

Updated Packet Materials for Agenda Item #10

CONSULTING AGREEMENT

This Agreement, dated as of 2/15/ 2015 is between Ketchum Computers, Inc., P. O. Box 5186, Ketchum, ID 83340 ("*CONSULTANT*"), and City of Sun Valley, P.O. Box 416, Sun Valley, Idaho 83353 ("*CLIENT*") collectively (the "parties").

RECITALS

WHEREAS *CLIENT* desires to retain *CONSULTANT* to render consulting and advisory services for *CLIENT* on the terms and conditions set forth in this Agreement and *CONSULTANT* desires to be retained by *CLIENT* on such terms and conditions.

NOW, THEREFORE, *CLIENT* and *CONSULTANT* agree as follows:

1. Retention of Consultant; Services to be Performed. *CLIENT* hereby retains *CONSULTANT* for the term of this Agreement to perform the following consulting services for *CLIENT* ("Services"):

IT Services: Network, Server and Workstation consulting/maintenance

In rendering Services hereunder, *CONSULTANT* shall be acting as an independent contractor and not as an employee or agent of *CLIENT*. 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 (which may include email) by an authorized representative of *CONSULTANT* or *CLIENT*, as the case may be, which authorization may be general or specific. Nothing contained in this Agreement shall be construed or applied to create a partnership. *CONSULTANT* shall be responsible for the payment of all federal, state or local taxes payable with respect to all amounts paid to *CONSULTANT* under this Agreement. The following individuals at *CLIENT*, and none others, are authorized to representatives for the purpose of assigning tasks to *CONSULTANT*:

- Mayor
- City Administrator
- City Clerk
- City Treasurer

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2. Compensation for Consulting Services. For Services hereunder, *CLIENT* shall pay to *CONSULTANT* a fee of ~~\$125~~\$145 per hour. The minimum time to be billed for any one day for work performed at *CONSULTANT'S* location will be one half hour. The minimum time to be billed for any one day for work performed at *CLIENT'S* location will be one hour. Overtime as defined by any hours worked outside 8:00 am to 5:00 pm Monday through Friday is billed at time and a half. Bills will be sent electronically to the following email address: _____

3. Expenses. *CLIENT* shall reimburse *CONSULTANT* for all reasonable travel and other out-of-pocket expenses incurred by *CONSULTANT* in rendering Services hereunder. Travel expenses shall include the cost of any travel by personal vehicle to a location more than 40 miles from *CONSULTANT'S* primary work location in Hailey, Idaho, the costs of any travel requiring public transportation, the costs of meals, and the costs of necessary lodging. The costs of time required for traveling shall be paid for all time *CONSULTANT* is away from *CONSULTANT'S* primary work location, but excluding any time spent on personal business or at a place of temporary lodging. *CLIENT* shall pay such reimbursement within 30 (thirty) days after receipt of appropriate receipts or documentation of the expenses.

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4. Billing. *CONSULTANT* shall invoice *CLIENT* when work is completed or the 1st and 15th of the month for ongoing work, providing a listing of labor terms and expenses. Payment on invoices so provided shall be due immediately for work that is completed or Net 15 of the invoice date for ongoing work, not later than forty-five (4045) days from presentation of invoice.

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CONSULTING AGREEMENT - 2

5. Confidential Information. Confidential information of any nature that either party acquires regarding any aspect of the other party's business shall be treated in strict confidence. Confidential Information includes any information disclosed by either party (the "Disclosing Party"), to the other party (the "Receiving Party") either directly or indirectly, in writing, orally, electronically, or by inspection of tangible objects, which is designated as "Confidential," "Proprietary" or some similar designation or should be reasonably understood to be confidential or proprietary in that its unauthorized disclosure would be harmful to the party that owns the information. Information so obtained shall not be divulged, furnished or made accessible to third parties without the written permission of the other party to this Agreement.

This Agreement shall impose no obligation on the Parties with respect to maintaining the confidence of Confidential Information of the Disclosing Party that: (a) is or becomes generally known or available to the public other than as a result of a breach of this Agreement by the Recipient; (b) is known by Recipient at the time of disclosure and is not subject to restriction; (c) that is the same as or substantially the same as information independently developed by Recipient; (d) becomes available to Recipient on a non-confidential basis from a third party provided that such third party is not to Recipient's knowledge bound by a confidentiality agreement or other legal or fiduciary obligation of secrecy to the Disclosing Party; or (e) is required by law, judicial order (subject to an appropriate protective order), or the rules of any nationally-recognized stock exchange on which Recipient's stock is traded, to be disclosed.

