

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB23

ORDINANCE NUMBER: 2016-23

TITLE: AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND THE CITY AND COUNTY OF DENVER

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

Section 1. The City of Black Hawk hereby approves the Intergovernmental Agreement between the City of Black Hawk and the City and County of Denver regarding technical support for the proposed implosion of a parking garage, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.

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

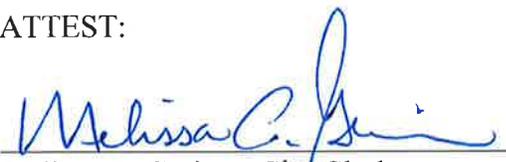
Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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

READ, PASSED AND ORDERED POSTED this 28th day of September, 2016.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, City Clerk



INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into, effective as of the date set forth on Denver’s signature page (“Effective Date”), by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation, whose address is 1437 Bannock Street, Room 350, Denver, Colorado 80202 (“Denver”) and **CITY OF BLACK HAWK**, a Colorado municipal corporation, whose address is 196 Clear Creek Street, P.O. Box 68, Black Hawk, Colorado 80422 (“Black Hawk”), individually referred to as a “Party” and jointly referred to as the “Parties”.

RECITALS

A. Black Hawk wishes to have the benefit of the services of an employee of the Denver Fire Department (“DFD Employee”) with knowledge and experience that will assist Black Hawk and its contractor with respect to a proposed implosion of a parking garage within the boundaries of Black Hawk.

B. On an intergovernmental basis, the Denver Fire Department (“DFD”) is willing to provide the services of the DFD Employee on the limited basis set forth in this Agreement and the Scope of Work, with the understanding that 1) the DFD Employee remains an employee of Denver at all times, 2) no contractual relationship exists between the DFD Employee and Black Hawk, and 3) the compensation for these services shall be paid directly to Denver.

In consideration of the premises set out above in the Recitals and the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

1. BASIC TERMS:

A. Services: Denver, acting through DFD, is willing to assign a DFD Employee, acceptable to Black Hawk, who will provide the technical support set forth in the Scope of Work attached to this Agreement as **Exhibit A** (“Services”). The DFD Employee will have the experience and knowledge common to major urban fire departments with respect to controlled implosions of buildings. DFD may substitute another employee of DFD to provide the Services, upon the consent of Black Hawk. DFD shall make every reasonable effort to coordinate the Services with Black Hawk and other governmental entities with authority over the Services or any person or firm under contract with Black Hawk doing work which affects the Services. Denver agrees to allow Black Hawk to review any of the procedures and practices used by the

DFD Employee in performing the Services under this Agreement and to make available for inspection all notes and other documents related to the performance of the Services.

B. Limitations of Services and Liability: The Services are being provided in the context of an intergovernmental arrangement between Denver and Black Hawk and shall not be regarded, under any circumstances, as contracted professional services. As noted in the Scope of Work, the proposed removal of the parking garage involves certain technical difficulties and dangers with respect to the close proximity of other buildings and infrastructure. In no instance shall Denver, DFD or the DFD Employee be regarded as having any liability with respect to the safety and success of the implosion. Black Hawk shall be solely responsible for assuring that the implosion is conducted in accordance with all established health and safety standards.

C. Permits and Licenses: Black Hawk shall obtain, at its own expense, and maintain all permits or licenses, including any prescribed governmental authorizations or approvals, required for the performance of the Services and shall demonstrate, if requested, what actions Black Hawk has taken to comply with the required permits, licenses, authorizations or approvals.

2. TERM: The term of the Agreement is from October 1, 2016, through November 30, 2016 unless this Agreement is terminated earlier as provided in this Agreement or unless this Agreement is extended as provided in a separate amendment to this Agreement (“Term”).

