REGULAR MEETING AGENDA
City of Black Hawk City Council
211 Church Street, Black Hawk, CO

September 25, 2019
3:00 p.m.

RINGING OF THE BELL:
1. CALL TO ORDER:
2. ROLL CALL & PLEDGE OF ALLEGIANCE:
3. AGENDA CHANGES:
4. CONFLICTS OF INTEREST: (Council disclosures are on file w/City Clerk & Sec. of State)
5. INTRODUCTION OF NEW EMPLOYEE: David Young, Firefighter
6. PUBLIC COMMENT: Please limit comments to 5 minutes
7. APPROVAL OF MINUTES: September 11, 2019
8. PUBLIC HEARINGS:
   A. CB20, an Ordinance Approving the Proposed Eighth Amendment to the Service Plan of the Silver Dollar Metropolitan District
   Notice is hereby given to all interested persons to appear at the public hearing before the City Council of the City of Black, Colorado at 211 Church Street, Black Hawk, Gilpin County, Colorado, on the 25th day of September, 2019, at 3:00 p.m., at which time the City Council shall determine whether to approve, conditionally approve, or disapprove the proposed Eighth Amendment of the Silver Dollar Metropolitan District to authorize the District to provide (1) transportation services; (2) activities in support of business recruitment, management and development; and (3) a change in the number of the District’s Board of Directors from five (5) to nine (9).
   B. CB21, an Ordinance Amending Chapter 16 of the Black Hawk Municipal Code to Amend the Commercial/Business Services Zoning District, the History Appreciation and Preservation District, and the Definitions Sections of the City's Zoning Code
   C. CB22, An Ordinance Approving the Grant Agreement Between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk
9. ACTION ITEMS:
   A. Resolution 61-2019, A Resolution Awarding the Bid and Approving the Contract Between the City of Black Hawk and Avery Asphalt, Inc. in an Amount Not To Exceed $61,760.00 for Construction of the Chase Street Asphalt Patching Project
   B. Resolution 62-2019, A Resolution Approving Amendment No. 2 to the Construction Manager/General Contractor Agreement Executed on February 27, 2019 Between the City of Black Hawk and Roche Constructors, Inc. Establishing the Phase 2 Guaranteed Maximum Price (GMP) of $12,605,752.00 for Construction of the Gregory Street Plaza Project
   C. Resolution 63-2019, A Resolution Awarding the Bid and Approving the Contract Between the City of Black Hawk and Brennan Stone Masonry in an Amount Not To Exceed $66,500.00 for Construction of the Clear Creek Parking Lot Wall Project
   D. Resolution 64-2019, A Resolution Approving Amendment No. 1 to the Design-Builder Contract Executed on April 24, 2019 Between the City of Black Hawk and Concrete Express, Inc., Establishing the Guaranteed Maximum Price (GMP) of $865,711.43 for Construction of the Bobtail Street Rail Slab Project

MISSION STATEMENT
The mission of the City of Black Hawk is to progressively provide cost effective programs and services of the highest quality to the community
E. Resolution 65-2019, A Resolution Supporting the Grant Application for a Local Parks and Outdoor Recreation Grant from the State Board of the Great Outdoors Colorado Trust Fund for the Completion of Maryland Mountain Park Trail Project

F. Resolution 66-2019, A Resolution Approving a Variance to Allow a Reduction of the Minimum Width of a Driveway for an Access Point on the West Overflow Valet Parking Area of the Monarch Casino from 20-Feet to 14.5-Feet

G. Resolution 67-2019, A Resolution Approving the First Amendment to the Agreement of Lease Between the City of Black Hawk as Lessor and Ed & Shirley, Inc. as Lessee for Property Located at 200 Gregory Street, Black Hawk, Colorado

H. Resolution 68-2019, A Resolution Approving the Proposal from the Colorado Intergovernmental Risk Sharing Agency (CIRSA) for 2020 Property Casualty Coverage

I. Resolution 69-2019, A Resolution Approving the Communication System and Service Agreement Between the City of Black Hawk and Motorola Solutions, Inc. in an Amount Not to Exceed $67,101.00

10. CITY MANAGER REPORTS:

11. CITY ATTORNEY:

12. EXECUTIVE SESSION:

13. ADJOURNMENT:
David spent the first 12 years of his life in Nebraska before moving to Colorado with his family and graduating from Dakota Ridge High School. He now lives just down the hill from Black Hawk in the Morrison area. He has a background in concrete construction and started a career in the fire service as a volunteer with Fairmount Fire Protection District in 2013. Since that time, he has enjoyed deploying on wildfire incidents around the country.

David spends his spare time playing with his son, who also enjoys his sport of choice, ice hockey. David participates in an ice hockey league with his team of other firefighters from the metro area. He also likes to go camping and fishing with his wife and son, his favorite location near Kenosha Pass.

David says he is having a wonderful experience working at the Fire Department. Everyone has been extremely nice and welcoming, and he is looking forward to creating new bonds with the people here and working hard for the City of Black Hawk.
Two co-owners of the newest non-gaming business in the City, The Green Solution (TGS), twins Eric and Kyle Speidell, took turns ringing the bell to open the meeting.

1. CALL TO ORDER: The regular meeting of the City Council was called to order on Wednesday, September 11, 2019, by Mayor Spellman.

2. ROLL CALL: Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Staff present: City Attorney Hoffmann, City Manager Cole, Police Chief Lloyd, Fire Chief Woolley, Finance Director Hillis, Senior Civil Engineer Reed, City Clerk/Administrative Services Director Greiner, Community Planning & Development Administrator Linker, and Deputy City Clerk Martin.

PLEDGE OF ALLEGIANCE: Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.

Mayor Spellman asked everyone to continue to stand for a moment of silence to honor the victims of the 911 terrorist attack that took place on this great country 18 years ago.

3. AGENDA CHANGES: Deputy City Clerk Martin confirmed there were no agenda changes.

4. CONFLICTS OF INTEREST: City Attorney Hoffmann asked Council to declare any Conflicts of Interest on any issue appearing on the agenda this afternoon other than those previous disclosures and conflicts that have already been disclosed and are on file with the City Clerk and Secretary of State. No conflicts were noted from City Council.

City Attorney Hoffmann asked the audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. The audience had no objections.
5. PUBLIC COMMENT: Deputy City Clerk Martin confirmed that City resident Tom Feeney had signed up to speak.

Mr. Feeney wanted to compliment the City’s Fire Department on the nice job they did on the 911 Memorial Stair Climb held at the Ameristar Casino this morning. He wanted to challenge the Mayor and Council to come up with some sort of marketing idea to invite New York firefighters to attend next year’s event, maybe some sort of scholarship or money for steps type of idea. He added that the City looks great.

6. APPROVAL OF MINUTES: August 28, 2019

MOTION TO APPROVE

Alderman Armbright MOVED and was SECONDED by Alderman Torres to approve the Minutes as presented.

MOTION PASSED There was no discussion, and the motion passed unanimously.

7. PUBLIC HEARINGS:


Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann explained that this Ordinance would repeal what the City had originally adopted as its version before the State had acted on theirs, and adopt one of the two current State authorized models. He touched on some of the attributes such as bring your own product, City Council approval of an original application and renewals approved administratively, the hours, limited to the HARD Zoning District, and limited to only one location.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB19, a Bill for an Ordinance repealing and reenacting Article XIX of Chapter 6 of the Black Hawk Municipal Code, eliminating Social Clubs and creating a licensing system for Marijuana Hospitality Establishments open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

Geoffrey Gordon, Gilpin County resident, was in opposition of a single location and asked Council to reconsider that requirement.
Tom Feeney, of Black Hawk, was in support saying he is involved in this business in another state and feels it is solid business for the economy and an opportunity to provide jobs.

Eric Speidell, Co-President of The Green Solution (TGS) of Denver, spoke in support of the ordinance. He said where he believes the State lacked a progressive nature was in allowing lounges too late. He said out-of-state people have no place to go, especially if hotels do not allow it, they are often forced to consume on streets or in vehicles. He feels this is a safe way to move forward with the cannabis agenda.

Kyle Spiedell, Co-President of TGS of Denver also spoke in support of the ordinance saying their business was second to none in the industry and that they take consumption very seriously in making sure they are capable and able to open a business that is safe and in compliance; they have over 20 stores right now. He was excited about this opportunity for people to go to one establishment to consume so that they are not consuming illegally all over the City.

No one else came forward to speak, and Mayor Spellman declared the Public Hearing closed.

**MOTION TO APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to approve CB19, a Bill for an Ordinance repealing and reenacting Article XIX of Chapter 6 of the Black Hawk Municipal Code, eliminating Social Clubs and creating a licensing system for Marijuana Hospitality Establishments.

**MOTION PASSED**

There was no discussion, and the motion **PASSED** unanimously.

8. **ACTION ITEMS:**


Mayor Spellman read the title.

City Attorney Hoffmann explained that this resolution merely sets a public hearing for the eighth amendment to the Silver Dollar Metropolitan District’s (SDMD) Service Plan. He said City Council is only required to approve modifications for the SDMD and the proposed modifications are transportation services, business recruitment activities, and a change in the number of the members from five to nine. The public hearing would be set for September 25, 2019.
APPROVE

Alderman Armbright MOVED and was SECONDED by Alderman Johnson to approve Resolution 58-2019, a Resolution Setting a Public Hearing on the Proposed Material Modifications of the Service Plan of the Silver Dollar Metropolitan District.

MOTION PASSED

There was no discussion, and the motion PASSED unanimously.

B. Resolution 59-2019, A Resolution Approving the First Addendum to Trade Contractor Agreement for the Complete Demolition of 500 Chase Street and 531 Chase Street with Grapes & Sons Excavation

Mayor Spellman read the title.

Community Planning & Development Administrator Linker introduced this item. She said the State wanted to come up and do site inspections of both properties and found a small amount of additional asbestos left over at 500 Chase Street and identified more asbestos at 531 Chase Street, so denied both permits. She said everything had been removed and they should be ready to resubmit to the State this week. The original agreement term ended on September 30, so this first addendum would extend the term until the end of October.

MOTION TO APPROVE

Alderman Bennett MOVED and was SECONDED by Alderman Torres to approve Resolution 59-2019, a Resolution approving the First Addendum to Trade Contractor Agreement for the complete demolition of 500 Chase Street and 531 Chase Street with Grapes & Sons Excavation.

MOTION PASSED

There was no discussion, and the motion PASSED unanimously.

C. Resolution 60-2019, A Resolution Approving the Professional Services Agreement Between the City of Black Hawk and PEH Architects in an Amount Not To Exceed $262,070.00 for Design Services Pertaining to the Gregory Street Commercial Building

Mayor Spellman read the title.

Senior Civil Engineer Reed provided the background on this project of rehabilitating the buildings at 211 and 221 Gregory Street, also known as the Eureka and Lucky Star buildings. He noted that for continuity staff had asked PEH Architects to provide this service since they have been with the Gregory Street Phase 2 Project since the beginning.

Nathan Pillatzke and Peter Heinz of PEH Architects in Boulder went through their presentation. Mr. Heinz said that when gaming came into the City, historical buildings were modified. He said they are proposing
to take those modifications back to a period view and update them from an energy and accessibility point of view to make them into great retail spaces. He elaborated on some of the details, such as placing the elevator in the middle of the building with two retail shops on either side with their own entrance and bathrooms, this proved to be more practical and also allows them to group individual utility meters together outside. He said the upper level would be the same layout with two retail spaces on either side. He continued to address the Lincoln building, which was in the worst condition as the wood frame was built right against the dirt and is now completely rotted out.

Mr. Pillatzke noted the addition of an awning to the middle of the building to draw people into the common area where the elevator is to access the upper levels, and how they intend to create a more uniform appearance on the street side by extending the cornice around the building.

Mayor and Council were very pleased with the design and feel it captures the resort appeal they are seeking.

**MOTION TO APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 60-2019, a Resolution approving the Professional Services Agreement between the City of Black Hawk and PEH Architects in an amount not to exceed $262,070.00 for design services pertaining to the Gregory Street commercial building.

**MOTION PASSED**

There was no discussion, and the motion **PASSED** unanimously.

9. **ACTING CITY MANAGER REPORTS:**

City Manager Cole reported on the Baseline commercial building inspections. Reports are back, and they are ready to be sent out to businesses. A cover letter on behalf of Council was handed out for their review. Some thought the letter was a bit too harsh, while others thought it was spot on since the casinos are well aware of the investment the City has been pouring into making it a resort destination. Mayor Spellman added that the goal should be that the businesses finish up their repairs as the City finishes up their projects to get that resort appeal. The letter is intended to go out now so that the casinos can budget accordingly in next year’s budget cycle. It was felt that if the tone of the letter is lessened then they may not take it seriously and it would be put off for another budget cycle.

Community Planning & Development Administrator Linker added that staff did not exclude City properties from the inspection list. This was not a double standard; the City has items to rectify as well. Mayor
Spellman asked City Manager Cole to maybe embellish more on that in the letter to express how much the City has invested in this goal of a resort destination.

10. CITY ATTORNEY: City Attorney Hoffmann had nothing to report.

11. EXECUTIVE SESSION: None

12. ADJOURNMENT: Mayor Spellman declared the Regular Meeting of the City Council closed at 3:35 p.m.

____________________________
Melissa A. Greiner, CMC
City Clerk

____________________________
David D. Spellman
Mayor
COUNCIL BILL 20
ORDINANCE 2019-20

AN ORDINANCE APPROVING THE EIGHTH AMENDMENT TO SERVICE PLAN OF THE SILVER DOLLAR METROPOLITAN DISTRICT TO ALLOW THE PROVISION OF (1) TRANSPORTATION SERVICES PURSUANT TO C.R.S. § 32-1-1004(9); (2) ACTIVITIES IN SUPPORT OF BUSINESS RECRUITMENT, MANAGEMENT AND DEVELOPMENT PURSUANT TO C.R.S. § 32-1-1004(9); AND (3) A CHANGE IN THE NUMBER OF THE DISTRICT'S BOARD OF DIRECTORS FROM FIVE (5) TO NINE (9) PURSUANT TO THE CITY OF BLACK HAWK HOME RULE CHARTER
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Eighth Amendment to the Service Plan of the Silver Dollar Metropolitan District

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE Ordinance 2019-20, An Ordinance Approving the Eighth Amendment to Service Plan of the Silver Dollar Metropolitan District to allow the provision of (1) Transportation Services Pursuant to C.R.S. § 32-1-1004(9); (2) Activities in Support of the Business Recruitment, Management and Development Pursuant to C.R.S § 32-1-1004(9); and (3) A Change in Number of the District’s Board of Directors from Five (5) to Nine (9) Pursuant to the City of Black Hawk Home Rule Charter

AGENDA DATE: September 25, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [ X ] Yes [ ] No

STAFF PERSON RESPONSIBLE: Melissa Greiner, City Clerk/Administrative Services Director

DOCUMENTS ATTACHED: Eight Amendment to the Service Plan of the Silver Dollar Metropolitan District

RECORD: [ ] Yes [ X ] No

CITY ATTORNEY REVIEW: [ X ] Yes [ ] N/A

SUBMITTED BY: REVIEWED BY:

Melissa A. Greiner, CMC
City Clerk/Administrative Services Director

Stephen N. Cole
City Manager
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB20

ORDINANCE NUMBER: 2019-20

TITLE: AN ORDINANCE APPROVING THE EIGHTH AMENDMENT TO SERVICE PLAN OF THE SILVER DOLLAR METROPOLITAN DISTRICT TO ALLOW THE PROVISION OF (1) TRANSPORTATION SERVICES PURSUANT TO C.R.S. § 32-1-1004(9); (2) ACTIVITIES IN SUPPORT OF BUSINESS RECRUITMENT, MANAGEMENT AND DEVELOPMENT PURSUANT TO C.R.S. § 32-1-1004(9); AND (3) A CHANGE IN THE NUMBER OF THE DISTRICT'S BOARD OF DIRECTORS FROM FIVE (5) TO NINE (9) PURSUANT TO THE CITY OF BLACK HAWK HOME RULE CHARTER

WHEREAS, the Board of Directors of the Silver Dollar Metropolitan District (“District”) has requested that the City Council of the City of Black Hawk approve the “Eighth Amendment to the Service Plan of the Silver Dollar Metropolitan District” (“Eighth Amendment”), attached hereto as Exhibit A, which if approved would allow the provision of (1) transportation services pursuant to C.R.S. § 32-1-1004(9); (2) activities in support of business recruitment, management and development pursuant to C.R.S. § 32-1-1004(9); and (3) a change in the number of the District's Board of Directors from five (5) to nine (9) pursuant to the City of Black Hawk Home Rule Charter;

WHEREAS, due notice of a public hearing on said Amendment was furnished as set forth in the Service Plan, the Charter, and Ordinances of the City; and

WHEREAS, the City Council has duly held the aforementioned public hearing.

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

Section 1. Jurisdiction. The City Council finds it has jurisdiction.

Section 2. Approval. The Eighth Amendment, attached hereto as Exhibit A, is approved unconditionally, and the Silver Dollar Metropolitan District is specifically authorized to provide (1) transportation services pursuant to C.R.S. § 32-1-1004(9); (2) activities in support of business recruitment, management and development pursuant to C.R.S. § 32-1-1004(9); and (3) a change in the number of the District's Board of Directors from five (5) to nine (9) pursuant to the City of Black Hawk Home Rule Charter.

Section 3. Safety Clause. The City Council 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 City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. 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 5. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 25th day of September, 2019.

_____________________________________________________
David D. Spellman, Mayor

ATTEST:

_____________________________________________________
Melissa A. Greiner, CMC, City Clerk
Silver Dollar Metropolitan District
P. O. Box 663
Black Hawk, CO 80422
303-582-3165

August 21, 2019

Melissa Greiner, City Clerk
City of Black Hawk

RE: Eighth Amendment to the Service Plan of the Silver Dollar Metropolitan District ("District")

Dear Melissa,

Enclosed is the Eighth Amendment to the Service Plan of the District; and, the related Resolutions concerning Transportation Services; a Nine Member Board of Directors; and, activities in support of business recruitment, management and development.

The District's Board of Directors hereby submit to the Black Hawk City Council the amendment to the District's Service Plan and related Resolutions for City Council consideration and approval.

If you have any questions or need additional information, please do not hesitate to contact me.

Thank you,

Lynnette Hailey
District Manager

Enclosures

CC: Rick Kron, Esq. via email
EIGHTH AMENDMENT TO THE SERVICE PLAN
OF THE
SILVER DOLLAR METROPOLITAN DISTRICT

I. INTRODUCTION

Pursuant to the August 2, 2000, Silver Dollar Metropolitan District ("District") Service Plan, Section IX. Modification of Service Plan, and the Special District Act, C.R.S. § 32-1-101, et seq., the District's Board of Directors hereby submits to the Black Hawk City Council the following amendment to the District's Service Plan for City Council consideration and approval.

This amendment to the Service Plan of the District (the “Amendment”) sets forth (1) the power and authority for the District to provide transportation services, (2) the power and authority for the District to provide activities in support of business recruitment, management and development, and (3) a change in the number of the members of the District's Board of Directors from five (5) to nine (9). As shown in the attached Resolutions, the Board of Directors of the District has determined that it is in the best interests of the District to amend the Service Plan as set forth herein.

The procedure for amending the Service Plan, as previously approved by the City, is reprinted in the attached Resolutions.

This Amendment is submitted in accordance with the requirements of the Special District Act, specifically Section 32-1-207(2), C.R.S.

II. AMENDMENT

A. Transportation Services

The District shall have the power and authority to provide for transportation services as allowed by C.R.S. § 32-1-1004(9), C.R.S. § 32-1-1106, Part 6 of Article 4 of Title 43, C.R.S., C.R.S. § 29-1-203, and/or any and all other law, including but not limited to the design, acquisition, installation, construction, financing, operation, and maintenance of public transportation system improvements, including transportation equipment, park and ride facilities and parking lots, parking structures, roofs, covers, and facilities, including structures for repair, operations and maintenance of such facilities, together with all necessary, incidental and appurtenant facilities, land and easements, and all necessary extensions of and improvements to said facilities or systems.

The District is authorized to provide such services by any available means allowed by Colorado law, including directly or by contract. The District is authorized, with the approval of its eligible electors, if as such approval is required by law, to impose taxes, rates, fees, tolls, charges and penalties, and to incur debt for such purposes.

B. Business Recruitment, Management and Development Authority

The District shall have the power and authority to provide activities in support of
business recruitment, management and development consistent with the provisions of the Special District Act and as specifically set forth in C.R.S. § 32-1-1004(9).

The District is authorized to provide such services by any available means allowed by Colorado law, including directly or by contract. The District is authorized, with the approval of its eligible electors, if an such approval is required by law, to impose taxes, rates, fees, tolls, charges and penalties, and to incur debt for such purposes.

C. Nine Member Board of Directors

Pursuant to the home rule authority of the City, the Board shall have nine (9) members, four (4) of whom shall stand for election at the next regular election of the District in May 2020, and five (5) of whom shall stand for election in May 2022. The terms and subsequent terms of office for the District’s directors shall be consistent with the Special District Act, C.R.S. § 32-1-101, et seq., and other applicable law, and under no circumstances shall the term of a member of the Board who is currently in office be lengthened or shortened by this amendment. Vacancies on the Board, including the initial vacancies resulting from the Amendment, shall be filled by appointment by the remaining Board members as provided in the Special District Act.

III. CONFORMING AMENDMENTS

To the extent necessary, the remainder of the Service Plan of the District is hereby amended to conform with the provisions hereof. No other changes are authorized by this Amendment and the Service Plan as amended is hereby ratified and confirmed.

IV. CONCLUSION

It is submitted that this Amendment, with the Original Service Plan, as amended, as necessarily modified hereby, meets the requirements of the Special District Act. Therefore, the District respectfully requests that the City Council of the City of Black Hawk, Colorado, which has jurisdiction to approve the Amendment by virtue of Section 32-1-204.5, C.R.S., as amended, adopt a resolution approving this Eighth Amendment to the Service Plan for the Silver Dollar Metropolitan District as submitted.

Respectfully Submitted, August 20, 2019.

BOARD OF DIRECTORS
SILVER DOLLAR METROPOLITAN DISTRICT

Attachments:
1. Resolution Concerning Transportation Services
2. Resolution Concerning Activities in Support of Business Recruitment, Management and Development
3. Resolution Concerning a Nine Member Board of Directors
RESOLUTION OF THE
SILVER DOLLAR METROPOLITAN DISTRICT
(Concerning Transportation Services)

WHEREAS, the Silver Dollar Metropolitan District is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, the District was organized by order of the District Court in and for Gilpin County in Civil Action No. 00CV044 effective December 6, 2000; and

WHEREAS, Section V "Council Decision Points" (page 12) of the Service Plan of the District states in relevant part:

"The Board of Directors of the District must return to the City Council and obtain approval of a service plan amendment from Council before proceeding with the following actions:

5. Requests for material modifications to the service plan which shall include modifications of a basic or essential nature including any additions to the types of services initially provided by the District, change in dissolution date, change in debt limit, change in revenue type, change in maximum mill levy, or any changes described in this Service Plan that constitute a material modification. The examples above are only examples and are not an exclusive list of all actions which may be identified as a material modification. The City's approval shall not be required for mechanical modifications to this Service Plan necessary for the execution of the original financing plan for public improvements previously outlined in the plan unless otherwise provided in the Service Plan. [Emphasis added];

and

WHEREAS, Section IX of the Service Plan furnishes the following procedure for modification of the Service Plan:

"IX. MODIFICATION OF SERVICE PLAN

The following procedure shall be followed in order to effect any modification of this service plan.

a. In such detail as may be reasonably requested by the City, the District shall
set forth a written proposal for the modification of the service plan ("Amendment").

b. The District shall file the Amendment with the City Clerk, City Manager and the City Attorney.

c. The City Clerk shall cause to be scheduled, and shall inform the District of, the date, time, and place for a public hearing by the City’s City Council on the Amendment.

d. The City shall provide posted public notice of the date, time, place and purpose of the public hearing on the Amendment. Such notice may be combined in the notice of any other agenda item that may come before the City Council and shall be posted at the time, in the location, and in the manner, as is provided by City charter and/or ordinance for the posting of notice for regular meetings of the City Council. Failure of the notice to specify that a public hearing shall be conducted concerning the Amendment shall not affect the validity of the notice.

e. The Council shall hold a public hearing on the Amendment in accordance with its regular procedures for public hearings.

f. The Council shall, within 30 days of the conclusion of the public hearing, adopt an ordinance approving, conditionally approving, or disapproving the Amendment as appropriate under the circumstances,”

and

WHEREAS, the City of Black Hawk and the District have discussed the desirability of cooperation and funding by the District in the provision of transportation services; and

WHEREAS, the Board of Directors of the District has determined that it is in the best interest of the District to cooperate with the City of Black Hawk in the provision of such services and to request an amendment to the Service Plan to add the power and authority to provide transportation service in order to do so.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Silver Dollar Metropolitan District, City of Black Hawk, Gilpin County, Colorado, that:

1. The District’s legal counsel is directed to seek an amendment to the Service Plan for the purpose of adding the following power and authority of the District:

Resolution Concerning Transportation Services
Silver Dollar Metropolitan District
Page 2 of 3
DN 3696474.1
The District shall have the power and authority to provide for transportation services as allowed by C.R.S. § 32-1-1004(9), C.R.S. § 32-1-1106, Part 6 of Article 4 of Title 43, C.R.S., C.R.S. § 29-1-203, and/or any and all other law, including but not limited to the design, acquisition, installation, construction, financing, operation, and maintenance of public transportation system improvements, including transportation equipment, park and ride facilities and parking lots, parking structures, roofs, covers, and facilities, including structures for repair, operations and maintenance of such facilities, together with all necessary, incidental and appurtenant facilities, land and easements, and all necessary extensions of and improvements to said facilities or systems.

The District is authorized to provide such services by any available means allowed by Colorado law, including directly or by contract. The District is authorized, with the approval of its eligible electors, if an as such approval is required by law, to impose taxes, rates, fees, tolls, charges and penalties, and to incur debt for such purposes.

2. The proposed amendment to the Service Plan, substantially in the form attached hereto, is hereby approved and the District’s legal counsel and manager are authorized to file the same for consideration and approval by the City of Black Hawk.

3. This Resolution shall be effective immediately.

RESOLVED, this 20 day of August, 2019.

