



BLACK HAWK[®]

**CITY OF BLACK HAWK
HISTORIC PRESERVATION EASEMENT PROGRAM FUND
GUIDE TO PROGRAMS**

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PLEASE TAKE NOTE

THE CITY OF BLACK HAWK BELIEVES THAT COST OF THE WORK PERFORMED BY THE CITY UNDER THE HISTORIC PRESERVATION EASEMENT PROGRAM IS NOT TAXABLE INCOME UNDER STATE AND FEDERAL INCOME TAX LAWS. AS SUCH, THE CITY WILL NOT BE REPORTING THE COST OF THE WORK TO STATE AND FEDERAL TAXING AUTHORITIES.

IF IT IS DETERMINED BY THE INTERNAL REVENUE SERVICE OR THE COLORADO DEPARTMENT OF REVENUE THAT THE COST OF THE PROJECTS IS TAXABLE INCOME TO THE PROPERTY OWNER, THE CITY WILL REIMBURSE PROPERTY OWNERS FOR ADDITIONAL STATE AND FEDERAL TAXES PAID BY RECIPIENTS THAT ARE DIRECTLY ATTRIBUTABLE TO THE COST OF THE PROJECT.

REGARDLESS OF THE CITY'S AGREEMENT TO REIMBURSE PROPERTY OWNERS FOR THE INITIAL STATE AND FEDERAL TAX BURDEN OF A GRANT, THE OBLIGATION TO PAY ANY TAXES SHALL REMAIN THE RESPONSIBILITY OF THE PROPERTY OWNER.

IF YOU AGREE TO PARTICIPATE IN THE HISTORIC PRESERVATION EASEMENT PROGRAM, YOU SHOULD CONTACT YOUR TAX ADVISOR CONCERNING ANY POTENTIAL TAX LIABILITY THAT YOU MAY HAVE AS A RESULT OF RECEIVING ANY OF THE BENEFITS DESCRIBED IN THE HISTORIC PRESERVATION AND RESTORATION EASEMENT PROGRAM.

SECTION 1: PROGRAM OVERVIEW

a. BACKGROUND

1. The Constitution for the State of Colorado provides that a portion of the gaming tax revenues be returned to the City of Black Hawk, specifically for restoration and preservation of the City of Black Hawk. The City of Black Hawk established the Historic Restoration and Community Preservation Fund (“Fund”) to assist residential Property Owners within the City. The Black Hawk Preservation Easement Fund Guide to Programs (the “Program”) is intended to assist Property Owners in the rehabilitation and preservation of residential properties. This specifically includes the ability to keep the houses in the City that are defined as Qualified Properties (per Section 1.c) as functional, sustainable, and habitable. Property Owners, as set forth below, have one option for funding assistance in the rehabilitation and preservation of properties. The Preservation Easement Program is further described and defined in Section 3 of this Guide to Programs document.

b. PURPOSE

1. The City has established goals to preserve the City’s architectural character with exterior improvements to buildings, while also assuring that the residences and any Qualified Properties are habitable. In order to attain these goals, the City seeks to preserve as many of the City’s structures as possible in accordance with Colo. Rev. Stat. § 12-47.1-1202. The purpose of the fund, therefore, is to provide financial assistance that will promote the restoration and preservation of Black Hawk’s Qualified Properties and to provide for the continuation and enhancement of a functional, sustainable, healthy and vibrant Black Hawk residential community.
2. This program is intended to enhance certain select areas of the City by providing Property Owners with the resources needed to rehabilitate and historically preserve Qualified Properties. The use of funds pursuant to the Program is only for the specific property address and work program recommended by the Historic Preservation Commission (HPC) and approved by the City Council, which is consistent with the Secretary of the Interior’s Standards for Treatment of Historic Properties, and complies with the City of Black Hawk Residential Design Guidelines.

c. DEFINITIONS

1. Bed and Breakfast: A residential dwelling unit that provides sleeping accommodations for hire, for thirty (30) days or less, on a day-to-day basis, with one (1) or more meals per day included, at which an owner, manager or lessee of the property resides on the premises. Such use shall not include residential dwelling units with two (2) or more rental rooms or facilities which include retail or commercial activities of any kind. Commercial properties without a resident owner are not eligible for this Program.

2. Board of Aldermen: An elected six-member panel authorized with decision-making powers for the governance of the City of Black Hawk.
3. Boundary Line Agreement: A formal document signed by the affected Property Owners documenting and agreeing upon the location of all property boundaries.
4. Building Official: The City official charged with the responsibility of administering and enforcing the City's building codes.
5. Certificate of Appropriateness (COA): The official document issued by City Council approving an application or permit for the erection, moving, demolition, alteration or addition to, or the external construction or external restoration of a historic landmark. A COA, once issued, will expire under the same conditions as its associated building permit. A recommendation for approval must be provided by the Historic Preservation Commission.
6. City Council: The elected Board of Aldermen, plus the Mayor.
7. City of Black Hawk Residential Design Guidelines: Guidelines developed to help achieve the goal of preserving the City's character with exterior improvements to buildings. Please contact City staff for a copy of these Guidelines.
8. City Staff: An employee of the City of Black Hawk.
9. General Contractor: The contracting company selected to oversee and manage the construction work.
10. Construction Hard Costs: Costs related to labor, materials, and overhead.
11. Construction Soft Costs: Costs related to fees, permits, insurance, and other costs not directly related to the physical installation of the Scope of Work.
12. Contributing Structure: Any building, structure, or object included on the property which adds to the historical integrity or architectural qualities that make the historic district significant and is used for defining context and which retains a significant amount of its physical integrity and character-defining features.
13. Designated Historic Resource: A public or private building, home, replica, structure, object, property, park or site that has importance in the history, architecture, archeology or culture of the City, State or Nation, as designated by the Historic Preservation Commission.

14. Escrow Account: An account established by the Property Owner to fund any additional costs for the project which are not covered through the Historic Restoration and Community Preservation Fund. Costs must be pre-paid into the account prior to the start of construction.
15. Flood Plain: Also known as a flood zone. An area defined by FEMA according to varying levels of flood risk and type of flooding.
16. Guide to Programs: This policy and procedures document, related to the Historic Restoration and Community Preservation Fund.
17. Historic Preservation Commission (HPC): A five-member appointed panel charged with the review and recommendation of modifications to the historic components of the City of Black Hawk.
18. Historic Preservation Easement: A funding source from the City of Black Hawk which is administered via direct contract between the City and General Contractor. Program Funds will be expended on the Project in exchange for Property Owner's execution of a Historic Preservation Easement in favor of the City. The Easement is for ten (10) years and runs with the Property to any new Property Owner. After ten (10) years, the then Property Owner may request release of the Easement. The Historic Preservation Easement is signed prior to Project, but recorded subsequent to Project completion. Work is completed via construction easements granted by the Property Owner. For purposes of the Historic Preservation Easement Program, the exterior of the Property to which the Easement applies shall include all exterior features, and the drywall phase including installation and finish to a paintable surface for exterior walls only, and shall also include the sub-floor.
19. Injunctive Relief: A court-ordered act or prohibition against an act or condition which has been requested, and sometimes granted, in a petition to the court for an injunction.
20. Liquidated Damages: Monetary compensation for a loss, detriment, or injury to a person or a person's rights or property, awarded by a court judgment or by a contract stipulation regarding breach of contract. The purpose is to establish a predetermined sum that must be paid if a party fails to perform as promised.
21. National Historic District Landmark: All properties within the Historic Residential District zoning designation are included within the National Historic District Landmark. The full boundaries of this Landmark District can be obtained from City staff.
22. National Historic Landmark Period of Significance: 1859 to 1918.
23. Noncontributing Building: A building, regardless of age, that has lost its integrity. These buildings do retain value as residential or commercial properties, but do not possess the significance and/or physical integrity necessary to be listed as contributing.

24. Outbuildings: Accessory structures to the original building which may or may not be included as part of the Qualified Property. Improvements to these structures will be at the discretion of the City.
25. Owners Representative: An entity designated by the Owner (City of Black Hawk and/or Property Owner) to act on their behalf in administering the contract documents, coordinating design professionals, overseeing construction progress, and reviewing paperwork required as part of the Program.
26. Program: The Black Hawk Historic Restoration and Community Preservation Fund.
27. Property Owner (Owner): Property Owner per recorded City documents, or designated representative as provided with written permission via a signed and notarized "Affidavit of Permission" or "Power-of-Attorney" from the Property Owner.
28. Qualified Professional: An individual licensed or appropriately experienced in the discipline within which a recommendation is needed.
29. Qualified Properties: Properties within City limits which were constructed more than fifty (50) years prior to the date of the application and are designated as a national landmark or within a national historic landmark district. NOTE: Properties may have both historic and non-historic components; however, the intent of the Program is only for the historic portion of the structure.
30. Roadway Easement: An easement provided by the City of Black Hawk for road and utility work within the public right of way adjacent to the property. Also applicable when portions of the existing structure are located within the public right of way.
31. Secretary of the Interior Standards: The United States Secretary of the Interior's Standards for Treatment of Historic Properties.
32. Substantial Completion: The stage in the progress of the work when the work, or designated portion thereof, is sufficiently complete in accordance with the contract documents so that the owner can occupy or utilize the work for its intended use.
33. Temporary Construction Easement: A legal document providing the Grantee (City of Black Hawk) with full access to the property under consideration for the purpose of completing the Scope of Work. The easement is only valid for the duration of the construction period.
34. Temporary Use Permit: A permit issued by the City of Black Hawk to allow private property to be used for alternate uses (storage, staging, etc.) for a limited amount of time.

35. City Trade Contract Agreement: An agreement signed by the City of Black Hawk and the successful General Contractor detailing the contract terms for any construction work as part of the Preservation Easement Program.

d. PROGRAM GOALS

1. The goal of the Preservation Easement Fund Program is to promote the restoration and preservation of Qualified Properties through proper rehabilitation, which includes making Qualified Properties habitable and sustainable. The exterior of the structures must be maintained and preserved with materials that comply with the City of Black Hawk Residential Design Guidelines, and by methods consistent with those that will allow the structure to remain as a contributing structure in the historic district. Historically significant exterior finishes are expected to remain on each property. Evaluation, approval and rehabilitation of homes will be reviewed on a case-by-case basis in accordance with the applicable standards, laws, and regulations approved by the City, including this Preservation Easement Guide to Programs.
2. For further guidance regarding the long-term preservation, maintenance, and proposed improvements on a property, Property Owner consults with professional staff in the Community Planning and Development Department. Additional information concerning structural and architectural improvements can be found in the City of Black Hawk Residential Design Guidelines, which is consistent with the Secretary of the Interior's Standards for Treatment of Historic Properties, also available from the Community Planning and Development Department.

e. GENERAL PROGRAM INFORMATION

The following considerations apply to all activities proposed and/or covered by the Program:

1. Projects will only be selected and authorized upon completion of an application in accordance with the requirements described in this Preservation Easement Guide to Programs.
2. Careful consideration should be given in preparing the application. The quality of the application will be considered as indicative of the Property Owner's ability to accomplish the proposed project. Careful consideration will also be given to a Property Owner's past performance in prior projects including, but not limited to, the use of a grant and the accomplishment of a prior project. Additionally, the manner of upkeep and routine maintenance performed by the Property Owner at the property will be taken into account by the City Council.

3. The City Council shall have the authority in its sole discretion to deny any application submitted for a Preservation Easement project if, in their opinion, the Property Owner has neglected to adequately maintain their property allowing it to become in a state of disrepair.
4. Failure to sign and enter into the necessary legal agreements will disqualify the Property Owner from participation in the program. All Preservation Easement Program Agreements will be signed prior to issuance of Notice to Proceed to the general contractor, but recorded upon completion of project.
5. The City of Black Hawk expressly reserves the right to reject any or all applications, reduce the application amount, and request additional information to assist in the thorough review of any application. Failure of a Property Owner to comply with this Preservation Easement Guide to Programs on a prior project, to properly use a Preservation Easement for a prior project, to administer a prior project, and to accomplish a prior project may be a basis to reject or deny an application.
6. The award of any Preservation Easement to a Qualified Property, regardless of funding type, shall only occur once per Category of Assistance. Additionally, only one request may be made within any one-year period, and is subject to the availability of Preservation Easement funds, which are allocated by the City Council of the City of Black Hawk in the exercise of its sole discretion, and is further subject to the annual budget and appropriation of the Historic Restoration and Community Preservation Fund by the City Council of the City of Black Hawk.
7. Once a Property Owner has submitted an application to the City of Black Hawk for any of the Categories of Assistance, the Property Owner's name and address will be placed (first-come, first served basis) on the list of potential recipients for such Preservation Easement category. If such property is subsequently sold to a new Property Owner, the new Property Owner's name shall remain in the same priority if the new Property Owner makes a request in writing within 45 days of the date of notification as set forth herein. The Community Planning and Development Department shall notify the new Property Owner of the opportunity to have the property stay on the list of upcoming Preservation Easement projects. The new Property Owner shall have 45 calendar days to respond to the City's request. If the new Property Owner does not notify the City of Black Hawk in writing within the 45 days after receiving the notification letter, the original application from the previous Property Owner will be deemed of no effect.

