



## REGULAR MEETING AGENDA

City of Black Hawk City Council  
211 Church Street, Black Hawk, CO

August 25, 2021  
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. EXECUTIVE SESSION:

Executive Session to instruct negotiators regarding City-owned land on Artisans Point and Gregory Street Plaza and leases of other City-owned property, pursuant to C.R.S § 24-6-402(4)(e).

#### 6. PUBLIC COMMENT: *Please limit comments to 5 minutes*

#### 7. APPROVAL OF MINUTES: August 11, 2021

#### 8. PUBLIC HEARINGS:

- A. CB24, An Ordinance Approving an Intergovernmental Agreement and an Easement Agreement for Sanitary Sewer Facilities Between the City of Black Hawk and the Black Hawk-Central City Sanitation District Regarding the Gregory Street Sub-Main Segments

#### 9. ACTION ITEMS:

- A. Resolution 56-2021, A Resolution Approving the Memorandum of Understanding Between the Boulder Mountainbike Alliance and the City of Black Hawk
- B. Resolution 57-2021, A Resolution Approving the Agreement for Professional Services for Holiday Decorations with Alpine Artisan Studios in the Amount Not to Exceed \$166,527
- C. Resolution 58-2021, A Resolution Approving the Letter Agreement with D.A. Davidson & CO. Fixed Income Capital Markets for Investment Banking Services
- D. Resolution 59-2021, A Resolution Approving the Commercial Lease with Feeney Farms, Inc. for the Property Located at 7320 Black Hawk Blvd., Suite 1A, Black Hawk, Colorado

#### 10. CITY MANAGER REPORTS:

#### 11. CITY ATTORNEY:

#### 12. EXECUTIVE SESSION:

Executive Session to instruct negotiators regarding City-owned land on Artisans Point and Gregory Street Plaza and leases of other City-owned property, pursuant to C.R.S § 24-6-402(4)(e).

#### 13. 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



**City of Black Hawk  
City Council**

**August 11, 2021**

**MEETING MINUTES**

Alicia Marotti, Communications Officer I, rang the bell to open the meeting.

1. **CALL TO ORDER:** Mayor Spellman called the regular meeting of the City Council to order on Wednesday, August 11, 2021, at 3:00 p.m.

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

**Staff Present:** City Attorney Hoffmann, City Manager Cole, Fire Chief Woolley, Police Chief Moriarty, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, and Community Planning & Development Director Linker.

**PLEDGE OF ALLEGIANCE:** Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.

3. **AGENDA CHANGES:** City Clerk Greiner confirmed there were no changes to the agenda.

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. City Council noted no conflicts.

City Attorney Hoffmann asked the audience if there were any objections to any member of the Council voting on any issue on the agenda this afternoon. There were no objections noted.

5. **INTRODUCTION OF NEW EMPLOYEE:** Alicia Marotti, Communications Officer

6. PUBLIC COMMENT: City Clerk Greiner that no one had signed up to speak.

7. APPROVAL OF  
MINUTES: July 28, 2021

**MOTION TO  
APPROVE** Alderman Armbricht **MOVED** and was **SECONDED** by Alderman Johnson to approve the Minutes as presented.

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

8. PUBLIC HEARINGS:

**A. CB21, An Ordinance Approving the Intergovernmental Agreement Between the City of Black Hawk and Gilpin County Regarding the November 2, 2021 Special Election**

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann explained the ordinance addresses the City's November 2021 Special Election approving the IGA to have the election as a coordinated election with Gilpin County.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB21, an Ordinance approving the Intergovernmental Agreement between the City of Black Hawk and Gilpin County regarding the November 2, 2021 Special Election open and invited anyone wanting to address the Board either "for" or "against" the proposed Ordinance to come forward.

No one else wished to speak, and Mayor Spellman declared the Public Hearing closed.

**MOTION TO  
APPROVE** Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve CB21, an Ordinance approving the Intergovernmental Agreement between the City of Black Hawk and Gilpin County regarding the November 2, 2021 Special Election.

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

**B. CB22, An Ordinance Calling for a November 2, 2021, Special Election to be Conducted as a Coordinated Mail Ballot Election Pursuant to the Colorado Municipal Election Code, Submitting Ballot Questions and Setting the Ballot Titles Thereof**

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann explained the ordinance calls the special election and sets two ballot questions which are Tabor questions, the first question addresses a number of issues related to Colorado Amendment 77 and applying our existing device tax to new games and some games that were existing to clarify how the device tax applies when the games are not traditional gaming devices or traditional table games. The second ballot question applies the City's device tax to actual devices in the casinos that are used for Sports Betting in a multiple of four.

**PUBLIC HEARING:**

Mayor Spellman declared a Public Hearing on CB22, an Ordinance calling for a November 2, 2021, Special Election to be conducted as a coordinated Mail Ballot Election pursuant to the Colorado Municipal Election Code, submitting Ballot Questions and setting the Ballot Titles thereof open and invited anyone wanting to address the Board either "for" or "against" the proposed Ordinance to come forward.

No one else wished to speak, and Mayor Spellman declared the Public Hearing closed.

**MOTION TO  
APPROVE**

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Bennett to approve CB22, an Ordinance calling for a November 2, 2021, Special Election to be conducted as a coordinated Mail Ballot Election pursuant to the Colorado Municipal Election Code, submitting Ballot Questions and setting the Ballot Titles thereof.

**MOTION PASSED**

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

**C. CB23, An Ordinance Amending Section 8-91 of the Black Hawk Municipal Code Regarding the Definition of Recreational Vehicle and Equipment Residential Permits**

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann explained the resolution keeps the 72-hour permit limit and allows for permits of shorter duration. It also requires a duration of 48-hours between approved permits. The intent is to allow residents to bring their recreational vehicles to their homes to load and unload but prohibits continual on-street storage/parking.

**PUBLIC HEARING:**

Mayor Spellman declared a Public Hearing on CB23, an Ordinance amending Section 8-91 of the Black Hawk Municipal Code regarding the definition of Recreational Vehicle and Equipment Residential Permits open and invited anyone wanting to address the Board either "for" or "against" the proposed Ordinance to come forward.

No one else wished to speak, and Mayor Spellman declared the Public Hearing closed.

**MOTION TO  
APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Midcap to approve CB23, an Ordinance amending Section 8-91 of the Black Hawk Municipal Code regarding the definition of Recreational Vehicle and Equipment Residential Permits.

**MOTION PASSED**

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

9. ACTION ITEMS:

**A. Resolution 54-2021, A Resolution Appointing Robert Mack to be a City of Black Hawk Associate Municipal Court Judge**

Mayor Spellman read the title.

City Manager Cole explained the addition of a second associate judge will provide coverage for the court when the other judges are not available.

**MOTION TO  
APPROVE**

Alderman Torres **MOVED** and was **SECONDED** by Alderman Johnson to approve Resolution 54-2021, a Resolution appointing Robert Mack to be a City of Black Hawk Associate Municipal Court Judge.

**MOTION PASSED**

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

**B. Resolution 55-2021, A Resolution Approving the Acquisition of Benches, Trash Cans, and a Picnic Table for the Hard District to Include the Gregory Plaza for an Amount Not to Exceed \$60,617.25**

Mayor Spellman read the title.

City Engineer Reed discussed the need for the equipment in and around the Gregory Street Plaza area. Mayor Spellman added that additional equipment may be needed in the future.

**MOTION TO  
APPROVE**

Alderman Midcap **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 55-2021, a Resolution approving the acquisition of benches, trash cans, and a picnic table for the Hard District to include the Gregory Plaza for an amount not to exceed \$60,617.25.

**MOTION PASSED**

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

10. CITY MANAGER  
REPORTS:

City Manager Cole reported that a Trademark Agreement was on the last Council Agenda to be continued until today, but COMBA has decided not to use the City's Trademarked Logo so the continued agenda item was dropped.

11. CITY ATTORNEY:

City Attorney Hoffmann had nothing to report.

12. EXECUTIVE  
SESSION:

City Attorney Hoffmann recommended items number 2 and 5 for Executive Session. The specific legal advice is in regards to public health orders, and the negotiations are in regards to City-owned land on Artisans Point and Gregory Street Plaza and leases of other City-owned property.

**MOTION TO ADJOURN  
INTO EXECUTIVE  
SESSION**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn into Executive Session at 3:XX 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(4)(b) and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).

**MOTION PASSED**

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

**MOTION TO  
ADJOURN**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn the Executive Session at 3:25 p.m.

**MOTION PASSED**

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

13. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council adjourned at 4:45 p.m.

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Melissa A. Greiner, CMC  
City Clerk

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David D. Spellman  
Mayor

**COUNCIL BILL 24  
AN ORDINANCE  
APPROVING AN  
INTERGOVERNMENTAL  
AGREEMENT AND AN  
EASEMENT AGREEMENT  
FOR SANITARY SEWER  
FACILITIES BETWEEN  
THE CITY OF BLACK  
HAWK AND THE BLACK  
HAWK-CENTRAL CITY  
SANITATION DISTRICT  
REGARDING THE  
GREGORY STREET SUB-  
MAIN SEGMENTS**

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

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**SUBJECT:** IGA and Easement Agreement with Black Hawk –Central City Sanitation District regarding the Gregory Street Sub-Main Segments

**RECOMMENDATION:** Staff recommends the following motion to the Mayor and Board of Aldermen:

**MOTION TO APPROVE** Council Bill 24, An Ordinance Approving as Intergovernmental Agreement and an Easement Agreement for Sanitary Sewer Facilities between the City of Black Hawk and the Black Hawk-Central City Sanitation District Regarding the Gregory Street Sub-Main Segments

**AGENDA DATE:** August 25, 2021

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** General Fund

**STAFF PERSON RESPONSIBLE:** Stephen N. Cole, City Manager

**DOCUMENTS ATTACHED:** IGA and Easement Agreement

**RECORD:** [ ] Yes [ X ] No

**CoBH CERTIFICATE OF INSURANCE REQUIRED** [ ] Yes [ X ] No

**CITY ATTORNEY REVIEW:** [ X ] Yes [ ] N/A

**SUBMITTED BY:**



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Stephen N. Cole, City Manager

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

**COUNCIL BILL NUMBER: 24**

**ORDINANCE NUMBER: 2021-24**

**TITLE: AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT AND AN EASEMENT AGREEMENT FOR SANITARY SEWER FACILITIES BETWEEN THE CITY OF BLACK HAWK AND THE BLACK HAWK-CENTRAL CITY SANITATION DISTRICT REGARDING THE GREGORY STREET SUB-MAIN SEGMENTS**

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

Section 1. The City of Black Hawk hereby approves the Intergovernmental Agreement between the City of Black Hawk and the Black Hawk-Central City Sanitation District Regarding Gregory Street Sub-Main Segments Easement, Maintenance and Operation, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City of Black Hawk.

