



City of Ketchum

June 21, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Independent Contractor Agreement #20638 with Spur Community Foundation, Inc.

Recommendation and Summary

Staff is recommending the City Council approve Independent Contractor Agreement #20638 with Spur Community Foundation, Inc. for services associated with the city's capital campaign to acquire Warm Springs Ranch. The Agreement is attached as presented by the Spur Community Foundation. Comments from the city attorney have been transmitted to Spur and we expect to have an approved document.

"I move to approve contract #20638 between the city and Spur Community Foundation, Inc. to provide funds associated with the city's capital campaign to acquire Warm Springs Ranch, upon approval by city attorney.

The reasons for the recommendation are as follows:

- The city intends to acquire Warm Springs Ranch at the purchase price of \$9M solely through private funds
- All funds will be collected and held by the Spur Community Foundation to ensure confidentiality of donors

Introduction and History

On April 19, 2021, the city entered into a purchase agreement with Bob Brennan to acquire 65 acres of the 78 acres of Warm Springs Ranch and plans to purchase the land with donations. The city has contracted with Nested Strategies as the capital campaign lead organizer. A campaign committee has been formed to assist in the efforts to acquire donations.

Due to the sensitivity involved in procuring large donations, staff recommends the city engage the Spur Community Foundation as the fiduciary agent for the Warm Springs Preserve Project. Spur would hold all contributions received from donors, provide weekly updates on the amount of funds donated to Spur for the project, and provide the funds to the city for the acquisition of the property.

Sustainability Impact

There is no sustainability impact.

Financial Impact

This contract will be funded from unallocated general fund revenues in the current fiscal year.

Attachment:

1. Independent Contractor Agreement #20638 - DRAFT



draft May 27, 2021

Our mission is to inspire effective philanthropy for the Wood River Valley by expanding funding to the sector, fostering excellence and accountability among nonprofits, and helping donors give wisely.

GRANT AGREEMENT

- 1.1 Date: _____
- 1.2 Spur: Spur Community Foundation, Inc., an Idaho nonprofit corporation that is recognized by the IRS as a 501(c)(3) public charity. EIN 81-2375057
- 1.3 City (or Grantee): City of Ketchum, an Idaho municipal corporation
- 1.4 Grant Name: Warm Springs Park Grant
- 1.5 Grant Purpose: City has the option to purchase the Warm Springs Ranch property and related water rights (the “**Property**”) pursuant to Option Agreement 20610 dated April 28, 2021 (the “**Option Agreement**”). City desires to purchase the Property for use as passive public park for open space (the “**Charitable Use**”). The purpose of the Grant is to provide funds to City for the acquisition and use of the Property for the Charitable Use.
- 1.6 Amount of Grant Funds: All funds held by Spur for the Grant, which will be the sum of all contributions received from donors for the Warm Springs Park Grant Fund administered by Spur. Spur will provide City with regular updates (usually weekly) on the amount of funds donated to Spur for the Grant. Spur does not guarantee that the Grant funds will be sufficient for City’s purposes.
- 1.7 Grant Requirements: Spur’s obligation to issue the Grant is subject to City meeting the following conditions to Spur’s reasonable satisfaction prior to the Requirements Deadline:
- (a) City remains a governmental entity or public charity that is eligible to receive 501(c)(3) donations from Spur;
 - (b) City exercises its option to purchase the Property under the Option Agreement;
 - (c) City provides Spur with reasonable evidence that City has sufficient funds, with the Grant Amount, to acquire the Property; and

- (d) City provides Spur with reasonable evidence that City is ready, willing and able to comply with all of City's other obligations related to the acquisition, development and use of the Property.
- 1.8 Requirements Deadline: Spur's obligations under this Grant Agreement will expire on the earliest to occur of (a) April 30, 2022, or (b) any earlier termination of City's option to purchase the Property under the Option Agreement for any reason; provided, however, Spur may extend the Grant Deadline by written notice to City.
- 1.9 City Information Reporting: City must promptly notify Spur of any event or occurrence (known to City) that may materially affect City's ability to meet the Grant Requirements or perform any of the Post-Grant Obligations. City must promptly notify Spur if any City learns that any information previously provided by City to Spur is not true and correct in all material respects.
- 1.10 Payment of Grant Funds: If Spur determines that City has met the Grant Requirements, then Spur will endeavor to distribute Grant funds then available for distribution to City at a mutually convenient date that allows City to use the Grant funds for the closing of its purchase of the Property. In all events, distributions of Grant funds will be subject to the requirements and limitations of Section 4 of the Special Terms and Conditions.
- 1.11 Post-Grant Obligations: If the Grant is funded, then City will thereafter comply with the following obligations for the duration of the Compliance Period:
- (a) City will use Grant funds solely for the acquisition of the Property pursuant to the Option Agreement, provided that excess Grant funds received (if any) may be used in any manner consistent with the Charitable Purpose; and
 - (b) City will use the Property for the Charitable Use and no other purpose except incidental uses that are consistent with the Charitable Use.
- 1.12 Compliance Period: Ten (10) years, starting on City's acquisition of the Property.
- 1.13 Terms and Conditions: This Grant Agreement (this "Agreement") is comprised of these Basic Agreement Terms and Spur's current Standard Terms and Conditions for Grant Agreements, which is incorporated into this Agreement by this reference, and which are available from Spur upon request.
- 1.14 Administrative Fees/Expenses: To allow Spur to administer the Warm Springs Special Purpose Fund and this Grant Agreement, City will (*see Section 7 of the applicable Standard Terms and Conditions for additional terms*):
- (a) Pay Spur an administrative fee of \$5,000 per month commencing upon receipt of the first gift to the Warm Springs