If a Property Owner owns multiple Qualified Properties, an application may be made for each individual property. Properties will be placed on the list of potential recipients in the order in which the applications are received. The order of properties to receive grant funds, if owned by the same Property Owner and in sequential order on the grant approval list, may be modified from the order of application. Non-sequential properties owned by the same Property Owner may not be modified from the order of application.

8. Applications can only be made by the Property Owner, as defined in this Section.
9. This program is not intended for, and should not be used as a substitute for, routine maintenance and care of a house, structure, or prior improvements to the home and/or property. Additionally, all improvements to a Qualified Property that are funded by this grant program need to be appropriately and consistently maintained by the Property Owner. All improvement(s) should be maintained in conformance with manufacturers' standards of normal care for such improvement. Furthermore, no Category of Assistance included in this program is to be utilized as a substitute for a Property Owner's property insurance policy.
10. In the event the City makes certain expenditures to benefit a property in reliance upon a signed application, including but not limited to the creation of any and all Construction Documents and fees for Owners Representative services, the Property Owner agrees to be bound by the terms and conditions contained in the Preservation Easement Fund Guide to Programs and to complete the project set forth in the application. Property Owner further agrees that in the event he/she decides not to proceed with construction of the project, Property Owner shall be responsible for reimbursing the City for actual costs incurred by the City for items including but not limited to the creation of any and all Construction Documents, fees for Owners Representative services, and any other costs actually incurred.
11. All projects, whether via contract with the City or Property Owner, shall commence construction within twelve (12) months of the award of any Preservation Easement funds for a project, and will have twelve (12) months to complete the work after the project has begun. The beginning of a project is the date of issuance of the building permit for the project. The end of the project is the expiration date (one (1) year after issuance of the building permit and same date that all available and approved funds should be requested from the City, with appropriate and required receipts and documentation, on or before that day.

Unless the City Council approves an extension of the expiration date, any funds remaining at the end of the project shall revert to the Preservation Easement Fund for use on other projects. In the event the Contractor/Property Owner fails to obtain a building permit and commence construction of a project within twelve (12) months of the Preservation Easement award, the Preservation Easement funds shall revert to the Historic Preservation Easement Program Fund for use on other projects and the property/project will move off the list of upcoming projects for the Historic Preservation Easement Fund Program.

12. It is the responsibility of the Property Owner subject to any Preservation Easement agreement being completed to keep the improvements paid for with the City-approved grant installed and on the property for a minimum of five (5) years. Changes to the Preservation Easement-paid improvements shall not be allowed (external to the building and site) for the next five (5) years upon the completion date of the last disbursement of funds from the City for the Preservation Easement.

f. GENERAL EVALUATION CRITERIA

1. The City’s decision to approve an application will be based on the Criteria for Selection included in, but not limited to, Appendix 1 of this Preservation Easement Guide to Programs for any proposed project and the support that the project provides to the advancement of the City’s restoration and preservation goals. In addition to the discretionary Criteria, priority may be given to applications that will:
 - A. Substantially improve the visual appearance of neighborhoods, streetscape or an individually significant Qualified Property.
 - B. Demonstrate proper rehabilitation techniques based on preservation and restoration principles.
 - C. Demonstrate previous proper maintenance and upkeep of the property including all required payments to the City and/or other governmental agency.
 - D. Undertake critically needed improvements, restoration, and preservation of properties.

2. The listed general considerations include, but are not limited to the following, and will be taken into account in reviewing and evaluating all requests for assistance from the Program:
 - A. The significance of the property involved.
 - B. The physical condition of the property.
 - C. The quality of maintenance and repairs made to the property.
 - D. The quality of the proposal and the completeness of the application.
 - E. The likelihood of satisfactory completion and previous proper maintenance of the property and its improvements.

SECTION 2: CATEGORIES OF ASSISTANCE

a. CATEGORIES OF ASSISTANCE

The Historic Preservation Easement Fund Program includes two (2) components of assistance, which may be combined into any one Preservation Easement application and/or award.

1. Full Site Component
2. Partial Site Work Component

All work conducted through the Preservation Easement program shall be completed in accordance with the standards and specifications listed in the appropriate component/section in the Appendix of the Preservation Easement Guide to Programs.

b. DESCRIPTION OF COMPONENTS

1. Full Site Component

The Full Site Component is available to provide exterior preservation, stabilization and repair of Qualified Properties and may include more than one Category of Assistance. Funding for a Full Site Category of Assistance is required to be achieved through a Preservation Easement Grant. Tree removal may be included as a part of the Full Site Component if such removal is determined to be necessary by the City Council, after a recommendation by HPC. Any such approved tree removal shall be included in the Scope of Work. Please consult with City staff and the Owners Representative to fully understand how a specific request for this component will be processed.

2. Partial Site Work Component

The Site Work Component is available for site stabilization and structural support, site drainage, and site remediation of Qualified Properties. Projects may include the repair or replacement of existing rock walls, the construction of new rock walls or other types of retaining structures to stabilize or support a site. Site drainage projects to allow for appropriate drainage to or from a site. It is the intent of the program to repair native rock walls as much as possible, rather than replace, per the City of Black Hawk Residential Design Guidelines. Tree removal may be included as part of the Site Work Component if such removal is determined to be necessary by the City Council, after a recommendation by HPC.

Also included are site remediation projects to remove mine waste rock or contaminated mine tailings, which have been identified as presenting a danger to public health and safety.

The Site Work Component may also include the addition of a fence to secure the perimeter of a Qualified Property, and will typically include one gate in order to provide access to the property. If an additional gate and/or gates are required in order to provide for a functional perimeter fence system, the cost for these additional gate(s) may be

covered by the Historic Preservation Easement Fund if deemed appropriate and approved by the City Council.

Site Work Component funding may be available to previous Program Grant recipients experiencing drainage related problems not previously addressed by a civil engineer in the previous rehabilitation process. Applications will be reviewed by the City Council on a case-by-case basis.

At least three (3) detailed bids will be required to be requested from qualified and financially sound General Contractors. General Contractors must be on the City Pre-Qualified Contractors list, or meet all pre-qualification requirements prior to execution of a contract. The City and/or the Owners Representative, appointed by the City, Property Owner shall procurement three (3) detailed bids, in order to ensure that all bidders are qualified, financially sound and provide pricing for the same Scope of Work to be performed.

A Site Work Component grant may only be considered on a case-by-case basis by the City Council via Certificate of Appropriateness, if applicable, after a recommendation by HPC. In the event a Full Site Preservation Easement is awarded within three (3) years of the City Council awarding a Site Work grant, the Property Owner agrees to reimburse the City in full the total amount awarded on the Site Work Grant for construction hard costs only, prior to the award of the Full Site Preservation Easement.

The award of a Site Work Component grant may be contingent on the recommendation of a City-selected design professional for those scopes of work which would require engineering or design drawings and permits, such as retaining walls and rock wall improvements.

This program is not intended for, and should not be used as a substitute for, routine upkeep and care of a house, structure, property or prior improvements to the home and/or property.

All projects are subject to funding availability, and are subject to the annual budget and appropriation by the City Council of the City of Black Hawk.

Please consult with City staff and the Owners Representative to fully understand how a specific request for this component will be processed.

SECTION 3: HISTORIC PRESERVATION EASEMENT PROGRAM

a. GUIDELINES FOR THE CITY OF BLACK HAWK HISTORIC PRESERVATION EASEMENT PROGRAM

By applying for a grant under the Historic Restoration and Community Preservation Fund Grant Program (“Rehabilitation Grant”), a Property Owner agrees to participate in the City of Black Hawk Historic Preservation Easement Program. The goal of the work performed pursuant to the Historic Preservation Easement Program is to preserve the historic appearance and to maintain the structural integrity of the historic structures within the City. Since the work is viewed as primarily for the benefit of the City, all costs to the exterior are borne by the City. The following provisions and criteria shall apply:¹

1. The Historic Preservation Easement work will be performed by the City consistent with the Secretary of the Interior’s Standards for Treatment of Historic Properties. A Certificate of Appropriateness is required with all projects. The Property Owner agrees to work with the Architect and his/her design team, City staff, Owners Representative and/or other appropriate staff or consultants to assist in proposing that historically significant finishes and materials, and character defining features (exterior only) are to remain, or be addressed appropriately in accordance with the standards and guidelines.
2. A Qualified Property cannot receive more than one (1) grant in each category, or in this case, approval of an application within the Historic Preservation Easement Program within any one-year period.
3. A Qualified Property must be located within a national historic landmark district, or within an area listed on the national register of historic places.
4. Structures must have been originally constructed more than fifty (50) years prior to the date of the application.
5. Applications shall not be accepted from a private individual that does not own the residential property that is to be restored or preserved. Applications shall only be accepted from a defined Property Owner.
6. The City will pay for all work performed pursuant to the Historic Preservation Easement Program.
7. A Historic Preservation Easement Program application shall not be made for more than one (1) year at a time.

¹ An Applicant should be aware that the provisions of the Historic Preservation Easement Program, while in many respects is similar to the Rehabilitation Grant Program, does differ in many significant respects because of the fact any project under the Historic Preservation Easement Program will be a City of Black Hawk project. Please refer to the matrix provided by City staff for a delineation of the various differences between the two programs.

8. A member of the City Council of the City of Black Hawk and members of HPC shall disclose any personal interest in the Historic Preservation Easement Program before voting on the application.
9. Property Owner shall grant to the City a Historic Preservation Easement, and agree to encumber the property with the Easement, and the Property Owner shall further grant to the City the associated Temporary Construction Easements on the property that is the subject of the Project. The term of the Historic Preservation Easement shall be ten (10) years and runs with the property to any new Property Owner. After ten (10) years, the then Property Owner may request release of the Easement.
10. Determination of what work will be performed pursuant to the Historic Preservation Easement Program is at the sole discretion of the Board of Aldermen, and is subject to the annual budget and appropriation of the Historic Restoration and Community Preservation Fund by the Board of Aldermen of the City of Black Hawk.

b. CITY CONTROLS

1. Property Owner s with eligible property must submit a program application for a grant under the Rehabilitation Grant Program to the City (Exhibit III).
 - A. In addition to proving eligibility, the application provides information regarding the location of the property to be restored and the extent of restoration proposed.

B. The application shall state:

APPLICANT UNDERSTANDS AND AGREES THAT PRIOR TO ANY CONSTRUCTION, APPLICANT SHALL GRANT TO THE CITY A TEMPORARY CONSTRUCTION EASEMENT NECESSARY TO COMPLETE THE WORK, AND SHALL EXECUTE A DEED RESTRICTION IN FAVOR OF THE CITY IN THE APPENDICES ATTACHED TO EXHIBIT III.

2. Along with the approval of an application by the City, owners must enter into legal agreements with the City which describe the terms for participation in the Preservation Easement Program. Participation in the Preservation Easement Program requires a Preservation Easement Agreement. A copy of this document is included in the appendices to Exhibit I. The Agreement indicates that:
 - a. The City and Property Owner will agree to the specific scope of the project as described in the construction drawings and project manual and schedule of the Project, and the City will send the Project out to bid to at least three (3) pre-qualified and financially sound General Contractors.

- b. The City selects the General Contractor(s) (which means that the General Contractor for this portion of the project could be different from the Property Owner's Rehabilitation Grant Contractor selected by the Property Owner), uses a City-selected Owners Representative, negotiates the schedule, and pays the approved General Contractor(s) directly from the Program Funds. It is strongly recommended that the Property Owner use the same General Contractor for any Rehabilitation Grant work that is separately contracted.
3. Program Funds will be expended on the Project in exchange for Property Owner's execution of a Historic Preservation Easement in favor of the City. As noted previously, this Easement is for ten (10) years and runs with the property to any new Property Owner. After ten (10) years, the then Property Owner may request release of the Easement.
4. Historic Preservation Easement Program provisions (signed prior to Project, but recorded subsequent to Project completion) are in pertinent part as follows [a complete form of the Easement is attached hereto in the appendices to Exhibit I]:
 - A. The exterior shall not be significantly altered either visually or structurally. For purposes of the Historic Preservation Easement Program, the exterior of the Property to which the Easement applies shall include all exterior features, and the drywall phase including installation and finish to a paintable surface for exterior walls only, and shall also include the sub-floor.
 - B. No demolition of existing structure is allowed without consent of the City. However, dismantling and storage of existing structure for reassembly is allowed.
 - C. No additional structural elements or architectural features may be added/built without the consent of the City.
 - D. The structure must be maintained in a good state of repair and be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
 - E. The City maintains a right of entry to inspect the property's interior and exterior at any time during construction.
 - F. Remedies for Property Owner's breach of the Easement:
 - i. Injunctive Relief
 - ii. Liquidated Damages
 - iii. City right of entry to make repairs at Property Owner's expense (lien)

5. If a mortgage or line of credit is recorded on the property, the mortgage holder must complete a Subordination of Rights [a complete form of the Easement is attached hereto in the appendices to Exhibit A] prior to any work being performed at the property. If the mortgage holder refuses to execute such document, the application for the Preservation Easement Program will be denied.

