



**REVISED**  
**REGULAR MEETING AGENDA**

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

April 8, 2020  
3:00 p.m.

**The City of Black Hawk is hosting Virtual City Council meetings in Zoom in response to the Coronavirus COVID-19 until further notice. There are no physical meetings at this time.**

Join from a PC, Mac, iPad, iPhone, or Android device:  
Please click this URL to join: <https://zoom.us/j/593346656>

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Webinar ID: 593-346-656

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Phone commands using your phone's dial pad while in a Zoom meeting:

\*6 – Toggle mute/unmute

\*9 – Raise your hand to make a public comment or to  
speak for or against a Public Hearing matter

**Public Comment:**

If you wish to make a public comment during the meeting,  
please go to:

[https://www.cityofblackhawk.org/comment\\_signup](https://www.cityofblackhawk.org/comment_signup)

and provide your Name, Email address, and Telephone.

During the Public comment section of the meeting, the host will  
go in order of sign up to ask for comments from those who have signed up

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: March 25, 2020
7. SWEARING IN OF INCUMBENTS:
8. PUBLIC HEARINGS:  
  
None
9. ACTION ITEMS:  
  
A. Resolution 30-2020, A Resolution Reappointing Ronald W. Carlson to be the City of Black Hawk Municipal Court Judge

**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

- B. Resolution 31-2020, A Resolution Reappointing Thad Renaud to be the City of Black Hawk Assistant Municipal Court Judge
- C. Resolution 32-2020, A Resolution Appointing a New Member to the City of Black Hawk Historic Preservation Commission
- D. Resolution 33-2020, A Resolution Awarding the Bid and Approving the Design-Build Contract Between the City of Black Hawk and Roche Constructors, Inc. in an Amount Not To Exceed \$12,650.00 for Pre-Construction Services Pertaining to the Police Station 2<sup>nd</sup> Floor Renovation Project
- E. Resolution 34-2020, A Resolution Awarding the Bid and Approving the Contract Between the City of Black Hawk and High Country Conservation, LLC in an Amount Not To Exceed \$260,436.80 to Construct the Maryland Mountain Trail System Project
- F. Resolution 35-2020, A Resolution Forgiving Certain Device Taxes for the Month of April, 2020, Payable in May 2020 and Deferring Certain Water Fees

10. CITY MANAGER REPORTS:

11. CITY ATTORNEY:

12. EXECUTIVE SESSION:

13. 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**

**March 25, 2020**

**MEETING MINUTES**

1. CALL TO ORDER: The regular meeting of the City Council was called to order on Wednesday, March 25, 2020, at 3:00 p.m. by Mayor Spellman.
  2. ROLL CALL: Physically Present: Mayor Spellman  
  
Virtually Present: Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.  
  
Virtual/Present Staff: City Attorney Hoffmann, City Manager Cole, Police Chief Lloyd, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Senior Civil Engineer Reed, Fire Lieutenant Reid, Community Planning & Development Director Linker, Executive Administrative Assistant Murphy, IT Manager Muhammad, IT Systems Analyst Blenker, Deputy City Clerk Martin, and Baseline Consultants Harris and Watel.
- PLEDGE OF ALLEGIANCE: Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance, by displaying a flag on the screen.

Mayor Spellman took a moment to recognize Black Hawk City employees and the work they have been doing throughout this pandemic and likened them to the same brave pioneers that founded and incorporated the City, and who have persevered through many trials and tribulations including other pandemics, wars, the Depression and others within the City's 160-year history. He said he could not be any prouder of them at this time, and on behalf of the City Council, he thanked all employees.

He then went on to recount part of Black Hawk's history to demonstrate that we have gone through similar times like this. He stood in front of the City's Seal and read the Latin word Perseverando and Latin phrase Noli Me Tangere, which are just as relevant today as they were back in 1863, he said. He stated that Perseverando means to preserve, persevere, and push forward, and Noli Me Tangere means touch me not, do not meddle, do not interfere. He said the Revolutionary War flag and battle cry Don't Tread on Me was derived from this phrase. He declared that Black Hawk would continue to persevere and push ahead, and this phrase has always been an admonishment and a warning for those that may try to interfere with Black Hawk's goals, and that is why we have it as part of our seal.

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

4. CONFLICTS OF INTEREST:

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

City Attorney Hoffmann asked the virtual and present audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. Both audiences had no objections.

5. PUBLIC COMMENT: Deputy City Clerk Martin confirmed no one had signed up to speak.

6. APPROVAL OF MINUTES:

March 11, 2020, Regular Meeting  
March 18, 2020, Special Meeting

**MOTION TO APPROVE**

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

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0. Mayor Spellman explained that moving forward, and he would randomly call upon one Alderman for a motion and a second for less confusion.

7. PUBLIC HEARINGS:

- A. **Resolution 25-2020, A Resolution Making Certain Findings of Fact Regarding the Proposed Annexation of Parcels of Land to the City of Black Hawk, Colorado, Known as the Lake Gulch Whiskey Resort Annexation**
- B. **CB2, A Bill for an Ordinance Approving and Accomplishing the Annexation of Parcel No. 1, Consisting of Contiguous Unincorporated Territory in Gilpin County Also Known as a Portion of the Lake Gulch Whiskey Resort Annexation**
- C. **CB3, A Bill for an Ordinance Approving and Accomplishing the Annexation of Parcel No. 2, Consisting of Contiguous Unincorporated Territory in Gilpin County Also Known as a Portion of the Lake Gulch Whiskey Resort Annexation**

- D. CB4, A Bill for an Ordinance Approving and Accomplishing the Annexation of Parcel No. 3, Consisting of Contiguous Unincorporated Territory in Gilpin County Also Known as a Portion of the Lake Gulch Whiskey Resort Annexation**
- E. CB5, A Bill for an Ordinance Approving and Accomplishing the Annexation of Parcel No. 4, Consisting of Contiguous Unincorporated Territory in Gilpin County Also Known as a Portion of the Lake Gulch Whiskey Resort Annexation**
- F. CB6, A Bill for an Ordinance Approving and Accomplishing the Annexation of Parcel No. 5, Consisting of Contiguous Unincorporated Territory in Gilpin County Also Known as a Portion of the Lake Gulch Whiskey Resort Annexation**
- G. CB7, A Bill for an Ordinance Approving and Accomplishing the Annexation of Parcel No. 6, Consisting of Contiguous Unincorporated Territory in Gilpin County Also Known as a Portion of the Lake Gulch Whiskey Resort Annexation**
- H. CB8, A Bill for an Ordinance Approving and Accomplishing the Annexation of Parcel No. 7, Consisting of Contiguous Unincorporated Territory in Gilpin County Also Known as a Portion of the Lake Gulch Whiskey Resort Annexation**
- I. CB9, A Bill for an Ordinance Zoning Certain Property Within the City of Black Hawk to Commercial/Business Services (C/BS) Zoning District and a Planned Unit Development (PUD) Overlay Known as the Lake Gulch Whiskey Resort Planned Unit Development, and Amending the City's Zoning Map to Conform Therewith**

Mayor Spellman read the titles and gaveled the public hearings open.

