



City of Ketchum

February 22, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation To Approve Agreement 22760 Between the City of Ketchum and the Ketchum Urban Renewal Agency

Recommendation and Summary

Staff is recommending the council authorize the Mayor to approve Agreement 22760, an agreement between the City and Ketchum Urban Renewal Agency (KURA) for KURA reimbursement of the demolition costs for old City Hall by adopting the following motion:

I move to authorize the Mayor to sign Agreement 22760.

The reasons for the recommendation are as follows:

- The City Administrator requested the KURA fund the demolition of old City Hall.
- The KURA approved the request on January 18, 2022 with the understanding the contribution will be credited towards the amount the KURA borrowed from the City from the housing in-lieu funds.

Introduction and History

The City Administrator requested the KURA provide funding for the demolition of old City Hall. KURA funding of the demolition is consistent with the adopted KURA Plan. The KURA discussed the request on December 20, 2021 and approved the attached agreement on January 18, 2022. The City Council must also approve the Agreement.

The KURA is obligated to reimburse the City \$1,260,000 for a loan the City provided from the housing in-lieu fund to purchase the Starbucks building and property at First Street and Washington Ave (Doll House Property). Because this reimbursement is to facilitate the production of affordable housing units, the demolition costs of \$201,061 will be credited towards the KURA repayment leaving \$1,058,938 to be repaid to the City. The City and KURA entered into MOU 50027 in 2019 that sets forth the terms of the repayment.

Financial Impact

This Agreement will authorize KURA reimbursement of the costs for demolition of old City Hall. The cost is \$201,061.40.

Attachment: Agreement 22760

**DEMOLITION, SALVAGE, AND ASBESTOS ABATEMENT PROJECT AGREEMENT
FOR THE OLD CITY HALL**

**KURA AGREEMENT 50076
CITY OF KETCHUM AGREEMENT 22760**

THIS DEMOLITION, SALVAGE, ASBESTOS ABATEMENT PROJECT AGREEMENT FOR THE OLD CITY HALL (the “Demolition Agreement”) is made and entered into this ____ day of _____, 2022, by and between the city of Ketchum, Idaho, a municipal corporation of the state of Idaho (the “City”), and the Urban Renewal Agency of the city of Ketchum, Idaho, also known as the Ketchum Urban Renewal Agency, an independent public body corporate and politic (the “Agency”), individually referred to as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Agency is authorized to undertake and carry out urban renewal projects to eliminate, remedy, or prevent deteriorated or deteriorating areas through redevelopment, rehabilitation or conservation, or any combination thereof, within its area of operation and is authorized to carry out such projects jointly with the City;

WHEREAS, the City Council of the City of Ketchum, by adoption of Ordinance No. 992 on November 15, 2006, duly adopted the Ketchum Urban Renewal Plan (the “2006 Plan”) to be administered by the Agency;

WHEREAS, upon the approval of Ordinance No. 1077 adopted by the City Council on November 15, 2010, and deemed effective on November 24, 2010, the Agency began implementation of the Ketchum Urban Renewal Plan 2010 (the “2010 Plan”);

WHEREAS, the 2010 Plan and the Project Area terminate November 15, 2030, recognizing the Agency shall receive its allocation of revenues in 2031, pursuant to Idaho Code § 50-2903(7) (the “Termination Date”). Many of the proposed improvements identified in the 2010 Plan have not been completed and continue to suffer from certain deteriorating conditions;

WHEREAS, the City has moved from the old City Hall building which building is now vacant;

WHEREAS, the City seeks the Agency’s funding for the demolition, salvage, asbestos abatement, and removal of the old City Hall building (the “Project”);

WHEREAS, the City has bid the Project and selected Elite Restoration, Inc. as the contractor for the Project and the total bid amounts for the costs of the demolition of the Project total approximately \$201,061.40;

WHEREAS, the Agency Board finds it in the best interests of the Agency to continue to enhance the development within the Project Area and in the best interests of the public to provide financial support for the Project;

WHEREAS, the Agency and City desire that the Project be completed in 2022, reflecting Agency funding for FY 2022;

WHEREAS, upon completion of the Project, the City intends to convey the old City Hall building site to a developer for development of an affordable work force housing project;

WHEREAS, the City has expressed its desire to complete the demolition of the old City Hall building and providing demolition management services for the Project;

WHEREAS, the City and the Agency hereby find and determine that this Demolition Agreement enables them to cooperate to their mutual advantage in a manner that will best accord with the needs and development of the City and the Agency;

WHEREAS, the ability for the City and Agency to cooperate and jointly benefit each other is expressly allowed pursuant to Idaho Code § 50-2015;

WHEREAS, the City and Agency agree that the Agency's financial contribution shall be credited to the amount borrowed from the City from the in lieu of housing fees funds.