APPENDIX 1
PRESERVATION EASEMENT PROGRAM
PROJECT CRITERIA/ PROCESS/PROCEDURE

Appendix 1 is intended as a resource to educate and inform the Property Owner to the extent they completely comprehend and understand the Historic Preservation Easement program review process and procedure.

For the purposes of this section, the terms Applicant and Property Owner are used interchangeably.

The Property Owner is required to meet with the City staff and Owners Representative to discuss their proposed project and potential eligibility. City staff and Owners Representative will introduce the general features of the program as highlighted below:

1. Application Phase.

- a. Initial Application Phase
- b. Orientation Meeting
- c. Update Application

2. Scope of Work Phase.

- a. Historic Research
- b. On-site Strategy Meeting
- c. Existing Conditions
- d. Inspections and Testing
- e. Appraisal Report

3. Agreement and Contracts Phase.

- a. Rehabilitation Grant Agreement
- b. Historic Preservation Easement Agreement
- c. Lender's Request for Subordination of Rights
- d. W-9
- e. Power of Attorney or Affidavit of Permission, ; if applicable
- f. State and Federal Tax Liability
- g. Boundary Line Agreements; if applicable
- h. Temporary Construction Easement between Applicant and City
- i. Temporary Construction Easement between Neighboring Properties and City
- j. Roadway Easement; if applicable
- k. License Agreement; if applicable

4. Architect Bid Phase.

- a. Architect Bid Process
- b. Bid Selection
- c. Project Design Start-up

5. Design Process Phase.

- a. Abatement and Remediation
- b. Conceptual Design
- c. Schematic Design
- d. Design Development
- e. Construction Drawings

6. Historic Preservation Commission and City Council Approval Phase

- a. Historic Preservation Commission Review and Approval
- b. City Council Review and Approval

7. General Contractor Bid Phase.

- a. Pre-qualified General Contractor Application Process:
Contractors must submit an American Institute of Architects (AIA) document A305 for review and approval. Once a Contractor has submitted all required forms and documents, a short interview will be scheduled to meet and discuss the Contractor's history and documents submitted. This process must include, from the Contractor, past project examples including bid breakdown, budgets, change order forms, and project schedules. References will also be required from the Contractor as noted within the A305 document. A determination will be made by City staff and the Owners Representative to approve or disapprove the Contractor to be put on the pre-qualified list.

A Qualifications Packet is requested which includes the following information:

- 1. An overview of general information about the company including:
 - a. Previous work experience related to any of the Categories of Assistance
 - b. Managerial ability
- 2. Quality control management/procedures
- 3. Previous construction experience in and/or near the City of Black Hawk
- 4. Staff resumes
- 5. Historic preservation/rehabilitation experience
- b. Referenced City of Black Hawk Resolutions; 19-2013, 3-2014, 13-2016, 14-2016
- c. General Contractor Bid Process
- d. Bid Analysis
- e. Bid Selection
- f. Project Construction Start-Up

8. Construction Phase.

- a. Pre-Construction
- b. Active Construction

9. Close-Out Phase.

- a. Construction Close-out
- b. Rehabilitation Grant Close-out
- c. Preservation Easement Close-out

Acknowledgement by Property Owner

The Property Owner has:

- (a) read this Agreement and the applicable documents associated with the “Guide to Programs,”
- (b) fully understands the terms and conditions of the grant as set forth therein, and
- (c) agrees to be bound by those terms and conditions.

Property Owner

By: _____

Date: _____

(Insert Address) : APPLICATION PHASE CHECKLIST

Date Done

To get their house added onto the existing Grant list...

Initial Application Phase:

HO submits completed initial application	
AA assigns Grant #, Project #, Type of Grant	
AA creates hard file & electronic file for documents	
AA scans initial application documents & saves in files	

Once this Grant's # comes up to the top of the list...

Orientation Meeting:

CP&D review Roles and Responsibilities	
CP&D review Project Schedule	
CP&D creates Dropbox folder (including Own-Your-Own-Home Guide and other pertinent documents)	
CP&D review Guide to Programs	
CP&D review Grant Agreement	
CP&D review Easement Agreement	
CP&D review Tax Implications	
CP&D review HPC requirements	
CP&D review Residential Design Guidelines	
CP&D review Standards for the Treatment of Historic Properties	

If HO decides to move forward with the project...

Updated Application Phase:

HO completes and signs new application	
NV5 gets Owner & Encumbrance Report/Title Work completed	
CP&D reviews past grants/reports for this property (Grant \$ spent)	
AA sends relevant Project Synopsis out to team via email	

Abbreviations:

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- CoA = Certificate of Appropriateness
- CoBH = City of Black Hawk
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- ENG = Engineer
- FBO = For Benefit Of
- GC = General Contractor
- HO = Homeowner
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(Insert Address) : SCOPE OF WORK PHASE CHECKLIST

	Date Done
Historic Research (if needed):	
HP defines and recommends historic appearance	
CP&D/HP determines which portions are eligible for grant	
CP&D If info not available, get HO to prove building(s) age	
On-site Strategy Meeting (with CP&D, BI, HO, HP, NV5, PW & OR):	
CP&D/NV5 identify what is historic/non-historic	
CP&D/NV5 Identify areas of concern:	
*Sitework/Exterior (bridges, utilities, rock walls, other)	
*Code Review (exterior, interior, other)	
*Historic Review (historic structures, demolition, other)	
CP&D/NV5 Discuss w/HO of cost assoc'd w/keeping non-historic sections (code-compliant)	
CP&D/NV5/HO Identify what will be kept/discarded	
CP&D/NV5 review Home Program Outline Checklist w/HO	
Existing Conditions	
NV5 obtains Site/Topo/Floodways Property Survey	
NV5 obtains Wood/Windows/Doors Survey	
NV5 obtains Stone Wall/Masonry Survey	
NV5 obtains Geotechnical Report	
Inspections/Testing:	
NV5 schedules Lead Based Paint Survey	
NV5 schedules Radon Testing	
NV5 schedules Mold Survey	
NV5 schedules Asbestos Survey	
NV5 schedules mine tailings or mining waste rock determination	
Appraisal Report	
NV5 Obtains an appraisal report	

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(Insert Address) : ARCHITECT BID PHASE CHECKLIST

(CP&D/NV5 responsible for all items on this list)	Date Done
ARCH Bid Process:	
Approve Bid Process/Schedule	
Prepare Bid Package (ITBs, Agreements, Reports, Specs, Surveys, etc)	
Issue RFP for Architect (include Guide to Programs)	
Pre-bid Site Meeting	
Issue Addenda based on questions from Bidders	
Receive Bids (include signature that have read Guide to Programs)	
Bid Selection:	
Submit Bid Analysis for CC approval	
Obtain CC approval	
Issue Notice of Award	
Issue Notice(s) of Non-Award	
Project Start Up:	
Execute Architect Contract (Historic Portion)	
Execute Architect HO Contract (Non-historic Portion) if necessary	

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(Insert Address) : DESIGN PROCESS PHASE CHECKLIST

	Date Done
NV5/ARCH: As-Builts (CAD)	
Abatement/Remediation:	
CP&D/NV5/EC: Lead Abatement	
CP&D/NV5/EC: Radon Mitigation	
CP&D/NV5/EC: Mold Abatement	
CP&D/NV5/EC: Asbestos Abatement	
CP&D/NV5/EC: Mine tailings or mining waste rock abatement	
CP&D/NV5/EC: Final Clearance	
CONCEPTUAL DESIGN:	
DT: Concept Design Review Meeting w/HO	
HO signs off on concept design	
SCHEMATIC DESIGN:	
Architect refines concept to create schematic	
DT: Schematic Design Review Meeting w/HO	
HO signs off on schematic design	
DESIGN DEVELOPMENT:	
Interior designer meets w/HO to discuss design	
Designer develops design scope	
ARCH confirms material allowance is w/in limits	
Design Development Meeting (CP&D, HO, ARCH, HP, PW, SAN, NV5)	
HO agrees to pay escrow, if necessary	
HO signs off on final design plan	
CONSTRUCTION DRAWINGS	
Construction Drawings Developed	
Final Construction Drawings Developed	
HO signs off on final construction drawings	

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(Insert Address) : HPC/CC APPROVAL PHASE CHECKLIST

(CP&D/NV5/HP/ARCH responsible for all items on this list)	Date Done
HPC REVIEW/APPROVAL	
Final Construction Drawings to HPC for review	
Staff report for HPC CoA recommendation (HP drafts)	
HPC recommendation	
CC REVIEW/APPROVAL	
Send report to CA to prep resolution	
Prepare Public Hearing Notice to be posted at property	
Prepare Public Hearing Notice for the Newspaper	
Update staff report for CC	
Submit Construction Drawings and report for CC approval	
Obtain CC approval	
Process CoA with approved resolution	
Construction Drawings out to BI for plan review	

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(Insert Address) : GENERAL CONTRACTOR BID PHASE CHECKLIST

(CP&D/NV5 responsible for all items on this list)	Date Done
GC Bid Process:	
Approve Bid Process/Schedule	
Prepare Bid Package (ITBs, Bid Forms, Agreements, Reports, Specs, Surveys, etc)	
Issue Bid Package	
Pre-bid Site Meeting	
Issue Addenda based on questions from Bidders	
Receive Bids	
Public Bid Opening (with checklist)	
Bid Analysis:	
Formulate bid analysis w/cost comparison	
Review bid analysis w/CoBH	
Review bid analysis w/HO	
Get bid clarifications from contractor(s)	
Value Engineering (as necessary)	
Bid Selection:	
Staff report	
Submit Bid Analysis for CC approval	
Obtain CC approval	
Issue Notices of Award (Exterior & Interior)	
Issue Notice(s) of Non-Award	
Issue Notice to Proceed	
Issue Materials Cost Allowance Worksheet (attach if escrow)	
Review Materials Cost Allowance Worksheet	
Homeowner Escrow of Material Upgrade Funds (obtain check, if needed)	
Project Start Up:	
Rehabilitation Grant Agreement signed	
Execute contract w/HO & GC	
Execute contract w/CoBH & GC	
Builders Risk insurance - add HO, CoBH & OR as add'l insured	
Obtain Payment & Performance Bonds	

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(Insert Address) : CONSTRUCTION PHASE CHECKLIST

(CP&D/NV5/HO/OR/GC/ARCH responsible for all items on this list)	Date Done
Pre-Construction:	
Provide Subcontractor List for Contractor Registration & Business License	
Issue Notices to Proceed (Exterior & Interior)	
Issue Temporary Construction Easement Commencement Letter	
Kick-off Meeting (incl Safety Plan discussion)	
Review procedures for pay apps, submittals, RFIs, change orders, sketch logs	
Set up FBO Check Process	
GC pulls building permit	
Obtain Temporary Use permits (if needed)	
Obtain Parking Permits for construction crew	
Active Construction:	
Begin collecting/reviewing pay apps, submittals, RFIs, change orders, sketch logs	
Electrical rough-in "box walk" (if HO wants changes, they pay Change Order)	
Email all Inspection Reports to ARCH, OR, HO, CP&D, NV5	

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(Insert Address) : CLOSE-OUT PHASE CHECKLIST

Date Done

Construction Close-Out

Meter Release	
GC creates & completes preliminary punch list	
Obtain Punch list from HO	
Obtain Punch list from ARCH	
Obtain Punch list from NV5	
Obtain Punch list from OR	
Obtain Punch list from CoBH	
HO Signs off on all final Punch List items	
ARCH Signs off on all final Punch List items	
NV5 Signs off on all final Punch List items	
OR Signs off on all final Punch List items	
CoBH Signs off on all final Punch List items	
Certificate of Substantial Completion (Interior)	
Certificate of Substantial Completion (Exterior)	
GC's Affidavit of Payment of Debts & Claims	
NV5/GC/ARCH: O&M Manuals	
NV5/GC/ARCH: As-Builts/Record Drawings	
CP&D/NV5: Submit Retainage Pay Application (incl Final Lien Waivers)	
CP&D/NV5: Advertise for Release of Retention	
CP&D/NV5: Final Payment	
CP&D/NV5: Final Unconditional Lien Release	

Grant Close-Out

CP&D/NV5: Update Grant Reconciliation Sheets	
CP&D/NV5: Record Preservation Easement Agreement w/City Clerk	
CP&D/NV5: Add City to HO Insurance COI as additionally insured	

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EXHIBIT I

HISTORIC PRESERVATION EASEMENT AGREEMENT – (DEED RESTRICTION)

HISTORIC PRESERVATION EASEMENT

This **HISTORIC PRESERVATION EASEMENT AGREEMENT** (the "**Easement**") is entered into as of the _____ day of _____ 20____, by and between _____ whose property address is _____, Black Hawk, Colorado 80422 ("**Grantor**"), and the **CITY OF BLACK HAWK**, a Colorado home rule municipality, whose address is 201 Selak Street, P.O. Box 68, Black Hawk, Colorado, 80422 (the "**City**").