SILVER DOLLAR METROPOLITAN DISTRICT

By: [Signature]

Edward Smith, President

ATTEST:

[Signature]

David D. Spellman, Secretary
RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SILVER DOLLAR METROPOLITAN DISTRICT
(Concerning a Nine Member Board of Directors)

WHEREAS, the Silver Dollar Metropolitan District is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, the District was organized by order of the District Court in and for Gilpin County in Civil Action No. 00CV044 effective December 6, 2000; and

WHEREAS, Section V “Council Decision Points” (page 12) of the Service Plan of the District states in relevant part:

“The Board of Directors of the District must return to the City Council and obtain approval of a service plan amendment from Council before proceeding with the following actions:

5. Requests for material modifications to the service plan which shall include modifications of a basic or essential nature including any additions to the types of services initially provided by the District, change in dissolution date, change in debt limit, change in revenue type, change in maximum mill levy, or any changes described in this Service Plan that constitute a material modification. The examples above are only examples and are not an exclusive list of all actions which may be identified as a material modification. The City’s approval shall not be required for mechanical modifications to this Service Plan necessary for the execution of the original financing plan for public improvements previously outlined in the plan unless otherwise provided in the Service Plan. [Emphasis added],

and

WHEREAS, Section IX of the Service Plan furnishes the following procedure for modification of the Service Plan:

“IX. MODIFICATION OF SERVICE PLAN

The following procedure shall be followed in order to effect any modification of this service plan.

a. In such detail as may be reasonably requested by the City, the District shall set forth a written proposal for the modification of the service plan (“Amendment”).

b. The District shall file the Amendment with the City Clerk, City Manager and the City Attorney.
c. The City Clerk shall cause to be scheduled, and shall inform the District of, the date, time, and place for a public hearing by the City’s City Council on the Amendment.

d. The City shall provide posted public notice of the date, time, place and purpose of the public hearing on the Amendment. Such notice may be combined in the notice of any other agenda item that may come before the City Council and shall be posted at the time, in the location, and in the manner, as is provided by City charter and/or ordinance for the posting of notice for regular meetings of the City Council. Failure of the notice to specify that a public hearing shall be conducted concerning the Amendment shall not affect the validity of the notice.

e. The Council shall hold a public hearing on the Amendment in accordance with its regular procedures for public hearings.

f. The Council shall, within 30 days of the conclusion of the public hearing, adopt an ordinance approving, conditionally approving, or disapproving the Amendment as appropriate under the circumstances;”

and

WHEREAS, the Board of Directors of the District has determined that it is in the best interest of the District to increase the number of members of the District’s Board of Directors to nine (9) and to request an amendment to the Service Plan to establish the same.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Silver Dollar Metropolitan District, City of Black Hawk, Gilpin County, Colorado, that:

1. The District’s legal counsel is directed to seek an amendment to the Service Plan for the purpose of adding the following:

Pursuant to the home rule authority of the City, the Board shall have nine (9) members, four (4) of whom shall stand for election at the next regular election of the District in May 2020, and five (5) of whom shall stand for election in May 2022. The terms and subsequent terms of office for the District’s directors shall be consistent with the Special District Act, C.R.S. § 32-1-101, et seq., and other applicable law, and under no circumstances shall the term of a member of the Board who is currently in office be lengthened or shortened by this amendment. Vacancies on the Board, including the initial vacancies resulting from the Amendment, shall be filled by appointment by the remaining Board members as provided in the Special District Act.
2. The proposed amendment to the Service Plan, substantially in the form attached hereto, is hereby approved and the District's legal counsel and manager are authorized to file the same for consideration and approval by the City of Black Hawk.

3. This Resolution shall be effective immediately.

RESOLVED, this ___ day of ___ , 2019.

SILVER DOLLAR METROPOLITAN DISTRICT

By: ___________________________

Edward Smith, President

ATTEST:

______________________________

David D. Spellman, Secretary
RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SILVER DOLLAR METROPOLITAN DISTRICT
(Concerning Activities in Support of Business Recruitment, Management and Development)

WHEREAS, the Silver Dollar Metropolitan District is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, the District was organized by order of the District Court in and for Gilpin County in Civil Action No. 00CV044 effective December 6, 2000; and

WHEREAS, Section V “Council Decision Points” (page 12) of the Service Plan of the District states in relevant part:

“The Board of Directors of the District must return to the City Council and obtain approval of a service plan amendment from Council before proceeding with the following actions:

5. Requests for material modifications to the service plan which shall include modifications of a basic or essential nature including any additions to the types of services initially provided by the District, change in dissolution date, change in debt limit, change in revenue type, change in maximum mill levy, or any changes described in this Service Plan that constitute a material modification. The examples above are only examples and are not an exclusive list of all actions which may be identified as a material modification. The City’s approval shall not be required for mechanical modifications to this Service Plan necessary for the execution of the original financing plan for public improvements previously outlined in the plan unless otherwise provided in the Service Plan. [Emphasis added];

and

WHEREAS, Section IX of the Service Plan furnishes the following procedure for modification of the Service Plan:

“IX. MODIFICATION OF SERVICE PLAN

The following procedure shall be followed in order to effect any modification of this service plan.

a. In such detail as may be reasonably requested by the City, the District shall
set forth a written proposal for the modification of the service plan ("Amendment").

b. The District shall file the Amendment with the City Clerk, City Manager and the City Attorney.

c. The City Clerk shall cause to be scheduled, and shall inform the District of, the date, time, and place for a public hearing by the City’s City Council on the Amendment.

d. The City shall provide posted public notice of the date, time, place and purpose of the public hearing on the Amendment. Such notice may be combined in the notice of any other agenda item that may come before the City Council and shall be posted at the time, in the location, and in the manner, as is provided by City charter and/or ordinance for the posting of notice for regular meetings of the City Council. Failure of the notice to specify that a public hearing shall be conducted concerning the Amendment shall not affect the validity of the notice.

e. The Council shall hold a public hearing on the Amendment in accordance with its regular procedures for public hearings.

f. The Council shall, within 30 days of the conclusion of the public hearing, adopt an ordinance approving, conditionally approving, or disapproving the Amendment as appropriate under the circumstances;”

and

WHEREAS, the Board of Directors of the District has determined that it is in the best interest of the District to be able to provide activities in support of business recruitment, management and development and to request an amendment to the Service Plan to add the power and authority in order to do so.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Silver Dollar Metropolitan District, City of Black Hawk, Gilpin County, Colorado, that:

1. The District’s legal counsel is directed to seek an amendment to the Service Plan for the purpose of adding the following power and authority of the District:

The District shall have the power and authority to provide activities in support of business recruitment, management and development consistent with the provisions
of the Special District Act and as specifically set forth in C.R.S. § 32-1-1004(9).

The District is authorized to provide such services by any available means allowed by Colorado law, including directly or by contract. The District is authorized, with the approval of its eligible electors, if an such approval is required by law, to impose taxes, rates, fees, tolls, charges and penalties, and to incur debt for such purposes.

2. The proposed amendment to the Service Plan, substantially in the form attached hereto, is hereby approved and the District's legal counsel and manager are authorized to file the same for consideration and approval by the City of Black Hawk.

3. This Resolution shall be effective immediately.

RESOLVED, this 20 day of August, 2019.

SILVER DOLLAR METROPOLITAN DISTRICT

By: Edward Smith, President

ATTEST:

David D. Spellman, Secretary
COUNCIL BILL 21
ORDINANCE 2019-21
AN ORDINANCE
AMENDING CHAPTER 16
OF THE BLACK HAWK
MUNICIPAL CODE TO
AMEND THE
COMMERCIAL/BUSINESS
SERVICES ZONING
DISTRICT, THE HISTORY
APPRECIATION AND
PRESERVATION
DISTRICT, AND THE
DEFINITIONS SECTIONS
OF THE CITY'S ZONING
CODE
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: 21
ORDINANCE NUMBER: 2019-21


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

Section 1. Section 16-24 of the Black Hawk Municipal Code is amended by the addition thereto of the following definitions:

Event Center: A multi-purpose venue facility hosting special events such as graduations, weddings, anniversaries, holiday gatherings, trade shows, concert settings, and corporate functions or parties. An event center may have a catering kitchen, indoor and/or outdoor seating and a stage or event area.

Mini-Warehouse/Storage: Enclosed warehouse units which are rented or leased to second parties for storage purposes, and which have no outside storage. No residential unit is allowed with this use.

Campground: Any area that is occupied or intended or designed or improved for occupancy by transients (no permanent residency is allowed) using recreational vehicles, travel trailers, tent trailers, or tents for temporary dwelling, lodging, or sleeping purposes wherein sites are offered for the use of the public or members of any organization for no longer than fifteen (15) days.

Section 2. Section 16-93 of the Black Hawk Municipal Code is amended by the addition thereto of a new subsection (4) to read as follows:

Sec. 16-93. Objectives.

The objectives of the C/BS zoning district are to:

* * *

(4) Support existing commercial uses in the City.
Section 3. Section 16-94 of the Black Hawk Municipal Code is amended by the addition thereto of new subsections (a)(12) and (a)(13) to read as follows:

Sec. 16-94. Use regulations.

(a) Permitted principal uses. Any of the following uses, provided that the gross floor area of a single building or structure containing the use does not exceed twenty five thousand (25,000) fifteen thousand (15,000) square feet.

* * *

(12) Event Center (indoor and outdoor)
(13) Mini-Warehousing/Storage (indoor only)

Section 4. Section 16-94 of the Black Hawk Municipal Code is amended by the deletion of subsection (c), and the re-lettering of subsection (d) to subsection (c) to read as follows:

Sec. 16-94. Use regulations.

* * *

(c) Special review uses.

(1) Any of the permitted principal uses where the gross floor area of a single building containing the use exceeds fifteen thousand (15,000) twenty-five thousand (25,000) square feet may be permitted if the building and accessory facilities are designed to be consistent with the desired character of the area, and do not adversely affect other uses in the area.

(2) Outdoor recreation and amusements may be permitted if they are designed to be consistent with the desired character of the area, do not adversely affect other uses in the area and do not pose a threat to public safety.

(3) Surface transportation related facilities such as private shuttle stops not located on public rights-of-way and shuttle stations with indoor areas designed for passenger waiting and comfort.

(4) Fixed guideway transportation systems such as trains, cogways and aerial tramways. Fixed guideway transportation systems shall be subject to specific regulations found in Section 16-363(g).

(5) Residential use for a caretakers unit that is secondary to the principal use, subject to the criteria contained in Subsection 16-363(h) of this Chapter.
(6) Indoor Shooting ranges may be permitted if they are designed to be consistent with the desired character of the area, do not adversely affect other uses in the area and do not pose a threat to public safety.

(7) Campgrounds, including those providing recreational vehicle hookups. These specific uses shall be required to provide for on-site sanitary facilities, all-weather accessibility and road surfacing, and a caretaker residence. Campgrounds shall also be required to have a source of water contained on-site considered sufficient for fire protection. No campground shall be located within five hundred (500) feet of a preexisting residentially developed property.

Section 5. Section 16-121, subsection (b) of the Black Hawk Municipal Code is amended to read as follows:

Sec. 16-121. Purpose and objectives.

* * *

(b) Objectives. The objectives of the HARD zoning district are to allow for such uses that are dedicated to serving the public, and to minimize the adverse impacts and adjacent uses and the community. Within the commercial land use areas of the district, the close proximity of buildings to each other and their close proximity to the street will create a personal commercial experience. In addition, the objectives of the HARD zoning district are to allow for such uses that are dedicated to serving the public and may include passive recreational activities, as well as active recreational activities such as mountain biking, hiking, and water sports associated with lakes, reservoirs, and water storage facilities.

Section 6. Section 16-122, subsection (c) of the Black Hawk Municipal Code is amended to read as follows:

Sec. 16-122. Use regulations.

* * *

(c) Dimensional regulations.

(1) Minimum lot area: none.
(2) Minimum lot dimensions:

a. One hundred (100) Fifty (50) feet deep.
b. Forty (40) Twenty (20) feet wide.

(3) Minimum setbacks.

a. Front yard: zero (0) feet.
b. Side yard: ten (10) zero (0) feet.
c. Rear yard: twenty (20) zero (0) feet.

(4) Maximum height: thirty-five (35) feet.

Section 7. Safety Clause. The City Council 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 City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 8. 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 9. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 25th day of September, 2019.

__________________________________________
David D. Spellman, Mayor

ATTEST:

__________________________________________
Melissa A. Greiner, CMC, City Clerk
NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Black Hawk Board of Aldermen shall hold a public hearing concerning a request for amendments to the City of Black Hawk Municipal Code, Chapter 16, Article V – Nonresidential Districts, Division 1 - C/BS Commercial/Business Services Zoning District, AND Article V - Division 6 - History Appreciation Recreation Destination (HARD) Zoning District, AND Article II - Section 16-24 - Definitions, pursuant to the City of Black Hawk zoning ordinance.

The public hearing is to be held before the City of Black Hawk Board of Aldermen on Wednesday, September 25, 2019, at 3:00 p.m. or as soon as possible thereafter. The public hearing shall be held in the City of Black Hawk Council Chambers, located at 211 Church Street, Black Hawk, CO 80422, or at such other time of place in the event this hearing is adjourned.

ALL INTERESTED PARTIES MAY ATTEND

Melissa A. Greiner, CMC
City Clerk
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: To consider an Ordinance amending the Commercial/Business Services zoning district, the History Appreciation and Preservation District, and the Definitions sections of the Chapter 16 (Zoning) of the City of Black Hawk Municipal Code.

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:
MOTION TO APPROVE Council Bill 21 - Ordinance No. 2019-21, an ordinance amending the Commercial/Business Services (C/BS), the History, Appreciation and Preservation District (HARD), and the Definitions sections of Chapter 16 (Zoning) of the City of Black Hawk Municipal Code, as more fully described in the attached ordinance.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: The City of Black Hawk has identified the need to update portions of the Municipal Code within Chapter 16 (Zoning). The proposed amendments include three sections: Commercial/Business Services (C/BS), Historic Appreciation and Preservation District (HARD), and Definitions.

The goal of the proposed amendments is to provide additional flexibility for commercial development in order to advance the City’s goal of becoming a destination resort, as outlined in the City of Black Hawk Comprehensive Plan adopted on October 27, 2004 by Resolution No. 18-2004, and amended on October 23, 2013 by Resolution No. 40-2013

AGENDA DATE: September 25, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [ X ]Yes [ ]No

STAFF PERSON RESPONSIBLE: Cynthia L. Linker
CP&D Administrator

DOCUMENTS ATTACHED: Council Bill 21 - Ordinance No. 2019-21 Staff Report

RECORD: [ ]Yes [ X ]No

CITY ATTORNEY REVIEW: [ X ]Yes [ ]N/A
BACKGROUND:
In July of 2019, the City of Black Hawk identified the need to update portions of the Municipal Code within Chapter 16 (Zoning). The proposed amendments include three sections: Commercial/Business Services (C/BS), Historic Appreciation and Preservation District (HARD), and Definitions. The two zoning district sections are contained within Chapter 16, Article V (Nonresidential Districts) of the Municipal Code. The definitions section is contained within Chapter 16, Article II (Definitions) of the Municipal Code.

The goal of the proposed amendments is to provide additional flexibility for commercial development in order to advance the City’s goal of becoming a destination resort, as outlined in the City of Black Hawk Comprehensive Plan adopted on October 27, 2004 by Resolution No. 18-2004, and amended on October 23, 2013 by Resolution No. 40-2013.

SUMMARY OF PROPOSED AMENDMENTS:
Chapter 16, Article V, Division 1 – Commercial/Business Services (C/BS):
This amendment adds indoor or outdoor event centers and indoor mini-warehousing and storage to the list of permitted principal uses. In addition, this amendment adds indoor shooting ranges and campgrounds to the list of special review uses. Other minor changes are proposed to clarify certain sections and fix typographical errors included in the last adopted code.

Chapter 16, Article V, Division 6 – History, Appreciation and Preservation District (HARD):
This amendment adds language reflected in the Gregory Street Sub-Area Plan adopted as an amendment to the Comprehensive Plan on October 23, 2013 by Resolution No. 40-2013. This added language reflects the desire for the planned Gregory Street area to allow for and encourage close spacing of commercial buildings in order to promote a personal pedestrian commercial experience. In addition, this amendment alters the lot dimension and setback regulations to allow for closer building spacing.

Chapter 16, Article II – Definitions:
This amendment adds words and definitions to the zoning code in order to clarify the additional uses proposed in the C/BS amendment. Additional words include ‘Event Center’, ‘Mini-Warehouse/Storage’, and ‘Campground’.
Staff has prepared the proposed amendments which have been reviewed by the City Attorney to ensure legal conformance.

**APPLICABLE CITY OF BLACK HAWK REGULATIONS:**
Excerpts from:

*City of Black Hawk*

*Municipal Code*

*Chapter 1 – General Provisions*

**Sec. 1-47. Amendments to Code.**

*Ordinances and parts of ordinances of a permanent and general nature, passed or adopted after the adoption of this Code, may be passed or adopted either in the form of amendments to the Code adopted by this Code or without specific reference to the Code. However, in either case, all such ordinances and parts of ordinances shall be deemed amendments to the Code, and all of the substantive, permanent and general parts of said ordinances and changes made thereby in the Code shall be inserted and made in the Code as provided in Section 1-50 hereof.*

**STAFF SUMMARY:**

Staff believes that the proposed amendments to Chapter 16 (Zoning) are an appropriate course of action to provide additional flexibility for commercial development which will assist in attaining the City goal of becoming a destination resort.

City Council may approve the proposed amendments to Chapter 16 (Zoning) of the Municipal Code and give consideration to the criteria below:

a. A need exists for the proposal

   **Staff Comment:** Staff believes a need exists for these proposed amendments to the C/BS, HARD and Definitions sections of the code. These amendments will promote additional commercial development opportunities within the C/BS district and will allow for the desired building density in the HARD district.

b. The proposal is in conformance with the goals and objectives of the Comprehensive Plan.

   **Staff Comment:** The proposed amendments are in conformance with the Comprehensive Plan and are designed to specifically promote the City’s goal of becoming a destination resort.

Staff recommends that City Council pass an ordinance amending Chapter 16 (Zoning) of the City of Black Hawk Municipal Code as more fully described in the attached ordinance.
**FINDINGS:**
City Council may *approve, conditionally approve, or deny* the proposal to amend three sections of Chapter 16 (Zoning Code) of the City of Black Hawk Municipal Code. To support this proposal, the following findings can be used:

1. A need exists for code amendments that allow for additional and more flexible commercial development.
2. The proposed amendments are in conformance with the Comprehensive Plan and City goals.

**RECOMMENDATION:**
Staff recommends the following motion to the Mayor and Board of Aldermen:

**MOTION TO APPROVE Council Bill 21, Ordinance No. 2019-21, an Ordinance amending the Commercial/Business Services (C/BS), the History, Appreciation and Preservation District (HARD), and the Definitions sections of Chapter 16 (Zoning) of the City of Black Hawk Municipal Code, as more fully described in the attached ordinance.**

**ATTACHMENTS:**
- Council Bill 21, Ordinance No. 2019-21
COUNCIL BILL 22
ORDINANCE 2019-22
AN ORDINANCE
APPROVING THE GRANT AGREEMENT BETWEEN
THE COLORADO DEPARTMENT OF TRANSPORTATION,
DIVISION OF TRANSIT AND RAIL AND THE CITY OF BLACK HAWK
SUBJECT:
Approve Council Bill 22, an Ordinance approving the Grant Agreement, and authorizing the Mayor to execute the same, between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk, utilizing SB228 funds for the acquisition of a replacement bus for the Black Hawk and Central City Tramway for an amount Not to Exceed $135,440.00.

RECOMMENDATION:
If City Council chooses to approve Council Bill 22, the recommended motion is as follows: "Approve Council Bill 22, an Ordinance approving the Grant Agreement between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk."

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
Staff has been diligently working with CDOT for well over a year to finalize details for the grant application and order process to replace the #10 Blue Bird bus. The Blue Bird has met the mileage and age requirements necessary to qualify for replacement. The Blue Bird is requiring increasing maintenance due to its heavy usage and parts are becoming increasing difficult to source. The Blue Bird will be replaced with a Champion 18 passenger low floor unit with a V-10 gas engine. The expected build time is between 6 and 9 months.

The City will be required to pay the full cost of the unit anticipated to be $169,304.00 and will be reimbursed from CDOT in the amount of $135,440.00. This will leave approximately $33,860.00 to be paid by the City depending upon final accessory costs.

The City has successfully utilized similar grants for the existing fleet of buses.

FUNDING SOURCE: 204-4801-481-7401 Capital-Transit

WORKSHOP DATE: September 25, 2019

ORIGINATED BY: Thomas Isbester

STAFF PERSON RESPONSIBLE: Thomas Isbester/ Steve Jackson

PROJECT COMPLETION DATE: June 2020

DOCUMENTS ATTACHED: Grant Agreement

CITY ATTORNEY REVIEW: [ ]Yes [ ]No [ ]N/A INITIALS__________
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB22  
ORDINANCE NUMBER: 2019-22

TITLE: AN ORDINANCE APPROVING THE GRANT AGREEMENT BETWEEN 
THE COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION 
OF TRANSIT AND RAIL AND THE CITY OF BLACK HAWK

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 Grant Agreement between the 
Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk, 
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 City Council 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 City Council further determines that the Ordinance bears a rational relation to 
the proper legislative object sought to be attained.

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

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

READ, PASSED AND ORDERED POSTED this 25th day of September, 2019.

_______________________________  
David D. Spellman, Mayor

ATTEST:

_______________________________  
Melissa A. Greiner, CMC, City Clerk
STATE OF COLORADO GRANT AGREEMENT
COVER PAGE

<table>
<thead>
<tr>
<th>State Agency</th>
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<tr>
<td>Department of Transportation</td>
<td>20-HTR-ZL-03046/491001985</td>
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<td>CITY OF BLACK HAWK</td>
<td>The Effective Date.</td>
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<td>Transit Program Funds to</td>
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<td>Grantee to conduct work</td>
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<td>within the provisions of this Grant.</td>
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Exhibits and Order of Precedence
The following Exhibits and attachments are included with this Agreement:
1. Exhibit A, Statement of Work and Budget.
2. Exhibit B, Sample Option Letter.
3. Exhibit C, Title VI-Civil Rights.

In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:
1. Exhibit C, Title VI-Civil Rights.
2. Colorado Special Provisions in §18 of the main body of this Agreement.
3. The provisions of the other sections of the main body of this Agreement.
4. Exhibit A, Statement of Work and Budget.
5. Exhibit B, Sample Option Letter.

Principal Representatives
For the State:
To Be Determined
Division of Transit and Rail
2829 W. Howard Pl.
Denver, CO 80204
To Be Determined

For Subrecipient:
Amy Ostrander
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422-0068
aostranderconsulting@msn.com
**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<table>
<thead>
<tr>
<th>GRANTEE</th>
<th>STATE OF COLORADO</th>
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<tbody>
<tr>
<td>CITY OF BLACK HAWK</td>
<td>Jared S. Polis, Governor</td>
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<td></td>
<td>Colorado Department of Transportation</td>
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<td>Shoshana M. Lew, Executive Director</td>
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<tr>
<th>By: Name &amp; Title of Person Signing for Grantee</th>
<th>By: Name &amp; Title of Person Signing for Agency or IHE</th>
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<td>Date:</td>
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<th>2nd State or Grantee Signature if needed</th>
<th>LEGAL REVIEW</th>
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<tr>
<td>By: Name &amp; Title of Person Signing for Signatory</td>
<td>Philip J. Weiser, Attorney General</td>
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<tr>
<td>Date:</td>
<td>By: Assistant Attorney General</td>
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In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

<table>
<thead>
<tr>
<th>STATE CONTROLLER</th>
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<tr>
<td>Robert Jaros, CPA, MBA, JD</td>
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<th>By: Name of Agency or IHE Delegate</th>
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Effective Date: ________________________

Contract Number: 20-HTR-ZL-03046/491001985  Page 2 of 24  Version 1018
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1. PARTIES

This Agreement is entered into by and between Grantee named on the Cover Page for this Agreement (the
"Grantee"), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page
for this Agreement (the "State"). Grantee and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be
expended by the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement.
The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have
no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except
as described in §5.D, or after the Fund Expenditure End Date. If the Work will be performed in multiple
phases, the period of performance start and end date of each phase is detailed under the Project Schedule in
Exhibit A.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance
Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement
Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated
or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the
Initial Term for a period, or for successive periods, of 1 year or less at the same rates and under the same
terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option,
the State shall provide written notice to Grantee in a form substantially equivalent to Sample Option Letter
attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at
its discretion, upon written notice to Grantee as provided in §14, may unilaterally extend such Initial Term
or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether
additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice
is given shall remain in effect during the End of Term Extension. The End of Term Extension shall
automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Grantee for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Grantee which are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

F. Grantee’s Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. “Agreement” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

B. “Breach of Agreement” means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.

C. “Budget” means the budget for the Work described in Exhibit A.

D. “Business Day” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.

E. “CORA” means the Colorado Open Records Act, §§24-72-200.1, et. seq., C.R.S.

F. “Effective Date” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.

G. “End of Term Extension” means the time period defined in §2.D.
H. "Exhibits" means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.

I. "Extension Term" means the time period defined in §2.C.

J. "Goods" means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.

K. "Grant Funds" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.

L. "Incident" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401 et seq. C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

M. "Initial Term" means the time period defined in §2.B.

N. "Matching Funds" means the funds provided Grantee as a match required to receive the Grant Funds.

O. "Party" means the State or Grantee, and "Parties" means both the State and Grantee.

P. "PII" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.

Q. "Services" means the services to be performed by Grantee as set forth in this Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.

R. "State Confidential Information" means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to PII, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

S. "State Fiscal Rules" means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

T. "State Fiscal Year" means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

U. "State Records" means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

V. "Subcontractor" means third-parties, if any, engaged by Grantee to aid in performance of the Work. "Subcontractor" also includes sub-grantees of grant funds.

W. "Work" means the Goods delivered and Services performed pursuant to this Agreement.

X. "Work Product" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and
any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Agreement Maximum for each State Fiscal Year shown on the Signature and Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Grantee in the amounts and in accordance with the conditions set forth in Exhibit A.

b. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Grantee and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Grantee shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Grantee shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

iii. Payment Disputes

If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within 30 days following the earlier to occur of Grantee’s receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Grantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State’s review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State’s obligation to pay Grantee shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State’s liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become
unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

C. Matching Funds.

Grantee shall provide Matching Funds as provided in §5.A. and Exhibit A. Grantee shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Grantee’s obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Grantee and paid into Grantee’s treasury or bank account. Grantee represents to the State that the amount designated “Grantee’s Matching Funds” in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Grantee does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Grantee. If Grantee is a public entity, Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee’s laws or policies.

