



## **KETCHUM URBAN RENEWAL BOARD MEETING AGENDA**

### **REGULAR MEETING**

**October 18, 2021 beginning at 2:00 PM**

**480 East Avenue, Ketchum, Idaho**

Members of the public may observe the meeting live on the KURA's website at <https://www.ketchumura.org/kura/meetings>, dial into a ZOOM call or attend the meeting in person.

### **Join Zoom Meeting**

Dial In: 1 253 215 8782

Meeting ID: 850 0802 6696

### **Meeting Location**

480 East Ave. N

## **AGENDA**

### **CALL TO ORDER:**

### **ROLL CALL:**

### **COMMUNICATIONS FROM THE BOARD OF COMMISSIONERS:**

### **COMMUNICATIONS FROM THE PUBLIC:**

### **CONSENT CALENDAR: (ALL ACTION ITEMS)**

1. ACTION: Approval of Bills.
2. ACTION: Approval of Meeting Minutes.

### **DISCUSSION ITEMS:**

3. Update on KURA projects.
4. Proposed contract for services with the City of Ketchum.

### **ACTION ITEMS:**

5. ACTION: Recommendation to review and approve Owner Participation Agreement with Mountain Land Design located at 111 N. Washington Ave.

### **ADJOURNMENT:**

Any person needing special accommodations to participate in the above noticed meeting should contact the Ketchum Urban Renewal Agency prior to the meeting at (208) 726-3841. This agenda is subject to revisions and additions. NOTE: Revised portions of the agenda are underlined in bold. Public information on agenda items is available in the Clerk's Office located at 480 East Ave. N in Ketchum or (208) 726-3841.

STAY INFORMED! – visit [www.ketchumura.org](http://www.ketchumura.org) To receive notifications from the Ketchum Urban Renewal Agency, please sign up at [www.ketchumura.org](http://www.ketchumura.org). Here you can select to receive email and/or text notifications when meeting agendas, packets and minutes are posted.

Report Criteria:

Invoices with totals above \$0 included.  
Only unpaid invoices included.  
[Report].GL Account Number = "961000000"- "9848009999"

Vendor Name	Invoice Number	Description	Net Invoice Amount
<b>URBAN RENEWAL AGENCY</b>			
<b>URBAN RENEWAL EXPENDITURES</b>			
<b>98-4410-4200 PROFESSIONAL SERVICES</b>			
ELAM & BURKE	192831	General Representation	800.90
S & C ASSOCIATES LLC	1900	20-1029 Hawk	230.00
S & C ASSOCIATES LLC	2195	20-1029 Hawk	295.00
<b>98-4410-4800 DUES, SUBSCRIPTIONS, &amp; MEMBERS</b>			
REDEVELOPMENT ASSOCIATIO	M16014 10012	Membership Dues Fiscal Year 2022	2,600.00
<b>98-4410-7100 INFRASTRUCTURE PROJECTS</b>			
ECONOLITE CONTROL PRODUC	INV205669	Tech Labor w/Clients	1,500.00
Total URBAN RENEWAL EXPENDITURES:			5,425.90
Total URBAN RENEWAL AGENCY:			5,425.90
Grand Totals:			5,425.90



# Ketchum Urban Renewal Agency

480 East Avenue North  
Ketchum, ID 83340  
<http://ketchumura.org/>

## Regular Meeting

~ Minutes ~

Admin

Monday, September 20, 2021

2:00 PM

Ketchum City Hall

### CALL TO ORDER:

The meeting was called to order at 2:09 PM by Chairman Ed Johnson.

### ROLL CALL:

#### PRESENT

- Chair Ed Johnson
- Vice Chair Casey Dove
- Commissioner Casey Burke
- Commissioner Carson Palmer
- Commissioner Susan Scovell
- Commissioner Jim Slanetz

#### ABSENT

- Commissioner Amanda Breen

### COMMUNICATIONS FROM THE BOARD OF COMMISSIONERS:

### COMMUNICATIONS FROM THE PUBLIC:

1. Zoom Meeting Dial-in Instructions:  
Phone: 253 215 8782  
Meeting ID: 865 1223 6904

There were no public comments.

