

OWNER PARTICIPATION AND REIMBURSEMENT AGREEMENT
(Existing Plan & District)

THIS AGREEMENT made and entered into this 21st day of AUGUST, 2014, by and between the POST FALLS URBAN RENEWAL AGENCY, an Idaho urban renewal agency, P.O. Box 236, Post Falls, ID, 83877-0236, hereinafter referred to as the Agency, and Copper Basin Construction, Inc., P.O. Box 949, Hayden, ID 83835, hereinafter referred to as the Participant.

WITNESSETH:

WHEREAS the Agency is an independent public body, corporate and politic, and is an Idaho urban renewal agency created by and existing under the authority of and pursuant to the Idaho Urban Renewal Law of 1965, being Idaho Code, Title 50, Chapter 20, and the Local Economic Development Act of 1988, being Idaho Code, Title 50, Chapter 29, as amended and supplemented, hereinafter collectively referred to as the Act, and

WHEREAS the Post Falls City Council did on December 17, 2002, pass Ordinance No. 1017, duly adopting the East Post Falls Urban Renewal Plan and created the East Post Falls Urban Renewal District, and on December 20, 2005, did pass Ordinance 1093 approving the amended East Post Falls District Plan hereinafter referred to as the Plan and the District, and on January 15, 2013, did pass Ordinance 1242 amending Post Falls Ordinance 1093, providing a revised termination date of December 31, 2022, and on February 4, 2014, did pass Ordinance 1258 amending Post Falls Ordinance 1093 to revise the area where planned improvements may be constructed within the East Post Falls Urban Renewal Plan Area, and

WHEREAS the Participant owns or controls real property located within the boundaries of the East Post Falls Urban Renewal North Sub-District, which is more specifically described in **Exhibit A** attached hereto and incorporated by reference herein, and hereinafter referred to as the Site or the North District, and

WHEREAS the Participant intends to construct public infrastructure improvements on the Site, as more specifically described in **Exhibit B**, attached hereto and incorporated by reference herein, and hereinafter referred to as the Project, and

WHEREAS such improvements are included in Attachment C-1 to the Plan as authorized urban renewal projects.

WHEREAS the Agency has reviewed the elements of the Project and feels that the Project would enhance the redevelopment and revitalization of the North District pursuant to the provisions of the Plan, and

WHEREAS the Agency and the Participant seek to cooperate in the construction of public infrastructure improvements, and

WHEREAS until such time as the Project is completed the tax increment revenues from the District would be insufficient to pay for construction of the Project, and

WHEREAS the Participant is willing to construct and pay for the Project with the expectation of being reimbursed from future tax increment revenues received by the Agency from the

District as those revenues are received, subject to repayment of existing Agency obligations within the District as hereinafter provided for in Section 6 of this Agreement, and

WHEREAS the Parties seek to memorialize understandings relating to the conditions associated with Agency funded reimbursement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, the Parties agree as follows:

1. **EFFECTIVE DATE:** The effective date of this Agreement shall be the date first above-written, and shall continue until all obligations of each Party are completed or until the termination of the Plan, whichever shall first occur.
2. **PUBLIC INFRASTRUCTURE AND OTHER PUBLIC FACILITIES:** The Parties agree that the public infrastructure and other public facilities and their estimated costs that are the subject of this Agreement are those listed on **Exhibit C**, attached hereto and incorporated by reference herein, and hereinafter referred to as the Agency Funded Public Improvements which shall qualify for reimbursement subject to the conditions set forth herein when they have been constructed, dedicated to the City of Post Falls, and accepted by the City of Post Falls. Any other public improvements that are constructed by the Participant as part of the Project are not eligible for reimbursement pursuant to this Agreement.
3. **CONSTRUCTION OF AGENCY FUNDED PUBLIC IMPROVEMENTS:** The participant agrees to construct the Agency Funded Public Improvements consistent with the following:
 - 3.1. The improvements to be constructed shall be in accordance with the overall City infrastructure plans, polices, and design standards. Such improvements shall not be eligible for reimbursement until they are dedicated to the public.
 - 3.2. Prior to commencing construction, all necessary permits will be obtained by the Participant and/or the Participant's agents.
 - 3.3. Construction and quality control inspections shall be provided by the engineer of record and the City.
4. **CONDITIONS:** In consideration for the commitments presented by the Participant, the Agency agrees to continue to proceed with reimbursement for the Agency Funded Public Improvements, subject to the following conditions:
 - 4.1. The Participant shall comply with the City of Post Falls design review approvals and all applicable local, state and federal laws.
 - 4.2. The Participant shall submit a Project schedule to the Agency upon completion of City approvals, which shall contain specific timelines for completing the Agency Funded Public Improvements.
 - 4.3. The Participant shall complete the Agency Funded Public Improvements described in **Exhibit C** and any attachments to **Exhibit C**.

