

Reimbursement Agreement

This Reimbursement Agreement (the "Agreement") is made and entered into as of the ___ day of _____, 2022 (the "Effective Date"), by and between the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority with an address of 645 Holbrook Street, Erie, CO 80516 ("TOEURA"), and Bourbon on Briggs, LLC, a Colorado limited liability company with an address of 554 Briggs St, Erie, CO 80516 ("Lucile's") (each a "Party" and collectively the "Parties").

Whereas, TOEURA is a body corporate and has been duly created, organized, established, and authorized to transact business and exercise its powers as an urban renewal authority within the Town of Erie (the "Town"), under the Colorado Urban Renewal Law, C.R.S. § 31-25-101, *et seq.*, and Town Resolution No. 11-121, adopted October 11, 2011;

Whereas, because TOEURA's goal is to reduce, eliminate, and prevent the spread of blight by stimulating growth and investment within the Town, TOEURA has the power to undertake urban renewal projects and activities benefitting properties within the Town, in accordance with Colorado Urban Renewal Law, and to provide financial assistance in public or private improvements in cooperation with property owners and other affected parties using a portion of Property Tax Increment, a portion of Town Sales Tax Increment, or some combination of both;

Whereas, on June 23, 2020, TOEURA adopted its Incentive Policy (the "Policy"), the purpose of which is to utilize tax increment financing ("TIF") funds received by TOEURA to promote the goals of reducing blight within urban renewal areas in the Town;

Whereas, under the Policy, TOEURA launched the Revitalization Incentive Grant Program (the "Grant Program"), designed to provide business sighting and expansion assistance to help business owners improve the external appearance of their commercial properties;

Whereas, TOEURA has selected Lucile's to receive funds from the Grant Program to assist in construction costs for improving the external and internal appearance of 554 Briggs Street, Erie, CO 80516 (the "Project"), as set forth in Exhibit A, attached hereto and incorporated herein by reference;

Whereas, TOEURA has determined that the Project serves a public purpose;

Whereas, Lucile's will complete the Project at its own expense, and upon completion, TOEURA will reimburse Lucile's for certain costs; and

Whereas, C.R.S. § 31-21-105 expressly authorizes TOEURA to enter into contracts necessary or convenient to the exercise of its powers.

Now, therefore, in consideration of the mutual covenants, agreements, representations, and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Term. This Agreement shall commence on the Effective Date and shall terminate 7 years after the date on which the final inspection is completed for the Project. Notwithstanding the foregoing, in no event shall the term be longer than the duration of TOEURA's statutory authority to receive TIF.

2. Eligible Costs. For Lucile's to be eligible to receive the Eligible Costs, defined below, all of the following criteria shall be satisfied:

a. Lucile's shall complete construction of the Project within 180 days of the Effective Date;

b. Lucile's shall expend a minimum of \$500,000 to complete the Project (the "Eligible Costs"), in accordance with Lucile's development plans;

c. The Project shall comply with the Erie Municipal Code; and

d. Lucile's shall provide TOEURA with evidence, reasonably satisfactory to TOEURA, documenting and certifying the Eligible Costs paid by Lucile's, which evidence may consist of canceled checks, payment records, or certification of representatives of Lucile's showing actual expenditure of funds, and if requested by TOEURA, Lucile's shall also provide evidence regarding the reasonableness of such expenditures.

3. Reimbursement Obligation.

a. In accordance with this Agreement, and in furtherance of the Policy, TOEURA agrees to reimburse Lucile's an amount not to exceed \$50,000 (the "Reimbursement Obligation") upon completion of the Project. The reimbursement amount shall be equal 10% of the eligible amounts actually spent by Lucile's, up to the maximum of \$50,000.

b. TOEURA will only reimburse Lucile's for the direct costs of completing the Project.

c. Notwithstanding anything to the contrary herein, TOEURA shall not make any payment to Lucile's in any time period during which no TIF is generated, and in no event shall TOEURA make a payment in excess of the Reimbursement Obligation.

d. The Reimbursement Obligation is a limited obligation, payable solely to the extent that sufficient TIF exists to satisfy this Agreement and any other obligation of TOEURA. The Reimbursement Obligation is not a debt or general obligation of TOEURA and is not a debt of the Town or the State of Colorado, or of any political subdivision of

the State of Colorado or any other public body. Such payment shall not be payable from, or constitute a charge upon, any funds of TOEURA or the Town except from the Grant Program, and then only to the extent in the manner specified in this Agreement.

