



REVISED
REGULAR MEETING AGENDA

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

February 8, 2023
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. EMPLOYEE
INTRODUCTION: Brad Dallam, Water Resource Engineer

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

7. APPROVAL OF MINUTES: January 25, 2023

8. PUBLIC HEARINGS:

A. CB4, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion, and Improvement of City Streets and Roadways, Pursuant to C.R.S. § 38-6-101, C.R.S. § 31-25-201, Article XX, § 1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter
Rescheduled to February 22, 2023

B. CB5, An Ordinance Approving the Water Storage Agreement Between the City of Black Hawk and the City of Golden

9. ACTION ITEMS:

A. Resolution 13-2023, A Resolution Approving the Purchase of 1 Pick-Up Truck

B. Resolution 14-2023, A Resolution Approving the Commercial Lease with Peak to Peak Market, LLC for the Property Located at 7320 Black Hawk Blvd., Suite 1A, Black Hawk, Colorado

C. Resolution 15-2023, A Resolution to Temporarily Waive the Payment of Certain Enumerated Occupational Taxes as Otherwise Imposed Pursuant to Article IX of Chapter 4 of the Black Hawk Municipal Code

10. CITY MANAGER REPORT:

11. CITY ATTORNEY REPORT:

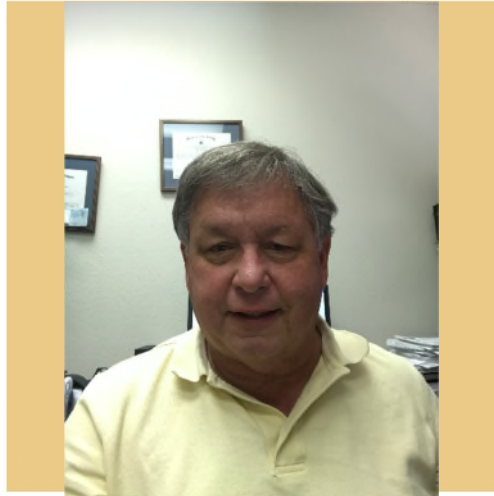
12. EXECUTIVE SESSION:

Executive Session to instruct negotiators regarding City-owned land on Gregory Hill, the Gregory Street HARD District, other City-owned property, and potential property acquisition pursuant to C.R.S § 24-6-402(4)(e).

13. ADJOURNMENT:



City of Black Hawk New Employee Introduction



Brad Dallam
Water Resource Engineer

My name is Brad Dallam, I am filling the position created by Jim Ford's retirement, Water Resource Engineer. I have over thirty years' experience in municipal engineering, with an emphasis on water related projects. I have managed complex water systems for over 20 of the 30 years consisting of water rights management, construction management and system operations. In my spare time I enjoy outdoor activities such as golf and cycling, I also am passionate about cooking on a bbq grill.



**City of Black Hawk
City Council**

January 25, 2023

MEETING MINUTES

Master Distiller Declan Watts, from the Rick Thomas Distillery, 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, January 25, 2023 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, Police Chief Moriarty, Fire Chief Woolley, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Maintenance Services Manager Jackson, City Engineer Reed, Water System Superintendent Fredericks, Community Planning & Development Director Linker, Baseline Consultants Harris and Charles, and Deputy City Clerk Martin.
- PLEDGE OF ALLEGIANCE:** Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.
3. **AGENDA CHANGES:** City Attorney Hoffmann corrected the Executive Session language to read Executive Session to instruct negotiators regarding City-owned land on Gregory Hill, the Gregory Street HARD District, other City-owned property, and potential property acquisition pursuant to C.R.S. § 24-6-402(4)(e), and to hold a conference with the City Attorney to receive legal advice on a specific legal issue regarding a contract dispute pursuant to C.R.S. § 24-6-402(4)(b).
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. PUBLIC COMMENT: Deputy City Clerk Martin confirmed no one had signed up to speak.

