



Ketchum Urban Renewal Agency

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

September 21, 2020

Chair and Commissioners
Ketchum Urban Renewal Agency
Ketchum, Idaho

Recommendation to adopt Resolution 20-URA07 and approve Owner Participation Agreement 50066 in the amount of \$90,000 for improvements at 311 First Avenue

Introduction/History

On June 15, 2020 the KURA approved funding in the amount of \$90,000 for improvements within the public right of way located at 311 First Avenue.

The proposed improvements are located at the corner of Sun Valley Road and First Avenue, the site of the “Old Post Office” and prior location of the Ketchum Innovation Center. The building is undergoing a significant remodel and transforming into a mixed-use development containing commercial uses on the ground floor, two second floor penthouses, and two community housing units on the ground floor fronting Sun Valley Road.

The owner requested KURA funding to reimburse costs to install heated pavers for the Sun Valley Road and First Avenue sidewalks around the project, replace the curb and gutter around the site, install street trees and irrigation, reconfigure the bulb-out and repair the street asphalt, and install street furniture such as a bench and trash container. The Board approved up to \$90,000 in funding for a period of 30 months.

Proposed OPA Agreement

The attached OPA reflects a substantive change requested by the Participant’s attorney to the Agreement prepared by the KURA attorney.

The change involves the Indemnity text in Section 16 of the Agreement on the bottom of page 8. The concept of a Legality Claim is new to the OPA agreement form that have been used for KURA and other agencies of late. The genesis of the new language is trying to protect an agency, which after entering into this type of an agreement, gets

sued by a third party arguing this type of reimbursement or participation is illegal. The Legality Claim could assert the invalidity of the right to participate/reimburse, or challenge the way in which the public improvements are being constructed without going through a formal bidding process. As an agency is responding to a request made by the participant/owner, requiring the participant to defend the agency's action seems appropriate.

What the Participant's attorney is proposing, in essence, is a cap on fees/damages where the Participant can simply agree to return the funds received to KURA, waive the right to any further reimbursement and KURA is on its own to defend whatever Legality Claim has been filed. If a legality claim is filed shortly after the agreement is approved there would be no reimbursement, but the Participant would need to waive any right to reimbursement. In that instance, KURA would not be obligated to pay the \$90,000. As the maximum amount to be reimbursed is \$90,000,

Ryan Armbruster will be available at the meeting for further clarification of this issue. It will be the decision of the Board if the requested modification by the Participant's attorney should be included in the agreement.

Recommendation and Motion

I move to approve Resolution 20-URA07 and Owner Participation Agreement 50066 for 311 First Avenue.

Attachments:

Resolution 20-URA07

Agreement 50066

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 SUN VALLEY & FIRST, 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, Sun Valley & First, LLC (“Participant”) owns or controls certain real property located at 311 First Avenue, Ketchum, Idaho (the “Project Site”) which is more accurately depicted as Lot 4, Block 57, Ketchum Townsite. The Project Site will be redeveloped and improved resulting in an upgraded residential and commercial building (the “Participant’s Project”);

WHEREAS, as part of the Participant’s Project, Participant intends to remediate certain Project Site conditions and redevelop the Project Site (the “Improvement Project”);

WHEREAS, the Participant’s Project and the Improvement Project are located in the Amended Plan area, which consists of the 2006 Plan approved by the City Council on November 15, 2006, and the Amended Plan approved by the City Council on November 15, 2010

(“Ketchum Urban Renewal District”). The Amended Plan includes various measures to mitigate and remediate the Ketchum Urban Renewal District. The Agency has also previously adopted a Participation Policy;

WHEREAS the Improvement Project includes improvements of public infrastructure to replace gutter and install heated sidewalks and street trees along First Avenue and Sun Valley Road, adjacent to the Project Site along with certain utility improvements, roadway paving, and a street light, that are consistent with the objectives of the Amended Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District. Participant’s Improvement Project includes upgrades or enhanced improvements beyond city of Ketchum requirements;

