

**City of Black Hawk
City Council
211 Church Street
May 14, 2014
3:00 p.m.**

RINGING OF THE BELL:

- 1. CALL TO ORDER:**
- 2. ROLL CALL & PLEDGE OF ALLEGIANCE:**
- 3. AGENDA CHANGES:**
- 4. CONFLICTS OF INTEREST: (Council disclosures are on file w/City Clerk & Sec. Of State)**
- 5. PUBLIC COMMENT: *Please limit comments to 5 minutes*
(Notify the City Clerk if you wish to address Council on items not on the agenda)**
- 6. APPROVAL OF MINUTES: April 23, 2014**
- 7. PUBLIC HEARINGS:**
 - A.** CB 9, An Ordinance Repealing and Reenacting Article XV to Chapter 6 of the Black Hawk Municipal Code Regarding Medical Marijuana
 - B.** CB 10, An Ordinance Adopting a New Article XVIII of Chapter 6 of the Black Hawk Municipal Code Regarding Retail Marijuana Establishments, and Revoking in Part the City's Temporary Moratorium On Marijuana Businesses and Marijuana Social Clubs
 - C.** Resolution 30-2014, A Resolution Establishing Fees for Marijuana Licenses
 - D.** Resolution 29-2014, A Resolution Approving a Certificate of Appropriateness for the Exterior Paint, Stain and Siding Repair for the Historic Residence Located at 151 Marchant Street
- 8. ACTION ITEMS:**
 - E.** Resolution 26-2014, A Resolution Approving the Service Agreement for Vehicle Towing Services Between the City of Black Hawk and D & J Towing and Recovery
 - F.** Resolution 27-2014, A Resolution Approving the Service Agreement for Vehicle Towing Services Between the City of Black Hawk and Help Towing
 - G.** Resolution 28-2014, A Resolution Approving the Service Agreement for Vehicle Towing Services Between the City of Black Hawk and Black Hawk Towing
 - H.** 101 Marchant – Roadway Easement
 - I.** Ratification of Phone Poll – Change Order for Removal of Certain Retaining Walls on the Winners Haven Demolition Site
- 9. CITY MANAGER REPORTS:**
 - J.** 271 Church Street – Boundary Line Agreement Letter With Adjacent Property Owners
 - K.** 271 Church Street – Clay Masonry Wall
- 10. CITY ATTORNEY:**
- 11. EXECUTIVE SESSION:**
- 12. ADJOURNMENT:**

MISSION STATEMENT

The mission of the City of Black Hawk is to progressively provide cost effective programs and services of the highest quality to the community

**APPROVAL OF
MINUTES FOR
APRIL 23, 2014**

City of Black Hawk
City Council Minutes
April 23, 2014

Judge Ron Carlson rang the bell.

1. CALL TO ORDER: The regular meeting of the City Council was called to order by Mayor Spellman Wednesday, April 23, 2014 at 3:00 p.m.

ROLL CALL: Present were: Mayor Spellman, Aldermen Armbright, Bennett, Cales, Johnson, Moates, and Torres.

OATH OF OFFICE FOR
ALDERMEN

Judge Ron Carlson administered the Oath of Office to Alderman Armbright, Alderman Johnson, and Alderman Midcap who were elected to serve four-year terms.

Mayor Spellman presented Diane Cales with a plaque for her services as Alderman.

Mayor Spellman presented plaques, as part of the Sesquicentennial Celebration, to City Manager Lewis, City Attorney Hoffmann, Department Chairs, Administrative Assistant Archer, Administrative Assistant to City Manager Romero, and Deputy Clerk Stevens.

Mayor Spellman requested a recess at 3:07 p.m. for a short reception for Diane Cales.

Meeting reconvened at 3:15 p.m.

2. ROLL CALL: Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Staff present: City Attorney Hoffmann, City Manager Lewis, City Clerk Magno, Assistant to City Manager for Administration Greiner, Community Planning and Development Administrator Linker, IT Director Young, Fire Chief Taylor, Police Chief Cole, and Public Works Director Isbester.

PLEDGE OF
ALLEGIANCE:

Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.

3. AGENDA CHANGES: City Clerk Magno informed Council item 8-H, 101 Marchant Street — Roadway Easement has been moved to the May 14, 2014 meeting.

4. CONFLICTS OF INTEREST:

City Attorney Hoffmann asked Council to declare any Conflicts of Interest on any issue appearing on the agenda this afternoon other than those previous disclosures and conflicts that have already been disclosed and are on file with the City Clerk and Secretary of State. Alderman Johnson recused himself from item 8-H, 101 Marchant Street — Temporary Construction Easement.

City Attorney Hoffmann asked the audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon; with the conflict of Alderman Johnson. The audience had no objections.

5A. INTRODUCTION OF NEW EMPLOYEES:

Police Chief Cole introduced Officers James Randall, Kory Peterson, and Taylor Taggart. Council welcomed the new officers.

5B. PUBLIC COMMENTS:

Diane Cales, formerly a Council Member, thanked Mayor and Staff on the Sesquicentennial Celebration. She stated she really enjoyed herself.

6. APPROVAL OF MINUTES for April 9, 2014 MOTION TO APPROVE

Alderman Johnson MOVED and was SECONDED by Alderman Torres to approve the Minutes of the April 9, 2014 meeting as presented.

MOTION PASSED

There was no discussion and the motion PASSED. Alderman Midcap Abstained.

7. PUBLIC HEARINGS:

- A. CB 7, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion and Improvement of Gregory Street. A City Street and Roadway Pursuant to C.R.S. §38-6-101, C.R.S. §31-25-201, Article XX, §1 of the Colorado Constitution,

and Article 8, Section
4 of the City of Black
Hawk Home Rule
Charter

Mayor Spellman read the title.

Alderman Midcap Abstained.

City Attorney Hoffmann explained there were two typo errors on the cover sheet. He stated please look at the ordinance it is very important.

City Attorney Hoffmann stated the City moved to acquire the convenience store and the closing will be next week. He explained this property is next to the convenience store and the City needs to acquire it for the expansion of Gregory Street.

City Attorney Hoffmann explained if the City could not negotiate with property owner, this ordinance would start condemnation.

Mayor Spellman inquired if Alderman Midcap is abstaining because he was not here to hear the facts on this item. Alderman Midcap stated yes.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB 7, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion and Improvement of Gregory Street. A City Street and Roadway Pursuant to C.R.S. §38-6-101, C.R.S. §31-25-201, Article XX, §1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter open and invited anyone wanting to address the Board either "for" or "against" the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

**MOTION TO
APPROVE**

Alderman Bennett MOVED and was SECONDED by Alderman Moates to approve CB 7, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion and Improvement of Gregory Street. A City Street and Roadway Pursuant to C.R.S. §38-6-101, C.R.S. §31-25-201, Article XX, §1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter.

MOTION PASSED

There was no discussion and the motion **PASSED**. Alderman Midcap Abstained.

B. CB 8, An Ordinance
Amending Section
11-35(d) of the
Black Hawk
Municipal Code
Concerning
Required Insurance
for Street Cut
Permits

Mayor Spellman read the title.

City Attorney Hoffmann explained this is a cleanup ordinance. He stated the insurance would increase to cover the City from any claims or damages.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB 8, An Ordinance Amending Section 11-35(d) of the Black Hawk Municipal Code Concerning Required Insurance for Street Cut Permits open and invited anyone wanting to address the Board either "for" or "against" the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO
APPROVE

Alderman Armbright MOVED and was **SECONDED** by Alderman Johnson to approve CB 8, An Ordinance Amending Section 11-35(d) of the Black Hawk Municipal Code Concerning Required Insurance for Street Cut Permits.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

C. Resolution 22-2014,
A Resolution Conditionally
Approving a Certificate
of Appropriateness for
Exterior Rock Wall
Improvements for
the Property at
271 Church Street

Mayor Spellman read the title.

Community Planning and Development Administrator Linker explained the homeowner has requested a Certificate of Appropriateness for scope of work and exterior alterations.

Administrator Linker stated the brick wall is crumbling; therefore, the lower **two** to 5 courses of brick will be replaced with mortared stone.

Mayor Spellman inquired if there was any consideration of stripping the brick and not painting it. Jessica Killian, Consilium Partners, explained the appearance of the brick would be lost.

Administrator Linker explained this Certificate of Appropriateness is for cosmetic improvements not structural.

Administrator Linker stated HPC approved with the following conditions: 1) historic photographic evidence showing east elevation fascia with gingerbread to be reviewed and approved by Three Gables Preservation and Consilium Partners. If photographic evidence is not available, item will be removed from scope of work; 2) final color selection for concrete drainage swale to be approved by Three Gables Preservation and Consilium Partners; 3) alterations to approved fence design to be reviewed and approved by Three Gables Preservation and Consilium Partners; 4) resolution of a Boundary Line Agreement between the homeowner and adjacent property owners of 261 Church Street to determine final east rock wall layout prior to approval of construction documents, with final approval by Consilium Partners and City Staff; and 5) HPC recommends that a structural engineer review the existing south brick foundation wall to determine if recommended work, described as removal and replacement of a load bearing section, will produce a finished condition that serves to structurally support the building for continued use and preservation.

Council inquired if the firm that did the initial inspection were engineers. Administrator Linker stated yes they were.

Administrator Linker explained with the boundary line dispute, Staff has given the homeowner until April 25 to work the problem out or that portion will be removed from the scope of work.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on Resolution 22-4014, A Resolution Conditionally Approving a Certificate of Appropriateness for Exterior Rockwall Improvements for the Property at 271 Church Street open and invited anyone wanting to address the Board either "for" or "against" the proposed resolution to come forward.

Jeannie Larkins, owner of 271 Church Street, thanked Council for reviewing the brick. She stated there had been pictures of the gingerbread; however, she was unable to locate a photo at this time.

Ms. Larkins explained she would like to have an extension regarding the boundary line agreement. Council stated she could

have until May 7 to get a letter from the adjacent property owner stating the two parties are working on it. If a letter from adjacent property owner is not obtained by May 7 it will removed from the scope of work.

Terry Peterson, resident, explained he felt a structural engineer needed to look at the brick to make sure it is structurally sound. He stated HPC did not have the same information as what was presented today. Administrator Linker stated HPC received the same reports and information as Council.

No one else came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 22-4014, A Resolution Conditionally Approving a Certificate of Appropriateness for Exterior Rockwall Improvements for the Property at 271 Church Street without the condition that final color selection for concrete drainage swale be approved by Three Gables Preservation and Consilium Partners.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

D. Resolution 23-2014,
A Resolution Conditionally
Approving a Certificate
of Appropriateness for
Demolition of 251
Gregory Street

Mayor Spellman read the title.

Community **Planning and** Development Administrator Linker explained the City is requesting the complete demolition of 251 Gregory Street. All the documentation has been completed for demolition to happen.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on Resolution 23-2014, A Resolution Conditionally Approving a Certificate of Appropriateness for Demolition of 251 Gregory Street open and invited anyone wanting to address the Board either "for" or "against" the proposed resolution to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.

MOTION TO

APPROVE Alderman Moates MOVED and was SECONDED by Alderman Armbricht to approve Resolution 23-2014, A Resolution Conditionally Approving a Certificate of Appropriateness for Demolition of 251 Gregory Street.

MOTION PASSED There was no discussion and the motion PASSED unanimously.

8. ACTION ITEMS:

E. Resolution 24-2014,
A Resolution Approving
the Contributed
Funds Agreement
Between the City of
Black Hawk and the
Bureau of Land
Management

Mayor Spellman read the title.

Public Works Director Isbester explained this was basically an IGA to work with the Bureau of Land Management on property up Chase Gulch.

MOTION TO APPROVE

Alderman Armbricht MOVED and was SECONDED by Alderman Bennett to approve Resolution 24-2014, A Resolution Conditionally Approving a Certificate of Appropriateness for Demolition of 251 Gregory Street.

MOTION PASSED There was no discussion and the motion PASSED unanimously.

F. Resolution 25-2014,
A Resolution Approving
the Agreement for
Purchase and Sale of
Water Rights Between
the City of Black Hawk
as Seller and the
Consolidated Mutual
Water Company
as Buyer

Mayor Spellman read the title.

Senior Civil Engineer/Water Resources Ford explained these are rights the City obtained from Coors Brewery. The water rights are problematic with regards to return flow valves.

Mr. Ford stated the City would regain their money back from the original purchase with Coors. He explained it would also relieve pressure on City's water right case in court right now.

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 25-2014, A Resolution Approving the Agreement for Purchase and Sale of Water Rights Between the City of Black Hawk as Seller and the Consolidated Mutual Water Company as Buyer.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

G. Dory Hill Water Treatment Plant — Construction Contract Bid

Mayor Spellman read the title.

Senior Civil Engineer/Water Resources Ford explained Staff received four bids. Staff then sat down with the two lowest bidders going over all the aspects.

Mr. Ford stated Staff recommends RN Civil Contractors with the project being funded over this year and next.

Mr. Ford stated Superintendent Fredricks and the operators have been doing a good job keeping Dory Hill Water Treatment Plant open.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Moates to approve Dory Hill Water Treatment Plant — Construction Contract Bid.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

H. 101 Marchant Street — Temporary Construction Easement

Mayor Spellman read the title.

Alderman Johnson recused himself.

Community Planning and Development Administrator Linker explained this is a request for a temporary construction easement for 101 Marchant Street. Property owners of 111 Marchant, Jim Johnson and Curtis Linder, are allowing the easement.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Moates to approve 101 Marchant Street — Temporary Construction Easement.

MOTION PASSED There was no discussion and the motion **PASSED**. Alderman Johnson Abstained.

Alderman Johnson returned.

I. 101 Marchant Street —
Roadway Easement Postponed to May 14, 2014 Council Meeting.

J. Monarch Casino —
Temporary Construction
Easement Mayor Spellman read the title.

Vince Harris, Baseline, explained this was a temporary construction easement for Monarch Casino. The easement requested is directly south of the proposed garage in Main Street right-of-way.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to approve Monarch Casino— Temporary Construction Easement.

MOTION PASSED There was no discussion and the motion **PASSED** unanimously.

K. Personnel Issue —
Reclassification AA —
Office of City
Manager to
AA — HR
Generalist

Mayor Spellman read the title

Assistant to City Manager for Administration Greiner explained every year Staff goes through the job descriptions. If the job description is not correct, it is corrected to reflect the duties of that job.

Ms. Greiner stated cross training has been going on in Employee Services so all the needs of Staff are met if the Director is out. Administrative Assistant Romero has finished her AA degree in HR and feels she will be able to do the job when Director is out.

MOTION TO APPROVE

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Tones to approve Personnel Issue — Reclassification AA — Office of City Manager to AA — HR Generalist.

MOTION PASSED There was no discussion and the motion **PASSED** unanimously.

L. Dental Insurance
Renewal Proposal
for 2014-2016

Mayor Spellman read the title.

Assistant to City Manager for Administration Greiner stated employees have requested an increase on orthodontic care. Delta agreed to increase orthodontic care with a 1.5% premium increase.

**MOTION TO
APPROVE**

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Johnson to approve Dental Insurance Renewal Proposal for 2014-2016.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

M. Vision Insurance
Renewal Proposal
for 2014-2015

Mayor Spellman read the title.

Assistant to City Manager for Administration Greiner explained there has not been an increase in vision insurance. This is a 3% increase.

**MOTION TO
APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Johnson to approve Vision Insurance Renewal Proposal for 2014-2015.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

N. Health Insurance
Renewal Proposal
for 2014-2015

Mayor Spellman read the title.

Assistant to City Manager for Administration Greiner explained Kaiser has gone up 5.3% for the 2014-2015 coverage.

**MOTION TO
APPROVE**

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Armbright to approve Health Insurance Renewal Proposal for 2014-2015.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

O. Short Term Disability
Insurance Renewal
Proposal for
2014-2015

Mayor Spellman read the title.

Assistant to City Manager for Administration Greiner explained short term disability insurance will have a 15.4% increase for the 2014-2015 year.

City Manager Lewis stated this seems like a lot; however, dollar wise it is rather small.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Tones to approve Short Term Disability Insurance Renewal Proposal for 2014-2015.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

9. CITY MANAGER REPORTS:

City Manager Lewis congratulated the new Alderman and the rest of Council.

10. CITY ATTORNEY:

City Attorney Hoffmann requested an Executive Session regarding potential legislation and potential litigation.

11. EXECUTIVE SESSION:

MOTION TO ADJOURN

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn into Executive Session 4:55 p.m. to hold a conference with the City's attorney to receive legal advice on specific legal questions pursuant to C.R.S. § 24-6-402(b).

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

MOTION TO RECONVENE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson at 5:35 p.m.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

MOTION TO APPROVE

Alderman Moates **MOVED** and was **SECONDED** by Alderman Armbright to authorize the City to file a brief with the Supreme Court opposing gaming initiative titles.

MOTION PASSED

There was no discussion and the motion **PASSED** unanimously.

MOTION TO APPROVE

Alderman Moates **MOVED** and was **SECONDED** by Alderman Bennett to authorize City Attorney to draft a resolution providing

already earned rebate to the casinos instead of the previously authorized rebate in 2015.

MOTION PASSED

There was no discussion and the motion PASSED unanimously.

12. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council closed at 5:40 p.m.

Kelly K. Stevens, CMC
Deputy City Clerk

David D. Spellman
Mayor

**CB 9, AN ORDINANCE
REPEALING AND
REENACTING ARTICLE XV
OF CHAPTER 6 OF THE
BLACK HAWK MUNICIPAL
CODE REGARDING
MEDICAL MARIJUANA**

**STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK**

COUNCIL BILL NUMBER: _____

ORDINANCE NUMBER: 2014-_____

TITLE: AN ORDINANCE REPEALING AND REENACTING ARTICLE XV TO CHAPTER 6 OF THE BLACK HAWK MUNICIPAL CODE REGARDING MEDICAL MARIJUANA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. Article XV to Chapter 6 of the Black Hawk Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

6-451. Short title.

This Article shall be known and may be cited as the "Black Hawk Medical Marijuana Code."

6-452. Findings.

The City Council adopts this Article based upon the following findings of fact:

(a) On November 7, 2000, the voters of the State of Colorado approved Amendment 20. Amendment 20 added § 14 of Article 18 to the Colorado Constitution, and created a limited exception from criminal liability under Colorado law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.

(b) The intent of Amendment 20 was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use and distribute marijuana without fear of criminal prosecution under Colorado (as opposed to federal) law.

(c) Despite the adoption of Amendment 20, marijuana is still a controlled substance under Colorado and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use and distribute marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse

that should be closely monitored and regulated by local authorities to the extent possible.

(d) The Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution ("Article XVIII, Section 14"), and at the same time authorizes a mechanism for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License";

(e) Nothing in this Article allows a person to:

(1) Engage in conduct that endangers others or causes a public nuisance;

(2) Possess, cultivate, grow, use or distribute marijuana for any purpose other than for use as medical marijuana as authorized and limited by Amendment 20, and the implementing state statutes and administrative regulations;

(3) Possess, cultivate, grow, use or distribute marijuana that is otherwise illegal under applicable law; or

(4) Engage in any activity related to the possession, cultivation, growing, use or distribution of marijuana that is otherwise not permitted under the laws of the City or the State of Colorado.

(f) This Article is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the City and the inhabitants thereof

6-453. Purpose.

Recognizing that there is a potential conflict between federal and state law with respect to the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing, it is the purpose of this Article to:

(a) Impose specific requirements and limitations for those individuals registering with the State of Colorado as a "patient" or "primary care-giver" as those terms are defined in Amendment 20, and the statutes and administrative regulations implementing Amendment 20.

(b) Require that a medical marijuana center (as defined in this Article) be operated in a safe manner that does not endanger the public welfare.

(c) Mitigate potential negative impacts that a medical marijuana center might cause on surrounding properties and persons.

(d) Regulate the conduct of persons owning, operating, and using a medical marijuana center in order to protect the public health, safety and welfare.

(e) Establish a nondiscriminatory mechanism by which the City can control, through appropriate regulation, the location and operation of medical marijuana centers within the City.

6-454. Authority.

The City Council hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

(a) The Local Government Land Use Control Enabling Act, article 20 of title 29, C.R.S.;

(b) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

(c) Section 31-15-103, C.R.S. (concerning municipal police powers);

(d) Section 31-15-401, C.R.S. (concerning municipal police powers);

(e) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses);

(f) The authority granted to home rule municipalities by Article XX of the Colorado Constitution;

(g) The powers contained in the City of Black Hawk Home Rule Charter; and

(h) Section 12-43.3-101, *et seq.*, C.R.S. (known as the Colorado Medical Marijuana Code).

6-455. Definitions.

(a) As used in this Article, the following words shall have the following meanings:

Alcoholic beverage has the meaning provided in Section 6-51 of this Code.

Amendment 20 means a voter-initiated amendment to the Colorado Constitution adopted November 7, 2000. Amendment 20 added §14 of Article 18 to the Colorado Constitution.

Application means an application for license submitted pursuant to this Article.

City means the City of Black Hawk, Colorado.

Colorado Medical Marijuana Code means C.R.S. § 12-43.3-101 *et seq.* as may be amended.

Cultivation means the process by which a person promotes the germination and growth of a seed to a mature marijuana plant. *Cultivation* does not include the storing or watering of mature marijuana plants without the aid of grow lighting.

Day means a calendar day, unless otherwise indicated.

Good cause (for the purpose of refusing or denying a license renewal under this Article) means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Article and any rule and regulation promulgated pursuant to this Article; (2) the licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued, or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or (3) the licensee's medical marijuana center operation has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana center is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace, as defined in Article VII of Chapter 10 of this Code; (ii) a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana center or in the immediate area surrounding the medical marijuana center; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana center.

Patient has the meaning provided in Amendment 20.

License means a license to operate a medical marijuana center issued by the City pursuant to this Article.

Licensee means the person to whom a license has been issued pursuant to this Article.

Licensed premises means the premises specified in an application for a license under this Article, which is owned or in possession of the licensee and within which the license is authorized to cultivate, manufacture, distribute, or sell medical marijuana or medical marijuana-infused products in accordance with state and local law.

Local licensing authority means the City Council.

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

Medical marijuana center means a person licensed pursuant to this Article to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Article XVIII, § 14 of the Colorado Constitution, but is not a primary caregiver.

Medical marijuana-infused product means a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures. These products, when manufactured or sold by a licensed medical marijuana center or a medical marijuana-infused product manufacturer, shall not be considered a food or drug for purposes of the "Colorado Food and Drug Act", Part 4 of Article 5 of Title 25, C.R.S.

