

## RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into this 24 day of September, 2014. The Parties agree as follows:

The Parties to this Agreement are:

- a. The MOSCOW URBAN RENEWAL AGENCY (the "Agency");
- b. LATAH COUNTY, IDAHO (the "County");

hereinafter referred to collectively as the "Parties" and individually as a "Party."

### RECITALS

WHEREAS, the City of Moscow (the "City"), on June 2, 2008, after notice duly published, conducted a public hearing on the Legacy Crossing Urban Renewal District Redevelopment Plan (the "Legacy Crossing Plan");

WHEREAS, following said public hearing, the City adopted its Ordinance No. 2008-10 on June 2, 2008, approving the Legacy Crossing Plan and making certain findings;

WHEREAS, the legislature of the State of Idaho enacted the Idaho Urban Renewal Law of 1965, as amended, Chapter 20, Title 50, Idaho Code (hereinafter the "Law"), and the Local Economic Development Act, Chapter 29, Title 50, as amended (hereinafter the "Act"), which Act authorizes certain urban renewal agencies, including the Moscow Urban Renewal Agency, to adopt revenue allocation financing provisions as part of their urban renewal plans;

WHEREAS, as authorized under the Act, a portion of the taxes levied is to be distributed to the taxing districts within the Legacy Crossing Plan Project Area ("Project Area") for the equalized assessed value as shown on the base assessment roll with the balance to the Agency;

WHEREAS, for tax years 2009, 2010, and 2011, the Agency received tax funds based upon presumed increases in value above the base assessment roll established as of 2008 with the adoption of the Legacy Urban Renewal Plan as authorized by the Act;

WHEREAS, the County contends that, due to a deficiency in the Idaho State Tax Commission computer software program, the urban renewal increment values for the Legacy Crossing Revenue Allocation Area were erroneously calculated for tax years 2009, 2010, and 2011;

WHEREAS, the County contends that the erroneous urban renewal increment values were not a result of the County's assessment methodology;

WHEREAS, in 2012, upon discovering the erroneous urban renewal increment values, the County notified the Agency that the urban renewal increment values reported for the Legacy Crossing Revenue Allocation Area were erroneous for tax years 2009, 2010, and 2011, resulting in an overpayment to the Agency in the total amount of \$114,537;

WHEREAS, because the erroneous urban renewal increment values resulted in incrementally higher overall levy rates for some County taxpayers and corresponding overpayment to the Agency, County proposes taxpayers should be made whole by a repayment process that results in incrementally lower levy rates, but that does not harm the Agency;

WHEREAS, Agency does not object to the County's plan to provide incrementally lower levy rates;

WHEREAS, the Parties agree that the overpayment to the Agency was not the fault of the Agency;

WHEREAS, the Parties have continued to negotiate resolution of all outstanding issues since the discovery of the asserted error;

WHEREAS, during the course of negotiations, Agency has questioned the assessment methodology for the properties within the Project Area;

WHEREAS, the Agency and the County have determined a review of the methodology to determine current base values and to calculate increment values is an appropriate action to coordinate with the Idaho State Tax Commission in order to provide assurance that similar issues will not surface in future tax years;

WHEREAS, the County acknowledges that the result of this overpayment has not harmed or effected other overlapping taxing entities, and those taxing entities would not receive the benefit of any corrected action as described herein;

WHEREAS, the Parties intend that the action described herein should benefit Latah County taxpayers;

WHEREAS, the Parties have agreed to fully and finally settle and compromise all claims relating to the distribution of the assessed and collected taxes for tax years 2009, 2010, and 2011 with the reduction of tax revenues distributed by the County to the Agency over the schedule attached hereto as Exhibit A and with the acknowledgment of such by County and County's disbursement of taxes as set forth herein; and

In recognition of the above statements, the Parties mutually desire to avoid costly litigation and are willing to effect a compromise and settle their dispute. Accordingly, the Parties hereby reach and accept a compromise and settlement of their respective claims and disputes in accordance with the terms set forth in this Agreement. Each of the Parties understands that by agreeing to this compromise and settlement, it in no way admits liability of any kind and it has not agreed or promised to do or omit to do any act or thing not contained in this Agreement.

