RESOLUTION NUMBER 05-099

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR SERVICES RELATING TO DOWNTOWN MASTER PLANNING WITH THE TOM HUDSON COMPANY IN AN AMOUNT NOT TO EXCEED $53,035.

WHEREAS, the City desires to obtain expert consulting services necessary to master plan the downtown area; and

WHEREAS, the Tom Hudson Company has such expertise and has offered to provide such services in an amount not to exceed $53,035; and

WHEREAS, the City desires to enter into a contract for such services with the Tom Hudson Company; and

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 Attorney shall review and approve such contract before the Mayor shall execute it.

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 down town master planning services with the Tom Hudson Company in an amount not to exceed $53,035.

PASSED by the City Council and APPROVED by the Mayor this 18th day of October, 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

CITY OF KETCHUM
BLAINE COUNTY, IDAHO
SEAL

CONTRACT FOR SERVICES
DOWNTOWN KETCHUM DEVELOPMENT FRAMEWORK

THIS CONTRACT is made this 20th day of October , 2005, by and between the City of Ketchum, an Idaho municipal corporation (hereinafter referred to as "CLIENT"), whose mailing address is PO Box 2315, Ketchum ID, 83340, and THE TOM HUDSON COMPANY, an Idaho corporation (hereinafter referred to as "CONSULTANT"), whose mailing address is P.O. Box 8645, Moscow, Idaho 83843.

The parties mutually agree as follows:

1. **REQUIRED WORK**. The CONSULTANT shall perform the services specified in SCOPE OF WORK set forth in **Attachment 1** to this CONTRACT, the terms and conditions of which are incorporated herein by reference. in accordance with terms and conditions as defined herein. Deliverables to be produced by CONSULTANT in performance of the SCOPE OF WORK also are set forth in **Attachment 1**.

2. **COMPENSATION FOR SERVICES**. CLIENT in full consideration of the services to be performed under this CONTRACT. agrees to pay CONSULTANT a sum not to exceed $46,835 (FORTY-SIX THOUSAND EIGHT HUNDRED THIRTY-FIVE DOLLARS)for professional services and a sum not to exceed $5,200 (FIVE THOUSAND TWO HUNDRED DOLLARS) for expenses, estimated per **Attachment 2**, the terms and conditions of which are incorporated herein by reference, for a total not to exceed $53,035 (FIFTY-THREE THOUSAND THIRTY-FIVE DOLLARS).

Expenses will be billed monthly at cost, except per diem, which will be billed at $30 per day of travel, and mileage, which will be billed at 39.5¢ per mile. CONSULTANT will be responsible for submitting monthly invoices for all consulting work hours completed. The CLIENT will make payments promptly to CONSULTANT based on monthly invoices and in accordance with the following schedule:

Execution of Contract	20% (Of Total Fees and Expenses)
Monthly Billings	Percentage of Completion, Up to 80% (Of Total Fees and Expenses)
Acceptance of Final Report	20% (Of Total Fees and Expenses)

By mutual written agreement. the CONTRACT may be amended from time to time to include additional planning services and fees as may be needed to pursue the primary purpose of this CONTRACT, development of the Ketchum Downtown, Warm Springs and River Run Areas.

3. **PERFORMANCE SCHEDULE**. Unless otherwise specified in writing, all work shall begin October 17, 2005 and be completed no later than January 31, 2006. CONSULTANT will provide

the CLIENT a monthly written progress report and invoice for work completed. Invoices will specify percentage of completion of each item in the SCOPE OF WORK.

Should the CLIENT have any concerns about the quality or progress of work, the CLIENT will provide a written notice to this effect, including specific concerns and recommendations for remedy. Absence of such a written notice sent within two weeks of receipt of the progress reports will indicate the CLIENT's satisfaction with quality and progress of work to date. Should additional work be authorized by the CLIENT, the CLIENT and CONSULTANT will review the time schedule and jointly agree on a completion date.

4. **CONFLICT OF INTEREST.** The CONSULTANT covenants that it presently has no interest and shall not acquire an interest directly or indirectly which will, in the determination of the CLIENT, conflict in any manner or degree with the performance of its services hereunder.

