



## REGULAR MEETING AGENDA

City of Black Hawk City Council  
211 Church Street, Black Hawk, CO

October 26, 2022  
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. PUBLIC COMMENT: *Please limit comments to 5 minutes*
6. APPROVAL OF MINUTES: October 12, 2022
7. PUBLIC HEARINGS:

A. CB23, An Ordinance Dissolving the Black Hawk Business Improvement District

### 8. ACTION ITEMS:

- A. Resolution 65-2022, A Resolution Approving the Construction Manager/General Contractor Agreement Between the City of Black Hawk and White Construction Group for the Residential Rehabilitation Program Preconstruction Phase in an Amount Not to Exceed \$14,500.00
- B. Resolution 66-2022, A Resolution Approving Change Order #3 to the Gregory Point Contract Between the City of Black Hawk and PEH Architects in the Amount of \$29,095 to Design a WiFi System Along the Gregory Street Corridor
- C. Resolution 67-2022, A Resolution Approving the Seventh Addendum to the Agreement for Transit Related Services for the Black Hawk & Central City Tramway for 2023 Between MV Transportation, Inc. and the City of Black Hawk
- D. Resolution 68-2022, A Resolution Authorizing the Repair of Hidden Valley Raw Water Pump #1 by Arvada Pump Company in the Total Amount Not to Exceed \$53,300.00

### 9. CITY MANAGER REPORT:

### 10. CITY ATTORNEY REPORT:

### 11. EXECUTIVE SESSION:

Executive Session to hold a conference with the City's Attorney to receive legal advice on specific legal questions regarding personnel issues, and regarding potential litigation pursuant to C.R.S § 24-6-402(4)(b), and to instruct negotiators regarding City-owned land on Gregory Hill, the Gregory Street HARD District, and other City-owned property, pursuant to C.R.S § 24-6-402(4)(e).

### 12. ADJOURNMENT:

### 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



**City of Black Hawk  
City Council**

**October 12, 2022**

**MEETING MINUTES**

New Police Officer Cameron Martinez rang the bell to open the meeting.

1. **CALL TO ORDER:** Mayor Spellman called the regular meeting of the City Council to order on Wednesday, October 12, 2022 at 3:00 p.m.

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 Moriarty, Fire Marshal Walsh, Finance Director Hillis, Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Maintenance Services Manager Jackson, Water System Superintendent Fredericks, and Deputy City Clerk Martin.

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

3. **AGENDA CHANGES:** Deputy City Clerk Martin confirmed 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. City Council noted no conflicts.

City Attorney Hoffmann asked the audience if there were any objections to any member of the Council voting on any issue on the agenda this afternoon. There were no objections noted.

5. INTRODUCTION OF  
NEW EMPLOYEE:

Police Officer Cameron Martinez

Police Chief Moriarty introduced Officer Martinez. He is a native of Colorado and comes to the City with experience from the Lakewood Police Department. He was warmly welcomed.

6. PUBLIC COMMENT:

Deputy City Clerk Martin confirmed no one had signed up to speak.

7. APPROVAL OF  
MINUTES:

September 14, 2022

**MOTION TO  
APPROVE**

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

**MOTION PASSED**

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

8. PUBLIC HEARINGS:

**None**

9. ACTION ITEMS:

**A. Resolution 60-2022, A Resolution Ratifying the Approval of the Proposal from the Colorado Intergovernmental Risk Sharing Agency for 2023 Property Casualty Coverage**

Mayor Spellman read the title.

City Clerk/Administrative Services Director Greiner introduced this item. She said it was the only item on the September 28<sup>th</sup> agenda, so a phone poll was conducted, and the item was unanimously approved to meet the deadline, allowing for the meeting on the 28<sup>th</sup> to be canceled. She explained the 17% increase was due to the City's total operating expenditures and insurance companies raising rates to cover liability insurance nationwide.

**MOTION TO  
APPROVE**

Alderman Armbricht **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 60-2022, a Resolution ratifying the approval of the proposal from the Colorado Intergovernmental Risk Sharing Agency for 2023 Property Casualty Coverage.

**MOTION PASSED**

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

**B. Resolution 61-2022, A Resolution Ratifying the Approval of the License Agreement Between the City of Black Hawk, Colorado and Boulder Mountainbike Alliance**

Mayor Spellman read the title.

Clerk/Administrative Services Director Greiner explained that a Special Event application had come in under the required 30 days, and to accommodate the applicant; another phone poll was conducted to expedite the License Agreement portion of the application. All were in favor of the approval. The applicant wishes to use the bike trails on City-owned Hidden Treasure/Maryland Mountain properties.

**MOTION TO APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to approve Resolution 61-2022, a Resolution ratifying the approval of the License Agreement between the City of Black Hawk, Colorado and Boulder Mountainbike Alliance.

**MOTION PASSED**

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

**C. Resolution 62-2022, A Resolution Authorizing the City Manager to Administratively Approve General License Agreements for City Property for Events of Ten Days or Less**

Mayor Spellman read the title.

Clerk/Administrative Services Director Greiner said this authorization is similar to the license agreements in the HARD District that the City Manager is authorized to approve. She added that it is easier to accommodate these types of license agreements, such as the Boulder Mountainbike Alliance agreement just approved.

**MOTION TO APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 62-2022, a Resolution Authorizing the City Manager to administratively approve General License Agreements for City Property for events of ten days or less.

**MOTION PASSED**

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

**D. Resolution 63-2022, A Resolution Authorizing the Repair of Mountain Supply Line Wells #2 and #4 by Boulder Water Well Service and Supply, Inc. in the Total Amount Not to Exceed \$85,500.00**

Mayor Spellman read the title.

Public Works Director Isbester and Water System Superintendent Fredericks introduced this item. They said two wells on Dory Hill Road had suffered failures over the last couple of months, and they are about 20 years old. They noted that these were critical pieces of infrastructure.

**MOTION TO APPROVE**

Alderman Midcap **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 63-2022, a Resolution authorizing the repair of mountain supply line wells #2 and #4 by Boulder Water Well Service and Supply, Inc. in the total amount not to exceed \$85,500.00.

**MOTION PASSED**

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

**E. Resolution 64-2022, A Resolution Authorizing the Mayor to Execute a Quitclaim Deed on Behalf of the City to a Newly Registered Elector Qualified to Serve on the Silver Dollar Metropolitan District**

Mayor Spellman read the title.

City Attorney Hoffmann explained that the Silver Dollar Metropolitan District (SDMD) is a separate governmental entity, but the City has a Directors' Parcel within the SDMD boundaries, so each time there is a newly qualified member of the SDMD under their service plan, City Council approves a Quitclaim Deed to allow the member to serve on the District, and if they ever leave then, the City receives the property back.

**MOTION TO APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 64-2022, a Resolution authorizing the Mayor to execute a Quitclaim Deed on behalf of the City to a newly registered elector qualified to serve on the Silver Dollar Metropolitan District.

**MOTION PASSED**

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

**10. CITY MANAGER REPORT:**

City Manager Cole reported the distribution of the proposed 2023 budget by Finance Director Hillis, required by law, to be received by October 15<sup>th</sup>. The budget work session is scheduled for November 9<sup>th</sup> at 2:00 pm.

Mayor Spellman added that the regular Council meeting would commence immediately after the work session.

City Manager Cole also requested for the December 14<sup>th</sup> regular meeting to be moved to December 7<sup>th</sup> to allow for more time in case anything needs further discussion, as the budget must be approved by December 15<sup>th</sup>. All were in favor.

**11. CITY ATTORNEY  
REPORT:**

City Attorney Hoffmann had nothing to report.

**12. EXECUTIVE  
SESSION:**

City Attorney Hoffmann recommended items number 2 and 5 only for Executive Session and the specific legal issues related to the Gilpin Ambulance Authority, City-owned buildings, and the construction contract with JBS, and the issues related to negotiations related to City-owned property.

**MOTION TO ADJOURN  
INTO EXECUTIVE  
SESSION**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn into Executive Session at 3:10 p.m. to hold a conference with the City's attorney to receive legal advice on specific legal questions pursuant to C.R.S. § 24-6-402(4)(b), and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).

**MOTION PASSED**

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

**MOTION TO ADJOURN  
EXECUTIVE SESSION**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn the Executive Session at 4:05 p.m.

**MOTION PASSED**

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

**MOTION TO RESUME  
REGULAR OPEN  
SESSION**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to resume back into regular session at 4:05 p.m.

**MOTION TO  
APPROVE**

Alderman Moates **MOVED** and was **SECONDED** by Alderman Johnson to send a notice of default to Thomas L. Feeney dba Feeney Farms, Inc., commonly known as the EagleSmart convenience store

located on City-owned property. The default is under the lease, which includes non-remittance of sales tax.

**MOTION PASSED**

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

13. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council adjourned at 4:06 p.m.

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Melissa A. Greiner, CMC  
City Clerk

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David D. Spellman  
Mayor

**COUNCIL BILL 23  
ORDINANCE 2022-23  
AN ORDINANCE  
DISSOLVING THE BLACK  
HAWK BUSINESS  
IMPROVEMENT DISTRICT**



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

**COUNCIL BILL NUMBER: CB23**

**ORDINANCE NUMBER: 2022-23**

**TITLE: AN ORDINANCE DISSOLVING THE BLACK HAWK BUSINESS  
IMPROVEMENT DISTRICT**

WHEREAS, the City of Black Hawk has received a petition from the Board of Directors of the Black Hawk Business Improvement District (the "Petition");

WHEREAS, the operations of the Black Hawk Business Improvement District have largely been taken over by the Silver Dollar Metropolitan District;

WHEREAS, the City has been provided a copy of an Agreement Regarding Transfer and Use of Remaining BID Funds by and between the Black Hawk Business Improvement District and the Silver Dollar Metropolitan District regarding the disposition of the funds of the Black Hawk Business Improvement District;

WHEREAS, the Petition complies with all of the requirements under C.R.S. § 31-25-1201, *et seq.*; and

WHEREAS, after a properly noticed public hearing, the City Council hereby determines that it is in the best interests of all concerned to dissolve the Black Hawk Business Improvement District.

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

Section 1. The Black Hawk Business Improvement District is hereby dissolved, effective on or before December 31, 2022 when the Black Hawk Business Improvement District is able to satisfy the requirements of having no outstanding indebtedness, obligations and liabilities based on Section 2 hereof.

Section 2. The City finds and determines that Agreement Regarding Transfer and Use of Remaining BID Funds satisfies the requirements of C.R.S. § 31-25-1225 that all outstanding indebtedness, obligations and liabilities of the Black Hawk Business Improvement District have been or will be satisfied by December 31, 2022.

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 26<sup>th</sup> day of October, 2022.

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David D. Spellman, Mayor

ATTEST:

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Melissa A. Greiner, CMC, City Clerk

# CITY OF BLACK HAWK

## REQUEST FOR COUNCIL ACTION

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**SUBJECT:** Dissolution of the Black Hawk Business Improvement District

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

**MOTION TO APPROVE** Council Bill 23, An Ordinance Dissolving the Black Hawk Business Improvement District.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:** The City of Black Hawk received a petition on October 3, 2022 from the Board of Directors of the Black Hawk Business Improvement District (BID) petitioning for its dissolution as the operations of the BID have been taken over by the Silver Dollar Metropolitan District.

A notice of the public hearing was sent to the Weekly Register-Call on October 6, 2022 and was published on October 13, 2022.

The same notice was also sent to each property owner within the BID district on October 11, 2022.

**AGENDA DATE:** October 26, 2022

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**DEPARTMENT DIRECTOR APPROVAL:** ☒ Yes ☐ No

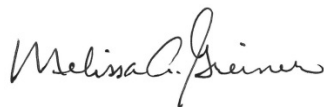
**STAFF PERSON RESPONSIBLE:** Melissa Greiner, City Clerk/Administrative Services Director

**DOCUMENTS ATTACHED:** Dissolution Petition of Black Hawk Business Improvement District 2022, Notice, and Proof of Publication.

**RECORD:** ☒ Yes ☐ No

**CITY ATTORNEY REVIEW:** ☒ Yes ☐ N/A

**SUBMITTED BY:**



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

**REVIEWED BY:**



Stephen N. Cole  
City Manager

PETITION FOR DISSOLUTION  
FROM THE  
BLACK HAWK BUSINESS IMPROVEMENT DISTRICT

TO: City Council, City of Black Hawk, Colorado

The undersigned, the Board of Directors of the Black Hawk Business Improvement District (the "District"), hereby respectfully petitions the City Council of the City of Black Hawk pursuant to C.R.S. § 31-25-1201, *et seq.*, (the "BID Act") for the dissolution of the District.

The undersigned hereby requests that by an Ordinance of the City Council of the City of Black Hawk the District be dissolved and that the property within the District – as outlined in Exhibit A and incorporated herein by this reference – be relieved from all liability for taxes, assessments, and other obligations of the District.

Pursuant to the requirements of the BID Act, the undersigned affirm the following:

1. The undersigned represent the owners of at least fifty percent (50%) of the valuation for assessment of all real and personal property within the service area of the District;
2. Exhibit A describes and includes the boundaries of the District and all properties within the District; and
3. All services of the District, including improvements, were suspended in 2019 with those services or improvements having been assumed by the Silver Dollar Metropolitan District.
4. Lynnette Hailey, John East, and Sean Demeule represent the undersigned and have the power to enter into agreements relating to the organization of the District.

Acceptance of the Petition shall be deemed to have occurred at the time when the Board of Directors of the District votes on the dissolution of the BID and requests the City Council set the date for the public hearing for consideration of this Petition.

This is a verified petition.

Petitioner(s): Black Hawk Business Improvement District

Petitioner:

S - D  
Sean Demuele, Ameristar

Petitioner:

[Signature]  
John East, Gilpin and Lodge

Petitioner:

[Signature]  
Edward Smith, Wild Card and Sasquatch

Petitioner:

[Signature]  
Dodd Hanneman, Maverick Gaming

Petitioner:

[Signature]  
Brandon Lenssen, Bally's

Petitioner:

[Signature]  
Norris Hamilton, Harrah's

Petitioner:

[Signature]  
Michelle Shriver, Monarch

Petitioner:

[Signature]  
Marcus Rohrbaugh, Saratoga

**TO: PROPERTY OWNERS WITHIN THE BOUNDARIES OF THE BLACK HAWK BUSINESS IMPROVEMENT DISTRICT**

**NOTICE OF PUBLIC HEARING OF THE BLACK HAWK CITY COUNCIL TO  
CONSIDER DISSOLUTION OF THE BLACK HAWK BUSINESS  
IMPROVEMENT DISTRICT PURSUANT TO C.R.S. § 31-25-1225**

NOTICE is hereby provided that a public hearing will be held by the City Council of the City of Black Hawk to consider dissolution of the Black Hawk Business Improvement District pursuant to C.R.S. § 31-25-1225 on Wednesday October 26, 2022 at 3:00 p.m., or as soon thereafter as the matter may be heard.