D. Reimbursement of Grantee Costs.

The State shall reimburse Grantee’s allowable costs, not exceeding the maximum total amount described in Exhibit A and §5 for all allowable costs described in this Grant and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any State fiscal year, and the change does not modify any requirements of the Work. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed. Grantee’s costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Contract and shown in the Budget if those costs are:

i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and

ii. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred.).

iii. Any advance payment allowed under this Grant or in Exhibit A shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Eligibility and submission for advance payment is subject to State approval and must include approved documentation in the form and manner set forth and approved by the State.

E. Close-Out.

Grantee shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any Agreement having a term longer than 3 months, Grantee shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than 5 Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Grantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Grantee’s ability to perform its obligations under this Agreement, Grantee shall, within 10 days after being
served, notify the State of such action and deliver copies of such pleading or document to the State’s principal representative identified in §14.

C. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Grantee’s performance and the final status of Grantee’s obligations hereunder.

D. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State, all violations of State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records for a period (the “Record Retention Period”) of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days’ notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Grantee’s performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Grantee’s performance of its obligations under this Contract using procedures as determined by that governmental entity. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee’s performance in a manner that does not unduly interfere with Grantee’s performance of the Work.

D. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee’s records that relates to or affects this Agreement or the Work, whether the audit is conducted by Grantee or a third party.

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Grantee shall
provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Agreement as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJIS, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Grantee shall immediately forward any request or demand for State Records to the State’s principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee’s reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Grantee can establish that none of Grantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a “Third-Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S.
9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Agreement. Such a conflict of interest would arise when a Grantee or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Grantee acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State’s interests. Absent the State’s prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee’s obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

10. INSURANCE

Grantee shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers’ Compensation

Workers’ compensation insurance as required by state statute, and employers’ liability insurance covering all Grantee or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

i. $1,000,000 each occurrence;
ii. $1,000,000 general aggregate;
iii. $1,000,000 products and completed operations aggregate; and
iv. $50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

D. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

i. $1,000,000 each occurrence; and
ii. $2,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

i. $1,000,000 each occurrence; and
ii. $1,000,000 general aggregate.
F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:
1. $1,000,000 each occurrence; and
2. $1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Grantee and Subcontractors.

H. Primacy of Coverage

Coverage required of Grantee and each Subcontractor shall be primary over any insurance or self-insurance program carried by Grantee or the State.

I. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Grantee and Grantee shall forward such notice to the State in accordance with §14 within 7 days of Grantee’s receipt of such notice.

J. Subrogation Waiver

All commercial insurance policies secured or maintained by Grantee or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. (the “GIA”), Grantee shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Grantee shall maintain that the Subcontractor maintain at all times during the terms of this Agreement, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor’s obligations under the GIA.

L. Certificates

For each commercial insurance plan provided by Grantee under this Agreement, Grantee shall provide to the State certificates evidencing Grantee’s insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Grantee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Grantee’s subcontract is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Grantee’s execution of the subcontract. No later than 15 days before the expiration date of Grantee’s or any Subcontractor’s coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Grantee shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.
12. REMEDIES

A. State’s Remedies

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Grantee’s uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Grantee shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract’s terms. At the request of the State, Grantee shall assign to the State all of Grantee’s rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State’s request, Grantee shall return materials owned by the State in Grantee’s possession at the time of any termination. Grantee shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State’s request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee’s action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State’s damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Grantee’s performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee shall promptly cease performing Work and incurring costs in accordance with the State’s directive, and the State shall not be liable for costs incurred by Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee’s actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.
d. Removal

Demand immediate removal of any of Grantee’s employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State’s best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State (i) secure that right to use such Work for the State and Grantee; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Grantee’s Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Grantee for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES and REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the Designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party’s principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

i. Assignments and Assistance

Whether or not Grantee is under contract with the State at the time, Grantee shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State,
to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Grantee assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, “State Materials”). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee’s obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Grantee

Grantee retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Grantee including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Grantee under this Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Grantee Property”). Grantee Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Agreement is $100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Grantee agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State’s Agreement management system (“Contract Management System” or “CMS”). Grantee’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Grantee’s rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee’s rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Grantee shall not enter into any subcontract in connection with its obligations under this Agreement without providing notice to the State. The State may reject any such Subcontractor, and Grantee shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any work after that Subcontractor’s subcontract has been rejected by the State. Grantee shall submit to the State a copy of each such subcontract upon request by the State. All subgrants and subcontracts entered into by Grantee in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in §17.A., all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party’s obligations have been duly authorized.
E. Captions and References
The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts
This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding
This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures
If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification
Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.
Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions
Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee’s or a Subcontractor’s website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability
The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Agreement Terms
Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes
The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26–704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Grantee. Grantee shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries
Except for the Parties’ respective successors and assigns described in §17.A., this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.
of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver
A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure
To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance
Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Grantee's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.
Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.
This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.
Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.
Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.
Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees.** Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.
Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor’s liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor’s liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor’s services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State’s discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor
has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101, et seq., C.R.S.
Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §24-76.5-101, et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.
EXHIBIT A, STATEMENT OF WORK AND BUDGET

<table>
<thead>
<tr>
<th>Project Description</th>
<th>2020-SB228: One (1) 33' ADA Gas Bus Replacement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project End Date</td>
<td>December 31, 2021</td>
</tr>
<tr>
<td>Subrecipient</td>
<td>City of Black Hawk</td>
</tr>
<tr>
<td>Contact Name</td>
<td>Amy Ostrander</td>
</tr>
<tr>
<td>Address</td>
<td>PO Box 68, Black Hawk, CO 80422-0068</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:aostranderconsulting@msn.com">aostranderconsulting@msn.com</a></td>
</tr>
<tr>
<td>WBS*</td>
<td>23207.10.50</td>
</tr>
<tr>
<td>Vendor #</td>
<td>2000406</td>
</tr>
<tr>
<td>Phone</td>
<td>(720) 855-7404</td>
</tr>
<tr>
<td>Indirect Rate</td>
<td>N/A</td>
</tr>
<tr>
<td>ALI</td>
<td>11.12.03</td>
</tr>
<tr>
<td>Total Project Budget</td>
<td>$169,300.00</td>
</tr>
<tr>
<td>State SB-228 Funds</td>
<td>$135,440.00</td>
</tr>
<tr>
<td>Local Funds</td>
<td>$33,860.00</td>
</tr>
<tr>
<td>Total Project Amount</td>
<td>$135,440.00</td>
</tr>
</tbody>
</table>

*The WBS numbers may be replaced without changing the amount of the grant at CDOT's discretion.

A. Project Description

City of Black Hawk shall use 2020 SB-228 funds, along with local matching funds, to purchase 2019-SB228: One (1) 33' ADA Gas Bus Replacement as more fully described below. The purchase will support the goals of the Statewide Transit Plan.

City of Black Hawk shall use capital funds to purchase the following vehicle(s) (Capital Asset(s)):

<table>
<thead>
<tr>
<th>ALI Name</th>
<th>QTY</th>
<th>Fuel Type</th>
<th>Description</th>
<th>SB-228 Amount</th>
<th>ADA Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.12.03</td>
<td>1</td>
<td>Gas</td>
<td>(1) ADA 33' Gas Bus Repl</td>
<td>$135,440</td>
<td>ADA Compliant</td>
</tr>
</tbody>
</table>

The Capital Asset(s) being purchased is/are to replace the following existing fleet vehicle(s):

<table>
<thead>
<tr>
<th>VIN</th>
<th>COTRAMS Inventory #</th>
<th>Year</th>
<th>Model</th>
<th>Make</th>
</tr>
</thead>
<tbody>
<tr>
<td>1BAGJBPA17W100437</td>
<td>INV-00001123</td>
<td>2006</td>
<td>ULTRA LF</td>
<td>BBB - Blue Bird Corporation</td>
</tr>
</tbody>
</table>

B. Performance Standards

1. Project Milestones

<table>
<thead>
<tr>
<th>Milestone Description</th>
<th>Original Estimated Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submit Procurement Concurrence Request (PCR) to CDOT Project Manager for Approval</td>
<td>10/15/2019</td>
</tr>
<tr>
<td>Submit Procurement Authorization (PA) and solicitation docs CDOT Project Manager for Approval</td>
<td>1/1/2020</td>
</tr>
<tr>
<td>Take Delivery of (First) Vehicle/Equipment/Project Property</td>
<td>6/15/2020</td>
</tr>
<tr>
<td>Take Delivery of and Accept All Vehicles/Equipment/Project Property</td>
<td>6/30/2020</td>
</tr>
<tr>
<td>Submit Reimbursement Request in COTRAMS</td>
<td>7/10/2020</td>
</tr>
</tbody>
</table>

IMPORTANT NOTE: All milestones in this Statement of Work (except for the final reimbursement requests) must be completed no later than the expiration date of this Grant Agreement: December 31, 2021.
2. City of Black Hawk shall use the Capital Asset(s) purchased in its transit operations and shall perform regularly recurring maintenance with specific performance measures tied to City of Black Hawk's written maintenance plans, including manufacturer's recommendations and warranty program(s). City of Black Hawk will measure whether this project is successful and improves the efficiency, effectiveness, and safety of transportation.

3. Performance will be reviewed throughout the duration of this Grant Agreement. City of Black Hawk shall report to the CDOT Project Manager whenever one or more of the following occurs:
   a. Budget or schedule changes;
   b. Scheduled milestone or completion dates are not met;
   c. Identification of problem areas and how the problems will be resolved; and/or
   d. Expected impacts and the efforts to recover from delays.

4. City of Black Hawk must comply and submit all reimbursements and reports associated, including the assignment of "Colorado Department of Transportation" as the lienholder on the Capital Asset(s), as a condition of project closeout.

C. Project Budget

1. The Total Project Budget is $169,300.00. The State will pay no more than 80% of the eligible, actual project costs, up to the maximum amount of $135,440.00. The State will retain any remaining balance of the state share of SB-228 Funds. City of Black Hawk shall be solely responsible for all costs incurred in the project in excess of the amount paid by the State from SB-228 Funds for the state share of eligible, actual costs. For CDOT accounting purposes, the SB-228 Funds of $135,440.00 will be encumbered for this Grant Agreement.

2. No refund or reduction of the amount of City of Black Hawk's share to be provided for the project will be allowed unless there is at the same time a refund or reduction of the state share of a proportionate amount.

3. City of Black Hawk may use eligible federal funds for the Local Funds share. City of Black Hawk's share, together with the State SB-228 Funds share, must be enough to ensure payment of the Total Project Budget.

4. Per the terms of this Grant Agreement, the State shall have no obligation to provide state funds for use on this project. The State will administer SB-228 funds for this project under the terms of this Grant Agreement, provided that the state share of SB-228 funds to be administered by the State are made available and remain available. City of Black Hawk shall initiate and prosecute to completion all actions necessary to enable City of Black Hawk to provide its share of the Total Project Budget at or prior to the time that such funds are needed to meet the Total Project Budget.

D. Procurement

Procurement of this Capital Asset(s) will comply with state procurement procedures and the DTR Quick Procurement Guide. In addition to the state requirements outlined below, state procedures for purchase of this Capital Asset(s) must be followed and will be outlined prior to purchase.

1. The first step in the procurement process will be to obtain an Independent Cost Estimate (ICE).

2. The second step will be to obtain a Procurement Concurrence Request (PCR) approval from the CDOT Project Manager through COTRAMS.

3. Prior to entering into a purchasing agreement with the selected vendor, City of Black Hawk shall request a Purchase Authorization (PA) and submit a purchase order for the Capital Asset(s) in COTRAMS.

4. Once the Purchase Authorization (PA) is approved by the CDOT Project Manager, and the Capital Asset(s) is/are ordered, the CDOT Project Manager shall be notified by City of Black Hawk in COTRAMS of the agreed upon delivery date.

5. Upon delivery, City of Black Hawk shall be responsible for having the Capital Asset(s) inspected and accepted within fifteen (15) calendar days of delivery. If defects prevent acceptance of the Capital Asset(s), City of Black Hawk will contact the vendor to resolve any defects and notify CDOT.
6. City of Black Hawk shall be responsible for reimbursing the selected vendor within **forty-five (45) calendar days after acceptance** of the Capital Asset(s).

E. **Reimbursement Eligibility**

Requests for reimbursement for eligible project costs will be paid to City of Black Hawk upon submission of a complete reimbursement packet in COTRAMS for those eligible costs incurred during the Grant Agreement effective dates.

Accepted reimbursement packets will include the following completed documents:

- Independent Cost Estimate (ICE)
- Procurement Concurrence Request (PCR)
- Purchase Authorization (PA)
- Signed Notice of Acceptance (NA)
- Signed Security Agreement (SA)
- Application for Title showing “Colorado Department of Transportation” as the lienholder
- Invoice
- Proof of Payment
- Post Delivery Certifications

City of Black Hawk must submit the final invoice within sixty (60) calendar days of acceptance of the Capital Asset(s), and submit a Grant Closeout and Liquidation (GCL) Form in COTRAMS within fifteen (15) calendar days of issuance of the final reimbursement payment.

F. **State Interest-Service Life**

CDOT maintains its share of the remaining state interest upon disposition of state assisted property before the end of its useful life or for a value greater than $5,000 after the useful life has been met, according to the provisions of the State Management Plan.

The useful life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from revenue service. The minimum useful life in years refers to total time in transit revenue service, not time spent stockpiled or otherwise unavailable for regular transit use. The minimum useful life in miles refers to total miles in transit revenue service. Non-revenue miles and periods of extended removal from service do not count towards useful life. Changes in operating circumstances, including unforeseen difficulty maintaining vehicles, higher cost of fuel, and changes in local law limiting where vehicles can be operated are not exemptions from minimum useful life requirements.

Minimum useful life is determined by years of service or accumulation of miles, whichever comes first, in accordance with the State Management Plan.

City of Black Hawk shall not dispose or otherwise release the Capital Asset(s) to any other party while there is state interest in the Capital Asset(s) without approval from the CDOT Project Manager.

City of Black Hawk is responsible for making the request to the CDOT Project Manager in a timely manner, providing appropriate documentation, if indicated, when a lien release is being requested in order to allow CDOT to process the release of a lien.

CDOT and City of Black Hawk will work in conjunction with Department of Revenue (DOR) to assure the lien is released according to state rules.

G. **Training**

In an effort to enhance transit safety, City of Black Hawk and any subrecipients and subcontractors shall make a good faith effort to ensure that appropriate training of agency and contracted personnel is occurring and that personnel are up to date in appropriate certifications. In particular, City of Black Hawk shall ensure that driving
personnel are provided professional training in defensive driving and training on the handling of mobility devices and transporting older adults and individuals with disabilities.

H. Safety Data

City of Black Hawk and any subrecipients shall maintain and submit, as requested, data related to bus safety. This may include, but not be limited to, the number of vehicle accidents within certain measurement parameters set forth by CDOT, the number and extent of passenger injuries or claims, and the number and extent of employee accidents, injuries and incidents.

I. Restrictions on Lobbying

City of Black Hawk is certifying that it complies with 2 CFR 200.450 by entering into this Subaward Agreement.

J. Special Conditions

1. City of Black Hawk will comply with all requirements imposed by CDOT on City of Black Hawk so that the state award is used in accordance with state statutes, regulations, and the terms and conditions of the state award.

2. City of Black Hawk must permit CDOT and their auditors to have access to City of Black Hawk’s records and financial statements as necessary, with reasonable advance notice.

3. Except as provided in this Grant Agreement, City of Black Hawk shall not be reimbursed for any purchase, issued purchase order, or leased capital equipment prior to the execution of this Grant Agreement.

4. City of Black Hawk shall document any loss, damage, or theft of FTA- or state-funded property, equipment, or rolling stock in COTRAMS.

5. City of Black Hawk shall ensure that it does not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, national origin, sex, age or disability in accordance with Title VI of the Civil Rights Act of 1964.

6. City of Black Hawk shall seek to ensure non-discrimination in its programs and activities by developing and maintaining a Title VI Program in accordance with the “Requirements for FTA Subrecipients” in CDOT’s Title VI Program Plan and Federal Transit Administration Circular 4702.1B, “Title VI Requirements and Guidelines for FTA Recipients.” The Party shall also facilitate FTA’s compliance with Executive Order 12898 and DOT Order 5610.2(a) by incorporating the principles of environmental justice in planning, project development and public outreach in accordance with FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.”

7. City of Black Hawk will provide transportation services to persons with disabilities, in accordance with Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.

8. City of Black Hawk shall develop and maintain an ADA Program in accordance with 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services, FTA Circular 4710.1, and any additional requirements established by CDOT for FTA subrecipients.

9. City of Black Hawk shall ensure that it will comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FTA guidance, and any other federal, state, and/or local laws, rules and/or regulations. In any contract utilizing federal funds, land, or other federal aid, City of Black Hawk shall require its subrecipients and/or contractors to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

10. City of Black Hawk shall agree to produce and maintain documentation that supports compliance with the Americans with Disabilities Act to CDOT upon request.
**EXHIBIT B, SAMPLE OPTION LETTER**

<table>
<thead>
<tr>
<th>State Agency</th>
<th>Option Letter Number</th>
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<tbody>
<tr>
<td>Department of Transportion</td>
<td>Insert the Option Number (e.g. &quot;1&quot; for the first option)</td>
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<th>Grantee</th>
<th>Original Agreement Number</th>
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<td>Insert Grantee's Full Legal Name, including &quot;Inc.&quot;, &quot;LLC&quot;, etc...</td>
<td>Insert CMS number or Other Contract Number of the Original Contract</td>
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<table>
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<th>Current Agreement Maximum Amount</th>
<th>Option Agreement Number</th>
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<tr>
<td><strong>Extension Terms</strong></td>
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<td>State Fiscal Year 20xx</td>
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</tr>
<tr>
<td><strong>Total for All State Fiscal Years</strong></td>
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</tbody>
</table>

**1. OPTIONS:**
A. Option to extend for an Extension Term.

**2. REQUIRED PROVISIONS:**
A. **For use with Option I[A] In accordance with Section(s) 2.C of the Original Agreement referenced above,**
the State hereby exercises its option for an additional term, beginning **insert start date and ending on the current Agreement expiration date shown above,** at the rates stated in the Original Agreement, as amended.

B. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement’s Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

**3. OPTION EFFECTIVE DATE:**
A. The effective date of this Option Letter is upon approval of the State Controller or ……., whichever is later.

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**STATE OF COLORADO**
Jared S. Polis, Governor
Department of Transportation
Shoshana M. Lew, Executive Director

By: Name & Title of Person Signing for Agency or IHE

Date: __________________________

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In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.

**STATE CONTROLLER**
Robert Jaros, CPA, MBA, JD

By: Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Option Effective Date: __________________________
EXHIBIT C, TITLE VI – CIVIL RIGHTS

Nondiscrimination Requirements

The Parties shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, national origin, sex, age or disability. During the performance of this agreement, the Grantee, for itself, its assignees and successors in interest (hereinafter referred to as the “Grantee”) agrees as follows:

(1) Compliance with Regulations: The grantee shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The grantee, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, or sex in the selection and retention of subgrantees, including procurements of materials and leases of equipment. The grantee shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subgrantees, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the grantee for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subgrantee or supplier shall be notified by the grantee of the grantees obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin or sex.

(4) Information and Reports: The grantee shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Colorado Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a grantee is in the exclusive possession of another who fails or refuses to furnish this information the grantee shall so certify to the Colorado Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the grantee's noncompliance with the nondiscrimination provisions of this contract, the Colorado Department of Transportation shall impose such contract sanctions as may determine to be appropriate, including, but not limited to:
   (a) withholding of payments to the grantee under the contract until the grantee complies, and/or
   (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The grantee shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The grantee shall take such action with respect to any subcontract or procurement as the Colorado Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event a grantee becomes involved in, or is threatened with, litigation with a subgrantee or supplier as a result of such direction, the grantee may request the Colorado Department of Transportation to enter into such litigation to protect the interests of the Colorado Department of Transportation.
RESOLUTION 61-2019

A RESOLUTION AWARDING THE BID AND APPROVING THE CONTRACT BETWEEN THE CITY OF BLACK HAWK AND AVERY ASPHALT, INC. IN AN AMOUNT NOT TO EXCEED $61,760.00 FOR CONSTRUCTION OF THE CHASE STREET ASPHALT PATCHING PROJECT
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Resolution 61-2019, a Resolution awarding the bid and approving the contract between the City of Black Hawk and Avery Asphalt, Inc. for construction of the Chase Street Asphalt Patching project.

RECOMMENDATION:
If City Council chooses to approve Resolution 61-2019, the recommended motion is as follows: “Approve Resolution 61-2019, a Resolution awarding the bid and approving the contract between the City of Black Hawk and Avery Asphalt, Inc. in an amount not to exceed $61,760.00 for construction of the Chase Street Asphalt Patching project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
New underground utility lines in the Chase Street corridor were installed this year, and the overhead lines have been removed. Selective asphalt removal was necessary to accommodate trenching for the new underground utilities. Ultimately, a complete redesign and reconstruction of Chase Street will likely occur; however, this design will not be complete until 2020. In the meantime, to prevent washouts and constant maintenance through the winter, Staff recommends that asphalt patching be completed this fall.

This project was publicly advertised in the Weekly Register-Call and published online on BidNet Direct. Only Avery Asphalt, Inc., submitted a bid.


WORKSHOP DATE: September 25, 2019

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: October 31, 2019

DOCUMENTS ATTACHED: Chase Street Asphalt Patching Contract

CITY ATTORNEY REVIEW: [ ]Yes [ X ]No [ ]N/A INITIALS__________

SUBMITTED BY: Reviewed By:

Thomas Isbester, Public Works Director

Stephen N. Cole, City Manager
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 61-2019

TITLE: A RESOLUTION AWARDING THE BID AND APPROVING THE CONTRACT BETWEEN THE CITY OF BLACK HAWK AND AVERY ASPHALT, INC. IN AN AMOUNT NOT TO EXCEED $61,760.00 FOR CONSTRUCTION OF THE CHASE STREET ASPHALT PATCHING PROJECT

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

Section 1. The City Council hereby awards the bid and approves the contract between the City of Black Hawk and Avery Asphalt, Inc. in an amount not to exceed $61,760.00 for construction of the Chase Street Asphalt Patching project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 25th day of September, 2019.

_______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, City Clerk
CITY OF BLACK HAWK, COLORADO

BLACK HAWK

Contract Documents for

CHASE STREET ASPHALT PATCHING
Black Hawk, CO 80422

September 2019
TRADE CONTRACTOR AGREEMENT

THIS AGREEMENT is made this ______ day of ________________________, 2019, by and between the CITY OF BLACK HAWK, State of Colorado, a Colorado municipal corporation (hereinafter referred to as the “City”) and Avery Asphalt, Inc. (hereinafter referred to as “Contractor”).

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, the City and Contractor agree as follows:

Section 1. Scope of Work. Contractor shall perform Chase Street asphalt patching in accordance with Exhibit A, which is attached hereto and incorporated by this reference, including furnishing all supervision, labor, equipment, and materials therefor (the “Project”).

Section 2. Contract Documents. The Contract Documents, which comprise the entire agreement and contract between the City and Contractor, consist of this Agreement, Exhibit A, Exhibit B, and any modifications, change orders or other such revisions properly authorized after the execution of this Agreement.

Section 3. Agreement Price. The City shall pay Contractor for the performance of work and completion of the Project not to exceed the amounts set forth in Exhibit B.

Section 4. Times and Methods of Payment.

A. Payment shall be made for services rendered upon completion and final acceptance of the project and shall be due and owing within thirty (30) days of Contractor’s submittal of his invoice. Contractor shall submit invoices prior to the twenty-fourth (24th) day of each month for payment the following month. Payment of any invoice that is received after the twenty-fourth (24th) day of each month may be delayed up to a period of sixty (60) days. If the City objects to any invoices submitted by Contractor, the City will so advise Contractor in writing giving the reason within fourteen (14) days of receipt of such invoice.

B. If the City fails to make payments due Contractor within sixty (60) days after receipt and acceptance of Contractor’s bill, Contractor may, after giving seven (7) days written notice to the City, suspend services under this Agreement until Contractor’s outstanding bills have been paid in full.

Section 5. Not Used.

Section 6. Not Used.
Section 7. **Final Acceptance.** Final acceptance of the Project shall follow inspection and approval of Contractor's performance by the City, along with inspection by appropriate governmental officials pursuant to local, state and federal requirements, if necessary. The City shall have the right and authority to determine the acceptability of Contractor's performance for conformity with this Agreement, which determination shall be conclusive and binding upon Contractor. Final acceptance by the City is subject to the provisions of this Contract, and in no manner affects or releases any warranties or guarantees with Contractor or manufacturers of Project equipment.

The Project, when presented to the City for final acceptance, shall be delivered free from any and all claims or encumbrances, whether then in existence or later established by law, statute, ordinance, or otherwise. No claim or encumbrance against the Project or the Project site shall be outstanding or otherwise unsettled at the time of final acceptance. The right to assert any claim or encumbrance against the Project, after final acceptance by the City and final payment to Contractor, is hereby waived by Contractor on behalf of itself and any subcontractor, laborer, material man, equipment supplier, manufacturer or other person.

Section 8. **Commencement and Completion of Performance.** The services called for shall commence on or before September 30, 2019 and end by October 25, 2019. Contractor shall commence any work requested by the City within ten (10) days of notification by the City. In the event Contractor fails to commence work within this time period, the City may take over the work and prosecute the same to completion. The date of beginning and the time for completion of the work are essential conditions of this Agreement. Contractor shall proceed with the work at such rate of progress to ensure full completion within the contract time. It is expressly understood and agreed by and between the City and Contractor that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed. If Contractor shall fail to complete the work within the contract time, or extension of time granted by the City, then Contractor shall pay to the City the amount of liquidated damages and not as penalty the sum of Two Hundred Fifty and 00/100 Dollars ($250.00) for each calendar day that Contractor shall be in default after October 25, 2019. The City will charge Contractor, and may deduct from the partial and final payment for the work, all architectural, engineering and construction management expenses incurred by the City in connection with any work accomplished after the specified completion date.

