

RESOLUTION NUMBER 05-075

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR INSPECTION SERVICES WITH PONDEROSA ASSOCIATES, LIMITED.

WHEREAS, pursuant to Idaho Code §50-301, the City of Ketchum is empowered to enter into contracts as may be deemed necessary to promote the public health, safety, and welfare of Ketchum and its residents; and,

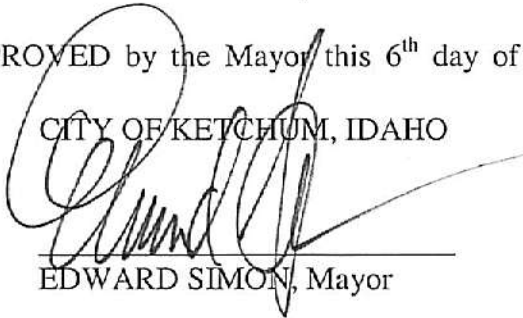
WHEREAS, the City finds it necessary and in the best interest of the City of Ketchum to acquire by contract certain inspection services of buildings that in the event of a fire, may pose a danger to tenants, citizens, and fire personnel; and,

WHEREAS, Ponderosa Associates, Limited desires to contract with the City of Ketchum to provide said inspection services.

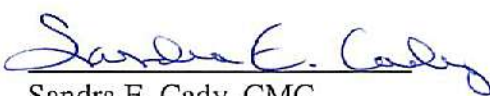
NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Ketchum, Idaho that the City Council hereby authorizes the Mayor to execute an agreement for inspection services with PONDEROSA ASSOCIATES, LIMITED.

PASSED by the City Council and APPROVED by the Mayor this 6th day of September, 2005.

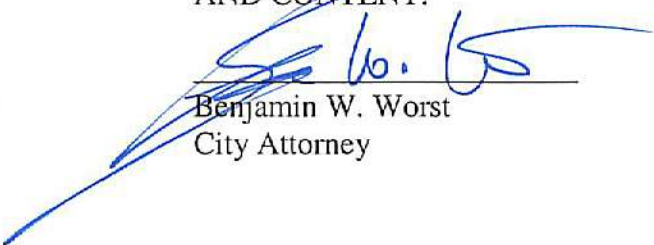
CITY OF KETCHUM, IDAHO


EDWARD SIMON, Mayor

ATTEST:


Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst
City Attorney



MEMORANDUM FOR THE RECORD

On 10/10/1961, the Board of Directors of the City of Ketchikan, Alaska, met in regular session and discussed the proposed purchase of the property located at 1000 1/2 Street, Ketchikan, Alaska, owned by the Alaska State Land Office.

The Board of Directors, by a vote of 5-0, recommended that the City purchase the property for the sum of \$10,000.00, plus the cost of title insurance and other charges.

The Board of Directors further recommended that the City purchase the property for the sum of \$10,000.00, plus the cost of title insurance and other charges, and that the City purchase the property for the sum of \$10,000.00, plus the cost of title insurance and other charges.

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INDEPENDENT CONTRACTOR AGREEMENT

(Ketchum/Ponderosa Associates)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into this 12th day of September, 2005, by and between the CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"), and PONDEROSA ASSOCIATES, LIMITED, a Colorado corporation ("Contractor"), referred to herein at times collectively as the "Parties" and individually as a "Party".

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, Ketchum is empowered to contract and be contracted with; and

WHEREAS, Ketchum has reason to believe that certain buildings in Ketchum fail to fully satisfy applicable building codes and fire codes; and

WHEREAS, Contractor has offered to perform certain professional services as set forth herein below necessary to confirm whether or not such buildings satisfy such Codes; and

WHEREAS, Ketchum desires to accept such services thereby promoting the health, safety and welfare of the residents of and visitors to Ketchum.

NOW, THEREFORE, for good and valuable consideration set forth herein below, the parties agree as follows:

- 1) Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.
- 2) Services To Be Provided By Contractor. Contractor shall provide all knowledge, expertise, equipment, labor, and materials necessary to do the following:
 - a) 120 Building. Contractor shall inspect that certain building located at 120 Second Avenue, Ketchum, Idaho, and determine whether such building satisfies the fire safety requirements of applicable building and fire codes, ordinances, laws and regulations (the "Codes"). Without limitation, Contractor shall determine whether or not the fire protection on the structural steel and the fire safety separation among parking, commercial/retail and residential portions of such building satisfy the Codes. Upon completing such inspections, Contractor shall deliver a written report to Ketchum stating whether or not such building satisfies

the fire safety requirements of the Codes and specify each failure, if any, and describe the same in detail.

