

RESOLUTION NO. 18-URA4

BY THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF KETCHUM, IDAHO:

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF KETCHUM, IDAHO, APPROVING THE AMENDED AND RESTATED CONTRACT FOR SERVICES BETWEEN THE KETCHUM URBAN RENEWAL AGENCY AND KETCHUM COMMUNITY DEVELOPMENT CORPORATION, AUTHORIZING THE EXECUTION OF THE AMENDED AND RESTATED CONTRACT FOR SERVICES BY THE CHAIR OR VICE-CHAIR AND SECRETARY; AUTHORIZING ANY TECHNICAL CHANGES TO THE AMENDED AND RESTATED CONTRACT FOR SERVICES; AUTHORIZING THE ADMINISTRATOR/EXECUTIVE DIRECTOR TO TAKE ALL NECESSARY ACTION REQUIRED TO IMPLEMENT THE AMENDED AND RESTATED CONTRACT FOR SERVICES; AND PROVIDING AN EFFECTIVE DATE.

THIS RESOLUTION, made on the date hereinafter set forth by the Urban Renewal Agency of Ketchum, Idaho, also known as the Ketchum Urban Renewal Agency, an independent public body, corporate and politic, authorized under the authority of the Idaho Urban Renewal Law of 1965, Chapter 20, Title 50, Idaho Code, as amended (hereinafter the "Law") and the Local Economic Development Act, Chapter 29, Title 50, Idaho Code, as amended (hereinafter the "Act"), a duly created and functioning urban renewal agency for Ketchum, Idaho, hereinafter referred to as the "Agency."

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, through implementing the Amended Plan, the Agency seeks to further the following stated goal: The strengthening of the tax base by encouraging private development, thus increasing the assessed valuation of properties within the Revenue Allocation Area and benefitting the various taxing districts in which the Revenue Allocation Area is located. Additionally, the Amended Plan seeks to further its goal of strengthening the economic base of the Revenue Allocation Area by installing needed site improvements and public facilities to stimulate new commercial expansion, employment and economic growth. These goals are consistent with the findings and purpose of the Act set forth in Idaho Code § 50-2902;

WHEREAS, in furtherance of these goals, the Agency seeks to support programs that stimulate job creation, expanded employment opportunities, and economic development opportunities within the Revenue Allocation Area;

WHEREAS, Ketchum Community Development Corporation (“KCDC”) provides economic development support for the City and works closely with the City and the Agency to identify and support projects that encourage job creation and private development.

WHEREAS, KCDC desires to create a strong economic climate for the City and the surrounding community and region;

WHEREAS, supporting promotion of the Revenue Allocation Area by attracting new businesses through targeted, economic development efforts constitutes a valid public purpose and is consistent with the goals of the Amended Plan, the Law and the Act;

WHEREAS, KCDC and KURA entered into that certain Contract for Services dated as of October 1, 2017, which provided for certain services by KCDC through September 30, 2018;

WHEREAS, KCDC has approached KURA and proposed additional services to be performed by KCDC through September 30, 2018;

WHEREAS, the Agency desires to contract with KCDC for professional services to provide economic development services to increase the number of businesses hiring permanent, full-time jobs within the Revenue Allocation Area. The Agency believes these services will positively affect development and land use decisions within the Revenue Allocation Area. The Agency further believes such efforts will strengthen the Revenue Allocation Area, as well as prevent the spread of deteriorating conditions;

WHEREAS, the parties specifically acknowledge and agree that all funds paid to KCDC under this Agreement shall be used solely to provide services for the Agency for the purpose of job creation, which is a direct quantifiable and measurable result of investing public funds for a public purpose;

WHEREAS, Agency staff has prepared an Amended and Restated Contract for Services, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, setting forth the details concerning the scope of work KCDC shall perform and the compensation to be paid by the Agency for the same;

WHEREAS, Agency staff recommends approval of the Amended and Restated Contract for Services by the Agency Board;

WHEREAS, the Board of Commissioners finds it in the best public interest to approve the Amended and Restated Contract for Services.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF COMMISSIONERS OF THE KETCHUM URBAN RENEWAL AGENCY OF THE CITY OF KETCHUM, IDAHO, AS FOLLOWS:

Section 1: That the above statements are true and correct.