Mayor Spellman said a few words prior to staff taking over; he started by saying that what you will see today is a bit of blue sky and even a few rays of sunshine in an otherwise bleak and gloomy time. He expanded by saying that this is a project that all of Gilpin County can rally behind, be excited about, and look forward to when we emerge from this unsettling and dark time. He continued to say it is the first significant development to diversify Black Hawk and Gilpin County from being a single-industry community and relying solely on the gaming industry for revenue and employment. He expressed this pandemic is our clarion call to embrace a project such as this one, which has so much to offer.

City Attorney Hoffmann reiterated for the record that agenda items 7A through 7I are the subject of this public hearing this afternoon, and the public hearing as it relates to the annexations is governed by state law. Notice has been provided under state law as it relates to annexation as a matter of statewide concern. As it relates to agenda item 7I, he said, which is the proposed ordinance zoning the property if the property is annexed, it is governed by Black Hawk's Municipal Code, and notice is in accordance with the Black Hawk Municipal Code. The only provision in Black Hawk's regulations that address annexation is merely to require that annexation and zoning occur concurrently, so it is a combined public

hearing, the annexation under state law, and the zoning under Black Hawk Municipal Code.

Baseline Planning Consultants Vince Harris and Ethan Watel introduced staff's presentation. Mr. Harris started first with the annexation piece, to be followed by Mr. Watel presenting the zoning piece. Mr. Harris read off the list of documents to be entered into the record:

- Entire submittal from RSM Partners LLC & Proximo Distillers, LLC
- Black Hawk 2020 Comprehensive Plan
- Three Mile Plan in place, which is the same as the Black Hawk 2020 Comprehensive Plan
- 1999 Growth Intergovernmental Agreement
- Referral comments from cases #P-20-01a, the annexation case, and P-20-01b, the zoning case
- Affidavit of Publication from the Weekly Register-Call for annexation notices
- Black Hawk Municipal Code including the Zoning Regulations

He went through the size of each annexation and said they are known as serial annexations for a total of 221.86 acres. He read the proposed development is to accommodate a distillery for the Tincup Whiskey brand including a distillery, barrelhouses, a visitor's center, a predominance of residential uses so long as the impacts of such residential development can be offset, hotel/lodging, guesthouse and cabins, a restaurant, event space, retail, parking, and outdoor activities. He said that Black Hawk is entering into an Annexation Agreement to address the terms and conditions to annex the property to the City, specifically how the developer will offset the impacts of any residential development, including impacts to the Gilpin County RE-1 School District. Mr. Harris read into the record a Resolution of Support from the Gilpin County School District adopted and approved on March 17, 2020. He also read another document provided today by the County of Gilpin, named Consent to Annexation Agreement, by the County of Gilpin dated March 24, 2020.

Mr. Watel went through the presentation of the proposed zoning of the property. He said the request is for initial zoning to Commercial/Business Services (C/BS) with a Planned Unit Development (PUD), it is currently zoned under Gilpin County's zoning. Staff believes all criteria have been met and the proposal meets the goals of the Black Hawk Comprehensive Plan, after the application was deemed complete it was sent to various internal and external agencies for review and comment, only one agency sent a letter of no support, the City of Central. Since that was the sole letter of no support, Mr. Watel felt compelled to go through their concerns. One of their concerns was the Traffic Impact Study, after review with CDOT, staff and the City's traffic consultants a revised traffic study was submitted, he believes their concerns are addressed in this revised study dated March 12, 2020, and read into the record a

paragraph from this revised study: “It is understood that some traffic may arrive at the site via Central City Parkway. Since Lake Gulch Road is unpaved and lacks a clean connection to Central City Parkway for the northbound and southbound directions of travel, 10 percent of traffic was applied to Lake Gulch Road. Other traffic traveling Central City Parkway will be able to gain access to the facility by traveling through Central City to Gregory Street by then accessing Bobtail Road. Since this travel distance is a bit further, although all paved, 10 percent of the trip distribution was assigned to this route as well, to account for 20 percent of traffic arrivals from Central City Parkway. Assignment of project traffic was based upon the trip generation described previously, and the distributions developed.”

Council had no questions for staff on their portion of the presentation.

Harmon Zuckerman, an attorney from Frasca, Joiner, Goodman, and Greenstein of Boulder, was present on behalf of the developer Proximo Distillers, LLC and introduced the team: Rodrigo Braun, Proximo Spirits Brand, Pete Macca, Stranahan’s Colorado Whiskey Distillery, Dean Mades, Proximo’s General Counsel, Pete Weber and Troy Tengwall of Coburn Architecture, Charlie Hagar and Xavier Torrents of JVA Consulting Engineers, Carl Deddens and Sean Doyle of RSM Partners, LLC, Natasha Felton of Colorado Commercial Companies, and Maria Garcia-Berry and Danielle Glover of CRL Associates.

Mr. Zuckerman took this time on behalf of Proximo Distillers, LLC to thank individuals at the City, Baseline staff, all other City consultants working on this project, the Gilpin County School District for their support, Gilpin County for their consent to the annexation received today, and the Sanitation, Fire and all other districts who also worked on this project. He went through the project plan; they anticipate over 40 new jobs and \$50,000,000 in capital investment. The project is envisioned to be completed in phases, with the distillery and the visitor’s center highlighting the first phase. He said they believe that the project would complement and diversify Black Hawk’s economy, contribute to the community’s achievement of its planning goals, and fit with the rugged image, mountain lifestyle, and mining heritage of the area.

