

**TOWN OF SUPERIOR
RESOLUTION NO. R-5
SERIES 2024**

**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING A SECOND AMENDMENT TO THE SALES TAX
REVENUE SHARING INTERGOVERNMENTAL AGREEMENT WITH THE
CITY OF LOUISVILLE CONCERNING A TEMPORARY WAIVER OF TAX
REVENUES**

WHEREAS, the City of Louisville ("Louisville") and the Town are parties to a Sales Tax Revenue Sharing Intergovernmental Agreement (the "IGA"), executed July 21, 1997, and effective upon ratification by the voters of Louisville and Superior at the jurisdictions' respective elections in November 1997;

WHEREAS, the IGA was amended in the First Amendment to Sales Tax Revenue Sharing IGA, dated February 15, 2005 (the "First Amendment");

WHEREAS, this Second Amendment to the Sales Tax Revenue Sharing IGA (the "Second Amendment") provides a temporary waiver of tax revenues received by Louisville to provide a business incentive to Bigsby's Folly Winery & Restaurant and, if successful, may attract other, sales-tax-generating businesses to the South Property, as defined in the IGA, thus increasing the sales tax revenues shared by Louisville and the Town under the IGA;

WHEREAS, on January 2, 2024, the Louisville City Council approved the Second Amendment; and

WHEREAS, the Board of Trustees finds that it is in the best interest of the Town to approve the Second Amendment with Louisville.

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

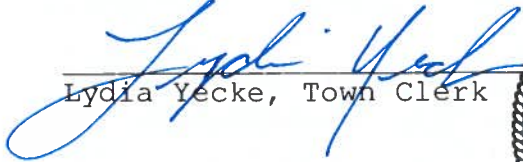
Section 1. The Second Amendment to the Sales Tax Sharing Intergovernmental Agreement between the Town and the City of Louisville concerning a temporary waiver of tax revenues is hereby approved in substantially the same form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the

Mayor is authorized to execute the Second Amendment to the Sales Tax Sharing Intergovernmental Agreement on behalf of the Town.

ADOPTED this 8th day of January, 2024.


Mark Lacis, Mayor

ATTEST:


Lydia Yecke, Town Clerk



SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This **SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** ("Second Amendment") is made and entered into this 2nd day of January, 2024 ("Effective Date"), by and between the **City of Louisville** ("Louisville" or the "City"), and the **Town of Superior** ("Superior") (each a "Party" and collectively, the "Parties").

WHEREAS, Louisville and Superior are parties to that certain Intergovernmental Agreement, executed July 21, 1997, and effective upon ratification by the voters of Louisville and Superior at the jurisdictions' respective elections in November 1997, as amended by that certain First Amendment to Intergovernmental Agreement, dated February 15, 2005 (collectively, the "IGA"); and

WHEREAS, under the IGA, Superior agreed, *inter alia*, to share with Louisville fifty percent (50%) of the revenues generated from Superior's existing 2.7% sales tax (the "Tax Revenues") imposed upon taxable transactions within the South Property (as such term is defined in the IGA); and

WHEREAS, in the summer of 2023, Superior adopted an Enhanced Sales Tax Incentive Program ("ESTIP"), for the purpose of encouraging the establishment and substantial expansion of retail sales tax generating businesses within Superior, with an emphasis on Downtown Superior; and

WHEREAS, following its adoption of the ESTIP, in June 2023, Superior entered into an incentive agreement ("Incentive Agreement") with Bigsby's Folly Winery & Restaurant (the "Company"), which Incentive Agreement will provide a rebate of Superior's portion of enhanced Tax Revenues collected from the Company until the earlier of (i) 10 years after issuance of the certificate of occupancy, or (ii) the total sum of rebates under the Incentive Agreement reaches \$1,000,000 (the "Rebate Period"); and

WHEREAS, the Company plans to purchase the property known as "Block 4" in Downtown Superior (the "Project Location") and construct a 7,500 square foot, event-based restaurant concept (the "Project"), at an estimated cost of \$6,700,000; and

WHEREAS, the Company anticipates the Project will be a regional draw, and create 45 new jobs with an average wage of \$30–\$65 per hour; and

WHEREAS, Superior has requested that Louisville temporarily waive its right to receive up to 100% of the City's share of enhanced Tax Revenues collected from the Company in connection with the Project during the Rebate Period, so that enhanced Tax Revenues subject to such temporary waiver may be rebated to the Company by Superior pursuant to the terms and conditions of the Incentive Agreement; and

WHEREAS, in response to Superior's request, the City Council finds it appropriate to waive its right to receive only half (50%) of the City's share of enhanced Tax Revenues

collected from the Company in connection with the Project during the Rebate Period, such that the City will continue to receive the remaining half (50%) of the City's share during the Rebate Period; and