WHEREAS, Participant has filed an application for funding as set forth in the Participation Policy. Participant qualifies for certain funding under the Participation Policy. Participant acknowledges it did not timely file an application for funding within thirty (30) days of its filing for a building permit for the Participant’s Project, which is one of the criteria for compliance with the Agency’s Participation Policy. Based on the Participant’s Project and the Improvement Project, Agency hereby agrees to the waiver of the timeliness of the application given the Participant filed an application within approximately one hundred (100) days of the filing for a building permit and within fifty (50) days of the issuance of the building permit;

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 Participant have negotiated the terms of a Reimbursement Participation Agreement, attached hereto as Exhibit A, which sets forth the obligations of Agency and Participant, concerning the reimbursement by Agency to Participant 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 September 21, 2020, 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 September 21, 2020. Signed by the Chair of the Board of Commissioners, and attested by the Secretary to the Board of Commissioners, on September 21, 2020.

URBAN RENEWAL AGENCY OF KETCHUM

By _____
Susan Scovell, Chair

ATTEST:

By _____
Secretary

4836-2635-5147, v. 1

REIMBURSEMENT PARTICIPATION AGREEMENT 20518

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 Sun Valley & First, LLC, an Idaho limited liability company ("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 311 First Avenue, Ketchum, Idaho (the "Project Site") which is more accurately depicted as Lot 4, Block 57, Ketchum Townsite. The Project Site will be redeveloped and improved resulting in an upgraded residential and commercial building as more particularly described on attached **Exhibit A** (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 B**. A site map showing the Participant's Project is attached as **Exhibit B**.

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 has also previously adopted a Participation Policy.

D. The Improvement Project includes improvements of public infrastructure to replace gutter and install heated sidewalks and street trees along First Avenue and Sun Valley Road, adjacent to the Project Site along with certain utility improvements, roadway paving, and a street light, that are consistent with the objectives of the Plan. The Improvement Project will contribute to enhancing and revitalizing the Ketchum Urban Renewal District. Participant's Improvement Project includes upgrades or enhanced improvements beyond city of Ketchum requirements.

E. Participant has filed an application for funding as set forth in the Participation Policy. Participant qualifies for certain funding under the Participation Policy. Participant acknowledges it did not timely file an application for funding within thirty (30) days of its filing for a building permit for the Participant's Project, which is one of the criteria for compliance with the Agency's Participation Policy. Based on the Participant's Project and the Improvement Project, Agency hereby agrees to the waiver of the timeliness of the application given the Participant filed an application within approximately one hundred (100) days of the filing for a building permit and within fifty (50) days of the issuance of the building permit.

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) thirty (30) months from the issuance of a Certificate of Occupancy for the Participant's Project, as further described in section 6 of this agreement, 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 B**, with cost estimates for eligible items described in the Schedule of Eligible Costs in **Exhibit C** ("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.

The Improvement Project shall be designed, engineered, and constructed to comply with applicable city of Ketchum and or Idaho Transportation Department standards.

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 C** 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 C**. The parties acknowledge and agree that Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Projects are constructed consistent with the construction contracts (the "Construction Contracts") and is undertaken in a reasonable manner. Participant shall be presumed to have utilized commercially reasonable contracting, budgeting, and

bidding practices if (1) each general contractor (the "Contractor(s)") has been selected through competitive bids for the Projects, pursuant to Idaho Code § 67-2805(1), which provides for a process of soliciting no fewer than three licensed public works contractors by written means, either by electronic or physical delivery, without the need for publication notice. This process is available for projects not to exceed \$200,000. The parties represent the estimate for the Improvement Project does not exceed \$200,000, (2) the work is performed by Idaho public works licensed contractors, and (3) the work is not performed by an affiliate or subsidiary of the Owner.

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 C**. **In no event shall the total for the Actual Eligible Costs to be reimbursed 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 to be reimbursed not to exceed \$90,000 is within its sole discretion. Agency and Participant acknowledge actual eligible expenses for the Improvement Project may exceed \$90,000.

