



CITY OF LEADVILLE

800 HARRISON AVE.
LEADVILLE, CO 80461

REGULAR COUNCIL MEETING AGENDA

Tuesday
April 4th, 2023

6:00 P.M.

Council Chambers & Zoom

<https://leadville-co-gov.zoom.us/j/83526944548?pwd=aEdjdGtpNlEyZmt5YVQ1bDBQbnN4dz09>

Meeting ID: 835 2694 4548

Passcode: 80461

Dial by your location

+1 719 359 4580 US

- 6:00 pm**
1. **Call to order of Regular Meeting of City Council**
 2. Roll Call
 3. Approval of Agenda
 4. Housekeeping Matters
 5. Public comments about items not on the agenda
Citizens wishing to speak to Council on issues not on the agenda are requested to send a message in the chat section or raise their hand in the participant's section of Zoom or in person. Staff will call on the public in order. Comments are limited to three (3) minutes (not including council questions). Action, if required, will be assigned to city staff. For matters on the agenda, public input will be heard prior to a vote being taken on the matter.
- 6:15 pm**
6. **Consent Agenda:**
 - A. Approval of March 21st, 2023 Minutes
- 6:20 pm**
7. **Presentations and Discussions:**
 - A. Leadville History Month Proclamation
 - B. Xcel Energy Presentation Regarding Work this Season
 - C. Tabor Opera House Update
 - D. City Administrator's Report
- 7:00 pm**
8. **Action Items:**
 - A. Elevated Quality Wholesale Cultivation License Renewal
 - B. Resolution No. 7, Series of 2023 – Approving a Temporary Construction and Access Easement Agreement with LTF Real Estate Company, Inc. for the Installation and Construction of Temporary Fencing and a Stair Tower Related to Phase 3 of the Tabor Opera House Rehabilitation of Exterior Envelope Project
 - C. Resolution No. 8, Series of 2023 - Approving an Intergovernmental Agreement Between the City of Leadville and Lake County Concerning Law Enforcement Mutual Aid
- 7:30 pm**
11. Public Meetings Planner
 12. Mayor's Report
 13. Council Reports
- 7:45 pm**
14. Adjournment

* These items may not have briefs or may have additional briefs Tuesday before the Council meeting.



**REGULAR COUNCIL
MEETING MINUTES**

**Tuesday,
March 21, 2023**

6:00 P.M.

Council Chambers & Zoom

1. **Call to order** of regular council meeting at 6:01 p.m.
2. **Roll call:**
 - a. **Present:** - Mayor Labbe, CM Hill, CM Luna-Leal, and CM Grant. MPT Greene, CM Lauritzen
 - b. **Absent:** - CM Forgensi

Staff Members Present: Deputy City Clerk Mayda Silver, Planning Director Chapin LaChance, City Administrator Laurie Simonson, and City Attorney Christiana McCormick

3. **Approval of the agenda:** CM Luna-Leal **moved** to approve the agenda, and CM Hill **seconded**. All present were in favor.
 - a. **Agenda Revisions:**
4. **Housekeeping Matters:**
 - Work Session requested on April 11th, 2023
5. **Public comments for items not on the agenda:**
 - -Steve Prestach:
 - Does not feel that City Council wants to hear from the public and is minimizing citizen participation.
 - Believes there is a conflict of interest for Councilmember Lauritzen to be the County Clerk and Recorder as well as a City Council member.
 - Claire Skeen:
 - April 19th at 10:00 am - Emergency Services Council Meeting at CMC in Climax room 401. This meeting is open to all.
 - The purpose is to provide a forum of cooperation, communication, and coordination among the entities providing emergency services to the citizens and visitors of Lake County and Leadville.
 - April 20th at 2:30 pm - Continuity of Operations Plan Training at the public library.
 - April 5th at 10:30 am – Regional field manager to host a training class for Emergency and Disaster Considerations for executives.

6. Consent Agenda:

CM Luna-Leal **moved** to approve the minutes of 3/7/2023; CM Grant **seconded**. All present were in favor.

7. Presentations and Discussions:**a. Rural Jump Start Presentation – Morgan Vankat presenting**

- i. Tax relief and grant program
- ii. Benefitting new businesses and new hires who locate into Jump-Start Zones
- iii. Rural, economically distressed counties as designated by OEDIT
- iv. Tax Benefits
 1. New business relief:
 - a. State income tax
 - b. State sales and use tax
 - c. County and Municipal business personal property tax
 2. Qualified Employee Relief:
 - a. State income tax
- v. Grant Benefits:
 1. \$20,000 Operating Grant
 - a. 3:1 match of business expenses
 2. \$2500 Grant per new hire
 - a. Salary above county AAW - \$52,367
 - b. Full-time, 80% or more of time in zone
 - c. Employed for at least 6 months
 3. Grant Program Expires on June 30, 2024
- vi. Business Rules of Rural Jump-Start
 1. Not be operating in Colorado at time of application (Not actively selling product)
 2. Not compete with a similar business in their or an adjacent economically distressed county/zone (ONLY Lake County)
 3. Must export product/service outside of the zone
 4. Must hire at least 5 employees over 4 years at or above county's AAW \$52,637
 5. Must be sponsored by a Designated Institute of Higher Education or and Economic Development Organization (EDO)
 - a. Southern Colorado Economic Development District
 - b. CMU/WCC or CMC
 6. Allows local partnerships in the zone
 7. IHE can mean internships, knowledge sharing and future employment
- vii. Impacts on the County
 1. Relief from county and municipal business personal property tax for the new business
 - a. Only for RJS approved businesses
 - b. 4 or 8 years of the RJS program only
 - c. Does not affect sales and use tax
 2. No fiscal impact until business is admitted to the Rural Jump Start Program
- viii. Becoming a Jump-Start Zone
 1. County Commissioners need to pass a Resolution, apply and be approved by the EDC
 2. Municipalities pass similar Resolution and be approved by the EDC

3. Waives county and municipal business personal property tax for potential RJS businesses
- ix. Application Process:
 1. <https://oedit.colorado.gov/rjs>
 2. Click on 'Create or Log in to an Account'
 3. Follow the steps to apply

b. Transit Update – County Manager Bergman

- i. Received MMOF Funding
- ii. Waiting for determination from CDOT while they wait for an answer from the Federal Government about how the money will flow into the County – Mostly likely will come in through the Division of Transit and Rail (DTR)
- iii. 75/25 split
 1. We were awarded a little over \$1.3 million
 2. The County has set aside \$450,000 for that
- iv. Because County received so much from the MMOF funding, they will not be awarded any Federal Transit money for operations
- v. Does not impact 5311 funding from CDOT
- vi. Moving forward on a capital purchase
 1. Put in for 2 vehicles – 1 as a back-up or when busy, 2 out at once
 2. 15 passenger vans with handicap access
 3. New builds are 18 months out
 4. Potential to use a van the County has for the senior center that has ADA accessibility
 5. May be possible to purchase a vehicle from another jurisdiction
- vii. Need to work out agreements for bus stops within the City
- viii. Completed feasibility study grant and received reimbursement
- ix. Potential timeline for routes to be active is within 6 months
- x. Working with Division of Transit and Rail for potential funding for bus stops

c. Sandwich Board Signs on Harrison Avenue

- i. Sandwich boards are illegal in the City of Leadville
- ii. Inhibits ADA access
- iii. CDOT has given the City jurisdiction to regulate from the curb to the buildings
- iv. Had City Council work session on 9/13/2022
- v. Signs do not have permits
- vi. Don't want to remove signs until there are alternative options available to business owners
- vii. Drafted a notice to businesses and the police department hand-delivered them
- viii. Blueflower Candies reached out and said they've received quite a bit of business from the sidewalk signs. Is supportive of an alternative, would be willing to contribute financially to an alternative that benefits everyone.
- ix. Freight uses sidewalk signs to advertise for events. Would be happy to be part of a marketing solution.
- x. Would like to visit businesses and find out what their preferences are.
- xi. Financials need to be discussed, who is paying for what, some type of collaboration
- xii. Banners might be the way to go

8. Action Items:

Resolution No. 6, Series of 2023, A Resolution Adopting a Further Updated Fee Schedule for the City of Leadville.

CM Luna-Leal **moved** to approve; CM Grant **seconded**. All in present were in favor.

9. Department Reports:**a. City Administrator's Report:**

- i.** Erin Lusin is our new Human Resources Director
 - 1.** Has lived in the County for over 40 years
 - 2.** Comes to us from City Market
 - 3.** Is currently looking at employee benefits the City could offer, i.e. a gym pass
- ii.** An administrative assistant has also been hired and starts March 27
 - 1.** Will be helpful backup on tasks like payroll
- iii.** Repairs are being made at City Hall
- iv.** Having a full staff is really helpful in making progress on important details within the City
- v.** The boiler is still an issue, the quote for a new one is a significant amount of money. Conversations will be had around potentially having a new boiler before next winter

b. Department Heads gave their monthly reports.**10. Executive Session:** At 8:18 pm, Mayor Labbe **moved** to go into Executive Session under Section 24-6-402(4)(b) of the Colorado Revised Statutes for legal advice on specific legal questions concerning options for law enforcement services.

Mayor Labbe further **moved** to reconvene the March 21st regular meeting at the conclusion of the Executive Session in order to proceed with the remaining items on the agenda.

CM Luna-Leal **seconded**; Vote was 6-0-0-1.

At 8:31 pm, the executive session has begun.

At 9:17 pm the executive session concluded.

Participants in the executive session were Mayor Labbe, CM Tracey Lauritzen, MPT Dana Greene, CM Shannon Grant, CM Luna-Leal, City Administrator Laurie Simonson, Deputy City Clerk Hannah Scheer, City Attorney Christiana McCormick, and Interim Police Chief Kenneth Chavez.

11. Public Meetings Planner:

- 3/24 – Cross country ski event
- 3/25 – Awards ceremony at Station II
- 3/30 – State of the Community at the Freight from 5:00 pm – 7:00 pm
- 4/21-22 – “Future Town” – Increase civic engagement – hosted by Freight, the Library and Lake County Build a Generation

12. Mayor’s Report:

- Lake County Off-Highway Vehicle Ordinance has second reading on April 4th
- Representative Patterson had a good visit. She doesn’t feel like a politician. Her team has good outreach within the community, including the Latino community.
- St. Patrick’s Day parade went well. The Street Department and the Police Department did a nice job setting it up and making sure everyone was safe.

13. Council Reports:

- CM Luna-Leal
 - DOLA grant was approved
 - Cannot use County site – will seek a different site
 - “Just Cause Eviction” – in the approval phase at the State level

Adjournment: 9:34 pm.

APPROVED this 18th day of October by a vote of [] in favor [] against, [] abstaining, and [] absent.

CITY OF LEADVILLE, COLORADO

ATTEST:

By

Deputy City Clerk



Proclamation

Whereas, the City of Leadville treasures our history, our historical assets, as well as our people and the legends and stories we hear and read about; and,

Whereas, from Joseph B. Riggs to Henry Smith; from Abe Lee to Texas Jack; from Horace Tabor and Father Dyer to Oscar Wilde and Evelyn Furman; from Billy Irwin and the Leadville Blues to Bun Ryan; from George Zaitz to the Delaware Block and the Tabor Opera House; from Doc Holliday to Marshal Duggan; from Jesse MacDonald to Carl Miller; from California Gulch to the Black Cloud and Climax Mines; from Carl and Donna Schaefer and the Old Church; from Ski Joring and Boom Days; from the Herald Democrat; from Ken Chlouber and Merilee Maupin and the Leadville Trail 100; from Kathleen Fitzsimmons and Bill Harrington and the Irish descendants of Leadville's mining glory days; and from Neil Reynolds and the House with the Eye, Leadville has produced legends, stories and buildings that remain compelling today; and,

Whereas, we have preserved historical structures and we have lost them; and,

Whereas, our structures, our stories and legends must be preserved in order to have a future as bright as our past; and,

Whereas, the City of Leadville wishes to honor our past.

Now, therefore, I, Greg Labbe, Mayor of Leadville, do hereby proclaim that April 2023 shall be celebrated as ***Leadville History Month***.

Greg Labbe, Mayor



AGENDA ITEM #8A

CITY COUNCIL COMMUNICATION FORM

MEETING DATE: 4/4/2023

SUBJECT: Elevated Quality Wholesale, LLC Retail Cultivation License Renewal

PRESENTED BY: Hannah Scheer

MOTION

I. REQUEST OR ISSUE:

This is the annual license renewal for Elevated Quality Wholesale, LLC marijuana retail cultivation license located at 210 E 10th Street.

II. BACKGROUND INFORMATION:

The annual local license of the retail cultivation license for Elevated Quality Wholesale, LLC at 210 E 10th Street expires on 4/30/2023. The Marijuana Licensing Authority should review the attached renewal application and determine if the license should be renewed.

Licensee has been in compliance with the City of Leadville Municipal codes regarding the retail cultivation requirements. Appropriate forms and renewal application fees were filed on 3/9/23. Since there is no change in ownership, premises, or operation at this time they are not required to submit new finger prints.

Admin staff has received no complaints or comments from the public regarding odor or lighting issues.

Fire Marshal Steve Boyle conducted an annual fire inspection on 3/23/23 and found no issues.

Hannah reached out to Interim Police Chief Kenneth Chavez and administrative office manager Perla Flores. Perla reported she would pull any reports or complaints filed in 2022 with the Leadville Police Dept. If there are reports they are attached to this staff report.

Finance Director Schneider has continued to receive timely and correct excise tax payments from Elevated Quality Wholesale all year.

Criteria for approval of marijuana renewal applications:

1. The renewal license fee, and late filing fee if applicable, shall accompany the application. Such fee is nonrefundable.
2. In the event there has been a change to any of the plans identified in the license application, including but not limited to the operating plan or security plan, the renewal

application shall include specifics of the changes or proposed changes in any of such plans.

3. The renewal application shall include verification that the retail marijuana establishment has a valid state license issued by the state licensing authority, and that such license is in good standing.