Contractor will not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and Contractor has promptly given written notice of such delay to the City:
A. to any preference, priority or allocation order duly issued by the City; and

B. to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather.

Section 9. Termination.

A. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, that no such termination may be effected unless the other party is given:

i. not less than ten (10) calendar days written notice of intent to terminate, and

ii. an opportunity for consultation with the terminating party prior to termination.

B. This Agreement may be terminated in whole or in part in writing by the City for its convenience.

C. Upon receipt of a termination action pursuant to paragraphs a. and b. above, Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

Section 10. Taxes, Licenses, Permits and Regulations. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law and shall obtain all licenses and permits necessary for completion of the Project, paying all fees therefor unless otherwise specified by the City. The City shall assist Contractor to determine which licenses and permits are required for completion of the Project.

The City is exempt from Colorado state sales and use taxes on materials to be permanently incorporated in the work. Accordingly, taxes for which the City is exempt shall not be included in the Agreement Price: The City shall, upon request, furnish Contractor with a copy of its Certificate of Tax Exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an exemption certificate and purchase the materials tax free. Pursuant to C.R.S. §39-26-708, Contractor and subcontractors shall be liable to the State of Colorado for exempt taxes paid due to failure to apply for exemption certificates or
for failure to use said certificates. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project and, particularly, in complying with those laws concerning the environment, workers’ compensation, safety and health, state labor and materials, and equal employment opportunity.

Section 11. Indemnification.

The Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its officers, employees, agents and their insurers, from and against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arises out of or is in any manner connected with this Contract, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of the Contractor, the Contractor’s employees, subcontractors or anyone else employed directly or indirectly by the Contractor, Contractor’s employees or subcontractor.

The Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims or demands at the sole expense of the Contractor, or at the option of the City, Contractor agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims, or demands. The Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

Section 12. Insurance.

A. The Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 11 above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 11 above, by reason of its failure to obtain and maintain during the life of this Contract insurance in sufficient amounts, durations, or types.
B. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 11 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker’s Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of five hundred thousand dollars ($500,000) each incident, five hundred thousand dollars ($500,000) disease—policy limit, and five hundred thousand dollars ($500,000) disease—each employee.

2. General Public Liability Insurance to be written with a limit of liability of not less than one million dollars ($1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than two million dollars ($2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than one million dollars ($1,000,000) for all damages arising out of injury to or destruction of property in any one (1) accident and not less than two million dollars ($2,000,000) for all damages arising out of injury to, or destruction of property, including the City’s property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.

3. Protective Liability and Property Damage Insurance covering the liability of the Owner, including any employee, officer or agent of the Owner with respect to all operations under the Contract by the Contractor or his sub-contractors shall be obtained and maintained during the life of this Contract.
4. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars ($1,000,000) each occurrence and one million dollars ($1,000,000) aggregate with respect to each of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Contractor providing services to the Owner under this contract.

C. To the extent that liability results from the acts or omissions of the Contractor, all Insurance Policies and Certificates of Insurance issued for this project shall name as additional insured(s), the Owner, whether private or governmental, the Owner's officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner. The Contractor shall be solely responsible for any deductible losses under any policy required herein.

D. The insurance provided by the Contractor shall be primary to insurance carried by the Owner and all other additional insureds, and the principal defense of any claims resulting from the Contractor's obligations under the Contract shall rest with the Contractor's Insurer.

Section 13. Warranties and Guarantees. Contractor hereby represents, warrants and guarantees to the City all workmanship, equipment and materials on or made a part of the Project and its structures for a period of two (2) years from and after the date of final acceptance of the work by the City as provided by this Agreement.

Section 14. Subcontractors. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement. Contractor shall require any subcontractors to provide the City with a certificate of insurance which provides insurance coverage as provided by Section 12 of this Agreement. The certificate of insurance shall name the City as an additional insured and provide that the policy shall not be terminated without ten (10) days written notice to the City. In all events, Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors. Upon receipt of progress and final payments from the City, Contractor shall disburse the same immediately to subcontractors without any requirement of the City to supervise the same. The City may, but shall not be obligated to, require Contractor to furnish lien waivers for the work performed or materials furnished by subcontractors or material men prior to payment of progress payments or final payment. No contractual relationship shall exist between the City and any subcontractor because of the subletting of any part of the Project work.
Section 15. Changes in Contract Price. The contract price may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price will be determined by one or more of the following methods in the order of precedence listed below:

A. Unit prices previously approved, which are attached hereto and incorporated by this reference.

B. An agreed lump sum.

C. The actual cost of labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work. In addition there will be added an amount to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work to cover the cost of general overhead and profit.

Section 16. Work Rules.

A. Contractor shall perform all work hereunder in keeping with the rules and regulations that the City may promulgate at any time for the safe, orderly, and efficient conduct of all operations.

B. The City shall have the right to require of Contractor the immediate removal from the Project of any employee of Contractor or of his subcontractors who, in the discretion of the City, is not qualified to perform the work assigned to him, is guilty of improper conduct, or is not working in harmony with the other trades.

C. Nothing contained in this Agreement shall constitute Contractor as being an employee of the City, nor shall any employment relationship between the City and Contractor be created by the terms hereof.

D. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the job site and for protection of the Project and shall hold the City and its authorized representatives harmless from any damage or loss incurred thereto.

E. Contractor shall promptly pay in full for any and all damage caused to the Project site by Contractor or by any subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services, or instruments for whose actions Contractor is responsible hereunder.
F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Project site by Contractor without the prior written approval of the City.

G. Contractor agrees to report immediately to the City, in writing, any and all property damage and/or personal injury that occurs on the Project site during the course of Contractor’s performance.

Section 17. Illegal Aliens

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

B. Prohibited Acts. Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:
a. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. If Contractor does not currently employ any employees, Contractor shall sign the No Employee Affidavit attached hereto.

F. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the Department Program Affidavit attached hereto.

Section 18. Assignment. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the City. The terms of this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 19. Amendment. This Agreement may be amended from time to time by agreement between the parties hereto. No amendment, modification, or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

Section 20. Severability. If any term, section, or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

Section 21. Waiver. No waiver by either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor
shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 22. Remedies. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

Section 23. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

Section 24. Entirety. This Agreement constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and are superseded by this Agreement.
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF BLACK HAWK, COLORADO

By: ________________________________

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

AVERY ASPHALT, INC.

By: ________________________________

Name: Andrew Avery

Title: V. P.

STATE OF COLORADO

) ss.

COUNTY OF DENVER

The foregoing instrument was acknowledged before me this 25th day of September, 2019, by Andrew Avery, as Vice President of Avery Asphalt Inc.

My commission expires: 8/24/2020

Witness my hand and official seal.

______________________________

Mirella McKnight

Notary Public
State of Colorado
Notary ID: 19924011461
My Commission Expires Aug. 26, 2020
PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: Avery Asphalt, Inc.  
(Prospective Contractor)

TO: City of Black Hawk  
P.O. Box 68  
Black Hawk, Colorado 80422

Project Name: Chase Street Asphalt Patching

Bid Number: N/A  
Project No.: 17012

As a prospective Contractor for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that I (we) will confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment.

Executed this 25th day of September, 2019.

Prospective Contractor  AVERY ASPHALT INC

By: [Signature]

Title: V.P.
NO EMPLOYEE AFFIDAVIT

(To be completed if Contractor has zero employees)

1. Check and complete one:

☐ I, ____________________________, am a sole proprietor doing business as ____________________________. I do not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, ____________________________, am an owner/member/shareholder of ____________________________, a ____________________________ [specify type of entity—i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

☐ I, ____________________________, am a United States citizen or legal permanent resident.

The City must verify this statement by reviewing one of the following items:

- A valid Colorado Driver’s license or a Colorado identification card
- A United States military card or a military dependent’s identification card
- A United States Coast Guard Merchant Mariner card
- A Native American tribal document
- In the case of a resident of another state, the driver’s license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card
- Any other documents or combination of documents listed in the City’s “Acceptable Documents for Lawful Presence Verification” chart that prove both the contractor’s citizenship/lawful presence and identity.

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

Contractor must verify this statement through the federal systematic alien verification of entitlement program, the “SAVE” program, and provide such verification to the City.

____________________________  ____________________________
Signature                                               Date
DEPARTMENT PROGRAM AFFIDAVIT

(To be completed if Contractor participates in the Department of Labor Lawful Presence Verification Program)

I, _____________________________, as a public contractor under contract with the City of Black Hawk (the "City"), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services ("Contract") with the City within twenty (20) days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Contract; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Contract.

______________________________  _____________________________
Contractor Signature              Date

STATE OF COLORADO   )
COUNTY OF ________________)  

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____________ day of _________________________, 20___, by ________________________________ as _______________.

My commission expires:

(S E A L.)

Notary Public
ACCEPTABLE DOCUMENTS FOR LAWFUL PRESENCE VERIFICATION

Documents that Serve to Prove Citizenship/Lawful Presence and Identification:

- Colorado Driver’s License or Identification Card
- Out of State drivers license from: AL, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NJ, NY, ND, OH, OK, PA, RI, SC, SD, VA, WV, WY
- A United States Military Card of a Military Dependent’s Identification Card
- A United States Coast Guard or Merchant Mariner Card
- A Native American Tribal Document
- Certificate of Naturalization with Photograph
- Certificate of U.S. Citizenship with Photograph
- U.S. Passport (less than 5 years old)
- Northern Mariana Identification Card with Photograph

OR

Documents that Only Serve to Prove Citizenship/Lawful Presence:

- U.S. Birth Certificate
- Certification of Report of Birth from Department of State
- Report of Birth Abroad of a U.S. Citizen
- U.S. Citizen Identification Card
- Final Adoption Decree
- Evidence of U.S. Civil Service Employment before June 1, 1976
- Statement Provided by U.S. Consular Officer Certifying Citizenship
- Religious Records Recorded in the 50 states, D.C., or a U.S. Territory Showing Birth Date or Child’s Age and Location of Birth in U.S.
- Early School Records
- Census Records
- Other Documents that Establish a U.S. Place of Birth or in Some Way Indicates U.S. Citizenship

AND

Documents that Serve to Prove Identification:

- A Driver’s License or Identification Card Regardless of the State of Issuance
- School Identification Card with Photograph
- Identification Card Issued by Federal, State or Local Government
- A Driver’s License Issued by a Canadian Government Authority
EXHIBIT A

SCOPE OF SERVICES

Work includes, but is not necessarily limited to the following:

1. All labor, materials, equipment, tools, transportation and supplies to perform and complete the work. All materials purchased for this project are exempt from all State and local sales taxes.

2. All materials, methods, workmanship and testing shall conform to all applicable federal, state and local regulations.

3. All relevant site work shall conform to the latest editions of CDOT's Standard Specifications for Road and Bridge Construction and CDOT's Standard Plans.

4. Contractor shall complete the Work in accordance with the completed Bid Schedule.

5. Contractor shall construct 5” asphalt pavement in all utility trench cuts in Chase Street. Most patches will be approximately 3’ in width. Contractor shall remove existing road base and other material within the patching areas to a depth of 5” and prepare the resulting subgrade as necessary. Asphalt shall be Grading SX placed in two lifts.

6. Asphalt will be paid based on the actual quantity supplied at the unit price established in this contract. A Change Order will be issued at the completion of the project to account for the actual asphalt quantity provided. The City may have additional asphalt patching work in another part of the City; if agreed upon by the City and the Contractor, this additional work may be added and paid at the unit price established in this contract.

7. Approximately 520 linear feet of 2’ concrete pan has been previously removed from Chase Street. Contractor shall replace these sections with a 3’ wide asphalt pan shaped to have a 1.5” depression in the center. Quantities for this asphalt work are included in the overall asphalt quantity in the Bid Schedule.

8. Contractor and all sub-contractors shall be registered with the City of Black Hawk. This is a no-cost registration. If a sub-contractor is found to be working on-site without being registered through the City, a stop work order may be issued immediately. The purpose of registration is to confirm that each firm working in the City is properly insured.

9. Contractor shall procure a zero-cost Temporary Use Permit from the City of Black Hawk Community Planning and Development Department for any dumpster, staging area, or other temporary facilities that will be necessary for this
work. All dumpsters shall be kept covered while not actively being used due to regular high winds in the area.

10. Contractor shall provide traffic control plans and provide all traffic control necessary to safely complete this project. Traffic control plans shall be provided to and approved by the City prior to implementation. All traffic control devices shall comply with the latest issue of the MUTCD.

11. A Street Closure Permit application shall be completed by the Contractor prior to each sidewalk/lane/roadway closure. There will be no fees associated with Street Closure Permits for this project.

12. Allowable work hours are from 7:00am through 7:00pm, Monday through Friday, holidays excluded.

13. Non-potable construction water is available at no cost from the City of Black Hawk truck fill station located on Highway 119 north of the Fire Station. Contractor shall coordinate with the Public Works Department to obtain construction water as needed. The truck fill station is located approximately one-half mile from the construction site. The Contractor will not be allowed to operate fire hydrants to acquire construction water.

14. Contractor shall be responsible for hauling and properly disposing of excavated material off-site. The City will allow excavation spoils to be dumped onto a City-owned site located on the east side of Highway 119, approximately one-half mile north of the construction site. There will be no dump fees assessed to the Contractor for depositing native material or aggregate at this site. Asphalt and concrete slabs and chunks will not be accepted by the City and must be hauled off-site.

15. Upon completion of work, Contractor shall remove all excess material, construction debris, tools and construction equipment from the site.

16. Payment and performance bonds are not required for this project.
EXHIBIT B

Chase Street Asphalt Patching
BID SCHEDULE

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<th>No.</th>
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<th>Quantity</th>
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BIDDER will complete the Work in accordance with the Contract Documents for a TOTAL BID PRICE (Sum of Bid Items 1 - 5) of:

Sixty-One Thousand Seven Hundred Sixty and 00/100 Dollars

\[ \text{(words)} \]

\[ \text{($61,760.00)} \]

(figures)
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Associates Insurance Group
7395 E. Orchard Rd.
Greenwood Village, CO 80111

INSURED
Avery Asphalt, Inc.
1770 E. 69th Ave.
Denver, CO 80229

INsurer(s) Affording Coverage
NAM #
INSURER A: Travelers Indemnity Company of America
25666
INSURER B: Travelers Property Casualty Company of America
25674
INSURER C: Travelers Indemnity Company
25688
INSURER D: Pinnacol Assurance
41190
INSURER E: Tokio Marine Specialty Insurance Company
23850

COVERAGES
CERTIFICATE NUMBER: Master
REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

[Job #: 17012 Job Type: Chase Street Asphalt Patching]

If required by written agreement, City of Black Hawk, officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by City of Black Hawk are named Additional Insured as respects General Liability & Automobile Liability on a primary & non-contributory basis.

CERTIFICATE HOLDER

City of Black Hawk
PO Box 68
Black Hawk, CO 80422

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD

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RESOLUTION 62-2019
A RESOLUTION APPROVING AMENDMENT NO. 2 TO THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT EXECUTED ON FEBRUARY 27, 2019 BETWEEN THE CITY OF BLACK HAWK AND ROCHE CONSTRUCTORS, INC., ESTABLISHING THE PHASE 2 GUARANTEED MAXIMUM PRICE (GMP) OF $12,605,752.00 FOR CONSTRUCTION OF THE GREGORY STREET PLAZA PROJECT
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Resolution 62-2019, a Resolution approving Amendment No. 2 to the Construction Manager/General Contractor contract for the Gregory Street Plaza project. Amendment No. 2 would establish Phase 2 of the Guaranteed Maximum Price (GMP) for construction of this project.

RECOMMENDATION: If City Council chooses to approve Resolution 62-2019, the recommended motion is as follows: “Approve Resolution 62-2019, a Resolution approving Amendment No. 2 to the Construction Manager/General Contractor agreement executed on February 27, 2019 between the City of Black Hawk and Roche Constructors, Inc. establishing the Phase 2 Guaranteed Maximum Price (GMP) of $12,605,752.00 for construction of the Gregory Street Plaza project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER: City Council approved a Construction Manager/General Contractor (CMGC) contract with Roche Constructors, Inc. to complete preconstruction services for the Gregory Street Plaza project on February 27, 2019. Additionally, City Council approved a Phase 1 Amendment to this Agreement on July 10, 2019 that authorized Roche Constructors to move the McAfee, Woodbury, and Norton Houses off their foundations and procure the precast sections of concrete box culvert necessary to reconstruct the flume between High and Church Streets.

This Phase 2 GMP includes the previously-approved costs mentioned above, as well as costs to:
- Renovate the McAfee, Woodbury, and Norton Houses.
- Construct the Public Restroom and Fire Truck Display buildings.
- Renovate the Bobtail Mine building.
- Relocate and renovate the Bunk House.
- Reconstruct the flume between High and Church Streets.
- Construct all site, landscaping, and utility improvements necessary to complete the Gregory Street Plaza.

It should be noted that this Phase 2 GMP does not include costs to:
- Renovate the Gregory Street Commercial Building at 211/221 Gregory Street.
- Construct the “Grand Staircase”.
- Stabilize the rock face behind the McAfee, Woodbury, and Norton Houses.
- Rehabilitate the masonry on the church building at 331 Gregory Street.

Future Amendments or Agreements will be presented to City Council to authorize these expenditures.

FUNDING SOURCE: Gregory Street Plaza: 203-0000-502-58-14

WORKSHOP DATE: September 25, 2019

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed
PROJECT COMPLETION DATE: March 31, 2021

DOCUMENTS ATTACHED: GMP Amendment No. 2

CITY ATTORNEY REVIEW: [ ]Yes [x] No [ ]N/A INITIALS __________

SUBMITTED BY: Thomas Isbester, Public Works Director

REVIEWED BY: Stephen N. Cole, City Manager
TITLE: A RESOLUTION APPROVING AMENDMENT NO. 2 TO THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT EXECUTED ON FEBRUARY 27, 2019 BETWEEN THE CITY OF BLACK HAWK AND ROCHE CONSTRUCTORS, INC., ESTABLISHING THE PHASE 2 GUARANTEED MAXIMUM PRICE (GMP) OF $12,605,752.00 FOR CONSTRUCTION OF THE GREGORY STREET PLAZA PROJECT

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

Section 1. The City Council hereby approves Amendment No. 2 to the Construction Manager/General Contractor agreement executed on February 27, 2019 between the City of Black Hawk and Roche Constructors, Inc., establishing the Phase 2 Guaranteed Maximum Price (GMP) of $12,605,752.00 for construction of the Gregory Street Plaza project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 25th day of September, 2019.

____________________________________
David D. Spellman, Mayor

ATTEST:

____________________________________
Melissa A. Greiner, CMC, City Clerk
AMENDMENT NO. 2
ACCEPTANCE OF THE PHASE 2 GUARANTEED MAXIMUM PRICE

City of Black Hawk Gregory Street Plaza
September 25, 2019

This Amendment to the Agreement between the parties signing below shall establish Phase 2 of the jointly agreed scope of Work, Schedule, and Guaranteed Maximum Price, in accordance with the terms of the Agreement entitled Construction Manager/General Contractor Agreement, dated February 27, 2019. Terms capitalized in this document are specifically defined in the Agreement and in the Contract Documents incorporated therein.

A.1. PHASE 2 SCOPE OF WORK

The Phase 2 scope of Work includes:

- Full renovation of the McAfee House located at 305/311 Gregory Street.
- Full renovation of the Woodbury House located at 321 Gregory Street.
- Full renovation of the Norton House located at 351 Gregory Street.
- Construction of the Public Restrooms building to be located at 341 Gregory Street.
- Construction of the Fire Truck Display building to be located at 361 Gregory Street.
- Full renovation of the Bobtail Mine building located at 426 Gregory Street, including construction of a wooden deck.
- Relocation of the Bunk House from its current location at 261 Gregory Street to its new location between the Lace House and the Bobtail Mine building. Full renovation of this building to create public restroom facilities.
- Reconstruction of the storm sewer culvert ("flume") between High and Church Streets.
- Construction of the Gregory Street Plaza along the north side of Gregory Street between High and Church Streets, including utilities, retaining walls, brick pavers, ramps, stairs, patio spaces, railings, landscaping, irrigation, lighting, and an audio system.
- Construction of site improvements along the south side of Gregory Street from the east end of Mountain City to the Bobtail Mine building, including utilities, a bus pullout, concrete sidewalks, landscaping, and irrigation.
- Construction of site improvements in the ‘Meeting Nook’ area at the SE corner of Gregory and Bobtail Streets, including a seat wall, concrete sidewalks, landscaping, and irrigation.
- Construction of brick patios and colored concrete along the north side of the St. Charles Carriage House.
- A description of the Work is included within Exhibit B, which is incorporated herein and attached hereto.

All construction shall be in accordance with the approved “Issued for Construction” plans prepared by PEH Architects, et al.
A.2. PHASE 2 GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price for the Phase 2 scope of Work includes the following:
- $26,452 preconstruction fee, as approved by City Council on February 27, 2019.
- $856,700 for Phase 1 house-moving and box culvert procurement, as approved by City Council on July 10, 2019.
- $1,081,500 for full renovation of the McAfee House.
- $936,700 for full renovation of the Woodbury House.
- $836,100 for full renovation of the Norton House.
- $685,600 for construction of the Fire Display Building.
- $465,500 for construction of the Public Restrooms building.
- $528,500 for full renovation of the Bobtail Mine building.
- $431,700 for relocation and full renovation of the Bunk House.
- $6,725,300 for construction of the Gregory Street Plaza.
- $29,300 Alternate #1 to add air conditioning to the McAfee, Woodbury, and Norton Houses.
- $2,400 Alternate #2 to include conduits for a Plaza WiFi system.

The total Phase 2 Guaranteed Maximum price is therefore Twelve Million Six Hundred Five Thousand, Seven Hundred Fifty-Two Dollars ($12,605,752), which is the maximum amount payable for performance of the Phase 2 scope of Work in accordance with the Contract Documents, including this Amendment and its incorporated Exhibit B.

A.3. PHASE 2 CONTRACT TIME

The date of Substantial Completion for the Phase 2 scope of Work established by this Amendment is March 31, 2021.
A.4. AUTHORIZATION TO PROCEED

Based on the representations made herein, the CMGC is hereby authorized to:

1) Conclude negotiations with bidders, and notify Owner of the intent to award subcontracts in accordance with the Agreement;
2) Commence construction in accordance with the Agreement, pending procurement of required insurance and bonds.

IN WITNESS WHEREOF the parties hereto each herewith subscribe the same.

CITY OF BLACK HAWK, COLORADO

By: ____________________________

David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

______________________________
Corey Y. Hoffmann, City Attorney

ROCHE CONSTRUCTORS, INC.

By: ____________________________

Name: Thomas J. Roche

Title: President & CEO

STATE OF COLORADO

) ss.

COUNTY OF Weld

The foregoing instrument was acknowledged before me this 20th day of September, 2019, by Thomas J. Roche, President & CEO of Roche Constructors, Inc.

My commission expires: 10/23/2019

Notary Public
### Description of Work
Roche Constructors, Inc. (Roche) is pleased to submit this cost summary for the Gregory Street, Phase II project located in Black Hawk, Colorado. The below pricing reflects all estimated supervision, labor, material, and equipment costs anticipated for completion of all work as detailed in the Construction Documents (CD) Drawings by FEH Architects.

### Cost Summary
Roche agrees to perform all work as detailed in the above mentioned documents for the following costs:

<table>
<thead>
<tr>
<th>Description of Work</th>
<th>Original Contract</th>
<th>Bid Package #1</th>
<th>Bid Package #2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Preconstruction Fee</td>
<td>House Moving, Mobilization, and Precast Material</td>
<td>McAfee House</td>
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<tr>
<td>Construction Staking</td>
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<tr>
<td>Winter Conditions</td>
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<tr>
<td>Earthwork &amp; Erosion Control</td>
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<td>Asphalt Paving &amp; Specialties</td>
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<tr>
<td>Utilities</td>
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<tr>
<td>Landscaping &amp; Irrigation</td>
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<tr>
<td>Unit Pavers</td>
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<tr>
<td>Concrete</td>
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<td>Selective Demolition</td>
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<td>Moisture Protection</td>
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<td>Roof, Frames, &amp; Hardware</td>
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<tr>
<td>Electrical</td>
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</table>

### Cost of Work Sub Total
- $563,185 $824,480 $714,332 $637,222 $522,659 $354,739 $402,658 $328,970 $5,070,220 $9,418,457

### General Conditions
- $212,182 $122,811 $106,494 $94,918 $77,852 $52,840 $59,978 $49,082 $1,158,496 $1,731,247

### General Liability Insurance
- $5,119 $7,130 $5,908 $5,788 $4,407 $3,229 $3,761 $2,943 $43,780 $82,119

### Builder's Risk
- $1,886 $6,386 $5,533 $4,936 $4,048 $2,746 $3,119 $2,548 $39,274 $69,781

### Payment & Performance Bonds
- $6,639 $6,823 $5,912 $5,273 $4,325 $2,930 $3,332 $2,722 $41,959 $79,902

### Preconstruction Fee
- $26,452 $8,387 $27,281 $24,352 $19,966 $13,592 $12,571 $1,158,496 $1,731,247

### Overhead & Fee

### Construction Contingency
- $31,498 $27,281 $24,352 $19,966 $13,592 $12,571 $1,158,496 $1,731,247

### Civil Construction Contingency
- $ - $ - $ - $ - $ - $ - $ - $ - $ - $ -

### Project Totals
- $26,452 $856,700 $1,108,500 $936,700 $836,100 $685,600 $465,500 $528,500 $431,700 $6,725,300 $12,574,052

Page 1 of 2 96 of 199
III. Alternates

The below additive and/or deductive alternates will affect the Project Total as desired in the following:

**Alternate 1:** Add Air conditioning to McAfee, Woodbury, and Norton Houses  
**Add:** $29,300

**Alternate 2:** Add Wi-Fi conduits and switches at Plaza  
**Add:** $2,400

**Alternate 3:** Kolbe Windows in lieu of Marvin Windows  
**Deduct:** $19,149

**Alternate 4:** Add paver sealer at unit pavers (Proseco Silaxene P6)  
**Add:** $30,200

IV. Clarifications & Assumptions

- Construction duration is anticipated to be 18 months based on immediate construction start.
- Earthwork costs are based on existing geotechnical report and are subject to change upon updated geotechnical recommendations.
- Asphalt paving is assumed to be a 6.75" thick paving with a 6" thickness at all patch locations.
- Proposal accounts for 300 crew hours of rock excavation at flute; any excess in work is subject to additional costs.
- Crew includes a Cat 329E excavator with Cat H140 breaker, Cat 349E excavator, crew, and supervision @ $652/HR.
- Pricing includes $30,124 allowance for tenting temporary heat, blanketing, ground thaw, and snow removal for all work.
- Pricing includes $30,000 allowance for seismic monitoring during construction.
- Pricing includes $30,000 allowance for any temporary shoring at church building during flute excavations.
- Pricing includes $84,558 allowance for dewatering and water diversion as needed.
- Box culvert installation is assumed to be 2 hours per day and left in order to allow proper drainage at end of each day.
- Pricing includes allowances for 4 cast-in-place connection points at the flute areas (may change based on design requirements).
- Unit pavers to be by Belgard Commercial as detailed in the drawings over a 1" sand bed and marfil fabric.