### CONSENT CALENDAR: (ALL ACTION ITEMS)

2. ACTION: Approval of Bills.
3. ACTION: Approval of August 23, 2021, Meeting Minutes.
4. ACTION: Recommendation to approve P.O. #50072 for ICRMP Insurance Renewal for the Annual Policy Period – 10/1/21 to 10/1/22.

Chair Johnson noted the signature name needed to be changed for the minutes.

### Motion to approve the Consent Calendar on Motions 2 through 4.

*Motion made by Commissioner Slanetz, Seconded by Commissioner Burke.*

*Voting Yea: Chair Johnson, Vice Chair Dove, Commissioner Burke, Commissioner Palmer, Commissioner Scovell, Commissioner Slanetz*

**DISCUSSION ITEMS:**

5. Discussion and direction to staff on FY22 KURA Projects.

Director Frick noted possible projects for 2022. There was a discussion of funds available for sidewalk and ADA improvements. The Commission discussed which sidewalks to include in the project, deciding to focus on Quadrants 3 and 4 for Fiscal Year 2022.

Quadrant 4, ADA ramps, and the 4th St extension were noted as priorities. Quadrant 4 has been engineered, but the engineering for 4th Street was expected to take a year.

The Commission directed Staff to send out bids for sidewalks. Ed Johnson and Carson Palmer will meet with Staff to identify additional sidewalks segments to be proposed.

**ACTION ITEMS:**

6. ACTION: Recommendation to review and discuss scope of work for public outreach with Agnew Beck and direct staff to prepare a contract for services.

Ellen Compfield-Nelson of Agnew Beck presented services for public outreach. They focus on the results of public outreach from a variety of informed positions from multiple sources. She would identify what aspects were important to the public and identify specific objections. They seek public engagement by those with influence over implementation and stakeholders.

**Motion to direct Staff to prepare a contract for services with Agnew Beck.**

*Motion made by Commissioner Scovell, Seconded by Vice Chair Dove.*

*Voting Yea: Chair Johnson, Vice Chair Dove, Commissioner Burke, Commissioner Palmer, Commissioner Scovell, Commissioner Slanetz*

7. ACTION: Recommendation to approve Engagement Letter #50073 with Workman and Company for FY21 Audit.

**Motion to approve Engagement Letter #50073 with Workman and Company for FY21 Audit.**

*Motion made by Commissioner Palmer, Seconded by Commissioner Burke.*

*Voting Yea: Chair Johnson, Vice Chair Dove, Commissioner Burke, Commissioner Palmer, Commissioner Scovell, Commissioner Slanetz*

8. ACTION: Recommendation to review and provide direction to staff on funding request for Mountain Land Design Project located at 111 N. Washington Ave.  
Frick noted this is for snowmelt pavers and trees under an Encroachment Agreement.

**Motion to approve a funding request for Mountain Land Design Project located at 111 N. Washington Ave.**

*Motion made by Commissioner Palmer, Seconded by Commissioner Burke.*

*Voting Yea: Chair Johnson, Vice Chair Dove, Commissioner Burke, Commissioner Palmer, Commissioner Scovell, Commissioner Slanetz*

9. ACTION: Approval of Resolution 21-URA04 and Contract for Services #50071 with Sun Valley Economic Development.

**Motion to approve Resolution 21-URA04 and Contract for Services #50071 with Sun Valley Economic Development and authorize the Chair to sign.**

*Motion made by Commissioner Scovell, Seconded by Commissioner Palmer.*

*Voting Yea: Chair Johnson, Vice Chair Dove, Commissioner Burke, Commissioner Palmer, Commissioner Scovell, Commissioner Slanetz*

**ADJOURNMENT:**

**Motion to adjourn**

*Motion made by Commissioner Palmer, Seconded by Commissioner Scovell.*

*Voting Yea: Chair Johnson, Vice Chair Dove, Commissioner Burke, Commissioner Palmer, Commissioner Scovell, Commissioner Slanetz*

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Ed Johnson, Chairman


ATTEST:

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Maureen Puddicombe, Secretary

## 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.  
4824-7880-2943, v. 1

## 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](mailto: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

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, AUTHORIZING AGENCY TO ENTER INTO A REIMBURSEMENT PARTICIPATION AGREEMENT WITH DAN DEVENPORT AND MARTINA DEVENPORT DBA MOUNTAIN LAND DESIGN; AUTHORIZING THE CHAIRMAN, VICE-CHAIRMAN, OR EXECUTIVE DIRECTOR AND THE SECRETARY OF AGENCY TO TAKE APPROPRIATE ACTION; AND PROVIDING FOR THIS RESOLUTION TO BE EFFECTIVE UPON ITS PASSAGE AND APPROVAL.