Section 2: That the Amended and Restated Contract for Services, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, be and the same hereby is approved.

Section 3: That the Chair, Vice-Chair, and Secretary are hereby authorized to sign and enter into the Amended and Restated Contract for Services and, further, are hereby authorized to execute all necessary documents required to implement the actions contemplated by the Amended and Restated Contract for Services subject to representations by Agency staff and Agency's legal counsel that all conditions precedent to actions contemplated in the Amended and Restated Contract for Services, and any necessary technical changes to the Amended and Restated Contract for Services, or other documents, are acceptable upon advice from Agency's legal counsel that said changes are consistent with the provisions of the Amended and Restated Contract for Services and the comments and discussions received at the February 20, 2018, Agency Board meeting; the Administrator/Executive Director is further authorized to appropriate any and all funds contemplated by the Amended and Restated Contract for Services and to perform any and all other duties required pursuant to said Amended and Restated Contract for Services.

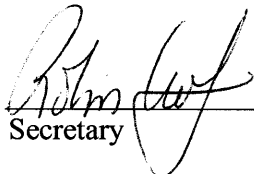
Section 4: That this Resolution shall be in full force and effect immediately upon its adoption and approval.

PASSED by the Urban Renewal Agency of Ketchum, Idaho, on February 20, 2018. Signed by the Chair of the Board of Commissioners and attested by the Secretary to the Board of Commissioners, on February 20, 2018.

URBAN RENEWAL AGENCY OF KETCHUM

By 
Mark Nieves, Chair

ATTEST:

By 
Secretary

4819-9256-1501, v. 1

RESOLUTION NO. 18-URA4- 3

EXHIBIT A

AMENDED AND RESTATED CONTRACT FOR SERVICES

THIS AMENDED AND RESTATED CONTRACT FOR SERVICES ("Agreement") is made and entered into retroactively to October 1, 2017, by and between the KETCHUM URBAN RENEWAL AGENCY, an independent public body corporate and politic, authorized and existing under the authority of the Idaho Urban Renewal Law of 1965, Chapter 20, Title 50, Idaho Code, as amended (the "Law"), and the Local Economic Development Act, Chapter 29, Title 50, Idaho Code, as amended (the "Act") (hereinafter referred to as "KURA") and the Ketchum Community Development Corporation, an Idaho non-profit corporation (hereinafter referred to as "KCDC"). Collectively, KURA and KCDC may be referred to as the "Parties."

RECITALS

A. The City Council of the City of Ketchum (the "City Council") by adoption of Ordinance No. 992 on November 15, 2006, duly adopted the Ketchum Urban Renewal Plan (the "Plan") to be administered by KURA. Subsequently, the Plan was amended upon the approval of Ordinance No. 1077 adopted by the City Council on November 15, 2010, and deemed effective on November 24, 2010 (the "Amended Plan").

B. Through implementing the Amended Plan, KURA seeks to further the following stated goal: The strengthening of the tax base by encouraging private development, thus increasing the assessed valuation of properties within the Revenue Allocation Area, and benefitting the various taxing districts in which the Revenue Allocation Area is located. Additionally, the Amended Plan seeks to further its goal of strengthening the economic base of the Revenue Allocation Area by installing needed site improvements and public facilities to stimulate new commercial expansion, employment and economic growth. These goals are consistent with the findings and purpose of the Act set forth in Idaho Code § 50-2902.

C. In furtherance of these goals, KURA seeks to support programs that stimulate job creation, expanded employment opportunities and economic development opportunities within the Revenue Allocation Area.

D. KCDC provides economic development support for the City of Ketchum (the "City") and works closely with the City and KURA to identify and support projects that encourage job creation and private development.

