



## City of Ketchum

April 14, 2022

Mayor Bradshaw and City Councilors  
City of Ketchum  
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

### **Recommendation to approve Contract # 22079 For Flower services**

#### Recommendation and Summary

Staff is recommending the council to approve Contract # 22079 with Lily and Fern Landscaping for city flowers and adopt the following motion:

**"I move to approve Contract # 22079 for an amount not to exceed \$18119.24 with Lily and Fern Landscaping and authorize the mayor to sign the Contract."**

The reasons for the recommendation are as follows:

- The City has had a positive experience on prior contracts with the contractor.
- FM is currently not staffed to do this work in house.

#### Introduction and History

Each year the city contracts with a company to plant flower beds on 4<sup>th</sup> Street, Forest Service Park and Town square, grow hanging baskets and inserts for big concrete planters for various locations. The contractor also provides maintenance once a week for 12 weeks and removes annuals and cut perennials at the end of the growing season.

#### Analysis

The contract involves periodic work throughout the growing season. The sporadic and specialized nature of the work makes this task preferable to contract to landscape firms. We have found this to be a cost-effective solution.

#### Financial Impact

A not-to-exceed contract amount of \$18,119.24 is budgeted in the facility maintenance division's City Beautification line item.

#### Attachments:

- Attachment A: Contract # 22079
- Attachment B: Lily and Fern Contract Summary
- Attachment C: Purchase order 22079



City of Ketchum

## INDEPENDENT CONTRACTOR AGREEMENT

### Contract # 22079

(City of Ketchum/ Whitehead Flowers dba Lily and Fern)

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into as of this 18<sup>th</sup> day of April, 2022, by and between THE CITY OF KETCHUM, an Idaho municipal corporation ("Ketchum"), and WHITEHEAD FLOWERS, LLC, dba LILY & FERN., an Idaho limited liability company ("Contractor").

### RECITALS

WHEREAS, Ketchum is a municipal corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, Pursuant to Idaho Code §50-301 *et seq.*, Ketchum is empowered to contract and be contracted with; and

WHEREAS, It is deemed in the best interest of Ketchum to contract with Contractor for certain City beautification services as set forth in more detail herein below (the "Services"); and

WHEREAS, Ketchum finds that contracting with Contractor for performance of the Services shall conserve economic resources and improve appearance throughout Ketchum in furtherance of the enjoyment of the residents and visitors of Ketchum.

NOW, THEREFORE, for the consideration recited herein below, Ketchum and Contractor enter this Agreement according to the following terms and conditions:

1. Incorporation of Recitals. The Recitals set forth herein above are hereby incorporated into and made an integral part of this Agreement.
2. The Services. Contractor shall perform flower/beautification services in Ketchum as follows:
  - a. Contractor shall perform services as outlined in attached proposal dated September 29, 2021 and approved by the City Council on April 18, 2022.
  - b. Contractor shall provide professionally trained and duly licensed drivers, and safe, Idaho-licensed, Idaho-registered, well-maintained equipment necessary to perform City beautification services designated by the Director of Streets and Facilities or any other employee of Ketchum designated by such Department Head. Ketchum shall have no responsibility for the security or protection of, maintenance of or damage to, Contractor's supplies or equipment.

- c. Contractor shall communicate directly with the Facilities Maintenance Supervisor regarding work to be performed as outlined in attached documentation and is required to obtain permission prior to performing any work outside the attached document's scope.
  - d. Contractor shall provide all tools, equipment, materials and services to complete and perform the Services, including without limitation, fuel for Contractor's trucks and all maintenance and repair of Contractor's trucks and trailers.
  - e. Ketchum shall not provide meals or any benefits whatsoever to Contractor, its officers, directors, shareholders, members, managers, agents or employees at any time, including without limitation, during breaks.
3. Payment for Services.
- a. In exchange for services, Ketchum will pay contractor based upon review and approval of work invoiced. Total amount of contract is not to exceed \$18,119.24.
4. Waiver. If Contractor requests Ketchum's assistance in any matter such as labor, equipment, or traffic control and Ketchum is able and willing to assist Contractor, Contractor hereby agrees to hold Ketchum, its employees and elected officials harmless and waives, releases, acquits, and forever discharges and indemnifies Ketchum, its employees and elected officials from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation, in any manner related to or arising from such assistance. Such assistance shall be purely voluntary and this Paragraph 4 shall not create or imply the creation of any agreement or obligation on the part of Ketchum.
5. Time of Performance. Contractor shall provide the Services on an "on call" basis as designated by the Facilities Maintenance Supervisor and shall complete such services in a professional and timely manner.
6. Term. This Agreement shall be effective as of the date first above written, and be in full force and effect until May 1, 2023, at which time it shall terminate and neither Party hereto shall have any continuing obligations to the other hereunder. The City may terminate this agreement for any reason upon thirty days written notice to Contractor.
7. Independent Contractor. Ketchum and Contractor hereby agree that Contractor 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. Contractor, its managers, members, directors, officers, shareholders, 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. Contractor shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to