6. Agency's Reimbursement Payment Amount and Payment Period. In accordance with the Participation Program, Agency agrees to reimburse Participant as follows:

A portion of Actual Eligible Costs of the Improvement Project not to exceed \$90,000 **WITH NO INTEREST**. Actual Eligible Costs include certain soft costs (e.g. architectural and engineering design). 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 and the assessed value of the Participant Project for three years after issuance of the Certificate of Occupancy. Participant shall be responsible for providing Agency property tax notices and evidence of property tax payment from other persons or entities being assessed for ownership interests within the Project Site. Agency disbursements shall commence upon the first receipt of revenue allocation (tax increment) proceeds after the issuance of the Certificate of Occupancy for the Participant's Project and shall continue for a period of thirty (30) months, conditioned upon proof of property tax payment and property tax receipt by the Agency unless the reimbursement of the Actual Eligible Costs not to

exceed \$90,000 has been extinguished previously. Agency shall determine its obligation for payment based on increases to assessed value above \$1,367,538. If the Actual Eligible Costs have not been fully reimbursed within thirty (30) months after the issuance of the Certificate of Occupancy for the Participant's Project, any further obligation of the Agency is terminated, and Participant shall have no right for any payments beyond that period. **PARTICIPANT ACKNOWLEDGES THE REVENUE ALLOCATION (TAX INCREMENT) PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE PERIOD SET FORTH HEREIN AND ASSUMES THAT RISK.**

Participant has provided the Agency with an estimated assessed value of the Participant's Project of approximately \$11,017,500 with an increment value of \$200,618 through 2024.

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

Participant may allocate the reimbursement among the cost estimates shown on **Exhibit C** among only those categories identified, but in no event shall be entitled to reimbursement for an amount which exceeds \$90,000. Participant and Agency acknowledge the amount of eligible costs exceeds \$90,000.

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 Project includes the commitment of providing two community housing units, which units shall be administered concerning rent or sale by the Idaho Housing and Finance Association ("IHFA") or equivalent state, county, or city entity. Should those two housing units not be available for community housing administered by IHFA or similar entity, the Agency shall have the right to terminate its reimbursement obligation.

Participant's Project shall be completed, and a certificate of occupancy issued for the Participant's Project, on or before January 2021. Failure of Participant to obtain a Certificate of Occupancy by that date shall be a basis for Agency's termination of its obligations under this Agreement.

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: Sun Valley & First, LLC
 Attn; Dave Wilson
 PO Box 6770
 Ketchum, Idaho 83340
 dwilson@wilsonconstructionsvalley.com

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

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	Participant's Project Site Map
Exhibit C	Schedule of Eligible Costs

16. Indemnification. Participant shall indemnify and hold Agency and its respective commissioners, officers, agents, consultants and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect, design 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 commissioners, officers, agents, consultants and

employees relating to the construction or design of Participant's Project, 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 commissioners, officers, agents, consultants 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 commissioners, officers, agents, consultants and employees harmless from and against any matter to the extent it arises from the negligence or willful act of Agency or its respective commissioners, officers, agents, consultants or employees.

Participant shall also indemnify and hold harmless and defend Agency and its commissioners, officers, agents, consultants and employees from and against any and all claims or causes of action asserted by entities or individuals that are not a party to this Agreement regarding the validity or legality of this Agreement and the reimbursement to Participant of the costs of the Improvement Project by Agency (collectively referred to in this Section as "Legality Claim"). Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the Legality Claim determining that the reimbursement to Participant by Agency of the costs of the Improvement Project is unlawful or invalid, the Agency shall have no further obligation or liability to reimburse or make payments to Participant for the costs associated with the Improvement Project and Participant shall solely bear the responsibility for such costs. Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the Legality Claim determining that the reimbursement to Participant by Agency of the costs of the Improvement Project is unlawful or invalid, then Participant, in Agency's sole discretion, may be required to return any funds paid by Agency to Participant for the Improvement Project within ninety (90) days of written request from Agency to Participant.

If a Legality Claim is made, then Agency and Participant shall jointly defend against said claim. Participant has the discretion to hire its own legal counsel with Participant reimbursing the Agency for its reasonable fees and costs, including without limitation, attorney and expert witness fees and costs.

If a claim, other than a Legality Claim, is brought against Agency or its respective commissioners, officers, agents, consultants and employees by reason of any such claim, Participant, upon written notice from Agency shall, at Participant's expense, bear the costs and expense of defending Agency against such action or proceedings by counsel selected by Agency.

