



City of Ketchum

January 21, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Take Specific Actions to Facilitate a New Tax Credit Application for Deed Restricted Housing at 480 East Avenue (City Hall)

Recommendation and Summary

The Mayor is recommending the Council take the following actions to facilitate a tax credit application for a new affordable rental housing project and adopt the following motions:

1. I move to extend Contract 20370 with GMD Development until February 2021.
2. I move to extend Option to Lease Agreement 20373 between Ketchum Community Development Corporation (KCDC) and the City of Ketchum until February 2021.
3. I move to authorize use of Housing In-Lieu Funds in the amount of \$32,639.47 to reimburse KCDC for the 2019 tax credit application expenses.
4. I move to authorize use of Housing In-Lieu Funds to pay the City's 2020 application, permit and impact development fees for the deed restricted housing units.

The reasons for the recommendation are as follows:

- In 2019 KCDC and GMD Development submitted a tax credit application for a workforce housing development at the City Hall site. The application was not approved however, there may be an opportunity to submit a new application in 2020.
- To facilitate submittal of a new application, the existing agreement with GMD Development and the Lease with KCDC need to be extended.
- The goals of Ketchum Comprehensive Plan state the City of Ketchum should support affordable housing programs established by other non-governmental agencies, the recommended actions further this goal.

Introduction and History

In July of 2019 the City Council approved Contract 20370 with GMD Development and Option to Lease 20373 with KCDC to facilitate submittal of a tax credit application for workforce housing at 480 East Avenue (City Hall). Unfortunately, the tax credit application was not approved by the Idaho Housing and Finance Association (IHFA). Based on discussions with IHFA, it may be advantageous to submit a new tax credit application in 2020. To facilitate this possibility, the contract and option to lease need to be extended.

A tax credit application requires a detailed submittal and expenditure of funds. KCDC worked with GMD Development to prepare the application materials. GMD Development and KCDC split the application costs 50/50. In July 2019 the City Council authorized use of Housing In-Lieu Funds to pay for the tax credit application expenses. KCDC is now requesting reimbursement for their portion of the application expenses in

the amount of \$32,639.47. In the event a new application is filed in 2020, Council is being asked to authorize use of Housing In-Lieu funds to off-set application expenses and to support project costs in the event the application is approved.

Analysis

Any tax credit application must include evidence GMD Development and KCDC have authorization to use the development property. The lease option is similar to the agreement the City entered into for the Northwood Place II tax credit application. The initial term was limited to February 1, 2020 and is proposed to be extended until February 1, 2021. If the second tax credit application is approved, another lease will be prepared for a 99-year period.

Tax credit applications are highly competitive and based on a point system. To gain more points and reduce the overall cost of development, it is common for local jurisdictions to reduce or waive project development fees. Because development fees pay for the city's cost to process and inspect a project, it is recommended the Council again authorize use of Housing In-Lieu Funds for a new 2020 project to off-set the development and impact fees related to the deed restricted housing units in this project. This action will help make the application more competitive while supporting the city's costs to provide required services.

Site Control

As part of any new application submittal, the Mayor will provide a letter identifying the time frame GMD will have control of the site to initiate construction.

Financial Impact

There are sufficient funds in the Housing In-Lieu Fund to reimburse KCDC for the application costs. Other actions in this report will not result in a financial impact.

Attachments:

Extension of Contract 20370 with GMD Development
Extension of Lease Option 20373

EXTENSION OF INDEPENDENT CONTRACTOR AGREEMENT 20370 WITH GMD
DEVELOPMENT

This Professional Services Agreement ("Agreement") is made by and between the City of Ketchum, Idaho, an Idaho municipal corporation, organized and existing under the laws of the State of Idaho ("City"), and GMD Development ("Contractor") as represented by Gregory Dunfield, President and Owner of GMD Development.

RECITALS

Whereas, the City of Ketchum is pursuing development of community housing in the City of Ketchum, and;

Whereas, the City of Ketchum issued a Request for Qualifications on June 4th 2019, and;

Whereas, GMD Development was the only proposal submitted, and;

Whereas, GMD Development is well qualified to develop and deliver community housing in the City of Ketchum based on their experience and record of successful development projects within Ketchum and other communities,

NOW, THEREFORE, on the basis of the foregoing recitals, response to the Request for Qualifications, and upon motion duly passed by the Ketchum City Council, and for the consideration set forth herein, the parties agree as follows:

AGREEMENT

Contractor agrees to provide professional services pursuant to the terms and conditions of this Agreement.

