



City of Ketchum

CITY COUNCIL MEETING AGENDA MEMO

Meeting Date: Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

- Ketchum voters approved (72.25% in favor) in November of 2024 to form a stand-alone Ketchum Fire District. The newly created Fire District started its first fiscal year on October 1, 2025.
- On August 18, 2025, Council approved an MOU outlining the coordination of tasks between the city and the District to ensure a successful startup.
 - Transfer of personnel
 - Physical assets (including lease of facilities)
 - Start-up costs
 - On-going service coordination
- Fire Station Lease highlights:
 - City retains long-term ownership through payment of construction bonds and then transfers to Fire District. The transfer language does not legally bind a future city council. Should the future city council not be inclined to transfer the assets, the land lease continues.
 - Fire District will assume all operational facility costs under the lease. Any significant alterations or improvements to the facility require city approval.
- Training Facility Lease highlights:
 - Lease proposes transferring the training facility back to Fire District. They are responsible for any operational costs or upgrades.
 - Should the city desire to develop the property, the lease outlines a one-year notice provision to the District to relocate the training tower and associated training props. Should they not comply, the city has ability to clear the site.

Sustainability Impact:

Financial Impact:

Attachments:

1. Lease agreement 26997
2. Lease agreement 26998

**LEASE AGREEMENT BETWEEN
THE CITY OF KETCHUM AND THE KETCHUM FIRE DISTRICT
#26997 | Fire Station**

This Lease Agreement (hereinafter “Lease”) is entered into effect this 15th day of December, 2026, by and between the CITY OF KETCHUM, a municipal corporation of the State of Idaho, (“City”), and the KETCHUM FIRE DISTRICT, a fire district of the State of Idaho (“KFD”). The City and KFD may be referred to herein individual as a “Party” or collectively as the “Parties.”

RECITALS

A. The City has operated a fire department for many years, and owns and utilizes real property used for such purposes, including the real property identified in Exhibit A and located at 107 Saddle Rd., Ketchum, Idaho (“Property”).

B. There is a fire station and other buildings constructed on the Property.

C. The City utilizes the fire station, and portions of the Property immediately around the fire station, for fire department purposes, while other portions of the Property are not routinely utilized by the City;

D. The portion of the Property used by the City for the fire department is depicted in the image attached hereto as Exhibit B, and this portion of the Property be referred to herein as the “Premises;”

E. The Premises includes the areas outlined in red and hashed in orange on Exhibit B.

F. On November 5th, 2024, voters within the City of Ketchum approved the formation of the KFD, a new independent taxing entity comprising of the same geographic boundaries as the City.

G. It is the understanding of the Parties that KFD was established for the purpose of transferring fire department operations from the City to the newly established KFD;

H. In August of 2025, the Parties entered a Memorandum of Understanding (“MOU”) that detailed the intended future hand-off of fire departments operations from the City to KFD;

I. Section 4.3 of the MOU commits the Parties to negotiate and enter a lease for the Premises, and sets forth some basic preliminary terms for such lease;

J. Effective October 1, 2025, the KFD began utilizing the Premises, and it is anticipated by the Parties that—moving forward—the Premises will be used exclusively by the KFD;

K. The purpose of this Lease is to be the lease contemplated, and committed to, by the Parties in Section 4.3 of the MOU.

AGREEMENT

Now, therefore, the City and KFD agree as follows:

1. PREMISES.

- 1.1 **Premises Defined.** The City agrees to lease to, and KFD agrees to lease from the City, the Premises as illustrated in Exhibit B, including the building, parking lot, and other improvements located on the Premises. The Parties agree and recognize that the attached image in Exhibit B is not a survey, and therefore the boundary's depicted are an approximation. In the event any dispute arises regarding the true boundary lines for the Premises, the City and KFD agree to work cooperatively and in good faith to accomplish the intent of this Lease to resolve such dispute. The Parties agree and recognize that the parking lot (denoted in hashed lines on Exhibit B) shall be utilized in a non-exclusive manner.
- 1.2 **As-Is.** The City is leasing the Premises in "as-is" condition for the KFD's use. The City makes no representation regarding the condition of the Premises, or the improvements located on the same.

2. USE.

- 2.1 **Permitted Use.** KFD shall use the Premises for purposes necessary and related to the operation and administration of a fire district (the "Permitted Use") and for no other purpose unrelated to the administration and operation of a fire district. The Parties note that at the time this Lease was entered, there was and is a fire station constructed on the Premises that housed firefighting apparatus, equipment, and personnel, and that such use is expected to continue during the life of this Lease.
- 2.2 **Liens and Encumbrances.** KFD shall keep the Premises free and clear of any liens and encumbrances arising out of or related to its use or occupancy of the Premises. However, the Parties note that at the time this Lease was entered, the City owed an obligation for a bond indebtedness incurred by the City to finance the Construction of the fire station located on the Premises. This obligation will continue as an encumbrance on the Premises until satisfied by the City.