3. COMPENSATION AND PAYMENT: Black Hawk agrees to pay Denver, as compensation for the time and Services of the DFD Employee, the rate of sixty-five dollars (\$65.00) an hour plus travel expenses during the Term of this Agreement. The total compensation will not exceed five thousand dollars (\$5000.00) unless otherwise agreed by Black Hawk and the DFD Fire Chief. Payment shall be made upon submittal of an invoice by DFD to Black Hawk and subject the satisfactory provision of the Services in accordance with **Exhibit A**.

It is understood and agreed that any payment obligation of Denver and Black Hawk hereunder, whether direct or contingent, shall extend only to funds appropriated by their respective city councils for the purpose of this Agreement, encumbered for the purpose of the Agreement and available for payment under this Agreement. The Parties mutually acknowledge that (i) neither Party by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of Denver or Black Hawk.

Black Hawk acknowledges that Denver is not obligated to execute an amendment to this Agreement for any further phase of Services other than as described herein.

4. TERMINATION FOR CONVENIENCE: Black Hawk and the DFD Fire Chief, upon giving five (5) business days written notice to the other (unless a longer period is given), may terminate this Agreement, in whole or part, when it is in the best interest of Black Hawk or Denver. To the extent that the DFD Employee has provided some portion of the Services for which Denver has not yet been compensated in accordance with this Agreement, such compensation for all such Services performed prior to the effective date of termination shall be paid to Denver. Neither Black Hawk nor Denver shall have legal recourse against the other for termination for convenience.

5. INDEPENDENT CONTRACTOR: It is understood and agreed that the status of both Black Hawk and Denver shall be that of an independent governmental entities, and it is not intended, nor shall it be construed, that Denver, DFD, or the DFD Employee are employees or officers of Black Hawk for any purpose whatsoever. It is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture between the Parties.

6. INSURANCE: At all times during the term of this Agreement, including any renewals or extensions, Denver shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act. It is acknowledged and agreed by the Parties that Denver, DFD, and the DFD Employee are not providing professional services for which professional liability insurance would be appropriate. Black Hawk or its contractor shall be solely responsible for obtaining and maintaining all insurance, including self-insurance, necessary and appropriate for the conduct of the implosion as described in the Scope of Work. This obligation shall survive the expiration or termination of this Agreement.

7. LIABILITY:

A. To the extent authorized by law and except as otherwise provided in this Agreement, Black Hawk shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any action or omission of Black Hawk or its officers, employees, contractors, and agents in connection with the subject matter of this Agreement.

B. To the extent authorized by law and except as otherwise provided in this Agreement, Denver shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by Denver, or its officers, employees, and agents in connection with the subject matter of this Agreement.

C. Each Party waives all claims and causes of action against the other Party for compensation, damages, personal injury or death which may result or occur as a consequence, direct or indirect, of the performance of this Agreement. Black Hawk and Denver are each responsible for their own negligence and that of their agents, officials and employees to the extent provided in the Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

D. Nothing in this paragraph 7 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, or to any other defenses, immunities, or limitations of liability available to Black Hawk and Denver against third parties by law. Likewise, nothing in this Agreement shall be deemed to be an assumption or acceptance of liability, or a waiver or release of any rights, privileges or protections, by Black Hawk and Denver under federal, state or local law or regulation or under common law.

E. No official, officer, director, agent, or employee of either Party shall be charged personally or held contractually liable to the other Party or its officials, officers, directors, agents, or employees under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

8. COMPLIANCE WITH LAW; VENUE:

A. General: Both Parties shall comply with all applicable laws of the United States, the State of Colorado, Black Hawk, and Denver, and all rules and regulations issued pursuant thereto.

B. Environmental: Black Hawk shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements relating to the Services. Black Hawk shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, “**Environmental Requirements**”), including but not limited to

Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “Hazardous Materials” shall mean asbestos, asbestos-containing materials, and asbestos contaminated soils, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and state statute counterpart to the federal statutes, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

C. Venue: Venue for any legal action relating to this Agreement shall lie in District Court in and for the City and County of Denver.

