



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: November 6, 2023 Staff Member/Dept: Morgan Landers, AICP – Director of Planning and Building

Agenda Item: Recommendation to Approve Contract for Services with Mattison Consulting, LLC

Recommended Motion:

I move to approve Contract #24894 with Mattison Consulting, LLC.

Reasons for Recommendation:

- Robyn Mattison has been contracted with the City of Ketchum acting as City Engineer for the review of land use applications, building permits, and various streets permits since May of 2022.
 - The current contract is with Forsgren Associates, her current employer. However, she is leaving Forsgren and starting her own firm (Mattison Consulting, LLC).
 - City staff has been very pleased with Robyn’s professionalism, responsiveness, and experience and would like to continue using her for the above-mentioned services with her new firm.

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

Sustainability Impact:

None OR state impact here: Robyn has provided support services to city employees when reviewing certain policy decisions, such as our snowmelt in the ROW policy, and will continue to provide that services as we evaluate future policies within her area of expertise.

Financial Impact:

None OR Adequate funds exist in account:	The Forsgren contract was a “time and materials” contract at \$155 per hour. The proposed contract with Mattison Consulting is at the same rate with the same mark-ups for reimbursable expenses and
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	subcontracting. The Planning and Building Department has this expense accounted for in the professional services budget and no amendments to the city budget are needed to approve the contract.
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Attachments:

1. Contract #24894 with exhibits



City of Ketchum

**INDEPENDENT CONTRACTOR AGREEMENT #24894
WITH MATTISON CONSULTING, LLC
FOR ENGINEERING SERVICES**

This Independent Contractor Agreement (“Agreement”) is made and entered effective to the ___ day of ___ 2023, by and between the City of Ketchum, an Idaho municipal corporation (“City”), and Mattison Consulting, LLC. ("Contractor").

FINDINGS

- A. The City is a municipal corporation duly organized and existing under the laws of the State of Idaho.
- B. The City is empowered to enter into contracts and take such steps as are reasonably necessary to maintain the peace, good government and welfare of the City. Idaho Code §50-301 *et seq.*
- C. Contractor independently provides certain professional services which may be beneficial and of use for the general welfare of the City.
- D. The City finds that it is economical and efficient and that is in the best interests of the City to contract with Contractor for certain services as set forth herein (“Services”).

NOW, THEREFORE, the Parties enter into this Agreement according to the following terms and conditions:

1. **Description of Services.** *See Exhibit A.*
2. **Payment for Services.** In exchange for the Services, the City shall pay Contractor per fee/cost sheet on Exhibit A. Contractor shall track and report to the City as to the Service activities and all time expended on the Services. City will also reimburse Contractor, upon presentation of reports and receipts, for reasonable travel expenses required to provide the Services. Invoices for payment will be submitted monthly and payment made by City upon City review and approval within approximately thirty days.
3. **Term.** The term of this Agreement shall be through the duration and conclusion of the Services, not to exceed one year from the date of this Agreement. This term may be renewed or extended upon further written agreement between the parties.
4. **Independent Contractor.** Contractor performs the Services hereunder solely and exclusively as an independent contractor. Contractor is not an employee, servant, agent, partner, or joint venture of the City. The City will determine the projects or Services to be done by Contractor, but Contractor will determine the legal means by which it accomplishes the work specified by the City. This Agreement shall not be construed to create or establish any employee-employee relationship between the City and Contractor or make Contractor eligible for any City employment benefits. Contractor is solely responsible for all withholding and payment of all applicable federal, state, and local income or payroll taxes of any kind.

5. **Performance and Warranty.** Contractor will provide its own tools and equipment as needed to perform the Services. Contractor warrants that all equipment used to perform this Agreement will function safely, properly, and efficiently. Contractor warrants that all services will be timely performed in a safe, professional, and workmanlike manner.
6. **Indemnification.** Contractor releases, holds harmless, and agrees to indemnify City from and against all claims, suits, damages (including, without limitation, damages to persons and property including deaths, and all tax responsibilities), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Contractor, its managers, members, directors, officers, shareholders, agents, and employees.
7. **Limits of Liability.** Except for Consultant’s confidentiality and indemnity obligations, respectively, and except for actions or claims arising from gross negligence or intentional or willful misconduct, Consultant’s total liability to City shall not exceed the greater of (i) the total Consultant compensation value for the subtask of the project or (ii) the amount of recoverable insurance, regardless of whether any action or claim is based upon contract, warranty, tort (including negligence) or strict liability.
8. **Licensing.** Contractor represents that Contractors possesses the requisite skill, knowledge, and experience necessary to perform the Services. Contractor represents it has or agrees to obtain and maintain all necessary registrations, licenses, and insurance as may be required by the State of Idaho for the performance of the Services under this Agreement.
9. **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.
Personal Auto Liability	\$500,000.00 per accident with \$2,000,000 umbrella policy.
Professional Liability	\$1,000,000.00 per occurrence; \$2,000,000.00 aggregate.
Worker’s Compensation	As required by the State of Idaho, and not less than \$1,000,000.00 (Not currently required due to no employees)

