



City of Ketchum

October 21, 2019

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Enter into Contract 20415 with Sun Valley Economic Development

Recommendation and Summary

Staff is recommending the council approve the annual contract with Sun Valley Economic Development (SVED) and adopt the following motion:

I move to authorize the Mayor to sign Contract 20415 with Sun Valley Economic Development.

The reasons for the recommendation are as follows:

- The City contracts with SVED for specific services as identified in the contract.
- The funding was approved in the FY 19/20 adopted budget

Introduction and History

The proposed contract is similar to the contract and services entered into for the last two years with SVED. Minor changes have been made in the reporting requirements.

Analysis

SVED provides the City with specific support and analysis for the attraction, retention, and support of businesses within the community.

Financial Impact

The cost for services is \$9,000 for the year and funding comes from the Non-Departmental Account within the budget. The Fiscal Year 2019-20 budget includes funding for the proposed services.

Attachment:

Proposed Contract 20415

CONTRACT FOR SERVICES 20415
(City of Ketchum and Sun Valley Economic Development)

THIS CONTRACT FOR SERVICES (“Agreement”) is made and entered into this ____ day of _____, 2019, by and between the CITY OF KETCHUM, an Idaho municipal corporation (hereinafter referred to as “Ketchum”) and Sun Valley Economic Development, an Idaho non-profit corporation (hereinafter referred to as “SVED”).

RECITALS

- A. Ketchum is a resort city, as defined by Idaho Code § 50-1044, deriving the major portion of its economic well-being from businesses catering to recreational needs and the needs of people traveling to Ketchum for an extended period of time;
- B. Ketchum has the authority to enter into contracts and to take such steps as are reasonably necessary to maintain the health, safety and welfare of the City which includes the promotion of its trade, commerce, and industry;
- E. SVED is experienced in providing economic development support for the advancement of the trade, commerce, and industry of the tourism-based economy of Ketchum;
- F. SVED desires to create a strong economic climate for the City of Ketchum and the surrounding community and region;
- G. It is in the best interest of the public health, safety, welfare, and prosperity of the City to promote the region and attract new businesses through targeted, economic development efforts. These activities, and any costs associated therein, are determined to be ordinary and necessary expenses for the economic well-being of Ketchum and its residents and guests;
- H. Ketchum desires to contract with SVED for professional services to provide economic development services that will increase the number of businesses hiring permanent, full-time jobs within the City of Ketchum;
- I. The parties acknowledge and agree that all funds paid to SVED under this Agreement shall be used to provide services for Ketchum for the purpose of job creation, which is a direct quantifiable and measurable result of investing public funds for a public purpose; and
- J. Subject to the terms and conditions of this Agreement, the parties wish to enter into this agreement to provide the services described herein.

AGREEMENT

NOW THEREFORE, Ketchum and SVED, for and in consideration of the preceding recitals, mutual promises and covenants hereinafter set forth, do hereby agree as follows:

1. Consideration. In consideration for providing the services provided herein, Ketchum agrees to pay SVED the maximum sum of ten thousand dollars (\$9,000) for the term set forth in section 2 herein. Subject to the terms and conditions set forth herein, Ketchum shall make payments in four quarterly installments.
2. Term. Unless terminated pursuant to Section 7(B) of this Agreement and notwithstanding the date of execution hereof, this Agreement shall be in effect from October 1, 2019, until September 30, 2020.
3. Scope of Services. SVED shall provide the following services:
 - a. Quarterly Report of Activities. SVED shall provide a written report to the Ketchum City Council each quarter during the following months: January, April, July and September. The Quarterly Report shall contain updates for the city council on all items listed in the Scope of Services, described more specifically below for each item. If requested by the City, SVED shall also provide an oral quarterly report for Ketchum City Council after submission of the written report.
 - b. Ketchum Economic Development and Business Promotion Materials. SVED shall produce materials that promote the business climate and desirable characteristics of Ketchum and the surrounding region that are appealing to attracting new businesses and job creation. These materials shall include, but are not limited to, a business promotion materials, the annual Ketchum economic profile and/or any other promotional materials which have been mutually agreed upon between Ketchum and SVED.
 - c. Regional and State Representation in Economic Organizations. SVED shall represent Ketchum and the surrounding region's economic development interests at the Idaho Economic Development Association (IEDA) and the Southern Idaho Economic Development Organization (SIEDO) board meetings. SVED shall attend at least four regular meetings of the IEDA and SIEDO boards in addition to their annual meetings. SVED shall report on the activities of IEDA and SIEDO back to the City of Ketchum in its quarterly report.
 - d. Response to State Generated Requests for Information (RFI). SVED shall review all RFIs issued by the Idaho Department of Commerce and respond to each RFI that is applicable to Ketchum. SVED shall provide a report on all RFIs issued by the State Department in its quarterly report and report to the City Council on which RFIs SVED responded to and their status.
 - e. Gem State Prospector. SVED shall be responsible for listing available commercial properties on Gem State Prospector. SVED may work with local commercial brokers to list all available commercial properties in Ketchum with the Idaho Department of Commerce's business location website, gemstateprospector.com