Any interested citizens and property owners within the boundaries of the Black Hawk Business Improvement District are invited to attend the public hearing.

Respectfully submitted,  
Melissa A. Greiner, CMC, City Clerk

Published in the Weekly Register Call:  
October 13, 2022

## PUBLISHER'S AFFIDAVIT

STATE OF COLORADO,)

) SS.


COUNTY OF GILPIN)

I Robert Sweeney do solemnly affirm that I am the Publisher of WEEKLY REGISTER CALL; that the same is a weekly newspaper published in Black Hawk, County of GILPIN, State of Colorado, and has a general circulation therein; that said newspaper has been continuously and uninterruptedly published in said County of GILPIN for a period of at least 52 consecutive weeks prior to the first publication of the annexed notice, that said newspaper is entered in the post office at Black Hawk, Colorado, as periodical class mail matter and that said newspaper is a newspaper within the meaning of the Act of General Assembly of the State of Colorado, approved March 30, 1923, and entitled "Legal Notice and Advertisements," with other Acts relating to the printing and publishing of legal notice and advertisements. That the annexed notice was published in the regular and entire issue of said newspaper for a period of ONE consecutive insertions that the first publication of said notice was in the issue of said newspaper dated:

OCTOBER 13

and the last publication of said notice, was in the issue of said newspaper dated:

OCTOBER 13



Publisher

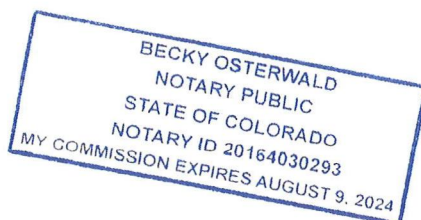
Subscribed and affirmed to before me, a Notary Public in the County of ARAPAHOE, State of Colorado,

This 13 th day of October A.D., 20 22



Notary Public

My Commission expires: August 9, 2024



# LEGAL NOTICES

## THE WEEKLY REGISTER-CALL

October 13, 2022

TO:  
PROPERTY OWNERS WITHIN THE  
BOUNDARIES OF THE BLACK  
HAWK BUSINESS IMPROVEMENT  
DISTRICT

NOTICE OF PUBLIC HEARING OF  
THE BLACK HAWK CITY COUNCIL  
TO CONSIDER DISSOLUTION OF  
THE BLACK HAWK BUSINESS  
IMPROVEMENT DISTRICT PURSU-  
ANT TO C.R.S. § 31-25-1225

NOTICE is hereby provided that a public hearing will be held by the City Council of the City of Black Hawk to consider dissolution of the **Black Hawk Business Improvement District** pursuant to C.R.S. § 31-25-1225 on Wednesday October 26, 2022 at 3:00 p.m., or as soon thereafter as the matter may be heard.

Any interested citizens and property owners within the boundaries of the **Black Hawk Business Improvement District** are invited to attend the public hearing.

Respectfully submitted,  
Melissa A. Greiner, CMC, City Clerk

Published in The Weekly Register-Call  
Published: October 13, 2022  
Legal # 5699

**RESOLUTION 65-2022**  
**A RESOLUTION**  
**APPROVING THE**  
**CONSTRUCTION**  
**MANAGER / GENERAL**  
**CONTRACTOR**  
**AGREEMENT BETWEEN**  
**THE CITY OF BLACK**  
**HAWK AND WHITE**  
**CONSTRUCTION GROUP**  
**FOR THE RESIDENTIAL**  
**REHABILITATION**  
**PROGRAM**  
**PRECONSTRUCTION**  
**PHASE IN AN AMOUNT**  
**NOT TO EXCEED \$14,500.00**



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

**Resolution No. 65-2022**

**TITLE:     A RESOLUTION APPROVING THE CONSTRUCTION MANAGER /  
GENERAL CONTRACTOR AGREEMENT BETWEEN THE CITY OF  
BLACK HAWK AND WHITE CONSTRUCTION GROUP FOR THE  
RESIDENTIAL REHABILITATION PROGRAM PRECONSTRUCTION  
PHASE IN AN AMOUNT NOT TO EXCEED \$14,500.00**

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 Construction Manager/General  
Contractor Agreement between the City of Black Hawk and White Construction Group for the  
Residential Rehabilitation Program Preconstruction Phase in an Amount Not to Exceed  
\$14,500.00, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 26<sup>th</sup> day of October, 2022.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk

## **CITY OF BLACK HAWK**

### **REQUEST FOR COUNCIL ACTION**

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**SUBJECT:** A Resolution approving the Construction Manager/General Contractor Agreement between the City of Black Hawk and White Construction Group for the Residential Rehabilitation Program Preconstruction Phase.

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

**MOTION TO APPROVE RESOLUTION NO. 65-2022** - A Resolution approving the Construction Manager/General Contractor Agreement between the City of Black Hawk and White Construction Group for the Residential Rehabilitation Program Preconstruction Phase in an amount not to exceed \$14,500.00.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The City of Black Hawk intends to enter into a contract with a qualified, professional Construction Manager/General Contractor to provide pre-construction and construction services necessary to complete the Residential Rehabilitation Program on two Historic residential homes.

The purpose of the Residential Rehabilitation Program is to enhance certain areas of the City by providing Property Owners with the resources needed to rehabilitate and historically preserve Qualified Properties.

The Construction Manager/General Contractor Request for Proposal (RFP), dated July 18, 2022, was made available to the Contractors pre-qualified during this Project's Request for Qualifications (RFQ) phase. The RFQ was originally advertised through Rocky Mountain BidNet on June 6, 2022, to pre-qualify Contractors to participate in the RFP process. Qualifications were due by 4:00 p.m. June 30, 2022. An invitation to interview with CP&D was extended to White Construction Group for July 14, 2022, to review the qualifications of their team and project experience. CP&D used the overall RFQ/RFP process to select White Construction as the Construction Manager/General Contractor for the Project.

The City of Black Hawk intends to perform complete rehabilitation of two (2) residential historic homes concurrently. The homes are located at 187 Clear Creek Street and 121 Marchant Street. Work will include complete exterior renovation, interior reconstruction, and associated site and utility construction. The White Construction Group shall provide professional services during design, construction, and warranty periods, as described below:

- A. Contractor shall provide assistance during the design phase of these projects to include plan review, constructability analysis, and cost estimating.
- B. The Residential Rehabilitation Program will require the Contractor to enter into two separate contracts: One with the City for Preservation Easement exterior work and another with the Homeowner for Rehabilitation Grant interior work. The work performed under both contracts will be overseen by the City.
- C. Contractor, may be required to perform selective interior demolition during the design phase to strip the properties down to their studs. Contractor may be required to complete

required hazardous material abatement and mitigation services as necessary prior to demolition.

- D. Contractor shall remove and reconstruct or repair retaining walls adjacent to the project sites as part of the Rehabilitation Program. Reconstruction or repair may be based on the Atkinson-Noland & Associates, Inc. provided scope of work.
- E. Contractor shall replace all utility service lines from their respective mains to the residence. Contractor shall coordinate with all utility providers for final connections.
- F. Rehabilitation shall be per plans and specifications. This is to ensure the City reaches the goal of preserving the architectural character with exterior improvements while assuring that the interior is habitable.
- G. The City is contracting directly with professional design firms to perform the design work required for the Project.

If White Construction Group performs to the City's expectations in the design phase, staff will return with a request to amend their contract to include their Construction Fees currently estimated at \$518,681.00.

**AGENDA DATE:**

October 26, 2022

**WORKSHOP DATE:**

N/A

**FUNDING SOURCE:**

305-3101-4317570  
Residential Restoration Program

**DEPARTMENT DIRECTOR APPROVAL:**

☒ Yes      ☐ No

**STAFF PERSON RESPONSIBLE:**

Cynthia L. Linker, CP&D Director

**DOCUMENTS ATTACHED:**

Resolution 65-2022  
Construction Manager/General  
Contractor Agreement

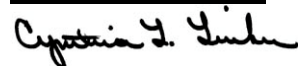
**RECORD:**

☐ Yes      ☒ No

**CoBH CERTIFICATE OF INSURANCE REQUIRED** ☒ Yes      ☐ No

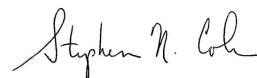
**CITY ATTORNEY REVIEW:** ☒ Yes      ☐ N/A

**SUBMITTED BY:**



Cynthia L. Linker, CP&D Director

**REVIEWED BY:**



Stephen N. Cole, City Manager

# CITY OF BLACK HAWK, COLORADO



CONTRACT DOCUMENTS FOR

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CMGC)**  
**RESIDENTIAL REHABILITATION PROGRAM**

**Black Hawk, CO 80422**

**OCTOBER 26, 2022**

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## CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT

THIS AGREEMENT is made and entered into this **14<sup>TH</sup> DAY OF SEPTEMBER 2022**, by and between the **CITY OF BLACK HAWK**, State of Colorado, a body politic and corporate, hereinafter referred to as the "City" or "Owner" and **WHITE CONSTRUCTION GROUP**, hereinafter referred to as the "Contractor".

### ARTICLE 1 - GENERAL PROVISIONS AND SERVICES

- A. The Contractor shall commence and fully complete preconstruction and construction of the **Residential Rehabilitation Program** project, described in **Exhibit A**, which is attached hereto and made a part hereof ("Project").
- B. The Contractor shall retain Subcontractors at the Contractor's expense as necessary to complete the Work.
- C. The Contractor shall commence the Work required by the Contract Documents within ten (10) calendar days after the date of the notification to proceed and will complete the same on or before December 31, 2023, unless the period for completion is extended otherwise by the Contract Documents. The Contractor agrees to pay as liquidated damages, and not as a penalty, the sum of **One Thousand Dollars (\$1,000.00)** for each consecutive calendar day's delay in completing this Project after the completion date specified herein, excluding any approved extensions of time.
- D. The Contractor agrees to perform all of the preconstruction work described in the Contract Documents and to comply with the terms therein for an amount not to exceed **Fourteen Thousand Five Hundred Dollars (\$14,500.00)**, as shown in **Exhibit B**.

### ARTICLE 2 - DEFINITIONS

- A. Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
  - 1. Addenda - Written or graphic instruments issued prior to the execution of the Agreement that modify or interpret the Contract Documents, drawings, and specifications, by additions, deletions, clarifications, or corrections.
  - 2. Bid - The offer or proposal of the Bidder submitted in the prescribed form setting forth the prices for the Work to be performed.
  - 3. Bidder - Any person, firm, or corporation submitting a Bid for the Work.
  - 4. Bonds - Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Contractor and its surety in accordance with the Contract Documents.
  - 5. Change Order - A written order to the Contractor authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Sum and/or Contract Time.

6. Construction Change Directive – A written order directed to the Contractor and signed by the Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
7. Consultant – A person or entity providing professional services for the Contractor or the Owner to execute a portion of the Work. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services. Consultants include architects and engineers, as applicable.
8. Contractor – The person, firm, or corporation with whom the City of Black Hawk has executed this Agreement. Also known as the Construction Manager/General Contractor or CMGC. The Contractor shall be lawfully licensed by the City of Black Hawk.
9. Contract Documents – The contract (“Agreement”), including advertisement for Bids, information for Bidders, Bid, Bid bond agreement, Bid schedule, labor and material payment bond, performance bond, notice of award, notice to proceed, Change Orders, general conditions, special conditions, general specifications, special specifications, scopes of Work, addenda, drawings, schedules, and any and all other documents or papers included or referred to in the foregoing documents are part of the Contract Documents.
10. Contract Sum – The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
11. Contract Time – The number of calendar days stated in the Contract Documents for Substantial Completion of the Work.
12. Date of Award – Date of award of contract shall mean the date formal notice of such award, approved by the Owner, has been delivered to the intended awardee, or mailed to it at the main business address shown in its proposal by the Owner or its authorized representative.
13. Day – Unless herein otherwise expressly defined, Day shall mean calendar day.
14. Major Equipment or Major Equipment Items – Installation of major equipment to be furnished and placed under the Agreement awarded to the Contractor and/or installations of major equipment to be furnished by the Owner and received, unloaded, stored, and placed by the Contractor under the Agreement awarded to the Contractor.
15. Notice of Award – The written notice of the acceptance of the Bid by the Owner to the successful Bidder.
16. Notice to Proceed – Written communication issued by the Owner to the Contractor authorizing it to proceed with the Work and establishing the date of commencement of the Work.

17. Owner or City – The City of Black Hawk, Colorado, a home rule municipality. The Public Works Director, Project Manager, or their designee of the Owner is the Owner’s representative.
18. Project – Construction of the Project described in **Exhibit A**.
19. Shop Drawings – All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.
20. Site – The lands and other places on, under, in, or through which the Work is to be executed or carried out and any other lands or places provided by the Owner for the purposes of the Agreement together with such other places as may be specifically designed in the Contract Documents as forming part of the Site.
21. Special Conditions – Supplemental conditions that apply to specific aspects of the Project or modifications to the general conditions that are to be adhered to in the Project.
22. Subcontractor – An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site. All Subcontractors shall be lawfully licensed by the City of Black Hawk.
23. Submittal – Any submission to the Owner for review and approval demonstrating how the Contractor proposes to conform to the Contract Documents. Submittals include, but are not limited to Shop Drawings, product data, and samples.
24. Substantial Completion – That date as certified by the Authority Having Jurisdiction, which shall not be unreasonably withheld, when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended. All major systems shall be operational, all safety features shall be completed, and final inspections by all applicable local and state officials must be received by the Owner prior to achieving Substantial Completion.
25. Supplier – Any person, supplier, or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the Site. A Supplier is not a Subcontractor who purchases an item of equipment from a manufacturer.
26. Work – The preconstruction, construction, and related services required to fulfill the Contractor’s obligations under the Contract Documents. The Work includes all labor, materials, equipment, and services provided or to be provided by the Contractor. The Work may constitute the whole or a part of the Project.
27. Written Notice – Written Notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by



registered or certified mail or by courier service or electronic mail providing proof of delivery to the last business address known to the party giving notice.