Medical marijuana-infused products manufacturer means a business as described in the Colorado Medical Marijuana Code that manufactures medical marijuana-infused products.

Optional premises cultivation operation means a business as described in the Colorado Medical Marijuana Code to grow and cultivate marijuana for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.

Patient has the meaning set forth in Article XVIII, § 14(1)(c) of the Colorado Constitution.

Primary caregiver has the meaning set forth in Article XVIII, §14 (1)(f) of the Colorado Constitution.

Sell or sale means any of the following: to exchange, barter or traffic in; to offer, solicit or receive an order for, except through a licensee licensed under C.R.S. Article 43.3 of Title 12; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or possess with intent to sell; to possess or transport in contravention of this Article; or to traffic in for any consideration promised or obtained, directly or indirectly.

State licensing authority, means, for the purposes of this article, the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

(b) In addition to the definitions provided in Subsection (a) hereof, the other defined terms in Amendment 20 and the Colorado Medical Marijuana Code are incorporated into this Article by reference.

6-456. License required.

No person shall operate a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused product manufacturing operation within the City without a valid license issued in accordance with this Article and the Colorado Medical Marijuana Code.

6-457. Medical Marijuana Centers

(a) A licensed medical marijuana center may sell marijuana and marijuana-infused products to registered patients or primary caregivers.

(b) The medical marijuana offered for sale and distribution must be labeled with a list of all chemical additives including non-organic pesticides, herbicides and fertilizers used in cultivation and production.

(c) With the exception of medical marijuana-infused products, at least seventy percent (70%) of the medical marijuana offered for sale and/or distribution must be comprised of medical marijuana grown at the medical marijuana center's own optional premises cultivation licensed facility.

(d) On-site consumption and use of medical marijuana is prohibited.

(e) The medical marijuana center shall pay applicable sales tax.

6-458. Medical Marijuana-Infused Products Manufacturer

Medical marijuana-infused products manufacturers shall be prohibited within the City.

6-459. Optional Premises Cultivation Operation

(a) Optional premises cultivation operation licenses shall be prohibited within the City.

6-460. Disqualification.

(a) No license provided by this Article shall be issued to or held by:

(1) Any person until the annual license fee has been paid;

(2) Any person who is not of good moral character;

(3) Any corporation, any of whose officers, directors or stockholders are not of good moral character;

(4) Any partnership, association or company, any of whose officers are not of good moral character;

- (5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the respective licensing authorities;
- (6) Any sheriff, deputy sheriff, police officer, prosecuting officer, and state or local licensing authority or any of its inspectors or employees;
- (7) Any person, unless he or she is with respect to his or her character, record and reputation satisfactory to the respective licensing authority;
- (8) Any natural person under twenty-one (21) years of age;
- (9) Any person who fails to file any tax return with a taxing agency, stay out of default on a government-issued student loan, pay child support, or remedy outstanding delinquent taxes;
- (10) Any person who fails to provide a surety bond;
- (11) Any person who was a primary caregiver whose authority has been revoked;
- (12) Any person for a license location that is also a retail food establishment or wholesale food registrant;
- (13) Any person who has not been a resident of Colorado for at least two years prior to the date of the application;
- (14) Any person who has discharged a sentence for a felony conviction within past 5 years;
- (15) Any person convicted of a felony for drug possession, distribution or use;

Or

- (16) Any licensed physician making patient recommendations.

(b) In making a determination as to character or when considering the conviction of a crime, unless otherwise provided by the Colorado Medical Marijuana Code, the local licensing authority shall be governed by the provisions of C.R.S. § 24-5-101.

- (c) Jurisdiction.

- (1) In investigating the qualifications of the applicant or a licensee, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any

restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in subsection (1) of this Section, "criminal justice agency" means any federal, state, or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

6-461. Application for license.

(a) A person seeking to obtain a license pursuant to this Article shall file an application with the City Clerk. The form of the application shall be provided by the City Clerk.

(b) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required City licenses and licenses related to the operation of the approved medical marijuana center, including, without limitation:

- (1) Any required land use approval, if applicable;
- (2) A City business and sales tax license; and
- (3) A building permit, mechanical permit, plumbing permit or electrical permit.

(c) An application for a license under this Article shall contain the following information:

- (1) The applicant's name, address, telephone number and social security number;
- (2) The street address and unit number, if applicable, of the proposed medical marijuana center and a complete description of the site for which the license is being obtained;
- (3) Proof of ownership or right to possession of the proposed location of the medical marijuana center, consisting of a copy of a deed or lease thereto with any lease acknowledging the owner's consent and authorization of the submission of the application;

- (4) A completed set of fingerprints for the applicant, owner, officers, manager, and employees;
- (5) A statement to be initialed by the applicant that the applicant and the employees of the medical marijuana center may be subject to prosecution under federal marijuana laws;
- (6) A statement to be initialed by the applicant that the City accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana center;
- (7) An acknowledgement that the City will conduct a background investigation as specified in 6-460 of this Article; and
- (8) Any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

Applications shall be processed by the local licensing authority in order of receipt.

6-462. Application fee.

An applicant shall pay to the City a nonrefundable application fee when the application is filed. The purpose of the fee is to cover the administrative costs of processing the application. The amount of the application fee shall be fixed by the City Council by resolution.

6-463. Investigation of application.

(a) Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by Section 6-462, the local licensing authority shall transmit copies of the application to:

- (1) the Police Department;
- (2) the Planning Department; and
- (3) any other person or agency which the local licensing authority determines should properly investigate and comment upon the application.

(b) Upon receipt of a completed application the Police Department shall obtain and review a criminal background records search on the applicant from the Colorado Bureau of Investigation.

(c) Within twenty (20) days of receipt of a completed application those City departments and other referral agencies described in Subsection (a) of this

Section shall provide the local licensing authority with comments concerning the application.

6-464. Establishing neighborhood and public hearing dates.

(a) The local licensing authority may cause the application for a medical marijuana center to be placed on the agenda of a City Council meeting to be held not less than four (4) days nor more than thirty (30) days after the City Clerk has received the application. The date of presentation of the application to the City Council shall be deemed the date of filing of the application.

(b) The corporate limits of the City shall be designated the neighborhood upon the presentation of the application.

(c) The City Council shall also set a date for a public hearing, which date shall be held not less than thirty (30) days from the date of the City Council meeting at which the date is set.

6-465. Public Notice.

(a) The applicant for a medical marijuana center shall cause to be posted and published a public notice of hearing thereon. The sign used for posting such notice shall be of card 1 material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary and manager or other managing officers.

(b) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type so as to be not less than one (1) column in width nor less than six (6) inches in length.

(c) Where the building in which the medical marijuana center is to be located is in existence at the time of the application for the license, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such manner that it shall be conspicuous and plainly visible to the general public.

6-466. Standards for issuance of license.

The local licensing authority shall issue a license under this Article when, from a consideration of the application and from such other information as may otherwise be obtained, the local licensing authority determines that:

- (1) The application (including any required attachments and submissions) is complete and signed by the applicant;
- (2) The applicant has paid the application fee and any other fees required by Section 6-462.
- (3) The application does not contain a material falsehood or misrepresentation;
- (4) The application and applicant complies with all of the requirements of this Article, including Section 6-460;
- (5) The applicant has not previously been convicted of a felony violation of state law related to the sale, possession or use of a scheduled controlled substance; and
- (6) The proposed location of the medical marijuana center, optional premises cultivation operation, or medical marijuana-infused product manufacturing operation is licensed under Section 6-485.

6-467. Denial of license.

(a) The Local licensing authority shall deny an application for a license under this Article, if the Local licensing authority determines that:

- (1) Information contained in the application or supplemental information requested from the applicant is found to be false in any material respect; or
- (2) The application fails to meet any of the standards sets forth in Section 6-466.

(b) If an application is denied the application fee shall not be refunded.

6-468. Authority to impose conditions on license.

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and applicable law.

6-469. Decision by Local Licensing Authority.

(a) The local licensing authority shall approve, deny or conditionally approve an application within thirty (30) days of the receipt of the completed application, unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days if necessary for the local licensing authority to complete the review of the application.

(b) If an application is denied, the local licensing authority shall clearly set forth in writing the grounds for denial.

(c) In the event an application is conditionally approved, the local licensing authority shall clearly set forth in writing the conditions of approval.

6-470. Notice of Decision.

The local licensing authority shall notify the applicant of the decision on the application within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the local licensing authority's decision to the applicant by regular mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.

6-471. Rehearing limitation.

No application for the issuance of a medical marijuana center, an optional premises cultivation operation or a medical marijuana-infused products manufacturing operation license shall be considered by the local licensing authority if an application for a similar type license has been denied for the same location within the two (2) years immediately preceding the date of such new application.

6-472. Judicial review.

Any person applying to the courts for a review of the local licensing authority's decision shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the local licensing authority when such a transcript is furnished by the local licensing authority pursuant to court order.

6-473. Contents of license.

- (a) A license shall contain the following information:
 - (1) The name of the licensee;
 - (2) The date of the issuance of the license;

(3) The address at which the licensee is authorized to operate the medical marijuana center;

(4) Any special conditions of approval imposed upon the license by the Local licensing authority, pursuant to Section 6-462; and

(5) The date of the expiration of the license, which shall be two years from the date of issuance.

(b) A license must be signed by both the applicant and the local licensing authority to be valid.

6-474. Sale of all or part of business interest.

(a) Whenever any individual, corporation or partnership existing or licensed under this Article sells all or part of its corporate stock, partnership interest or business interest in medical marijuana center and a new license application is required by the State, an application fee in the amount of five hundred dollars (\$500.00) shall be paid to the City at the time of making the application.

(b) The local licensing authority shall follow the procedures in this Article for the investigation of the applicant and shall determine whether the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license pursuant to this Article. If the investigation reveals no information tending to establish that the applicant may be prohibited from holding a license, the local licensing authority shall issue a license to the applicant. Provided, however, that if the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license, the local licensing authority shall cause the new application for the existing medical marijuana center to be placed on the agenda not less than four (4) days nor more than thirty (30) days after the local licensing authority has received the application. The applicant, or his or her attorney, shall be in attendance at the City Council meeting at which his or her application is presented. The date of presentation of the application to the City Council shall be deemed the date of filing of the application. Upon receipt of the application, the City Council shall follow procedures set forth in this Article for conducting a public hearing. The City Council shall only consider the criteria listed in this Article when conducting the hearing.

6-475. Change of corporate officers or directors.

Whenever any corporation causes a change in its corporate officers or directors, and a license addendum is required to be filed with the State, an application fee in the amount of one hundred dollars (\$100.00) shall be paid to the City at the time of filing the addendum with the City.

6-476. Manager registration.

(a) A person licensed pursuant to this Article shall manage the premises him or herself or shall employ a separate and distinct manager on the premises and shall report the name of such manager to the City. Such person licensed shall also report any change in managers to the City within thirty (30) days after the change. Such failure to report a change in managers shall be grounds for suspension of a license.

6-477. Notice of issuance of license.

Immediately upon the issuance of a license, the local licensing authority shall send a copy of the license to:

- (a) The Police Department;
- (b) The Planning Department;
- (c) Any other person or agency as determined by the local licensing authority.

6-478. Duration of license; renewal.

(a) Each license issued pursuant to this Article shall be valid for two (2) years from the date of issuance, and may be renewed as provided in this Section.

(b) All renewal applications for medical marijuana centers shall be submitted to the local licensing authority on the prescribed forms, together with the applicable license fee, no later than forty-five (45) days prior to the date on which the license expires. No renewal application shall be accepted by the local licensing authority which is not complete in every detail. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application, including any appeal.

(c) Upon receiving the completed renewal application, the local licensing authority shall assemble the file of the applicant and review the file to determine whether "good cause" is present for non-renewal. Whether "good cause" is present is a fact specific inquiry depending on the circumstances of the case, and may be based on evidence that continuation of the license would be contrary to the public interest, as well as the conduct of the licensee. If the local licensing authority's review indicates no facts or circumstances supporting "good cause" for non-renewal, the local licensing authority shall issue a renewal license. Provided, however, that in the event that the renewal application is made by a financial institution which came into possession of the license by virtue of a deed in lieu of foreclosure, a hearing must be held before the City Council.

(d) If there is information before the local licensing authority that there have been complaints filed against the licensee, that the licensee has a history of violating this Article, or there are allegations against the licensee that would constitute good cause in denying the renewal application, the local licensing authority shall cause to be issued a notice of hearing on the license renewal. In the event the local licensing authority issues a notice requiring a hearing to renew a license, the notice shall be served and a notice of the hearing shall be conspicuously posted on the premises of the medical marijuana center or medical marijuana-infused products manufacturing operation at least ten (10) days prior to the hearing.

(e) Hearings held on any renewal application, after proper notice has been given, may result in denial of renewal of the license for good cause.

(f) In the event that a license is renewed by the licensing authority, such renewal will not affect a pending show cause order which relates to an incident that occurred prior to the date of the renewal. The licensing authority shall be authorized to take whatever action is necessary against a licensee either in the form of suspension or revocation of the liquor license regardless of when such license has been renewed.

(g) A licensee whose license has been expired for less than ninety (90) days may submit to the local licensing authority a late renewal application on the proscribed forms and pay a non-refundable late application fee in an amount of five-hundred dollars (\$500.00). All other provisions concerning renewal applications apply to late renewal applications.

(h) The local licensing authority will not accept late renewal applications from licensees whose licenses have been expired for more than ninety (90) days. A licensee whose license has been expired for more than ninety (90) days shall not distribute or sell medical marijuana until all necessary licenses have been obtained.

6-479. Inactive Licenses

The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises have been inactive, without good cause, for at least one year.

6-480. Duties of licensee.

It is the duty and obligation of each licensee to do the following:

(a) Comply with all of the terms and conditions of the license, and any special conditions on the license imposed by the local licensing authority, pursuant to Section 6-462.

(b) Comply with all of the requirements of this Article;

- (c) Comply with all other applicable City ordinances;
- (d) Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, Amendment 20; the Colorado Medical Marijuana Code; Section 18-18-406.3, C.R.S.; and the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, all as amended from time to time.
- (e) Comply with all applicable federal laws, rules or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20; and
- (f) Permit inspection of its records and operation by the local licensing authority for the purpose of determining the licensee's compliance with the terms and conditions of the license.

6-481. Posting of license.

A license shall be continuously posted in a conspicuous location at the medical marijuana center.

6-482. Suspension or revocation of license.

- (a) A license issued pursuant to this Article may be suspended or revoked, fined or other sanction deemed necessary by the local licensing authority for the following reasons:
 - (1) Fraud, misrepresentation, or a false statement of material fact contained in the license application;
 - (2) A violation of any City, state, or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20 or the Colorado or Black Hawk Medical Marijuana Code;
 - (3) A violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license by the local licensing authority pursuant to Section 6-462.
 - (4) A violation of any of the provisions of this Article;
 - (5) Operations have ceased at the medical marijuana center for more than ninety (90) days, including during a change of ownership of the center; or
 - (6) Ownership of the medical marijuana center has been transferred without the new owner obtaining a license pursuant to this Article.

(b) In connection with the suspension of a license, the local licensing authority may impose reasonable conditions.

(c) The local licensing authority shall notify the licensee of the decision to suspend or revoke the license within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the local licensing authority's decision to the licensee by regular mail, postage prepaid, at the address shown in the license. Notice is deemed to have been properly given upon mailing.

(d) Any decision made by the City Council shall be a final decision and may be appealed to the district court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The licensee's failure to timely appeal the decision is a waiver of the licensee's right to contest the suspension or revocation of the license.

6-483. Limitation on the sale of marijuana.

No marijuana, marijuana-infused products or paraphernalia may be sold, given away or transferred at a medical marijuana center except to patients and to primary caregivers.

6-484. Location criteria.

Prior to the issuance of a license for a medical marijuana center, the local licensing authority shall determine whether the proposed location of the medical marijuana center complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(a) No medical marijuana center shall be located except within that one-block portion of the History Appreciation Recreation Destination (HARD) District identified by the street addresses of 211 Gregory Street, 221 Gregory Street, 231 Gregory Street, and 241 Gregory Street.

(b) Each medical marijuana center shall be operated from a permanent location. No medical marijuana center shall be permitted to operate from a moveable, mobile or transitory location.

(c) The suitability of a location for a medical marijuana center shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a medical marijuana center under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains in effect.

6-485. Hours of operation.

A medical marijuana center may open no earlier than 8:00 a.m. and shall close no later than midnight the same day. A medical marijuana center may be open seven (7) days a week.

6-486. Signage.

All signage for a medical marijuana center shall comply with all applicable state laws as well as provisions of this Article and other applicable provisions of the Black Hawk Municipal Code, including Chapter 15 of the Black Hawk Municipal Code.

6-487. Required warnings to be posted.

There shall be posted in a conspicuous location in each medical marijuana center a legible sign containing the following warnings:

(a) A warning that the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;

(b) A warning that loitering in or around the medical marijuana center is prohibited by state law; and

(c) A warning that possession and distribution of marijuana is a violation of federal law.

6-488. Paraphernalia.

Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a medical marijuana center. Such items may be sold or provided only to patients or primary caregivers.

6-489. On-site consumption prohibited.

The use, consumption or inhalation of marijuana or medical marijuana-infused products on or within the premises of a medical marijuana center is prohibited.

6-490. Alcohol.

The sale or consumption of an alcoholic beverage within a medical marijuana center is prohibited.

6-491. Security requirements.

A licensee shall provide adequate security on the premises of a medical marijuana center including, but not limited to, the following:

(a) Security surveillance cameras installed to monitor the main entrance along with the interior and exterior of the premises to discourage and to facilitate the reporting of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least seventy-two (72) hours by the licensee and be made available to law enforcement officers upon demand; and

(b) Exterior lighting that illuminates the exterior walls of the business and is compliant with Chapter 16 of the Black Hawk Municipal Code.

6-492. Sales and business license required.

At all times while a license is in effect the licensee shall possess a valid license issued under Section 6-2 of this Code.

6-493. Taxes.

Each licensee shall pay sales tax on all medical marijuana, medical marijuana-infused products, paraphernalia and other tangible personal property sold by the licensee at the medical marijuana center.

6-494. Penalties; injunctive relief.

(a) It is a misdemeanor offense for any person to violate any provision of this Article. Any person convicted of having violated any provision of this Article shall be punished as set forth in Article IV of Chapter 1 of this Code.

(b) The operation of a medical marijuana center without a valid license issued pursuant to this Article may be enjoined by the City in an action brought in a court of competent jurisdiction.

6-495. Other laws remain applicable.

The provisions of this Article do not protect licensees, operators, employees, customers and clients of a licensed medical marijuana center from prosecution pursuant to any laws that may prohibit the cultivation, sale, use or possession of controlled substances. In addition, as of the date of the adoption of this Article the cultivation, sale, possession, distribution and use of marijuana remain violations of federal law, and this Article affords no protection against prosecution under such federal and state laws. Licensees, operators, employees, customers and clients of a licensed medical marijuana center assume any and all risk and any and all liability arising or resulting from the operation of the medical marijuana center under federal law. Further, to the greatest extent licensed by law, any actions taken under the provisions of this Article by any public officer or

officers, elected or appointed officials, employees, attorneys and agents of the City shall not become a personal liability of such person or of the City.

6-496. Rules and regulations.

The local licensing authority shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper administration of this Article.

Section 2. Safety Clause. The Board of Aldermen hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this ____ day of _____ 2014.

David D. Spellman, Mayor

ATTEST:

Kelly Stevens, Deputy City Clerk

**CB 10, AN ORDINANCE
ADOPTING A NEW ARTICLE
XVIII OF CHAPTER 6 OF THE
BLACK HAWK MUNICIPAL
CODE REGARDING RETAIL
MARIJUANA
ESTABLISHMENTS, AND
REVOKING IN PART THE
CITY'S TEMPORARY
MORATORIUM ON
MARIJUANA BUSINESSES
AND MARIJUANA SOCIAL
CLUBS**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: **ID**___

ORDINANCE NUMBER: 2014-_____

TITLE: AN ORDINANCE ADOPTING A NEW ARTICLE XVIII OF CHAPTER 6 OF THE BLACK HAWK MUNICIPAL CODE REGARDING RETAIL MARIJUANA ESTABLISHMENTS, AND REVOKING IN PART THE CITY'S TEMPORARY MORATORIUM ON MARIJUANA BUSINESSES AND MARIJUANA SOCIAL CLUBS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. The Black Hawk Municipal Code is amended by the addition thereto of a new Article XVIII of Chapter 6 of the Black Hawk Municipal Code, entitled "Retail Marijuana Establishments," to read as follows:

ARTICLE XVIII

Retail Marijuana Establishments

Sec 6-551. Findings.

The City Council makes the following legislative findings:

(a) The City Council finds that on November 6, 2012, the voters of the State of Colorado approved Amendment 64. Amendment 64 added § 16 of Article 18 to the Colorado Constitution and legalized the possession, use, display, purchase, transport, transfer, and consumption of marijuana accessories or one ounce or less of marijuana by persons twenty-one years of age or older ("Adult Use Marijuana") within the State of Colorado (as opposed to federal law).

(b) The City Council finds and determines that the enactment by the Colorado Legislature of the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Amendment 64 to the Colorado Constitution.

(c) The City Council finds and determines that the Colorado Retail Marijuana Code now provides a statutory framework for the regulation of retail marijuana establishments, including retail marijuana stores.

(d) The City Council finds and determines that by requiring that retail marijuana businesses be operated in a manner that minimizes potential health and safety risks, it mitigates the negative impacts that retail marijuana establishments might have on surrounding properties and persons.

(e) The City Council finds and determines that through this Ordinance it intends to establish a nondiscriminatory mechanism by which the City can control, through appropriate regulation, the location and operation of retail marijuana establishments within the City.

(f) The City Council recognizes and affirms the protections afforded by Article XVIII, Section 16 of the Colorado Constitution and desires to affirm the ability of persons twenty-one (21) years of age and older the protections of Article XVIII, Section 16 of the Colorado Constitution, the Retail Marijuana Code, and all associated regulations as the same may be amended from time to time.

Sec. 6-552. Purpose.

The purpose of this Article is to implement the provisions of the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101, *et seq.*, which authorizes the licensing and regulation of retail marijuana businesses and affords local government the option to determine whether or not to allow retail marijuana businesses within their respective jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law.

Sec. 6-553. Incorporation of state law.

The provisions of the Colorado Retail Marijuana Code, and any rules and regulations promulgated thereunder as the same may be amended from time to time, are incorporated herein by reference except to the extent that more restrictive or additional regulations are set forth in this Article.

Sec. 6-554. Authority.