E. KCDC desires to create a strong economic climate for the City and the surrounding community and region.

F. Supporting promotion of the Revenue Allocation Area by attracting new businesses through targeted, economic development efforts constitutes a valid public purpose and is consistent with the goals of the Amended Plan, the Law and the Act.

G. KCDC and KURA entered into that certain Contract for Services dated as of October 1, 2017, which provided for certain services by KCDC through September 30, 2018.

H. KCDC has approached KURA and proposed additional services to be performed by KCDC through September 30, 2018.

I. KURA desires to contract with KCDC for professional services to provide economic development services to increase the number of businesses hiring permanent, full-time jobs within the Revenue Allocation Area. KURA believes these services will positively affect development and land use decisions within KURA's Revenue Allocation Area. KURA further believes such efforts will strengthen the Revenue Allocation Area, as well as prevent the spread of deteriorating conditions.

J. The parties specifically acknowledge and agree that all funds paid to KCDC under this Agreement shall be used solely to provide services for KURA for the purpose of job creation, which is a direct quantifiable and measurable result of investing public funds for a public purpose.

K. Subject to the terms and conditions of this Agreement, the parties wish to enter into this Agreement to provide the services described herein.

AMENDED AND RESTATED AGREEMENT

NOW THEREFORE, KURA and KCDC, for and in consideration of the preceding recitals, mutual promises and covenants hereinafter set forth, do hereby agree as follows:

1. Consideration. In consideration for providing the services provided herein, KURA agrees to pay KCDC an amount not to exceed forty thousand dollars and 00/100 cents (\$40,000.00) for the term set forth in Section 2. Payments shall be made as set forth in Section 5.
2. Term. Unless terminated pursuant to Section 7(b) of this Agreement, and notwithstanding the date of execution hereof, this Agreement shall be in effect from October 1, 2017, until September 30, 2018.
3. Scope of Services. KCDC shall provide the following services:
 - a. Public Workshops to Promote Economic Development. At a minimum, KCDC shall provide fifty (50) public workshops/events during the term of this Agreement. Workshops shall be held within the boundaries of the Revenue Allocation Area and shall focus on entrepreneurship and business development.
 - b. Local Investor Meetings or "Pitch Nights." At a minimum, KCDC shall conduct two (2) Pitch Nights during the term of this Agreement. Pitch Nights shall be held within the boundaries of the Revenue Allocation Area

and shall focus on generating awareness of the capital needs for local growing companies from investors.

- c. Public Outreach & Marketing. KCDC shall develop a marketing strategy to increase community awareness of the programs and services offered by KCDC. As part of this marketing strategy, KCDC will conduct a survey to understand the needs of the business and entrepreneurial community and to assess the effectiveness of KCDC programs.
- d. Quarterly Report of Activities. KCDC shall report to the KURA Board of Commissioners each quarter during the following months: January, April, July and September (the "Quarterly Report"). The Quarterly Report shall contain updates for the KURA Board on the services provided in Section 3 of this Agreement.
- e. Business Development & Mentoring. KCDC shall provide to the public: business development assistance and mentoring to entrepreneurs and startups, primarily at the Ketchum Innovation Center (KIC). During the period of this contract, KCDC will assess and re-launch the mentor program. Specifically, KCDC will
 - Identify desired qualities of Mentors (commitment, business knowledge, etc)
 - Identify 30-50 Mentors
 - Create criteria for admitting Mentees into program
 - Create expectations of Mentorship program
 - Develop a plan for the Mentor Boot Camp

