

RESOLUTION NUMBER 08-055

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SERVICES WITH KATHY GROTTO OF BENCHMARK ASSOCIATES FOR THE HOTEL KETCHUM PUD STAFF REPORT IN THE AMOUNT OF \$126 PER HOUR, NOT TO EXCEED 100 HOURS.

WHEREAS, pursuant to Idaho Code Sections 50-301, Ketchum has the authority to enter into contracts to provide services which are reasonably necessary to maintain the peace and promote the public health, safety and welfare of Ketchum's residents and visitors; and

WHEREAS, Kathy Grotto has offered to provide professional planning services for the Warm Springs Ranch Resort PUD; and

WHEREAS, Ketchum desires to obtain such professional planning services; and

WHEREAS, Kathy Grotto has offered to provide such services in exchange for \$126 per hour, not to exceed 100 hours; and

WHEREAS, Resolution No. 07-035 establishes a public policy of soliciting professional services through either a formal Request For Proposal (RFP) process, or a formal Request for Qualifications (RFQ) process; and

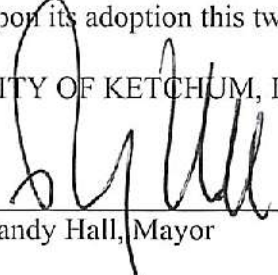
WHEREAS, the Mayor and Council Members hereby determine that it is not necessary to follow such policy in entering into a contract for services with Ms. Grotto; and

WHEREAS, it is deemed in the best interest of the public health, safety, and welfare to contract with Kathy Grotto to provide professional planning services for the Hotel Ketchum PUD staff report.

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 a Contract for Services with Kathy Grotto of Benchmark Associates for professional planning services regarding the Hotel Ketchum PUD staff report in the amount of \$126 per hour, not to exceed 100 hours.

This Resolution will be in full force and effect upon its adoption this twenty-first (21st) day of April, 2008.


CITY OF KETCHUM, IDAHO


Randy Hall, Mayor

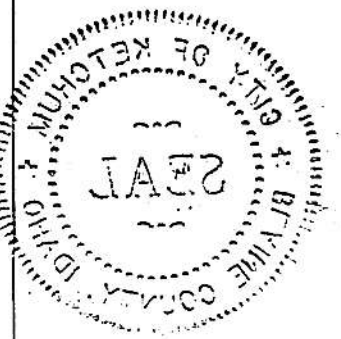
APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst,
City Attorney

ATTEST:


Sandra E. Gady, CMC
City Treasurer/Clerk

RESOLUTION NO. 08-055



BENCHMARK ASSOCIATES, P.A.
PROFESSIONAL SERVICES AGREEMENT

Project Number: 08813
Project Manager: KMG

PARTIES

This Agreement is made this 10th day of March, 2008, between:

City of Ketchum
Box 2315
Ketchum, ID 83340

Phone: 726-7801

Benchmark Associates, P.A.
PO Box 733
Ketchum, Idaho 83340
Phone: 726-9512
FAX: 726-9514

Hereinafter called "Client"

Hereinafter called "Consultant"

PROJECT

Client engages Consultant to provide services in connection with the property commonly known as Hotel Ketchum.

SCOPE OF SERVICES

Consultant agrees to perform services as follows:

Preliminary analysis and staff review of the project (Hotel Ketchum) according to the City of Ketchum's PUD, Tourist zoning district design review and waterways design review standards. Evaluate what additional information is needed to be able to address the standards, and complete staff report for the project. Inclusionary housing issues will not be included in this scope of services.

Client agrees that all services not expressly included are excluded from Consultant's Scope of Services. Additional work requested by client will be performed on a time and materials basis.

COMPENSATION

Client agrees to compensate Consultant for all services on a *time and materials basis*. Based on the scope of services above we estimate our fee to be \$126.00 per hour, not to exceed 100 hours.

Client and Consultant acknowledge that each has read and agrees to the General Conditions printed on pages 2 and 3 of this document which are incorporated herein and made a part of this Agreement and apply to all services performed by Consultant regardless of whether such services are included in the Scope of Services above.

Client: _____

Consultant: BENCHMARK ASSOCIATES, P. A.