6. APPROVAL OF
MINUTES: January 11, 2023

**MOTION TO
APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to approve the Minutes as presented.

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

7. PUBLIC HEARINGS:

A. CB3, An Ordinance Amending Article IV of Chapter 4 and Article I of Chapter 6 of the Black Hawk Municipal Code Regarding Business Licensing

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann introduced this item pertaining to the Senate Bill passed in 2022 prohibiting the City from requiring a Business License for those businesses without a physical location in the City. He said the City still desires to license and track our brick-and-mortar businesses but will not charge a fee, so this Ordinance will eliminate the need to license those without a physical presence and not charge a fee for those who do have a physical presence and still require a license.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB3, an Ordinance amending Article IV of Chapter 4 and Article I of Chapter 6 of the Black Hawk Municipal Code regarding Business Licensing open and invited anyone wanting to address the Board either “for” or “against” the proposed Ordinance to come forward.

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

**MOTION TO
APPROVE**

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Torres to approve CB3, an Ordinance amending Article IV of Chapter 4 and Article I of Chapter 6 of the Black Hawk Municipal Code regarding Business Licensing.

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

B. Resolution 6-2023, A Resolution Conditionally Approving the Minor Subdivision Titled City of Black Hawk, Block 16, Amendment No. 1

C. Resolution 7-2023, A Resolution Approving a Variance to the Front Yard Setback for Property Located at 311 Chase Street from 18 Feet to 2 Feet

Mayor Spellman read the titles and opened the public hearings.

Baseline Consultants Harris and Charles introduced these items and went through their presentation. The minor subdivision request is to eliminate all lot lines and create a single lot, to be recorded with the County.

The variance request is for the construction of a new garage and the anticipated significant topographic hardships pending a geotechnical report. The applicants, Larry and Cynthia Linker, propose having the front of the garage constructed in line with the front of the existing house (8-foot setback) but wish to have the flexibility, if the geotechnical report and excavation prove more challenging, to build two feet from the property line.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on Resolution 6-2023, a Resolution conditionally approving the Minor Subdivision titled City of Black Hawk, Block 16, Amendment No. 1, and Resolution 7-2023, a Resolution approving a variance to the front yard setback for property located at 311 Chase Street from 18 feet to 2 feet open and invited anyone wanting to address the Board either “for” or “against” the proposed Resolutions to come forward.

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

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to approve Resolution 6-2023, a Resolution conditionally approving the Minor Subdivision titled City of Black Hawk, Block 16, Amendment No. 1.

MOTION PASSED

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

MOTION TO APPROVE

Alderman Midcap **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 7-2023, a Resolution approving a variance to the front yard setback for property located at 311 Chase Street from 18 feet to 2 feet.

MOTION PASSED

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

8. ACTION ITEMS:

A. Resolution 8-2023, A Resolution to Temporarily Waive the Payment of Certain Enumerated Occupational Taxes as Otherwise Imposed Pursuant to Article IX of Chapter 4 of the Black Hawk Municipal Code

Mayor Spellman read the title.

City Attorney Hoffmann introduced this item, also related to SB22-032, and explained that the City would like to temporarily waive the Occupational Taxes related to certain limited and enumerated businesses and added that the taxes have a de minimis impact on the City. He noted that a few of the taxes would stay in place.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Johnson to approve Resolution 8-2023, a Resolution to temporarily waive the payment of certain enumerated Occupational Taxes as otherwise imposed pursuant to Article IX of Chapter 4 of the Black Hawk Municipal Code.

MOTION PASSED

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

B. Resolution 9-2023, A Resolution Approving the Waiver of Water Fees for One Year for the Rick Thomas Distillery Located on Lot 7 of the Black Hawk Park Subdivision

Mayor Spellman read the title.

Finance Director Hillis introduced this incentive to waive all water consumption fees for the first year.

