



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

- S&C has been providing engineering services for the City since 2017
- The need exists for the City to have engineering expertise on internal city projects.
- S&C current contract is expired and requires renewal.

Policy Analysis and Background (non-consent items only):

Sustainability Impact:

Financial Impact:

<input type="text" value="None OR Adequate funds exist in account:"/>	<input type="text" value="S&C Associates contract expense has been accounted for in the professional services budget."/>
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Attachments:

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INDEPENDENT CONTRACTOR AGREEMENT 24078

This Professional Services Agreement ("Agreement") is made by and between the City of Ketchum, Idaho, an Idaho municipal corporation, organized and existing under the laws of the State of Idaho ("City"), and S&C Associates ("Contractor") as represented by Sherri Newland, PE, CPESC.

RECITALS

Whereas, the City of Ketchum is working on public works projects that require engineering oversight;

Whereas, the City is in need of special expertise in engineering and project management;

Whereas, the City is empowered by Idaho Code section 50-301 to enter into contracts as may be deemed necessary to promote the welfare of the City and its residents, and to implement projects approved within the adopted budget;

NOW, THEREFORE, on the basis of the foregoing recitals, and upon motion duly passed by the Ketchum City Council, and for the consideration set forth herein, the parties agree as follows:

AGREEMENT

Contractor agrees to provide professional services pursuant to the terms and conditions of this Agreement.

1. SCOPE OF WORK:

Contractor will coordinate with the City Administrator to provide engineering assistance and project management assistance on public works projects as directed by the City Administrator and the Mayor, Contractor's point of contact is the City Administrator or his designee. Such work will consist of:

1. Providing engineering advice, analysis and expertise on city projects and private projects in the development review process.
2. Reviewing plans, providing input to staff and applicants, answering questions, interfacing with the public related to right of way requests and permits, participating in developing recommendations on development projects and city public works projects.
3. When requested, serving as the City Engineer.
4. Providing project management assistance on public works projects consisting of scheduling, review, preparation of documents and studies, interfacing with contractors and staff to ensure the timely completion of assigned projects.

2. AMOUNT AND METHOD OF PAYMENT: The City agrees to pay Contractor for services rendered under this Agreement on a time and materials basis in accordance with Attachment A, Professional Services Fee Schedule. Fees shall be based on the service provided by the Contractor.

Contractor shall maintain time and expense records and make them available to the City monthly and provide monthly invoices in a format acceptable to the City for work performed to the date of the invoice. Each invoice shall specify charges as they relate to specific tasks. Each invoice shall also specify current billing and previous payments, with a total of costs incurred and payments made to date.

Reimbursable expenses (which shall cover general out-of-pocket expenses including Contractor's hourly fees, telephone charges, copying expenses, overnight or standard mailing expenses, travel-related expenses, and the like) shall be billed to the City at actual cost to Contractor with no mark-up.

All invoices shall be paid by the City within forty-five (45) days of receipt of proper invoice unless no funds are available, then as soon as funds become available. Uncontested invoices paid after forty-five days may be subject to the statutory rate of interest pursuant to Idaho Code section 67-2302.

(d) If the services subject to a specific invoice do not meet the requirements of this Agreement as the City may determine, the City shall notify Contractor in writing and provide specific deficiencies in the work that do not meet the requirements. Contractor shall have seven (7) working days to correct or modify the work to comply with the requirements of the Agreement as set forth in the City's written notice. If the City again determines the work fails to meet the requirements, the City may withhold payment until deficiencies have been corrected to the City's satisfaction or may terminate this Agreement for cause as set forth in Section 19 of this Agreement.

3. RIGHT OF CONTROL: The City agrees that it will have no right to control or direct the details, manner, or means by which Contractor accomplishes the results of the services performed hereunder. Contractor has no obligation to work any particular hours or days or any particular number of hours or days. Contractor agrees, however, that its other contracts and services shall not interfere with its performance under this Agreement. Contractor agrees to coordinate project schedules and respective commencements and deadlines with the Mayor, City Administrator and other City employees or contractors as otherwise directed by the City.

4. INDEPENDENT CONTRACTOR RELATIONSHIP: Contractor is not an employee, servant, agent, partner, or joint venture of the City. The City shall determine the work to be done by Contractor, but Contractor shall determine the legal means by which it accomplishes the work specified by the City. This Agreement shall not be construed to create any employer-employee relationship between the City and Contractor.

5. RECORDS ACCESS AND AUDITS: Contractor shall maintain complete and accurate records with respect to costs incurred and manpower expended under this Agreement. All such records shall be maintained according to generally accepted accounting principles, shall be clearly identified, and shall be readily accessible. Such records shall be available for review by the City representatives for three (3) years after final payment. Copies shall be made available to the city upon request.