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, Dan Devenport and Martina Devenport dba Mountain Land Design (“Participant”) owns or controls certain real property located at 111 Washington Avenue, Ketchum, Idaho (the “Project Site”). The Project Site will be redeveloped and improved resulting in a new residential and commercial building (the “Participant’s Project”);

WHEREAS, as part of the Participant’s Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the “Improvement Project”);

WHEREAS, the Participant’s Project and the Improvement Project are located in the Amended Plan area, which consists of the 2006 Plan approved by the City Council on November

15, 2006, and the Amended Plan approved by the City Council on November 15, 2010 (“Ketchum Urban Renewal District”). The Amended Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency has also previously adopted a Participation Policy;

WHEREAS the Improvement Project includes improvements of public infrastructure to install heated sidewalks, pavers, and street trees along First Street and Washington Avenue, adjacent to the Project Site that are consistent with the objectives of the Amended Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District. Participant’s Improvement Project includes upgrades or enhanced improvements beyond city of Ketchum requirements;

WHEREAS, Participant has filed an application for funding as set forth in the Participation Policy. Participant qualifies for certain funding under the Participation Policy;

WHEREAS, the Improvement Project, while not specifically identified in the Amended Plan, consists of infrastructure improvement which will be of benefit to the public and achieve the overall objectives of the Amended Plan;

WHEREAS, Agency deems it appropriate to assist the development of the Improvement Project to achieve the objectives set forth in the Amended Plan;

WHEREAS, Agency and Participant have negotiated the terms of a Reimbursement Participation Agreement, attached hereto as Exhibit A, which sets forth the obligations of Agency and Participant, concerning the reimbursement by Agency to Participant for construction of the Improvement Project;

WHEREAS, the Board of Commissioners finds it in the best public interest to approve the Reimbursement Participation Agreement and to authorize the Chair or Vice-Chair to execute and attest the Reimbursement Participation Agreement, subject to certain conditions, and to execute all necessary documents to implement the transaction, subject to the conditions set forth below.

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 Reimbursement Participation Agreement, attached hereto as Exhibit A, is hereby incorporated herein and made a part hereof by reference and is hereby approved and accepted, recognizing technical changes or corrections which may be required prior to execution of the Reimbursement Participation Agreement.

Section 3. That the Chair, Vice-Chair, or Executive Director, and Secretary of the Agency are hereby authorized to sign and enter into the Reimbursement Participation Agreement and to execute all necessary documents required to implement the actions contemplated by the Reimbursement Participation Agreement, subject to representations by Agency staff and Agency legal counsel that all conditions precedent to such actions have been met; and further, any necessary technical changes to the Reimbursement Participation Agreement or other documents are acceptable, upon advice from Agency's legal counsel that said changes are consistent with the provisions of the Reimbursement Participation Agreement and the comments and discussions received at the October 18, 2021, Agency Board meeting; Agency is further authorized to appropriate any and all funds contemplated by the Agreement and to perform any and all other duties required pursuant to said Agreement.

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 October 18, 2021. Signed by the Chair of the Board of Commissioners, and attested by the Secretary to the Board of Commissioners, on October 18, 2021.

URBAN RENEWAL AGENCY OF KETCHUM

By \_\_\_\_\_  
Ed Johnson, Chair

ATTEST:

By \_\_\_\_\_  
Secretary

4843-3517-6959, v. 1

## REIMBURSEMENT PARTICIPATION AGREEMENT

THIS REIMBURSEMENT PARTICIPATION AGREEMENT (“Agreement”) is entered into by and between the Urban Renewal Agency of the City of Ketchum, also known as the Ketchum Redevelopment Agency, an independent public body, corporate and politic, organized and existing under the laws of the state of Idaho and known as the urban renewal agency of the city of Ketchum, Idaho (“Agency”) and Dan Devenport and Martina Devenport dba Mountain Land Design (“Participant”). Agency and Participant may be collectively referred to as the “Parties” and individually referred to as a “Party.”

