

RESOLUTION NO. 3177

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA, APPROVING THE CONTRACT FOR SERVICES AND AUTHORIZING PAYMENT.

WHEREAS, the City Council for the City of Red Lodge previously budgeted to obtain consulting services to revise the City's Development Code; and

WHEREAS, the City of Red Lodge issued a request for services, reviewed various proposals and interviewed qualified candidates and made such prudent inquiries as appropriate to conclude that one consultant, Mr. Eric Heil, best met the needs of the City; and

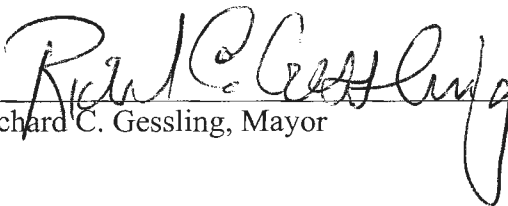
WHEREAS, a contract for services has been negotiated and the City Council for the City of Red Lodge is advised and understands the contract is within budget, accomplishes the tasks required and needed to revise the City's Development Code and is in the City's interest to enter into.

NOW THEREFORE, BE IT RESOLVED:

1. The City Council resolves that the contract for services attached to and made a part of this Resolution is and has been reached in accordance with M.C.A. 7-5-4301, et seq.
2. The City Council resolves to authorize the City to enter into the aforementioned contract for services and to take such action as may be necessary and appropriate to finalize and implement said contract.
3. The City Council resolves and directs the Mayor to take such administrative action as he deems prudent to adjust present allocations in the budget for this project without increasing the appropriations to the Planning Department, and to make such appropriations as may be necessary in the FY 2006 budget to complete to fully fund completion of this project, and to carry out the intent of this Resolution.

PASSED and APPROVED by the Red Lodge City Council this 12th day of April, 2005.

FOR THE CITY OF RED LODGE, MT


Richard C. Gessling, Mayor

ATTEST:


Debbie Tomicich, City Clerk

CONTRACT FOR SERVICES
- REVISION OF LAND USE CODE -

THIS CONTRACT (“Contract”), by and between E.J. Heil, P.C. (“the firm”) and E.J. Heil as an individual (“Heil”) and the City of Red Lodge (“Red Lodge”) (collectively referred to as the “Parties”), is hereby entered into on the 12th day of April, 2005.

R E C I T A L S

WHEREAS, Red Lodge desires to retain a consultant to revise the Development Code for the City of Red Lodge; and,

WHEREAS, Heil desires to provide such consultant services;

NOW, THEREFORE, in consideration of the terms and mutual promises contained herein, the Parties agree as follows:

1. Representations and Warranties:

- A. Heil represents and warrants he is duly licensed and in good standing in the State of Colorado to practice law. Heil further represents and warrants he is admitted to the American Institute of Certified Planners, and is a current member of that organization.
- B. Heil agrees to provide consultant services to Red Lodge as defined below in a manner that meets the minimum professional expectations for attorneys in accordance with the Rules of Professional Conduct established by the American Bar Association and in accordance with the Code of Ethics and Professional Conduct established by the American Institute of Certified Planners.
- C. Red Lodge has relied on Heil’s experience and expertise as a municipal attorney, administrator, and as a land planner in entering into this Contract and therefore requires that Heil shall at all times during the course of this Contract maintain his professional accreditations and memberships. Heil shall promptly notify Red Lodge in writing if his professional accreditations or memberships expire, are revoked, or otherwise become inactive.
- D. Heil represents himself to be the primary consultant responsible for drafting the revised Code, attending meetings in Red Lodge, and otherwise performing this Contract. Heil agrees to notify Red Lodge in writing of any other person engaged in work on this Contract including providing a resume of any such person(s). Heil represents his firm has a full time assistant who will be available to provide administrative support for the provision of services defined in this Contract, and Heil agrees to provide information about this assistant on or before the effective date of this Contract.
- E. Heil represents his firm has subcontracted with I-Stuff, owned and operated by Judy Schaefer, for the provision of website services and consultant services to prepare a web-accessible and web-searchable format of the revised code of land use regulations. In the event that the subcontract between I-Stuff and Heil is terminated or can not otherwise be performed, Heil shall immediately notify Red Lodge in writing, and Heil shall propose an alternate consultant with similar web-site and web-document experience to fulfill the services of this Contract.
- F. Heil represents he is not licensed to practice law in the State of Montana, but his firm is qualified to do business in the State of Montana.
- G. Red Lodge hereby acknowledges that Heil is not licensed to practice law in the State of Montana and cannot provide legal advice to Red Lodge. Red Lodge further agrees it will not rely on Heil for legal advise. Red Lodge also acknowledges it has been advised to

seek the legal services of an attorney or law firm licensed to practice law in the State of Montana to provide legal advice and consultation on this Contract and Heil's work product from the scope of services as set forth below.

