



Ketchum Urban Renewal Agency

P.O. Box 2315 | 480 East Ave. N. | Ketchum, ID 83340

July 26, 2021

Chair and Commissioners
Ketchum Urban Renewal Agency
Ketchum, Idaho

Consider Public Comment, Review, Discuss and Approve Resolution No. 21-URA02

Background and Process

As part of the closing process for the Revenue Allocation Refunding Bond, Series 2021, KURA is required to commit to a policy concerning post issuance compliance. Bond counsel has drafted the policy statement and assisted in the preparation of the KURA board resolution adopting the policy statement.

Recommendation

KURA Executive Director and KURA Counsel recommend approval of Resolution No. 21-URA02

Proposed Motion

I move to approve Resolution No. 21-URA02 approving the Post-issuance Tax Compliance Procedures.

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 POST-ISSUANCE TAX COMPLIANCE PROCEDURES DATED AS OF JULY 23, 2021; AUTHORIZING THE 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; and

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”); and

WHEREAS, the Board of Commissioners (the “Board”) of the Agency has determined it necessary to issue its Revenue Allocation Refunding Bond, Series 2021 in the aggregate principal amount of up to \$4,815,958.70 (the “Bond”) for the purpose of refunding and refinancing certain outstanding prior bonds and applying any financial benefit therefrom to urban renewal projects authorized under its Urban Renewal Plan; and

WHEREAS, the Agency issued the Bond on July 23, 2021, pursuant to and in accordance with Resolution No. 21-URA01 of the Agency adopted by the Board on June 21, 2021 (the “Bond Resolution”); and

WHEREAS, the Bond Resolution authorized the Agency to deliver a Tax Certificate, stating, in part, that the Bond is not “arbitrage bonds” within the meaning of said Sections 103 or 148 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, attached to the Tax Certificate are the Post-Issuance Tax Compliance Procedures establishing procedures in connection with the Bond to ensure that the Agency complies with all applicable post-issuance requirements of the Code needed to preserve the tax-exempt status of the Bond; and

WHEREAS, the Agency now desires that the Post Issuance Tax Compliance Procedures attached hereto as Exhibit A be ratified and approved by the Board.

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: The Post-Issuance Tax Compliance Procedures dated as of July 23, 2021, and attached hereto as Exhibit A are hereby ratified and approved and the Executive Director is authorized to implement and carryout the policies and procedures set forth therein.

Section 3: 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 July 26, 2021. Signed by the Chair of the Board of Commissioners, and attested by the Secretary to the Board of Commissioners, on July 26, 2021.

URBAN RENEWAL AGENCY OF KETCHUM

By _____
Chairman, Board of Commissioners

ATTEST:

By _____
Secretary

CERTIFICATION

I, the undersigned Secretary of the Board of Commissioners of the Ketchum Urban Renewal Agency, hereby certify that the foregoing Resolution is a full, true and correct copy of an Resolution duly passed and adopted at a regular meeting of the Board of Commissioners of said Agency, duly and regularly held at the special meeting place thereof on July 26, 2021, of which meeting all members of said Board had due notice, and at which a majority thereof were present; and that at said meeting said Resolution was adopted by the following vote:

AYES, and in favor thereof, Commissioners:

NAYS, Commissioners:

ABSENT, Commissioners:

ABSTAIN, Commissioners:

I further certify that I have carefully compared the same with the original Resolution on file and of record in my office, that said Resolution is a full, true and correct copy of the original Resolution adopted at said meeting; and that said Resolution has not been amended, modified or rescinded since the date of its adoption, and is now in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the official seal of said Agency on July 26, 2021.

(S E A L)

Secretary

EXHIBIT A

Ketchum Urban Renewal Agency Post-Issuance Tax Compliance Procedures For Tax-Exempt Bonds

July 23, 2021

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds (“Bonds”) issued by the Ketchum Urban Renewal Agency (the “Agency”) so as to ensure that the Agency complies with all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds.

General

Ultimate responsibility for all matters relating to Agency financings and refinancings rests with the Executive Director of the Agency (the “Executive Director”).