Section 2. The City of Black Hawk hereby approves the Easement Agreement between the City of Black Hawk and the Black Hawk-Central City Sanitation District Regarding Sanitary Sewer Facilities, as more particularly described in **Exhibit B**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City of Black Hawk.

Section 3. Safety Clause. The City Council 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 City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. 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 5.      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 25<sup>th</sup> day of August, 2021.

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David D. Spellman, Mayor

ATTEST:

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Melissa A. Greiner, CMC, City Clerk

## INTERGOVERNMENTAL AGREEMENT

### Regarding Gregory Street Sub-Main Segments Easement, Maintenance and Operations

This Intergovernmental Agreement (“IGA”) is effective on the date of the final signature (the “**Effective Date**”) among the City of Black Hawk, Colorado (the “**City**”) and the Black Hawk-Central City Sanitation District (the “**District**”).

#### RECITALS

A. The City has completed a project to create a pedestrian friendly retail district known as Gregory Street Plaza (the “**Plaza**”).

B. The Project required extensive relocation and reconstruction of the Gregory Street sewer Main and two sub-main segments completed by the City and the District. See, **Exhibit A**.

1. The District’s main line is located in Gregory Street and includes Manholes numbered 093, 094 and 095 (the “**District Main**”).

2. Sub-Main Segment No. 1 runs parallel to Gregory Street on the north side west of Church Street and includes Manholes numbered 06a-002 and 06a-001a, including the line’s connection into Manhole 06a-001 in Church Street (“**Main Segment I**”).

3. Sub-Main Segment No. 2 runs parallel to Gregory Street on the north side, east of Church Street and includes Manholes numbered 05-002, 05-001 and the line segment from MH 05-001 to and including its connection to Manhole 091 in Gregory Street (“**Main Segment II**”)(Jointly, the “**Sub-Main Segments**”).

C. Extensive public improvements were designed and built by the City on top of the Sub-Main Segments for the Gregory Street Plaza project.

D. The District Main, Sub-Main Segment I and Sub-Main Segment II are and shall remain Sanitary Sewer Facilities as defined in the District’s Rules and Regulations and their use is, at all times subject to the terms and conditions of the District’s Rules and Regulations except as otherwise provided herein.

E. The District is not willing to maintain the Sub-Main Segments because of the extensive public improvements constructed on top of the line.

F. The City and District desire to cooperate in the maintenance and any future replacements of the Sub-Main Segments as authorized and encouraged by C.R.S. § 29-1-203 to ensure uninterrupted sanitary sewer services to all properties connecting to the Sub-Main Segments and to minimize interruptions to public use of the Project.

G. This IGA sets forth the purposes, powers, rights, obligations, and responsibilities of the parties.

## INTERGOVERNMENTAL AGREEMENT

(Gregory Street Plaza Sewer Sub-Main Segments Easement and Maintenance)

Black Hawk – Central City Sanitation District

City of Black Hawk

Page 2 of 5

### AGREEMENT

- I. Sewer Easement. The City hereby grants to the District a 30' wide easement for the location, maintenance, repair, replacement and operation of the Sub-Main Segments consisting of 15' on each side of the sewer line and 15' on all sides of each manhole.
- II. Maintenance and Repairs. All cleaning, maintenance, repairs and replacements of the Sub-Main Segments will be performed and/or paid for by the City as described below.
  - A. All cleaning, maintenance or repairs of the Sub-Main Segments will be completed by the City:
    1. Within 30 days of a written notice from the District describing the cleaning maintenance or repairs required; or,
    2. As quickly as possible in the event of an emergency determined by the City or the District.
  - B. Inspection of the Sub-main Segments will be completed by the District as the District deems necessary so long as the inspection does not interfere with use of the Plaza or involve removal or alteration of the public improvements on the easement. In the event some interference is necessary, the District will notify the City at least 15 days in advance of the inspection.
  - C. Cleaning, maintenance and repair or replacement of the Sub-Main Segments will only be performed by the District in the event of an emergency to protect sanitary sewer service or the Sanitary Sewer System after notice to the City. The District will, in such event, not be responsible for replacing any public improvements necessarily removed to address the emergency.
- III. Sanitary Sewer Users. The City currently owns all of the property in the Plaza and related buildings surrounding the Plaza with exception of the Rocky Mountain Evangelical Free Church located at 337 Gregory Street.
  - A. Each structure will be treated as a sanitary sewer user under the District's Rules and Regulations and each structure must be separately tapped into the appropriate Sub-Main Segment and will be separately billed for Sanitary Sewer Service.
  - B. Sanitary Sewer Service bills will be sent to the City as owner/lessor for each City owned property.

INTERGOVERNMENTAL AGREEMENT

(Gregory Street Plaza Sewer Sub-Main Segments Easement and Maintenance)

Black Hawk – Central City Sanitation District

City of Black Hawk

Page 3 of 5

IV. Miscellaneous Provisions.

A. This document is an integrated IGA encompassing all of the agreement among the parties concerning the matter to which it pertains.

B. Any changes to or amendments to this IGA must be in writing signed by the parties.

C. There are no intended beneficiaries of this IGA other than the parties, the Rocky Mountain Evangelical Free Church property located at 337 Gregory Street, and the lessees or occupants of the City owned Plaza property.

D. In the event any portion of this IGA is declared void or unenforceable, the remaining terms of this IGA shall be interpreted in a manner that furthers the parties' manifest intent.

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INTERGOVERNMENTAL AGREEMENT

(Gregory Street Plaza Sewer Sub-Main Segments Easement and Maintenance)

Black Hawk – Central City Sanitation District

City of Black Hawk

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**Black Hawk – Central City Sanitation District**



David D. Spellman, President

Date: \_\_\_\_\_

Attest:



Jeff Aiken, Secretary

**City of Black Hawk**

\_\_\_\_\_  
David D. Spellman, Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

INTERGOVERNMENTAL AGREEMENT

(Gregory Street Plaza Sewer Sub-Main Segments Easement and Maintenance)

Black Hawk – Central City Sanitation District

City of Black Hawk

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**Exhibit A**

Gregory Street Plaza

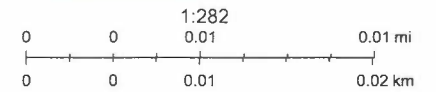
District Main, Sub-Main Segments I and II and Manhole Location Drawing

# Black Hawk Central City Sanitation District



5/14/2021, 9:47:39 AM

- Sanitary Manholes
- Sanitary Sewer
- As-Built
- Digitized from Plans
- Parcels
- Municipal\_Boundary
- Building Footprints
- BHCCSD 811 Boundary











Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Esri Community Maps Contributors, County of Clear Creek, County of

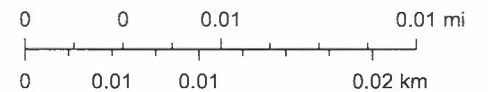
# Black Hawk Central City Sanitation District



5/14/2021, 9:43:15 AM

-  Sanitary Manholes
-  Digitized from Plans
-  Building Footprints
-  Sanitary Sewer
-  Parcels
-  BHCCSD 811 Boundary
-  As-Built
-  Municipal\_Boundary

1:564



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS,

BHCCSD

Esri Community Maps Contributors, County of Clear Creek, County of Gilpin, BuildingFootprintUSA, Esri, HERE, Garmin, SafeGraph, INCREMENT P, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA |

**GRANT OF EASEMENT  
SANITARY SEWER FACILITIES**

**THIS GRANT OF EASEMENT (“Grant”)** is given this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the CITY OF BLACK HAWK, a Colorado home-rule municipality (“**Grantor**”), whose address is 201 Selak Street, P.O. Box 68, Black Hawk, Colorado 80422, to the BLACK HAWK-CENTRAL CITY SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, (“**Grantee**”), whose address is 7320 Black Hawk Boulevard, Suite 2B, P.O. Box 362, Black Hawk, Colorado 80422.

Pursuant to that certain Intergovernmental Agreement Regarding Gregory Street Main Segments Easement, Maintenance and Operations (“**IGA**”), the parties hereby covenant and agree as follows:

1. Easement Property. The “Easement Property” shall mean the real property owned by Grantor and located in the County of Gilpin, State of Colorado, more particularly described on **Exhibit B**, attached hereto and incorporated herein, and substantially as depicted on **Exhibit A**, attached hereto and incorporated herein.

2. Grant of Easement. Grantor grants to Grantee, its successors and assigns, a non-exclusive easement (“**Easement**”) on, over, under, through and across the Easement Property for the purpose of having, accessing, maintaining, and repairing sanitary sewer facilities owned by Grantee and defined in the IGA as the “Sub-Main Segments” (collectively, the “**Facilities**”).

3. Maintenance and Repair. The maintenance and repair of the Facilities located on the Easement Property is the responsibility of Grantor. All cleaning, maintenance or repair of the Facilities will be completed by Grantor within 30 days’ written notice from Grantee, which will describe required the cleaning, maintenance or repair. In the event maintenance and repair are not performed by Grantor to the satisfaction of Grantee, then Grantee has the right, but not the obligation, to enter the Easement Property after ten (10) days prior written notice to Grantor to perform all necessary work, the cost of which shall be paid by Grantor upon a billing submitted by Grantee. In the event Grantor fails to reimburse Grantee within thirty (30) days after submission of the bill for the costs incurred, Grantee may enforce the obligation under its Rules and Regulations or by appropriate legal action. It is Grantor’s responsibility to maintain and repair the Facilities in a manner consistent with all plans approved or accepted by Grantee.

In the case of an emergency determined by Grantor, Grantor shall perform the necessary cleaning, maintenance or repair as soon as practicable without notice from Grantee, and Grantor shall provide written notice of the same to Grantor as soon as practicable.

In the case of an emergency determined by Grantee, which in Grantee’s sole discretion threatens Grantee’s sewer service or sanitary sewer system, Grantee may enter the Easement Property to perform necessary cleaning, maintenance or repair, and shall provide written notice of the same to Grantor as soon as practicable. The cost of such cleaning, maintenance, or repair shall be paid by Grantor upon a billing submitted by Grantee.

5. Retained Rights of Grantor. Grantor reserves the right of ownership, use and occupancy of the Easement Property insofar as said ownership, use and occupancy does not impair the rights granted to Grantee. Grantee’s rights are non-exclusive, and Grantor shall have the full right and authority to grant other easements or rights to use the Easement Property.

6. Binding Effect. This Grant shall extend to and be binding upon the successors and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Grant shall be construed as covenants running with the land.

IN WITNESS WHEREOF, the parties have executed this Grant the day and year first above written.