3. TERM.

- 3.1 **Term Defined.** The term of this lease shall be for 99 years unless terminated earlier by mutual agreement of the KFD and the City.
- 3.2 **End of Term.** Upon the expiration or termination of the Term, as applicable, this Lease will automatically renew unless specified in writing by either Party.

- 3.3 **Transfer Upon Satisfaction of Bond Obligation.** The Premises is presently burdened by a bond obligation incurred by the City for the purpose of financing the construction of the fire station. Upon satisfaction of the bond obligation by the City, it is the intent of the Parties that ownership of the Premises, and all improvements and appurtenances thereon, be transferred to the ownership of KFD with no additional financial obligation by/from KFD and that this Lease be terminated in conjunction with such transfer.

4. LEASE PAYMENT.

- 4.1 **Rent.** The consideration for this lease is the annual sum of one dollar (\$1.00), due and payable by January 31 of each year.

5. UTILITIES AND OTHER EXPENSES.

- 5.1 **Electric and Sewer.** The monthly costs of these Utilities shall be paid by the KFD.
- 5.2 **Water.** The monthly costs of water utilities shall be paid by the KFD.
- 5.3 **Janitorial.** The KFD will be responsible for the janitorial services for Premises.

6. MAINTENANCE AND REPAIR.

- 6.1 **Routine Maintenance.** Routine maintenance includes all regular maintenance. KFD shall be solely responsible for the routine maintenance associated with the Premises, which includes the mowing the grass on leased premises. However, the City shall be responsible for performing seasonal blowouts of the sprinkler system on the Premises, as such system is combined with other sprinklers at the Property.
- 6.2 **Major Repairs and Maintenance.** The Parties shall work cooperatively to plan for and schedule major maintenance and repairs, such as roof maintenance, structural repairs, and HVAC systems. Further, the Parties shall collaborate on identifying and approving contractors to complete such work. KFD shall be responsible for the cost of such repairs, and therefore shall have the final decision on any contractors retained to complete such work.
- 6.3 **Additions and Improvements to the Premises.** KFD shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacement, or changes to the Premises or any improvements on the Premises which may be desired by the KFD or required by any public authority. All additions, repairs, alterations, replacements, or changes to the Premises shall be made in accordance with Section 7.

7. TENANT IMPROVEMENTS.

- 7.1 **Construction.** Prior to any construction, alteration, replacement, removal, or major repair of any improvements on the Premises, KFD shall submit to the City plans and

specifications which describe the proposed activity. Construction shall not commence until the City has approved the plans and specifications in writing. The City shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved and the requirement for the City's written consent shall be treated as waived, unless the City notifies the KFD otherwise within sixty (60) days. Upon completion of construction, KFD shall promptly provide the City with as-built plans and specifications. The City's consent and approval shall not be required for any routine maintenance or repair improvements made by the KFD pursuant to its obligation to maintain the Premises in good order and repair that does not result in the construction, alteration, replacement, removal, or major repair of any improvements on the Premises. The provisions of this section do not obviate any permit requirements that may apply to the proposed activity.

- 7.2 **Unauthorized Improvements.** Improvements made on the Premises without the City's consent pursuant to Subsection 7.1 of this Lease or which are not in conformance with the plans immediately become the property of the City, unless the City elects otherwise.

8. INDEMNIFICATION.

- 8.1 The KFD agrees to protect, save, defend, hold harmless and indemnify the City, its officials, employees and agents of any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, or other occurrences on the Premises, occasioned by either the negligent, reckless and/or willful conduct of the KFD, its agents or any person or entity on the Premises as a result of the KFD activity, regardless of who the injured party may be. Notwithstanding the foregoing, the City shall be responsible for its own negligent acts or omissions to the extent of valid and collectible insurance coverage and subject to the limits of lawfully appropriated funds. Nothing herein shall be construed as the City's agreement to indemnify KFD for the City's reckless or willful misconduct, or to create any obligation, for either Party, beyond that permitted by Article VIII, Section 4 of the Idaho Constitution.
- 8.2 KFD shall indemnify, defend and hold City harmless from any and all claims, demands, judgments, orders, or damages resulting from hazardous substances on the Premises caused in whole or in part by the activity of the KFD, its agents, subtenants, or any other person or entity on the Premises during any period of time that KFD has occupied all or a portion of the Premises during the term of the Lease. The City shall be responsible for hazardous substances on the Premises to the extent directly caused by the City's own negligent acts or omissions, and only to the extent of valid and collectible insurance coverage and subject to lawfully appropriated funds. Nothing herein shall be construed as the City's agreement to indemnify KFD for any liability arising from the City's reckless or willful misconduct, or to create any obligation beyond that permitted by Article VIII, Section 4 of the Idaho Constitution.
- 8.3 The provisions of Section 8 shall survive the expiration or termination of this Lease.

