

RESOLUTION NUMBER 05-053

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY AND RICHARD T. JESINGER ("JESINGER"), TO PROVIDE KETCHUM'S POLICE DEPARTMENT WITH PROFESSIONAL INTERNAL INVESTIGATION SERVICES.

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

WHEREAS, pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, Ketchum's Police Department requires professional internal investigation services from time to time; and

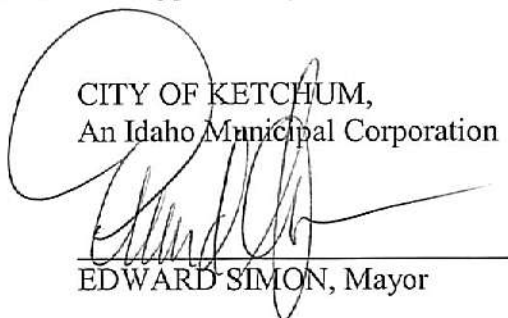
WHEREAS, Jesinger is qualified and has offered to provide such professional services; and

WHEREAS, Ketchum finds that entering such a contract for such services with Jesinger shall serve the best interests of the health, safety, and welfare of residents of and visitors of Ketchum.


NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho, that the City Council hereby authorizes the Mayor to execute an Agreement between the City and Richard T. Jesinger to provide Ketchum's Police Department with professional internal investigation services.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 27th day of June, 2005.

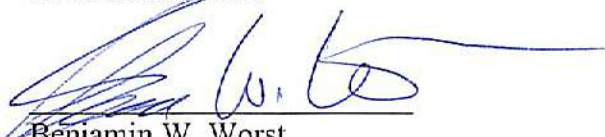
CITY OF KETCHUM,
An Idaho Municipal Corporation


EDWARD SIMON, Mayor


ATTEST:


Sandra E. Cady, CMC
Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst,
City Attorney

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PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT is made and entered into as of the date of the last signature hereto, by and between the CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"), and RICHARD T. JESINGER, a married man ("Jesinger").

RECITALS

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

WHEREAS, pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, Ketchum's Police Department requires professional internal investigation services from time to time; and

WHEREAS, Jesinger is qualified to provide such professional services; and

WHEREAS, Jesinger has offered to provide such services; and

WHEREAS, Ketchum finds that entering such a contract for such services with Jesinger shall serve the best interests of the health, safety and welfare of the residents of and visitors to Ketchum.

NOW, THEREFORE, Ketchum and Jesinger agree as follows:

- 1) Incorporation of Recitals. The Recitals set forth above are hereby incorporated as an integral part of this Agreement.
- 2) Scope of Services. Jesinger will conduct Ketchum Police Department internal affairs investigations, when assigned to him by the Ketchum Police Chief, or his designee, in accordance with Ketchum policies and procedures, including without limitation the applicable Ketchum Employee Handbook and Ketchum Police Department Internal Investigations and discipline, and applicable federal, state and local laws and rules, and regulations, and in conformance with generally accepted practices, procedures, and rules for such investigations. This work will involve investigations of matters, such as complaints, referred to Richard T. Jesinger, and the research necessary to fully investigate such matters, such as interviews, document review, and interrogations.

Without limitation, such Services may consist of: interviewing complaining party(s) interviewing the officer(s) alleged to have violated federal, state or local laws, rules, regulations, policies, procedures or the public trust; interviewing witnesses to the allegation and other individuals having direct and indirect information pertinent to the allegation; collecting evidence; recording research; reviewing documents and records; arranging for polygraph or voice analyzation, if deemed necessary; using investigative procedures deemed appropriate to determine the validity of the allegations; and preparing the report. Investigations will include, but not be limited to officers involved in shootings, serious automobile accidents, EEO complaints, and allegations of criminal acts, excessive use of force and sexual harassment, including Class I complaints in compliance with Section 11.0000 of the Ketchum Police Department Internal Investigation Discipline Guidelines, participating in the disciplinary process and any resulting agency or legal actions, all of which are collectively referred to herein as the "Services". This scope of Services may be amended from time to time by mutual consent of both parties.

- 3) Facilities and Resources Provided by Ketchum. It is understood that in order to properly perform the Services, Ketchum will provide the following to Jesinger in connection with the performance of the Services:
- a) Full and complete access to interview Ketchum employees and officials as necessary under the circumstances of each assignment.
 - b) Reasonable access to available appropriate resources of the Ketchum Police Department including, without limitation, interviewing facilities, video and audio recording equipment, printers, photocopiers, meeting space, etc.
 - c) Access to the Ketchum City Attorney for legal assistance on matters which may arise in the performance of the Services. Jesinger hereby acknowledges that in rendering such assistance, the Ketchum City Attorney shall at all times be working exclusively for Ketchum and may under no circumstances provide legal advice or services to Jesinger.
 - d) Access to City files and records, as necessary under the circumstances of each assignment.
 - e) Ketchum hereby releases and agrees to indemnify Jesinger from any loss, damage to persons or property, personal injury (including, without limitation, death), claim, demand, lawsuit or action, costs or attorney fees, which in any manner relate to or arise from the Services if, and only if, Jesinger acts within the reasonable course and

scope of this Agreement and does not engage in any intentional misconduct or gross negligence.