WITNESSETH

WHEREAS, Grantor owns certain real property (the "**Property**") and the improvements thereon (the "**Structure**") located at _____, in the City of Black Hawk, Gilpin County, Colorado, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference;

WHEREAS, the Structure has certain architectural, historic and/or cultural significance, which attributes are collectively described in **Exhibit B** attached hereto and incorporated herein by this reference, the Structure is located in a National Register historic district, and has been deemed by the United States Department of the Interior as contributing to the historic significance of the historic district;

WHEREAS, in exchange for the grant of this Easement, the City has agreed to expend a portion of its Restoration and Preservation Grant Funds to restore and/or preserve the Structure; and

WHEREAS, the grant of this Easement by Grantor to the City will assist in preserving and maintaining the Structure for the benefit of the general public.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and restrictions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, Grantor and the City hereby covenant and agree as follows:

1. Grant of Easement. In specific consideration for the expenditure of funds by the City on the preservation and restoration of the Property and the Structure (the "**Project**"), Grantor hereby grants to the City an easement for ten (10) years to preserve the Structure as hereinafter described following completion of the Project as follows:

a. Easement Area. The Area of the Easement encompasses the exterior of the structure including but not limited to wall surfaces, railings, decorative woodwork, decorative metalwork, doors, windows, roofs, decorative elements, interior drywall and the sub-floor.

b. Scope of Easement. This Easement conveys to the City an interest in the Structure as hereinafter specifically provided, which includes the benefit of the following covenants, conditions and restrictions:

i. The exterior of the Structure, including interior drywall and the sub-floor, is not to be visually or structurally altered from the condition existing as of the Effective Date of this Easement without the City's Consent. Nothing shall be erected on the Property that impairs the visibility of the Structure from the street or grade level.

ii. The Structure shall not be demolished and no new structures or additions of any kind to the exterior of the Structure, including interior drywall and the sub-floor, may be constructed at the Property without the City's Consent, except as may be required by law.

iii. The Property and the Structure shall be maintained in a good and sound state of repair in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* as modified from time to time (the "Standards"), to prevent deterioration in its exterior appearance existing on the date hereof, as depicted in **Exhibit B**. Such maintenance and repair includes replacement, repair, and reconstruction by Grantor whenever reasonably necessary to preserve the Property and the Structure in substantially the same condition and state of repair as that existing on the date hereof.

iv. Grantor, at its expense, shall keep the Property and the Structure insured by a reputable insurance company licensed and in good standing in the state in which the Structure is located with a replacement cost insurance policy against loss or damage resulting from fire, windstorm, vandalism, explosion and such other hazards as typically required by prudent Property Owners in the same geographic area as the Property; and shall **carry and maintain comprehensive public liability insurance under a policy issued by an insurance company that names the City as an additional insured** party thereunder.

v. The Property shall not be subdivided or otherwise parcelized without the City's consent.

2. City Review Procedures. The City has the discretion when reviewing applications under Section 1, to give or withhold its consent, conditionally or unconditionally, but such consent shall not be unreasonably withheld, conditioned or delayed. "Consent" as used herein, means that the City shall have given or withheld its prior written consent to the requested action, or approval. The basis for the City's review of and Consent to proposed changes to the Project shall be the Standards.

3. Owner's Representative Payment. The City hereby agrees to reimburse Grantor for all Owner's Representative fees incurred on the project, provided that the Owner's Representative is a third party Owner's Representative consulting firm or individual hired to perform the Owner's Representative tasks and that such individual or firm is not the Grantor themselves, related to the Grantor, or an employer of someone related to the Grantor.

4. Right of Entry. Grantor agrees that representatives of the City may upon prior reasonable notice and at times reasonably acceptable to Grantor inspect the Property, including the Structure. Inspections will normally occur outside the Structure, except if the City determines interior access is reasonably necessary to establish compliance with this Easement.

5. Obligations of Grantor. Grantor shall pay before delinquency all real estate taxes, assessments, fees or charges properly levied upon the Property and shall furnish the City with evidence of payment upon request. Grantor shall keep the Property free of any liens or encumbrances for obligations incurred by Grantor, other than liens or encumbrances secured by the Project that are subordinate to this Easement. The City shall have no liability or responsibility of any kind related to the ownership, operation, insurance, or maintenance of the Property other than as specifically identified in this Easement.

6. Condemnation. Grantor shall notify the City of any condemnation proceeding with respect to the Property. The City has the option, but not the obligation, to participate in any action or settlement with respect to any condemnation and to claim a reasonable portion of any net proceeds.

7. Remedies for Breach.

a. Upon a breach of any provision of this Easement, the City may pursue all available legal and equitable remedies, including injunction, to prevent or seek remedy for such violation. The prevailing party in any enforcement shall be entitled to reasonable attorney fees, costs and expenses. Grantor expressly agrees that if Grantor directly acts, or Grantor's officers, agents, representatives or employees directly act pursuant to Grantor's instructions, to cause a demolition or willful destruction of a material portion of the Property including the Structure, the City, in addition to any other equitable relief, is entitled to recover as liquidated damages reasonable costs of the Project prior to such demolition or destruction. Grantor agrees for itself and its successors and assigns that such liquidated damages are reasonable as of the Effective Date and

b. If the Property has substantially deteriorated as a result of a breach of subparagraph 1(b)(iii), then the City may send written notice to Grantor requesting that the Project be repaired to achieve a level of maintenance consistent with subparagraph 1(b)(iii). If, within ninety (90) days of receipt of such notice, Grantor fails to commence the implementation of repair actions reasonably satisfactory to the City, then the City or its agents may enter upon the Property and cause repairs to be made at Grantor's sole expense. Grantor's failure to reimburse the City for any actions taken by the City pursuant to this paragraph within 30 (thirty) days of Grantor's receipt of invoice(s) and supporting documentation for such actions shall constitute a lien on the Property accruing interest at the lesser of the maximum per annum rate permitted by law or 12% (twelve percent) per annum. Upon payment by Grantor of all amounts due to the City pursuant to this paragraph, including all interest accrued hereunder, the City shall deliver to Grantor a release of the lien.

8. Nature and Duration. The covenants, conditions and restrictions in this Easement run with the land constituting the Property for ten (10) years and are binding upon Grantor and the successors and assigns of Grantor for the benefit of the City.

9. Release of Easement. Grantor and the City agree that this Easement may be released by the City upon application by the Grantor or the Grantor's successor in interest upon satisfaction of the following conditions:

a. The expiration of ten (10) years from the Effective Date of the Preservation Easement; and

b. The Property shall have been maintained and is as of the date of the application for such a release in a good and sound state of repair in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* as modified from time to time (the "Standards") in order to preserve the Property and the Structure in substantially the same condition and state of repair as that existing on Effective Date.

10. Indemnification. Grantor shall hold harmless, indemnify and defend the City and its officers, employees, agents and contractors, successors and assigns of each of them (collectively, "Indemnified Parties") from and against all liabilities, penalties, costs, damages, expenses, causes of action, claims, or judgments (collectively, "Claims") in any way related to: (1) any real property taxes and general or special assessments assessed and levied against the Project; or (2) this Easement, the conveyance or possession thereof or the exercise of any rights hereunder, excluding, however, any Claims based in whole or in part upon the gross negligence or willful misconduct of any Indemnified Party, provided that the Indemnified Party gives Grantor prompt notice of each such Claim, cooperates in the defense thereof, and Grantor shall have the sole right to defend and/or settle each such Claim.

11. Entire Agreement and Severability. This instrument and the attached Exhibits contain the entire agreement of the parties with respect to the Easement and supersede any prior agreements relating to the Easement. If any provision of this Easement is held unenforceable by a court of competent jurisdiction, the remainder of the Easement shall continue in full force and effect.

12. Subordination. Grantor represents and warrants to the best of its knowledge that the only mortgage or deed of trust encumbering the Project is the security instrument identified in **Exhibit C** attached hereto. Concurrently herewith, the holder of the security instrument hereto has agreed, by separate instrument (in the form of **Exhibit D** attached hereto) to be recorded immediately after this Easement, to subordinate its rights in the Project to this Easement to the extent necessary to permit the City to enforce the purpose of the Easement in perpetuity and to prevent any extinguishment of this Easement by the holder thereof. The priority of any present or future security instrument with respect to any valid claim on the part of the holder thereof to the proceeds of any sale, condemnation proceedings or insurance, or to the leases, rents and profits of the Property or Structure shall not be affected by this Easement, and any liens created by the City's exercise of any of its rights under this Easement shall be junior to

such present and future security instrument; provided that this Easement shall not be subordinated in any other respect whatsoever.

13. Notices. All notices given pursuant to this Easement shall be in writing and sent to the other party at the address set forth in the first paragraph hereof, by US Mail or overnight express courier. Either party may change its notice address by notice to the other party. Either party may, from time to time, specify one additional party to receive written notice in order for such notice to be binding.

14. Amendments. This Easement may be amended only by a written instrument signed by Grantor and the City.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above-written.

CITY OF BLACK HAWK

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

EXHIBIT A

DESCRIPTION OF REAL PROPERTY AND IMPROVEMENTS

Property is located at _____, legally described as _____
_____, City
of Black Hawk, based upon the City of Black Hawk survey map of Block _____, of the
Map of Black Hawk, surveyed by Albert Johnson City Surveyor, dated May and June 1866, City
of Black Hawk, County of Gilpin, State of Colorado

EXHIBIT B

HISTORICAL SIGNIFICANCE OF THE SUBJECT PROPERTY

Based upon the 1991 Black Hawk – Central City Historic District Inventory and resurvey of 2011.

PROPERTY AND STRUCTURE MAINTENANCE

In accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*

EXHIBIT C

SECURITY INSTRUMENT

Grantor represents and warrants to the best of its knowledge that the only mortgage or deed of trust encumbering the Project is the security instrument identified and attached hereto. A copy of the Title Commitment is attached.

OR

Grantor represents and warrants to the best of his/her knowledge that there is no mortgage or deed of trust encumbering the Project, therefore no security instrument is identified or attached hereto. A copy of the Title Commitment is attached.

EXHIBIT D

PARTIAL SUBORDINATION OF RIGHTS

The holder of the security instrument hereto has agreed, by separate instrument (in the form of an executed Partial Subordination of Rights) to be recorded immediately after this Easement, to subordinate its rights in the Project to this Easement to the extent necessary to permit the city to enforce the purpose of the Easement for a period of ten (10) years and to prevent any extinguishment of this Easement by the holder thereof.

OR

Grantor represents and warrants to the best of his/her knowledge that there is no mortgage or deed of trust encumbering the Project, therefore no request for partial subordination of rights is required.

REQUEST FOR PARTIAL SUBORDINATION OF RIGHTS
Page 1 of 2

Date

Original Grantor (Borrower)

Original Beneficiary (Lender)

Date of Deed of Trust

Recording Date of Deed of Trust

County of Recording of Recorded Deed of Trust

Reception No. of Recorded Deed of Trust

Book and Page of Recorded Deed of Trust

Book

Page

BORROWER:

STATE OF COLORADO

)

)ss.

COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of _____

_____, 20____ by _____ Borrower.

My commission expires: _____

(SEAL)

Notary

PARTIAL SUBORDINATION OF RIGHTS

Page 2 of 2

WHEREAS, Owner owns certain real property (the "Property") and improvements thereon (the "Structure") that are secured by the above-referenced Deed of Trust;

WHEREAS, the Structure has certain architectural, historic and/or cultural significance, is located in a National Register historic district and has been deemed by the United States Department of the Interior as contributing to the historic significance of the historic district; and

WHEREAS, Owner desires to enter into a Historic Preservation Covenant and Deed Restriction Agreement (the "Covenant") with the City of Black Hawk, Colorado (the "City"), for the expenditure of funds by the City on the preservation and restoration of the Property and the Structure (the "Project");

NOW THEREFORE, Lender hereby agrees to subordinate its rights in the Project to the Covenant to the extent necessary to permit the City to enforce the purpose of the Covenant in perpetuity, and to prevent any extinguishment of the Covenant by the holder thereof. The priority of any present or future security instrument with respect to any valid claim on the part of the holder thereof to the proceeds of any sale, condemnation proceedings, or insurance, or to the leases, rents and profits of the Property or Structure shall not be affected by the Covenant, and any liens created by the City's exercise of any of its rights under the Covenant shall be junior to such present and future security instrument; provided that the Covenant shall not be subordinated in any other respect whatsoever.