and to maintain these listings as needed. SVED shall also work with the local listing agents as required to promote and/or secure business tenants for these properties. The Quarterly Report shall provide a list of all properties shown on Gem State Prospector.

- f. Strategic Recruitment of Businesses. SVED shall strategically recruit businesses to Ketchum and the surrounding region by attending select trade fairs/conferences. SVED shall also recruit businesses to Ketchum and the surrounding region by utilizing Idaho Department of Commerce Tax Reimbursement Incentives (TRI). SVED shall seek and support qualified companies by initiating and advising on TRI applications, and shall provide a list of all such companies in its quarterly report.
4. Budget, IRS Filings, Annual Work Plan, Monthly Record Keeping and Availability of Records.
 - a. Budget. Within thirty (30) days after the execution of this Agreement, SVED shall submit a 2019 Year-to-Date P&L and Balance Sheet for SVED, which is satisfactory to Ketchum showing income, expenses and particular fund balances. SVED shall submit its 2019/20 Operating Budget to Ketchum when such budget has been approved by the SVED Board. This operating budget shall contain sufficient information and detail to permit meaningful review by the public.
 - b. IRS Filings. Within fifteen days (15) days after execution of this Agreement, SVED shall submit to Ketchum IRS Form 990 and all associated documents for the previous two (2) years of operation.
 - c. Financial Accounting and Reporting Requirements. SVED shall submit to Ketchum a year-end financial statement which shall be prepared in a format that details the expenditure of Ketchum funds paid to SVED under the terms of this Agreement. The City may request additional financial information it deems necessary or appropriate to assist the City in verifying the accuracy of SVED's financial records. Any duly authorized agents of the City shall be entitled to inspect and audit all books and records of SVED only for compliance with the terms of this Agreement. In the event the financial report indicates that funds were used for purposes not permitted by this Agreement, SVED shall remit the disallowed amount to Ketchum within thirty (30) days of notification by Ketchum of such improper expenditures.
 - d. General Requests. Upon request, and within a reasonable time period, SVED shall submit any other information or reports relating to its activities under this Agreement to Ketchum in such form and at such time as Ketchum may reasonably require.
 - e. Retention of Records. SVED agrees to retain all financial records, supporting

documents, statistical reports, client or membership records and contracts, property records, minutes, correspondence, and all other accounting records or written materials pertaining to this Agreement for three (3) years following the expiration or termination of this Agreement. Ketchum, at its own expense, may review or audit the financial transactions undertaken by SVED under this Agreement to ensure compliance with the terms and conditions herein with reasonable prior notice and during the normal business hours of SVED.