4. A licensee whose license has expired for not more than ninety (90) days may file an expired license renewal application, upon applicant's payment of a late filing fee established pursuant to Section 5.48.080. A licensee who files such application and pays the late filing fee may continue to operate until both the state and the city have taken final action to approve or deny the late renewal application. If more than ninety (90) days have elapsed since the expiration of a permanent annual license, the licensee must file a new license application.

III. FISCAL IMPACTS:

N/A

VI. STAFF RECOMMENDATION:

Approving the annual renewal for Elevated Quality Control at 210 E 10th Street.

VII. COUNCIL OPTIONS:

Approval, Denial, or a Continuation of Marijuana license hearing.

VIII. PROPOSED MOTION:

Make a motion to approve or disapprove...

The annual renewal on 4/4/2023 for the retail cultivation license for Josh Myers DBA Elevated Quality Wholesale, LLC at 210 E 10th Street.

IX. ATTACHMENTS:

Renewal application materials, receipt of renewal application fee, Certificate of Good Standing with the State of Colorado, lease agreements, and operational site plans as required renewal documents and form required in Leadville Municipal Code.

City of Leadville

800 Harrison Avenue, Leadville, Colorado 80461

Phone: (719) 486-0349 Fax: (719) 486-1040

City Clerk: (719) 486-0349 cityclerk@leadville-co.gov City Treasurer: (719) 486-0349 treasurer@leadville-co.gov
Planning Director (719) 427-0517 planningdirector@leadville-co.gov City Administrator (719) 486-2092 cityadmin@leadville-co.gov
Street Department: (719) 486-1166 Police Department: (719) 486-1365 Fire Department: (719) 486-2990

Retail Marijuana License Application

Ownership Type

<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership	<input checked="" type="checkbox"/> LLC	<input type="checkbox"/> Corporation	<input type="checkbox"/> Other
-------------------------------------	--------------------------------------	-----------------------------------------	--------------------------------------	--------------------------------

Business Type

<input type="checkbox"/> Store	<input checked="" type="checkbox"/> Cultivation Facility	<input type="checkbox"/> Products Manufacturing	<input type="checkbox"/> Testing Facility	<input type="checkbox"/> Dual medical marijuana and retail operation
--------------------------------	----------------------------------------------------------	-------------------------------------------------	-------------------------------------------	----------------------------------------------------------------------

Business Information

Name(s) of Applicant(s):	Elevated Quality Wholesale, LLC
--------------------------	---------------------------------

DBA (doing business as) Trade or Business Name:	Elevated Quality Wholesale, LLC
-------------------------------------------------	---------------------------------

Physical Address of Business:	
-------------------------------	--

Mailing Address of Business:	
------------------------------	--

Business Phone No.:	
---------------------	--

Business Email Address:	
-------------------------	--

Name of Manager (on-site):	7
----------------------------	---

The following must be attached as part of the application:

<input checked="" type="checkbox"/> Completed Colorado Marijuana Enforcement Division form DR 8548 (Retail Marijuana Business License Application); or DR 8545 (Change of Ownership) and all items on the associated document checklists. Information provided on these forms need not be duplicated except that all documents must have information identifying the applicants and business. <i>Hard copy of License attached.</i>

<input checked="" type="checkbox"/> Proof of ownership or legal possession of the proposed licensed premises (e.g., Copy of deed or lease)


<input checked="" type="checkbox"/> Consent from the landowner if the proposed premises will be leased. If the owner(s) of the proposed retail marijuana establishment is(are) not the owner(s) of the proposed licensed premises, the applicant shall provide written, notarized authorization to use the property as a retail marijuana establishment and authorization to the City from the owner(s) to enter the property for inspection of the proposed licensed premises, on a form approved by the City.

<input checked="" type="checkbox"/> Name(s) and address(es) of the owner(s) of the proposed retail establishment. <i>Josua Myers See above</i>

<input checked="" type="checkbox"/> If the owner is a corporation, partnership, limited liability company, or other business entity, the name(s), social security number(s), and address(es) of any officer or director of the entity and of any person holding any of the issued and outstanding capital stock or other ownership interest of the business entity.

<input checked="" type="checkbox"/> A completed set of fingerprints of each manager, and any person holding any of the issued and outstanding capital stock or other ownership interest of the business entity. <i>on file with city</i>

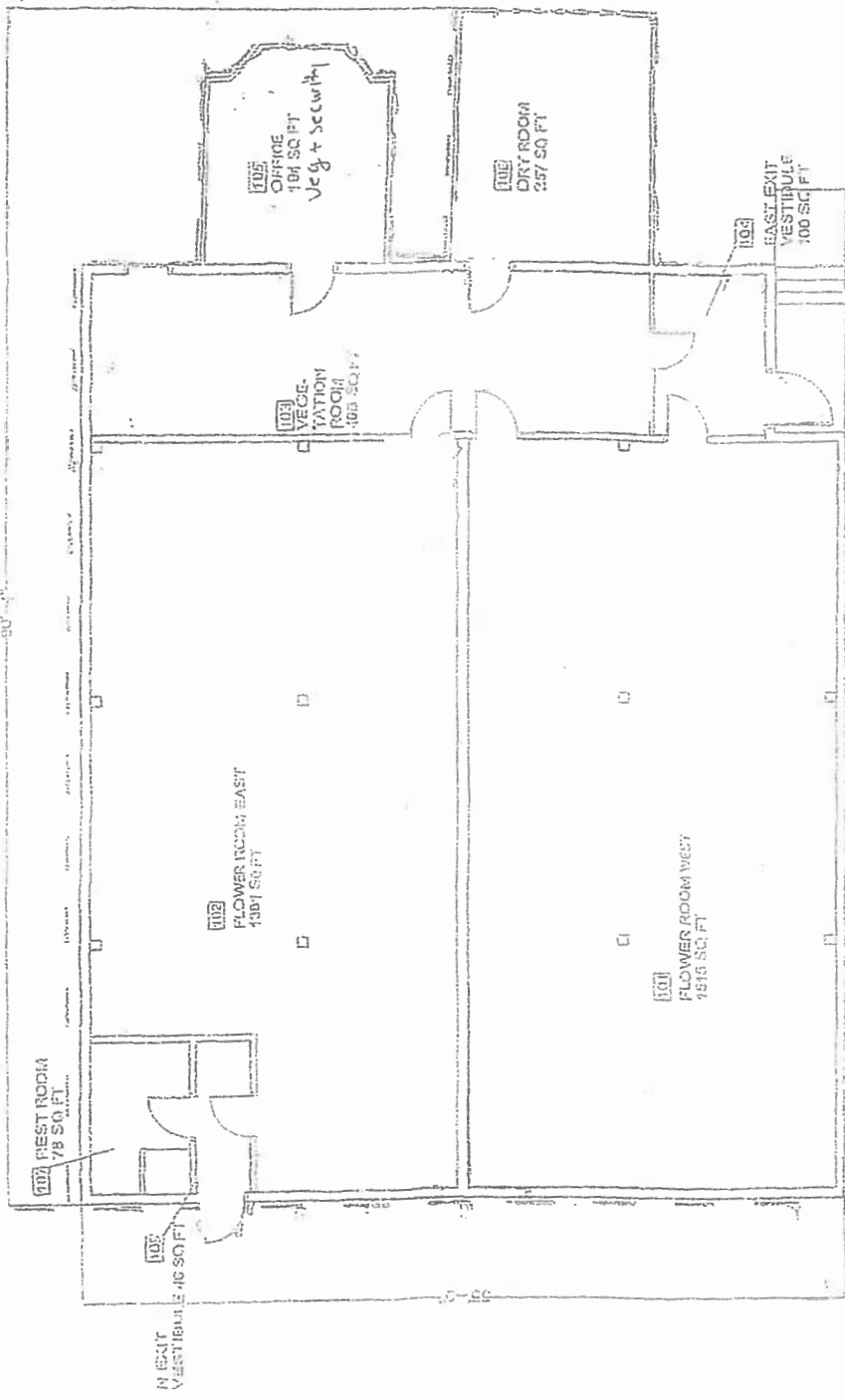
<input checked="" type="checkbox"/> Name(s) and address(es) of all managers of the proposed retail marijuana establishment.

<input type="checkbox"/>	The following must be attached as part of the application:
<input checked="" type="checkbox"/>	An operating plan for the proposed retail marijuana establishment including the following information:
<input checked="" type="checkbox"/>	A description of the products and services to be provided by the retail marijuana establishment.
<input checked="" type="checkbox"/>	A floor plan showing all interior dimensions of the proposed licensed premises and the layout of the retail marijuana establishment, including all limited access areas, areas of ingress and egress, and location(s) of all security cameras. Such floor plan shall also show the principal uses of the floor area depicted therein (see LMC § 5.48.060.D.13 for additional details).
<input checked="" type="checkbox"/>	A security plan indicating how the applicant intends to comply with the requirements of Chapter 5.48, the Colorado Retail Marijuana Code, and any other applicable law, rule or regulation as adopted and amended.
<input checked="" type="checkbox"/>	A plan for exterior signage that complies with all applicable requirements of the Leadville Municipal Code (see LMC Ch. 17.80).
<input checked="" type="checkbox"/>	An area map, drawn to scale, indicating, within a radius of one-quarter mile from the boundaries of the property upon which the retail marijuana establishment is proposed to be located, and the proximity of the property to any school (see LMC § 5.48.060.D.12 for additional details).
<input checked="" type="checkbox"/>	A statement of whether or not the applicant or any person holding any ownership interest in the proposed retail marijuana establishment has:
<input checked="" type="checkbox"/>	Been denied an application for a medical marijuana establishment license or retail marijuana establishment license by the State or any other local jurisdiction in the State, or has had such a license suspended or revoked; and
<input checked="" type="checkbox"/>	Been convicted of a felony or has completed any portion of a sentence due to a felony charge within the preceding five (5) years.
<input checked="" type="checkbox"/>	Completed City of Leadville Business license application showing that the proposed retail marijuana establishment will be located in a location that permits such land use under the City of Leadville Zoning Code and other applicable provisions of the City of Leadville Municipal Code and as evidenced by written confirmation of the City of Leadville Planning & Zoning Department, City of Leadville Building Department, Leadville Police Department, Leadville Lake County Fire Department, Lake County Health Inspector, Lake County Clerk & Recorder, and any other required approvals.
<input checked="" type="checkbox"/>	Any required building permits, including but not limited to, building, mechanical, plumbing, and electrical.
<input type="checkbox"/>	Payment of all initial application, licensing, operational, background, and other fees due and payable to properly license and operate a retail marijuana establishment, and as determined by the Leadville Marijuana Licensing Authority. <i>Waiting for City to provide</i>
OATH OF APPLICANT:	
I declare, under penalty of perjury, that the statements in this application, and all attachments to and documents submitted with this application, are true, correct and complete to the best of my knowledge. I understand and acknowledge that any information contained herein or submitted as part of this application that is found to be false or misleading may result in this application being denied, or any license granted pursuant to this application, suspended or revoked, in addition to possible filing of applicable criminal charges. I hereby acknowledge that I am familiar with and will comply with the provisions of Chapter 5.48 of the Municipal Code and the Colorado Retail Marijuana Code.	
Applicant's Signature:	
Title or Position:	<i>owner</i>
Date:	<i>03/09/2025</i>

2023-2024 License/Application fee

Security

New 403P-00562



TOTAL BUILDING AREA = 4,348 SQ. FT.

Security Legend

17 Boundary of Service Areas

Location of Camera

Indicate Security Enclosure

Door

Window

Wall

Floor

Roof

OPERATING AGREEMENT FOR ELEVATED QUALITY WHOLESALE, LLC

The sole use for Elevated Quality Wholesale, LLC is to be used as a retail marijuana cultivation facility. The purpose is to cultivate marijuana on the site address of 210 E 10th St Leadville, Co 80461 under license number 403R-00562 and wholesale the product directly to other licensed retail facilities in the State of Colorado. There will be no direct retail sales to the public. The company is solely owned by Joshua H. Myers (100%) owner who will be in charge of all operations. All practices will be in compliance with the laws of the City of Leadville and State of Colorado.

ATTEST: Elevated Quality Wholesale, LLC



Joshua H. Myers

TITLE: Owner/Member

Date: 3/12/17

STATE OF COLORADO

DEPARTMENT OF REVENUE



Marijuana Enforcement Division



Regulated Marijuana Conditional License

ELEVATED QUALITY WHOLESALE, LLC

210 East 10th Street, Leadville, CO 80461

Retail Marijuana Cultivation Facility – Tier 1 (1,800 Plants) - 403R-00562

License Issue Date: 06/24/2022

License Valid Through: 06/24/2023

This license is conditioned upon Local Authority approval, pursuant to section 44-10-305 C.R.S.

This conditional license is issued subject to the laws of the State of Colorado and especially under the provisions of Title 44, Article 10, as amended. This conditional license is nontransferable and shall be conspicuously posted in the place above described.

This conditional license is only valid through the expiration date shown above. Any questions concerning this conditional license should be addressed to: Colorado Marijuana Enforcement Division, 1697 Cole Blvd., Suite 200, Lakewood, CO 80401. In testimony whereof, I have hereunto set my hand.

Handwritten signature of Dominique Mendiola.

Dominique Mendiola, Senior Director

Handwritten signature of Mark Ferrandino.

Mark Ferrandino, Executive Director

COMMERCIAL LEASE AGREEMENT

THIS LEASE (this "Lease") dated this 28th day of January 2015

BETWEEN:

Elevated Properties, LLC of 210 E. 10th Street, Leadville, Co. 80461
Telephone: 970-476-4425 Fax: 970-479-0741
(the "Landlord")

OF THE FIRST PART

- AND -

Elevated Quality Wholesale, LLC of 210 E. 10th Street, Leadville,
Co. 80461
Telephone: 303-905-4617
(the "Tenant")

OF THE SECOND PART

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

Definitions

1. When used in this Lease, the following expressions will have the meanings indicated:
 - a. "Additional Rent" means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;
 - b. "Building" means all buildings, improvements, equipment, fixtures, property and facilities from time to time located at 210 E. 10th Street, Leadville, Co. 80461, as from time to time altered, expanded or reduced by the Landlord in its sole discretion;
 - c. "Common Areas and Facilities" mean:
 - i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are not designated or intended by the Landlord to be leased to tenants of the Building including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas,

retaining walls and maintenance, cleaning and operating equipment serving the Building; and

- ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;
- d. "Leasable Area" means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined, calculated and certified by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements;
- e. "Premises" means the industrial premises at 210 E. 10th Street, Leadville, Co. 80461;
- f. "Proportionate Share" means a fraction, the numerator of which is the Leasable Area of the Premises and the denominator of which is the aggregate of the Leasable Area of all rentable premises in the Building.