4. Insurance. Lucile's shall include TOEURA as a named insured on the insurance policy or policies related to the Project for the duration of this Agreement.

5. Lucile's Representations and Warranties. Lucile's represents, warrants, and certifies to TOEURA as follows:

a. Lucile's is a Colorado limited liability company, validly existing, in good standing, and qualified to do business in the State of Colorado and has the legal capacity and the authority to enter into and perform its obligations under this Agreement.

b. The execution and delivery of this Agreement, and the performance and observance of its terms, conditions, and obligations have been duly and validly authorized by all necessary action on Lucile's part.

c. The execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement will not: (i) to Lucile's knowledge, conflict with or contravene any law, order, rule or regulation applicable to Lucile's; (ii) conflict with Lucile's governing documents; (iii) result in the breach of any of the terms or provisions, or constitute a default under, any agreement or other instrument to which Lucile's is a party or by which it may be bound or affected; or (iv) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of Lucile's.

d. Lucile's knows of no litigation, proceeding, initiative, referendum, or investigation, or threat of any of the same, contesting the power of TOEURA or Lucile's or any of their representative principals or officials with respect to this Agreement or any action taken by TOEURA relating to the Project.

e. This Agreement constitutes a valid and binding obligation of Lucile's, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

6. TOEURA's Representations and Warranties. TOEURA represents, warrants, and certifies to Lucile's as follows:

a. TOEURA is a body corporate organized pursuant to the provisions of the Colorado Urban Renewal Law and is not a "district" within the meaning of Article X, § 20 of the Colorado Constitution. As such, TOEURA has the power and legal right to enter into this Agreement and has duly authorized the execution, delivery, and performance of

this Agreement by proper action, which Agreement shall be a legal, valid, and binding obligation of TOEURA, enforceable in accordance with its terms.

b. The consummation of the transactions by this Agreement will not violate any provisions of any applicable law, rule, regulation, or ordinance or the governing laws or formation documents of TOEURA or constitute a default or result in any breach of any term or provision of any contract or agreement to which TOEURA is a party or by which it is bound.

c. TOEURA knows of no litigation, proceeding, initiative, referendum, or investigation, or threat of any of the same, contesting the power of TOEURA or Lucile's or any of their representative principals or officials with respect to this Agreement or any action taken by TOEURA relating to the Project.

d. The execution and delivery of this Agreement, and the performance and observance of its terms, conditions, and obligations have been duly and validly authorized by all necessary action on TOEURA's part.

e. TOEURA reasonably believes that the Project is, for all purposes, a necessary and appropriate urban renewal project as contemplated under the Colorado Urban Renewal Law.

7. Methodology, Risk Allocation, Protests and Abatements.

a. The Parties understand and acknowledge that TIF revenues are remitted to TOEURA according to policies and procedures adopted by the State Sales Tax Administrator, the County Assessor, and the County Treasurer (to the extent applicable). Accordingly, the timing and payment by the State Sales Tax Administrator or the County to TOEURA of all, or some, portion of the TIF revenues is a matter that is out of the control of TOEURA. Nothing herein is intended to be, or shall be construed as, a promise or guarantee by TOEURA that the TIF revenues will be collected and remitted to TOEURA in projected or anticipated amounts.

b. The Parties acknowledge that TIF revenues attributable to the properties located within the Town are calculated and remitted to TOEURA in the aggregate for the entire Town. Therefore, in the event that the total annual TIF revenues are received by TOEURA are insufficient to meet all of its TIF obligations and agreements existing as of the date of this Agreement, TOEURA will use a reasonable methodology for allocating its funds and revenues actually distributed to Lucile's pursuant to this Agreement. In such event, TOEURA will provide to Lucile's an explanation of its methodology together with supporting documentation.