All landscape bedding material is to be removed and replaced with 12" of topsoil materials.

All pervenials are to be furnished and installed by the City of Black Hawk.

Cast-In-Place concrete retaining walls are to be colored concrete with 20% dye from standard color pallet selected by owner/architect.

Selective demolition includes removing all remaining siding, doors, and exterior finishes to stabs as detailed on the drawings.

- Chimneys on McAfee, Woodbury, and Norton are to receive a thin brick veneer to match fire truck display building.
- Masonry repointing work is included at the Bobtail building.
- Metal wall panels at Public Restroom and Bunkhouse are to be 48" x 24" Hemmed Corten steel siding as detailed in the drawings.
- All exterior steel handrails are to be sand-blasted and painted to be black.
- Pricing includes $41,000 allowance for rotten framing allowance on existing structures.

Pricing includes $30,404 allowance for shimming/leveling existing walls, floors, and roofs at McAfee, Norton, Woodbury & Bunkhouse.

- Dampproofing is assumed to be a 2-coat cold fluid-applied product by WR Grace.
- All spray, rigid, and batt insulation is included per the "provide" requirements as detailed in the drawings.
- Roofing membrane replacement of Bobtail building is included in pricing per drawings.
- Overhead doors are to be Raynor AV175 (AlumaView) with 1/2" insulated glazing.
- All window pricing includes premanufactured windows by Marvin (see alternate W2 for comparable equal pricing).
- Wall finish at Bunkhouse is to receive a Marlite FRP wall covering with 211 Grial color.
- Resilient plank flooring is to be included in McAfee, Woodbury, and Norton.
- Sealed Concrete to be in Fire Display Building/ward Bobtail.
- Spec Chem sealed concrete is included in Public Restroom and Bunkhouse.
- Public Restroom building to receive aluminum wall panels over plywood substrate by Chemetal.
- Price includes secondary feeders and conduits from proposed transformer locations.
- All site lighting poles, bases, and wiring are included in pricing.
- Pricing includes conduits and boxes for paws and only (cabling, devices and equipment are to be other by others).

Thank you for allowing us the opportunity to be a part of your team. Please contact us with any questions.

Sincerely,

ROCHE CONSTRUCTION, INC.

Sean Hawley  
Senior Estimator
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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<tbody>
<tr>
<td>Lockton Companies 8110 E. Union Avenue Suite 700 Denver CO 80237 (303) 414-6000</td>
<td>Roche Constructors, Inc. 361 71st Avenue Greeley CO 80634</td>
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<td>INSURER A: The Continental Insurance Company</td>
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<td>AUTOMOBILE LIABILITY</td>
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<td>UMBRELLA LIABILITY</td>
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<td>PROPERTY DAMAGE (Per accident)</td>
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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project RE: Gregory Street Phase 2. City of Black Hawk the Owner's officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner are included as Additional Insured if required by written contract. If the policies are cancelled by the issuing company during the policy term, other than non-payment of premium, 30 days' notice will be provided to the Certificate Holder.

CERTIFICATE HOLDER

15897404
City of Black Hawk
Attn: Matt Reed, Project Manager
PO Box 68
Black Hawk, CO 80422

CANCELLATION

See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2019 ACORD CORPORATION. All rights reserved. 98 of 199
WAIVER OF OUR RIGHT TO RECOVER FROM OTHER ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that required you to obtain this agreement from us.)

ANY PERSON OR ORGANIZATION ON WHOSE BEHALF YOU ARE REQUIRED TO OBTAIN THIS WAIVER OF OUR RIGHT TO RECOVER FROM UNDER A WRITTEN CONTRACT OR AGREEMENT. NOT APPLICABLE IN KANSAS.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured
Roche Constructors Inc

Policy No.

Endorsement No.

6016344595

Premium $

Countersigned by:

Copyright 1983 National Council on Compensation Insurance.

Miscellaneous Attachment: M518446
Master ID: 1443418, Certificate ID: 15897404
Policy #6016184346

25. WAIVER OF SUBROGATION - BLANKET

Under CONDITIONS, the condition entitled Transfer Of Rights Of Recovery Against Others To Us is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the Named Insured's ongoing operations; or
2. your work included in the products completed operations hazard.

However, this waiver applies only when the Named Insured has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:
1. is in effect or becomes effective during the term of this Coverage Part; and
2. was executed prior to the bodily injury, property damage or personal and advertising injury giving rise to the claim.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
CONTRACTORS EXTENDED COVERAGE ENDORSEMENT
- BUSINESS AUTO PLUS -

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE
A. Who Is An Insured

The following is added to Section II, Paragraph A.1., Who Is An Insured:

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,

   b. The insurance afforded by this provision A.1. does not apply to any such entity that is an "insured" under any other liability "policy" providing "auto" coverage.

2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision A.2.:

a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.

b. Does not apply to:

   (1) "Bodily injury" or "property damage" caused by an "accident" that occurred before you acquired or formed the organization; or

   (2) Any such organization that is an "insured" under any other liability "policy" providing "auto" coverage.

3. Any person or organization that you are required by a written contract to name as an additional insured is an "insured" but only with respect to their legal liability for acts or omissions of a person, who qualifies as an "insured" under 4. An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

"Policy," as used in this provision A. Who Is An Insured, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or

2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In a.(2), the limit for the cost of bail bonds is changed from $2,000 to $5,000; and

2. In a.(4), the limit for the loss of earnings is changed from $250 to $500 a day.

C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

PHYSICAL DAMAGE COVERAGE
A. Glass Breakage - Hitting A Bird Or Animal -Falling Objects Or Missiles

The following is added to Section III, Paragraph A.3.:

With respect to any covered "auto," any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:
Section II - Who Is An insured and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

a. $1,000 maximum, in lieu of $600.

D. Hired "Autos"

The following is added to Section III, Paragraph A.:

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

a. Any covered "auto" you lease, hire, rent or borrow without a driver; and

b. Any covered "auto" hired or rented by your "employee" without a driver, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

c. The most we will pay for any one "accident" or "loss" is the actual cash value, cost of repair, cost of replacement or $75,000, whichever is less, minus a $500 deductible for each covered auto. No deductible applies to "loss" caused by fire or lightning.

d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned "autos."

e. Such physical damage coverage for hired "autos" will:

(1) Include loss of use, provided it is the consequence of an "accident" for which the Named insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.

(2) Such coverage as is provided by this provision will be subject to a limit of $750 per "accident."

E. Airbag Coverage

The following is added to Section III, Paragraph B.3.: The accidental discharge of an airbag shall not be considered mechanical breakdown.

F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any permanently installed electronic equipment including its antennas and other accessories.

d. A $100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution in Value

The following is added to Section III, Paragraph B.6.:

Subject to the following, the "diminution in value" exclusion does not apply to:

a. Any covered "auto" of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and

b. Any covered "auto" of the private passenger type hired or rented by your "employee" without a driver for a period of 30 days or less, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

c. Such coverage as is provided by this provision is limited to a "diminution in value" loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.

d. The most we will pay for "loss" to a covered "auto" in any one accident is the lesser of:

(1) $5,000; or

(2) 20% of the "auto's" actual cash value (ACV).

III. Drive Other Car Coverage - Executive Officers

The following is added to Sections II and III:

1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers," except:

a. An "auto" owned by that "executive officer" or a member of that person's household; or
b. An "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos."

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

(1) Equal to the greatest of those coverages afforded any covered "auto"; and

(2) Excess over any other collectible insurance.

2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are "insureds" while using a covered "auto" described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to Section IV, Paragraph A.2.a.:

(4) Your "employees" may know of an "accident" or "loss." This will not mean that you have such knowledge, unless such "accident" or "loss" is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to Section IV, Paragraph A.2.b.:

(6) Your "employees" may know of documents received concerning a claim or "suit." This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an "accident" or "loss."

C. Concealment, Misrepresentation or Fraud

The following is added to Section IV, Paragraph B.2.:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to Section IV, Paragraph B.5.:

Regardless of the provisions of Paragraphs 5.a. and 5.d. above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract. That written contract must have been entered into prior to "Accident" or "Loss."

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V, Paragraph C. is deleted and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.
Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. WHO IS AN INSURED is amended to include as an Insured any person or organization whom you are required by written contract to add as an additional insured on this coverage part, but only with respect to liability for bodily injury, property damage or personal and advertising injury caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:

A. in the performance of your ongoing operations subject to such written contract; or

B. in the performance of your work subject to such written contract, but only with respect to bodily injury or property damage included in the products-completed operations hazard, and only if:
   1. the written contract requires you to provide the additional insured such coverage; and
   2. this coverage part provides such coverage.

II. But if the written contract requires:

A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or

B. additional insured coverage with "arising out of" language; or

C. additional insured coverage to the greatest extent permissible by law;

then paragraph I. above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an Insured any person or organization whom you are required by written contract to add as an additional insured on this coverage part, but only with respect to liability for bodily injury, property damage or personal and advertising injury arising out of your work that is subject to such written contract.

III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

A. coverage broader than required by the written contract; or

B. a higher limit of insurance than required by the written contract.

IV. The insurance granted by this endorsement to the additional insured does not apply to bodily injury, property damage, or personal and advertising injury arising out of:

A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
   1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
   2. supervisory, inspection, architectural or engineering activities; or

B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this coverage part.

V. Under COMMERCIAL GENERAL LIABILITY CONDITIONS, the Condition entitled Other Insurance is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this coverage part:

Policy No: 6016184346
Endorsement No: 
Effective Date: 1/1/2019
Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a written contract requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

The Condition entitled Duties In The Event of Occurrence, Offense, Claim or Suit is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the insurer written notice of any claim, or any occurrence or offense which may result in a claim;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the claim; and
3. make available any other insurance, and tender the defense and indemnity of any claim to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this coverage part. However, if the written contract requires this insurance to be primary and non-contributory, this paragraph does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a claim from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled DEFINITIONS is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this coverage part, provided the contract or agreement:

A. is currently in effect or becomes effective during the term of this policy; and
B. was executed prior to:
1. the bodily injury or property damage; or
2. the offense that caused the personal and advertising injury;
for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75079XX (10-16)
Page 2 of 2
The Continental Insurance Co.
Insured Name: Roche Constructors, Inc.

Policy No: 6016184346
Endorsement No: 
Effective Date: 01/1/2019
RESOLUTION 63-2019

A RESOLUTION
AWARDING THE BID AND
APPROVING THE
CONTRACT BETWEEN
THE CITY OF BLACK
HAWK AND BRENNAN
STONE MASONRY IN AN
AMOUNT NOT TO
EXCEED $66,500.00 FOR
CONSTRUCTION OF THE
CLEAR CREEK PARKING
LOT WALL PROJECT
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT:
Approve Resolution 63-2019, a Resolution approving the Trade Contractor Agreement, and authorizing the Mayor to execute the same, between Brennan Stone Masonry and the City of Black Hawk, for the construction of the stone retaining wall for the Clear Creek Parking Lot.

RECOMMENDATION:
If City Council chooses to approve Resolution 63-2019, the recommended motion is as follows: "Approve Resolution 63-2019, a Resolution awarding the bid and approving the contract between the City of Black Hawk and Brennan Stone Masonry in an amount not to exceed $66,500.00 for construction of the Clear Creek Parking Lot Wall Project."

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
The Clear Creek Parking Lot project has been ongoing for over a year. XCEL finally relocated the lighting necessary to allow continuation of the work. After going several years without being able to find a stone mason for City projects, staff has recently engaged Brennan Stone Masonry to install the monument sign for the EOC and has been satisfied with their work. This project will include a short stone masonry wall along the south and east side of the parking lot.

FUNDING SOURCE: 305-3101-431-7520 Clear Creek St Improvements

WORKSHOP DATE: September 25, 2019

ORIGINATED BY: Thomas Isbester

STAFF PERSON RESPONSIBLE: Thomas Isbester/ Matt Reed

PROJECT COMPLETION DATE: December 13, 2019

DOCUMENTS ATTACHED: Grant Agreement

CITY ATTORNEY REVIEW: [ ]Yes [ ]No [ ]N/A INITIALS__________

SUBMITTED BY: REVIEWED BY:

Thomas Isbester, Public Works Director
Stephen N. Cole, City Manager
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK  

Resolution No. 63-2019

TITLE: A RESOLUTION AWARDING THE BID AND APPROVING THE CONTRACT BETWEEN THE CITY OF BLACK HAWK AND BRENNAN STONE MASONRY IN AN AMOUNT NOT TO EXCEED $66,500.00 FOR CONSTRUCTION OF THE CLEAR CREEK PARKING LOT WALL PROJECT

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

Section 1. The City Council hereby awards the bid and approves the contract between the City of Black Hawk and Brennan Stone Masonry in an amount not to exceed $66,500.00 for construction of the Clear Creek Parking Lot Wall project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 25th day of September, 2019.

_______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, City Clerk
TRADE CONTRACTOR AGREEMENT

THIS AGREEMENT is made this __________ day of ____________________, 20__, by and between the CITY OF BLACK HAWK, State of Colorado, a Colorado municipal corporation (hereinafter referred to as the ("City") and Brennan Stone Masonry (hereinafter referred to as ("Contractor").

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, the City and Contractor agree as follows:

Section 1. Scope of Work. Contractor shall perform all work in accordance with Exhibit A, which is attached hereto and incorporated by this reference, including furnishing all supervision, labor, equipment, and materials therefor (the “Project”).

Section 2. Contract Documents. The Contract Documents, which comprise the entire agreement and contract between the City and Contractor, consist of this Agreement and Exhibit A and any modifications, change orders or other such revisions properly authorized after the execution of this Agreement.

Section 3. Agreement Price. The City shall pay Contractor for the performance of work and completion of the Project not to exceed the amounts set forth in Exhibit B.

Section 4. Times and Methods of Payment.

A. Payment shall be made for services rendered upon completion and final acceptance of the project and shall be due and owing within thirty (30) days of Contractor’s submittal of his invoice. Contractor shall submit invoices prior to the twenty-fourth (24th) day of each month for payment the following month. Payment of any invoice that is received after the twenty-fourth (24th) day of each month may be delayed up to a period of sixty (60) days. If the City objects to any invoices submitted by Contractor, the City will so advise Contractor in writing giving the reason within fourteen (14) days of receipt of such invoice.

B. If the City fails to make payments due Contractor within sixty (60) days after receipt and acceptance of Contractor’s bill, Contractor may, after giving seven (7) days written notice to the City, suspend services under this Agreement until Contractor’s outstanding bills have been paid in full.

Section 5. Not Used

Section 6. Not Used

Section 7. Final Acceptance. Final acceptance of the Project shall follow inspection and approval of Contractor’s performance by the City, along with inspection by appropriate governmental officials pursuant to local, state and federal requirements, if necessary. The City
shall have the right and authority to determine the acceptability of Contractor’s performance for conformity with this Agreement, which determination shall be conclusive and binding upon Contractor. Final acceptance by the City is subject to the provisions of this Contract, and in no manner affects or releases any warranties or guarantees with Contractor or manufacturers of Project equipment.

The Project, when presented to the City for final acceptance, shall be delivered free from any and all claims or encumbrances whether then in existence or later established by law, statute, ordinance or otherwise. No claim or encumbrance against the Project or the Project site shall be outstanding or otherwise unsettled at the time of final acceptance. The right to assert any claim or encumbrance against the Project, after final acceptance by the City and final payment to Contractor, is hereby waived by Contractor on behalf of itself and any subcontractor, laborer, material man, equipment supplier, manufacturer or other person.

Section 8. Commencement and Completion of Performance. The services called for shall commence by October 10, 2019 and end on December 13, 2019. Contractor shall commence any work requested by the City within ten (10) days of notification by the City. In the event Contractor fails to commence work within this time period, the City may take over the work and prosecute the same to completion. The date of beginning and the time for completion of the work are essential conditions of this Agreement. Contractor shall proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed by and between the City and Contractor that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed. If Contractor shall fail to complete the work within the contract time, or extension of time granted by the City, then Contractor shall pay to the City the amount of liquidated damages and not as penalty the sum of ($100) for each calendar day that Contractor shall be in default after December 13, 2019. The City will charge Contractor, and may deduct from the partial and final payment for the work, all architectural, engineering and construction management expenses incurred by the City in connection with any work accomplished after the specified completion date.

Contractor will not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and Contractor has promptly given written notice of such delay to the City:

A. to any preference, priority or allocation order duly issued by the City; and

B. to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather.

Section 9. Termination.

A. This Agreement may be terminated in whole or in part in writing by either
party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, that no such termination may be effected unless the other party is given:

i. not less than ten (10) calendar days written notice of intent to terminate, and

ii. an opportunity for consultation with the terminating party prior to termination.

B. This Agreement may be terminated in whole or in part in writing by the City for its convenience.

C. Upon receipt of a termination action pursuant to paragraphs a. and b. above, Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

Section 10. Taxes, Licenses, Permits and Regulations. In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law and shall obtain all licenses and permits necessary for completion of the Project, paying all fees therefor unless otherwise specified by the City. The City shall assist Contractor to determine which licenses and permits are required for completion of the Project.

The City is exempt from Colorado state sales and use taxes on materials to be permanently incorporated in the work. Accordingly, taxes for which the City is exempt shall not be included in the Agreement Price. The City shall, upon request, furnish Contractor with a copy of its Certificate of Tax Exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an exemption certificate and purchase the materials tax free. Pursuant to C.R.S. §39-26-114(1)(a)(XIX), Contractor and subcontractors shall be liable to the State of Colorado for exempt taxes paid due to failure to apply for exemption certificates or for failure to use said certificates. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project and, particularly, in complying with those laws concerning the environment, workers' compensation, safety and health, state labor and materials, and equal employment opportunity.

Section 11. Indemnification.

The Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its officers, employees, agents and their insurers, from and against all liability, claims and demands on account of injury, loss or damage, including without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arises out of or is in any manner connected with this Contract, to the extent that such injury, loss or damage is attributable to the act, omission, error, professional error, mistake, negligence or other fault of the Contractor, the Contractor's employees, subcontractors or anyone else employed directly or indirectly by the Contractor,
Contractor's employees or subcontractor.

The Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims or demands at the sole expense of the Contractor, or at the option of the City, Contractor agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims, or demands. The Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

Section 12. Insurance.

A. The Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 1 above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 1 above, by reason of its failure to obtain and maintain during the life of this Contract insurance in sufficient amounts, durations, or types.

B. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 1 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of five hundred thousand dollars ($500,000) each incident, five hundred thousand dollars ($500,000) disease-policy limit, and five hundred thousand dollars ($500,000) disease—each employee.

2. General Public Liability Insurance to be written with a limit of liability of not less than one million dollars ($1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than two million dollars ($2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than one million dollars ($1,000,000)
for all damages arising out of injury to or destruction of property in any one (1) accident and not less than two million dollars ($2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.

3. Protective Liability and Property Damage insurance covering the liability of the Owner, including any employee, officer or agent of the Owner with respect to all operations under the Contract by the Trade Contractor or his sub-contractors shall be obtained and maintained during the life of this Contract.

4. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars ($1,000,000) each occurrence and one million dollars ($1,000,000) aggregate with respect to each of the Trade Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Trade Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Trade Contractor providing services to the Owner under this contract.

C. To the extent that liability results from the acts or omissions of the Trade Contractor, all Insurance Policies and Certificates of Insurance issued for this project shall name as additional insured(s), the Owner, whether private or governmental, the Owner's officers and employees, and the Engineer and its agents and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner. The Trade Contractor shall be solely responsible for any deductible losses under any policy required herein.

D. The insurance provided by the Trade Contractor shall be primary to insurance carried by the Owner, the Engineer, and all other additional insureds, and the principal defense of any claims resulting from the Trade Contractor's obligations under the Contract shall rest with the Trade Contractor's Insurer.

Section 13. Warranties and Guarantees. Contractor hereby represents, warrants and guarantees to the City all workmanship, equipment and materials on or made a part of the Project and its structures for a period of one (1) year from and after the date of final acceptance of the work by the City as provided by this Agreement.

Section 14. Subcontractors. All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement. Contractor shall require any subcontractors to provide the City with a certificate of insurance which provides insurance coverage as provided by Section 11 of this Agreement. The certificate of insurance shall name the City as an additional insured and provide that the policy shall not be terminated without ten (10) days written notice to the City. In all events, Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors. Upon receipt of progress and final payments from the City, Contractor shall disburse the same immediately to subcontractors without any requirement of the City to supervise the same. The City may, but shall not be obligated to, require Contractor
to furnish lien waivers for the work performed or materials furnished by subcontractors or material men prior to payment of progress payments or final payment. No contractual relationship shall exist between the City and any subcontractor because of the subletting of any part of the Project work.

Section 15. Changes in Contract Price. The contract price may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price will be determined by one or more of the following methods in the order of precedence listed below:

A. Unit prices previously approved, which are attached as Exhibit B and incorporated by this reference.

B. An agreed lump sum.

C. The actual cost of labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work. In addition there will be added an amount to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work to cover the cost of general overhead and profit.

Section 16. Work Rules.

A. Contractor shall perform all work hereunder in keeping with the rules and regulations that the City may promulgate at any time for the safe, orderly, and efficient conduct of all operations.

B. The City shall have the right to require of Contractor the immediate removal from the Project of any employee of Contractor or of his subcontractors who, in the discretion of the City, is not qualified to perform the work assigned to him, is guilty of improper conduct, or is not working in harmony with the other trades.

C. Nothing contained in this Agreement shall constitute Contractor as being an employee of the City, nor shall any employment relationship between the City and Contractor be created by the terms hereof.

D. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the job site and for protection of the Project and shall hold the City and its authorized representatives harmless from any damage or loss incurred thereto.

E. Contractor shall promptly pay in full for any and all damage caused to the Project site by Contractor or by any subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services, or instruments for whose actions Contractor is responsible hereunder.

F. No material, equipment, tools, supplies, or instruments other than those
belonging to or leased by Contractor will be removed from the Project site by Contractor without the prior written approval of the City.

G. Contractor agrees to report immediately to the City, in writing, any and all property damage and/or personal injury that occurs on the Project site during the course of Contractor’s performance.

Section 17. Illegal Aliens

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

B. Prohibited Acts. Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

2. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:

   a. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and
b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (a) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. If Contractor does not currently employ any employees, Contractor shall sign the No Employee Affidavit attached hereto.

F. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the Department Program Affidavit attached hereto.

Section 18. Assignment. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the City. The terms of this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 19. Amendment. This Agreement may be amended from time to time by agreement between the parties hereto. No amendment, modification, or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

Section 20. Severability. If any term, section, or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

Section 21. Waiver. No waiver any either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 22. Remedies. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the
State of Colorado, and particularly those relating to governmental contracts.

**Section 23. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

**Section 24. Entirety.** This Agreement constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and are superseded by this Agreement.
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF BLACK HAWK, COLORADO

By: __________________________
    David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

CONTRACTOR

_________________________
Sennan Stone Masonry

STATE OF COLORADO )
COUNTY OF Boulder ) ss.

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

19 day of September, 2019

by __________________________

as the ______________________ of ____________________________________

My commission expires: ____________

(SEAL)

Luis Anthony Velez
Notary Public

My Commission Expires April 13, 2022
PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: Brennan Stone Masonry
(Prospective Contractor)

TO: City of Black Hawk
    P.O. Box 68
    Black Hawk, Colorado 80422

Project Name Clear Creek st. parking lot wall

Bid Number _______________ Project No. _______________

As a prospective Contractor for the above-identified bid, I (we) do hereby certify that, as of the date of this certification, I (we) do not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that I (we) will confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment.

Executed this 19th day of September, 2019.

Prospective Contractor Brennan Stone Masonry

By: Chris Brennan

Title: Sole Proprietor/owner
NO EMPLOYEE AFFIDAVIT

1. Check and complete one:

☒ I, Chris Brennan, am a sole proprietor doing business as Brennan Stone Masonry. I do not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

OR

☐ I, ______________________, am an owner/member/shareholder of ______________________ [specify type of entity—i.e., corporation, limited liability company], that does not currently employ any individuals. Should I employ any individuals during the term of my Agreement with the City, I certify that I will comply with the lawful presence verification requirements outlined in that Agreement.

2. Check one.

☒ I, Chris Brennan, am a United States citizen or legal permanent resident.

The City must verify this statement by reviewing one of the following items:

○ A valid Colorado Driver’s license or a Colorado identification card
○ A United States military card or a military dependent’s identification card
○ A United States Coast Guard Merchant Mariner card
○ A Native American tribal document or
○ In the case of a resident of another state, the driver’s license or state-issued identification card from the state of residence, if that state requires the applicant to prove lawful presence prior to the issuance of the identification card
○ Any other documents or combination of documents listed in the City’s “Acceptable Documents for Lawful Presence Verification” chart that prove both the contractor’s citizenship/lawful presence and identity.

OR

☐ I am otherwise lawfully present in the United States pursuant to federal law.

Contractor must verify this statement through the federal systematic alien verification of entitlement program, the “SAVE” program, and provide such verification to the City.

[Signature]

9/19/19

Date
DEPARTMENT PROGRAM AFFIDAVIT

(To be completed if Contractor participates in the Department of Labor Lawful Presence Verification Program)

I, Chris Brennan, as a public contractor under contract with the City of Black Hawk (the “City”), hereby affirm that:

1. I have examined or will examine the legal work status of all employees who are newly hired for employment to perform work under this public contract for services (“Contract”) with the Town within twenty (20) days after such hiring date;

2. I have retained or will retain file copies of all documents required by 8 U.S.C. § 1324a, which verify the employment eligibility and identity of newly hired employees who perform work under this Contract; and

3. I have not and will not alter or falsify the identification documents for my newly hired employees who perform work under this Contract.