5. **INDEMNIFICATION AND INSURANCE.** The CONSULTANT shall protect, indemnify, and save the CLIENT harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons or property or claims for money damages arising from acts or omissions of CONSULTANT, its employees, or subcontractors, however caused.

6. **CONTRACT RELATIONSHIP.** It is distinctly and particularly understood that the CONSULTANT is an independent contractor in the performance of each and every part of this CONTRACT. The CONSULTANT is not an employee of the CLIENT and will perform all services free from supervision, direction or control of the CLIENT. 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 independent contractors, neither CONSULTANT nor CLIENT 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 by an authorized representative of CONSULTANT or CLIENT, as the case may be, which authorization may be general or specific.

7. **LIABILITY.** The CONSULTANT shall exonerate, indemnify and hold the CLIENT harmless from and against and assume full responsibility for payment of all federal, state, and local taxes or contribution imposed or required under unemployment insurance, social security, workers compensations, and income tax laws with respect to Consultant's employees engaged in the performance of this contract. The CONSULTANT will be responsible for maintaining workers compensation insurance and will provide certificate of same, if required. The CLIENT will not assume liability as an employer.

8. **WORKER'S COMPENSATION INSURANCE.** CONSULTANT shall maintain during the life of this CONTRACT, Worker's Compensation Insurance for all of CONSULTANT'S employees performing work on this project and in case of any work that is sublet. CONSULTANT shall require any subcontractor, similarly, to provide Worker's Compensation Insurance for all the

latter's employees as specified by Idaho law unless such employees are covered by the protection afforded by the CONSULTANT. In case any class of employees engaged in work under this CONTRACT is not protected under Worker's Compensation statutes, CONSULTANT shall provide and shall cause such subcontractor to provide compensation insurance in an amount equal to that provided by the Worker's Compensation statute for the protection for subcontractor's employees not otherwise protected.

9. **NOTICES**. Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this CONTRACT, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt request, addressed as followed:

Harold Moniz, City Planner
City of Ketchum
PO Box 2315
Ketchum ID, 83340

(and)

Tom Hudson, Principal
THE HUDSON COMPANY
P.O. Box 8645
Moscow, Idaho 83843

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the either in the manner herein provided.

10. **TIME IS OF THE ESSENCE**. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this CONTRACT by the party so failing to perform. Should the parties determine mutually that the timeline for services under this contract needs to be amended, amendment to the CONTRACT'S timeline and duration must be agreed to in writing by both parties.

11. **ASSIGNMENT**. It is expressly agreed and understood by the parties hereto, that CONSULTANT shall not have the right to assign, transfer, hypothecate or sell any of its rights under this CONTRACT except upon the prior expressed written consent of CLIENT.

12. **PUBLICATION, REPRODUCTION AND USE OF MATERIAL.** All material produced in whole or in part under this CONTRACT shall be the exclusive property of the CLIENT. CONSULTANT hereby grants and assigns to CLIENT all rights to use any work product and to develop, manufacture, market or otherwise commercialize any product based on, directly related to or directly making use of the work set forth in Attachment 1.

13. **RELEASE OF INFORMATION.** CONSULTANT will work with the media, under supervision of CLIENT, to distribute public information about the project. Such information may include progress updates, meeting notices, and results from the planning process.

15. **COMPLIANCE WITH LAWS.** In performing the scope of services required hereunder, CONSULTANT and CLIENT shall comply with all applicable laws, ordinances, and codes of Federal and State governments.

16. **FAILURE TO PERFORM.** Upon any substantial failure to perform this agreement by either party, the other party shall be entitled to the following remedy:

a. Stop performing or accepting performance of the contract until the matter is resolved.

b. Where appropriate, obtain completion of the performance of the remaining balance of the contract with the original party. Upon discovery of the problem or defect, mail a written description of it to the other party, and:

1. If the defect can be cured, demand specific remedial action within a specified reasonable time; or
2. If the defect cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a specified time within which the alternative performance would be required; or
3. If the defect cannot be cured and no alternative performance is acceptable, the other party shall thereupon have the right to terminate this CONTRACT by giving written notice to the party-in-violation of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by CONSULTANT under this CONTRACT shall, at the option of the CLIENT, become its property, and CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily complete hereunder.

c. Any other legal or equitable remedy.

