



## **Ketchum Urban Renewal Agency**

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**P.O. Box 2315 | 191 5<sup>th</sup> Street | Ketchum, ID 83340**

March 27, 2023

Chair and Commissioners  
Ketchum Urban Renewal Agency  
Ketchum, Idaho

### **RECOMMENDATION TO PROVIDE DIRECTION TO STAFF ON SERIES 2021 BOND ACTION RELATED TO THE FIRST AND WASHINGTON PROJECT**

#### Introduction/History

Tax exempt bonds were used by the KURA to purchase the “Dollhouse Property” which is the southern two lots of the First and Washington site. In 2021, the KURA refunded the original tax exempt bonds used to purchase the property by issuing new tax exempt bonds, known as the Series 2021 Bonds.

For the bonds to qualify as tax exempt bonds, Resolution No. 21-URA01 adopted by the KURA Board on June 21, 2021, and the Tax Certificate of KURA dated July 23, 2021, KURA agreed to not allow more than ten percent (10.00%) of the proceeds of the Series 2021 Bonds to be used directly or indirectly to benefit private businesses or individuals (“Private Business Use”). KURA certified the 1<sup>st</sup> and Washington Property would remain as a public parking lot, or other public use, through the term of the Series 2021 Bonds.

The proposed development of the property, even to a non-profit organization, may cause the tax-exempt Series 2021 Bonds to be deemed taxable by the Internal Revenue Service (IRS). Bond counsel has prepared an evaluation of the issue which is summarized in Attachment A.

#### Analysis

Attachment A identifies two options for Board consideration and direction to address the issue related to the tax-exempt bonds. The options consist of:

Option 1: KURA would pursue, with bond counsel’s assistance, scheduling a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing to be held by the City Council, followed by adoption of a resolution by the City approving the use of the 1<sup>st</sup> and Washington Property for the Affordable Workforce Housing Project. Bond Counsel would then prepare and file a Form 8039 with the IRS evidencing KURA’s election to

treat a portion of the Series 2021 Bonds as “qualified 501(c)(3) bonds.” KURA would also be expected to approve a resolution issuing the qualified 501(c)(3) bonds.

Option 2: KURA would expend significant capital to pay down a portion of the Series 2021 Bonds and would also likely require significantly more in legal fees for bond counsel assistance.

Staff is seeking Board direction on the option to pursue. Execution of the option would not occur until all the project commitments are in place for redevelopment of the First and Washington property.

Recommendation and Motion

Staff recommends the Board provide direction on the preferred option and adopt the following motion:

“I move to direct staff to implement Option \_\_ once the project commitments are place for redevelopment of the First Street and Washington Avenue project.”

Attachment A:                      March 20, 2023 Staff Narrative for Series 2021 Bonds

## Attachment A

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**Subject:** Staff Report Narrative for Series 2021 Bonds  
**Date:** March 20, 2023

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Back in 2007 KURA issued its Revenue Allocation Notes, Series 2007C (“Series 2007C Bonds”) to finance the purchase of a portion of the 1<sup>st</sup> and Washington Property, which was commonly referred to as the “Dollhouse Property.” Prior to this purchase, the City of Ketchum (“City”) obtained the other portion of the 1<sup>st</sup> and Washington Property. Sometime later the City conveyed the remaining portion of the 1<sup>st</sup> and Washington parcel to KURA. The entire 1<sup>st</sup> and Washington Property, including the purchased Dollhouse Property, and the portion conveyed to KURA by the City, have been used as a public parking lot. In 2010, KURA issued its tax-exempt Revenue Allocation (Tax Increment) Refunding Bonds, Series 2010 (“Series 2010 Bonds”), which in part, refinanced the Series 2007C Bonds. On July 23, 2021, KURA issued its tax-exempt Revenue Allocation Refunding Bond, Series 2021 (“Series 2021 Bonds”) to refund its Series 2010 Bonds.

Pursuant to Section 16.0 of KURA’s Bond Resolution No. 21-URA01 adopted by the KURA Board on June 21, 2021, and the Tax Certificate of KURA dated July 23, 2021, KURA agreed to not allow more than ten percent (10.00%) of the proceeds of the Series 2021 Bonds to be used directly or indirectly to benefit private businesses or individuals (“Private Business Use”). In brief, KURA certified the 1<sup>st</sup> and Washington Property would remain as a public parking lot, or other public use, through the term of the Series 2021 Bonds.

KURA bond and tax counsel has concluded, leasing the 1<sup>st</sup> and Washington Property to the Wood River Community Housing Trust (“WRCHT”) will likely result in Private Business Use which would exceed the 10.00% allowable limit under the Tax Certificate and the KURA Bond Resolution, even though the 1<sup>st</sup> and Washington Property is being leased at a “zero sum” (\$50 for 50 years) to a non-profit organization. This exceedance of the 10.00% limit of Private Business Use may cause the tax-exempt Series 2021 Bonds to be deemed taxable by the Internal Revenue Service (“IRS”). The Series 2021 Bonds were issued by KURA as governmental bonds because the refinanced projects related to these Series 2021 Bonds were not used or owned by a 501(c)(3) organization (with the exception of a portion of the Town Square Building occupied by Sun Valley Marketing Alliance, Inc. dba Visit Sun Valley). The Series 2021 Bonds were issued to refinance primarily traditional public infrastructure improvements.

As explained by KURA bond and tax counsel, KURA has essentially two (2) options to avoid the Series 2021 Bonds being deemed taxable by the IRS:

- 1) Elect to treat the Series 2021 Bonds as “qualified 501(c)(3) bonds” pursuant to Section 131(b)(i) of the Internal Revenue Code of 1986, as amended, (“Code”) through a process known as remedial action.
- 2) Partially or fully redeem the Series 2021 Bonds with available funds or proceeds of refunding bonds. This would require using KURA’s cash on hand to pay

approximately 35.6% of the outstanding balance of the bonds related to the 1<sup>st</sup> and Washington Property. A formal calculation of the monetary amount would need to be conducted if this option were to be pursued.

Bond and tax counsel recommend Option 1, the remedial action. The Option 1 process is simple and cost effective. Under this option, KURA can elect to treat the portion of the Series 2021 Bonds that refinanced the 1<sup>st</sup> and Washington Property as “qualifying 501(c)(3) bonds” due to the nature of the 1<sup>st</sup> and Washington Property ultimately being leased to WRCHT. By selecting this Option 1, KURA’s lease of the 1<sup>st</sup> and Washington Property to WRCHT as a 501(c)(3), will not trigger the Private Business Use, or otherwise modify the terms of the Series 2021 Bonds, and KURA will remain in compliance with the covenants of the Bond Resolution and the Tax Certificate.

The process for this remedial action of Option 1 is that KURA will need to pursue, with bond counsel’s assistance, scheduling a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing to be held by the City Council, followed by adoption of a resolution by the City approving the use of the 1<sup>st</sup> and Washington Property for the Affordable Workforce Housing Project. Bond Counsel would then prepare and file a Form 8039 with the IRS evidencing KURA’s election to treat a portion of the Series 2021 Bonds as “qualified 501(c)(3) bonds.” KURA would also be expected to approve a resolution issuing the qualified 501(c)(3) bonds.

Option 2 would require KURA expending significant capital to pay down a portion of the Series 2021 Bonds and would also likely require significantly more in legal fees for bond counsel assistance.

Should KURA elect to pursue Option 1, bond and tax counsel will be advised of KURA’s selection and will begin the process of outlining next steps.