

Tax Rebate Agreement

This Tax Rebate Agreement (the "Agreement") is made and entered into this ____ day of _____, 2021 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and Elementum 3D, Inc., a Colorado corporation with a principal place of business at 400 Young Court, Unit 1, Erie, Colorado 80516 (the "Company") (each a "Party" and collectively the "Parties").

Whereas, Company is engaging in expansion of business including the purchase and construction of additional workspace and an industry leading metal powder atomizer that will assist Company in vertically integrating and providing raw materials for world wide distribution (the "Project");

Whereas, the Project is located in the Town and is expected to generate approximately 18 new jobs by completion, and is expected to provide the Town with beneficial economic impacts; and

Whereas, the Project will serve a significant public purpose in aiding the health of the local economy and it is in the best interest of the public health, safety and welfare for the Town to enter into this Agreement.

Now therefore, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to memorialize and set forth the terms and conditions by which the Town may provide Company with a sales tax rebate on machinery purchased in connection with the Project. All conditions in this Agreement are in addition to any requirements of the Erie Municipal Code (the "Code"), state law and other Town ordinances, and are not intended to supersede any requirements contained therein.
2. Rebate. Subject to this Agreement, the Town shall refund 100% of the Town sales taxes paid by Company and actually received by the Town on the purchase of manufacturing equipment, machinery, and machine tools used directly and predominately in the manufacturing of tangible personal property and associated with the Project, up to a maximum amount of \$132,125 (the "Maximum Rebate").
3. Eligibility. As a precondition to receiving a rebate, Company shall send a letter to the Town certifying to the Town that it has paid all Town taxes, assessments, fees, or fines levied or assessed against the Company or Company property to date. The Town shall not pay any interest or other carrying costs or charge on any rebate payment. The

Town may withhold payment of the rebate if Company fails to certify that it is not current on the payment of all Town taxes, assessments and fees.

4. Timing. Company acknowledges that sales tax revenues are remitted to the Town by the State, on the State's schedule. Accordingly, the timing and payment by the State is a matter that is out of the control of the Town. The Town shall only be obligated to rebate tax revenues actually received by the Town.

5. Term. This Agreement shall commence on the Effective Date and shall expire on the date the last tax rebate payment is made, which shall occur once the Maximum Amount has been rebated to the Company, or on December 31, 2024, whichever occurs first.

6. 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 the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. *Integration*. This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof.

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.

This Agreement is a personal agreement between the Town and Company and is not transferable and does not run with the land.

i. *Governmental Immunity.* The Town 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 (the "Act"), or otherwise available to the Town and its officers, attorneys or employees.

j. *No Joint Venture.* Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

k. *Subject to Annual Appropriation.* This Agreement shall never constitute a debt or obligation of the Town within any constitutional or statutory provision. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk

By:

The foregoing instrument was subscribed, sworn to, and acknowledged before me this ____ day of _____, 2021, by _____ as the _____ of Elementum 3D, Inc.

(Seal)

Notary Public