### **ARTICLE 3 - DESCRIPTION OF WORK AND SERVICES**

#### **Section 1      Process to Establish Guaranteed Maximum Price**

- A. The Contractor shall advise the Owner on proposed Site use and improvements, selection of materials, building systems, and equipment, as applicable. The Contractor shall provide the Owner with recommendations on constructability, availability of materials and labor, schedule, installation and construction, alternative designs or materials, budgeting, life-cycle data, and value engineering.
- B. The Contractor shall schedule and conduct meetings with the Owner, Consultants, and any other necessary individuals or entities to discuss and evaluate the ongoing design of the Project. The evaluation shall address possible alternative approaches to design and construction of the Project and include the Contractor's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, and phasing.
- C. The Contractor shall prepare a written report to summarize the Contractor's evaluation of the Project design. The report shall include a proposed Project schedule and a control estimate for the cost of the Work organized by trade categories.
- D. The Owner shall review the Contractor's written report and, if acceptable, provide the Contractor and Consultants written consent to proceed to the development of the construction drawings and specifications. The Owner shall also provide written consent to the Contractor to proceed to development of the Contractor's proposal. The Contractor's proposal shall, at a minimum, include the following:
  - 1. A list of preliminary design documents and other information upon which the Contractor's proposal is based.
  - 2. The proposed Contract Sum organized by trade categories, including allowances, contingencies, updates to the Contractor's Fee Proposal, and other items that comprise the proposed Contract Sum. A schedule of values shall be provided by which each application for payment will be evaluated.
  - 3. The proposed Project schedule, including the proposed date that the Contractor shall achieve Substantial Completion.
- E. Preparation of the Contractor's proposal will likely be an iterative process. The Contractor shall revise the Contract Sum and Project schedule as necessary prior to agreement between the Owner and Contractor on a final proposal. The Contractor shall strive to eliminate allowances wherever possible and decrease Contractor's contingencies until the Owner and Contractor agree on a final Contractor's proposal.
- F. If the Owner and Contractor agree on a proposal, the Owner and Contractor shall execute an amendment setting forth the terms of their Agreement. The final Contract Sum as agreed upon by the Owner and Contractor will become established as the Guaranteed Maximum Price ("GMP") in the GMP Amendment.
  - 1. The GMP guarantees to the Owner the price for which all Work will be completed within the Contract Time.

2. The GMP, unless changed by Change Order or Construction Change Directive, represents the absolute limit of obligation or liability that the Owner may have insofar as the cost for full and final completion of the Work and the total of all payments to the Contractor or its Subcontractors.
3. Should additional amounts over and above the GMP be required to be expended to achieve completion of the Work, liability for and payment of such additional amounts shall be the sole responsibility of the Contractor.
4. Should the final cost of the Work be less than the GMP, the difference shall inure to the benefit of the Owner and no claim for all or any portion of said difference shall be valid against or payable by the Owner.

G. Construction shall not commence prior to execution of the GMP Amendment.

## Section 2 Drawings and Specifications

- A. The Contractor shall coordinate with the Consultants to provide Project drawings and specifications to the Owner for approval. The Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the Owner.
- B. In case of conflict between the drawings and specifications, the specifications shall govern, unless directed otherwise by the Owner and Consultants. In case of conflict between the special specifications and the general specifications, the special specifications shall govern. Figure dimensions on drawings will govern over scale dimensions, and detailed drawings shall govern over general drawings. Notwithstanding the above, a document which is more restrictive or requires greater responsibility or increased compliance by the Contractor shall govern.
- C. Any discrepancies found between the drawings and specifications and Site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the Owner and Consultants in writing, who will promptly resolve such inconsistencies or ambiguities in writing. Work done on unreported discrepancies, inconsistencies or ambiguities by the Contractor shall be done at the Contractor's risk.
- D. The Contractor may be furnished additional instructions and detail drawings by the Owner and Consultants as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

## Section 3 Materials, Services and Facilities

- A. The Contractor shall, in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Contract Documents. The Contractor shall, at its sole cost, risk, and expense, construct, equip, provide purchase, pay for, and furnish all of the materials, services, and equipment necessary to provide the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall be in accordance with such Contract

Documents, as well as all local, state, and federal governmental codes, ordinances, and regulations as they apply to performance of the Work.

- B. In addition to the requirements for major equipment items previously given, the Contractor shall submit to the Owner a complete listing of the manufacturers of each item of equipment or assembly fabricated off the Site that is proposed to be furnished for the Project, together with sufficient information, including shop assembly and detail drawings, manufacturers' specifications, and performance data, to demonstrate clearly that the materials and equipment to be furnished comply with the provisions and intent of the Contract Documents. If the information shows any deviation from the contract requirements, the Contractor shall notify the Owner of the deviation and state the reason for it in writing. Acceptance of substitute material or equipment that deviates from the specifications shall be determined by the Owner and Consultants.
- C. Only specified materials and materials which conform to the requirements of the specifications shall be incorporated in the Work. All materials shall be new unless specified to be otherwise.
- D. When requested by the Owner, the Contractor shall furnish a written statement of the origin, composition, and manufacturer of any or all materials (manufactured, produced or grown) that are to be used in the Work. The sources of supply of each material used will be approved by the Owner and Consultants before delivery is started. If, at any time, sources previously approved fail to produce materials acceptable to the Owner and Consultants, the Contractor shall furnish materials from other approved sources.
- E. Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. Material or equipment stored off-site shall be insured by the Contractor. Proof of insurance shall be submitted to Owner prior to request for payment for such material or equipment.
- F. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer.
- G. Materials, supplies, and equipment shall be in accordance with samples submitted by the Contractor and approved by the Owner and Consultants.
- H. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or any Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.
- I. The Contractor shall retain, for the benefit of the Owner, all materials and supplies that are purchased for the project but are not used as a part of the project. The Owner may take any of the materials and supplies that are used in the project for any City purpose. Any materials and supplies not taken by the Owner shall be removed from the Site by the Contractor as a Cost of Work.

#### Section 4      Submittals

- A. The Contractor shall submit Shop Drawings, samples, and O&M manuals as may be necessary for the prosecution of the Work, as required by the Contract Documents, on a

timely basis so that the Project schedule is not affected. The Owner and Consultants will review all Submittals within 14 Calendar Days. All such Submittals will be approved and signed by the Consultants, and will be null and void unless authorized by such signature. Review and approval of any Submittal by the Owner or Consultants will not release the Contractor from responsibility for any deviations from the Contract Documents unless requested by the Contractor in the submittal utilizing the approved substitution process. The approval of any Submittal that substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order. The Designer shall not be permitted to design on show drawings or submittals.

- B. All drawings and details on items of major equipment will be reviewed by the Owner and Consultants only after the complete set of drawings and details covering the entire equipment package indicated by the Specifications to be furnished under a particular major equipment item are submitted. Drawings submitted on a piecemeal basis covering only parts of the equipment package will be held for checking until the entire set of drawings are received.
- C. The Contractor shall submit to the Owner and Consultants Shop Drawings showing detail of structural wood trusses, structural steel and concrete reinforcing steel, bending details, piping details, and of other items necessary for the proper installation of materials into the completed Work, as provided by this Agreement.
- D. The Contractor shall make any indicated corrections on the Submittals returned and shall resubmit corrected Submittals until final approval is obtained.
- E. The Contractor shall have no claims for damages or extension of time on account of any delay in the Work resulting from the review, revision and resubmittal of a Submittal when the review, revision and resubmittal is due to changes to the original Submittal required by the Owner or Consultants.
- F. Each Shop Drawing shall be dated and shall be identified with the name of the Project, the division, if any, the contract item number, and the name of the Contractor.
- G. When submitted for review by the Owner and Consultants, Submittals shall bear the Contractor's certification that it has reviewed, checked, and approved the Submittals and that they are in conformance with the requirements of the Contract Documents.
- H. Portions of the Work requiring a Submittal shall not begin until the Submittal has been approved by the Owner and Consultants. A copy of each approved sample shall be kept in good order by the Contractor at the Site and shall be available to the Owner and Consultants. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.
- I. By approving and submitting Shop Drawings and samples, the Contractor thereby represents that it has determined and verified all available field measurements, field construction criteria, materials, catalog numbers, and similar data, and that it has checked and coordinated each Shop Drawing and sample with the requirements of the Work and of the Contract Documents.

## Section 5      Records, Accounts and Audits

- A. The Contractor agrees to keep one complete set of records and books of account on a recognized cost accounting basis (satisfactory to the Owner), showing all expenditures, of whatever nature, made pursuant to the provisions of this Contract.
- B. The Contractor shall furnish the Owner with such records, information and data as may be reasonable. The Owner shall at all reasonable times be afforded the opportunity to inspect and/or audit the above-specified books and records of the Contractor. Costs incurred by the Contractor for inspections and audits are allowable Cost of the Work

## Section 6      Inspection and Testing

- A. All materials and equipment used in the construction of the project will be subject to adequate inspection and testing in accordance with generally accepted standards and the Contract Documents.
- B. The Contractor shall give sufficient advance notice of placing orders to permit tests required by the Contract Documents to be completed before materials are incorporated in the Work.
- C. The Owner shall bear costs for all inspection and testing services required by the Contract Documents, unless specifically noted in the specifications for special inspection and testing services, such as, by way of example, welding inspections on off-site assemblies. The Contractor shall make arrangements for all tests, inspections, and approvals specified within the Contract Documents with an independent testing laboratory or entity acceptable to and contracted by the Owner.
- D. Neither observations by the Owner or Consultants, tests, nor approvals by persons other than the Owner will relieve the Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents. The Contractor shall not deviate from the Contract Documents based upon third-party inspections or field reports resulting from Section 6.
- E. The Owner and its representatives shall, at all times, have access to the Work and to locations where materials or equipment are being manufactured, stored, or prepared for use under these Contract Documents, and they shall have full facilities for unrestricted inspection of such materials, equipment, and Work including full access to purchasing and engineering information to the extent of uncovering, testing, or removing portions of the finished Work. The Owner shall be furnished with such information as may be specified regarding materials used and the process of manufacture for the various items of equipment. Observations by the Owner of equipment or materials during its manufacture will be performed by or for the Owner solely in an effort to detect discrepancies and defects as early as possible, when they can be most readily corrected, and the Work thereby expedited. No acceptance of equipment or materials will be construed to result from such observations by the Owner. Any inspections or tests or waivers thereof will not relieve the Contractor of responsibility for meeting all requirements of these Contract Documents.
- F. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all Work, materials, payrolls, records of personnel,

invoices of materials, and other relevant data and records. The Contractor shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof as a Cost of Work.

- G. In case of disputes between the Contractor and the Owner as to materials furnished or manner of performing the Work, the Owner will have authority to reject materials or suspend the Work until the question at issue can be decided by the Owner. The Owner is authorized to revoke, alter, enlarge, relax, or release any requirements of Project drawings and specifications, and to approve or accept any portion of the Work, and to issue instructions contrary to the drawings and specifications and the Contractor shall be entitled to seek appropriate relief for cost and time impacts.

## Section 7      Construction Review

- A. The Owner will periodically observe the construction of all Work covered by this Contract. The Owner is authorized to - observe the amount or quantities of the several items of Work which are to be paid for under this Agreement; to order field changes by Change Directive or Change Order within the scope of the Agreement and to render decisions on any questions which may arise relative to the execution of the Work covered by this Agreement. The Owner has the authority to suspend Work. The Contractor shall not suspend any portion of the Work nor resume suspended Work without the written Notice to the Owner.
- B. Whenever in the drawings, plans, or Contract Documents the terms "as ordered", "as directed", or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory", or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the intent indicated within the Contract Documents. The use of any such term or adjective shall not be effective to assign to the Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility for the Project. The Owner will not be responsible for the acts or omissions of the Contractor or any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- C. If any Work has been covered which the Owner has not been specifically requested to observe prior to its being covered, or if the Owner considers it necessary or advisable that covered Work be inspected or tested, the Contractor at the request of the Owner shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Owner may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment and, as a Cost of the Work, the Contractor will be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, and an appropriate Change Order will be issued.

## Section 8      Surveys, Permits, and Regulations

- A. The Owner will furnish all land surveys together with a suitable number of bench marks adjacent to the Work as shown in the Contract Documents. The Contractor shall provide detailed construction staking as a Cost of the Work.

- B. At the beginning of the construction or as the Work progresses, a surveyor at the Owner's expense shall install property corners and set bench marks.
- C. Any additional surveying or re-surveying shall be done by the Contractor at the Contractor's expense as a Cost of Work. Bench marks and survey stakes shall be preserved by the Contractor, and in case of their destruction or removal by the Contractor, its employees, or others, they shall be replaced at the Contractor's expense as a Cost of Work.
- D. Existing and proposed elevations will be provided to the Contractor by the Owner in the Contract Documents. The Contractor shall be responsible for determining quantities and pricing used in their bid based upon these.
- E. The Contractor shall secure all necessary permits, fees, and licenses in connection with the performance of the Work and shall pay all municipal and other governmental fees in connection therewith except for fees associated with permits or licenses issued by the City of Black Hawk, tap fees, or development fees associated with permanent utility connections, which will be paid by the Owner, and shall furnish at its expense any and all bonds and cash or other deposits required by any lawful body having the right to make demand therefor.
- F. The Contractor shall procure a zero-cost Temporary Use Permit from the City's Community Planning and Development Department for any dumpster, staging area, parking area, sanitary facilities, or other temporary facilities that will be necessary for the Work which shall not be unreasonably withheld.
- G. The Contractor shall provide traffic control plans and provide all traffic control necessary for all Work that requires closures of public roadways, lanes, or sidewalks. The Contractor shall procure a zero-cost Street Closure Permit from the City's Public Works Department for each roadway, lane, or sidewalk closure necessary to complete the Work which shall not be unreasonably withheld.
- H. The Contractor shall specifically be responsible for registering with the City Clerk pursuant to Article VII of Chapter 6 of the Black Hawk Municipal Code, and shall further be responsible for requiring that all Subcontractors register with the City Clerk pursuant to Article VII of Chapter 6 of the Black Hawk Municipal Code, and pay the necessary registration fee as a Cost of the Work. The Contractor shall similarly require that each Subcontractor provide any required certificate of insurance to the City Clerk pursuant to Section 6-222 of the Black Hawk Municipal Code.
- I. The Owner will provide rights-of-way and permanent and temporary easements as shown on the plans for construction purposes. Any additional land actually needed by the Contractor for performance of the Work, proper location of its plant and equipment, or the storage of materials and supplies for the Work, shall be furnished by the Contractor as a Cost of the Work.