- 4.4. The Participant shall allow the Agency or its agent to review the final design and construction of the Project.
- 4.5. The Participant agrees to invoice the Agency per the cost of the items to be reimbursed for review by the Agency, with reimbursement to be based upon completion and final inspection by the Agency or its agent, and the availability of tax increment revenues for the District.
- 4.6. The Participant shall complete the Project improvements on or before the 30th day of August, 2020.
5. INITIAL CONSTRUCTION FUNDING: The Participant shall pay for all of the costs of installation of the Agency Funded Public Improvements set forth in **Exhibit C** and previously approved by the Agency, hereinafter referred to as Participant Advances.
6. REIMBURSEMENT OF PARTICIPANT ADVANCES: The Participant shall be entitled to reimbursement of Participant Advances subject to the following conditions and understandings:
 - 6.1. It is the understanding of the Parties that the Participant shall only be paid the reimbursement of Participant Advances from the tax increment revenues of the District and in order of approval by the Agency of any other project obligation within the District. If for any reason tax increment revenues anticipated to be received by the Agency are insufficient or curtailed, the Agency shall not be obligated to use other sources of revenue to make reimbursements to the Participant.
 - 6.2. It is the understanding of the Parties that tax increment revenues received by the Agency for the District will first be used in the following manner and order:
 - 6.2.1. To reimburse the Agency for the costs of amending the Plan and/or any remaining unpaid costs of designing or adopting the Plan.
 - 6.2.2. For the payment of the District's annual contribution to the administrative costs of the Agency.
 - 6.2.3. For the repayment of any debt of the District disclosed to the Participant upon the execution of this Agreement.
 - 6.2.4. For the reimbursement of other proponents in the District that have orders of approval that predate the order of approval authorizing the Participant's reimbursement.
 - 6.2.5. To the reimbursement of Participant Advances.
 - 6.3. The Participant acknowledges that the Agency has provided the Participant with copies of the Agency's policies concerning the use of tax increment revenue and cost reimbursement.

7. The Participant is aware that the Agency intends to conduct an annual review of the performance of both the Plan and the District, and reserves the right within the sole discretion of the Agency to make adjustments to the Plan.
8. MISCELLANEOUS:
 - 8.1. The Participant shall provide the Agency with proof that the Participant and its agents have adequate liability and workers compensation insurance.
 - 8.2. The Participant agrees to indemnify and hold harmless the Agency from any and all liability and/or obligations not specifically provided for in this Agreement to be performed by the Agency with reference to the Project, except for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Agency, its agents, employees or indemnitees.
 - 8.3. The Participant does hereby grant to the Agency and its agents a right of access to the Project area for the purposes of inspections.
 - 8.4. The Participant agrees at the appropriate time to convey title to Agency Funded Public Improvements to the City of Post Falls.
 - 8.5. The Parties agree that this Agreement does not establish a partnership or joint venture relationship between the Parties.
 - 8.6. The rights and obligations provided for in this Agreement may not be assigned without the mutual agreement of the Parties, which consent shall not unreasonably be withheld. It being understood that the right of reimbursement to the Participant shall survive any assignment, sale and/or lease of portions of the Site to third parties. The Participant shall coordinate with the Agency on behalf of such third parties so that the Agency's direct involvement with such third parties will be limited as much as possible.
 - 8.7. This Agreement shall be construed and enforced under the laws of the State of Idaho, with any enforcement action to be brought in Kootenai County, Idaho. The prevailing party in any action shall be entitled to attorney's fees and costs.
 - 8.8. The Parties agree that in the event that there is a disagreement or dispute over the terms and provisions of this Agreement, including reimbursement submittals, that the Parties will mutually submit the disagreement or dispute to non-binding mediation utilizing a mediator mutually agreeable to the Parties, with the Parties jointly sharing the costs of mediation. In the event that the Parties cannot agree on a mediator or if the mediation is unsuccessful, the Parties shall engage in a binding arbitration pursuant to the Commercial Rules of the American Arbitration Association. Costs and fees, including but not limited to reasonable attorney's fees, incurred in such arbitration shall be awarded to the prevailing party as the term is defined by Idaho Law.
 - 8.9. The Parties agree that this Agreement is the entire agreement between the Parties, and is binding upon their successors and assigns.

8.10. All of the provisions of this Agreement are distinct and severable, and if any provision shall be deemed illegal, void or unenforceable, it shall not affect the legality, validity or enforceability of any other provision or portion of this Agreement.


IN WITNESS WHEREOF, the Parties have set their hands effective the date first above-written.

POST FALLS URBAN RENEWAL AGENCY
an Idaho urban renewal agency

By: 
Chairperson

PARTICIPANT:

Copper Bear Construction, Inc.