2. Scope of Services: Heil agrees to provide the following services and deliverable documents:
 - A. Heil agrees to draft and provide a complete revised Development Code ("Code") for the City of Red Lodge. The draft shall be based on Heil's review of the existing code of land use regulations, other regulations that affect the use of land, the growth policy document of the City of Red Lodge, the CEDS, input and direction from city staff, elected and appointed officials and the general public.
 - B. Heil agrees to travel to Red Lodge a total of seven (7) times according to a schedule based on the outlined travel dates provided below at Section 4, and as the Parties may mutually determine at a later date. Heil agrees to be reasonably available for meetings with city staff, elected and appointed officials, and the general public during such visits to Red Lodge.
 - C. Heil shall draft and provide a complete 1st draft, a 2nd draft, and a final draft for adoption of the Code, in accordance with a schedule and process to be mutually determined by Heil and Red Lodge. Heil also agrees to provide portions of the revised Code in draft form for review and input by city staff. The Code shall be provided in a hard copy form as specified below and in an electronic format as both a Microsoft Word document and Adobe PDF document.
 - D. Heil agrees to provide memos identifying Montana statutes, case law and other law relevant to proposed or contemplated land use regulations. Heil shall provide a comprehensive memo with the 1st draft of the Code
 - E. Heil agrees to provide information regarding the public process for review, comment and adoption of the Code and drafts of the Code in a website format that can be accessed by the general public. Heil agrees to provide information to Red Lodge for inclusion on the City of Red Lodge's website or to provide such information on Heil's business website, www.ericjamesheil.com, which can be linked to from the City of Red Lodge's website.
 - F. Heil agrees to consult relevant state and federal agencies on draft Code provisions with approval by Red Lodge.
 - G. The Parties agree that the Scope of Work in this Contract does not include preparing or creating any zoning maps, overlay maps, hazard maps, environmental maps, or other maps, which are referenced in the Code.
3. Representations by Red Lodge: Red Lodge represents and agrees to the follow:
 - A. Red Lodge shall designate a city staff person to be the primary contact with Heil and act as the overall administrator of this Contract. Red Lodge shall indicate to Heil the scope of authority and delegation of responsibility amongst the City Council, Planning Board, other elected and appointed officials and boards, and city staff. Red Lodge shall promptly notify Heil of any changes in such delegation of responsibility or authority.
 - B. Red Lodge shall furnish Heil copies of all ordinances, codes, forms and applications related to land use regulations, zoning maps, overlay maps, hazard maps, environmental maps, the Growth Policy document including maps, the CEDS document, and other materials relevant to the revision of the Code at no charge to Heil.

- C. Red Lodge agrees to provide names of all relevant public board members and city staff, along with e-mail addresses, to Heil.
- D. Red Lodge agrees that city staff shall be available at reasonable times to work with Heil, answer questions, review and comment on specific Code provisions, and assist Heil with obtaining municipal information. The Parties agree that scheduling and sharing of information will occur regularly through e-mail.
- 4. Schedule and Deliverables: Heil agrees to provide the following deliverables (NOTE: this is a draft schedule which may be amended or refined based on initial meetings with city staff, the Planning Board, and/or City Council).
 - A. **April 27th: Trip 1**: Heil shall meet with city staff, conduct site visit of Red Lodge, and attend regular Planning Board meeting to discuss scope of project, process, schedule, public involvement, code revision goals, and identified code issues.
 - B. **May 20th**: Heil shall provide memo to Planning Board regarding proposed outlines of format for revised Code, general overview of suggested revisions, follow-up on matters identified at April 27th Planning Board meeting, establish website and post information regarding process for Code revisions.
 - C. **May 25th: Trip 2**: Heil shall attend regular Planning Board meeting to discuss code format and suggested code revisions and/or additions.
 - D. **June 8th**: Heil shall deliver 1st Draft of Revised Code, (12 hard copies for Planning Board and city staff) and comprehensive memo regarding relevant land use law in Montana, post 1st draft of revised Code on website.
 - E. **June 15th: Trip 3**: Heil shall attend regular Planning Board meeting to review 1st draft of revised Code.
 - F. **June 21st**: Heil shall deliver 2nd draft of revised Code (25 copies for Planning Board, city staff and general public), post 2nd draft on website.
 - G. **June 29th: Trip 4**: Heil shall attend regular Planning Board meeting to review 2nd draft.
 - H. **July 8th**: Heil shall deliver final revised code for formal adoption with notices and memo describing procedure.
 - I. **July 27th: Trip 5**: Heil shall attend regular Planning Board meeting and public hearing regarding formal action on revised Code.
 - J. **August 5th**: Heil shall deliver final revised Code to City Council incorporating Planning Board actions along with support memo (25 copies for City Council, city staff, and general public).
 - K. **August 23rd**: Heil shall attend regular City Council public hearing regarding adoption of revised Code.
 - L. **September 6th**: Heil shall provide supplement/revisions to Code based on direction and action at August 30th, City Council meeting.
 - M. **September 13th**: Heil shall attend regular City Council public hearing regarding adoption of revised Code.
 - N. **September 28th**: Heil shall provide 25 hard copies of final adopted Code for city staff, Planning Board and City Council, and electronic copy of final adopted Code in Microsoft

Word Document format and Adobe PDF format suitable for inclusion on City of Red Lodge website.