### RECITALS

A. Participant owns or controls certain real property located at 111 Washington Avenue, Ketchum, Idaho (the “Project Site”). The Project Site will be redeveloped and improved resulting in an upgraded residential and commercial building as more particularly described on attached **Exhibit A** (the “Participant’s Project”).

B. As part of the Participant’s Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the “Improvement Project”). The Improvement Project is more accurately depicted on attached **Exhibit B**. A site map showing the Participant’s Project is attached as **Exhibit B**.

C. The Participant’s Project and the Improvement Project are located in the Ketchum Urban Renewal Plan (the “Plan”) area, which consists of the Ketchum Urban Renewal Plan approved by the City Council on November 15, 2006, and the Amended Ketchum Urban Renewal Plan approved by the City Council on November 15, 2010 (“Ketchum Urban Renewal District”). The Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency has also previously adopted a Participation Policy.

D. The Improvement Project includes improvements of public infrastructure to install heated sidewalks, pavers, and street trees along First Street and Washington Avenue, adjacent to the Project Site that are consistent with the objectives of the Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District. Participant’s Improvement Project includes upgrades or enhanced improvements beyond city of Ketchum requirements.

E. Participant has filed an application for funding as set forth in the Participation Policy. Participant qualifies for certain funding under the Participation Policy.

F. The Improvement Project, while not specifically identified in the Plan, consists of traditional infrastructure improvement which will be of benefit to the public and achieve the overall objectives of the Plan.

G. Agency deems it appropriate to assist the development of the Improvement Project to achieve the objectives set forth in the Plan.

## AGREEMENTS

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement; the mutual covenants contained herein; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Effective Date.** The effective date (“Effective Date”) of this Agreement shall be the date when this Agreement has been signed by the Participant and Agency (last date signed) and shall continue until: (1) the completion of all obligations of each Party; or (2) sixty (60) months from the issuance of a Certificate of Occupancy for the Participant’s Project, as further described in section 6 of this agreement, whichever comes first.

**2. Construction of the Improvement Project.** Participant agrees to construct the Improvement Project consistent with the following:

The Parties agree that the Improvement Project is depicted on **Exhibit B**, with cost estimates for eligible items described in the Schedule of Eligible Costs in **Exhibit C** (“Estimated Eligible Costs”). Any other public improvements that are constructed by the Participant as part of the Participant’s Project are not eligible for reimbursement pursuant to this Agreement. Additionally, Agency’s reimbursement obligation is limited to the amount set forth in Section 6 of this Agreement.

The Improvement Project shall be designed, engineered, and constructed to comply with applicable city of Ketchum.

**3. Initial Construction Funding.** Participant shall pay for all of the costs of construction for the Improvement Project. Agency acknowledges that the Schedule of Costs attached as **Exhibit C** is an estimate by Participant’s contractor and that actual costs for the Improvement Project, as well as each line item of cost, may be more or less than is shown on **Exhibit C**. The parties acknowledge and agree that Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Projects are constructed consistent with the construction contracts (the “Construction Contracts”) and is undertaken in a reasonable manner. Participant shall be presumed to have utilized commercially reasonable contracting, budgeting, and bidding practices if (1) each general contractor (the “Contractor(s)”) has been selected through competitive bids for the Projects, pursuant to Idaho Code § 67-2805(1), which provides for a process of soliciting no fewer than three licensed public works contractors by written means, either by electronic or physical delivery, without the need for publication notice. This process is available for projects not to exceed \$200,000. The parties represent the estimate for the Improvement Project does not exceed \$200,000, (2) the work is performed by Idaho public works licensed contractors, and (3) the work is not performed by an affiliate or subsidiary of the Owner.

**4. Notification of Completion; Inspection.** Upon completion of construction, Participant shall notify Agency in writing and request a final construction

inspection and/ or a meeting with Agency to determine if the Improvement Project meets the requirements of this Agreement. Agency shall provide Participant with written confirmation that the Improvement Project has been completed in compliance with this Agreement.

