


MEMORANDUM

To: Ketchum Urban Renewal Agency Board members and Suzanne Frick

From: RPA Agency counsel 

Date: October 14, 2021

Re: Draft Administration and Support Services Agreement

At the KURA Board meeting of April 19, 2021, the Board reviewed a draft Administration and Support Services Agreement. At that time, several issues remained open for discussion and/or unresolved. Since the April 19, 2021, Board meeting, the Board formally elected/appointed Tara Fenwick as KURA Secretary and Shellie Rubel as KURA Treasurer. Tara also serves as Ketchum City Clerk and Shellie serves as City Treasurer. With those two positions filled, the description of the services to be provided through those two city offices has been updated in the attached draft agreement. Additionally, based on further discussion, the compensation methodology for services provided by city personnel and city departments will be premised on hours worked on KURA projects/assignments and an agreed upon rate for those individuals working on those projects/assignments. This methodology is the current system used for invoicing KURA for KURA services. This new draft includes an evaluation section which outlines how annual evaluations of performance may be handled in conjunction with the annual budgeting process for the KURA fiscal year. For simplicity, the Agreement would be effective retroactively to October 1, 2021, the start of the fiscal year 2022. As a result of the changes, I have provided you a clean updated version of the Agreement as opposed to a somewhat convoluted redline redraft.

Changes of note from the April draft are as follows:

- Section 3 – Updated descriptions for Treasurer, Clerical support services, and other city departments
- Section 4 – Compensation
- Section 7 – Evaluations
- Section 8 – Annual Budgeting Proposal
- Section 17 – Termination notice time frame changed to 30 days
- Section 22 – Term of Agreement retroactive to October 1, 2021, with initial term through September 30, 2022. Renewal of the term automatic unless either party provides sixty days' notice of non-renewal.

This working draft remains subject to change based on your input and guidance at the Board meeting on October 18, 2021. Once the Board has reached consensus on the content of the Agreement, the Agreement will be transmitted to the City for its review and comment, with the final version of the Agreement coming back to you for formal consideration and approval.

I look forward to discussing this with you on Monday.

ADMINISTRATION AND SUPPORT SERVICES AGREEMENT

THIS ADMINISTRATION AND SUPPORT SERVICES AGREEMENT

(“Agreement”) is made and entered into this ____ day of _____, 2021, by and between the city of Ketchum (hereinafter referred to as the “City”), a municipal corporation of the state of Idaho, and the Urban Renewal KURA of the city of Ketchum, also known as the Ketchum Urban Renewal KURA, an independent public body, corporate and politic, duly organized and existing by virtue of the laws of the State of Idaho, specifically the Idaho Urban Renewal Law of 1965, as amended, Chapter 20, Title 50, Idaho Code (the “Law”), and authorized to transact business and exercise the powers granted by the Law and the Local Economic Development Act, as amended, Chapter 29, Title 50, Idaho Code (the “Act”) (hereinafter referred to as the “KURA”) (collectively the City and KURA may be referred to as the “Parties”), effective retroactively to October 1, 2021.

WHEREAS, KURA 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 (“City Council”) of the City of Ketchum (the “City”) 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 amended Ketchum Urban Renewal Plan (the “Amended Plan”);

WHEREAS, the Amended Plan includes the acquisition, construction, and installation of public improvements within the Project Area and necessary costs for engineering, insurance, audit, planning and administration;

WHEREAS, KURA is authorized to conduct proceedings and to borrow monies to be repaid through revenue allocation (tax increment) funds pursuant to the terms and provisions of the Act for the purpose of financing the undertaking of any urban renewal project;

WHEREAS, the Amended Plan contains revenue allocation (tax increment) financing provision;

WHEREAS, the City and KURA hereby find and determine that this 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 KURA and to implement the Amended Plan as well as any future urban renewal plans and project areas;

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

WHEREAS, the City has provided and continues to provide certain services to KURA;

WHEREAS, the City and KURA wish to state their respective obligations, expand the services provided by the City to KURA, and revise the amount of consideration paid by KURA to the City accordingly;

NOW, THEREFORE, the City and KURA do hereby agree as follows:

1. Statement of Purpose

The purpose of this Agreement is to provide for the definition of rights, obligations, and responsibilities of KURA and the City to provide for the receipt, investment, and disbursement of funds by the City Treasurer on behalf of KURA, clarify the City's obligations to provide administrative, clerical, and secretarial services and support for KURA, and set the amount of consideration KURA shall pay the City for such services.

