CITY COUNCIL COMMUNICATION
AGENDA ITEM 5D

City of Louisville
COLORADO • SINCE 1878

SUBJECT: APPROVAL OF RESOLUTION NO. 41, SERIES 2024 – A RESOLUTION APPROVING A FIRST AMENDMENT TO THE BUSINESS ASSISTANCE AGREEMENT WITH BASECAMP CONCEPTS, LLC FOR AN ECONOMIC DEVELOPMENT PROJECT IN THE CITY OF LOUISVILLE

DATE: SEPTEMBER 17, 2024

PRESENTED BY: VANESSA ZARATE, CECD, ECONOMIC VITALITY MANAGER

SUMMARY:
On March 15, 2022, the Louisville City Council approved a Business Assistance Package (BAP) with Ironton Distillery for a new economic development project (Resolution 16, Series 2022). The Company is considering a new distillery project at 1303 Empire Road to include a new production distillery, event space and restaurant. Due to the timing of the initial request, approval of PUD and City plans, and current market realities, Staff is now requesting an amendment to the agreement to better align with current project projections and needs.

DISCUSSION:
The original BAP for Ironton Distillery (Basecamp Louisville) was approved in March 2022. Since that time, staff has continued to interact with the project as it works towards City required approvals to start construction on the project and as the project has worked towards completing their capital stack needed to fund the project. Due to the time it has taken to complete needed requirements, Ironton Distillery has not been able to start construction and is now facing a different financing and real estate market than in 2022.

The originally approved Business Assistance Package was for a 50% rebate of the Building Permit Fees, Sign Permit Fees, and Construction Use Tax Fees for a combined total amount of $30,000. In addition, the agreement was approved for a 50% Sales tax Rebate for five years, with a total amount of $207,000. The project was originally expected to complete construction by September 30, 2024.

The company received an approved planned unit development for the project on March 5, 2024. Since that time, the company has been in communication with the City and other partners to align construction and capital needs. Since the original BAP approval in 2022, costs of the development have increased significantly. In addition, anticipated sales projections have also changed to become more aligned with current market realities.

Due to timing of approvals and current needs, Ironton Distillery is asking for an amendment to their BAP to extend the project completion date and amend the project caps for building permit fees, sign permit fees, construction use tax and sales tax. The amended BAP allowed for the project to receive building permit fees, sign fees and construction use tax rebates until December 31, 2025, with a cap of $100,000. In addition, the sales tax rebate would be amended to a cap of $400,000. The five year sales tax rebate period will remain the same. This amendment would become void if construction is not completed by December 31, 2025.

All rebates would be paid on true costs for each component of the BAP agreement, until the cap is met. Should the project costs exceed that cap, the project will cover the additional costs. The attached first amendment to the business assistance agreement does not include any other changes from what was originally approved.

FISCAL IMPACT:
As all components of the incentive agreement are rebates based on actual costs and sales tax generation, all components of this incentive are paid from the new money generated from the project. There is no direct fiscal impact from this amendment.

PROGRAM/SUB-PROGRAM IMPACT:
The recommended Business Assistance Agreement supports the Business Retention & Development sub-program objective to retain a diverse mix of businesses that provide good employment opportunities for Louisville residents and the Economic Prosperity Program Goal to promote a thriving business climate that provides job opportunities, facilitates investment, and produces reliable revenue to support City services. In addition, this BAP amendment supports the growth and sustainability of quality of life businesses in Louisville to support residents and visitors.

RECOMMENDATION:
Staff recommends City Council approve the Resolution approving a first amendment to the Business Assistance Agreement with Ironton Distillery.

ATTACHMENTS:
1. Resolution
2. Business Assistance Agreement (First Amendment)
3. Business Assistance Agreement (Original)

STRATEGIC PLAN IMPACT:

☐		**Financial Stewardship & Asset Management**	☐		**Reliable Core Services**
☒		**Vibrant Economic Climate**	☐		**Quality Programs & Amenities**

☐	Engaged Community	☐	Healthy Workforce
☐	Supportive Technology	☐	Collaborative Regional Partner

RESOLUTION NO. 41
SERIES 2024

A RESOLUTION APPROVING A FIRST AMENDMENT TO BUSINESS ASSISTANCE AGREEMENT FOR BASECAMP CONCEPTS, LLC IN THE CITY OF LOUISVILLE

WHEREAS, there has been proposed a First Amendment to the Business Assistance Agreement for Basecamp Concepts, LLC dba Ironton Distillery and Crafthouse that would extend the project completion date and would increase the caps on rebates of the building permit fees, sign permit fees, construction use tax, and sales tax for the project; and

WHEREAS, the successful attraction and retention of quality development to the City of Louisville provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, the City Council finds that the proposed First Amendment is consistent with and in furtherance of the business assistance policies of the City, and desires to approve the First Amendment and authorize its execution and implementation.