**5. Determining Actual Payment after Completion of Construction.**

Participant shall provide appropriate documentation (“Cost Documentation”) to Agency that Participant has expended funds for eligible costs in order to receive payment per the terms of this Agreement. Any Cost Documentation shall be submitted within thirty (30) days of Participant’s notification to Agency that construction of the Improvement Project is complete and shall include:

- a. Schedule of values that includes line items for the Improvement Project improvements approved by Agency for reimbursement, so they are identifiable separate from other line items (“Schedule of Values”).
- b. Invoices from Participant’s general contractor, subcontractor(s), and material suppliers for each type of eligible cost item (e.g., excavation, material fill, pavement, etc.). Invoices shall specify quantities and unit costs of materials, and a percentage estimate of how much material was used for the Improvement Project in comparison to the amount used for the remainder of Participant’s project (“Invoices”).
- c. Explanation of any significant deviation between the initial cost estimates in **Exhibit C** and the actual costs in the Cost Documentation as requested by Agency.
- d. Additional documentation or clarifications may be required and requested by Agency.

Agency shall have the right to review the Cost Documentation and to obtain independent verification that the quantities of work claimed, the unit costs and the total costs for eligible costs are commercially reasonable and consistent with the cost estimates provided by Participant to Agency prior to construction. In the event Participant fails to timely deliver the Cost Documentation, Agency may, in its discretion, elect to terminate its payment obligations under this Agreement by providing Participant with written notice of such default. Participant shall have thirty (30) days from such written notice to cure the default. In the event Participant fails to cure such a default, Agency’s payment obligations under this Agreement may be terminated in Agency’s sole discretion.

Within fifteen (15) calendar days of Agency’s receipt of the Cost Documentation, Agency will notify Participant in writing of Agency’s acceptance or rejection of the Cost Documentation and Agency’s determination of the Actual Eligible Costs to be reimbursed. Agency shall, in its discretion, determine the Actual Eligible Costs following its review of the Cost Documentation, verification of the commercial reasonableness of the costs and expenses contained in such Cost Documentation, and comparison of the amounts in the Cost Documentation to the amounts in **Exhibit C**. **In no event shall the**

**total for the Actual Eligible Costs to be reimbursed exceed the amount allowed by Section 6.**

If Participant disagrees with Agency's calculation of the Actual Eligible Costs, Participant must respond to Agency in writing within three (3) business days explaining why Participant believes Agency's calculation was in error and providing any evidence to support any such contentions Participant wants Agency to consider. Agency shall respond to Participant within three (3) business days with a revised amount for the Actual Eligible Costs or notifying Participant Agency will not revise the initial amount calculated. At that point, the determination of the Actual Eligible Costs will be final.

**Agency's determination of the Actual Eligible Costs to be reimbursed not to exceed \$73,176 is within its sole discretion.**

**6. Agency's Reimbursement Payment Amount and Payment Period.** In accordance with the Participation Program, Agency agrees to reimburse Participant as follows:

A portion of Actual Eligible Costs of the Improvement Project not to exceed \$73,176 **WITH NO INTEREST**. Actual Eligible Costs include certain soft costs (e.g., architectural and engineering design). Agency shall disburse to Participant 50% of the revenue allocation (tax increment) proceeds Agency receives from the Project Site. Participant shall provide Agency with its property tax notices and evidence of property tax payments to assist the Agency in determining the amount of revenue allocation (tax increment) proceeds received and the assessed value of the Participant Project for three years after issuance of the Certificate of Occupancy. Participant shall be responsible for providing Agency property tax notices and evidence of property tax payment from other persons or entities being assessed for ownership interests within the Project Site. Agency disbursements shall commence upon the first receipt of revenue allocation (tax increment) proceeds after the issuance of the Certificate of Occupancy for the Participant's Project and shall continue for a period of sixty (60) months but not beyond the termination date of the Amended Plan, conditioned upon proof of property tax payment and property tax receipt by the Agency unless the reimbursement of the Actual Eligible Costs not to exceed \$73,176 has been extinguished previously. Agency shall determine its obligation for payment based on increases to assessed value above \$1,092,294. If the Actual Eligible Costs have not been fully reimbursed within sixty (60) months after the issuance of the Certificate of Occupancy for the Participant's Project, any further obligation of the Agency is terminated, and Participant shall have no right for any payments beyond that period.