Rodrigo Braun went through his marketing presentation for Proximo Distillery, LLC, who is a global innovator of quality spirits that creates excitement with every sip and is always on the lookout for what is next. He gave background on the company founded by a family who has been in the spirits business since 1758. Their corporate headquarters is located in Jersey City, New Jersey, and they employ more than 400 employees nationwide. He went on to show several marketing videos to show their diverse portfolio of products and award-winning liquids. They are the world’s #1 tequila and invented the margarita in 1938. Proximo’s Pendleton whiskey is the official sponsor of the PBR and the pro rodeo.

Tincup Whiskey's slogan is, "Tincup takes American whiskey to the great outdoors." He said aside from brands, their most valuable asset is the people that make them come to life, and their team of experts includes many women master blenders.

He showed videos of Proximo's commitment to caring for their community, which they take very seriously because they are here for the long run, and they like to take care of where they produce and market their products. They have partnered with the Ford Motor Company to use agave fibers to create cup holders and fuse boxes. Their Hangar 1 Vodka Distillery in San Francisco uses the fog to bottle approach by using the collected fog in their distillery process, with a donated part of their proceeds going to water conservation efforts in California.

Proximo distillers have locations in Northern Ireland, the United States, and Mexico. He said their Stranahan's Distillery in Denver has a cult following. Every year they launch a limited amount of bottles of their Snowflake Whiskey, and last year, they had people camped out for ten days, including Thanksgiving evening just to be the first in line to purchase this whiskey. He went on to talk about their 1608 Bushmills Whiskey Distillery in Northern Ireland as a place where they created authenticity through the relationship between a whiskey and where it's made. Proximo Spirits' vision is to create a great, authentic whiskey in a great, authentic place by building a new, state-of-the-art whiskey distillery in the mountains of Black Hawk, becoming the largest whiskey distillery in Colorado. The distillery will serve as a destination that attracts visitors from across the world. Proximo will promote the distillery through the company's national and international advertising campaigns and marketing plans. This marketing activity will benefit the area by highlighting it as the home of a major whiskey brand and will put the Black Hawk name in consumer's minds around the globe.

Up next were Pete Weber and Troy Tengwall of Coburn Architecture to present how they have brought Proximo's vision to life. They focused on the mining history, the utilitarian use and forms of mining buildings, using real materials such as wood, metal, and rusted materials that are natural and authentic, and how the buildings will engage with the land using the natural grade.

Rodrigo Braun summed up the applicant's presentation with a final marketing video for Tincup Mountain Whiskey and highlighted the last phrase, which states, "it's where you do it." He said this is very powerful, as it is more than what you do, but it is where you do it, and Proximo values providence that is why they are going the extra mile to build this project on this site they found, he said they could have built-in an industrial park with utilities and roads already included, but they decided on a much more expensive route which holds much more character and soul and with a lot more future. He said Black Hawk would be a long



term partner, and this distillery will be there for many future generations to enjoy. He elaborated on the attraction of more than 60,000 visitors per year and how this will complement and diversify the tourist offering that is already here. He added that visitors would know that 1,000 gallons of water a day from Black Hawk is used in their whiskey. Millions of bottles produced will carry the Black Hawk name and will travel around the world; he again shared that this will be the largest distillery in the whole state of Colorado. He thanked everyone again, including Mayor Spellman, for thinking big with them and congratulating him on having such an exceptional team with which to work.

Mayor Spellman congratulated them on an outstanding presentation and asked Council if they had any questions. Alderman Midcap made a few comments which all of the Council agreed with, that Proximo's concept and Coburn's architecture is a perfect fit and spot on with made in the mountains and that Proximo and Tincup are a perfect fit for Black Hawk. He added that it is the best whiskey, and Black Hawk does have the best water.

**PUBLIC HEARING:**

Mayor Spellman declared a Public Hearing on Resolution 25-2020, a Resolution making certain Findings of Fact regarding the proposed annexation of parcels of land to the City of Black Hawk, Colorado, known as the Lake Gulch Whiskey Resort Annexation, CB2 through CB8, Bills for Ordinances approving and accomplishing the annexation of Parcels No. 1 through No. 7, consisting of contiguous unincorporated territory in Gilpin County also known as a portions of the Lake Gulch Whiskey Resort Annexation, and CB9, A Bill for an Ordinance zoning certain property within the City of Black Hawk to Commercial/Business Services (C/BS) Zoning District and a Planned Unit Development (PUD) Overlay known as the Lake Gulch Whiskey Resort Planned Unit Development, and amending the City's Zoning Map to conform therewith open and invited anyone wanting to address the Board in support of the proposed resolution and ordinances to come forward.

Tom Feeney, resident and business owner in Black Hawk, applauded the presentation and said it is obviously going to be a unique and exciting project for the City and the whole county. He said it would be a win-win for all residents of the county bringing new business opportunities, a new tax base, and open up business development as well as recreation. He is 100% in support of this project.

Gilpin County Commissioner Ron Engels spoke in support of the project online through Zoom. He said he is also a Central City resident, as well as the County Commissioner from District 1. He said the Gilpin County Commissioners, after many special meetings, are unanimously and enthusiastically in support of this project and have signed the consent to the annexation. He expressed the positive negotiations with Black Hawk to address the minimal impacts of this project. He said, of the

commissioners, he has been the driver of economic diversity for years, and as much as they appreciate the casinos, having them alone as the main revenue stream and using the loss of life from this pandemic as an example, one has to see it as stark and sad evidence of our dependence on that alone. He said they are excited to have a new partner in Proximo, and The Gilpin County Commissioners welcome all of you to the little kingdom of Gilpin. He is personally looking forward to welcoming them with a cup together. He said he has a bottle of 1608 Bushmills that he has been guarding for the last 12 years and will finally open it up today. Mayor Spellman tagged on to that, that when the all-clear sign is given, Proximo will come back to Council Chambers to celebrate this occasion with a glass, and that the county has collaborated and been a tremendous asset

Mayor Spellman asked anyone wanting to address the Board in opposition to the proposed resolution and ordinances to come forward. No one came forward to speak from the audience or through the Zoom platform, and Mayor Spellman gaveled the Public Hearing closed.