## Section 9      Protection of Work, Property, and Persons

- A. The Contractor shall be responsible for initiating and maintaining all safety precautions and programs in connection with the Work. The Owner will not be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or

the safety precautions and programs incident thereto. The Contractor shall take all reasonable necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to all employees on the Work who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site, and other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

- B. The Contractor shall, at all times, consult with and obtain the approval of the Owner for the storage of material, operation of equipment, placing of temporary structures, or dispositions of any surplus or waste materials upon property of the Owner anywhere outside the limits of construction. The Contractor shall comply with all state, federal, and local laws related to the storage or placement of any supplies, equipment, structures, or any other materials.
- C. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. The Contractor shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Contractor shall notify owners of adjacent utilities when prosecution of the Work may affect them. The Contractor shall remedy all damage, injury, or loss to any property or person caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable as a Cost of the Work, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Owner or anyone for whose acts the Owner may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor. Notwithstanding the provisions of C.R.S. § 13-20-802.5(2), for purposes of this Agreement, the measure of damages shall never be deemed to be the fair market value of the real property without an alleged construction defect.
- D. The Contractor shall observe all rules and regulations of the health department having jurisdiction and shall take precautions to avoid creating unsanitary conditions.
- E. In emergencies affecting the safety of persons or the Work or property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner, shall act to prevent threatened damage, injury, or loss.
- F. The Contractor shall at all times conduct Work in such a manner as to cause the least inconvenience and greatest protection to the general public. The Contractor shall furnish and maintain as required by the Contract Documents barricades, warning signs, red flags, lights, and temporary passageways as may be necessary to protect the Work and to safeguard the public. The cost of furnishing and maintaining the above facilities shall be a Cost of the Work.
- G. Throughout the performance of the Work or in connection with this Agreement, the Contractor shall construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for public and private traffic. The material excavated from trenches shall be deposited along the sides of the trench or elsewhere in such a manner as shall give as little inconvenience as possible to the traveling public, to adjoining property owners, to other contractors, or to the City.



- H. In performing the Work, the Contractor shall take the necessary action, including making arrangements with the owners or operators of existing power, cable, and telephone lines, fiber-optic and telemetry lines, gas, water, sewer, and other utilities or installations that may be encountered, whether privately or publicly owned, to prevent interference with the conditions, operations, and maintenance of the respective utilities in a manner satisfactory to the owners or operators of the respective utilities. Relocation or repair of utilities encountered even though not shown on the plans, shall be the responsibility of the Contractor. The cost of the above measures, including maintaining of guards, watchmen, signals, barricades, and temporary structures, making any necessary repairs and other cooperative or corrective Work shall be borne by the Contractor and shall be included in the prices bid for the related items as Cost of Work. The Owner shall be responsible to the Contractor for the existence of utilities not shown on the plans or drawings and the Contractor shall not be obligated under this paragraph for all hidden utilities.
- I. The Contractor shall be responsible for the preservation of all private or public property along and adjacent to the Work and shall take all necessary precautions to prevent damage or injury thereto. Such preservation and protection shall include but not be limited to, trees, stone walls, fences, mail boxes, monuments, irrigation ditches, driveways, road access culverts, underground pipelines, and structures. Such preservation and protection shall apply to all underground pipelines and utilities whether public, private, or individually owned that are in or adjacent to the right-of-way. When direct or indirect damage is done to public or private property on account of an, omission, neglect, or misconduct in the prosecution or non-prosecution of the Work on the part of the Contractor, such property shall be restored by the Contractor at the Contractor's expense to a condition similar or equivalent to that which existed before such damage or injury was done, and brought up to current codes if applicable. If the Contractor encounters and damages underground facilities that are not identified on the Contract Documents and not properly located in the field, the Contractor shall repair said facilities and bring them up to current codes, if applicable, as Cost of the Work. The Contractor shall be responsible for making all arrangements for moving and operating equipment at temporary crossings of telephone and transmission lines, railroad tracks, irrigation ditches, and pipelines.

#### Section 10      Communication with the Owner

The Contractor shall designate a responsible member of its organization at the Site, whose duty shall be designated as the contact person for all communication between the Owner and the Contractor. Said designated representative shall also be responsible to attend such meetings as may be required to ensure coordination and adequate performance of the Work.

#### Section 11      Scope of Work

The scope of Work is described in the Contract Documents which are appended hereto and incorporated herein by this reference as Exhibit A.

#### Section 12      Contractor's Responsibility

- A. The Contractor shall be responsible for all the Work under this Agreement.

- B. The Contractor shall supervise and direct the Work. It shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- C. The Contractor shall employ on the Work only such persons who are competent and skilled in their assignments. Any employee who obstructs the progress of the Work through incompetence or other means, or conducts himself or herself improperly shall be discharged or removed from the Work when so requested by the Owner. This section shall not create a duty for the Owner to evaluate or assess the competence or skills of the Contractor's employees.
- D. The Contractor warrants that all materials and equipment furnished and incorporated by it in the Project shall be new, unless otherwise specified, and that all Work under this Agreement shall be of good quality, free from fault and defects and in conformity with the Contract Documents. All Work not conforming to these standards shall be considered defective. The warranty provided herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. The warranty provided herein shall not apply to latent material defects.
- E. The Contractor agrees that if it should fail or neglect to prosecute the Work diligently and properly, or fail to perform any provisions of this Agreement, that the Owner, after three (3) days written notice to said Contractor without response by the Contractor may, without prejudice to any other remedy, make good such deficiencies and may withhold the cost thereof from the payments then or thereafter due to the Contractor pursuant to this Agreement.
- F. Tools furnished with any equipment may be used for erection purposes when approved by the Owner and shall be turned over to the Owner after completion of the erection in a condition acceptable to the Owner.
- G. Upon completion and before final acceptance of the Work, the Contractor shall remove from the Site of the Work and property of the Owner, all machinery, equipment, surplus materials, rubbish, barricades, signs, and temporary structures and shall leave the premises in a condition which is satisfactory to the Owner as a Cost of the Work
- H. The Contractor shall keep one record set of the Contract Documents annotated to show all changes made during construction.
- I. The Contractor shall be responsible for the acts and omissions of all its employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.
- J. Upon completion of the Work, the Contractor shall, as a Cost of the Work, remove from the vicinity of the Work, all plant, buildings, rubbish, unused materials, concrete forms, and other like material, belonging to the Contractor or used under its direction during construction, and in the event of its failure to do so, the same may be removed by the Owner, and the Contractor and its surety or sureties shall be liable for the cost thereof. Also during the construction of the Work, the Site, partially finished structures, and material stockpiles shall be kept in a reasonable state of order and cleanliness.

## Section 13     Changes in the Work

- A.     A.     Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, only by Change Order or Construction Change Directive, subject to the limitations stated in this Article and elsewhere in the Contract Documents. Upon identifying a change in condition, the Owner will request pricing via a Proposal Request. If the Contractor believes that a Change in Condition exists but a Proposal Request is not produced by the Owner, it will provide Notice of the Change via a Proposed Change Order.
1.     A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor.
  2.     Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. The Contractor shall not proceed with scope changes without written directive from the Owner.
  3.     If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted; subject to 13.A.3, however, that Owner may increase the number of units without change in the unit price, if reasonable.
- B.     CHANGE ORDERS. The Contract Sum and the Contract Time may be changed only by Change Order. Methods used in determining adjustments to the Contract Sum may include those listed in Subsection C below. A Change Order is a written order to the Contractor, signed by the Contractor and the Owner, stating their agreement upon all of the following:
1.     A change in the Work;
  2.     The amount of the adjustment in the Contract Sum, if any; and
  3.     The extent of the adjustment in the Contract Time, if any.
- C.     CONSTRUCTION CHANGE DIRECTIVES. A Construction Change Directive is a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
1.     A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

2. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
  - a. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - b. By unit prices stated in the Contract Documents or subsequently agreed upon;
  - c. By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - d. By the method provided in Subparagraph (C)(5).
3. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
4. A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time and the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
5. If the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be mutually agreed on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed ten percent ( 10%) of such Work's actual cost for Contractor and ten percent (10%) of such Work's actual cost to be apportioned between any and all Subcontractors and sub-Subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this subparagraph, actual costs shall be defined as and limited to the following:
  - a. Costs of staff and craft labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
  - b. Costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;
  - c. Reasonable rental costs of machinery and equipment, exclusive of hand tools, obtained and used specifically for such Work, whether rented from the Contractor or others; and

- d. Costs of premiums for all bonds (if any), permit fees, and sales, use, or similar taxes directly attributable to such Work. Actual cost does not include any item which could be deemed to be a general condition cost or overhead, such as but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses, unless the scope change impacts the Critical Path or the Contract Time.
6. As Costs are incurred, such costs not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.
7. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be determined in accordance with Article 5 hereof.
8. When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### Section 14     Contract Documents

In case of conflict between this Agreement, the general conditions of the contract for construction, and the supplementary conditions, this Agreement will govern.

### **ARTICLE 4 – CONTRACTOR'S CONSTRUCTION SCHEDULE**

#### Section 1     Preconstruction Conference

A preconstruction conference shall be scheduled at the time the GMP Amendment is executed. The Contractor, at the preconstruction conference, shall prepare and submit, for review and concurrence by the Owner, a Contractor's construction schedule for the Work, in such form and detail as specified. The schedule shall not exceed time limits under the Contract Documents, shall be revised as required herein and at monthly intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for the expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days for submission to the Owner with Contractor's applications for payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Agreement (as the same may be extended as provided in the Contract Documents), for reasons within the Contractor's control and not related to reasons for which the Contractor is entitled to relief in the Contract Documents, then the Contractor shall submit to the Owner, for its review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the

various phases of the Work as well as the totality of the Work. Subject to 4.1, ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time.

## Section 2      Schedule of Submittals

The Contractor shall prepare and keep current, for approval by the Owner and Consultants, a schedule of Submittals which is coordinated with the Contractor's construction schedule and allows the Owner and Consultants reasonable time to review Submittals.

## Section 3      Conformance to Schedule

The Contractor shall conform to the most recent schedules, subject to Contractor's rights to amend logic and durations, as required to manage the work.

# **ARTICLE 5 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- A. The date of Commencement and the time for completion of the Work are essential conditions of the Contract Documents, and the Work embraced shall be commenced as specified in the Notice to Proceed and Contract Documents.
- B. The 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 Contractor and the Owner, that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic conditions of the Work during the period such Work is to be performed.
- C. If the Contractor shall fail to complete the Work within the Contract Time, or extension of time granted by the Owner through a Change Order or Construction Change Directive, then the Contractor shall pay to the Owner the amounts of liquidated damages and not as penalty the sum of **One Thousand Dollars (\$1,000.00)** for each calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.
- D. ~~The Owner will charge the Contractor, and may deduct from the partial and final payment for the Work, all architectural, engineering, construction management and other Consultant expense incurred by the Owner in connection with any Work accomplished after the specified completion date.~~
- E. The 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 the Contractor has promptly given written notice of such delay to the Owner.
  - 1. To any preference, priority, or allocation order duly issued by the Owner.
  - 2. To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the Owner, or designer, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes, and weather

conditions that could not be reasonably anticipated labor, equipment, or material shortages or delays; and

3. To any delays of Subcontractors occasioned by any of the causes specified in subparagraphs 1 and 2 of this paragraph E.
- F. The Contractor waives any right of recovery or reimbursement or by whatever name, as against the Owner, as a result of any delay or increase on overhead cost incurred by the Contractor's association with any action or inaction on the part of any other trade contractor or Supplier.

## **ARTICLE 6 - CONTRACT SUM**

- A. The City Council of the City of Black Hawk has appropriated the money necessary to fund this project. The Owner shall pay the Contractor the Contract Sum in current funds for the performance of the Work, subject to any additions and deletions by written Change Order. Notwithstanding anything to the contrary contained in this Agreement, no Change Order or other form of directive by the Owner requiring additional compensation, which causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Original Contract Amount, unless the Contractor is given written assurance by the City of Black Hawk that lawful appropriations have been made by the City Council of the City of Black Hawk to cover the cost of the additional Work and the Contractor shall not proceed until evidence of financing is provided.
- B. The Contractor hereby agrees that estimates of the value of all Work provided to the Owner shall be for Work actually performed upon the Project. The determination of the amount of Work completed on each application for payment by the Contractor shall be subject to approval by the Owner which shall not be unreasonably withheld. However, such determination by the Owner shall not be construed as acceptance of the Work.
1. Before the first application for payment, the Contractor shall submit to the Owner a schedule of values to be allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Consultants or Subcontractors. This schedule shall be used to monitor the progress of the Work and as a basis for making progress payments hereunder. Application for monthly progress payments shall be made in writing in accordance with this Contract and shall be submitted on AIA Document G702 and AIA Document G703. Applications for payment shall be submitted to the Owner on a monthly basis. Approved applications for payment that remain unpaid thirty (30) days after the application date are subject to an interest rate of 12% per year.
  2. Pursuant to Colo. Rev. Stat. § 24-91-103, as may be amended, where the Original Contract Amount exceeds one hundred fifty thousand dollars (\$150,000.00), the Owner will retain five percent (5%) of the calculated value of completed Work from each progress payment up until the Work is completed satisfactorily and finally accepted by the Owner. If the Owner finds satisfactory progress is being made in any phase of the Work, the Contractor may make written request of the Owner for payment of the withheld percentage. The Owner may agree to payment of the withheld percentage if the Owner finds satisfactory and substantial reasons exist for the payment. The Contractor must provide written approval to

the Owner from any surety furnishing bonds for the contract Work in order to receive said payment of the withheld percentage.

3. Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance by the Owner and upon receipt of final application for payment, the Owner will promptly make such final field review subject to the final payment requirements contained in Colo. Rev. Stat. § 38-26-107, as amended. If the Owner finds that the Work is acceptable under the Contract Documents, a final certificate of payment will be issued. Neither final payment nor the remaining retention shall become due until the Contractor submits to the Owner an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work, have been paid or otherwise satisfied. Likewise, final payment shall not be made until the consent of the surety to final payment has been obtained, and if required by the Owner, such other data establishing payment or satisfaction of all obligations, including releases, final lien waivers, and receipts and warranties, if any, have been provided to the Owner for the use and benefit of the Owner. The Contractor may then furnish sufficient bonds satisfactory to the Owner to indemnify the Owner against any such liens.
4. Before final payment will be made to the Contractor, the Owner is required to comply with State statutes regarding publication of a notice of final settlement specifying the date of such final settlement.
5. Any unpaid supplier of materials, equipment, services, or labor may file a verified statement with the Owner indicating the amount due and owing on or before the date set for final settlement.
6. Before final payment will be made, the Contractor shall provide final electronic files and one hard-copy set of as-built drawings and specifications to the Owner, updated to reflect the final condition of the Project.
7. Notwithstanding anything else to the contrary contained herein, such final payment by the Owner shall not be construed as a waiver of any claims affecting or arising from:
  - a. Unsettled liens;
  - b. Faulty or defective Work appearing after Substantial Completion;
  - c. Failure of the Work to comply with the requirements of the Contract Documents;
  - d. Terms of any special warranties required by the Contract Documents.
8. The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner from all claims and all liability to the Contractor for payment for all things done or furnished in connection with this Work and for every prior act and neglect of the Owner relating to or arising out of the Work other than claims in stated amounts as may be specifically identified by the Contractor with its final application for payment. Any payment, however, final or otherwise, will not release the Contractor or its sureties from any



obligations under the Contract Documents or the performance bond and labor and material payment bond. Notwithstanding the foregoing, the release contemplated in this section does not extend to and does not release any defenses Contractor may assert in future disputes arising from or related to the Work.

#### **ARTICLE 7 - CORRECTION OF WORK**

- A. During the life of the Contract and for a period of two (2) years after Substantial Completion, the Contractor shall promptly remove from the premises all Work that fails to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense above the GMP to the Owner and shall bear the expense of making good all Work of its trade contractors destroyed or damaged by such removal or replacement. The Owner, however, may at its discretion elect to accept an equitable reduction in Contract Sum or a refund instead of correction of the damaged Work.
- B. All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within a reasonable period after receipt of written notice, the Owner may remove such Work and store the materials all at the expense of the Contractor.

#### **ARTICLE 8 - TEMPORARY FACILITIES AND SERVICES**

- A. Unless otherwise provided in this Agreement, the Contractor shall furnish and make available, all temporary facilities, including all power needed for heating and protection of facilities and Work. It is the expressed intent of the parties that the Contractor shall be responsible for as a Cost of the Work all heating and protection of facilities and Work.
- B. The Contractor shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor as a Cost of Work. The facilities of existing, nearby buildings are not available for construction use.

#### **ARTICLE 9 - INDEMNIFICATION AND INSURANCE**

##### **Section 1      Indemnification**

The Contractor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the City, its officers, employees, and 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 Agreement, to the extent that such injury, loss, or damage is attributable to the negligence of the Contractor, the Contractor's employees, Subcontractors, or anyone else employed directly or indirectly by the Contractor, Contractor's employees, Consultants, or Subcontractors.

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. 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 2      Insurance

- A. The Contractor agrees to obtain and maintain during the life of this Agreement, 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 Agreement insurance in sufficient amounts, durations, or types.
- B. The Contractor shall obtain and maintain during the life of this Agreement, and shall cause any Subcontractor to obtain and maintain during the life of this Agreement, 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. Workers' Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the Work under this Agreement, 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 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 interest 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 Agreement by the Contractor or its Subcontractors shall be

obtained and maintained during the life of the Agreement. The limits of the Owner's Protective Liability Policy, to be provided by the Contractor, as described in this Section 2, shall be increased to the same limits as described above for the Contractor's General Public Liability Insurance.

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 interest 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 Agreement.
- 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 Agreement shall rest with the Contractor's Insurer.

### Section 3      Certificates of Insurance

- A. The certificate of insurance provided by the Contractor shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Owner prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated, or materially changed until at least 30 days' prior written notice has been given to the Owner. The completed certificate of insurance shall be sent to:

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

- B. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Owner may immediately terminate this Agreement, or at its discretion the Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the Contractor to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to the Contractor from the Owner.

- C. The Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- D. The parties hereto understand and agree that the Owner is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the Owner, its officers, or employees.

## **ARTICLE 10 – PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS**

The Contractor shall within ten (10) days after the receipt of a notice of award, furnish the Owner with a performance bond and a payment bond in penal sums equal to the amount of the Contract Sum, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions, and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the Work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared bankrupt, or loses its right to do business in the state in which the Work is to be performed, or is removed from the list of Surety Companies accepted on Federal Bonds, the Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments will be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

## **ARTICLE 11 – CLAIMS AND DISPUTES**

- A. Definition. A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. The term "claim" also includes other disputes between the Owner and Contractor arising out of or relating to the Agreement. Claims must be made by Written Notice. The responsibility to substantiate claims shall rest with the party making the claim.
- B. Time limits on claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by Change Order will not be considered unless submitted in a timely manner.
- C. Continuing performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Contractor shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.
- D. Waiver of claims: Final Payment. The making of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

1. Liens, claims, security interests, or encumbrances arising out of the Agreement and unsettled;
  2. Failure of the Work to comply with the requirements of the Contract Documents;
  3. Terms of special warranties required by the Contract Documents; or
  4. Faulty or defective Work appearing after Substantial Completion.
- E. Claims for concealed or unknown conditions. If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if they differ materially or cause an increase or decrease in the Contractor's cost of, or the required time for performance of any part of the Work, will make an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Owner has given notice of the decision. If the Contractor disputes the Owner's determination or recommendation, the Contractor may proceed as provided in Article 11 of the Contract Documents.
- F. Claims for additional cost. If the Contractor wishes to make claim for an increase in the Contract Sum, Written Notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by the Owner. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) failure of payment by the Owner, (4) termination of the Agreement by the Owner, (5) Owner's suspension, or (6) other reasonable grounds, claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive.
- G. Claims for additional time. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary.
- H. Injury or damage to person or property. Subject to the parties' obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, Written Notice of such injury or damage, whether or not insured, shall be given to the other party within a

reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in Article 3, Section 13.

## **ARTICLE 12 - RESOLUTION OF CLAIMS AND DISPUTES**

- A. When either the Contractor or the Owner makes a claim, the other party shall review the claim and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the claimant indicating when the other party expects to take action; (3) reject the claim in whole or in part, stating the reasons for rejection; (4) approve the claim; or (5) suggest a compromise. When a claim is made against the Contractor, the Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.
- B. If a claim has been resolved, the Owner will prepare or obtain appropriate documentation.
- C. If a claim has not been resolved, the party making the claim shall within ten (10) days after the preliminary response from the other party, take one or more of the following actions: (1) submit additional supporting data requested by the other party; (2) modify the initial claim; or (3) notify the other party that the initial claim stands.
- D. If a claim has not been resolved after consideration of the foregoing, either party may file for non-binding mediation to be held in the place where the Project is located, unless another location is mutually agreed upon. If the parties fail to resolve their dispute through mediation, final dispute resolution shall be by litigation in a court of competent jurisdiction.
- E. The dispute clause does not preclude the considerations of questions of fact or law in connection with decisions provided for in Paragraph A above. Nothing in this Agreement, however, shall be construed as making final a decision of an administrative official, representative, or City Council on a question of fact or law.
- F. As between the parties of this Agreement, as to all acts or failure to act by either party of this Agreement, any applicable statute of limitation shall commence to run from the date of the agreed party's discovery of such act or failure to act.
- G. The Contractor shall give Written Notice to the Owner within ten (10) days of any dispute/claim arising under this Contract upon which the Contractor seeks compensation or change from the Contract Documents; otherwise, the Contractor's dispute/claim shall be deemed waived. Said ten (10) days Written Notice shall not be deemed to run from the date of discovery in this instance but from the date the dispute/claim has arisen.

## **ARTICLE 13 - 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 (1) not less than ten (10) days Written

Notice of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination.

- B. This Agreement may be suspended or terminated in whole or in part, in writing, by the Owner for its convenience; provided that no such termination may be effected unless the Contractor is given (1) not less than ten (10) days Written Notice of intent to suspend or terminate; and (2) an opportunity for consultation with the Owner prior to suspension or termination.
- C. Suspension for Convenience: The Owner, for its own convenience, may suspend the Agreement in whole or in part at any time by Written Notice to the Contractor. Such notice shall state the extent and the effective date of such suspension, and on the effective date thereof the Contractor shall promptly suspend such Work to the extent specified, and during the period of such suspension shall properly care for and protect all Work, materials, housing, and equipment on hand for construction under the Agreement. The Contractor also shall promptly supply the Owner with copies of all outstanding orders for materials, equipment, and services, and shall take such action relative to such orders as may be directed by the Owner. If the performance of the Work is thus suspended, the Contractor shall be entitled to be reimbursed for all additional expense incurred by reason of such suspension as agreed upon by the Contractor and the Owner.
- D. Termination for Convenience:
  - 1. The Owner may for its own convenience terminate Work under the Agreement in whole or in part at any time by Written Notice to the Contractor. Such notice shall state the extent and effective date of such termination and on the effective date thereof, the Contractor will, and as to the extent directed, stop Work under the Agreement and the placement of further orders of subcontracts under the Agreement, terminate Work under order and subcontracts under the Agreement, and take any necessary action to protect property in the Contractor's possession in which the Owner has or may acquire an interest.
  - 2. In the event of such termination, the Owner shall pay to the Contractor: (1) its indirect and direct costs (excluding primary office overhead) for all Work done in conformity with the Agreement to the effective date of such termination and (2) other costs pertaining to the Work which the Contractor may incur as a result of such termination, all as approved by the Owner plus ten percent (10%) of such costs for overhead and profit, provided, however, that in no event shall the total amount to be paid under this Article 13, Section D.(2) plus payments previously made, exceed the total aggregate Contract Sum specified in the Agreement. Any payment under this Article 13, Section D.(2) shall be made within thirty (30) days of Contractor's demobilization from the Work.
- E. Termination for Default:
  - 1. The Owner shall have the right to terminate the employment of the Contractor if, within ten (10) days of receiving Owner's Written Notice of default, the Contractor fails to cure or commence and diligently continue curing such default to the reasonable satisfaction of Owner. In the event of such termination, the Owner may take possession of the Work and of all materials, tools, and

equipment thereon and may finish the Work by whatever method and means it may select.

- a. Disregards or violates important provisions of the Contract Documents or the Owner's instructions, or fails to prosecute the Work according to the Agreement schedule of completion, including extensions thereof;
  - b. Fails to provide a qualified representative, competent workmen or Subcontractors, or proper materials, or fails to make prompt payment therefor; and
  - c. Fails to submit a completion schedule within fourteen (14) days after award of GMP amendment.
2. Upon termination of the Agreement by the Owner for default by the Contractor, no further payments shall be due to the Contractor until the work is completed. If the unpaid balance of the contract amount shall exceed the cost of completing the Work including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the Work shall exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount of the cost incurred by the Owner in implementing the Work, and the damage incurred through the Contractor's default, shall be approved by the Owner.
3. The provisions of this Article 13, Section D.(2) shall not apply in the event of default of the Contractor; provided, however, that the provisions of Article 13, Section D.(2) shall apply in the event of substantial failure by the Owner to fulfill its obligations under this Agreement.

#### **ARTICLE 14 - SIMULTANEOUS WORK BY OTHERS**

- A. The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other trade contractors' reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its Work with theirs.
- B. If the proper execution or results of any part of the Contractor's Work depends upon the work of any other trade contractor, the Contractor shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report defects shall constitute an acceptance of the other trade contractors' work as fit and proper for the addition of its work thereto, except as to defects which may develop in the other trade contractors' work after the execution of its Work. The Contractor shall be entitled to an adjustment in the Contract Sum or Contract Time that result from the actions or inactions of simultaneous work by others.
- C. The Contractor shall coordinate its operations with those of other trade contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the Work.
- D. The Contractor, including its Subcontractors, shall keep informed of the progress and the detail work of other trade contractors and shall notify the Owner immediately of lack of



progress, defective workmanship, or lack of coordination on the part of other trade contractors. Failure of the Contractor to keep informed of the Work progressing on the Site and failure to give notice of lack of progress, defective workmanship, or lack of coordination by others shall be construed as acceptance by it of the work and the status of work as being satisfactory for proper execution of its own Work.

- E. All materials and labor shall be furnished at such times as shall be for the best interest of all trade contractors concerned, to the end that the combined work of all may be properly and fully completed on time per this Contractor Agreement.
- F. ~~Nothing herein shall be construed in any way as giving the Contractor a claim as against the Owner resulting in any revised schedule based upon delay caused by any other trade contractor or supplier.~~

#### **ARTICLE 15 - SUBCONTRACTING**

- A. The Contractor may utilize the services of specialty Subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty Subcontractors.
- B. Before execution of the GMP amendment, the Contractor shall submit the names of all Subcontractors, including contact persons, phone numbers, and addresses to the Owner. The Contractor shall also promptly notify all parties of any changes in Subcontractors or Subcontractor contact information.
- C. The Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is responsible for the acts and omissions of persons directly employed by it.
- D. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.
- E. Nothing contained in this Agreement will create any contractual relation between any Subcontractor and the Owner.

#### **ARTICLE 16 - GUARANTY**

- A. The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of two (2) years from the date of Substantial Completion of the Agreement by the Owner that the Work is free from all defects due to faulty materials or workmanship and that the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make or commence such analysis associated with repairs, adjustments, or other Work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The performance bond shall remain in full force and effect through the guarantee period.

- B. Whenever in the specifications a guarantee or maintenance bond is required to be furnished for any item of equipment, material, or portion of the Work, such guarantee shall be submitted to the Owner and a written approval will be issued to the Contractor before any such equipment, material, or construction is ordered and incorporated in Work by the Contractor.

#### **ARTICLE 17 - SALES TAX**

The Owner has received an exemption granted by the Colorado State Department of Revenue that provides for tax-free purchases or materials. The Owner will provide this exemption certificate to the Contractor, and the Contractor shall ensure that all Subcontractors and Suppliers engaged for the Work receive the same certificate. The Owner reserves the right to require such additional information and/or documentation as may be necessary to ensure that no sales taxes are paid by the Contractor or any Subcontractor or Supplier and charged to the Owner. If sales tax is paid to any Subcontractor or Supplier for any reason, the Contractor is responsible for applying to the Sales Tax Division of the Colorado Department of Revenue for a refund.