Contractor under this Agreement and for Contractor's payments for work performed in performance of this Agreement by Contractor's managers, members, directors, officers, shareholders, agents and employees; and Contractor 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.

8. Warranty. Contractor warrants that all equipment used to perform this Agreement will function safely, properly, and efficiently and that all services will be performed in a safe, professional and workmanlike manner. Contractor agrees and warrants that all of Contractor's drivers are duly licensed to and capable of operating the equipment contemplated in this Agreement safely and efficiently in adverse or extreme road and weather conditions and that Contractor and its drivers shall obey all traffic laws, drive safely and professionally, and act in a polite professional manner. Contractor warrants and agrees that under no circumstances while performing the Services shall Contractor or any of its drivers be under the influence of any alcohol or other legal or illegal drugs or substances which may impair their driving skills, reaction time or judgment.

9. Indemnification. Contractor agrees to indemnify and hold Ketchum harmless from and against all claims, suits, damages (including without limitation, damages to persons and property including deaths), costs, losses, and expenses, in any manner related to or arising from the acts or omissions of Contractor, its managers, members, directors, officers, shareholders, agents and employees.

10. Registration. Contractor agrees to maintain all registration, license and insurance as required by the laws and decisions of the State of Idaho for all trucks and trailers used in the performance of this Agreement throughout the term of this Agreement. Contractor shall furnish proof of said registration, license and insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for.

11. Insurance. Contractor shall maintain public liability insurance in the amount of \$500,000.00 and workers compensation insurance from an insurance carrier licensed to do business in the State of Idaho, and furnish proof of said insurance to Ketchum prior to performing any of the Services or being entitled to any pay there for

12. Compliance with Laws/Public Records. Contractor, its managers, members, directors, officers shareholders, agents and employees shall comply with all federal, state and local laws, rules and ordinances. This Agreement does not relieve Contractor of any obligation or responsibility imposed upon Contractor by law. Without limitation, Contractor hereby acknowledges that all writings and documents, including without limitation email, containing information relating to the conduct or administration of the public's business prepared by Contractor for City regardless of physical form or characteristics may be public records pursuant to Chapter 1 of Title 74 of Idaho Code Contractor further acknowledges that, subject to certain limitations, the public may examine and take a copy of all such public writings and records. Accordingly, Contractor shall maintain such writings and records in such a manner that they may readily identified, retrieved and made available for such inspection and copying.

13. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by Ketchum pursuant to Paragraph 2 herein above shall be in writing. Notices to Ketchum and the Contractor shall be addressed as follows:

**KETCHUM:**

CITY OF KETCHUM  
BOX 2315  
Ketchum, ID 83340

**CONTRACTOR:**

Lily and Fern (Whitehead Flowers), LLC  
4302 Glenbrook Dr.  
Hailey, ID 83333

14. Non-Assignment. Contractor hereby acknowledges that Ketchum has agreed to enter this Agreement based in part on Contractor's unique skills and reputation for professional work. Accordingly, Contractor may not assign or transfer in any manner this Agreement or any of Contractor's right, title or interest in or to this Agreement without the prior written consent of Ketchum which may be withheld for any reason.
15. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.
16. Headings. The headings in the Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
17. Attorney Fees and Costs. In the event that either party hereto is required to retain the services of an attorney to enforce any of its rights hereunder, the non-prevailing party shall pay to the prevailing party all reasonable costs and attorney fees incurred in such enforcement, whether or not litigation is commenced and including reasonable costs and attorney fees on appeal.
18. No Presumption. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.
19. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.
20. Entire Agreement. This Agreement contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties hereto respecting such matter.
21. Execution and Fax Copies and Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
22. Authority. The parties executing this Agreement warrant, state, acknowledge, and affirm that they have the authority to sign the same and to bind themselves to the terms contained herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of this 18<sup>th</sup> day of April, 2022.