Both parties retain the right to do business with third parties in matters that may be competitive with the interests of the other party to this Agreement. However, the confidentiality constraints above shall be binding and have precedence over these business matters. Upon termination of this Agreement, the terms of this paragraph shall remain in effect.

6. Ownership of Intellectual Property. *CONSULTANT* 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 Services. *CLIENT* shall be responsible for verifying any property rights of other parties prior to use of any work product provided under this Agreement. *CLIENT* acknowledges that the use of any design, advice, drawing or other service provided by *CONSULTANT*, its employees and agents does not relieve *CLIENT's* responsibility to execute sufficient testing and judgment to ensure that any resulting product is suitable for usage in *CLIENT's* market.

7. Software Licensing. It is the sole responsibility of *CLIENT* to obtain legal licenses for all software.

8. Term and Termination.

(a) Unless terminated at an earlier date in accordance with Section 8(b), this Agreement shall commence as of the date first written above and shall continue for one year.

(b) This Agreement shall be terminated when either party gives written notice to the other party of the intent to terminate this Agreement. *CONSULTANT* shall be entitled to receive from *CLIENT* all fees and expenses incurred up to the date of termination in accordance with the billing procedures set forth in Section 4.

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9. Limitations on Liability. Except as a result of gross negligence or willful misconduct, neither party shall be liable for any indirect, incidental, punitive, special or consequential damages whatsoever, including without limitation, any such damages for loss for business profits, for business interruption, for personal injury, loss of business information, data loss, damage to reputation or for any other pecuniary or other loss whatsoever. Except as expressly provided herein, there are no warranties, express or implied, by operation of law or otherwise, for any services furnished hereunder.

CONSULTANT DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURCHASE.

10. Disputes. Any action based on this Agreement, including disagreement, disputes regarding the terms and conditions, alleged breaches of contract, and remedies under contract, shall be governed by the laws of the State of Idaho and shall be adjudicated exclusively by a court of competent jurisdiction in Blaine County, Idaho. Prior to the filing of any action, the parties agree to mediate in good faith the dispute with the American Arbitration Association (AAA) or any other mutually acceptable mediator. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other reasonable and related expenses.

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CONSULTING AGREEMENT - 4

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11. 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 *CONSULTANT* and *CLIENT* and dated subsequent to the date hereof. Performance of work by *CONSULTANT* and/or acceptance of payment by *CONSULTANT* for work performed and/or work to be performed for *CLIENT* beyond the scope of this Agreement does not constitute acceptance by *CONSULTANT* 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. This Agreement and the rights and obligations of the parties hereunder shall not be assignable by either party without prior written consent of the other party.

(e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives and, to the extent permitted by subsection (d), successors and assigns of the parties hereto.

(f) 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.

IN WITNESS WHEREOF, *CLIENT* and *CONSULTANT* have executed this Agreement as of the date set forth in the first paragraph.

Ketchum Computers, Inc.

By:

Date: _____

Todd Mandeville, Its President

~~Ketchum Computers, Inc.~~

City of Sun Valley

By:

Date: _____

Dewayne Briscoe, Mayor

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Attest: _____
Alissa Weber Kelly Ek, City Clerk
City of Sun Valley

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Ketchum Computer's Initials ____

CONSULTING AGREEMENT - 6

CONSULTING AGREEMENT

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***CONSULTANT* DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURCHASE.**

10. Disputes. Any action based on this Agreement, including disagreement, disputes regarding the terms and conditions, alleged breaches of contract, and remedies under contract, shall be governed by the laws of the State of Idaho and shall be adjudicated exclusively by a court of competent jurisdiction in Blaine County, Idaho. Prior to the filing of any action, the parties agree to mediate in good faith the dispute with the American Arbitration Association (AAA) or any other mutually acceptable mediator. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other reasonable and related expenses.

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Ketchum Computers, Inc.
By:

Date: _____

Todd Mandeville, Its President

City of Sun Valley
By:

Date: _____

Dewayne Briscoe, Mayor

Attest: _____
Alissa Weber, City Clerk

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