[Contractor Signature] 9/19/19

STATE OF COLORADO )
COUNTY OF Boulder ) ss.

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 19 day of September, 2019 by

__________________________

as the ____________________ of ____________________

My commission expires: April 13, 2022

(S E A L)

LUIS ANTHONY VELEZ
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184016216
My Commission Expires April 13, 2022

13
ACCEPTABLE DOCUMENTS FOR LAWFUL PRESENCE VERIFICATION

Documents that Serve to Prove Citizenship/Lawful Presence and Identification:

- Colorado Driver’s License or Identification Card
- Out of State drivers license from: AL, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NJ, NY, ND, OH, OK, PA, RI, SC, SD, VA, WV, WY
- A United States Military Card of a Military Dependent’s Identification Card
- A United States Coast Guard or Merchant Mariner Card
- A Native American Tribal Document
- Certificate of Naturalization with Photograph
- Certificate of U.S. Citizenship with Photograph
- U.S. Passport (less than 5 years old)
- Northern Mariana Identification Card with Photograph

OR

Documents that Only Serve to Prove Citizenship/Lawful Presence:

- U.S. Birth Certificate
- Certification of Report of Birth from Department of State
- Report of Birth Abroad of a U.S. Citizen
- U.S. Citizen Identification Card
- Final Adoption Decree
- Evidence of U.S. Civil Service Employment before June 1, 1976
- Statement Provided by U.S. Consular Officer Certifying Citizenship
- Religious Records Recorded in the 50 states, D.C., or a U.S. Territory Showing Birth Date or Child’s Age and Location of Birth in U.S.
- Early School Records
- Census Records
- Other Documents that Establish a U.S. Place of Birth or in Some Way Indicates U.S. Citizenship

AND

Documents that Serve to Prove Identification:

- A Driver’s License or Identification Card Regardless of the State of Issuance
- School Identification Card with Photograph
- Identification Card Issued by Federal, State or Local Government
- A Driver’s License Issued by a Canadian Government Authority
EXHIBIT A

SCOPE OF WORK
EXHIBIT B

SCHEDULE OF VALUES
From: Christopher Brennan <cbrenned11@gmail.com>
Sent: Wednesday, September 11, 2019 12:26 PM
To: Tom Isbester; Melissa Greiner
Subject: Clear Creek Parking lot retaining wall Estimate

***PLEASE NOTE: This E-Mail originated from OUTSIDE the organization (City of Black Hawk), use caution when replying to this message, clicking links, or opening any attachments.***

This is an estimate for the construction of the Clear Creek Street Parking lot retaining wall

Brennan Stone Masonry will:

- Excavate/move existing rocks/remove parking blocks and steel I-beam. (Not responsible for damage to blocks or beam)
- Construct concrete footing (190'x2'x4' 3500psi concrete)
- Collect and deliver local rock from City of Black Hawk property
- Construct grouted stone retaining wall (locally collected rock)
  Wall specifications:
  - 190' long
  - 6" reveal above asphalt on parking lot side
  - 18" finished grouted top
  - Minimum 6"-maximum 24"
  - Finished "dry stack look" grouted wall
  - 2' wide scupper at east end of wall
  - At asphalt elevation for water elimination
- Set a line of boulders from the electrical service at the west end of the wall to the west end of the parking lot behind the fire hydrant

Brennan Stone Masonry requires that the entire north side of the lot remains closed during construction and that all or portions of the south side of the lot may be closed as required for construction purposes.

Total estimate for all labor and materials: $66,500.00
RESOLUTION 64-2019
A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE DESIGN-BUILDER CONTRACT EXECUTED ON APRIL 24, 2019 BETWEEN THE CITY OF BLACK HAWK AND CONCRETE EXPRESS, INC., ESTABLISHING THE GUARANTEED MAXIMUM PRICE (GMP) OF $865,711.43 FOR CONSTRUCTION OF THE BOBTAIL STREET RAIL SLAB PROJECT
SUBJECT:
Approve Resolution 64-2019, a Resolution approving Amendment No. 1 to the Design-Builder contract for the Bobtail Street Rail Slab project. Amendment No. 1 would establish the Guaranteed Maximum Price (GMP) for construction of this project.

RECOMMENDATION:
If City Council chooses to approve Resolution 64-2019, the recommended motion is as follows: “Approve Resolution 64-2019, a Resolution approving Amendment No. 1 to the Design-Builder contract executed on April 24, 2019 between the City of Black Hawk and Concrete Express, Inc., establishing the Guaranteed Maximum Price (GMP) of $865,711.43 for construction of the Bobtail Street Rail Slab project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
City Council approved a Design-Builder contract with Concrete Express, Inc. to complete preconstruction services for the Bobtail Rail Slab project on April 24, 2019. While the Design-Build contract authorized Concrete Express, Inc. to proceed with preconstruction services, Council was made aware that an Amendment to accept the GMP for construction would be forthcoming.

The GMP of $865,711.43 includes the preconstruction costs of $108,500 previously approved by City Council for preconstruction services.

FUNDING SOURCE: Bobtail Street Rail Slab: 305-3101-431-75-62

WORKSHOP DATE: September 25, 2019

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: February 28, 2020

DOCUMENTS ATTACHED: Amendment No. 1

CITY ATTORNEY REVIEW: [ ]Yes [ X ]No [ ]N/A INITIALS__________

SUBMITTED BY: Thomas Isbester, Public Works Director

REVIEWED BY: Stephen N. Cole, City Manager
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 64-2019

TITLE: A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE DESIGN-BUILDER CONTRACT EXECUTED ON APRIL 24, 2019 BETWEEN THE CITY OF BLACK HAWK AND CONCRETE EXPRESS, INC., ESTABLISHING THE GUARANTEED MAXIMUM PRICE (GMP) OF $865,711.43 FOR CONSTRUCTION OF THE BOBTAIL STREET RAIL SLAB PROJECT

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

Section 1. The City Council hereby approves Amendment No. 1 to the Design-Builder contract executed on April 24, 2019 between the City of Black Hawk and Concrete Express, Inc., establishing the Guaranteed Maximum Price (GMP) of $865,711.43 for construction of the Bobtail Street Rail Slab project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 25th day of September, 2019.

_________________________________
David D. Spellman, Mayor

ATTEST:

_________________________________
Melissa A. Greiner, CMC, City Clerk
AMENDMENT NO. 1
ACCEPTANCE OF THE GUARANTEED MAXIMUM PRICE

City of Black Hawk Bobtail Street Rail Slab
September 25, 2019

This Amendment to the Agreement between the parties signing below shall establish the jointly agreed scope of Work, Schedule, and Guaranteed Maximum Price, in accordance with the terms of the Agreement entitled Design-Builder Agreement, dated April 24, 2019. Terms capitalized in this document are specifically defined in the Agreement and in the Contract Documents incorporated therein.

A.1. SCOPE OF WORK

The scope of Work includes:
- Constructing a concrete rail slab, railing, and sidewalk along the north side of Bobtail Street from the end of the existing rail slab above the Crooks Palace parking lot to a point near the Bobtail/Gregory Street intersection. The new rail slab system shall generally match the existing rail slab in appearance.
- Constructing a soil nail wall on the north side of the proposed rail slab from a point behind the SW corner of the St. Charles Carriage House to the western end of the proposed rail slab. This soil nail wall shall be concealed with sculpted and stained Shotcrete to match the existing Shotcrete wall along the south side of Bobtail Street.
- Repairing existing sealant and grout failures throughout the entirety of the existing Bobtail Street rail slab. Re-painting the existing Bobtail Street rail slab.
- Construction shall conform to the “Construction Drawings for Bobtail Road Rail Slab”, prepared by Muller Engineering Company.

A description of the Work is included within Exhibit B, which is incorporated herein and attached hereto.

A.2. GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price for the scope of Work, including the previously-approved preconstruction fee, is Eight Hundred Sixty-Five Thousand Seven Hundred Eleven and 43/100 Dollars ($865,711.43), which is the maximum amount payable for performance of the scope of Work in accordance with the Contract Documents, including this Amendment and its incorporated Exhibit B.

A.3. CONTRACT TIME

The date of Substantial Completion for the scope of Work established by this Amendment is February 28, 2020.
A.4. AUTHORIZATION TO PROCEED

Based on the representations made herein, the Design-Builder is hereby authorized to:

1) Conclude negotiations with bidders, and notify Owner of the intent to award subcontracts in accordance with the Agreement;
2) Commence construction in accordance with the Agreement, pending procurement of required insurance and bonds.

IN WITNESS WHEREOF the parties hereto each herewith subscribe the same.

CITY OF BLACK HAWK, COLORADO

By: ________________________________
    David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

______________________________
Corey Y. Hoffmann, City Attorney

CONCRETE EXPRESS, INC.

By: ________________________________
    __________________________________________
    Name: Joseph M. O'Dea
    Title: Vice President

STATE OF COLORADO            )
    ) ss.
COUNTY OF Denver              )

The foregoing instrument was acknowledged before me this 23rd day of September, 2019, by Joseph M. O'Dea, as Vice President of Concrete Express, Inc.

My commission expires: October 15, 2020

Witness my hand and official seal.

JESSICA A. RAY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20984035681
MY COMMISSION EXPIRES OCTOBER 15, 2020
# Bobtail Road Rail Slab Final Cost Estimate Summary

Submitted 09-18-2019

Pricing is based on plans by Muller Engineering, 90% Plan Set dated September 11, 2019; This price assumes that CEI will mobilize once the Xcel light pole is removed from the work area.

<table>
<thead>
<tr>
<th>CEI Item Number</th>
<th>Item Description</th>
<th>Estimated Quantity</th>
<th>Unit</th>
<th>Unit Bid Price</th>
<th>Total</th>
<th>Comments/Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization</td>
<td>1.0</td>
<td>EA</td>
<td>$72,000.00</td>
<td>$72,000.00</td>
<td>Includes project staffing (Project Manager, Superintendent), site, toilet and equipment mobilization.</td>
</tr>
<tr>
<td>2</td>
<td>Traffic Control</td>
<td>1.0</td>
<td>EA</td>
<td>$10,500.00</td>
<td>$10,500.00</td>
<td>Includes IC's, inspection, barricade, signage, MITF and all associated permits. It is assumed the road will be closed during normal working hours. Message boards are not included.</td>
</tr>
<tr>
<td>3</td>
<td>Construction Survey</td>
<td>1.0</td>
<td>EA</td>
<td>$5,100.00</td>
<td>$5,100.00</td>
<td>All construction survey.layout. As-built survey is not included.</td>
</tr>
<tr>
<td>4</td>
<td>Remove Asphalt</td>
<td>81.0</td>
<td>SY</td>
<td>$12.00</td>
<td>$972.00</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Remove Curb &amp; Gutter</td>
<td>310.0</td>
<td>LF</td>
<td>$6.00</td>
<td>$1,860.00</td>
<td>Include sawcutting and disposal of site.</td>
</tr>
<tr>
<td>6</td>
<td>Remove Sidewalk</td>
<td>210.0</td>
<td>SY</td>
<td>$10.00</td>
<td>$2,100.00</td>
<td>Include sawcutting and disposal of site.</td>
</tr>
<tr>
<td>7</td>
<td>Remove Type 7 Barrier</td>
<td>250.0</td>
<td>LF</td>
<td>$8.00</td>
<td>$2,000.00</td>
<td>Include Load and export from site. Barrier will be stockpiled at a City designated location for future use.</td>
</tr>
<tr>
<td>8</td>
<td>Fill Material &amp; Grading</td>
<td>100.0</td>
<td>CY</td>
<td>$67.00</td>
<td>$6,700.00</td>
<td>Subgrade material and preparation for CIP rail slab.</td>
</tr>
<tr>
<td>9</td>
<td>CIP Concrete Wall</td>
<td>364.0</td>
<td>LF</td>
<td>$205.00</td>
<td>$74,420.00</td>
<td>CIP Rail Slab Wall</td>
</tr>
<tr>
<td>10</td>
<td>Reinforcing Steel</td>
<td>31000.00</td>
<td>LB</td>
<td>$1.00</td>
<td>$31,000.00</td>
<td>Material and installation of reinforcing steel in CIP rail slab and rail slab wall.</td>
</tr>
<tr>
<td>11</td>
<td>Concrete Sidewalk</td>
<td>250.0</td>
<td>SY</td>
<td>$250.00</td>
<td>$42,500.00</td>
<td>CIP Rail Slab (Gray)</td>
</tr>
<tr>
<td>12</td>
<td>Concrete Sidewalk (Integral Color)</td>
<td>90.0</td>
<td>SY</td>
<td>$255.00</td>
<td>$22,950.00</td>
<td>CIP Rail Slab (Integral Color)</td>
</tr>
<tr>
<td>13</td>
<td>Ground Anchor</td>
<td>5.0</td>
<td>EA</td>
<td>$4,500.00</td>
<td>$22,500.00</td>
<td>Drilling and installation of required ground anchors. Includes CEI assistance with spoil removal and clean up.</td>
</tr>
<tr>
<td>14</td>
<td>Structural Concrete Stain</td>
<td>3150.0</td>
<td>SF</td>
<td>$2.65</td>
<td>$8,347.50</td>
<td>Structural Concrete Coating to match the existing rail slab wall including bridge truck rental.</td>
</tr>
<tr>
<td>15</td>
<td>Pedestrian Fence</td>
<td>364.0</td>
<td>LF</td>
<td>$270.00</td>
<td>$93,980.00</td>
<td>Includes installation of fence, grab rail and guard pad under posts as well as CEI post layout and assistance.</td>
</tr>
<tr>
<td>16</td>
<td>Electrical Conduit &amp; Grounding</td>
<td>1.0</td>
<td>LS</td>
<td>$11,000.00</td>
<td>$11,000.00</td>
<td>Includes 2&quot; galvanized conduit and ground rods for installation of Xcel light poles (by others).</td>
</tr>
<tr>
<td>17</td>
<td>Asphalt Patching</td>
<td>30.0</td>
<td>TON</td>
<td>$180.00</td>
<td>$5,400.00</td>
<td>Asphalt patch back along proposed rail slab and gutter, pricing based on 1/4&quot; depth.</td>
</tr>
<tr>
<td>18</td>
<td>Wall Structural Excavation</td>
<td>110.0</td>
<td>CY</td>
<td>$80.00</td>
<td>$8,800.00</td>
<td>Structural Excavation for Soil Nail Walls. This includes rock excavation as necessary to bring wall face to plan location.</td>
</tr>
<tr>
<td>19</td>
<td>Shotcrete Wall</td>
<td>650.0</td>
<td>SF</td>
<td>$116.00</td>
<td>$75,400.00</td>
<td>This scope includes matching the sculpted, colored shotcrete wall recently installed above Bobtail Road.</td>
</tr>
<tr>
<td>20</td>
<td>Soil Nails</td>
<td>29.0</td>
<td>EA</td>
<td>$1,910.00</td>
<td>$53,480.00</td>
<td>Soil nails for required relining wall including drilling, grouting and reinforcement installation.</td>
</tr>
<tr>
<td>21</td>
<td>Soil Nail Testing</td>
<td>1.0</td>
<td>ALL</td>
<td>$4,400.00</td>
<td>$4,400.00</td>
<td>Required testing for soil nails. This is a budget number.</td>
</tr>
</tbody>
</table>

|                | Total Base Bid Cost                       | $580,539.50        |      |                |        |                                                                                     |

|                | Home Office O&P (15%)                     | $87,080.93         |      |                |        |                                                                                     |
|                | O&P Plus Base Bid                         | $667,620.43        |      |                |        |                                                                                     |

| 22              | Structural Stain Re-Coat on Existing Wall | 14940.0            | SF   | $2.65          | $39,591.00 | Add-All Item for re-coat/grout joints and structural concrete coating of existing rail slab wall from Miner's Mesa Rd to the end of existing rail slab wall. |
| 23              | Contingency Allowance                     | 1.0                | LS   | $50,000.00     | $50,000.00 | See below Summary of Allowance Items                                               |

Total Add-All & Contingency $89,591.00

Total GMP $757,211.43

| 24              | Concrete Leveling Course                 | 50.0               | CY   | $225.00        | $11,250.00 | If needed to level out bed rock to prepare for subgrade of CIP rail slab.            |
| 25              | Modify Existing Rock Anchors & Mesh       | 30.0               | EA   | $150.00        | $4,500.00  | If needed to modify existing ground anchors and mesh if conflicting with CIP slab forms. This includes chipping of each ground anchor, moving mesh and cable, and trimming existing anchor bolt. |
| 26              | Misc. Items                               | 1.0                | ALL  | $34,250.00     | $34,250.00 | This contingency allowance is to be used only if needed for changes that may arise during the work due to unforeseen conditions. Any changes to this item will be billed at cost plus 15% and will only be utilized if needed. |

132 of 199
CERTIFICATE OF LIABILITY INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insures(s), authorized representative or producer, and the certificate holder.

Important: If the certificate holder is an additional insured, the policy(ies) must have additional insured provisions or be endorsed. If subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**Producer:** IMA, Inc. - Colorado Division

**Contact:**
- **Name:**
- **Phone:** 1-303-534-4567
- **Fax:**
- **E-mail:** DenAccountTechs@imacorp.com

**Insurers:**
- **Insurer A:** TRAVELERS PROP CAS CO OF AMER 25674
- **Insurer B:** TRAVELERS IND CO 25658

**Insured:**
- **Concrete Express, Inc.**
  - 2027 West Colfax Avenue
  - Denver, CO 80204

**Coverages**

<table>
<thead>
<tr>
<th>Ind Ins</th>
<th>Type of Insurance</th>
<th>Addl Insured</th>
<th>Policy Number</th>
<th>Policy Eff</th>
<th>Policy Exp</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>CLAIMS-MADE X OCCUR</td>
<td>VTC2JCO05644B02ATIL</td>
<td>05/01/19</td>
<td>05/01/20</td>
<td>EACH OCCURRENCE $1,000,000</td>
</tr>
<tr>
<td>B</td>
<td>AUTOMOBILE LIABILITY</td>
<td>ANY AUTO</td>
<td>VTC2KCAP05644B03119</td>
<td>05/01/19</td>
<td>05/01/20</td>
<td>COMBINED SINGLE LIMIT $1,000,000</td>
</tr>
</tbody>
</table>

**Description of Operations / Locations / Vehicles**

City of Black Hawk and the Owner, whether private or governmental, the Owner's officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner are included as Additional Insureds on the General Liability Policy if required by written agreement and with respect to work performed by Insured subject to the policy terms and conditions. This Insurance is Primary and Non-Contributory on the General Liability Policy subject to the policy terms and conditions.

**Certificate Holder**

City of Black Hawk

**Cancellation**

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**Authorized Representative**
RESOLUTION 65-2019
A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND FOR THE COMPLETION OF MARYLAND MOUNTAIN PARK TRAIL PROJECT
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: GOCO Grant Application

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE Resolution 65-2019, A Resolution Supporting the Grant Application for a Local Parks and Outdoor Recreation Grant from the State Board of the Great Outdoors Colorado Trust Fund for the Completion of Maryland Mountain Park Trail Project.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
The City has requested $400,000 from Great Outdoors Colorado to create a trail system.

AGENDA DATE: September 25, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

STAFF PERSON RESPONSIBLE: Stephen N. Cole, City Manager

DOCUMENTS ATTACHED: N/A

RECORD: [ ] Yes [ X ] No

CITY ATTORNEY REVIEW: [ ] Yes [ X ] N/A

SUBMITTED BY: ____________________________

Stephen N. Cole, City Manager
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK  

Resolution No. 65-2019  

TITLE: A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND FOR THE COMPLETION OF MARYLAND MOUNTAIN PARK TRAIL PROJECT  

WHEREAS, the City of Black Hawk supports the Great Outdoors Colorado grant application for the Maryland Mountain Park Trail Project, and if the grant is awarded, the City of Black Hawk supports the completion of the project; and  

WHEREAS, the City of Black Hawk has requested $400,000 from Great Outdoors Colorado to create a trail system.  

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 of the City of Black Hawk strongly support the application and have appropriated matching funds for a grant with Great Outdoors Colorado.  

Section 2. If the grant is awarded, the Mayor and Board of Aldermen of the City of Black Hawk strongly support the completion of the project. The Mayor and Board of Aldermen of the City of Black Hawk authorize the expenditure of funds necessary to meet the terms and obligations of any grant awarded.  

Section 3. The project site is owned by the City of Black Hawk and will be owned by the City for at least the next 25 years.  

Section 4. The Mayor and Board of Aldermen of the City of Black Hawk recognize that as the recipient of a Great Outdoors Colorado Local Government grant, the project site must provide reasonable public access.  

Section 5. The Mayor and Board of Aldermen will continue to maintain the Maryland Mountain Park Trail Project in a high-quality condition and will appropriate funds for maintenance in its annual budget.  

Section 6. If the grant is awarded, the Mayor and Board of Aldermen hereby authorizes the Mayor to sign the grant agreement with Great Outdoors Colorado.
Section 7. This Resolution is to be in full force and effect from and after its passage and approval.

RESOLVED AND PASSED this 25th day of September, 2019.

____________________________________
David D. Spellman, Mayor

ATTEST:

____________________________________
Melissa Greiner, CMC, City Clerk
RESOLUTION 66-2019
A RESOLUTION APPROVING A VARIANCE TO ALLOW A REDUCTION OF THE MINIMUM WIDTH OF A DRIVEWAY FOR AN ACCESS POINT ON THE WEST OVERFLOW VALET PARKING AREA OF THE MONARCH CASINO FROM 20-FEET TO 14.5-FEET
TITLE: A RESOLUTION APPROVING A VARIANCE TO ALLOW A REDUCTION OF THE MINIMUM WIDTH OF A DRIVEWAY FOR AN ACCESS POINT ON THE WEST OVERFLOW VALET PARKING AREA OF THE MONARCH CASINO FROM 20-FEET TO 14.5-FEET

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

Section 1. Findings of Fact.

A. Application has been made by the property owner, Monarch Growth, Inc. for a variance for the required width for a driveway from 20 feet to 14.5 feet for certain property located at 488 Main Street (the "Property"), within the City of Black Hawk, Colorado.

B. Notice of such proposed hearing was posted on the property for fifteen (15) consecutive days prior to said hearing; and

C. The application complies with the criteria set forth in Section 16-366(2) of the Black Hawk Municipal Code.

Section 2. The City Council hereby determines to approve the variance, a resolution approving a Variance to allow a reduction of the minimum width of a driveway for an access point on the west overflow valet parking area of the Monarch Casino from 20-feet to 14.5-feet with the following conditions:

A. Implementation/installation of the following traffic safety items:

   I. The relocation of the existing City bus stop to a location further east on Main Street;

   II. The addition of a right turn lane in the area of the existing City bus stop to allow drivers entering the overflow valet parking area to stop for any exiting/on-coming traffic;

   III. The installation of a wall mounted convex traffic mirror inside the overflow valet parking area to assist drivers’ visibility of on-coming traffic;

   IV. The installation of a stop sign inside the overflow valet parking area with a sign below to read “Always Yield to Incoming Traffic”; and
V. Installation of an exterior sign to read “Do Not Enter” above entrance/exit of the overflow valet parking area.

B. An amendment to the Certificate of Architectural Compatibility for the Monarch Exterior Façade Remodel shall be issued prior to any building permit being issued for the proposed porte cochere/poker room remodel.

C. A building permit shall be issued prior to any construction of the porte cochere/poker room remodel.

RESOLVED AND PASSED this 25\textsuperscript{th} day of September, 2019.

__________________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, CMC, City Clerk
NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Black Hawk Board of Aldermen shall hold a public hearing concerning a request for a Variance to the minimum width of a driveway located on property described in Exhibit A and generally located at 488 Main Street, pursuant to the City of Black Hawk zoning ordinance.

The public hearing is to be held before the City of Black Hawk Board of Aldermen on Wednesday, September 25, 2019, at 3:00 p.m. or as soon as possible thereafter. The public hearing shall be held in the City of Black Hawk Council Chambers, located at 211 Church Street, Black Hawk, CO 80422, or at such other time of place in the event this hearing is adjourned.

ALL INTERESTED PARTIES MAY ATTEND

Melissa A. Greiner, CMC
City Clerk

EXHIBIT A

LOT 1 BLOCK 1 – Monarch Casino Filing No. 1
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: To consider a Resolution for a Variance to allow a reduction of the minimum driveway width from 20 feet to 14.5 feet.

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Appeals:

MOTION TO APPROVE Resolution No. 66-2019, a resolution approving a Variance to allow a reduction of the minimum width of a driveway for an access point on the west overflow valet parking area of the Monarch Casino from 20-feet to 14.5-feet with the following conditions:

1. Implementation/installation of the following traffic safety items:
   a. Relocation of the existing City bus stop to a location further east on Main Street.
   b. Addition of a right turn lane in the area of the existing City bus stop to allow drivers entering the overflow valet parking area to stop for any exiting/on-coming traffic.
   c. Installation of a wall-mounted convex traffic mirror inside the overflow valet parking area to assist drivers’ visibility of on-coming traffic.
   d. Installation of a stop sign inside the overflow valet parking area with a sign below to read “Always Yield to Incoming Traffic.”
   e. Installation of an exterior sign to read “Do Not Enter” above entrance/exit of the overflow valet parking area.

2. An amendment to the Certificate of Architectural Compatibility for the Monarch Exterior Façade Remodel shall be issued prior to any building permit being issued for the proposed porte cochere/poker room remodel.

3. A building permit shall be issued prior to any construction of the porte cochere/poker room remodel.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
The City of Black Hawk has received an application from MBA Architecture and Monarch Growth Inc. requesting a Variance to the minimum driveway width from 20 feet to 14.5 feet for an access/egress point at the west end of the Monarch Casino. The variance is being requested as part of the porte cochere conversion into a poker room. Once the renovations are completed, the existing valet parking area will be used exclusively by Monarch staff for overflow valet parking. Refer to the Staff Report included with this Request for Council Action.

AGENDA DATE: September 25, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [ X ]Yes [ ]No

STAFF PERSON RESPONSIBLE: Cynthia L. Linker
CP&D Administrator
DOCUMENTS ATTACHED:
Resolution 66-2019
Staff Report

RECORD:
[ ]Yes  [ X ]No

CITY ATTORNEY REVIEW:
[ ]Yes  [ X ]N/A

SUBMITTED BY:
Cynthia L. Linker, CP&D 9/20/19

Reviewed by:
Vincent Harris, AICP, Baseline Corporation 9/20/19

REVIEWED BY:
Stephen N. Cole, City Manager
BACKGROUND:
On August 26, 2019 the City of Black Hawk received a request for a variance to driveway width from Joseph Marandola of MBA Architecture on behalf of Monarch Growth Inc. The request involves a variance to the required width for a driveway from 20 feet to 14.5 feet. The driveway currently exists at the Monarch Casino located at 488 Main Street, Black Hawk. Proposed renovations to the existing porte cochere will result in the narrowing of the driveway entrance/exit.