The City Council hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

- (a) Article XVIII, Section 16 of the Colorado Constitution;
- (b) The Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101, *et seq.*;
- (c) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- (d) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

- (e) Section 31-15-103, C.R.S. (concerning municipal police powers);
- (f) Section 31-15-401, C.R.S. (concerning municipal police powers);
- (g) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Sec. 6-555. Definitions.

- (a) For purposes of this Article, the following terms shall have the following meanings:

Applicant means a person twenty-one (21) years of age or older who has submitted an application for a license or renewal of a license issued pursuant to this Article. If the applicant is an entity and not a natural person, *applicant* shall include all persons who are the members, managers, officers and directors of such entity.

Colorado Medical Marijuana Code means Article 43.3 of Title 12, Colorado Revised Statutes.

Consumer means a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by a person twenty-one (21) years of age or older, but not for resale to others.

Cultivation or *cultivate* means the process by which a person grows a marijuana plant.

Dual operation means a business that operates as both a licensed medical marijuana business and a licensed retail marijuana establishment.

Industrial Hemp means the plant of the genus *cannabis* and any part of such plant, whether growing or not, with a Delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent on a dry weight basis.

Good cause (for the purpose of refusing or denying a license renewal under this Article) means: (1) the licensee has violated, does not meet, or has failed to comply with any of the terms, conditions or provisions of this Article and any rule and regulation promulgated pursuant to this Article; (2) the licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued, or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or (3) the licensee's retail marijuana store has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the retail marijuana store is located. Evidence to support such a finding can include: (i) a continuing pattern of offenses against the public peace, as defined in Article VII of Chapter 10 of the Black Hawk Municipal Code; (ii) a continuing pattern of drug-related criminal conduct within the premises of the retail marijuana store or in the immediate area surrounding the retail marijuana store arising

out of the operation of the establishment; or (iii) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana store.

License means a document issued by the City officially authorizing an applicant to operate a retail marijuana store pursuant to this Article.

Licensee means the person to whom a license has been issued pursuant to this Article.

Licensed premises means the premises specified in an application for a license under this Article, which is owned or in possession of the licensee and within which the license is authorized to distribute or sell retail marijuana or retail marijuana products in accordance with state and local law.

Local licensing authority means the City Council of the City of Black Hawk.

Marijuana means all parts of the plant of the genus *cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. *Marijuana* does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana accessories means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

Medical marijuana business means a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer as defined in the Colorado Medical Marijuana Code.

Person means a natural person, partnership, association, company, corporation, limited liability company or organization.

Retail marijuana means marijuana that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment.

Retail marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients that are intended for use or consumption, such as but not limited to, edible products, ointments and tinctures.

Retail marijuana cultivation facility means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product

manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

Retail marijuana establishment means a retail marijuana store, a retail marijuana cultivation facility, or a retail marijuana products manufacturing operation.

Retail marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Retail marijuana testing facility means an entity licensed by the City and State of Colorado to analyze and certify the safety and potency of marijuana.

State licensing authority means the authority created by the Colorado Department of Revenue for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, sale and testing of retail marijuana in the State of Colorado pursuant to C.R.S. § 12-43.4-201.

(b) In addition to the definitions provided in Subsection (a) hereof, other terms used in this Article shall have the meaning ascribed to them in Article XVIII, § 16 of the Colorado Constitution, or the Colorado Retail Marijuana Code, and such definitions are hereby incorporated into this Article by reference.

Sec. 6-556. License required for Operation of a Retail Marijuana Establishment.

The City hereby authorizes the operation of retail marijuana establishments in the City as set forth in this Article. It shall be unlawful for any person to establish or operate a retail marijuana establishment in the City without first having obtained a license for such business from the local licensing authority. Pursuant to the provisions of this Article XVIII of Chapter 6, the City hereby authorizes only the licensing of retail marijuana stores as the same are defined herein and by state law. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section.

Sec. 6-557. Requirements of application for license; payment of application fee; denial of license.

(a) A person seeking a license or renewal of a license issued pursuant to this Article shall submit an application to the local licensing authority on forms provided by the City Clerk. At the time of application, each applicant shall pay a nonrefundable operating fee to the City in an amount to be determined by the City by separate Resolution to defray the costs incurred by the City for costs including but not limited to inspection, administration, and enforcement of retail marijuana stores. In addition, the applicant shall present one (1) of the following forms of identification:

(1) an operator's, chauffer's or similar type of driver's license issued by any state within the United States or a U.S. Territory;

(2) an identification card, issued by any state for purpose of proving age using requirements similar to those in C.R.S. §§ 42-2-302 and 42-2-303;

(3) a United States military identification card;

(4) a valid passport; or

(5) an enrollment card issued by the government authority of a federally recognized tribe located in the state of Colorado.

(b) The applicant shall also provide the following information on a form approved by, or acceptable to the City, which information shall be required for the applicant, all employees, including the proposed manager of the retail marijuana store, and all persons having a ten percent (10%) or more financial interest in the retail marijuana store that is the subject of the application or, if the applicant is an entity, having a ten percent (10%) or more financial interest in the entity:

(1) name, address, date of birth;

(2) a complete set of fingerprints;

(3) suitable evidence of proof of lawful presence, residence, if applicable, and good character and reputation that the City may request;

(4) an acknowledgment and consent that the City will conduct a background investigation, including a criminal history check, and that the City will be entitled to full and complete disclosure of all financial records of the retail marijuana store, including records of deposit, withdrawals, balances and loans;

(5) if the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable;

(6) the name and complete address of the proposed retail marijuana store, including the facilities to be used in furtherance of such business, whether or not such facilities are, or are planned to be, within the territorial limits of the City;

(7) if the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a retail marijuana store;

(⁸) a copy of any deed, lease, contract or other document reflecting the right of the applicant to possess the proposed licensed premises along with the conditions of occupancy of the premises;

(⁹) evidence of a valid sales tax license for the business;

(10) if the retail marijuana store will be providing retail marijuana products in edible form, evidence of at a minimum a pending application for any food establishment license or permit that may be required by the State;

(11) a "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the marijuana store, loading zones and all areas in which retail marijuana will be stored or dispensed;

(12) a comprehensive business operation plan for the retail marijuana store which shall contain, without limitation, the following:

a. a security plan meeting the requirements of Section 6-574 of this Article;

b. a description by category of all products to be sold;

c. a signage plan that is in compliance with all applicable requirements of this Article and other applicable provisions of the Black Hawk Municipal Code, as well as the Colorado Retail Marijuana Code and all rules and regulations promulgated thereunder; and

d. a plan for the disposal of marijuana and related byproducts.

(13) any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

(c) The applicant shall verify the truthfulness of the information required by this Section by the applicant's signature on the application.

(d) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the retail marijuana store, including, without limitation, a license from the state licensing authority and any development approvals or building permits required by this Article and any other applicable provisions of the Black Hawk Municipal Code.

(e) Upon receipt of a completed application, the local licensing authority shall circulate the application to all affected departments of the City to determine whether the application is in full compliance with all applicable laws, rules and regulations.

(f) Upon receipt of an application for a new license, the local licensing authority shall schedule a public hearing on the application to be held not less than thirty (30) days after the date of the completed application. The local licensing authority shall cause a notice of such hearing to be posted in a conspicuous place upon the proposed licensed premises and published in a newspaper of general circulation within the City not less than ten (10) days prior to the hearing. Such posted notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters of not less than one (1) inch in height. Both the posted and the published notice shall state the type of license applied for, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application.

(g) Not less than five (5) days prior to the date of the public hearing for a new license, the local licensing authority shall cause its preliminary findings based on its investigation to be known in writing to the applicant and other parties in interest. The local licensing authority shall deny any application that does not meet the requirements of this Article. The local licensing authority shall also deny any application that contains any false, misleading or incomplete information. The local licensing authority shall also deny or refuse to issue a license for good cause. Denial of an application for a license shall not be subject to further administrative review but only to review by a court of competent jurisdiction.

(h) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type and availability of retail marijuana establishments located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed. The local licensing authority shall issue its decision within ninety (90) days of the receipt of the complete license application. Such decision shall be by Resolution and shall state the reasons for the decision. The Resolution shall be sent via certified mail to the state licensing authority and the applicant at the address shown in the application.

The City shall, prior to issuance of the license, perform an inspection of the proposed licensed premises to determine compliance with any applicable requirements of this Article or other applicable requirements of the Black Hawk Municipal Code.

Sec 6-558. Retail Marijuana Stores.

(a) A licensed retail marijuana store may sell retail marijuana or retail marijuana products to persons twenty-one (21) years of age or older in the following quantities:

(1) Up to one (1) ounce of retail marijuana or its equivalent in retail marijuana products during a single sales transaction to Colorado residents; or

(2) Up to one-quarter (1/4) ounce of retail marijuana or its equivalent in retail

marijuana products during a single sales transaction to a non-Colorado resident.

(b) The following forms of identification may be accepted for purposes of determining Colorado residency: a valid state of Colorado Driver's license; a valid state of Colorado identification card; or any other valid government-issued picture identification that demonstrates that the holder of the identification is a Colorado resident.

(c) The retail marijuana offered for sale and distribution must be packaged and labeled in accordance with state law.

(d) From January 1, 2014 to September 30, 2014, a retail marijuana store licensee shall only sell retail marijuana that was grown in its commonly-owned retail marijuana cultivation facility and subsequently purchased or transferred from the cultivation, with the following exceptions:

(1) A retail marijuana store licensee may purchase not more than thirty percent (30%) of its total on-hand retail marijuana inventory, in aggregate, from other retail marijuana establishments with which it does not share common ownership.

(2) A retail marijuana store licensee may sell not more than thirty percent (30%) of its total on-hand retail marijuana inventory, in aggregate, to other retail marijuana establishments with which it does not share common ownership.

(3) For purposes of calculating the percentage limitations detailed in this subpart (d), the licensee shall use the total weight of its on-hand inventory at the end of the month preceding the purchase.

(e) Retail marijuana store licensees are prohibited from selling retail marijuana or retail marijuana products over the internet.

(f) Retail marijuana store licensees are prohibited from selling or giving away any consumable product that is not a retail marijuana product, including but not limited to cigarettes or tobacco products, alcohol beverages, and food products other than non-alcohol beverages that are not retail marijuana products.

Sec. 6-559. Retail marijuana products manufacturer facilities.

Retail marijuana products manufacturer facilities are prohibited in the City.

Sec. 6-560. Retail marijuana cultivation facilities.

Retail marijuana cultivation facilities are prohibited in the City.

Sec. 6-561. Retail marijuana testing facilities.

Retail marijuana testing facilities are prohibited in the City.

Sec. 6-562. Dual operations.

Dual operations are prohibited in the City.

Sec. 6-563. Location criteria.

Prior to the issuance of a license for a retail marijuana store, the local licensing authority shall determine whether the proposed location of the retail marijuana store complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(a) No retail marijuana store shall be located except within that one-block portion of the History Appreciation Recreation Destination (HARD) District identified by the street addresses of 211 Gregory Street, 221 Gregory Street, 231 Gregory Street, and 241 Gregory Street.

(b) Each retail marijuana store shall be operated from a permanent location. No retail marijuana store shall be permitted to operate from a moveable, mobile or transitory location.

(c) The suitability of a location for a retail marijuana store shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a retail marijuana store under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains in effect.

Sec. 6-564. Persons prohibited as licensees and employees.

(a) No license shall be issued to, held by, or renewed by any of the following:

(1) Any person until all applicable fees have been paid;

(2) Any person who is not of good moral character satisfactory to the local licensing authority;

(3) Any corporation, any of whose officers, directors or stockholders are not of good moral character satisfactory to the local licensing authority;

(4) Any partnership, association or company, any of whose officers are not of good moral character satisfactory to the local licensing authority;

(5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the local licensing authority;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, and state or local licensing authority or any of its members, inspectors or employees;

(7) Any natural person under twenty-one (21) years of age;

(8) Any person for a licensed location that is also a retail food establishment or wholesale food registrant;

(9) Any person who has not been a resident of Colorado for at least two (2) years prior to the date of the application;

(10) Any person who has not possessed a medical marijuana license or provisional medical marijuana license authorizing the sale of marijuana at retail within the meaning of C.R.S. § 12-43.3-101, *et seq.*, or in the alternative has not possessed a retail marijuana license within the meaning of C.R.S. § 12-43.4-101, *et seq.* in another jurisdiction for at least one (1) year prior to the date of the application, with the person having not received any state or local violations of their medical marijuana or retail marijuana retail license in said other jurisdiction; provided however, this provision shall not be applicable to employees who do not have an ownership interest in the license;

(11) Any person who has discharged a sentence for a felony conviction within the past five (5) years;

(12) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license;

(13) Any entity whose directors, shareholders, partners or other persons having a financial interest in said entity do not meet the criteria set forth above;

(14) Any person who employs another person at a retail marijuana store who has not submitted fingerprints for a criminal record history check or whose criminal record history check reveals the employee is ineligible; or

(15) Any person who has made a false, misleading or fraudulent statement on his or her application.

(b) No licensee shall employ or contract with any person to perform work functions directly related to the possession, cultivation, dispensing, selling, serving or delivering of marijuana for a licensed retail marijuana store, any of the following:

(1) Any person who is not of good moral character satisfactory to the local licensing authority;

- (2) Any person who is under twenty-one (21) years of age;
- (3) Any person who is not currently a resident of Colorado;
- (4) Any person who has discharged a sentence for a felony conviction within the past five (5) years;
- (5) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license; or
- (6) Any sheriff, deputy sheriff, police officer, prosecuting officer, and state or local licensing authority or any of its members, inspectors or employees.

(c) Jurisdiction.

(1) In investigating the qualifications described herein, the local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in Subsection (c)(1) of this Section, "criminal justice agency" means any federal, state, or municipal court or any governmental agency or sub-unit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

Sec. 6-565. Issuance of license; duration; renewal.

(a) Upon issuance of a license, the City shall provide the licensee with one (1) original of such license for each retail marijuana store to be operated by the licensee in the City. Each such copy shall show the name and address of the licensee, the type of facility or establishment for which it is issued, and the address of the facility at which it is to be displayed.

(b) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the local licensing authority not more than sixty (60) days and not less than thirty

(30) days prior to the date of expiration of the license. A licensee may submit to the local licensing authority a late renewal application on the prescribed forms and pay a non-refundable late application fee in an amount of five hundred dollars (\$500.00) for a renewal application made less than thirty (30) days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

(c) Notwithstanding state law to the contrary, a licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Article. The City shall not accept renewal applications after the expiration date of such license.

(d) A licensee whose license expires shall not distribute or sell retail marijuana or retail marijuana products until all necessary new licenses have been obtained.

Sec. 6-566. Authority to impose conditions on license.

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and applicable law.

Sec. 6-567. Annual Operations fee; Transaction fee.

A licensee shall pay the following fees for the following purposes:

(a) Upon issuance of a license or any renewal of a license, the licensee shall pay to the City a fee in an amount determined by the City by separate Resolution to be sufficient to cover the annual cost of inspections conducted pursuant to Section 6-584 of this Article by the Black Hawk Police Department, and such other departments of the City as may be designated by the local licensing authority, for the purpose of determining compliance with the provisions of this Article and any other applicable state or local laws or regulations; and

(b) The licensee shall pay a transaction fee of Two Dollars (\$2.00) per transaction. Such transaction fee shall be used by the City to offset the impacts caused by the issuance of such a license, including the impacts of increased law enforcement needs, increased emergency services needs, and the impact on Gregory Street and its associated buildings and infrastructure.

Sec. 6-568. Display of license.

(a) Each license shall be limited to use at the premises specified in the application for such license.

(b) Each license shall be continuously posted in a conspicuous location at the retail marijuana store.

Sec. 6-569. Management of licensed premises.

Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager to the local licensing authority. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the local licensing authority. All managers must be natural persons who are at least twenty-one (21) years of age. No manager shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license.

Sec. 6-570. Change in manager; change in financial interest.

(a) Each licensee shall report any change in managers to the local licensing authority within thirty (30) days after the change. Such report shall include all information required for managers under Section 6-569 of this Article.

(b) Each licensee shall report in writing to the local licensing authority any transfer or change of financial interest in the license holder or in the retail marijuana store that is the subject of the license. Such report must be filed with the local licensing authority within thirty (30) days after any such transfer or change. A report shall be required for any transfer of the capital stock of a public corporation totaling more than ten percent (10%) of the stock in any one (1) year, as well as any transfer of a controlling interest in the corporation whenever a sufficient number of shares have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the retail marijuana store that is the subject of a license shall be a person who has discharged a sentence for a felony conviction within the past five (5) years, or who has been convicted of a felony for drug possession, distribution or use, unless such felony drug charge was based on possession or use of marijuana or marijuana concentrate that would not be a felony if the person were convicted of the offense on the date he or she applied for the license.

(c) Whenever any licensee causes a change in its officers, directors or manager, and a license addendum is required to be filed with the State, an application fee in the amount of one hundred dollars (\$100.00) shall be paid to the City at the time of filing the addendum with the City.

Sec. 6-571. Transfer of ownership; change of location.

(a) Transfer of ownership. For a transfer of ownership, a license holder shall apply to the state and local licensing authority on forms provided by the state licensing authority. In considering whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Article, the Colorado Retail Marijuana Code, and the regulations promulgated in conformance therewith. The local licensing authority may hold a hearing on the

application for a transfer of ownership, but such hearing shall not be held until a notice of such hearing has been posted on the licensed retail marijuana store premises for a period of at least ten (10) days prior to such hearing, and the applicant has been provided at least ten (10) days prior notice of such hearing.

(b) Change of location. A licensee from another jurisdiction that has previously obtained a license from the state and any other local licensing authority as applicable may move his or her permanent location to the City of Black Hawk so long as the applicant and the new location conform to the requirements of this Article.

Sec. 6-572. Hours of operation.

A retail marijuana business may open no earlier than 8:00 a.m. and shall close no later than midnight the same day. A retail marijuana business may be open seven (7) days a week.

Sec. 6-573. Signage and advertising.

All signage and advertising for a retail marijuana store shall comply with all applicable state laws as well as the provisions of this Article and other applicable provisions of the Black Hawk Municipal Code, including Chapter 15 of the Black Hawk Municipal Code.

Sec. 6-574. Security requirements.

(a) Security measures at retail marijuana store shall include at a minimum the following:

(1) security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;

(2) robbery and burglary alarm systems which are professionally monitored and maintained in good working condition;

(3) a locking safe permanently affixed to the premises that is suitable for storage of all marijuana and cash stored overnight on the licensed premises;

(4) exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this Article and other applicable provisions of the Black Hawk Municipal Code; and

(5) deadbolt locks on all exterior doors.

(b) All security recordings shall be preserved for at least seventy-two (72) hours by the licensee and be made available to the Black Hawk Police Department upon request for inspection.

Sec. 6-575. Required notices.

There shall be posted in a conspicuous location in each retail marijuana store, a legible sign containing the following warnings:

- (a) that the use of marijuana or marijuana products may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of or impaired by marijuana;
- (b) that loitering in or around a retail marijuana store is prohibited by law;
- (c) that possession and distribution of marijuana is a violation of federal law; and
- (d) that no one under the age of twenty one (21) years is permitted on the premises.

Sec. 6-576. On-site consumption of marijuana.

The use, consumption, ingestion or inhalation of retail marijuana or retail marijuana products on or within the premises of a retail marijuana store is prohibited.

Sec. 6-577. Prohibited acts.

It shall be unlawful for any licensee to:

- (a) employ any person at a retail marijuana store who is not at least twenty-one (21) years of age or who has a criminal history as described in Subsections 6-564 (a)(11) and (12);
- (b) purchase or otherwise obtain retail marijuana from any source that is not properly authorized under state and local law to sell or dispense retail marijuana;
- (c) permit the sale or consumption of alcohol beverages on the licensed premises; or
- (d) dispense marijuana to a person that is or appears to be under the influence of alcohol or under the influence of any controlled substance, including marijuana.

Sec. 6-578. Visibility of activities; paraphernalia; control of emissions.

- (a) All activities of retail marijuana stores, including, without limitation, processing, displaying, selling and storage, shall be conducted indoors.
- (b) Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may lawfully be sold at a retail marijuana store. No retail marijuana or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside the licensed premises.
- (c) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a retail marijuana store must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a retail marijuana store, the

owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full clean-up and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

Sec. 6-579. Disposal of marijuana byproducts.

The disposal of marijuana, marijuana products, byproducts and paraphernalia shall be done in accordance with plans and procedures approved in advance by the local licensing authority.

Sec. 6-580. Sales and business license required.

At all times while a permit is in effect the licensee shall possess a valid license issued under Section 6-2 of the Black Hawk Municipal Code.

Sec. 6-581. Sales tax.

Each licensee shall collect and remit City sales tax on all retail marijuana, retail marijuana products, paraphernalia and other tangible personal property sold by the licensee, and shall further collect and remit any specific tax imposed on marijuana on all retail marijuana, retail marijuana products and paraphernalia.

Sec. 6-582. Required books and records.

(a) Every licensee shall maintain an accurate and complete record of all retail marijuana purchased, sold or dispensed by the retail marijuana store in any usable form. Such record shall include the following:

- (1) the identity of the seller and purchaser involved in each transaction;
- (2) the total quantity of, and amount paid for, the retail marijuana and/or the retail marijuana product(s); and
- (3) the date, time and location of each transaction.

(b) All transactions shall be kept in a numerical register in the order in which they Occur.

(c) All records required to be kept under this Article must be kept in the English language in a legible manner and must be preserved and made available for inspection for a period of three (3) years after the date of the transaction. Information inspected by the Black Hawk Police Department or other City departments pursuant to this Article shall be used for regulatory and law enforcement purposes only and shall not be a matter of public record.

Sec. 6-583. Inspection of licensed premises.

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Black Hawk Police Department and all other City departments designated by the local licensing authority for the purpose of investigating and determining compliance with the provisions of this Article and any other applicable state and local laws or regulations. Said inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the licensed premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.

Sec. 6-584. Nonrenewal, suspension or revocation of license.

(a) The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's state license. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

(b) The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises has been inactive, without good cause, for at least one year.

Sec. 6-585. Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Article, any person, including, but not limited to, any licensee, manager or employee of a retail marijuana store, or any customer of such business, who violates any of the provisions of this Article, shall be subject to the following penalties:

(a) It shall be a misdemeanor offense for any person to violate any provision of this Article. Any person convicted of having violated any provision of this Article shall be punished as set forth in Section 1-73 of the Black Hawk Municipal Code.

(h) The operation of a retail marijuana establishment without a valid license issued pursuant to this Article may be enjoined by the City in an action brought in a court of competent jurisdiction, including the Black Hawk Municipal Court.

