

## STREETSCAPE IMPROVEMENT REIMBURSEMENT AGREEMENT

[Downs Realty Building – 221 S. Eagle Rd., Eagle Idaho 83616]

THIS STREETSCAPE IMPROVEMENT REIMBURSEMENT AGREEMENT (“Agreement”) is entered into and effective as of the 27<sup>th</sup> day of September ~~th~~ 2014, by and between the Urban Renewal Agency of the City of Eagle, Idaho, also known as the Eagle Urban Renewal Agency, a public body, corporate and politic, of the State of Idaho (“Agency”), and Downs Realty, LLC., and Idaho Limited Liability Company (“Developer”). Agency and Developer may be collectively referred to as the “Parties” and individually referred to as a “Party.”

### RECITALS

A. Developer owns or controls certain real property, more commonly known as 221 S. Eagle Rd., Eagle, Idaho (the “Project Site”). The Project Site is undergoing redevelopment, which includes the construction of streetscape improvements (the “Developer’s Project”). Developer had not received a final certificate of completion or occupancy by the effective date of this Agreement.

B. As part of the Developer’s Project, Developer intends to construct certain improvements to the Project Site’s streetscape (the “Streetscape Project”). The improvements in the Streetscape Project for which Developer is seeking reimbursement are depicted on attached Exhibit A.

C. Agency believes the Developer’s Project will enhance and revitalize the Eagle Urban Renewal District in accordance with the goals and objectives referred to in the Eagle Urban Renewal Plan (the “Plan”).

D. Agency deems it appropriate to assist in the development of the Streetscape Project to achieve the objectives set forth in the Plan by reimbursing Developer for eligible improvements, as described below, in the public right of way.

### 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 first noted above and shall continue until: (1) the completion of all obligations of each Party; or three (3) months from the Effective Date, whichever comes first. Upon written request Agency may grant one extension for a period not to exceed three months. Further extensions of time must be mutually agreed upon in writing by the Parties.

2. **Public Infrastructure and Other Public Facilities.** The Parties agree that the Streetscape Project is depicted on Exhibit A, with cost details described there. Any public improvements not described on Exhibit A that are constructed by the Developer as part of the Developer’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 5 of this Agreement.

3. **Construction of the Streetscape Project.** The Developer's Project shall be constructed in accordance with the overall City of Eagle ("City") infrastructure plans, policies, and design standards, including but not limited to the City of Eagle's "2011 Comprehensive Plan and the Future Land Use Designation Map" and the applicable standards required by the Ada County Highway District ("ACHD"). Prior to submitting a request for reimbursement, Developer shall obtain all necessary approvals, licenses and permits from the City of Eagle and ACHD and provide copies of any such approvals, licenses or permits to Agency with the written request for reimbursement.

4. **Initial Construction Funding.** Developer shall pay for all of the costs of construction for the Streetscape Project. The reimbursement to Developer by Agency shall be made pursuant to Section 5.

5. **Reimbursement Procedure.** Developer is responsible for submitting invoices or receipts within thirty (30) days of completion of the Streetscape Project or execution of this Agreement, whichever is later. Agency shall have the right to review such documentation and to obtain independent verification of the costs and expenses. Agency reserves the right to find, in its sole discretion, the costs and expenses incurred by Developer for the Streetscape Project were unreasonable and in excess of the market rate for such items and/or services and reduce the amounts accordingly.

5.01 **Reimbursement toward Streetscape Project.** Agency agrees to reimburse Developer in an amount not to exceed **eleven thousand one hundred thirty one dollars and fifty cents (\$11,131.50)** toward the Streetscape Project no later than ninety (90) days after completion of all of the following:

- a. Developer notifies Agency of the completion of the Streetscape Project in writing.
- b. Developer submits all necessary invoices and documentation as required by Agency for the Streetscape Project.
- c. Agency reviews the submitted invoices and documentation for the Streetscape Project and finds, in its sole discretion, the costs and expenses incurred were reasonable or reduces the amounts accordingly.
- d. Agency certifies compliance with Agreement provisions applicable to the Streetscape Project.

Failure to comply with all Agreement provisions, including Section 3, shall be a basis for cancellation of Agency's reimbursement obligation.

5.02 In the event Developer fails to timely deliver the necessary invoices, receipts or other required documentation, Agency may, in its sole discretion, elect to terminate its payment obligations under this Agreement by providing Developer with written notice of such default. Developer shall have thirty (30) days from such written notice to cure the default. In the event Developer fails to cure such a default, Agency's payment obligations under this Agreement shall be terminated.

6. **Default.** A Party shall be deemed to be in default of this Agreement upon the expiration of thirty (30) days 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. However, if such defaulting Party, prior to expiration of said 30-day period, has rectified the particulars specified in said notice of default then that Party shall not be deemed in default of this Agreement. In the event of a default, the nondefaulting Party may do the following:

6.01 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.

6.02 The nondefaulting Party may seek specific performance of this Agreement and, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that this Agreement may be specifically enforced.

6.03 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.

6.04 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.

6.05 In the event the Developer 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 Section 5 of this Agreement, for so long as the default continues and if not cured within a reasonable time as determined by Agency, Agency's obligation under Section 5 shall be deemed extinguished.

7. **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.

8. **No Joint Venture or Partnership.** Agency and Developer agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making Agency and Developer a joint venture or partners.

