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RECEIVED  
DEC 09 2008  
MSB & T, CTD.

December 8, 2008

Susan E. Buxton  
Moore Smith Buxton & Turcke  
950 W. Bannock, Suite 520  
Boise, ID 83702

Re: *Joint School District No. 2 vs. City of Eagle, Idaho and Eagle Urban Renewal  
Agency – Case No. CV OC 0801169*

Dear Susan

Enclosed are a fully-executed original copy of the Settlement and Release Agreement and a copy of the Order of Dismissal with Prejudice in the referenced matter. Please contact us if you have any questions or comments.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP

  
Nicholas G. Miller

NGM/tjon  
Enclosures

## SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (the "**Agreement**") is made and entered into as of November 25, 2008, by and between Joint School District No. 2, Ada and Canyon Counties, Idaho (the "**District**" or the "**Plaintiff**"), and the City of Eagle, Idaho (the "**City**") and the Eagle Urban Renewal Agency (the "**EURA**") (collectively referred to as the "**Defendants**"). The Plaintiff and the Defendants are hereinafter each referred to as a "**Party**" and collectively referred to as the "**Parties**."

### ARTICLE 1 BACKGROUND

**1.1 The Eagle Urban Renewal Plan.** The City created the EURA to develop and administer the Eagle Urban Renewal Plan for the Downtown and East End Urban Renewal Project (the "**Plan**"). On or about December 11, 2007, the City approved Ordinance Number 592 to formally enact the Plan and authorize the EURA's implementation of the Plan. Thereafter, the City published Ordinance Number 592 on or about December 24, 2007, thereby setting the Plan's effective date. The Plan contains a "revenue allocation" provision as authorized by Chapter 29, Title 50, Idaho Code (the "**Act**"). The revenue allocation provision provides for the collection by the EURA of the revenues (the "**Tax Increment Revenues**") generated by all taxing districts' tax levies applied to the value of taxable property within the revenue allocation boundaries that exceeds the base assessment roll, as set forth in the Plan (the "**Tax Increment Value**"). According to the Plan and the Act, the base assessment is the taxable value of the property within the revenue allocation boundaries as of January 1, 2007.

**1.2 The Plaintiff.** The District is a taxing district affected by the Plan.

**1.3 The Defendants.** The City is the municipality responsible for developing and approving the Plan through the formation of the EURA. The EURA is the urban renewal agency enabled by the City to implement and administer the Plan.

**1.4 Litigation.** On January 18, 2008, the Plaintiff initiated proceedings against the Defendants in the District Court of the Fourth Judicial District of the State of Idaho (the "**Court**") by filing a complaint (the "**Complaint**") asserting both procedural and substantive causes of action challenging the validity of the Plan. The Complaint was filed pursuant to the provisions of Sections 50-2027 and 50-2911, Idaho Code.

**1.5 Settlement and Compromise.** By this Agreement, the Parties desire and intend to settle and compromise their differences, resolve the disputes between them, and release any Claims (defined herein) they may have.

## ARTICLE 2 SETTLEMENT AND RELEASE

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein, the benefits to be derived therefrom, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below:

**2.1 Conditions Precedent.** The obligations of the Parties set forth in Section 2.3, including, without limitation, the releases set forth in Subsection 2.3.1 and the stipulations set forth in Subsection 2.3.2, are hereby expressly conditioned upon the complete performance of each of the items of consideration set forth in Section 2.2.

**2.2 Consideration.** As material conditions of, and consideration for, the obligations of the Parties set forth in Section 2.3, the Parties hereby agree to the performance of the following items of consideration.

**2.2.1 Rebate Provision.** The Parties contemplate that the EURA shall operate the revenue allocation financing as set forth in the Plan and in accordance with the Act, except that upon receipt of Tax Increment Revenues, the EURA will transfer the portions of the Tax Increment Revenues described in this Section 2.2.1 to the District

(a) The District may certify and collect an emergency levy authorized by Section 33-805, Idaho Code. The EURA agrees to rebate annually to the District upon imposition of such levy an amount calculated by multiplying the following amounts by the Tax Increment Value:

(i) if the emergency levy imposed is equal to or less than .0003, then the EURA will rebate .0003 times the Tax Increment Value;

(ii) if the emergency levy imposed is greater than .0003, then the EURA will rebate .0006 times the Tax Increment Value.