- 4) Fee for Services. Jesinger will charge, and Ketchum agrees to pay, for hourly services performed in connection with investigations assigned, the sum of \$30.00 (THIRTY DOLLARS) per hour plus expenses. Hourly charges, mileage reimbursement, miscellaneous supplies and expenses and travel expenses [based upon the Federal GSA reimbursement rates] will be detailed each month, on a form or in a format acceptable to Ketchum, consistent with the Ketchum's written policy on hourly charges and personal expenses. To the maximum extent possible, Jesinger will consult in advance with the Ketchum Chief Police, or his designee, regarding the time he expects to take and the expenses he expects to incur, so as to meet the Ketchum's expectations and budget for the Services.

- 5) Independent Contractor. Ketchum and Jesinger hereby agree that Jesinger shall perform the Services exclusively as an independent contractor and not as an employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Neither Jesinger nor Ketchum shall have any authority, express or implied, to commit or obligate the other in any manner whatsoever, except as specifically authorized from time to time in writing. Jesinger shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. Jesinger shall be solely responsible for the payment of all applicable federal, state or local income taxes payable with respect to all amounts paid to him under this Agreement. Jesinger shall be solely responsible for the payment of all applicable payroll and withholding taxes for amounts paid under this Agreement, and hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll, withholding, federal, state or local taxes. Since Jesinger has a business established to perform the same and similar services for others and may in fact perform this service for others, he will be entitled to continue to perform the service for others. He also may accept or continue employment with other entities during the performance of Services under this contract. This contract will not prevent him from continuing to perform those services for other entities. Ketchum will not instruct or direct Jesinger while he is performing the Services, other than to discuss fully each assignment in advance of his

performance, and to direct that the results of his investigation be delivered to the Ketchum Chief Police, or his designee, in writing or verbally, or both, as so directed by the Ketchum Chief Police, or his designee.

- 6) Confidentiality. Jesinger agrees during the term of this Agreement and for all times thereafter to hold inviolate and keep secret all knowledge or information obtained during the course of the contractual relationship or in performing the Services. Confidential information may be disclosed if required by law or court order.
- 7) Termination of Agreement. This contract may be terminated at any time by either party providing thirty (30) days notice in writing to the other. Jesinger agrees not to quit or abandon the Services unless he properly terminates the contract. Ketchum promises to continue to pay the fees and expenses detailed above and to provide the 30-day notice of termination unless and until it concludes that Jesinger has breached this contract. At that time, Ketchum may cease payment of the fees and or expenses provided for in this contract and notify Jesinger of its decision to terminate the contract immediately without providing the 30-day notice. All work product, including without limitation, physical evidence, electronic evidence, notes, reports, writings, correspondence, statements, transcripts, recordings, and photographs, in any form whatsoever including without limitation electronic form, generated by, prepared by or at the request of, or received by Jesinger in the course of performing the Services shall belong to Ketchum. Jesinger shall deliver all such work product to Ketchum upon written request from Ketchum, upon termination of this Agreement by either Party for any reason, or upon breach of this Agreement by either Party for any reason.
- 8) Miscellaneous.
 - (a) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreements, oral or written, between the parties with respect to the subject matter hereof.
 - (b) Severability. If any provision of this Agreement is for any reason declared to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. Such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it valid and enforceable, and if no modification shall render it valid and enforceable, this Agreement shall be construed

as if not containing such provision and the rights and obligations of the parties shall be construed and enforced accordingly.


- (c) Amendment, Waiver, Modification or Termination. No amendment, waiver or termination or modification of this Agreement shall be binding unless it is in writing and signed by both Jesinger and Ketchum dated subsequent to the date hereof. Performance of work by Jesinger and/or acceptance of payment by Jesinger for work performed and/or work to be performed for Ketchum beyond the scope of this Agreement does not constitute acceptance by Ketchum of amendments or modifications to this Agreement nor shall they be binding. No failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.
- (d) Assignment. Jesinger hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Jesinger's unique skills and reputation for professional work. Accordingly, Jesinger may not assign or transfer in any manner this Agreement or any of Jesinger's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.
- (e) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.
- (f) Representation/No Presumptions. All parties to this Agreement have been advised to seek independent counsel in the negotiating, drafting and execution of this Agreement. To the extent that a party chooses not to obtain independent counsel, that party acknowledges that it has been advised to obtain counsel, knows it has that right, knowingly waives that right, understands the terms of this Agreement, and enters this Agreement with full knowledge of the rights, duties, and obligations it is undertaking by signing this Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation hereof.
- (g) Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
- (h) Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to

describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.


IN WITNESS WHEREOF, the parties enter this Agreement as of the date of the last signature hereto.

CITY OF KETCHUM,
An Idaho municipal corporation

DATE: 6/23/05

By: 
Ed Simon, Mayor

DATE: 6/23/05


RICHARD T. JESINGER,
a married man