



City of Ketchum

## CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:  Staff Member/Dept:

Agenda Item:

Recommended Motion:

I move to approve:  
1. Agreement 22884 Between the City of Ketchum and Ketchum Urban Renewal Agency.

Reasons for Recommendation:

- On September 18, 2023 the Ketchum Urban Renewal Agency approved the reimbursement agreement to provide funding for the Town Square Master Plan and undergrounding of power lines on Highway 75 between Gem Street and Serenade. In order for the agreement to become effective, the City Council must also approve the agreement.

Policy Analysis and Background (non-consent items only):

Sustainability Impact:

None

Financial Impact:

None

Attachments:

1. City Reimbursement Agreement 22884, KURA Agreement 50087

**KURA Agreement 50087  
City of Ketchum Agreement 22884  
PLANNING, DESIGN, ENGINEERING, AND  
CONSTRUCTION REIMBURSEMENT AGREEMENT FOR CITY PROJECTS  
(Main Street Utility Undergrounding, and Town Square Master Plan)**

THIS PLANNING, DESIGN, ENGINEERING, AND CONSTRUCTION REIMBURSEMENT AGREEMENT FOR CITY PROJECTS (the “Reimbursement Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, 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 (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 Ketchum Urban Renewal Plan 2010 (the “2010 Plan”);

WHEREAS, the 2010 Plan established the Revenue Allocation Area (the “Project Area”), which established an area for redevelopment and anticipated improvement projects;

WHEREAS, the 2010 Plan identified improvement to sidewalks, streets, rights-of-way, pedestrian and bicycle access, crosswalks, and safety as important objectives of 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 requested funding participation from the Agency for undergrounding power lines on Highway 75 between Gem Street to Serenade, preparing a master plan for Town Square improvements, and the Rehabilitation of Main Street;

WHEREAS, these street projects will greatly enhance safety and pedestrian access along one of the busiest streets in Ketchum;

WHEREAS, the master plan for Town Square will identify improvements necessary for maintaining and enhancing Town Square, a project originally funded, in part, by the Agency;

WHEREAS, the City received a preliminary estimate for the costs of undergrounding power lines on Highway 75 from Gem Street to Weyyakin Drive from Idaho Power consisting of two hundred thousand (\$200,000) to be paid by October 31, 2023, and eight hundred thousand dollars (\$800,000) to be paid by October 31, 2024, see Exhibit A attached;

WHEREAS, the Agency agreed at its Agency Board meeting on August 21, 2023, to fund fifty percent (50%) of the two hundred thousand dollar (\$200,000) cost estimate, for a total of one hundred thousand dollar (\$100,000) for the undergrounding utility work between Gem Street and Serenade, located within the Agency's Project Area by October 31, 2023;

WHEREAS, only a portion of the undergrounding project is within the Project Area. The Agency, at its Agency Board meeting on August 21, 2023, agreed to fund the undergrounding improvements between Gem Street and Serenade for a cost of three hundred eighty-six thousand, three hundred fourteen dollars (\$386,314) to be paid by October 31, 2024, for a total Agency funded contribution not to exceed, four hundred eighty-six thousand three hundred fourteen dollars (\$486,314).

WHEREAS, the City issued a request for proposal for preparation of the Town Square Master Plan and selected GGLO to prepare the plan. The total cost of the plan is one hundred twelve thousand, five hundred (\$112,500). The City requested the Agency split the cost of the plan and contribute an amount not too exceed fifty-six thousand, two hundred and fifty dollar (\$56,250). The Agency agreed, at its Agency Board meeting on August 21, 2023, to fund fifty percent (50%) of the cost of the Town Square Master Plan that is one hundred twelve thousand, five hundred dollars (\$112,500) for an Agency contribution of fifty six thousand, two hundred fifty dollars (\$56,250);

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 undergrounding of power lines on Main Street between Gem Street and Serenade, and preparation of a Town Square Master Plan;

WHEREAS, the City and the Agency hereby find and determine that this Reimbursement 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, in consideration of the payment by the Agency for costs, as more specifically defined in this Reimbursement Agreement, the City hereby agrees to serve and perform as project

manager for the final planning, design, engineering, and construction of the Project; said final design to be subject to the review and approval of the Agency.

### **AGREEMENT**

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

1. **Definitions.** As used in this Reimbursement 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 construction of the Project.

**Contractor** shall mean the selected general contractor awarded the construction of the Project.

**Design Consultant** shall mean the selected design firm to prepare the Town Square Master Plan.

**Project** shall mean the undergrounding of power lines between Gem Street and Serenade in the City of Ketchum.

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 Reimbursement Agreement is to provide for the definition of rights, obligations, and responsibilities of the Agency and City regarding the planning, design services, engineering services, project management services, and cost estimating services for this Reimbursement Agreement.

3. **City Services and Responsibilities for the Undergrounding of Power Lines on Main Street.** City agrees to furnish its skill and judgment necessary to carry out the project administration for the Project.

3.1 Planning, Design, Engineering, and Construction. City shall oversee Idaho Power's construction management and administration for the Project. updates on the construction of the Project for Agency review and comment.

