

# **PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT**

**BY AND BETWEEN**

**THE EAGLE URBAN RENEWAL AGENCY**

**AND**

**GEM STATE BREWING, LLC**

**November 15, 2022**

**Sewer Line, Fire Hydrant, ACHD and other Right of Way Improvements  
2022**

## PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT

THIS PUBLIC IMPROVEMENT REIMBURSEMENT AGREEMENT ("Agreement") is entered into as of the 15th day of November 2022, by and between the EAGLE URBAN RENEWAL AGENCY ("EURA"), the urban renewal agency for the City of Eagle ("City"), an independent public body, corporate and politic, organized and existing under the urban renewal laws of the State of Idaho (the "Agency") and Gem State Brewing, LLC an Idaho limited liability company ("Participant"). Agency and Participant may collectively be referred to as "Parties" and individually as "Party."

### *RECITALS*

WHEREAS, the EURA, an independent public body, corporate and politic, is an 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, as amended and supplemented, and the Local Economic Development Act of 1988, being Idaho Code, Title 50, Chapter 29; as amended and supplemented (collectively the "Act");

WHEREAS, the EURA was established by Resolution No. 06-50 of the City Council of the City of Eagle, Idaho (hereinafter the "City Council"), adopted October 10, 2006;

WHEREAS, the City Council of the City of Eagle, Idaho (the "City"), on December 11, 2007, after notice duly published, conducted a public hearing on the Eagle Revitalization Plan (the "Plan");

WHEREAS, following said public hearing the City adopted its Ordinance No. 592 on December 11, 2007, approving the Plan and making certain findings;



WHEREAS, the EURA has a strong interest in the revitalization, development and re-development of those portions of the City of Eagle with the urban renewal district;

WHEREAS, Participant will be developing property in the urban renewal district as described herein and will be required or has agreed to make certain public improvements including an upgraded a sewer line, fire hydrant, ACHD and other right of way improvements;

WHEREAS, the EURA received a request from Participant to receive reimbursement for construction costs associated with the such public improvements for its project as noted in Exhibit A attached hereto and incorporated herein;

WHEREAS, the total estimated cost of construction and related work and corresponding amount to the public improvements is \$201,143.00 with reimbursement from the EURA requested in the amount of \$100,000.00;

NOW, THEREFORE, based upon the mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Participant agree as follows:

I. SUBJECT OF AGREEMENT

A. Reimbursement Agreement

The purpose of this Agreement is to effectuate the Plan and a portion of the Eagle Urban Renewal Project (the "Urban Renewal Project") by providing for upgrades to a sewer line, fire hydrant and ACHD and other right of way improvements as noted in Exhibit A ("Reimbursable Improvements") that will support and promote redevelopment within the urban renewal district. The maximum amount of reimbursement to be paid by the EURA to Participant for these Reimbursable Improvements is one hundred thousand dollars (\$100,000.00). Reimbursement to be made in accordance with this

Agreement and in three approximately equal payments over three consecutive fiscal years.

The above noted recitals are hereby incorporated into this Agreement as if set forth fully herein. There is any conflict between the language contained in the exhibits attached hereto and the body of this Agreement the terms and conditions contained in the body of the Agreement and not the Exhibits will govern and control.

The Participant will ensure construction of the Reimbursable Improvements and as part of the Participant's development project as described in Exhibit A. Participant will provide documentation acceptable to Agency that the reimbursable Improvements as described in Exhibit A to this Agreement are properly constructed, completed and accepted by applicable agencies prior to receiving any reimbursement under this Agreement.

The Project is estimated to be completed in the spring of 2023 with anticipated reimbursement payments of \$33,333.33, \$33,333.33 and \$33,333.34 to be made in fiscal years (FY) 2023, 2024 and 2025 respectively. Unless extended by mutual written agreement, the term of this Agreement shall be through December 31, 2025 or until the Reimbursable Improvements are properly completed and the applicable reimbursements are paid to Participant, whichever occurs first. This Agreement may be earlier terminated by the parties as provided herein and portions of this Agreement pertaining to the obligations of Participant shall survive expiration and termination of this Agreement.

B. The Plan

This Agreement is subject to the provisions of the Plan.

C. Reimburse for Costs of Public Improvements

The Reimbursable Improvements consist a sewer line upgrade, fire hydrant, ACHD and other right of way improvements as noted in Exhibit A which is located within the Urban Renewal Project Area. The Parties agree that reimbursement under this agreement will be paid only after the Reimbursable Improvements described in this



Agreement are properly completed and accepted by the applicable agencies and corresponding documentation acceptable to EURA is provided by the Participant. Participant agrees to submit a request for reimbursement to the Agency which shall include proof acceptable to Agency of proper completion of the Reimbursable Improvements no later September 1, 2023.

D. Agency Participation Policy

Generally, the Agency has agreed to financially participate with a private developer when such participation, in the Agency's complete discretion, achieves and conforms with the goals and objectives of the Plan and the law, is not duplicative of other public entity funding, does not replace or substitute for the obligations imposed by other governmental agencies on the Participant, when funding is available and where the applicable project is a priority for the Agency.