Brian and Declan Watts, owners of the Rick Thomas Distillery at 830 Miners Road, provided a status update on the distillery. They plan to ask the City for a TCO in February and want to invite everyone for a tour before opening. They wanted to thank the City, staff, Safebuilt, and Baseline for the great partnership and that it has been a wonderful project to work on with the City. They also offered tours to any potential investors the City may want to bring in.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 9-2023, a Resolution approving the waiver of water fees for one year for the Rick Thomas Distillery located on Lot 7 of the Black Hawk Park Subdivision.

MOTION PASSED

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

C. Resolution 10-2023, A Resolution Approving Certain Service Agreements for Calendar Year 2023 (Public Works)

Mayor Spellman read the title.

City Engineer Reed explained the annual contracts used by Public Works throughout the year.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Johnson to approve Resolution 10-2023, a Resolution approving certain service agreements for calendar year 2023 (Public Works).

MOTION PASSED

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

D. Resolution 11-2023, A Resolution Approving the Purchase of 3 Pick-Up Trucks

E. Resolution 12-2023, A Resolution Approving the Purchase of 2 Dodge Durango Police Vehicles

Mayor Spellman combined these items and read the titles.

Public Works Maintenance Services Manager Jackson and Police Chief Moriarty presented these requests. Jackson said two pick-up trucks were for Public Works and one for the Water Department. They are all budgeted for and will replace older vehicles in the fleet.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 11-2023, a Resolution approving the purchase of 3 pick-up trucks, and Resolution 12-2023, a Resolution approving the purchase of 2 Dodge Durango Police vehicles.

MOTION PASSED

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

9. CITY MANAGER REPORT:

City Manager Cole had nothing to report.

10. CITY ATTORNEY REPORT:

City Attorney Hoffmann had nothing to report.

11. EXECUTIVE SESSION:

City Attorney Hoffmann recommended items number 2 and 5 only for Executive Session with the specific legal issue related to a contract

dispute, and the item subject to negotiations is related to City-owned property in the Gregory Street Hard District and 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 3:22 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 4:00 p.m.

MOTION PASSED

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

12. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council adjourned at 4:00 p.m.

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Mayor

**COUNCIL BILL 4
ORDINANCE 2023-4
AN ORDINANCE STATING THE
INTENT OF THE CITY OF
BLACK HAWK TO ACQUIRE
CERTAIN PROPERTY FOR THE
CONSTRUCTION, EXPANSION,
AND IMPROVEMENT OF CITY
STREETS AND ROADWAYS,
PURSUANT TO C.R.S. § 38-6-101,
C.R.S. § 31-25-201, ARTICLE XX,
§ 1 OF THE COLORADO
CONSTITUTION, AND ARTICLE
8, SECTION 4 OF THE CITY OF
BLACK HAWK HOME RULE
CHARTER**

**RESCHEDULED TO
FEBRUARY 22, 2023**

**COUNCIL BILL 5
ORDINANCE 2023-5
AN ORDINANCE
APPROVING THE WATER
STORAGE AGREEMENT
BETWEEN THE CITY OF
BLACK HAWK AND THE
CITY OF GOLDEN**

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

COUNCIL BILL NUMBER: CB5

ORDINANCE NUMBER: 2023-5

**TITLE: AN ORDINANCE APPROVING THE WATER STORAGE AGREEMENT
BETWEEN THE CITY OF BLACK HAWK AND THE CITY OF
GOLDEN**

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 Water Storage Agreement between the City of Black Hawk and the City of Golden, 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. 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 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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

READ, PASSED AND ORDERED POSTED this 8th day of February, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk



CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Council Bill 5, an Ordinance approving the Water Storage Agreement with the City of Golden.