Special Purpose Fund and continuing thereafter for the term of this Grant Agreement; and

- (b) Reimburse Spur for third-party expenses incurred by Spur in the administration of the Warm Springs Special Purpose Fund and this Grant Agreement.

This Grant Agreement is entered into as of the Effective Date by Spur and City.

“Spur”

SPUR COMMUNITY FOUNDATION, INC.,
an Idaho nonprofit corporation

By: _____

Name: Sally Gillespie

Title: Executive Director

Date: _____

Address: Spur Community Foundation, Inc.
Attn: Sally Gillespie, Executive Director
PO Box 6184
Ketchum, Idaho 83340

Email: Sally@SpurFoundation.org

Telephone: (208) 450-2607

“City”

CITY OF KETCHUM, an Idaho municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

Address: Ketchum City Hall
480 East Avenue North
PO Box 2315
Ketchum, Idaho 83340

Telephone: (208) 726-3841

Email: _____@ketchumidaho.org

City’s contact person for the Grant:

Office: _____



STANDARD TERMS AND CONDITIONS FOR GRANT AGREEMENTS

1. **GRANT REQUIREMENTS.** Grantee is responsible for providing us with any information and documents that we deem necessary to determine whether or not Grantee has met the requirements. If we determine that Grantee has not met the requirements, then we will notify Grantee of the basis of our determination and will work with Grantee in good faith to identify tasks that Grantee may take to secure the grants funds.

2. **DONOR ACKNOWLEDGEMENT.** Grantee may disclose the existence and terms of this Agreement, but Grantee agrees not to disclose the identity of any donor to the Fund unless we approve the disclosure in advance, or the applicable donor separately so authorizes Grantee. After receipt of the Grant, Grantee will publicly identify “Spur Community Foundation” as the granting entity, and Grantee will provide donor credit as instructed by Spur; provided, however, Grantee is free to honor (and expected to reasonably honor) any separate donor credit instructions provided by the donor to Grantee directly (but only with respect to the instructing donor).

3. **GRANT PUBLICITY.** Unless otherwise set forth in this Agreement, Grantee may engage in any truthful, tasteful and appropriate publicity activities related to the Grant as Grantee deems appropriate. Spur requests that Grantee inform Spur of Grantee’s publicity efforts, including timely copies of news releases and advertisements for public events.

4. **GRANT FUNDING.** Spur will fund the Grant only as provided in this Agreement and any agreement or restriction related to the funds for the Grant; provided, however, Spur will not make any distribution that would (a) discharge or satisfy a legally enforceable pledge or obligation of any person; (b) result in the receipt of goods, services or other specific benefits to any person; or (c) violate applicable law (as reasonably determined by Spur). In general, Spur will release Grant funds to Grantee in a mutually convenient time, place and manner (with attention to allowing Grantee to use the grant funds for the purpose of the Grant). Grantee is responsible for providing Spur with ample advanced notice, clear release instructions and appropriate documentation (as requested by Spur) for all Grant funding requests, including documents required by Spur for record keeping, compliance, tax and donor relations purposes. Spur intends to follow, and expects Grantee to follow, then current best practices to minimize the risk of theft or diversion of Grant funds. Spur may condition the receipt of any grant funds on Grantee executing any agreement or covenant as Spur deems appropriate to ensure that Grantee remains qualified to receive the Grant and that the Grant funds will be used as required by Spur. Grantee acknowledges that some Grant funds may not be liquid or otherwise readily available for distribution when requested by Grantee.

5. **PLEDGES.** For the convenience of donors (and other reasons), Spur may accept pledges of future donations from donors. In that event, the pledges will be subject to the terms thereof, including terms that may make the pledged practically or legally enforceable. Further, pledged donations will be subject to the payment thereof by the pledging donor. Spur will not be under any obligation to take legal action against any donor that fails to contribute pledged funds in accordance with the applicable pledge agreement.

6. **REPORTS; PUBLICITY.** To further Spur’s mission to inspire effective philanthropy, Spur periodically publishes reports about its activities to Grantees and the general public, and Spur periodically publishes news releases and other materials to honor its supporters. Grantee agrees that Spur may use any non-confidential information related to the Grant in Spur’s news releases, reports and publicity activities.