WHEREAS, finding that the Project, if successful, may attract other, sales-tax-generating businesses to the South Property, thus increasing the sales tax revenues shared by the Parties under the IGA, the Louisville City Council has agreed to grant Superior's request, subject to the terms and conditions of this Second Amendment.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein and in the Agreement, the Parties agree as follows:

1. Temporary Waiver. Subject to the terms and conditions hereinafter set forth, commencing on the first day of the month following the day the Company begins retail sales to the public from the Project Location ("the Commencement Date"), the City shall temporarily waive its right under the IGA to receive half (50%) of that certain portion of the City's share of Tax Revenues generated from taxable transactions occurring within the Project Location and collected by Superior and falling under the definition of "enhanced sales tax" set forth in the Incentive Agreement, without regard to any amendments following such agreement's effective date (the "Temporary Waiver"), until the occurrence of the *earlier* of the following events: (i) the City has waived \$500,000 in Tax Revenues to which the City would otherwise be entitled under the IGA; (ii) 10 years has elapsed from the Commencement Date; or (iii) the total sum of enhanced Tax Revenues rebated by Superior under the Incentive Agreement reaches \$1,000,000. All Tax Revenues subject to the Temporary Waiver must be used by Superior for the sole purpose of providing eligible rebates to the Company under the Incentive Agreement. Superior shall ensure that the Company uses the rebated Tax Revenues subject to the Temporary Waiver solely for the purposes permitted under the Incentive Agreement, the expansion of which permitted purposes shall require the City's prior, express written consent. Following the expiration or termination of the Temporary Waiver, the Parties shall resume their respective rights and obligations under the IGA, such that Superior will pay, and the City will receive, the City's portion of Tax Revenues collected by Superior from taxable transactions occurring within the Project Location as required by the IGA.
2. Inspection of Records. To the greatest extent allowed by law, Louisville and its agents shall have the right to inspect and audit the applicable records of Superior to verify the amount of any payment made to the Company under the Incentive Agreement, whether paid out of Tax Revenues subject to the Temporary Waiver or otherwise, and each Party shall cooperate and take such actions as may be necessary to allow such inspections and audits.
3. Effect of Change in Tax Rate. Any subsequent increase in the general sales tax rate above the rate imposed on the Project Location on the Effective Date shall not

affect the amount of Tax Revenues subject to the Temporary Waiver, which will continue to be based upon the 2.7% sales tax rate applicable to the Project Location on the Effective Date.

4. Entire Agreement. This Second Amendment shall constitute the entire agreement between the City and Superior and supersedes any prior agreements between the Parties and their agents or representatives, all of which are merged into and revoked by this Second Amendment, with respect to its subject matter.

5. Contact Information. Contact information for the Parties is as follows:

If to Superior:

Town of Superior
124 E. Coal Creek Drive
Superior, CO 80027

If to Louisville:

Louisville City Hall
Attn: Economic Vitality
749 Main Street
Louisville, CO 80027

6. Termination. Notwithstanding anything herein to the contrary, this Second Amendment shall terminate and become void and of no force or effect if, by December 31, 2026, the Company has not completed the Project (as evidenced by a successful final inspection and Superior's issuance of certificate of occupancy for the Project) and commenced retail sales to the public at the Project Location.
7. Reimbursement. In the event the Company is required under the Incentive Agreement to reimburse Superior for any reason (e.g., Company's, and/or its successors' or assigns', failure to operate the business for the requisite ten (10) year period), and subject to Section 9 hereof, Superior shall pay to the City one third of the total funds reimbursed to Superior by the Company. Superior shall use all commercially reasonable remedies available to Superior to enforce any reimbursement rights it may have against Company under the Incentive Agreement, at law, and in equity.
8. Annual Appropriation. Nothing in this Second Amendment shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City or Superior within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision, and the Parties' obligations hereunder are expressly conditional upon annual appropriation by the City Council and Superior Board of Trustees, in their sole discretion.

9. Governing Law; Venue. This Second Amendment shall be governed and construed in accordance with the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Second Amendment shall be filed in the District Court of Boulder County of the State of Colorado and in no other court or jurisdiction.
10. Legal Challenge; Escrow. In the event of any legal challenge to this Second Amendment or the Incentive Agreement, the City shall have the option to suspend the Temporary Waiver during the pendency of such legal challenge. Superior shall provide the City with written notice of any legal challenge to the Incentive Agreement within 5 days of being served with a complaint. The Parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Second Amendment. Upon suspension of the Temporary Waiver pursuant to this Section, any funds subject to the suspended Temporary Waiver shall be escrowed in a separate Superior account.
11. Assignment. Neither Party may assign any of the obligations, benefits or provisions of this Second Amendment in whole or in any part without the express written authorization of the other Party; provided that, this Section shall not be construed to prevent Superior from making rebates to Company in accordance with the Incentive Agreement and subject to the terms and conditions of this Second Amendment. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.
12. No Joint Venture. Nothing in this Second Amendment is intended or shall be construed to create a joint venture between the City and Superior, and neither Party shall be liable or responsible for any debt or obligation of the other Party, including without limitation any debt or obligation established under the Incentive Agreement.

