

RESOLUTION NO. 19-URA06

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

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF KETCHUM, IDAHO, APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF KETCHUM AND THE KETCHUM URBAN RENEWAL AGENCY; AUTHORIZING THE CHAIR OR VICE-CHAIR AND SECRETARY, RESPECTIVELY, TO EXECUTE AND ATTEST SAID MEMORANDUM OF UNDERSTANDING SUBJECT TO CERTAIN CONDITIONS; AUTHORIZING THE CHAIR OR VICE-CHAIR AND SECRETARY TO EXECUTE ALL NECESSARY DOCUMENTS REQUIRED TO IMPLEMENT THE MEMORANDUM OF UNDERSTANDING AND TO MAKE ANY NECESSARY TECHNICAL CHANGES TO THE MEMORANDUM OF UNDERSTANDING SUBJECT TO CERTAIN CONDITIONS, INCLUDING SUBSTANTIVE CHANGES; AND PROVIDING AN AFFECTIVE DATE.

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

WHEREAS, the City Council ("City Council") of the City of Ketchum (the "City") by adoption of Ordinance No. 992 on November 15, 2006, duly adopted the Ketchum Urban Renewal Plan (the "2006 Plan") to be administered by the Agency;

WHEREAS, upon the approval of Ordinance No. 1077 adopted by the City Council on November 15, 2010, and deemed effective on November 24, 2010, the Agency began implementation of the amended Ketchum Urban Renewal Plan (the "Amended Plan");

WHEREAS, pursuant to Idaho Code §§ 50-2007(f) and 50-2015, City and Agency are authorized and empowered to enter into such contracts as may be necessary to carry out the purposes of the Idaho Urban Renewal Law;

WHEREAS, pursuant to the Amended Plan, the Agency has embarked upon certain public improvement projects and several private development projects within the Project Area as defined by the Amended Plan and authorized by the Act;

WHEREAS, the Agency is authorized to undertake and carry out urban renewal projects to eliminate, remedy, or prevent deteriorated or deteriorating areas through redevelopment, rehabilitation, or conservation, or any combination thereof, within its area of operation and is authorized to carry out such projects jointly with the City;

WHEREAS, pursuant to Idaho Code §§ 50-2007(f) and 50-2015, City and Agency are authorized and empowered to enter into such contracts as may be necessary to carry out the purposes of the Idaho Urban Renewal Law, including contracts for the furnishing of financial assistance by City to Agency;

WHEREAS, one of the City's objectives includes providing certain funds for housing projects which will accommodate work force and/or affordable housing opportunities within the City. To achieve that objective, the City has imposed certain in lieu of housing fees which has generated funds available to the City for assistance for housing projects which meet the City's objectives and requirements;

WHEREAS, since the adoption of the Amended Plan, the Agency has responded to certain opportunities to purchase real property which could be redeveloped in compliance with the Amended Plan for either public improvements or private redevelopment;

WHEREAS, in order to achieve certain property acquisitions, the Agency received from the City funds from the in lieu of housing fees which Agency used to purchase real property commonly referred to as the Starbucks building and the Doll House property;

WHEREAS, the amount advanced by the City to the Agency totaled \$1,460,000;

WHEREAS, Agency counsel and staff have prepared a Memorandum of Understanding ("MOU") to formalize the agreement among the Parties concerning the repayment of the advanced amount, a copy of which is attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, Agency, prior to the effective date of this MOU, has repaid the amount of \$234,143, leaving a balance of \$1,261,687;

WHEREAS, the Parties acknowledge no previous written agreement, memorandum, or other document has evidenced a binding obligation of the Agency to repay the advance funds, though the Agency acknowledges its previously stated intent to reimburse the City dependent on certain circumstances;

WHEREAS, the Agency has previously conveyed the Starbucks building to the City for no consideration and purchased the City's interest in an adjacent parcel to the Doll House property in an amount of \$1,474,000;

WHEREAS, the City and the Agency have, during duly noticed public meetings, authorized execution of this MOU;

WHEREAS, Agency staff has reviewed the MOU and recommends approval of the MOU subject to certain conditions;

WHEREAS, the Board of Commissioners finds it in the best public interest to approve the MOU and to authorize the Chair or Vice-Chair to execute and attest the MOU, 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 MOU, attached hereto as Exhibit A, is hereby incorporated herein and made a part hereof by reference and are hereby approved and accepted, recognizing technical changes or corrections which may be required prior to execution of the MOU.

Section 3. That the Chair or Vice-Chair and Secretary of the Agency are hereby authorized to sign and enter into the MOU and, further, are hereby authorized to execute all necessary documents required to implement the actions contemplated by the MOU subject to representations by the Agency staff and Agency legal counsel that all conditions precedent to and any necessary technical changes to the MOU or other documents are acceptable upon advice from the Agency's legal counsel that said changes are consistent with the provisions of the MOU and the comments and discussions received at the August 19, 2019, Agency Board meeting, including any substantive changes discussed and approved at that meeting.

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 August 19, 2019. Signed by the Chair of the Board of Commissioners and attested by the Secretary to the Board of Commissioners, on August 19, 2019.