(c) The operation of a retail marijuana establishment without a valid license issued pursuant to this Article is also specifically determined to be a public nuisance pursuant to Section 7-2 of the Black Hawk Municipal Code.

Sec. 6-586. No City liability; indemnification.

(a) By accepting a license issued pursuant to this Article, the licensee waives and releases the City, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of retail marijuana establishment owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(b) By accepting a license issued pursuant to this Article, all licensees, jointly and severally, if more than one (1), agree to indemnify, defend and hold harmless the City, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any 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 arising out of or in any manner connected with the operation of the retail marijuana establishment that is the subject of the license.

Sec. 6-587. No waiver of governmental immunity.

In adopting this Article, the City Council is relying on and does not waive or intend to waive by any provision of this Article, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other limitation, right, immunity, or protection otherwise available to the City, its officers or its employees.

Sec. 6-588. Other laws remain applicable.

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the establishment or operation of any retail marijuana establishment in the City. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the local licensing authority or by law enforcement officers that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

(c) If the State prohibits the sale or other distribution of marijuana through retail marijuana stores, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(d) The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana.

Sec. 6-589. Rules and regulations.

The City Manager shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations, and file the same with the City Clerk, as may be necessary for the proper administration of this Article.

Sec. 6-590. Judicial review.

In accordance with Article 18, § 16 of the Colorado Constitution, decisions by the local licensing authority are subject to judicial review pursuant to C.R.S. § 24-4-106.

Section 2. Sections 2 and 3 of Ordinance No. 2013-55 are hereby repealed.

Section 3. Section 1 of Ordinance No. 2013-55 is hereby reaffirmed, and the City affirmatively finds and determines to continue the moratorium on the use of property as a marijuana club, which moratorium shall expire December 3, 2014, unless repealed prior to that date or extended, if necessary, as determined by City ordinance.

Section 4. Safety Clause. The Board of Aldermen hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 6. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this ____ day of _____, 2014.

David D. Spellman, Mayor

ATTEST:

Kelly Stevens, Deputy City Clerk

**RESOLUTION 30-2014, A
RESOLUTION IMPOSING
LICENSE FEES FOR
MEDICAL MARIJUANA AND
OPERATING FEES FOR
RETAIL MARIJUANA
PURSUANT TO THE BLACK
HAWK MUNICIPAL CODE**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. mm -2014

TITLE: A RESOLUTION IMPOSING LICENSE FEES FOR MEDICAL MARIJUANA AND OPERATING FEES FOR RETAIL MARIJUANA PURSUANT TO THE BLACK HAWK MUNICIPAL CODE

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF BLACK HAWK, COLORADO, THAT:

Section 1. The Board of Aldermen hereby imposes the following medical marijuana license fees pursuant to Article XV of Chapter 6 of the Black Hawk Municipal Code:

- A. Initial application fee for any medical marijuana business application: \$2,500
- B. License fee for Medical Marijuana Center: \$1,500
- C. Renewal fee per License: \$1,500

Section 2. The Board of Aldermen hereby imposes the following operating fees for retail marijuana license fees pursuant to Article XVIII of Chapter 6 of the Black Hawk Municipal Code:

- A. Initial operating fee for any retail marijuana business application: \$2,500
- B. Annual renewal and operating fee per retail marijuana license: \$1,500

RESOLVED AND PASSED this _____ day of _____, 2014.

David D. Spellman, Mayor

ATTEST:

Kelly K. Stevens, CMC, Deputy City Clerk

**RESOLUTION 29, A
RESOLUTION
APPROVING THE
CERTIFICATE OF
APPROPRIATENESS
FOR EXTERIOR PAINT,
STAIN AND SIDING
REPAIR FOR THE
HISTORIC RESIDENCE
LOCATED AT 151
MARCHANT STREET**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 201 .2014

**TITLE: A RESOLUTION APPROVING A CERTIFICATE OF
APPROPRIATENESS FOR THE EXTERIOR PAINT, STAIN AND
SIDING REPAIR OF THE HISTORIC RESIDENCE LOCATED AT 151
MARCHANT STREET**

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE
CITY OF BLACK HAWK, COLORADO, THAT:

Section 1. The City Council hereby determines to approve a Certificate of
Appropriateness for the exterior paint, stain, and siding repair of the historic residence located at
101 Marchant Street.

RESOLVED AND PASSED this _____ day of _____, 2014.

David D. Spellman, Mayor

ATTEST:

Kelly K. Stevens, CMC, Deputy City Clerk

a  HAWK
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING

May 14, 2014

SUBJECT

Approval of a Certificate of Appropriateness for exterior paint of house, staining and sealing porch deck, and minor siding repairs.

SUMMARY

The applicants, Sean and Rebecca Conway, are requesting approval of a Certificate of Appropriateness (COA) for exterior paint of the house, staining and sealing of the porch deck, and minor repairs to the siding for the historic residence at 151 Marchant Street.

HISTORIC PRESERVATION COMMISSION RECOMMENDATION

The Historic Preservation Commission (EMC) evaluated the application, the comments in the report, and testimony by staff, consultants, and the applicant. The Commission discussed if there was sufficient evidence that the Certificate of Appropriateness application met the intent of the criteria outlined in the City of Black Hawk Historic Restoration and Community Preservation Fund Guide to Programs, Section 16-368 of the Black Hawk Municipal Code, and Sections 3 and 4 of the City of Black Hawk Residential Design Guidelines. The HPC also review the proposed alterations and evaluated their effect on the building's eligibility for "contributing" status.

At the conclusion of its discussion, the Historic Preservation Commission recommended to the Board of Aldermen **APPROVAL** of the Certificate of Appropriateness for exterior paint, stain and siding repair for the historic residence at 151 Marchant Street based on the criteria set forth in the staff report dated April 30, 2014. The Certificate of Appropriateness application for 151 Marchant Street met the intent of the criteria outlined in the City of Black Hawk Historic Restoration and Community Preservation Fund Guide to Programs, Section 16-368 of the Black Hawk Municipal Code, and Sections 3 and 4 of the City of Black Hawk Residential Design Guidelines.

STAFF COMMENTS

151 Marchant Street is a highly visible property. The proposed alterations to the current color scheme would to a large extent enhance the overall character and visual appearance of the immediate area, promoting the preservation and the historic character of this individual property and of the City. Staff's evaluation of the application finds that the proposed alterations are in accordance with the Historic Restoration and Community Preservation Fund Guide to Programs, the City of Black Hawk Residential Design Guidelines and the U.S. Secretary of the Interior's Standards for Rehabilitation and recommends **APPROVAL** of the Certificate of Appropriateness for exterior paint, stain and siding repair for the historic residence at 151 Marchant Street based on the criteria set forth in the staff report dated April 30, 2014.

RESOLUTION DATE:

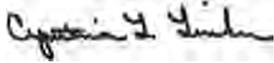
ORIGINATED BY:

STAFF PERSON RESPONSIBLE:

DOCUMENTS ATTACHED:

CITY ATTORNEY REVIEW:

SUBMITTED BY:



05/06/14

Cynthia Linker, CP&D Administrator

May 14, 2014

Community Planning &
Development

Cynthia Linker, CP&D Administrator
Staff Report, Attachments A-D

Yes No N/A

INITIALS _____.

REVIEWED BY:



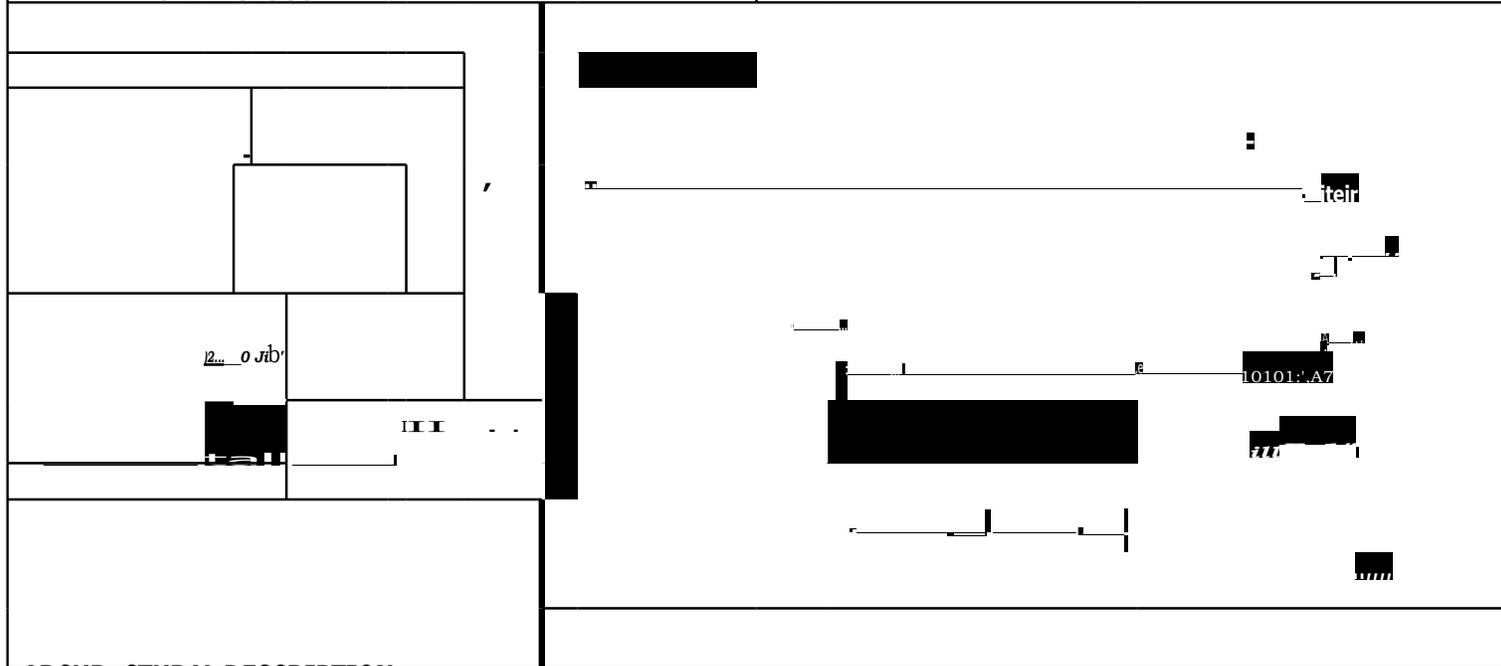
&/..1

Jack D. Lewis, City Manager

CENTRAL CITY - BLACK HAWK HISTORIC DISTRICT

GILPIN COUNTY, COLORADO

BUILDING NAME	BLOCK NUMBER 8	LOT NUMBER 4	DATE OF CONSTRUCTION 1890
ADDRESS 151 Marchant Street Black Hawk		STYLE Vernacular	
PROPERTY TYPE:		PRESENT USE residence	
<input checked="" type="checkbox"/> RESIDENTIAL <input type="checkbox"/> ACADEMIC <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> OTHER <input type="checkbox"/> RELIGIOUS		ASSOCIATED BUILDINGS	
		ADDITIONS AND ALTERATIONS	
		CONDITION good	



ARCHITECTURAL DESCRIPTION

This 1 1/2-story long rectangular plan building has an intersecting gable roof with a shed roof over the front porch and a small rear wing. The roof is covered with asphalt shingles, the walls with horizontal wood siding with cornerboards, and a medium height foundation is poured cement. Windows generally are 1-over-1 wood sash with plain wood surrounds. There is a 4 window bay on the first level of the facade on the gable end. The primary door is wood paneled with 2 elongated oval lights. Distinctive features are the bay window, the cornerboards, and the wood porch across the one story wing at the entry with turned wooden spindle supports.

STATEMENT OF SIGNIFICANCE

SITE DESCRIPTION

The house sits high above the street behind a high mortared rubblestone retaining wall, and a wrought iron fence that is non-historic.

COMMENTS

REFERENCES

Gilpin County Tax Assessor office files

PREPARED BY: Rickey Hendricks, NPS-RMRO

DATE 8/86

Attachment B: Photographs of existing conditions



2014. Front elevation



2014. Looking northwest, at front and east elevation



2014



2014. Deck and facade



2014. Cracked clapboard, paint failure.



2014. Loose and popped clapboards.



**CITY OF BLACK HAWK
PLANNING / LAND USE**

Date prepared: April 30, 2014
HPC Meeting Date: May 6, 2014
Council Meeting Date: May 14, 2014

STAFF REPORT:

For: City Council
Project: Certificate of Appropriateness for exterior paint of house, staining and sealing porch deck, and minor siding repairs
Property Address: 151 Marchant Street
Property Owner: Sean and Rebecca Conway
Zoning: Historic Residential (HR)
Prepared by: Cynthia Linker, City of Black Hawk

BACKGROUND

The applicants, Sean and Rebecca Conway, are requesting approval of a Certificate of Appropriateness (COA) for exterior paint of the house, staining and sealing of the porch deck, and minor repairs to the siding for the historic residence at 151 Marchant Street.

The estimated date of construction for this house is ca. 1880s. The house is visible in historic photographs which date from 1888, and can be seen in the 1886 Sanborn map. It was first evaluated for its historic/architectural significance in 1986 when the National Park Service conducted a survey of historic resources in the communities of Black Hawk, Central City, and Nevadaville. In 1991, when Black Hawk was added to an expanded National Historic Landmark district, 151 Marchant Street was counted as a "contributing" building to the historic district, meaning it had retained sufficient integrity to contribute to the historic character of the district. The 1986 survey provided the following description:

This 1 1/2 -story rectangular plan building has an intersecting gable roof with a shed roof over the front porch and a small rear wing. The roof is covered with asphalt shingles, the walls with horizontal wood siding with cornerboards, and a medium height foundation is poured cement. Windows generally are 1-over-1 wood sash with plain wood surrounds. There is a 4 window bay on the first level of the façade on the gable end. The primary door is wood paneled with 2 elongated oval lights. Distinctive features are the bay window, the cornerboards, and the wood porch across the one story wing at the entry with turned wood spindle supports.

The house has received the following grants:

- 1996 - Rehabilitation — \$25,000 — Metal roof, bathroom structural repairs, water line/meter, exterior handrail repair, new front door and jamb
- 1997 - Rehabilitation — \$4,500 — Continued work from 1996 grant
- 2003 as part of a "complete rehabilitation, city project." Alterations at that time included new siding, windows, and a raised foundation
- 2008 — Exterior Paint - \$9,600

In 2010-2011, a re-survey and evaluation of the historic district found that the residence still retained its historic integrity, and was a "contributing" building in the National Historic Landmark district.

The applicants are requesting approval of the following work, which requires a Certificate of Appropriateness:

- Exterior painting of the historic residence
- Staining and sealing the porch deck
- Minor siding repairs on the west side due to hail damage, and replacing fasteners below the porch causing some siding to bow

In accordance with the Black Hawk Municipal Code, all final plans for a Rehabilitation Grant must be reviewed by the Historic Preservation Commission as well as City Council.

APPLICABLE CITY OF BLACK HAWK REGULATIONS

Excerpt from:

*City of Black Hawk
Historic Restoration and Community Preservation Fund Guide to Programs*

Section 1: Program Overview, (e) General Program Information, (3) The City Council shall have the authority in its sole discretion to deny any application submitted for a grant or easement project, if in their opinion, the Property Owner has neglected to adequately maintain their property allowing it to become in a state of disrepair.

Excerpt from:

*City of Black Hawk Zoning Code
Chapter 16
Section 16-368, City Council historic review process*

16-368: Anyone seeking to renovate the exterior of, add to or construct a new building shall be subject to the following procedures. Any such renovation construction or demolition shall be subject to the City's design standards.

f Criteria for determining appropriateness of proposed erection, construction, reconstruction or alteration. In determining the appropriateness of a proposed site plan or building permit for the erection, construction or alteration of a building, the HPC and the City Council shall consider the following:

- 1. All plans, drawings and photographs as may be submitted by the applicant;***
Photographs showing existing conditions and indicating the portions proposed for alteration have been (see Attachment **B**).
- 2. Information presented at a public hearing held concerning the proposed work;***
Findings and recommendation from Historic Preservation Commission will be presented to the Board of Aldermen at the Public Hearing scheduled for May 14, 2014.

3. *The purpose of this Chapter;*

The information received adequately describes the proposed work in order to determine the appropriateness of the proposed rehabilitation.

4. *Compliance with the Black Hawk Municipal Code and the payment of all fees required by the Black Hawk Municipal Code;*

The project complies with all regulations of the Municipal Code.

5. *The historical and architectural style, the general design, arrangement, texture, materials, and color of the development, building or structure in question or its appurtenance fixtures; the relationship of such features to similar features of the other buildings within the City and the position of the building, structure, park or open space in relation to public right-of-way and to other buildings and structures in the City;*

The house is an example of the gable-front-and-wing sub-type of a National Folk style house as defined by Virginia and Lee McAlester in *A Field Guide to American Houses*. These buildings were simple houses found throughout much of the United States, and are defined more by their form than stylistic architectural features, although this house also contains "Folk Victorian" elements. The house is evident in historic photographs of Marchant Street, and is a contributing building to the National Historic Landmark district.

6. *The effects of the proposed work upon the protection, enhancement, perpetuation and use of the City which cause it to possess a special character or special historical or aesthetic interest or value; and*

The property was re-evaluated in 2010-2011 and was determined "contributing" to the National Historic Landmark historic district. The HPC should review the proposed alterations and evaluate their effect on the building's eligibility for "contributing" status.

7. *The design standards for the City.*

Sections 3. Rehabilitation of Historic Structures and 4. Paint, Paint Colors and Lead Paint Issues of the City of Black Hawk Residential Design Guidelines adopted in 2011 apply to this application. Listed below are the applicable sections, and the consultant's evaluation for compliance of the proposed alterations for 151 Marchant Street.

Excerpt from:

City of Black Hawk Residential Design Guidelines

3. Rehabilitation of Historic Structures

3.3. Exterior Materials: Wood Siding and Masonry

3.3.A.1. Original historic finish materials should be preserved, rehabilitated and/or repaired.

- a. If portions of wood siding must be replaced, be sure to match the lap dimensions of the original.***

3.3.C.1. Protect and maintain significant stylistic elements.

- a. **Avoid removing or altering any historic material or significant features.**
- b. **Repair historic building features that are deteriorated where feasible.**
- c. **When disassembly of an historic element is necessary for its restoration, use methods that minimize damage to the original materials.**
- d. **Use the gentlest possible procedures for cleaning, refinishing, and repairing historic materials.**

Evaluation of proposal's compliance with Section 3:

The current siding is not historic, although it matches the original siding. Epoxy filler will be used for the boards that are repairable. The boards that are too deteriorated will be replaced with wood siding that matches the original in depth, width and overlap dimensions. This meets the design guidelines.

4. Paint, Paint Colors and Lead Paint Issues

4.1 Color

4.1.1. Use historic color schemes.

4.1.2. Develop a color scheme for the entire building that coordinates all the facade elements.

4.1.3. Use muted colors for the base and brighter colors for accents.

4.1.4. Leave natural masonry finishes unpainted when feasible.

Evaluation of proposal's compliance with Section 4:

The proposed paint scheme for the building is:

- Main Body & Front Door: Currant Red/1323 (for all areas that are currently green)
- Trim: Pink Damask/890 (for all areas that are purple or yellow)
- Fence: Alabaster/876
- Deck: staining to match the existing "weathered" color and sealing

The scheme meets the design guidelines in that it uses colors from the City of Black Hawk's pre-approved list of historically appropriate colors; it develops a coordinated color scheme for the entire building; and it uses muted colors for the base and brighter colors for the accent (see Attachment C). While the staining of the deck does not necessarily fit into an overall paint scheme, it is not visible from the street and is reversible (i.e., does not harm historic materials).

APPLICABLE GUIDE TO PROGRAM STANDARDS

All grants, whether Full Site Building, Site Work, Exterior Maintenance, Emergency or Radon Mitigation, must adhere to the eligibility requirements in the City of Black Hawk Historic Restoration and Community Preservation Fund Guide to Programs, the Residential Design Guidelines, and the Secretary of the Interior's Standards for treatment of historic properties. The project was evaluated using these standards and staff found the elements of the proposal are in accordance and meet the requirements.

CONSULTANT COMMENTS

The following work requires a Certificate of Appropriateness:

- Exterior painting of the historic residence
- Staining and sealing the porch deck
- Minor siding repairs on the west side due to hail damage, and replacing fasteners below the porch causing some siding to bow

The consultant's evaluation of the proposal finds that the proposed alterations are in accordance with the City of Black Hawk Residential Design Guidelines and the U.S. Secretary of the Interior's Standards for Rehabilitation.

HISTORIC PRESERVATION COMMISSION RECOMMENDATION

The Historic Preservation Commission (HPC) evaluated the application, the comments in the report, and testimony by staff, consultants, and the applicant. The Commission discussed if there was sufficient evidence that the Certificate of Appropriateness application met the intent of the criteria outlined in the City of Black Hawk Historic Restoration and Community Preservation Fund Guide to Programs, Section 16-368 of the Black Hawk Municipal Code, and Sections 3 and 4 of the City of Black Hawk Residential Design Guidelines. The HPC also review the proposed alterations and evaluated their effect on the building's eligibility for "contributing" status.

At the conclusion of its discussion, the Historic Preservation Commission recommended to the Board of Aldermen APPROVAL of the Certificate of Appropriateness for exterior paint, stain and siding repair for the historic residence at 151 Marchant Street based on the criteria set forth in the staff report dated April 30, 2014. The Certificate of Appropriateness application for 151 Marchant Street met the intent of the criteria outlined in the City of Black Hawk Historic Restoration and Community Preservation Fund Guide to Programs, Section 16-368 of the Black Hawk Municipal Code, and Sections 3 and 4 of the City of Black Hawk Residential Design Guidelines.

STAFF COMMENTS

151 Marchant Street is a highly visible property. The proposed alterations to the current color scheme would to a large extent enhance the overall character and visual appearance of the immediate area, promoting the preservation and the historic character of this individual property and of the City. Staff's evaluation of the application finds that the proposed alterations are in accordance with the Historic Restoration and Community Preservation Fund Guide to Programs, the City of Black Hawk Residential Design Guidelines and the U.S. Secretary of the Interior's Standards for Rehabilitation and recommends APPROVAL of the Certificate of Appropriateness for exterior paint, stain and siding repair for the historic residence at 151 Marchant Street based on the criteria set forth in the staff report dated April 30, 2014.