City Attorney Hoffmann summarized any remaining issues by saying that the public hearing held everything that Council is to consider. He wanted the public and City Council to recall what they heard while in the public hearing, that Central City had submitted opposition to the PUD. He said that right before this Council meeting, the Central City Attorney and Council had filed a lawsuit and will try to challenge this. He said with that in mind, Council item 7A is the resolution that makes the findings of fact regarding the proposed annexation of parcels of land to be in compliance with the Colorado Municipal Annexation Act of 1965, and it would also approve the Annexation Agreement attached to that resolution. If Resolution 25-2020 is adopted, he said, then Council can consider items 7B through 7I, which are the ordinances accomplishing the legislative determination for the annexations of the properties. He said they are considered serial annexations to be approved in a series, they are consistent with the Black Hawk Municipal Code, and if Council adopts those seven ordinances to annex the properties, then item 7I would accomplish the rezoning of the properties consistent with the PUD discussed in the presentation, again which complies with the Black Hawk Municipal Code, which requires the concurrent annexation and zoning of the properties.

Baseline Consultant Harris reiterated a couple of items to consider related to the housing component in regards to Central City's opposition. He said that today's action is related to land use, the PUD, and zoning, and that this zoning allows a wide variety of uses, with only 5% of the property being used for the distillery and another 5% of the land to be developed for the resort, the other 90% has not been determined yet and won't be until the final site plans and reviews come in later in the development process. Also, he added the Traffic Impact Study was

resubmitted by the applicant and even further integrates the insistent need and desire by Black Hawk from the start to see all traffic patterns use Miners Mesa and Bobtail Roads, and it was determined that during inclement weather the preferred route is Black Hawk through Clear Creek Canyon. Mayor Spellman followed up on that comment, by saying in early October Proximo thought that the Central City Parkway should be their primary access, yet the City of Black Hawk was insistent at the beginning of the discussions that they use our roadways and come through our City so that Black Hawk would be fully integrated and not just be an outpost for this development. He said he even asked them during bad weather to test out all the different access roads to the site. They did, and they concurred that Highway 119 up to Miners Mesa Road was the preferred route.

**MOTION TO  
APPROVE**

Alderman Torres **MOVED** and was **SECONDED** by Alderman Midcap to approve Resolution 25-2020, a Resolution making certain Findings of Fact regarding the proposed annexation of parcels of land to the City of Black Hawk, Colorado, known as the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO  
APPROVE**

Alderman Moates **MOVED** and was **SECONDED** by Alderman Armbright to approve CB2, a Bill for an Ordinance approving and accomplishing the annexation of Parcel No. 1, consisting of contiguous unincorporated territory in Gilpin County also known as a portion of the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO  
APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to approve CB3, a Bill for an Ordinance approving and accomplishing the annexation of Parcel No. 2, consisting of contiguous unincorporated territory in Gilpin County also known as a portion of the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO  
APPROVE**

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Bennett to approve CB4, a Bill for an Ordinance approving and accomplishing the annexation of Parcel No. 3, consisting of contiguous

unincorporated territory in Gilpin County also known as a portion of the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO APPROVE**

Alderman Moates **MOVED** and was **SECONDED** by Alderman Midcap to approve CB5, a Bill for an Ordinance approving and accomplishing the annexation of Parcel No. 4, consisting of contiguous unincorporated territory in Gilpin County also known as a portion of the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO APPROVE**

Alderman Torres **MOVED** and was **SECONDED** by Alderman Armbright to approve CB6, a Bill for an Ordinance approving and accomplishing the annexation of Parcel No. 5, consisting of contiguous unincorporated territory in Gilpin County also known as a portion of the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO APPROVE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Bennett to approve CB7, a Bill for an Ordinance approving and accomplishing the annexation of Parcel No. 6, consisting of contiguous unincorporated territory in Gilpin County, also known as a portion of the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO APPROVE**

Alderman Johnson **MOVED** and was **SECONDED** by Alderman Moates to approve CB8, a Bill for an Ordinance approving and accomplishing the annexation of Parcel No. 7, consisting of contiguous unincorporated territory in Gilpin County also known as a portion of the Lake Gulch Whiskey Resort Annexation.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO APPROVE**

Alderman Midcap **MOVED** and was **SECONDED** by Alderman Torres to approve CB9, a Bill for an Ordinance zoning certain property within the City of Black Hawk to Commercial/Business Services (C/BS) Zoning

District and a Planned Unit Development (PUD) Overlay known as the Lake Gulch Whiskey Resort Planned Unit Development, and amending the City's Zoning Map to conform therewith.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

Mayor Spellman read some closing remarks, "It should not be lost on anyone watching this public hearing today that three out of the four major governmental entities in Gilpin County support this history-making project (Gilpin County, Gilpin RE-1 School District, and Black Hawk). It is incredible what we can accomplish when we are all pulling in the same direction. This is what is referred to as good governance. Central City's opposition to a project that will benefit all of Gilpin County demonstrates a decisive lack of leadership and failure to look out for their residents and businesses of their City by squandering precious revenue at a time like this on a frivolous lawsuit. Instead of waiving their casino's device fees at a time like this to give relief, they would rather line the pockets of their city attorney, as well as outside legal counsel. These actions are shameful. The Council's actions amount to intellectual bankruptcy and confirm they are devoid of how to better their City without resorting to extortion. Central City, you cannot extort your way to success, nor can you extort your way to prosperity; it will only bring further ruin to your City, which you can ill afford. It appears your actions may also be rooted in jealousy, envy, and spitefulness, which will only bring doom and gloom to the City you claim to love and represent. This is beyond shameful; it is pathetic and irresponsible in the governance of your City. Noli Me Tangere, Central City."

Mayor Spellman then thanked City staff and Baseline for their diligent work on this development and extended his thanks to Gilpin County Commissioners, Ron Engles, Linda Isenhardt, and Gail Watson for their collaboration and support of this project. Clearly, he said, they are looking out for the best interest of the county, and county residents should take note of this. He commented that more work lies in front of us, but he has no doubt together they will accomplish it. He thanked the Gilpin County Board of Education for their support, who he said, is always making the right decisions, and it is a pleasure to work with the School District.

He then went on to thank Proximo and said, with what we are experiencing today in our Country, a lesser Company would have, at a minimum, delayed this public hearing if not pulled the plug altogether. Proximo is to be commended for their fortitude, steadfastness, and commitment to this development. There have been tough negotiations between us, he said, but also camaraderie. To say we are excited about your project would be an understatement to the extreme. We, in Black Hawk, and Gilpin County, look forward to a long relationship. He

concluded with “now let me say Tincup Mountain Whiskey has found a new home and a permanent home in the City of Black Hawk, County of Gilpin, and the State of Colorado.”