URBAN RENEWAL AGENCY OF KETCHUM

By SWAN SWAN
Chair

ATTEST:

By [Signature]
Secretary

MEMORANDUM OF UNDERSTANDING 50027

This Memorandum of Understanding (“MOU”) is by between and among the Ketchum Urban Renewal Agency (“Agency”), a public body corporate and politic, organized and existing under the urban renewal laws of the state of Idaho, Chapter 20 & 29, Title 50 of the Idaho Code (collectively the “Act”), and the city of Ketchum, Idaho, a public body corporate and politic, organized and existing under the laws of the state of Idaho, (collectively “the Parties”). Now therefore, in consideration of the premises, mutual covenants and agreement herein contained, the Parties hereto agree as follows:

Recitals

A.. The City Council of the City of Ketchum (the “City”) by adoption of Ordinance No. 992 on November 15, 2006, duly adopted the Ketchum Urban Renewal Plan (the “2006 Plan”) to be administered by the Agency;

B. 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”);

C. Pursuant to the Amended Plan, the Agency has embarked upon certain public improvement projects and several private development projects within the Project Area as defined by the Amended Plan and authorized by the Act.

D. The Agency is authorized to undertake and carry out urban renewal projects to eliminate, remedy, or prevent deteriorated or deteriorating areas through redevelopment, rehabilitation, or conservation, or any combination thereof, within its area of operation and is authorized to carry out such projects jointly with the City.

E. Pursuant to Idaho Code §§ 50-2007(f) and 50-2015, City and Agency are authorized and empowered to enter into such contracts as may be necessary to carry out the purposes of the Idaho Urban Renewal Law, including contracts for the furnishing of financial assistance by City to Agency.

F. One of the City’s objectives includes providing certain funds for housing projects which will accommodate work force and/or affordable housing opportunities within the City. To achieve that objective, the City has imposed certain in lieu of housing fees which has generated funds available to the City for assistance for housing projects which meet the City’s objectives and requirements.

G. Since the adoption of the Amended Plan, the Agency has responded to certain opportunities to purchase real property which could be redeveloped in compliance with the Amended Plan for either public improvements or private redevelopment.

H. In order to achieve certain property acquisitions, the Agency received from the City funds from the in lieu of housing fees which Agency used to purchase real property commonly referred to as the Starbucks building and the Doll House property.

I. The amount advanced by the City to the Agency totaled \$1,460,000.

J. Agency, prior to the effective date of this MOU, has repaid the amount of \$234,143, leaving a balance of \$1,261,687.

K. The Parties acknowledge no previous written agreement, memorandum, or other document has evidenced a binding obligation of the Agency to repay the advance funds, though the Agency acknowledges its previously stated intent to reimburse the City dependent on certain circumstances.

L. The Agency has previously conveyed the Starbucks building to the City for no consideration and purchased the City's interest in an adjacent parcel to the Doll House property in an amount of \$1,474,000.

M. The purpose of this MOU is to formalize the agreement among the Parties concerning the repayment of the advanced amount.

N. The City and the Agency have, during duly noticed public meetings, authorized execution of this MOU.

AGREEMENT

NOW THEREFORE, it is understood between City and Agency as follows:

1. The Recitals set forth above are a part of the agreement of the Parties and not mere recitals.

2. The Parties agree to cooperate in the implementation of this MOU.

3. The Parties agree the amount to be reimbursed shall not exceed \$1,260,000. Agency shall determine each year the amount, in its discretion which shall be reimbursed to the City by following the process outlined below:

A. **Annual Work Session and Public Meeting Reimbursement Funding.** Each June, during the Agency's preparation of the following fiscal year's budget, subject to subsection C, the Agency Board will hold a work session to review current conditions and consider factors regarding the Agency's financial contribution to support reimbursement of the remaining advanced amount.

During the work session Agency staff will present the following, including but not limited to:

- i. A report of its activities over the prior fiscal year focusing on private redevelopment.
- ii. Status of any Agency property for disposition for redevelopment for housing.
- iii. Infrastructure funding as described in Section 4 of this MOU.
- iv. Status of long-term projects.
- v. Funding priorities during the current fiscal year.
- vi. Requests for additional funding for specific projects, as appropriate.
- vii. Additional information as may be agreed to by the Parties.

Two weeks after the work session, or as soon as practicable thereafter and subject to subsection C, the Agency will hold a public work session to receive public comment regarding the Agency's proposed contribution to the City concerning reimbursement to the City of the remaining advanced amount. Such comment shall include information the City desires to present to the Agency Board for consideration.

B. Notice of Funding Amount Provided for Reimbursement.

Subsequent to the public meeting, the Agency Board will adopt a resolution stating its intent to budget the reimbursement amount for the next fiscal year and will give notice of the reimbursement amount to the City no later than June 30 of each year.

C. Mutual Agreement. The timing and date of the work session and public hearing set forth in subsection A shall be mutually agreed to by the Parties. The Parties, by mutual agreement, may agree to alternative dates, as may be necessary, without formally amending this Agreement.