Notwithstanding anything to the contrary in this Section 16, in the event Participant's Indemnity obligations are triggered as a result of a Legality Claim, Participant shall have the right, in lieu of indemnifying and /or providing any defense to Agency, of returning all Reimbursements made in accordance with this Agreement to Agency and waiving any right to further Reimbursement. In such case, this Agreement shall terminate and neither party hereto shall have any further obligation to the other.

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.

18. Compliance with Laws. Participant agrees to comply with all applicable federal, state, and local laws, rules and regulations, including, but not limited to, all conditions imposed by the city of Ketchum through its planning and zoning land use approval process and building permit approval process. Should the Participant not comply with the requirements set forth in the preceding sentence, the Agency shall no longer be obligated to provide the Participant reimbursement as set forth in this Agreement.

19. Warranty on Improvement Project. Participant warrants that the materials and workmanship employed in the construction of the Improvement Project shall be good and sound and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of the Improvement Project by Agency, provided nothing herein shall limit the time within which Agency may bring an action against Participant on account of Participant's failure to otherwise construct such improvements in accordance with this Agreement. The one-year warranty period does not constitute a limitation period with respect to the enforcement of Participant's other obligations under the Agreement.

20. Maintenance. Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Improvement Project and that no agreement has been reached with Agency to accept any maintenance obligations for the Improvement Project. Provided however, that this Section shall not limit or modify any obligation that Agency assumes or may assume in the future pursuant to a separate agreement.

21. Insurance Requirements. Participant shall, or through its contractor, agents, representatives, employees or subcontractors shall, at its sole cost, obtain and maintain in force for the duration of the construction of the improvements to the Project Site as part of the Improvement Project, insurance of the following types, with limits not less than those set forth below and in a form acceptable to Agency, against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Participant, its agents, representatives, employees or subcontractors:

- a. Commercial General Liability Insurance with a minimum combined single limit liability of \$1,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability. Such policy shall have a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis. The policy shall be endorsed to name Agency and City as additional insureds.

- b. Workers' Compensation Insurance, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Participant's employees, and Employer's Liability Insurance. Participant shall not utilize occupational accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.
- c. Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Agency, including its respective affiliates, directors, and employees, as additional insureds.
- d. All insurance provided by Participant under this Agreement shall include a waiver of subrogation by the insurers in favor of Agency. Participant hereby releases Agency, including its respective affiliates, directors, and employees, for losses or claims for bodily injury, property damage covered by Participant's insurance or other insured claims arising out of Participant's performance under this Agreement or construction of the Improvement Project.
- e. Certificates of insurance satisfactory in form to Agency (ACORD form or equivalent) shall be supplied to Agency evidencing that the insurance required above is in force, that, to the extent commercially reasonable, not less than thirty (30) days' written notice will be given to Agency prior to any cancellation or restrictive modification of the policies, and that the waivers of subrogation are in force. Participant shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Agency's request, Participant shall provide a certified copy of each insurance policy required under this Agreement.
- f. The foregoing insurance coverage shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Agency. The fact that Participant has obtained the insurance required in this Section shall in no manner lessen or affect Participant's other obligations or liabilities set forth in the Agreement.

22. Taxes. Participant shall pay when due all real estate and personal property taxes and assessments assessed and levied on Participant's ownership interest of the Project Site. This provision shall be binding upon Participant's successors or assigns. Participant recognizes Agency has no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property and personal property taxes. Participant also recognizes the ability of Agency to reimburse Participant for the Agency Reimbursement is dependent on the ad valorem

assessment and collection process. Participant expressly acknowledges and understands that the Agency Reimbursement is linked to the tax increment revenue actually generated from the Project Site, and in the event insufficient taxes are received by Agency for any reason, including a reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event any tax delinquency or contest of value by any owner of parcels with the Project Site or by any tenant related to personal property, the actual tax increment received by Agency will be reduced which in turn will result in lower annual payments by Agency to Participant.

