

RESOLUTION NUMBER 04-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR SERVICES AGREEMENT WITH SUSAN SCOVELL AND BEN YOUNG FOR A MASTER PLAN FOR THE KETCHUM CEMETERY, CITY RIGHT OF WAY, CITY LOTS AND PEDESTRIAN PATHWAY.

WHEREAS, the City Council has concluded that a master plan of improvements for the City of Ketchum and the Ketchum Cemetery District would be of great help to both the City and the District;

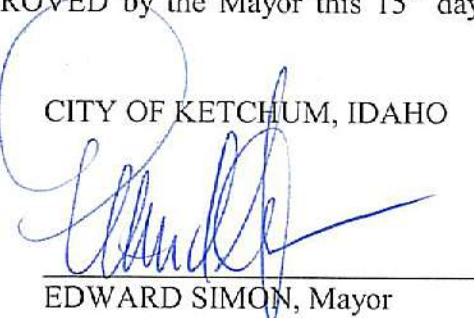
WHEREAS, the City of Ketchum has agreed to fund the services for such a master plan; and,

WHEREAS, Susan Scovell, Architect, and Ben Young, Landscape Architect, have provided a proposal and a scope of work for a master plan of improvements, and they wish to enter into a contract of services agreement with the City of Ketchum.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Ketchum, Idaho that the Mayor is authorized to enter into a contract for services agreement between the City of Ketchum and Susan Scovell and Ben Young for a master plan of improvements.

PASSED by the City Council and APPROVED by the Mayor this 15th day of March 2004.

CITY OF KETCHUM, IDAHO


EDWARD SIMON, Mayor

ATTEST:


Sandra E. Cady, CMC
City Clerk/Treasurer



OFFICE OF THE CLERK

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the County of Blaine, Idaho, at the City of Ketchikan, Idaho, this 1st day of January, 1911.

CLERK OF COUNTY

BY _____

NOTARY PUBLIC

BY _____

BY _____

BY _____

BY _____



**PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL AND LANDSCAPE DESIGN SERVICES**

This Professional Services Agreement ("Agreement") is dated effective this 15TH day of March, 2004. The parties ("Parties") to this Agreement are the City of Ketchum, an Idaho municipal corporation ("City"), and Susan Scovell, ("Contractor").

A. The City seeks the temporary professional services of a skilled independent contractor capable of working without direct supervision, in the capacity of architectural and landscape architectural design services; and

B. The Contractor has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

Contractor shall provide the services more specifically described in Exhibit "A", attached hereto and incorporated by this reference ("Services"), in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period set forth.

2. Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than March 15, 2005 ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Contractor.

3. Termination.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause by the City.

4. Compensation.

4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount not to exceed Six Thousand, Five Hundred and No/100 Dollars (\$6,500.00), without written authorization signed by the City.

(i) Contractor's Fee. An amount calculated on the basis of the hourly labor charge rate schedule for Contractor and Contractor's personnel attached hereto as Exhibit "B";)

(ii) Reimbursable Expenses. The actual customary and incidental expenses incurred by Contractor in performing the Services and other reasonable costs; provided, however, that such costs shall be deemed reasonable in the City's sole discretion.

4.2 Method of Payment. Payment by the City for the Services will only be made after the Services have been performed, a voucher or invoice is submitted in the form specified by the City (which invoice shall specifically describe the Services performed, the name of Contractor's personnel or type of personnel performing such Services, the hourly labor charge rate for such personnel), and the same is approved by the appropriate City representative. Payment shall be made on a monthly basis, thirty (30) days after receipt of such voucher or invoice.

4.3 Contractor Responsible for Taxes. The Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

5. Compliance with Laws.

Contractor shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

6. Warranty.

The Contractor warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Ketchum by obtaining a City of Ketchum business license, if applicable.

7. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Contractor may or will be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City.

8. Indemnification.

8.1 Contractor Indemnification. The Contractor agrees to indemnify, defend and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or

representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the Contractor, its partners, shareholders, agents, employees, or by the Contractor's breach of this Agreement. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs, and the indemnification and agreement to defend and hold harmless contained herein expressly includes any and all claims by employees, subcontractors, and assignees of Contractor or for which Contractor would otherwise have immunity under the Worker's Compensation Act or any similar law in the absence of Contractor's waiver of such immunity herein. By executing the Contract, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties.