ATTACHMENTS

- A: Cultural Resource Evaluation Form
- B: Photographs of Existing Conditions
- C: Paint Colors — (Color Wheel Available at Meeting)
- D: Public Hearing Notice

BLACK HAWK CULTURAL RESOURCE SURVEY
Cultural Resource Re-evaluation Form
(page 1 of 2)

Current Address: **151 Marchant**

Resource Number: **5GL.7.407**

3. NHL Resource Number: **B8-2**

Resource Name:

Purpose of this current site visit (check as many as apply)

Site is within a current project area

Resurvey

Update of previous site form(s)

Surface collection

Testing to determine eligibility

Excavation

Other

6. Previous Recordings:

1986 National Park Service Survey

Photograph

1991 National Historic Landmark Nomination

No Photographs

Contributing

1998 Re-survey

Photograph

2004 Photo survey

Photograph

Other:

Photograph

7. Exterior alterations since 1986: **1996: Historic Preservation grant, alteration permit, \$5,500. 2003: "complete remodel, city project." Alterations include new siding, windows, and raised foundation.**

8. Additional historical background: **The house is visible in the 1886-1900 Sanborn maps, although the maps appear to have the lots numbered incorrectly. It is also seen in historic photographs purporting to date from 1888. Deed research may reveal a more accurate construction date, as the house has architectural features typical of an earlier construction date.**

Ca. 1880s Construction date Estimate from 1986 NPS Survey New estimate

Sources of information: **Digital Image Collection, Western History & Genealogy, Denver Public Library; The Gilpin Railroad Era (Abbot)**

Sanborn Maps

1886

1890

1895

1900

Current Address: **151 Marchant**

(page 2 of 2)

Resource Number: **5GL.7.407**

NHL Resource Number: **B8-2**

9. Changes to Location or Size Information: **Block 8, lot 5**

10. Revised National Historic Landmark District- Contributing Building Eligibility Assessment:
Contributing Non contributing Need data

11. National Register - Individual Eligibility Assessment:
Eligible Not eligible Need data

12. Is there National Register district potential? Yes No
Discuss: **This building would contribute to a potential N.R. district.**

13. Local Designation - Individual Eligibility Assessment:
Eligible Not eligible Need data

14. Is there Local district potential? Yes No
Discuss: **This building would contribute to a potential local district**

15. Photograph Types and Numbers: **Digital, <.jpg> format. 151 Marchant-1.JPG, 151 Marchant-2.JPG, 151 Marchant-3.JPG**

16. Report Title: **Black Hawk Historic Resource Resurvey: 2009-2010**

17. Recorder(s): **Deon Wolfenbarger**

18. Date(s): **July 15, 2010**

19. Recorder Affiliation: **Three Gables Preservation**

20. Attachments
(check as many as apply)
 Photographs
 Site sketch map
 U.S.G.S. map photocopy
 Other
 Other

21. Official determination
(OAHF USE ONLY)
Determined Eligible
Determined Not Eligible
Need Data
Nominated
Listed
Contributing to N.R. District
Not Contributing to N.R. Dist

Current Address: **151 Marchant**
Resource Number: **5GL.7.407**
NHL Resource Number: **B8-2**

Continuation Sheets

Current Photographs
Date: **04/09/2009, 1/19/2010, 1/21/2010**



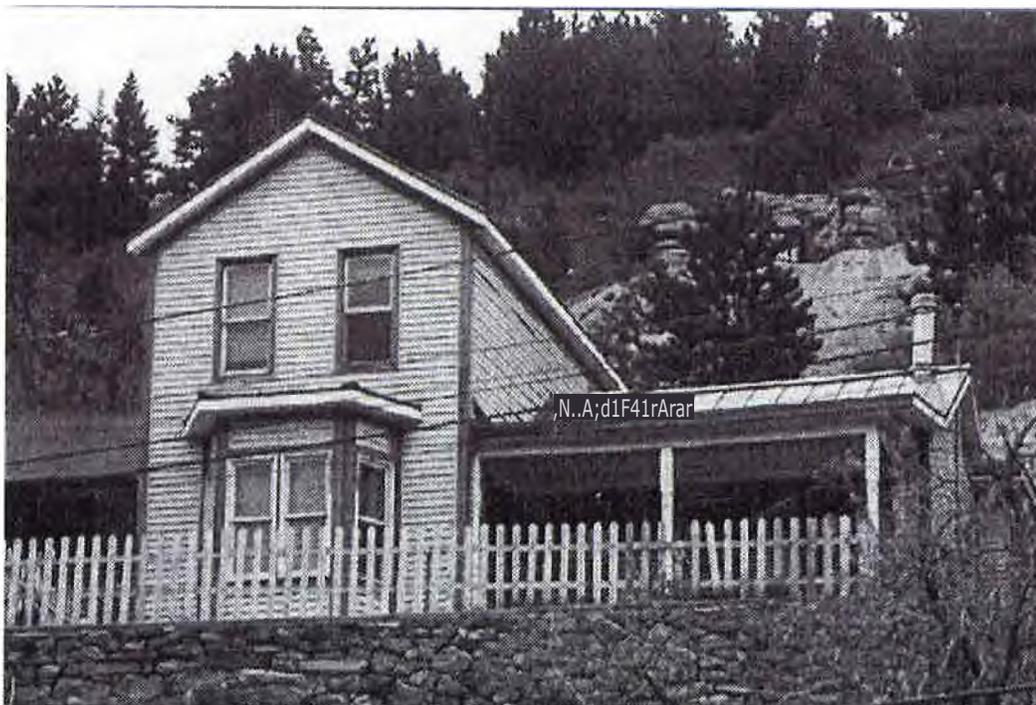
Current Address: **151 Marchant**
Resource Number: **5GL.7.407**
NHL Resource Number: **B8-2**

Continuation Sheets

2004 Photograph



1998 Resurvey Photograph



Current Address: **151 Marchant**
Resource Number: **5GL.7.407**
NHL Resource Number: **B8-2**

Continuation Sheets

1986 Survey Photograph



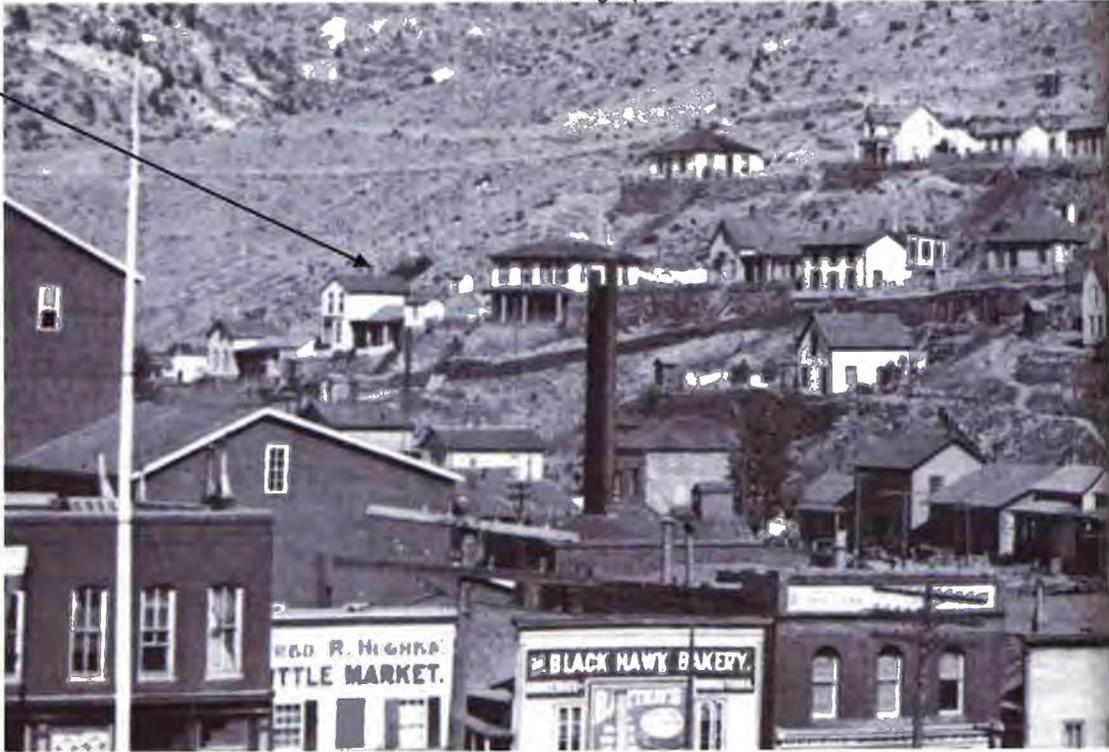
Gilpin County Assessor's Photographs



Current Address: **151 Marchant**
Resource Number: **5GL.7.407**
NHL Resource Number: **B8-2**

Continuation Sheets

Historic Photographs



Ca. 1899

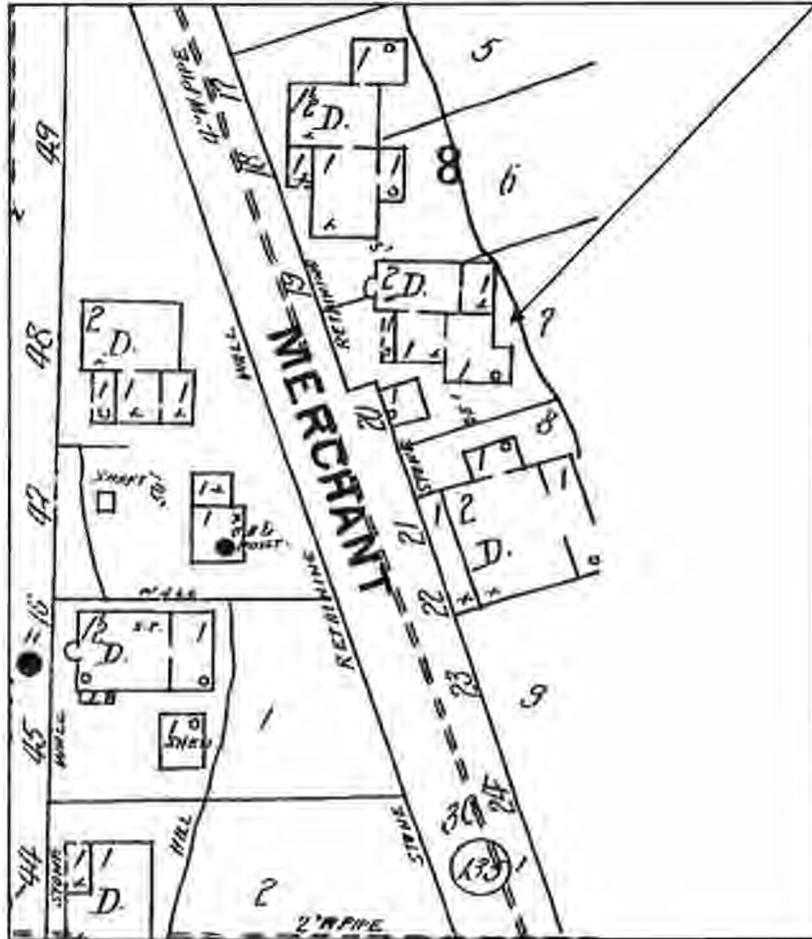


Ca. 1910

Current Address: 151 Marchant
Resource Number: 5GL.7.407
NHL Resource Number: B8-2

Continuation Sheets

1900 Sanborn Map



**RESOLUTION 28-2014, A
RESOLUTION
APPROVING THE
SERVICE AGREEMENT
FOR VEHICLE TOWING
SERVICES BETWEEN
THE CITY OF BLACK
HAWK AND BLACK
HAWK TOWING**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. c 9? -2014

**TITLE: A RESOLUTION APPROVING THE SERVICE AGREEMENT FOR
VEHICLE TOWING SERVICES BETWEEN THE CITY OF BLACK
HAWK AND BLACK HAWK TOWING**

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE
CITY OF BLACK HAWK, COLORADO, THAT:

Section 1. The Service Agreement for Vehicle Towing Services between the City of
Black Hawk and Black Hawk Towing, attached hereto as **Exhibit A**, is hereby approved,
and the Mayor is authorized to execute the same on behalf of the City.

RESOLVED AND PASSED this _____ day of _____, 2014.

David D. Spellman, Mayor

ATTEST:

Kelly K. Stevens, CMC, Deputy City Clerk

SERVICE AGREEMENT
CITY OF BLACK HAWK, COLORADO

TITLE: VEHICLE TOWING SERVICES
CONTRACT NO.:



TABLE OF CONTENTS

Section I	General Terms and Conditions
Section II	Obligations of the City and the Contractor
Section III	Special Conditions
Section IV	Payment and Fee Schedule for Towing Services
Section V	Insurance Requirements
Section VI	Change Orders or Extensions
Section VII	Charter, Laws and Ordinances
Section VIII	Equal Employment Opportunity
Section IX	Termination of Contract
Section X	Miscellaneous
Exhibit A	Requirements of the Contractor

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20 by _____ and between the City of Black Hawk, Colorado (the "City") and 29 Atet 7;(01:4,1, - "Contractor").

WITNESSETH:

WHEREAS, the City intends that the Contractor shall provide towing and related services for City-owned vehicles and police tows as provided within this Agreement and any addenda thereto;

WHEREAS, it is in the best interests of the public that the City designate the Contractor to provide towing and related services to the City; and

WHEREAS, the Contractor agrees to provide all authorized towing and related services for City-owned vehicles and police tows as provided within this Agreement and any addenda thereto.

NOW, THEREFORE, the City and the Contractor, for the consideration hereinafter set forth, agree as follows:

SECTION I. GENERAL TERMS AND CONDITIONS

A. This Agreement shall be effective 12:01 a.m., on the _____ day of _____, 20 _____ and shall continue for a period of one (1) year. If the Contractor's service is satisfactory **during** this period of time, the City reserves the right to renew this Agreement for additional one year terms.

B. All work performed by the Contractor shall be authorized by a duly authorized officer, agent or representative of the City prior to the Contractor undertaking performance. This Agreement does not guarantee to the Contractor any work or create an exclusive contract.

C. The Contractor shall inform the City in writing of any subcontractors or firms hired by the Contractor to perform work in connection with this Agreement and shall keep the City informed of any changes. Unless approved in writing by the City, subcontractors may only be used to perform work in unusual circumstances, and shall not be used to substitute for the minimum equipment required by this Agreement. The Contractor shall be responsible for the performance of any subcontractor or firm hired by the Contractor. Nothing contained herein shall create any contractual relationship between the City and a subcontractor or a firm hired by the Contractor.

D. The Contractor and its personnel shall remain the agents and employees of the Contractor and are not, nor shall be construed to be, agents or employees of the City even though the City may use their services under the terms of this Agreement.

E. The Contractor shall be responsible for any injury to persons or damage to property from negligent acts, errors or omissions of the Contractor, its subcontractors, agents and employees.

SECTION II. OBLIGATIONS OF THE CITY AND THE CONTRACTOR

The City shall:

- A. Provide full information, including a detailed scope as to its service requirements.
- B. Give prompt notice to the Contractor whenever the City observes or otherwise becomes aware of any discrepancies in the services provided and the services requested.
- C. Furnish or direct the Contractor to provide at the City's expense any necessary additional services.

The Contractor shall:

- A. Perform services as provided within this Agreement and "Requirements of Contractor" attached hereto as **Exhibit A** and incorporated herein by this reference and
- B. Obtain a City of Black Hawk Business License pursuant to Article 1 of Chapter 6 of the Black Hawk Municipal Code.

SECTION III. SPECIAL CONDITIONS

A. The Contractor shall be licensed by the Colorado Public Utilities Commission (the "PUC") and it must comply at all times with the rules and regulations promulgated by the PUC. Revocation of the license by the PUC will subject this Agreement to immediate termination. Also, all towing vehicle operators must possess a valid Colorado Driver's License of the proper class.

B. The Chief of Police and the Contractor shall review claims for loss or damage settled by the Contractor. If substantiated, the Contractor shall pay all claims. If the City is advised of a claim, they will advise the Contractor of the claim and the same procedure of review and settlement stated above will apply.

C. The City shall not deputize the Contractor, its drivers or its employees, nor shall any of the Contractor's vehicles or trucks be required to carry flashing red lights. All vehicles and trucks shall be operated in compliance with all traffic regulations of the City, unless otherwise directed by a City of Black Hawk police officer.

D. In order to assure acceptable standards of performance, it is specifically agreed and understood that the City has entered into this Agreement in reliance on its inspection and investigation of the establishment, facilities, business reputation and other general qualifications of the Contractor. In order to assure that these standards of performance are maintained during the term of this Agreement, there shall be no change in ownership of the Contractor without the prior approval of the City.

SECTION IV. PAYMENT AND FEE SCHEDULE FOR TOWING SERVICES

The Contractor agrees to accept as full payment for towing services the following amounts of compensation:

TOWING CHARGES

	<u>DAY</u>	<u>NIGHT</u>
Business Hours	8:00 a.m. to 5:00 p.m.	5:01 p.m. to 7:59 a.m.

Private Property fees: set by PUC

All other fees: Black Hawk fees will be consistent with approved fees established by the Colorado State Patrol's annual fee review. Contractor will provide City with copy of approved fees annually.

- A. The amounts set forth above shall be firm for a period of one year. All fees will be collected at the Contractor's office.
- B. If the City requests a vehicle to be impounded, the Contractor shall collect at its office the fees for the towing and storage of the vehicle from the vehicle owner or other person authorized to receive the vehicle. The fees collected shall be in the amounts set forth above. If the tow sheet "Police Hold" box is not checked, the vehicle can be released to the Registered Owner or authorized person without verbal or written authorization from the Chief of Police or his designee for that vehicle. Police Holds shall be released in writing from the Chief of Police or his designee. Any motor vehicle ordered to be held pending investigation by the Chief of Police or his designee or other law enforcement agency shall not accrue

storage charges during the first 7 days of the vehicle is held. After the initial 7 days a maximum of 60 days storage can be charged. Towing charges on vehicles held pending investigation shall be paid by the vehicle owner or other person authorized to receive the vehicle unless a supervisor of the Chief of Police or his designee determines that these charges should be paid by the City.

- C. Releases of impounded vehicles shall be by appointment only. The regular hours of the impound lot shall be from 8:00 a.m. until 5:00 p.m., Monday through Friday. If a vehicle cannot be picked up during regular business hours, there shall be an after-hours/weekend charge of \$66.00 for the release of a vehicle.
- D. Each month the Chief of Police or his designee shall pay the Contractor for all authorized services performed for the City. The sum shall be calculated according to the charges set forth above.

SECTION V. INSURANCE REQUIREMENTS

A. The parties understand and agree that the City is relying on the Colorado Governmental Immunity Act, § 24-10-101, et seq., 10A C.R.S., as amended, and it does not waive nor 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.

B. The Contractor shall procure and maintain, and shall require any subcontractor to procure and maintain, the minimum insurance coverage listed below. The coverage shall be procured and maintained from a company satisfactory to the City and in a form satisfactory to the City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor during the period of this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- C. The Contractor shall provide and maintain the following minimum coverage:
 - 1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and employer's liability insurance, with minimum limits of six hundred thousand dollars (\$600,000) - each accident, six hundred thousand dollars (\$600,000) disease - policy limit, and six hundred thousand dollars (\$600,000) disease - each employee. Evidence

of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

2. General liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including independent contractors, products, and completed operations). The policy shall contain a severability of interest provision.
3. Comprehensive automobile liability insurance with minimum limits of six hundred thousand dollars (\$600,000) for each person and one million dollars (\$1,000,000) for each occurrence.

D. The one million thousand dollar general liability insurance policy shall be endorsed to include the City and the City's officers and employees as additional insured. Every policy stipulated above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City shall be excess and not contributory insurance to that provided by the Contractor. No additional insured endorsement to the worker's compensation policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required under this Agreement.

E. The certificate of insurance shall be completed by the Contractor's insurance agent and shall be reviewed and approved by the City prior to commencement of the Agreement. The certificate shall evidence that the policies meet the required coverage, conditions, and minimum limits and are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City Clerk's Office
City of Black Hawk
P.O. Box 68
Black Hawk, CO 80422

F. Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and

all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Contractor to the City upon demand, or the City may off-set the cost of the premiums against any monies due to the Contractor from the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

SECTION VI. CHANGE ORDERS OR EXTENSIONS

The City may, from time to time, require changes in the scope of the services the Contractor performs. All changes in service shall be incorporated in written Change Orders to this Agreement, including any changes in the increase or decrease of the amount of the Contractor's compensation. All Change Orders shall be mutually agreed upon by and between the City and the Contractor.

SECTION VII. CHARTER, LAWS AND ORDINANCES

During the term of this Agreement the Contractor agrees to observe all federal and state laws, the City of Black Hawk's Ordinances and Charter, and all rules and regulations issued pursuant thereto, which in any manner affect or govern the services contemplated under this Agreement.

SECTION VIII. EOUAL EMPLOYMENT OPPORTUNITY

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall adhere to acceptable affirmative action guidelines in selecting employees. The Contractor shall ensure that the employees are treated, during employment, without regard to their race, color, religion, sex or national origin. The Contractor shall not discriminate when employing, upgrading, demoting, transferring, recruiting, terminating, compensating, or training an employee. This list is by way of example and not limitation. Furthermore, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. All solicitations or advertisements for employees placed by or on behalf of the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. The Contractor shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the city, state and federal agencies may require.

E. The Contractor agrees to comply with such rules, regulations, and guidelines as the city, the state, or federal agencies may issue to prevent discrimination based upon race, color, religion, sex or national origin.

SECTION IX. TERMINATION OF CONTRACT

A. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this Agreement, or if the work is not being performed in accordance with the rules and regulations of the PUC, the City shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date of termination.

B. The Contractor agrees to perform all services to the satisfaction of the City. If, in the opinion of the City, the Contractor's performance is unsatisfactory, the City reserves the right to terminate this Agreement by giving fifteen (15) days' written notice to the Contractor of such termination.

C. If this Agreement is terminated for any reason, all finished or unfinished services, reports, or other material prepared by the Contractor under this Agreement shall, at the option of the City, become its property.

SECTION X. MISCELLANEOUS

A. This Agreement consists of this Agreement, **Exhibit A** and such written addenda hereto as the parties subsequently agree shall be in effect.

B. The services contemplated under this Agreement shall not be assigned, sublet or transferred without the prior written consent of the City.

C. Any notice required under this Agreement shall be sent to the parties as follows:

City of Black Hawk
Attn: City Manager
P.O. Box 68
Black Hawk, CO 80422

Contractor:

D. The captions and headings in this Agreement are for convenience only and are not to be construed as defining or limiting in any way the scope or intent of this Agreement.

