

**TOWN OF SUPERIOR
RESOLUTION NO. R-34
SERIES 2023**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING AN ENHANCED SALES TAX INCENTIVE
PROGRAM AGREEMENT WITH BIGSBY'S FOLLY WINERY &
RESTAURANT**

WHEREAS, the Board of Trustees adopted Ordinance No. O-12, Series 2023, creating Chapter 6, Article VIII of the Superior Municipal Code establishing an Enhanced Sales Tax Incentive Program (the "ESTIP") to become effective on July 12, 2023;

WHEREAS, the purpose of the ESTIP is to encourage the establishment and substantial expansion of retail sales tax-generating businesses within the Town;

WHEREAS, Bigsby's Folly Winery & Restaurant (the "Applicant") wishes to participate in the ESTIP and filed an application for consideration by the Board of Trustees (the "Application"), which included without limitation an Enhanced Sales Tax Incentive Program Agreement (the "Agreement");

WHEREAS, on June 26, 2023, the Board of Trustees held a public hearing on the Application; and

WHEREAS, the Board of Trustees, upon reviewing the application, hearing the statements of staff, the Applicant, and the public, giving due consideration to the matter, found that the Application met the criteria as set forth in Section 6-8-70 of the Code and approved the Application.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:


Section 1. The Agreement between the Town of Superior and Bigsby's Folly Winery & Restaurant is hereby approved in substantially the same form as attached hereto, subject to final approval by the Town Attorney.

Section 2. Upon such approval, the Mayor is authorized to execute the Agreement upon the effective date of Ordinance No. O-12, Series 2023 of July 12, 2023.

ADOPTED this 26th day of June 2023.


Mark Lacis, Mayor

ATTEST:


Lydia Yecke, Town Clerk



ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT

THIS ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT (the "Agreement") is made and entered into this 25 day of July, 2023 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town"), and Wash Park Vintners, LLLP, a Colorado limited liability limited partnership, d/b/a Bigsby's Folly Winery & Restaurant, with a principal place of business at 821 S. High St., Denver, CO 80209 ("Owner") (each a "Party" and collectively the "Parties").

WHEREAS, Owner owns certain real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Owner has agreed to undertake certain public improvements on the Property while making the Property more viable as a competitive retail sales center; and

WHEREAS, Owner desires to participate in the Town's Enhanced Sales Tax Incentive Program (the "ESTIP"), pursuant to Chapter 6, Article VIII of the Superior Municipal Code, and to receive a portion of the Enhanced Sales Tax derived from the Property in exchange for the installation of Public Improvements described in Exhibit B, attached hereto and incorporated herein by this reference (the "Public Improvements") to the extent allowed by this Agreement and the ESTIP.

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

I. DEFINITIONS AND APPLICATION OF CODE

This Agreement is subject to the limitations of the ESTIP, as found in Chapter 6, Article VIII of the Superior Municipal Code, including without limitation the definitions contained therein.

II. TERM

A. The term of this Agreement shall be 10 years from the date of the issuance of the first certificate of occupancy for a retail or commercial business on the Property, or upon receipt of the Maximum Amount, defined below, by Owner in accordance with this Agreement, whichever shall occur first (the "Term").

B. At the end of the Term, any monies segregated by the Town which have not been rebated to Owner may be transferred to another account of the Town or used in a manner determined by the Town in its sole discretion.

III. QUALIFICATION FOR ESTIP

The Town finds that: the Property qualifies for the ESTIP; the Public Improvements are improvements for public or public-related purposes that will stimulate the Town's economy, provide employment opportunities for Town residents and others, expand the goods available for

purchase and consumption by Town residents, and increase sales taxes received by the Town; and the business is reasonably likely to generate Enhanced Sales Taxes of at least \$1,000,000 over the Term.

IV. MAXIMUM AMOUNT OF ENHANCED SALES TAX

In no event shall the total amount rebated by the Town to Owner exceed \$1,000,000 (the "Maximum Amount"). Notwithstanding the foregoing, if the actual costs of the Public Improvements are less than the Maximum Amount, only the actual costs shall be rebated. The Owner shall establish the actual costs of the Public Improvements by providing invoices and receipts satisfactory to the Town as further discussed in Section V(C) hereof.

V. ENHANCED SALES TAX PROCEEDS

A. For purposes of this Agreement, the Parties agree that the Base Amount shall be \$20,000 for the first year of operation divided into monthly increments agreed upon by the Parties, which considers the historic level of sales at the Property in question, or a similar property within the area in the event of a new business, and a reasonable allowance for increased sales due to the improvements and upgrades completed as a result of inclusion within the ESTIP Program.

B. The Town shall segregate 50% of the Enhanced Sales Taxes collected by the Town and derived from the Property for the ESTIP (the "Allocated Revenues"). From the Allocated Revenues, the Town shall pay to the Owner up to the actual cost incurred by the Owner for the construction and installation of the Public Improvements but not to exceed the Maximum Amount. If, in any month, the Enhanced Sales Taxes do not at least equal the Base Amount, there shall be no Allocated Revenue that month and no sharing of funds. The Town shall have no obligation to make any payment to Owner in the absence of a corresponding amount of Allocated Revenue.

C. To obtain reimbursement, Owner shall submit invoices to the Town, accompanied by an affidavit or other supporting documentation from the general contractor stating that the Public Improvements have been substantially completed pursuant to plans and specifications approved by the Town, and that the Owner has paid the full amount specified on the invoice. The Town shall make to the Owner any Enhanced Sales Tax payment within 60 days following receipt of such invoices and receipts.

D. Should the Parties enter into a Development Improvement Agreement and during the warranty period for Public Improvements set forth therein, the Owner does not replace, repair, modify, or correct the Public Improvements which the Town has determined have failed or was not constructed or installed in accordance with the Development Improvement Agreement, the Town shall have the right to withhold from the Allocated Revenues the amount required to make such replacement, repair, modification, or correction.

VI. FEE REDUCTION AND WAIVER.

Pursuant to the ESTIP, Owner may apply for a fee reduction and waiver of Town-imposed application, permit, and development fees. Such fee reductions and waivers shall be at the discretion of the Board of Trustees.

VII. INDEMNIFICATION

Owner agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs, attorneys and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Owner, any subcontractor of Owner, or any officer, employee, representative, or agent of Owner, or which arise out of a worker's compensation claim of any employee of Owner or of any employee of any subcontractor of Owner.

VIII. 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 Boulder 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 other terms or obligations 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 U.S. 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.* This Agreement is a personal agreement between the Town and the Owner and does not run with the Owner's property interest in the land. The obligations, benefits, and the provisions of this Agreement shall not be assigned in whole or in part without the express authorization of the Town, acting in its sole and exclusive discretion, and no third party shall be entitled to rely upon or enforce any provisions herein.

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, and 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. *Subject to Annual Appropriation.* 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 SUPERIOR, COLORADO



[Signature]
Mark Lacis, Mayor

ATTEST:

[Signature]
Lydia Yeeke, Town Clerk

OWNER

By: [Signature]

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was subscribed, sworn to and acknowledged before me this 25th day of July, 2023, by Maria Yetka as owner of Ideaction dba Bigsby's Folly.

My commission expires:

(SEAL)

[Signature]
Notary Public

APRIL J DEROUEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054015852
MY COMMISSION EXPIRES 04/28/2025

EXHIBIT A
LEGAL DESCRIPTION