4. Budget, IRS Filings, Annual Work Plan, Monthly Record Keeping and Availability of Records.

- a. Budget. Within thirty (30) days after the execution of this Agreement, KCDC shall submit its 2017 Year-to-Date P&L and Balance Sheet to KURA, in a form which is satisfactory to KURA, showing income, expenses and particular fund balances. KCDC shall submit its 2018 Operating Budget to KURA when such budget has been approved by the KCDC Board. This operating budget shall contain sufficient information and detail to permit meaningful review by the public.
- b. IRS Filings. Within fifteen days (15) days after execution of this Agreement, KCDC shall submit to KURA IRS Form 990 and all associated documents for the previous two (2) years of operation.
- c. Financial Accounting and Reporting Requirements. KCDC shall submit to KURA a year-end financial statement within ninety (90) days of KCDC's

fiscal year-end, which shall be prepared in a format that details the expenditure of KURA funds paid to KCDC under the terms of this Agreement. KURA may request additional financial information it deems necessary or appropriate to assist KURA in verifying the accuracy of KCDC's financial records. Any duly authorized agents of the KURA shall be entitled to inspect and audit all books and records of KCDC only for compliance with the terms of this Agreement. In the event the financial report indicates that funds were used for purposes not permitted by this Agreement, KCDC shall remit the disallowed amount to KURA within thirty (30) days of notification by KURA of such improper expenditures.

- d. General Requests. Upon request, and within a reasonable time period, KCDC shall submit any other information or reports relating to its activities under this Agreement to KURA in such form and at such time as KURA may reasonably require.
 - e. Retention of Records. KCDC agrees to retain all financial records, supporting documents, statistical reports, client or membership records and contracts, property records, minutes, correspondence, and all other accounting records or written materials pertaining to this Agreement for three (3) years following the expiration or termination of this Agreement. KURA, at its own expense, may review or audit the financial transactions undertaken by KCDC under this Agreement to ensure compliance with the terms and conditions herein with reasonable prior notice and during the normal business hours of KCDC.
5. Payments. To receive payments for the services described in Section 3 of this Agreement, KCDC shall submit the Quarterly Reports described in paragraph 3(d) of this Agreement. Upon acceptance of the Quarterly Reports by the KURA Board, payment shall be made within thirty (30) days. The amount of each quarterly payment to be paid to KCDC shall be ten thousand and 00/100 dollars (\$10,000.00).
 6. Record of Funds. In order to insure proper financial accountability, KCDC shall maintain accurate records and accounts of all funds received from KURA, keeping such accounts and records separate and identifiable from all other accounts, and making such accounts and records available to KURA during normal business hours, on request of the KURA Board, or its staff. Compliance with this provision does not require a separate bank account for the funds. The funds paid to KCDC by KURA shall be expended solely for services rendered in conformance with this Agreement. Further, no such funds shall be transferred, spent, loaned or encumbered for other KCDC activities or purposes other than for operations and activities in conformance with this Agreement.

7. Miscellaneous Provisions.

a. Notices. All notices to be served pursuant to this Agreement or which are served with regard to this Agreement shall be sent by certified mail, return receipt, to the parties at the following addresses:

Ketchum Urban Renewal Agency
PO Box 2315
Ketchum, Idaho 83340

Ketchum Community Development Corporation
PO Box 6452
Ketchum, ID 83340

All notices of changes of addresses shall be sent in the same manner.

b. Termination.

i. The Parties hereto covenant and agree that in the event KURA, in its sole and absolute discretion, lacks sufficient funds to continue paying for KCDC's services under this Agreement, KURA may terminate this Agreement without penalty upon thirty (30) days written notice. Upon receipt of such notice neither party shall have any further obligation to the other. In the event of early termination of this Agreement, KCDC shall submit to KURA a report of expenditures authorized by this Agreement as of the effective date of termination. Any KURA funds not encumbered for authorized expenditures at the date of termination shall be refunded to KURA within twenty (20) days.

ii. If KCDC shall fail to fulfill its obligations in compliance with the Scope of Services as set forth in Section 3, or if KCDC shall violate any of the covenants, agreements, or stipulations of this Agreement, KURA shall thereupon have the right to terminate this Agreement effective immediately. If this Agreement is terminated for cause, KCDC shall be paid a pro-rata amount of the quarterly payment earned in accordance with this Agreement through the cancellation date.

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

products or work generated, whether complete or not, are the property of KURA.