(b) The District certifies and collects other levies authorized by Sections 33-802 through 33-804, Idaho Code (the "Other Levies") The EURA agrees to rebate to the District an amount calculated by multiplying the total of the Other Levies, when and if imposed, times the greater of (i) the Tax Increment Value for tax year 2009 (i.e., Tax Increment Value as of January 1, 2009), or (ii) \$19,000,000.

**2.2.2 Manner of Payment** The EURA agrees to pay any rebate payments described in Section 2.2.1 promptly upon receipt and verification of tax revenues from Ada County. Verification is intended to address the delinquency and collection factor within the revenue allocation area, it being understood that the District's rebate is based upon the collected Tax Increment Revenue.

**2.2.3 House Bill 470 Provisions.** The Act was amended by House Bill No. 470 enacted during the 2008 Idaho Legislative Session ("HB 470"). HB 470 modifies the manner and amount of Tax Increment Revenues that are paid to EURA under the Act. To the extent that HB 470 has gone into effect with respect to any of the District's Other Levies, the

rebate provisions of Section 2.2.1(b) shall not apply. The Parties agree that HB 470, in its present form, will apply notwithstanding any future amendment to the Act for as long as the Plan's revenue allocation financing continues to operate, including the time period of any renewals or modifications thereto.

**2.3 Settlement Obligations of the Parties.** Conditioned upon the complete performance of the items of consideration set forth in Section 2.2, the Parties hereby agree to settle all Claims and dismiss the Complaint as follows:

**2.3.1 Release of Claims** The Plaintiff fully, finally, and forever releases and discharges the Defendants pursuant to the terms set forth in this Subsection 2.3.1. This release includes all manner of actions, causes of action, suits, liabilities, obligations, debts, bonds, bills, moneys owed, accounts, covenants, agreements, promises, damages, judgments, claims and demands whatsoever, in law or equity, (collectively referred to as "Claims"), which are the subject of or arising from the relationship of the Parties and any of them, including, without limitation, all Claims relating to the Plan and all Claims relating to the facts and circumstances pled in the Complaint.

**2.3.2 Stipulation Relating to Litigation** Upon execution of this agreement, the Parties will execute and file with the Court a stipulation for judgment, with each party bearing their own attorney fees, costs, interest, and any other expenses incurred in connection with such litigation as well as the proposed order. The stipulation and proposed judgment are attached hereto and incorporated herein as Exhibit A. In the event the Court modifies the proposed judgment or enters its own order, it shall be sufficient for purposes of this Agreement if the Court enters an order that shall dismiss the Complaint with prejudice.

**2.3.3 Nonadmission of Fault or Liability.** The terms and conditions documented in this Agreement relate to the settlement of the Claims as set forth in Subsection 2.3.1. Nothing herein contained shall constitute an admission of fault or liability by the Parties. The Parties intend by this Agreement to fully, finally, and forever resolve all such Claims and to avoid further litigation between them.

**2.3.4 Ownership of Claims.** The Parties represent and warrant that no portion of any of the Claims set forth in Subsection 2.3.1 has been assigned or transferred to any other party or entity, either directly or by way of subrogation or operation of law.

**2.3.5 Authorization** The Parties represent and warrant that they are fully authorized to enter into this Agreement.

**2.3.6 Press Release** Promptly after the execution of this Agreement, the parties shall issue a joint press release in the form attached hereto as Exhibit B

**2.3.7 Attorney Fees; Costs; and Expenses** Each of the Parties covenant that each Party shall bear their own attorney fees, costs, interests, and other expenses relating to the preparation, authorization, and execution of this Agreement.

