

Reimbursement Agreement

This Reimbursement Agreement (the "Agreement") is made and entered into as of the ____ day of June, 2021 (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 (the "Authority"), and Old Mine Brewing Company, a corporation with an address of 500 Briggs Street, Erie, CO 80516 ("Old Mine") (each a "Party" and collectively the "Parties").

Whereas, the Authority 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 the Authority's goal is to reduce, eliminate, and prevent the spread of blight by stimulating growth and investment within the Town, the Authority 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 Municipal Sales Tax Increment, or some combination of both;

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

Whereas, under the Policy, the Authority 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, the Authority has selected Old Mine to receive funds from the Grant Program to assist in construction costs for improving the external appearance of 500 Briggs Street, Erie, Colorado (the "Project"), as set forth in **Exhibit A**, attached hereto and incorporated herein by reference;

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

Whereas, Old Mine will complete the Project at its own expense and, upon completion, the Authority will reimburse Old Mine for certain costs; and

Whereas, C.R.S. § 31-21-105 expressly authorizes the Authority 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 the Authority's statutory authority to receive TIF.

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

a. Old Mine shall complete construction of the Project within 180 days of the Effective Date.

b. Old Mine shall expend a minimum of \$10,000 to complete the Project (the "Eligible Costs"), in accordance with Old Mine's development plans.

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

d. Old Mine shall provide the Authority with evidence, reasonably satisfactory to the Authority, documenting and certifying the Eligible Costs paid by Old Mine. Such evidence may consist of canceled checks, payment records, or certification of representatives of Old Mine showing actual expenditure of funds. If requested by the Authority, Old Mine 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, the Authority agrees to reimburse Old Mine an amount not to exceed \$10,000 (the "Reimbursement Obligation") upon completion of the Project.

b. The Authority will only reimburse Old Mine for the direct costs of completing the Project.

c. Notwithstanding anything to the contrary herein, the Authority shall not make any payment to Old Mine in any time period during which no TIF is generated, and in no event shall the Authority 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 the Authority. The Reimbursement Obligation is not a debt or general obligation of the Authority, 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 the Authority or the Town except from the Grant Program, and then only to the extent in the manner specified in this Agreement.

4. Insurance. Old Mine shall include the Authority as a named insured on the insurance policy or policies related to the Project for the duration of this Agreement.

5. Old Mine's Representations and Warranties. Old Mine represents, warrants, and certifies to the Authority as follows:

a. Old Mine is a Colorado corporation, 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 Old Mine's part.

c. The execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement will not: (i) to Old Mine's knowledge, conflict with or contravene any law, order, rule or regulation applicable to Old Mine; (ii) conflict with Old Mine'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 Old Mine 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 Old Mine.

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

e. This Agreement constitutes a valid and binding obligation of Old Mine, 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. The Authority's Representations and Warranties. The Authority represents, warrants, and certifies to Old Mine as follows:

a. The Authority 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, the Authority 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 the Authority, 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 the Authority or constitute a default or result in any breach of any term or provision of any contract or agreement to which the Authority is a party or by which it is bound.

c. The Authority knows of no litigation, proceeding, initiative, referendum, or investigation, or threat of any of the same, contesting the power of the Authority or Old Mine or any of their representative principals or officials with respect to this Agreement or any action taken by the Authority 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 the Authority's part.

e. The Authority 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 the Authority 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 the Authority of all, or some, portion of the TIF revenues is a matter that is out of the control of the Authority. Nothing herein is intended to be, or shall be construed as, a promise or guarantee by the Authority that the TIF revenues will be collected and remitted to the Authority 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 the Authority in the aggregate for the entire Town. Therefore, in the event that the total annual TIF revenues are received by the Authority are insufficient to meet all of its TIF obligations and agreements existing as of the date of this Agreement, the Authority will use a reasonable methodology for allocating its funds and revenues actually distributed to Old Mine pursuant to this Agreement. In such event, the Authority will provide to Old Mine an explanation of its methodology together with supporting documentation.

c. Old Mine acknowledges that the acceptance of TIF revenues are dependent upon completion of the Project, and agrees that the Authority is in no way

responsible for the amount of TIF revenue actually generated. Old Mine also acknowledges that the Project is considered complete upon the completion of the final inspection and the Authority's Reimbursement Obligation shall not arise until the Authority receives written confirmation that Old Mine is not in default, or, with the giving of notice or lapse of time, will be in default, pursuant to any Project financing. Old Mine 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. Old Mine 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 the Authority 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.* the Authority 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.

j. *Rights and Remedies.* The rights and remedies of the Authority under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Authority's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

k. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

**Town of Erie Urban Renewal
Authority**

Jennifer Carroll, Chair

Attest:

Heidi Leatherwood, Secretary

Old Mine Brewing Company

STATE OF COLORADO)
)ss.
COUNTY OF _____)

Subscribed, sworn to and acknowledged before me this _____ day of _____, 2021, by _____ as _____ of Old Mine Brewing Company.

My Commission expires:

(SEAL)

Notary Public

Exhibit A Project

Project Detail: Construction of a permanent shade structure on the back patio and the addition of a service counter where customers can sit and order.