#### **ARTICLE 18 - MISCELLANEOUS PROVISIONS**

- A. This Agreement is made and entered into subject and conformable to the laws of the State of Colorado and the Charter of the City of Black Hawk. To the extent any provision hereof is inconsistent with said laws and Charter, said laws and Charter shall control.
- B. The Contractor shall comply with all federal and state laws and local ordinances and regulations which affect those engaged or employed in the Work or which affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations, and decrees, and shall protect and indemnify the Owner against any claim or liabilities arising solely from or based solely on the violations of such law, ordinance, regulation, order, or decree, whether by itself, its sub-consultants, agents, or employees.
- C. The Contractor shall take affirmative action to not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, or handicap, if otherwise qualified.
- D. In the event any provision of this Agreement is held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.
- E. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver or a subsequent breach of the same by the other party.
- F. The Owner and the Contractor each bind itself and its partners, successors, executors, administrators, and assigns to this Agreement. Neither the Owner nor the Contractor will assign, sublet, or transfer its interest in this Agreement without the written consent of the other.
- G. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed

as giving any rights or benefits hereunder to anyone other than the Owner and the Contractor.

H. Workers without Authorization

1. Certification. By entering into this Agreement, Trade Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an unauthorized worker who will perform Work under the Agreement and that Trade 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.
2. Prohibited Acts. Trade Contractor shall not:
  - a. Knowingly employ or contract with an unauthorized worker to perform Work under this Agreement; or
  - b. Enter into a contract with a Subcontractor that fails to certify to Trade Contractor that the Subcontractor shall not knowingly employ or contract with an unauthorized worker to perform Work under this Agreement.
3. Verification
  - a. Trade 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.
  - b. Trade 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.
  - c. If Trade Contractor obtains actual knowledge that a Subcontractor performing Work under this Agreement knowingly employs or contracts with an unauthorized worker who is performing Work under the Agreement, Trade Contractor shall:
    - i. Notify the Subcontractor and the City within three (3) days that Trade Contractor has actual knowledge that the Subcontractor is employing or contracting with an unauthorized worker who is performing Work under the Agreement; and
    - ii. Terminate the subcontract with the Subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the Subcontractor does not stop employing or contracting with the unauthorized worker who is performing Work under the Agreement; except that Trade 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 unauthorized worker who is performing Work under the Agreement.

4. 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.
  5. If Contractor does not currently employ any employees, Contractor shall sign the No Employee Affidavit attached hereto.
  6. 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.
- I. Keep Jobs in Colorado Act. Pursuant to the Keep Jobs in Colorado Act, C.R.S. 8-17-101 *et seq.* (the “Act”) and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the “Rules”), the Contractor shall employ Colorado labor to perform at least eighty percent (80%) of the Work and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, “Colorado labor” means any person who is a resident of the state of Colorado at the time of this Project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide qualification. A resident of the state is a person who can provide a valid Colorado driver’s license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate for any fiscal year.

## **ARTICLE 19 - ATTACHMENTS, SCHEDULES, AND SIGNATURES**

It is further mutually agreed that this Agreement and the Contract Documents constitute the entire Agreement between the Owner and the Contractor and supersede all prior or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written amendment.

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

### **CITY OF BLACK HAWK, COLORADO**

By: \_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

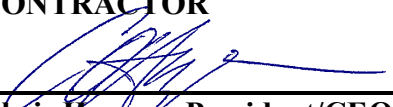
\_\_\_\_\_  
Melissa A. Greiner, City Clerk, CMC

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, City Attorney

**CONTRACTOR**

**By:**

  
\_\_\_\_\_  
**Chris Haugen, President/CEO<sub>1</sub>**  
**White Construction Group**

**Date:**

10/3/22

**PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR  
CONTRACTING WITH AN UNAUTHORIZED WORKER**

FROM: **White Construction Group**  
(Prospective *Contractor*)

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

Project Name Residential Rehabilitation Program

Bid Number N/A

Project No. 22021 – 121 Marchant Street

Project No. 22022 – 187 Clear Creek Street

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 unauthorized worker 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.

Prospective Contractor **White Construction Group**

By: \_\_\_\_\_

  
**Chris Haugen, President/CEO**  
**White Construction Group**

Date: 10/3/22

**THIS PAGE IS NOT APPLICABLE**  
**NO EMPLOYEE AFFIDAVIT**

**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 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.*

N/A  
\_\_\_\_\_  
Signature

N/A  
\_\_\_\_\_  
Date



## DEPARTMENT PROGRAM AFFIDAVIT

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

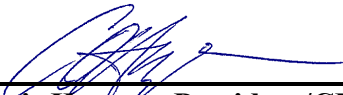
I, **Chris Haugen, President/CEO, White Construction Group**, as a public contractor under contract with the City of Black Hawk (the “City”), hereby affirm that:

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 (“Agreement”) 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 Agreement; and

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

By:

  
\_\_\_\_\_  
**Chris Haugen, President/CEO**  
**White Construction Group**

Date: 10/3/22

## **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 driver's 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 the 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 the 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**

The City of Black Hawk intends to perform complete rehabilitation of two (2) residential historic homes concurrently. The homes are located at 187 Clear Creek Street and 121 Marchant Street. Work will include complete exterior renovation, interior reconstruction, and associated site and utility construction. The Contractor shall provide professional services during design, construction, and warranty periods, as described below:

- A. Contractor shall provide assistance during the design phase of these projects to include plan review, constructability analysis, and cost estimating.
- B. The Residential Rehabilitation Program will require the Contractor to enter into two separate contracts: One with the City for exterior work and another with the Homeowner for interior work. The work performed under both contracts will be overseen by the City.
- C. The Contractor may be required to perform selective interior demolition during the design phase to strip the properties down to their studs. Contractor may be required to complete required hazardous material abatement and mitigation services as necessary prior to demolition.
- D. Contractor shall remove and reconstruct or repair retaining walls adjacent to the project sites as part of the Rehabilitation Program. Reconstruction or repair may be based on the Atkinson-Noland & Associates, Inc. provided scope of work.
- E. Contractor shall replace all utility service lines from their respective mains to the residence. Contractor shall coordinate with all utility providers for final connections.
- F. Rehabilitation shall be per plans and specifications. This is to ensure the City reaches the goal of preserving the architectural character with exterior improvements while assuring that the interior is habitable.
- G. The City is contracting directly with professional design firms to perform the design work required for the Project.

EXHIBIT B					
CONSTRUCTION MANAGER/GENERAL CONTRACTOR FEE PROPOSAL					
RESIDENTIAL REHABILITATION PROGRAM					
RFP Issued July 14, 2022					
Item #	Description	Quantity	Unit	Unit Cost	Total Cost
Preconstruction Fee					
1.A.1	Preconstruction Services	1	LS	\$14,500	\$14,500
1.A.2	Construction Cost Estimating and Value Analysis				w/Above
1.A.3	Scheduling, Phasing, and Logistics Planning				w/Above
1.A.4	Constructability Reviews				w/Above
1.A.5	Subcontractor Procurement and Scope Validation				w/Above
1.A.6	Meetings, Conference Calls, and Travel				w/Above
1.A.7	Other Preconstruction Services	1	LS		N/A
1.A	Preconstruction Fee - Subtotal				\$14,500
Construction Fee (Assumes \$3,000,000 Total Contract Sum)					
1.B.1	Home Office Overhead (See definition in email proposal)	1	LS	\$165,693	\$165,693
1.B.2	Home Office Profit	1	LS	\$55,231	\$55,231
1.B.3	Other Construction Fees (General Conditions)	1	LS	\$283,257	\$283,257
1.B	Construction Fee - Subtotal				\$504,181
1	CMGC'S TOTAL PROPOSED FEES				\$518,681
CMGC's Proposed Fee on Change Orders				10.0%	

For clarity's sake, White Construction Group would like to define Items 1.B.1 Home Office Overhead the way that the AIA 133 defines "Costs Not To Be Reimbursed", more specifically:

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

1.B.2 Home Office Profit is simply that, corporate profit.

1.B.3 Other Construction Fees are General Conditions, i.e., Supervisory Labor including: Project Executive, Project Manager, General Superintendent, Project Superintendent, Project Engineer, Scheduler, Environmental Health & Safety Manager, Project Accountant. These staff positions will be charged only when utilized, at mutually agreed upon hourly rates, only for the hours required to execute the work. We would propose including these individuals into the Cost of Work definition, so Black Hawk only pays for the time utilized for efficient project execution.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/2/2022

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 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).

<b>PRODUCER</b> IMA, Inc. - Colorado Division 1705 17th Street, Suite 100 Denver CO 80202	<b>CONTACT NAME:</b> IMA Denver Team <b>PHONE (A/C, No, Ext):</b> 303-534-4567 <b>E-MAIL ADDRESS:</b> DenAccountTechs@imacorp.com	<b>FAX (A/C, No):</b>
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Valley Forge Insurance Company		20508
<b>INSURER B:</b> Travelers Property Casualty Company of America		25674
<b>INSURER C:</b> The Continental Insurance Company		35289
<b>INSURER D:</b> *Pinnacol Assurance		41190
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES****CERTIFICATE NUMBER:** 1976478797**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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI/PD DED:\$10K <input checked="" type="checkbox"/> *SEE DOO GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6078836947	8/1/2022	8/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			6078836950	8/1/2022	8/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			6078836964	8/1/2022	8/1/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	3497678	8/1/2022	8/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Leased & Rented Equipment No Exclusion for Boom or Overload			6607T540481TIL22	8/1/2022	8/1/2023	Limit \$250,000 SPC Form/RC

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

\*GL Residential &amp; Subsidence Deductible: \$10,000

Automobile Physical Damage Coverage: Policy #6078836950  
Effective Dates: 08/01/22-08/01/23 Insurer C: See Above  
\$2,000 Comprehensive Deductible; \$2,000 Collision Deductible

See Attached...

**CERTIFICATE HOLDER****CANCELLATION**

City of Black Hawk  
Attn: City Clerk  
P.O. Box 68  
Black Hawk CO 80422

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

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# **ADDITIONAL REMARKS SCHEDULE**

Page 1 of 1

AGENCY IMA, Inc. - Colorado Division		NAMED INSURED White Construction Group Ltd. 4 Inverness Court East, Suite 100 Englewood, CO 80112
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

## **ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Builders Risk Coverage: Policy #6081611136  
 Effective Dates: 08/01/22-08/01/23 Insurer: Continental Casualty Company  
 \$5,000,000 Any One Location Frame/Joisted Masonry Limit; \$15,000,000 Any One Location(All Other) Limit;  
 \$500,000 Temporary Location/Transit Limit; \$5,000 AOP on Frame/Joisted Masonry; \$2,500 on other construction classes; SPC Form/RC  
 \$10,000,000 Earthquake (Low) Sub Limit; \$25,000 Deductible  
 \$10,000,000 Flood Zone C, X Unshaded Limit; \$25,000 Deductible

Pollution Liability Coverage: Policy #PEC004798806  
 Effective Dates 08/01/22-08/01/23 Insurer: Indian Harbor Insurance Company  
 \$2,000,000 Per Loss Limit; \$2,000,000 Annual Aggregate; \$25,000 Deductible

Professional Liability Coverage: Policy #PEC004798806  
 Effective Dates: 08/01/22-08/01/23 Insurer: Indian Harbor Insurance Company  
 \$2,000,000 Per Loss Limit; \$2,000,000 Annual Aggregate; \$25,000 Deductible  
 Claims Made Retro Date: 09/25/2006

Unscheduled Contractors Equipment Coverage: Policy #6607T540481TIL22  
 Effective Dates: 08/01/22-08/01/23 Insurer B: See Above  
 \$208,300 Limit; \$1,000 Deductible  
 SPC Form

No XCU Exclusions.

Certificate Holder(s) is included as Additional Insured on the General Liability including Ongoing and Completed Operations, Automobile, Umbrella Liability, and Pollution Liability Policies if required by written contract or agreement and with respect to work performed by Insured subject to the policy terms and conditions. A Waiver of Subrogation is provided in favor of Certificate Holder(s) on the General Liability, Automobile Liability, Umbrella Liability, Pollution Liability and Workers Compensation policies if required by written contract or agreement and with respect to work performed by Insured, subject to the policy terms and conditions. This Insurance is Primary & Non-Contributory on the General Liability policy subject to the policy terms and conditions.

Additional Insured Includes: City of Black Hawk



## Contractors' General Liability Extension Endorsement

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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## Contractors' General Liability Extension Endorsement

### 1. ADDITIONAL INSURED

- a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **H.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

- b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **H.** below.

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

#### A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

#### B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

#### C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

#### D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the



## Contractors' General Liability Extension Endorsement

termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

### E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

### F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

### G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
  - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
  - b. the construction, erection, or removal of elevators; or
  - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

### H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
  - a. the **Named Insured's** acts or omissions; or



## Contractors' General Liability Extension Endorsement

b. the acts or omissions of those acting on the **Named Insured's** behalf, in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

### 2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

### 3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

**Bodily injury** means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

### 4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

#### A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

#### B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

### 5. BROAD NAMED INSURED

**WHO IS AN INSURED** is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:
- a. on the effective date of this **Coverage Part**; or
  - b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,



## Contractors' General Liability Extension Endorsement

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership, limited liability company or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
  - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
  - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.
6. **BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK**
- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions k. and l. and replace them with the following:

This insurance does not apply to:

**k. Damage to Your Product**

**Property damage to your product** arising out of it, or any part of it except when caused by or resulting from:

- (1) fire;
- (2) smoke;
- (3) collapse; or
- (4) explosion.

**l. Damage to Your Work**

**Property damage to your work** arising out of it, or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

- (1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or



## Contractors' General Liability Extension Endorsement

(2) If the cause of loss to the damaged work arises as a result of:

- (a) fire;
- (b) smoke;
- (c) collapse; or
- (d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage** to **your product** and **your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage** to **your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

### 7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

**Insured Contract** means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

### 8. ELECTRONIC DATA LIABILITY



## Contractors' General Liability Extension Endorsement

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **p. Electronic Data** and replace it with the following:

This insurance does not apply to:

**p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph (1) above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph (1) or (2) above.

