

# Eagle Urban Renewal Agency

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Monday November 17<sup>th</sup>, 2014

Special Meeting

1:00 p.m.

Eagle City Hall

660 E. Civic Lane, Eagle, Idaho

1. Call to Order: Butler called the meeting to order at 1:05PM.
2. Roll Call by Butler – Present: Reynolds, Kunz, Butler, Ridgeway. \*\*Jim Reynolds arrived at 1:07PM\*\* A quorum is present.
3. Pledge of Allegiance.
4. Amendments to agenda. Mark Butler stated an email has been sent around asking to amend the agenda to include the Downs Realty contract. District Attorney Todd Lakey stated the EURA got a response back on the portions of the project that were in the public right-of-way. Mrs. Downs sent a revised total that reduced the reimbursement amount to \$8,993.75 after removal of items not in the public right-of-way. Butler moved to put this item on the agenda since the agenda had already been posted. Stan Ridgeway seconded the motion. All ayes – motion carries.
5. Public Comment on matters not on the agenda. (Please limit comments to 3 minutes maximum): None
6. Approval of November 4<sup>th</sup>, 2014 meeting minutes: Jeff Kunz made a motion to approve the November 4<sup>th</sup>, 2014 meeting minutes. Ridgeway and Jim Reynolds seconded the motion. All ayes – motion carries.
7. Discussion of rehab costs for former Tri-City Meats properties (south of W. State St. and west of Eagle Rd.) and possible lease agreement. Butler asked that Lakey and Adam Little of Eberle Berlin (1111 W. Jefferson St., Boise, ID), the attorney representing property owners Nick Zenovich and Randy Hetrick, go over the lease and finish all business.

Attorneys Lakey and Little noted the legal description will exclude the portion of the premises currently leased by the owners to Rembrandts Coffee House as a parking lot. Lakey asked if we had a tighter number for the pre-paid rents. Little asked how the rents will be paid. Hetrick estimated the building demolition will cost \$50,000; the tree removal will cost \$8,500. Kunz asked about asbestos and lead abatement. Lakey said the bids would include anything the EURA is responsible for. Discussion followed about a Phase 1 environmental site assessment. Butler asked how the total cost will appear in the lease. Lakey stated the pre-paid rents will be equivalent to the total costs for building demolition and tree removal. Lakey will add a not-to-exceed amount of \$60,000 with a maximum 20% cost overrun contingency to the lease, for a maximum total cost of \$72,000. To determine the monthly pre-paid rent amount, the actual final costs of building demolition and tree removal will be divided equally and applied to each month occurring within the term of the lease. If the estimates for building demolition and tree removal come in higher than anticipated, the EURA will have the option to terminate the lease. Lakey confirmed with Little that the property owners would accept lease termination under such conditions. Little asked that the buildings not be demolished until the bids and costs are confirmed. Ridgeway proposed allowing for either lease renegotiation or

termination should the estimates for building demolition and tree removal come in higher than anticipated. All parties agreed to this particular change.

A conceptual site plan showing the trees to be removed will be attached as Appendix B and incorporated by reference in the lease; the conceptual site plan, including any possible adjustments, will remain within the discretion and control of the EURA as tenant. Little asked about the tree replacement costs. Butler stated any tree replacement costs will be the responsibility of the EURA. Kunz confirmed that some of the trees being removed will have a replacement value; up to two trees will remain in the northwest corner of the premises. The EURA will not remove anything (including trees and bushes) from property not subject to the lease. Butler stated the EURA does not have a legal right to do anything on property not controlled by it. Butler will request that Planning & Zoning Administrator Bill Vaughan include all trees and bushes within the analysis; however, Zenovich and Hetrick will be responsible for the cost of tree and bush removal on portions of the premises not subject to the lease. (The trees and bushes to be removed and paid for by each party could appear as separate work orders within the bid.) Little asked that any significant changes to the conceptual site plan be discussed with Zenovich and Hetrick beforehand. Butler asked if wording could be added in reference to possibly expanding the temporary parking lot to an adjacent property, if acquired, without prior consultation with the Tri-City Meats property owners. Kunz asked if such a requirement could be limited only to the Tri-City Meats property. Butler suggested standard legal wording stating that any changes in the conceptual site plan shall be reviewed and approved by the landlord and that such approval shall not be unreasonably withheld. Little was okay with that. Kunz asked if more precise wording should be added to ensure the landlord does not have the right of review and refusal to conceptual site plan changes that involve expanding the temporary parking lot to an adjacent property. Ridgeway asked about access points. Discussion followed. It was decided not to mention expanding the temporary parking lot to adjacent properties in the lease.