23. Exemptions. Participant shall not, without written consent of the Agency, file any application with Blaine County or the state of Idaho which could result in such property tax exemption or property tax abatement, including but not limited to the following:

The Idaho Small Employer Incentive Act of 2005, Chapter 44, Title 63,
Idaho Code
The Idaho Small Employer Growth Incentive Exemption, Idaho Code,
§ 63-606A
New Capital Investment Incentive Act, Chapter 45, Title 63
Idaho Code § 63-602NN, business property tax exemption

or similar type exemption.

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

Susan Scovell, Chair

Date: _____

PARTICIPANT:

Sun Valley & First LLC

Dave Wilson, Managing Member

Date _____

Exhibits

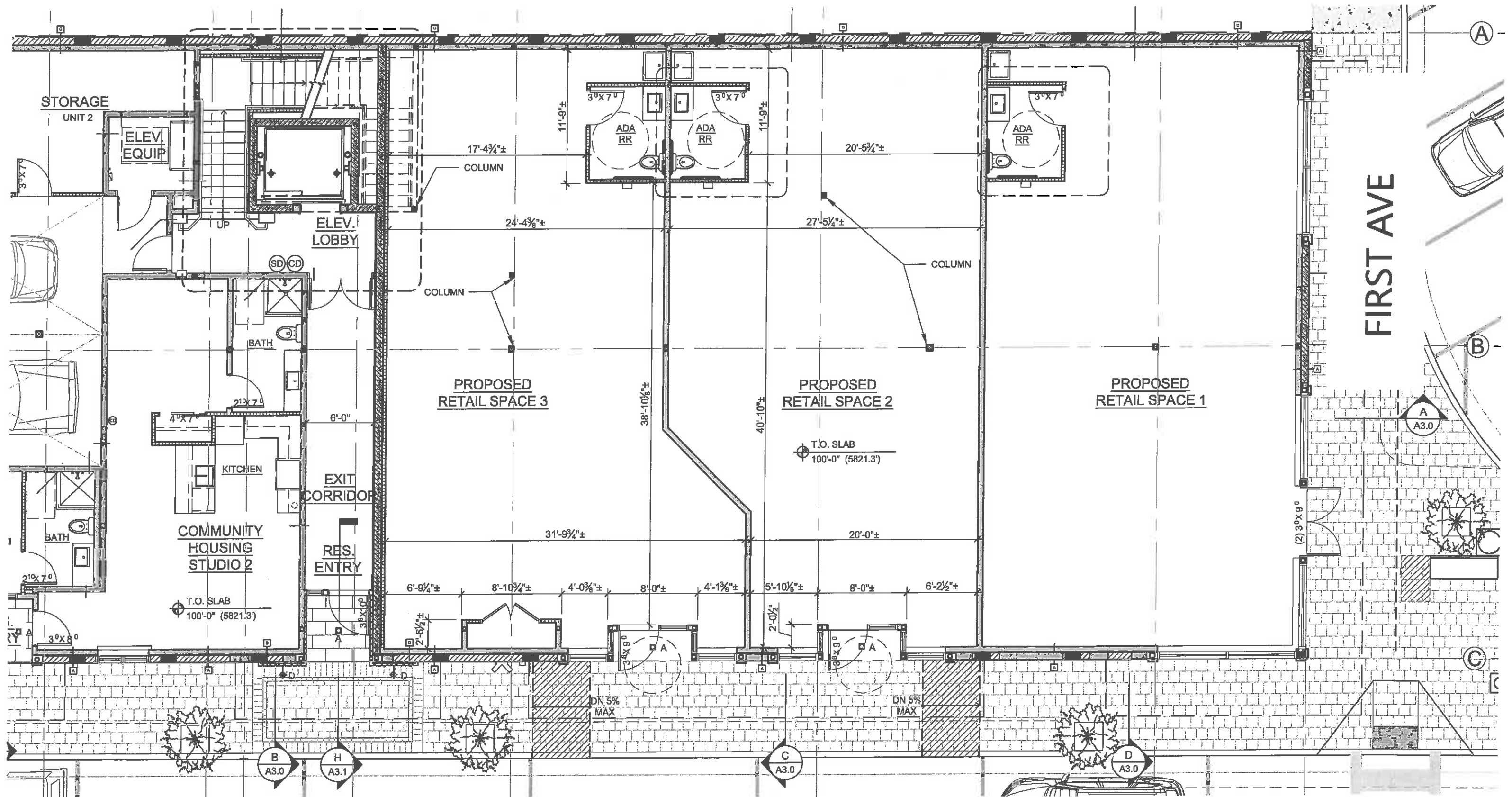
- A: Participant's Project and Improvement Project
- B. Participant's Project Site Map
- C: Schedule of Eligible Costs