9. ASSIGNMENT AND SUBLETTING.

- 9.1 KFD shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of KFD's interest in this Lease or the Premises without the City's prior written consent which may not be unreasonably withheld by the City. In the event of such consent, each permitted transferee shall assume all obligations under this Lease. Further, the Parties agree that it is the intent of KFD, at some future unknown date, to consolidate with one or more other fire districts in Blaine County, Idaho. In the event of consolidation, City agrees to consent to assignment of this Lease to the appropriate fire district (i.e. whatever fire district remains or is created after consolidation) following consolidation.

10. INSURANCE.

- 10.1 During the term of this Lease and any extension thereof, the KFD shall maintain premises liability insurance policy for the Premises.

11. DAMAGE OR DESTRUCTION.

- 11.1 The Parties recognize that some or all use of the Premises may be interfered with or prevented because of fire, earthquake, flood, storm, landslide, act of war, vandalism, theft or other extraordinary casualty ("Casualty").
- 11.2 **Material Damage.** If the Premises is damaged or destroyed by fire or any Casualty which cannot, despite diligent, good faith efforts be repaired or restored within one hundred twenty (120) days following the date on which such damage occurs, then KFD may elect to terminate the Lease effective as of the date of such damage or destruction. Within thirty (30) days after the date of such damage, the Parties shall determine how long the repair and restoration will take. After that determination has been made, KFD shall have a period of thirty (30) days to terminate the Lease by giving written notice to the City.
- 11.3 **Repair after Damage.** If KFD does not give notice of KFD's election to terminate as provided in subsection 11.2, then the City shall, subject to the provisions of this Section, immediately commence and diligently pursue the completion of the repair of such damage so that the Premises is restored to a condition of similar quality, character and utility for KFD's purposes. Notwithstanding anything contained herein to the contrary, if the Premises is not repaired and restored within one hundred twenty (120) days from the date of the damage, KFD may cancel the Lease at any time before City completes the repairs and delivers the restored Premises to KFD. If KFD does not so terminate, the City shall continue to restore the Premises. KFD shall have no claim against the City for any direct, incidental or consequential damages arising from the City's failure to commence or complete any repairs to the Premises. In no event shall the City be obligated to spend more money on the repair than is provided by insurance proceeds in subsection 11.2.

- 11.4 **Uninsured Damage.** If damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, either the City or KFD may terminate this Lease by thirty (30) days written notice to the other of its election so to do so and the Lease shall be deemed to have terminated as of such date unless the other party agrees in writing to pay for such repairs and restoration.

12. MISCELLANEOUS.

- 12.1 **Authority.** The City and KFD represent that each person signing this Lease on their behalf are authorized to do so.
- 12.2 **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the Parties, their successors, and assigns.
- 12.3 **Headings.** The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.
- 12.4 **Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Lease.
- 12.5 **Attorneys' Fees.** In the event any Party shall file suit or action at law or equity to interpret or enforce this Agreement, the provisions of Idaho Code Section 12-117, or any subsequent amendment or recodification of the same, shall apply to the determination of the prevailing Party and the award of reasonable attorney's fees, witness fees, and other reasonable expenses.
- 12.6 **Effective Date.** This Agreement shall become effective on the first date mentioned above and shall remain in full force and effect until amended or replaced upon the mutual consent of the City and KFD.
- 12.7 **Severability.** If any of the provisions of this Agreement shall be held or made invalid by a court decision, statute, or rule, or shall be otherwise rendered invalid, the remainder of this Agreement shall not be affected thereby.
- 12.8 **Entire Agreement.** This Agreement, including all Exhibits attached hereto, contains the entire agreement between the Parties regarding the subject matter hereof, and all prior or contemporaneous communications or agreements between the Parties or their respective representatives with respect to the subject matter herein, whether oral or written, are merged into this Agreement and extinguished. No agreement, representation, or inducement shall be effective to change, modify, or terminate this Agreement, in whole or in part, unless in writing and signed by the Party or Parties to be bound by such change, modification, or termination. If any term or provision of this Agreement or any application thereof shall be unenforceable, the remainder of this Agreement and any other application of any such term or provision shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the

fullest extent permitted by Law. The Parties acknowledge and agree that this Agreement represents a negotiated agreement, having been drafted, negotiated, and agreed upon by the Parties and their respective legal counsel. Therefore, the Parties agree that the fact that one Party or the other Party may have been primarily responsible for drafting or editing this Agreement shall not, in any dispute over the terms of this Agreement, cause this Agreement to be interpreted against such Party. It is the Parties' collective intention to encourage, promote, and aid the Project so that the opportunities and positive community impacts of the Project are fully realized by the City, its citizens, and the Company.