PROPOSAL:
With the addition of the new parking garage on the east end of the Monarch property, the need for the valet lot located under the existing casino is reduced. Monarch plans to use the existing ground level and lower level valet parking areas for overflow valet parking only. Monarch has indicated that this overflow valet lot will be accessed by Monarch personnel only and public access will be restricted.

The existing porte cochere is designed with a two-way entrance/exit on the east end and a one-way exit on the west end. The proposed addition of a poker room in the location of the existing porte cochere will reduce the access to the parking area to a single two-way entrance on the west end.

In order to mitigate the traffic flow changes and safety issues introduced by the proposed change, the applicant has proposed the addition of the following:

1. Relocation of the existing City bus stop to a location further east on Main Street.
2. Addition of a right turn lane in the area of the existing City bus stop to allow drivers entering the overflow valet parking area to stop for any exiting/on-coming traffic.
3. Installation of a wall mounted convex traffic mirror inside the overflow valet parking area to assist drivers’ visibility of on-coming traffic.
4. Installation of a stop sign inside the overflow valet parking area with a sign below to read “Always Yield to Incoming Traffic”.
5. Installation of an exterior sign to read “Do Not Enter” above entrance/exit of the overflow valet parking area.
Figure 1: Site Map

Monarch Casino with ground level and lower level parking

Monarch Hotel Tower

New Parking Garage

Figure 2: Existing Porte Cochere and Parking Area Access - Street View

Existing Exit Only

Existing Two-Way Entrance/Exit
Figure 3: Existing Porte Cochere and Parking Area Plan

Figure 4: Proposed Overflow Valet and Poker Room Plan
Figure 5: Existing Building Elevation

Figure 6: Proposed Building Elevation
Figure 7: Proposed Striping Plan

Applicable City of Black Hawk Regulations

Excerpts from:

City of Black Hawk
Zoning Code
Chapter 16 – Zoning

Sec. 16-264. Parking area design.
(b) Parking area design standards. All parking areas, driveways and maneuvering areas shall be constructed to the dimensional standards shown in Figure A. The standard parking space shall measure eight (8) feet six (6) inches by eighteen (18) feet. All parallel parking spaces shall measure eight (8) feet six (6) inches by twenty-two (22) feet. Recreational vehicle parking spaces shall measure ten (10) feet by twenty-four (24) feet.

(1) Dimensional standards: (The dimensional standards contained within Figure A are located below:}
PARKING AREA DIMENSIONS

Figure A

PARKING DIMENSIONS

<table>
<thead>
<tr>
<th>Angle</th>
<th>Minimum Stall Width</th>
<th>Vehicle Projection</th>
<th>Aisle</th>
<th>Typical Module</th>
<th>Interlock Reduction</th>
<th>Overhang</th>
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<tr>
<td></td>
<td>(A)</td>
<td>(B)</td>
<td>(C)</td>
<td>(D)</td>
<td>(E)</td>
<td>(F)</td>
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<tr>
<td></td>
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<td>std.</td>
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<td>std.</td>
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<td>two way</td>
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<tr>
<td>PARALLEL</td>
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<td>8' 6&quot;</td>
<td>7' 6&quot;</td>
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<td>16' 0&quot;</td>
<td>17' 6&quot;</td>
<td>20'</td>
<td>20'</td>
</tr>
</tbody>
</table>

1. RECREATION VEHICLE PARKING SPACES SHALL MEASURE 10' X 24'.
2. PARKING LOTS SHALL COMPLY WITH AMERICANS WITH DISABILITIES ACT.
Sec. 16-366. Variances and appeals.
All appeals of decisions and requests for a variance shall be processed as described below.

(2) Variances.
Requests for relief from the regulations and development standards of this Chapter may be taken to the Board of Appeals when the strict application of this Chapter will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding.

(4) Decision of the Board of Appeals.
   a. After a public hearing, the Board of Appeals may modify the application of the regulations or provisions of this Chapter relating to the construction or alteration of buildings or structures or uses of land if the Board of Appeals finds that all of the following exist:

   1. Due to exceptional and extraordinary circumstances unique to the property or structure for which the variance is sought, the strict enforcement of the provisions of this Chapter would cause an unnecessary hardship to the applicant;
      Staff Comment: The Monarch Casino, Hotel and Garage development has been an ongoing project since 2012. The vision of the conversion of the original porte cochere into a poker room has been established for some time, however that change was not included in the original COA for the Monarch Exterior Façade Remodel which was approved in July of 2016. Because of the long duration of the project, and the complexity of the development, the applicant indicates that the strict enforcement of the 20-foot driveway width for a privately used overflow valet parking area would cause an unnecessary hardship requiring the redesign of this area and subsequent plans associated with it.

   2. The circumstances causing the unnecessary hardship were not created by an owner or user of the property or by the applicant for the variance;
      Staff Comment: Refer to staff comment #1 above.

   3. The hardship is not established on the basis of lack of knowledge of the restrictions upon constructing or altering a structure; nor by the purchasing of a property without knowledge of applicable restrictions; nor by showing that greater profit would result if the variance were granted;
      Staff Comment: The applicant indicates the hardship was not established on the basis of a lack of knowledge of the code, and the granting of this variance will not result in greater profit to the property owner.

   4. The circumstances causing the unnecessary hardship are particular to the land or structure for which the variance is sought and do not apply generally to land and buildings in the zoning district in which the property is located;
      Staff Comment: The hardship does not apply generally to land and buildings in the zoning district in which the property is located.
5. The variance requested is the minimum deviation from this Chapter necessary to allow the same and no greater use as that allowed of other land or structures in the same zoning district;
   **Staff Comment:** The driveway width of approximately 14.5 feet for access to the overflow valet parking area would be accessed and controlled by the property owner, with no public access permitted. This is the minimum deviation necessary.

6. The granting of the variance will not injure the appropriate use of adjacent conforming properties, will not impair an adequate supply of light and air, will not impair the view from adjacent property and will not substantially diminish or impair property values within the surrounding area;
   **Staff Comment:** The granting of the variance would not injure the use of adjacent properties, affect the supply of light and air, impair views and should not diminish or impair property values in the area.

7. The granting of the variance will be consistent with the spirit, purpose and intent of this Chapter and will not create a situation which alters the character of the area surrounding the property for which the variance is granted;
   **Staff Comment:** Granting of the variance would not alter the character of the surrounding area.

8. The granting of the variance will secure and in no way diminish the public safety and welfare; nor impair prevention of or increase risk of fire, flood, traffic congestion or other hazard;
   **Staff Comment:** Based upon the proposed configuration of the access and egress to the overflow valet garage and the fact that the driveway will be used only by Monarch employees, granting of the variance should not diminish safety or increase the risks noted in this item.

9. The granting of the variance is necessary to cause substantial justice to be done; and
   **Staff Comment:** Based on the duration and complexity of the development, this variation seems to be a fair and reasonable request.

10. The granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor allow the expansion or establishment of a nonconforming use.
    **Staff Comment:** The granting of this driveway width variance does not affect allowed uses or densities and does not expand a nonconforming use.

b. In granting a variance, the Board of Appeals may prescribe any safeguard that it deems necessary to secure substantially the objectives of the regulations or provisions to which the variance applies and may impose such conditions on the use of the property for which the variance is sought as are consistent with the purposes of this Chapter. If such safeguards or conditions are imposed, the variance shall not become effective until the owner of the property and the applicant agree to abide by such conditions.
Staff Comment: Staff believes that the applicant has addressed traffic flow and safety concerns as outlined in the proposal above. Additional safeguards may be requested if deemed necessary by the Board of Appeals.

STAFF SUMMARY:
Staff from Baseline Corporation has evaluated the information provided by MBA Architecture and Monarch Growth Inc. for this project. The City of Black Hawk Municipal Code allows for variations to code regulations with the review and approval of the Board of Appeals. Staff from Baseline recommends that a variance to the driveway width be granted. The proposed variation to the code is a reasonable request for a complex development project that has been ongoing for several years. Granting this variance will not injure the land use or property values of adjacent properties. With the addition of the safety measures outlined in the proposal, the granting of the variance should not diminish public safety and welfare.

In summary, Staff recommends that a Variance for a driveway width from 20 feet to 14.5 feet be granted, subject to the following conditions:

1. Implementation/installation of the following traffic safety items:
   a. Relocation of the existing City bus stop to a location further east on Main Street.
   b. Addition of a right turn lane in the area of the existing City bus stop to allow drivers entering the overflow valet parking area to stop for any exiting/on-coming traffic.
   c. Installation of a wall mounted convex traffic mirror inside the overflow valet parking area to assist drivers’ visibility of on-coming traffic.
   d. Installation of a stop sign inside the overflow valet parking area with a sign below to read “Always Yield to Incoming Traffic”.
   e. Installation of an exterior sign to read “Do Not Enter” above entrance/exit of the overflow valet parking area.

2. An amendment to the Certificate of Architectural Compatibility for the Monarch Exterior Façade Remodel shall be issued prior to any building permit being issued for the proposed porte cochere/poker room remodel.

3. A building permit shall be issued prior to any construction of the porte cochere/poker room remodel.

FINDINGS:
The Board of Appeals may approve, conditionally approve, or deny the requested Variance. To support this proposal, the following findings can be used:

The proposed driveway width variance satisfies the criteria outlined in Section 16-366 of the Municipal Code as noted and evaluated in the staff report presented to the Board of Appeals.
RECOMMENDATION:
Staff recommends the following motion to the Mayor and Board of Appeals:

MOTION TO APPROVE Resolution No. 66-2019, a Resolution approving a Variance to allow a reduction of the minimum width of a driveway for an access point on the west overflow valet parking area of the Monarch Casino from 20-feet to 14.5-feet with the following conditions:

1. Implementation/installation of the following traffic safety items:
   a. Relocation of the existing City bus stop to a location further east on Main Street.
   b. Addition of a right turn lane in the area of the existing City bus stop to allow drivers entering the overflow valet parking area to stop for any exiting/on-coming traffic.
   c. Installation of a wall mounted convex traffic mirror inside the overflow valet parking area to assist drivers’ visibility of on-coming traffic.
   d. Installation of a stop sign inside the overflow valet parking area with a sign below to read “Always Yield to Incoming Traffic”.
   e. Installation of an exterior sign to read “Do Not Enter” above entrance/exit of the overflow valet parking area.

2. An amendment to the Certificate of Architectural Compatibility for the Monarch Exterior Façade Remodel shall be issued prior to any building permit being issued for the proposed porte cochere/poker room remodel.

3. A building permit shall be issued prior to any construction of the porte cochere/poker room remodel.

ATTACHMENTS:
- Variance Request Cover Letter
- Modified Plans
- Striping Plan
Applicant’s Submittal
August 26, 2019

Ms. Cynthia Linker  
Community Planning and Development Administrator  
City of Black Hawk  
211 Church Street  
Black Hawk, CO 80422

Project:    Monarch Poker Room / Porte Cochere COAC Amendment (19-08)
Subject:   Request for Variance, Driveway Width at Overflow Valet Garage  
(Existing Building)

Dear Cynthia,

Regarding the width of the driveway into the Overflow Valet Parking Garage in the existing Casino  
building the Black Hawk Municipal Code, Section 16-264 under “Parking Area Dimensions” indicates  
the “aisle” width dimensions between adjacent rows of parking. That width, per the table, is 20-feet for  
both one-way and two-way traffic circulation and makes no difference whether the parking is angled or  
perpendicular. It would appear that the 20-foot aisle dimension is to allow sufficient space for a vehicle  
to back out of a parking stall. The section does not appear to specifically indicate or reference a required  
driveway width into a parking area. Pursuant to separate correspondences, as well as the discussion  
during DRC meeting on Wednesday, August 21, 2019 it has been indicated by the City staff that the  
required driveway width needs to be a minimum of 20-feet and that anything less would require a  
variance. Therefore, on behalf of Monarch Casino Resort, we would like to request a variance to permit  
a minimum driveway width of 14’-6”.

This driveway will be used for overflow valet parking only. There will be no guest or public access. A  
sign stating “DO NOT ENTER” will be provided at the driveway entrance. Refer to the attached COA  
sheet A5.1A. Ingress and egress will be controlled by Monarch. The flow of traffic is expected to come  
from the new Porte Cochere. The valet person would drive west on Main Street and then make a right  
turn in to the existing parking. A valet person returning a vehicle to the new Porte Cochere would make  
a left turn out on to Main Street to head east, crossing traffic the same as the current traffic exiting the  
existing Porte Cochere does today. To help coordinate the flow of traffic, a traffic control mirror will be  
provided to allow the exiting car to see if the driveway is clear prior to proceeding. Additionally, a  
STOP SIGN and supplementary sign indicating ALWAYS YIELD TO INCOMING TRAFFIC will be  
located at the interior column. Refer to the attached COA sheet A4.1A.
It should be noted that the depth of the driveway from the face of curb at Main Street to the point where the driveway opens up to two-way traffic is approx. 26-feet. The first 11’-6” of that distance is open sidewalk. This would permit an incoming driver on Main Street to see if there is a car stopped waiting to exit. The sidewalk/curb radius at the driveway has been revised to an 11’-0” radius which allows the entering car to make the right turn from the curbside lane. Refer to the attached Turning Radius Diagram.

Also, it should be noted that the bus stop for the Black Hawk & Central City Tramway will not be located outside the Poker Room. It will be located at the parking garage, between the exit driveway and the valet garage entrance, in accordance with the permit documents for the parking garage. This area may be utilized for the occasional Monarch tour bus to bring guests to the property. Per the attached Striping Plan, there will be a curbside lane, in addition to the main westbound traffic lane, that would be used by the valet driver to turn into the garage, as well as for the occasional tour bus to stop and be out of the flow of traffic. The total length of this lane is approx. 100-feet.

Lastly, with regard to the items listed in Section 16-366 (4)a, we offer the following comments in support of the variance:

1. Due to exceptional and extraordinary circumstances unique to the property or structure for which the variance is sought, the strict enforcement of the provisions of this Chapter would cause an unnecessary hardship to the applicant; Based on our interpretation and understanding of the Black Hawk Municipal Code, Section 16-264, the dimensions indicated applied to “parking areas”, as denoted by the parking diagram included in the Code section, and not driveways into or out of the parking areas. As such, design and construction documents for the new Poker Room were prepared based on our understanding of the Code, as well as the approval of the Certificate of Appropriateness for the parking garage which incorporated driveways less than 20-feet.

2. The circumstances causing the unnecessary hardship were not created by an owner or user of the property or by the applicant for the variance; Refer to the comments regarding item 1 above.

3. The hardship is not established on the basis of lack of knowledge of the restrictions upon constructing or altering a structure; nor by the purchasing of a property without knowledge of applicable restrictions; nor by showing that greater profit would result if the variance were granted; Refer to the comments regarding item 1. Permitting a driveway less than 20-feet would not result in greater profit for the Monarch Casino.

4. The circumstances causing the unnecessary hardship are particular to the land or structure for which the variance is sought and do not apply generally to land and buildings in the zoning district in which the property is located; The driveway width of approx. 14’-6’ for access to the Overflow Valet Garage would be accessed and controlled by the Property, with no public access permitted. This condition would not apply to the district in general.

5. The variance requested is the minimum deviation from this Chapter necessary to allow the same and no greater use as that allowed of other land or structures in the same zoning district; The requested driveway width is the minimum deviation that would facilitate controlled access into and out of the overflow valet parking garage.

6. The granting of the variance will not injure the appropriate use of adjacent conforming properties, will not impair an adequate supply of light and air, will not impair the view from adjacent property and will not substantially diminish or impair property values within the surrounding area; the granting of the variance would not injure the use of adjacent properties, affect the supply of light and air, impair views and should not diminish or impair property values in the area.

7. The granting of the variance will be consistent with the spirit, purpose and intent of this Chapter and will not create a situation which alters the character of the area surrounding the property for which the variance is granted; Granting of the variance would not alter the character of the surrounding area.
8. *The granting of the variance will secure and in no way diminish the public safety and welfare; nor impair prevention of or increase risk of fire, flood, traffic congestion or other hazard;* Based upon the proposed configuration of the access and egress to the overflow valet garage, granting of the variance should not diminish safety or increase the risks noted in this item.

9. *The granting of the variance is necessary to cause substantial justice to be done; and*

10. *The granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor allow the expansion or establishment of a nonconforming use.* The variance is not requesting a use or density that is not already permitted, nor is it seeking to establish a nonconforming use.

If you have any questions, or require any additional information, please do not hesitate to contact our office.

Sincerely,
MBA Architecture & Interior Design

[Signature]

Joseph R. Marandola, A.I.A., LEED AP BD+C
Architect

Distribution:
John Farahi, Monarch
Daniel Farahi, Monarch
Sue Gredvig, Monarch
RESOLUTION 67-2019
A RESOLUTION
APPROVING THE FIRST
AMENDMENT TO THE
AGREEMENT OF LEASE
BETWEEN THE CITY OF
BLACK HAWK AS LESSOR
AND ED & SHIRLEY, INC.
AS LESSEE FOR
PROPERTY LOCATED AT
200 GREGORY STREET,
BLACK HAWK,
COLORADO
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Amendment to the Lease of 200 Gregory Street.

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE: Resolution 67-2019, A Resolution approving the First Amendment to the Agreement of Lease between the City of Black Hawk as lessor and Ed & Shirley, Inc. as lessee for Property Located at 200 Gregory Street, Black Hawk, Colorado.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: The First Amendment to the Lease provides alternate parking due to the Gregory Street Phase 2 Project. With the need to use the Briggs Lot for staging and laydown, the City has impeded access to the Lessee’s parking lot located immediately west of the Briggs Lot. This amendment provides additional surface parking between Crooks parking lot and the St. Charles Parking Structure for the duration of the time access is denied to Lessee.

AGENDA DATE: September 25, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X] Yes [ ] No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: First Amendment to the Agreement of Lease

RECORD: [ ] Yes [X] No

CITY ATTORNEY REVIEW: [X] Yes [ ] N/A

SUBMITTED BY: Reviewed by:

Lance Hillis, Finance Director

Stephen N. Cole, City Manager
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK  

Resolution No. 67-2019  

TITLE: A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE AGREEMENT OF LEASE BETWEEN THE CITY OF BLACK HAWK AS LESSOR AND ED & SHIRLEY, INC. AS LESSEE FOR PROPERTY LOCATED AT 200 GREGORY STREET, BLACK HAWK, COLORADO  

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

Section 1. The City Council hereby approves the First Amendment to the Agreement of Lease between the City of Black Hawk as Lessor and Ed & Shirley, Inc. as Lessee for Property Located at 200 Gregory Street, Black Hawk, Colorado, and authorizes the Mayor to execute the same on behalf of the City.  

RESOLVED AND PASSED this 25th day of September, 2019.  

_______________________________  
David D. Spellman, Mayor  

ATTEST:  

______________________________  
Melissa A. Greiner, CMC, City Clerk
FIRST AMENDMENT TO AGREEMENT OF LEASE

This First Amendment to the Agreement of Lease is made and entered into this 25th day of September, 2019 (the “First Amendment”), by and between the City of Black Hawk (“Lessor”) and Ed & Shirley, Inc. (“Lessee”).

WHEREAS, Lessor and Lessee entered into the Agreement of Lease dated May 22, 2019 regarding “Premises” defined as the paved parking area located at 200 Gregory Street, Black Hawk, Colorado 80422, consisting of approximately twenty-five (25) parking spaces (the “Original Lease”); and

WHEREAS, Lessor has initiated the Gregory Street Phase 2 Project and will require staging and lay down areas at the Briggs Parking Lot located at 562 Gregory Street, and in doing so impeding access to Lessee’s parking lot immediately west of the Briggs Lot; and

WHEREAS, Lessor and Lessee desire to temporarily amend Article 1 -Definition of “Premises”, Section 3.2 “Rent Adjustment”, Section 3.3 “Rent” and Section 3.4 “Termination” (“the Temporary Amendment”).

NOW THEREFORE, In consideration of the rents, covenants and agreements herein reserved and contained, Lessor demises and leases to Lessee, and Lessee rents from Lessor, the Premises as amended by this First Amendment.

1. Article 1 – Definitions of the Original Lease is amended to read as follows:

“Premises” means the paved parking area located at 200 Gregory Street, Black Hawk, CO 80422, consisting of approximately twenty-five (25) parking spaces, plus an additional seventeen (17) spaces located on the temporary parking lot located between the Original “Premises” and the St. Charles Carriage House Parking Garage.

2. Section 3.2 of the Original Lease is amended to read as follows:

3.2 Holding Over. For the duration of the Temporary Amendment, Lessee will maintain possession of the Premises and the Rate Adjustments based on the Consumer Price Index will be waived.

3. Section 3.3 of the Original Lease is amended to read as follows:

3.3 Rent. For the duration of the Temporary Amendment, Lessee shall pay rent to Lessor in the amount of Five Thousand, Thirty-Four Dollars ($5,034.00) per month. Lessee has been granted a temporary rent reduction in the amount of $1,800.00 (6 x $300.00) for the difference between the twenty-three spaces lost and the seventeen spaces provided in the temporary lot.
4. Section 3.4 of the Original Lease is amended to read as follows:

3.4 **Termination.** For the duration of the Temporary Amendment, Lessor shall waive the right to Terminate without cause. Lessor does retain the right to terminate the Lease for cause, including for non-payment of rent. In the event that the Lease is terminated for any reason during the Temporary Amendment, Lessor shall restore Lessee’s access to Lessee’s parking lot immediately west of the Briggs Lot prior to the effective date of termination of the Lease.

5. The Original Lease, including Lessee’s obligations under ARTICLE 7 - Insurance and ARTICLE 10 – Special Covenants of Lessee, is in full force and effect and is hereby ratified by Lessor and Lessee to include the “Premises” as defined in this First Amendment. The Original Lease and this First Amendment constitute all of the agreements between Lessor and Lessee with respect to the subject matter of the Original Lease.

[signatures, attestation and acknowledgement on following page]
IN WITNESS WHEREOF, the parties to this First Addendum have set their hands and seals the day and year first written above.

CITY OF BLACK HAWK, COLORADO

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

ED & SHIRLEY’S, INC.
A Colorado Corporation

By:  
Edward E. Smith, President

STATE OF COLORADO  )
) ss.
COUNTY OF GILPIN  )

The foregoing instrument was acknowledged before me this 23rd day of September, 2019, by Edward E. Smith, President of Ed & Shirley’s, Inc., a Colorado Corporation.

My commission expires: 3/25/23

(SEAL)

MICHELE MARTIN  
Notary Public  
State of Colorado  
Notary ID # 20154012152  
My Commission Expires 03-25-2023
RESOLUTION 68-2019
A RESOLUTION APPROVING THE PROPOSAL FROM THE COLORADO INTERGOVERNMENTAL RISK SHARING AGENCY (CIRSA) FOR 2020 PROPERTY CASUALTY COVERAGE
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Acceptance of the Preliminary 2020 Quote for Renewal for Property Casualty Insurance with Colorado Intergovernmental Risk Sharing Agency (CIRSA).

RECOMMENDATION: Staff recommends the following motion to the City Council:

MOTION TO APPROVE Resolution 68-2019, A Resolution Approving the Proposal from the Colorado Intergovernmental Risk Agency (CIRSA) for 2020 Property Casualty Coverage.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

CIRSA presented a preliminary quote of $263,667 for the annual renewal of the 2020 Property Casualty Insurance. The impact of loss experience decreased the quote by $12,874 bringing the amount of the 2020 Preliminary Quotation down before credits to $250,793. The City of Black Hawk actively works to control our losses and this year earned $3,848 in Loss Control Credits. This credit will be used to further reduction the 2020 contribution to $246,945 which results in a 12% increase over 2019 coverage.

While the City’s loss ratio decrease from .89 to .88, the following factors contributed to the increase in the City’s annual contribution:

- Total Operating Expenditures increased by $1,695,713;
- Total building values increased by $1,948,800; and
- Anticipated payroll increased by $897,737.

AGENDA DATE: N/A
WORKSHOP DATE: N/A
FUNDING SOURCE: 010-1302-413-5101
DEPARTMENT DIRECTOR APPROVAL: [ X ]Yes [ ]No
STAFF PERSON RESPONSIBLE: Melissa Greiner, CMC
City Clerk/Administrative Services Director
DOCUMENTS ATTACHED: N/A
RECORD: [ ]Yes [ X ]No
CITY ATTORNEY REVIEW: [ ]Yes [ X ]N/A
SUBMITTED BY: REVIEWED BY:
Melissa Greiner, CMC
City Clerk/Administrative Services Director

Stephen N. Cole
City Manager
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 68-2019

TITLE: A RESOLUTION APPROVING THE PROPOSAL FROM THE COLORADO INTERGOVERNMENTAL RISK SHARING AGENCY (CIRSA) FOR 2020 PROPERTY CASUALTY COVERAGE

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

Section 1. The City Council hereby approves the proposal from CIRSA for 2020 Property Casualty in the total amount (after credits) of $246,945.

RESOLVED AND PASSED this 25th day of September, 2019.

__________________________________________
David D. Spellman, Mayor

ATTEST:

__________________________________________
Melissa A. Greiner, CMC, City Clerk
RESOLUTION 69-2019
A RESOLUTION
APPROVING THE
COMMUNICATION
SYSTEM AND SERVICE
AGREEMENT BETWEEN
THE CITY OF BLACK
HAWK AND MOTOROLA
SOLUTIONS, INC. IN AN
AMOUNT NOT TO
EXCEED $67,101.00
SUBJECT: Communication System and Service agreement between the City of Black Hawk and Motorola Solutions, Inc. to upgrade the radio communications system radio consoles in the communications center to 800 MHZ (DTRS).