NOW, THEREFORE, in consideration of the terms, covenants, and conditions contained in the foregoing Recitals and hereinafter set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

1. Repayment. In consideration of the terms of this Agreement, the Parties acknowledge the overpayment for tax years 2009, 2010, and 2011 in the total amount of One Hundred Fourteen Thousand, Five Hundred Thirty-seven Dollars (\$114,537). In recognition that the overpayment occurred through no fault of the Agency and the impact of the Agency having to repay those amounts or receive less funds in future years, the County has agreed that no interest component shall be charged. In order to mitigate the impact on the Agency, the Parties agree that the amounts withheld from funds, which would otherwise be distributed to the Agency, shall be reduced each year in the amount as set forth on Exhibit A, attached hereto and incorporated herein by reference.

In order to assure the withheld amounts shall benefit Latah County taxpayers, the County shall report the reduced amount on the form referred to by the County and the Idaho State Tax Commission as L2. County represents that by doing so and compliance with all required filing and processing of tax reporting, Latah County taxpayers should experience a slightly lower levy rate for the years identified on Exhibit A.

The total amount set forth in Exhibit A to this Agreement is an "indebtedness" of the Agency, as that term is contemplated in Idaho Code section 50-2909(1). The Agency shall maintain an adequate reserve for such indebtedness from any moneys deposited in the Agency's special fund or funds, as authorized by Idaho Code section 50-2909(2). In the event that the Agency dissolves or otherwise ceases to exist before full repayment has been made to the County, the Agency's indebtedness resulting from this Agreement shall be included in the Agency's termination budget and shall be paid in full pursuant to Idaho Code section 50-2909(4).

The obligation stated herein is subordinate and junior to the lien of the pledge of the Revenue Allocation Revenues as defined in Resolution No. 2010-01 and interest earnings thereon for, and the lien thereon of, the Revenue Allocation (Tax Increment) Bonds, Series

2010A (Legacy Crossing Redevelopment Project) and other bonds issued under Resolution No. 2010-01 (collectively, the "Senior Lien Obligations"). The Agency may incur additional indebtedness on parity with the obligation stated herein, which shall also be subordinate to the Senior Lien Obligations. All payments to be made by the Agency herein are not general obligations of the Agency but are special, limited obligations payable solely from Revenue Allocation Revenues after all obligations on the Senior Lien Obligations have been satisfied.

The obligation stated herein shall not constitute an indebtedness within the meaning of any Constitutional or statutory debt limitation or restriction, and shall not constitute a general obligation or debt of the City, the State, or any of its political subdivisions. In no event shall the obligation herein give rise to a general obligation or liability of the Agency, the City, the State, or any of its political subdivisions, or give rise to a charge against their general credit or taxing powers, or be payable out of any funds or properties other than Revenue Allocation Revenues. Nothing herein shall be construed to pledge revenues from, or give a security interest in, any revenues, properties or facilities of the Agency except as hereinabove provided.

2. Purpose. The Parties enter into this Agreement to settle all claims between and among them which arise out of the assessment, collection, and distribution of taxes from the Project Area by County for tax years 2009, 2010, and 2011.

3. Recitals Incorporated. The Recitals set forth above are incorporated by reference herein. The Parties agree that the foregoing recitals are not mere recitations, but are full and complete statements of the facts underlying the pending claims and issues between the Parties and are covenants of the Parties as may be appropriate and a portion of the consideration for the agreements contained herein.

4. Release of Claims. With the exception of any claims, which any of the Parties hereto may bring against the other seeking enforcement of this Agreement, or charging a breach of this Agreement, the Parties hereto release one another from any and all claims, causes of action, sums of money, covenants, suits, demands, contracts, liabilities, damages, indebtedness, and losses of whatever kind or nature, known or unknown, in law or in equity, which they have had in the past, may now have, or may in the future have against one another, by reason of any act, omission, breach, matter, event, contract, or cause or thing whatsoever, occurring or arising at any time prior to the date on which this Agreement is executed and from all claims and issues, which were asserted or which could have been asserted, arising or relating to the assessment, levying, collection, and disbursement of taxes under the Act for tax years 2009, 2010, and 2011.