c. Lucile's acknowledges that the acceptance of TIF revenues is dependent upon completion of the Project and agrees that TOEURA is in no way responsible for the amount of TIF revenue actually generated. Lucile's also acknowledges that the Project

is considered complete upon the completion of the final inspection and TOEURA's Reimbursement Obligation shall not arise until TOEURA receives written confirmation that Lucile's is not in default, or, with the giving of notice or lapse of time, will be in default, pursuant to any Project financing. Lucile's further acknowledges that the State Sales Tax Administrator and the County Assessor may modify the process for calculating TIF revenues, which may reduce the amount of TIF revenues. Lucile's therefore agrees to assume the entire risk that insufficient TIF revenue will be generated to reimburse all Eligible Costs.

8. Miscellaneous.

a. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

b. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by TOEURA shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

e. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.

f. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

g. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

h. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

i. *Governmental Immunity.* TOEURA and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

(Seal)

Notary Public

**Exhibit A
Project**

Project Details: The Project is primarily the addition of approximately 1,000 square feet to the west of the existing building at 554 Briggs Street, Erie, CO 80516 to accommodate a new kitchen, restrooms, storage, and walk-in cooler. The project also includes the renovation of the existing 1,275 square foot building to remove the existing kitchen, restrooms, etc. and build a new bar, opening up the dining room for additional seating. New electrical, plumbing and HVAC is anticipated. The front facade will include improvements to the windows and front door.

Eligible Reimbursement Projects:

Division 1 – General conditions

1. Plan review fee, building permit fee, use tax, and Mountain View Fire fee.
2. Provide management and supervision.
3. 3rd party inspections.
4. Survey and layout.
5. Temporary sanitary facilities.
6. Dumpsters.

Division 2 – Site work

1. Excavate and export for crawl space.
2. Fine grading of lot.
3. Excavate and backfill for footing and foundation wall.

Division 3 – Concrete

1. Form and pour foundation wall and footing.
2. Valley pan.
3. Sidewalk, landing, and trash enclosure pad.
4. Fencing for trash enclosure.
5. 4" slab on deck.

Division 5 – Metals

1. New handrails at back stairs.

Division 6 – Wood and plastics

1. POS counter.
2. Service counter.
3. Frame building addition walls, ceiling, and floor.

Division 7 – Thermal and moisture

1. Insulate walls, roof, and floor.
2. Stucco exterior walls at addition.
3. Install membrane roof.

Division 8 – Doors and windows

1. New doors and windows at south elevation of existing building.
2. New door at addition.
3. Install drop-down window.
4. New restroom doors.

Division 9 – Finishes

1. Demo, as required.
2. Drywall
 - a. New interior walls.
 - b. Patch walls at old kitchen.
3. Ceiling grid and tile, standard ceiling grid with vinyl-faced tile.
4. Paint
 - a. Paint interior drywall walls, drywall ceilings, door frames.
 - b. Stain new interior doors.
5. Flooring
 - a. Standard quarry tile at addition.
 - b. Patch floor at old kitchen location.
 - c. Floor and wall tile (wet walls) at restrooms.

Division 15 – Mechanical systems

1. HVAC
 - a. 6-ton HVAC and distribution.
 - b. Relocate existing MUA and hood.
2. Plumbing
 - a. Install floor sinks.
 - b. Install owner-supplied hand sinks and 3-compartment sink.
 - c. Grease interceptor.
 - d. Gas line.

Division 16 – Electrical systems

1. Demo as required.
2. New service panel.
3. Re-feed existing building.
4. New electrical distribution.
5. Does NOT include fire alarm.

Estimated Total Project Costs:

Schedule of values (approximate)

1. General conditions:		\$92,028
2. Site work:		\$31,060
3. Concrete:		\$30,750
5. Metals:		\$1,500
6. Wood & Plastics:		\$65,940
7. Thermal & Moisture:		\$51,754
8. Doors & Windows:		\$14,520
9. Finishes:		\$84,038
15. Mechanical systems:		\$107,500
16. Electrical systems:		\$45,000
	Subtotal	\$524,090
Contractor's overhead (5%)		\$26,205
Contractor's fee (5%)		\$26,205
	Total	\$576,500
Contingency		\$48,500
	Total with contingencies	\$625,000