



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Drew Nelson - City Administrator	December 20, 2022

ITEM

Resolution 2022-61 – A Resolution of the City Council for the City of Salida, Colorado, Authorizing the City Administrator to Enter into a Commercial Lease Agreement for 323 First Street with Salida Bottling Company LLC

BACKGROUND

On November 9, 2022, the City of Salida was notified by Salida Bottling Company LLC that it was terminating the current parking lot lease agreement (in place since 2019) for 323 First Street. The current lease agreement requires a sixty (60) day notice period for the termination to come into effect, making it effective on January 8, 2023.

Due to possible community concerns over availability of parking, the City and Salida Bottling Company have discussed the possibility of re-establishing the lease. Lease rates desired by the property owner would be an increase in monthly rent from \$2,200 per month to \$4,000 per month. Other terms in the lease would be essentially the same as the previous lease agreement, including termination timelines (please see attached draft lease agreement).

FISCAL NOTE

As noted above, the lease rate requested by the property owner would be \$4,000 per month for the duration of the lease, or \$48,000 annually. This would be an increase of \$21,600 annually and would be accommodated in the 2023 Annual Budget. Fifty-six (56) parking spaces are accommodated on the site, which would equate to \$857 per space per year (\$71 per space per month). Property value price escalation in Salida over the past three years would explain the increase in value of the lease, with values increasing fifty percent (50%) or more in that timeframe.

STAFF RECOMMENDATION

Staff recommends that the City Council approve the Commercial Lease Agreement with Salida Bottling Company for 323 First Street for use as a parking lot.

SUGGESTED MOTION

A City Councilperson should state, "I move approve Resolution 2022-61", followed by a second and a roll call vote.

**CITY OF SALIDA, COLORADO
RESOLUTION NO. 61
(Series of 2022)**

**A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO,
AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A COMMERCIAL LEASE
AGREEMENT FOR 323 FIRST STREET WITH SALIDA BOTTLING COMPANY LLC**

WHEREAS, The City of Salida has leased 323 First Street on a month-to-month basis for public parking purposes for some time; and

WHEREAS, The property has been owned by Salida Bottling Company LLC since 2019; and

WHEREAS, The City and the property owner would like to continue the lease arrangement for 2023, with a month-to-month extension beginning in January of 2024; and

WHEREAS, the City agrees to pay Salida Bottling Company LLC the sum of \$4,000 monthly for use of 323 First Street as public parking, subject to the terms and conditions of the Commercial Lease Agreement to be executed by the parties.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
SALIDA COLORADO, THAT:**

1. The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.
2. The Commercial Lease Agreement is hereby approved, and the City Administrator is authorized to sign the contract on behalf of the City.

RESOLVED, APPROVED, AND ADOPTED this 20th day of December, 2022.

CITY OF SALIDA, COLORADO

By _____
Dan Shore, Mayor

[SEAL]

ATTEST:

City Clerk/Deputy City Clerk

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement ("Lease") is made and effective January 1, 2023, by and between Salida Bottling Company LLC ("Landlord") and City of Salida Colorado, a Colorado municipal corporation ("Tenant").

Landlord is the owner of the vacant lot ("Lot") located at 323 West 1st Street, Salida, Colorado 81201, measuring approximately 26,112 square feet.

Tenant has been leasing Lot from previous owner since approximately February 2016 and wishes to continue to lease Lot for the primary purpose of providing public parking.

Landlord desires to lease Lot to Tenant, and Tenant desires to lease Lot from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

A. Landlord hereby leases Lot to Tenant, and Tenant hereby leases the same from Landlord, under the following terms:

Beginning on the effective date of lease until December 31, 2023, thereafter month-to-month.

2. Rent.

Tenant shall pay Landlord four thousand dollars (\$4,000) monthly on or before the first day of each month.

3. Use

Tenant intends to use Lot as a public parking area, however Tenant may use lot for parking for its employees, vehicle or other storage, storage of removed snow or other materials, staging of equipment for public events, vehicle impoundment or any other reasonable purpose it desires to manage its operations.

Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

Furthermore, if Tenant uses Lot for removed snow, it shall do so in a manner that doesn't result in street flooding or that impedes public right of ways or encroaches on adjacent properties or easements. If Tenant stores dirt or other landscaping materials it shall do so in a manner that doesn't generate excessive dust or debris and should be done in an organized and tidy fashion.

Unless used for exceptional or emergency situations, and if Tenant uses Lot for purpose other than public parking, any large vehicle movement on and off of Lot should be done between the hours of 7 a.m. and 9 p.m. Tenant will use its best efforts to ensure that any overnight parking in Lot is limited to one night and that, other than storage of its owned or leased vehicles and/or or vehicle impoundment, Lot shall not be used for long term parking of vehicles.

4. Sublease and Assignment.

Tenant shall not assign or sublet Lot.

5. Repairs and Maintenance

During the Lease term, Tenant shall maintain Lot at its expense in a manner that doesn't pose a public safety threat or risk to vehicles parked in Lot. This shall consist primarily of pothole repair. The foregoing

notwithstanding Tenant and Landlord acknowledge Lot is unpaved and thus minor potholes will always be present.

Tenant shall keep Lot free of trash and debris at its expense. With Landlord's prior, written consent, Tenant may, but is not obligated to, provide lighting, erect fencing, pave lot, place parking curbs or make any additional improvements it believes are necessary to operate parking operations safely and efficiently.