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

1. The proposed First Amendment to Business Assistance Agreement between the City of Louisville and Basecamp Concepts, LLC dba Ironton Distillery and Crafthouse (the “First Amendment”) is hereby approved in essentially the same form as the copy accompanying this Resolution.

2. The Mayor is hereby authorized to execute the First Amendment on behalf of the City Council, and the Mayor is hereby further authorized to negotiate and approve such revisions to said First 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 First Amendment are not altered.

PASSED AND ADOPTED this 17th day of September. 2024.

____
Christopher M. Leh, Mayor

ATTEST:

____
Meredyth Muth, City Clerk

FIRST AMENDMENT TO BUSINESS ASSISTANCE AGREEMENT FOR BASECAMP CONCEPTS, LLC IN THE CITY OF LOUISVILLE

THIS FIRST AMENDMENT is made and entered into as of the _______ day of ______________________, 2024, between the CITY OF LOUISVILLE, a Colorado home rule municipal corporation (the "City") and BASECAMP CONCEPTS, LLC, doing business as Ironton Distillery and Crafthouse, a Colorado limited liability company (the "Company").

WHEREAS, by Resolution No. 16, Series 2022, the City Council approved a Business Assistance Agreement (the "Original Agreement") to provide business assistance in connection with the Company's desire to locate its operations in Louisville (the "Project"); and

WHEREAS, since the City approved the Original Agreement, Project costs have increased substantially and the timeline for the Project has been delayed; and

WHEREAS, the Company has requested that the Original Agreement be amended to extend the Project completion date and to increase the caps on rebates of building permit fees, sign permit fees, construction use tax, and sales tax; and

WHEREAS, the City Council finds the execution of this First Amendment will benefit and advance the public interest and welfare of the City and its citizens by assisting this economic development project within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and Company agree as follows:

Section 1. The following sections of the Original Agreement are hereby amended to read as follows (words to be deleted ~~stricken~~; words to be added double underlined):

1. Building Permit Fee Rebates. The City shall rebate to the Company 50% of the building related permit fees for the Project, required under section 15.04.050 of the Louisville Municipal Code (the "City Code") and section 108.2 of the International Building Code as adopted by the City, for the period from execution of this Agreement and ending December 31, 2025 ~~September 30, 2024~~.

2. Sign Permit Fee Rebates. The City shall rebate to the Company 50% of the sign related permit fees for the Project, required under the City of Louisville Sign Code, adopted by Ordinance 1779, Series 2019, and codified as Appendix B to Chapter 17 of the City Code, and as may be amended from

time to time, for the period from execution of this agreement and ending December 31, 2025 ~~September 30, 2024~~. For purposes of this Section, "sign related permit fees" include sign permit fees, in-house sign plan review, and the use tax assessed on the valuation of signs installed as part of the Project.

3. Use Tax Rebate-Construction. The City shall rebate to the Company 50% of the Construction Use Tax on the construction materials for the Project, required under section 3.20.300 of the City Code, excluding all revenues from the Open Space Tax, Historic Preservation Tax, and Recreation Center Tax for the Project, for the period from execution of this Agreement and ending December 31, 2025 ~~September 30, 2024~~.