By: _____

By:

Title: _____

Title:

Date: _____

Date:

GENERAL CONDITIONS

1. Consultant shall invoice Client periodically for the services performed under the Agreement. Client shall pay such invoices upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late payment charge of 1.5 per cent per month. The invoice amounts shall be presumed to be correct unless Client notifies Consultant otherwise in writing within fourteen (14) days of receipt of the invoice.
2. If Client fails to pay an invoice when due, Consultant may suspend all services until such invoice is paid in full. If payment in full is not made within sixty (60) days of the invoice date, Consultant may treat such nonpayment as a material breach of this Agreement by the Client and may terminate this Agreement or pursue other available remedies.
3. Consultant shall perform its services in a manner consistent with the standard of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the services are performed. No warranty, representation or guarantee, expressed or implied, is made or intended by the Agreement.
4. Consultant shall sign certifications only if Consultant approves the form of such certification prior to the commencement of services, and provided such certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied.
5. Services provided under this Agreement, including all reports, information or recommendations prepared or issued by Consultant, are for the exclusive use of the Client for the Project specified. No other use is authorized. Client will not distribute or convey Consultant's reports or recommendations to any person or organization other than those identified in the Project description without Consultant's written authorization. Client releases Consultant from liability and agrees to defend, indemnify, protect and hold harmless Consultant from any and all claims, liabilities, damages or expenses arising, in whole or in part, from such unauthorized distribution.
6. Consultant's reports, maps, field data, drawings, test results and other similar documents are instruments of professional service, not products. Consultant reserves the right to copyright such documents; however, such copyright is not intended to limit the Client's use of the services provided under this Agreement other than as described in paragraph 5.
7. Client will make available to Consultant all information known to client regarding existing conditions, including the existence of hazardous or dangerous materials, and proposed uses of the Project site. Client will transmit immediately to Consultant any new information that becomes available or any change in plans. Client releases Consultant from liability for any incorrect advice, judgment or decision based on any inaccurate information furnished by Client or others. Client agrees to defend, indemnify, protect and hold harmless Consultant from any and all claims, liabilities, damages or expenses arising, in whole or in part, from such inaccurate information.
8. Client shall secure the permission necessary to allow Consultant's personnel and equipment access to the Project site at no cost to Consultant.
9. Consultant is not responsible for the completion or quality of work that is dependent upon or performed by the Client or third parties not under the direct control of Consultant, nor is Consultant responsible for any third party or client acts or omissions or for any damages resulting therefrom.
10. Neither Client nor any other person may change or modify Consultant's work product without Consultant's written authorization. Client releases Consultant from liability and agrees to defend, indemnify, protect and hold harmless Consultant from any and all claims, liabilities, damages or expenses arising, in whole or in part, from such unauthorized changes or modifications.
11. Client waives any claim against Consultant and agrees to defend, indemnify, protect and hold harmless Consultant from any and all claims, liabilities, damages or expenses, including but not limited to delay of the Project, reduction of property value, fear of or actual exposure to or release of toxic or hazardous substances, and any consequential damages of whatever nature, which may arise directly or indirectly as a result of the services provided by Consultant under this Agreement, unless such injury or loss is caused by the sole negligence or willful misconduct of Consultant.
12. Client agrees to limit Consultant's and liability due to professional negligence and to any liability arising out of or relating to the Agreement to fifty thousand dollars (\$50,000) or the amount of Consultant's fee, whichever is greater. This limit applies to all services on this Project, whether provided under this or subsequent agreements, unless modified in writing, agreed to and signed by authorized representatives of the parties.

13. Consultant is protected by workers' Compensation Insurance, Employers' Liability Insurance, General Liability Insurance and Automobile Liability insurance for bodily injury and property damage and will furnish evidence thereof upon request. Consultant assumes the risk of damage to its own supplies and equipment.
14. Client shall be responsible for job site safety.
15. Client solely shall be responsible for notifying all appropriate municipal, regional, state or federal agencies and other parties of the existence of any hazardous or dangerous materials known by client to exist on or in the Project site, or discovered during the performance of this Agreement, as may be required by such agencies or parties.
16. In the event Consultant's work is interrupted due to delay, other than delays caused by Consultant, Consultant shall be compensated equitably (based on Consultant's current Schedule of Charges) for the additional labor or other charges associated with maintaining its work force for Client's benefit during the delay, or at the option of the Client, for charges incurred by Consultant for demobilization and subsequent remobilization.
17. If, during the course of performance of this Agreement, conditions or circumstances are discovered which were not contemplated by Consultant at the commencement of this Agreement, Consultant shall notify Client in writing of the newly discovered conditions or circumstances, and Client and Consultant shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after notice, consultant may terminate this Agreement and be compensated under paragraph 21 in this Agreement.
18. This Agreement may be terminated by either party upon ten (10) days written notice sent first class mail, return receipt requested. In the event of a termination, Client shall pay for all reasonable charges for work performed and demobilization by Consultant through the tenth (10th) day after mailing the notice of termination. The limitation of liability and indemnity obligations of this Agreement shall be binding notwithstanding any termination of this Agreement.
19. Neither Client nor Consultant shall assign its interest in this Agreement without the written consent of the other.
20. This Agreement, including attachment incorporated herein by reference, represents the entire agreement and understanding between the parties. The terms of this Agreement shall be in writing and signed by authorized representatives of the parties. One or more waives of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.
21. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.
22. In the event an arbitration, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys fees to be fixed by the arbitrator, trial court, and/or appellate court.
23. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.
24. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

_____ Initial By Client

_____ Initial By Consultant