6. FEDERAL, STATE, AND LOCAL PAYROLL TAXES: Neither federal, state, or local income taxes nor payroll taxes of any kind shall be withheld and paid by the City on behalf of Contractor or the employees of Contractor. Contractor shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. Contractor understands that Contractor is solely responsible to pay, according to law, Contractor's income tax. Contractor further understands that Contractor may be liable for self-employment (Social Security) tax to be

paid by Contractor according to law.

7. LICENSES AND LAW: Contractor represents that it possesses the requisite skill, knowledge, and experience necessary, as well as all licenses required, if any, to perform the services under this Agreement. Contractor further agrees to comply with all applicable laws, ordinances, and codes of federal, state, and local governments in the performance of the services hereunder.

8. FRINGE BENEFITS: Because Contractor is engaged in its own independently established business, Contractor is not eligible for and shall not participate in any employee pension, health, or other fringe benefit plans of the City.

9. WORKER'S COMPENSATION: Contractor shall maintain in full force and effect worker's compensation and employer's liability insurance for Contractor and any agents, employees, and staff that Contractor may employ, and provide proof to the City of such coverage or that such worker's compensation insurance is not required under the circumstances.

10. EQUIPMENT, TOOLS, MATERIALS, OR SUPPLIES: Contractor shall supply, at its sole expense, all equipment, tools, materials, and/or supplies to accomplish the services to be provided herein.

11. PROPRIETARY RIGHTS: All data, materials, reports, maps, graphics, tables, memoranda, and other documents or products developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City at its request, and may be used by the City for any business or municipal purpose. The City agrees that if it uses products prepared by Contractor for purposes other than those intended in this Agreement, it does so at its sole risk.

12. CONFIDENTIALITY: Contractor agrees to maintain confidentiality of all work product produced under this Agreement, including both interim and draft, materials, reports, maps, graphics, tables, memoranda, and other documents unless and until the City signifies its written approval that such work product may be published as final work product subject to the public records laws of the state of Idaho. The City reserves the right to distribute the final work product as it sees fit provided that Contractor may use final reports as approved and adopted by the Ketchum City Council in the marketing of its firm.

13. TERM OF AGREEMENT: This Agreement shall commence as of the effective date specified in this Agreement and shall remain in effect for one (1) year unless terminated by either party as set forth in this Agreement.

15. ENTIRE AGREEMENT: This Agreement, along with any and all exhibits and appendix attached hereto and incorporated herein by reference, 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.

16. GENERAL ADMINISTRATION AND MANAGEMENT: The Mayor and the City Administrator or his/her designee shall be the City's representative and shall oversee and approve all services to be performed, coordinate all communications, review and approve all invoices, and carry out any and all tasks as may be required under this Agreement.

17. CHANGES: The City reserves the right to make changes from time to time in the scope of services to be performed hereunder. Such changes, including any increase or decrease in Contractor's compensation, which are mutually agreed upon by and between the City and

Contractor, shall be incorporated in written amendments to this Agreement.

18. AMENDMENTS: This Agreement may be amended only in writing upon mutual agreement of both the City and Contractor.

19. ASSIGNMENT: It is expressly agreed and understood by the parties hereto that Contractor shall not have the right to assign, transfer, hypothecate, or sell any of its rights under this Agreement except upon the prior express written consent of the City.

20. TERMINATION OF AGREEMENT:

1. **FOR CAUSE DUE TO BREACH:** If Contractor shall fail to fulfill its obligations in compliance with the scope of work or if Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. If this Agreement is terminated for cause, Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by Contractor, and the City may withhold any payments to Contractor for the purpose of setoff until such time as the exact amount of damages due the City from Contractor is determined. Contractor shall also provide the City all products or works of consulting generated to date of termination.

2. **TERMINATION BY THE CITY:** The City reserves the right to terminate this Agreement at any time, for any reason, by giving at least fifteen (15) days' notice in writing to Contractor. If this Agreement is terminated by the City as provided herein, Contractor shall be paid for the work performed prior to termination, less payment or compensation previously made. Contractor shall also provide the City all products or works related to this Project generated to date of termination.

3. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated by Contractor upon thirty (30) days' written notice. Such termination shall be based upon substantial lack of performance by the City under the terms and conditions of this Agreement when said substantial lack of performance is through no fault of Contractor. If this Agreement is terminated by Contractor, Contractor shall be paid for services rendered and for reimbursable expenses incurred to the date of such termination.

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

To CITY: City of Ketchum
Attn: Jade Riley, City Administrator
PO Box 2315
Ketchum, ID 83340

To CONTRACTOR: S&C Associates
Attn: Sherri Newland
P.O. Box 2647
Ketchum ID, 83340

22. DISCRIMINATION PROHIBITED: In performing the services required herein, Contractor agrees not to discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or handicap. Violation of this section shall constitute a material breach of this Agreement and deemed grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

23. STANDARD OF SERVICE: Contractor shall provide services as described in this Agreement. These services will be performed in accordance with generally accepted professional practices for the scope of this project. Contractor makes no other warranty either expressed or implied.

