, Ketchum has the power as conferred by the State of Idaho to provide directly for certain promotional activities to enhance the trade, commerce, industry, and economic well being of the City;

WHEREAS, the voters of Ketchum approved Ketchum Ordinance Number 712, which imposes a one percent (1%) non-property tax on the sales price of certain property, goods, and services sold or otherwise transferred in Ketchum and an additional one percent (1%) hotel-motel room occupancy sales tax, and an additional one percent (1%) liquor by-the-drink sales tax, all which is sold or otherwise transferred in Ketchum. Pursuant to the provisions of this ordinance, revenues derived therefrom shall be used, among other things, for the promotion and marketing of the City, special events, and visitor information.

WHEREAS, the Chamber is a non-profit corporation duly organized and operating under the laws of the State of Idaho;

WHEREAS, the Chamber is highly skilled, has unique public relations abilities and is experienced in providing advertising and marketing services for the advancement of the trade, commerce, and industry of the tourism-based economy of Ketchum;

WHEREAS, among the Organizational Goals of the Chamber is the goal to create a

strong economic climate, provide tourism marketing, and to provide the best possible information and service to Ketchum area visitors. These goals are consistent with the purposes and findings included in Ordinance No. 712;

WHEREAS, it is in the best interest of the public health, welfare, and prosperity of the City to provide general information to and encourage tourists to visit Ketchum area by means of marketing and promotion and to participate in lawful activities which promote and enhance the trade, commerce, and industry of the City. These activities are determined to be ordinary and necessary expenses for the economic well-being of Ketchum and its residents and guests;

WHEREAS, Ketchum desires to contract with the Chamber for professional services to provide visitor information and the promotion and marketing of the City and its special events; and

WHEREAS, the Chamber desires to contract with Ketchum to provide said professional services.

NOW THEREFORE, Ketchum and the Chamber, for and in consideration of the recitals, promises, and covenants hereinafter set forth, do hereby agree as follows:

Section 1. Scope of Services.

A. **Public Purposes Limitation.** All funds paid to the Chamber shall be used to provide professional services for the City of Ketchum only for the public purpose of promoting the Ketchum area to attract visitors and conventions, to provide information about the community, and to operate the Visitor Information Center pursuant to the Chamber's Annual Work Plan referred to in Section 3, subsection B, below.

B. **Management and Administration of Promotional Activities.** The Chamber shall provide professional services to operate, manage, provide, and supervise the distribution of visitor information to the general public and provide professional marketing services to promote the Ketchum area in accordance with this Agreement and its Annual Work Plan.

C. **Visitor Promotion Awareness Programs.** The Chamber shall provide literature, advertising, staff, supplies, equipment and support associated with an educational awareness program designed to promote the Ketchum area as a destination for tours and visitors. The Chamber shall develop, arrange and pay for the costs of printing, and distribute the literature necessary to promote the Ketchum area to

visitors. The Chamber shall also travel to and identify and conduct activities and programs encouraging potential visitors to use the Ketchum area as a destination. The Chamber shall coordinate its activities in accordance with its Annual Work Plan and in coordination with other visitor promotional entities.

D. **Management and Administration of the Visitors Information Center.** The Chamber shall staff, supply, and operate a Visitor Information Center ("Center"), located at 411 North Main Street, Ketchum, Idaho.

(1) The Chamber shall offer information and answer all inquires from visitors and the general public and shall produce adequate supplies of brochures, pamphlets, fact sheets, and similar materials that can be handed out or mailed, free of charge to the public.

(2) The hours of operation of the Center shall be no less than 9:00 a.m. to 5:00 p.m., Monday through Friday, and 12:00 noon to 5:00 p.m., Saturdays and Sundays, including holidays, but excluding Christmas Day and New Year's Day and certain Sundays during off-season periods, as agreed upon in advance by Ketchum and the Chamber.

E. **Chamber Officers or Directors.** No officer or director of the Chamber who has decision making authority either by himself or by vote, and no immediate family member of such individual, shall have a direct pecuniary interest in any contract or subcontract for work to be performed in connection with this agreement and the Annual Work Plan. The Chamber shall incorporate or cause to be incorporated in all such contracts, a provision prohibiting such interest pursuant to this provision.

Section 2. Budget, Annual Work Plan, Reports and Availability of Records.