E. This Agreement shall be construed under the laws of the State of Colorado.

F. If any of the terms of this Agreement are in conflict with any rule of law or statutory provision of the State of Colorado, then the terms of this Agreement which may conflict with such laws shall be deemed inoperative and null and void to the extent they may be in conflict therewith, but the remaining provisions of this Agreement shall remain in full force and effect.

G. ILLEGAL ALIENS.

1. Prohibited Acts. Contractor shall not:

a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

b. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

2. Verification.

a. Contractor has verified or attempted to verify through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the basic pilot program prior to entering into this Agreement, that Contractor shall apply to participate in the basic pilot program every three (3) months until Contractor is accepted or this Agreement has been completed, whichever is earlier.

b. Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

c. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

3. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

IN WITNESS WHEREOF, the City of Black Hawk and the Contractor have caused this Agreement to be executed this _____ day of _____, 20_____

CITY OF BLACK HAWK, COLORADO

By: _____
David Spellman, Mayor

ATTEST:

Jeanie Magno, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

CONTRACTOR
By: _____
4-10-14

Name:  Mdasita fia

Title: gte///tr/C,,

EXHIBIT A

REQUIREMENTS OF THE CONTRACTOR

A. Protection and Handling of Vehicles

It shall be the duty of the Contractor to protect all motor vehicles in its custody, and the Contractor shall be liable for any loss or damage caused by the negligence of its employees, agents, or servants. All vehicles must be towed in accordance with the manufacturer's specifications.

Vehicles to be stored by the Contractor shall be secured at the scene of the tow and removed directly to the Contractor's lot. The Contractor understands and agrees that the City will not be responsible for any fees associated with storage of any vehicle on the Contractor's lot. The vehicle shall not be opened or tampered with while enroute. Upon arrival at the lot, entrance and access to the vehicle shall be limited to: wheel tie-down equipment removal, locking of transmission gear or only as required by the performance of legitimate business.

All personal property is to remain in the vehicle once the vehicle is in the custody of the towing agency and shall be secured inside that vehicle and be the responsibility of the towing agency while the vehicle is in their custody.

Vehicles towed as evidence will be delivered to a locked storage area located at the Contractors place of business or any other location specified by the Chief of Police of his designee and will be accompanied by the Chief of Police or his designee until they are appropriately secured.

After any evidence processing has been completed, the City will notify the owner to pick-up their vehicle. If the owner should fail to do so within seventy-two 72 hours, excluding weekends and holidays, the City will request vehicle removal from the City's lot by the Contractor to the Contractor's storage lot. All expenses incurred from the time the vehicle is picked-up at the City's lot will be at the owner's expense. The expenses are, but are not limited to, towing, special equipment needs and/or storage. The failure of the owner to recover the vehicle at the City's lot will cause the vehicle to be considered abandoned and will be treated as such by the Contractor from that time on.

The Contractor is required to store all other vehicles impounded during the term of the Contractor's Agreement with the City until such vehicles are lawfully released, sold or disposed of as prescribed in Colo. Rev. Stat. § 42-4-1801 to 1815.

B. Removing Debris

The Contractor's tow unit operator shall be required to remove all glass and debris deposited upon the roadway by the disabled vehicle that he has received authorization to tow. In addition, any grease or oil slick deposited on the roadway must be covered with dirt or a grease absorbing material. All spills shall be handled in accordance with all existing rules and regulations as prescribed by the E.P.A. and under the direction of the Black Hawk Fire Department.

C. Property in Vehicles

The Contractor shall immediately notify the Chief of Police or his designee of the existence of any property of substantial value that is found in any vehicle towed at the request of the Chief of Police or his designee. Substantial value for the purposes of this paragraph shall be property estimated by the Contractor to be in excess of four hundred dollars (\$400.00) in value. After said notification, the Contractor will request that the Chief of Police or his designee be dispatched to take custody of any such property. All other property of little or no value left inside abandoned vehicles may be disposed of at the discretion of the Contractor after the abandoned vehicle process is completed and said vehicle is available for sale or destruction.

D. Suspected Criminal Activity

Tow operators and their dispatchers, acting in the course of their duties as defined by this document, shall immediately inform the Chief of Police or his designee whenever they observe or learn about any activity of a suspected criminal nature or any other circumstance that reasonably appears to require police action.

E. Response Time

If a tow unit is unable to respond within forty-five (45) minutes to any official request from the City for any reason, the Contractor shall so inform the requesting City department and will state the reason for the inability to respond to the request and the estimated response time. If deemed necessary by the requesting department or the Contractor, a call to another tow company to respond to that tow may be initiated. The Contractor shall bear any and all additional costs related to the hiring and use of another firm's tow unit(s) if that firm is outside of those contracted by the City and under this same contract. It is the responsibility of the Contractor to arrange for the use of another firm's tow unit(s) for any emergency situation that causes the Contractor to be unable to respond to the City's request for services. If employing another tow service is caused by the failure of the Contractor to maintain the required number of operating tow units as stated in this document (Section "L"), the Contractor shall bear any and all additional

expense of hiring another firm's tow units. Such an occurrence could cause cancellation of the towing services unless the City receives a written report detailing the mitigating circumstances and accepts the reasons therein. Any vehicle towed by any other towing company for the Contractor shall be stored at the Contractor's cost.

F. Business Hours

The Contractor's lot shall be open, at a minimum, from 8:30 a.m. to 4:30 p.m., Monday through Friday, to release vehicles to those persons authorized to receive them. An after hours release shall be at the discretion of the Contractor, unless a release is specifically requested by the Chief of Police or his designee. The Contractor is entitled to take holidays in accordance with the City's holiday schedule; however, the Contractor is responsible for providing twenty-four (24) hour, seven (7) day-a-week towing service for the City in emergencies and as deemed necessary by the Chief of Police or his designee. Releases of vehicles shall be done by appointment, whether during normal lot hours, or after hours and on weekends.

G. Fee Collection

The Contractor shall collect fees for the towing and storage of vehicles requested to be impounded by the City, however, the City shall not be responsible for the payment of any fees associated with vehicle storage on the Contractor's lot. The fees collected shall be in the amounts set forth in the Agreement.

The amounts shown in the Agreement shall be firm for a period of one (1) year. All fees will be collected at the Contractor's office.

No fees shall be accepted by the Contractor on any vehicle impounded by the Chief of Police or his designee unless proper written authorization for release has been obtained for the vehicle.

H. Rates and Charges

Each month the Chief of Police or his designee shall transfer to the Contractor a sum calculated according to the charges set forth in the Agreement and contracted to, for services performed by the Contractor for the City of Black Hawk.

Any motor vehicle ordered to be held pending investigation by the Chief of Police or his designee or other law enforcement agency shall accrue no storage fees chargeable to the City during the period for which the vehicle is held. Towing charges on vehicles held

pending investigation shall be paid by the vehicle owner or other person authorized to receive the vehicle unless the Chief of Police or his designee determines that these charges should be paid by the City.

I. Disposal of Abandoned Vehicles

Vehicle disposal by the Contractor will be accomplished in the manner set forth by state statutes on the required Report of Abandoned Vehicle Form prescribed and supplied by the Colorado Department of Revenue.

J. Service Log

A log of all services performed for the City shall be maintained at the office of the Contractor and shall be available for inspection by City personnel during normal business hours as per PUC. For each City tow service, the log shall contain the following minimums:

1. Date of activity;
2. Time;
3. Location;
4. Vehicle/item description (make, model, year, color(s), license number or VIN);
5. Disposition of vehicle/item;
6. Total towing charges; and
7. Name of tow truck operator and tow truck number.

K. Storage Lot

The Contractor's storage lot shall be within a twenty-five (25) mile radius of the City of Black Hawk.

The Contractor shall provide sufficient lot space to accommodate a minimum of thirty (30) towed vehicles per month. The lot shall be equipped with appropriate locks and sufficient lighting to ensure the security of the vehicles towed at the City's request.

L. Towing Unit Requirements

The Contractor shall have at least two (2) towing vehicles, including one operable four-wheel drive vehicle, in their fleet of vehicles. Subcontractors may not be used to meet this minimum requirement.

A heavy-duty towing unit will be used whenever a vehicle to be towed has three (3) or more axles or has a gross weight in excess of ten thousand (10,000) pounds. A heavy-

duty tow unit may also be requested by the Chief of Police or his designee if he feels a heavy-duty tow is warranted. The Contractor with this capability will be given these tows. If more than one (1) Contractor has this capability, these types of tows will be rotated between them.

Towing units will be required to safely tow vehicles in accordance with normally accepted towing procedures.

Minimum towing vehicle requirements are dolly and winching capabilities, as promulgated by the PUC, as those requirements may be amended.

Each tow vehicle must carry adequate supplies to accomplish debris removal (Section "B").

The Contractor must be able to return vehicles to an upright towable position, safely, for removal in a reasonable amount of time.

**RESOLUTION 26-2014, A
RESOLUTION
APPROVING THE
SERVICE AGREEMENT
FOR VEHICLE TOWING
SERVICES BETWEEN
THE CITY OF BLACK
HAWK AND D & J
TOWING AND
RECOVERY**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 6 -2014

TITLE: A RESOLUTION APPROVING THE SERVICE AGREEMENT FOR VEHICLE TOWING SERVICES BETWEEN THE CITY OF BLACK HAWK AND D & J TOWING AND RECOVERY.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF BLACK HAWK, COLORADO, THAT:

Section 1. The Service Agreement for Vehicle Towing Services between the City of Black Hawk and D & J Towing and Recovery, attached hereto as **Exhibit A**, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

RESOLVED AND PASSED this _____ day of _____, 2014.

David D. Spellman, Mayor

ATTEST:

Kelly K. Stevens, CMC, Deputy City Clerk

SERVICE AGREEMENT
CITY OF BLACK HAWK, COLORADO

TITLE: VEHICLE TOWING SERVICES

CONTRACT NO.:

TABLE OF CONTENTS

Section I	General Terms and Conditions
Section II	Obligations of the City and the Contractor
Section III	Special Conditions
Section IV	Payment and Fee Schedule for Towing Services
Section V	Insurance Requirements
Section VI	Change Orders or Extensions
Section VII	Charter, Laws and Ordinances
Section VIII	Equal Employment Opportunity
Section IX	Termination of Contract
Section X	Miscellaneous
Exhibit A	Requirements of the Contractor

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2011 by and between the City of Black Hawk, Colorado (the "City") and NI 1, LLC (the "Contractor").

WITNESSETH:

WHEREAS, the City intends that the Contractor shall provide towing and related services for City-owned vehicles and police tows as provided within this Agreement and any addenda thereto;

WHEREAS, it is in the best interests of the public that the City designate the Contractor to provide towing and related services to the City; and

WHEREAS, the Contractor agrees to provide all authorized towing and related services for City-owned vehicles and police tows as provided within this Agreement and any addenda thereto.

NOW, THEREFORE, the City and the Contractor, for the consideration hereinafter set forth, agree as follows:

SECTION I. GENERAL TERMS AND CONDITIONS

A. This Agreement shall be effective 12:01 a.m., on the _____ day of _____, 2011, and shall continue for a period of one (1) year. If the Contractor's service is satisfactory during this period of time, the City reserves the right to renew this Agreement for additional one year terms.

B. All work performed by the Contractor shall be authorized by a duly authorized officer, agent or representative of the City prior to the Contractor undertaking performance. This Agreement does not guarantee to the Contractor any work or create an exclusive contract.

C. The Contractor shall inform the City in writing of any subcontractors or firms hired by the Contractor to perform work in connection with this Agreement and shall keep the City informed of any changes. Unless approved in writing by the City, subcontractors may only be used to perform work in unusual circumstances, and shall not be used to substitute for the minimum equipment required by this Agreement. The Contractor shall be responsible for the performance of any subcontractor or firm hired by the Contractor. Nothing contained herein shall create any contractual relationship between the City and a subcontractor or a firm hired by the Contractor.

D. The Contractor and its personnel shall remain the agents and employees of the Contractor and are not, nor shall be construed to be, agents or employees of the City even though the City may use their services under the terms of this Agreement.

E. The Contractor shall be responsible for any injury to persons or damage to property from negligent acts, errors or omissions of the Contractor, its subcontractors, agents and employees.

SECTION H. OBLIGATIONS OF THE CITY AND THE CONTRACTOR

The City shall:

- A. Provide full information, including a detailed scope as to its service requirements.
- B. Give prompt notice to the Contractor whenever the City observes or otherwise becomes aware of any discrepancies in the services provided and the services requested.
- C. Furnish or direct the Contractor to provide at the City's expense any necessary additional services.

The Contractor shall:

- A. Perform services as provided within this Agreement and "Requirements of Contractor" attached hereto as **Exhibit A** and incorporated herein by this reference and
- B. Obtain a City of Black Hawk Business License pursuant to Article 1 of Chapter 6 of the Black Hawk Municipal Code.

SECTION HI. SPECIAL CONDITIONS

A. The Contractor shall be licensed by the Colorado Public Utilities Commission (the "PUC") and it must comply at all times with the rules and regulations promulgated by the PUC. Revocation of the license by the PUC will subject this Agreement to immediate termination. Also, all towing vehicle operators must possess a valid Colorado Driver's License of the proper class.

B. The Chief of Police and the Contractor shall review claims for loss or damage settled by the Contractor. If substantiated, the Contractor shall pay all claims. If the City is advised of a claim, they will advise the Contractor of the claim and the same procedure of review and settlement stated above will apply.

C. The City shall not deputize the Contractor, its drivers or its employees, nor shall any of the Contractor's vehicles or trucks be required to carry flashing red lights. All vehicles and trucks shall be operated in compliance with all traffic regulations of the City, unless otherwise directed by a City of Black Hawk police officer.

D. In order to assure acceptable standards of performance, it is specifically agreed and understood that the City has entered into this Agreement in reliance on its inspection and investigation of the establishment, facilities, business reputation and other general qualifications of the Contractor. In order to assure that these standards of performance are maintained during the term of this Agreement, there shall be no change in ownership of the Contractor without the prior approval of the City.

SECTION IV. PAYMENT AND FEE SCHEDULE FOR TOWING SERVICES

The Contractor agrees to accept as full payment for towing services the following amounts of compensation:

TOWING CHARGES

	<u>DAY</u>	<u>NIGHT</u>
Business Hours	8:00 a.m. to 5:00 p.m.	5:01 p.m. to 7:59 a.m.

Private Property fees: set by PUC

All other fees: Black Hawk fees will be consistent with approved fees established by the Colorado State Patrol's annual fee review. Contractor will provide City with copy of approved fees annually.

- A. The amounts set forth above shall be firm for a period of one year. All fees will be collected at the Contractor's office.
- B. If the City requests a vehicle to be impounded, the Contractor shall collect at its office the fees for the towing and storage of the vehicle from the vehicle owner or other person authorized to receive the vehicle. The fees collected shall be in the amounts set forth above. If the tow sheet "Police Hold" box is not checked, the vehicle can be released to the Registered Owner or authorized person without verbal or written authorization from the Chief of Police or his designee for that vehicle. Police Holds shall be released in writing from the Chief of Police or his designee. Any motor vehicle ordered to be held pending investigation by the Chief of Police or his designee or other law enforcement agency shall not accrue

storage charges during the first 7 days of the vehicle is held. After the initial 7 days a maximum of 60 days storage can be charged. Towing charges on vehicles held pending investigation shall be paid by the vehicle owner or other person authorized to receive the vehicle unless a supervisor of the Chief of Police or his designee determines that these charges should be paid by the City.

- C. Releases of impounded vehicles shall be by appointment only. The regular hours of the impound lot shall be from 8:00 a.m. until 5:00 p.m., Monday through Friday. If a vehicle cannot be picked up during regular business hours, there shall be an after-hours/weekend charge of \$66.00 for the release of a vehicle.
- D. Each month the Chief of Police or his designee shall pay the Contractor for all authorized services performed for the City. The sum shall be calculated according to the charges set forth above.

SECTION V. INSURANCE REQUIREMENTS

A. The parties understand and agree that the City is relying on the Colorado Governmental Immunity Act, § 24-10-101, et seq., 10A C.R.S., as amended, and it does not waive nor 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.

B. The Contractor shall procure and maintain, and shall require any subcontractor to procure and maintain, the minimum insurance coverage listed below. The coverage shall be procured and maintained from a company satisfactory to the City and in a form satisfactory to the City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor during the period of this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- C. The Contractor shall provide and maintain the following minimum coverage:
 - 1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and employer's liability insurance, with minimum limits of six hundred thousand dollars (\$600,000) - each accident, six hundred thousand dollars (\$600,000) disease - policy limit, and six hundred thousand dollars (\$600,000) disease - each employee. Evidence

of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

2. General liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including independent contractors, products, and completed operations). The policy shall contain a severability of interest provision.
3. Comprehensive automobile liability insurance with minimum limits of six hundred thousand dollars (\$600,000) for each person and one million dollars (\$1,000,000) for each occurrence.

D. The one million thousand dollar general liability insurance policy shall be endorsed to include the City and the City's officers and employees as additional insured. Every policy stipulated above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City shall be excess and not contributory insurance to that provided by the Contractor. No additional insured endorsement to the worker's compensation policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required under this Agreement.

E. The certificate of insurance shall be completed by the Contractor's insurance agent and shall be reviewed and approved by the City prior to commencement of the Agreement. The certificate shall evidence that the policies meet the required coverage, conditions, and minimum limits and are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City Clerk's Office
City of Black Hawk
P.O. Box 68
Black Hawk, CO 80422

F. Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and

all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Contractor to the City upon demand, or the City may off-set the cost of the premiums against any monies due to the Contractor from the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

SECTION VI. CHANGE ORDERS OR EXTENSIONS

The City may, from time to time, require changes in the scope of the services the Contractor performs. All changes in service shall be incorporated in written Change Orders to this Agreement, including any changes in the increase or decrease of the amount of the Contractor's compensation. All Change Orders shall be mutually agreed upon by and between the City and the Contractor.

SECTION VII. CHARTER, LAWS AND ORDINANCES

During the term of this Agreement the Contractor agrees to observe all federal and state laws, the City of Black Hawk's Ordinances and Charter, and all rules and regulations issued pursuant thereto, which in any manner affect or govern the services contemplated under this Agreement.

SECTION VIII. EQUAL EMPLOYMENT OPPORTUNITY

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall adhere to acceptable affirmative action guidelines in selecting employees. The Contractor shall ensure that the employees are treated, during employment, without regard to their race, color, religion, sex or national origin. The Contractor shall not discriminate when employing, upgrading, demoting, transferring, recruiting, terminating, compensating, or training an employee. This list is by way of example and not limitation. Furthermore, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. All solicitations or advertisements for employees placed by or on behalf of the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. The Contractor shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the city, state and federal agencies may require.

E. The Contractor agrees to comply with such rules, regulations, and guidelines as the city, the state, or federal agencies may issue to prevent discrimination based upon race, color, religion, sex or national origin.

SECTION IX. TERMINATION OF CONTRACT

A. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this Agreement, or if the work is not being performed in accordance with the rules and regulations of the PUC, the City shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date of termination.

B. The Contractor agrees to perform all services to the satisfaction of the City. If, in the opinion of the City, the Contractor's performance is unsatisfactory, the City reserves the right to terminate this Agreement by giving fifteen (15) days' written notice to the Contractor of such termination.

C. If this Agreement is terminated for any reason, all finished or unfinished services, reports, or other material prepared by the Contractor under this Agreement shall, at the option of the City, become its property.

SECTION X. MISCELLANEOUS

A. This Agreement consists of this Agreement, **Exhibit A** and such written addenda hereto as the parties subsequently agree shall be in effect.

B. The services contemplated under this Agreement shall not be assigned, sublet or transferred without the prior written consent of the City.

C. Any notice required under this Agreement shall be sent to the parties as follows:

City of Black Hawk
Attn: City Manager
P.O. Box 68
Black Hawk, CO 80422

Contractor:

D. The captions and headings in this Agreement are for convenience only and are not to be construed as defining or limiting in any way the scope or intent of this Agreement.

E. This Agreement shall be construed under the laws of the State of Colorado.

F. If any of the terms of this Agreement are in conflict with any rule of law or statutory provision of the State of Colorado, then the terms of this Agreement which may conflict with such laws shall be deemed inoperative and null and void to the extent they may be in conflict therewith, but the remaining provisions of this Agreement shall remain in full force and effect.

G. ILLEGAL ALIENS.

1. Prohibited Acts. Contractor shall not:

a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

b. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

2. Verification.

a. Contractor has verified or attempted to verify through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the basic pilot program prior to entering into this Agreement, that Contractor shall apply to participate in the basic pilot program every three (3) months until Contractor is accepted or this Agreement has been completed, whichever is earlier.

b. Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

c. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

3. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

IN WITNESS WHEREOF, the City of Black Hawk and the Contractor have caused this Agreement to be executed this _____ day of _____, 20_____

CITY OF BLACK HAWK, COLORADO

By: _____
David Spellman, Mayor

ATTEST:

Jeanie Magno, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

CONTRACTOR

By: _____ *Fe) ev_e . / - % - c / A ecOU - e / tX*

1/17/14

Name: vv-rt 41/ze^o ~~gr~~

Title: G.c.c.)"- Cif .

EXHIBIT A

REQUIREMENTS OF THE CONTRACTOR

A. Protection and Handling of Vehicles

It shall be the duty of the Contractor to protect all motor vehicles in its custody, and the Contractor shall be liable for any loss or damage caused by the negligence of its employees, agents, or servants. All vehicles must be towed in accordance with the manufacturer's specifications.

Vehicles to be stored by the Contractor shall be secured at the scene of the tow and removed directly to the Contractor's lot. The Contractor understands and agrees that the City will not be responsible for any fees associated with storage of any vehicle on the Contractor's lot. The vehicle shall not be opened or tampered with while enroute. Upon arrival at the lot, entrance and access to the vehicle shall be limited to: wheel tie-down equipment removal, locking of transmission gear or only as required by the performance of legitimate business.

All personal property is to remain in the vehicle once the vehicle is in the custody of the towing agency and shall be secured inside that vehicle and be the responsibility of the towing agency while the vehicle is in their custody.

Vehicles towed as evidence will be delivered to a locked storage area located at the Contractor's place of business or any other location specified by the Chief of Police of his designee and will be accompanied by the Chief of Police or his designee until they are appropriately secured.

After any evidence processing has been completed, the City will notify the owner to pick-up their vehicle. If the owner should fail to do so within seventy-two (72) hours, excluding weekends and holidays, the City will request vehicle removal from the City's lot by the Contractor to the Contractor's storage lot. All expenses incurred from the time the vehicle is picked-up at the City's lot will be at the owner's expense. The expenses are, but are not limited to, towing, special equipment needs and/or storage. The failure of the owner to recover the vehicle at the City's lot will cause the vehicle to be considered abandoned and will be treated as such by the Contractor from that time on.