LENDER:

By: _____

Its: _____

Attest: _____

CITY OF _____, **STATE OF** _____

Please return signed original to:

Cynthia Linker, Community Planning and Development Administrator
City of Black Hawk, PO Box 68, Black Hawk, CO 80422 - 303-582-0615 – clinker@cityofblackhawk.org

**PARTIAL SUBORDINATION OF RIGHTS
COVER LETTER EXAMPLE**

Date: _____

Lender: _____

Re: Request for Partial Subordination of Rights
Property Address: _____

To Whom It May Concern:

I/We desire to enter into a Historic Preservation Covenant and Deed Restriction Agreement with the City of Black Hawk, Colorado for the expenditure of funds by the City on the historic preservation and restoration of **my/our** property on which you hold a Deed of Trust. Because the structure has certain architectural, historic and/or cultural significance, is located in a National Register historic district and has been deemed by the United States Department of the Interior as contributing to the historic significance of the historic district, it qualifies for the City of Black Hawk's Historic Preservation Easement Program.

To participate in the program, the City of Black Hawk requires that you partially subordinate your rights in the property only to the extent necessary to permit the City to enforce the purpose of the Historic Preservation Covenant and Deed Restriction Agreement and to prevent its extinguishment. Any liens created by the City's exercise of its rights under the Historic Preservation Covenant and Deed Restriction Agreement will be junior to any present and future security instrument on the property as long as the Historic Preservation Covenant and Deed Restriction Agreement is not subordinated in any other respect.

Enclosed you will find a Request for Partial Subordination of Rights and a copy of the Historic Preservation Covenant and Deed Restriction Agreement.

Sincerely,

Property Owner

EXHIBIT II
MATERIALS ALLOWANCE

City of Black Hawk - Material Allowance Sheet 2016

Item Description	<Contractor>									
	GC Quantity	GC Unit Cost	GC Total Cost	CoBH Unit Cost	Not to Exceed Limit	Unit of Measure	CoBH Total Cost	Homeowner Unit Cost	Homeowner Total Cost	Comments
Division 5 - Metals										
Exterior Deck Railings - Metal			\$0	\$88.00	N/A	LF	\$0	(\$88.00)	\$0	
Division 6 - Wood and Plastics										
Cabinets (including door/drawer pulls)			\$0	\$351.00	\$18,672.00	LF	\$0	(\$351.00)	\$0	Includes all casework and built-in millwork items, along with the associated hardware (hinges, pulls and drawer guides) (See footnote #1 for calculation)
Cabinetry door/drawer pulls			\$0	\$6.00	N/A	EA	\$0	(\$6.00)	\$0	Includes price of individual pull or knob
Slab Countertops (including slab backsplashes & edge profile)			\$0	\$59.00	\$3,269.00	SF	\$0	(\$59.00)	\$0	Includes associated edge detail and backsplash (if applicable) (See footnote #2 for calculation)
Exterior Decking Material			\$0	\$8.00	N/A	SF	\$0	(\$8.00)	\$0	Pricing based on composite type material
Exterior Deck Railings - Wood/Comp.			\$0	\$36.00	N/A	LF	\$0	(\$36.00)	\$0	
Interior Trim (Base & Case)			\$0	\$6.00	N/A	LF	\$0	(\$6.00)	\$0	Pricing based on PEH Architects Trim Option 3 in Paint Grade Poplar (See footnote #4)
Division 8 - Doors and Windows										
Exterior Door & Frame			\$0	\$1,401.00	N/A	EA	\$0	(\$1,401.00)	\$0	Applies to replacement of existing exterior door & frame. 3'-0" wide exterior door required.
Storm Door & Frame			\$0	\$681.00	N/A	EA	\$0	(\$681.00)	\$0	Based on wood storm door
Interior Door & Frame			\$0	\$293.00	N/A	EA	\$0	(\$293.00)	\$0	Pricing based on 4 panel MDF pre-hung door. (See footnote #3 for Non-Standard Doors)
Exterior Door Hardware			\$0	\$176.00	N/A	EA	\$0	(\$176.00)	\$0	
Interior Door Hardware			\$0	\$88.00	N/A	EA	\$0	(\$88.00)	\$0	
Shower Door			\$0	\$468.00	N/A	EA	\$0	(\$468.00)	\$0	
Division 9 - Finishes										
Flooring			\$0	\$11.00	N/A	SF	\$0	(\$11.00)	\$0	
Carpet & Pad			\$0	\$30.00	N/A	SY	\$0	(\$30.00)	\$0	
Wall Tile			\$0	\$11.00	N/A	SF	\$0	(\$11.00)	\$0	Based on aggregate cost per SF of wall tile, inclusive of edge trim pieces, decorative patterns and transitions
Wallpaper			\$0	\$5.00	N/A	SF	\$0	(\$5.00)	\$0	Applies to replacement of existing wallpaper. Homeowner liable for total cost of wallpaper where it does not exist currently.
Division 10 - Specialties										
Bathroom Accessories			\$0	\$258.00	N/A	Per Bath	\$0	(\$258.00)	\$0	Per bathroom (Towel bars, TP holder, robe hook, shower curtain rod, etc)
Bathroom Mirror/Medicine Cabinet			\$0	\$309.00	N/A	EA	\$0	(\$309.00)	\$0	
Division 15 - Mechanical										
Kitchen Sink			\$0	\$403.00	N/A	EA	\$0	(\$403.00)	\$0	
Kitchen Faucet			\$0	\$293.00	N/A	EA	\$0	(\$293.00)	\$0	
Bathroom Sink			\$0	\$403.00	N/A	EA	\$0	(\$403.00)	\$0	
Bathroom Faucet			\$0	\$234.00	N/A	EA	\$0	(\$234.00)	\$0	
Bath Tub or Shower Enclosure/Pan			\$0	\$760.00	N/A	EA	\$0	(\$760.00)	\$0	Includes shower doors.
Bath Tub/Shower Fixture			\$0	\$234.00	N/A	EA	\$0	(\$234.00)	\$0	
Toilet			\$0	\$293.00	N/A	EA	\$0	(\$293.00)	\$0	
Division 16 - Electrical										
Light Fixtures (Indoor/Outdoor)			\$0	\$176.00	N/A	EA	\$0	(\$176.00)	\$0	Applies to both indoor and outdoor fixtures
Ceiling Fans			\$0	\$293.00	N/A	EA	\$0	(\$293.00)	\$0	1 ceiling fan per room
Total Material Cost			\$0				\$0		\$0	



These material cost allowances do not include costs for installation, shipping/handling, taxes, delivery, contractor markup, etc. Contractor shall include any of these costs and any other incidental costs in line items for labor, general conditions, OH&P, etc. in their bid.

Footnote #1: The cabinetry is not to exceed \$340 per lineal foot. The overall budget for cabinetry is not to exceed \$18,182. Lineal footage costs are based on base cabinets and wall cabinets separately. Utility (or tall) cabinets would qualify for both wall and base cabinet allowances. Measurements should be taken from the back face of the cabinet, meaning that corner cabinets in an "L" shape space would get the measurement for each wall they have contact with.

Footnote #2: The countertops are priced separately than the cabinets. The countertops shall not \$57 per square foot of area (including backsplash). The overall budget for the countertops is not to exceed \$3,173. The inclusion of the backsplash in this item is only when the backsplash is a slab type material, so if the backsplash is tile, the backsplash would then fall under the wall tile allowance.

Footnote #3: Openings that require a non-standard door size and/or style will be evaluated independent of the standard allowance. Non-standard doors should only be the result of code restrictions, historic restraints caused by existing conditions, and manufacturer requirement for best practices in construction.

Footnote #4: Based on current pricing, none of the Program's standard trim options fall within the allowance provided. Therefore the allowance has been adjusted to allow for the basic trim options to be installed without the need for escrow.

Material Allowance Sheet will be reviewed on a yearly basis and re-evaluated according to material price increases.



EXHIBIT III

HISTORIC PRESERVATION EASEMENT PROGRAM APPLICATION



City of Black Hawk
 Community Planning and Development
 211 Church Street
 P.O. Box 68
 Black Hawk, CO 80422
 Ph: 303-582-0615 / 303-582-2223

Grant No: _____ Project No: _____ <p style="text-align: center;"><i>For Office Use Only</i></p>

HISTORIC PRESERVATION FUND - APPLICATION

GENERAL INFORMATION:

Grant Year: _____ **Today's Date:** _____

Property Street Address: _____

Property Owner(s): _____

Owner(s) Mailing Address: _____

Owner(s) Telephone No.: (H) _____ (W) _____ (Cell) _____

Email Address: _____

Contact Person (if different from owner)

Contact Telephone No.: (H) _____ (W) _____ (Cell) _____

Email Address: _____

Applications can be made by individuals other than the property owners with the owner's written permission (written permission must be signed and notarized on a form "Affidavit of Permission" or 'Power-of-Attorney' provided by the applicant). For the purpose of this document, Applicant and Property Owner are considered one in the same and are interchangeable.

Please check the appropriate box of the type of grant you are applying for. Refer to the "Preservation Easement Guide to Programs" for information relating to each program. PLEASE NOTE: YOU WILL NEED A SEPARATE NARRATIVE FOR EACH COMPONENT:

Full Site Component

Site Work Only Component

Office Use Only. Do not write below this line.

Date Received: _____ *Grant No.:* _____

HPC Review Date: _____ *Board of Aldermen Approval Date:* _____

Amount Approved: _____

Comments or Conditions: _____

Authorization Signature: _____ *Date:* _____

Associated Grant Numbers: _____

PROJECT INFORMATION:

Description of Proposed Project

Provide a detailed description of the proposed project (If additional room is needed, attach additional paper). Attach a site plan, photos or any other information relevant to the application:

Process and Procedure

Applicant agrees to thoroughly review the Preservation Easement Guide to Programs. Applicant further understands that although a property is located in the National Historic Landmark District; completion of an application does not guarantee the property is eligible to participate in the Historic Preservation Easement program.

Applicant will be notified by the Community Planning and Development with a decision and the next steps in the program process, if applicable.

Temporary Construction Easement and Deed Restriction

Applicant understands and agrees that prior to any construction, the Applicant shall grant to the City a temporary construction easement necessary to complete the work, and shall execute a deed restriction in favor of the City in the forms attached hereto as **Exhibit A – Temporary Construction Easement and Exhibit B – Preservation Easement Agreement with exhibits A-D.**

Cost Responsibility

Applicant understands and agrees the City will make certain expenditures in reliance, including but not limited to, the creation of architectural plans and civil construction drawings. Applicant therefore agrees:

1. To read the applicable "Historic Preservation Fund Guide to Programs," and fully understand the terms and conditions of the City's program as it relates to the Property.
2. In reliance upon this Application, the City will commence making expenditures to benefit the Property. Applicant/Applicant agrees to be bound by the terms and conditions contained in the "Historic Preservation Fund Guide to Programs" and to complete the project set forth in the Application. In the event Applicant/Applicant determines not to proceed with construction of the Project, Applicant/Applicant shall be responsible for reimbursing the City for actual costs incurred by the City in creating any architectural renderings, plans, civil construction plans, surveying, and any other costs actually incurred by the City in reliance on the Application.
3. The Applicant understands he/she is responsible for paying certain costs set forth above in the event Applicant decides not to proceed with the Project.

Tax Liability

The City of Black Hawk believes that the cost of the work performed by the City under the Historic Preservation Easement Program is not taxable income under State and Federal income tax laws.

As such, the City will not be reporting the cost of the work to State and Federal taxing authorities.

If it is determined by the Internal Revenue Service or the Colorado Department of Revenue that the cost of the projects is taxable income to the Applicant, the city will reimburse Applicant s for additional state and federal taxes paid by recipients that are directly attributable to the cost of the project.

Regardless of the City's agreement to reimburse Applicants for the initial State and Federal tax burden of a grant, the obligation to pay any taxes shall remain the responsibility of the Applicant.

If the Applicant agrees to participate in the Historic Preservation Easement Program, they should contact their tax advisor concerning any potential tax liability that they may have as a result of receiving any of the benefits described in the historic preservation and restoration easement program.

I, the Property Owner/Applicant, have read the above information and understand that by voluntarily signing and submitting this Historic Preservation Easement Program application, I am responsible for paying certain costs as set forth above in the event I decide not to proceed with the Project.