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

MOTION TO APPROVE Council Bill 5, an Ordinance approving the Water Storage Agreement between the City of Black Hawk and the City of Golden.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City of Golden delivers 100 acre feet of water to the City of Black Hawk each year. This water is typically provided from the Vidler Tunnel. The Vidler water is trans-basin water making it valuable because the water can be used to extinction without return flow requirements. In most years, the City of Black Hawk takes delivery of the Vidler water into Green Lake or Georgetown Lake. In the event of a wet spring, room in these reservoirs may not be available. The City of Golden has space available in its Guanella Reservoir and will store the water until we can exchange it to Green Lake or Georgetown Lake. The cost of the storage is 50% of the water put into Guanella Reservoir. For example, if we store 100 acre feet in Guanella, we keep 50 acre feet and Golden gets 50 acre feet. There is no monetary cost to the City. The alternative is to let the water go down stream and make no use of it.

AGENDA DATE: February 8, 2023

FUNDING SOURCE: N/A

STAFF PERSON RESPONSIBLE: TI/BD

DOCUMENTS ATTACHED: agreement

RECORD [] Yes [] No

CoBH Certificate of Insurance Required [] Yes [] No

CITY ATTORNEY REVIEW: [] Yes [] No [] N/A INITIALS _____

SUBMITTED BY:

Thomas Isbester, Public Works Director

REVIEWED BY:

Stephen N. Cole, City Manager

WATER STORAGE AGREEMENT

This AGREEMENT dated this ____ Day of ____, 2023, is entered into between the City of Golden, a Colorado municipal corporation ("Golden") and the City of Black Hawk, a Colorado municipal corporation ("Black Hawk").

Recitals

WHEREAS C.R.S. § 29-1-201, as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, § 18(2); and

WHEREAS, the purpose of Part 2 of Article 1 of Title 29, C.R.S., is to implement the aforesaid provisions of the Colorado Constitution and authorize the Parties to enter into intergovernmental agreements; and

WHEREAS, C.R.S. § 29-1-203(1) provides, inter alia, that governmental units may cooperate with one another to provide any function, service, or facility lawfully authorized to each of the contracting units;

WHEREAS, Black Hawk and Golden entered into an Assignment and Water Delivery Agreement dated June 7, 2007, pursuant to which Black Hawk is entitled to delivery from Golden of 100 acre-feet of fully consumable water between June 1, 2023, and October 31, 2023 (the "2023 Golden delivery"); and

WHEREAS, Golden owns and controls a reservoir known as Guanella Reservoir, an off-channel reservoir located adjacent to the West Fork of Clear Creek in Sections 29 and 30, Township 3 South, Range 74 West of the 6th P.M., in Clear Creek County, Colorado; and

WHEREAS, this Agreement is intended to authorize Black Hawk to store up to 100 acre-feet of the 2023 Golden delivery in Guanella Reservoir subject to the limitations herein; and

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows.

1. Black Hawk shall be entitled to store up to 100 acre-feet of the 2023 Golden delivery in Guanella Reservoir. Depending on the source of the water delivered by Golden to Black Hawk, such storage may be by diversion of water into storage from the West Fork of Clear Creek, by exchange from Clear Creek, and/or by book-over of Golden's water previously stored in Guanella Reservoir.
2. Any water stored by Black Hawk in Guanella Reservoir pursuant to this Agreement shall be owned by Black Hawk and Golden on a 50%/50% basis.
3. Black Hawk will be charged pro rata with evaporation loss on its stored water at the same rate as applied to other waters stored in Guanella Reservoir, which will reduce Black Hawk's storage account under this Agreement.
4. Any water stored by Black Hawk in Guanella Reservoir during 2023 under this Agreement after evaporation loss is assessed and owned by Black Hawk, shall be removed from storage on or

before June 15, 2024. Black Hawk will coordinate with Golden on the timing and rate of release it desires for such water in a manner consistent with Golden's operations of Guanella Reservoir. Any water owned by Black Hawk pursuant to this agreement and remaining in storage in Guanella after June 15, 2024 may be released by Golden or may be booked over into Golden's storage accounts.

5. Golden and Black Hawk shall provide each other with all necessary accounting information relating to water stored by Black Hawk hereunder and, to the extent necessary, shall provide said information to the Division Engineer and/or Water Commissioner. To the extent any approvals are necessary in implementing this Agreement, those shall be Black Hawk's exclusive responsibility.