- 12.9 **Governing Law.** This Agreement is governed by and shall be construed under the laws of the State of Idaho. Any action brought in connection with this Agreement shall be brought exclusively in the Fifth Judicial District of Idaho in and for Blaine County.
- 12.10 **Waivers.** Neither Party may waive any condition or breach of any representation, term, covenant, or condition of this Agreement, except in writing signed by the waiving Party and specifically describing the condition or breach waived. The waiver by either Party of any condition or breach of any representation, term, condition, or covenant contained in this Agreement shall not be deemed to be a waiver of any other representation, term, condition, or covenant or of any subsequent breach of the same or of any other representation, term, condition or covenant of this Agreement.
- 12.11 **Further Assurances.** Upon the request of the other Party, each Party agrees to (i) furnish to the other Party such requested information, (ii) execute and deliver to the other Party such requested documents and (iii) do such other acts and things reasonably required for the purpose of carrying out the intent of this Agreement.
- 12.12 **Counterparts.** This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the Parties in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. A scanned or photocopy signature on this Agreement, any amendment hereto, or any notice delivered hereunder shall have the same legal effect as an original signature.
- 12.13 **Interpretation.** The section headings of this Agreement are for the convenience of reference only and shall not be deemed to modify, explain, restrict, alter, or affect the meaning or interpretation of any provision hereof. Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders. All references herein to "Section" or "Exhibit" reference the applicable Section of this Agreement or Exhibit attached hereto, and all Exhibits attached hereto are incorporated herein and made a part hereof to the same extent as if they were included in the body of this Agreement. The use in this Agreement of the words "including", "such as" or words of similar import when used with reference to any general term, statement, or matter shall not be construed to limit such term, statement, or matter to the specific terms, statements or matters unless the language of limitation, such as "and limited to" or words of similar import are used

with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such term, statement, or matter.

- 12.14 **Disclosure of Conflict of Interest.** The Parties acknowledge that attorneys from the same law firm, White, Peterson, Gigray & Nichols, P.A. (“White Peterson”), have provided legal representation in connection with this Agreement: specifically, Matthew A. Johnson has represented the City of Ketchum, and Marc J. Bybee has represented the Ketchum Fire District. The Parties further acknowledge that this concurrent representation constitutes a potential conflict of interest under Rule 1.7 of the Idaho Rules of Professional Conduct. Each Party affirms that they have been fully informed of the potential risks associated with this dual representation, including the possibility that the attorneys’ obligations to one client may limit their ability to advocate fully for the other. Each Party has had the opportunity to seek independent legal counsel and voluntarily waives any actual or potential conflict of interest arising from this arrangement. The Parties expressly provide their informed consent to the dual representation and agree that White Peterson may continue to represent both Parties in connection with this Agreement, and in any subsequent matters related to its implementation, unless or until a conflict arises that is not waivable under applicable ethical rules.

[Signatures appear on the following page]

The City and the District have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date first written above.

CITY:

The City of Ketchum, a municipal corporation of the State of Idaho

By:

Name:

Title: Mayor

Date:

ATTEST:

By:

Name:

Title: City Clerk

Date:

DISTRICT:

Ketchum Fire District

By:

Name:

Title: Board President

Date:

ATTEST:

By:

Name:

Title: District Secretary

Date:

