

STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB15

ORDINANCE NUMBER: 2016-15

**TITLE: AN ORDINANCE APPROVING THE FIRST AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT CONCERNING THE MARKETING AND PROMOTION OF BLACK HAWK BETWEEN THE CITY OF BLACK HAWK AND THE BLACK HAWK BUSINESS IMPROVEMENT DISTRICT**

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

Section 1. The City of Black Hawk hereby approves the First Amendment to an Intergovernmental Agreement Concerning the Marketing and Promotion of Black Hawk between the City of Black Hawk and the Black Hawk Business Improvement District, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.

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

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

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

READ, PASSED AND ORDERED POSTED this 13<sup>th</sup> day of July, 2016.

ATTEST:

  
Melissa A. Greiner, City Clerk

  
David D. Spellman, Mayor



**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT  
CONCERNING  
MARKETING AND PROMOTION OF  
BLACK HAWK**

**THIS FIRST AMENDMENT** is made and entered into this 19<sup>th</sup> day of July, 2016, by and between the City of Black Hawk ("City") and the Black Hawk Business Improvement District ("BID") hereafter being referred to jointly as "Parties" and singularly as "Party".

**WITNESSETH**

**WHEREAS**, the Parties have previously determined that it is in the best interests of the Parties to mutually assist one another with marketing and promotion of the Black Hawk community, and entered into that Intergovernmental Agreement Concerning Marketing and Promotion of Black Hawk, dated December 9, 2015 (the "Original Agreement");

**WHEREAS**, the BID, pursuant to Section 31-25-1212(1)(f)(III), (IV) and (V), C.R.S. and the City, pursuant to Section 31-15-901(1)(b), C.R.S. and Article VI of the City of Black Hawk Home Rule Charter, are each lawfully authorized to provide marketing and promotion programs (hereafter, the "Marketing Program");

**WHEREAS**, each of the Parties desire to participate in the costs of an enhanced Marketing Program (the "Enhanced Marketing Program") as set forth herein to further promote both Parties;

**WHEREAS**, each Party shall provide for funding to support the Enhanced Marketing Program on an annual basis, subject to budget and appropriations being made available for such purpose, and subject to the reciprocal obligations set forth in this Agreement; and

**WHEREAS**, entry into and performance of this Agreement pursuant to §29-1-203, C.R.S. and Colo. Const. Article XIV, Section 18(2)(a) will serve a public purpose and will promote the purposes of the Parties and general welfare of the residents, property owners, constituents, and visitors of the Parties.

**NOW THEREFORE, IT IS MUTUALLY AGREED** by and between the Parties as follows:

1. Each of the Parties agrees to fund the Enhanced Marketing Program for the mutual benefit of the Parties subject to annual appropriation as set forth below. Such Enhanced Marketing Program and the mutual obligations herein are in addition to those obligations set forth in the Original Agreement; provided, however, that the obligation of

the BID in the Original Agreement Section 3(a) to levy 1.5 mills is superseded and replaced by the obligations in Section 3 of the First Amendment for tax collection year 2017 and beyond.

2. City of Black Hawk Obligations. The City shall, so long as this Agreement is in effect:

- (a) Not exercise the previously granted authority to impose the City's lodging tax on hotel rooms provided on a complimentary basis; and
- (b) Not seek voter approval for a new tax or tax policy change that would allow the City, as an exercise of its home rule authority or otherwise, to apply any new tax on complimentary items or to apply its existing sales tax or impose a use tax on complimentary items; and.
- (c) Not increase the City device fee or tax on slot machines for two years from the effective date of this Agreement, so long as the device count does not drop below 8,050 monthly according to the Colorado Division of Gaming Monthly Gaming Statistics device count for a three consecutive month period; and
- (d) Not support any citizen initiative or referendum in conflict with 2(a) or 2(b) or 2(c); and
- (e) Not remove the provisions in the BID's annual operating plan and budget for 2017 and thereafter that require that the entire market share rebate earned pursuant to the Original Agreement be designated and spent only for the Enhanced Marketing Program.