24. INDEMNIFICATION: Contractor agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees and City Council from and against all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or resulting from the negligent performances or activities of Contractor, Contractor's agents, employees, or representatives under this Agreement.

25. INSURANCE: Contractor agrees to obtain and keep in force during its acts under this Agreement a professional liability insurance policy with coverage limits over \$1,000,000.00 per occurrence. Certificate of proof of insurance will be provided to the City. Contractor shall provide proof of coverage as set forth above to the City before commencing its performance as herein provided and shall require insurer to notify the City ten (10) days prior to cancellation of said policy. Deliver certificates of insurance and endorsements required by this Article to:

City of Ketchum
Attn: Jade Riley, City Administrator
PO Box 2315
Ketchum, ID 83340

26. NONWAIVER: Failure of either party to exercise any of the rights under this Agreement or breach thereof shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

27. APPLICABLE LAW: Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the state of Idaho.

28. SEVERABILITY: If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

29. ATTORNEY FEES: Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorney fees as determined by a court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

30. EFFECTIVE DATE: The effective date of this Agreement shall be the day this Agreement is signed by the City.

31. DISPUTES: In the event that a dispute arises between the City and Contractor regarding application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises.

If the parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the parties agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation before resorting to litigation. Should the parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

32. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereby and their respective successors and assigns.

33. MISCELLANEOUS: Contractor has not been retained to supervise, direct, or have control over any contractor's work. Contractor specifically does not have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by contractor(s) for safety precautions and programs to the work of contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to contractor(s) furnishing and performing their work. Accordingly, Contractor can neither guarantee the performance of the construction contracts by contractor(s) nor assume responsibility for the failure of contractor(s) to furnish and perform their work in accordance with the contract documents.

34. CONFLICT OF INTEREST: Contractor shall disclose any conflict of interest to the City that may arise or exists with any of Contractors current or former employers, clients, contractors or the like of or regarding any work, information, data, that may relate to the subject matter whether it is within the Contractor's scope of work or not. In the event a conflict of interest is identified, Contractor shall immediately disclose the conflict and the City may, in its sole discretion determine that this Agreement will terminate, or agree to measures to address the conflict and limit Contractor's scope of work to avoid the conflict. Failure to promptly disclose a conflict of interest constitutes Contractor's breach of this Agreement.

IN WITNESS WHEREOF, THE CITY and Contractor have executed this Agreement as of the effective date specified above.

CITY OF KETCHUM

CONTRACTOR

By: _____
Neil Bradshaw
Mayor

By: _____
Sherri Newland, PE
Principal

DATE: _____

DATE: _____

ATTEST:

By: _____
Trent Donat
City Clerk & Business Manager

DATE: _____

EXHIBIT A
PROFESSIONAL SERVICES FEE SCHEDULE



2024 Professional Services Fee Schedule

Professional Staff	Rate
Specialist	\$ 220.00/Hr.
Senior Project Manager PE Senior Construction Engineer PE Senior Design Manager PE	\$ 185.00/Hr.
Professional Engineer PE Construction Engineer PE City Engineer PE	\$ 155.00/Hr.
Project Manager	\$ 140.00/Hr.
Associate Engineer	\$130.00/Hr.
Project Engineer	\$ 120.00/Hr.
Engineering Technician Civil Designer	\$ 110.00/Hr.
Project Controller	\$100.00/Hr.
Project Coordinator	\$ 85.00/Hr.

Reimbursable and Other Direct Costs

Personal Vehicle Mileage	\$ 0.670/mile
Travel - Airfare, hotel, rental vehicles, meals	Cost plus 0%
Third Party and outside expenses (i.e.: printing, deliveries, FedEx, etc.)	Cost plus 0%



CITY OF KETCHUM
 PO BOX 2315 * 191 5TH ST. * KETCHUM, ID 83340
 Administration 208-726-3841 (fax) 208-726-8234

PURCHASE ORDER
 BUDGETED ITEM? ___ Yes ___ No

PURCHASE ORDER - NUMBER: 24078

To: 4924 S & C ASSOCIATES LLC BOX 2647 KETCHUM ID 83340	Ship to: CITY OF KETCHUM PO BOX 2315 KETCHUM ID 83340
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P. O. Date	Created By	Requested By	Department	Req Number	Terms
04/09/2024	BANCONA	BANCONA	Administration	0	

Quantity	Description	Unit Price	Total
1.00	SERVICE AGREEMENT 2024 01-4170-4200	10,000.00	10,000.00
1.00	IDAHO POWER ENCROACHMENT 03-4193-7190	15,000.00	15,000.00
SHIPPING & HANDLING			0.00
TOTAL PO AMOUNT			25,000.00

 Authorized Signature