RECOMMENDATION: Staff recommends the following motion to the Mayor and Board of Aldermen:

MOTION TO APPROVE Resolution 69-2019, a Resolution approving the Communication System and Service Agreement between the City of Black Hawk and Motorola Solutions, Inc. in an amount not to exceed $67,101.00.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: The City of Black Hawk in conjunction with Clear Creek County Sheriff’s Department and the Gilpin County Sheriff’s has shared the same radio system LCORE for over a decade on a VHF radio system. With the aging system and increased cost to the radio maintenance, the City is migrating to the State of Colorado’s DTRS system, also known as 800MHZ radios. The DTRS system will have lower annual maintenance costs of $12,000.00 in 2020, compared to $50,957.15 paid in 2019 for annual maintenance fees. The DTRS system will allow interoperability with many law, fire and emergency services throughout the state. The City will transition to the DTRS system at the same time as Gilpin and Clear Creek County Sheriff’s Departments do in March 2020.

As part of the transition the communication system must be upgraded and new equipment installed. This agreement for $67,101.00 is to upgrade the dispatch consoles in the Black Hawk Communications Center.

AGENDA DATE: September 25, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X ]Yes [ ]No

STAFF PERSON RESPONSIBLE: Chief Kenneth Lloyd

DOCUMENTS ATTACHED: Communication System and Services Agreement
Motorola Console Network Proposal

RECORD: [ ]Yes [X ]No
CITY ATTORNEY REVIEW:  [X] Yes  [ ] N/A

SUBMITTED BY: __________________________
Kenneth E. Lloyd, Chief of Police

REVIEWED BY: __________________________
Stephen N. Cole, City Manager
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 69-2019

TITLE: A RESOLUTION APPROVING THE COMMUNICATION SYSTEM AND SERVICE AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND MOTOROLA SOLUTIONS, INC. IN AN AMOUNT NOT TO EXCEED $67,101.00

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

Section 1. The City Council hereby approves the Communication System and Service Agreement between the City of Black Hawk and Motorola Solutions, Inc. in an amount not to exceed $67,101.00 to upgrade the dispatch consoles in the Black Hawk Communications Center to 800 MHZ (DTRS), and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 25th day of September, 2019.

________________________________________
David D. Spellman, Mayor

ATTEST:

________________________________________
Melissa A. Greiner, CMC, City Clerk
Communications System and Services Agreement

Motorola Solutions, Inc. ("Motorola") and Clear Creek County ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System and Services, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

Section 1 ATTACHMENTS

1.1. EXHIBITS. The Exhibits listed below are exhibits related to the System sale and implementation. These Exhibits are incorporated into and made a part of this Agreement.
Exhibit A  "Motorola Software License Agreement"
Exhibit B  "Payment"
Exhibit C  Technical and Implementation Documents
   C-1  "System Description" dated May 8, 2019
   C-2  "Pricing Summary & Equipment List" dated May 8, 2019
   C-3  "Implementation Statement of Work" dated May 8, 2019
   C-4  "Acceptance Test Plan" or "ATP" dated May 8, 2019
   C-5  "Performance Schedule" dated May 8, 2019
Exhibit D  "System Acceptance Certificate"

1.2. ADDENDUM (ADDENDA). Customer may elect to purchase professional or subscription services in addition to the System and related services. Any such services will be governed by the terms in the main body of the Agreement and an applicable Addendum containing terms specific to such service. Such Addendums will be labeled with the name of the service being purchased.

1.3 ORDER OF PRECEDENCE. In interpreting this Agreement and resolving any ambiguities: 1) the main body of this Agreement takes precedence over the exhibits (unless otherwise specified in an exhibit), and any inconsistency between Exhibits A through D will be resolved in their listed order, and 2) The applicable service Addendum will take precedence over the main body of the Agreement and the Exhibits.

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

"Acceptance Tests" means those tests described in the Acceptance Test Plan.

"Addendum (Addenda)" is the title of the document(s) containing a specific set of terms and conditions applicable to a particular service or other offering beyond the Communication System and System implementation services. The terms in the Addendum are applicable only to the specific service or offering described therein.

"Administrative User Credentials" means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer’s personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

"Beneficial Use" means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).

"Confidential Information" means all information consistent with the fulfillment of this Agreement that is
(i) disclosed under this Agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. The nature and existence of this Agreement are considered Confidential Information. Confidential Information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

“Contract Price” means the price for the System and implementation Services, excluding applicable sales or similar taxes and freight charges. Further, unless otherwise stated in Exhibit B, “Payment” or the pricing pages of the proposal, recurring fees for maintenance, SUA, or subscription services are not included in the Contract Price.

“Deliverables” means all written information (such as reports, specifications, designs, plans, drawings, analytics, Solution Data, or other technical or business information) that Motorola prepares for Customer in the performance of the Services and is obligated to provide to Customer under this Agreement. The Deliverables, if any, are more fully described in the Statement of Work.

“Derivative Proprietary Materials” means derivatives of the Proprietary Materials that Motorola may from time to time, including during the course of providing the Services, develop and/or use and/or to which Motorola provides Customer access.

“Effective Date” means that date upon which the last Party executes this Agreement.

“Equipment” means the hardware components of the Solution that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

“Feedback” means comments or information, in oral or written form, given to Motorola by Customer in connection with or relating to Equipment or Services, during the term of this Agreement.

“Force Majeure” means an event, circumstance, or act that is beyond a Party’s reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes, other labor disturbances, supplier performance, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause.

“Motorola Software” means software that Motorola or its affiliated companies owns.

“Non-Motorola Software” means software that a party other than Motorola or its affiliated companies owns.

“Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

“Proprietary Materials” means certain software tools and/or other technical materials, including, but not limited to, data, modules, components, designs, utilities, subsets, objects, program listings, models, methodologies, programs, systems, analysis frameworks, leading practices and specifications which Motorola has developed prior to, or independently from, the provision of the Services and/or which Motorola licenses from third parties.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the
Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

“Services” means system implementation, maintenance, support, subscription, or other professional services provided under this Agreement, which may be further described in the applicable Addendum and/or SOW.

“Software” (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term “Software” does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

“Software Support Policy” ("SwSP") means the policy set forth at http://www.motorolasolutions.com/softwarepolicy describing the specific technical support that will be provided to Customers under the Warranty Period and during any paid maintenance support period for Motorola Software. This policy may be modified from time to time at Motorola’s discretion.

“Solution” means the combination of the System(s) and Services provided by Motorola under this Agreement.

“Solution Data” means Customer data that is transformed, altered, processed, aggregated, correlated or operated on by Motorola, its vendors or other data sources and data that has been manipulated or retrieved using Motorola know-how to produce value-added content to data consumers, including customers or citizens which is made available to Customer with the Solution and Services.

“Specifications” means the functionality and performance requirements that are described in the Technical and Implementation Documents.

“SUA” or “SUA II” means Motorola’s Software Upgrade Agreement program.

“Subsystem” means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

“System” means the Equipment, including incidental hardware and materials, Software, and design, installation and implementation services that are combined together into an integrated system; the System(s) is (are) described in the Technical and Implementation Documents.

“System Acceptance” means the Acceptance Tests have been successfully completed.

“System Data” means data created by, in connection with or in relation to Equipment or the performance of Services under this Agreement.

“Warranty Period” for System Hardware, Software, or services related to system implementation means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first. Unless otherwise stated in the applicable Addendum, Warranty Period for other Services means ninety (90) days from performance of the Service.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. SCOPE OF WORK. Motorola will provide, install and test the System(s), and perform its other contractual responsibilities to provide the Solution, all in accordance with this Agreement. Customer will
perform its contractual responsibilities in accordance with this Agreement.

3.2. CHANGE ORDERS. Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price or applicable subscription fees, Performance Schedule, or both, and will reflect the adjustment in a change order or Addendum. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. TERM. Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, or completion of the Services, whichever occurs last. The term and the effective date of recurring Services will be set forth in the applicable Addendum.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. For three (3) years after the expiration date of the Agreement, Customer may order additional Equipment or Software, if it is then available. Each purchase order must refer to this Agreement, the expiration date of the Agreement, and must specify the pricing and delivery terms. The Parties agree that, notwithstanding expiration of the Agreement, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Additional or contrary terms in the purchase order will be inapplicable, unless signed by both parties. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within thirty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the “Underlying Agreement” for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at https://businessonline.motorolasolutions.com and the MOL telephone number is (800) 814-0601.

3.5. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Motorola Software License Agreement in Exhibit A (“Software License Agreement”). Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.6. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor’s rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software.

3.7. SUBSTITUTIONS. At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.8. OPTIONAL EQUIPMENT OR SOFTWARE. This paragraph applies only if a “Priced Options” exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and
conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

Section 4  SERVICES

4.1. If Customer desires and Motorola agrees to continue Services beyond the Term, Customer's issuance and Motorola's acceptance of a purchase order for Services will serve as an automatic extension of the Agreement for purposes of the continuing Services. Only the terms and conditions applicable to the performance of Services will apply to the extended Agreement.

4.2. During the Warranty Period, in addition to warranty services, Motorola will provide maintenance Services for the Equipment and support for the Motorola Software pursuant to the applicable maintenance and support Statements of Work. Support for the Motorola Software will be in accordance with Motorola's established Software Support Policy. Copies of the SwSP can be found at http://www.motorolasolutions.com/softwarepolicy and will be sent by mail, email or fax to Customer upon written request. Maintenance Services and support during the Warranty Period are included in the Contract Price. Unless already included in the Contract Price, if Customer wishes to purchase 1) additional maintenance or software support services during the Warranty Period; or 2) continue or expand maintenance, software support, installation, and/or SUA services after the Warranty Period, Motorola will provide the description of and pricing for such services in a separate proposal document. Unless otherwise agreed by the parties in writing, the terms and conditions in this Agreement applicable to maintenance, support, installation, and/or SUA Services, will be included in the Maintenance and Support Addendum, SUA Addendum, the applicable Statements of Work, and the proposal, (if applicable). These collective terms will govern the provision of such Services.

To obtain any such additional Services, Customer will issue a purchase order referring to this Agreement and the separate proposal document. Omission of reference to this Agreement in Customer's purchase order will not affect the applicability of this Agreement. Motorola’s proposal may include a cover page entitled “Service Agreement” or “Installation Agreement”, as applicable, and other attachments. These cover pages and other attachments are incorporated into this Agreement by this reference.

4.3. PROFESSIONAL AND SUBSCRIPTION SERVICES. If Customer purchases professional or subscription Services as part of the Solution, additional or different terms specific to such Service will be included in the applicable Addendum and will apply to those Services. Customer may purchase additional professional or subscription services by issuing a purchase order referencing this Agreement and Motorola’s proposal for such additional services.

4.4. Any information in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer in providing Services under this Agreement or Motorola data viewed, accessed, will remain Motorola’s property, will be deemed proprietary, Confidential Information. This Confidential Information will be promptly returned at Motorola's request.

4.5. TOOLS. All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of providing Services under this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer’s custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola’s use without charge and may be removed from Customer’s premises by Motorola at any time without restriction. Upon termination of the contract for any reason, Customer shall return to Motorola all equipment delivered to Customer.
4.6. COVENANT NOT TO EMPLOY. During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering Services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

4.7. CUSTOMER OBLIGATIONS. If the applicable Statement of Work or Addendum contains assumptions that affect the Services or Deliverables, Customer will verify that they are accurate and complete. Any information that Customer provides to Motorola concerning the Services or Deliverables will be accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to perform the Services and its other duties under this Agreement. Unless the Statement of Work states the contrary, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions and Customer-provided information, decisions and approvals described in this paragraph.

4.8. ASSUMPTIONS. If any assumptions or conditions contained in this Agreement, applicable Addenda or Statements of Work prove to be incorrect or if Customer’s obligations are not performed, Motorola’s ability to perform under this Agreement may be impacted and changes to the Contract Price, subscription fees, project schedule, Deliverables, or other changes may be necessary.

4.9. NON-PRECLUSION. If, as a result of the Services performed under this Agreement, Motorola recommends that Customer purchase products or other services, nothing in this Agreement precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement or other laws, regulations, or policies.

4.10. PROPRIETARY MATERIALS. Customer acknowledges that Motorola may use and/or provide Customer with access to Proprietary Materials and Derivative Proprietary Materials. The Proprietary Materials and the Derivative Proprietary Materials are the sole and exclusive property of Motorola and Motorola retains all right, title and interest in and to the Proprietary Materials and Derivative Proprietary Materials.

4.11. ADDITIONAL SERVICES. Any services performed by Motorola outside the scope of this Agreement at the direction of Customer will be considered to be additional Services which are subject to additional charges. Any agreement to perform additional Services will be reflected in a written and executed change order, Addendum or amendment to this Agreement.

Section 5 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

Section 6 CONTRACT PRICE, PAYMENT AND INVOICING

6.1. Customer affirms that a purchase order or notice to proceed is not required for contract performance or for subsequent years of service, if any, and that sufficient funds have been appropriated in accordance with applicable law. The Customer will pay all invoices as received from Motorola and any changes in scope will be subject to the change order process as described in this Agreement. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.
6.2. CONTRACT PRICE. The Contract Price in U.S. dollars is $67,101.00. If applicable, a pricing summary is included with the Payment schedule in Exhibit B. Motorola has priced the Services, Software, and Equipment as an integrated System. A change in Software or Equipment quantities, or Services, may affect the overall Contract Price, including discounts if applicable. Fees for professional, SUA, and/or subscription services which are not included in the Contract Price may be listed in Exhibit B, the pricing pages of the proposal, or the applicable Addendum.

6.3. INVOICING AND PAYMENT. Motorola will submit invoices to Customer according to the Payment schedule in Exhibit B. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a wire transfer, check, or cashier’s check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola is 36-1115800.

6.4. FREIGHT, TITLE, AND RISK OF LOSS. Motorola will pre-pay and add all freight charges to the invoices. Title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

6.5. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address:
Name:______________________________________________________________________________
Address:______________________________________________________________________________
Phone:______________________________________________________________________________
Email:______________________________________________________________________________

The address which is the ultimate destination where the Equipment will be delivered to Customer is:
Name:______________________________________________________________________________
Address:______________________________________________________________________________

The Equipment will be shipped to the Customer at the following address (insert if this information is known):
Name:______________________________________________________________________________
Address:______________________________________________________________________________
Phone:______________________________________________________________________________

Customer may change this information by giving written notice to Motorola.

Section 7 SITES AND SITE CONDITIONS

7.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the worksites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit process.

7.2. SITE CONDITIONS. Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical
power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

7.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

Section 8 TRAINING

Any training to be provided by Motorola to Customer will be described in the applicable Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

Section 9 SYSTEM ACCEPTANCE

9.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.

9.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

9.3. BENEFICIAL USE. Customer acknowledges that Motorola’s ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola’s prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

9.4. FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.
Section 10  REPRESENTATIONS AND WARRANTIES

10.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola’s control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

10.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes beyond Motorola’s control, this warranty expires eighteen (18) months after the shipment of the Equipment.

10.3. SOFTWARE WARRANTY. Except as described in the SwSP and unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Software in accordance with the warranty terms set forth in the Software License Agreement and the provisions of this Section that are applicable to the Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes beyond Motorola’s control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. Nothing in this Warranty provision is intended to conflict or modify the Software Support Policy. In the event of an ambiguity or conflict between the Software Warranty and Software Support Policy, the Software Support Policy governs.

10.4. EXCLUSIONS TO EQUIPMENT AND SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer’s failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

10.5. SERVICE WARRANTY. During the Warranty Period, Motorola warrants that the Services will be provided in a good and workmanlike manner and will conform in all material respects to the applicable Statement of Work. Services will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. Customer acknowledges that the Deliverables may contain recommendations, suggestions or advice from Motorola to Customer (collectively, "recommendations"). Motorola makes no warranties concerning those recommendations, and Customer alone accepts responsibility for choosing whether and how to implement the recommendations and the results to be realized from implementing them.

10.6. WARRANTY CLAIMS. To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid Equipment or Software warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. These actions will be the full extent of Motorola’s liability for the warranty claim. In the event of a valid Services warranty claim, Customer’s sole remedy is to require
Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

10.7. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the System or Services for commercial, industrial, or governmental use only, and are not assignable or transferable.

10.8. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Section 11 DELAYS

11.1. FORCE MAJEURE. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule or applicable Addenda for a time period that is reasonable under the circumstances.

11.2. PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER. If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to the Payment schedule as if no delay occurred; and the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

Section 12 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

12.1. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.

12.2. NEGOTIATION. Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

12.3. MEDIATION. The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request
that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

12.4. LITIGATION, VENUE and JURISDICTION. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

12.5. CONFIDENTIALITY. All communications pursuant to subsections 12.2 and 12.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 13  DEFAULT AND TERMINATION

13.1. DEFAULT BY A PARTY. If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer’s cure plan.

13.2. FAILURE TO CURE. If a defaulting Party fails to cure the default as provided above in Section 13.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges. In the event Customer elects to terminate this Agreement for any reason other than default, Customer shall pay Motorola for the conforming Equipment and/or Software delivered and all services performed.

Section 14  INDEMNIFICATION

14.1. GENERAL INDEMNITY BY Motorola. Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This Section sets forth the full extent of Motorola’s general indemnification of Customer from liabilities that are in any way related to Motorola’s performance under this Agreement.

14.2. Intentionally Omitted.
14.3. PATENT AND COPYRIGHT INFRINGEMENT.

14.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola’s duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola’s obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

14.3.2 If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

14.3.3 Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola’s liability resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer’s revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

14.3.4. This Section 14 provides Customer’s sole and exclusive remedies and Motorola’s entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 14 are subject to and limited by the restrictions set forth in Section 15.

Section 15 LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed $500,000. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this
Communication System and Services Agreement
Motorola Solutions, Inc. Contract No. 18-248816
Clear Creek County, CO

Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

Section 16 CONFIDENTIALITY AND PROPRIETARY RIGHTS

16.1. CONFIDENTIAL INFORMATION.

16.1.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. All Deliverables will be deemed to be Motorola's Confidential Information. During the term of this Agreement and for a period of three (3) years from the expiration or termination of this Agreement, subject to the obligations of the City pursuant to the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq., Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not copy, reproduce, reverse engineer, de-compile or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

16.1.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this Agreement.

16.1.3. All Confidential Information remains the property of the Discloser and will not be copied or reproduced without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

16.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS. Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.
16.3 VOLUNTARY DISCLOSURE. Except as required to fulfill its obligations under this Agreement, Motorola will have no obligation to provide Customer with access to its Confidential Information and/or proprietary information. Under no circumstances will Motorola be required to provide any data related to cost and pricing.

16.4 DATA AND FEEDBACK.

16.4.1 To the extent permitted by law, Customer owns all right, title and interest in System Data created solely by it or its agents (hereafter, “Customer Data”), and grants to Motorola the right to use, host, cache, store, reproduce, copy, modify, combine, analyze, create derivatives from, communicate, transmit, publish, display, and distribute such Customer Data.

16.4.2 Motorola owns all right, title and interest in data resulting from System Data that is or has been transformed, altered, processed, aggregated, correlated or operated on (hereafter, “Derivative Data”).

16.4.3 Any Feedback given by Customer is and will be entirely voluntary and, even if designated as confidential, will not create any confidentiality obligation for Motorola. Motorola will be free to use, reproduce, license or otherwise distribute and exploit the Feedback without any obligation to Customer. Customer acknowledges that Motorola’s receipt of the Feedback does not imply or create recognition by Motorola of either the novelty or originality of any idea. The parties further agree that all fixes, modifications and improvements made to Motorola products or services conceived of or made by Motorola that are based, either in whole or in part, on the Feedback are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements to the Motorola product or service will vest solely in Motorola.

Section 17 GENERAL

17.1 TAXES. The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.

17.2 ASSIGNABILITY AND SUBCONTRACTING. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a “Separated Business”), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a “Separation Event”), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.3 WAIVER. Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a
writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

17.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

17.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

17.6. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

17.7. **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt.

17.8. **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission (“FCC”) licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

17.9 **FUTURE REGULATORY REQUIREMENTS.** The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

17.10. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms and conditions; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

17.11. **ADMINISTRATOR LEVEL ACCOUNT ACCESS.** If applicable to the type of System purchased by Customer, Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant access to the Administrative User Credentials to those personnel with the training and experience to correctly use them. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support personnel. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made using the Administrative User Credentials may impact Motorola’s
ability to perform Services or other obligations under the Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

17.12. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.5 (Motorola Software); Section 3.6 (Non-Motorola Software); if any payment obligations exist, Sections 6.2 and 6.3 (Contract Price and Invoicing and Payment); Subsection 10.8 (Disclaimer of Implied Warranties); Section 12 (Disputes); Section 15 (Limitation of Liability); and Section 16 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 17.

17.13. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

The Parties hereby enter into this Agreement as of the Effective Date.

Motorola Solutions, Inc.  Customer

By: ______________________________  By: ______________________________
Name: ___________________________  Name: ____________________________
Title: ____________________________   Title: _____________________________
Date: ____________________________  Date: ____________________________
MOTOROLA SOFTWARE LICENSE AGREEMENT

This Exhibit A Motorola Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and Clear Creek County ("Licensee").

For good and valuable consideration, the parties agree as follows:

Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary software or products containing embedded or pre-loaded proprietary software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the proprietary software and affiliated documentation.

Section 3 GRANT OF LICENSE

3.1 Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.
3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee’s use of the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; and (ii) identify the Open Source Software (or specify where that license may be found).

3.3. TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERSEDES THE SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

Section 4 LIMITATIONS ON USE

4.1. Licensee may use the Software only for Licensee’s internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a “time sharing,” “application service provider,” or “service bureau” basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola’s proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; provided that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4. Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party (“Auditor”) may inspect Licensee’s premises, books and records, upon reasonable
prior notice to Licensee, during Licensee’s normal business hours and subject to Licensee’s facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

Section 5 Ownership and Title

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola’s processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

Section 6 Limited Warranty; Disclaimer of Warranty

6.1. Unless otherwise stated in the Primary Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee’s use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee’s particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to Licensee for third party software provided by Motorola.

6.2. Motorola’s sole obligation to Licensee and Licensee’s exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola’s option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee’s paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.
Section 7       TRANSFERS

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than CPS and Motorola's FLASHPort® software) which is embedded in or furnished for use with the radio products and the related Documentation; provided that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.

Section 8       TERM AND TERMINATION

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

Section 9       Commercial Computer Software

9.1 *This Section 9 only applies to U.S. Government end users.* The Software, Documentation and updates are commercial items as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212 and 48 C.F.R. Part 227.7202, as applicable. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, 48 C.F.R. Part 227.7202-1 through 227.7202-4, 48 C.F.R. Part 52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, the Software, Documentation and Updates are distributed and licensed to U.S. Government end users: (i) only as commercial items, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

9.2 If Licensee is licensing Software for end use by the United States Government or a United States Government agency, Licensee may transfer such Software license, but only if: (i) Licensee transfers all copies of such Software and Documentation to such United States Government entity or interim transferee, and (ii) Licensee has first obtained from the transferee (if applicable) and ultimate end user an enforceable end user license agreement containing restrictions substantially identical to the ones contained in this Agreement. Except as stated in the foregoing, Licensee and any transferee(s) authorized by this subsection 9.2 may not otherwise use or transfer or make available any Motorola software to any third party nor permit any party to do so.
Section 10     CONFIDENTIALITY  
Licensee acknowledges that the Software and Documentation contain Motorola’s valuable proprietary and Confidential Information and are Motorola’s trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

Section 11     LIMITATION OF LIABILITY  
The Limitation of Liability provision is described in the Primary Agreement.

Section 12     NOTICES  
Notices are described in the Primary Agreement.

Section 13     GENERAL  
13.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2. COMPLIANCE WITH LAWS. Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3 FUTURE REGULATORY REQUIREMENTS. The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

13.4. ASSIGNMENTS AND SUBCONTRACTING. Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.5. GOVERNING LAW. This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State of Colorado. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.6. THIRD PARTY BENEFICIARIES. This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.7. SURVIVAL. Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.
13.8. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.9. SECURITY. Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.
Exhibit B

PAYMENT

Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier’s check, or wire transfer drawn on a U.S. financial institution. If Customer has purchased additional Professional or Subscription services, payment will be in accordance with the applicable addenda. Payment for the System purchase will be in accordance with the following milestones.

System Purchase (excluding Subscribers, if applicable)

1. Total of Equipment and Software is due upon shipment. Customer will accept partial shipments.

2. Total of Services is due upon completion of installation.

If Subscribers are purchased, 100% of the Subscriber Contract Price will be invoiced upon shipment (as shipped).

Motorola shall make partial shipments of equipment and will request payment upon shipment of such equipment. In addition, Motorola shall invoice for installations completed on a site-by-site basis or when professional services are completed, when applicable. The value of the equipment shipped/services performed will be determined by the value shipped/services performed as a percentage of the total milestone value. Unless otherwise specified, contract discounts are based upon all items proposed and overall system package. For invoicing purposes only, discounts will be applied proportionately to the FNE and Subscriber equipment values to total contract price. Overdue invoices will bear simple interest at the maximum allowable rate by state law.

For Lifecycle Support Plan and Subscription Based Services:
Motorola will invoice Customer annually in advance of each year of the plan.

The chart below outlines the hourly labor rates for Motorola System Integration resources to be used. The staffing requirements shall be multiplied by the appropriate rate per resource in the table below. The hourly labor rates are fully burdened. The hourly rates per resource type and level are listed in Table 1.

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<th>Levels</th>
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<th>System Technologist</th>
<th>Project Administration</th>
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<td>$ 210.00</td>
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</tbody>
</table>

Table 1 - Hourly Rates

These rates apply to ordinary days and times (Monday to Friday during the hours 8am to 5pm). Additional surcharges may apply to work done outside these timeframes. The minimum charge for any resource will be 4 hours. Travel expenses are not included in these rates and may be charged separately. The qualifications of each type and level of resource are defined in the tables found at https://www.motorolasolutions.com/content/dam/msi/secure/services/labor-rates-exhibit-160408.pdf. All Motorola System Integration personnel assigned to this project will be classified according these levels. Project Administrative roles are varied and their specific duties and qualifications will be determined by the complexity and requirements of each project.
EXHIBIT D
System Acceptance Certificate

Customer Name: ______________________________________________________

Project Name: _______________________________________________________

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Customer Representative: ____________________________
Motorola Representative: ____________________________
Print Name: ___________________________                Print Name: ___________________________
Title: ________________________________                 Title: ________________________________
Date: ________________________________                Date: ________________________________

FINAL PROJECT ACCEPTANCE:
Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative: ____________________________
Motorola Representative: ____________________________
Print Name: ___________________________                Print Name: ___________________________
Title: ________________________________                 Title: ________________________________
Date: ________________________________                Date: ________________________________