5. Binding Agreement. This Agreement, hereby agreed to by the Parties, is binding upon and enforceable against any and all of the persons and entities in whose favor the Agreement runs. This Agreement, agreed to by the Parties, is also enforceable by and binding upon all of the Parties' respective heirs, assigns, successors, and representatives.

6. Ratification of Release. The Parties hereby ratify, confirm and approve withholding the amount of One Hundred Fourteen Thousand Five Hundred Thirty-seven Dollars (\$114,537.00) by County as set forth in the schedule attached as Exhibit A to effectuate all the intents and purposes of this Agreement and further ratify, confirm, and approve the releases expressed in this Agreement. Execution of this Agreement by any Party shall constitute a resolution duly approving or ratifying this Agreement for all purposes and requirements of such Party.

7. Parties Fully Advised. The Parties also warrant and represent to one another that they have, either personally or through their attorneys and accountants, fully investigated to their satisfaction all facts surrounding the herein expressed claims, controversies, and disputes between and among themselves, the adequacy of the consideration provided herein, the tax consequences of the consummation of the transactions contemplated hereby, and the legal effect thereof. The Parties assume the risk that this Agreement has been made on the basis of mistake or mistakes, mutual or unilateral, whether or not fully expressed herein.

8. Right to Enter Into Agreement. The Parties represent and warrant to one another that they have the full right, power, and authority to enter into this Agreement, that they have not assigned, conveyed, encumbered, or in any manner transferred to others all or any portion of the claims covered by this Agreement, and that the individuals executing this Agreement have authority to sign this Agreement and bind such Party.

9. No Admission of Liability. This Agreement is a result of a compromise and shall not at any time or for any purpose be considered as an admission of liability, fault, or responsibility on the part of any Party.

10. Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of Idaho.

11. Attorney Fees. Should it be necessary for any Party to this Agreement to initiate or defend any legal proceedings wherein any issues arising under the Agreement are adjudicated, the prevailing Party in such legal proceedings shall be entitled to an award of its attorney fees, costs, expenses, and disbursements (including the fees and expenses of expert and fact witnesses), reasonably incurred or made by it in preparing to bring suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award as determined by a court with competent jurisdiction.

12. Severability. This Agreement hereto does not violate any federal, state, or local statute, ordinance, regulation, or common law known, but any provision or portion thereof that is found to be in violation of any statute, ordinance, regulation, or common law shall be considered null and void with the remaining provisions remaining viable and in effect.

13. Headings Not Controlling. The paragraph headings included herein are for reference only and are not part of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.

14. Equal Participation in the Drafting. The Parties have had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party based upon a claim that the Party drafted the ambiguous language.

15. Waiver. A waiver or any breach of, or failure to enforce, any of the terms or conditions of this Agreement shall not in any way affect, limit, or waive a Party's rights to enforce noncompliance thereafter with each and every term and condition of this Agreement.

16. Entire Agreement. This Agreement memorializes the entire agreement of the Parties in all these subjects. This Agreement may not be modified, interpreted, amended, waived or revoked orally, except by a writing signed by all Parties. No Party is entering into this Agreement in reliance on oral or written promises, inducements, representations, understandings, interpretations, or agreements other than those contained in this Agreement.

17. Indemnity. The County agrees to defend, save, and hold harmless the Agency from any claim arising from the assessment, collection, levying, or distribution of taxes by the County from the Project Area for Tax Years 2009, 2010, and 2011. The Agency agrees to defend, save, and hold harmless the County and the County's officers, agents, and employees for all claims, losses, actions, damages, judgments, costs, expenses, and/or injuries to persons or property arising out of or in connection with any activities, acts, or omissions of the Agency. This indemnification agreement does not require any Party to defend, save, or hold harmless from claims arising from the negligence, errors, or omissions of another Party.