6. Alterations and Improvements.

With Landlord's prior written consent, Tenant, at Tenant's expense, shall have the right to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of Lot from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. With Landlord's prior written consent, Tenant shall also have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon Lot. At the time of Landlord's approval, Landlord and Tenant must also agree in writing as to whether any such alteration or improvement shall be deemed a permanent fixture which shall remain with Lot upon termination or shall be deemed to be property of Tenant which will be removed upon termination. The parties shall also set forth in writing the conditions or restoration needed for removal of any such improvement. In the absence of any such written agreement, all improvements and fixtures shall constitute the sole property of the Landlord. Provided that the procedures herein are observed, all personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on Lot by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease or upon termination of this Lease, provided that all damage to Lot caused by such removal shall be promptly repaired by Tenant at Tenant's expense.

7. Property Taxes.

Landlord shall pay, prior to delinquency, all general real estate taxes, sales and use taxes, and installments of special assessments coming due during the Lease term on the Leased Premises, and Tenant shall pay all personal property taxes with respect to Tenant's personal property at the Leased Premises.

8. Insurance.

A. If Lot is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Tenant shall at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the activities of its use, through a private insurer or through an intergovernmental agency, with the premiums thereon fully paid on or before due date. Such insurance shall afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph upon execution of this Lease. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration.

C. Lessor shall not be liable for any injury or damages to any property or to any person on or about the Lot nor for any injury or damage to any property of Tenant.

9. Utilities.

There are not currently any utilities on the Lot, however should Tenant desire to make, and Landlord approve of any alterations or improvements that may result in the installation of any utilities Tenant will be responsible for the cost of installing such utilities, along with the payment of any utility bills.

10. Signs.

Following Landlord's consent, Tenant shall have the right to place on Lot any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or offensive. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant. Landlord shall have the right to place on Lot any signs that are compliant with city ordinances regarding size and content, and are for the express purpose of either marketing the lot for sale or future lease, or related to development of the Lot including but not limited to public notices related to hearings or proposed ordinances, display of permits related to development, or promotion of political campaigns specifically related to the development of the property. Any such signs erected by Landlord shall not interfere with Tenant's ability to use Lot for its intended use.

11. Entry.

Landlord shall have the right to enter Lot at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on Lot.

12. Termination.

This Lease may not be terminated by either party prior to December 31, 2023. Thereafter either party may terminate Lease with 60 days written notice.

13. Tenant option to rent portion of Lot.

Landlord may contemplate development of Lot in the future, but no sooner than January 1, 2024. If Landlord only develops a portion of Lot on or after January 1, 2024, Tenant shall have option to continue to lease the undeveloped portion of Lot on terms mutually agreeable to both parties. Landlord shall give Tenant at least 60 days' notice of plans to develop a portion of the lot.

14. Damage and Destruction.

Subject to Section 8 A. above, if Lot or any part thereof is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of Lot, and if such damage does not render Lot unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that Lot is unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders Lot, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

15. Default.

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default continues for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord to pay rent or surrender possession of Lot, Landlord may declare the term of this Lease ended and proceed to reenter and take possession of the premises and pursue Landlord's remedies in accordance with Colorado law. If default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default continues for fifteen (15) days after notice thereof in writing to Tenant by Landlord to cure the default or surrender possession of Lot (without correction thereof then having been

commenced and thereafter diligently prosecuted) Landlord may declare the term of this Lease ended and proceed to reenter and take possession of Lot and pursue Landlord's remedies in accordance with Colorado law. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity, including an action for damages for unpaid rent, property damage, or other damages. Landlord shall use reasonable efforts to mitigate its damages. If Tenant is in default more than three (3) times in a Calendar year, even if default has been cured, Landlord shall have the right, in its sole discretion, to terminate Lease. In the event that any payment required to be paid by Tenant hereunder is not made within fifteen (15) days of when due, a late fee of \$50 will be due and payable plus \$10 per day after the 6th day.

16. Quiet Possession.

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of Lot during the term of this Lease.

17. Condemnation.

If any legally constituted authority condemns Lot or such part thereof which shall make Lot unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

18. Subordination.

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon Lot and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon Lot, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

19. Security Deposit.

Landlord shall not require a Security Deposit from Tenant

20. Liability and Indemnification.

A. Except as otherwise provided herein, Tenant shall be in exclusive control and possession of Lot from the date this Lease is executed until it is terminated. Landlord shall not be liable for any injury or damages to any property or to any person on or about Lot nor for any injury or damage to any property of the Tenant. Landlord shall not be liable to Tenant for any entry on Lot for inspection or repair purposes.

B. To the fullest extent permitted by applicable law, Tenant shall hold harmless and indemnify Landlord from and against all expenses, liabilities, and claims of every kind and character, including reasonable attorney fees and court costs, incurred, raised, or brought by or on behalf of any person or entity arising out of either: (1) a failure by Tenant to perform any of the terms or conditions of this Lease, (2) Tenant's failure to comply with any

law of any governmental authority, or (3) any mechanic's lien pertaining to work, services, or materials contracted for by Tenant or security interest filed against Lot or equipment, materials, or alterations of buildings or improvements thereon which pertains to any indebtedness incurred by Tenant.

21. Notice.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

Salida Bottling Company LLC
9707 CR 163
Salida, CO 81201

If to Tenant to:

City of Salida
448 East 1st St.
Salida, CO 81201

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

22. Waiver.

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

23. Memorandum of Lease.

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

24. Headings.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

25. Successors.

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

26. Consent.

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

27. Performance.

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lesser of twelve percent (12%) per annum or the then highest lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

28. Compliance with Law.

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

29. Final Agreement.

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

30. Governing Law.

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Colorado, and all disputes under this Agreement shall be adjudicated in the District Court for Chaffee County.

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

[Landlord Signature]

[Tenant Signature]