Post-Issuance Compliance Requirements

External Advisors / Documentation

The Executive Director and other appropriate Agency personnel shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for the appropriate tax status. Those requirements and procedures shall be documented in an Agency resolution(s), Tax Certificate(s) and / or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds.

The Executive Director and other appropriate Agency personnel also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed assets and future contracts with respect to the use of output or throughput of Bond-financed assets.

Whenever necessary or appropriate, the Agency shall engage expert advisors (each a “Rebate Service Provider”) to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds.

Role of the Agency as Bond Issuer

Unless otherwise provided by Agency resolutions, unexpended Bond proceeds shall be held by the

Agency, and the investment of Bond proceeds shall be managed by the Executive Director. The Executive Director shall maintain records and shall prepare regular, periodic statements to the Agency regarding the investments and transactions involving Bond proceeds.

If an Agency resolution provides for Bond proceeds to be administered by a trustee, the trustee shall provide regular, periodic (monthly) statements regarding the investments and transactions involving Bond proceeds.

Arbitrage Rebate and Yield

Unless a Tax Certificate documents that bond counsel has advised that arbitrage rebate will not be applicable to an issue of Bonds:

- the Agency shall engage the services of a Rebate Service Provider, and the Agency or the Bond trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;
- upon request, the Executive Director and other appropriate Agency personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
- the Executive Director and other appropriate Agency personnel shall monitor efforts of the Rebate Service Provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and
- during the construction period of each capital project financed in whole or in part by Bonds, the Executive Director and other appropriate Agency personnel shall monitor the investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds.

For working capital financings, the Agency shall follow procedures set forth in the applicable Tax Certificate and/or instructions delivered at bond or note closing.

The Agency shall retain copies of all arbitrage reports and trustee statements as described below under “Record Keeping Requirements”.

Use of Bond Proceeds

The Executive Director and other appropriate Agency personnel shall:

- monitor the use of Bond proceeds, the use of Bond-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of Bond-financed assets throughout

the term of the Bonds (and in some cases beyond the term of the Bonds) to ensure compliance with covenants and restrictions set forth in applicable Agency resolutions and Tax Certificates;

- maintain records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds;
- consult with Bond Counsel and other professional expert advisers in the review of any contracts or arrangements involving use of Bond-financed facilities to ensure compliance with all covenants and restrictions set forth in applicable Agency resolutions and Tax Certificates;
- maintain records for any contracts or arrangements involving the use of Bond-financed facilities as might be necessary or appropriate to document compliance with all covenants and restrictions set forth in applicable Agency resolutions and Tax Certificates;
- meet at least annually with personnel responsible for Bond-financed assets to identify and discuss any existing or planned use of Bond-financed, assets or output or throughput of Bond-financed assets, to ensure that those uses are consistent with all covenants and restrictions set forth in applicable Agency resolutions and Tax Certificates.
- take timely remedial actions under section 1.141-12 of the Treasury Regulations (or other remedial actions authorized by the Commissioner of the IRS under Section 1.141-12(h) of the Regulations) to prevent from being considered “deliberate actions” any actions of the Agency which cause the conditions of the private business tests or the private loan financing test to be met resulting in private activity bonds.

All relevant records and contracts shall be maintained as described below and in the applicable Tax Certificate.

Investment of Bond proceeds in compliance with the arbitrage bond rules and rebate of arbitrage will be supervised by the Executive Director.

- Guaranteed investment contracts (“GIC”) will be purchased only using the three-bid “safe harbor” of applicable Treasury regulations, in compliance with fee limitations on GIC brokers in the regulations.
- Other investments will be purchased only in market transactions.
- Calculations of rebate liability will be performed annually by outside consultants.
- Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the issuer.
- Identification of the date for first rebate payment will be determined at time of issuance and entered in records for the issue.

Record Keeping Requirements

Unless otherwise specified in applicable Agency resolutions or Tax Certificates, the Agency shall maintain the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Agency at or in connection with closing of the issue of Bonds;
- a copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds;
- a copy of all contracts and arrangements involving private use of Bond-financed assets or for the private use of output or throughput of Bond-financed assets; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.