**J. Resolution 26-2020, A Resolution Approving a Minor Subdivision Creating Two Lots at 211-221 Gregory Street and 201 Selak Street (Continued to May 13, 2020)**

**K. Resolution 27-2020, A Resolution Approving a Certificate of Architectural Compatibility for the Renovation of a Building at 211-221 Gregory Street (Continued to May 13, 2020)**

Mayor Spellman read the titles and said both of these items are under an umbrella motion to be continued to the May 13 meeting.

**MOTION TO  
CONTINUE**

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Moates to continue Resolution 26-2020, a Resolution approving a Minor Subdivision creating two lots at 211-221 Gregory Street and 201 Selak Street and Resolution 27-2020, a Resolution approving a Certificate of Architectural Compatibility for the renovation of a building at 211-221 Gregory Street to the May 13 City Council meeting.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**8. ACTION ITEMS:**

**A. Resolution 28-2020, A Resolution Consenting To and Extending the Order Declaring a Local Disaster Emergency In and For the City of Black Hawk, Colorado**

Mayor Spellman read the title.

City Attorney Hoffmann stated that the Mayor, authorized under the Emergency Declaration Act, did issue an order to impose an emergency consistent with state statute, this order can only be good for seven days unless the City extends the declaration by resolution. This resolution would extend the order until April 24 unless terminated sooner by the action of the City Council.

**MOTION TO  
APPROVE**

Alderman Torres **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 28-2020, a Resolution consenting to and extending the order declaring a Local Disaster Emergency in and for the City of Black Hawk, Colorado.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**B. Resolution 29-2020, A Resolution Approving the 2020 Fireworks Production Contract Between the City of Black Hawk and Western Enterprises, Inc.**

Mayor Spellman read the title.

Mayor Spellman said if the City cannot hold the fireworks on the Fourth of July for some reason, then they would postpone them to celebrate when the City is back in business.

**MOTION TO APPROVE**

Alderman Moates **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 29-2020, a Resolution approving the 2020 Fireworks Production Contract between the City of Black Hawk and Western Enterprises, Inc.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**9. CITY MANAGER REPORTS:**

City Manager Cole had nothing to report.

**10. CITY ATTORNEY:**

City Attorney Hoffmann had nothing to report.

**11. EXECUTIVE SESSION:**

City Attorney Hoffmann recommended item number 2 for Executive Session to discuss litigation based on the Central City lawsuit issued at 2:00 p.m. today.

**MOTION TO ADJOURN INTO EXECUTIVE SESSION**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Johnson to adjourn into Executive Session at 5:16 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).

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

**MOTION TO  
ADJOURN**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to adjourn the Executive Session at 5:55 p.m.

**MOTION PASSED**

There was no discussion and the motion **PASSED** by a roll call vote of 6-0.

12. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council closed at 5:55 p.m.

---

Melissa A. Greiner, CMC  
City Clerk

---

David D. Spellman  
Mayor



**RESOLUTION 30-2020**  
**A RESOLUTION**  
**REAPPOINTING RONALD**  
**W. CARLSON TO BE THE**  
**CITY OF BLACK HAWK**  
**MUNICIPAL COURT**  
**JUDGE**

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

**Resolution No. 30-2020**

**TITLE:       A RESOLUTION REAPPOINTING RONALD W. CARLSON TO BE THE  
CITY OF BLACK HAWK MUNICIPAL COURT JUDGE**

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

**Section 1.** Pursuant to Article V, Section 3 of the City of Black Hawk Home Rule  
Charter, Ronald W. Carlson is hereby reappointed as Municipal Judge to serve a two (2) year  
term, which term shall expire on May 1, 2022.

RESOLVED AND PASSED this 8<sup>th</sup> day of April 2020.

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

ATTEST:

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

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

**SUBJECT:** Reappointment of Ronald W. Carlson to be the City of Black Hawk Municipal Court Judge.

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

**MOTION TO APPROVE** Resolution 30-2020, A Resolution Reappointing Ronald W. Carlson to be the City of Black Hawk Municipal Court Judge.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Municipal Court Judge has a two (2) year term, which expires on May 1, 2020. Judge Carlson was last reappointed on February 14, 2018.

**AGENDA DATE:** April 8, 2020

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

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

**STAFF PERSON RESPONSIBLE:** Melissa Greiner, CMC, City Clerk

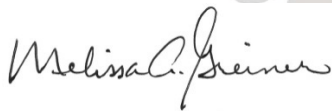
**DOCUMENTS ATTACHED:** N/A

**RECORD:** ☐ Yes ☒ No

**CITY ATTORNEY REVIEW:** ☐ Yes ☒ N/A

**SUBMITTED BY:**

**REVIEWED BY:**



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

\_\_\_\_\_  
Stephen N. Cole, City Manager

**RESOLUTION 31-2020**  
**A RESOLUTION**  
**REAPPOINTING THAD**  
**RENAUD TO BE THE CITY**  
**OF BLACK HAWK**  
**ASSISTANT MUNICIPAL**  
**COURT JUDGE**

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

**Resolution No. 31-2020**

**TITLE:       A RESOLUTION REAPPOINTING THAD RENAUD TO BE THE CITY  
              OF BLACK HAWK ASSISTANT MUNICIPAL COURT JUDGE**

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

**Section 1.** Pursuant to Section 2-126(b), and at the request of Municipal Court Judge  
Ronald W. Carlson, the City Council hereby reappoints Thad Renaud as the Assistant Municipal  
Court Judge to act in the absence of Judge Carlson. The term of the Assistant Municipal Judge  
shall expire on May 1, 2020.

RESOLVED AND PASSED this 8<sup>th</sup> day of April 2020.

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

ATTEST:

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

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

**SUBJECT:** Reappointment of Thad Renaud to be the City of Black Hawk Assistant Municipal Court Judge.

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

**MOTION TO APPROVE** Resolution 31-2020, A Resolution Reappointing Thad Renaud to be the City of Black Hawk Assistant Municipal Court Judge.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Assistant to the Municipal Court Judge has a two (2) year term, which expires on May 1, 2020. Assistant Judge Renaud was last reappointed on February 14, 2018.