Leased Premises

2. The Landlord agrees to rent to the Tenant the industrial premises municipally described as 210 E. 10th Street, Leadville, Co. 80461, (the "Premises"). The Premises will be used for only the following permitted use (the "Permitted Use"): Retail Marijuana Cultivation Facility. Neither the Premises nor any part of the Premises will be used at any time during the term of this Lease by Tenant for any purpose other than the Permitted Use.
 3. While the Tenant, or an assignee or subtenant approved by the Landlord, is using and occupying the Premises for the Permitted Use and is not in default under the Lease, the Landlord agrees not to Lease space in the Building to any tenant who will be conducting in such premises as its principal business, the services of: Retail Marijuana Cultivation Facility.
 4. Subject to the provisions of this Lease, the Tenant is entitled to the use of parking (the 'Parking') on or about the Premises.
-
-

Term

5. The term of the Lease is for 10 years to commence at 12:00 noon on January 28, 2015 and subject to renewal by written agreement of the parties.
6. Upon 15 days notice, the Landlord may terminate the tenancy under this Lease if the Tenant has defaulted in the payment of any portion of the Rent when due.
7. Tenant is entitled to possession of the Premises at 12:00 noon on January 28, 2015.
8. Tenant may remain in possession of the Premises with the consent of the Landlord after the natural expiration of this Lease by written consent of the parties or a new tenancy from month to month will be created between the Landlord and the Tenant which will be subject to all the terms and conditions of this Lease but will be terminable upon either party giving one month's notice to the other party.

Rent

9. Subject to the provisions of this Lease, the Tenant will pay a base rent of Two Thousand Dollars (\$2,000.00), payable per month, for the Premises (the "Base Rent").
10. The Tenant will pay the Base Rent on or before the first of each and every month of the term of this Lease to the Landlord at 210 E. 10th Street, Leadville, Co. 80461, or at such other place as the Landlord may later designate. Rent shall commence four (4) months after the planting of the first seeds.

Operating Costs

11. In addition to the Base Rent, the Tenant will pay as Additional Rent, without setoff, abatement or deduction, its Proportionate Share of all of the Landlord's costs, charges and expenses of operating, maintaining, repairing, replacing and insuring the Building including the Common Areas and Facilities from time to time and the carrying out of all obligations of the Landlord under this Lease and similar leases with respect to the Building ("Operating Costs").
12. Except as otherwise provided in this Lease, Operating Costs will not include debt service, depreciation, costs determined by the Landlord from time to time to be fairly allocable to the correction of construction faults or initial maladjustments in operating equipment, all management costs not allocable to the actual maintenance, repair or operation of the Building (such as in connection with leasing and rental advertising), work performed in connection with the initial construction of the Building and the Premises and improvements and modernization to the Building subsequent to the date of original construction which are not in the nature of a repair or replacement of an existing component, system or part of the Building.
13. Operating Costs will also not include the following:

- a. the costs of any capital replacements;
- b. the costs incurred or accrued due to the willful act or negligence of the Landlord or anyone acting on behalf of the Landlord;
- c. structural repairs;
- d. costs for which the Landlord is reimbursed by insurers or covered by warranties;
- e. costs incurred for repairs or maintenance for the direct account of a specific Tenant or vacant space;
- f. costs recovered directly from any Tenant for separate charges such as heating, ventilating, and air conditioning relating to that Tenant's leased premises, and in respect of any act, omission, neglect or default of any Tenant of its obligations under its Lease; or
- g. any expenses incurred as a result of the Landlord generating revenues from common area facilities will be paid from those revenues generated.

14. The Tenant will pay:

- a. To the Landlord, the Tenant's Proportionate Share of all real property taxes, rates, duties, levies and assessments which are levied, rated, charged, imposed or assessed by any lawful taxing authority (whether federal, state, district, municipal, school or otherwise) against the Building and the land or any part of the Building and land from time to time or any taxes payable by the Landlord which are charged in lieu of such taxes or in addition to such taxes, but excluding income tax upon the income of the Landlord to the extent that such taxes are not levied in lieu of real property taxes against the Building or upon the Landlord in respect of the Building.
- b. To the lawful taxing authorities, or to the Landlord, as it may direct, as and when the same become due and payable, all taxes, rates, use fees, duties, assessments and other charges that are levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Tenant on or in default by the Tenant and in respect of any business carried on in the Premises or in respect of the use or occupancy of the Premises by the Tenant.

Landlord's Estimate

16. The Landlord may, in respect of all taxes and Operating Costs and any other items of Additional Rent referred to in this Lease compute bona fide estimates of the amounts which are anticipated to accrue in the next following lease year, calendar year or fiscal year, or portion of such year, as the Landlord may determine is most appropriate for each and of all items of Additional Rent, and the Landlord may provide the Tenant with written notice and a reasonable breakdown of the amount of any such estimate, and the Tenant, following receipt of such written notice of the estimated amount and breakdown will pay to the Landlord such amount, in equal consecutive monthly installments throughout the application period with the monthly instalments of Base Rent. With respect to any item of Additional rent which the Landlord has not elected to estimate from time to time, the Tenant will pay to the Landlord the amount of such item of Additional Rent, determined under the applicable provisions of this Lease, immediately

upon receipt of an invoice setting out such items of Additional Rent. Within one hundred and twenty (120) days of the conclusion of each year of the term or a portion of a year, as the case may be, calendar year or fiscal year, or portion of such year, as the case may be, for which the Landlord has estimated any item of Additional Rent, the Landlord will compute the actual amount of such item of Additional Rent, and make available to the Tenant for examination a statement providing the amount of such item of Additional Rent and the calculation of the Tenant's share of that Additional Rent for such year or portion of such year. If the actual amount of such items of Additional Rent, as set out in the any such statement, exceeds the aggregate amount of the installments paid by the Tenant in respect of such item, the Tenant will pay to the Landlord the amount of excess within fifteen (15) days of receipt of any such statement. If the contrary is the case, any such statement will be accompanied by a refund to the Tenant of any such overpayment without interest, provided that the Landlord may first deduct from such refund any rent which is then in arrears.

Use and Occupation

17. The Tenant will use and occupy the Premises only for the Permitted Use and for no other purpose whatsoever. The Tenant will carry on business under the name of Elevated Quality Wholesale, LLC and will not change such name without the prior written consent of the Landlord, such consent not to be unreasonably withheld. The Tenant during the date of commencement of the term and throughout the term, will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined by the Tenant.

Quiet Enjoyment

18. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

Distress

19. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as rent, or any part of the rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.

Overholding

20. If the Tenant continues to occupy the Premises without the written consent of the Landlord after the expiration or other termination of the term, then, without any further

written agreement, the Tenant will be a month-to-month tenant at a minimum monthly rental equal to twice the Base Rent and subject always to all of the other provisions of this Lease insofar as the same are applicable to a month-to-month tenancy and a tenancy from year to year will not be created by implication of law.

Additional Rights on Reentry

21. If the Landlord reenters the Premises or terminates this Lease, then:
- a. notwithstanding any such termination or the term thereby becoming forfeited and void, the provisions of this Lease relating to the consequences of termination will survive;
 - b. the Landlord may use such reasonable force as it may deem necessary for the purpose of gaining admittance to and retaking possession of the Premises and the Tenant hereby releases the Landlord from all actions, proceedings, claims and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith or consequential thereupon;
 - c. the Landlord may expel and remove, forcibly, if necessary, the Tenant, those claiming under the Tenant and their effects, as allowed by law, without being taken or deemed to be guilty of any manner of trespass;
 - d. in the event that the Landlord has removed the property of the Tenant, the Landlord may store such property in a public warehouse or at a place selected by the Landlord, at the expense of the Tenant. If the Landlord feels that it is not worth storing such property given its value and the cost to store it, then the Landlord may dispose of such property in its sole discretion and use such funds, if any, towards any indebtedness of the Tenant to the Landlord. The Landlord will not be responsible to the Tenant for the disposal of such property other than to provide any balance of the proceeds to the Tenant after paying any storage costs and any amounts owed by the Tenant to the Landlord;
 - e. the Landlord may relet the Premises or any part of the Premises for a term or terms which may be less or greater than the balance of the term of this Lease remaining and may grant reasonable concessions in connection with such reletting including any alterations and improvements to the Premises;
 - f. after reentry, the Landlord may procure the appointment of a receiver to take possession and collect rents and profits of the business of the Tenant, and, if necessary to collect the rents and profits the receiver may carry on the business of the Tenant and take possession of the personal property used in the business of the Tenant, including inventory, trade fixtures, and furnishings, and use them in the business without compensating the Tenant;
-
-

- g. after reentry, the Landlord may terminate the Lease on giving 5 days written notice of termination to the Tenant. Without this notice, reentry of the Premises by the Landlord or its agents will not terminate this Lease;
- h. the Tenant will pay to the Landlord on demand:
 - i. all rent, Additional Rent and other amounts payable under this Lease up to the time of reentry or termination, whichever is later;
 - ii. reasonable expenses as the Landlord incurs or has incurred in connection with the reentering, terminating, reletting, collecting sums due or payable by the Tenant, realizing upon assets seized; including without limitation, brokerage, fees and expenses and legal fees and disbursements and the expenses of keeping the Premises in good order, repairing the same and preparing them for reletting; and
 - iii. as liquidated damages for the loss of rent and other income of the Landlord expected to be derived from this Lease during the period which would have constituted the unexpired portion of the term had it not been terminated, at the option of the Landlord, either:
 - i. an amount determined by reducing to present worth at an assumed interest rate of twelve percent (12%) per annum all Base Rent and estimated Additional Rent to become payable during the period which would have constituted the unexpired portion of the term, such determination to be made by the Landlord, who may make reasonable estimates of when any such other amounts would have become payable and may make such other assumptions of the facts as may be reasonable in the circumstances; or
 - ii. an amount equal to the Base Rent and estimated Additional Rent for a period of six (6) months.

Renewal of Lease

22. Upon giving written notice no later than 60 days before the expiration of the term of this Lease, the Tenant may renew this Lease for an additional term. All terms of the renewed lease will be the same except the parties may agree upon an increased rent in writing.

Tenant Improvements

23. The Tenant will obtain written permission from the Landlord before doing any of the following:
- a. applying adhesive materials, or inserting nails or hooks in walls or ceilings other than two small picture hooks per wall;

- b. painting, wallpapering, redecorating or in any way significantly altering the appearance of the Premises;
- c. removing or adding walls, or performing any structural alterations;
- e. changing the amount of heat or power normally used on the Premises as well as installing additional electrical wiring or heating units;
- f. placing or exposing or allowing to be placed or exposed anywhere inside or outside the Premises any placard, notice or sign for advertising or any other purpose; or

Utilities and Other Costs

24. The Tenant is responsible for the direct payment of the following utilities and other charges in relation to the Premises: electricity, natural gas, water, sewer, telephone, Internet and cable.

Insurance

25. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. Once construction is started on the Premises, the Tenant must carry insurance in the amount of One Million Dollars (\$1,000,000) and name Elevated Properties, LLC as an additional insured.

Governing Law

26. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Colorado, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

27. If there is a conflict between any provision of this Lease and the applicable legislation of the State of Colorado (the 'Act'), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

Assignment and Subletting

28. The Tenant will not assign this Lease, or sublet or grant any concession or license to use the Premises or any part of the Premises unless Tenant obtains written approval of the

Landlord. An assignment, subletting, concession, or license, whether by operation of law or otherwise, will be void and will, at Landlord's option, terminate this Lease unless Tenant obtains written approval of the Landlord.

Care and Use of Premises

29. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.

30. Vehicles which the Landlord reasonably considers unsightly, noisy, dangerous, improperly insured, inoperable or unlicensed are not permitted in the Tenant's parking stall(s), and such vehicles may be towed away at the Tenant's expense. Parking facilities are provided at the Tenant's own risk. The Tenant is required to park in only the space allotted to them.

31. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable opinion of the Landlord, disturbs the comfort or convenience of other tenants.

32. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

Surrender of Premises

-
33. At the expiration of the lease term, the Tenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

Hazardous Materials

34. The Tenant will not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on the Premises or that might be considered hazardous by any responsible insurance company.

Rules and Regulations

35. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot, laundry room and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

General Provisions

36. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease will not operate as a waiver of the Landlord's rights under this
-
-
-

Lease in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Landlord's rights in respect of any subsequent default or breach.

- 37. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.
- 38. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recovered by the Landlord as rental arrears.
- 39. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.

Scope of Agreement

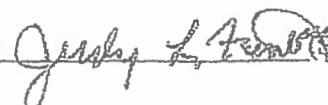
- 40. This Agreement represents the entire and integrated agreement between the Landlord and Tenant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instruments signed by both the Landlord and Tenant.

IN WITNESS WHEREOF the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this 28th day of JAN, 2015.



(Witness)

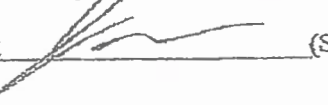
Elevated Properties, LLC (Landlord)

Per:  (SEAL)



(Witness)

Elevated Quality Wholesale, LLC (Tenant)

Per:  (SEAL)

OPERATING AGREEMENT FOR ELEVATED QUALITY WHOLESAL, LLC

The sole use for Elevated Quality Wholesale, LLC is to be used as a retail marijuana cultivation facility. The purpose is to cultivate marijuana on the site address of 210 E 10th St Leadville, Co 80461 under license number 403R-00562 and wholesale the product directly to other licensed retail facilities in the State of Colorado. There will be no direct retail sales to the public. The company is solely owned by Joshua H. Myers (100%) owner who will be in charge of all operations. All practices will be in compliance with the laws of the City of Leadville and State of Colorado.