8.2 City Indemnification. The City agrees to indemnify, defend and hold the Contractor, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

8.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

9. Equal Opportunity Employer.

A. In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, veteran status, or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the performance of the essential functions required of the position. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall not violate Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

B. In the event of Contractor's noncompliance or refusal to comply with the above nondiscrimination plan, this Contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the City. The Contractor, shall, however, be given a reasonable time in which to correct this noncompliance.

10. Confidentiality.

All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential. Breach of confidentiality by Contractor will be grounds for immediate termination.

11. Work Product.

All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the Services shall belong to the City. At the termination or cancellation of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

12. Books and Records.

The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

13. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

14. General Provisions.

14.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

14.2 Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

14.3 Full Force and Effect; Severability. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Idaho, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

14.4 Assignment. Neither the Contractor nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

A. If the Contractor desires to assign this Contract or subcontract any of its work hereunder, the Contractor shall submit a written request to the City for approval not less than fifteen (15) days prior to the commencement date of any proposed assignment or subcontract.

B. Any work or services assigned or subcontracted for hereunder shall be subject to each provision of this Contract.

C. Any technical/professional service subcontract not listed in this Contract, which is to be charged to the Contract, must have prior written approval by the City.

D. The City reserves the right to inspect any assignment or subcontract document.

14.5 Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

14.6 Attorney Fees. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Blaine County, Idaho.

14.7 No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

14.8 Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Idaho.

14.9 Authority. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Contractor or the City.

14.10 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

14.11 Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

14.12 Performance. Time is of the essence of this Agreement and each and all of its

provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement.

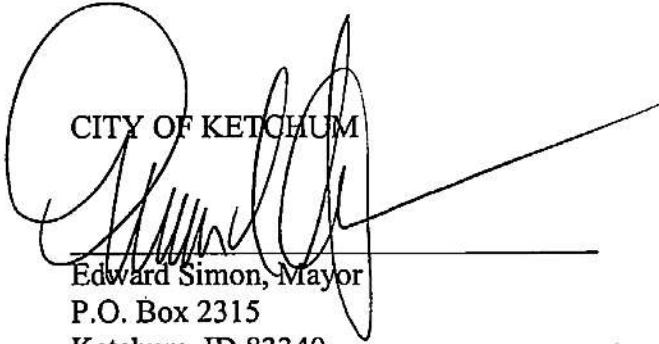
14.13 Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

14.14 Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.


14.15 Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

DATED the day and year set forth above.

CITY OF KETCHUM




Edward Simon, Mayor
P.O. Box 2315
Ketchum, ID 83340



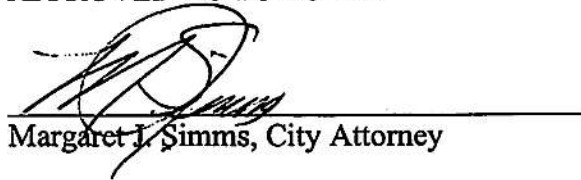
Susan Scovell

ATTEST:



Sec: Sandy E. Cady, City Clerk

APPROVED AS TO FORM:



Margaret J. Simms, City Attorney

APPENDIX A

PHASE I. Project Definition.

During this phase, special issues such as soils, topography, location of trees and vegetation, drainage, utilities, circulation, paths, use of rights-of-way and city property, views, solar access and code requirements will be addressed. The results of this phase will provide the basic information needed to continue this project and include:

1. A schematic site plan showing the basic organization for the site and buildings;
2. Conceptual plans, section and elevation views of the building(s), including, number of buildings, sizes, locations, budget, schedules and overall master plan for the project.
3. Construction-type decisions, such as whether to use timber frame, conventional frame or masonry will be explored.

Estimate that this phase and will take approximately 45 days.

APPENDIX B

FEES AND EXPENSES

PHASE I. *Project Definition:*

All of the fees will be billed on a hourly bases.

Fees:

Principal (Susan Scovell): \$52.50/hour for Schematic Plan. (Normal rate is \$105/hour)
\$105/hour for remainder of project.

Senior Designer (Ben Young) \$65.00/hour
Draft Person (Tom Dabney) \$55.00/hour
Clerical \$35.00/hour

Travel Costs will be billed at ½ the above hourly rates (shown on the billing as a flat fee) plus \$0.28 per mile.

Estimate of Cost: Approximately \$6,500.

Billing:

All work will be billed on a monthly basis for the amount of work completed and for reimbursable expenses up to that time. Reimbursable expenses include costs for blueprinting, duplication of documents, phone and Fax, shipping and postage, and travel. Any fees necessary for permits and consultations such as engineering shall be paid directly by the City.