- c. Independent Contractor. KURA and KCDC hereby agree that the KCDC shall perform the services set forth in Section 3 of this Agreement exclusively as an independent contractor and not as employee or agent of KURA. 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. KCDC, its agents and employees shall not receive nor be entitled to any employment-related benefits from KURA including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that KURA offers to its employees. KCDC shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to KCDC under this Agreement and for KCDC's payments for work performed in performance of this Agreement by KCDC, its agents and employees; and KCDC hereby releases, holds harmless and agrees to indemnify KURA 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.

KURA shall determine the work to be done by KCDC, but KCDC shall determine the legal means by which it accomplishes the work specified by KURA. KURA agrees that it will have no right to control or direct the method, manner, or means by which KCDC accomplishes the results of the services performed hereunder. KCDC has no obligation to work any particular hours or days or any particular number of hours or days. KCDC agrees, however, that his or her other contracts and/or services shall not interfere with the performance of his or her services under this Agreement. KURA agrees to coordinate project schedules and respective commencements and deadlines with KCDC.

KCDC shall supply, at KCDC's sole expense, all equipment, tools, materials, and/or supplies to accomplish the services to be provided herein.

- d. Compliance with Laws/Public Records. KCDC acknowledges that KURA is an independent public body corporate and politic subject to the Public Records Act, Chapter 1, Title 74, Idaho Code, as amended. KCDC will communicate with and cooperate with KURA upon request by KURA so as to identify, address, potentially disclose, and evaluate exemptions as necessary for records that may be subject to the Public Records Act. KCDC further agrees to comply with all federal, state, city, and local laws, rules and regulations.

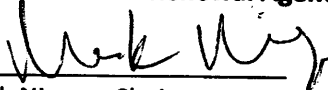
- e. Non-assignment. This Agreement may not be assigned by or transferred by KCDC, in whole or in part, without the prior written consent of KURA.
- f. Hold Harmless Agreement. KCDC shall indemnify, defend and save and hold harmless KURA, its officers, agents, and employees, from and against any and all claims, loss, damages, injury or liability, including but not limited to, the misapplication of KURA funds, state or federal anti-trust violations, personal injury or death, damages to property, liability arising out of the use of materials, concepts, or processes protected by intellectual property, rights and liens of workmen and materialmen, howsoever caused, resulting directly or indirectly from the performance of the Agreement by KCDC.
- g. Entire Contract. This Agreement contains the entire contract between the Parties and shall not be modified or changed in any manner, except by prior written contract executed by both Parties.
- h. Succession. This Agreement shall be binding upon all successors in interest of either party hereto.
- i. No Third-Party Beneficiaries. This Agreement shall not create any rights or interest in any third parties.
- j. Law of Idaho. This Agreement shall be construed in accordance with the laws of the State of Idaho.
- k. Severability. If any clause, sentence, or paragraph of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, such decision shall not affect the remaining portions, and the parties do now declare their intention that each such clause, sentence, or paragraph of this Agreement is a separate part hereof.
- l. Preparation of Contract. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the document.
- m. No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.
- n. Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, to recover damages resulting from a breach hereof or if either party defaults in the performance of this Agreement, the prevailing party shall be entitled to

recover from the other party all reasonable attorney's fees incurred herein or on appeal.

- o. **Conflict of Interest**. No officer or director of KCDC, who has decision-making authority or immediate family member of such individual, shall have a direct pecuniary interest in any contract or subcontract for work to be performed in connection with this Agreement. KCDC shall incorporate or cause to be incorporated in all such contracts, a provision prohibiting such interest pursuant to this provision.

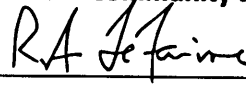
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the 28th day of February 2018.

Ketchum Urban Renewal Agency



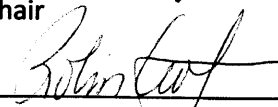
Mark Nieves, Chair

Ketchum Community Development Corporation



Rick LeFavre, Board Member

ATTEST:



Robin Crotty, City Clerk