**AGENDA DATE:** April 8, 2020

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

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

**STAFF PERSON RESPONSIBLE:** Melissa Greiner, CMC, City Clerk

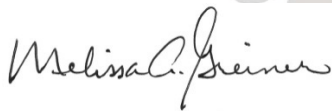
**DOCUMENTS ATTACHED:** N/A

**RECORD:** ☐ Yes ☒ No

**CITY ATTORNEY REVIEW:** ☐ Yes ☒ N/A

**SUBMITTED BY:**

**REVIEWED BY:**



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

\_\_\_\_\_  
Stephen N. Cole, City Manager

**RESOLUTION 32-2020**  
**A RESOLUTION**  
**APPOINTING A NEW**  
**MEMBER TO THE CITY**  
**OF BLACK HAWK**  
**HISTORIC**  
**PRESERVATION**  
**COMMISSION**

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

**Resolution No. 32-2020**

**TITLE: A RESOLUTION APPOINTING A NEW MEMBER TO THE CITY OF  
BLACK HAWK HISTORIC PRESERVATION COMMISSION**

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

Section 1. The City Council hereby appoints Tonya Cadena-Barnett to the Historic  
Preservation Commission for a four (4) year term.

RESOLVED AND PASSED this 8<sup>th</sup> day of April, 2020.

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

ATTEST:

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



## **CITY OF BLACK HAWK**

### **REQUEST FOR COUNCIL ACTION**

**SUBJECT:** To consider a Resolution appointing one (1) regular member to fill a remaining term vacancy on the City of Black Hawk Historic Preservation Commission.

**RECOMMENDATION:**

**MOTION TO** approve Resolution 32-2020 appointing one (1) regular member to fill a remaining term vacancy on the City of Black Hawk Historic Preservation Commission.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Members of the Historic Preservation Commission shall be residents of the City of Black Hawk, and they shall have such qualifications as the City Council deems necessary and desirable in the best interest of the City. To the extent possible, the Commission shall be composed of both professional and lay members, and they shall be selected from fields of history, architecture, landscape architecture, architectural history, prehistoric or historic archaeology, planning or related disciplines such as the building trades, culture geography, cultural anthropology, real estate or law. Recognizing that professionals may not be available in some communities, this requirement can be waived if the local government makes a good faith effort to recruit professionals and demonstrates that it is capable of carrying out Commission responsibilities.

The Commission shall consist of five (5) members appointed by the City Council. All members shall serve a four (4) year term unless a Commission member is filling an unexpired term, in which case the Commission member shall serve the remaining portion of the unexpired term. The City Council shall appoint a member to fill the unexpired term of the member whose place has become vacant.

The City of Black Hawk placed an advertisement in the Weekly Register call for the February 6, 2020, and February 13, 2020, editions seeking a resident of Black Hawk to fulfill the vacancy with a four (4) year term expiring August 1, 2021. All interested candidates were instructed to submit a Letter of Interest, including qualifications to the City of Black Hawk, Community Planning and Development Department, by February 18, 2020.

Community Planning and Development received one (1) Letter of Interest from Tonya Cadena-Barnett dated February 17, 2020. Tonya Cadena-Barnett does not have professional experience in a preservation-related discipline, but the City contracts with a Historic Preservation Consultant to provide expertise as needed and meets Federal Standards 36-CFR-61. The City went under contract with Pinyon Environmental, Inc. in June 2018. This firm has multiple Secretary of the Interior-Qualified professionals with varied backgrounds in the field who can help support the City's Historic Preservation Commission and programs.

Staff recommends the appointment of Tonya Cadena-Barnett to serve the remaining portion of the Historic Preservation Commission unexpired four (4) term expiring August 1, 2021.

**AGENDA DATE:**

April 8, 2020

**WORKSHOP DATE:**

N/A

**FUNDING SOURCE:**

N/A

**DEPARTMENT DIRECTOR APPROVAL:**

☒ Yes      ☐ No

**STAFF PERSON RESPONSIBLE:**

Cynthia L. Linker, CP&D Director

**DOCUMENTS ATTACHED:**

Resolution 32-2020  
Exhibit A – Advertisement  
Exhibit B – Letter of Interest

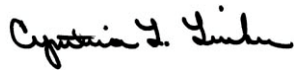
**RECORD:**

☐ Yes      ☒ No

**CITY ATTORNEY REVIEW:**

☒ Yes      ☐ N/A


**SUBMITTED BY:**



4/02/2020

Cynthia L. Linker, CP&D Director

**REVIEWED BY:**



Stephen N. Cole, City Manager

EXHIBIT A

Advertisement for Historic Preservation Commission Vacancies



## **CITY OF BLACK HAWK HISTORIC PRESERVATION COMMISSION**

The City of Black Hawk is seeking a resident to fill a vacancy on the Historic Preservation Commission. The successful candidate will fulfill a four (4) year term expiring August 1, 2021. The Commission is responsible for recommending to City Council the designation of historic landmarks and the revocation of such designations, for reviewing applications and issuing Certificates of Appropriateness for building permits and demolition permits affecting locally-designated historic landmarks for ratification by the City Council, and any other duties as may be established by the City Council. Commission members attend meetings on the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of the month at 2:00 p.m. when necessary and occasional training. While not required, applicants would preferably have professional experience in preservation-related disciplines such as architecture, landscape architecture, architectural history, archaeology, history, and planning, or related disciplines such as building trades, real estate, law, cultural geography and cultural anthropology. All interested candidates should submit a letter of interest including qualifications to the City of Black Hawk, Community Planning and Development, Department, P.O. Box 68, Black Hawk, CO 80422. The City will accept applications until Tuesday, February 18, 2020. The City reserves the right to reject any application. Direct questions to the Community Planning and Development Department at 303-582-0615.

EXHIBIT B

Letters of Interest – Tonya Cadena-Barnett

Tonya Cadena-Barnett  
100 Marchant Street  
P. O. Box 154  
Black Hawk, CO 80422  
tcadena70@gmail.com  
720-220-6892 (c)

February 17, 2020

Cynthia Linker  
Community Planning & Development Director  
City of Black Hawk  
P. O. Box 68  
Black Hawk, CO 80422

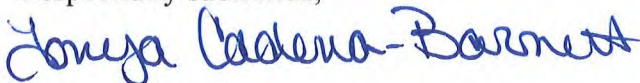
In consideration of any future Black Hawk Historic Preservation Commission vacancies, please accept this letter as my interest in serving as a member of this Commission.

I've lived and worked in the City of Black Hawk since 2008 and while I do not have professional experience in preservation-related disciplines as outlined in the advertisement, my family is the 6th generation to live and work in the City of Black Hawk. As such, I am extremely interested in the history and historic preservation of our City and can contribute my working, professional experience to the Commission.