- B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

- C. The following definition is added to **DEFINITIONS**:

**Electronic data** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

**Property damage** means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

- E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the \$100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

### 9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses**



## Contractors' General Liability Extension Endorsement

only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

### 10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

#### **Expected or Intended Injury**

**Bodily injury** or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

### 11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;
2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.



## Contractors' General Liability Extension Endorsement

- E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

### 12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

### 13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:
  - b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:
    - (1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.
    - (2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and
- B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:
  - i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).
  - ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

**Contractual Liability**

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.
  - iii. add the following additional exclusions:

This insurance does not apply to:

**Discrimination**

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

**Dishonesty or Crime**

Any actual or alleged dishonest, criminal or malicious act, error or omission.

**Medicare/Medicaid Fraud**





## Contractors' General Liability Extension Endorsement

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

### Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

#### C. DEFINITIONS is amended to:

##### i. add the following definitions:

**Health care incident** means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

**Professional health care services** means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

**Professional health care services** does not include any services rendered in connection with human clinical trials or product testing.

##### ii. delete the definition of **occurrence** and replace it with the following:

**Occurrence** means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

##### iii. amend the definition of **Insured** to:

##### a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:

- (1) **bodily injury** to a co-employee while in the course of the co-employee's employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and



## Contractors' General Liability Extension Endorsement

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

### **Other Insurance**

#### **b. Excess Insurance**

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

## **14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES**

**WHO IS AN INSURED** is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

## **15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL**



## Contractors' General Liability Extension Endorsement

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion j. **Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:

j. **Damage to Property**

**Property damage** to:

- (1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- i. tools, or equipment the **Named Insured** borrows from others, nor
- ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;
- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.



## Contractors' General Liability Extension Endorsement

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

- B.** Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

- C.** The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, \$25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

- D.** Paragraph **6.**, Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

**6.** Subject to Paragraph **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

- a.** \$500,000; or
- b.** The Damage To Premises Rented To You Limit shown in the Declarations.

- E.** Paragraph **4.b.(1)(a)(ii)** of the **Other Insurance** Condition is deleted and replaced by the following:

**(ii)** That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

### 16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

### 17. MEDICAL PAYMENTS

- A. LIMITS OF INSURANCE** is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

**7.** Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1)** \$15,000 unless a different amount is shown here: \$N,NNN,NNN,NNN; or



## Contractors' General Liability Extension Endorsement

(2) the amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph **1.a.(3)(b)** with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

### 18. NON-OWNED AIRCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

### 19. NON-OWNED WATERCRAFT

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a) less than 75 feet long; and
- (b) not being used to carry persons or property for a charge.

### 20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

#### **Knowing Violation of Rights of Another**

**Personal and advertising injury** caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
- (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.



## Contractors' General Liability Extension Endorsement

2. add the following exclusions:

This insurance does not apply to:

### **Employment Related Discrimination**

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

### **Premises Related Discrimination**

**discrimination or humiliation** arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision 1. **ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

## **21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY**

- A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.
- B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph **2.d.** is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph **2.f.(2)(b)** is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

- C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.



## Contractors' General Liability Extension Endorsement

### 22. PROPERTY DAMAGE – ELEVATORS

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs **(3), (4)** and **(6)** of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.
- B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

### 23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph **1.b.** is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph **1.d.** is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

### 24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

### 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**.

### 26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

**Note:** The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:



## Contractors' General Liability Extension Endorsement

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor
2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

**B. Condition 4. Other Insurance** is amended to add the following subparagraph **4.b.(1)(c)**:

This insurance is excess over:

- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

**C. DEFINITIONS** is amended to add the following definitions:

**Consolidated (wrap-up) insurance program** means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

**Residential structure** means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

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.





**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXTENDED COVERAGE ENDORSEMENT – BA 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 obligated to provide Insurance where required by a written contract or agreement is an insured, but only with respect to legal responsibility for acts or omissions of a person for whom Liability Coverage is afforded under this policy.
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.a.(2) and A.2.a.(4)** are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is increased from \$2,000 to \$5,000, and
2. In **a.(4)**, the limit for the loss of earnings is increased 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.

**II. PHYSICAL DAMAGE COVERAGE**

**A. Towing**

**Section III, Paragraph A.2.**, is revised to include Light Trucks up to 10,000 pounds G.V.W.

**B. 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.

**C. Transportation Expenses**

**Section III, Paragraph A.4.a.** is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

**D. 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.

**E. Personal Property**

The following is added to **Section III, Paragraph A.4.**

- c. We will pay up to \$500 for loss to **Personal Property** which is:

- (1) Owned by an "insured"; and
- (2) In or on the covered "auto."

This coverage applies only in the event of a total theft of your covered "auto."

This insurance is excess over any other collectible insurance and no deductible applies.

#### **F. Rental Reimbursement**

The following is added to **Section III, Paragraph A.4.:**

- d. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto." Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto." No deductibles apply to this coverage.

1. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

- (a) The number of days reasonably required to repair or replace the covered "auto"; or,
- (b) 15 days.

2. Our payment is limited to the lesser of the following amounts:

- (a) Necessary and actual expenses incurred; or,
- (b) \$25 per day subject to a maximum of \$375.

3. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.

4. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension.

#### **G. 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 will be limited to the types of 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 **G.e.(1)** will be subject to a limit of \$750 per "accident."

#### **H. Airbag Coverage**

The following is added to **Section III, Paragraph B.3.**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

#### **I. 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.

#### **J. 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 will be:
- (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. 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.

#### C. Policy Period, Coverage Territory

**Section IV, Paragraph B.7.b.(5)** 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

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured:** White Construction Group, Ltd.

**Endorsement Effective Date:** 08/01/2022 - 08/01/2023

### **SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

ANY PERSON OR ORGANIZATION FOR WHOM OR WHICH YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER FROM US. YOU MUST AGREE TO THAT REQUIREMENT PRIOR TO LOSS.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

NCCI #: WC000313B  
Policy #: 3497678

Ash & White Construction Co dba White  
PO Box 97  
Castle Rock, CO 80104

IMA, Inc  
1705 17th Street  
Suite 100  
Denver, CO 80202  
(303) 534-4567

**ENDORSEMENT: Blanket Waiver of Subrogation**

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 requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

**SCHEDULE**

To any person or organization when agreed to under a written contract or agreement, as defined above and with the insured, which is in effect and executed prior to any loss.

Effective Date: August 1, 2022 Expires on: August 1, 2023  
Pinnacol Assurance has issued this endorsement on July, 29, 2022.

Center of Excellence  
Phone (303) 361-4550 / (888) 852-2269  
Fax (303) 361-5550 / (888) 329-2213

## ENDORSEMENT #021

This endorsement, effective 12:01 a.m., August 1, 2022 forms a part of Policy No. PEC004798806 issued to WHITE CONSTRUCTION GROUP LTD. by Indian Harbor Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### **INSURED DEFINITION AMENDMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

PROFESSIONAL AND CONTRACTOR'S POLLUTION LEGAL LIABILITY POLICY

Section II. Definitions, I. INSURED, 2. is deleted in its entirety and replaced with the following:

2.W      ith regard to Coverage B.1. JOB SITE – Occurrence, Coverage B. 4. TRANSPORTATION, and Coverage B.5. NON-OWNED DISPOSAL SITE only, as set forth in Section I. Insuring Agreements, the CLIENT and any other person or organization as required by written contract, but only:

- a.i      f the NAMED INSURED is required to include the CLIENT or other person or organization as an additional INSURED in a written contract in effect during the POLICY PERIOD and signed by the NAMED INSURED prior to the first commencement of the POLLUTION CONDITION; and
- b.w      ith respect to the CLIENT's or other person or organization's liability resulting from CONTRACTING SERVICES rendered by or on behalf of the NAMED INSURED.

Any insurance afforded to the CLIENT or other person or organization as required by written contract under the terms and conditions of this Policy, will be limited to the lesser of the amount of the limits of liability required by such written contract and the Limits of Liability under this Policy. In no event will the Company be liable for any amounts in excess of the Limits of Liability shown in Item (3) and Item (4) of the Declarations.

All other terms and conditions remain the same.

3. With regard to Coverage B – Contractor’s Pollution Legal Liability, as set forth in Section I. Insuring Agreements, this insurance is primary except when Section VIII.K.4. and Section VIII.K.5. apply.
  4. With regard to RESTORATION COSTS, this insurance is excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.
  5. This insurance is excess over any other valid and collectible insurance available to the INSURED under a project specific insurance policy, contractor controlled insurance program, owner controlled insurance program, consolidated (wrap-up) insurance program or any other similar insurance or program, whether such other insurance or program is stated to be primary, contributory, excess, contingent or otherwise.
  6. Where other valid and collectible insurance is available to the INSURED and is also primary, the Company’s obligation to the INSURED is as follows:
    - a. If other primary insurance permits contribution by equal shares, the Company will also follow this method. Under this method, each Insurer contributes equal amounts until it has paid the applicable limit of insurance or none of the loss remains, whichever comes first; or
    - b. If any other insurance does not permit contribution by equal shares, the Company will contribute pro-rata by limits. Under this method, each Insurer’s share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all primary Insurers.
- L. Severability** -- Except with respect to the Limits of Liability and the Self-Insured Retention Amount, and any rights or duties specifically assigned in this Policy to the NAMED INSURED listed in Item (1) of the Declarations, this insurance applies: (i) as if each NAMED INSURED were the only NAMED INSURED; and (ii) separately to each INSURED against whom a CLAIM is made.
- M. Sole Agent** -- The NAMED INSURED listed in Item (1) of the Declarations will act on behalf of all INSURED(s) for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal and the exercise of the rights provided in Section V. Extended Reporting Period, B. Optional Extended Reporting Period.
- N. Subrogation** -- In the event of any payment under this Policy, the Company will be subrogated to all of the INSURED’s rights of recovery against any person or organization and the INSURED will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED will do nothing at any time to prejudice the Company’s subrogation rights.

However, the Company waives its right(s) of recovery against any person or organization if and to the extent the NAMED INSURED has agreed to waive its right(s) of recovery against such person or organization in a written contract signed by the NAMED INSURED prior to: (i) the act, error or omission in PROFESSIONAL SERVICES out of which the CLAIM or request for MITIGATION EXPENSE arises under Section I. Insuring Agreements, A. Coverage A - Professional Liability; or (ii) the first commencement of a POLLUTION CONDITION out of which the CLAIM or request for EMERGENCY REMEDIATION EXPENSE arises under Section I. Insuring Agreements, B. Coverage B – Contractor’s Pollution Legal Liability.

**RESOLUTION 66-2022**  
**A RESOLUTION**  
**APPROVING CHANGE**  
**ORDER #3 TO THE**  
**GREGORY POINT**  
**CONTRACT BETWEEN**  
**THE CITY OF BLACK**  
**HAWK AND PEH**  
**ARCHITECTS IN THE**  
**AMOUNT OF \$29,095 TO**  
**DESIGN A WIFI SYSTEM**  
**ALONG THE GREGORY**  
**STREET CORRIDOR**



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

**Resolution No. 66-2022**

**TITLE:       A RESOLUTION APPROVING CHANGE ORDER #3 TO THE  
GREGORY POINT CONTRACT BETWEEN THE CITY OF BLACK  
HAWK AND PEH ARCHITECTS IN THE AMOUNT OF \$29,095 TO  
DESIGN A WIFI SYSTEM ALONG THE GREGORY STREET  
CORRIDOR**

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

**Section 1.**     The City Council hereby approves Change Order #3 to the Gregory Point  
contract between the City of Black Hawk and PEH Architects in the amount of \$29,095 to design  
a WiFi system along the Gregory Street corridor, and authorizes the Mayor to execute the same  
on behalf of the City.

RESOLVED AND PASSED this 26<sup>th</sup> day of October, 2022.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, City Clerk



## CITY OF BLACK HAWK

### REQUEST FOR COUNCIL ACTION

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**SUBJECT:** Resolution 66-2022, a Resolution approving Change Order #3 to the Gregory Point contract between the City of Black Hawk and PEH Architects to design a WiFi system along the Gregory Street corridor.

**RECOMMENDATION:**

If City Council chooses to approve Resolution 66-2022, the recommended motion is as follows: “Approve Resolution 66-2022, a Resolution approving Change Order #3 to the Gregory Point contract between the City of Black Hawk and PEH Architects in the amount of \$29,095 to design a WiFi system along the Gregory Street corridor.”

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The City is currently under contract with PEH Architects to design site improvements at Gregory Point, which includes an elevator, new exterior lighting, and new railings. Design is complete for the original project; however, additional scope is being considered.

Change Order #3 to the Gregory Point design contract would authorize PEH Architects and their A/V subconsultant to design a WiFi system throughout the Gregory Street corridor, from 221 Gregory Street up through Gregory Point. This system would be used to propagate the Gregory Plaza audio output, allow WiFi guest access to the general public, provide security camera coverage at desired locations, and provide opportunity for a multimedia historic tour at specified locations throughout the Gregory Street corridor.

**FUNDING SOURCE:** Program Expenses / Mountain City: 203-0000-502-58-43

**AGENDA DATE:** October 26, 2022

**ORIGINATED BY:** Tom Isbester / Matt Reed

**STAFF PERSON RESPONSIBLE:** Tom Isbester / Matt Reed

**PROJECT COMPLETION DATE:** Design Completed by December 30, 2022

**DOCUMENTS ATTACHED:** Change Order #3

**CITY ATTORNEY REVIEW:** [ ] Yes [ X ] No [ ] N/A INITIALS \_\_\_\_\_

**SUBMITTED BY:**

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Thomas Isbester, Public Works Director

**REVIEWED BY:**

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Stephen N. Cole, City Manager



**CITY OF BLACK HAWK, COLORADO**  
**Public Works Department**

**Change Order**  
**No. 3**

**PROFESSIONAL SERVICES AGREEMENT CHANGE ORDER**

Date of Issuance: 26-Oct-22

Project: Gregory Point Railing and Elevator Installation

Consultant: PEH Architects  
1720 14th St., Suite #100  
Boulder, CO 80302

Date of Agreement: 12-Feb-20

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**The Professional Services Agreement is modified as follows upon execution of this Change Order:**

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**Description:** Design WiFi system for Gregory Street corridor from 221 Gregory Street up to Gregory Point.

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**Attachments:** CENSEO proposal for \$26,450 dated September 20, 2022; 10% mark-up included in Change Order.