**GRANTOR:**

CITY OF BLACK HAWK, a Colorado home-rule municipality

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF COLORADO       )  
                                          ) ss.  
COUNTY OF GILPIN       )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_ of the City of Black Hawk, a Colorado  
home-rule municipality.







My commission expires: \_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

# EXHIBIT A

## EASEMENT EXHIBIT

-  Benchmark
-  Manhole
-  Sub-Main Segment
-  Control to Point of Beginning
-  Main District Line
-  Curbline

Line Table			
Easement	Line	Bearing	Length
District Main Line	L1	59° 31' 01"	113.34'
	L2	54° 44' 20"	189.56'
Sub-Main	L3	69° 35' 23"	20.68'
Segment NO.1	L4	51° 57' 01"	297.91'
Sub-Main	L5	45° 35' 16"	58.53'
Segment NO.2	L6	82° 00' 44"	185.89'

Benchmark BM-3, being a 3.25-inch brass cap marked CITY OF BLACK HAWK BENCHMARK, located on the south side of Church Street, in a concrete pad next to the stairs, having coordinates Northing 1,170,638.27 feet (USf) and Easting 3,001,362.70 feet (USf), as based on the Colorado State Plane Coordinate System, Colorado North, U.S. Survey Foot (USf) NAD\_83(2011)(EPOCH:2010.0000)

NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from August, 2021.  
(13-80-105 C.R.S. 2012)



100 0 100

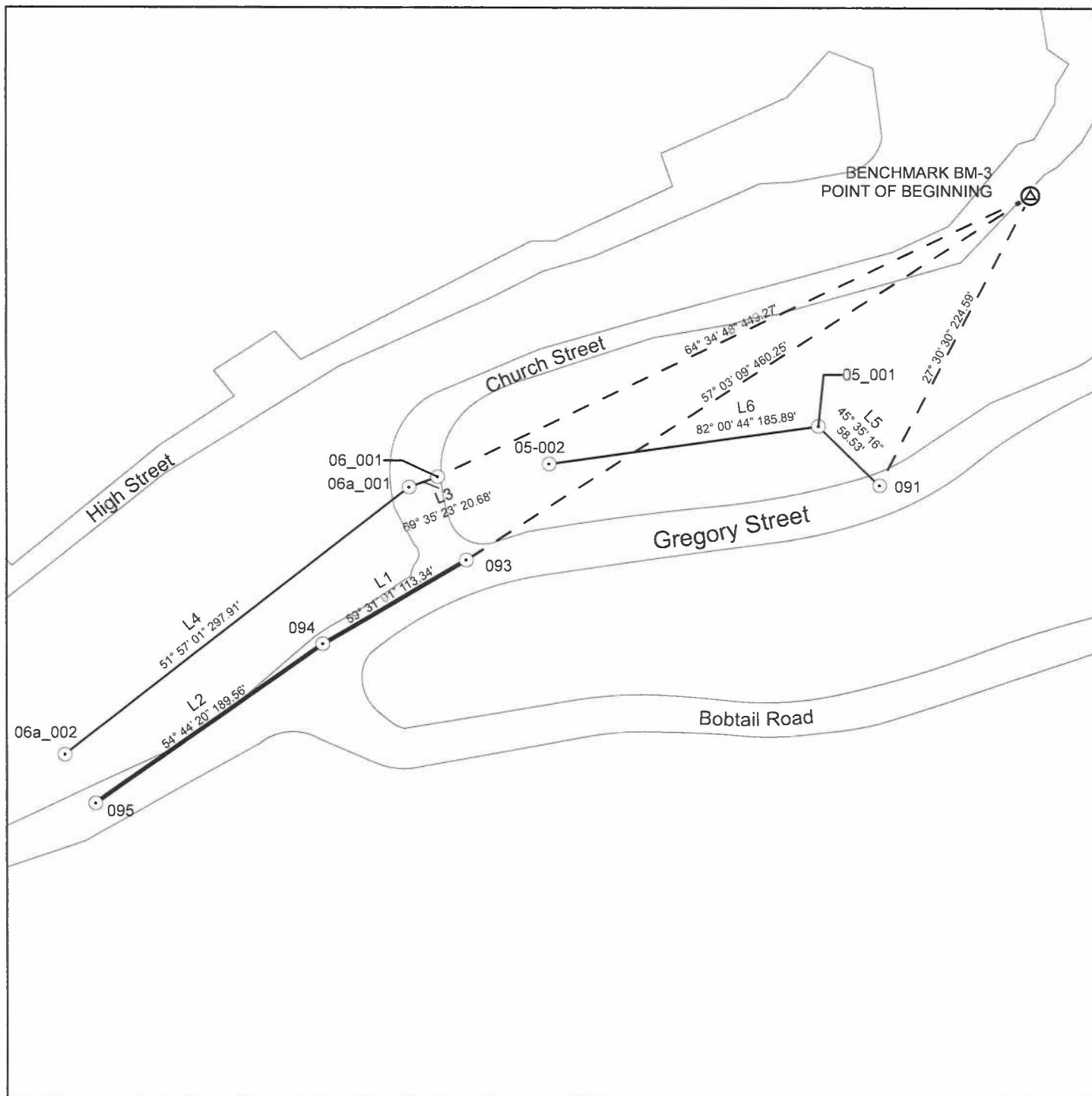


Scale in Feet  
Scale: 1:1,200

Spatial Reference

Name: NAD 1983 2011 StatePlane Colorado North FIPS 0501 Ft US

Path: Z:\project\5714-BHCCSD\027702228\Gregory\_Easement\Gregory\_Easement.aprx  
Layout: Gregory\_Easement.mxd Date Saved: 7/28/2021 11:43 AM Prepared By: KachD0606



**SUB-MAIN SEGMENT NO. 1**

COMMENCING at the City of Black Hawk, Benchmark BM-3, being a 3.25-inch brass cap marked CITY OF BLACK HAWK BENCHMARK, located on the south side of Church Street, in a concrete pad next to the stairs, having coordinates Northing 1,170,638.27 feet (USf) and Easting 3,001,362.70 feet (USf), as based on the Colorado State Plane Coordinate System, Colorado North, U.S. Survey Foot (USf) NAD\_83(2011)(EPOCH:2010.0000), as are all coordinates, bearings and distances (grid) in this description; THENCE South 64° 34' 48" West a distance of 449.27 feet to the POINT OF BEGINNING AT **Manhole 06 001** with a 24-inch diameter steel cover; THENCE South 69° 35' 23" West a distance of 20.68 feet to **Manhole 06a 001** with a 24-inch diameter steel cover; THENCE South 51° 57' 01" West a distance of 297.91 feet to **Manhole 06a 002** with a 24-inch diameter steel cover. The easement for the District Main Line shall consist of 15 feet on each side of the sanitary sewer centerline as described above. The 15-foot easement will also extend from all directions at the terminal manhole described above.

**SUB-MAIN SEGMENT NO. 2**

COMMENCING at the City of Black Hawk, Benchmark BM-3, being a 3.25-inch brass cap marked CITY OF BLACK HAWK BENCHMARK, located on the south side of Church Street, in a concrete pad next to the stairs, having coordinates Northing 1,170,638.27 feet (USf) and Easting 3,001,362.70 feet (USf), as based on the Colorado State Plane Coordinate System, Colorado North, U.S. Survey Foot (USf) NAD\_83(2011)(EPOCH:2010.0000), as are all coordinates, bearings and distances (grid) in this description; THENCE South 27° 30' 30" West a distance of 224.58 feet to the POINT OF BEGINNING AT **Manhole 091** with a 24-inch diameter steel cover; THENCE North 45° 35' 16" West a distance of 58.53 feet to **Manhole 05 001** with a 24-inch diameter steel cover; THENCE South 82° 00' 44" West a distance of 185.89 feet to **Manhole 05 002** with a 24-inch diameter steel cover. The easement for the District Main Line shall consist of 15 feet on each side of the sanitary sewer centerline as described above. The 15-foot easement will also extend from all directions at the terminal manhole described above.

**RESOLUTION 56-2021**  
**A RESOLUTION**  
**APPROVING THE**  
**MEMORANDUM OF**  
**UNDERSTANDING**  
**BETWEEN THE BOULDER**  
**MOUNTAINBIKE**  
**ALLIANCE AND THE CITY**  
**OF BLACK HAWK**

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

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**SUBJECT:** Memorandum of Understanding – Boulder Mountain Bike Association (BMA)

**RECOMMENDATION:** Staff recommends the following motion to the Mayor and Board of Aldermen:

**MOTION TO APPROVE** Resolution 56-2021, a Resolution Approving the Memorandum of Understanding between the Boulder Mountainbike Alliance and the City of Black Hawk.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Boulder Mountainbike Alliance (BMA) requested an MOU to govern how BMA and the City will work together to design, construct and maintain multi-use non-motorized trails managed by the City. While no specific trail work is described in the agreement, the MOU lays the groundwork for a successful relationship between BMA and the City.

**AGENDA DATE:** August 25, 2021

**FUNDING SOURCE:** N/A

**STAFF PERSON RESPONSIBLE:** Stephen N. Cole

**DOCUMENTS ATTACHED:** MOU

**RECORD:** [ ] Yes [ X ] No

**CoBH CERTIFICATE OF INSURANCE REQUIRED** [ ] Yes [ X ] No

**CITY ATTORNEY REVIEW:** [ X ] Yes [ ] N/A

**SUBMITTED BY:**



---

Stephen N. Cole, City Manager

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

**Resolution No. 56-2021**

**TITLE:       A    RESOLUTION    APPROVING    THE    MEMORANDUM    OF  
              UNDERSTANDING   BETWEEN   THE   BOULDER   MOUNTAINBIKE  
              ALLIANCE AND THE CITY OF BLACK HAWK**

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

**Section 1.**       The City Council hereby approves the Memorandum of Understanding (the  
“MOU”) between the Boulder Mountainbike Alliance and the City of Black Hawk, and authorizes  
the Mayor to sign the MOU on behalf of the City.

RESOLVED AND PASSED this 25<sup>th</sup> day of August, 2021.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk

Memorandum of Understanding Between  
Boulder Mountainbike Alliance  
and  
City of Black Hawk

This Memorandum of Understanding (MOU) is dated this 25<sup>th</sup> day of August, 2021 between the Boulder Mountainbike Alliance (BMA) and the City of Black Hawk (City) as follows:

Purpose:

This MOU sets forth guidelines that govern how BMA and the City will work together to design, construct and maintain multi-use non-motorized trails managed by the City. While no specific trail work is described herein, this MOU lays the groundwork for a successful relationship between BMA and the City.

