

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB12

ORDINANCE NUMBER: 2016-12

TITLE: AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT CONCERNING THE LANDSCAPING AND MAINTENANCE OF PROPERTY LOCATED AT 562 GREGORY STREET BETWEEN THE CITY OF BLACK HAWK AND THE CITY OF CENTRAL

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

Section 1. The City of Black Hawk hereby approves the Intergovernmental Agreement Concerning the Landscaping and Maintenance of Property Located at 562 Gregory Street Between the City of Black Hawk and the City of Central, 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.

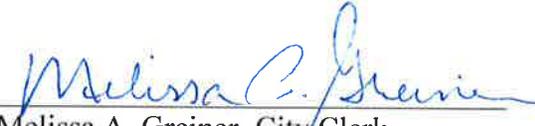
Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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 25th day of May, 2016.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, City Clerk



When recorded, return to:

City of Central
Community Development
141 Nevada Street
Central City, CO 80427

CITY OF CENTRAL

LANDSCAPING AND MAINTENANCE AGREEMENT

Project Number: SRU 15-01
Project Name: City of Black Hawk Gregory Street – Surface Parking Lot
Project Location: 562 Gregory Street
(Assessor Account Number: R009988)

THIS AGREEMENT, made on May 25, 2016 by and between the City of Central, hereafter referred to as "City", and The City of Black Hawk, hereafter referred to as "Property Owner", is with reference to the above-described project ("Project") and the following facts:

1. Property Owner is the owner of the real property ("the Property") in the County of Gilpin described as S: 7 T: 3S R: 72W Subd: CENTRAL CITY Lot: PCL D COLVIN TRACT AKA: LOT N SIDE OF GREGORY ST DESC 56/392 & 61/189 & 122/84 LESS PTS DESC 526/350 & 614/39 and made a part hereof by this reference.
2. "Landscaping" means plantings, irrigation lines, and improvements including but not limited to walls, fences and ornamental paving and other like site improvements.
3. "Landscaping Plan" is the plan approved by the City for landscaping for the project.
4. On January 19, 2016, the Central City Council granted project approval in accordance with the Zoning Regulations of the City of Central. By the terms of said grant the Property Owner was required to install and maintain landscaping on the Property in accordance with a landscape plan approved by the City on April 27, 2016 (plus exhibit dated 3/26/16) a copy of which is on file in the Planning Department and which is identified and incorporated by reference herein as though set forth in full.

5. The undersigned recognizes that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the Property and complying with the conditions and specifically the landscaping conditions imposed by the City as a requirement of the development of the Property will materially benefit the Property.

NOW, THEREFORE, IN CONSIDERATION OF APPROVAL OF SAID PLAN AND ISSUANCE OF A BUILDING PERMIT THE UNDERSIGNED AGREE AS FOLLOWS:

1. **Purpose.** The purpose of this agreement is to assure installation of the project landscaping in accordance with the approved landscaping plan and continued maintenance and care of the landscaping.
2. **Duty to Maintain Landscaping.** The Property Owner agrees to diligently maintain and care for the landscaping, which the Property Owner shall install, using generally accepted methods for cultivation and watering. The Property Owner will maintain that standard of care necessary to prevent the landscaping from deteriorating. At a minimum, all vegetation shall be maintained free from physical damage or injury from lack of water, excess chemical fertilizer or other toxic chemical, blight or disease, and such vegetation or those which show signs of such damage or injury at any time shall be replaced by the same or an approved-similar or-substitute vegetation of a size, form, and character which will be comparably equal at full growth.
3. **Landscape Guaranty.** Property Owner shall provide to City a financial guaranty that for a period of 1 year(s) from date of execution hereof, all landscaping described in the Landscaping Plan shall be maintained in good and healthy condition, in accordance with the approved Landscaping Plan. Said guaranty shall be in the form of an irrevocable letter of credit in a form acceptable to City or in the form of a performance bond or such other financial guaranty as may be acceptable to City, in an amount no less than \$zero. Upon expiration of the 1 year period, the bank issuing the LOC, or surety on the Bond or other Guaranty shall be released, provided that the Property Owner obligations pursuant to paragraph 4 hereof shall continue.
4. **City May Maintain Landscaping.** The Property Owner agrees that if the Property Owner fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition as determined by the Community Development Director, the City may elect to take the steps necessary to assure that the landscaping is cared for and maintained. To do this, the City shall serve a notice of its intent to enter the Property for this purpose. If the Financial Guaranty required by paragraph 3 is in effect at the time, the City shall notify the guarantor, and shall either personally serve the notice upon the Property Owner or mail a copy of it to the Property Owner's address as shown on tax rolls, at least 15 days in advance of the date when the City intends to enter the Property. A single notice regarding