ATTEST: Elevated Quality Wholesale, LLC



Joshua H. Myers

TITLE: Owner/Member

Date: 5/12/17

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Elevated Quality Wholesale, LLC

is a

Limited Liability Company

formed or registered on 10/15/2014 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20141626650 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/13/2023 that have been posted, and by documents delivered to this office electronically through 03/14/2023 @ 10:05:36 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/14/2023 @ 10:05:36 in accordance with applicable law. This certificate is assigned Confirmation Number 14778788 .



Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

LEADVILLE POLICE DEPARTMENT

800 Harrison Avenue
Leadville, CO 80461
(719) 486-1365 Office
(719) 486-1040 Fax



Kenneth D. Chavez
Interim Chief of Police
kchavez@leadville-co.gov
720 641-0213 cell

March 17,2023

To Whom It May Concern:

The Leadville Police Department in the year of 2022 does not have any record of complaints for odors or lights for Elevation Quality Wholesale or Josh Meyers.

If you have any questions or concerns, please contact us at 719-486-1365.

Respectfully,

A handwritten signature in black ink, appearing to read "K. Chavez", with a long, sweeping horizontal line extending to the right.

Kenneth D. Chavez

Interim Chief of Police



210 K 1071
Annual F/I
All okay
~~3/23/23~~

Fire Crew Inspection List

pg 1 of 1
3/23/23

816 Harrison Avenue Leadville, CO 80461
Phone (719) 486-2990 Fax (719) 486-3113 Emergency – Dial 911
www.lakecountycolorado.com/fire

A B C SHIFT

DATE

1. ACCESS & PREMISES:	YES	NO	N/A
a) Are the address numbers on the building at least 4" in height?			
b) Are the unit numbers visible from the street?			
c) Is the Fire Department Access unobstructed?			
d) Does the building unit have a current "Knox" key?			
e) Is there a minimum of 3' clearance around the fire hydrant?			
2. EGRESS			
a) Is the exit access and exit doors labeled, unobstructed and maintained functional?			
b) Is there a sign either on the door or above the door that reads "THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS"?			
c) Are doors w/self-closing hinges maintained in the closed position?			
d) Are exits and exit enclosures free from storage?			
3. ELECTRICAL			
a) Are all electrical outlets, switches and junction boxes properly covered with cover plates? Is the electrical system safe from any apparent shock and/or other electrical hazards?			
b) Are circuit breakers/fuses labeled so as to identify the area protected?			
c) Is the area in front of the electrical panel(s) clear, by at least 30"?			
d) Are extension cords used only for temporary use? (90 DAYS)			
e) Are extension cord(s) of heavy duty construction, maintained in good condition, and only used as temporary wiring? (Extension cords are not to be plugged into power strips or used to supply electricity to power strips.)			
f) If a multi-plug adapter (power strip) is used is it equipped with a built in circuit breaker and is it a "Listed" unit?			
g) If a multi-plug adapter is used, is it plugged directly into an installed receptacle?			
h) Are only electronics plugged into the multi-plug adapter? (No appliances are permitted to be plugged into power strips)			
4. EMERGENCY LIGHTING/EGRESS ILLUMINATION			
a) If emergency lighting is provided, is it maintained in operable condition?			
b) Is the means of egress illuminated when the building or structure is occupied?			

City of Leadville
800 Harrison Ave
Leadville CO 80461

719-486-5329 Treas

Receipt No: 8.002649

Mar 9, 2023

Elevated Quality Wholesale

Licenses and Permits - Marijuana Application Fee	3,500.00
--------------------------------------------------	----------

Total:	3,500.00
--------	----------

Check	Check No: 1451	3,500.00
-------	----------------	----------

Payor: Elevated Quality Wholesale

Total Applied:	3,500.00
----------------	----------

Change Tendered:	.00
------------------	-----

Duplicate Copy

03/27/2023 4:04 PM



AGENDA ITEM #8B

CITY COUNCIL COMMUNICATION FORM

MEETING DATE: April 4, 2023

SUBJECT: Resolution No. 7, Series of 2023: A Resolution Approving a Temporary Construction and Access Easement Agreement with LTF Real Estate Company, Inc. for the installation and construction of temporary fencing and a stair tower related to Phase 3 of the Tabor Opera House Rehabilitation of Exterior Envelope Project.

PRESENTED BY: Sarah Dae, TOHPF Executive Director

ORDINANCE
 RESOLUTION
 MOTION

I. **REQUEST OR ISSUE:**

Before City Council is Resolution No. 7, Series of 2023, (the "Resolution"), which would approve a temporary construction and access easement agreement with Lifetime Fitness related to Phase 3 of the rehabilitation of the exterior envelope of the City's historic Tabor Opera House ("Project").

II. **BACKGROUND INFORMATION:**

The City of Leadville, in coordination and cooperation with the Tabor Opera House Preservation Foundation ("TOHPF"), is rehabilitating the City's historic Tabor Opera House ("TOH"), located at 308 Harrison Avenue, Leadville, Colorado 80461. The TOH is a contributing building in the Leadville National Historic Landmark District as noted on the National Register of Historic Places and designated as a National Treasure by the National Trust for Historic Preservation. The TOHPF is a Colorado nonprofit that leases and operates the TOH.

Phase 3 of the Project construction is scheduled to occur in 2023. The purpose of Phase 3 is to rehabilitate the northern exterior of the TOH, which includes rehabilitation of the masonry and ghost sign to the west end of the north elevation, above the upper and lower roofs of Grantor's building located on the Grantor's Property.

To complete the necessary work for Phase 3, A&M Renovations, LLC (the City's construction contractor) requires the temporary use of a portion of the property adjacent to the TOH, which is owned by Lifetime Fitness, to place and install construction fencing and a stair tower on the paver portion of Grantor's Property, laydown EPDM rubber mats on Grantor's lower and upper roofs, and complete ancillary work necessary to the Project.

Lifetime Fitness has agreed to grant to the City a temporary easement across a portion of its property for such purpose as described in the easement agreement attached to the Resolution. The easement agreement is for the work to be completed during the 2023 construction season only.

III. FISCAL IMPACTS:

Consideration to be paid by the City to Lifetime Fitness for the grant of the temporary easement is \$10.00.

IV. STAFF RECOMMENDATION:

Staff recommends that City Council approve Resolution No. 7, Series of 2023 and approve the temporary easement agreement.

V. PROPOSED MOTION:

“I move to adopt Resolution No. 7, Series of 2023, A Resolution Approving a Temporary Construction and Access Easement Agreement with LTF Real Estate Company, Inc. for the installation and construction of temporary fencing and a stair tower related to Phase 3 of the Tabor Opera House Rehabilitation of Exterior Envelope Project.”

ATTACHMENTS:

Resolution No. 7, Series of 2023

Temporary Construction and Access Easement Agreement (Exhibit 1 to Resolution)

**CITY OF LEADVILLE, COLORADO
RESOLUTION NO. 7
SERIES OF 2023**

**A RESOLUTION APPROVING A TEMPORARY CONSTRUCTION AND ACCESS
EASEMENT AGREEMENT WITH LTF REAL ESTATE COMPANY, INC. FOR
INSTALLATION AND CONSTRUCTION OF TEMPORARY FENCING AND A STAIR
TOWER RELATED TO PHASE 3 OF THE TABOR OPERA HOUSE
REHABILITATION OF EXTERIOR ENVELOPE PROJECT**

WHEREAS, the City of Leadville, Colorado (“City”) will soon be performing construction work on the City’s historic Tabor Opera House (“TOH”) located at 308 Harrison Avenue, Leadville, Colorado 80461, which real property is owned by the City (“City Property”); and

WHEREAS, the TOH is a contributing building in the Leadville National Historic Landmark District as noted on the National Register of Historic Places and designated as a National Treasure by the National Trust for Historic Preservation; and

WHEREAS, the purpose of the construction work is to rehabilitate the northern exterior of the TOH including the masonry and ghost sign to the west end of the north elevation, above the upper and lower roofs of the TOH (the “Project”); and

WHEREAS, LTF Real Estate Company, Inc., a Minnesota corporation (“LTF”), is the owner of that certain real property known as 316 Harrison Avenue, Leadville, Colorado 80461 (“LTF Property”), which is adjacent to the City Property; and

WHEREAS, the work for the Project on the City Property requires access by City contractors and employees to the LTF Property to place and install construction fencing and a stair tower related to the Project; and

WHEREAS, LTF has agreed to grant the City a temporary construction and access easement over a portion of the LTF Property for the City’s work on the Project during the 2023 construction season, which easement is described and depicted in the Temporary Construction and Access Easement Agreement (“Easement Agreement”), attached hereto as **Exhibit 1**; and

WHEREAS, City Council finds that it is in the best interests of the City to approve the Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO, AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein by reference as findings and determinations of City Council.

Section 2. The City Council hereby: (a) approves the Easement Agreement in substantially the form attached hereto as **Exhibit 1**; (b) authorizes the City Attorney to make any changes to the Easement Agreement that do not increase the financial obligations of the City; and (c) authorizes the Mayor to execute the Easement Agreement on behalf of the City once in final form.

Section 3. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

Section 4. **Effective Date.** This Resolution shall take effect upon its adoption by the City Council.

**ADOPTED this 4th day of April, 2023 by a vote of ___ in favor, ___ against,
and ___ absent.**

CITY OF LEADVILLE, COLORADO:

Greg Labbe, Mayor

ATTEST:

Deputy City Clerk

EXHIBIT 1
EASEMENT AGREEMENT

(see attached)

2023 TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT

This **2023 TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT** ("Agreement") is entered into by and between the **CITY OF LEADVILLE**, a municipal corporation of the State of Colorado with offices at 800 Harrison Avenue, Leadville, Colorado 80461 (the "City" or "Grantee"), and **LTF Real Estate Company, Inc.**, a Minnesota corporation with an address of 2900 Corporate Place, Chanhassen, Minnesota 55317 (the "Grantor") (together the "Parties"). This Agreement shall be effective upon the date of its mutual execution by the Parties.

For consideration in the amount of Ten and 00/100 Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the Grantor and Grantee hereby agree as follows:

1. Grantor's Property. The Grantor is the owner of that certain property known as 316 Harrison Avenue, Leadville, County of Lake, Colorado 80461, as described in that certain Special Warranty Deed to the Grantor recorded in the real property records of the Lake County Clerk and Recorder at Reception No. 355661 and having a legal description as follows: Lots 4, 5, 6 and the North 15 feet Lot 7, Block 1, Leadville Improvement Company's Addition to the City of Leadville, County of Lake, State of Colorado (the "Grantor's Property").
2. Grantee's Project. Grantee is performing construction work, funded wholly by grants and state tax credits, on Grantee's property adjacent to the Grantor's Property and having an address of 308 Harrison Avenue, Leadville, Colorado 80461, as described in that certain Special Warranty Deed to the Grantee recorded in the real property records of the Lake County Clerk and Recorder at Reception No. 369050 and having a legal description as follows: The South 10 feet of Lot 7, and Lots 8 and 9, Block 1, Leadville Improvement Company's Addition to the City of Leadville, County of Lake, State of Colorado ("Grantee's Property") in coordination with the Colorado nonprofit corporation Tabor Opera House Preservation Foundation. Grantee's Property houses the historic Tabor Opera House ("TOH"), a contributing building in the Leadville National Historic Landmark District as noted on the National Register of Historic Places and designated as a National Treasure by the National Trust for Historic Preservation. The purpose of the construction work is to rehabilitate the northern exterior of the TOH, and the work includes rehabilitation of the masonry and ghost sign to the west end of the north elevation, above the upper and lower roofs of Grantor's building located on the Grantor's Property (the "Project").
3. Grant of Temporary Easement. Subject to the terms and conditions of this Agreement, Grantor hereby grants, bargains, sells, and conveys to the Grantee the temporary, non-exclusive construction and access easements over, across and upon portions of the Grantor's Property as described below and as depicted in **EXHIBIT B**, attached hereto and incorporated herein by this reference solely for the following purpose:
 - A. Narrative Description. To provide access by construction personnel to the Grantee's Property that is necessary for the completion of the Project and to place and install construction fencing and a stair tower on the paver portion of Grantor's Property, laydown EPDM rubber mats on Grantor's lower and upper roofs, and ancillary work necessary to the Project as specifically described in the A&M Renovations, LLC Narrative Description dated March 29, 2023 (the "Narrative Description") and attached hereto as **EXHIBIT A**.

B. Ground Level Easement. The width of the temporary easement on the Grantor's Property shall not exceed a distance of fourteen (14) feet from the Northerly wall of the TOH, and the westerly limit of the temporary easement shall end no closer than one (1) foot from the Grantor's railing and decking on Grantor's lower roof (the "**Ground Level Easement**"). Within the Ground Level Easement, the Grantee's Project Representatives, as defined below, may erect construction fencing and a stair tower in connection with the Project.

C. Lower Roof Easement. The width of the temporary easement upon the lower roof of the Grantor's Property shall not exceed a distance of fourteen (14) feet from the Northerly wall of the TOH (the "**Lower Roof Easement**"). Within the Lower Roof Easement, the Grantee's Project Representatives, as defined below, may place EPDM rubber mats, temporary railings, a temporary gate on the easternmost walkway, a plywood base for the temporary placement of a twenty (20) foot extension ladder to access the upper roof of the Grantor's Property in connection with the Project.

D. Upper Roof Easement. The width of the temporary easement upon the upper roof of the Grantor's Property shall not exceed a distance of eighteen (18) feet from the Northerly wall of the TOH (the "**Upper Roof Easement**"). Within the Upper Roof Easement, the Grantee's Project Representatives, as defined below, may place EPDM rubber mats, temporary railings, temporary stanchions and connecting rope on the western side of said upper roof, a plywood base and temporary railings for the landing of the twenty (20) foot extension ladder accessing the upper roof of the Grantor's Property in connection with the Project.

In connection with the exercise of its rights pursuant to this Agreement, Grantee may permit its contractors, subcontractors, employees, agents, and representatives of the City (the "**Grantee's Project Representatives**") to enter upon the Ground Level Easement, the Lower Roof Easement, and the Upper Roof Easement (collectively, the "**Temporary Easements**") for the purposes set forth above. The term Grantee's Project Representatives includes the City's construction contractor and its subcontractors completing work on the Project ("**Grantee's Construction Contractor**").