9. EXAMINATION OF RECORDS: Black Hawk agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of Black Hawk directly related to this Agreement.

10. ASSIGNMENT & SUBCONTRACT: Both Parties agree that the rights and obligations under this Agreement will not be assigned, transferred or subcontracted without the written permission of both Parties. Any attempt to assign, transfer or subcontract rights and obligations hereunder shall result in the termination of this Agreement.

11. NO THIRD PARTY BENEFICIARY: The Parties understand and expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than Black Hawk and Denver receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

12. NO AUTHORITY TO BIND TO CONTRACTS: Neither Party has authority to bind the other on any contractual matters. Final approval of all contractual matters which obligate the City must be by the City, as required by Denver Charter and ordinance. Final

approval of all contractual matters which obligate Black Hawk must be by Black Hawk, as required by Black Hawk law.

13. INTEGRATION & AMENDMENTS: This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force of effect unless embodied in a written amendment to this Agreement properly executed by the Parties. Any oral representation by any officer or employee of the City at variance with terms and conditions of this Agreement or any written amendment to this Agreement shall not have any force or effect nor bind the City.

14. SEVERABILITY: The Parties agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law of the State of Colorado or the federal government, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

15. CONFLICT OF INTEREST: No employee of Denver shall have any personal or beneficial interest in the services or property described in the Agreement; and Black Hawk shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

16. NOTICES: Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance, including changes to the persons to be notified or their addresses, shall be made:

By Black Hawk to:

Fire Chief
Denver Fire Department
City and County of Denver
745 West Colfax Avenue
Denver, CO 80204

And by Denver to:

City of Black Hawk
196 Clear Creek Street
P.O. Box 68
Black Hawk, CO 80422

All notices shall be in writing and provided by either personal delivery or certified mail, return receipt requested. All notices are effective upon personal delivery or upon placing the notice the United States mail.

17. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and Black Hawk further agrees to insert the foregoing provision in all approved subcontracts hereunder.

18. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

19. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

20. CITY EXECUTION OF AGREEMENT: This Agreement shall not be or become effective or binding on Black Hawk or Denver until it has been fully executed by all required signatories of Black Hawk and Denver.

21. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

22. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Black Hawk consents to the use of electronic signatures by Denver. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by Denver in the manner specified by Denver. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of

an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Contract Control Number: FIRES-201630473-00

Contractor Name: City of Blackhawk

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of October 06, 2016.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson
Debra Johnson, Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

By Michael B Hancock
Michael B Hancock, Mayor

APPROVED AS TO FORM:

Attorney for the City and County of
Denver

By Jason Moore
Jason Moore, Assistant City
Attorney

REGISTERED AND COUNTERSIGNED:

By Brendan Hanlon
Brendan Hanlon, CFO of Finance

By Timothy M. O'Brien
Timothy M. O'Brien, Auditor



Contract Control Number: FIRES-201630473-00

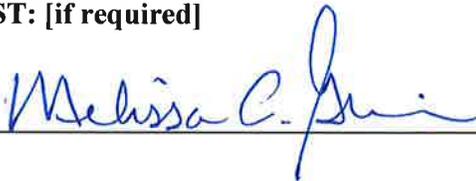
Contractor Name: City of Blackhawk

By: 

Name: DAVID D. SPELLMAN
(please print)

Title: MAYOR
(please print)

ATTEST: [if required]

By: 

Name: Melissa A. Greiner
(please print)

Title: City Clerk
(please print)





INCORPORATED 1864

Fire Department
196 Clear Creek Street
P.O. Box 68
Black Hawk, CO 80422
www.cityofblackhawk.org
303-582-0426 Office
303-582-2229 Fax

Mayor
David D. Spellman

Aldermen
Linda Armbright
Paul G. Bennett
Hal Midcap
Jim Johnson
Greg Moates
Benito Torres