- b) Miscellaneous Other Buildings. If time permits, Contractor shall make limited, cursory similar inspections of other buildings located in Ketchum, Idaho, as identified by the Ketchum Building Official, primarily inspecting the fire protection of the structural steel of such buildings and the fire protection separation of parking, commercial/retail and residential uses within such building and provide a similar written evaluation of the same.

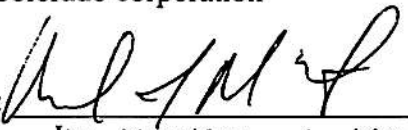
The services set forth above and as further set forth in that certain letter from Michael J. McCort, P.E to Eric Adams dated June 21, 2005, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference, shall be collectively referred to herein as the "Services".

- 3) Payment by Ketchum. Ketchum shall pay Contractor for the Services, including without limitation the services of Michael J. McCort, P.E. at his hourly rate of \$195.00 (ONE HUNDRED NINETY-FIVE DOLLARS), according to Contractor's established rates for personnel and administrative staff, in addition to travel expenses and out of pocket expenses as set forth in Exhibit A, not to exceed the sum of \$10,000 (TEN THOUSAND DOLLARS).
- 4) Non-Assignment. The Parties acknowledge that Ketchum elects to enter this Agreement with Contractor due to Contractor's unique knowledge and skills. Accordingly, this Agreement may not be assigned by or transferred by Contractor, in whole or in part, without the prior written consent of Ketchum.
- 5) Independent Contractor Status. Ketchum and Contractor hereby agree that Contractor 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. As an independent contractor, neither Contractor nor Ketchum shall have any authority, express or implied, to commit or obligate the other in any manner whatsoever, except as specifically authorized in writing.
- 6) Miscellaneous Provisions.
- (a) Provision Severable. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.
- (b) Entire Agreement. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matters.

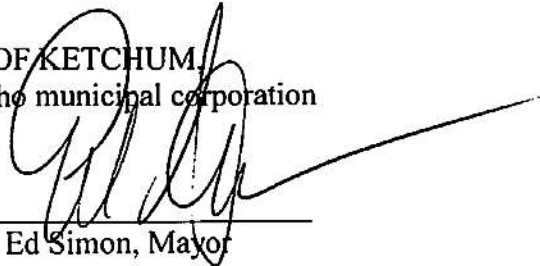
- (c) Governing Law. This Agreement shall be construed in accordance with the laws and decisions of the State of Idaho.
- (d) Time of the Essence. Time is hereby made expressly of the essence in the performance of every covenant, term, and condition of this Agreement.
- (e) Preparation of Agreement. The parties acknowledge that Benjamin W. Worst, City Attorney for the City of Ketchum, prepared this Agreement. No presumption shall exist in favor of or against any party to this Agreement as a result of such preparation. Mr. Worst represented the City of Ketchum exclusively in the negotiation and preparation of this Agreement.
- (f) 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.
- (g) Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by each of the parties.
- (h) Attorney Fees. If either party is required to retain an attorney to enforce its rights hereunder, the defaulting party shall pay to the non-defaulting party all reasonable costs and attorney fees, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.
- (i) Counterparts/Fax Copies and Fax Signatures. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed an original hereof. Fax copies of this Agreement and the original and faxed signatures thereon shall have the same force and effect as originals.

IN WITNESS WHEREOF, the parties enter this Agreement as of the day and year first-above written.


PONDEROSA ASSOCIATES LIMITED,
A Colorado corporation

By: 
Its: MICHAEL J. MCCORT
SENIOR ENGINEER

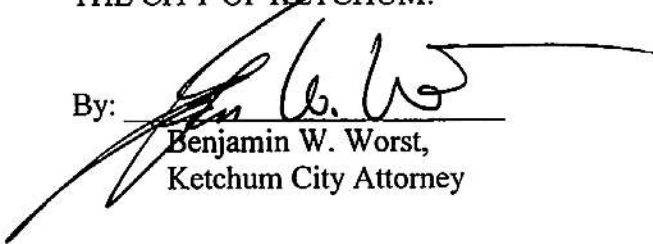
CITY OF KETCHUM,
An Idaho municipal corporation

By: 
Ed Simon, Mayor

ATTEST:

By: 
Sandra E. Cady, CMC,
Ketchum City Clerk/Treasurer

APPROVED AS TO FORM AND
CONTENT EXCLUSIVELY FOR
THE CITY OF KETCHUM:

By: 
Benjamin W. Worst,
Ketchum City Attorney