4. Reserved Rights. Grantor reserves the right to use the Grantor's Property for any purposes that do not unreasonably interfere with Grantee's use of the Temporary Easements granted herein. Grantor further reserves the right to grant additional easements or other rights to third parties over, under, and upon the Grantor's Property on the condition that such easements or other rights do not unreasonably interfere with Grantee's use of the Temporary Easements for the purposes set forth herein. Grantor also reserves the right but not the obligation to remove any EPDM rubber mats, construction fencing or other Project materials of Grantee or Grantee's Project Representatives which may remain on Grantor's Property after termination of this Agreement upon at least 24 hours' advance notice to Grantee.
5. Maintenance and Repair. Grantee shall make reasonable efforts to minimize interference with the use and operation of any improvements owned by Grantor located on the Grantor's Property or activities of Grantor on the Grantor's Property. Grantee and

Grantee's Project Representatives shall not block or otherwise impede access to the rear entrances or stairways of the Grantor's building located on the Grantor's Property. Grantee shall repair and restore any damage to the surface of the Grantor's Property or any improvements located thereon caused by Grantee's and/or Grantee's Project Representatives use of the Temporary Easements or Grantor's Property by the date that is no later than fifteen (15) days after termination of this Agreement or fifteen (15) days from the date of Grantor's notice to Grantee regarding such repair or restoration.

6. Insurance. Grantee shall require Grantee's Construction Contractor to maintain in full force and effect the following insurance during the period this Agreement is in effect: (a) comprehensive general liability insurance with limits of liability of one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) aggregate; and (b) umbrella/excess liability insurance with limits of liability of a minimum of two million dollars (\$2,000,000) in the aggregate. Each liability policy shall contain an endorsement naming Grantor (and such other parties holding insurable interests as designated by Grantor) as additional insureds thereunder. All insurance policies required pursuant to this section shall be written as primary policies, not contributing with or in excess of any coverage which Grantee or Grantee's Project Representatives may carry. The Grantee will provide certificates evidencing the above liability policies and endorsements to Grantor no less than five (5) business days prior to entering or using the Temporary Easements.
7. Indemnification. To the extent permitted by law, Grantee shall indemnify, defend, and hold harmless Grantor from and against any and all claims, causes of action, demands, obligations, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Claims") arising from or as a result of, or in connection with, any activities conducted within the Temporary Easements on the Grantor's Property by Grantee or Grantee's Project Representatives to the extent caused by the negligent act, omission, error, professional error, mistake, negligence, intentional acts, willful misconduct, or other fault of Grantee or Grantee's Project Representatives (excluding, however, liability, damage, liens, costs or expenses to the extent caused by Grantor's negligence or willful misconduct).
8. Mechanic's Liens. Grantee shall not permit any mechanic's or materialman's liens to be filed or enforced against the Grantor's Property in connection with any work performed over, upon or across the Grantor's Property by or at the direction of the Grantee and/or Grantee's Project Representatives or for any materials furnished in connection with work for the Project. If such a lien is filed, Grantee shall cause the lien to be removed of record within thirty (30) days thereafter, or, if any foreclosure action to enforce the lien actually commences, within five (5) days after commencement of such foreclosure action.
9. Amendment. This Agreement may be amended only by a written instrument duly executed by Grantor and Grantee.
10. Termination. This Agreement shall terminate without any further action by the parties on October 31, 2023.
11. No Assignment. It is expressly acknowledged and agreed that the Grantee shall have neither the right nor the authority to assign to any third party the rights or obligations

granted by virtue of this Agreement without prior written approval from Grantor, which be withheld in Grantor's sole discretion.

12. Successors and Covenants Running with the Land. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, successors, and permitted assigns of the Grantor and the Grantee. The rights and responsibilities set forth in this Agreement are intended to be covenants running with the land until the Temporary Easements are abandoned or terminated pursuant to the terms set forth herein.
13. No Waiver of Immunity. Nothing in this Agreement is intended to waive any protection afforded to the Grantee, or its respective officials, employees, and agents by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. or any other applicable law providing immunity to the Grantee, its officials, employees, and agents.
14. Recordation. This Agreement shall not be recorded in the offices of the County Clerk and Recorder for Lake County, Colorado.
15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute one original Agreement. In order to expedite the execution of this Agreement, electronic signatures may be used in place of original signatures on this Agreement and any amendments thereto. All Parties hereto intend to be bound by the signatures on the electronic document, are aware that other parties shall rely on the electronic signatures, and hereby waive any and all defenses to the enforcement of the terms thereof based on the form of signature.
16. Authority. Grantor and Grantee hereby represent and warrant to each other that they have the full right and authority to enter into this Agreement, and that the undersigned are duly authorized to execute this Agreement on behalf of Grantor and Grantee.
17. Notices. Any notice hereunder must be in writing and shall be effective upon three (3) business days after being deposited in the United States mail, certified mail, return receipt requested, addressed to the respective parties as set forth below (or as may be designated from time-to-time by any such Owner, pursuant to the procedures provided in this paragraph), or upon confirmed transmission, if sent by email, or when actually received by the party to be notified, if hand delivered. For the purposes of notice, the address of the parties hereto, until changed as herein provided, shall be as follows:

Grantor: LTF Real Estate Company, Inc.
2900 Corporate Place
Chanhassen, MN 55317
Attn: Kari L. Broyles
Email: kbroyles@lt.life

With a copy to: LTF Real Estate Company, Inc.
2900 Corporate Place
Chanhassen, MN 55317
Attn: Property Manager
Email: propertymanagement@lt.life

Grantee: The City of Leadville
800 Harrison Avenue
Leadville, CO 80461
Attn: City Administrator
Email: cityadmin@leadville-co.gov

With a copy to: Tabor Opera House Preservation Foundation
308 Harrison Avenue
Leadville, CO 80461
Attn: Executive Director
Email: execdirector@taboroperahouse.net

Michow Cox & McAksin LLP
6530 S. Yosemite Street, Ste 200
Greenwood Village, CO 80111
Attn: Leadville City Attorney
christiana@mcm-legal.com

18. Section Headings. Any section headings contained herein are included for reference purposes only.
19. Attorneys' Fees. In the event either party seeks to enforce its rights hereunder through litigation or another legal proceeding, the court or panel shall award to the prevailing party in such litigation or other legal proceeding, as part of its judgment or award, its reasonable attorneys' fees and costs.
20. Governing Law. The terms, covenants and provisions hereof shall be governed by and construed under the applicable laws of the State of Colorado.
21. Police Powers Reserved. Nothing in this Agreement waives or is intended to waive the Grantee's authority to exercise its police powers.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as provided herein.

GRANTOR:

LTF REAL ESTATE COMPANY, INC., a Minnesota corporation

By: 
Kari Broyles (Mar 30, 2023 12:13 CDT)

Printed name: Kari L. Broyles

Title: Vice President, Deputy General Counsel

Date of execution: March 30, 2023

GRANTEE:

CITY OF LEADVILLE, a Colorado municipal corporation

By: _____

Name: _____


Title: _____

Date of execution: _____

ATTEST:

APPROVED AS TO FORM:

Deputy City Clerk



City Attorney

EXHIBIT A

NARRATIVE DESCRIPTION

(see attached)

A&M Renovations, LLC

Tabor Opera House
2023 Work on North Elevation, Above Lifetime Fitness Building
Final Narrative Description of Planned Approach
March 29, 2023

From May 2023 through October 2023, A&M Renovations will continue its ongoing restoration of the Tabor Opera House. Work this season will include restoring the masonry and ghost sign at the west end of the building's north elevation, above the upper and lower roofs of the Lifetime Fitness Building. To gain access to these portions of the Tabor Opera House while respecting our neighbor's physical property and ongoing operations, we would propose the following work plan.

Our scaffold contractor will anchor three adjustable swing stages to the roof of the Tabor Opera House. These work platforms can be moved up and down, allowing our masons and paint conservators to complete their work on the Opera House without installing any scaffolding or other heavy equipment on the Lifetime Fitness roofs.

Immediately to the east of the lower Lifetime Fitness roof, a stair tower will be erected on the pavers at ground level, allowing our crew to load both personnel and materials directly onto the swing stages from the stair tower. Most work will therefore be performed from the swing stages, and both personnel and materials will generally be loaded onto the swing stages from the stair tower. There are three instances, however, in which our crews will need to access the Lifetime Fitness roofs directly.

1. Site protection and cleanup.

At the beginning of the project, we will blanket the Lifetime Fitness roofs with EPDM rubber to a distance of 14 - 18 feet from the north wall of the Opera House. Our masonry crew will regularly sweep this rubber and the surrounding roof deck to prevent a buildup of debris. The EPDM rubber will be removed at the conclusion of the project. If the roof is damaged in any way during the course of the project, any necessary repairs will be performed in a timely fashion.

We will remove some of the railings from the deck and stairway on the lower Lifetime Fitness roof in order to protect the railings and improve access. The only railings that will be removed are those associated with egress from the Opera House. We will temporarily bar access from the Opera House door on the second story until such time that the railings may be reinstalled. No railings will be removed from the sections of the deck or stairway that provide egress from the Lifetime Fitness building, nor will the Lifetime Fitness building's egress be impeded in any way at any point in the project. Any railings removed will be installed at the conclusion of the project. The railing that we anticipate removing are indicated on the attached schematic Plan View.

At the west end of the upper Lifetime Fitness roof, temporary stanchions and caution lines will be set up to keep crew members back from the roof edge per OSHA specifications.

2. Masonry work on the lower courses of brick.

Because the swing stages cannot be lowered all the way to the roof deck, our masons will restore the lowest 6 feet of each wall from the corresponding roof deck. In addition to the EPDM rubber already on the roof deck, plywood sheets will be laid down when work is performed from the roof deck to distribute any loads and provide

5800 E. 58th Ave. Unit K
Commerce City, CO 80022
andy@heritagewindowrestoration.com
720-435-6750

2023 Temporary Construction and Access Easement Agreement
Grantor: LTF Real Estate Company, Inc.
Grantee: City of Leadville, CO
Page 9 of 16

additional protection. No more than 100 pounds of bricks, mortar, or other materials or equipment will be set on the roof deck at any one time, and any such materials will always be placed on the plywood. No more than 4 masons will work on a single roof deck at any one time, and they will typically be spread across the roof deck rather than concentrated in any one location.

If safe and feasible, masonry personnel working on the upper roof deck will access the upper roof deck from the swing stages. If this is not safe and feasible, masonry personnel will access the upper roof using the same extension ladder as the ghost sign conservators (see below). In any case, all masonry materials will be transported to the upper roof deck via the swing stages.

3. Ghost sign restoration.

Our ghost sign conservators will work independently of the masons, and thus they will access their swing stage—located at the far west end of the upper Lifetime Fitness roof—directly from the roof deck. They will access the upper roof using an extension ladder set on the lower roof, immediately to the south of the doorway to the Lifetime Fitness apartment. We will install temporary plywood platforms on both the lower and upper roofs where the ladder will be set in order to maximize safety and protect the Lifetime Building; see the attached sketch for an indication of how these platforms will be constructed. To prevent unauthorized access to the upper roof, the extension ladder will be taken down every night and stored in the construction yard. The ghost sign conservators will only use small amounts of materials, such as cans of paint, so they will not need to place any significant loads on the roof deck, nor will they generate significant amounts of debris.

To secure the jobsite, A&M Renovations will install a construction fence as indicated in the attached schematic drawing, with a similar configuration as the fence used in 2022. Where the fence meets the Lifetime Fitness building, it will be set to the south of the Lifetime Fitness egress stairway, thereby maintaining egress from the Lifetime Fitness building at all times. The construction fence will be kept locked when no crews are onsite. Lifetime Fitness staff and the general public will be able to safely utilize the Lifetime Fitness parking area outside of our construction fence.

Throughout the course of this project, we will maintain close contact with the local Lifetime Fitness staff, and should any unforeseen impacts arise from our work, we will work with Lifetime Fitness to address these problems as quickly as possible.