Property Owner / Applicant Signature

Date

(INTENTIONALLY LEFT BLANK)

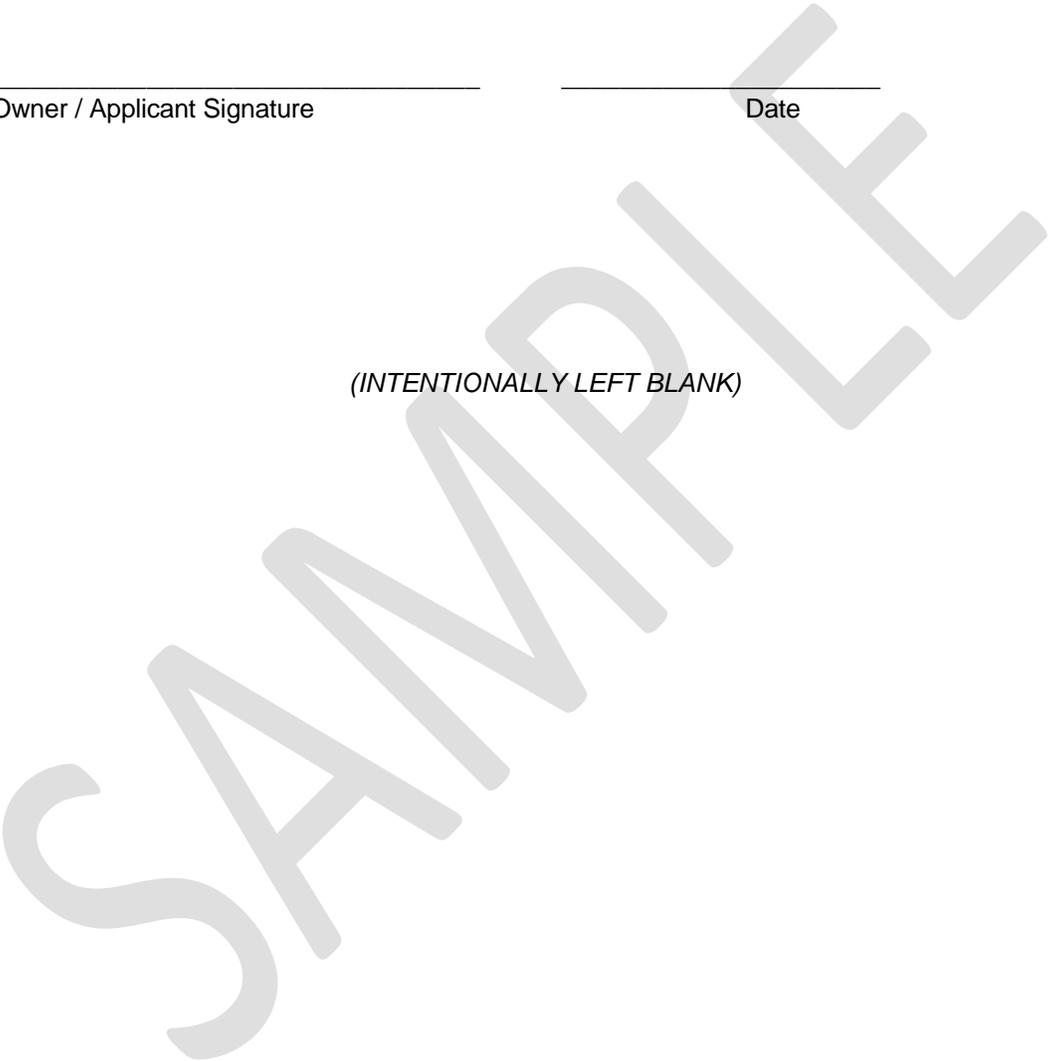


EXHIBIT A

TEMPORARY CONSTRUCTION EASEMENT

SAMPLE

TEMPORARY CONSTRUCTION EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That _____, whose address is _____ ("Grantor"), in consideration of **TEN DOLLARS (\$10.00)**, receipt of which is hereby acknowledged, and other good and valuable consideration, does hereby grant, bargain, sell and convey to **CITY OF BLACK HAWK**, whose address is 201 Selak Street, Black Hawk, Colorado 80422, ("Grantee"), a Temporary Easement for restoration of _____, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement in and to, over, under and across the tract of land described as follows:

See **Exhibit A**, attached hereto and incorporated herein by this reference the "Temporary Easement Property". (**Insert Site Plan/Improvement Location Survey/Legal Description**)

1. Said Temporary Easement shall expire and be of no further force or effect one (1) year after the date of notice by the Grantee of the commencement of said temporary construction easement. More specifically, this Temporary Easement shall not commence until the Grantee provides a written notice to Grantor of the commencement of the Temporary Easement, which must be provided within one (1) year of the date of execution of this Agreement. The Grantor also grants to the Grantee the option to extend this Temporary Easement for a period not to exceed six (6) months from the date of expiration hereof.

2. City will use the Temporary Easement Property as access to the _____ and _____ sides of _____ for the restoration of that property. The City may have to install an earth ramp to access the area and this may entail the removal of the existing low rock retaining walls. The City will repair or replace any rock walls to existing conditions. The Temporary Easement Property will be restored to its current condition. The City will remove any dead and downed trees and clean, finish grade and reseed all disturbed areas with native grasses and wildflowers.

3. During the term of this Temporary Easement, Grantor shall not erect or construct, or allow to be erected or constructed, any building or other structure which may interfere with Grantee's full enjoyment of the rights hereunder.

4. The parties hereto agree that neither has made nor authorized any agreement with respect to the subject matter of this instrument other than expressly set forth herein, and no oral representation, promise or consideration different from the terms herein contained shall be binding on either party, or its agents or employees hereto.

5. Grantor warrants that he has full and lawful authority to make the grant hereinabove contained, and promises and agrees to defend Grantee in the exercise of its rights hereunder against any defect in Grantor's title to the land involved or Grantor's rights to make the grant hereinabove contained.

6. Whenever used herein, the singular number shall include the plural, the plural the singular; and the use of any gender shall be applicable to all genders. All of the covenants herein contained shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

WITNESS our hand(s) and seal(s) this _____ day of _____, 20____.

GRANTOR:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by _____, as _____, for _____.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public
Address:

GRANTEE: CITY OF BLACK HAWK

By: _____ Date: _____
David D. Spellman, Mayor

Attest: _____
Melissa A. Greiner, City Clerk

Approved as to legal form: _____
Corey Y. Hoffmann, City Attorney

EXHIBIT B

HISTORIC PRESERVATION EASEMENT AGREEMENT – (DEED RESTRICTION)

SAMPLE

HISTORIC PRESERVATION EASEMENT

This **HISTORIC PRESERVATION EASEMENT AGREEMENT** (the "**Easement**") is entered into as of the _____ day of _____, 20____, by and between _____ whose property address is _____, Black Hawk, Colorado 80422 ("**Grantor**"), and the **CITY OF BLACK HAWK**, a Colorado home rule municipality, whose address is 201 Selak Street, P.O. Box 68, Black Hawk, Colorado, 80422 (the "City").

WITNESSETH

WHEREAS, Grantor owns certain real property (the "**Property**") and the improvements thereon (the "**Structure**") located at _____, in the City of Black Hawk, Gilpin County, Colorado, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference;

WHEREAS, the Structure has certain architectural, historic and/or cultural significance, which attributes are collectively described in **Exhibit B** attached hereto and incorporated herein by this reference, the Structure is located in a National Register historic district, and has been deemed by the United States Department of the Interior as contributing to the historic significance of the historic district;

WHEREAS, in exchange for the grant of this Easement, the City has agreed to expend a portion of its Restoration and Preservation Grant Funds to restore and/or preserve the Structure; and

WHEREAS, the grant of this Easement by Grantor to the City will assist in preserving and maintaining the Structure for the benefit of the general public.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and restrictions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged, Grantor and the City hereby covenant and agree as follows:

1. Grant of Easement. In specific consideration for the expenditure of funds by the City on the preservation and restoration of the Property and the Structure (the "**Project**"), Grantor hereby grants to the City an easement for ten (10) years to preserve the Structure as hereinafter described following completion of the Project as follows:

a. Easement Area. The Area of the Easement encompasses the exterior of the structure including but not limited to wall surfaces, railings, decorative woodwork, decorative metalwork, doors, windows, roofs, decorative elements, interior drywall and the sub-floor.

b. Scope of Easement. This Easement conveys to the City an interest in the Structure as hereinafter specifically provided, which includes the benefit of the following covenants, conditions and restrictions:

i. The exterior of the Structure, including interior drywall and the sub-floor, is not to be visually or structurally altered from the condition existing as of the Effective Date of this Easement without the City's Consent. Nothing shall be erected on the Property that impairs the visibility of the Structure from the street or grade level.

ii. The Structure shall not be demolished and no new structures or additions of any kind to the exterior of the Structure, including interior drywall and the sub-floor,

may be constructed at the Property without the City's Consent, except as may be required by law.

iii. The Property and the Structure shall be maintained in a good and sound state of repair in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* as modified from time to time (the "Standards"), to prevent deterioration in its exterior appearance existing on the date hereof, as depicted in **Exhibit B**. Such maintenance and repair includes replacement, repair, and reconstruction by Grantor whenever reasonably necessary to preserve the Property and the Structure in substantially the same condition and state of repair as that existing on the date hereof.

iv. Grantor, at its expense, shall keep the Property and the Structure insured by a reputable insurance company licensed and in good standing in the state in which the Structure is located with a replacement cost insurance policy against loss or damage resulting from fire, windstorm, vandalism, explosion and such other hazards as typically required by prudent Property Owners in the same geographic area as the Property; and shall **carry and maintain comprehensive public liability insurance under a policy issued by an insurance company that names the City as an additional insured** party thereunder.

v. The Property shall not be subdivided or otherwise parcelized without the City's consent.

2. City Review Procedures. The City has the discretion when reviewing applications under Section 1, to give or withhold its consent, conditionally or unconditionally, but such consent shall not be unreasonably withheld, conditioned or delayed. "Consent" as used herein, means that the City shall have given or withheld its prior written consent to the requested action, or approval. The basis for the City's review of and Consent to proposed changes to the Project shall be the Standards.

3. Owner's Representative Payment. The City hereby agrees to reimburse Grantor for all Owner's Representative fees incurred on the project, provided that the Owner's Representative is a third party Owner's Representative consulting firm or individual hired to perform the Owner's Representative tasks and that such individual or firm is not the Grantor themselves, related to the Grantor, or an employer of someone related to the Grantor.

4. Right of Entry. Grantor agrees that representatives of the City may upon prior reasonable notice and at times reasonably acceptable to Grantor inspect the Property, including the Structure. Inspections will normally occur outside the Structure, except if the City determines interior access is reasonably necessary to establish compliance with this Easement.

5. Obligations of Grantor. Grantor shall pay before delinquency all real estate taxes, assessments, fees or charges properly levied upon the Property and shall furnish the City with evidence of payment upon request. Grantor shall keep the Property free of any liens or encumbrances for obligations incurred by Grantor, other than liens or encumbrances secured by the Project that are subordinate to this Easement. The City shall have no liability or responsibility of any kind related to the ownership, operation, insurance, or maintenance of the Property other than as specifically identified in this Easement.

6. Condemnation. Grantor shall notify the City of any condemnation proceeding with respect to the Property. The City has the option, but not the obligation, to participate in any action or settlement with respect to any condemnation and to claim a reasonable portion of any net proceeds.

7. Remedies for Breach.

a. Upon a breach of any provision of this Easement, the City may pursue all available legal and equitable remedies, including injunction, to prevent or seek remedy for such violation. The prevailing party in any enforcement shall be entitled to reasonable attorney fees, costs and expenses. Grantor expressly agrees that if Grantor directly acts, or Grantor's officers, agents, representatives or employees directly act pursuant to Grantor's instructions, to cause a demolition or willful destruction of a material portion of the Property including the Structure, the City, in addition to any other equitable relief, is entitled to recover as liquidated damages reasonable costs of the Project prior to such demolition or destruction. Grantor agrees for itself and its successors and assigns that such liquidated damages are reasonable as of the Effective Date and

b. If the Property has substantially deteriorated as a result of a breach of subparagraph 1(b)(iii), then the City may send written notice to Grantor requesting that the Project be repaired to achieve a level of maintenance consistent with subparagraph 1(b)(iii). If, within ninety (90) days of receipt of such notice, Grantor fails to commence the implementation of repair actions reasonably satisfactory to the City, then the City or its agents may enter upon the Property and cause repairs to be made at Grantor's sole expense. Grantor's failure to reimburse the City for any actions taken by the City pursuant to this paragraph within 30 (thirty) days of Grantor's receipt of invoice(s) and supporting documentation for such actions shall constitute a lien on the Property accruing interest at the lesser of the maximum per annum rate permitted by law or 12% (twelve percent) per annum. Upon payment by Grantor of all amounts due to the City pursuant to this paragraph, including all interest accrued hereunder, the City shall deliver to Grantor a release of the lien.