A. **Budget.** Within ten (10) days after the execution of this agreement, the Chamber shall submit a final operating budget for the Chamber which is satisfactory to Ketchum, for the fiscal year 2003-2004, showing income, expenses and particular fund balances. The operating budget shall contain sufficient information and detail to permit meaningful review by the public.

B. **Annual Work Plan.** Prior to the commencement of services, the Chamber shall provide Ketchum with a proposed Annual Work Plan containing a detailed proposed budget and the identification of activities for which Ketchum's funds will be spent, along with a statement of performance goals and standards for all

activities contemplated pursuant to this contract. Said work plan must be approved by Ketchum prior to the disbursement of any funds hereunder. Additionally, any material or significant changes to the Work Plan must be submitted to Ketchum and receive Ketchum's approval prior to implementing any changes where Ketchum's funds will be used.

C. **Quarterly Reports.** The Chamber shall submit and present a quarterly performance report, in November, February, May, and September, verbal or written, on the progress being made on the Work Plan, as well as an accounting of the actual expenditures of Ketchum funds in relation to the Budget.

D. **Monthly Reports.** The Chamber shall keep a record of all written and oral inquires received and all information distributed during the contract period and shall submit a monthly statistical report to Ketchum of these activities.

E. **Financial Accounting and Reporting Requirements.** The Chamber shall submit to the Ketchum City Administrator (a) a financial statement which shall be prepared according to generally accepted accounting principles and shall, at a minimum, address the expenditure of Ketchum funds paid to the Chamber under the terms of this contract, and (b) an audit report prepared by a certified public accountant. The City may request additional financial information it deems necessary or appropriate to assist the City staff or the governing body in verifying the accuracy of the Chamber's financial records. Any duly authorized agents of the City shall be entitled to inspect and audit all books and records of the Chamber only for compliance with the terms of this Agreement. Two (2) copies of the reviewed financial statements of the Chamber shall be submitted to the Administrator no later than one hundred twenty (120) days following the close of the term of this contract. Payment for the reviewed financial statement and audit is the financial responsibility of the Chamber. In the event the financial statement indicates that funds were used for purposes not permitted by this agreement or the Annual Work Plan, the Chamber shall remit the disallowed amount to Ketchum within 30 days of notification by Ketchum of such improper expenditures.

F. **General Requests.** Upon request, and within a reasonable time period, the Chamber shall submit any other information or reports relating to its activities under this Agreement to Ketchum in such form and at such time as Ketchum may reasonably require.

G. **Retention of Records.** Chamber agrees to retain all financial records,

supporting documents, statistical reports, client or membership records and contracts, property records, minutes, correspondence, and all other accounting records or written materials pertaining to this contract for three (3) years following the expiration or termination of this Agreement. Ketchum, at its own expense, may review or audit the financial transactions undertaken by the Chamber under this Agreement to ensure compliance with the terms and conditions herein with reasonable prior notice and during the normal business hours of the Chamber.

Section 3. **Payments for Professional Services.**

A. In consideration for providing the professional services provided herein, Ketchum agrees to pay Chamber the sum of THREE HUNDRED SIXTY NINE THOUSAND SEVEN HUNDRED AND NO/100 Dollars ($369,700), as follows:

(1) The sum of NINETY TWO THOUSAND FOUR HUNDRED TWENTY FIVE AND NO/100 DOLLARS ($92,425) after receipt of the quarterly report in November, 2003.

(2) The sum of NINETY TWO THOUSAND FOUR HUNDRED TWENTY FIVE AND NO/100 DOLLARS ($92,425) after receipt of the quarterly report in February, 2004.

(3) The sum of NINETY TWO THOUSAND FOUR HUNDRED TWENTY FIVE AND NO/100 DOLLARS ($92,425) after receipt of the quarterly report in May, 2004.

(4) The sum of NINETY TWO THOUSAND FOUR HUNDRED TWENTY FIVE AND NO/100 DOLLARS ($92,425) after receipt of the quarterly report in September, 2004.

Section 4. **Record of Funds.** In order to insure proper financial accountability, the Chamber shall maintain accurate records and accounts of all funds received from Ketchum, keeping such accounts and records separate and identifiable from all other accounts, and making such accounts and records available to the City during normal business hours, on request of the City. Compliance with this provision does not require a separate bank account for the funds. The funds paid to the Chamber by Ketchum shall be expended solely for operations and activities in

conformance with this agreement and the approved Annual Work Plan. Further, no such funds shall be transferred, spent, loaned, or encumbered for other Chamber activities or purposes other than for operations and activities in conformance with this Agreement and the approved Annual Work Plan.