I would be honored if the Black Hawk City Council would consider my appointment to fill the current HPC vacancy. I believe I would be an asset to the Commission if appointed.

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

Respectfully submitted,

  
Tonya Cadena-Barnett

**RESOLUTION 33-2020**

**A RESOLUTION**

**AWARDING THE BID AND**

**APPROVING THE DESIGN-**

**BUILD CONTRACT**

**BETWEEN THE CITY OF**

**BLACK HAWK AND**

**ROCHE CONSTRUCTORS,**

**INC. IN AN AMOUNT NOT**

**TO EXCEED \$12,650.00 FOR**

**PRE-CONSTRUCTION**

**SERVICES PERTAINING**

**TO THE POLICE STATION**

**2<sup>ND</sup> FLOOR RENOVATION**

**PROJECT**

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

**Resolution No. 33-2020**

**TITLE:       A RESOLUTION AWARDING THE BID AND APPROVING THE  
DESIGN-BUILD CONTRACT BETWEEN THE CITY OF BLACK HAWK  
AND ROCHE CONSTRUCTORS, INC. IN AN AMOUNT NOT TO  
EXCEED   \$12,650.00   FOR   PRE-CONSTRUCTION   SERVICES  
PERTAINING TO THE POLICE STATION 2<sup>ND</sup> FLOOR RENOVATION  
PROJECT**

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

**Section 1.**     The City Council hereby awards the bid and approves the design-build  
contract between the City of Black Hawk and Roche Constructors, Inc. in an amount not to  
exceed \$12,650.00 for pre-construction services related to the Police Station 2<sup>nd</sup> Floor  
Renovation project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 8<sup>th</sup> day of April, 2020.

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

ATTEST:

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





## CITY OF BLACK HAWK

### REQUEST FOR COUNCIL ACTION

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**SUBJECT:**

Approve Resolution 33-2020, a Resolution awarding the design-build contract for the Police Station 2<sup>nd</sup> Floor Renovation project to Roche Constructors, Inc.

**RECOMMENDATION:**

If City Council chooses to approve Resolution 33-2020, a Resolution awarding the bid and approving the design-build contract between the City of Black Hawk and Roche Constructors, Inc., the recommended motion is as follows: “Approve Resolution 33-2020, a Resolution awarding the bid and approving the design-build contract between the City of Black Hawk and Roche Constructors, Inc. in an amount not to exceed \$12,650.00 for pre-construction services pertaining to the Police Station 2<sup>nd</sup> floor renovation project.”

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Renovations to the Police Station are desired to more effectively use the limited amount of space provided by the old schoolhouse. Staff is recommending that the two large upstairs bathrooms be converted into two smaller bathrooms, which will create additional space for storage and a larger evidence room. The existing evidence room would be converted into a Commander’s office. Pass-through evidence lockers are also proposed, as well as additional cabinet space within the upstairs corridor.

The design-build method of contracting has been selected for this project. A Request for Proposals was publicly advertised on January 21, 2020. Four contractors submitted proposals. A total of six Staff members reviewed the proposals, and the team led by Roche Constructors, Inc. was unanimously selected to design and construct this project. Not only is their experience in line with the City’s expectations, their pricing structure was the lowest among the four proposals.

Approval of this Resolution would authorize Roche Constructors, Inc. to proceed with architectural and engineering design, along with cost estimating and other pre-construction tasks. Over the next few months, Roche Constructors, Inc. will prepare a Guaranteed Maximum Price (GMP) for construction of this project. An Amendment to this design-build contract will be brought before City Council to establish the GMP and authorize construction.

**FUNDING SOURCE:**

Program Expenses / Police Building: 203-0000-502-58-40

**AGENDA DATE:**

April 8, 2020

**ORIGINATED BY:**

Tom Isbester / Matt Reed

**STAFF PERSON RESPONSIBLE:**

Tom Isbester / Matt Reed

**PROJECT COMPLETION DATE:**

December 18, 2020

**DOCUMENTS ATTACHED:**

Design-Build Contract

**CITY ATTORNEY REVIEW:**

[ ☐ ]Yes [ ☒ ]No [ ☐ ]N/A INITIALS \_\_\_\_\_

**SUBMITTED BY:**



\_\_\_\_\_  
Thomas Isbester, Public Works Director

**REVIEWED BY:**



\_\_\_\_\_  
Stephen N. Cole, City Manager

# CITY OF BLACK HAWK, COLORADO



**Contract Documents for**

**DESIGN-BUILDER**  
**POLICE STATION 2<sup>ND</sup> FLOOR RENOVATION**  
Black Hawk, CO 80422

**April 2020**

## **TABLE OF CONTENTS**

<b><u>ARTICLE 1 - GENERAL PROVISIONS AND SERVICES</u></b> .....	2
<b><u>ARTICLE 2 - DEFINITIONS</u></b> .....	2
<b><u>ARTICLE 3 – DESCRIPTION OF WORK AND SERVICE</u></b> .....	5
<b><u>ARTICLE 4 – DESIGN-BUILDER'S CONSTRUCTION SCHEDULE</u></b> .....	17
<b><u>ARTICLE 5 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES</u></b> .....	18
<b><u>ARTICLE 6 - CONTRACT SUM</u></b> .....	19
<b><u>ARTICLE 7 - CORRECTION OF WORK</u></b> .....	21
<b><u>ARTICLE 8 - TEMPORARY FACILITIES AND SERVICES</u></b> .....	21
<b><u>ARTICLE 9 - INDEMNIFICATION AND INSURANCE</u></b> .....	23
<b><u>ARTICLE 10 - PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS</u></b> .....	24
<b><u>ARTICLE 11 – CLAIMS AND DISPUTES</u></b> .....	25
<b><u>ARTICLE 12 - RESOLUTION OF CLAIMS AND DISPUTES</u></b> .....	27
<b><u>ARTICLE 13 - TERMINATION</u></b> .....	28
<b><u>ARTICLE 14 - SIMULTANEOUS WORK BY OTHERS</u></b> .....	30
<b><u>ARTICLE 15 - SUBCONTRACTING</u></b> .....	30
<b><u>ARTICLE 16 - GUARANTY</u></b> .....	31
<b><u>ARTICLE 17 - SALES TAX</u></b> .....	31
<b><u>ARTICLE 18 - MISCELLANEOUS PROVISIONS</u></b> .....	32
<b><u>ARTICLE 19 – ATTACHMENTS, SCHEDULES, AND SIGNATURES</u></b> .....	35

## DESIGN-BUILDER AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, 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 **Roche Constructors, Inc.**, hereinafter referred to as the "Design-Builder".