City Attorney
Corey Y. Hoffmann

City Manager
Jack D. Lewis

**City Clerk /
Administrative Services Director**
Melissa A. Greiner

Finance Director
Lance R. Hillis

Fire Chief/Emergency Manager
Donald E. Taylor

Police Chief
Stephen N. Cole

Public Works Director
Thomas Isbester

**Community Planning & Development
Administrator**
Cynthia L. Linker

**COLORADO'S SECOND OLDEST
MUNICIPAL CORPORATION**

Scope of Work Denver Fire Department Consulting Support Monarch Garage Implosion

1: Introduction

The City of Black Hawk by and through the Black Hawk Fire Department (the "City") is looking for consulting to provide support for the upcoming implosion of the Monarch Parking Garage by a private contractor. Consulting work to include review of submissions by the contractor and providing comment prior to issuance of a City of Black Hawk blasting permit. Depending upon the opinion of the consultant may include site visits the day before and the day of the implosion which is currently scheduled for the beginning of November 2016. Deliverables would include written communication via email or verbal via phone to provide comment on submitted plans within a 5-7 day period. As stated, depending upon the complexity of the project, it may be requested for the consultant to visit the implosion site upon signing of the contract, the day before the event and during the event. This would be agreed to after initial review of the project and based upon the needs of the consultant.

1.1 Background

The existing Monarch parking structure will need to undergo complete demolition upon the completion of the new parking structure to make way for a 20+ story high rise. The existing structure is a post-tension construction that has been determined to have critical concerns if the attempt is made to mechanically remove it. The ownership has contracted with a third party to implode approximately 75-80% of the structure after reinforcing the 20-25% which is cosmetically attached to the current casino. The City of Black Hawk, while frequently permitting blasting for rock removal, has little experience regarding large scale demolition via implosion.

1.2 Scope of Work

Provide review and comment of submitted plans and proposals for the implosion project. Based upon the recommendation of the consultant, site visits, as described above, may be required. The City seeks to have an outside consultant with expertise in this area provide technical support for the plan and process. Timeline will be upon execution of this agreement to provide assistance, as necessary, until the implosion occurs which is currently scheduled for the beginning of

November 2016. This date is contingent upon the successful completion and occupancy of the new parking structure.

1.3 Requirements

The City will provide submitted plans and permit items to the consultant within 48 hours of receipt for review and comment. The City will also accommodate a site visit and coordinate such with the property owner, if requested, at the commencement of this agreement for a better overall understanding of the project. The City agrees to reimburse the Denver Fire Department for the hourly rate of the consultant for review, comment and site time. Travel expensed in accordance with Federal travel rate will be paid. The Denver Fire Department will provide review and comment of submitted plans within 5-7 days to allow the City to meet its 10 day plan review commitment to the owner and contractor. There may be the necessity for verbal communication should questions arise. Based upon the complexity of the project and needs of the consultant there may be the necessity for up to 3 site visits during the process. The City and County of Denver shall provide an invoice of expenses at the end of the project for payment by the City within 30 days. Should the project extend past the anticipated November implosion to date, expenses shall be invoiced to the City for payment. If the project is extended, an extension of this contract may be agreed upon by both parties.

2 Compliance

The City of Black Hawk has adopted the 2015 IFC and its associated NFPA standards. The Code and standards will be the governing documents in addition to City codes and policies.

3 Project Deliverables

As listed in Section 1 and 1.3 above.

4 Project Timeline

Project shall commence upon approval of the agreement and conclude upon the completion of the implosion currently scheduled for the beginning of November. Should the implosion be delayed the agreement may be extended upon agreement of both parties.

5 Budget/Costs

The City does not have an allocated budget as consulting fees are passed through to the permit applicant in accordance with City policy. The City will pay hourly rates for the consultant and any travel expenses as stated above and then seek reimbursement from the permit applicant. However, the City acknowledges its obligation to pay the City and County of Denver, and then seek reimbursement from the permit holder.

DT