Section 5. General.

A. **Notices.** All notices to be served pursuant to this Agreement or which are served with regard to this Agreement shall be sent by certified mail, return receipt, to the parties at the following addresses:

City of Ketchum	Sun Valley-Ketchum Chamber & Visitors Bureau
Attn: Ron LeBlanc	Attn: Carol Waller
P.O. Box 2315	P.O. Box 2420
Ketchum, Idaho 83340	Sun Valley, Idaho 83353

All notices of changes of addresses shall be sent in the same manner.

B. **Equal Employment Opportunity.** The Chamber covenants and agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, sex, religion, ancestry or national origin and shall take such affirmative action including but not limited to, hiring, promotion or demotion, recruitment, layoff or termination, salary and selection for training as is necessary to ensure that all employees and applicants are treated equally.

C. **Termination/Default.** Either party may terminate this agreement for just cause upon sixty (60) days written notice. The parties hereto covenant and agree that in the event Chamber fails, refuses, or is unable to provide the professional services as set forth herein above, the same shall constitute a material default under the terms of this Agreement, and Ketchum may elect to terminate the Agreement upon thirty (30) days written notice to Chamber. In the event of early termination of this Agreement, the Chamber shall submit a report of expenditures to Ketchum. Any Ketchum funds not encumbered for authorized expenditures at the date of termination shall be refunded to Ketchum within twenty (20) days.

D. **Independent Contract.** The parties acknowledge and agree that the Chamber shall provide its services for the fee specified herein in the status of independent contractor, and not as an employee of Ketchum. The Chamber and its agents, employees, and volunteers, are not employees of Ketchum and shall not accrue leave, retirement, insurance, bonding, or any other benefit from the City of

Ketchum. The sole interest and responsibility of Ketchum in terms of the independent contractor status of the Chamber is to assure itself that the services covered by this Agreement shall be performed and rendered by the Chamber in a competent, efficient, legal, and satisfactory manner.

E. **Non-assignment.** This Agreement may not be assigned by or transferred by the Chamber, in whole or in part, without the prior written consent of Ketchum.

F. **Hold Harmless Agreement.** The Chamber shall indemnify and save and hold harmless Ketchum, its officers, agents, and employees, from and against any an all claims, loss, damages, injury or liability, including but not limited to, the misapplication of Ketchum funds, state or federal anti-trust violations, personal injury or death, damages to property, liability arising out of the use of materials, concepts, or processes protected by intellectual property rights and liens of workmen and material men, howsoever caused, resulting directly or indirectly from the performance of the Agreement by the Chamber.

G. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and shall not be modified or changed in any manner, except by prior written agreement executed by both parties hereto.

H. **Succession.** This Agreement shall be binding upon all successors in interest of either party hereto.

I. **No Third Party Beneficiaries.** This agreement shall not create any rights or interest in any third parties.

J. **Law of Idaho.** This Agreement shall be construed in accordance with the laws of the State of Idaho.

K. **Separate Parts.** If any clause, sentence, or paragraph of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, such decision shall not affect the remaining portions, and the parties do now declare their intention that each such clause, sentence, or paragraph of this Agreement is a separate part hereof.

L. **Preparation of Agreement.** No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the document.

M. **No Waiver.** No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

N. **Attorney's Fees.** In the event that either party defaults in the performance of the obligations set forth herein, the defaulting party agrees to pay to the non-defaulting party all costs of pursuing any remedy available to it, including all reasonable attorney's fees, whether incurred prior to initiation of litigation or subsequent to the issuance of any judgment thereunder.

Section 6. Duration of Agreement.

Notwithstanding the date of execution hereof, this Agreement shall be in effect from the 1st day of October, 2003 to the 30th day of September, 2004, both dates inclusive. The term of this contract is synonymous with the aforementioned dates.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

CITY OF KETCHUM

Edward Simon, Mayor

ATTEST:

Sandra E. Cady, CMC
City Clerk

APPROVED AS TO FORM

Margaret J. Simms, City Attorney
October 17, 2003

SUN VALLEY-KETCHUM CHAMBER & VISITORS BUREAU, INC.

Carol Waller, Executive Director

~~Scott Mason~~, Board President
Bob Nero