**2.4 Material Breach of Settlement and Release Agreement** Any failure to complete any of the items of consideration set forth in Section 2.2 shall constitute a material

breach of this Agreement, entitling the Parties to all rights and defenses available to them at law or equity.

### **ARTICLE 3 MISCELLANEOUS PROVISIONS**

**3.1 Independent Advice of Counsel.** Each of the Parties represent and warrant that they have read this Agreement and understand and voluntarily accept its terms and conditions, and that they have received or had the opportunity to obtain independent legal advice from their respective attorneys with respect to the meaning of this Agreement and the advisability of making the settlement on the terms and conditions contained herein. No presumption shall be made in favor of or against any Party as a result of the preparation or drafting of this Agreement. Each Party, together with its advisors, has made such investigation of the facts and the law pertaining to this Agreement, and of all the matters pertaining thereto, as it deems necessary. Each party forever waives all rights to assert that this Agreement was the result of a mistake in law or in fact.

**3.2 Integrated Agreement.** This Agreement contains and constitutes the entire agreement between the Parties concerning the subject matter of the Agreement and supersedes any and all prior agreements, arrangements, or understandings between the Parties relating to such subject matter. No oral understandings, statements, representations, promises or inducements contrary to the terms of this Agreement exist. No express or implied representations, warranties, covenants, or conditions, other than those set forth herein or imposed by law, have been made or relied upon by any Party.

**3.3 Binding Effect.** This Agreement shall be binding upon the representatives, successors and assigns of the Parties, and each of them, and no inducement or agreement not herein expressed has been made to the undersigned. The terms of this Agreement are contractual in nature and not mere recitals.

**3.4 Further Acts.** The Parties agree to do any further acts, or to execute and deliver any and all further documents or instruments as any other Party may reasonably require for the purpose of giving full effect to the provisions of this Agreement.

**3.5 Governing Law.** This Agreement shall be governed by the laws of the State of Idaho without regard to any conflicts-of-law provisions of any state law.

**3.6 Written Modification.** No modification of this Agreement and no waiver of a provision hereof shall be of any force or effect unless the same is in writing and signed by all of the Parties.

**3.7 Headings.** The headings in this Agreement are inserted for convenience only, and shall not affect the meaning or interpretation of this Agreement in any manner.

**3.8 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If a Party signs this Agreement and transmits an electronic facsimile of its

signature, each other Party may rely upon the facsimile and treat it as a signed original of this Agreement.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the Parties have signed this Settlement and Release Agreement as of the date first set forth above.

**DISTRICT:**

JOINT SCHOOL DISTRICT NO 2,  
ADA AND CANYON COUNTIES,  
IDAHO

By: 

Name: Juan Vuittonet

Title: Board Chairman

**CITY:**

CITY OF EAGLE, IDAHO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EURA:**

EAGLE URBAN RENEWAL AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have signed this Settlement and Release Agreement as of the date first set forth above.

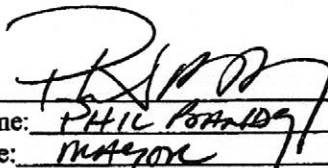
**DISTRICT:**

JOINT SCHOOL DISTRICT NO 2,  
ADA AND CANYON COUNTIES,  
IDAHO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**CITY:**

CITY OF EAGLE, IDAHO

By:  \_\_\_\_\_  
Name: PHIL BONDY  
Title: MAYOR

**EURA:**

EAGLE URBAN RENEWAL AGENCY

By:  \_\_\_\_\_  
Name: CAMERON ARSAL  
Title: CHAIRMAN



**EXHIBIT A**

**FORM OF STIPULATION AND PROPOSED ORDER**

Geoffrey M. Wardle ISB No. 5604  
Nicholas G. Miller ISB No. 3041  
D. John Ashby ISB No. 7228  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: (208) 344-6000  
Facsimile: (208) 342-3829  
Email: gmw@hteh.com  
ngm@hteh.com  
jash@hteh.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JOINT SCHOOL DISTRICT NO. 2, Ada and )  
Canyon Counties, Idaho, a body corporate and )  
politic and a political subdivision of the State )  
of Idaho, )