It is mutually agreed that:

1. BMA and the City will work together to plan, design, construct, maintain and/or improve specific trails identified by the City as appropriate for such joint work. The final authority for all decisions concerning the trails belongs to the City.
2. BMA and the City will agree to specific dates on which BMA will perform mutually agreed upon activities for the City pursuant to this MOU. No work may be performed on any City-managed trails by BMA or persons BMA has engaged unless approved in advance by the City.
3. Except as may be expressly agreed by the City and BMA in writing, all services that BMA provides pursuant to this MOU will be provided by volunteers, expressly acting as such, at no cost to the City. This includes, but is not limited to, such things as planning and design assistance, trail assessments, documentation, trail construction, and maintenance activities (including organization of and carrying out volunteer work parties), etc.
4. The City may agree to pay BMA for services on an exception basis from time to time, which requires a separate, written agreement for each activity. The City is not obligated to pay any amounts to BMA pursuant to this MOU.
5. Except as may be expressly agreed by the City and BMA in writing and as set forth in paragraph 6 below, all work performed by BMA pursuant to this MOU will be performed by personal labor and hand tools only.
6. BMA will have the ability to use power machines such as a mini-excavator, mini-skid steer, or mini-dozer (the machines) as follows:
  - a. The City agrees BMA may use the machines notwithstanding the limitation to personal labor and hand tools referenced above. BMA represents and warrants that the machines will be operated only by an experienced operator trained to operate that machine, and with appropriate experience.

- b. The machines will not be operated without the presence of another volunteer in addition to the machine operator.
  - c. BMA and the operator of the machine will use the machine at their sole risk. The City is not responsible for any personal injury or property damage to the equipment or any persons as a result of BMA's use of the machine.
  - d. The City agrees to provide or reimburse BMA for the cost of fuel for the machines performing the work if reimbursement is preapproved by the City, upon presentation of receipts for fuel purchases and any other documentation deemed adequate in the discretion of the City.
  - e. Additional reimbursement may be made to BMA to help offset costs associated with machine operation, rental, repair or maintenance at the discretion of the City.
- 7. BMA shall purchase, and maintain throughout the course of its performance under this MOU, such insurance written by companies authorized to do insurance business in the State of Colorado as will protect BMA from claims which may arise out of or result from BMA's operations under this MOU, whether such operations be by itself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, with coverage as follows:
  - a. Worker's Compensation and Employers Liability Insurance in amounts and coverage as required by the laws of Colorado.
  - b. Commercial General Liability Form of insurance with bodily injury and property damage liability limits of not less than \$500,000 for any one person in any one occurrence and \$1,500,000 for two or more persons in any one occurrence not to exceed \$1,500,000. BMA will have the City named as an additional insured on its general liability insurance policy and provide a certificate of its being an additional insured before beginning work.
- 8. For liability insurance coverages, before BMA may commence any work under this MOU, BMA must provide a certificate, in a form satisfactory to the City, showing that the coverage will not expire or be terminated without first giving the City thirty days' notice thereof.
- 9. A City Volunteer Notification & Waiver of Liability form must be signed by each volunteer prior to that individual performing work on City-maintained or managed trails. The minimum age of volunteers is 14 years old, and any person under the age of 18 must have a parent or guardian sign the Waiver of Liability form on their behalf. No volunteers under the age of 18 may utilize power tools.
- 10. Principal contacts of the respective parties for the performance of this MOU are:
  - a. Michael Rutter, BMA Trails Program Director, for BMA
  - b. David D. Spellman, Mayor, for the City

The City Agrees:

1. To collaborate with BMA to identify and prioritize appropriate trail construction and maintenance activities suitable for BMA's volunteer assistance program.
2. To move plans and approvals through City processes in a timely manner.
3. To pay authorized expenses for materials required for trail construction and maintenance, if preapproved by the City directly to be reimbursed to BMA within 45 days after activity completed.
4. To review and approve project, design, construction, and maintenance plans as necessary within 2 weeks after receiving such plans.
5. To keep BMA informed of management or policy changes that affect trail management or access.
6. To share relevant information as requested by BMA to perform their agreed upon activities, for example, existing data/studies (EIS, surveying, GIS)
7. To pursue/facilitate local relationships, for example, easements from adjoining property owners and/or land managers, as necessary.
8. To use reasonable efforts to ensure that other parties working on trails where BMA is working to not deviate from the flagged route or trail design.
9. BMA is not obligated to perform any services or provide any labor under this MOU for any project that is not approved by BMA in its sole discretion.

BMA Agrees:

1. To assist with trail design, construction and maintenance within the prescribed specifications as described by the latest City Trail Design & Build Guidelines.
2. To provide leadership & organizational structure for BMA volunteers.
3. To share relevant information and documents related to trail assessments, design, construction and maintenance activities.
4. To provide the City with documentation detailing work to be performed on specific dates and secure written approval for that work from the City prior to performing such work.
5. To provide crew leaders, volunteers, resources, and tools.
6. To determine means and methods to perform the agreed upon activities by the volunteers.
7. When deemed appropriate, to recommend contractors whose services can facilitate or support BMA volunteer activities.

8. BMA or individual volunteers will be responsible for transportation of volunteers to the trail head or work staging area.
9. To train and instruct their volunteers on City trail construction and maintenance techniques per the latest City Trail Design & Build Guidelines.
10. To perform a risk assessment for each project and notify both the volunteer and the City of any potential risk associated with the project. To address other safety concerns such as vehicular traffic, improper tool usage and weather as necessary during a project.
11. To require each volunteer to provide an adequate personal supply of water for proper hydration.
12. To keep the City informed of organizational changes that may alter BMA's role.
13. To seek private and corporate donations as well as grants typically available to nonprofit organizations.
14. To make recommendations for qualified partners (e.g., IMBA, etc.)
15. To the maximum extent allowed by law, to waive all claims against the City for loss, damage and costs of any nature whatsoever arising from or relating to the parties' activities pursuant to this MOU.
16. To hold harmless, indemnify and defend the City from all claims for loss, damage or expense of any nature whatsoever by a volunteer who did not complete a City Volunteer Notification & Waiver of Liability form before performing work pursuant to this MOU, whose claim arises from or relates in any way to such work.

#### MOU Term:

This MOU shall remain in place until December 31, 2021. It will automatically renew for subsequent terms of one year, not to exceed 4 such renewal terms, commencing on January 1, and ending on December 31 of each succeeding year, until cancelled by one party giving the other at least 30 days written notice of its intent to terminate. In the event of a breach of this MOU by either party, the other party's sole remedy will be to terminate this MOU by written notice to the other party. Neither party shall be liable to the other party for any lost revenues or profits, or indirect, special, incidental, punitive or consequential damages regardless of legal theory or foreseeability. This MOU will be governed by internal the laws of the State of Colorado without reference to conflicts of laws principles. This MOU may be modified only in a writing executed and delivered by BMA and the City.

#### Budget/Appropriation:

Notwithstanding anything to the contrary contained in this MOU, the City shall have no obligations under this MOU, nor shall any payment be made to BMA or anyone else, in respect of any period or Work performed after any December 31 of each calendar year during the term of this MOU, without an appropriation therefor by the City in accordance with a budget adopted by the City Council of the City of Black Hawk in compliance with the provisions of Article 25 of Title 30 of the Colorado Revised Statutes, the Local Government Budget Law (CRS. Section 29-1101 et seq.), and the TABOR Amendment (Constitution, Article X, Section 20).

The parties have entered into this MOU as of this 25<sup>th</sup> day of August, 2021.

Boulder Mountainbike Alliance

City of Black Hawk

By: Wendy Sweet

By: David D. Spellman

Signature: Wendy Sweet

Title: Executive Director

Signature: \_\_\_\_\_

Title: Mayor

**RESOLUTION 57-2021**  
**A RESOLUTION**  
**APPROVING THE**  
**AGREEMENT FOR**  
**PROFESSIONAL**  
**SERVICES FOR HOLIDAY**  
**DECORATIONS WITH**  
**ALPINE ARTISAN**  
**STUDIOS IN THE AMOUNT**  
**NOT TO EXCEED \$166,527**

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

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**SUBJECT:** Holiday Decorations for the 2021 Season

**RECOMMENDATION:** Staff recommends the following motion to the Mayor and Board of Aldermen:

**MOTION TO APPROVE** Resolution 57-2021, A Resolution Approving the Agreement for Professional Services for Holiday Decorations with Alpine Artisans Studios in the Amount of \$166,527

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:** This agreement will provide funding for the acquisition of new products, replacement of some worn out products, installation, maintenance and removal including inventory and condition report for the 2021 Season. The work will include installing the same program as last year as well as specifically provide for the acquisition of a new carousel animal to replace the broken reindeer at the gazebo, a new sleigh for Mountain Life Park photo ops, and completion of the garland on the St. Charles Parking Garage. Additional new product for the season includes providing garlands and bows on the new lamp posts on Gregory Plaza consistent with the rest of the City. The agreement will include the annual cleaning and refurbishment of the existing décor upon tear down so it will be stored in a cleaned condition.

**AGENDA DATE:** August 25, 2021

**WORKSHOP DATE:** Same

**FUNDING SOURCE:** 010-1101-411-5827 Holiday Decorations

**DEPARTMENT DIRECTOR APPROVAL:** [ x ]Yes [ ]No

**STAFF PERSON RESPONSIBLE:** Tom Isbester

**DOCUMENTS ATTACHED:** Agreement

**RECORD:** [ ]Yes [ x ]No

**CoBH CERTIFICATE OF INSURANCE REQUIRED** [x ]Yes [ ]No

**CITY ATTORNEY REVIEW:** [ ]Yes [ ]N/A

**SUBMITTED BY:**



Thomas Isbester, Public Works Director

**REVIEWED BY:**



Stephen N. Cole, City Manager

STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

Resolution No. 57-2021

**TITLE: A RESOLUTION APPROVING THE AGREEMENT FOR PROFESSIONAL SERVICES FOR HOLIDAY DECORATIONS WITH ALPINE ARTISAN STUDIOS IN THE AMOUNT NOT TO EXCEED \$166,527**

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

**Section 1.** The City Council hereby approves the Agreement for Professional Services for the holiday decoration manufacture, refurbishment, installation, and maintenance with Alpine Artisan Studios in the amount not to exceed \$166,527.

RESOLVED AND PASSED this 25<sup>th</sup> day of August, 2021.

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David D. Spellman, Mayor

ATTEST:

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Melissa A. Greiner, CMC, City Clerk

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this 25<sup>th</sup> day of August, 2021, by and between the **CITY OF BLACK HAWK**, State of Colorado, a Colorado municipal corporation (hereinafter referred to as the "City") and **Alpine Artisan Studios** hereinafter referred to as "Contractor").

### **RECITALS:**

A. The City requires **professional services for the ongoing manufacture, refurbishment, installation, maintenance and removal of the annual City Christmas Decorations** (the Project").