18. Survival of Claims and Assignment. The Parties hereby acknowledge that by virtue of this Agreement, no rights, claims, or causes of action will survive against the other Party. The Parties further covenant, in consideration of the promises contained herein, that they have not assigned and will make no assignment of any putative right, claim, or cause of action to any third party arising out of the circumstances referenced hereinabove and hereby acknowledge that the other Party would suffer irreparable harm by virtue of any such assignment.

19. Corrective Action. County represents and Agency acknowledges that County officials attended a training session in October 2012 that was conducted by the Idaho State Tax Commission and addressed issues with the Urban Renewal Edit Program ("Program") of the State's Uniform Assessment Development software ("Software"). The Program and Software were utilized by County in preparing the annual property assessment rolls and abstracts in Tax Years 2009, 2010, and 2011. Issues with the Program and Software led to errors on the calculation of increment value within the Legacy Crossing Plan area during the time frame set forth in this Agreement. The training session also addressed the fact that, because of the issues with the Program and Software, assessors must manually adjust current base values from initial

base values in order to complete a correct calculation of incremental value. By virtue of attending that training session, future abstracts of the property roll, on which urban renewal increment is listed, should avoid the issues experienced in Tax Years 2009, 2010 and 2011.

20. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same Agreement.

21. Signature Pages. A facsimile of the signature page evidencing the signature of a Party(s) to this Agreement shall constitute an original signature(s).

22. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person or entity, other than the Parties hereto, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiary or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties hereto.

23. Survival of Representations and Warranties. All representations, warranties, covenants, and agreements of all Parties hereto or contained herein shall survive the delivery of the documents described herein and the withholding of all sums described in this Agreement.

**PARTIES:**

MOSCOW URBAN RENEWAL AGENCY



By

*John McCabe*

John McCabe, Chair, Moscow Urban  
Renewal Agency Board

ATTEST:

*Don Palmer*

Don Palmer, Treasurer

LATAH COUNTY

By

*Dave McGraw*

Dave McGraw, Chair, Board of County  
Commissioners

ATTEST:

*Susan Peterson* 10-27-14  
Susan Peterson, County Clerk



STATE OF IDAHO )  
 ) ss:  
County of Latah )

On this 24 day of September, 2014, before me, a notary public in and for said state, personally appeared John McCabe, known to me to be the Chair of the Moscow Urban Renewal Agency, the entity that executed the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



*Annie Kalasz*

Notary Public for Idaho  
My Commission Expires: 5/31/17

STATE OF IDAHO )  
 ) ss:  
County of Latah )

On this 27th day of October, 2014, before me, a notary public in and for said state, personally appeared Dave McGraw, known to me to be the Chair of the Board of County Commissioners of Latah County, the entity that executed the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



*Kara N. Egan*

Notary Public for Idaho  
My Commission Expires: 04-13-17

EXHIBIT A

January 2015	\$4,000
January 2016	\$2,000
January 2017	\$3,500
January 2018	\$3,500
January 2019	\$3,500
January 2020	\$3,500
January 2021	\$5,000
January 2022	\$5,000
January 2023	\$5,000
January 2024	\$5,000
January 2025	\$5,000
January 2026	\$10,000
January 2027	\$12,000
January 2028	\$23,000
January 2029	<u>\$24,537</u>
<b>Total</b>	<b>\$114,537</b>



**Latah County**  
**BOARD OF COUNTY COMMISSIONERS**

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P.O. Box 8068 ♦ 522 South Adams ♦ Moscow, Idaho 83843  
(208) 883-7208 ♦ fax (208) 883-2280 ♦ e-mail [bocc@latah.id.us](mailto:bocc@latah.id.us)  
*David McGraw ♦ Tom S. Stroschein ♦ Richard Walser*

To: Stephanie Kalasz

From: Kara N. Egan   
Deputy Clerk and Administrative  
Assistant to the Board

Date: 27 October 2014

Re: Release and Settlement Agreement

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Enclosed for your records is your original of the Release and Settlement Agreement between the Moscow Urban Renewal Agency and Latah County as signed by the Board of County Commissioners.