9. **Successors and Assignment.** This Agreement is not assignable except that the Developer may assign Developer's rights or obligations under this Agreement to a third party only with the written approval of Agency, which approval may be granted or denied in Agency's sole discretion. However, the parties recognize that Developer may establish another lawful Idaho entity controlled by Developer and transfer ownership of the site and the Developer's Project to that entity. Developer's rights and obligations under this Agreement may be assigned by Developer to that entity upon written consent of Agency, not to be unreasonably withheld.

**10. Notices and Receipt.** All notices under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, postage prepaid, to the Parties at the addresses listed below or such other address as may from time to time be designated by any such party in writing. Notices mailed as provided in this section shall be deemed given and received on the date that is three (3) business days following the date of postmark in the case of mailing.

**Agency**

Mark Butler, Chairman  
Eagle Urban Renewal Agency  
Eagle City Hall  
660 E. Civic Lane  
Eagle, Idaho 83616

**Developer**

Downs Realty, LLC  
Debi Downs, Member  
7037 N Spurwing Way  
Meridian, ID 83646

**11. 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.

**12. Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties. A list of exhibits to this Agreement are as follows:

Exhibit A Streetscape Project Plan

**13. Indemnification.** Developer shall defend, indemnify and hold Agency, the City, and their respective officers, agents, and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable design professional or attorney fees (collectively referred to in this section as "Claim"), which may be imposed upon or incurred by or asserted against Agency, the City, or their respective officers, agents, and employees relating to the construction or design of the Streetscape Project or otherwise arising out of this Agreement and/or the completion of Developer's Project. Notwithstanding the foregoing, Developer shall have no obligation to indemnify and hold Agency or the City, respectively, and their respective officers, agents, and employees harmless from and against any matter to the extent it arises from the active negligence or willful act of Agency or of the City, respectively, or their respective officers, agents, or employees or from conduct resulting in an award of punitive damages against Agency or the City, respectively. In the event an action or proceeding is brought against Agency, the City, or their respective officers, agents, and employees by reason of any such claim, Developer, upon written notice from Agency or the City, shall, at Developer's expense, resist or defend such action or proceeding.

**14. Antidiscrimination During Construction.** Developer, 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 Developer will not discriminate against any employee or applicant for employment because of age, race, handicap, color, creed, religion, sex, marital status, ancestry, or national origin.

**15. Maintenance.** Developer agrees that any and all costs and expenses associated with the repair and maintenance of the Streetscape Project improvements shall be at the sole cost and expense of Developer. Agency has no obligation to maintain or repair the Streetscape Project improvements.

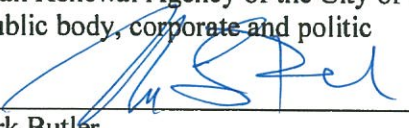
**16. Design Plans.** Developer shall provide a digital copy of the design plans (the "Design Plans") for the Streetscape Project to Agency. Developer shall cause its design professionals that prepared the Design Plans for the Streetscape Project ("Developer's Design Professionals") to provide a permanent license allowing Agency and/or City to use the Design Plans in conjunction with any additional street scape construction work by Agency and/or City in downtown Eagle. Agency agrees it shall use the Design Plans at its own risk and shall indemnify and hold harmless Developer and Developer's Design Professionals for any claims arising out of Agency or City's use of the Design Plans.

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.

DATED this 7<sup>th</sup> day of October, 2014.

**AGENCY:**

Urban Renewal Agency of the City of Eagle,  
a public body, corporate and politic

By   
Mark Butler  
Chairman  
Date 09 7 2014

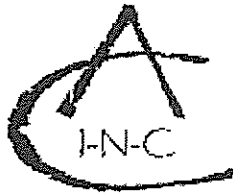
  
Secretary Attest

**DEVELOPER:**

Downs Realty, LLC

By   
Debi Downs, Member  
Date 9-25-14

Exhibit A



**Invoice**

Date	Invoice #
7/28/2014	6453

**ADVANCED CONCRETE INC.**

<b>Bill To</b>
Sold Rock Rueary@solidrockconcrete.net 459-8036

558 Harris View Way  
Melba, ID 83641  
870-4563

<b>Terms</b>
Net 10th of month

Item	Description	Qty	Rate	Amount
brick pavers	brick pavers per city of melba	245	10.50	2,572.50
excavation	excavation approach, 12' x 60' x 18" traffic control repair, actual permit	1	5,500.00	5,500.00
concrete	2" thick concrete slab	4,208	1.05	4,418.40
curb	curb	161	8.04	1,294.44
turn down skirt	turn down skirt	28	12.00	336.00
pipe	pipe	1	1,000.00	1,000.00
concrete paving	4" thick with fiber	5,247	2.15	11,281.05
concrete (sand)	for drainage in thickness in parking lot	17	105.00	1,785.00
valley gutter	concrete/labor	90	18.00	1,620.00
curb and gutter	concrete/labor	55	25.00	1,375.00
pipe	concrete and haul off extra at 450.00 per day, 450.00 per ACHD	1	450.00	450.00
pipe	2" tape for sleeves	30	1.25	37.50
<b>Project</b>				
<b>Down</b>				
<b>Total</b>				<b>520,358.45</b>

**Balance Due**      520,358.45