**PARTICIPANT ACKNOWLEDGES THE REVENUE ALLOCATION (TAX INCREMENT) PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE PERIOD SET FORTH HEREIN AND ASSUMES THAT RISK.**



Participant has provided the Agency with an estimated assessed value of the Participant's Project of approximately \$10,000 of increment value above \$1,092,294.

Agency may pay at any time, in whole or in part, without penalty, the then remaining outstanding balance of the reimbursement obligation.

Participant may allocate the reimbursement among the cost estimates shown on **Exhibit C** among only those categories identified, but in no event shall be entitled to reimbursement for an amount which exceeds \$73,176.

**7. Conditions Precedent to Agency's Payment Obligation.** Agency agrees to reimburse Participant in the amount as determined in compliance with Sections 2.b., 5, and 6 and submittal of the required information described in Section 6 above.

Participant's Project includes the commitment of providing one community housing unit in compliance with the city of Ketchum policy. Should the housing unit not be available for community housing, the Agency shall have the right to terminate its reimbursement obligation.

Participant's Project shall be completed, and a certificate of occupancy issued for the Participant's Project, on or before September 2023. Failure of Participant to obtain a Certificate of Occupancy by that date shall be a basis for Agency's termination of its obligations under this Agreement.

Participant shall provide KURA with evidence the Improvements listed on **Exhibit C** have been formally accepted by the city of Ketchum. In addition, Participant shall enter into the appropriate agreement with the city of Ketchum binding the Participant to maintain the Improvements listed on **Exhibit C**. Failure of the Participant to obtain acceptance by the city of Ketchum of the Improvements, failure to enter into the appropriate agreement for maintenance of the Improvements and failure to comply with the City agreement, shall be a basis for termination of Agency's reimbursement obligation.

Participant's failure to comply with all Agreement provisions shall be a basis for termination of Agency's reimbursement obligation.

**8. Subordination of Reimbursement Obligations.** The Parties agree this Agreement does not provide Participant with a security interest in any Agency revenues for the Ketchum Urban Renewal District or any other urban renewal plan area, including but not limited to revenue from any "Revenue Allocation Area" (as defined in Title 50, Chapter 29 of the Idaho Code). Notwithstanding anything to the contrary in this Agreement, the obligation of Agency to make the payments as specified in this Agreement shall be subordinate to all Agency obligations that have committed or in the future commit available Agency revenues, including but not limited to revenue from any Revenue Allocation Area and may be subject to consent and approval by Agency lenders or bondholders.

**9. Default.** Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days [ten (10) days in the event of failure to pay money] from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said 45-day period [ten (10) days in the event of failure to pay money], has rectified the particulars specified in said notice of default. In the event of a default, the nondefaulting Party may do the following:

- a. The nondefaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the nondefaulting Party.
- b. The nondefaulting Party may seek specific performance of those elements of this Agreement which can be specifically performed, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that elements of this Agreement requiring certain actions be taken for which there are not adequate legal remedies may be specifically enforced.
- c. The nondefaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.
- d. The nondefaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting Party.
- e. In the event Participant defaults under this Agreement, Agency (the nondefaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured, Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Participant shall reimburse Agency for any such funds Participant received.

**10. Captions and Headings.** 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.

**11. No Joint Venture or Partnership.** Agency and Participant agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making Agency and Participant a joint venture or partners.

**12. Successors and Assignment.** This Agreement is not assignable except that the Participant may assign Participant's rights or obligations under this Agreement to a third party only with the written approval of Agency, at Agency's sole discretion and cannot be reasonably denied.

**13. Notices and Receipt.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail, or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, or by electronic mail (e-mail) addressed to the appropriate Party at the address set forth below:

If to Participant:     Dan Devenport  
                              Martina Devenport  
                              Mountain Land Design  
                              [Address]  
                              [City, State ZIP]  
                              [phone number]  
                              [email]

If to Agency:           Suzanne Frick, Executive Director  
                              Ketchum Urban Renewal Agency  
                              P.O. Box 2315  
                              Ketchum, Idaho 83340  
                              208-726-7801  
                              [sfrick@ketchumidaho.org](mailto:sfrick@ketchumidaho.org)

**14. Applicable Law/Attorney Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either Party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, court costs, and such other costs as may be found by the court.