1. SCOPE OF WORK:

Contractor will prepare and submit a Low Income Tax Credit Housing Application to the Idaho Housing and Finance Association at 480 East Avenue (Ketchum City Hall).

2. INDEPENDENT CONTRACTOR RELATIONSHIP: Contractor is not an employee, servant, agent, partner, or joint venture of the City. The City shall determine the work to be done by Contractor, but Contractor shall determine the legal means by which it accomplishes the work specified by the City. This Agreement shall not be construed to create any employer-employee relationship between the City and Contractor.

3. RECORDS ACCESS AND AUDITS: Contractor shall maintain complete and accurate records with respect to costs incurred and manpower expended under this Agreement. All such records shall be maintained according to generally accepted accounting principles, shall be clearly identified, and shall be readily accessible. Such records shall be available for review by the City representatives for three (3) years after final payment. Copies shall be made available to the city upon request.

4. FEDERAL, STATE, AND LOCAL PAYROLL TAXES: Neither federal, state, or local income taxes nor payroll taxes of any kind shall be withheld and paid by the City on behalf of Contractor or the employees of Contractor. Contractor shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes. Contractor understands that Contractor is solely responsible to pay, according to law, Contractor's income tax. Contractor

further understands that Contractor may be liable for self-employment (Social Security) tax to be paid by Contractor according to law.

5. LICENSES AND LAW: Contractor represents that it possesses the requisite skill, knowledge, and experience necessary, as well as all licenses required, if any, to perform the services under this Agreement. Contractor further agrees to comply with all applicable laws, ordinances, and codes of federal, state, and local governments in the performance of the services hereunder.

6. FRINGE BENEFITS: Because Contractor is engaged in its own independently established business, Contractor is not eligible for and shall not participate in any employee pension, health, or other fringe benefit plans of the City.

7. WORKER'S COMPENSATION: Contractor shall maintain in full force and effect worker's compensation and employer's liability insurance for Contractor and any agents, employees, and staff that Contractor may employ, and provide proof to the City of such coverage or that such worker's compensation insurance is not required under the circumstances.

8. EQUIPMENT, TOOLS, MATERIALS, OR SUPPLIES: Contractor shall supply, at its sole expense, all equipment, tools, materials, and/or supplies to accomplish the services to be provided herein.

9. PROPRIETARY RIGHTS: All data, materials, reports, maps, graphics, tables, memoranda, and other documents or products developed under this Agreement whether finished or not shall become the property of the City, shall be forwarded to the City at its request, and may be used by the City for any business or municipal purpose. The City agrees that if it uses products prepared by Contractor for purposes other than those intended in this Agreement, it does so at its sole risk.

10. CONFIDENTIALITY: Contractor agrees to maintain confidentiality of all work product produced under this Agreement, including both interim and draft, materials, reports, maps, graphics, tables, memoranda, and other documents unless and until the City signifies its written approval that such work product may be published as final work product subject to the public records laws of the state of Idaho. The City reserves the right to distribute the final work product as it sees fit provided that Contractor may use final reports as approved and adopted by the Ketchum City Council in the marketing of its firm.

11. TERM OF AGREEMENT: This Agreement commenced on the date signed by the last party to the Agreement and shall be effective until February 1, 2021 ~~for one year~~ unless terminated by either party as set forth in this Agreement.

12. ENTIRE AGREEMENT: This Agreement, along with any and all exhibits and appendix 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.

13. GENERAL ADMINISTRATION AND MANAGEMENT: The Mayor and the City Administrator or his/her designee shall be the City's representative and shall oversee and approve all services to be performed, coordinate all communications, review and approve all invoices, and carry out any and all tasks as may be required under this Agreement.

14. CHANGES: The City reserves the right to make changes from time to time in the scope of services to be performed hereunder. Such changes, including any increase or decrease

in Contractor's compensation, which are mutually agreed upon by and between the City and Contractor, shall be incorporated in written amendments to this Agreement.

15. AMENDMENTS: This Agreement may be amended only in writing upon mutual agreement of both the City and Contractor.

16. ASSIGNMENT: It is expressly agreed and understood by the parties hereto that Contractor shall not have the right to assign, transfer, hypothecate, or sell any of its rights under this Agreement except upon the prior express written consent of the City.