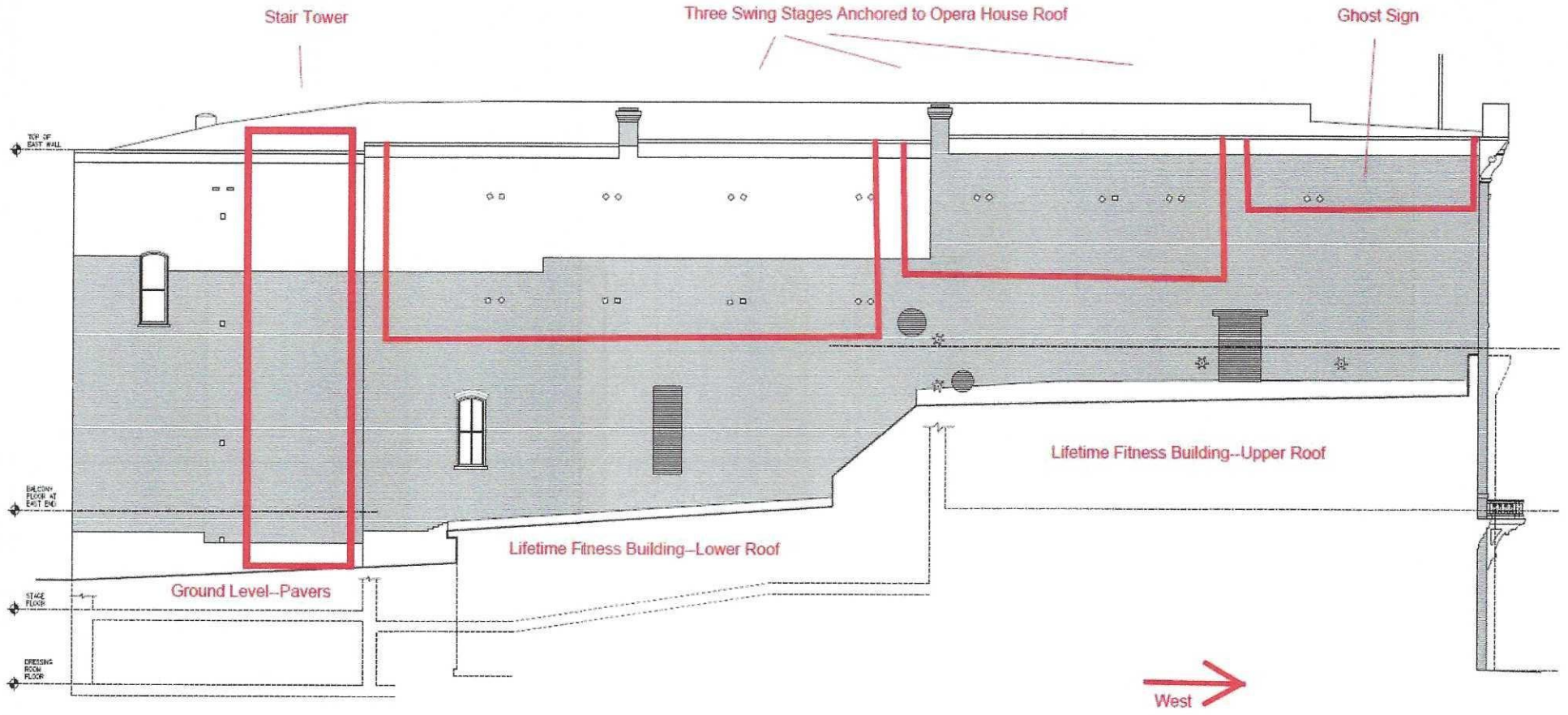
5800 E. 58th Ave. Unit K
Commerce City, CO 80022
andy@heritagewindowrestoration.com
720-435-6750

EXHIBIT B

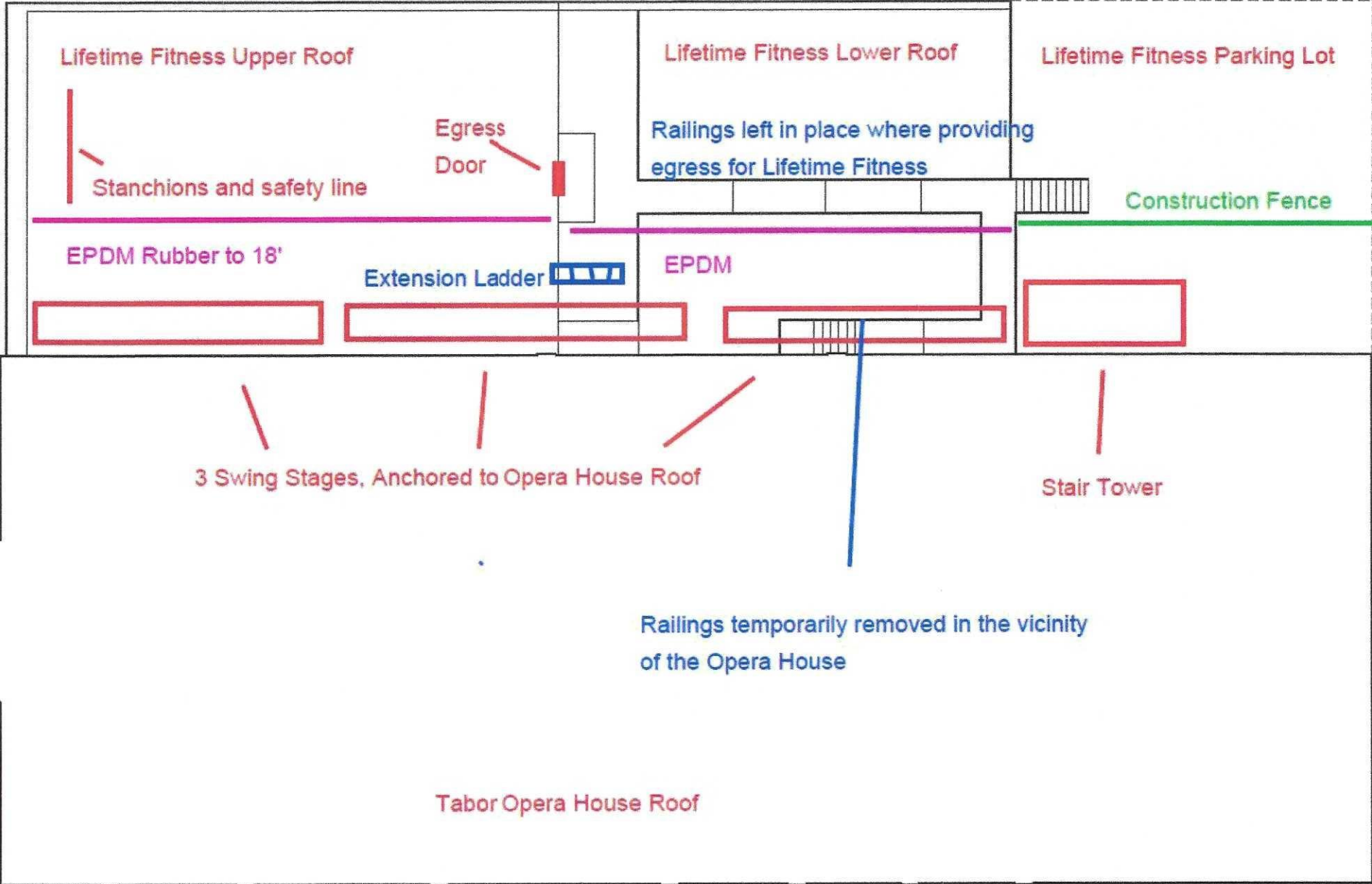
LOCATION OF TEMPORARY EASEMENTS

(see attached)

Tabor Opera House 2023 Work, North Elevation



Tabor Opera House 2023 Work, Plan View



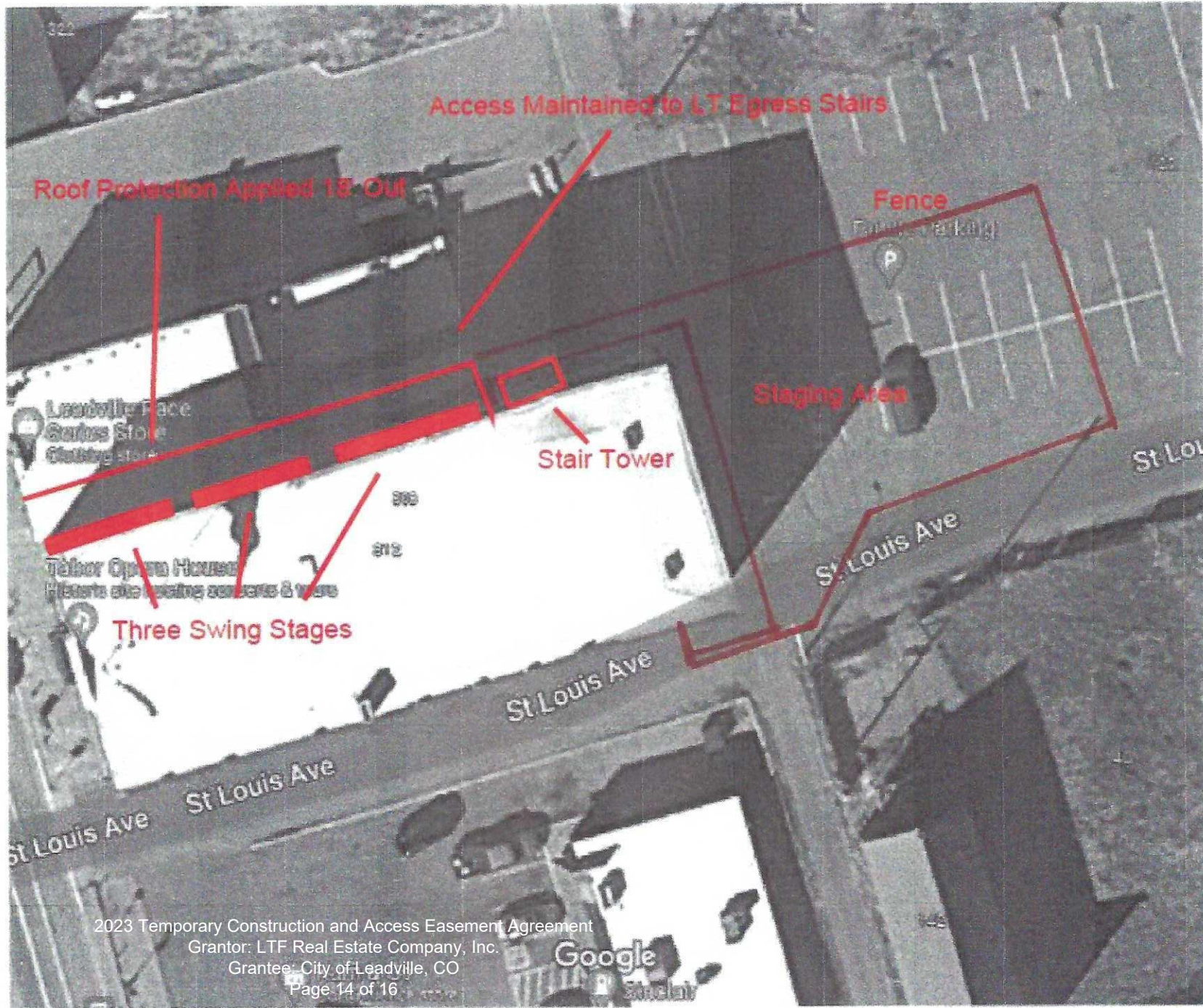
← Harrison Avenue (West)

2023 Temporary Construction and Access Easement Agreement

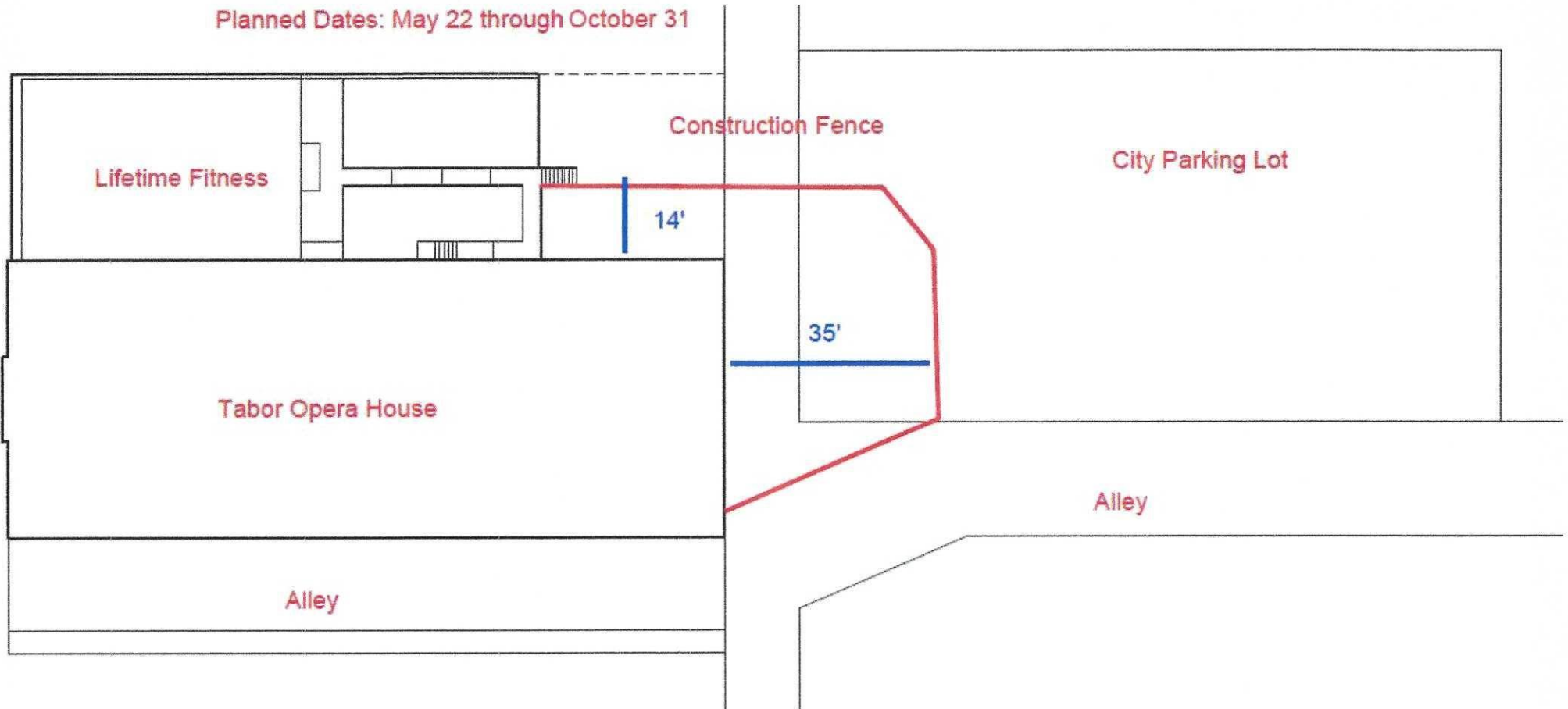
City Parking Lot (East) →

Grantor: LTF Real Estate Company, Inc.