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 a “Additional Insured” by all contractors and subcontractors.

10. **Notice.** All notices under this Agreement shall be in writing and addressed as follows:

CITY:
City of Ketchum
Attn: Director of Planning and Building
P.O. Box 2315
191 5th St., West
Ketchum, ID 83340

CONTRACTOR
Mattison Consulting, LLC
Attn: Robyn Mattison
739 N. Morningside Way
Boise, ID 83712

11. **Compliance with Laws/Public Records.** Contractor, its managers, members, directors, officers, shareholders, agents, and employees shall comply with all federal, state and local laws, rules, and ordinances. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to the Idaho Public Records Act. Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying. Should Contractor wish to claim an exemption to disclosure on any record, Contractor shall identify such in advance and assume all costs of defense on any associated legal action to defend such claimed exemption from disclosure.
12. **Non-Assignment.** Contractor hereby acknowledges that City has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign, subcontract, or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of City.
13. **Amendments.** This Agreement may only be changed, modified, or amended in writing executed by all parties.
14. **Non-Waiver.** The failure of either party to exercise any of its rights under this Agreement at any time does not constitute a breach of this Agreement and shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.
15. **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.
16. **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 non-prevailing party shall pay to the prevailing 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.
17. **Governing Law.** This Agreement shall be governed by the laws of the State of Idaho. Venue shall be in the Fifth Judicial District, Blaine County, Idaho.
18. **Entire Agreement.** This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes any and all prior Agreements between the parties hereto respecting such matter.
19. **Severability.** If any part of this Agreement is held to be invalid or unenforceable, such part shall be considered as stricken and the rest of this Agreement shall continue in full force and effect and so as to preserve the agreement and intent to the fullest possible extent.

20. Execution 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.

21. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement.

CITY OF KETCHUM

MATTISON CONSULTING, LLC, CONTRACTOR

Neil Bradshaw, Mayor

Robyn L. Mattison, Owner

ATTEST:

Trent Donat
City Clerk

EXHIBIT A
INDEPENDENT CONTRACTOR AGREEMENT WITH
MATTISON CONSULTING, LLC
FOR ENGINEERING SERVICES

Description of Services:

The City of Ketchum is requesting engineering services to support the City's Planning and Building department, and other departments as needed. Services include performing reviews for compliance with city and state standards and general engineering practices and coordinating with other departments and project owners/agents.

Contractor shall provide the following review services as requested:

- a. Subdivision plan reviews
- b. Design Review plan reviews
- c. Building permit plan reviews
- d. Right-of-Way Encroachment Permit applications
- e. Other application reviews as requested

All plan reviews will be completed within the following schedule unless otherwise agreed upon between the parties:

- First round review to be completed within 20 working days
- Second round review, and all subsequent reviews to be completed within 9 working days

Additional engineering services as required by the City. These services may include, but are not limited to: review, comment and provide suggestions on all related standards or proposed ordinances, advise the Planning and Zoning Commission and/or City Council on development matters; and provide new ordinance research and development.

Assumptions:

1. Documents will be submitted and reviewed electronically using the city's selected plan review software, or other as approved by the city. In addition, engineering review forms will be prepared summarizing comments.
2. Site visits will be approved and coordinated with city staff prior to travel.

Fee:

Engineering assistance will be completed on a time & material basis. Rates for 2023 are shown below. Rates are subject to change annually.

Robyn Mattison 2023 Rate = \$155 per hour

Rate is fully-loaded with direct labor, overhead, and profit.
Reimbursables are charged at cost + 15%

Subconsultants are charged at cost + 15% (to be approved by City prior to subcontracting services)
Mileage and per diems will be charged at federal government rates.