**15. Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties. Exhibits to this Agreement are as follows:

Exhibit A	Improvement Project Plan
Exhibit B	Participant's Project Site Map
Exhibit C	Schedule of Eligible Costs

**16. Indemnification.** Participant shall indemnify and hold Agency and its respective commissioners, officers, agents, consultants and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect, design 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 commissioners, officers, agents, consultants and employees relating to the construction or design of Participant's Project, the Improvement Project or otherwise arising out of Participant's actions or inactions. In the event an action or proceeding is brought against Agency or its respective

commissioners, officers, agents, consultants, and employees by reason of any such Claim, Participant, upon written notice from Agency shall, at Participant's expense, resist or defend such action or proceeding. Notwithstanding the foregoing, Participant shall have no obligation to indemnify, defend, or hold Agency and its respective commissioners, officers, agents, consultants, and employees harmless from and against any matter to the extent it arises from the negligence or willful act of Agency or its respective commissioners, officers, agents, consultants, or employees.

Participant shall also indemnify and hold harmless and defend Agency and its commissioners, officers, agents, consultants, and employees from and against any and all claims or causes of action asserted by entities or individuals that are not a party to this Agreement regarding the validity or legality of this Agreement and the reimbursement to Participant of the costs of the Improvement Project by Agency (collectively referred to in this Section as "Legality Claim"). Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the Legality Claim determining that the reimbursement to Participant by Agency of the costs of the Improvement Project is unlawful or invalid, the Agency shall have no further obligation or liability to reimburse or make payments to Participant for the costs associated with the Improvement Project and Participant shall solely bear the responsibility for such costs. Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the Legality Claim determining that the reimbursement to Participant by Agency of the costs of the Improvement Project is unlawful or invalid, then Participant, in Agency's sole discretion, may be required to return any funds paid by Agency to Participant for the Improvement Project within ninety (90) days of written request from Agency to Participant.

If a Legality Claim is made, then Agency and Participant shall jointly defend against said claim. Participant has the discretion to hire its own legal counsel with Participant reimbursing the Agency for its reasonable fees and costs, including without limitation, attorney and expert witness fees and costs.

If a claim, other than a legality claim, is brought against Agency or its respective commissioners, officers, agents, consultants, and employees by reason of any such claim, Participant, upon written notice from Agency shall, at Participant's expense, bear the costs and expense of defending Agency against such action or proceedings by counsel selected by Agency.

Notwithstanding anything to the contrary in this Section 16, in the event Participant's Indemnity obligations are triggered as a result of a Legality Claim, Participant shall have the right, in lieu of indemnifying and /or providing any defense to Agency, of returning all Reimbursements made in accordance with this Agreement to Agency and waiving any right to further Reimbursement. In such case, this Agreement shall terminate and neither party hereto shall have any further obligation to the other.

**17. Antidiscrimination During Construction.** Participant, for itself and its successors and assigns, agrees that in the rehabilitation and/or construction of improvements on the Project Site provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color,

religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, marital status, age, or physical disability.

**18. Compliance with Laws.** Participant agrees to comply with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, all conditions imposed by the city of Ketchum through its planning and zoning land use approval process and building permit approval process. Should the Participant not comply with the requirements set forth in the preceding sentence, the Agency shall no longer be obligated to provide the Participant reimbursement as set forth in this Agreement.

**19. Warranty on Improvement Project.** Participant warrants that the materials and workmanship employed in the construction of the Improvement Project shall be good and sound and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of the Improvement Project by Agency, provided nothing herein shall limit the time within which Agency may bring an action against Participant on account of Participant's failure to otherwise construct such improvements in accordance with this Agreement. The one-year warranty period does not constitute a limitation period with respect to the enforcement of Participant's other obligations under the Agreement.

**20. Maintenance.** Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Improvement Project and that no agreement has been reached with Agency to accept any maintenance obligations for the Improvement Project. Provided however, that this Section shall not limit or modify any obligation that Agency assumes or may assume in the future pursuant to a separate agreement.