The Contractor is required to store all other vehicles impounded during the term of the Contractor's Agreement with the City until such vehicles are lawfully released, sold or disposed of as prescribed in Colo. Rev. Stat. § 42-4-1801 to 1815.

B. Removing Debris

The Contractor's tow unit operator shall be required to remove all glass and debris deposited upon the roadway by the disabled vehicle that he has received authorization to tow. In addition, any grease or oil slick deposited on the roadway must be covered with dirt or a grease absorbing material. All spills shall be handled in accordance with all existing rules and regulations as prescribed by the E.P.A. and under the direction of the Black Hawk Fire Department.

C. Property in Vehicles

The Contractor shall immediately notify the Chief of Police or his designee of the existence of any property of substantial value that is found in any vehicle towed at the request of the Chief of Police or his designee. Substantial value for the purposes of this paragraph shall be property estimated by the Contractor to be in excess of four hundred dollars (\$400.00) in value. After said notification, the Contractor will request that the Chief of Police or his designee be dispatched to take custody of any such property. All other property of little or no value left inside abandoned vehicles may be disposed of at the discretion of the Contractor after the abandoned vehicle process is completed and said vehicle is available for sale or destruction.

D. Suspected Criminal Activity

Tow operators and their dispatchers, acting in the course of their duties as defined by this document, shall immediately inform the Chief of Police or his designee whenever they observe or learn about any activity of a suspected criminal nature or any other circumstance that reasonably appears to require police action.

E. Response Time

If a tow unit is unable to respond within forty-five (45) minutes to any official request from the City for any reason, the Contractor shall so inform the requesting City department and will state the reason for the inability to respond to the request and the estimated response time. If deemed necessary by the requesting department or the Contractor, a call to another tow company to respond to that tow may be initiated. The Contractor shall bear any and all additional costs related to the hiring and use of another firm's tow unit(s) if that firm is outside of those contracted by the City and under this same contract. It is the responsibility of the Contractor to arrange for the use of another firm's tow unit(s) for any emergency situation that causes the Contractor to be unable to respond to the City's request for services. If employing another tow service is caused by the failure of the Contractor to maintain the required number of operating tow units as stated in this document (Section "L"), the Contractor shall bear any and all additional

expense of hiring another firm's tow units. Such an occurrence could cause cancellation of the towing services unless the City receives a written report detailing the mitigating circumstances and accepts the reasons therein. Any vehicle towed by any other towing company for the Contractor shall be stored at the Contractor's cost.

E. Business Hours

The Contractor's lot shall be open, at a minimum, from 8:30 a.m. to 4:30 p.m., Monday through Friday, to release vehicles to those persons authorized to receive them. An after hours release shall be at the discretion of the Contractor, unless a release is specifically requested by the Chief of Police or his designee. The Contractor is entitled to take holidays in accordance with the City's holiday schedule; however, the Contractor is responsible for providing twenty-four (24) hour, seven (7) day-a-week towing service for the City in emergencies and as deemed necessary by the Chief of Police or his designee. Releases of vehicles shall be done by appointment, whether during normal lot hours, or after hours and on weekends.

G. Fee Collection

The Contractor shall collect fees for the towing and storage of vehicles requested to be impounded by the City, however, the City shall not be responsible for the payment of any fees associated with vehicle storage on the Contractor's lot. The fees collected shall be in the amounts set forth in the Agreement.

The amounts shown in the Agreement shall be firm for a period of one (1) year. All fees will be collected at the Contractor's office.

No fees shall be accepted by the Contractor on any vehicle impounded by the Chief of Police or his designee unless proper written authorization for release has been obtained for the vehicle.

H. Rates and Charges

Each month the Chief of Police or his designee shall transfer to the Contractor a sum calculated according to the charges set forth in the Agreement and contracted to, for services performed by the Contractor for the City of Black Hawk.

Any motor vehicle ordered to be held pending investigation by the Chief of Police or his designee or other law enforcement agency shall accrue no storage fees chargeable to the City during the period for which the vehicle is held. Towing charges on vehicles held

pending investigation shall be paid by the vehicle owner or other person authorized to receive the vehicle unless the Chief of Police or his designee determines that these charges should be paid by the City.

I. Disposal of Abandoned Vehicles

Vehicle disposal by the Contractor will be accomplished in the manner set forth by state statutes on the required Report of Abandoned Vehicle Form prescribed and supplied by the Colorado Department of Revenue.

J. Service Log

A log of all services performed for the City shall be maintained at the office of the Contractor and shall be available for inspection by City personnel during normal business hours as per PUC. For each City tow service, the log shall contain the following minimums:

1. Date of activity;
2. Time;
3. Location;
4. Vehicle/item description (make, model, year, color(s), license number or VIN);
5. Disposition of vehicle/item;
6. Total towing charges; and
7. Name of tow truck operator and tow truck number.

K. Storage Lot

The Contractor's storage lot shall be within a twenty-five (25) mile radius of the City of Black Hawk.

The Contractor shall provide sufficient lot space to accommodate a minimum of thirty (30) towed vehicles per month. The lot shall be equipped with appropriate locks and sufficient lighting to ensure the security of the vehicles towed at the City's request.

L. Towing Unit Requirements

The Contractor shall have at least two (2) towing vehicles, including one operable four-wheel drive vehicle, in their fleet of vehicles. Subcontractors may not be used to meet this minimum requirement.

A heavy-duty towing unit will be used whenever a vehicle to be towed has three (3) or more axles or has a gross weight in excess of ten thousand (10,000) pounds. A heavy-

duty tow unit may also be requested by the Chief of Police or his designee if he feels a heavy-duty tow is warranted. The Contractor with this capability will be given these tows. If more than one (1) Contractor has this capability, these types of tows will be rotated between them.

Towing units will be required to safely tow vehicles in accordance with normally accepted towing procedures.

Minimum towing vehicle requirements are dolly and winching capabilities, as promulgated by the PUC, as those requirements may be amended.

Each tow vehicle must carry adequate supplies to accomplish debris removal (Section "B").

The Contractor must be able to return vehicles to an upright towable position, safely, for removal in a reasonable amount of time.

**RESOLUTION 27-2014, A
RESOLUTION
APPROVING THE
SERVICE AGREEMENT
FOR VEHICLE TOWING
SERVICES BETWEEN
THE CITY OF BLACK
HAWK AND HELP
TOWING**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No..31 -2014

TITLE: A RESOLUTION APPROVING THE SERVICE AGREEMENT FOR VEHICLE TOWING SERVICES BETWEEN THE CITY OF BLACK HAWK AND HELP TOWING

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF BLACK HAWK, COLORADO, THAT:

Section 1. The Service Agreement for Vehicle Towing Services between the City of Black Hawk and Help Towing, attached hereto as **Exhibit A**, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

RESOLVED AND PASSED this _____ day of _____, 2014.

David D. Spellman, Mayor

ATTEST:

Kelly K. Stevens, CMC, Deputy City Clerk

SERVICE AGREEMENT
CITY OF BLACK HAWK, COLORADO

TITLE: VEHICLE TOWING SERVICES
CONTRACT NO.:

TABLE OF CONTENTS

Section I	General Terms and Conditions
Section II	Obligations of the City and the Contractor
Section III	Special Conditions
Section IV	Payment and Fee Schedule for Towing Services
Section V	Insurance Requirements
Section VI	Change Orders or Extensions
Section VII	Charter, Laws and Ordinances
Section VIII	Equal Employment Opportunity
Section IX	Termination of Contract
Section X	Miscellaneous
Exhibit A	Requirements of the Contractor

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2011, by and between the City of Black Hawk, Colorado (the "City") and 41, 1701, 15 (the "Contractor").

WITNESSETH:

WHEREAS, the City intends that the Contractor shall provide towing and related services for City-owned vehicles and police tows as provided within this Agreement and any addenda thereto;

WHEREAS, it is in the best interests of the public that the City designate the Contractor to provide towing and related services to the City; and

WHEREAS, the Contractor agrees to provide all authorized towing and related services for City-owned vehicles and police tows as provided within this Agreement and any addenda thereto.

NOW, THEREFORE, the City and the Contractor, for the consideration hereinafter set forth, agree as follows:

SECTION I. GENERAL TERMS AND CONDITIONS

A. This Agreement shall be effective 12:01 a.m., on the _____ day of _____, 20____ and shall continue for a period of one (1) year. If the Contractor's service is satisfactory during this period of time, the City reserves the right to renew this Agreement for additional one year terms.

B. All work performed by the Contractor shall be authorized by a duly authorized officer, agent or representative of the City prior to the Contractor undertaking performance. This Agreement does not guarantee to the Contractor any work or create an exclusive contract.

C. The Contractor shall inform the City in writing of any subcontractors or firms hired by the Contractor to perform work in connection with this Agreement and shall keep the City informed of any changes. Unless approved in writing by the City, subcontractors may only be used to perform work in unusual circumstances, and shall not be used to substitute for the minimum equipment required by this Agreement. The Contractor shall be responsible for the performance of any subcontractor or firm hired by the Contractor. Nothing contained herein shall create any contractual relationship between the City and a subcontractor or a firm hired by the Contractor.

D. The Contractor and its personnel shall remain the agents and employees of the Contractor and are not, nor shall be construed to be, agents or employees of the City even though the City may use their services under the terms of this Agreement.

E. The Contractor shall be responsible for any injury to persons or damage to property from negligent acts, errors or omissions of the Contractor, its subcontractors, agents and employees.

SECTION H. OBLIGATIONS OF THE CITY AND THE CONTRACTOR

The City shall:

- A. Provide full information, including a detailed scope as to its service requirements.
- B. Give prompt notice to the Contractor whenever the City observes or otherwise becomes aware of any discrepancies in the services provided and the services requested.
- C. Furnish or direct the Contractor to provide at the City's expense any necessary additional services.

The Contractor shall:

- A. Perform services as provided within this Agreement and "Requirements of Contractor" attached hereto as **Exhibit A** and incorporated herein by this reference and
- B. Obtain a City of Black Hawk Business License pursuant to Article 1 of Chapter 6 of the Black Hawk Municipal Code.

SECTION III. SPECIAL CONDITIONS

A. The Contractor shall be licensed by the Colorado Public Utilities Commission (the "PUC") and it must comply at all times with the rules and regulations promulgated by the PUC. Revocation of the license by the PUC will subject this Agreement to immediate termination. Also, all towing vehicle operators must possess a valid Colorado Driver's License of the proper class.

B. The Chief of Police and the Contractor shall review claims for loss or damage settled by the Contractor. If substantiated, the Contractor shall pay all claims. If the City is advised of a claim, they will advise the Contractor of the claim and the same procedure of review and settlement stated above will apply.

C. The City shall not deputize the Contractor, its drivers or its employees, nor shall any of the Contractor's vehicles or trucks be required to carry flashing red lights. All vehicles and trucks shall be operated in compliance with all traffic regulations of the City, unless otherwise directed by a City of Black Hawk police officer.

D. In order to assure acceptable standards of performance, it is specifically agreed and understood that the City has entered into this Agreement in reliance on its inspection and investigation of the establishment, facilities, business reputation and other general qualifications of the Contractor. In order to assure that these standards of performance are maintained during the term of this Agreement, there shall be no change in ownership of the Contractor without the prior approval of the City.

SECTION IV. PAYMENT AND FEE SCHEDULE FOR TOWING SERVICES

The Contractor agrees to accept as full payment for towing services the following amounts of compensation:

TOWING CHARGES

	<u>DAY</u>	<u>NIGHT</u>
Business Hours	8:00 a.m. to 5:00 p.m.	5:01 p.m. to 7:59 a.m.

Private Property fees: set by PUC

All other fees: Black Hawk fees will be consistent with approved fees established by the Colorado State Patrol's annual fee review. Contractor will provide City with copy of approved fees annually.

- A. The amounts set forth above shall be firm for a period of one year. All fees will be collected at the Contractor's office.
- B. If the City requests a vehicle to be impounded, the Contractor shall collect at its office the fees for the towing and storage of the vehicle from the vehicle owner or other person authorized to receive the vehicle. The fees collected shall be in the amounts set forth above. If the tow sheet "Police Hold" box is not checked, the vehicle can be released to the Registered Owner or authorized person without verbal or written authorization from the Chief of Police or his designee for that vehicle. Police Holds shall be released in writing from the Chief of Police or his designee. Any motor vehicle ordered to be held pending investigation by the Chief of Police or his designee or other law enforcement agency shall not accrue

storage charges during the first 7 days of the vehicle is held. After the initial 7 days a maximum of 60 days storage can be charged. Towing charges on vehicles held pending investigation shall be paid by the vehicle owner or other person authorized to receive the vehicle unless a supervisor of the Chief of Police or his designee determines that these charges should be paid by the City.

- C. Releases of impounded vehicles shall be by appointment only. The regular hours of the impound lot shall be from 8:00 a.m. until 5:00 p.m., Monday through Friday. If a vehicle cannot be picked up during regular business hours, there shall be an after-hours/weekend charge of \$66.00 for the release of a vehicle.
- D. Each month the Chief of Police or his designee shall pay the Contractor for all authorized services performed for the City. The sum shall be calculated according to the charges set forth above.

SECTION V. INSURANCE REQUIREMENTS

A. The parties understand and agree that the City is relying on the Colorado Governmental Immunity Act, § 24-10-101, et seq., 10A C.R.S., as amended, and it does not waive nor 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.

B. The Contractor shall procure and maintain, and shall require any subcontractor to procure and maintain, the minimum insurance coverage listed below. The coverage shall be procured and maintained from a company satisfactory to the City and in a form satisfactory to the City. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor during the period of this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

- C. The Contractor shall provide and maintain the following minimum coverage:
 - 1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and employer's liability insurance, with minimum limits of six hundred thousand dollars (\$600,000) - each accident, six hundred thousand dollars (\$600,000) disease - policy limit, and six hundred thousand dollars (\$600,000) disease - each employee. Evidence

of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

2. General liability insurance with minimum combined single limits of one million six hundred thousand dollars (\$61,900,000) each occurrence and one million six hundred thousand dollars (\$61,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including independent contractors, products, and completed operations). The policy shall contain a severability of interest provision.
3. Comprehensive automobile liability insurance with minimum limits of six hundred thousand dollars (\$600,000) for each person and one million dollars (\$1,000,000) one-hundred-fifty-thousand dollars (\$150,000) for each person. The policy shall include coverage for bodily injury, property damage, and medical payments. The policy shall contain a severability of interest provision.

D. The six-hundred-thousand one million thousand dollar general liability insurance policy shall be endorsed to include the City and the City's officers and employees as additional insured. Every policy stipulated above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City shall be excess and not contributory insurance to that provided by the Contractor. No additional insured endorsement to the worker's compensation policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under any policy required under this Agreement.

E. The certificate of insurance shall be completed by the Contractor's insurance agent and shall be reviewed and approved by the City prior to commencement of the Agreement. The certificate shall evidence that the policies meet the required coverage, conditions, and minimum limits and are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City Clerk's Office
City of Black Hawk
P.O. Box 68
Black Hawk, CO 80422

F. Failure on the part of the Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the Contractor to the City upon demand, or the City may off-set the cost of the premiums against any monies due to the Contractor from the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

SECTION VI. CHANGE ORDERS OR EXTENSIONS

The City may, from time to time, require changes in the scope of the services the Contractor performs. All changes in service shall be incorporated in written Change Orders to this Agreement, including any changes in the increase or decrease of the amount of the Contractor's compensation. All Change Orders shall be mutually agreed upon by and between the City and the Contractor.

SECTION VII. CHARTER LAWS AND ORDINANCES

During the term of this Agreement the Contractor agrees to observe all federal and state laws, the City of Black Hawk's Ordinances and Charter, and all rules and regulations issued pursuant thereto, which in any manner affect or govern the services contemplated under this Agreement.

SECTION VIII. EQUAL EMPLOYMENT OPPORTUNITY

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall adhere to acceptable affirmative action guidelines in selecting employees. The Contractor shall ensure that the employees are treated, during employment, without regard to their race, color, religion, sex or national origin. The Contractor shall not discriminate when employing, upgrading, demoting, transferring, recruiting, terminating, compensating, or training an employee. This list is by way of example and not limitation. Furthermore, the Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. All solicitations or advertisements for employees placed by or on behalf of the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. The Contractor shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the city, state and federal agencies may require.

E. The Contractor agrees to comply with such rules, regulations, and guidelines as the city, the state, or federal agencies may issue to prevent discrimination based upon race, color, religion, sex or national origin.

SECTION IX. TERMINATION OF CONTRACT

A. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, agreements, or stipulations of this Agreement, or if the work is not being performed in accordance with the rules and regulations of the PUC, the City shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date of termination.

B. The Contractor agrees to perform all services to the satisfaction of the City. If, in the opinion of the City, the Contractor's performance is unsatisfactory, the City reserves the right to terminate this Agreement by giving fifteen (15) days' written notice to the Contractor of such termination.

C. If this Agreement is terminated for any reason, all finished or unfinished services, reports, or other material prepared by the Contractor under this Agreement shall, at the option of the City, become its property.

SECTION X. MISCELLANEOUS

A. This Agreement consists of this Agreement, **Exhibit A** and such written addenda hereto as the parties subsequently agree shall be in effect.

B. The services contemplated under this Agreement shall not be assigned, sublet or transferred without the prior written consent of the City.

C. Any notice required under this Agreement shall be sent to the parties as follows:

City of Black Hawk
Attn: City Manager

P.O. Box 68
Black Hawk, CO 80422

Contractor:

D. The captions and headings in this Agreement are for convenience only and are not to be construed as defining or limiting in any way the scope or intent of this Agreement.

E. This Agreement shall be construed under the laws of the State of Colorado.

F. If any of the terms of this Agreement are in conflict with any rule of law or statutory provision of the State of Colorado, then the terms of this Agreement which may conflict with such laws shall be deemed inoperative and null and void to the extent they may be in conflict therewith, but the remaining provisions of this Agreement shall remain in full force and effect.

G. ILLEGAL ALIENS.

1. Prohibited Acts. Contractor shall not:

a. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

b. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

2. Verification.

a. Contractor has verified or attempted to verify through participation in the basic pilot program administered by the U.S. Department of Homeland Security that Contractor does not employ any illegal aliens and, if Contractor is not accepted into the basic pilot program prior to entering into this Agreement, that Contractor shall apply to participate in the basic pilot program every three (3) months until Contractor is accepted or this Agreement has been completed, whichever is earlier.

b. Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

c. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

3. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

IN WITNESS WHEREOF, the City of Black Hawk and the Contractor have caused this Agreement to be executed this _____ day of _____, 20

CITY OF BLACK HAWK, COLORADO

By: _____
David Spellman, Mayor

ATTEST:

Jeanie Magno, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

CONTRACTOR

By: iret^p/-0-1-44y _____

Name: lc-e 1-iy _____ 

Title: a _____

EXHIBIT A

REQUIREMENTS OF THE CONTRACTOR

A. Protection and Handling of Vehicles

It shall be the duty of the Contractor to protect all motor vehicles in its custody, and the Contractor shall be liable for any loss or damage caused by the negligence of its employees, agents, or servants. All vehicles must be towed in accordance with the manufacturer's specifications.

Vehicles to be stored by the Contractor shall be secured at the scene of the tow and removed directly to the Contractor's lot. The Contractor understands and agrees that the City will not be responsible for any fees associated with storage of any vehicle on the Contractor's lot. The vehicle shall not be opened or tampered with while enroute. Upon arrival at the lot, entrance and access to the vehicle shall be limited to: wheel tie-down equipment removal, locking of transmission gear or only as required by the performance of legitimate business.

All personal property is to remain in the vehicle once the vehicle is in the custody of the towing agency and shall be secured inside that vehicle and be the responsibility of the towing agency while the vehicle is in their custody.

Vehicles towed as evidence will be delivered to a locked storage area located at the Contractors place of business or any other location specified by the Chief of Police of his designee and will be accompanied by the Chief of Police or his designee until they are appropriately secured.

After any evidence processing has been completed, the City will notify the owner to pick-up their vehicle. If the owner should fail to do so within seventy-two 72 hours, excluding weekends and holidays, the City will request vehicle removal from the City's lot by the Contractor to the Contractor's storage lot. All expenses incurred from the time the vehicle is picked-up at the City's lot will be at the owner's expense. The expenses are, but are not limited to, towing, special equipment needs and/or storage. The failure of the owner to recover the vehicle at the City's lot will cause the vehicle to be considered abandoned and will be treated as such by the Contractor from that time on.

The Contractor is required to store all other vehicles impounded during the term of the Contractor's Agreement with the City until such vehicles are lawfully released, sold or disposed of as prescribed in Colo. Rev. Stat. § 42-4-1801 to 1815.

B. Removing Debris

The Contractor's tow unit operator shall be required to remove all glass and debris deposited upon the roadway by the disabled vehicle that he has received authorization to tow. In addition, any grease or oil slick deposited on the roadway must be covered with dirt or a grease absorbing material. All spills shall be handled in accordance with all existing rules and regulations as prescribed by the E.P.A. and under the direction of the Black Hawk Fire Department.

C. Property in Vehicles

The Contractor shall immediately notify the Chief of Police or his designee of the existence of any property of substantial value that is found in any vehicle towed at the request of the Chief of Police or his designee. Substantial value for the purposes of this paragraph shall be property estimated by the Contractor to be in excess of four hundred dollars (\$400.00) in value. After said notification, the Contractor will request that the Chief of Police or his designee be dispatched to take custody of any such property. All other property of little or no value left inside abandoned vehicles may be disposed of at the discretion of the Contractor after the abandoned vehicle process is completed and said vehicle is available for sale or destruction.

D. Suspected Criminal Activity

Tow operators and their dispatchers, acting in the course of their duties as defined by this document, shall immediately inform the Chief of Police or his designee whenever they observe or learn about any activity of a suspected criminal nature or any other circumstance that reasonably appears to require police action.

E. Response Time

If a tow unit is unable to respond within forty-five (45) minutes to any official request from the City for any reason, the Contractor shall so inform the requesting City department and will state the reason for the inability to respond to the request and the estimated response time. If deemed necessary by the requesting department or the Contractor, a call to another tow company to respond to that tow may be initiated. The Contractor shall bear any and all additional costs related to the hiring and use of another firm's tow unit(s) if that firm is outside of those contracted by the City and under this same contract. It is the responsibility of the Contractor to arrange for the use of another firm's tow unit(s) for any emergency situation that causes the Contractor to be unable to respond to the City's request for services. If employing another tow service is caused by the failure of the Contractor to maintain the required number of operating tow units as stated in this document (Section "L"), the Contractor shall bear any and all additional

expense of hiring another firm's tow units. Such an occurrence could cause cancellation of the towing services unless the City receives a written report detailing the mitigating circumstances and accepts the reasons therein. Any vehicle towed by any other towing company for the Contractor shall be stored at the Contractor's cost.