AGREEMENT

NOW, THEREFORE, in consideration of the provisions contained herein and the recital set forth above which are a material part of this Agreement, the parties agree as follows:

1. **Definitions.** As used in this Demolition Agreement, the following words, unless the context dictates otherwise, shall have the following meanings:

Act shall mean collectively the Idaho Urban Renewal Law of 1965, title 50, chapter 20, Idaho Code, as amended and supplemented and the Local Economic Development Act of 1988, title 50, chapter 29, Idaho Code as amended and supplemented.

Board shall mean the Board of Commissioners of the Agency as the same shall be duly and regularly constituted from time to time.

Contract shall mean the contract through which the general contractor is awarded the demolition of the Project.

Contractor shall mean the selected general contractor, Elite Restoration, Inc., awarded the demolition of the Project.

Project Demolition shall mean the demolition, salvage, and asbestos abatement of the old City Hall building at the Agency's expense, which demolition consists of the Project. The

City and Agency shall determine the Agency's not-to-exceed obligation amount as described in Section 6.

2. Recitals and Purpose.

- a. The Parties agree that the foregoing recitals are not mere recitations but are covenants of the Parties, binding upon them as may be appropriate and a portion of the consideration for the agreements contained herein.
- b. The purpose of this Demolition Agreement is to provide for the definition of rights, obligations, and responsibilities of the Agency and City regarding project management services and funding reimbursement of the Demolition Agreement. The City shall serve as project manager as described below. This Demolition Agreement constitutes a joint agreement between the City and the Agency for the successful completion of the Project.

3. City Services and Responsibilities. City agrees to furnish its skill and judgment necessary to carry out the project administration for the Project. The obligations under this Demolition Agreement shall end thirty (30) days after final payment to the Contractor under the Contract has been paid. The Contract with the Contractor for the Project, shall be between the City and the selected Contractor. The City shall:

- a. Provide administration of the Project in compliance with generally accepted standards recognizing that the Project is a City project with the Agency providing financial reimbursement. City shall comply with all applicable statutory provisions, including, but not limited to, chapter 28, title 67, Idaho Code;
- b. Provide necessary project management and oversight to assure Contractor's timely progress and process all invoices and payment requests, verify Contractor's entitlement to all progress payments or other payments requested by Contractor;
- c. Receive and hold all certificates of insurance required by the Contract;
- d. Maintain all necessary records, documents, drawings, and other related documents normally maintained for a public works project; and
- e. Determine when the Project or a designated portion thereof is substantially complete, issue Certificates of Substantial Completion (if necessary), and determine when the work is ready for final inspection and final payment to the Contractor.

4. Agency and City Obligations. The purpose of this Demolition Agreement is to provide for the definition of rights, obligations, and responsibilities of the Agency and City regarding the Project.

5. **Effective Date.** This Demolition Agreement shall be effective upon execution of the Demolition Agreement by Agency's Chairman of the Board of Commissioners and the Mayor of the City.

6. **Reimbursement.** As consideration for the City services set forth above, the Agency shall pay for the costs of the Project. Such costs shall not exceed \$201,061.40.

In order to provide sufficient documentation to ensure compliance, the City shall provide the Agency with the following information and a final invoice upon substantial completion of the Project:

- a. requests for payment for billing invoices received from the Contractor for work related to the Project with sufficient documentation to ensure accuracy;
- b. certification by the City Public Works Director or designee that the costs incurred for demolition services are consistent with the scope of the Project.

Agency shall remit payment to City for all approved amounts within forty-five (45) days of Agency's receipt of the final invoice or payment request.