Exhibit A

Parcel Number

RPK4N170121100

Legal Description

KETCHUM
FR S1/2SE TL 6689
SEC 12 & 13 4N 17E YMCA BLDG K4N170121200

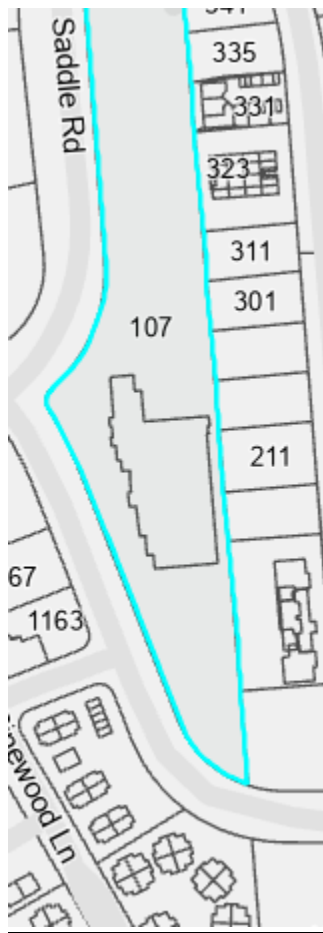
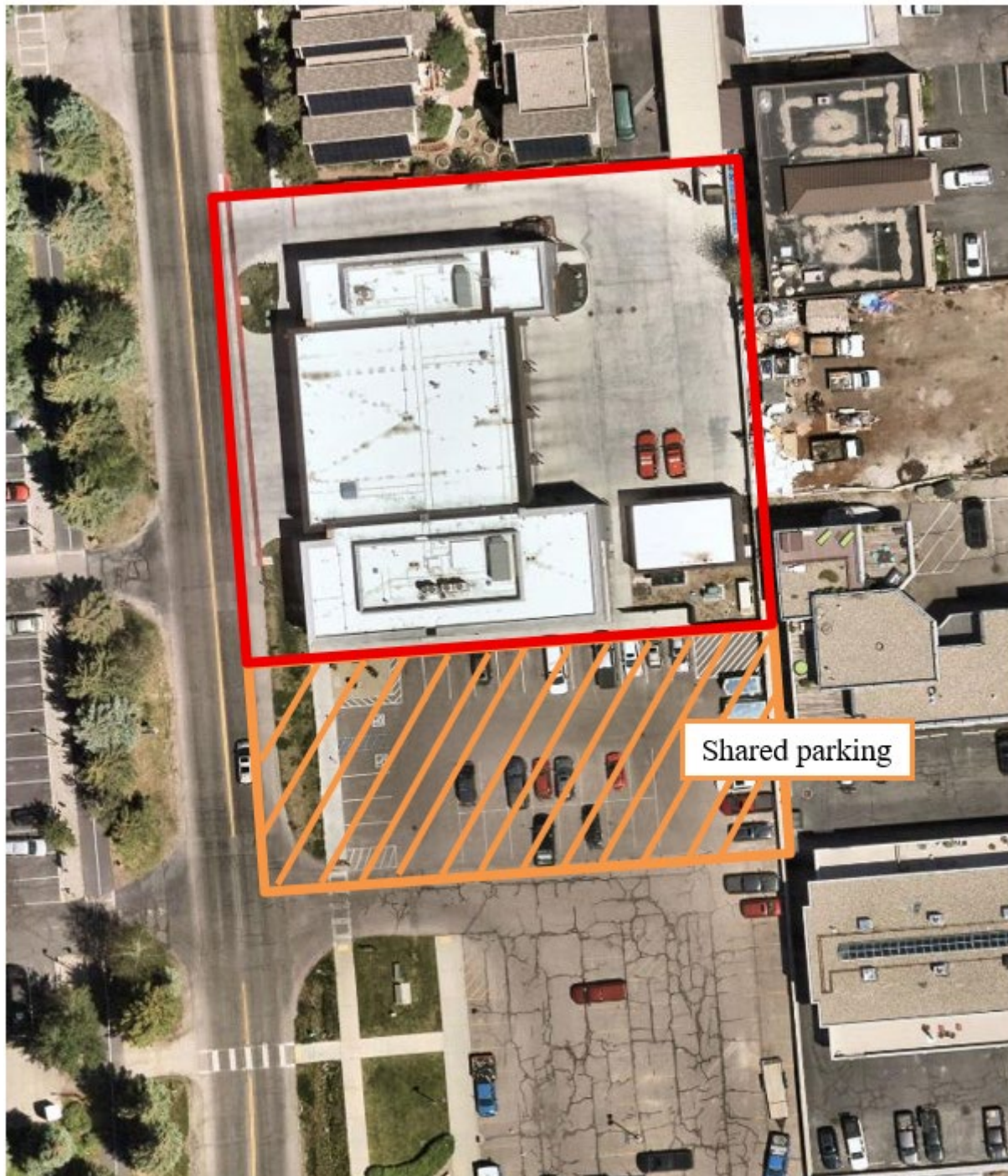


Exhibit B



**LEASE AGREEMENT BETWEEN
THE CITY OF KETCHUM AND THE KETCHUM FIRE DISTRICT
#26998 | Training Grounds**

This Lease Agreement (hereinafter “Lease”) is entered into effect this 15th day of December, 2025, by and between the CITY OF KETCHUM, a municipal corporation of the State of Idaho, (“City”), and the KETCHUM FIRE DISTRICT, a fire district of the State of Idaho (“KFD”). The City and KFD may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

A. The City has operated a fire department for many years, and owns and utilizes real property used for such purposes, including the real property identified in Exhibit A and located at 219 Lewis St., Ketchum, Idaho (“Premises”). More particularly, the Premises is the property identified as Parcel 7 in Exhibit A, and is also known as Blaine County Assessor Parcel No. RPK04940000070.

B. The Premises has historically been used as training grounds for the Ketchum Fire Department.

C. The Premises contains a training tower that is constructed of shipping containers, storage containers, a buried cistern, as well as a large propane tank.

D. On November 5th, 2024, voters within the City of Ketchum approved the formation of the KFD, a new independent taxing entity comprising of the same geographic boundaries as the City.

E. It is the understanding of the Parties that KFD was established for the purpose of transferring fire department operations from the City to the newly established KFD;

F. In August of 2025, the Parties entered a Memorandum of Understanding (“MOU”) that detailed the intended future hand-off of fire department operations from the City to KFD;

G. Section 4.4 of the MOU commits the Parties to negotiate and enter a lease for the Premises, and sets forth some basic preliminary terms for such lease;

H. Section 4.4 of the MOU also commits the City to transfer ownership of the “training facility and infrastructure” to the District;

I. Effective October 1, 2025, the KFD began utilizing the Premises, and it is anticipated by the Parties that—moving forward—the Premises will continue to be used primarily by the KFD. Consistent with past practice, the Parties acknowledge and agree that the KFD may permit neighboring or mutual-aid fire agencies to use the facility for training purposes.