6. The term of this Agreement shall commence on the date of mutual execution and terminate on July 1, 2024. This Agreement may be renewed annually upon mutual written agreement of the Parties.

7. Black Hawk acknowledges that this Agreement provides for storage of raw water only. Neither party makes representations with respect to the quality of water diverted into or stored in Guanella Reservoir, or released therefrom, nor assumes responsibility therefor.

8. Nothing herein modifies any of the obligations of Golden and Black Hawk as set forth in the Assignment and Water Delivery Agreement dated June 7, 2007, except as may be expressly modified herein by allowing storage of up to 100 AF of the 2023 Golden delivery in Guanella Reservoir and the subsequent release of a portion thereof.

9. Notice: Any required notice, demand, or conveyance of information shall be sent via U.S. mail or fax, or telephone call and subsequent mailing or fax to:

Golden:

Utilities Director
City of Golden
1445 Tenth Street
Golden, CO 80401
Fax: 303.384.8161

With copy to:

Steve Bushong
Bushong & Holleman PC
1525 Spruce Street, Suite 200
Boulder, Colorado 80302
Fax: 800-803-6648

Black Hawk:

Director of Public Works
City of Black Hawk
P.O. Box 68
987 Miners Mesa Road
Black Hawk, CO 80422
Fax: 303.582.2250

With copy to:

David L. Kueter
Holsinger Law, LLC
1800 Glenarm Place, Suite 500
Denver, CO 80202
Fax: 303 496-1025

The above individuals and addresses may be modified at any time by written notice.

10. Entire Agreement; Amendments. This Agreement constitutes the entire agreement among the parties. This Agreement may be altered, amended or revoked only by an instrument in writing signed by both parties.

11. Assignment. This Agreement, and the rights, interests and obligations hereunder, may not be assigned by Black Hawk without Golden's prior written consent.

12. Indemnification. To the extent permitted by law, Black Hawk agrees to indemnify, defend and hold harmless Golden and its agents from and against all claims, causes of action, costs, expenses, judgments, damages and any other liabilities of any kind arising out of this Agreement and/or arising out of Black Hawk's storage and subsequent use of water in Guanella Reservoir pursuant to this Agreement.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

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

CITY OF GOLDEN, a Colorado Municipal Corporation

By: _____
Laura Weinberg, Mayor

Date: _____

ATTEST:

CITY OF BLACK HAWK, a Colorado Municipal Corporation

By: _____
David D. Spellman, Mayor

Date: _____

ATTEST:

Melissa A. Greiner, City Clerk

RESOLUTION 13-2023
A RESOLUTION
APPROVING THE
PURCHASE OF 1 PICK-UP
TRUCK

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

Resolution No. 13-2023

TITLE: A RESOLUTION APPROVING THE PURCHASE OF 1 PICK-UP TRUCK

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 purchase of the following budgeted vehicle:

<u>Vehicle</u>	<u>Price</u>
1 GMC Crew Cab Truck	\$58,000

RESOLVED AND PASSED this 8th day of February, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Approve purchase of budgeted ½ ton GMC pickup truck for Public Works

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

MOTION TO APPROVE *Resolution 13-2023, approving the purchase of 1 pick-up truck.*

SUMMARY AND BACKGROUND OF SUBJECT MATTER: During the 2022 budget approval process, a pickup truck was approved to be purchased. Due to the ongoing supply chain issues and equipment shortages we were not able to purchase that unit. We have been able to locate a truck this year to finally complete the acquisition.

(1) GMC Crew Cab	305-3101-4317548	\$58,000
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Again, this was a approved budgeted item under the 2022 budget that we are just now able to fulfill. The additional funding is to outfit the truck with the additional accessories such as warning lights and headache rack.