B. Contractor has held itself out to the City as having the requisite expertise and experience to perform the required work for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Contractor shall provide to the City **professional services for the ongoing manufacture, refurbishment, installation, maintenance and removal of the annual City Christmas Decorations** for the Project.

### **I. SCOPE OF SERVICES**

Contractor shall complete the scope of services as described in **Exhibit A** attached hereto and incorporated herein by this reference. Contractor shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project.

### **II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY**

The City shall provide Contractor with reports and such other data as may be available to the City and reasonably required by Contractor to perform hereunder. No project information shall be disclosed by Contractor to third parties without the prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Contractor shall be returned to the City. Contractor is authorized by the City to retain copies of such data and materials at Contractor's expense.

### **III. OWNERSHIP OF WORK PRODUCT**

The City acknowledges that Contractor's documents produced under this Agreement are instruments of professional services. Nevertheless, upon payment to Contractor pursuant to this Agreement, all work, data, drawings, designs, plans, reports, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed for this Project are, and shall be, the sole and exclusive property of the City. However, any reuse of the documents by the City without prior written authorization by Contractor other than for the specific intended purpose of this Agreement will be at the City's sole risk. Contractor will provide the City with a ten (10) day written notice prior to disposal of Project documents it has retained, during which time the City may take physical possession of same at the storage site.

#### **IV. COMPENSATION**

A. Compensation shall not exceed One Hundred Sixty Six Thousand Five Hundred Twenty Seven Dollars (\$166,527.00) for the work described in **Exhibit A**. Payment shall be made in accordance with the schedule of charges in **Exhibit A**. Invoices will be itemized and include hourly breakdown for all personnel and other charges.

B. Contractor may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Contractor under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1. All invoices, including Contractor's verified payment request, shall be submitted by Contractor to the City no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Contractor fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Contractor defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.
2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The City has the right to ask for clarification on any Contractor invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Contractor may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Contractor may terminate this Agreement. Upon receipt of payment in full for services rendered, Contractor will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Contractor's certification that services required herein by Contractor have been fully completed in accordance with this Agreement and all data and reports for the Project.

## **V. COMMENCEMENT AND COMPLETION OF WORK**

Contractor shall commence work upon the execution of this Agreement. This Agreement shall be completed by April 29, 2022.

## **VI. PROFESSIONAL RESPONSIBILITY**

A. Contractor hereby represents that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by Contractor under this Agreement. Contractor shall, without additional compensation, correct or resolve any errors or deficiencies in its designs, drawings, specifications, reports, and other services which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Contractor of responsibility for technical adequacy of the work. Neither the City's review, approval, or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement, and Contractor shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

## **VII. COMPLIANCE WITH LAW**

A. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

B. Illegal Aliens.

1. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

2. 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.

3. Verification.

a. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

b. Contractor shall not use the E-Verify Program or the Department 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 who is performing work under the Agreement, 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 who is performing work under the Agreement; 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 who is performing work under the Agreement; 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 who is performing work under the Agreement.

4. 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.

5. If Contractor does not currently employ any employees, Contractor shall sign the No Employee Affidavit attached hereto.

6. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the Department Program Affidavit attached hereto.

## **VIII. INDEMNIFICATION**

A. **INDEMNIFICATION – GENERAL:** The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of professional negligence, the Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its Council members, officials, officers, directors, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including worker's compensation claims, in any way resulting from or arising from the services rendered by Contractor, its employees, agents or sub-contractors, or others for whom the Contractor is legally liable, under this Agreement; provided, however, that the Contractor need not indemnify or save harmless the City, its Council members, its officers, agents and employees from damages resulting from the negligence of the Council members, officials, officers, directors, agents and employees.

B. **INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE:** The Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the City, its Council members, and any of its officials, officers, directors, and employees from and against damages, liability, losses, costs and expenses, including reasonable attorney's fees, but only to the extent caused by or arising out of the negligent acts, errors or omissions of the Contractor, its employees, agents or subcontractors, or others for whom the Contractor is legally liable, in the performance of professional services under this Agreement. The Contractor is not obligated under this subparagraph VIII.B. to indemnify the City for the negligent acts of the City, its Council members, or any of its officials, officers, directors, agents and employees.

C. **INDEMNIFICATION – COSTS:** Contractor shall, to the fullest extent permitted by law, defend, investigate, handle, respond to, and provide defense for and defend against, any such liability, claims or demands at the sole expense of Contractor or, at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with any such liability, claims or demands. Contractor shall, to the fullest extent permitted by law, defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the City, its Council members, officials, officers, directors, agents and employees, the City shall reimburse Contractor for the portion of the judgment attributable to such act, omission or other fault of the City, its Council members, officials, officers, directors, agents and employees.

## **IX. INSURANCE**

A. The Contractor agrees to obtain and maintain during the life of the Agreement, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section VIII above. Such insurance shall be in addition to any other insurance requirements imposed by the Agreement or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section VIII above, by reason of its failure to obtain and maintain during the life of the Agreement insurance in sufficient amounts, durations, or types.

B. Contractor shall obtain and maintain during the life of the Agreement, and shall cause any subcontractor to obtain and maintain during the life of the Agreement, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section VIII above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. **Worker's Compensation Insurance** to cover obligations imposed by applicable law for any employee engaged in the performance of the work under the Agreement, and Employers Liability Insurance with minimum limits of six hundred thousand dollars (\$600,000) each incident, one million dollars (\$1,000,000) disease—policy limit, and one million dollars (\$1,000,000) disease—each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements under this paragraph.

2. **Commercial general liability insurance** with minimum combined single limits of six hundred thousand dollars (\$600,000) each occurrence and one million dollars (\$1,000,000) general 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 coverage for contractual and employee acts), blanket contractual products, and completed operations. This policy shall contain a severability of interests provision.

3. **Professional liability insurance** with minimum limits of six hundred, thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

4. **The policy required by paragraph 2., above, shall be endorsed to include the City and the City's officers, employees, and Contractors as additional insureds.** The policy required in Paragraphs 1 and 2 above shall be primary insurance, and any insurance carried by the City, its officers, its employees, or its Contractors shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by paragraph 1., above, shall contain any exclusion for bodily injury or property damage arising from completed operations. Contractor shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the City shall be completed by Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages 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 of Black Hawk  
P.O. Box 68  
Black Hawk, Colorado 80422-0068  
**Attn: City Clerk**

6. Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement 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 Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

8. The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-114 et seq., 13 Colo. Rev. Stat., as from time to time amended, or otherwise available to the City, its officers, its employees, or agents.

#### **X. NON-ASSIGNABILITY**

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

#### **XI. TERMINATION**

This Agreement shall terminate upon the City's providing Contractor with thirty (30) days advance written notice. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Contractor.

#### **XII. VENUE**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Gilpin, State of Colorado.

### **XIII. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is the employee of the City for any purpose.

### **XIV. NO WAIVER**

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

### **XV. NOTICE**

Any notice or communication between Contractor and the City which may be required, or which may be given, under the terms of this Agreement, shall be in writing and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City:

City of Black Hawk  
P.O. Box 68  
Black Hawk, Colorado 80422-0068  
Attn: Thomas Isbester, Public Works Director

The Contractor:

Alpine Artisan Studios  
1170 W 120<sup>th</sup> Avenue  
Westminster, CO 80234

**PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR  
CONTRACTING WITH AN ILLEGAL ALIEN**

FROM: ALPINE ARTISAN STUDIOS  
(Prospective Contractor)

TO: City of Black Hawk  
P.O. Box 68  
Black Hawk, Colorado 80422-0068

Project Name HOLIDAY DECOR & LIGHTS

Bid Number \_\_\_\_\_ Project No. \_\_\_\_\_

As a prospective Contractor for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that I (we) will confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment.

Executed this 16 day of AUGUST, 20 21

Prospective Contractor ALPINE ARTISAN STUDIOS

By: [Signature]

Title: PRESIDENT

## **XVI. ENTIRE AGREEMENT**

This Agreement and the attached exhibits constitute the entire Agreement between Contractor and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

CITY OF BLACK HAWK, COLORADO

By: \_\_\_\_\_  
David D. Spellman, Mayor

**ATTEST:**

Melissa A. Greiner, CMC  
City Clerk

**APPROVED AS TO FORM:**

Corey Y. Hoffmann, City Attorney

## Alpine Artisan Studios

By: sefin  
Its: PRESIDENT

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 16 day of August, 2021, by Jennifer Vanini as the President of Alpine Artisan Studios.

My commission expires: June 18 2025

(S E A L)

Notary Public



DEPARTMENT PROGRAM AFFIDAVIT

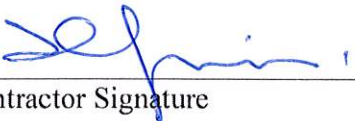
(To be completed if Contractor participates in the  
Department of Labor Lawful Presence Verification Program)

I, JENN VANINI, as a public contractor under contract with the City of  
Black Hawk (the "City"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are  
newly hired for employment to perform work under this public contract for services ("Contract")  
with the Town within twenty (20) days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. §  
1324a, which verify the employment eligibility and identity of newly hired employees who  
perform work under the Agreement; and

3. I have not and will not alter or falsify the identification documents for my newly  
hired employees who perform work under the Agreement.

  
Contractor Signature

8.16.21  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 16 day of  
August, 20 21, by Jennifer Vanini as President of  
Alpine Artisan Studios

My commission expires:

(S E A L)

  
Notary Public



## NO EMPLOYEE AFFIDAVIT

### 1. Check and complete one:

☐ I, \_\_\_\_\_, am a sole proprietor doing business as \_\_\_\_\_. I do not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☒ I, JENN VANINI, am an owner/member/shareholder of ALPINE ARTISAN STUDIOS, LLC [specify type of entity-i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

### 2. Check one.

☒ I, JENN VANINI, am a United States citizen or legal permanent resident.

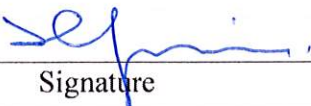
*The City must verify this statement by reviewing one of the following items:*

- A valid Colorado Driver's license or a Colorado identification card
- A United States military card or a military dependent's identification card
- A United States Coast Guard Merchant Mariner card
- A Native American tribal document or
- In the case of a resident of another state, the driver's license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card
- Any other documents or combination of documents listed in the City's "Acceptable Documents for Lawful Presence Verification" chart that prove both the contractor's citizenship/lawful presence and identity.