5. Payment Schedule: Red Lodge agrees to pay Heil according to the following payment of schedule.
- A. Heil shall be paid a total flat fee of **\$22,000.00** for performance of the Scope of Services and provision of Deliverables, which flat fee shall be all inclusive of all costs and expenses, including Heil's time, Heil's assistant's time, I-Stuff's costs as a sub-contractor retained by Heil, expenses related to travel, lodging, copying, mailing, long distance phone calls, and other related expenses. Heil is responsible for all of his own corporate, professional and liability expenses. Payments shall be made by invoice as provided below.
 - B. This Contract contemplates a contingency of \$3,000.00 for additional work or trips to Red Lodge not specifically identified in the Scope of Services or Deliverables in this Contract. Heil agrees to perform such additional work as may be desired by Red Lodge to complete this project. Such additional work shall be billed at the rate of \$85/hour for Heil's time, \$25/hour for Heil's assistant's time, and \$60/hour for Judy Schaefer's (I-Stuff) time, plus all expenses including but not limited to travel, lodging, car rental, copying, mailing, and long distance phones calls shall be reimbursable by Red Lodge. Heil and Red Lodge may negotiate a fixed flat fee and amended Scope of Services/Deliverables for additional work.
 - C. Red Lodge may desire to alter, amend or revise the proposed schedule and deliverables set forth in this Contract. Additional work shall not include rescheduling of meeting attendance or dates for deliverables. Additional work shall include attendance at additional meetings in excess of the number of meetings identified in this Contract, additional drafts of the revised Code in excess of the number of drafts identified in this Contract, and expansion of the Scope of Work beyond the identified scope of work in this Contract.
 - D. Red Lodge agrees to pay Heil's invoices in accordance with the schedule below only if Heil provides such services and deliverables in accordance with the schedule set forth in this Contract and as may be modified or refined by mutual agreement.
 - E. Heil shall submit an invoice in PDF format to the City of Red Lodge by e-mail to redlodgeplanning@vcn.com on the last day of the calendar month. Heil's invoice shall be payable no later than the 20th day of the next month; unless disputed by Red Lodge. Invoices shall be in the following amounts:
 - (i) April 30th invoice: \$2,600.00
 - (ii) May 31st invoice: \$4,800.00
 - (iii) June 30th invoice: \$6,600.00
 - (iv) July 31st invoice: \$2,100.00
 - (v) August 31st invoice: \$2,100.00
 - (vi) September 30th invoice: \$1,600.00
 - (vii) Final Invoice: \$2,200.00 (10% retainage) to be submitted upon acceptance of final deliverables, which shall be due and payable by the 20th of the month following the month the invoice is submitted.

CONTRACT FOR SERVICES BETWEEN HEIL AND THE CITY OF RED LODGE
RE: REVISIONS TO CODE OF LAND USE REGULATIONS – 4-12-05

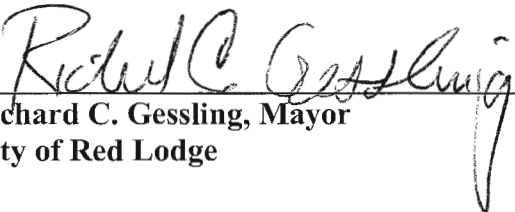
- F. Red Lodge agrees that payments not received in accordance with Paragraph E. shall accrue interest at the rate of 12% per year, compounded monthly, on the outstanding balance due.
6. Termination: Red Lodge may terminate this Contract at any time, with or without cause, by providing written notice to Heil. Red Lodge shall be responsible for paying for all services under this Contract up to the time of providing a notice of termination.
7. Disputes: In the event of a dispute regarding the performance of this Contract, the prevailing party shall be entitled to recover all reasonable legal and other costs related to enforcing performance of this Contract and/or recovering damages for failure to perform this Contract.

CONTRACT READ, UNDERSTOOD, AND AGREED:

BY:

**Eric James Heil, individually and as
Owner/Principal of E.J. Heil, P.C.**

BY:



**Richard C. Gessling, Mayor
City of Red Lodge**