2. City's Obligations

The City agrees to make available certain personnel and administrative services to KURA, including, but not limited to:

- a. Services through the City Clerk; City Treasurer; and the Director of Planning and Building, who, as of the effective date, serves as the Executive Director of KURA;
- b. Any other necessary services from other City departments or staff related to clerical support;
- c. Assistance from other City departments, including, but not limited to, Recreation, Streets and Facilities, and Utilities.

3. General Job Descriptions

a. Treasurer

As of the effective date of this Agreement, the City Treasurer serves as the elected KURA Treasurer (the "KURA Treasurer"). The City Treasurer shall receive, invest, and disburse funds subject to legal authorization and budgeting by KURA and formal approval by KURA Board. The City Treasurer shall also be responsible for preparing all required accounting reports, including any required year end financial statements and/or a comprehensive annual financial report, and advising KURA Board of KURA's financial status. Provided however, KURA shall engage, at its sole cost and expense, a qualified accountant/auditor to provide the annual independent financial audit as required by Idaho Code 67-450B.

The City may designate City's Deputy Treasurer to perform these functions, subject to approval by KURA. The City Treasurer (or his or her designee) shall provide the following specific services:

- Maintain an account ledger for all income and expenses and provide a monthly summary report of the same to KURA Board; as well as distribution of invoice/expense information for all Board meetings and monthly between meetings;
- Provide general bookkeeping services in substantial compliance with Generally Accepted Accounting Principles or Governmental Accounting Standard Board (GASB) standards, whichever is applicable;
- Coordinate with any accountant/auditor selected by KURA to perform annual audits;

b. Director of Planning and Building

The Director of Planning and Building, or his or her designee as selected by the City and subject to approval by KURA, agrees to furnish its skill and judgment in the administration of services by a political subdivision, including but not limited to areas related to urban planning and economic development, to carry out the Amended Plan and the Project Area. The extent of those administration services will be as authorized by the KURA Board of Commissioners and/or the KURA Chair. Under the general direction of the Board of Commissioners, and in accordance with KURA policy, applicable laws, and professional standards, the Director of Planning and Building is responsible for the effective administration of all KURA activities, including development, planning, operations, budgeting, staffing, and developing/maintaining KURA's external relationships. **Exhibit A**, attached hereto, contains a general description of the services to be provided by the Director of Planning and Building.

c. Other City Departments

From time to time, KURA may seek input and assistance from other City departments, including, but not limited to, Recreation, Streets and Facilities, and Utilities to provide research, analysis, and information concerning potential KURA projects. In those instances, those departments and their personnel shall be compensated by KURA as set forth in Section 4 of this Agreement.

d. Clerical and Support Services

As of the effective date of this Agreement, the City Clerk serves as the elected Agency Secretary. City, through the City Clerk's office, subject to approval by KURA, shall designate a city employee or employees and shall provide the following services:

- Preparation and distribution of the agendas for all meetings of KURA;
- Attend each KURA meeting and record and transcribe the minutes;
- Assemble and maintain the records of KURA in a safe and organized manner in compliance with the principles or standards referenced above;

- Keep track of and prepare checks or other methods of payment for KURA expenses as directed by the City Treasurer, the Director of Planning and Building or KURA Board;
- Compliance with KURA reporting requirements.