F. Business Hours

The Contractor's lot shall be open, at a minimum, from 8:30 a.m. to 4:30 p.m., Monday through Friday, to release vehicles to those persons authorized to receive them. An after hours release shall be at the discretion of the Contractor, unless a release is specifically requested by the Chief of Police or his designee. The Contractor is entitled to take holidays in accordance with the City's holiday schedule; however, the Contractor is responsible for providing twenty-four (24) hour, seven (7) day-a-week towing service for the City in emergencies and as deemed necessary by the Chief of Police or his designee. Releases of vehicles shall be done by appointment, whether during normal lot hours, or after hours and on weekends.

G. Fee Collection

The Contractor shall collect fees for the towing and storage of vehicles requested to be impounded by the City, however, the City shall not be responsible for the payment of any fees associated with vehicle storage on the Contractor's lot. The fees collected shall be in the amounts set forth in the Agreement.

The amounts shown in the Agreement shall be firm for a period of one (1) year. All fees will be collected at the Contractor's office.

No fees shall be accepted by the Contractor on any vehicle impounded by the Chief of Police or his designee unless proper written authorization for release has been obtained for the vehicle.

H. Rates and Charges

Each month the Chief of Police or his designee shall transfer to the Contractor a sum calculated according to the charges set forth in the Agreement and contracted to, for services performed by the Contractor for the City of Black Hawk.

Any motor vehicle ordered to be held pending investigation by the Chief of Police or his designee or other law enforcement agency shall accrue no storage fees chargeable to the City during the period for which the vehicle is held. Towing charges on vehicles held

pending investigation shall be paid by the vehicle owner or other person authorized to receive the vehicle unless the Chief of Police or his designee determines that these charges should be paid by the City.

I. Disposal of Abandoned Vehicles

Vehicle disposal by the Contractor will be accomplished in the manner set forth by state statutes on the required Report of Abandoned Vehicle Form prescribed and supplied by the Colorado Department of Revenue.

J. Service Log

A log of all services performed for the City shall be maintained at the office of the Contractor and shall be available for inspection by City personnel during normal business hours as per PUC. For each City tow service, the log shall contain the following minimums:

1. Date of activity;
2. Time;
3. Location;
4. Vehicle/item description (make, model, year, color(s), license number or VIN);
5. Disposition of vehicle/item;
6. Total towing charges; and
7. Name of tow truck operator and tow truck number.

K. Storage Lot

The Contractor's storage lot shall be within a twenty-five (25) mile radius of the City of Black Hawk.

The Contractor shall provide sufficient lot space to accommodate a minimum of thirty (30) towed vehicles per month. The lot shall be equipped with appropriate locks and sufficient lighting to ensure the security of the vehicles towed at the City's request.

L. Towing Unit Requirements

The Contractor shall have at least two (2) towing vehicles, including one operable four-wheel drive vehicle, in their fleet of vehicles. Subcontractors may not be used to meet this minimum requirement.

A heavy-duty towing unit will be used whenever a vehicle to be towed has three (3) or more axles or has a gross weight in excess of ten thousand (10,000) pounds. A heavy-

duty tow unit may also be requested by the Chief of Police or his designee if he feels a heavy-duty tow is warranted. The Contractor with this capability will be given these tows. If more than one (1) Contractor has this capability, these types of tows will be rotated between them.

Towing units will be required to safely tow vehicles in accordance with normally accepted towing procedures.

Minimum towing vehicle requirements are dolly and winching capabilities, as promulgated by the PUC, as those requirements may be amended.

Each tow vehicle must carry adequate supplies to accomplish debris removal (Section "B").

The Contractor must be able to return vehicles to an upright towable position, safely, for removal in a reasonable amount of time.

**101 MARCHANT STREET
ROADWAY EASEMENT
AGREEMENT**

ROADWAY EASEMENT AGREEMENT

THIS ROADWAY EASEMENT AGREEMENT (the "Agreement") is made and entered into this 0⁴⁶ day of ...4p Psi 2014, by and between the City or Black 1 lawk, Colorado (the "City") and JoAnnKerr (the "Owner").

WITNESSETH:

For and in consideration of the sum of ten dollars (\$10.00) to the City paid in hand by the Owner, the receipt of which is hereby acknowledged, the City hereby grants to the owner a roadway easement for use by the Owner, its successors and assigns, lessees, licensees, and agents, of the real property within Church Street described in Exhibit A which is attached hereto and incorporated herein.

Section 1. Grant of Easement by the City. The City does hereby grant to the Owner, its successors and assigns, lessees, licensees, and agents, an easement for that portion of Marchant Street more particularly described in Exhibit A (the "Easement Property"), attached hereto and incorporated herein by this reference, for the purpose of constructing and maintaining Owner's residential structure (the "Improvement") within and upon the Easement Property according to the design and construction plans approved by the City for the improvement.

Section 2. Covenants of the Owner. The Owner hereby represents, covenants, and warrants in favor of the City as follows:

a. The Owner shall protect the Easement Property and adjacent lands from damage caused in whole or in part by acts or omissions of the Owner, its employees, agents, contractors, subcontractors, assigns, lessees, licensees, agents, patrons, invitees, and visitors.

b. In all activities undertaken on property belonging to the City by the Owner or its employees, agents, contractors, subcontractors, successors, assigns, lessees, or licensees, all work shall be completed in a good and workmanlike manner.

Section 3. Insurance. The Owner shall obtain for itself, its agents, successors, assigns, lessees, licensees, and agents, necessary and adequate property damage insurance with limits commensurate with hazards and risks associated with the use of the Easement Property, but in no event less than the liability limits established by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101, *et seq.*, as now in effect or as hereinafter amended.

Section 4. Non-waiver. The failure of the City or the Owner to enforce any provision of this Agreement shall not act as a waiver by the City or the Owner to enforce any other provision of this Agreement.

OWNER

By: *Jo Ann Kerr*
Jo Ann Kerr

STATE OF COLORADO

) ss.

COUNTY OF GILPIN

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 15th day of Apri, 2014, by Jo /Ann

My commission expires: ~~(>9/89/ 2013—~~

**(^s Wyk ARCHER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19934011261
MY COMMISSION EXPIRES SEPT. 09, 2017**

LOanti gAuku-if
Notary Public

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING:

May 14, 2014

SUBJECT: Approval of a Roadway Easement associated with 101 Marchant Street.

SUMMARY

If approved by the Board of Aldermen, the City of Black Hawk shall grant to the Owner of 101 Marchant Street, its successors and assigns, lessees, licensees, and agents, an easement for that portion of Marchant Street more particularly described in Exhibit A, which is attached and incorporated into the agreement.

RECOMMENDATION:

City staff recommends the Board of Aldermen approve the Roadway Easement for that portion of Marchant Street as described in Exhibit A.

RESOLUTION DATE:

May 14, 2014

ORIGINATED BY:

Community Planning &
Development

STAFF PERSON RESPONSIBLE:

Cynthia Linker, CP&D Administrator

DOCUMENTS ATTACHED:

Roadway Easement, Exhibit A

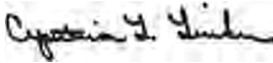
CITY ATTORNEY REVIEW:

Yes No N/A

INITIALS *c--4*11*

SUBMITTED BY:

R VIEW D BY.



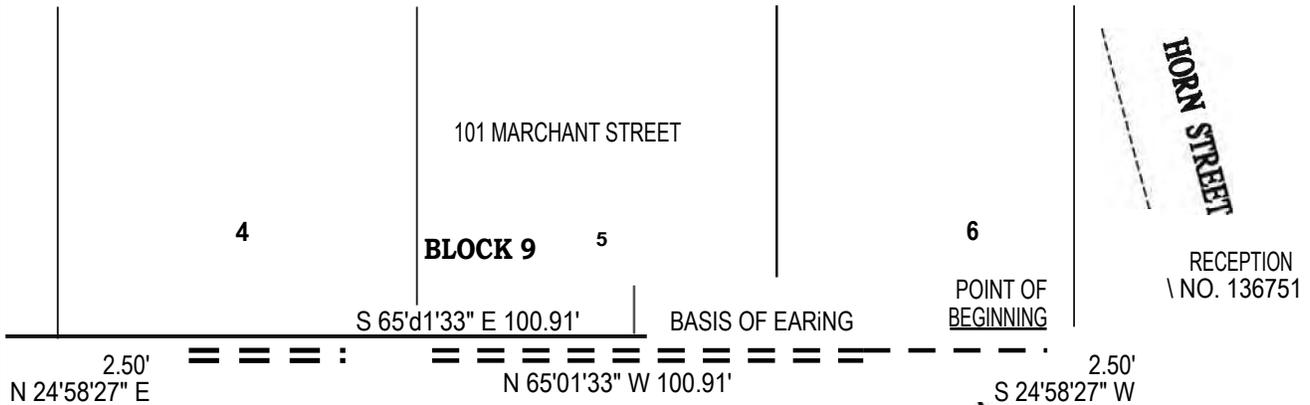
04/30/14

Cynthia Linker, CP&D Administrator

Jack D. Lewis, City Manager

EXHIBIT A

A ROADWAY EASEMENT OVER A PORTION OF MARCHANT STREET CITY OF BLACK HAWK, COUNTY OF GILPIN, STATE OF COLORADO



MARCHANT STREET

SCALE: 1"=20'
DATE: 04.24.2014

DESCRIPTION.

A ROADWAY EASEMENT, LOCATED WITHIN MARCHANT STREET, BASED UPON THE SURVEY MAP OF BLOCK 9, OF THE MAP OF BLACK HAWK, SURVEYED BY ALBERT JOHNSON CITY SURVEYOR, DATED MAY AND JUNE 1866, CITY OF BLACK HAWK, COUNTY OF GILPIN, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON SOUTHERLY CORNER OF LOT 6, BLOCK 9 AND THE PARCEL DESCRIBED AT RECEPTION NO. 136751, WHENCE THE SOUTHERLY LINE OF SAID BLOCK 9, BEARS N 65°01'33" W, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; THENCE S 24°58'27" W, 2.50 FEET; THENCE N 65°01'33" W, 100.91 FEET; THENCE N 24°58'27" E, 2.50 FEET TO A POINT ALONG THE SOUTHERLY LINE OF SAID BLOCK 9; THENCE ALONG SAID BLOCK, S 65°01'33" E, 100.91 FEET TO THE POINT OF BEGINNING.



NOTE:
THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

C.C.S. CONSULTANTS, INC.

4860 Robb Street Suite 206
Wheat Ridge, Colorado 80033
Phone: 3034034706, Fax 303-403.0800j

**RATIFICATION OF
PHONE POLL
CHANGE ORDER FOR
REMOVAL OF CERTAIN
RETAINING WALLS ON
THE WINNERS HAVEN
DEMOLITION SITE**

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

BLACK 1.1 AM;

SUBJECT: Ratification of a phone poll for a change order to remove certain retaining walls on the Winners Haven demolition site.

RECOMMENDATION:

If City Council chooses to approve the change order for the removal of certain retaining walls on the Winners Haven demolition site the recommended motion is as follows:

"Approve the Change order with Alpine Demolition in the amount of \$38,163.00 to remove certain retaining walls on the Winners Haven site.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Winners Haven Building has been demolished leaving certain retaining walls and foundations holding up portions of the hillside. These retaining walls were not a part of the original demolition proposal as no one knew exactly what we would encounter. Some of the foundations are holding the toe of the retaining walls and therefor have been left in place. This portion of the work will leave the site with an earthen slope on the east half. The existing stone covered retaining wall and asphalt parking lot will remain for use until future development occurs.

FUNDING SOURCE: 305-3101-431.75-14 — Gregory Street Demos

WORKSHOP DATE: May 14, 2014

ORIGINATED BY: Thomas Isbester

STAFF PERSON RESPONSIBLE: Thomas Isbester

PROJECT COMPLETION DATE: 23 May, 2014

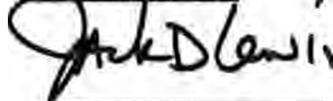
DOCUMENTS ATTACHED: Alpine proposal

CITY ATTORNEY REVIEW: [] Yes [] No [] N/A INITIALS _____

SUBMITTED BY:

Thomas Isbester, Public Works Director

REVIEWED BY:



Jack Lewis, City Manager

CHANGE ORDER #2

CONSTRUCTION AGREEMENT — CHANGE ORDER

Project Name: 260 Gregory Street — Black Forest Inn/Winners Haven Demolition

Project Address or Location: 260 Gregory Street

City: Black Hawk State: CO Zip Code: 80422

Owner and Contractor are parties to the above-referenced contract ("Contract") and wish to amend the Contract as follows:

a) Contractor has been requested to perform and agrees to perform the following Change of Scope: Retaining Wall removal per proposal dated May 5

b) The compensation for said Change of Scope shall be \$ 38 163.00, which is in addition to the amounts stated below:

This Change Amount	\$	<u>38 163.00</u>
Previous Change Amount	\$	<u>0.00</u>
Total of Changes to date	\$	<u>38,163.00</u>
Original Contract Amount	\$	<u>74,813.00</u>
Contract Amount to date	\$	<u>112,976.00</u>

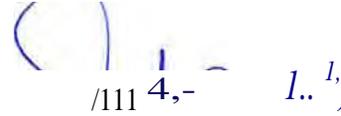
c) The completion date of the contract will be extended to **May 23, 2014**

Except as expressly amended or modified herein, the Contract shall remain unmodified and in full force and effect.

CONTRACTOR:

By:
Name: Alpine Demolition
Title: _____

OWN :


By: /s/ JAJ D. Lewis
Name: **JAJ D. Lewis**
Title: City Manager - COBH



a MAMINEVital

May 5, 2014 Updated #2

City of Blackhawk Colorado
Cynthia Linker
201 Selak Street
Blackhawk, CO 80422

ATTN: deliver via: CLinker@cityofblackhawk.org

RE: Earth Retaining Wall Removal

Cynthia:

Thank you for the opportunity to provide you pricing for the above mentioned project. Alpine Demolition Inc. is pleased to provide you a detailed proposal including our Statement of Qualifications (SOQ), previous project experience and Safety Documents.

SCOPE OF DEMOLITION WORK: Earth Retaining Wall Removal

Alpine will be responsible for the demolition and removal of retaining walls, A, B1, B2, B3, C and retaining wall D. Alpine will utilize the backfill alternate as noted in our original proposal for 301 Gregory. This demolition will include the engineering. This price does not include Wall E or the parking lot on the top or bottom, and Alpine will work to keep as much asphalt intact associated with Bob Tail Road. No blasting or hammering will occur where solid rock is located. All work to be performed under OSHA compliance and will follow an engineered plan provided by Anchor Engineering.

THE PRICE FOR THE ABOVE REFERENCED DEMOLITION WORK IS: \$ 30,913.00

Backfill: \$7250.00

Installation of the BMPs (Storm-Water Plan and Permit not included in pricing): By Owner
5790 West 56th Ave. Unit C. Arvada, Colorado 80002 0: 303-421-3366 F: 303-940-0868

www.alpinedemolition.com



We thank you for the opportunity to provide you pricing, if we can assist you in any other way or if you need additional information please contact me directly. Thank you again and we look forward to working with you.

Thank you,

Awwqcyh4

Alpine Demolition Inc.
James E. Gochis

May 5, 2014

Mr. Nathan Pillatzke
PEH Architects, Inc.
1319 Spruce St., Suite 207
Boulder, CO 80302

Dear Mr. Pillatzke:

It is my understanding that questions have come up regarding the structural adequacy of the clay masonry wall on the south face of the residence at 271 S Church St. in Black Hawk. Atkinson-Noland conducted a site visit on March 13, 2014 at the request of PEH Architects to survey the clay and stone masonry walls along Church St. and provide an opinion on rehabilitation options for the walls.

My recommendations for treatment of the clay masonry wall are stated in my letter dated March 19, 2014. I recommended replacement of the deteriorated brick units at the base of the wall with either reclaimed brick of similar type or local stone similar to that which is present below the deterioration. The unit replacement was to be done in smaller areas to allow the masonry to arch over the temporary openings until infilled with new masonry. This work would return the wall to approximately its original wall condition and load bearing capacity.

I did not conduct any structural investigations on the adequacy of the wall or the adequacy of the remainder of the home. If these are in question, we would be pleased to provide a fee proposal for investigation of the structural systems and load paths for the home.

Please feel free to contact me if you have any questions. Thank you for the opportunity to work with you on this project.

Sincerely,

David B. Woodham, P.E.



Atkinson-Noland & Associates 2619 Spruce Street
Consulting Engineers Boulder, CO 80302
www.ana-usa.com 303.444.3620

41 E. 11th Street, Ste. 310
New York, NY 10003
917.647.9530

Attachment D

March 19, 2014

Mr. Nathan Pillatzke
Pill Architects, Inc.
1319 Spruce St., Suite 207
Boulder, CO 80302

Dear Mr. Pillatzke:

At your request, I conducted a brief site visit in Black Hawk at the historic home at 271 Church St. on March 13, 2014. The purpose of the site visit was to briefly survey the exterior clay and stone masonry walls along the street at 271 Church St. and provide an opinion on rehabilitation options.

Brick Wall Observations

The clay masonry wall is two wythes in thickness and has header courses every 6th course. It appears that the entire wall was sandblasted at some previous time. Portions of the wall are covered with a cementitious render that is partially delaminated based on sounding the render. Despite this, the wall is generally in fair condition except for the lower 12 - 16 inches of the wall that is above the asphalt paving of the street (Figure 1). This area of the wall has likely experienced numerous saturated freeze/thaw cycles as snow and ice accumulated at the base of the wall. Exposure to deleterious deicing chemicals is a contributor as well.

Recommendations

Removal of the partial render should be done where it does not take portions of the brick face with it. Rebuilding the lower 5 to 6 courses of the clay masonry wall is also recommended. This should be done in alternating areas no wider than three feet with at least an equal amount of masonry remaining between repair areas. Shore the work with timber cripples where it doesn't interfere with reconstruction. Although reclaimed brick matching the existing brick would be the most appropriate material for replacement "in kind", consider using local stone to match the stone that currently exists below the clay masonry for reconstructing the lower 12 — 16 inches of the wall. If the lower portion of the wall is rebuilt with brick, I recommend a Type N or O mortar in compliance with the proportions described in ASTM C 270, *Standard Specification for Mortar for Unit Masonry*. This mortar would also be appropriate for repointing areas of the brick where there are open joints or the mortar has eroded more than 3/8 inch back from the face of the wall. If the lower portion is rebuilt with stone, a Type N mortar is recommended.

Stone Wall Observations

The stone masonry walls are in good condition with the exception of some of the mortar joints. I sounded many of the mortar joints and several joints had an obvious hollow sound indicating loss of bond and eventual delamination from the wall. This is true of the short wall West of the stairs to the home and the longer wall to the East of the stairs.



Atkinson-Noland & Associates
Consulting Engineers
www.ana-usa.com

2619 Spruce Street
Boulder, CO 80302
303.444.3620

41 E. 11111 Street, Ste. 310
New York, NY 10003
917.647.9530

Stone Wall Recommendations

The stone walls should be partially repointed where the mortar is visibly cracked or debonded. Sounding with a small hammer will identify the areas debonded and requiring repointing. Please see Figures 2 through 4 below.

Please feel free to contact us if you have any questions. Thank you for the opportunity to work with you on this project.

Sincerely,

an./6

David B. Woodham, P.E.



Atkinson-Noland & Associates 2619 Spruce Street
Consulting Engineers Boulder, CO 80302
www.ana-uso.com 303.444.3620

41 E. 11th Street, Ste. 310
New York, NY 10003
917.647.9530



Figure 1. Clay masonry wall. Area below yellow line should be rebuilt with brick or stone units.



Figure 2. Stone masonry wall West of stairs. Yellow lines indicate minimum extent of repointing. Additional repointing may be required as a result of sounding the mortar joints.

TAN

Atkinson-Noland & Associates 2619 Spruce Street
Consulting Engineers Boulder, CO 80302
www.ana-usa.com 303,444.3620

41 E. 11th Street, Ste. 310
New York, NY 10003
917.647.9530



Figure 3. Portion of stone masonry wall East of stairs. Yellow lines indicate minimum extent of repointing. Additional repointing may be required as a result of sounding the mortar joints.

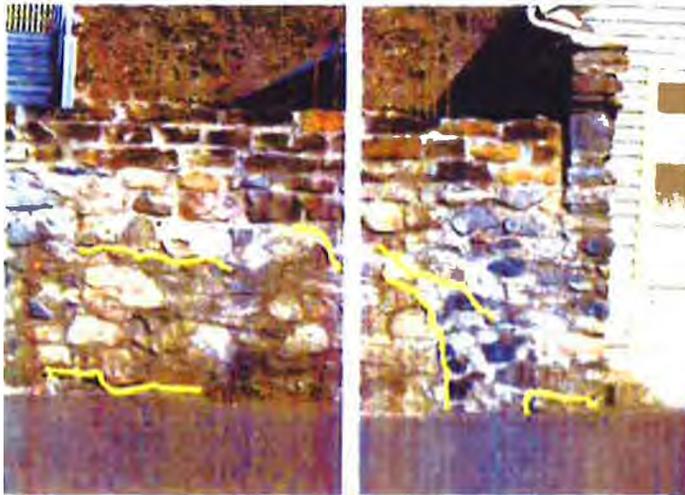


Figure 4. Portion of stone masonry wall East of stairs. Yellow lines indicate minimum extent of repointing. Additional repointing may be required as a result of sounding the mortar joints.



Atkinson-Noland & Associates
Consulting Engineers
www.ana-usa.com

2619 Spruce Street
Boulder, CO 80302
303.444.3620

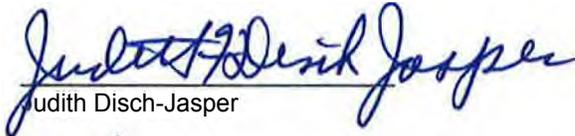
41 E. 11th Street, Ste. 310
New York, NY 10003
917.647.9530

April 28, 2014

To Whom it may concern:

We are trying to establish a Boundary Line Agreement. We have been working together to resolve this situation, and have had many telephone conversations talking about our options and we will continue to do so.

Thank you for your time.


Judith Disch-Jasper


Gary Jasper


Jeannie Larkins