8. Nature and Duration. The covenants, conditions and restrictions in this Easement run with the land constituting the Property for ten (10) years and are binding upon Grantor and the successors and assigns of Grantor for the benefit of the City.

9. Release of Easement. Grantor and the City agree that this Easement may be released by the City upon application by the Grantor or the Grantor's successor in interest upon satisfaction of the following conditions:

a. The expiration of ten (10) years from the Effective Date of the Preservation Easement; and

b. The Property shall have been maintained and is as of the date of the application for such a release in a good and sound state of repair in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* as modified from time to time (the "Standards") in order to preserve the Property and the Structure in substantially the same condition and state of repair as that existing on Effective Date.

10. Indemnification. Grantor shall hold harmless, indemnify and defend the City and its officers, employees, agents and contractors, successors and assigns of each of them (collectively, "Indemnified Parties") from and against all liabilities, penalties, costs, damages, expenses, causes of action, claims, or judgments (collectively, "Claims") in any way related to: (1) any real property taxes and general or special assessments assessed and levied against the Project; or (2) this Easement, the conveyance or possession thereof or the exercise of any rights hereunder, excluding, however, any Claims based in whole or in part upon the gross negligence or willful misconduct of any Indemnified Party, provided that the Indemnified Party gives Grantor prompt notice of each such Claim, cooperates in the defense thereof, and Grantor shall have the sole right to defend and/or settle each such Claim.

11. Entire Agreement and Severability. This instrument and the attached Exhibits contain the entire agreement of the parties with respect to the Easement and supersede any prior agreements relating to the Easement. If any provision of this Easement is held unenforceable by a court of competent jurisdiction, the remainder of the Easement shall continue in full force and effect.

12. Subordination. Grantor represents and warrants to the best of its knowledge that the only mortgage or deed of trust encumbering the Project is the security instrument identified in **Exhibit C** attached hereto. Concurrently herewith, the holder of the security instrument hereto has agreed, by separate instrument (in the form of **Exhibit D** attached hereto) to be recorded immediately after this Easement, to subordinate its rights in the Project to this Easement to the extent necessary to permit the City to enforce the purpose of the Easement in perpetuity and to prevent any extinguishment of this Easement by the holder thereof. The priority of any present or future security instrument with respect to any valid claim on the part of the holder thereof to the proceeds of any sale, condemnation proceedings or insurance, or to the leases, rents and profits of the Property or Structure shall not be affected by this Easement, and any liens created by the City's exercise of any of its rights under this Easement shall be junior to such present and future security instrument; provided that this Easement shall not be subordinated in any other respect whatsoever.

13. Notices. All notices given pursuant to this Easement shall be in writing and sent to the other party at the address set forth in the first paragraph hereof, by US Mail or overnight express courier. Either party may change its notice address by notice to the other party. Either party may, from time to time, specify one additional party to receive written notice in order for such notice to be binding.

14. Amendments. This Easement may be amended only by a written instrument signed by Grantor and the City.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above-written.

CITY OF BLACK HAWK

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

GRANTOR

By: _____
Insert Grantor Name

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this ____ day
of _____, 20____, by _____.

My commission expires: _____

(S E A L)

Notary Public

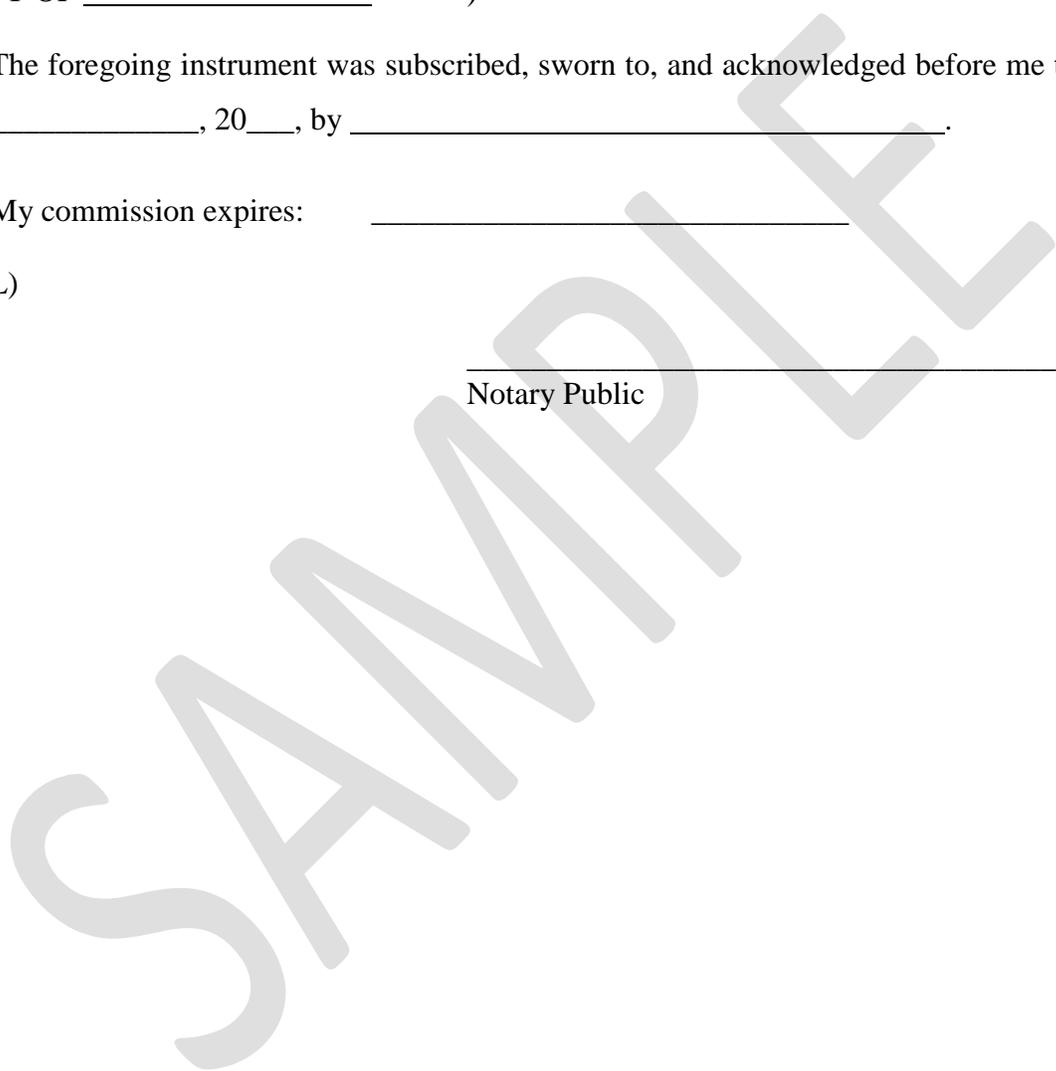


EXHIBIT A – TO PRESERVATION EASEMENT AGREEMENT

DESCRIPTION OF REAL PROPERTY AND IMPROVEMENTS

Property is located at _____, legally described as _____
_____, City of
Black Hawk, based upon the City of Black Hawk survey map of Block _____, of the Map
of Black Hawk, surveyed by Albert Johnson City Surveyor, dated May and June 1866, City of Black
Hawk, County of Gilpin, State of Colorado

SAMPLE

EXHIBIT B – TO PRESERVATION EASEMENT AGREEMENT

HISTORICAL SIGNIFICANCE OF THE SUBJECT PROPERTY

Based upon the 1991 Black Hawk – Central City Historic District Inventory and resurvey of 2011.

PROPERTY AND STRUCTURE MAINTENANCE

In accordance with *The Secretary of the Interior’s Standards for the Treatment of Historic Properties*

SAMPLE

EXHIBIT C – TO PRESERVATION EASEMENT AGREEMENT

SECURITY INSTRUMENT

Grantor represents and warrants to the best of its knowledge that the only mortgage or deed of trust encumbering the Project is the security instrument identified and attached hereto. A copy of the Title Commitment is attached.

OR

Grantor represents and warrants to the best of his/her knowledge that there is no mortgage or deed of trust encumbering the Project, therefore no security instrument is identified or attached hereto. A copy of the Title Commitment is attached.

SAMPLE

EXHIBIT D - TO PRESERVATION EASEMENT AGREEMENT

PARTIAL SUBORDINATION OF RIGHTS

The holder of the security instrument hereto has agreed, by separate instrument (in the form of an executed Partial Subordination of Rights) to be recorded immediately after this Easement, to subordinate its rights in the Project to this Easement to the extent necessary to permit the city to enforce the purpose of the Easement for a period of ten (10) years and to prevent any extinguishment of this Easement by the holder thereof.

OR

Grantor represents and warrants to the best of his/her knowledge that there is no mortgage or deed of trust encumbering the Project, therefore no request for partial subordination of rights is required.

SAMPLE

PARTIAL SUBORDINATION OF RIGHTS

Page 2 of 2

WHEREAS, Owner owns certain real property (the "Property") and improvements thereon (the "Structure") that are secured by the above-referenced Deed of Trust;

WHEREAS, the Structure has certain architectural, historic and/or cultural significance, is located in a National Register historic district and has been deemed by the United States Department of the Interior as contributing to the historic significance of the historic district; and

WHEREAS, Owner desires to enter into a Historic Preservation Covenant and Deed Restriction Agreement (the "Covenant") with the City of Black Hawk, Colorado (the "City"), for the expenditure of funds by the City on the preservation and restoration of the Property and the Structure (the "Project");

NOW THEREFORE, Lender hereby agrees to subordinate its rights in the Project to the Covenant to the extent necessary to permit the City to enforce the purpose of the Covenant in perpetuity, and to prevent any extinguishment of the Covenant by the holder thereof. The priority of any present or future security instrument with respect to any valid claim on the part of the holder thereof to the proceeds of any sale, condemnation proceedings, or insurance, or to the leases, rents and profits of the Property or Structure shall not be affected by the Covenant, and any liens created by the City's exercise of any of its rights under the Covenant shall be junior to such present and future security instrument; provided that the Covenant shall not be subordinated in any other respect whatsoever.

LENDER:

By: _____

Its: _____

Attest: _____

CITY OF _____, **STATE OF** _____

Please return signed original to:

Cynthia Linker, Community Planning and Development Administrator
City of Black Hawk, PO Box 68, Black Hawk, CO 80422 - 303-582-0615 – clinker@cityofblackhawk.org

**PARTIAL SUBORDINATION OF RIGHTS
COVER LETTER EXAMPLE**

Date: _____

Lender: _____

Re: Request for Partial Subordination of Rights
Property Address: _____

To Whom It May Concern:

I/We desire to enter into a Historic Preservation Covenant and Deed Restriction Agreement with the City of Black Hawk, Colorado for the expenditure of funds by the City on the historic preservation and restoration of **my/our** property on which you hold a Deed of Trust. Because the structure has certain architectural, historic and/or cultural significance, is located in a National Register historic district and has been deemed by the United States Department of the Interior as contributing to the historic significance of the historic district, it qualifies for the City of Black Hawk's Historic Preservation Easement Program.

To participate in the program, the City of Black Hawk requires that you partially subordinate your rights in the property only to the extent necessary to permit the City to enforce the purpose of the Historic Preservation Covenant and Deed Restriction Agreement and to prevent its extinguishment. Any liens created by the City's exercise of its rights under the Historic Preservation Covenant and Deed Restriction Agreement will be junior to any present and future security instrument on the property as long as the Historic Preservation Covenant and Deed Restriction Agreement is not subordinated in any other respect.

Enclosed you will find a Request for Partial Subordination of Rights and a copy of the Historic Preservation Covenant and Deed Restriction Agreement.

Sincerely,

Property Owner

EXHIBIT IV

HISTORIC PRESERVATION EASEMENT HOME PROGRAM OUTLINE



City of Black Hawk

Community Planning and Development
211 Church Street
P.O. Box 68
Black Hawk, CO 80422
Ph: 303-582-0615 Fax: 303-582-2239

HISTORIC PRESERVATION – HOME PROGRAM OUTLINE

DATE: _____

OWNERS: _____

PROPERTY ADDRESS: _____

A. HOUSE INFORMATION:

Year home was built: _____

Additions on House: _____

Date Addition was added: _____

Approximate Square Footage of Home: _____

Floors: _____

House Occupied: YES NO

Will Owner empty house and live elsewhere during construction: YES NO

Approximate Renovation Start Date: _____

B. REASONS PROPERTY OWNER IS REQUESTING RENOVATIONS TO HOUSE:

For purposes of the Historic Preservation Easement Program, the exterior of the Property to which the Easement applies shall include all exterior features, and the drywall phase including installation and finish to a paintable surface for exterior walls only, and shall also include the sub-floor.