The City may designate City's Deputy City Clerk to perform the above functions subject to the approval by KURA.

e. Miscellaneous Services

City, through the City Clerk's office, subject to approval by KURA, shall designate a city employee or employees and shall provide the following services:

- City shall host and maintain the KURA website;
- At no cost to KURA, the City shall provide meeting facilities that include live broadcasting of KURA meetings, to include audio, video, and projection equipment.

4. KURA'S Obligations/Compensation to City

KURA agrees to pay City for services rendered under this Agreement based on the following methodology. Any City personnel providing services to KURA as described in this Agreement shall maintain specific time increments showing the amount of time worked on a KURA project or initiative as well as a description of the services provided. KURA shall compensate such work based on the hourly rate imposed by the City employee, in an amount previously agreed to by the City and KURA through the budgeting process described in Section 8 of this Agreement. Such hourly rate shall consider the salary and other benefit costs related to the employee's position.

5. Method of Payment/Monthly Invoices

The City shall maintain time and expense records and provide them to KURA monthly, along with monthly invoices in a format acceptable to KURA for services performed to the date of the invoice. Each invoice shall specify charges as they relate to the tasks set forth in this Agreement. Each invoice shall also specify current billing and previous payments, with a total of costs incurred and payments made to date. Each invoice shall identify the number of hours incurred by each City employee identified in this Agreement along with that employee's hourly rate. City shall provide KURA the applicable hourly rate for the work provided, which hourly rate shall be subject to review and approved by KURA.

If the services subject to a specific invoice do not meet the requirements of this Agreement as KURA may reasonably determine, KURA shall notify City in writing and provide specific deficiencies in the services or work product that do not meet the requirements. City shall have seven (7) working days to correct or modify the services or work product to comply with the requirements of the Agreement as set forth in KURA's written notice. If KURA again reasonably determines the services or work product fails to meet the requirements, KURA may

withhold payment until deficiencies have been corrected to KURA's reasonable satisfaction or may terminate this Agreement for cause as set forth in Section 14 of this Agreement.

6. Additional Reimbursements

KURA shall reimburse City for costs associated with engineering or other technical services associated with KURA funded projects. KURA shall provide reimbursement for the costs of systems and technology to support administrative functions. Such costs shall be identified and approved by the KURA Board as part of the annual budgeting process.

7. Evaluations

No later than June 1 of each calendar year, KURA shall evaluate the performance of the activity provided by any City employee for services described in this Agreement. KURA shall provide the results of such evaluations to the City for its review and comment. One of the purposes of such evaluations is to provide KURA the opportunity to request City assign other employees to provide the services set forth in this Agreement. Should the City and Agency not reach agreement on the assignment of alternative employees, either party may invoke termination of this Agreement for Convenience as described in Section 17.b. of this Agreement. Alternatively, should the City and Agency not reach agreement on the assignment of alternative employees, either party may elect to not renew this Agreement as described in Section 22 of this Agreement.

8. Annual Budgeting Proposal

No later than July 1 of each calendar year, City shall provide KURA with a summary of the hours worked by City employees on KURA assignments, a breakdown of hourly rates, and the total amount compensated through the date of the summary. No later than July 1 of each calendar year, City shall provide KURA with City's proposal for the type of services, hourly rates for such service, hourly rates of City employees providing services to KURA, and an estimated amount of compensation for the following fiscal year to assist KURA in preparing its required budget for the following fiscal year. Should City and KURA not reach agreement on the services provided, the City employees assigned to KURA, or the amount of compensation for the subsequent fiscal year, then either party may provide notice of non-renewal as described in Section 22 of this Agreement.

9. Insurance

The City shall purchase and maintain for the benefit of the City and KURA insurance for protection from claims under workers' or workmens' compensation acts arising from work performed under this Agreement; claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any of the City's employees while working on activities under this Agreement; claims for damages because of injury to or destruction or loss of use of tangible property as a result of work pursuant to this Agreement; and claims arising out of the performance of this 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 (but no less than the limits required under the Idaho Tort Claims Act), and nothing herein shall be construed as

any waiver of any claim or defense by the City or KURA premised upon any claim of sovereign immunity or arising from the Idaho Tort Claims Act. Provided, however, KURA shall obtain its own insurance of similar benefit and value for KURA activities.