5. Payment of Rebates; Cap; Inspection. The maximum amount of the rebates payable pursuant to Sections 1, 2 and 3 above shall in no event exceed the lesser of (i) the calculation of 50% of the fees or taxes described in Sections 1, 2, and 3 paid to the City, or (ii) one hundred thousand dollars ($100,000) ~~thirty thousand dollars ($30,000)~~. The maximum amount of the rebates payable pursuant to Section 4 above shall in no event exceed the calculation of 50% of the taxes described in Section 4 above; provided, further that the total maximum amount of rebates payable pursuant to Section 4 shall in no event exceed four hundred and forty thousand dollars ($440,000) ~~two hundred seven thousand dollars ($207,000)~~. Sales Tax rebates pursuant to Section 4 shall terminate when the Company has received from the City the last rebate payment under this Agreement for the five-year rebate period or when the Company has received $440,000 ~~$207,000~~ in rebate payments, whichever first occurs. The building permit fee, sign permit fee and construction use tax rebates in Sections 1, 2, and 3 pertaining to each phase of the Project shall be paid by the City to Company within 120 days following issuance of the certificate of occupancy or final inspection for the applicable portion of the Project work, as reasonably determined by the City, subject to Sections 6, 7, and 8 below. The Sales Tax rebate provided for in Section 4 above shall be paid by the City to Company in annual installments, on or before February 28 of the following year, subject to Sections 6, 7, and 8 below. At the end of each month, on or before the 20th of the following month, the Company shall be responsible to remit to the City its total monthly Sales/Use Tax payment on the appropriate Sales/Use Tax return form. All rebate payments will be remitted by the City to the Company at the address set forth in Section 9.

10. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if, by December 31, 2025 ~~September 30, 2024~~, the Company has not completed the Project as described in the Company's application for business assistance (as evidenced by a successful final inspection for the Project); or should fail to comply with any City code.

<u>Section 2.</u> Except as amended by this First Amendment, the Business Assistance Agreement with Basecamp Concepts, LLC shall remain in full force and effect in accordance with its terms.

This First Amendment is effective as of the date first above written.

BASECAMP CONCEPTS, LLC

____

Lance Peterson, President

CITY OF LOUISVILLE

____

Christopher M. Leh, Mayor

ATTEST:

____

Meredyth Muth, City Clerk

RESOLUTION NO. 16
SERIES 2022

A RESOLUTION APPROVING A BUSINESS ASSISTANCE AGREEMENT WITH BASECAMP LOUISVILLE, LLC FOR AN ECONOMIC DEVELOPMENT PROJECT IN THE CITY OF LOUISVILLE

WHEREAS, the successful attraction of quality development to the City of Louisville provides employment opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Louisville to create and retain basic jobs and remain competitive with other local governments in creating assistance for occupancy of commercial space in the City; and

WHEREAS, Basecamp Louisville, LLC, doing business as Ironton Distillery and Crafthouse, seeks to redevelop existing vacant commercial space at 1303 Empire Road in Louisville, and relocate its existing business into such commercial space, which will add basic jobs and generate new fee and tax revenues to the City; and

WHEREAS, the Business Assistance Agreement between the City and Basecamp Louisville, LLC is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, pursuant to the Constitution of the State of Colorado, and the Home Rule Charter and ordinances of the City of Louisville, the City has authority to enter into the proposed Business Assistance Agreement; and

WHEREAS, the City Council finds that the proposed Business Assistance Agreement is consistent with and in furtherance of the business assistance policies of the City, and desires to approve the Agreement and authorize its execution and implementation.

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

1. The proposed Business Assistance Agreement between the City of Louisville and Basecamp Louisville, LLC (the "Agreement") is hereby approved in essentially the same form as the copy of such Agreement accompanying this Resolution.

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

3. City staff is hereby authorized to do all things necessary on behalf of the City to perform the obligations of the City under the Agreement, including but not limited to funding and implementation of the Agreement in accordance with and upon performance of the terms thereof.

PASSED AND ADOPTED this 15th day of March, 2022.

Ashley Stolzmann, Mayor

ATTEST:

Meredyth Muth, City Clerk

CITY OF LOUISVILLE SEAL COLORADO

EXHIBIT A

Copy of Business Assistance Agreement

BUSINESS ASSISTANCE AGREEMENT FOR BASECAMP LOUISVILLE, LLC IN THE CITY OF LOUISVILLE

THIS AGREEMENT ("Agreement") is made and entered into as of the 15th day of March, 2022, between the CITY OF LOUISVILLE, a Colorado home rule municipal corporation (the "City"), and BASECAMP LOUISVILLE, LLC (the "Company"), doing business as Ironton Distillery and Crafthouse, a Colorado limited liability company.