Plaintiff, )

vs. )

CITY OF EAGLE, IDAHO, a municipal )  
corporation and a political subdivision of the )  
State of Idaho; EAGLE URBAN RENEWAL )  
AGENCY, an independent public body )  
corporate and politic of the State of Idaho, )

Defendants )

Case No. CV OC 0801169

STIPULATION TO DISMISS WITH  
PREJUDICE

STIPULATION TO DISMISS WITH PREJUDICE - 1

The above named parties have resolved their dispute through a separate Settlement and Release Agreement and, therefore, stipulate that the Plaintiff's Complaint be dismissed with prejudice, each party to bear its own attorneys' fees and costs.

DATED THIS \_\_\_\_\_ day of November, 2008.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By \_\_\_\_\_  
Nicholas G. Miller  
Attorneys for Plaintiff

DATED THIS \_\_\_\_\_ day of  
November, 2008.

ELAM & BURKE

By \_\_\_\_\_  
Ryan P. Armbruster  
Attorneys for Defendant Eagle Urban Renewal  
Agency

DATED THIS \_\_\_\_\_ day of  
November, 2008.

MOORE SMITH BUXTON & TURCKE

By \_\_\_\_\_  
Susan E. Buxton  
Attorneys for Defendant City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_ day of November, 2008, I caused to be served a true copy of the foregoing STIPULATION TO DISMISS WITH PREJUDICE by the method indicated below, and addressed to each of the following:

Ryan P. Armbruster  
ELAM & BURKE  
251 E. Front St., Suite G  
Boise, ID 83701  
[Attorneys for Defendant Eagle Urban Renewal  
Agency]

\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Susan E. Buxton  
MOORE SMITH BUXTON & TURCKE  
950 W Bannock, Suite 520  
Boise, ID 83702  
[Attorneys for Defendant City of Eagle]

\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

\_\_\_\_\_  
Geoffrey M Wardle

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JOINT SCHOOL DISTRICT NO. 2, Ada and )  
Canyon Counties, Idaho, a body corporate and )  
politic and a political subdivision of the State )  
of Idaho, )

Plaintiff, )

vs. )

CITY OF EAGLE, IDAHO, a municipal )  
corporation and a political subdivision of the )  
State of Idaho; EAGLE URBAN RENEWAL )  
AGENCY, an independent public body )  
corporate and politic of the State of Idaho, )

Defendants. )

Case No. CV OC 0801169

ORDER OF DISMISSAL WITH  
PREJUDICE

This matter having come before the Court on the parties' Stipulation To Dismiss With  
Prejudice, and there appearing good cause therefor,

IT IS HEREBY ORDERED that this case is dismissed with prejudice, with each party to  
bear its own attorneys' fees and costs.

ORDER OF DISMISSAL WITH PREJUDICE - 1

DATED THIS \_\_\_\_\_ day of November, 2008.

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DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_ day of November, 2008, I caused to be served a true copy of the foregoing ORDER OF DISMISSAL WITH PREJUDICE by the method indicated below, and addressed to each of the following:

Ryan P. Armbruster  
ELAM & BURKE  
251 E. Front St., Suite G  
Boise, ID 83701  
[Attorneys for Defendant Eagle Urban Renewal  
Agency]

\_\_\_\_ U S Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

Susan E. Buxton  
MOORE SMITH BUXTON & TURCKE  
950 W Bannock, Suite 520  
Boise, ID 83702  
[Attorneys for Defendant City of Eagle]

\_\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_\_ Hand Delivered  
\_\_\_\_ Overnight Mail  
\_\_\_\_ Telecopy