10. Representations and Warranties

In consideration of this Agreement City and KURA make the following representations and warranties:

a. KURA is a public body corporate and politic of the State of Idaho, duly organized and validly existing, and in good standing under the laws of the State of Idaho with the power to own its assets and to transact business in Idaho.

b. KURA has the authority and power to execute and deliver any document required hereunder and to perform any condition or obligation imposed under the terms of such documents.

c. The execution, delivery, and performance of this Agreement and each document incident hereto will not violate any provision of any applicable law, regulation, order, judgment, decree, article of incorporation, bylaw, indenture, contract, agreement, or other undertaking to which KURA is a party or which purports to be binding on KURA or its assets and will not result in the creation of imposition of a lien on any of its assets.

d. There is no action, suit, investigation, or proceeding pending or, to the knowledge of KURA, threatened against or affecting KURA or any of its assets which, if adversely determined, would have a material adverse affect on the financial condition of KURA or the operation of its business or which would otherwise affect this Agreement or KURA's obligations hereunder.

e. City is a municipal corporation of the state of Idaho, duly organized and validly existing, and in good standing under the laws of the state of Idaho with the power to own its assets and to transact business in Idaho.

f. City has the authority and power to execute and deliver any document required hereunder and to perform any condition or obligation imposed under the terms of such documents.

g. The execution, delivery, and performance of this Agreement and each document incident hereto will not violate any provision of any applicable law, regulation, order, judgment, decree, article of incorporation, bylaw, indenture, contract, agreement, or other undertaking to which KURA is a party or which purports to be binding on City.

h. There is no action, suit, investigation, or proceeding pending or, to the knowledge of City, threatened against or affecting City or any of its assets which, if adversely determined, would have a material adverse affect on the financial condition of

City or the operation of its business or which would otherwise affect this Agreement or City's obligations hereunder.

11. Miscellaneous Provisions

Each Party represents and warrants that each person executing this Agreement on behalf of such Party is, at the time of such execution, duly authorized to do so by such Party's governing body, and is fully vested with the authority to bind such party in all respects.

If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties, and shall survive the severed provisions.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, or agreements contained herein.

The Parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants, and conditions of this Agreement and each shall deal fairly with the other.

Each Party shall cooperate fully with the other and execute such further instruments, documents and agreements and give such further written assurances, as may be reasonably requested by the other to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

In any suit, action, or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

This Agreement shall not be modified or otherwise amended except in writing signed by all of the Parties.

If the date for delivery of a notice or performance of some other obligation of a Party falls on a Saturday, Sunday, or legal holiday in the State of Idaho, then the date for such notice or performance shall be postponed until the next business day

This Agreement shall be governed by the laws of the state of Idaho.

12. Successors and Assigns

No Party may assign or delegate its obligations under this Agreement without the consent of the other Party hereto, which consent may be withheld in the discretion of that Party. Except as otherwise set forth in this Agreement, the terms, covenants, conditions, and agreements contained herein shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the Parties.

13. Number and Gender

In constructing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

14. No Third-Party Beneficiary

This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a Party hereto unless otherwise expressly provided herein.

15. Counterparts / Facsimile

This Agreement may be executed in counterparts, and each counterpart shall then be deemed for all purposes to be an original, executed agreement with respect to the Parties whose signatures appear thereon. Facsimile transmission of any signed original of this Agreement, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original and shall be binding upon the parties.

16. Merger Clause

This Agreement, along with any and all Exhibits, attached hereto and incorporated herein by reference, contains the entire Agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

17. Termination of Agreement

a. **For Cause.** If, through any cause, the City shall fail to fulfill its obligations under this Agreement, or if the City shall violate any of the covenants, agreements, or stipulations of this Agreement, KURA shall thereupon have the right to terminate this Agreement by giving written notice to the City and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. If this Agreement is terminated for cause, City shall be paid an amount for the actual services performed in accordance with this Agreement through the cancellation date.