E. Indemnification

Participants shall indemnify, defend and hold harmless the Agency and its respective officers, agents, consultants and employees from and against all liabilities, obligations, damages, penalties, claims, suits, costs, fees, charges, and expenses, including without limitation architect, engineer and attorney fees, which may be imposed upon or incurred by or asserted against Agency or its respective officers, agents, consultants and employees by reason of any of the following:

- a. Any and all construction and other work related to reimbursable Improvements and other work related to Participant's project and their request for reimbursement;
- b. Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the property or area where work related to the Participant's project and the reimbursable Improvements or related activities are performed;

- c. Any negligence on the part of Participant or any of their agents, consultants, contractors, subcontractors, servants, employees, subtenants, operators, licensees, guests or invitees;
- d. Any accident, injury, or damage to any person or property occurring in, on, about or enroute to or from the property or area where the work related to Participant's project is being performed or any part thereof, whether during construction or after construction; and/or
- e. Any failure on the part of Participant to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Agreement to be performed or complied with on its part.

Participants shall also indemnify and hold harmless and defend Agency and its officers, agents, consultants and employees from and against any and all claims or causes of action asserted by entities or individuals that are not a party to this Agreement regarding the validity or legality of this Agreement and the reimbursement to Participant.

F. Rights of Access During Construction

Representatives of the Agency and the City shall have the reasonable right of access to the site and property where any work related to Participant project and the Reimbursable Improvements are being or has been performed without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed constructing the reimbursable public improvements.

II. DEFAULTS, REMEDIES, AND TERMINATION

A. Defaults in General

Subject to any approved extensions of time as set forth in this Agreement, failure or delay by either party to perform any term or provision of this Agreement constitutes a



default under this Agreement. The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence and during any period of curing shall not be in default.

The Party claiming default shall give written notice of default to the Party in default specifying the default complained of, and the injured Party may not institute proceedings against the party in default until thirty (30) days after giving such notice; said thirty (30) days constitutes the period to cure any default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert, or enforce any such rights or remedies. The time to cure a default shall not commence until notice is provided.

B. Legal Actions

In ~~addition~~ <sup>9/2023</sup> to any other rights or remedies, any party may institute legal action to cure, correct, or remedy any default; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement. The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

C. Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party. The Agency rights and remedies retained by the Agency shall include without limitation an action for specific performance, damages or other equitable remedy and withholding payment of its funds then due under this Agreement.

D. Termination

If either party is in breach or default of the terms of this AGREEMENT, then upon proper notice and opportunity to cure as provided herein, the non-defaulting party may terminate this AGREEMENT. Upon such termination, non-defaulting party shall have no further liability to the other under this Agreement.

III. GENERAL PROVISIONS

A. Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between the Agency and Participants shall be sufficiently given if dispatched by regular mail or registered or certified mail, postage prepaid, return receipt requested, to the last known address of Agency and Participants as set forth in this Agreement. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

B. Nonliability of Agency Officials and Employees

No member, official, consultant or employee of the Agency shall be personally liable to the Participants in the event of any default or breach by the Agency or for any amount which may become due to the Participants or for any obligations under the terms of this Agreement.

C. Attorney Fees and Costs

In the event that either party to this Agreement shall initiate an action to enforce any of the provisions hereof in any action at law or in equity, the non-prevailing party to such action agrees to pay to the prevailing party all costs and expenses, including reasonable attorney fees incurred therein by the prevailing party, and such may be included in the judgment entered in such action.



D. Severability

The provisions in this Agreement are severable. Should any one or more of the provisions of this Agreement for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

E. Headings

The section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

F. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

G. Dispute Resolution

In the event that a dispute arises between Agency and Participants regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within thirty (30) days after such dispute arises. If the Parties fail to resolve the dispute informally within thirty (30) days after delivery of such notice, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days or other mutually agreeable timeframe after such commencement of mediation or other process of structured negotiation, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

H. Forced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts of another party; environmental analysis or removal of hazardous or toxic substances; acts or the failure to act of any public or governmental agency or entity; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the forced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Agency and Participant.

I. Attachments and Exhibits Made a Part

All attachments and exhibits, including without limitation Exhibit A, which are attached to this Development Agreement are made a part hereof by this reference.

J. Computation of Time

In computing any period of time prescribed or allowed under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. As used herein, "legal holiday" means a legal holiday recognized by the City on which the offices of the City are closed for City business.



K. No Third-Party Beneficiary or Joint Venture

The provisions of this Agreement are for the exclusive benefit of Agency and Participant and their authorized successors and assigns, and not for the benefit of any third person; nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person except for provisions expressly for the benefit of a mortgagee of Participant or its successors and assigns. The parties hereto are no partners nor are they to be considered to be engaged in any joint venture.

L. Good Faith and Cooperation

It is agreed by Agency and Participants that it is in their mutual best interests and in the best interests of the public that the re-development of the Property proceed and be completed as herein agreed, and, to that end, the Parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.

IV. AMENDMENTS TO THIS AGREEMENT

This Agreement may only be amended by mutual written agreement of the Parties hereto.

V. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement comprises the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter thereof.

All waivers of the provision of this Agreement must be in writing and signed by the appropriate authorities of the Agency and Participant.

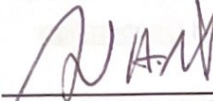
VI. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

AGENCY

Date: 11.15.22

EAGLE URBAN RENEWAL AGENCY

By   
Andrew McNeil, Chairman

Attest   
EURA Secretary

PARTICIPANT

Date: 11/15/2022

from state document  
URBAN, LLC

By 

Chris McGinnis - Manager/Member