EXHIBIT A
PARTICIPANT'S PROJECT AND
IMPROVEMENT PROJECT

Redevelopment of the Project Site located at 311 First Avenue consisting of a mixed use development containing commercial uses on the ground floor, two second floor penthouses, and two community housing units on the ground floor along with common space totaling approximately 14,305 square feet.

The Improvement Project consists of improvements to the sidewalk to include heated sidewalks, improvements to the streetscape and landscaping within the right of way, replacement of curb and gutter, installation of street furniture, and reconfigure the bulb out.

EXHIBIT B
PARTICIPANT'S PROJECT SITE MAP



SUN VALLEY RD

SUN VALLEY & FIRST
KETCHUM, IDAHO

RETAIL # 2 & 3 - INTERIOR DIMENSIONS

SCALE: 1/8" = 1'-0"

PROJECT

DRAWING

DATE

DWG. #

PARTIAL MAIN LEVEL FLOOR
PLAN

01.30.2020

A2.0

208.726.5608
www.rlb-sv.com
sun valley, idaho

RLB

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EXHIBIT C
SCHEDULE OF ELIGIBLE COSTS

INSERT IMPROVEMENTS

Not to exceed \$90,000

Spreadsheet Report

SV and First Ext Expenses

Group	Description	Takeoff Quantity	Labor Cost/Unit	Labor Amount	Material Price	Material Amount	Sub Price	Sub Amount	Equip Price	Other Amount	Total Amount
2.200	EXCAVATION										
	Excavation										
	Prep for Paver Sidewalk Bid	bid	-	-	-	-	/bid	7,469	-	-	7,469
	Prep For New Curbs and Gutter Bid	bid	-	-	-	-	/bid	3,528	-	-	3,528
	Excavation							10,997	-	-	10,997
	Backfill										
	Backfill ADA Wall Bid	bid	-	-	-	-	/bid	870	-	-	870
	Backfill							870	-	-	870
	EXCAVATION		/lsu	m				11,867	-	-	11,867
2.400	PAVING										
	Paving										
	Prep Sub Base Bid	bid	-	-	-	-	/bid	26,520	-	-	26,520
	Paving							26,520	-	-	26,520
	Paving										
	Asphalt Paving Bid	bid	-	-	-	-	/bid	19,954	-	-	19,954
	Roll Curb at Garage Bid	hrs	-	-	-	-	/hrs	1,800	-	-	1,800
	Paving							21,754	-	-	21,754
	Landscaping										
	Backfill For Entries Bid	bid	-	-	-	-	/bid	145	-	-	145
	Stratavault Tree Wells	bid	-	-	-	-	/bid	9,250	-	-	9,250
	Tree Grate and Frame	bid	-	-	-	-	/bid	4,750	-	-	4,750
	Entry Paver Bid Commercial entry	bid	-	-	-	-	/bid	980	-	-	980
	Block wall Commercial Steps	bid	-	-	-	-	/bid	980	-	-	980
	Pavers Commercial Entry	bid	-	-	-	-	/bid	960	-	-	960
	Trees & Shrubs Bid	bid	-	-	-	-	/bid	2,750	-	-	2,750
	Irrigation Bid	bid	-	-	-	-	/bid	2,500	-	-	2,500
	Landscaping							22,315	-	-	22,315
	Snowmelt										
	Snowmelt Bid	3,542.00 sqft	-	-	-	-	16.00 /sqft	56,672	-	-	56,672
	Snowmelt							56,672	-	-	56,672
	Hardscape										
	ADA Ramp Bid	bid	-	-	-	-	/bid	2,800	-	-	2,800
	Pavers Sidewalk Bid	bid	-	-	-	-	/bid	19,250	-	-	19,250
	Hardscape							22,050	-	-	22,050
	PAVING							149,311	-	-	149,311
2.600	DEMOLITION										
	Demolition										
	Demolition Sidewalk and Street Lights Bid	bid	-	-	-	-	/bid	9,166	-	-	9,166
	Demolition							9,166	-	-	9,166
	DEMOLITION							9,166	-	-	9,166
3.000	CONCRETE										
	Concrete Bid										
	Curb & Gutter Bid	bid	-	-	-	-	/bid	14,720	-	-	14,720
	Gutter at Sun Valley Alley Bid	bid	-	-	-	-	/bid	1,850	-	-	1,850
	Concrete Bid							16,570	-	-	16,570