regular maintenance is sufficient notice of regular entry for maintenance. For this purpose, the City may enter upon the Property and perform such work as it considers reasonably necessary and proper in its sole judgment to restore and maintain the landscaping. The City may act either through its own employees or through a contractor. The Costs incurred by City shall constitute a lien upon the property upon recording of a notice in the Gilpin County Clerk and recorders Office. The remedies provided in this agreement shall be in addition to statutory remedies for violation of Central City Zoning Regulations, and violation of the terms of this agreement shall be deemed a violation of such Zoning Regulations.

5. **Remedies.** *To the extent permitted by law, and without limiting other statutory remedies available,* The City may bring legal action to specifically enforce performance of the duties described herein or in the alternative, may bring action to collect the sums due as the result of expending funds for restoration and maintenance of landscaping. The Property Owner agrees that if legal action by the City is necessary, the Property Owner to the extent permitted by law will pay the City's reasonable attorney's fees and court costs, together with interest from the date on which legal action is commenced.

6. **Notices.** Any notice required by this Agreement shall be mailed to the following address:

<u>City</u>	<u>Property Owner</u>
City of Central Attn: Community Development PO Box 249 Central City, CO 80427	City of Black Hawk PO Box 68 Black Hawk, CO 80422 or as indicated on the tax roles.

6. **Miscellaneous Terms and Provisions.**

- (a) If any provision of this contract is adjudged invalid, the remaining provisions of it are not affected.
- (b) Notice to the Property Owner shall be considered to have been given when sent to the address stated above by certified or registered mail.
- (c) The Property Owner hereby appoints the City as his attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain said landscaping.
- (d) If more than one party signs this agreement on behalf of the Property Owner, their obligations are joint and several.

7. **Agreement Attached to Land.** This agreement pertains to and runs with the Property, binding the successors in interest of the Property Owner and is made in favor of the City. The Property Owner agrees to notify, or cause to be notified, the immediate successors in interest of the existence of this agreement and to that purpose this agreement must be recorded. Property Owner also agrees to notify, or cause to be notified, the City of Central within 30 days of any change of title of the Property, and further agrees to pay the City of Central any and all amounts due and owing within the same period of time.

IN WITNESS WHEREOF, the undersigned have executed this agreement.

City of Central,
State of Colorado

City of Black Hawk
State of Colorado

Daniel R Miera
Central City Manager



David D. Spellman, Mayor
Property Owner

(The above signature(s)
must be notarized)

LANDSCAPE PLAN:

The landscape plan is on file in the project records located at the City of Central, Community Development Department, 141 Nevada Street, Central City, CO 80427.

The landscape plan may be amended or terminated upon written agreement of the City of Central and the Property Owner.

STATE OF COLORADO)
) ss.
COUNTY OF GILPIN)

The foregoing instrument was acknowledged before me this 25 day of May, 2016
by David D. Spellman, as Mayor of
City of Black Hawk.

My commission expires: 3/25/2019

Witness my hand and official seal.

Michele Martin
Notary Public

MICHELE MARTIN
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20154012152
My Commission Expires 3/25/2019