Notwithstanding the above, the City shall not be relieved of liability to KURA by virtue of any breach of this Agreement by the City, and KURA may withhold any payments to the City for the purpose of set-off until such time as the exact amount of damages due KURA from the City is determined. City shall also provide KURA all work products generated prior to date of termination. All work products generated, whether complete or not, are the property of KURA.

b. **For Convenience.** KURA or City may terminate this Agreement at any time, for any reason, by giving at least thirty (30) days' notice in writing to the other party. If this Agreement is terminated by KURA as provided herein, City shall be paid an

amount for the actual services performed in accordance with this Agreement through the cancellation date.

18. Notices

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

To KURA: Suzanne Frick, Executive Director
Ketchum Urban Renewal Agency
P.O. Box 2315
Ketchum, ID 83340
sfrick@ketchumidaho.org

To City: _____
City of Ketchum
P.O. Box 2315
Ketchum, ID 83340
[Email address]

19. Discrimination Prohibited.

In performing the services required herein, City shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or handicap. Violation of this section shall constitute a material breach of this Agreement and be deemed grounds for cancellation, termination, or suspension of the Agreement by KURA, in whole or in part, and may result in ineligibility for further work for KURA.

20. Indemnification

City agrees to indemnify, defend and hold harmless KURA, and its officers, agents and employees, from and against all claims, losses, actions, or judgments for damages or injury to persons or property to the extent caused by the City's negligence or intentional acts or omissions, including but not limited to any claim for libel, slander, piracy, plagiarism, invasion of privacy, false advertising, discrimination, or infringement of copyright, during the performance of this Agreement by City or City's agents, employees, or representatives. In case any action or proceeding is brought against KURA or its officers, agents, or employees by reason of or arising out of connection with City's negligence or intentionally wrongful acts or omissions during the performance of this Agreement, City, upon written notice from KURA, shall at City's expense, resist or defend such action or proceeding.

21. Disputes

In the event that a dispute arises between KURA and the City regarding application or interpretation of any provision of this Agreement, the aggrieved Party shall promptly notify the other Party to this 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, the Parties may first endeavor to settle the dispute in an amicable manner by mediation. If the Parties elect to mediate their dispute, the Parties will select a mediator by mutual agreement and agree to each pay half of the mediator's costs and fees. The mediation will take place in Jerome, Idaho unless otherwise agreed by the Parties in writing. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation, each Party shall have the right to pursue any rights or remedies it may have at law or in equity. If the Parties do not mutually agree to mediate the dispute, either Party may pursue any rights or remedies it may have at law.

22. Term of Agreement and Renewal

This Agreement shall be effective retroactively to October 1, 2021, and shall continue for an initial period through September 30, 2022. The Agreement shall automatically renew for additional one-year terms at the expiration of the then existing term unless either City or KURA provides notice of non-renewal within sixty (60) days of the expiration of the then existing term.

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

CITY OF KETCHUM

By _____
Neil Bradshaw, Mayor

ATTEST:

_____, City Clerk

URBAN RENEWAL AGENCY OF THE CITY OF
KETCHUM

By _____
Ed Johnson, Chairman

ATTEST:

Secretary

EXHIBIT A

SCOPE OF SERVICES

City shall provide day to day administrative and operational support to the KURA to include, but not limited to, the following services:

- Assist with the preparation and administration of KURA contracts and agreements
- Provide staff support for projects requested by the KURA Board
- Provide assistance to members of the public inquiring about KURA projects or funding
- Prepare letters, memos, or other correspondence on behalf of the KURA Board.
- Manage and administer KURA Owner Participation Agreements
- Respond to KURA public records requests
- Manage and maintain all KURA records and files
- Coordinate KURA activities and projects with City staff and KURA consultants

4820-2337-4821, v. 3