



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

I move to approve IT consulting services with Ketchum Computers, Inc. Contract 24910, and IT consulting services with Speed Goat Technology, LLC Contract 24911.

Reasons for Recommendation:

- Ketchum Computers has served as the City's IT professional for over eighteen years with exemplary service and standards.
- Ketchum Computers has on-site employees to respond to IT needs at any of the city facilities.
- Speed Goat Technology brings Cyber Security expertise from many years of experience in the commercial sector.
- Idaho state law does not require competitive solicitation for professional services.

Sustainability Impact:

NONE

Financial Impact:

Adequate funds exist in account:	GL Code 01-4150-5110
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Attachments:

1. Ketchum Computers, Inc. Contract 24910
2. Speed Goat Technology, LLC. Contract 24911

CONSULTING AGREEMENT 24910

This Agreement, dated as of May 20, 2024, is between Ketchum Computers, Inc., P. O. Box 5186, Ketchum, ID 83340 ("*CONSULTANT*"), and City of Ketchum, P.O. Box 2315 Ketchum, ID 83340 ("*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 consulting

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 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.

2. Compensation for Consulting Services. For Services hereunder, *CLIENT* shall pay to *CONSULTANT* a fee of \$180 per hour. The minimum time to be billed for any one day for work performed at *CONSULTANT'S* location will be 1/2 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.

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 *CONSULTANT'S* vehicle to a location more than 40 miles from *CONSULTANT'S* primary work location in Ketchum, 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.

4. Billing. *CONSULTANT* shall invoice *CLIENT* when work is completed or on the 1st of the month for ongoing work, providing a listing of labor terms and expenses. Payment on invoices so provided shall be due no later than thirty (30) days from presentation of invoice.

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.

City of Ketchum Initials _____

Ketchum Computer's Initials _____

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

7. 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.

8. Term and Termination. This Agreement shall be terminated when either party gives at least fifteen (15) days 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.

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.**

City of Ketchum Initials _____

Ketchum Computer's Initials _____

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.

11. Insurance. Contractor is not covered by the City's liability insurance policy. Contractor shall carry and maintain liability insurance in the following minimum amounts:

General liability	\$1,000,000.00 per occurrence; \$2,000,000.00 aggregate.
Commercial Auto	\$1,000,000.00
Professional Liability	\$1,000,000.00
Worker's Compensation	As required by the State of Idaho, and not less than \$1,000,000.00

Proof of said insurance shall be provided to City. Each policy of insurance required shall provide for no less than thirty-day advance notice to City prior to cancellation. In addition, the City shall be named an "Additional Insured" by all contractors and subcontractors.

12. 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.

City of Ketchum Initials _____

Ketchum Computer's Initials _____

Date: _____

Todd Mandeville, Principal
Ketchum Computers, Inc

Date: _____

Neil Bradshaw, Mayor
City of Ketchum

Attest:

Trent Donat, City Clerk

SERVICE AGREEMENT 24911

This Agreement, dated as of May 20, 2024, is between Speed Goat Technology LLC, 1540 Heroic Rd., Hailey, ID 83333 and City of Ketchum, PO Box 2315, Ketchum, Idaho 83340 ("CLIENT") ("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: Implementation of Security Assessment, Backup and Disaster Recovery, Network Infrastructure and Server configuration and 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. Ketchum Computers will act as the primary project manager and designate tasks to *CONSULTANT* for *CLIENT*.

2. Compensation for Consulting Services. For Services hereunder, *CLIENT* shall pay to *CONSULTANT* a fee of \$180 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: finance@ketchumidaho.org.

3. Expenses. *CLIENT* shall reimburse *CONSULTANT* for all reasonable travel and other out-of-pocket expenses incurred by *CONSULTANT* in rendering Services hereunder with prior approval of client for any charge over \$200. 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.

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 not later than forty-five (45) days from presentation of invoice.

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.

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This Agreement shall be terminated when either party gives at least fifteen (15) days 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.

9. Limitations on Liability. Except as a result of 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.

11. Insurance. Contractor is not covered by the City's liability insurance policy. Contractor shall carry and maintain liability insurance in the following minimum amounts:

General liability	\$1,000,000.00 per occurrence; \$2,000,000.00 aggregate.
Commercial Auto	\$1,000,000.00

Professional Liability	\$1,000,000.00
Worker's Compensation	As required by the State of Idaho, and not less than \$1,000,000.00

Proof of said insurance shall be provided to City. Each policy of insurance required shall provide for no less than thirty-day advance notice to City prior to cancellation. In addition, the City shall be named an "Additional Insured" by all contractors and subcontractors.

12. 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.

Speed Goat Technology LLC

Date: _____

Brad Grohusky, Principal
Speed Goat Technology LLC

Date: _____

Neil Bradshaw, Mayor
City of Ketchum

Attest:

Trent Donat, City Clerk