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

*Contractor must verify this statement through the federal systematic alien verification of entitlement program, the "SAVE" program, and provide such verification to the City.*

  
Signature

8.16.21  
Date

**ACCEPTABLE DOCUMENTS FOR  
LAWFUL PRESENCE VERIFICATION**

**Documents that Serve to Prove Citizenship/Lawful Presence and Identification:**

- Colorado Driver's License or Identification Card
- Out of State drivers license from: AL, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NJ, NY, ND, OH, OK, PA, RI, SC, SD, VA, WV, WY
- A United States Military Card of a Military Dependent's Identification Card
- A United States Coast Guard or Merchant Mariner Card
- A Native American Tribal Document
- Certificate of Naturalization with Photograph
- Certificate of U.S. Citizenship with Photograph
- U.S. Passport (less than 5 years old)
- Northern Mariana Identification Card with Photograph

**OR**

**Documents that Only Serve to Prove Citizenship/Lawful Presence:**

- U.S. Birth Certificate
- Certification of Report of Birth from Department of State
- Report of Birth Abroad of a U.S. Citizen
- U.S. Citizen Identification Card
- Final Adoption Decree
- Evidence of U.S. Civil Service Employment before June 1, 1976
- Statement Provided by U.S. Consular Officer Certifying Citizenship
- Religious Records Recorded in the 50 states, D.C., or a U.S. Territory Showing Birth Date or Child's Age and Location of Birth in U.S.
- Early School Records
- Census Records
- Other Documents that Establish a U.S. Place of Birth or in Some Way Indicates U.S. Citizenship

**AND**


**Documents that Serve to Prove Identification:**

- A Driver's License or Identification Card Regardless of the State of Issuance
- School Identification Card with Photograph
- Identification Card Issued by Federal, State or Local Government
- A Driver's License Issued by a Canadian Government Authority



## Black Hawk Holiday Decor 2021 Strategy



Scope of Work	Notes	2021 BASE SCOPE	2021 NEW SCOPE	2021 NEW SERVICE	2021 TOTAL
2021 Product Updates:	(9) Cares - Replace 50% of Cool White lights which are Faded - Aspen Trees & (6) Cases of Aurora LED Lights - Evergreen Trees (19) Replace Torn Garland - 9' Hard Needle & Soft Needle with Gold Mix Garland - LED Warm White - Red & Gold Decor (14) 2' Glittered Mesh Bows - LED Outline Rope Lit - (10) Post Office Sprays, (1) Fire Station, (2) Public Works & (1) Bus Barn New Plaza Development - (22) Lamp Posts Garlands (11) Garland with Bow & (10) Garland Only includes Installation & Removal	n/a n/a n/a n/a	\$ 6,930.00 \$ 6,007.25 \$ 4,074.00 \$ 14,052.76	included in base services included in base services included in base services 1,210.00	\$ 32,874.01
2021 Product Repairs, Replacements & Design Completion:	REPLACE: Carousel Reindeer (Antler broken/removed) - Cost to Replace with New Carousel Animal Brass Pole & Bracket. Choose alternative animal that has fewer fragile pieces.  CHOOSE ONE FROM: Frog, Bear, Pig, Horse A or Horse B DESIGN COMPLETED: Parking Garage - (6) 18' Garlands LED Lit Paparazzi, (8) 2' Red Bows LED Rope Lit - Extends Design to End of Garage As Well as Wrap On Sides NEW: Selfie Sleigh - Sit in for Photo - Include Black Hawk Logo - LED Lit	n/a n/a n/a n/a	\$ 8,318.75 \$ 11,650.00 \$ 4,632.00	Included 1,125.00 Included	\$ 25,725.75
2021 Installation Supplies & Rentals:	Same As 2019 SCOPE + 2020 ADDITIONS (2021 Services Listed with New Product) - Includes Twice Weekly Maintenance	\$ 10,851.25	included	see above	\$ 55,310.97
2021 Removal Services & Condition Report:	Remove Decor & Tree Lighting - After Stock Show - Condition Report Due by March 1st	\$ 26,542.99	n/a	see above	\$ 26,542.99
2022 Annual Cleaning & Refurbishment of Existing Decor	Base Refurbishment - Includes washing, general touch up and light repair of decor. Added Scope To Be Completed @ Alpine (in addition to base refurb): • Refurbishment @ Alpine. • Transportation to/fr City of Blackhawk • Re-Clitens: 53 Bows and All Snowflakes • Heavy Repair Work Based Upon Condition Report	\$ 17,293.00	n/a	n/a	\$ 26,073.00
Category Subtotals:		\$ 81,853.96	\$ 56,264.76	\$ 2,335.00	\$ 166,526.72

Notes:	Payment Schedule:	2021 Payment	2022 Payment
Tree Lighting to Begin Early October, Decor Installation November - ALL On Day After Thanksgiving - Decor & Tree Lighting Removed After Stock Show on By Mid February - Maintenance Twice Per Week From Go Live to Take Down	New Product Deposit- AUG Services Supplies & Rentals - SEP New Product Balance- OCT Installation - New Product Services - NOV Removal - FEB 2022 Refurbishment - MAR 2022	\$ 29,299.88 \$ 10,851.25 \$ 29,299.88 \$ 44,459.72 \$ - \$ -	\$ - \$ - \$ - \$ 26,542.99 \$ 26,073.00 \$ 52,615.99
	Totals	\$ 113,910.73	\$ 52,615.99
GRAND TOTAL		\$ 166,526.72	



**RESOLUTION 58-2021**  
**A RESOLUTION**  
**APPROVING THE LETTER**  
**AGREEMENT WITH D.A.**  
**DAVIDSON & CO. FIXED**  
**INCOME CAPITAL**  
**MARKETS FOR**  
**INVESTMENT BANKING**  
**SERVICES**

STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

Resolution No. 58-2021

**TITLE: A RESOLUTION APPROVING THE LETTER AGREEMENT WITH D.A. DAVIDSON & CO. FIXED INCOME CAPITAL MARKETS FOR INVESTMENT BANKING SERVICES**

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

**Section 1.** The City Council hereby approves the Letter Agreement with D.A. Davidson & Co. Fixed Income Capital Markets for investment banking services attached as **Exhibit A**, and authorizes the Mayor to sign the Letter Agreement on behalf of the City.

RESOLVED AND PASSED this 25<sup>th</sup> day of August, 2021.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

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**SUBJECT:** Approving the Letter Agreement with D.A. Davidson & Co. to provide Investment Banking Services.

**RECOMMENDATION:** Staff recommends the following motion to the Mayor and Board of Aldermen:

**MOTION TO APPROVE:** Resolution 58-2021, A Resolution Approving the Letter Agreement with D.A. Davidson & Co. Fixed Income Capital Markets for Investment Banking Services.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:** The City is currently exploring financing options to fund capital improvements and land acquisitions. If approved, D.A. Davidson will be assisting the City with negotiating the terms and structure of the tax-exempt financing. They will also act as the underwriter and will coordinate the steps necessary to close the transaction.

**AGENDA DATE:** August 25, 2021

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**DEPARTMENT DIRECTOR APPROVAL:** ☒ Yes ☐ No

**STAFF PERSON RESPONSIBLE:** Lance Hillis, Finance Director

**DOCUMENTS ATTACHED:** Resolution XX-2021

**RECORD:** ☐ Yes ☒ No

**CITY ATTORNEY REVIEW:** ☒ Yes ☐ N/A

**SUBMITTED BY:**

**REVIEWED BY:**



Lance Hillis, Finance Director



Stephen N. Cole, City Manager



**D|A|DAVIDSON**  
FIXED INCOME CAPITAL MARKETS

1550 Market Street, Suite 300  
Denver, CO 80202  
303.764.6000  
[www.davidson.com/ficm](http://www.davidson.com/ficm)  
D.A. Davidson & Co. member SIPC

August 13, 2021

City of Black Hawk  
c/o Lance Hillis  
PO Box 68, 211 Church St  
Black Hawk, CO 80422

**RE: *Letter Agreement for Investment Banking Services  
to the City of Black Hawk***

Mr. Hillis,

This letter agreement confirms the terms and conditions upon which D.A. Davidson & Co. Fixed Income Capital Markets ("Davidson"), its successors or assigns will provide investment banking services to the City of Black Hawk (the "Client").

The investment banking services rendered by Davidson under this agreement may include:

- Analysis of the project's credit quality
- Analysis of the capital markets, including interest rates and terms available in the market
- Evaluating potential strategies to achieve the Client's goals
- Working with the Client's consultants and attorneys to determine the feasibility of various borrowing or restructuring options
- Advising the Client on the structure and terms of a restructured bond or a new bond or loan
- Coordinating with the Client's attorneys and consultants, the dissemination of financial data
- Negotiating the structure and terms of the Bonds/loan with the purchaser on behalf of the Client
- Underwriting or privately placing Bonds on behalf of the Client or assisting the Client in obtaining a direct, tax exempt loan
- Under the direction and legal advice of nationally recognized bond counsel, assist and supervise the steps necessary to be taken to close the transaction

Delivered with this letter are the disclosures required by MSRB Rule G-17 regarding our role, duties and interests as an underwriter of the Bonds. By signing this letter agreement, the Client acknowledges and agrees that: (i) the transaction contemplated by this Agreement will be an arm's length, commercial transaction between the Client and the purchaser, in which Davidson may be acting as an agent or as an underwriter, but not as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) Davidson has not assumed any fiduciary responsibility to the Client with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto; (iii) the only obligations Davidson will have to the Client with respect to the transaction contemplated hereby are expressly set forth in this letter agreement; and (iv) the Issuer has consulted and will continue to consult with its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it deems appropriate. The representative of the Client signing this letter agreement has been duly authorized to execute this letter agreement and to act hereunder.

This letter agreement shall remain in full force and effect until such time as the Client notifies Davidson in writing of its intent to terminate this letter agreement. Davidson may resign and terminate this letter agreement by providing written notification with no less than 30 days prior notice to the Client.

At such time as arrangements for the sale of Bonds or other borrowing have been completed, Davidson shall be paid as shown below, or \$30,000, whichever is greater:

- 0.5% of the par for the underwriting of Certificates of Participation or the placement of a lease purchase loan

Unless otherwise agreed to by Client, Client's payment of the foregoing is contingent upon the sale of Bonds or placement of debt.

This letter agreement is not an offer to purchase Bonds. If the sale of Bonds or other borrowing does not occur, Davidson shall not be owed compensation. Please indicate by your signature below your desire to engage D.A. Davidson & Co. Fixed Income Capital Markets to provide investment banking services on these terms.

Respectfully submitted,

D.A. Davidson & Co. Fixed Income Capital Markets



Kyle Thomas  
Managing Director

ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
Authorized Officer  
City of Black Hawk

EXHIBIT A

D.A. Davidson & Co. (hereinafter referred to as “Davidson” or “underwriter”) intends/ proposes to serve as an underwriter, and not as a financial advisor or municipal advisor, in connection with the issuance of the Bonds.

As part of our services as underwriter/senior managing underwriter, Davidson may provide advice concerning the structure, timing, terms, and other similar matters concerning the issuance of the Bonds.

