RESOLUTION NUMBER 06-029

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SERVICES BETWEEN THE CITY OF KETCHUM AND EISENBURG KENNELS FOR THE KENNELING, TRAINING, AND SALE OF THE KETCHUM POLICE DEPARTMENT NARCOTIC K-9.

WHEREAS, pursuant to Idaho Code §50-301, the City of Ketchum is empowered to enter into contracts; and

WHEREAS, the City desires to contract with Eisenburg Kennels to care for, feed, continue training, and assist in selling the Ketchum Police Department narcotic K-9; and

WHEREAS, the City agrees to pay Eisenburg Kennels three hundred dollars ($300.00) per month as well as a percentage ranging from 10% to 12% of the sale price of approximately $6,500 for the care, food, training, and assistance in selling the K-9; and

WHEREAS, Eisenburg Kennels has agreed to provide such services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho, that the Mayor is hereby authorized to execute a Contract for Services between the City of Ketchum and Eisenburg Kennels for the kenneling, training, and sale of the Ketchum Police Department narcotic K-9.

This Resolution will be in full force and effect upon its adoption this 6th day of March, 2006.

CITY OF KETCHUM, IDAHO

Randy Hall, Mayor

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:

Benjamin W. Worst, City Attorney

CONTRACT FOR SERVICES
(City of Ketchum/Eisenburg Kennels)

THIS CONTRACT FOR SERVICES made and entered into this 14 day of April 2006, by and between the CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum") and PAMELA ARNO-KOPECKY, an individual doing business as "Eisenburg Kennels" ("EK").

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, the Ketchum Police Department needs professional kenneling and training services and marketing and sales services for its narcotic K-9 known as "Shadow"; and

WHEREAS, EK has offered to provide such services.

AGREEMENT

NOW, THEREFORE, the parties hereto covenant and 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. The Services. EK shall provide at its own expense all labor, facilities, equipment, supplies and materials, including without limitation high-quality feed, reasonably necessary to professionally kennel and to maintain or improve the current level of K-9 narcotic training of Shadow until such animal is either sold or returned to Ketchum. EK shall also make reasonable efforts to market Shadow for sale and shall show Shadow to prospective purchasers upon reasonable advance notice (collectively the "Services").

3. Consideration.

   a. Kenneling and Training Fee. Ketchum shall pay EK THREE HUNDRED DOLLARS ($300.00) per month in consideration for that portion of the Services related to the kenneling and training of Shadow which amount shall be pro-rated upon the sale of the dog or the termination of this Agreement.

   b. Sales Commission. Ketchum shall pay EK a sales commission upon the successful closing of the sale of Shadow as follows:

i. If the agreement for sale is entered within SIXTY (60) days of the execution of this Agreement - 12%(TWELVE PERCENT) of the sales price.

ii. If the agreement for sale is entered after SIXTY (60) days from the execution of this Agreement - 10%(TEN PERCENT) of the sales price.

The above-referenced sales commission shall be the sole and exclusive compensation that Ketchum shall pay to EK for the sale of Shadow, for any expenses incurred in marketing or showing shadow and for any expenses which are in any manner related to or arising from the sale, marketing or showing of Shadow. Moreover, EK shall only be entitled to such commission if this Agreement is in effect at the time that the purchase and sale agreement is entered.

4. Conditions. Ketchum shall own all right, title and interest in and to Shadow at all times. The asking price for Shadow shall be $6,500 (SIX THOUSAND FIVE HUNDRED DOLLARS). Ketchum shall have the exclusive authority to negotiate the price and terms of the sale of Shadow and to enter any purchase and sale agreement. EK agrees that any and all veterinary decisions and expenses, including without limitation, choice of veterinarian, care, treatments, medications and diagnostic procedures, shall require the prior consent of Ketchum. However, in the event of an emergency, EK may make reasonable veterinary decisions and incur reasonable veterinary expenses after making a good faith effort to contact Ketchum in advance of making such decisions and incurring such expenses and EK shall contact Ketchum within twenty-four (24) hours of making such decisions or incurring such expenses. With the exception of such emergency situations, in the event that any veterinary expenses are incurred without Ketchum's prior consent, such expenses shall be paid by EK without compensation from Ketchum. Either party may terminate this Agreement for any reason or no reason upon 10 (Ten) days prior notice to the other party.

5. Independent Contractor. Ketchum and EK hereby agree that EK shall perform the Services exclusively as an independent contractor and not as 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. EK shall not have any authority, express or implied, to commit or obligate Ketchum in any manner whatsoever, including without limitation, to enter purchase and sale agreements, except as specifically authorized in writing Ketchum. EK, its agents and employees 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. EK shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to EK under this Agreement and

for EK's payments for work performed in performance of this Agreement by EK's agents and employees; and EK 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 or withholding taxes.

6. Indemnification. EK agrees to indemnify and hold Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of EK, its agents and employees. Such indemnification shall not extend to any injury to Shadow other than injuries due to EK's gross negligence or willful misconduct and EK shall have no liability for any injury to Shadow other than injuries due to EK's gross negligence or willful misconduct.

7. Miscellaneous.

   a. Time Of Performance. EK shall provide the Services in a professional and timely manner.

   b. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until the K-9 is sold or at such time that either party terminates this Agreement which either party may do for any reason or no reason whatsoever. Upon completion of the sale or termination of this Agreement, neither Party hereto shall have any continuing obligations to the other hereunder.

   c. Compliance With Laws. EK, its agents and employees shall comply with all federal, state and local laws, rules and ordinances in performing the Services. This Agreement does not relieve EK of any obligation or responsibility imposed upon EK by law.

   d. Non-Assignment. EK hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on EK's unique skills and reputation for professional work. Accordingly, EK may not assign or transfer in any manner this Agreement or any of EK'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. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.

   f. 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.

g. Attorney Fees And Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the defaulting party shall pay to the non-defaulting party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.

h. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.

i. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.

j. 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 matter.

k. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

4-14-06

PAMELA ARNO KOPECKY,
an individual dba "Eisenburg Kennels"

original/hard copy to be mailed

CITY OF KETCHUM, an Idaho municipal corporation

Randy Hall,
Mayor

ATTEST:

SANDRA E. CADY, CMC
City Clerk

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

BENJAMIN W. WORST, City Attorney