



City of Ketchum

March 15, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Authorize Mayor to Enter Into Contract 20599 for Phase 2 work with Logan Simpson

Recommendation and Summary

Staff is recommending the council authorize the Mayor to enter into Contract 20599 with Logan Simpson for Phase 2 work and adopt the following motion:

I move to authorize the Mayor to enter into Contract 20599 with Logan Simpson

The reasons are as follows:

- A request for proposal was originally issued for assistance in identifying regulatory options related to preservation of buildings and preparation of design guidelines.
- Logan Simpson submitted a proposal, was selected and completed for Phase 1 services and is now ready to undertake Phase 2 services. Staff is recommending the Council approve the contract for Phase 2 services.

Introduction and History

On October 19, 2020 the City Council adopted a 90-day ordinance pausing the demolition of potentially historic structures in the community core. During this 90-day period, the 2005 and 2006 survey of potentially significant structures was updated and on January 15, 2021 the City Council adopted Interim Ordinance 1216. The interim ordinance will be in effect for one year.

As identified in the original request for proposal, the project consisted of two phases. Phase 1, was completed within the 90-day ordinance timeframe, and Phase 2 will occur during the interim ordinance time frame of one year.

Phase 2 consists of detailed evaluation of the 26 buildings on the list of historic structures to determine which properties will remain on the list and if any other properties should be added to the list, preparation of a permanent ordinance, community outreach and preparation of design guidelines to assist developers in designing buildings that reflected the scale, character and design objectives of the community. A draft contract and scope of work is provided in Attachment A.

Analysis

As identified in the Logan Simpson scope of work, they have extensive experience assisting communities in developing ordinances, design guidelines and handbooks. They have worked with communities within Idaho and other mountain resort communities.

Financial Impact

The proposed cost for the Phase 2 work will be \$80,000. During the FY21 budget development process, the Council appropriated \$50,000 for an update to the Zoning Code. Staff is proposing to utilize those funds as many of the outcomes of this project will address similar goals. Staff would propose to utilize planning/building development revenues from this fiscal year as we are trending well over the approved budget.

Attachment:

Proposed Contract 20599

INDEPENDENT CONTRACTOR AGREEMENT 20599

THIS AGREEMENT made and entered into this ____ day of _____, 2021, by and between the CITY OF KETCHUM, IDAHO, a municipal corporation (hereinafter referred to as "Ketchum") and LOGAN SIMPSON DESIGN INC. (hereinafter referred to as "Contractor").

FINDINGS

1. Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho.
2. Contractor will provide services to the City of Ketchum consistent with the services identified in Attachment A.
3. Pursuant to Idaho Code §§ 50-301 and 50-302, Ketchum 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.
4. Contractor desires to enter into an Agreement with Ketchum to provide such services all as hereinafter provided.

NOW, THEREFORE, the parties hereto covenant and agree as follows:

1. **SERVICES RECEIVED.** Contractor agrees to provide those services described in Attachment A for Phase 2. Additional optional services will be determined during the Phase 2 work. Contractor shall be responsible for all associated taxes, workers compensation and other related expenses.
3. **TERM.** The term of this Agreement shall commence on the date the Agreement is signed and shall terminate February 1, 2022.
5. **CONSIDERATION.** In consideration for providing the services as herein provided, Ketchum agrees to pay to Contractor a not to exceed amount of \$80,000 for Phase 2 services. Additional services and payment as identified in the scope of work may be authorized on a case by case basis.

All invoices shall be paid by the City within sixty (60) days of receipt of proper invoice. Uncontested invoices paid after sixty days may be subject to a 1.5% per month late charge applied to the outstanding balance, including late charges.

7. **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.
8. **RECORDS ACCESS AND AUDITS:** Contractor shall maintain complete and accurate records with respect to costs incurred and hours 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.

9. **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.
10. **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.
11. **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.
12. **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.
13. **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.
14. **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.
15. **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.
16. **GENERAL ADMINISTRATION AND MANAGEMENT:** The Director of Planning and Building 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. **NOTICES.** All notices to be served pursuant to this Agreement or which are served with regard to this Agreement shall be sent by general mail to the parties at the following addresses:

Director of Planning and Building	Bruce Meighen, AICP
City of Ketchum	Logan Simpson
Post Office Box 2315	213 Linden Street
Ketchum, ID 83340	Suite 300
	Fort Collins Colorado, 80524

20. **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.
21. **TERMINATION.** Notwithstanding any contrary provision of this Agreement, either party may terminate this Agreement effective upon thirty (30) days written notice to the other for any reason or no reason. In addition, the parties agree that in the event Contractor refuses or is unable to provide the services set forth hereinabove, the same shall constitute a default under the terms of this Agreement, and that Ketchum shall have the power to terminate this Agreement upon two (2) days' written notice to Contractor. Furthermore, this Agreement shall be terminable by Ketchum upon five (5) days' written notice if Contractor is adjudicated bankrupt, or subject to the appointment of a receiver, or has any of its property attached, or becomes insolvent, or is unable to pay its debts as the same become due. Upon termination, the Contractor shall be paid for all undisputed services performed to the termination date. No refund of funds paid shall occur if the Agreement is terminated.
22. **NONASSIGNMENT.** This Agreement, in whole or in part, shall not be assigned or transferred by Contractor to any other party except upon the prior written consent of Ketchum and approved by the Ketchum City Council.
23. **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: City Administrator
PO Box 2315
Ketchum, ID 83340

24. **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.
25. **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.
26. **SEVERABILITY:** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.
27. **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.
28. **EFFECTIVE DATE:** The effective date of this Agreement shall be the day this Agreement is signed by the City.
29. **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.
30. **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.
31. **HOLD HARMLESS AGREEMENT.** The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless Ketchum, its officers, directors and employees (collectively, Ketchum) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Contractor's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Contractor is legally liable.

Neither Ketchum nor the Contractor shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

32. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties hereto and shall not be modified or changed in any manner, except by prior written agreement executed by the parties hereto. If any term or provision of this Agreement or application thereof shall be declared invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and years first written above.

LOGAN SIMPSON

CITY OF KETCHUM

By

Bruce Meighen, AICP

By

Neil Bradshaw
Mayor

ATTEST:

By

Katrin Sharp, Interim City Clerk