WHEREAS, the City wishes to provide certain business assistance in connection with the Company's desire to relocate its existing business to Louisville (the "Project"); and

WHEREAS, the Company seeks to occupy a 4,000 square foot vacant commercial space and construct an additional 15,000 square feet of new space at 1303 Empire Road (the "Project Location"), which has not housed a significant Sales Tax generating use since 2017; and

WHEREAS, the Company will bring new basic jobs to the City, as well as generate new fee and tax revenues; and

WHEREAS, the City Council finds the execution of this Agreement will serve to provide a benefit and advance the public interest and welfare of the City and its citizens by securing this economic development project within the City.

NOW THEREFORE, in consideration of the mutual promises set forth below, the City and Company agree as follows:

1. Building Permit Fee Rebates. The City shall rebate to the Company 50% of the building related permit fees for the Project, required under section 15.04.050 of the Louisville Municipal Code (the "City Code") and section 108.2 of the International Building Code as adopted by the City, for the period from execution of this Agreement and ending September 30, 2024.

2. Sign Permit Fee Rebates. The City shall rebate to the Company 50% of the sign related permit fees for the Project, required under the City of Louisville Sign Code, adopted by Ordinance 1779, Series 2019, and codified as Appendix B to Chapter 17 of the City Code, and as may be amended from time to time, for the period from execution of this agreement and ending September 30, 2024. For purposes of this Section, "sign related permit fees" include sign permit fees, in-house sign plan review, and the use tax assessed on the valuation of signs installed as part of the Project.

3. Use Tax Rebate-Construction. The City shall rebate to the Company 50% of the Construction Use Tax on the construction materials for the Project, required under section 3.20.300 of the City Code, excluding all revenues from the Open Space Tax, Historic Preservation Tax, and Recreation

Center Tax for the Project, for the period from execution of this Agreement and ending September 30, 2024.

4. Sales Tax Rebates. The City shall rebate to the Company 50% of the Sales Tax revenues derived from the imposition of the City's 3.0% General Sales Tax (excluding the City's .375% Open Space Tax, the .125% Historic Preservation Tax, the .15% Recreation Center Tax, and any new sales taxes) that is actually collected by the City and attributable solely to new retail sales generated by operation of the Project and occurring at the Project Location. The rebates apply to the first five (5) years of its operation 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 five-year rebate period shall commence upon and run continuously from the Commencement Date.

5. Payment of Rebates; Cap; Inspection. The maximum amount of the rebates payable pursuant to Sections 1, 2 and 3 above shall in no event exceed the lesser of (i) the calculation of 50% of the fees or taxes described in Sections 1, 2, and 3 paid to the City, or (ii) thirty thousand dollars ($30,000). The maximum amount of the rebates payable pursuant to Section 4 above shall in no event exceed the calculation of 50% of the taxes described in Section 4 above; provided, further that the total maximum amount of rebates payable pursuant to Section 4 shall in no event exceed two hundred seven thousand dollars ($207,000). Sales Tax rebates pursuant to Section 4 shall terminate when the Company has received from the City the last rebate payment under this Agreement for the five-year rebate period or when the Company has received $207,000 in rebate payments, whichever first occurs. The building permit fee, sign permit fee and construction use tax rebates in Sections 1, 2, and 3 pertaining to each phase of the Project shall be paid by the City to Company within 120 days following issuance of the certificate of occupancy or final inspection for the applicable portion of the Project work, as reasonably determined by the City, subject to Sections 6, 7, and 8 below. The Sales Tax rebate provided for in Section 4 above shall be paid by the City to Company in annual installments, on or before February 28 of the following year, subject to Sections 6, 7, and 8 below. At the end of each month, on or before the 20th of the following month, the Company shall be responsible to remit to the City its total monthly Sales/Use Tax payment on the appropriate Sales/Use Tax return form. All rebate payments will be remitted by the City to the Company at the address set forth in Section 9.

6. No Interest; Inspection and Disclosure of Records. No interest shall be paid on any amounts subject to rebate under this Agreement. Each party and its agents shall have the right to inspect and audit the applicable records of the other party to verify the amount of any payment under this Agreement, and each party shall cooperate and take such actions as may be necessary to allow such inspections and audits. The Company acknowledges that implementation of this Agreement requires calculations based on the

amount of taxes collected and paid by the Company with respect to the term of this Agreement and issuance of rebate payment checks in amounts determined pursuant to this Agreement, and that the amounts of the rebate payment checks will be public information. The Company, for itself, its successors, assigns, and affiliated entities, hereby releases and agrees to hold harmless the City and its officers and employees from any and all liability, claims, demands, and expenses in any manner connected with any dissemination of information necessary for or generated in connection with the implementation of rebate provisions of this Agreement.