Group	Description	Takeoff Quantity	Labor Cost/Unit	Labor Amount	Material Price	Material Amount	Sub Price	Sub Amount	Equip Price	Other Amount	Total Amount
16.100	CONCRETE							16,570			16,570
	ELECTRICAL										
	Electrical										
	Electrical Bid Tree Lights	bid	-	-	-	-	bid	2,500	-	-	2,500
	Electrical							2,500			2,500
	ELECTRICAL							2,500			2,500

Estimate Totals

Description	Amount	Totals	Rate
Labor			
Material			
Subcontract	189,414		
Equipment			
Other	189,414	189,414	
Sales Tax			7.000
Contractor Fee @ 10%			
Total		189,414	

Sun Valley Garden Center



Estimate

Owner: Wilson
Address: Sun Valley Rd and First St.
Attn: Wilson Construction
Phone:
Email:
Date: 1/15/20
Plans Dated: 12-2-19

	Unit	Quantity	Unit Cost	Extension
Demolition, Grubbing & Site Preparation				
<i>Mobilization and General Site Management</i>	LS	1.00	500.00	500.00
Hardscape Installation				
<i>Supply and Install - Sidewalk Pavers. Mutual Roaman cobblestone 6x9" w/noted Accent - Color Charcoal</i>	SF	2,200.00	8.75	19,250.00
<i>Supply and Install - Stratavault Tree Wells (Includes Excavation/Dump Fee, Base Work, Stratavault Material, Planting Mix, Weedcloth)</i>	Ea	5.00	1,850.00	9,250.00
<i>Supply and Install - Tree Grate and Frame</i>	Ea	5.00	950.00	4,750.00
<i>Porcelain Slabs 24"x24" w/pedistals. Min pedistal height 1", Max Pedistal Height 4" - Supply & Install</i>	SF	2,680.00	20.50	54,940.00
<i>Pisa Block wall for commercial entry steps. Mutual Cypress Stone Color Rio (charcoal Blend) - Supply & Install</i>	LF	14.00	70.00	980.00
<i>Roadmix Backfill for Entries as Excavator will not be able to complete this work prior to our install of retaining blocks.</i>	CY	1.00	145.00	145.00
<i>Commercial Entry Pavers 18"x12" Abbotsford Cortez Series Color Charcoal - Supply and Install</i>	SF	80.00	12.00	960.00
Irrigation System Installation				
<i>Irrigation Installed - Point of Connection by GC. Drip System for Roof level decks. Necessary Sleeving by GC. Includes Clock. Does Not Include City Sidewalk Trees.</i>	LS	1.00	3,750.00	3,750.00
<i>Irrigation System for Trees at Street Level (Not Sure of H2O source at this time) ALLOWANCE</i>	LS	1.00	2,500.00	2,500.00
Landscape Installation				
<i>Supply & Install - Topsoil/Compost 60/40 Blend for Planters.</i>	CY	15.00	150.00	2,250.00
<i>Supply & Install - Bark and Weedcloth for bottom of planters if no drainage is designed into planters.</i>	CY	7.00	150.00	1,050.00
Plant Material Installed		Quantity	Unit Cost	Extended
<i>Supply & Install - 2" Caliper Deciduous Trees, B&B</i>	EA	3.00	545.00	1,635.00
<i>Supply & Install - 3" Caliper Deciduous Trees, B&B</i>	EA	5.00	550.00	2,750.00
<i>Supply & Install - 5 Gallon Deciduous Shrubs</i>	EA	24.00	52.00	1,248.00
<i>Supply & Install - 1 Gallon Perennials, Select</i>	EA	300.00	18.50	5,550.00
<i>Plant Material Installed, Subtotal</i>				11,183.00
<i>Miscellaneous Clean-Up & Site Work</i>	LS	1.00	500.00	500.00
Estimated Project Total:				112,008.00

