



Memo

To: Mayor and Hayden City Council

From: Abbi Sanchez, City Clerk/Arts Commission Liaison

Date: April 9, 2024

Agenda Item: Hayden Urban Renewal Agency Participation Agreement for Funding of Improvements for Arts Commission Come Together Bench Program

Agenda Item Location

Consent Calendar

Recommended Action or Motion

The Arts Commission recommends approval and authorization for the Mayor to sign the Hayden Urban Renewal Agency Participation Agreement for Funding of Improvements of up to \$25,000 for the Arts Commission Come Together Bench Project.

Summary

The Hayden Urban Renewal Agency Board has approved funding up to \$25,000 for the City's match requirement to purchase nine benches from the company Canvus for the Arts Commission Come Together Bench Program project.

Execution of this agreement will memorialize HURA's commitment and allow the City to seek reimbursement of expended funds up to \$25,000 for the purchase of the benches.

Fiscal Impact

N/A

Budget Funding Source / Transfer Request

Expended funds for the purchase of these benches up to \$25,000 will be reimbursed by the Hayden Urban Renewal Agency.

Attachment

Agreement

**PARTICIPATION AGREEMENT FOR FINANCING OF IMPROVEMENTS
ARTS COMMISSION COME TOGETHER BENCH
PROGRAM**

This Agreement is entered into between the Hayden Urban Renewal Agency (the "Agency") and the City of Hayden (the "City") relating to the financing the Arts Commission "Come Together" Canvas Bench program (the "Project"). The City and the Agency are each referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Agency is an independent public body corporate and politic, authorized under the authority of the Idaho Urban Renewal Law of 1965, as amended, Title 50, Chapter 20 of the Idaho Code, as amended (the "Law") and the Local Economic Development Act, Title 50, Chapter 29, as amended (the "Act") as a duly created and existing urban renewal agency for City; and

WHEREAS, City is a municipal corporation duly organized existing and operating under the laws and Constitution of the State of Idaho (the "State"); and

WHEREAS, the City Council, after notice duly published, conducted a public hearing on the Hayden Urban Renewal Capital Development Plan (the "Plan"); and

WHEREAS, following said public hearing the City Council adopted its Ordinance 406, on December 13, 2005, approving the Plan; and

WHEREAS, pursuant to the Act, the Law and Plan, the Agency is authorized to carry out the purposes and various projects under the Plan and to enter into and carry out contracts or agreements in connection therewith, including but not limited to, "the creating of public spaces, gateway entries, public art, and the like" that is consistent with the goals of the Plan; and

WHEREAS, the Agency recognizes that a key element listed the Plan is to "promote and acquire public art through public and private partnerships."

WHEREAS, Agency has found that the Project is consistent with the goals of the Plan; and

WHEREAS, in fiscal year 2016, the Agency designated 5% of the tax assessments collected in that fiscal year to only be used for the arts. To date, the Agency has thirty-seven thousand one hundred twenty-six dollars (\$37,126) remaining specifically assigned to arts.

WHEREAS, City's Arts Commission has selected a supplier for the benches and solicited a quote in accordance with State Code. The nine (9) benches were selected by the City Arts Commission and will come primed and ready for an artist to paint. The City will fund commissioning artists to paint the benches.

WHEREAS, the supplier of the benches (Canvas) will provide matching funds if benches are ordered by June 2024. The quote for the nine (9) benches, including freight, is forty-eight thousand ninety-five dollars (\$48,095). The Canvas-provided match of twenty-three thousand six hundred eighty-five dollars (\$23,685) reduces the quote to twenty-four thousand four hundred ten dollars (\$24,410).

WHEREAS, pursuant to Idaho Code Section 50-2015(d)(1), the City and the Agency may

enter into agreements (which agreements may extend over any period, notwithstanding any provisions or rule of law to the contrary), respecting action to be taken by the City pursuant to any of the powers granted by the Law; and

WHEREAS, Agency agreed at its March 11, 2024 regular meeting, in accordance with its Plan, and for the benefit of City and Agency, to contribute certain funds of Agency for the purpose of providing the City Arts Commission funds not to exceed twenty-five thousand dollars (\$25,000);

NOW THEREFORE, it is agreed as follows:

1. **Effective Date.** The effective date of this Agreement shall be the date when this Agreement has been signed by City and Agency (last date signed) and shall continue until the completion of all obligations of each Party.

2. **Financing of Project.** Agency agrees to fund the costs incurred for the Project (collectively, the "Project Costs") as follows:

(a) City Responsibilities. The City will be the contracting agency for the Project and shall be financially responsible for all costs less the Agency contribution described below.