3.3 Project Construction Estimates. City has obtained estimates from Idaho Power for the Project.

3.4 Design and Construction. The obligations under this Reimbursement Agreement shall end thirty (30) days after final payment to the Contractor under the Contract has been paid. The City shall:

- a. Provide administration of the Project in compliance with generally accepted standards recognizing that the Project is a partially Agency funded project with the City providing project oversight.
- b. Provide necessary project oversight to assure timely progress and process all invoices and payment requests and verify Idaho Power's entitlement to all progress payments or other payments requested by Contractor;
- e. Receive and hold all certificates of insurance required by the Contract;
- f. Provide monthly progress reports to Agency either in writing or by presentation to Agency at Agency's Board meetings;
- h. Maintain all necessary records, documents, drawings, and other related documents normally maintained for a public works project; and

3.5 City Contribution. A portion of this Project as described in this Reimbursement Agreement is within the Project Area and is funded through the Agency. The City has budgeted funds for a portion of the work. City shall contribute all funds toward any work or improvements to areas outside the Project Area.

4. **City Services and Responsibilities for the Town Square Master Plan.** City, in partnership with the Agency, agrees to manage the Town Square Master Plan project and the Design Consultant necessary to carry out the project administration.

4.1 Planning, and Design. City and Agency shall coordinate hiring of necessary planning and design services for the Town Square Master Plan. City shall provide the Agency with periodic reports and updates on the completion of the final design services, for Agency review and comment, including approval of the final design of the Project.

4.2 City and Agency Contribution. The Town Square Master Plan as described in this Reimbursement Agreement, relates to the first phase of the Town Square Master Plan, consisting of planning and design services which are within the Project Area and is

funded fifty percent (50%) by the Agency and fifty percent (50%) by the City. The City has budgeted funds for a portion of the work. City shall contribute all funds toward any work or improvements to areas outside the Project Area.

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

6. **Effective Date.** This Reimbursement Agreement shall be effective upon execution of the Reimbursement Agreement by Agency's Chairman of the Board of Commissioners and the Mayor of the City and/or the City Administrator, as the case may be, the effective date being the date of last signature.

7. **Method of Reimbursement.**

- a. **Project Costs.** As consideration for the public improvement and value of the Project set forth above, the Agency shall pay the City one hundred thousand dollars (\$100,000) by October 31, 2023, and three hundred eighty-six thousand three hundred fourteen dollars (\$386,314) before October 31, 2024, toward the Project cost estimate provided by Idaho Power. For a total funding contribution by the Agency, not to exceed four hundred eighty-six thousand three hundred fourteen dollars (\$486,314) All project costs related to areas outside of the Project Area will be borne by the City.
- b. **Town Square Master Plan.** As consideration for the public improvement and value of the Project set forth above for the Town Square Master Plan, the Agency shall fund fifty (50%) of the cost estimate of the Town Square Master Plan phase 1, consisting of planning and design services. Agency's funding contribution to the City will not exceed fifty-six thousand, two hundred fifty dollars (\$56,250).

In order to provide sufficient documentation to ensure compliance, the City shall provide the Agency with the following information in reimbursement invoices and in a final invoice upon completion of the Project and the Town Square Master Plan:

- a. requests for payment for billing invoices received for work related to the Project and Town Square Master Plan with sufficient documentation to ensure accuracy;
- c. certification by the City that the costs incurred for services are consistent with the scope of the Project and the Town Square Master Plan; and
- d. monthly reports on the Town Square Master Plan and Project status as described above.

Upon receipt and approval of the reimbursement invoice, Agency shall remit payment to City for all approved amounts within forty-five (45) days of Agency's receipt of an invoice or

payment request. If Agency disputes any amount, Agency shall pay the undisputed amount within forty-five (45) days and reasonably cooperate with City to resolve the disputed amount. City shall include this payment process within the Contract with the selected contractor.

7. **Records Project Costs.** Costs pertaining to the Project shall be kept on the basis of generally accepted accounting principles and shall be available to the Agency or the Agency's authorized representative at mutually convenient times.

8. **Insurance.**

- a. The City (either itself, Idaho Power, 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 and the Town Square Master Plan; 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 and the Town Square Master Plan; 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 Reimbursement 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, the Town Square Master Plan, 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, design and 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 Reimbursement 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 Reimbursement 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 Reimbursement 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 Reimbursement 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:  
Susan Scovell , Chair  
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 Reimbursement 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 Reimbursement Agreement, or related to this Reimbursement 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 Reimbursement 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 Reimbursement Agreement.

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

17. **Assignment.** It is expressly agreed and understood by the Parties hereto that the City shall not have the right to assign, transfer, hypothecate, or sell any of its rights under this Reimbursement 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 Reimbursement Agreement, the aggrieved Party shall promptly notify the other Party to this Reimbursement 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. Anti-Boycott Against Israel Certification.**

City and Agency hereby certify pursuant to Section 67-2346, Idaho Code, they are not currently engaged in, and will not for the duration of this Agreement, knowingly engage in, a boycott of goods or services from Israel or territories under its control.

**20. Government of China Owned Companies Prohibited**

The Developer is not currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China.

**21. Entire Agreement.** This Reimbursement 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 Reimbursement Agreement on the date first cited above.

CITY OF KETCHUM

By \_\_\_\_\_  
Neil Bradshaw, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

KETCHUM URBAN RENEWAL AGENCY

By \_\_\_\_\_  
Susan Scovell, Chair

ATTEST:

\_\_\_\_\_  
Secretary

## **Exhibit A**

Idaho Power Estimate

## Idaho Power Cost Estimates

Option 1: Gem Street to south of proposed round about at Serenade Ln: \$486,314

Option2: Gem Street to south of Weyyakin Drive: \$900,000