CITY -


CITY -

CITY -

CITY -

CITY -

CITY -



SKYLINE
EXCAVATION AND GRADING

Signature:

PROPOSAL

MERRICK CONSTRUCTION INC.

P.O. BOX 821 KETCHUM ID. 83340
(208) 788-2688 FAX (208) 788- 8258

Contractor lisc. # RCE 154 Public works lisc. # PWC-C- 15632

PROPOSAL SUBMITTED TO:	WORK PERFORMED AT:
NAME: WILSON CONSTRUCTION	NAME: 311 FIRST AVE
ADDRESS:	ADDRESS:
CITY:	CITY: KETCHUM
STATE:	STATE: ID
PHONE:	DATE OF PLANS: 10/29/2019
DATE: 1/10/2020	ARCHITECT: RLB

Merrick Construction Inc. hereby proposes to furnish the materials and perform the labor necessary for the completion of foundation footings, stem walls slabs and piers.

PRELIMINARY BUDGET

FOUNDATION FOOTINGS, PADS AND STEM WALLS	\$ 47,950.00
CURB WALL AT EAST END	\$ 1,000.00
PILASTERS	\$ 700.00
GARAGE SLAB	\$ 8,856.00
SLAB PATCHES, PLUMBING TRENCH PATCHES, PAD INFILLS AND ADA BATHROOMS	\$ 19,876.00
PAN DECK SLAB	\$ 4,320.00
SECOND LEVEL SLAB 2 1/2" THICK (BULL FLOAT FINISH)	\$ 46,684.00
SHEARWALL AND PARTY WALL DROP DOWNS	\$ 3,560.00
ELEVATOR ROOF	\$ 1,800.00
HOISTING	\$ 2,000.00
PUMP TRUCK	\$ 9,600.00
	\$ 146,346.00

SECOND LEVEL FLOOR	1 1/2" Thick concrete over sub floor	(called out as gypcrete)	\$ 28,627.00
THIRD LEVEL FLOOR	1 1/2" Thick concrete over sub floor	(called out as gypcrete)	\$ 2,100.00
			\$ 30,727.00

SITE WORK

CURB AND GUTTER AT STREET	\$ 14,720.00
VALLEY GUTTER AT ALLEY	\$ 1,850.00
VERTICAL CURB AT ADA RAMP	\$ 2,800.00
METAL TRUNCATED DOMES FOR ADA RAMPS	\$ 2,250.00
PLACE TRUNCATED DOMES IN CONCRETE BASE	\$ 1,800.00
ROLL CURB BY GARAGE	\$ 1,800.00
CONCRETE SURROUND FOR TRENCH DRAIN (does not include purchase or placement of drain)	\$ 2,100.00
	\$ 27,320.00

BID DOES NOT INCLUDE

SIMPSON HARDWARE	VAPOR BARRIERS
WELD PLATES / TEMPLATES	COLD WEATHER PROTECTION
SHOVELING DIRT OR GRAVEL	SNOW REMOVAL
FIREPLACE HEARTHES	PROPANE HEAT
CONCRETE CAPS	ICE MELT CANNOT BE USED ON EXTERIOR CONCRETE SLABS
TESTING	
SURVEYING	
TRAFFIC CONTROL	
SAFETY HAND RAILS AT UPPER DECKS	Radiant heat contractor must make sure pipes are holding air before concrete pours
CONTRACTOR MUST PROVIDE WASH OUT AREA FOR PUMP TRUCK AND CONCRETE TRUCKS	

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for the above work and completed in a substantial workmanlike manner for the sum of (Price is good for 30 days)

Respectfully submitted:
per:

MERRICK CONSTRUCTION INC.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

signature:

Date:

signature:

NO OVERS

SITE BUDGET