IN WITNESS WHEREOF the Parties have executed this Second Amendment as of the Effective Date.

TOWN OF SUPERIOR

By: 
Mark Lacia, Mayor

CITY OF LOUISVILLE

By: 
Christopher M. Leh, Mayor

ATTEST:

ATTEST:

Lydia Yecke
Lydia Yecke, Town Clerk



Meredyth Muth
Meredyth Muth, City Clerk

**RESOLUTION NO. 2
SERIES 2024**

**A RESOLUTION APPROVING A SECOND AMENDMENT TO THE SALES TAX
REVENUE SHARING INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF
SUPERIOR REGARDING A TEMPORARY WAIVER OF TAX REVENUES DUE TO
THE CITY FOR PURPOSES OF PROVIDING A BUSINESS INCENTIVE**

WHEREAS, Louisville and Superior are parties to that certain Intergovernmental Agreement, executed July 21, 1997, and effective upon ratification by the voters of Louisville and Superior at the jurisdictions' respective elections in November 1997, as amended by that certain First Amendment to Intergovernmental Agreement, dated February 15, 2005 (collectively, the "IGA"); and

WHEREAS, under the IGA, Superior agreed, *inter alia*, to share with Louisville fifty percent (50%) of the revenues generated from Superior's existing 2.7% sales tax imposed upon taxable transactions within the South Property (as such term is defined in the IGA); and

WHEREAS, in the summer of 2023, Superior adopted an Enhanced Sales Tax Incentive Program ("ESTIP"), for the purpose of encouraging the establishment and substantial expansion of retail sales tax generating businesses within Superior, with an emphasis on Downtown Superior; and

WHEREAS, following its adoption of the ESTIP, in June 2023, Superior entered into an incentive agreement ("Incentive Agreement") with Bigsby's Folly Winery & Restaurant (the "Company"), which Incentive Agreement will provide a rebate of Superior's portion of enhanced sales tax revenues collected from the Company until the earlier of (i) 10 years after issuance of the certificate of occupancy, or (ii) the total sum of rebates under the Incentive Agreement reaches \$1,000,000 (the "Rebate Period"); and

WHEREAS, the Company plans to purchase the property known as "Block 4" in Downtown Superior (the "Project Location") and construct a 7,500 square foot, event-based restaurant concept (the "Project"), at an estimated cost of \$6,700,000; and

WHEREAS, the Company anticipates the Project will be a regional draw, and create 45 new jobs with an average wage of \$30–\$65 per hour; and

WHEREAS, Superior has requested that Louisville temporarily waive its right to receive up to 100% of the City's portion of enhanced sales tax revenues collected from the Company in connection with the Project during the Rebate Period, so that enhanced sales tax revenues subject to such temporary waiver may be rebated to the Company by Superior pursuant to the terms and conditions of the Incentive Agreement; and

WHEREAS, in response to Superior's request, the City Council finds it appropriate to waive its right to receive only half (50%) of the City's share of enhanced Tax Revenues collected from the Company in connection with the Project during the Rebate Period, such that the City will continue to receive the remaining half (50%) of the City's share during the Rebate Period; and

WHEREAS, the City Council finds that the Project, if successful, may attract other, sales-tax-generating businesses to the South Property, thus increasing the sales tax revenues shared by the City and Superior under the IGA, and, therefore, desires to grant Superior's request, subject to the terms and conditions of the Second Amendment accompanying this resolution; and

WHEREAS, the City Council by this resolution desires to approve the Second Amendment and authorize its execution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

1. The Second Amendment to Intergovernmental Agreement (the "Amendment"), regarding the City's temporary waiver of its right to receive certain sales tax revenues from Superior to provide a business incentive, is hereby approved in essentially the same form as the copy of such Amendment accompanying this Resolution.

2. The Mayor is authorized to execute the Amendment on behalf of the City, and is hereby further authorized to negotiate and approve such revisions to said Amendment as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Amendment are not altered.

PASSED AND ADOPTED this 2nd day of January, 2024.



Christopher M. Leh, Mayor

ATTEST:



Meredyth Muth, City Clerk

