

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING  
AN AGREEMENT FOR PROFESSIONAL SERVICES WITH TED BORCHELT AND  
JANA DILLARD OF ASPEN SNOWMASS SOTHEBY'S INTERNATIONAL REALTY  
TO PERFORM REAL ESTATE BROKER SERVICES FOR THE SALE OF 29 AND 30  
30 SHINING MOUNTAIN WAY**

**Town of Basalt  
Resolution No. 20  
Series of 2019**

**RECITALS**

- A. The Town of Basalt is in need of real estate brokerage services (the "Services") with respect to the sale of real property the Town owns at 29 and 30 Shining Mountain Way in Old Snowmass (the "Property").
- B. Pursuant to the Town of Basalt Procurement Policy, the Town issued a Request for Proposals (RFP) for such brokerage services (the "Services") and, upon review and after interviewing the persons submitting proposals, wishes to select Ted Borchelt and Jana Dillard of Aspen Snowmass Sotheby's International Realty to provide the Services and wishes to enter an Agreement for Professional Services for the Services.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Basalt, Colorado:

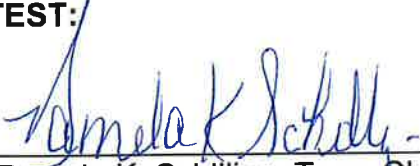
1. Recitals. The foregoing recitals are incorporated herein as findings of Town Council.
2. Professional Services. The Town Council hereby selects Ted Borchelt and Jana Dillard of Aspen Snowmass Sotheby's International Realty to provide the Services and approves Agreement for Professional Services in substantially the same form as set forth in **Exhibit A**, as determined to be satisfactory to the Town Attorney, and authorizes the Town Manager or Mayor to execute the same. The Town Council further authorizes Town Manager to take such further actions as are necessary to implement the terms of the Professional Services Agreement and direct Ted Borchelt and Jana Dillard of Aspen Snowmass Sotheby's International Realty in the performance of the Services.

**READ AND ADOPTED** on April 23, 2019, by a vote of 5 to 0 with 1 abstention.

**TOWN OF BASALT, COLORADO**

By:   
\_\_\_\_\_  
Jacque R. Whitsitt, Mayor

**ATTEST:**

By:   
\_\_\_\_\_  
Pamela K. Schilling, Town Clerk



## EXHIBIT A

### AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 3<sup>rd</sup> day of May, 2019 by and between the TOWN OF BASALT, COLORADO, a home rule municipality (the "Town"), and Ted Borchelt and Jana Dillard of Aspen Snowmass Sotheby's International Realty ("Contractor").

WHEREAS, the Town desires that Contractor perform the services of real estate broker for the sale of property located at 29 Shining Mountain Way and 30 Shining Mountain Way as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in the Exclusive Right-to-Sell Listing Contract attached hereto as **Exhibit A**; and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the services in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Services. The Town agrees to retain Contractor to provide the services set forth herein and as further specified in the Exclusive Right-to-Sell Listing Contract attached hereto as **Exhibit A** and incorporated herein by reference ("Services"), and Contractor agrees to so serve. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein. In the event of any conflict between this Agreement and **Exhibit A**, the provisions of this Agreement shall prevail.

2. The Town's Obligations/Confidentiality. The Town shall provide Contractor with reports and such other data/information as may be available to the Town and reasonably required by Contractor to perform hereunder and Contractor is entitled to rely on that information. No project information shall be disclosed by Contractor to third parties without prior written consent of the Town or pursuant to a lawful court order directing disclosure. All documents provided by the Town to Contractor shall be returned to the Town at termination of this Agreement. Contractor is authorized by the Town to retain copies of such data and materials at Contractor expense during the term of this Agreement.

3. Compensation. Subject to annual appropriation, the Town agrees to pay Contractor for the Services in accordance with the commission set forth in **Exhibit A**.

4. Term. The Term of this Agreement shall be from the date first written above until December 31, 2019, unless extended by written agreement of the parties.

5. Outside Support Services and Sub-Contractor. Any sub-Contractors shall be pre-approved by the Town. A rate sheet for such sub-Contractors shall be provided to the Town.

6. Ownership of Instruments of Service. The Town acknowledges the Contractor's work product, including electronic files, as instruments of professional service. Nevertheless, the final work product prepared under this Agreement shall become the property of the Town upon completion of the services and payment in full of all monies due to the Contractor.

7. Monitoring and Evaluation. The Town reserves the right to monitor and evaluate the progress and performance of Contractor to ensure that the terms of this Agreement are being satisfactorily met in accordance with the Town's and other applicable monitoring and evaluating criteria and standards. Contractor shall cooperate with the Town relating to such monitoring and evaluation.

8. Independent Contractor. The parties agree that the Contractor shall be an independent contractor and shall not be an employee, agent, or servant of the Town. **Contractor is not entitled to workers' compensation benefits from the Town and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.**

9. Insurance Requirements.

a. General. To the extent applicable, Contractor shall maintain insurance in the forms and amounts required by law and will provide copies of such policies upon request of the Town.

b. Workers' Compensation and Other Insurance. During the term of this Agreement, Contractor shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law. If under Colorado law Contractor is not required to carry workers' compensation insurance, Contractor shall provide the Town an executed Certificate of Exemption From Statutory Workers' Compensation Law and Acknowledgment of Risk/Hold Harmless Agreement.

c. Evidence of Coverage. Before commencing work under this Agreement, Contractor shall furnish to the Town certificates of insurance policies evidencing insurance coverage required by this Agreement. Contractor understands and agrees that the Town shall not be obligated under this Agreement until Contractor furnishes such certificates of insurance.

d. Subcontracts. Contractor agrees to include the insurance requirements set forth in this Agreement in all subcontracts. The Town shall hold Contractor responsible in the event any subcontractor fails to have insurance meeting the requirements set forth in this Agreement. The Town reserves the right to approve variations in the insurance requirements applicable to subcontractors upon joint written request of subcontractor and Contractor if, in the Town's opinion, such variations do not substantially affect the Town's interests.