AGENDA DATE: February 8, 2023

FUNDING SOURCE: see above

DEPARTMENT DIRECTOR APPROVAL: [x]Yes []No

STAFF PERSON RESPONSIBLE: Steve Jackson

DOCUMENTS ATTACHED: quote

RECORD: []Yes []No

CoBH CERTIFICATE OF INSURANCE REQUIRED []Yes[]No

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

SUBMITTED BY:



Thomas Isbester, Public Works Director

REVIEWED BY:



Stephen N. Cole, City Manager



Vehicle Locator

Detail Report for Customer

JOHNSON AUTO PLAZA, INC.
12420 E 136TH AVENUE, BRIGHTON, CO, 80601
303-654-1940

Customer/Company:

Sales Consultant:

Address:

Vehicle #1: 2023 GMC 1500 Sierra	VIN/Order #	MSRP	Stock #
	1GTUUCED5PZ139548	\$61,505.00	G339548
Additional Vehicle Information			
GM Marketing Information			

Body Style: TK10543-Crew Cab Short Box, 4WD

PEG: 3SB-Elevation

Primary Color: GAZ-Summit White

Trim: H0U-3SA/3SB/3VL/1SA--Cloth, Jet Black, Interior Trim

Engine: L84-Engine: 5.3L, EcoTec3 V-8, DI, Dynamic Fuel Mgt, V V T

Transmission: MHS-10-Speed Automatic

Options: 00C-CREDIT - NOT EQUIPPED WITH WIRELESS

CHARGING

1SZ-X31 OFF-ROAD PROTECTION PACKAGE

DISCOUNT

3SB-Elevation

A2X-Power Seat Adjuster (Driver's Side)

A50-Seats: Front, Bucket, with Center Console

AKO-Deep Tinted Glass

AU3-Power Door Locks

B1J-Liner, Rear Wheelhouse

B30-Floor Covering: Carpet, Color Keyed

BTV-Remote Vehicle Starter System

C49-Defogger, Rear Window Electric

C5Y-GVW Rating 7100 Lbs

CGN-Bed Liner, Spray-on, Black Textured Polyurea

CJ2-Climate Control, Electronic - Dual-zone

DLF-Mirrors, O/S: Power, Heated

E63-Body: Pick-Up Bed

FE9-50-STATE EMISSIONS

G80-Auto Locking Differential, Rear

GAZ-Summit White

GU5-Rear Axle: 3.23 Ratio

H0U-3SA/3SB/3VL/1SA--Cloth, Jet Black, Interior Trim

IOK-Premium GMC Infotainment system

K34-Cruise Control

K47-Heavy Duty Air Filter

K4C-Wireless Charging

KI3-Heated Steering Wheel

KI4-120 Volt Electrical Receptacle, In Cab

L84-Engine: 5.3L, EcoTec3 V-8, DI, Dynamic Fuel Mgt, V V T

MHS-10-Speed Automatic

N10-Dual Exhaust System

NQH-Transfer Case: Active, 2-Speed, Autotrac, Rotary Dial

NZZ-Skid Plates

PDI-GMC Pro Safety

QAE-Tires: 275/60 R20 All Terrain, Blackwall

QAA-Tire, Spare: 255/80 R17 All Season, Blackwall

QK1-Standard Tailgate

QT5-Tailgate Function--Manual w/ Assist, Pwr Release

R6J-CUSTOMER DIALOGUE NETWORK

R6W-CREDIT-NOT EQUIPPED WITH MULTIPRO TAILGATE

R7N-CREDIT - NOT EQUIPPED WITH STEERING COLUMN LOCK

R7O-Rear Seat: Folding with Storage Package

R9M-OnStar & Connected Services pkg. - 36 months

RD3-Wheels: 20" Black Gloss Painted Aluminum

RFQ-Focused Ordering Configuration

RFX-X31 Off-Road and Protection Package

RIA-LPO - All Weather Interior Floor Liners

SAF-Lock, Spare Tire

T3U-LED Fog Lamps, Front

TQ5-Headlamps, IntelliBeam

U2K-SiriusXM Satellite Radio (subscription)