Grantee: City of Leadville, CO

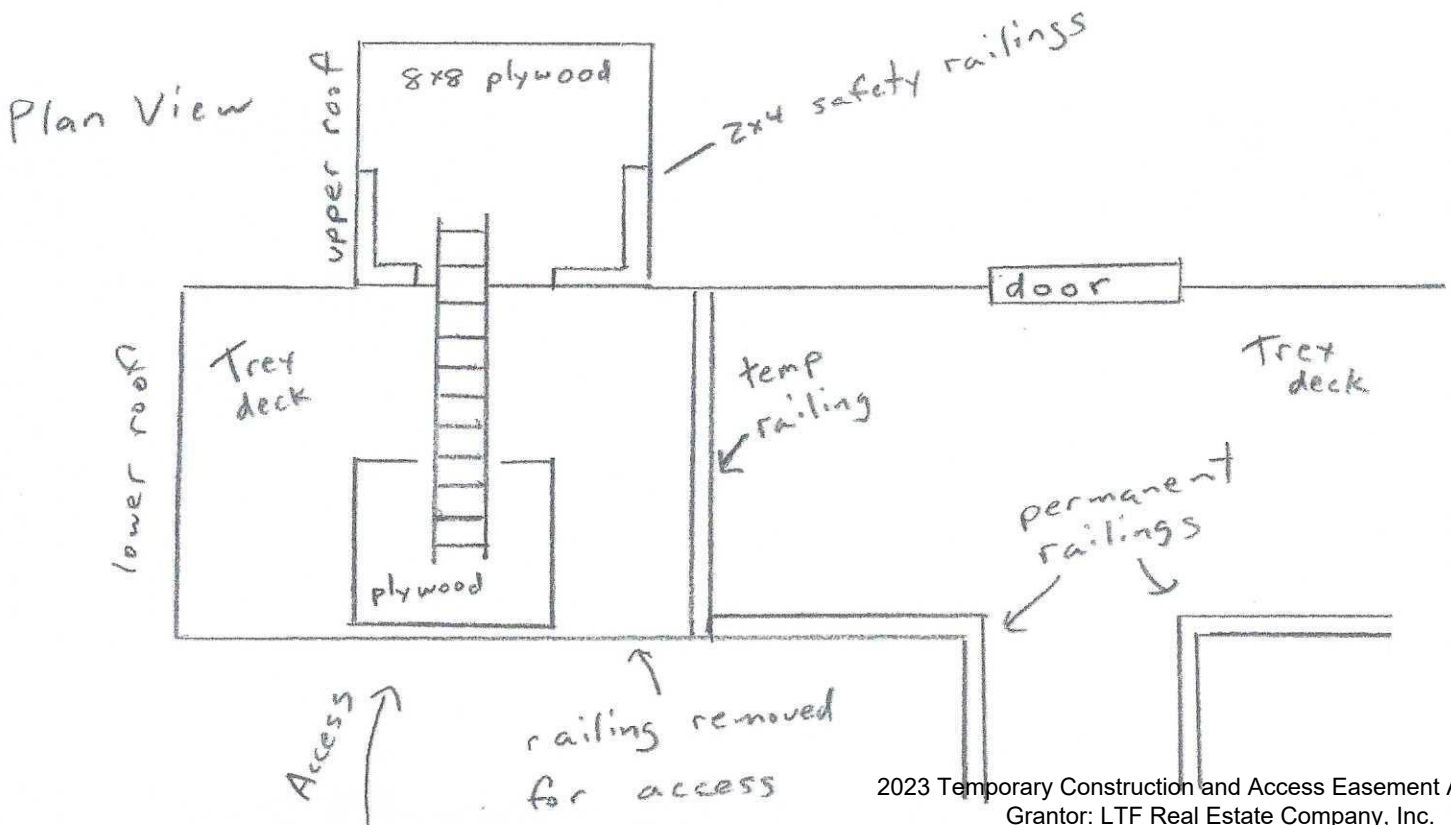
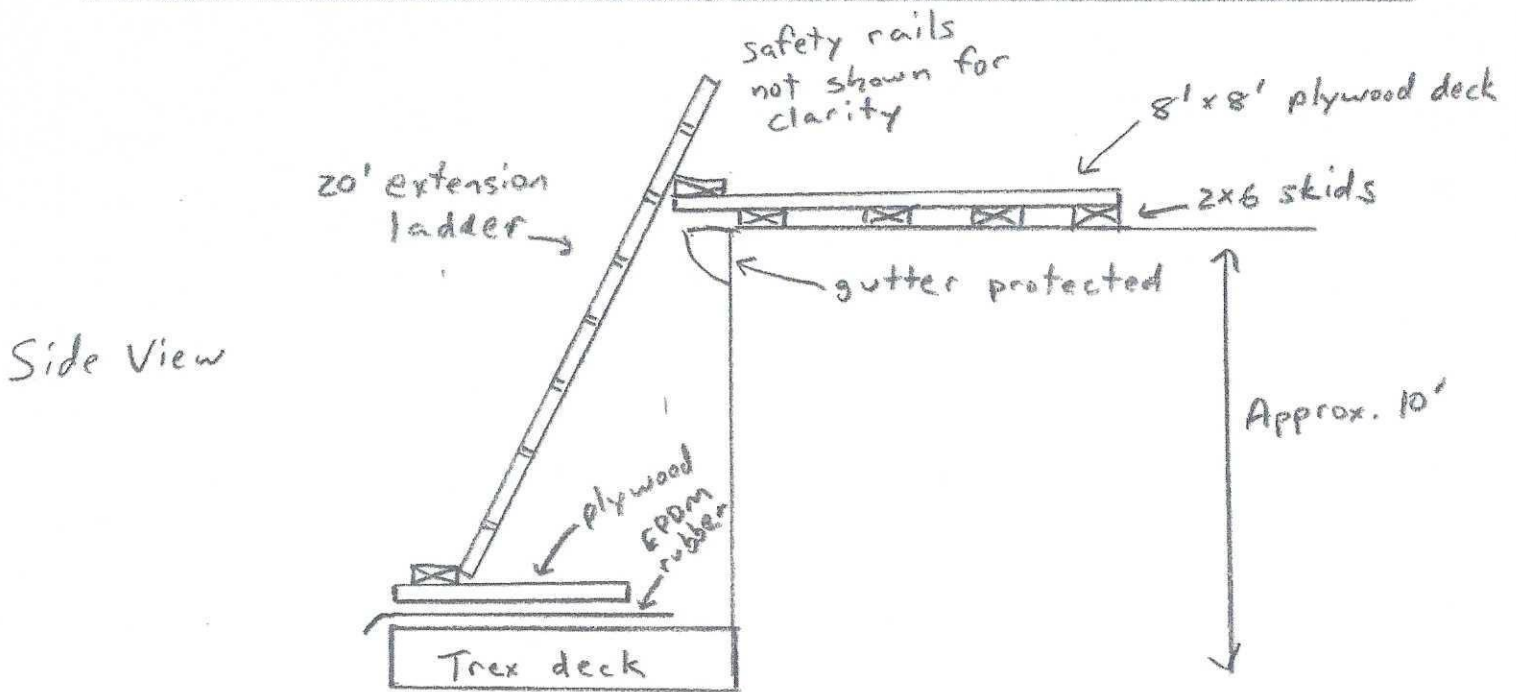


Encroachment Permit Application for Construction Fence
Tabor Opera House, 308 Harrison
Work Planned for Summer 2023
Planned Dates: May 22 through October 31



Tabor Opera House 2023 Work

Extension Ladder From Lower to Upper Roof of Lifetime Fitness Building.





AGENDA ITEM #8C

CITY COUNCIL COMMUNICATION FORM

MEETING DATE: April 4, 2023

SUBJECT: Resolution No. 8, Series of 2023: A Resolution Approving an Intergovernmental Agreement Between the City of Leadville and Lake County Concerning Law Enforcement Mutual Aid

PRESENTED BY: Laurie Simonson, City Administrator
Carmen Jackson, Assistant City Attorney

ORDINANCE
 RESOLUTION
 MOTION
 INFORMATION

I. REQUEST OR ISSUE:

Before City Council for consideration is Resolution No. 8, Series of 2023 (“Resolution”), which would approve an intergovernmental agreement (“IGA”) with Lake County for the provision of mutual aid between the Leadville Police Department (“LPD”) and Lake County Sheriff’s Office (“LCSO”).

II. BACKGROUND INFORMATION:

The IGA before City Council for approval sets forth the terms and conditions under which the LPD and LCSO assist each other when responding to calls for service. The IGA makes it clear that one agency providing assistance to the other is voluntary, and there are no situations under which either party is required to provide assistance to the other. Generally, the IGA states that one party agrees to assist the other if the agency has enough personnel and equipment to provide the requested assistance. The police chief and sheriff have full discretion as to whether their respective agency has the capacity to provide assistance when requested.

In addition, the IGA covers:

- The procedure for the agencies to request assistance from each other;
- Responding to requests for assistance;
- Who is in charge of directing the peace officers when one agency is assisting another;
- Each agency’s responsibility when discipline is needed;

- All peace officers' obligations to intervene in unlawful use of force and report it under state law;
- The process for conducting internal investigations involving mutual aid assistance;
- How to handle records requests, press releases, and confidential information; and
- Reimbursement/compensation for providing mutual aid to the other agency.

The IGA provides that neither party will request reimbursement or compensation from the other in 2023, but each agency will track their expenses related to providing mutual aid under the IGA. If the parties agree in writing after 2023 to reimburse each other for expenses incurred when providing aid to the other agency, then the parties may provide payment pursuant to that written agreement.

The IGA's initial term is through the end of 2023, and it automatically renews each year unless one or both parties terminate the IGA. Either Party may terminate the IGA for any reason with 30 days' notice to the other party.

III. FISCAL IMPACTS:

None.

V. LEGAL ISSUES:

None.

VI. RECOMMENDATION:

Adopt Resolution No. 8, Series of 2023 to approve the intergovernmental agreement for mutual aid with Lake County.

VII. COUNCIL OPTIONS:

Council may take one of the following actions:

1. Adopt the Resolution.
2. Adopt the Resolution with amendments.
3. Table for further discussion and consideration.

VIII. PROPOSED MOTION:

"I move to adopt Resolution No. 8, Series of 2023, A Resolution Approving an Intergovernmental Agreement Between the City of Leadville and Lake County Concerning Law Enforcement Mutual Aid."

IX. ATTACHMENTS:

Resolution No. 8, Series of 2023
Intergovernmental Agreement for Mutual Aid (Exhibit 1 to Resolution)

**CITY OF LEADVILLE, COLORADO
RESOLUTION NO. 8
SERIES OF 2023**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF LEADVILLE AND LAKE COUNTY CONCERNING LAW
ENFORCEMENT MUTUAL AID**

WHEREAS, the provisions of Section 18 of Article XIV of the Colorado Constitution and Section 29-1-203 of the Colorado Revised Statutes (“C.R.S.”) allow Colorado governments to cooperate or to contract with one another to provide any function, service or facility lawfully authorized to each local government; and

WHEREAS, the City of Leadville Police Department (“LPD”) and Lake County Sheriff’s Office (“LCSO”) have the ability to assist each other with law enforcement services from time to time; and

WHEREAS, the City Council of the City of Leadville recognizes the benefits and advantages for LPD and LCSO to collaborate and support each other and the public to provide available, coordinated, and quality law enforcement and other emergency services; and

WHEREAS, Leadville and Lake County each desire to authorize the other to provide law enforcement service assistance in their respective jurisdictions; and

WHEREAS, City Council therefore finds that it is in the best interests of the public health, safety, and welfare to enter into an intergovernmental agreement, in substantially the form attached to this Resolution as **Exhibit 1**, with Lake County for law enforcement mutual aid.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein by this reference as findings and determinations of City Council.

Section 2. The City Council hereby: (a) approves the Intergovernmental Agreement for Mutual Aid (“Agreement”) in substantially the form attached hereto as **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Administrator, to negotiate any changes to the Agreement as may be necessary that do not increase the obligations of the City; and (c) authorizes the Mayor to execute the Agreement on behalf of the City once in final form.

Section 3. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

Section 4. **Effective Date.** This Resolution shall take effect upon its adoption by the City Council.

ADOPTED this 4th day of April 2023 by a vote of _____ in favor, _____ against,
and _____ absent.

CITY OF LEADVILLE, COLORADO:

Greg Labbe, Mayor

ATTEST:

Deputy City Clerk

EXHIBIT 1
INTERGOVERNMENTAL AGREEMENT

(see attached document)

INTERGOVERNMENTAL AGREEMENT FOR MUTUAL AID

THIS INTERGOVERNMENTAL AGREEMENT FOR MUTUAL AID (“Agreement”) is made and entered into by and between the **City of Leadville**, a municipal corporation of the State of Colorado, with offices at 800 Harrison Avenue, Leadville, Colorado 80461 (the “City”), and the **County of Lake**, a political subdivision of the State of Colorado, with offices at 505 Harrison Avenue, Leadville, Colorado 8046 (“County”) (each referred to individually as a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the Colorado Constitution and the laws of the State of Colorado permit government entities to cooperate with one another to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, pursuant to Article XIV of the Colorado Constitution and C.R.S. § 29-1-201, *et seq.*, the Parties may contract with each other to provide any function, service or facility lawfully authorized to each, including the sharing of costs, upon authorization by the Parties; and

WHEREAS, the City of Leadville Police Department (“LPD”) and Lake County Sheriff’s Office (“LCSO”) have the ability to assist each other with law enforcement services from time to time; and

WHEREAS, the City desires to authorize LCSO to provide law enforcement service assistance within the City; and

WHEREAS, the County desires to authorize LPD to provide law enforcement service assistance in areas of Lake County served by the LCSO; and

WHEREAS, each Party desires to enter into this Agreement to set forth the procedures and conditions of providing law enforcement mutual aid to the other Party.

NOW, THEREFORE, the Parties agree as follows:

I. PROVISION OF MUTUAL AID

A. Definitions.

1. “Assisting Party” means the agency or Party that sends personnel, vehicles, resources or equipment to a Requesting Party pursuant to this Agreement.

2. “Officer in Charge” means the senior or highest-ranking officer on duty for a Requesting Party who has responsibility for directing the agency at the time the Requesting Party is receiving mutual aid from the Assisting Party.

3. “Requesting Party” means the agency or Party that has a need for assistance and that requests aid pursuant to this Agreement.

B. LPD Assistance to LCSO. The LPD will assist the LCSO when requested, subject to available resources and consistent with applicable laws and policies of the LPD. The Parties hereby authorize members of the LPD to render law enforcement services within the areas of Lake County served by the LCSO when such assistance is requested by the LCSO.

C. LCSO Assistance to LPD. The LCSO will assist the LPD when requested, subject to available resources and consistent with applicable laws and policies of the LCSO. The Parties hereby authorize members of the LCSO to render law enforcement services within the City of Leadville when such assistance is requested by the LPD.