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**CHANGE IN CONTRACT PRICE:**

Original Contract Price: \$84,812.00

Amount of Previous Change Orders: \$33,115.00

Contract Price prior to this Change Order: \$117,927.00

Amount of this Change Order: \$29,095.00

Contract Price Incorporating this Change Order: \$147,022.00

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Except as expressly amended or modified herein, the Agreement shall remain unmodified and shall remain in full force and effect.

**CITY OF BLACK HAWK, COLORADO**

**PEH ARCHITECTS**

By: \_\_\_\_\_

By: 

Date: \_\_\_\_\_

10/17/22  
Date: \_\_\_\_\_

**RESOLUTION 67-2022**  
**A RESOLUTION**  
**APPROVING THE**  
**SEVENTH ADDENDUM TO**  
**THE AGREEMENT FOR**  
**TRANSIT RELATED**  
**SERVICES FOR THE**  
**BLACK HAWK &**  
**CENTRAL CITY**  
**TRAMWAY FOR 2023**  
**BETWEEN MV**  
**TRANSPORTATION, INC.**  
**AND THE CITY OF BLACK**  
**HAWK**

STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

Resolution No. 67-2022

**TITLE: A RESOLUTION APPROVING THE SEVENTH ADDENDUM TO THE AGREEMENT FOR TRANSIT RELATED SERVICES FOR THE BLACK HAWK & CENTRAL CITY TRAMWAY FOR 2023 BETWEEN MV TRANSPORTATION, INC. AND THE CITY OF BLACK HAWK**

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

**Section 1.** The Seventh Addendum to the Agreement for Transit Related Services for the Black Hawk & Central City Tramway for 2023 between MV Transportation, Inc. and the City of Black Hawk, attached hereto as **Exhibit A**, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

RESOLVED AND PASSED this 26<sup>th</sup> day of October, 2022.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

---

**SUBJECT:** Seventh Addendum to the Agreement for the Management and Operation of the Transportation Services for the City of Black Hawk dba Black Hawk and Central City Tramway

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

**MOTION TO APPROVE** Resolution 67-2022 A Resolution Approving the Seventh Addendum to the Agreement for Transit Related Services for the Black Hawk & Central City Tramway for 2023 between MV Transportation Inc., and the City of Black Hawk

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:** The Tramway continues to operate successfully every day of the week. Ridership has steadily increased since the Covid shutdown. The Tramway will continue to circulate between the two Cities of Black Hawk and Central on a specific route with specific stops. The loop currently takes approximately 25 minutes to complete. A single bus will continue to operate Monday through Thursday and two buses will continue to operate Friday through Sunday. It is hoped that a small portion of the 2023 operations will be funded with a FTA 5311 grant.

**AGENDA DATE:** October 26, 2022

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** 204-4801-431-33-25 Contracted Bus Service

**DEPARTMENT DIRECTOR APPROVAL:** [ X ]Yes [ ]No

**STAFF PERSON RESPONSIBLE:** Thomas Isbester

**DOCUMENTS ATTACHED:** Seventh Addendum

**RECORD:** [ ]Yes [ ]No

**CoBH CERTIFICATE OF INSURANCE REQUIRED** [ ]Yes[ ]No

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

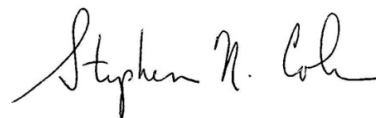
**SUBMITTED BY:**



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Thomas Isbester, Public Works Director

**REVIEWED BY:**



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Stephen N. Cole, City Manager

SEVENTH ADDENDUM TO AGREEMENT FOR THE MANAGEMENT AND  
OPERATION OF THE TRANSPORTATION SERVICES FOR THE  
CITY OF BLACK HAWK

This Seventh Addendum to agreement for the Management and Operation of the Transportation Services for the City of Black Hawk (the "Seventh Addendum") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Black Hawk, a political subdivision of the State of Colorado (the "City") and MV Public Transportation, Inc. (the "Contractor").

WHEREAS, City has previously contracted with the Contractor to operate its transportation system by that Agreement dated December 9, 2015 (the "Original Agreement"),

WHEREAS, the City and MV Public Transportation, Inc. entered into the First Addendum for the Management and Operation of the Transportation Services (the "First Addendum") on December 14, 2016, for a term commencing January 1, 2017, and terminating December 31, 2017; and

WHEREAS, the City and MV Public Transportation, Inc. entered into the Second Addendum for the Management and Operation of the Transportation Services (the "Second Addendum") on December 13, 2017, for a term commencing January 1, 2018, and terminating December 31, 2018; and

WHEREAS, the City and MV Public Transportation, Inc. entered into the Third Addendum for the Management and Operation of the Transportation Services (the "Third Addendum") on December 12, 2018, for a term commencing January 1, 2019, and terminating December 31, 2019; and

WHEREAS, the City and MV Public Transportation, Inc. entered into the Fourth Addendum for the Management and Operation of the Transportation Services (the "Fourth Addendum") on December 11, 2019, for a term commencing January 1, 2020, and terminating December 31, 2020; and

WHEREAS, the City and MV Public Transportation, Inc. entered into the Fifth Addendum for the Management and Operation of the Transportation Services (the "Fifth Addendum") on December 9, 2020, for a term commencing January 1, 2021, and terminating December 31, 2021; and

WHEREAS, the City and MV Public Transportation, Inc. entered into the Sixth Addendum for the Management and Operation of the Transportation Services (the "Sixth Addendum") on December 8, 2021, for a term commencing January 1, 2022, and terminating December 31, 2022; and

WHEREAS, the City desires to continue contracting with Contractor for an additional one-year term, commencing January 1, 2023.

NOW THEREFORE, in consideration for the mutual promises herein, the parties agree as follows:

1. The Parties agree to extend the Original Agreement, for an additional one-year term, starting January 1, 2023, and ending December 31, 2023, subject to all of the terms and conditions of the Original Agreement.
2. Section 3.1 of the Original Agreement is amended by the addition of a replacement Exhibit B, which rates shall include the Fixed Cost per Month plus the Variable Cost per Hour based on the actual hours of operation.

3. This Seventh Addendum, the Sixth Addendum, the Fifth Addendum, the Fourth Addendum, the Third Addendum, the Second Addendum, the First Addendum, and the Original Agreement constitute the entire Agreement between Contractor and the City, superseding all prior oral or written communications. None of the provisions of this Seventh Addendum, the Sixth Addendum, the Fifth Addendum, the Fourth Addendum, the Third Addendum, the Second Addendum, the First Addendum, and the Original Agreement may be amended, modified, or changed, except as specified herein.

IN WITNESS WHEREOF, City and Contractor have caused this Agreement to be executed by their respective officers duly authorized to do so.

**City of Black Hawk**

By: \_\_\_\_\_

David D. Spellman

Title: Mayor

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**Contractor**

By: \_\_\_\_\_  
Jamie Pierson

Title: CFO

Date: 10.7.22

Witness: Linda C.



## EXHIBIT B

### BLACKHAWK, CO SHUTTLE EXTENSION COST PROPOSAL FORMAT

1 Year Extension (Jan 1 - Dec 31, 2023)

#### SECTION 1

CURRENT SERVICE PROFILE: Based on 8,424 Total Service Hours/Year

*Note: Modify Cost Categories to Reflect Your Organization Budget Accounts*

Sample Budget Accounts	Total Cost	Fixed Cost	Variable Cost	Total \$/Hr
<b>Labor</b>				
Driver Wages	\$ 228,240	\$ -	\$ 228,240	\$ 27.09
Driver Payroll Tax/Benefits	\$ 39,404	\$ -	\$ 39,404	\$ 4.68
Mgmt Staff Wages	\$ 26,653	\$ 26,653	\$ -	\$ 3.16
Mgmt Staff Payroll Tax/Benefits	\$ 4,128	\$ 4,128	\$ -	\$ 0.49
<b>Operating Expense</b>				
Uniforms	\$ 525	\$ 525	\$ -	\$ 0.06
Drug, Alcohol Testing	\$ 1,773	\$ 1,773	\$ -	\$ 0.21
DOT Physicals	\$ 460	\$ 460	\$ -	\$ 0.05
Telephone/Communications	\$ 1,142	\$ 1,142	\$ -	\$ 0.14
Office Supplies/Materials	\$ 1,251	\$ 1,251	\$ -	\$ 0.15
Training/Safety Expenses	\$ 405	\$ 405	\$ -	\$ 0.05
<b>Insurance</b>				
Auto General	\$ 39,625	\$ -	\$ 39,625	\$ 4.70
Worker's Comp	\$ 12,597	\$ -	\$ 12,597	\$ 1.50
<b>Other</b>				
G&A	\$ 33,446	\$ 16,723	\$ 16,723	\$ 3.97
Fee	\$ 8,742	\$ 4,371	\$ 4,371	\$ 1.04
Capital Depreciation	\$ -	\$ -	\$ -	\$ -
Interest	\$ 2,421	\$ 2,421	\$ -	\$ 0.29
<b>TOTAL</b>	<b>\$ 400,814</b>	<b>\$ 59,854</b>	<b>\$ 340,960</b>	<b>\$ 47.58</b>
<b>Fixed Cost Per Month</b>		<b>\$ 4,987.79</b>		
<b>Variable Cost Per Hour</b>			<b>\$ 40.47</b>	

**RESOLUTION 68-2022**  
**A RESOLUTION**  
**AUTHORIZING THE**  
**REPAIR OF HIDDEN**  
**VALLEY RAW WATER**  
**PUMP #1 BY ARVADA**  
**PUMP COMPANY IN THE**  
**TOTAL AMOUNT NOT TO**  
**EXCEED \$53,300.00**

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

**Resolution No. 68-2022**

**TITLE:       A RESOLUTION AUTHORIZING THE REPAIR OF HIDDEN VALLEY  
RAW WATER PUMP #1 BY ARVADA PUMP COMPANY IN THE TOTAL  
AMOUNT NOT TO EXCEED \$53,300.00**

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

**Section 1.**       The City Council hereby authorizes the repair of Hidden Valley Raw Water  
Pump #1 by Arvada Pump Company in the total amount not to exceed \$53,300.00.

RESOLVED AND PASSED this 26<sup>th</sup> day of October, 2022.

\_\_\_\_\_  
David D. Spellman, Mayor

ATTEST:

\_\_\_\_\_  
Melissa A. Greiner, CMC, City Clerk

**CITY OF BLACK HAWK**  
**REQUEST FOR COUNCIL ACTION**

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**SUBJECT:** Repair of Hidden Valley Raw Water Pump #1

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

**MOTION TO APPROVE** Resolution 68-2022 A Resolution Authorizing the repair of Hidden Valley Raw Water Pump #1 by Arvada Pump Company in the total amount not to exceed \$53,300

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:** The raw water pump is one of 3 pumps used to pump water from the infiltration gallery to the treatment plant. The pump is in a 35 foot deep wet well and requires a crane to remove and replace it. The pump is approximately 23 years old and is beyond its useful life expectancy. The motor will be rebuilt as it is still serviceable but the pump will be replaced with a new 4 stage vertical turbine pump. Arvada pump has performed work for the city previously and staff was pleased with their service.

**AGENDA DATE:** October 26, 2022

**FUNDING SOURCE:** 501-3151-460-45-04 Repairs/Maintenance Plant

**DEPARTMENT DIRECTOR APPROVAL:** [ X ]Yes [ ]No

**STAFF PERSON RESPONSIBLE:** Jason Fredricks/Thomas Isbester

**DOCUMENTS ATTACHED:** Quote

**RECORD:** [ ]Yes [ ]No

**CoBH CERTIFICATE OF INSURANCE REQUIRED** [ ]Yes [ ]No

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

**SUBMITTED BY:**



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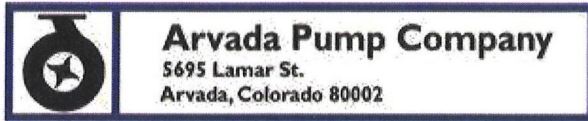
Thomas Isbester, Public Works Director

**REVIEWED BY:**



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Stephen N. Cole, City Manager



PHONE: (303) 424-2664

FAX: (303) 424-4058

TO: MICHAEL KORSVOLD

COMPANY: CITY OF BLACK HAWK

FROM: DEVIN FRICK

DATE: SEPTEMBER 21, 2022

SUBJECT: RAW WATER P1 REBUILD QUOTATION

Mr. Korsvold,

Arvada Pump Company is pleased to provide a quotation to replace a Floway model 10XKL 2-stage vertical turbine pump and rebuild its associated GE 7.5hp vertical hollow-shaft motor. The reason for replacement is the amount of damage done from the rock infiltration to the pump the cast iron in the bowl section is beyond repair as is all the pump shafting, Bearings, Wear Rings, and Column sections. The motor will be rebuilt as every part is in good operating condition so a basic rebuild will be performed including dynamic balance and bearings. The pump that will be replacing the old Floway will be a Goulds 7CLC 4stage vertical turbine pump. It is rated at 200 GPM at 96 Feet of Head at 1770 RPM. Installation will need to be done by crane as the length of the pump can not be done safely with another lifting device. The cost of the replacement with installation will be **\$53,300.00**

**Materials:** 1 Goulds 7CLC-4 Stage Vertical Turbine Pump Assembly rated at 200 GPM @ 96' TDH @ 1770 RPM with a total length of 30' from bottom of discharge head. Estimated lead time of 12-16 weeks **\$40,583.33**

**Labor:** Three technicians for the removal of the pump, one technician for the teardown, clean up, and measuring of the existing pump, Two technicians for the installation and testing of the new installed pump. **\$9,074.50**

**Crane & Telehandler:** Rental charges for the Telehandler is split 50% with booster 1 install and a crane will be needed to safely install the new pump and motor. **\$ 3,500.00**

**This gives us a grand total of \$ 53,157.83 the addition \$142.17 was estimated for tax and shipping of materials.**

Exclusions:

- Special insurance including WRAP, OCIP, etc. compliance
- Permits and inspections
- Liquidated damages
- Expedited shipping

Any order resulting from this proposal will be subject to our Standard Terms and Conditions, a copy of which is attached to this proposal. Equipment is quoted FOB factory. Shipping and handling charges, plus applicable sales taxes will be added to the prices quoted above unless specifically included. If your order is tax exempt copies of certificates must be provided at the time of order entry. If you have any questions, please do not hesitate to contact the undersigned. We appreciate the opportunity to provide this proposal and look forward to hearing from you.

Sincerely,