7. **ADMINISTRATIVE EXPENSES.** If the Grant Agreement provides that Grantee will pay an administrative fee to Spur, then the applicable administrative fee will be due in advance on the first day of each

calendar month during the term of the Grant Agreement. If the Grant Agreement provides that Grantee will reimburse Spur's administrative expenses with respect to the Grant, then Spur will provide invoice Grantee each month for the administrative fees incurred during the prior month; provided, however, Spur may invoice Grantee in advance for any extraordinary administrative expenses. Unless otherwise provided in the Grant Agreement, reimbursable expenses will include expenses that are customarily incurred in the proper administration of the grant agreements (e.g., reproductions, postage, communications, filing fees, accounting, reports, etc.) and any special expenses reasonable necessary for the Grant Agreement (e.g., legal fees, necessary travel and subsistence). All invoices are due upon receipt. Any amounts not paid within 15 days after receipt will bear interest at the legal rate in Idaho. If Grantee disputes any administrative fee or reimbursable expense, then Grantee must promptly notify Spur and engage in good faith efforts with Spur to resolve the dispute prior to the date administrative fee or reimbursable expense is due. Grantee's failure to timely pay all administrative fees and reimbursable expenses when due is a material breach of this Grant Agreement, and Spur may elect to suspect any or all of its obligations under the Grant Agreement until the breach is cured.

8. **CONFLICTS OF INTEREST PROHIBITED** . Spur's policy is to prohibit any Spur employee, officer or director from material engagement in any Grant that was created (directly or indirectly) by any related person (i.e., any person related to the Spur employee, officer or director by blood or marriage, to the second degree). Spur's policy also prohibits any Spur employee, officer or director from material engagement in any grant to a grant recipient in which the employee, officer or director (or related person) holds a management or financial interest. Spur welcomes any Grantee or advisor to report any conflict of interest concerns to Spur directly.

9. **DISCRIMINATION PROHIBITED**. Spur's policy is to condition grants on the grant recipient's agreement to comply with Spur's anti-discrimination requirements; provided, however, if consistent with applicable law, Spur may allow Grantee to have preferences where the preferences serve the charitable purposes of the grant.

10. **INTEGRITY**. Grantee covenants, represents and warrants that any statements, documents, reports or information provided by Grantee to Spur (excluding third-party reports) regarding the Grant will, to the best of Grantee's knowledge, information and belief (after due inquiry) at the time provided to Spur: (a) be true and correct in all material respects; (b) not contain any untrue statement of material fact; and (c) not omit a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If Grantee discovers that any document, report or information previously provided by Grantee to Spur failed to comply with the foregoing sentence at the time it was provided to Spur, Grantee will promptly (x) notify owner of the specific statement, document, report or information in question; (y) the nature of the failure to comply with the foregoing sentence; and (z) if known, the information that would have made the prior statement, document, report or information comply with the foregoing sentence.

11. **DISPUTE RESOLUTION**. Because litigation can be expensive, burdensome and time consuming, Grantee and Spur agree that it is in their mutual best interests to provide a fair, impartial and expeditious alternative to litigation for the resolution of any disputes that may arise under this Agreement. Accordingly, if Grantee believes that Spur has breached any of Spur's obligation to Grantee under this Agreement, then the dispute will be resolved by an individual arbitration conducted by a single arbitrator in accordance with Idaho's Uniform Arbitration Act. Unless otherwise agreed, the arbitrator will be any arbitrator (without a disqualifying conflict) appointed for the dispute by the Idaho Mediation Group, or if none is promptly appointed after a request, as may appointed under the Arbitration Act at the request of either party. The arbitrator will set the rules, procedures, cost sharing and schedule for the arbitration, it being the intent of the parties that the arbitration be as expeditious, inexpensive and informal as the nature of the dispute permits (e.g., a dispute that could reasonably be resolved using small claims court or small lawsuit style rules ought to be resolved using those rules). The arbitrator may, in his/her discretion, award the substantially prevailing party some or all of the arbitration costs and reasonable attorneys' fees as part of the arbitration award.

12. **LIMITATIONS OF LIABILITY.** In no event will Spur, Grantee or any advisor (or the officers, directors or employees of any of them) be liable or responsible to each other (or any third parties) for any type of incidental, punitive, indirect or consequential damages, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

13. **MISCELLANEOUS.** This Agreement will be governed by Idaho law. This Agreement embodies the entire agreement of the parties with respect to the transaction herein contemplated, and supersedes all prior representations or agreements, whether oral or written. There are no third party beneficiaries to this Agreement, and no third party will have any benefits or rights hereunder. If any provision of this Agreement is prohibited or unenforceable, the provision will be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions hereof. The headings in this Agreement are for convenience of reference only and will not affect the interpretation thereof. The word “including” is without limitation, as if the words “but not limited to” appear immediately thereafter. No one has the authority to amend this Agreement except in a written instrument, and Grantee agrees not to accept or rely on any oral statements or promises to the contrary.