**Disclosures Concerning the Underwriters Role:**

- (i) MSRB Rule G-17 requires an underwriter to deal fairly at all times with both municipal issuers and investors.
- (ii) The underwriters' primary role is to purchase the Bonds with a view to distribution in an arm's-length transaction with the Issuer. The underwriters financial and other interests that may differ from those of the Issuer.
- (iii) Unlike a municipal advisor, the underwriters do not have a fiduciary duty to the Issuer under the federal securities laws and are, therefore, not required by federal law to act in the best interests of the Issuer without regard to their own financial or other interests.
- (iv) The Issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the Issuer's interest in this transaction.
- (v) The underwriters have a duty to purchase the Bonds from the Issuer at a fair and reasonable price, but must balance that duty with their duty to sell the Bonds to investors at prices that are fair and reasonable.
- (vi) The underwriter will review the official statement for the Bonds in accordance with, and as part of, their respective responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction.

**Disclosures Concerning the Underwriters Compensation:**

As underwriter, Davidson will be compensated by a fee and/or an underwriting discount that will be set forth in the bond purchase agreement to be negotiated and entered into in connection with the issuance of the Bonds. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the Bonds. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriter may have an incentive to recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

**Additional Conflicts Disclosure:**

Davidson has not identified any additional potential or actual material conflicts that require disclosure.

**RESOLUTION 59-2021**  
**A RESOLUTION**  
**APPROVING THE**  
**COMMERCIAL LEASE**  
**WITH FEENEY FARMS,**  
**INC. FOR THE PROPERTY**  
**LOCATED AT 7320 BLACK**  
**HAWK BLVD., SUITE 1A,**  
**BLACK HAWK,**  
**COLORADO**

STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

Resolution No. 59-2021

**TITLE: A RESOLUTION APPROVING THE COMMERCIAL LEASE WITH  
FEENEY FARMS, INC. FOR THE PROPERTY LOCATED AT 7320  
BLACK HAWK BLVD., SUITE 1A, BLACK HAWK, COLORADO**

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

**Section 1.** The City Council hereby approves the Commercial Lease with feeney  
farms, Inc. for the property located at 7320 Black Hawk Blvd., Suite 1A, Black Hawk, Colorado,  
attached as **Exhibit A**, and authorizes the Mayor to sign the Commercial Lease on behalf of the  
City.

RESOLVED AND PASSED this 25<sup>th</sup> day of August, 2021.

---

David D. Spellman, Mayor

ATTEST:

---

Melissa A. Greiner, CMC, City Clerk

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

---

**SUBJECT:** Commercial Lease with Feeney Farms, Inc for the Property Located at 7320 Black Hawk Blvd, Suite 1A, Black Hawk, Colorado.

**RECOMMENDATION:** Staff recommends the following motion to the Mayor and Board of Aldermen:

**MOTION TO APPROVE:** Resolution 59-2021, A Resolution approving the Commercial Lease between the City of Black Hawk as Lessor and Feeney Farms, Inc. as Lessee.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:** In 2016, the Gilpin County Education Foundation entered into a lease with the City for the Convenience Store. The Foundations intentions extended beyond fundraising, to provide Gilpin School District students a hands-on business management experience. After five years, the Foundation has come to the conclusion that the store has not meet these goals. Feeney Farms, Inc. is under contract to purchase the business from the Foundation. This Commercial Lease will allow Feeney Farms, Inc to operate the Convenience Store at its current location. The lease calls for an initial five-year term, with 2 one-year options. Most of the other details are similar to the current lease.

**AGENDA DATE:** August 25, 2021

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**DEPARTMENT DIRECTOR APPROVAL:** ☒ Yes ☐ No

**STAFF PERSON RESPONSIBLE:** Lance Hillis, Finance Director

**DOCUMENTS ATTACHED:** Commercial Lease

**RECORD:** ☐ Yes ☒ No


**CITY ATTORNEY REVIEW:** ☒ Yes ☐ N/A

**SUBMITTED BY:**

**REVIEWED BY:**



Lance Hillis, Finance Director



Stephen N. Cole, City Manager

## Commercial Lease

This Lease is made between the City of Black Hawk, herein called the City, and Feeney Farms, Inc., herein called Tenant. Tenant hereby offers to lease from City the premises situated in the City of Black Hawk, County of Gilpin, State of Colorado, and more particularly described as described as 7320 Black Hawk Blvd., Suite 1A, Black Hawk, Colorado 80422, 1<sup>st</sup> Floor, West Side (fka 137 Clear Creek, Unit A) (Approx. 1,377 Rentable Square Feet) (the "Premises") upon the following TERMS and CONDITIONS:

### 1. **Term; Renewal; Rent; Termination.**

A. Term. City demises the above Premises for an initial term of five (5) years, commencing on August 25, 2021, and expiring on August 31, 2026.

B. Renewal. Provided that Tenant is not in default of any terms or conditions of this Lease, Tenant may renew this Lease for two (2) additional one (1) year terms by providing no less than sixty (60) days advance notice of the intent to renew the Lease.

C. Rent. Subject to the provisions of subsection D. of this Section 2, Tenant shall pay rent to City in the amount of Eight Hundred and Eighty-Three dollars (\$883.00) per month for the first twelve months of this lease in advance on the first day of each month for that month's rental, during the term of this lease. Tenant shall upon execution of this Agreement pay an amount equal to the first and last month's rent, which shall, so long as Tenant is not in default of the Lease, constitute payment for the aforesaid first and last month's rent. The total amount of the first and last month's rent shall be Two Hundred Seventy-Five Dollars (\$275.00), consisting of Two Hundred Seventy-Five Dollars (\$275.00) as the first month's rent, and no amount due as the last month's rent, which total amount takes into account the application of the rent credit set forth in subsection D of this Section 2 below. All rental payments shall be made to City, at the address of P.O. Box 68, Black Hawk, Colorado 80422, or such other location or in such other manner as may be mutually agreed upon by the Parties. Tenant shall also pay any possessory taxes which may be assessed against the Premises pursuant to Section 17 of this Lease. Commencing on the one-year anniversary of this lease and on each annual anniversary thereafter during the lease term, the rent shall be adjusted to include the most recent annual Denver-Aurora-Lakewood Consumer Price Index for All Urban Consumers. It is expressly agreed to that rent payments shall commence upon the termination of the existing Lease with the Gilpin County Educational Foundation.

D. Rent Credit. The Tenant shall be entitled to a credit towards the monthly lease payment in an amount equal to the average monthly sales tax collected at the location for the previous twelve-month period ending July 31. This credit for the initial twelve-month period will be \$608.00 per month.

E. Damage Deposit. Tenant shall upon execution of this Lease provide a deposit in the amount of Five Hundred Dollars (\$500.00) as security against damage to the Premises, normal wear and tear excepted.

F. Termination. City and Tenant may terminate this Lease upon ninety (90) days written notice with cause or at any earlier time upon mutual agreement between both parties.

Tenant may terminate this lease at any time without cause by providing City with one hundred twenty (120) days' advance written notice.

G. Holding Over. If Tenant remains in possession of all or any part of the Premises after the expiration of the term hereof, with or without the express or implied consent of the City, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and in such case, this Lease and such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained herein. A hold over monthly rental payment of the most recent monthly rent plus the current annual Denver-Aurora-Lakewood Consumer Price Index for All Urban Consumers shall be paid by Tenant to the City in advance on the first (1st) day of each calendar month in which the hold over continues.

## 2. Use.

A. Use as Convenience Store/Retail Liquor Store. Tenant, or its assigns or subtenant, shall use and occupy the Premises for a convenience store, a retail liquor store, and associated permitted activities. Tenant further covenants and agrees that the use of the Premises shall be at all times in accordance with applicable zoning regulations of the City. Moreover, the Parties hereto acknowledge and agree that the Premises do not include any parking spaces for the exclusive use of the Tenant. Tenant shall not use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables, or other inherently dangerous substance, chemical, thing, or device

B. Liquor License. This Lease shall be effective for purposes of requirements of the Colorado Liquor Code, C.R.S. § 44-3-101, et seq., upon execution of the Lease. The City specifically consents to the application by Tenant or its assigns or subtenant for a liquor license as allowed by law, subject to the requirements of the Colorado Liquor Code This Lease is specifically conditioned upon Tenant's subtenant, Feeney Farms II, Inc., obtaining, on or before the one hundred twentieth (120th) day following the parties' mutual execution hereof (the "Approval Date"), issuance of a retail liquor store liquor license by the local and State licensing authorities. Tenant or its subtenant shall bear the cost of all fees and expenses related to the liquor license. If Feeney Farms II, Inc. is unable to obtain issuance of the liquor license, then Tenant shall have the option to terminate this Lease by written notice delivered to Landlord within ten (10) days following the Approval Date (the "Termination Notice"), and upon delivery of said notice in a timely and proper manner and provided that Tenant surrenders the Leased Premises in accordance with the terms of this Lease simultaneously with the giving of said notice, this Lease shall terminate as of the end of such ten (10) day period and all further obligations that have not occurred before such termination shall end and be of no further force and effect. The failure to deliver the Termination Notice in a timely manner shall be deemed satisfaction or waiver of this contingency

3. **Care and Maintenance of Premises**. Tenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at his own expense and at all times, maintain the Premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations, and any other system or equipment upon the Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear

and tear excepted. Tenant shall be responsible for all repairs required, excepting the roof, exterior walls, and structural foundations, which shall be maintained by City.

**4. Tenant Improvements and Alterations.**

A. Tenant Improvements. The Premises shall be delivered as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.

B. Suitability. As of the date of the execution of this Lease, Tenant has inspected the physical condition of the Premises and has received the same in "as is" condition. THE CITY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CONDITION OR STATE OF THE PREMISES OR ITS FITNESS OR AVAILABILITY FOR ANY PARTICULAR USE, AND THE CITY SHALL NOT BE LIABLE TO TENANT FOR ANY LATENT OR PATENT DEFECT THEREON. Tenant may use said Premises for the uses specified in this Lease, so long as such uses conform with zoning and use restrictions of all authorities affecting the Premises, and Tenant will not do, or permit to be done, any action or thing which is contrary to any legal or insurable requirement, or which constitutes a public or private nuisance or waste.