Neither party wants to be responsible for curb, gutter and sidewalk improvements that the Ada County Highway District (ACHD) might require. The parties do not anticipate ACHD will require such improvements. Should ACHD require such improvements and the parties become aware of such a requirement prior to commencement of building demolition and/or tree removal, either party may terminate the lease without further obligation and the pre-paid rents will be returned to the tenant. Should the parties become aware of such a requirement after commencement of building demolition and/or tree removal, the parties agree to renegotiate in good faith regarding payment for said improvements or lease termination. Little would like to eliminate the last sentence and say that either party can terminate the lease if ACHD requires such improvements. Butler stated the EURA will confirm with ACHD that there will be no improvements required. Kunz suggested the EURA obtain a written assurance from ACHD. Zenovich and Hetrick do not want to be liable should ACHD reverse their position, in which case both parties can terminate the lease.

Delivery of possession of premises and lease commencement – Butler would like lease commencement to begin today. The delivery of possession of premises will happen after the City of Eagle determines the replacement values for the trees, after the EURA determines what they will pay for the trees and after the EURA determines what ACHD will require or, alternatively, no later than 60 (or 90) days after the lease is signed. Ridgeway asked about the existing renters. Butler would like the property completely vacant prior to taking possession. Kunz asked if January 1<sup>st</sup>, 2015 would be sufficient. Due to the approaching holidays, a date on or before February 1<sup>st</sup>, 2015 was proposed. The parties can amend this date by mutual written agreement.

Repair of the premises – the draft lease currently states the landlord will be responsible for all major repairs to the premises (which tenant is not required to make under the lease), whereas the tenant will be responsible for all normal repairs, maintenance and upkeep of the premises resulting from the tenant's use of the premises and necessary to keep the premises in a clean and orderly condition. Tenant will also be

responsible for any repairs caused by negligence of tenant, its agents, employees, guests, visitors and invitees. Discussion followed on what constitutes a “major repair,” other than a natural disaster or pipeline break. Ridgeway stated all water, sewer, power and gas lines should be taken back to the stub; thus, there should be nothing on the property that would cause issues. Little would like only the word “catastrophe” to appear in the lease; he doesn’t like the phrase “major repairs” as related to landlord responsibilities. The wording will be revised to state that repairs to the premises due to “catastrophe” are the responsibility of the landlord. This was agreed to by all parties. Kunz asked about the reimbursement for repairs and maintenance assumed and clarified the applicable interest rate; both parties were happy with a 7% interest rate per annum.

Sections 11.2 and 11.3 – Maintenance of commercial general liability insurance and evidence of insurance. Little asked that Section 11.2 be modified to provide no right of separation of insureds. Lakey suggested checking with the Idaho Counties Risk Management Program (ICRMP) to ensure they are okay with this proposed change. Little withdrew his proposal. Ridgeway asked that each party “shall” provide evidence of insurance and requested that the phrase “upon request” be deleted. All parties agreed.

Section 12.2 – Laky removed the phrase “business operations” since the EURA is not really a business entity. Section 12.3 – Termination for convenience within 60 days upon written notification to the other party. Section 12.4 – Termination for default, which makes references to Section 13 on termination remedies. Section 12.5 – Condemnation. If a public entity such as ACHD or otherwise condemns 50% or more of the property, the parties can mutually agree to renegotiate the lease terms or elect to terminate the lease upon written notice. If the lease is so terminated, any pre-paid rents remaining to be reimbursed to the tenant will be reduced by the percentage of the premises that was condemned. If less than 50% of the premises is condemned by ACHD or otherwise, the parties agree to renegotiate the terms of the lease in good faith.