CLERK OF THE COURT

By: \_\_\_\_\_  
Deputy Clerk

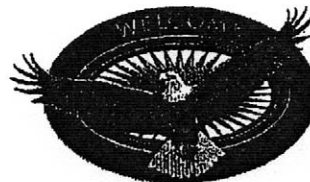
**EXHIBIT B**

**FORM OF JOINT PRESS RELEASE**





## Joint School District No. 2 City of Eagle, Idaho



### ◆ NEWS RELEASE ◆

Contact: Eric Exline  
340-0118

November 25, 2008  
For Release: Immediate

Contact: Mayor Phil Bandy or  
Clerk-Treasurer Sharon Bergman  
939-6813

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### City of Eagle, Eagle Urban Renewal Agency, and Joint School District No. 2 Settle Lawsuit

#### Agreement Allows Urban Renewal Plan to Move Forward While Protecting Financial Health of District

EAGLE, ID – The City of Eagle, the Eagle Urban Renewal Agency, and Joint School District No. 2 reached a settlement in the urban renewal lawsuit filed by the school district earlier this year, officials from all three entities said today.

The agreement ends the lawsuit and therefore removes any challenge to the Eagle Urban Renewal Plan for an urban renewal area in downtown and the eastern gateway to the City of Eagle. The urban renewal agency intends to build enhanced public facilities like streets, sidewalks, parking facilities, parks, public buildings, plazas and public infrastructure, improve design standards, eliminate environmental deficiencies and redevelop stagnant areas in Eagle's downtown and East End.

Linda Clark, Superintendent of the School District said: "We believed the lawsuit was necessary to safeguard our financial ability to meet the needs of students, parents, and taxpayers in our fast-growing district." "The agreement, together with the adoption of legislation in the 2008 legislative session that provides for school districts to retain tax revenues from future voter-approved levies, enables us to do that. This agreement shows how districts and municipalities can work together to develop urban renewal districts."

Mayor Bandy and Cameron Arial, Chairman of the Urban Renewal Agency, said: The agreement is the result of a very positive process and the recognition of the objectives of all three parties. We are grateful to Joint School District No. 2 for its patience and support of what the City and Agency are trying to achieve in Eagle.

###

COPY  
NO. \_\_\_\_\_  
FILED  
A M \_\_\_\_\_ P M \_\_\_\_\_  
DEC 03 2008  
J. DAVID NAVARRO, Clerk  
By J KENNEDY  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JOINT SCHOOL DISTRICT NO. 2, Ada and )  
Canyon Counties, Idaho, a body corporate and )  
politic and a political subdivision of the State )  
of Idaho, )

Plaintiff, )

vs. )

CITY OF EAGLE, IDAHO, a municipal )  
corporation and a political subdivision of the )  
State of Idaho; EAGLE URBAN RENEWAL )  
AGENCY, an independent public body )  
corporate and politic of the State of Idaho, )

Defendants. )

Case No. CV OC 0801169

ORDER OF DISMISSAL WITH  
PREJUDICE

This matter having come before the Court on the parties' Stipulation To Dismiss With  
Prejudice, and there appearing good cause therefor,

IT IS HEREBY ORDERED that this case is dismissed with prejudice, with each party to  
bear its own attorneys' fees and costs.

ORDER OF DISMISSAL WITH PREJUDICE - 1

04636.0068.1334775.1

DATED THIS 2nd. day of December, 2008.

KATHRYN A. STICKLEN

---

DISTRICT JUDGE

ORDER OF DISMISSAL WITH PREJUDICE - 2

04636.0068.1334775.1

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of December, 2008, I caused to be served a true copy of the foregoing ORDER OF DISMISSAL WITH PREJUDICE by the method indicated below, and addressed to each of the following:

Ryan P. Armbruster  
ELAM & BURKE  
251 E. Front St., Suite G  
Boise, ID 83701  
[Attorneys for Defendant Eagle Urban Renewal  
Agency]

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Susan E. Buxton  
MOORE SMITH BUXTON & TURCKE  
950 W. Bannock, Suite 520  
Boise, ID 83702  
[Attorneys for Defendant City of Eagle]

☒ U.S. Mail, Postage Prepaid  
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☐ Overnight Mail  
☐ Telecopy

CLERK OF THE COURT

J KENNEDY

By: \_\_\_\_\_  
Deputy Clerk