THE CITY OF KETCHUM,  
an Idaho municipal corporation

LILY AND FERN(WHITEHEAD FLOWERS),  
an Idaho limited liability company

By: \_\_\_\_\_  
Neil Bradshaw, Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Shellie Rubel  
Treasurer



**CITY OF KETCHUM**  
PO BOX 2315 \* 480 EAST AVE. \* KETCHUM, ID 83340  
Administration 208-726-3841 (fax) 208-726-8234

**PURCHASE ORDER**  
BUDGETED ITEM? \_\_\_\_ Yes \_\_\_\_ No

**PURCHASE ORDER - NUMBER: 22079**

<b>To:</b> 2859 LILY & FERN, LLC 4302 GLENBROOK DR HAILEY ID 83333	<b>Ship to:</b> CITY OF KETCHUM PO BOX 2315 KETCHUM ID 83340
--	---

P. O. Date	Created By	Requested By	Department	Req Number	Terms
04/12/2022	bancona	bancona		0	

Quantity	Description	Unit Price	Total
1.00	SEASONAL CITY FLOWERS 01-4194-4220	18,119.24	18,119.24
	SHIPPING & HANDLING		0.00
	TOTAL PO AMOUNT		18,119.24

\_\_\_\_\_  
Authorized Signature

## 2022 Ketchum City Seasonal Flowers

9/29/2021	Lily & Fern (Whitehead Flowers)			HB's/inserts	Delivery	Annuals/Per	Labor	Setup	Maint.	Takedown
<b>City Hall</b>			Each	Total						
0	18" WBox	0	\$38.21	\$0.00						
0	24" WBox	0	\$25.88	\$0.00						
0	30" WBox	0	\$58.97	\$0.00						
1	21" inserts	0	\$68.02	\$0.00					\$0.00	
6 hrs.	Maintenance	0	\$50.00	\$0.00					\$0.00	
4 hrs.	Take Down	0	\$50.00	\$0.00						\$0.00
<b>City &amp; Courtyard</b>										
32	16" HB's	32	\$60.23	\$1,927.36						
7	15" inserts	7	\$45.94	\$321.58						
10	18" inserts	10	\$64.43	\$644.30						
6	24" inserts	6	\$75.00	\$450.00						
190	4" Annuals	190	\$3.50			\$665.00				
756	6" Annuals/Perennials	756	\$6.50			\$4,914.00				
	Do not plant in the 6" border of all planting beds.									
32.5	Install hrs.	32.5	\$50.00				\$1,625.00			
48	Maintenance	48	\$50.00						\$2,400.00	
20	Fall Clean	20	\$50.00						\$1,000.00	
<b>Forest Service Park</b>										
30	4"	30	\$3.50			\$105.00				
18	6"	18	\$6.50			\$117.00				
4 hrs.	Spring Clean	4	\$50.00						\$200.00	
15 hrs.	Maintenance	15	\$50.00						\$750.00	
6 hrs.	Fall Clean	6	\$50.00						\$300.00	
	Fertilization / water truck	6	\$50.00						\$300.00	
\$1,000.00	Delivery (incl Street,FS)				\$1,000.00					
28 hrs.	Setup (incl Courtyard,Streets, FS)	28	\$50.00					\$1,400.00		
				\$3,343.24	\$1,000.00	\$5,801.00	\$1,625.00	\$1,400.00	\$4,950.00	\$0.00
	Totals			\$3,343.24	\$1,000.00	\$5,801.00	\$1,625.00	\$1,400.00	\$4,950.00	\$0.00
220 - 4"	May 2022 - \$4,530.00, June 2022 - \$4,530.00, July 2022 - \$4,530.00, August 2022 - \$4,530.00								2022 Total	\$18,119.24
774 - 6"									2021	\$15,511.65
									2020 Total	\$15,935.40
	Approval Signature: _____ Date: _____									