Little asked about the lease termination options if and when a developer wants to purchase the property – how will the pre-paid rents be reimbursed? Kunz shared his concern about a developer purchasing the property immediately after the lease is executed and immediately after a significant expenditure of urban renewal funds and resources. Kunz identified two public purposes: to prepare the property for development and to utilize the property for public parking for up to two years. Kunz said something should be written into the lease to safeguard against the possibilities where the property is sold immediately after the lease is executed such that the public purposes are not fully realized (e.g., the public is denied the ability to utilize the property for public parking for up to two years). Since developers may already be in possession of preliminary development plans for the property (which could be quickly submitted to the city), he favors contractual language stating that if the property is sold immediately after the lease is signed and before the public purposes are fully realized, the developer will reimburse the EURA for some sliding percentage of the building demolition and tree removal costs. Reynolds agreed that the major purpose is to provide parking for the public. Ridgeway agrees with the concerns. Discussion followed. There was a discussion about local developers coming to meetings. Ridgeway was concerned about fairness for all developers; he was unsure if the EURA could write someone else reimbursing the EURA into the lease. Butler’s understanding was that it wouldn’t be anyone’s responsibility to reimburse the EURA if and when the property is sold. Zenovich concurred with Butler’s understanding. Little asked that the termination language be removed and that language be added stating that a developer purchasing the property will be subject to the current lease terms. Lakey said the lease could specify that any sale of the property would be contingent upon the developer reimbursing the EURA for some sliding percentage of the costs of building demolition and tree removal, depending upon the amount of pre-paid rents still outstanding. There was discussion on providing the developer purchasing the property with the option of either (a) assuming the terms of the current lease; or (b) reimbursing the EURA for some sliding percentage of the costs of building demolition and tree removal, depending upon the amount of pre-paid rents still outstanding. Kunz asked if

the attorneys could draft the necessary language for such a safeguard and submit an agreed-upon lease for the December 2<sup>nd</sup> meeting.

Sections 14.3 and 27.9 – Hazardous and Toxic Conditions and Environmental Evaluation. Little asked about the Phase 1 environmental site assessment and clarified this site assessment will be a mandatory requirement prior to spending any money and before commencing demolition. Butler clarified the process of getting a Phase 1 environmental site assessment; he will pull names out of the phone book and Lakey will draft a letter stating what the EURA needs. The EURA (as tenant) will provide a copy of the Phase 1 environmental site assessment results to the landlord. If the results are non-satisfactory, either party may terminate the lease upon 10 days written notice following receipt to the other party and any pre-paid rents will be returned to tenant and neither party shall have any further obligations. Butler and Kunz will take the conceptual site plan to ACHD as well as contact Idaho Dig Line, Inc. (to identify and mark underground utility lines) and Vaughan. Kunz made a motion to continue this to the next meeting. Ridgeway seconded the motion. All ayes – motion carries.

8. Discussion of the Downs Realty contract for reimbursement – Lakey discussed new information brought to the board. Butler expressed concerns about the information on public right-of-way received. Kunz clarified the information was coming from the Downs. The Downs were not doing anything intentionally wrong and thought they made the correct statements. The Downs are submitting the corrected bid. Lakey stated the EURA could accept the Downs' revised bid or ask for a professional opinion as to the accuracy of the revised reimbursement request. Ridgeway stated that the City of Eagle only requires 16" inches of stamped concrete, whereas the Downs appear to have 4' of stamped concrete on private property. He also expressed concerns about reimbursements for removal and haul-off of certain concrete. Ridgeway asked Reynolds to ask Vaughan to professionally review the work done and report back on what can and cannot be done. Butler would like a copy of the civil engineering plans that were given to ACHD 10 days prior to the next meeting. Butler can bring an estimate on what should be reimbursed. Kunz made a motion that the EURA remand the Downs Realty reimbursement request to staff and the board to (a) obtain all civil engineering plans in ACHD's possession; and (b) have an independent professional, or requisite expert, certify that all items to be reimbursed are located within the public right-of-way, do not exceed ACHD's and the City of Eagle's minimum requirements and do not set a new precedent for reimbursement. (The motion does not allow for hiring of an independent professional or requisite expert for the certification.) Ridgeway seconded the motion. A roll call vote was taken: Reynolds: aye; Kunz: aye; Butler: aye; Ridgeway: aye. All ayes – motion carries. Lakey will communicate with the Downs and provide them with an update.
9. Adjournment. Ridgeway made a motion to adjourn. Reynolds and Kunz seconded the motion. Meeting adjourned.