J. The purpose of this Lease is to be the lease contemplated, and committed to, by the Parties in Section 4.4 of the MOU. It is also intended through this Lease that ownership of the “training facility and infrastructure” be transferred to KFD.

AGREEMENT

Now, therefore, the City and KFD agree as follows:

1. PREMISES AND INFRASTRUCTURE.

- 1.1 **Lease of Premises.** The City agrees to lease to, and KFD agrees to lease from the City, the Premise.
- 1.2 **Conveyance of Training Facility and Infrastructure.** There are, located on the Premises, certain infrastructure that comprise the training facility. More particularly, there are multiple shipping containers assembled as a tower on the Premises, as well as a storage container, a buried cistern, and a large propane tank, that comprise the training facility and infrastructure. Ownership for these items, as well as any other personal property on the Premises that is not permanently affixed to the Premises, is hereby transferred to KFD from the City.
- 1.3 **As-Is.** The City is providing the Premises, and the training facility and infrastructure, in their “as-is” condition for the KFD’s use. The City makes no representation regarding the condition of the Premises or improvements located on the same.

2. USE.

- 2.1 **Permitted Use.** KFD shall use the Premises for purposes necessary and related to the operation and administration of a fire district (the "Permitted Use") and for no other purpose unrelated to the administration and operation of a fire district without authorization of the City. The Parties note that at the time of this Agreement, the Premises have historically been used as a training ground, and it is expected that the Premises will continue to be used in this manner.
- 2.2 **Liens and Encumbrances.** KFD shall keep the Premises free and clear of any liens and encumbrances arising out of or related to its use or occupancy of the Premises.

3. TERM.

- 3.1 **Term Defined.** The term of this lease shall be for 99 years unless terminated earlier by mutual agreement of the KFD and the City. Should the lease terminate prior to term end, KFD will have a year following said termination to vacate the premises and the City reserves the right to remove any remaining materials or apparatuses.

- 3.2 **End of Term.** Upon the expiration or termination of the Term, as applicable, this Lease will automatically renew unless specified in writing by either party.

4. LEASE PAYMENT.

- 4.1 **Rent.** The consideration for this lease is the annual sum of one dollar (\$1.00), due and payable by January 31 of each year.

5. MAINTENANCE AND REPAIR.

- 5.1 **Routine Maintenance.** Routine maintenance includes all regular maintenance. KFD shall be solely responsible for the routine maintenance associated with the Premises.
- 5.2 **Snow Removal.** KFD shall be responsible for all snow-removal services on the Premises. The specific areas to be cleared, along with the designated locations for storing or depositing removed snow, shall be determined through mutual coordination between KFD and the City. The Parties agree to confer as necessary to adjust snow-removal locations or procedures in response to changing conditions or operational needs.
- 5.3 **Major Repairs and Maintenance.** The Parties shall work cooperatively to plan for and schedule major maintenance and repairs to the Premises. Further, the Parties shall collaborate on identifying and approving contractors to complete such work. KFD shall be responsible for the cost of such repairs, and therefore shall have the final decision on any contractors retained to complete such work.
- 5.4 **Additions and Improvements to the Premises.** KFD shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacement, or changes to the Premises or any improvements on the Premises which may be desired by the KFD or required by any public authority. All additions, repairs, alterations, replacements, or changes to the Premises shall be made in accordance with Section 6.

6. UTILITIES

- 6.1 **Water.** The City agrees that KFD shall not be charged for any water used to fill the cistern when such water is utilized for firefighting purposes, fire-suppression activities, or for training conducted by KFD or neighboring agencies participating in KFD-authorized training. The Parties may, from time to time, coordinate to ensure the cistern remains adequately supplied for operational and training needs.
- 6.2 **Electricity.** The Parties agree that all electricity used on the Premises, including electricity required for operations, training activities, lighting, or equipment, shall be the sole financial responsibility of the KFD. KFD shall bear all costs associated

with electrical service to the Premises and shall maintain any necessary accounts with the applicable utility provider.

7. TENANT IMPROVEMENTS.

- 7.1 **Construction.** Prior to any construction, alteration, replacement, removal, or major repair of any improvements affixed to the Premises, KFD shall submit to the City plans and specifications that describe the proposed activity. Construction shall not commence until the City has approved the plans and specifications in writing. The City shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved, and the requirement for the City's written consent shall be treated as waived, unless the City notifies the KFD otherwise within sixty (60) days. Upon completion of construction, KFD shall promptly provide the City with as-built plans and specifications. The City's consent and approval shall not be required for any routine maintenance or repair improvements made by the KFD pursuant to its obligation to maintain the Premises in good order and repair that do not result in the construction, alteration, replacement, removal, or major repair of any improvements on the Premises. The provisions of this section do not obviate any permit requirements that may apply to the proposed activity.
- 7.2 **Unauthorized Improvements.** Improvements made on the premises without the City's consent pursuant to Subsection 6.1 of this Agreement or which are not in conformance with the plans immediately become the property of the City, unless the City elects otherwise.