UE1-OnStar Communication System

UE4-Following Distance Indicator

UEU-Sensor, Forward Collision Alert

UF2-Lighting, Cargo Box, LED

UHX-Lane Keep Assist/Departure Warning

UHY-Automatic Emergency Braking

UVB-Rear Vision Camera, HD

VK3-Front License Plate Mounting Provisions

X31-Off-Road Package

YM8-LPO Processing Option

Z82-Trailer Package

Disclaimer:

GM has tried to make the pricing information provided in this summary accurate. Please refer to actual vehicle invoice, however, for complete pricing information. GM will not make any sales or policy adjustments in the case of inaccurate pricing information in this summary.

WOULD THIS TRUCK BE OF INTEREST.

YOUR PRICE 55,500⁰⁰

TRUCK IS
HERE.

RESOLUTION 14-2023
A RESOLUTION
APPROVING THE
COMMERCIAL LEASE
WITH PEAK TO PEAK
MARKET, LLC 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. 14-2023

**TITLE: A RESOLUTION APPROVING THE COMMERCIAL LEASE WITH
PEAK TO PEAK MARKET, LLC 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 Peak to Peak
Market, LLC 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 8th day of February, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Commercial Lease with Peak to Peak Market, LLC, 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 14-2023, A Resolution approving the Commercial Lease with Peak to Peak Market, LLC, for the Property located at 7320 Black Hawk BLVD., Suite 1A, Black Hawk, Colorado.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: This Commercial Lease will allow Peak to Peak Market, LLC, 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 previous lease.

AGENDA DATE: February 8, 2023

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:

Lance Hillis

Lance Hillis, Finance Director

REVIEWED BY:

Stephen N. Cole

Stephen N. Cole, City Manager

Commercial Lease

This Lease is made between the City of Black Hawk, herein called the City, and Peak to Peak Market, LLC, 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, 1st Floor, West Side (Approx. 1,308 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 February 8, 2023, and expiring on February 29, 2028.

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 Nine Hundred and Fifteen dollars (\$915.00) 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 month's rent, which shall constitute payment for the aforesaid first month's rent. The total amount of the first month's rent shall be Zero Dollars (\$0.00), 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.

D. Rent Credit. The Tenant shall be entitled to a credit towards the monthly lease payment in an amount equal to the average monthly City sales tax collected at the location for the previous twelve-month period ending January 31. This credit for the initial twelve-month period will be \$915.00 per month. Furthermore, the Rent Credit calculation for the twelve months beginning March 1, 2024 (Year 2) will be based on the most recent nine months' sales tax collections.

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. Unless otherwise provided by Section 16 of this Lease, 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. In the event of a conflict between this Section 1. Subsection F. and Section 16, the provisions of Section 16 shall control. Tenant may also

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 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 for a liquor license as allowed by law, subject to the requirements of the Colorado Liquor Code.

C. Standards of Operation. It is the expectation of the City that the Tenant have the premises open to walk-up foot traffic during set retail hours seven (7) days a week. Tenant may reasonably modify hours and days based on the flow of traffic.

- (i) “High Season” from May 1 through September 30: Monday-Sunday from 8:00 am to 8:00 pm; and
- (ii) “Off Season” from October 1 through April 30: Monday-Sunday from 8:00 am to 7:00 pm.

D. On-Premise Prepared Food Sales. Tenant agrees to get written approval from the City prior to making available to the public any food prepared on the Premises that is inconsistent with the provisions of this Section 2, subsection D, and specifically Tenant may not provide any food that is prepared on site that would extend beyond a Limited Food Service License as defined by the Colorado Retail Food Establishment Rules and Regulations. Notwithstanding the above, the City agrees approval is hereby provided to allow Tenant to provide individual salads, fruit parfait, yogurt cups, fruit cups and berry cups.

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.