4. City agrees that the remaining amount set forth in Section 1 in addition to the annual funding provided through the annual budget shall be reduced by any of the following activities or actions by the Agency, subject to Agency providing City with evidence confirming and verifying the contributions set out below:

- Conveyance of any Agency owned parcel to a developer who commits to redevelop the property to achieve the City's housing objectives. At the time the City shall issue a certificate of occupancy for such housing project, the reimbursable amount shall be reduced by the fair market value of the parcel conveyed by the Agency to the City at the time of such conveyance to the City.
- The cost of certain public infrastructure funded either directly by the Agency or through a developer advance to support the development of housing projects which achieve the City's housing objectives. Such public infrastructure includes, but is not limited to, street improvements, sidewalks, streetscapes within the public right of way, and utility

improvements such as gas, power, water, sewer, communication, conduit, cable, etc.

5. Agency's reimbursement payments under this MOU may be made in equal semi-annual installments on or before the 15th day of February and August of each year.

6. The term of this MOU shall be the termination date of the Amended Plan, which for the purposes of this MOU is deemed December 31, 2030, except for revenue allocation revenues received in calendar year 2031, or until City is reimbursed in full, whichever occurs first.

7. This MOU constitutes the entire agreement between the parties and supersedes all other agreements and understandings, written and oral, between the parties with respect to the subject matter hereof.

8. This entire MOU may be amended at any time and from time to time by the mutual written consent of the Parties for any of the following purposes:

- a. To add provisions to this MOU to benefit any or all of the Parties; and
- b. To cure any ambiguity and to correct or supplement any provision herein.

9. All parties hereto are or have been afforded the opportunity to be represented by counsel in the course of the negotiations for and the preparation of this MOU; accordingly, in all cases, the language of this MOU will be construed simply, according to its fair meaning, and not strictly for or against any party.

10. No covenant, term or condition, or breach thereof, shall be deemed waived, except by written consent of the party against whom waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any other covenant, term or condition herein or of any future breach of the provision in question. Acceptance by a party of any performance by another party after the time the same shall have become due shall not constitute a waiver by the first party of the breach or default of any such covenant, term or condition unless otherwise expressly agreed to in writing by the first party.

11. In the event any provision of this MOU shall be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12. Any and all notices required to be given by either of the Parties hereto, unless otherwise stated in this MOU shall be in writing and be deemed communicated

when mailed in the United States mail, certified, return receipt requested, addressed as follows:

Ketchum Urban Renewal Agency
c/o _____
480 East Avenue North
P.O. Box 2315
Ketchum, ID 83340

Mayor Neil Bradshaw
City of Ketchum
480 East Avenue North
P.O. Box 2315
Ketchum, ID 83340

13. Any dispute under this MOU, or related to this MOU, shall be decided in accordance with the laws of the state of Idaho.

14. Should any litigation or arbitration be commenced between the Parties hereto concerning this MOU, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorneys' fees as determined by a court or arbitrator of competent jurisdiction. This provision shall be deemed to be a separate contract between the Parties and shall survive any default, termination, or forfeiture of this MOU.

15. The provisions of this MOU shall be binding upon and shall inure to the benefit of the Parties hereby and their respective successors and assigns.

16. Agency and City have duly authorized and have full power and authority to execute this MOU.

17. It is expressly agreed and understood by the Parties hereto that no Party shall have the right to assign, transfer, hypothecate or sell any of its rights under this MOU except upon the prior express written consent of the other Parties, which consent shall not be unreasonably withheld.

18. In the event that a dispute arises between or among the Parties regarding application or interpretation of any provision of this MOU, the aggrieved party shall promptly notify the other Parties to this MOU of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, each party shall have the right to pursue any rights or remedies it may have at law or in equity, including but not limited to specific performance of this MOU.

19. This MOU may be executed in counterparts and, once so executed by both parties hereto, each such counterpart shall be deemed to be an original, but all such counterparts together shall constitute but one agreement.

The signing parties acknowledge and agree this MOU includes reasonable and necessary business points that the Parties have resolved at this time. The MOU has been negotiated by authorized representatives of the Parties, approved by each Party through its Council and Board, respectively, and executed and delivered by each Party in accordance with that understanding.

IN WITNESS WHEREOF, the Parties hereto, through their respective governing boards, have executed this MOU on the date signed below.

[signatures on following page]

KETCHUM URBAN RENEWAL AGENCY

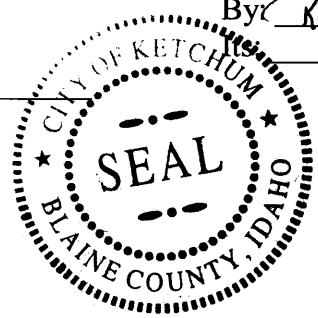
By: *Susan Scovell*
Title: Chair
Printed Name: Susan Scovell
Date: AUG. 30 19

ATTEST: *Robin Crotty*
By: Robin Crotty
Its: Secretary

CITY OF KETCHUM

By: *Neil Bradshaw*
Title: Mayor
Printed Name: Neil Bradshaw
Date: September 17, 2019

ATTEST: *Robin Crotty*
By: Robin Crotty
Its: City Clerk



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