17. **ENTIRE CONTRACT.** This CONTRACT, and exhibits attached hereto, contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

18. **APPLICABLE LAW**: This CONTRACT shall be governed by, construed and enforced in accordance with the laws of the State of Idaho.

19. **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.

20. **COUNTERPARTS/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 CLIENT and the CONSULTANT have executed this CONTRACT the day and year first above written.

CITY OF KETCHUM,
An Idaho municipal corporation

BY _____
Ed Simon, Mayor

THE TOM HUDSON COMPANY,
an Idaho corporation

BY: _____
Tom Hudson, Principal

ATTEST:

_____
Sandra E. Cady, CMC
City Clerk/Treasurer

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

_____
Benjamin W. Worst, City Attorney

Attachment 1, Scope of Work

Phase / Step / Action	Timeline Months 1-3	4-6	7-9
I. **Establish Blueprint Framework**			
What We've Been			
A. Background			
1 Historical Perspective of Town Eras			
2 Review existing regulatory framework			
What We Are Now			
B. Summarize and Integrate Existing Plans			
1 Identify and evaluate all relevant existing plans for direction; report findings			
2 Summarize key goals, objectives, projects in existing plans for City review			
C. Evaluate & Define Downtown & Warm Springs Strategic "SWOT"			
("Strengths, Weaknesses, Opportunities, Threats")			
1 Summarize community demographics			
2 Evaluate markets			
3 With City staff, evaluate physical conditions:			
Infrastructure, buildings, open space, streetscapes, parking			
4 Evaluate business and economic conditions			
5 Evaluate land uses and size of downtown			
What We Want to Be			
D. Define & Adopt Community Priorities for Downtown			
1 Conduct public workshop on community priorities for downtown			
2 Conduct Council/P&Z workshop on priorities for downtown			
3 Create draft Vision and Vision Statement			
4 Submit Vision Statement to Council for review & approval, revised as needed			
5 Conduct Town Meeting: A Vision for Downtown's Future			
E. Organize Downtown Development Framework			
1 Prepare Downtown Development Framework report			
2 Prepare support graphics for Downtown Development Framework			
3 Present report and graphics to City staff and P&Z			
4 Present report and graphics to Council at public meeting/workshop			
Phase I Deliverables:			
a. Report: Downtown Development Framework, findings & recommendations			
b. Community Workshop: Community Priorities for Downtown (D1)			
c. Workshop: City Council and P&Z Priorities for Downtown (D2)			
d. Technical memorandum: recommended downtown districts, boundaries, land uses			
e. Graphic Vision and Vision Statement for the Future of Downtown Ketchum			
PowerPoint presentation of photo's & graphics depicting examples of the future look and land uses of downtown			
4 perspective view images (before & after) of key downtown locations			
1 plan view image of downtown core; districts,land uses & key design elements			
** 1 large perspective view of downtown core district as a whole			
f. Presentation to Staff+P&Z of Final Framework Report			
g. Council & Town Meeting: A Vision for Downtown's Future (Project Report)			

Note: ** Assumes City has digitized downtown map with building footprints

Attachment 2, Details of Consultant's Fees and Expenses

	FEES & EXPENSES			
Fees	Planning			$ 33,910
	Graphics			$ 12,925
	PowerPoint graphic vision presentation		$ 1,225	
	4 site perspective view images		$ 5,740	
	1 plan view image		$ 1,540	
	1 district perspective view		$ 4,420	
		TH	UDS	TOTAL
Expenses	Travel	$ 1,200	$ 1,200	$ 2,400
	Hotel	$ 665	$ 475	$ 1,140
	Rental Car + Mileage	$ 570		$ 570
	Per Diem	$ 270	$ 60	$ 330
	Printing	$ 50	$ 200	$ 250
	Phone	$ 63	$ 45	$ 108
	Materials	$ 30	$ 200	$ 230
	Estimated Total Expenses			$ 5,028
Total Fees & Expenses				$ 51,863