10. Indemnification. Contractor hereby covenants and agrees to indemnify, save, and hold harmless the Town, its officers, employees, and agents from any and all liability, loss, costs,

charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or omission or other tortious conduct of Contractor, its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

11. Termination.

a. Generally.

(i) The Town may terminate this Agreement without cause if it determines that such termination is in the Town's best interest. The Town shall effect such termination by giving written notice of termination to Contractor, specifying the effective date of termination, at least thirty (30) calendar days prior to the effective date of termination. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Services performed as of the effective date of termination, if any, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination unless otherwise instructed in writing by the Town.

(ii) Contractor may terminate this Agreement without cause if it determines that such termination is in Contractor's best interest. Contractor shall effect such termination by giving written notice of termination to the Town, specifying the effective date of termination, at least sixty (60) calendar days prior to the effective date of termination.

b. For Cause. If, through any cause, Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, and does not commence correction of such nonperformance or violation within seven (7) calendar days of receipt of written notice and diligently complete the correction thereafter, the Town shall have the right to terminate this Agreement for cause immediately upon written notice of termination to Contractor. In the event of such termination by the Town, the Town shall be liable to pay Contractor for Services performed as of the effective date of termination, but shall not be liable to Contractor for anticipated profits. Contractor shall not perform any additional Services following receipt of the notice of termination. Notwithstanding the above, Contractor shall not be relieved of liability to the Town for any damages sustained by the Town by virtue of any breach of this Agreement, and the Town may withhold payment to Contractor for the purposes of setoff until such time as the exact amount of damages due to the Town from Contractor is determined.

12. Work By Illegal Aliens Prohibited. This paragraph shall apply to all Contractors whose performance of work under this Agreement does not involve the delivery of a specific end product other than reports that are merely incidental to the performance of said work, or information technology services or information technology products and services. Pursuant to Section 8-17.5-101, C.R.S., *et. seq.*, Contractor warrants, represents, acknowledges, and agrees that:

a. Contractor does not knowingly employ or contract with an illegal alien.

- b. Contractor shall not knowingly employ or contract with an illegal alien to perform works or enter into a contract with a subcontractor that fails to verify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- c. Contractor has participated in or attempted to participate in the basic pilot employment verification program created in Public Law 208, 104<sup>th</sup> Congress, as amended, and expanded in Public Law 156, 108<sup>th</sup> Congress, as amended, administered by the Department of Homeland Security (hereinafter, "E-Verify") in order to verify that Contractor does not employ illegal aliens. If Contractor is not accepted into E-Verify prior to entering into this Agreement, Contractor shall forthwith apply to participate in E-Verify and shall submit to the Town written verification of such application within five (5) days of the date of this Agreement. Contractor shall continue to apply to participate in E-Verify, and shall certify such application to the Town in writing, every three (3) months until Contractor is accepted or this Agreement is completed, whichever occurs first. This Paragraph 9 shall be null and void if E-Verify is discontinued.
- d. Contractor shall not use E-Verify procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- e. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall be required to:
  - (i) notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - (ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in subsection 8-17.5-102(5), C.R.S.
- g. If Contractor violates this Paragraph, the Town may terminate this Agreement for breach of contract. If this Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the Town arising out of said violation.

13. Compliance with C.R.S. § 24-76.5-103. *NOT APPLICABLE.*

14. Use of Software and other Intellectual Property. Contractor hereby represents and warrants that it has obtained all necessary rights and licenses to use any software or other intellectual property that may be required by Contractor to perform the Services. Contractor hereby agrees to indemnify, hold harmless and defend Town against any claim brought against Town for improper use or infringement upon any software or intellectual property interest.

15. Agreement Subject to Appropriation. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the Town, it shall be subject to annual appropriation pursuant to the Town of Basalt Municipal Code and Article X, Section 20 of the Colorado Constitution. The Town shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

16. Responsibilities. Contractor shall be responsible for all damages to persons or property caused by the Contractor, its agents, employees or sub-Contractors, to the extent caused by its negligent acts, errors and omissions hereunder, and shall indemnify and hold harmless the Town from any claims or actions brought against Contractor by reason thereof.

17. Entire Agreement. This Agreement, **along with any addendums and attachments hereto**, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

18. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Garfield, State of Colorado.

19. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*

20. Assignability. Contractor shall not assign this Agreement without the Town's prior written consent.

21. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns.

22. Survival Clause. The "Indemnification" provision set forth in this Agreement shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

23. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

24. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

25. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the Town:                      Town Manager  
   101 Midland Avenue  
   Basalt, CO 81621

With a copy to:                      Jeffrey J. Conklin  
   Karp Neu Hanlon, P.C.  
   201 14<sup>th</sup> Street, Suite 200  
   P.O. Drawer 2030  
   Glenwood Springs, CO 81602

If to Contractor:                      Aspen Snowmass Sotheby's International Realty  
   Attn: Ten Borcheldt  
   PO Box 650  
   Basalt, CO 81621

   Aspen Snowmass Sotheby's International Realty  
   Attn: Jana Dillard  
   PO Box 650  
   Basalt, CO 81621

26. Authority. Each person signing this Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

27. Attorneys' Fees. Should this Agreement become the subject of litigation between the Town and Contractor, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

~ Signature Pages Follow ~





