

RESOLUTION NO. 18-URA3

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 KNEEBONE, LLC; AUTHORIZING THE CHAIRMAN OR ADMINISTRATOR 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, Kneebone, LLC ("Kneebone") owns or controls certain real property located at 500 N. Washington Avenue, Ketchum, Idaho (the "Project Site") which is more accurately depicted as Lot 8, Block 15, Ketchum Townsite. The Project Site has undergone redevelopment including construction a commercial building (the "Project");

WHEREAS, as part of the Project, Kneebone intends to remediate certain Project Site conditions and redevelop the Project Site (the "Improvement Project");

WHEREAS, the Project and the Improvement Project are located in the Amended Plan area ("Ketchum Urban Renewal District"). The Amended Plan includes various measures to

mitigate and remediate the Ketchum Urban Renewal District. The Agency also adopted a Participation Policy on July 17, 2017;

WHEREAS, the Improvement Project includes improvements of public infrastructure to replace curb, gutter, and sidewalk along Washington Avenue and 5th Street, 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;

WHEREAS, the Participation Policy requires the filing of an application for assistance within 30 days of filing for a building permit. Kneebone did not file its application until September 11, 2017, after having received its certificate of occupancy on July 28, 2017. The Agency deems it appropriate, however, to accept and consider the application because of the importance of Kneebone's Project and the Improvement Project and the limited distribution and knowledge of the Agency's Participation Policy;

WHEREAS, the Improvement Project, while not specifically identified in the Amended Plan, consists of traditional 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 Kneebone have negotiated the terms of a Reimbursement Participation Agreement, attached hereto as Exhibit A, which sets forth the obligations of Agency and Kneebone, concerning the reimbursement by Agency to Trail Kneebone 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.

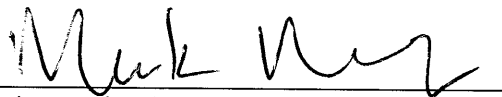
Section 2: That the Reimbursement Participation Agreement, attached hereto as Exhibit A, is hereby incorporated herein and made a part hereof by reference and is hereby approved and accepted, recognizing technical changes or corrections which may be required prior to execution of the Reimbursement Participation Agreement.

Section 3. That the Chair or Vice-Chair 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 January 16, 2018, 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.

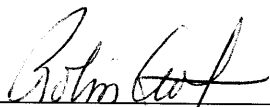
Section 4: That this Resolution shall be in full force and effect immediately upon its adoption and approval.

PASSED By the Urban Renewal Agency of Ketchum, Idaho, on January 16, 2018. Signed by the Chair of the Board of Commissioners, and attested by the Secretary to the Board of Commissioners, on January 16, 2018.

URBAN RENEWAL AGENCY OF KETCHUM

By 
Chair, Mark Nieves

ATTEST:

By 
Secretary, Robin Crotty

4838-7563-0682, 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 Kneebone, LLC (“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 500 N. Washington Avenue, Ketchum, Idaho (the “Project Site”) which is more accurately depicted as Lot 8, Block 15, Ketchum Townsite. The Project Site has undergone redevelopment including construction a commercial building (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 A**.

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 also adopted a Participation Policy on July 17, 2017

D. The Improvement Project includes improvements of public infrastructure to replace curb, gutter, and sidewalk along Washington Avenue and 5th Street, 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.

E. The Participation Policy requires the filing of an application for assistance within 30 days of filing for a building permit. Participant did not file its application until September 11, 2017, after having received its certificate of occupancy on July 28, 2017. The Agency deems it appropriate, however, to accept and consider the application because of the importance of this Participant’s Project and the Improvement Project and the limited distribution and knowledge of the Agency’s 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) five (5) years from the Effective Date, whichever comes first.

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

- a. Remove and remediate certain Project Site conditions and backfill in order to enhance development of the Project Site.
- b. The Parties agree that the Improvement Project is depicted on **Exhibit A**, with cost estimates for eligible items described in the Schedule of Eligible Costs in **Exhibit B** (“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.

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 B** 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 B**.

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 B**. **In no event shall the total for the Actual Eligible Costs 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 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:

Actual Eligible Costs not to exceed \$61,900 **WITH NO INTEREST**. Actual Eligible Costs do not include soft costs (e.g. architectural and engineering design, permits, traffic control, mobilization, and overhead). 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. Agency disbursements shall occur as follows, conditioned upon proof of property tax payment and property tax receipt by the Agency:

February 28, 2018
August 31, 2018
February 28, 2019
August 31, 2019
February 28, 2020
August 31, 2020
February 28, 2021
August 31, 2021
February 28, 2022
August 31, 2022

unless the reimbursement of the Actual Eligible Costs not to exceed \$61,900 has been extinguished previously. If the Actual Eligible Costs have not been fully reimbursed by August 31, 2022, any further obligation of the Agency is terminated, and Participant shall have no right for any payments after August 31, 2022. **PARTICIPANT ACKNOWLEDGES THE REVENUE ALLOCATION (TAX INCREMENT) PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE AUGUST 31, 2011, AND ASSUMES THAT RISK.**

Participant has provided the Agency with an estimated assessed value of the Participant's Project of approximately \$4,400,000 with an increment value of \$3,819,157.

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

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 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.

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: Stephen T. Kearns
 Kneebone, LLC
 P.O. Box 4356
 Ketchum, Idaho 83340
 Phone Number
 steve@kmvbuilders.com

If to Agency: Suzanne Frick, Executive Director
 Ketchum Urban Renewal Agency
 P.O. Box 2315
 Ketchum, Idaho 83340
 208-726-7801

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	Schedule of Eligible Costs

16. Indemnification. Participant shall indemnify and hold Agency and its respective officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect 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 construction or design of 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 officers, agents, 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 officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of Agency or its respective officers, agents, or employees.

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.

[Signatures appear on the 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

Chair

Date _____

PARTICIPANT:

Kneebone, LLC

Stephen T. Kearns, Owner

Date _____

Exhibits

- A: Improvement Project
- B: Schedule of Eligible Costs

4818-3038-2426, v. 1

This contract was approved with Resolution 18-URA3 - However, signatures were never obtained.

**EXHIBIT B
SCHEDULES OF ELIGIBLE COSTS**

Item	Cost
Bike racks	708
Bike racks installation, 1m 4 hrs	200
Street lights	24,148
Street lights installation, 3m 16 hrs	2,400
Excavation, grading, backfill, water line, fire hydrant sewer service, drainage, drywell, utilities, demo	37,839
Sidewalk prep, curb and gutter prep, asphalt, catch basin	10,224
Concrete site work	49,700
Additional concrete site work	12,720
Total Public Investment	\$ 137,939

4815-9073-5439, v. 1