D. LPD Members Appointed as Deputies. As permitted by C.R.S. § 30-10-506, the Lake County Sheriff will appoint each sworn LPD member as a deputy, and each duly appointed LPD member shall have such powers and authority conferred by law on the Lake County Sheriff's deputies when rendering law enforcement services within the specified scope of services and geographic areas of Lake County served by the LCSO when such assistance is requested by the LCSO. The Lake County Sheriff may revoke such appointments at will.

E. Requests for Assistance.

1. Making a Request for Assistance. The Parties agree that all requests for assistance pursuant to this Agreement shall be given upon the direction of the City Representative or County Representative, as applicable. When the City Representative or County Representative calls for assistance pursuant to this Agreement, such Representative shall state the specific services, equipment and personnel needed and shall give explicit directions as to the location where assistance is required.

2. Responding to Requests for Assistance. Each Party to this Agreement will respond to a request for assistance by making available to the Requesting Party such personnel, vehicles, and equipment that can safely be sent or released to respond to the request. The Parties agree to use their best efforts to promptly respond to a request for mutual aid. The assistance rendered will be to the extent or scope of available personnel, vehicles, and equipment not immediately required for adequate protection of the territorial limits of the Assisting Party. The judgment of the Leadville Chief of Police or the Lake County Sheriff, or their respective designees, when in the role of the Assisting Party shall be final as to the personnel, vehicles, and equipment that are available to render assistance to the Requesting Party.

3. Direction When Providing Assistance. In any situation in which mutual aid is provided by an Assisting Party pursuant to this Agreement, the Representative of the Requesting Party or the Officer in Charge, as applicable, shall have full charge and authority over any Assisting Party's services, equipment and personnel.

F. Qualifications. The Assisting Party shall ensure that loaned personnel have the ability, skill and certification necessary to perform the work required and may be required to disclose the qualification(s) and training level of personnel identified to provide assistance.

G. Rights and Privileges. Whenever the employees of a Party are rendering aid outside the area of their normal jurisdiction as an Assisting Party pursuant to this Agreement, such

employees shall have the powers, duties, rights, privileges and immunities of and receive the compensation incidental to their employment by their employing Party regardless of where serving.

H. Discipline. If a member of either Party's law enforcement agency warrants reprimand, suspension, demotion, or dismissal from employment as a direct result of their involvement or participation in the provision of law enforcement services under this Agreement, disciplinary action shall be the responsibility of the member's employing agency. If immediate corrective or instructive action is warranted while services are being performed, the on-duty supervisor of the Party requesting assistance is authorized to issue the correction or instruction.

I. Use of Force Interventions. Any peace officer witnessing another peace officer using excessive force must intervene to stop the force being used and immediately report it as required by C.R.S. § 18-8-802, as amended, to the Officer in Charge for the Requesting Party.

J. Internal Investigations. For internal investigations arising out of incidents involving the provision of mutual aid by a Party under this Agreement, each law enforcement agency shall be responsible for investigating its own members as needed. Each Party agrees to reasonably cooperate and coordinate in the investigations by the other Party. If one law enforcement agency desires or is required to interview one or more members of the other law enforcement agency, a member of the officer's agency shall be allowed to be present during the interview. In addition, the officer(s) being interviewed shall be informed that the interview is being conducted in cooperation with the other law enforcement agency, and the officer(s) shall be provided Garrity advisements for such joint agency interviews, as required by law and applicable policies of the law enforcement agencies. For purposes of coordinating and communicating regarding internal investigations arising out of incidents involving the provision of mutual aid under this Agreement, the point of contact for the City is the City's Representative and the point of contact for the County is the County's Representative.

K. Activities Outside of Scope or Not Performed in Good Faith. No Party shall be required under this Agreement to indemnify, hold harmless and defend the other Party from any claim, loss, harm, liability, damage or cost or expense caused by or resulting from the activities of the other Party's officers, employees and/or agents acting in bad faith or performing activities beyond the scope of the requested assistance, their training or duties.

L. Confidential Information. The Parties acknowledge that information obtained and exchanged about criminal or administrative investigations in the performance of or related to this Agreement may be confidential. The Parties will protect and only release confidential information pursuant to the requirements of state and federal law and will provide and maintain a secure environment that ensures confidentiality of all confidential documents and information. This paragraph applies to all forms of confidential information, including but not limited to hard copy, electronic, video, audio, and photographic formats along with any confidential information contained in or accessed through any computerized data system that the parties may gain access to through this Agreement.

M. Records Requests. For records requests related to the provision of law enforcement services under this Agreement, the Requesting Party in whose jurisdiction the incident occurred

shall be responsible for responding to criminal justice records requests regarding such incidents. The Assisting Party agrees to cooperate as needed in providing any information required for the Requesting Party to properly respond to such records requests.

N. Press Releases. Press releases and/or the release of information to the media will be made by the agency in whose jurisdiction the event requiring assistance occurred in accordance with the releasing agency's media release policy. No other information shall be unilaterally released or provided to the media by any Party without prior approval by the other Party.

O. No Obligation. Provision of mutual aid under this Agreement is voluntary. Nothing herein obligates or shall be construed to obligate the LPD or LCSO to provide law enforcement services outside of their respective jurisdictions.

II. TERM AND TERMINATION

A. Term and Renewal. This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until **December 31, 2023**. Beginning on January 1, 2024, this Agreement shall automatically renew each year for additional one-year terms until terminated as provided in this Agreement.

B. Termination. This Agreement may be terminated by either Party for any or no reason upon written notice delivered to the other Party at least thirty (30) days prior to termination.

III. REPRESENTATIVES

A. City Representative. The City representative for this Agreement shall be the Chief of Police or their designee ("City Representative"). City Council may designate another person to be the City Representative and will notify the County of such designation in writing. The City Representative shall act as the County's primary point of contact with the City for this Agreement.

B. County Representative. The County representative under this Agreement shall be Lake County Sheriff, or their designee ("County Representative"). In the event the Sheriff or their designee is not available, the Board of County Commissioners for the County may designate another person to be the County Representative and will notify the City of such designation in writing. The County Representative shall act as the City's primary point of contact with the County for this Agreement. The City Representative and County Representative together may be referred to herein as the "Representatives."

IV. REIMBURSEMENT

A. Waiver of Claims for Compensation. Except as otherwise set forth in this Section and to the extent permitted by law, the Parties waive all claims for compensation from each other for mutual aid provided under this Agreement, including without limitation compensation for equipment, vehicles, supplies and materials used or expended while providing assistance to the other Party under this Agreement.

B. Reimbursable Expenses. A Party may request assistance from the other Party in covering shifts when the Requesting Party has no POST certified and fully-field trained officers available (“Shift Coverage”).

1. Through December 31, 2023, the Parties will track their respective Shift Coverage hours and expenses, then within a reasonable time after December 31, 2023, the Parties will submit respective reports itemizing such expenses incurred and meet to evaluate and mutually agree whether they will seek reimbursement from each other for such expenses as provided below.

2. After December 31, 2023, if the Parties mutually agree in writing that they will seek reimbursement from each other as provided above, the Parties agree that, subject to annual appropriation and approval pursuant to each Party’s respective purchasing or procurement policies, as applicable, the Party requesting Shift Coverage will reimburse the Assisting Party for the cost of the regular wages, including any overtime, incurred by the Assisting Party for providing Shift Coverage subject to the terms of this Agreement. The Assisting Party may invoice the Requesting Party, and the Requesting Party shall review and pay such invoice within thirty (30) days of receipt of such invoice. Any Shift Coverage provided by one Party to the other is intended to constitute a “temporary assignment” under C.R.S. § 29-5-108 of each Party’s personnel or equipment when operating in a jurisdiction other than its own.

VI. INDEPENDENT CONTRACTOR

Employees of a Party shall at all times while providing assistance continue to be employees of said Party and shall not be deemed employees of the other Party for any purpose. Wages, hours and other terms and conditions of employment of each Party shall remain applicable to all of its employees who provide assistance. Each Party shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. Workers' compensation coverage shall apply as required by C.R.S. § 29-5-109.

EACH PARTY ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS AN ENTITY OTHER THAN THE OTHER PARTY PROVIDES SUCH BENEFITS. EACH PARTY FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS FROM THE OTHER PARTY. EACH PARTY ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT RELATED TO ITS OWN EMPLOYEES AND NOT THE EMPLOYEES OF THE OTHER PARTY.

VII. INSURANCE AND GOVERNMENTAL IMMUNITY

A. Each Party shall procure and maintain in full force and effect such insurance or self-insurance that will insure its obligations and liabilities under Colorado law, including workers' compensation, automobile liability and general liability. Such insurance of each Party shall be adequate to protect each respective party from liability claims and demands arising from the

performance of duties under this Agreement and to cover all operations by the party's law enforcement officers under this Agreement.

B. To the extent permitted by law, each Party shall be responsible for its own negligent acts and neither Party shall be responsible for claims, demands, or judgment arising from the acts or omissions of the other Party, its employees or agents. All other legal liability and litigation arising from or out of the conduct or performance of the Parties shall be the responsibility of each law enforcement officer's respective agency; however, any law enforcement officer acting under the specific orders of a superior officer from another agency may create a shared liability with that other agency, all in accordance with and pursuant to applicable law.

C. The Parties agree that if either Party receives a claim or lawsuit by any third party that relates to the performance of duties or actions taken pursuant to this Agreement, it will provide notice of the same to the other Party within a reasonable time. The Parties also agree to cooperate with one another and with the insuring entities of the Parties in defending any such claim.

D. Nothing in this Agreement shall be deemed a waiver by either Party of any immunity granted under the Colorado Governmental Immunity Act, Section 24-10-101, etc., C.R.S. or confer any benefits to any person not a party to this Agreement.

E. The provisions of this Agreement shall not be construed as restricting, modifying or abolishing the right of any member of either Party to receive workers' compensation benefits pursuant to C.R.S. § 29-5-109. Any pension fund payments payable to a member of a Party's law enforcement agency due to disability or death arising from the performance of their duties shall be made in accordance with C.R.S. § 29-5-110.

XII. MISCELLANEOUS

A. Governing Law and 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 Lake County, Colorado.

B. 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.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the City:

If to County:

City of Leadville Attn: City Administrator Police Chief 800 Harrison Avenue Leadville, Colorado 80461	Lake County Attn: Sheriff Heath Speckman 505 Harrison Ave/PO Box 255 Leadville, CO 80461
With Copy to: Leadville City Attorney Michow Cox & McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, Colorado 80111	With Copy to: Lake County Attorney 505 Harrison Avenue Leadville, CO 80461

E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

G. Assignment. 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.

H. Rights and Remedies. The rights and remedies of the Parties under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit either Party's legal or equitable remedies, or the period in which such remedies may be asserted.

I. Annual Appropriation. Consistent with Article X, §20 of the Colorado Constitution, any financial obligation of either Party not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Parties hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

J. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns as permitted under applicable law; provided that this Section shall not authorize assignment.

K. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto, and no third party shall be entitled to claim or enforce any rights hereunder except as expressly provided herein. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

L. Survival. Any terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

M. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

N. Force Majeure. Neither the County nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

O. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Leadville and Lake County and bind their respective entities.

P. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGES FOLLOW

THIS AGREEMENT is executed and made effective as provided above.

CITY OF LEADVILLE, COLORADO:

By: _____

Printed Name: _____

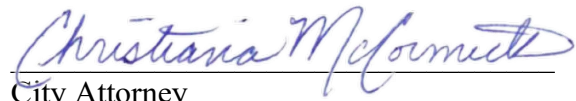
Title: _____

Date of execution: _____

ATTEST:

Deputy City Clerk

APPROVED AS TO FORM (*excluding exhibits*):



City Attorney

LAKE COUNTY, COLORADO:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

ATTEST:

County Clerk

APPROVED AS TO FORM (*excluding exhibits*):

County Attorney

April 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
26	27	28 4pm - HPC - Regular Mtg	29	30	31	1
2	3	4 11am - BOCC @ 505 6pm - Regular CC Mtg	5	6 6pm - LURA Board	7	8
9	10	11 4pm - HPC Meeting @ 6pm - City Council Short-	12 5pm - Sanitation @ 6pm - P&Z Meeting @	13 1pm - Leadville Municipal 5:15pm - Parkville Water	14	15
16	17	18 8:30am - Tourism Panel 11am - BOCC @ 500 6pm - Regular CC Mtg @	19	20	21-22 "Future Town" with Lake County Build a Generation	
23	24	25 4pm - HPC - Regular Mtg	26 6pm - P&Z Meeting @	27	28	29
30	1	2 11am - BOCC @ 505 6pm - Regular CC Mtg	3	4 6pm - LURA Board	5	6

May 2023

City Calendar

Sun	Mon	Tue	Wed	Thu	Fri	Sat
30	1	2	3	4	5	6
		11am - BOCC @ 505 6pm - Regular CC Mtg		6pm - LURA Board		
7	8	9	10	11	12	13
		City Council Work 4pm - HPC Meeting @	5pm - Sanitation @ 6pm - P&Z Meeting @	1pm - Leadville Municipal 5:15pm - Parkville Water		
14	15	16	17	18	19	20
		8:30am - Tourism Panel 11am - BOCC @ 500 6pm - Regular CC Mtg @				
21	22	23	24	25	26	27
		4pm - HPC - Regular Mtg	6pm - P&Z Meeting @			
28	29	30	31	1	2	3
	Memorial Day - City Hall			6pm - LURA Board		

June 2023

City Calendar

Sun	Mon	Tue	Wed	Thu	Fri	Sat
28	29 Memorial Day - City Hall	30	31	1 6pm - LURA Board	2	3
4	5	6 11am - BOCC @ 505 6pm - Regular CC Mtg	7	8 1pm - Leadville Municipal 5:15pm - Parkville Water	9	10 Main Street - Community
11	12	13 4pm - HPC Meeting @	14 5pm - Sanitation @ 6pm - P&Z Meeting @	15	16	17
18	19	20 8:30am - Tourism Panel 11am - BOCC @ 500 6pm - Regular CC Mtg @	21	22	23	24
25	26	27 4pm - HPC - Regular Mtg	28 6pm - P&Z Meeting @	29	30	1