**21. Insurance Requirements.** Participant shall, or through its contractor, agents, representatives, employees or subcontractors shall, at its sole cost, obtain and maintain in force for the duration of the construction of the improvements to the Project Site as part of the Improvement Project, insurance of the following types, with limits not less than those set forth below and in a form acceptable to Agency, against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Participant, its agents, representatives, employees or subcontractors:

- a. Commercial General Liability Insurance with a minimum combined single limit liability of \$1,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability. Such policy shall have a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis. The policy shall be endorsed to name Agency and City as additional insureds.
- b. Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Participant's employees, and

Employer's Liability Insurance. Participant shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

- c. Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Agency, including its respective affiliates, directors, and employees, as additional insureds.
- d. All insurance provided by Participant under this Agreement shall include a waiver of subrogation by the insurers in favor of Agency. Participant hereby releases Agency, including its respective affiliates, directors, and employees, for losses or claims for bodily injury, property damage covered by Participant's insurance or other insured claims arising out of Participant's performance under this Agreement or construction of the Improvement Project.
- e. Certificates of insurance satisfactory in form to Agency (ACORD form or equivalent) shall be supplied to Agency evidencing that the insurance required above is in force, that, to the extent commercially reasonable, not less than thirty (30) days' written notice will be given to Agency prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Participant shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Agency's request, Participant shall provide a certified copy of each insurance policy required under this Agreement.
- f. The foregoing insurance coverage shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Agency. The fact that Participant has obtained the insurance required in this Section shall in no manner lessen or affect Participant's other obligations or liabilities set forth in the Agreement.

**22. Taxes.** Participant shall pay when due all real estate and personal property taxes and assessments assessed and levied on Participant's ownership interest of the Project Site. This provision shall be binding upon Participant's successors or assigns. Participant recognizes Agency has no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property and personal property taxes. Participant also recognizes the ability of Agency to reimburse Participant for the Agency Reimbursement is dependent on the ad valorem assessment and collection process. Participant expressly acknowledges and understands that the Agency Reimbursement is linked to the tax increment revenue *actually* generated from the Project Site, and in the event insufficient taxes are received by Agency for any reason, including a reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event any tax delinquency or contest of value by

any owner of parcels with the Project Site or by any tenant related to personal property, the actual tax increment received by Agency will be reduced which in turn will result in lower annual payments by Agency to Participant.

**23. Exemptions.** Participant shall not, without written consent of the Agency, file any application with Blaine County or the state of Idaho which could result in such property tax exemption or property tax abatement, including but not limited to the following:

The Idaho Small Employer Incentive Act of 2005, Chapter 44, Title 63, Idaho Code  
The Idaho Small Employer Growth Incentive Exemption, Idaho Code, § 63-606A  
New Capital Investment Incentive Act, Chapter 45, Title 63  
Idaho Code § 63-602NN, business property tax exemption or similar type exemption.

**24. Anti-Boycott Against Israel Certification.** Developer hereby certifies pursuant to Section 67-2346, Idaho Code, that the Developer, its wholly owned subsidiaries, majority owned subsidiaries, parent companies and affiliates, 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.

*signatures on following page*

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

**Agency:**

Agency: the urban renewal agency of the City of Ketchum, a public body, corporate and politic

\_\_\_\_\_  
Ed Johnson, Chair

Date: \_\_\_\_\_

**PARTICIPANT:**

Mountain Land Design

\_\_\_\_\_  
Dan Devenport

Title: \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Martina Devenport

Title: \_\_\_\_\_

Date \_\_\_\_\_

**Exhibits**

- A: Participant's Project and Improvement Project
- B: Participant's Project Site Map
- C: Schedule of Eligible Costs



EXHIBIT A  
PARTICIPANT'S PROJECT AND  
IMPROVEMENT PROJECT

Redevelopment of the Project Site located at 111 Washington Avenue consisting of a mixed-use development containing commercial uses, residential uses, and one community housing unit along with common space totaling approximately 12,070 square feet.

The Improvement Project consists of improvements to include heated sidewalks, pavers, and street trees within the right of way.

EXHIBIT B  
PARTICIPANT'S PROJECT SITE MAP

EXHIBIT C  
SCHEDULE OF ELIGIBLE COSTS

Snow Melted Sidewalk	\$28,980
Street Trees	\$27,500
Paver Sidewalk	\$16,696
Not to exceed	\$73,176

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