Identified problems in need of repairs:

Roof Leaks. Roof material: _____

Exterior Wall & Trim Condition. Exterior material: _____

Exterior Paint. Condition: _____

Visible Structural Problems. Roof line: _____ Walls: _____

Rodent Infestation: _____

Crawl Space. Foundation type: _____

Site Drainage Problems. Location: _____

EXHIBIT V

REFERENCED CITY OF BLACK HAWK RESOLUTIONS

Resolution No. 10-2010

A Resolution amending the City of Black Hawk Community Restoration and Preservation Fund to provide a process for determining payment of Federal potential Income Tax Liability.

Resolution No. 19-2013

A Resolution establishing a contingency on Public Improvement projects to be managed at the City Manager's discretion.

Resolution No. 3-2014

A Resolution establishing a contingency on Grant Projects under the Community Restoration and Preservation Fund Grant Program to be managed at the City Manager's discretion.

Resolution No. 13-2016

A Resolution temporarily rebating City Sales tax on retail items delivered to City residential properties for personal consumption and use.

Resolution 14-2016

A Resolution temporarily rebating City Use Tax on construction and building materials for residential projects within the City's National Historic Landmark District.

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

Resolution No. 10-2010

TITLE: A RESOLUTION AMENDING THE CITY OF BLACK HAWK COMMUNITY RESTORATION AND PRESERVATION FUND GUIDE TO PROVIDE A PROCESS FOR DETERMINING PAYMENT OF FEDERAL POTENTIAL INCOME TAX LIABILITY

WHEREAS, with the adoption of HB 04-1381, a provision of C.R.S. § 12-47.1-1301(3) that prohibited the payment of income tax liability associated with the receipt of a residential grant within the City of Black Hawk was deleted from C.R.S. § 12-47.1-1301(3) for all residential grants awarded on or after May 12, 2004;

WHEREAS, the City Council of the City of Black Hawk desires to provide for payment of federal income tax liability associated with the receipt of a residential grant awarded on or after May 12, 2004, and at the same time protect the confidential financial information of those individuals that may be entitled to such payment pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*; and

WHEREAS, the City Council of the City of Black Hawk desires to develop a process for paying the federal income tax liability associated with the receipt of a residential grant that is in accord with the law and provides notice to the public of the expenditure of public funds and at the same time protects the privacy interests related to confidential financial information of those individuals receiving such grant funds.

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

Section 1. The recipient of a residential grant approved by the City Council pursuant to the City of Black Hawk Community Restoration and Preservation Fund Guide to Programs (the "Grant Program") seeking payment of federal income tax liability shall submit to the City of Black Hawk Finance Department a copy of the documents described hereinbelow in order to qualify for consideration to receive the payment of federal income tax liability associated with the preservation and restoration of the recipient's residential property.

A. A copy of a letter from a Certified Public Accountant or Enrolled Agent specifying the specific federal tax liability amount for the tax year in question associated with the receipt of a grant pursuant to the Grant Program, and

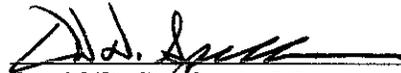
B. A fully executed document in the form attached hereto as **Exhibit A** and incorporated herein by this reference, signed by the grant recipient(s).

Section 2. The City Manager, in coordination and consultation with the Finance Director, shall provide to the City Council a report indicating the total federal income tax liability due grant recipients on a quarterly basis based on receipt of the information set forth in Section 1 of this Resolution, and the City Council shall consider by separate Resolution whether to approve the federal income tax liability for its residential grant program on a quarterly basis. If the City Council approves the payment of federal income tax liability by Resolution, said Resolution will identify the recipients of payment for federal income tax liability, but shall not disclose the amount paid to each recipient.

Section 3. The City Council may also determine to budget a certain amount within the City's annual budget for the payment of such federal income tax liability, and if the amount has been duly budgeted, and the approval of the grant included approval of an amount to be determined for federal income tax liability, the City Manager may approve the expenditure of the federal income tax liability, subject to ratification by the City Council by Resolution in accordance with section 2 of this Resolution, and provided said applicant has provided the necessary documentation as provided in Section 1 of this Resolution.

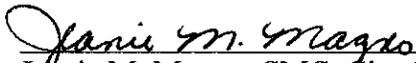
Section 4. For the purpose of determining reimbursement of State of Colorado income tax liability, the City Council further determines that a recipient of a residential grant must elect in writing prior to the receipt of any grant proceeds whether to seek the Colorado income tax credit for qualifying rehabilitation projects pursuant to C.R.S. § 39-22-514, or whether to apply to the City Manager consistent with C.R.S. § 12-47.1-1301, as amended, for the reimbursement of any Colorado income tax liability paid as a result of the receipt of the grant.

RESOLVED AND PASSED this 28 day of April, 2010.



David D. Spellman, Mayor

ATTEST:



Jeanie M. Magno, CMC, City Clerk

Exhibit A

Federal Income Tax Liability

City of Black Hawk
Attn: Finance Director
P.O. Box 68
Black Hawk, Colorado 80422

Dear Sir or Madam:

I (We) have completed our Federal Tax Returns for tax year 20____, and are requesting that the City of Black Hawk issue a check to cover our total federal income tax liability for receipt of the residential grant for my (our) property located at _____ in the amount of \$_____.

I (We) certify that for the Federal Income Tax Return filed for tax year 20____, my (our) total tax liability is \$_____ and my tax liability would have been \$_____ without reporting the grant.

I (We) certify that an application for the Colorado Historical Preservation Income Tax Credit has been submitted and I (we) understand that no reimbursement will be available from the City of Black Hawk for my State income tax liability.

Or

I (We) certify that I (we) will not submit an application for the Colorado Historical Preservation Income Tax Credit and are asking for reimbursement from the City in the amount of \$_____ for my State income tax liability.

I (We) certify that the above information is true and correct. To the extent the information is not correct, I (we) understand that I (we) may be held personally liable to repay all money received hereunder and to pay interest, costs, and attorneys' fees incurred by the City of Black Hawk in collecting such amounts, and that I (we) may also be subject to criminal prosecution.

(Name)

Date

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 19 -2013

TITLE: A RESOLUTION ESTABLISHING A CONTINGENCY ON PUBLIC IMPROVEMENT PROJECTS TO BE MANAGED AT THE CITY MANAGER'S DISCRETION

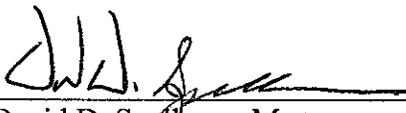
WHEREAS, Article IX of Chapter 1 of the Black Hawk Municipal Code sets forth procedures for the awarding of contracts for public improvements; and

WHEREAS, in furtherance of the awarding of contracts for public improvements as authorized by Article IX of Chapter 1 of the Black Hawk Municipal Code, the City Council desires to authorize the City Manager to manage the contingency in a fixed amount of ten percent (10%) for any such contract, without having the contingency specifically awarded to the successful contractor.

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

Section 1. The City Council hereby directs that the City Manager is authorized to manage a contingency in the amount of ten percent (10%) for any City contract for the design and/or construction of public improvements, without the need or requirement that the City Council specifically add such contingency to the award of the contract. Nothing in this Agreement shall preclude or prevent the City Manager from seeking City Council approval for any change orders, notwithstanding the authority granted by this Resolution.

RESOLVED AND PASSED this 24 day of April, 2013.



David D. Spellman, Mayor

ATTEST:



Jeanie M. Magno, CMC, City Clerk

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 3-2014

TITLE: A RESOLUTION ESTABLISHING A CONTINGENCY ON GRANT PROJECTS UNDER THE COMMUNITY RESTORATION AND PRESERVATION FUND GRANT PROGRAM TO BE MANAGED AT THE CITY MANAGER'S DISCRETION

WHEREAS, in furtherance of the awarding of contracts for public improvements as authorized by Article IX of Chapter 1 of the Black Hawk Municipal Code, the City Council has previously authorized the City Manager to manage the contingency in a fixed amount of ten percent (10%) for any such contract, without having the contingency specifically awarded to the successful contractor; and

WHEREAS, the City Council desires to include within such authorization grant projects under the Community Restoration and Preservation Fund Grant Program.

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

Section 1. In addition to the previous authorization given to the City Manager for management of design and/or construction of public improvement projects, the City Council further directs that the City Manager is authorized to manage a contingency in the amount of ten percent (10%) for any grant projects under the Community Restoration and Preservation Fund Grant Program without the need or requirement that the City Council specifically add such contingency to the award of the contract. Nothing in this Agreement shall preclude or prevent the City Manager from seeking City Council approval for any change orders, notwithstanding the authority granted by this Resolution.

RESOLVED AND PASSED this 12 day of February, 2014.



David D. Spellman, Mayor

ATTEST:



Jeanie M. Magno, CMC, City Clerk

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 13-2016

**TITLE: A RESOLUTION TEMPORARILY REBATING CITY SALES TAX ON
RETAIL ITEMS DELIVERED TO CITY RESIDENTIAL PROPERTIES FOR
PERSONAL CONSUMPTION AND USE**

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

Section 1. The Mayor and Board of Aldermen hereby resolve to temporarily rebate City sales tax on retail items delivered to City residential properties from out of City vendors for personal consumption and use, including the amount paid to the Gilpin County School District RE-1, for a total rebate amount of five and one-half percent (5.5%), subject to the following conditions:

- A. Said rebate shall only be provided to City residents who can provide proof in the form of a receipt that such sales tax was actually paid;
- B. Said receipt shall be submitted to the City for the rebate during the same calendar year in which the sales tax was paid or within thirty (30) days of delivery, whichever is later; and
- C. Said rebate shall expire on April 2, 2018.

RESOLVED AND PASSED this 24th day of February, 2016.



David D. Spellman, Mayor

ATTEST:



Melissa A. Greiner, City Clerk



STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 14-2016

**TITLE: A RESOLUTION TEMPORARILY REBATING CITY USE TAX ON
CONSTRUCTION AND BUILDING MATERIALS FOR RESIDENTIAL
PROJECTS WITHIN THE CITY'S NATIONAL HISTORIC LANDMARK
DISTRICT**

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

Section 1. The Mayor and Board of Aldermen hereby resolve to temporarily rebate City use tax of four percent (4%) on construction and building materials for projects which require a building permit for which use tax on construction and building materials is imposed, on those residential properties located within the City's National Historic Landmark District. Said rebate shall expire on April 2, 2018.

RESOLVED AND PASSED this 24th day of February, 2016.



David D. Spellman, Mayor

ATTEST:



Melissa A. Greiner, City Clerk



EXHIBIT VI
FUNDING MATRIX

FUNDING MATRIX

<u>Scope of Work</u>	<u>Preservation Easement</u>	<u>Rehabilitation Grant</u>	<u>Comments</u>
Excavation	✓		
Necessary Tree Removal	✓		
Historic Rock Wall Repairs	✓		
Historic Fencing	✓		
Outbuildings	✓		
Foundation Systems	✓		
Perimeter Foundation Drainage	✓		
Subfloor Repair	✓		
Exterior Doors and Hardware	✓		
Exterior Windows and Hardware	✓		
Skylights (if existing)	✓		
Exterior Siding and Trim	✓		
Exterior Appurtenances	✓		
Roofing	✓		
Sheet Metal and Flashing	✓		
Downspouts and Gutters	✓		
Site Utilities	✓		
Landscaping - Limited	✓		As allowed per Preservation Easement Guide to Programs
Chimney	✓		
Fireplace		✓	Must have doors installed to prevent heat loss and drafts – Rehabilitation Grant applies to fireplaces only if this is the sole heating source
Outdoor Lighting Replacement	✓		
Reversal of Inappropriate Alterations or Additions	✓		
Reconstruction/Restoration of Original Exterior Architectural Details	✓		
Interstitial Floor and Ceiling Systems		✓	
Roof Framing Systems/Roof Replacement	✓		
Exterior Wall Construction	✓		
Interior Wall Finishes		✓	
Interior Ceiling Finishes		✓	
Floor Finishes		✓	
Cabinetry and Hardware		✓	
Trim		✓	

Approved by Resolution 21-2016 on March 23, 2016

<u>Scope of Work</u>	<u>Preservation Easement</u>	<u>Rehabilitation Grant</u>	<u>Comments</u>
Interior Doors and Hardware		✓	
Countertops		✓	
Backsplash		✓	
Shower and Bath Accessories		✓	
Kitchen Fixtures		✓	
Bathroom Fixtures		✓	
Hose Bibs		✓	
Heating Systems		✓	
Ventilation Systems		✓	
Interior Rough MEP Utilities	✓		
Interior Trim MEP Utilities		✓	
BBQ Gas Line	✓		
Interior Lighting		✓	
Exterior Lighting	✓		
Ceiling Fans		✓	
Fire and Carbon Monoxide Detection		✓	
Radon Mitigation Systems	✓	✓	Rehabilitation Grant, if not included in a complete Rehabilitation with a Preservation Easement.