8. INDEMNIFICATION.

- 8.1 The KFD agrees to protect, save, defend, hold harmless and indemnify the City, its officials, employees and agents of any and all demands, claims, judgments, or liability for loss or damage arising as a result of accidents, injuries, or other occurrences on the Premises, occasioned by either the negligent, reckless and/or willful conduct of the KFD, its agents or any person or entity on the Premises as a result of the KFD activity, regardless of who the injured party may be. Notwithstanding the foregoing, the City shall be responsible for its own negligent acts or omissions to the extent of valid and collectible insurance coverage and subject to the limits of lawfully appropriated funds. Nothing herein shall be construed as the City's agreement to indemnify KFD for the City's reckless or willful misconduct, or to create any obligation, for either Party, beyond that permitted by Article VIII, Section 4 of the Idaho Constitution.
- 8.2 KFD shall indemnify, defend and hold City harmless from any and all claims, demands, judgments, orders, or damages resulting from hazardous substances on the Premises caused in whole or in part by the activity of the KFD, its agents, subtenants, or any other person or entity on the Premises during any period of time that KFD has occupied all or a portion of the Premises during the term of the Lease. The City shall be

responsible for hazardous substances on the Premises to the extent directly caused by the City's own negligent acts or omissions, and only to the extent of valid and collectible insurance coverage, and subject to lawfully appropriated funds. Nothing herein shall be construed as the City's agreement to indemnify KFD for any liability arising from the City's reckless or willful misconduct, or to create any obligation beyond that permitted by Article VIII, Section 4 of the Idaho Constitution.

8.3 The provisions of Section 7 shall survive the expiration or termination of this Lease.

9. ASSIGNMENT AND SUBLETTING.

9.1 KFD shall not sell, convey, mortgage, assign, pledge, sublet, or otherwise transfer or encumber all or any part of KFD's interest in this Lease or the Premises without the City's prior written consent, which may not be unreasonably withheld by the City. In the event of such consent, each permitted transferee shall assume all obligations under this Lease. Further, the Parties agree that it is the intent of KFD, at some future unknown date, to consolidate with one or more other fire districts in Blaine County, Idaho. In the event of consolidation, City agrees to consent to assignment of this Lease to the appropriate fire district (i.e., whatever fire district remains or is created after consolidation following consolidation).

10. INSURANCE.

10.1 During the term of this Lease and any extension thereof, the KFD shall maintain premises liability insurance policy for the Premises.

11. DAMAGE OR DESTRUCTION.

11.1 The Parties recognize that some or all use of the Premises may be interfered with or prevented because of fire, earthquake, flood, storm, landslide, act of war, vandalism, theft, or other extraordinary casualty ("Casualty").

11.2 **Material Damage.** If the Premises are damaged or destroyed by fire or any Casualty which cannot, despite diligent, good faith efforts, be repaired or restored within one hundred twenty (120) days following the date on which such damage occurs, then KFD may elect to terminate the Lease effective as of the date of such damage or destruction. Within thirty (30) days after the date of such damage, the Parties shall determine how long the repair and restoration will take. After that determination has been made, KFD shall have a period of thirty (30) days to terminate the Lease by giving written notice to the City.

11.3 **Repair after Damage.** If KFD does not give notice of KFD's election to terminate as provided in subsection 10.2, then the City shall, subject to the provisions of this Section, immediately commence and diligently pursue the completion of the repair of such damage so that the Premises is restored to a condition of similar quality,

character and utility for KFD's purposes. Notwithstanding anything contained herein to the contrary, if the Premises is not repaired and restored within one hundred twenty (120) days from the date of the damage, KFD may cancel the Lease at any time before City completes the repairs and delivers the restored Premises to KFD. If KFD does not so terminate, the City shall continue to restore the Premises. KFD shall have no claim against the City for any direct, incidental, or consequential damages arising from the City's failure to commence or complete any repairs to the Premises. In no event shall the City be obligated to spend more money on the repair than is provided by insurance proceeds in subsection 10.2.

- 11.4 **Uninsured Damage.** If damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, either the City or KFD may terminate this Lease by thirty (30) days written notice to the other of its election so to do so and the Lease shall be deemed to have terminated as of such date unless the other party agrees in writing to pay for such repairs and restoration.

12. MISCELLANEOUS.

- 12.1 **Authority.** The City and KFD represent that each person signing this Lease on its behalf is authorized to do so.
- 12.2 **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their successors, and assigns.
- 12.3 **Headings.** The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.
- 12.4 **Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Lease.
- 12.5 **Attorneys' Fees.** In the event any Party shall file suit or action at law or equity to interpret or enforce this Agreement, the provisions of Idaho Code Section 12-117, or any subsequent amendment or recodification of the same, shall apply to the determination of the prevailing Party and the award of reasonable attorney's fees, witness fees, and other reasonable expenses.
- 12.6 **Effective Date.** This Agreement shall become effective on the first date mentioned above and shall remain in full force and effect until amended or replaced upon the mutual consent of the City and the District.
- 12.7 **Severability.** If any of the provisions of this Agreement shall be held or made invalid by a court decision, statute, or rule, or shall be otherwise rendered invalid, the remainder of this Agreement shall not be affected thereby.