17. TERMINATION OF AGREEMENT:

1. **FOR CAUSE DUE TO BREACH:** If Contractor shall fail to fulfill its obligations in compliance with the scope of work or if Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. If this Agreement is terminated for cause, Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by Contractor, and the City may withhold any payments to Contractor for the purpose of setoff until such time as the exact amount of damages due the City from Contractor is determined. Contractor shall also provide the City all products or works of consulting generated to date of termination.

2. **TERMINATION BY THE CITY:** The City reserves the right to terminate this Agreement at any time, for any reason, by giving at least fifteen (15) days' notice in writing to Contractor. If this Agreement is terminated by the City as provided herein, Contractor shall be paid for the work performed prior to termination, less payment or compensation previously made. Contractor shall also provide the City all products or works related to this Project generated to date of termination.

3. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated by Contractor upon thirty (30) days' written notice. Such termination shall be based upon substantial lack of performance by the City under the terms and conditions of this Agreement when said substantial lack of performance is through no fault of Contractor. If this Agreement is terminated by Contractor, Contractor shall be paid for services rendered and for reimbursable expenses incurred to the date of such termination.

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, addressed as follows:

To CITY: City Administrator
City of Ketchum PO Box 2315
Ketchum, ID 83340

To CONTRACTOR: Gregory Dunfield
GMD Development
520 Pike Street Suite 1010
Seattle WA. 98101

18. DISCRIMINATION PROHIBITED: In performing the services required herein, Contractor agrees not to 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 deemed grounds for cancellation, termination, or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

19. STANDARD OF SERVICE: Contractor shall provide services as described in this Agreement. These services will be performed in accordance with generally accepted professional practices for the scope of this project. Contractor makes no other warranty either expressed or implied.

20. INDEMNIFICATION: Contractor agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees and City Council from and against all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or resulting from the negligent performances or activities of Contractor, Contractor's agents, employees, or representatives under this Agreement.

21. INSURANCE: Contractor agrees to obtain and keep in force during its acts under this Agreement a professional liability insurance policy with coverage limits over \$1,000,000.00 per occurrence. Certificate of proof of insurance will be provided to the City. Contractor shall provide proof of coverage as set forth above to the City before commencing its performance as herein provided and shall require insurer to notify the City ten (10) days prior to cancellation of said policy. Deliver certificates of insurance and endorsements required by this Article to:

City of Ketchum
Attn: City Administrator
PO Box 2315
Ketchum, ID 83340

22. NONWAIVER: Failure of either party to exercise any of the rights under this Agreement or breach thereof shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.

23. APPLICABLE LAW: Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the state of Idaho.

24. SEVERABILITY: If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

25. ATTORNEY FEES: Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorney fees as determined by a court 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 Agreement.

26. EFFECTIVE DATE: The effective date of this Agreement shall be the date signed by the last party of this Agreement.

27. DISPUTES: In the event that a dispute arises between the City and Contractor 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 agree to first endeavor to settle the dispute in an amicable manner by non-binding mediation before resorting to litigation. 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.

28. SUCCESSORS IN INTEREST: The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereby and their respective successors and assigns.

29. MISCELLANEOUS: Contractor has not been retained to supervise, direct, or have control over any contractor's work. Contractor specifically does not have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by contractor(s) for safety precautions and programs to the work of contractor(s) or for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to contractor(s) furnishing and performing their work. Accordingly, Contractor can neither guarantee the performance of the construction contracts by contractor(s) nor assume responsibility for the failure of contractor(s) to furnish and perform their work in accordance with the contract documents.

30. CONFLICT OF INTEREST: Contractor shall disclose any conflict of interest to the City that may arise or exists with any of Contractors current or former employers, clients, contractors or the like of or regarding any work, information, data, that may relate to the subject matter whether it is within the Contractor's scope of work or not. In the event a conflict of interest is identified, Contractor shall immediately disclose the conflict and the City may, in its sole discretion determine that this Agreement will terminate or agree to measures to address the conflict and limit Contractor's scope of work to avoid the conflict. Failure to promptly disclose a conflict of interest constitutes Contractor's breach of this Agreement.

IN WITNESS WHEREOF, THE CITY and Contractor have executed this Agreement as of the effective date specified above.