7. Use of Funds; Future Fees. Funds rebated to the Company pursuant to this Agreement shall be used by the Company solely for obligations and/or improvements permitted under Louisville Municipal Code section 3.24.060 (as enacted by Ordinance No. 1507, Series 2007), which includes, but is not limited to, creation of new Sales Tax revenue and new basic jobs in the City. The Building Permit Fee, Sign Permit Fee and Construction Use Tax rebates provided for under this Agreement are solely for construction activities and purchases for this Project during the periods stated in Sections 1-3, above. Any previous or subsequent purchases and construction activities shall be subject to payment without rebate of all applicable building permit fees, sign permit fees and construction use taxes.

8. Effect of Change in Tax Rate. Any increase or decrease in the City General Sales or Construction Use Tax rate above or below the applicable tax rate on the date of execution of this Agreement shall not affect the rebate payments to be made pursuant to this Agreement; rather, the amount of the rebate payments will continue to be based upon the General Sales, Construction Use, or Consumer Use Tax rates applicable on the date of execution of this Agreement (excluding the City's 0.375% Open Space Tax, 0.125% Historic Preservation Tax, and 0.150% Recreation Center Tax). Any decrease in the City General Sales or Construction Use Tax rates shall cause the amount of the rebate payments made pursuant to this Agreement to be based on the applicable percentage of revenues actually received by the City from application of the tax rate affected (excluding said Open Space, Historic Preservation, Recreation Center, or future special Sales or Use taxes).

9. Entire Agreement; Notices. This instrument shall constitute the entire agreement between the City and the Company and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. Contact information is as follows:

If to Company:
Basecamp Louisville LLC
Attn: Lance Peterson
3636 Chestnut Pl
Denver, CO 80216

303-619-1302
lance@irontondistillery.com

If to City:
Louisville City Hall
Attn: Economic Vitality
749 Main Street
Louisville, CO 80027
303.335.4531
mpierce@louisvilleco.gov

10. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if, by September 30, 2024, the Company has not completed the Project as described in the Company's application for business assistance (as evidenced by a successful final inspection for the Project); or should fail to comply with any City code.

11. Business Termination. In the event the Company, and/or its successors and assigns, ceases business operations in the City within ten (10) years after the Certificate of Occupancy has been received for the Project, then in such event the Company shall pay to the City a portion of the total amount of Building Permit Fees, Sign Permit Fees, Construction Use Taxes, and Sales Taxes which were due and payable by the Company to the City but were rebated by the City. For each full year that the Company, and/or its successors and assigns, cease operations at the Project Location, the City shall receive back 10% of the foregoing amounts.

12. Subordination. Notwithstanding anything in this Agreement to the contrary, the City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

13. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision, and the City's obligations

hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. Company understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or liability to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

14. Governing Law: Venue; Dispute Resolution. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with, the Louisville City Charter and the Louisville Municipal Code. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Boulder County of the State of Colorado and in no other court or jurisdiction. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation, they shall first engage in good faith the services of a mutually acceptable, qualified, and experienced mediator, or panel of mediators for the purpose of resolving such dispute; except that, either party may seek injunctive or other equitable relief in the District Court of Boulder County without first submitting the dispute to mediation. The costs of mediation shall be split equally between the parties. The costs of arbitration shall be split equally between the parties.

15. Legal Challenge; Escrow. The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party. Any funds appropriated for payment under this Agreement shall be escrowed in a separate City account in the event there is a legal challenge to this Agreement.

16. Personal Agreement; Assignment. This Agreement is personal to the Company and does not attach to or run with the Property. Neither party shall record this Agreement in the property records of the Boulder County Clerk and Recorder. The Company may not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part without the express written authorization of the City Council of the City. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

17. No Joint Venture. Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and the Company and the City shall never be liable or responsible for any debt or obligation of Company.

18. No Third-Party Beneficiaries. The terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Company, and nothing contained in this Agreement

shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Company receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15th

This Agreement is enacted this XXXXX day of March, 2022.

BASECAMP LOUISVILLE, LLC
a Colorado limited liability company

By: ______________________
Lance Peterson
President

CITY OF LOUISVILLE

____
Ashley Stolzmann
Mayor

ATTEST:

____
Meredyth Muth, City Clerk