By: 
Steve White, Pres

(Note to Reader:
Exhibit A – Legal Description of the East Post Falls Urban Renewal North Sub-District
Exhibit B – Site map indicating existing and proposed streets and parcels within the Sub-District
Exhibit C – Estimate of probable cost of construction of public infrastructure subject to reimbursement)

EXHIBIT "A"

Legal Description of the East Post Falls North Section 241.9 Acres

Parcel 1

Tracts 14, 15 and 16, and the East half of Tract 3, Block 25, POST FALLS IRRIGATED TRACTS, according to the recorded plat thereof; EXCEPT a parcel conveyed to the State of Idaho for highway purposes as recorded in Book 145 of Deeds, page 551, Records of Kootenai County, Idaho.

Parcel 2

The South half of the Northeast quarter and the North half of the Southeast quarter of Section 25, Township 51 North, Range 5 West, Boise Meridian, Kootenai County, Idaho; EXCEPT any portions that may lie within road rights-of-way.

Parcel 3

The West half of Tract 1 and all of Tract 2, Block 25, POST FALLS IRRIGATED TRACTS, according to the plat thereof recorded in Book "C" of Plats, Pages 78, 79 and 80, Records of Kootenai County, Idaho, EXCEPT any portion that may lie within road rights-of-way.

Parcel 4

The North half of the North half of the South half of the Southeast quarter of Section 25, Township 51 North, Range 5 West, Boise Meridian, Kootenai County, Idaho; EXCEPT any portions that may lie within road rights-of-way.

ALSO EXCEPTING that portion conveyed to the State of Idaho for right of way by Deed recorded in Book 151 of Deeds at Page 30.

Parcel 5

PARCEL 1:

A parcel of land located in the South half of the Southeast Quarter of Section 25, Township 51 North, Range 5 West, Boise Meridian, City of Post Falls, Kootenai County, Idaho. More particularly described as follows:

COMMENCING at the Southeast corner of said Section 25 marked by a railroad spike, from which the East Quarter of said Section 25 marked by a railroad spike bears North 00°59'01" East, 2638.99 feet; thence from said point of commencement

EXHIBIT "A" (Continued)

Legal Description of the East Post Falls North Section 241.9 Acres

Parcel 5 (Continued)

North 00°59'01" East, 989.63 feet along said Section line to a point; thence

North 88°36'53" West, 368.01 feet to a 5/8" rebar and cap marked "ATS PLS 8962" and being the true POINT OF BEGINNING for this described parcel of land; thence

South 00°59'01" West, 329.99 feet to a 5/8" rebar and cap marked "ATS PLS 8962"; thence

North 88°37'56" West, 2286.61 feet to a point on the North-South center section line; thence

North 00°41'24" East, 330.70 feet along said center section line to a 5/8" rebar and cap marked "A&C INC LS 1003; thence

South 88°36'53" East, 2288.31 feet to the true POINT OF BEGINNING for this parcel.

EXCEPTING therefrom that portion deeded to the city of Post Falls by Grant of Right of way recorded July 16, 2004 as Instrument No. 1888619.

PARCEL 2:

Lot 4, Block 1, PALIMINO ACRES, according to the official plat recorded in the office of the County Recorder in Book "F" of Plats at Pages 178 and 178A, records of Kootenai County, State of Idaho.

Excepting therefrom that portion deeded to the city of Post Falls by Grant of Right of way recorded July 16, 2004 as Instrument No. 1888621

Exhibit C

Copper Basin Estimated Cost Update 08/13/14

	2008 Estimate	Vision First	CBC		Remaining Estimate
		Phase 1A/B % Complete	Phase 2A Total Cost	Percent Complete	
O'Moore Street	\$ 232,252.00				\$ 232,252.00
Killdeer Avenue	\$ 565,028.00				\$ 565,028.00
Early Dawn Avenue	\$ 817,247.00	74%	\$ 129,183.68	26%	\$ -
Market Street	\$ 1,179,657.00	26%			\$ 872,946.18
Hope Ave	\$ 798,751.00				\$ 798,751.00
Cecil Street	\$ 502,646.00		\$ 212,669.17	37%	\$ 316,666.98
Charleville Blvd	\$ 1,830,559.00	42%			\$ 1,061,724.22
Round-a-bout	\$ 133,358.00				\$ 133,358.00
Hwy 41	\$ 140,150.00	15%			\$ 119,127.50
Offsite/Misc	\$ 1,570,000.00				\$ 1,570,000.00
Contingency 10%	\$ 776,965.00				\$ 776,965.00
	\$ 8,546,613.00				\$ 6,446,818.88
Eng. And admin. 12%	\$ 1,025,593.00	12%		12%	\$ 902,521.84
	\$ 9,572,206.00				\$ 7,349,340.72
Vision First OPA			\$ 2,724,027.00		
Copper Basin Submitted		Hard Cost	\$ 341,852.85		
		Eng. Admin	\$ 41,022.34		
			\$ 382,875.19		
Total Completed by Percentage		25%			