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 protecting the Premises and Tenant's use thereof against claims for personal injury and death 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 Renter's 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, and specifically including the Tenant's contents.
- iv. Business interruption insurance and/or loss of "rental value" insurance.
- v. 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: Peak to Peak Market, LLC
Attn: Nicolas Spencer
P.O. Box 169
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 _____, 2023.

CITY OF BLACK HAWK, COLORADO

By: _____
David. D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

TENANT

Peak to Peak Market, LLC

By: _____
Nicolas D. Spencer, Member

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2023, by _____ as Member of Peak to Peak Marketing, LLC.

My Commission expires:

[S E A L]

Notary Public

Peak to Peak Market, LLC

STATE OF COLORADO)
) ss.
COUNTY OF _____)

My Commission expires:

Notary Public

RESOLUTION 15-2023
A RESOLUTION TO
TEMPORARILY WAIVE
THE PAYMENT OF
CERTAIN ENUMERATED
OCCUPATIONAL TAXES
AS OTHERWISE IMPOSED
PURSUANT TO ARTICLE
IX OF CHAPTER 4 OF THE
BLACK HAWK
MUNICIPAL CODE

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

Resolution No. 15-2023

**TITLE: A RESOLUTION TO TEMPORARILY WAIVE THE PAYMENT OF CERTAIN
ENUMERATED OCCUPATIONAL TAXES AS OTHERWISE IMPOSED PURSUANT
TO ARTICLE IX OF CHAPTER 4 OF THE BLACK HAWK MUNICIPAL CODE**

WHEREAS, by the adoption of Senate Bill 22-032, the Colorado General Assembly purported to streamline the business license application process and the imposition, collection, and administration of sales and use taxes by eliminating the City's authority to impose business license fees on retailers that either do not have physical presence within the local taxing jurisdiction or have only incidental physical presence within the local taxing jurisdiction;

WHEREAS, the City also imposes certain occupational taxes on retailers including some that either do not have physical presence within the City or have only incidental physical presence within the City; and

WHEREAS, the City therefore desires to temporarily suspend the collection of occupational taxes on certain limited and enumerated businesses as set forth below that may also be impacted by Senate Bill 22-032.

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

Section 1. The City Council hereby resolves to temporarily waive and forego the payment of any occupational tax otherwise due and payable, limited to the occupational taxes payable under the following subsections set forth hereinbelow:

- A. Section 4-192(a);
- B. Section 4-192(b)(3) – Amusement Machines; and
- C. Section 4-192(b)(8) – Hotels, motels, etc.

Section 2. This Resolution shall remain in effect until repealed or otherwise amended by the City Council.

RESOLVED AND PASSED this 8th day of February, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A Greiner, CMC, City Clerk

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Temporary Waiver of Certain Occupational Taxes

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

MOTION TO APPROVE Resolution 15-2023, A Resolution to Temporarily Waive the Payment of Certain Enumerated Occupational Taxes as Otherwise Imposed Pursuant to Article IX of Chapter 4 of the Black Hawk Municipal Code.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

In SB 22-032, the Colorado General Assembly purported to streamline the business license application process and the imposition, collection, and administration of sales and use taxes by eliminating the City's authority to impose business license fees on retailers that either do not have physical presence within the local taxing jurisdiction or have only incidental physical presence within the local taxing jurisdiction.

The City desires to temporarily suspend the collection of occupational taxes on certain limited and enumerated businesses as set forth in Resolution 15 that may also be impacted by Senate Bill 22-032, specifically taxes payable under Section 4-192(a) of the Black Hawk Municipal Code.

AGENDA DATE: February 8, 2023

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [] Yes [] No [X] N/A

STAFF PERSON RESPONSIBLE: Corey Y. Hoffmann, City Attorney

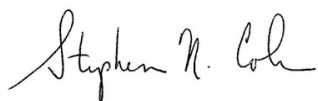
DOCUMENTS ATTACHED: Draft Resolution 15-2023

RECORD: [] Yes [X] No

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

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

REVIEWED BY:



Stephen N. Cole, City Manager