CITY OF KETCHUM

CONTRACTOR

By: _____
Neil Bradshaw
Mayor

By: _____
Gregory Dunfield

DATE: _____

DATE: _____

ATTEST:

By: _____
Robin Crotty
City Clerk

DATE: _____

OPTION TO LEASE 20373

THIS OPTION TO LEASE (the "Agreement") is made and entered into by and between the CITY OF KETCHUM, an Idaho municipal corporation ("CITY") and THE KETCHUM COMMUNITY DEVELOPMENT CORPORATION, an Idaho nonprofit corporation ("Contractor").

RECITALS

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

WHEREAS, the Contractor is an Idaho nonprofit corporation duly organized and existing under the laws of the State of Idaho; and

WHEREAS, pursuant to Idaho Code the City is empowered to enter into contracts as may be deemed necessary to promote the welfare of the City and its residents; and

WHEREAS, it is deemed in the best interest of the City to acquire, by contract, certain services to be performed by the Contractor.

WHEREAS, the City is the owner of certain Real Property as identified in Exhibit A;

WHEREAS, the City desires to contribute the use of the property through a long term lease at below market consideration to pursue the long term use of this property for community housing ;

WHEREAS, the KCDC, in conjunction with GMD Development intends to make application to the Idaho Housing and Finance Association for tax credits in August 2018;

WHEREAS, if awarded tax credits by the Idaho Housing and Finance Association, the City will accept a lease of 99 years for the amount of \$1, to be paid by the Contractor.

WHEREAS, ~~the first is~~ Option to Lease ~~was to~~ expires on February 1, 2020;

WHEREAS, the City is prepared to extend the Option to Lease until February 1, 2021;

NOW, THEREFORE, on the basis of the foregoing recitals, and upon motion duly passed by the Ketchum City Council, the parties agree as follows:

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. The Contractor shall pursue a tax credit housing project for the site identified in Exhibit A, including all necessary studies, architectural documents and other

services as needed in order to make an application to the Idaho Housing Finance Association for a tax credit housing project (collectively, these studies are referred to as the “Services”).

3. Negotiation Priority. As consideration for the performance of the Services, in the event the Tax Credit application is approved by the Idaho Housing and Finance Association, the City shall grant a 99 year lease for the amount of \$1 dollar for the Real Property identified in Exhibit A to the Contractor and imposes an obligation of the City to negotiate in good faith a final lease agreement to lease the subject property for a Tax Credit project. The City shall not negotiate with other parties during the term of this option to lease.

4. Time of Performance. Contractor shall provide the Services prior to February 1, ~~2021~~ 2020, beginning on the date this Agreement is signed. Contractor shall report to the City on the results of the feasibility studies and make recommendations as to how to proceed.

5. Independent Contractor. The City and Contractor hereby agree that Contractor shall perform the Services exclusively as an independent contractor and not as employee or agent of the City. 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 agents and employees shall not receive nor be entitled to any employment-related benefits from the City including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that City 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, its agents and employees; and Contractor hereby releases, holds harmless and agrees to indemnify City 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.

6. Compliance With Laws/Public Records. Contractor, its 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 Idaho Code Title 74. 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 be readily identified, retrieved and made available for such inspection and copying.

7. Notice. All notices, requests, demands or other communication required or provided for under this Agreement, other than instructions given by City pursuant to

Paragraph 2 herein above shall be in writing. Notices to City and Contractor shall be addressed as follows:

CITY OF KETCHUM:

CITY OF KETCHUM
ATTN: CITY ADMINISTRATOR
POST OFFICE BOX 2315
KETCHUM, IDAHO 83340-2315

CONTRACTOR:

KETCHUM COMMUNITY
DEVELOPMENT CORPORATION
P.O. BOX 6452
KETCHUM, ID 83340

8. Non-Assignment. Contractor hereby acknowledges that City 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' right, title or interest in or to this Agreement without the prior written consent of City which may be withheld for any reason.

9. Amendments. This Agreement may only be changed, modified, or amended in writing executed by all parties.

10. 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.

11. 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.

12. 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.

13. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Idaho.

14. 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.

15. 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.

16. 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 have signed this Agreement the day and year first above written.

CITY OF KETCHUM
a Municipal Corporation

KETCHUM COMMUNITY
DEVELOPMENT CORPORATION,
an Idaho nonprofit corporation

By: _____
Neil Bradshaw, Mayor

By: _____
Charles Friedman, Board President

ATTEST:

Robin Crotty
City Clerk

ATTACHMENT A

City Hall Property:	Lots 3 and 4 Block 45 of the Ketchum Original Town Site
Parking Lot:	Lots W 75' of 7 and 8 Block 45 of Ketchum Original Town Site