5. Payments. To receive payments for the services described in Section 3 of this Agreement, SVED shall submit the quarterly reports described in paragraph 3(a) of this Agreement. The quarterly sum to be paid to SVED shall not exceed one quarter (1/4) of the total amount approved by this agreement for fiscal year 2019/2020.
6. Record of Funds. In order to insure proper financial accountability, SVED shall maintain accurate records and accounts of all funds received from Ketchum, keeping such accounts and records separate and identifiable from all other accounts, and making such accounts and records available to the City during normal business hours, on request of the City. Compliance with this provision does not require a separate bank account for the funds. The funds paid to SVED by Ketchum shall be expended solely for operations and activities in conformance with this Agreement. Further, no such funds shall be transferred, spent, loaned or encumbered for other SVED activities or purposes other than for operations and activities in conformance with this Agreement.
7. Miscellaneous Provisions.

a. Notices. All notices to be served pursuant to this Agreement or which are served with regard to this Agreement shall be sent by certified mail, return receipt, to the parties at the following addresses:

City of Ketchum
PO Box 2315.
Ketchum, Idaho 83340

Sun Valley Economic Development
PO Box 3893
Ketchum, ID 83340

All notices of changes of addresses shall be sent in the same manner.

- b. Termination. The parties hereto covenant and agree that in the event Ketchum, in its sole and absolute discretion, lacks sufficient funds to continue paying for SVED's services under this Agreement, Ketchum may terminate this Agreement without penalty upon thirty (30) days written notice. Upon receipt of such notice neither party shall have any further obligation to the other. In the event of early termination of this Agreement, SVED shall submit to Ketchum a report of

expenditures authorized by this Agreement as of the effective date of termination. Any Ketchum funds not encumbered for authorized expenditures at the date of termination shall be refunded to Ketchum within twenty (20) days.

- c. Independent Contractor. Ketchum and SVED hereby agree that the SVED shall perform the Services exclusively as an independent contractor and not as employee or agent of Ketchum. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. SVED, its agents and employees shall not receive nor be entitled to any employment-related benefits from Ketchum including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Ketchum offers to its employees. SVED shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to SVED under this Agreement and for SVED's payments for work performed in performance of this Agreement by SVED, its agents and employees; and SVED hereby releases, holds harmless and agrees to indemnify Ketchum from and against any and all claims or penalties, including without limitation the 100% penalty, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.
- d. Compliance With Laws/Public Records. SVED acknowledges that Ketchum is a public agency subject to the Idaho Public Records Act. SVED will communicate with and cooperate with Ketchum upon request by Ketchum so as to identify, address, potentially disclose, and evaluate exemptions as necessary for records that may be subject to Idaho public records law.
- e. Non-assignment. This Agreement may not be assigned by or transferred by SVED, in whole or in part, without the prior written consent of Ketchum.
- f. Hold Harmless Agreement. SVED shall indemnify, defend and save and hold harmless Ketchum, its officers, agents, and employees, from and against any and all claims, loss, damages, injury or liability, including but not limited to, the misapplication of Ketchum funds, state or federal anti-trust violations, personal injury or death, damages to property, liability arising out of the use of materials, concepts, or processes protected by intellectual property rights and liens of workmen and material men, howsoever caused, resulting directly or indirectly from the performance of the Agreement by SVED.
- g. Entire Contract. This Agreement contains the entire contract between the parties hereto and shall not be modified or changed in any manner, except by prior written contract executed by both parties hereto.
- h. Succession. This Agreement shall be binding upon all successors in interest of either party hereto.

- i. No Third Party Beneficiaries. This Agreement shall not create any rights or interest in any third parties.
- j. Law of Idaho. This Agreement shall be construed in accordance with the laws of the State of Idaho.
- k. Severability. If any clause, sentence, or paragraph of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, such decision shall not affect the remaining portions, and the parties do now declare their intention that each such clause, sentence, or paragraph of this Agreement is a separate part hereof.
- l. Preparation of Contract. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the document.
- m. No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.
- n. Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, to recover damages resulting from a breach hereof or if either party defaults in the performance of this Agreement, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred herein or on appeal.
- o. Conflict of Interest. No officer or director of SVED who has decision making authority either by them self or by vote, and no immediate family member of such individual, shall have a direct pecuniary interest in any contract or subcontract for work to be performed in connection with this Agreement. SVED shall incorporate or cause to be incorporated in all such contracts, a provision prohibiting such interest pursuant to this provision.

IN WITNESS WHEREOF, the parties hereto have caused this Contract for Services to be executed on the day and year first written above.

CITY OF KETCHUM

Sun Valley Economic Development

Neil Bradshaw, Mayor

Harry Griffith, Director

ATTEST:

Robin Crotty, City Clerk