(b) Agency Financial Responsibilities. Agency is financially responsible to reimburse the City an amount not-to-exceed \$25,000 (the "Agency Contribution"):

(c) Invoices. City shall provide expense records to Agency with monthly invoices submitted to Agency for payment. Each invoice shall be in a format acceptable to Agency. Each invoice shall also specify current billing and previous payments, with a total of costs incurred and payments made to date. The City shall not seek reimbursement for City staff time. Also, The City understands and acknowledges that the Hayden Urban Renewal District has a finite life, and that all reimbursements/payments must be completed prior to the District maturity date of December 31, 2029. The City also understands and acknowledges that any costs or other obligations associated with the Project which are not documented and provided to the Agency by August 31, 2029 will not be reimbursed and will not be an obligation or liability of the Agency.

3. **Payments by the Agency.**

(a) Costs. Provided that the City is in compliance with the terms and conditions of this Agreement, within thirty (30) days of an invoice being submitted to the Agency, which has been signed and approved by the City, the Agency will reimburse the amount requested to the City up to a maximum of the total Agency Contribution in accordance with the stipulated terms in Section 2 herein. A project status update shall accompany any reimbursement request.

4. **Antidiscrimination.** The City and Agency, for themselves and their successors and assigns, agrees that in the construction, design and installation of the Project provided for in this Agreement, they will not discriminate against any employee or applicant for employment because of age, race, handicap, color, creed, religion, sex, marital status, ancestry, or national origin.

5. **Insurance.** The City shall purchase and maintain property damage insurance for any property damage to the Project even if benches are placed on Agency-owned property.

6. **Damage and Destruction; Condemnation.** In the event that the Project, or any part thereof, is damaged or destroyed, or title to the Project, or any part thereof, is taken by any

governmental body other than the City or Agency through the exercise of the power of eminent domain, any condemnation award or insurance proceeds payable to or for the account of the City shall be used to rebuild, replace, repair or restore the Project to the extent of such damage, destruction or taking. In the event the City reasonably determines that such rebuilding, replacement, repair or restoration of the Project is impracticable or not feasible, such proceeds shall be used to reimburse the Agency for the Agency Contribution. In the event of a partial taking or partial destruction of the Project, the City shall first apply such condemnation award or insurance proceeds to repair or restore the remainder of the Project to the extent such Project has been destroyed, or to replace the portion of the Project taken in any partial condemnation, and shall apply any amount not so expended to reimburse the Agency for its proportionate share of the costs of the Project components funded with the Agency Contribution subject to such partial taking or partial damage or destruction.

7. Default. Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days from receipt of written notice of default from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement. Such Party may, prior to expiration of said 45-day period, rectify the particulars specified in said notice of default. In the event the Party does not rectify the default within 45 days of receipt of the notice of 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 this Agreement and, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that this Agreement may be specifically enforced.

(c) In the event the City defaults under this Agreement, the Agency (the non-defaulting Party) shall have the right to seek reimbursement of any funds provided to the City pursuant to this Agreement.

(d) In the event the Agency defaults under this Agreement, the City (the non-defaulting Party) shall have the right to seek reimbursement of any funds or services provided to the Agency pursuant to this Agreement, plus any additional amount due to the City for work performed but not yet reimbursed.

8. Access to Reports. All Parties agree to provide all information regarding the Project to all other Parties upon reasonable request to the appropriate Authorized Representative as designated under Section 13.

9. 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.

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

11. Assignment. The rights, obligations and duties of the Agency and the City under this Agreement shall not be assigned or transferred, in whole or in part, without the prior written permission of the other Party.

12. Notice and Receipt.

(a) Notices. 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, addressed to the appropriate Party at the address set forth below:

To Agency:
Hayden Urban Renewal Agency
c/o City of Hayden
Attn: Ronda Mitchell, Chairperson
8930 North Government Way
Hayden, ID 83835
copy to Melissa Cleveland, Executive Director

To City:
Abbi Sanchez
City Clerk and City Arts Commission Clerk
City of Hayden
8930 North Government Way
Hayden, ID 83835

The person and address to which notices are to be given may be changed at any time by any Party upon written notice to the other Party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) Receipt. For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following:

- (i) the date of delivery of the notice or other document to the address specified above as shown on the return receipt;
- (ii) the date of actual receipt of the notice or other document by the person or entity specified above; or
- (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of:
 - (a) the date of the attempted delivery or refusal to accept delivery,
 - (b) the date of the postmark on the return receipt, or
 - (c) the date of receipt of notice of refusal or notice of non-delivery by the sending Party.

13. Authorized Representative. The Agency hereby designates Melissa Cleveland, as its Authorized Representative. The City hereby designates Abbi Sanchez, Clerk as its Authorized Representative.

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. Parties in Interest. Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Agency any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the City and the Agency.

16. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

18. Entire Agreement. This 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 Agreement on the date first cited above.

CITY OF HAYDEN

HAYDEN URBAN RENEWAL AGENCY

By: Alan Davis, Mayor

By: Ronda Mitchell, Chairperson

ATTEST

ATTEST

By: Abbi Sanchez, Clerk

Lindsay Spencer, Clerk