- 12.8 **Entire Agreement.** This Agreement, including all Exhibits attached hereto, contains the entire agreement between the Parties regarding the subject matter hereof, and all prior or contemporaneous communications or agreements between the Parties or their respective representatives with respect to the subject matter herein, whether oral or written, are merged into this Agreement and extinguished. No agreement, representation, or inducement shall be effective to change, modify, or terminate this Agreement, in whole or in part, unless in writing and signed by the Party or Parties to be bound by such change, modification, or termination. If any term or provision of this Agreement or any application thereof shall be unenforceable, the remainder of this Agreement and any other application of any such term or provision shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law. The Parties acknowledge and agree that this Agreement represents a negotiated agreement, having been drafted, negotiated, and agreed upon by the Parties and their respective legal counsel. Therefore, the Parties agree that the fact that one Party or the other Party may have been primarily responsible for drafting or editing this Agreement shall not, in any dispute over the terms of this Agreement, cause this Agreement to be interpreted against such Party. It is the Parties' collective intention to encourage, promote, and aid the Project so that the opportunities and positive community impacts of the Project are fully realized by the City, its citizens, and the Company.
- 12.9 **Governing Law.** This Agreement is governed by and shall be construed under the laws of the State of Idaho. Any action brought in connection with this Agreement shall be brought exclusively in the Fifth Judicial District, Blaine County, Idaho.
- 12.10 **Waivers.** Neither Party may waive any condition or breach of any representation, term, covenant, or condition of this Agreement, except in writing signed by the waiving Party and specifically describing the condition or breach waived. The waiver by either Party of any condition or breach of any representation, term, condition, or covenant contained in this Agreement shall not be deemed to be a waiver of any other representation, term, condition, or covenant or of any subsequent breach of the same or of any other representation, term, condition or covenant of this Agreement.
- 12.11 **Further Assurances.** Upon the request of the other Party, each Party agrees to (i) furnish to the other Party such requested information, (ii) execute and deliver to the other Party such requested documents, and (iii) do such other acts and things reasonably required for the purpose of carrying out the intent of this Agreement.
- 12.12 **Counterparts.** This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the Parties in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. A scanned or photocopy signature on this Agreement, any amendment hereto, or any notice delivered hereunder shall have the same legal effect as an original signature.

- 12.13 **Interpretation.** The section headings of this Agreement are for the convenience of reference only and shall not be deemed to modify, explain, restrict, alter, or affect the meaning or interpretation of any provision hereof. Whenever the singular number is used, and when required by the context, the same includes the plural, and the masculine gender includes the feminine and neuter genders. All references herein to “Section” or “Exhibit” reference the applicable Section of this Agreement or Exhibit attached hereto, and all Exhibits attached hereto are incorporated herein and made a part hereof to the same extent as if they were included in the body of this Agreement. The use in this Agreement of the words “including”, “such as” or words of similar import when used with reference to any general term, statement, or matter shall not be construed to limit such term, statement, or matter to the specific terms, statements or matters unless the language of limitation, such as “and limited to” or words of similar import are used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such term, statement, or matter.
- 12.14 **Disclosure of Conflict of Interest.** The Parties acknowledge that attorneys from the same law firm, White, Peterson, Gigray & Nichols, P.A. (“White Peterson”), have provided legal representation in connection with this Agreement: specifically, Matthew A. Johnson has represented the City of Ketchum, and Marc J. Bybee has represented the Ketchum Fire District. The Parties further acknowledge that this concurrent representation constitutes a potential conflict of interest under Rule 1.7 of the Idaho Rules of Professional Conduct. Each Party affirms that they have been fully informed of the potential risks associated with this dual representation, including the possibility that the attorneys’ obligations to one client may limit their ability to advocate fully for the other. Each Party has had the opportunity to seek independent legal counsel and voluntarily waives any actual or potential conflict of interest arising from this arrangement. The Parties expressly provide their informed consent to the dual representation and agree that White Peterson may continue to represent both Parties in connection with this Agreement, and in any subsequent matters related to its implementation, unless or until a conflict arises that is not waivable under applicable ethical rules.

[Signatures appear on the following page]

The City and the District have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date first written above.

CITY:

The City of Ketchum, a municipal corporation of the State of Idaho

By:

Name:

Title: Mayor

Date:

ATTEST:

By:

Name:

Title: City Clerk

Date:

DISTRICT:

Ketchum Fire District

By:

Name:

Title: Board President

Date:

ATTEST:

By:

Name:

Title: District Fire Clerk

Date:

EXHIBIT A