3. Black Hawk Business Improvement District Obligations. In consideration of the City's obligations set forth in Section 2 above except as provided in 3(d) below, the BID shall so long as this Agreement is in effect:

- (a) For property tax collection year 2017, certify its general operating mill levy at a rate of 3.0 mills for purposes of providing revenue for the Enhanced Marketing Program(the "Enhanced BID Contribution"); and
- (b) Commencing for property tax collection year 2018 and thereafter, set its mill levy at a rate of 4.07 mills for purposes of providing revenue for the Enhanced Marketing Program, and collect the same as an increased Enhanced BID Contribution; and
- (c) Utilize the City Contribution as defined in the Original Agreement if achieved, the BID Contribution as defined in the Original Agreement, and the Enhanced BID Contribution to fund the Enhanced Marketing Program (collectively, the "IGA Revenue"); and

- (d) Allocate the IGA Revenue in its entirety for the Enhanced Marketing Program, except that the BID is authorized to expend those amounts necessary for costs of property tax collection paid to Gilpin County and for the day to day administration and operations, including without limitation website maintenance and hosting of the BID and job fairs, such administration and operations to be in an amount not to exceed thirty percent (30%) in 2017; and twenty percent (20%) in 2018 and thereafter, provided, however, that expenditures of the TABOR Emergency Reserve and an emergency marketing fund created solely to allow for a response to catastrophic natural disasters such as rockslides, fire or flood, which fund shall be limited to a maximum fund amount of One Hundred Thousand Dollars (\$100,000.00), shall not be included in such percentages. Unless specifically agreed to by the City and the BID, the Enhanced Marketing Program shall only include those marketing activities promoting the City; and
- (e) Not lower its mill levy except as required by Article X, Section 20 of the Colorado Constitution; and
- (f) Include provisions in its annual operating plan and budget to comply with 3(a) through (e) above.

4. Each Party's Obligations Contingent Upon the Other. In addition to the contingency set forth in Section 1 of this Agreement, the obligations of the City and the BID are each contingent on the other party performing their respective obligations, and neither party shall have an obligation to perform under this Agreement if the other Party determines not to perform its obligations hereunder.

5. This First Amendment and the Original Agreement shall be binding upon the successors and assigns of each of the parties hereto, except that no party may assign any of its rights or obligations hereunder without the prior written consent of the other Party.

6. It is expressly understood and agreed that enforcement of the terms and conditions of this First Amendment and the Original Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the named parties hereto, and nothing contained herein or in the Original Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements.

7. The Original Agreement as amended by this First Amendment shall automatically renew each year without further action of the Parties; however, any Party hereto may terminate the Agreement with or without cause upon thirty (30) days prior written notice to the other. Any money for the Enhanced Marketing Program remaining at the time of termination following payment of all Enhanced Marketing Program expenses, will be returned to the City and the BID in proportion to the funds furnished to the Enhanced Marketing Program by the Parties in the year of termination; provided however, it is the intent of the Parties that in the event of such a termination, unless the

BID is unable to do so, that the BID exhaust the funds in the Enhanced Marketing Program for the purposes set forth herein.

8. Specific performance and damages are not remedies for breach hereof. The sole remedy for breach of this Agreement shall be loss of the benefits of the other party's performance of this Agreement.

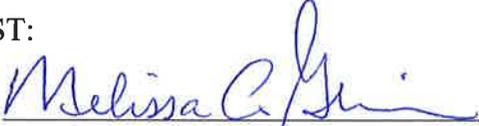
[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this 19<sup>th</sup> day of July, 2016.

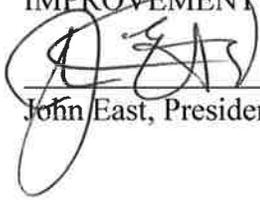
CITY OF BLACK HAWK, STATE OF COLORADO

By:   
David D. Spellman, Mayor  
City of Black Hawk

ATTEST:

By:   
Melissa A. Greiner, City Clerk

BLACK HAWK BUSINESS IMPROVEMENT DISTRICT

By:   
John East, President

ATTEST:

By:   
Brian Watts, Secretary