C. Alterations. Tenant shall not, without first obtaining the written consent of City, which shall not be unreasonably withheld, make any alterations, additions, or improvements, in, to, or about the Premises. Tenant shall not suffer nor permit any mechanic's liens or public works claims to be filed against the Premises by reason of work, labor, service or materials supplied or claimed to have been supplied to Tenant as a result of an agreement with, or the assent of Tenant. Nothing in this Lease shall be construed as constituting the consent or request of City, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the Premises or any part thereof. Nothing in this Lease shall be construed as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens or public works claims against City's interest in the Premises. If any such mechanic's lien or public works claims shall at any time be filed against the Premises, Tenant shall cause the same to be discharged of record within thirty (30) days after the date Tenant has knowledge of such filing. If Tenant shall fail to discharge such mechanic's lien or public works claims within such period, then, in addition to any other right or remedy of City, City may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien. However, Tenant shall not be required to pay or discharge any such mechanic's lien or public works claims so long as Tenant shall in good faith proceed to contest the same by appropriate proceedings; provided, however, Tenant shall give notice in writing to City of its intention to contest the validity of such lien and/or claim.

**5. Ordinances and Statutes.** Tenant shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Tenant.

6. **Assignment and Subletting.** Tenant shall not assign this lease or sublet any portion of the Premises without prior written consent of the City, which consent shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the City, may terminate this lease. Notwithstanding anything herein to the contrary, by its signature below, the City hereby consents to a sublease to Feeney Farms II, Inc., a Colorado Corporation of the space depicted in Exhibit B for operation of the retail liquor store.

7. **Utilities.** The City shall pay for water, sewer electricity, and gas. Tenant shall be responsible in its own name for telephone services, including equipment and repairs. Tenant shall also be responsible for cable/data/internet/satellite service, equipment, and repairs if such services are determined to be necessary by Tenant. Tenant shall not use any equipment or devices that utilize excessive electrical energy (i.e., portable space heater) or that may, in the City's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

8. **Entry and Inspection.** Tenant shall permit City or City's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit City at any time within sixty (60) days prior to the expiration of this lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

9. **Possession.** If City is unable to deliver possession of the Premises at the commencement hereof, City shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Tenant shall not be liable for any rent until possession is delivered.

10. **Indemnification.** Tenant agrees that City shall not be liable for any damage, either to person or persons or property or the loss of property sustained by Tenant or City or by any other person or persons due to the use of the Premises, due to the happening of any accident, or due to any act or neglect of Tenant, or any occupant of the Premises, or the use or misuse of any instrumentality or agency in or connected with the Premises, or occasioned by any nuisance made or suffered thereon. Tenant agrees to save City harmless thereon and therefrom, and to indemnify City on account thereof.

11. **Insurance.**

A. Tenant (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against City, City's servants, agents, and employees, on account of any loss or damage occasioned to Tenant, as the case may be, its respective property, the Premises or its contents, the common areas, parking lots, and sidewalks located adjacent to the Premises or to the other improvements of the Premises arising from any risk and to the extent covered by fire and extended coverage insurance, provided that such waiver does not invalidate such policies or prohibit recovery thereunder.

B. Tenant further covenants and agrees that from the date hereof Tenant will procure and maintain throughout the term, at its sole cost and expense, the following types of insurance in the amounts specified and, in the form, hereinafter provided:

i. Comprehensive broad form general public liability insurance in common use for commercial structures with extended coverage endorsement protecting City and Tenant against any liability whatsoever and covering the Premises, common areas, and parking lots and sidewalks located adjacent to the Premises and Tenant's use thereof against claims for personal injury, death, and property damage occurring upon, in or about the Premises, such insurance to afford protection to the **limit of not less than two million dollars (\$2,000,000)** combined single limit. The insurance coverage required under this subsection B shall, in addition, extend to any liability of Tenant arising out of the indemnities provided for in Section 10.

ii. Workers' compensation insurance covering all persons employed for such work.

iii. Fire and extended coverage insurance covering the Premises for injury or damage by the elements, or through any other cause, and all alterations, extensions, and improvements thereto and on the Premises and replacements thereof, including all appurtenances, whether on the Premises or extending beyond the boundaries thereof, against loss or damage by fire and the risks contemplated within the extended and malicious mischief (as such endorsements may customarily be written in Colorado from time to time), in an amount not less than the full actual replacement cost of the Premises, common areas, and appurtenances, and sufficient to prevent City or Tenant from becoming a co-insurer of any partial loss and the applicable provisions of the policies.

iv. Rental value insurance (covering loss or damage by fire with extended coverage).

v. Business interruption insurance and/or loss of "rental value" insurance.

vi. During the course of any construction or repair of improvements on the Premises initiated by Tenant, Tenant shall provide "Builders Risk Insurance."

C. All policies or insurance provided for in this Section 11 shall be issued by solvent and responsible insurance companies licensed to do business in the State of Colorado with a general policy holder's rating of not less than "A" and a financial rating of "AAA", as rated in the most current available "Bests" Insurance Reports, and qualified to write such policies in the State of Colorado. Each policy shall be issued in the names of City and Tenant, and their designees. Said policies shall be for the mutual and joint benefit and protection of City and Tenant and such policy of insurance, or a certificate thereof, shall be delivered to each of City and any such other parties in interest prior to the commencement of the term and thereafter within thirty (30) days prior to the expiration of each policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All such policies of insurance shall contain provisions that (a) the company writing said policy will give to City and such other parties in interest at least thirty (30) days' notice in writing in advance of any cancellations or lapses, or the effective date of any reduction in the amounts of insurance; and (b) the insurer waives the right of subrogation against City and against City's agents and representatives. All such public liability, property damage, and other casualty policies shall

be written as primary policies which do not contribute to and are not in excess of coverage which City may carry. All such public liability and property damage policies shall contain a provision that City and any such other parties in interest, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents, and employees by reason of the negligence of Tenant. Tenant's failure to provide and keep in force any of the insurance policies required hereunder shall be regarded as a material default hereunder, entitling City to exercise any or all of the remedies provided in this Lease in the event of Tenant's default.

D. The placement of any insurance by Tenant shall not be construed as any waiver or modification of City's rights under the Colorado Governmental Immunity Act.

12. **Eminent Domain.** If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Tenant's use of the Premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Tenant. Tenant shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Tenant may file a claim for any taking of fixtures and improvements owned by Tenant, and for moving expenses.

13. **Destruction of Premises.** In the event of a partial destruction of the Premises during the term hereof, from any cause, City shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Tenant shall be entitled to a proportionate reduction of rent, beginning with the date of the partial destruction, while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Tenant on the Premises. If such repairs cannot be made within said sixty (60) days, City, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated beginning with the date of the partial destruction, and in the event that City shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised Premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, City may elect to terminate this lease whether the demised Premises be injured or not. A total destruction of the building in which the Premises may be situated shall terminate this lease.

14. **Guaranty of Lease.** The undersigned does hereby personally guarantee to City and to its successors or assigns the prompt payment of all amounts due from Tenant to City under this Lease. To guaranty such performance, Tenant shall provide upon approval of this Lease the amount of Two Thousand Five Hundred Dollars (\$2,500.00) as a personal guaranty. Such personal guaranty shall only be utilized by the City in the event Tenant terminates the Lease without the one hundred twenty (120) days' notice required by Section 2. subsection F of this Lease. So long as Tenant remains in compliance with the terms of the Lease as it relates to notice of termination, said personal guaranty shall be returned to Tenant at the termination of the Lease, without any interest accruing thereon.

15. **Inspection of Records.** City shall have the right, upon reasonable notice to inspect the records of Tenant, including the financial records of Tenant so long as said inspection is reasonably related to a business or municipal purpose of the City pursuant to the terms of this Lease.

16. **City's Remedies on Default.** If Tenant defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, City may give Tenant notice of such default and if Tenant does not cure any such default within thirty (30) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Tenant does not commence such curing within thirty (30) days and thereafter proceed with reasonable diligence, in good faith to cure such default), then City may terminate this lease on no less than fifteen (15) days' notice to Tenant. On the date specified in such notice the term of this lease shall terminate, and Tenant shall then quit and surrender the Premises to City, without extinguishing Tenant's liability. If this lease shall have been so terminated by City, City may at any time thereafter resume possession of the Premises by any lawful means and remove Tenant or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

17. **Taxes.**

A. **Real Property Taxes.** Tenant shall pay all real property taxes, general, and special assessments ("real property taxes"), levied and assessed against the Premises.

B. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Tenant shall pay to City upon presentation of paid tax bills an amount equal to one hundred percent (100 %) of the increase in taxes upon the land and building in which the leased Premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Tenant shall be proportionate to the portion of the lease term included in such year.

18. **Rules and Regulations.** Tenant agrees that at all times during the term of this Lease, it shall at its own cost and expense:

A. Keep the Premises, common areas, parking lots and sidewalks located adjacent to the Premises in good, neat, and clean condition.

B. Not park trucks or delivery vehicles outside the Premises so as to unreasonably interfere with the use of any driveways, walks, roadways, highways, streets, malls, or parking areas.

C. Keep the Premises clean and free from refuse, rubbish, and dirt at all times; and store all trash, rubbish, and garbage within the Premises in the areas set aside therefor.

D. Obtain and maintain in effect all permits and licenses necessary for the operation of Tenant's business as herein provided.

E. Keep the outside area immediately adjoining the Premises reasonably clean and free from snow, ice, dirt, and rubbish, and keep that area free from any obstruction or merchandise.

F. All contractors of Tenant shall fully comply with the Occupational Safety and Health Act of 1970 (Chapter XVII, Title XIX of the United States Code) (OSHA) of applicable state statute adopted pursuant to OSHA. It shall be Tenant's obligation to ensure that its contractors fully comply with the provisions and standards as contained in such Act.

19. **Attorney's Fees.** In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, the City shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

20. **Waiver.** No failure of City to enforce any term hereof shall be deemed to be a waiver.

21. **Notices.** All notices, demands and requests required to be given by either party to the other shall be in writing. All notices, demands and requests shall either be hand-delivered or shall be sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth below, or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered on the date personally served, or two (2) days subsequent to the date that said notice was deposited with the United States Postal Service.

To Lessor: City of Black Hawk  
Attn: Lance Hillis, Finance Director  
P.O. Box 68  
Black Hawk, CO 80422

To Lessee: Feeney Farms, Inc  
Attn: Thomas L. Feeney  
P.O. Box 14  
Black Hawk, CO 80422

22. **Assigns, Successors.** This lease is binding upon and inures to the benefit of the assigns and successors in interest to the parties.

23. **Subordination.** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

23. **Radon Gas Disclosure.** As required by law, the City makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in the City of Black Hawk. Additional information regarding radon and radon testing may be obtained from the Gilpin County Health Department.

24. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF BLACK HAWK, COLORADO

By: \_\_\_\_\_  
David. D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk

TENANT

Feeney Farms, Inc.

By: \_\_\_\_\_  
Tom Feeney, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by  
\_\_\_\_\_ as President of Feeney Farms, Inc.

My Commission expires:

[S E A L]

\_\_\_\_\_  
Notary Public