7. **Credit of Amount of Reimbursement to Housing Fees.**

In order to achieve certain property acquisitions, the Agency received from the City funds from its in lieu of housing fees, which Agency has used to purchase real property. The amount advanced by the City to the Agency totaled \$1,460,000.00. This arrangement was memorialized by the MOU between the City and Agency approved by Resolution No. 19-URA___ on August 19, 2019. The amount of reimbursement for the Project, \$201,061.40, shall be credited towards the repayment of the in lieu of housing fees.

8. **Insurance.**

- a. The City (either itself or the selected Contractor) shall purchase and maintain, for the benefit of the City and the Agency, insurance for protection from claims under the worker's compensation law of the state of Idaho arising from work performed on the Project; claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any of the City's employees or of any person while working on the Project; claims for damages because of injury to or destruction or loss of use of tangible property as a result of work on the Project; and claims arising out of the performance of this Demolition Agreement and caused by negligent acts for which the City is legally liable. The terms and limits of liability shall be determined solely by the City, and nothing herein shall be construed as any waiver of any claim or defense by the City or the Agency premised upon any claim of sovereign immunity or arising from the Idaho

Tort Claims Act. The amount of insurance shall be in the amounts set forth in the Idaho Tort Claims Act.

- b. The City shall also purchase and maintain for the benefit of the City and Agency property damage insurance for any property damage to the Project or other property owned by the City.

9. **Indemnity.** Only to the extent permitted by Idaho law, the City shall defend, indemnify, and hold Agency and their respective officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable planning, engineering fees, and attorney fees (collectively referred to in this section as “Claim”), which may be imposed upon or incurred by or asserted against Agency or its respective officers, agents, and employees relating to the planning, design and engineering of the Project or otherwise arising out of this Demolition Agreement. In the event an action or proceeding is brought against Agency or their respective officers, agents, and employees by reason of any such Claim, City, upon written notice from Agency, shall, at City’s expense, resist or defend such action or proceeding.

Notwithstanding the foregoing, City shall have no obligation to indemnify and hold Agency and its respective officers, agents, and employees harmless from and against any matter to the extent it arises from the negligence or willful act of Agency or its respective officers, agents, or employees or from conduct resulting in an award of punitive damages against Agency.

10. **Amendment.** This entire Demolition Agreement may be amended at any time and from time to time by the mutual written consent of the City and the Agency.

11. **Severability.** In the event any provision of this Demolition Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12. **Notice.** Any and all notices required to be given by either of the Parties hereto, unless otherwise stated in this Demolition Agreement shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:

To Agency:
Suzanne Frick, Executive Director
Ketchum Urban Renewal Agency
P.O. Box 2315
Ketchum, ID 83340

To City:
City of Ketchum
P.O. Box 2315
Ketchum, ID 83340

13. **Non-Waiver.** Failure of either party to exercise any of the rights under this Demolition Agreement, or breach thereof, shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

14. **Choice of Law.** Any dispute under this Demolition Agreement, or related to this Demolition Agreement, shall be decided in accordance with the laws of the state of Idaho.

15. **Attorney Fees.** Should any litigation be commenced between the Parties hereto concerning this Demolition Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorneys' fees as determined by a court or arbitrator 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 Demolition Agreement.

16. **Authority to Execute.** Agency and City have been duly authorized and have full power and authority to execute this Demolition Agreement.

17. **Assignment.** It is expressly agreed and understood by the Parties hereto that City shall not have the right to assign, transfer, hypothecate, or sell any of its rights under this Demolition Agreement except upon the prior express written consent of Agency.

18. **Disputes.** In the event that a dispute arises between Agency and City regarding application or interpretation of any provision of this Demolition Agreement, the aggrieved party shall promptly notify the other party to this Demolition Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

19. **Entire Agreement.** This Demolition Agreement, along with any and all exhibits attached hereto and incorporated herein by reference, contains and integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the Project.

IN WITNESS WHEREOF, the parties hereto, through their respective governing boards, have executed this Demolition Agreement on the date first cited above.

CITY OF KETCHUM

By _____
Neil Bradshaw, Mayor

ATTEST:

Tara Fenwick, City Clerk

KETCHUM URBAN RENEWAL AGENCY

By _____
Susan Scovell, Chair

ATTEST:

Tara, Fenwick, Secretary