### ARTICLE 1 - GENERAL PROVISIONS AND SERVICES

- A. The Design-Builder shall commence and fully complete design and construction of the **Police Station 2<sup>nd</sup> Floor Renovation Project**, which is described in **Exhibit A**, which is attached hereto and made a part hereof ("Project").
- B. The Design-Builder shall retain Consultants and Subcontractors at the Design-Builder's expense as necessary to complete the Work.
- C. The Design-Builder 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 18, 2020, unless the period for completion is extended otherwise by the Contract Documents. The Design-Builder agrees to pay as liquidated damages, and not as a penalty, the sum of **Five Hundred Dollars (\$500.00)** 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 Design-Builder agrees to perform all of the pre-construction Work described in the Contract Documents and to comply with the terms therein for an amount not to exceed **Twelve Thousand Six Hundred Fifty Dollars (\$12,650)**, 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 Design-Builder and its surety in accordance with the Contract Documents.
  - 5. Change Order - A written order to the Design-Builder 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 Design-Builder 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 Design-Builder 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. 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.
9. Contract Sum – The total monies payable to the Design-Builder under the terms and conditions of the Contract Documents.
10. Contract Time – The number of calendar days stated in the Contract Documents for Substantial Completion of the Work.
11. 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.
12. Day – Unless herein otherwise expressly defined, Day shall mean calendar day.
13. Design-Builder – The person, firm, or corporation with whom the City of Black Hawk has executed this Agreement. The Design-Builder shall be lawfully licensed by the City of Black Hawk.
14. Major Equipment or Major Equipment Items – Installation of major equipment to be furnished and placed under the Agreement awarded to the Design-Builder and/or installations of major equipment to be furnished by the Owner and received, unloaded, stored, and placed by the Design-Builder under the Agreement awarded to the Design-Builder.
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 Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder 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 Owner 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 design, construction, and related services required to fulfill the Design-Builder’s obligations under the Contract Documents. The Work includes all labor, materials, equipment, and services provided or to be provided by the Design-Builder. 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 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 Design-Builder shall advise the Owner on proposed Site use and improvements, selection of materials, building systems, and equipment, as applicable. The Design-Builder 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 Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and evaluate the Owner's basis of design, as presented in Exhibit A. The evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, and phasing.
- C. The Design-Builder shall prepare a written report to summarize the Design-Builder's evaluation of the basis of 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 Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the preliminary design. The preliminary design shall include a site plan, building plans, sections, and elevations, identification of the structural systems, selections of major building systems, description of construction materials, and other information, as applicable.
- E. The Owner shall review the Design-Builder's preliminary design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's proposal. The Design-Builder's Proposal shall, at a minimum, include the following:
  - 1. A list of preliminary design documents and other information upon which the Design-Builder's proposal is based.
  - 2. The proposed Contract Sum organized by trade categories, including allowances, contingencies, updates to the Design-Builder's Fee and Cost 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 Design-Builder's schedule, including the proposed date that the Design-Builder shall achieve Substantial Completion.
- F. If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their Agreement.



The final Contract Sum as agreed upon by the Owner and Design-Builder will become established as the Guaranteed Maximum Price ("GMP") in the Design-Build 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 Design-Builder 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 Design-Builder.
  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. Upon agreement between the Owner and the Design-Builder on the Design-Builder's proposal, the Design-Builder shall prepare construction drawings and specifications.
- H. Construction shall not commence prior to execution of the Design-Build Amendment.

## Section 2      Drawings and Specifications

- A. The Design-Builder shall provide Project drawings and specifications to the Owner for approval. The Design-Builder 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 Design-Builder 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 Design-Builder shall be done at the Design-Builder's risk.
- D. The Design-Builder 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 Design-Builder shall carry out the Work in accordance with the additional detail drawings and instructions.

### Section 3      Materials, Services and Facilities

- A. The Design-Builder shall, in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Contract Documents. The Design-Builder 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 Design-Builder 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 Design-Builder 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 first class 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 Design-Builder 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 Design-Builder 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 Design-Builder. 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 Design-Builder and approved by the Owner and Consultants.

- H. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Design-Builder 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 Design-Builder 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 Design-Builder.

#### Section 4      Submittals

- A. The Design-Builder 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 promptly review all Submittals. 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 Design-Builder from responsibility for any deviations from the Contract Documents. The approval of any Submittal that substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order.
- 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 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 Design-Builder 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 Design-Builder shall make any indicated corrections on the Submittals returned and shall resubmit corrected Submittals until final approval is obtained.
- E. The Design-Builder 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 Design-Builder.
- G. When submitted for review by the Owner and Consultants, Submittals shall bear the Design-Builder'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 Design-Builder at the Site and shall be available to the Owner and Consultants. The Design-Builder 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 Design-Builder thereby represents that it has determined and verified all 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 Design-Builder 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 Design-Builder 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 Design-Builder.

#### 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.
- B. The Design-Builder shall give sufficient advance notice of placing orders to permit tests 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 Design-Builder shall make arrangements for all tests, inspections, and approvals 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 Design-Builder from its obligations to perform the Work in accordance with the requirements of the Contract Documents.
- 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 required 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 Design-Builder 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 Design-Builder shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.
- G. In case of disputes between the Design-Builder 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.

#### Section 7      Construction Review

- A. The Owner will periodically observe the construction of all Work covered by this Contract. The Owner is authorized to determine the amount or quantities of the several items of Work which are to be paid for under this Agreement; to order field changes 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 Design-Builder shall not suspend any portion of the Work nor resume suspended Work without the written authority of 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 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 Design-Builder 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 Design-Builder 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. If it is found that such Work is defective, the Design-Builder shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such Work is not found to be

defective, the Design-Builder 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 Design-Builder shall provide detailed construction staking.
- 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 Design-Builder at the Design-Builder's expense. Bench marks and survey stakes shall be preserved by the Design-Builder, and in case of their destruction or removal by the Design-Builder, its employees, or others, they shall be replaced at the Design-Builder's expense and its sureties shall be liable therefor.
- D. The Design-Builder shall be responsible for elevations used in computing its bid.
- E. The Design-Builder shall secure and pay for 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 those expressly provided by the specifications as being the responsibility of the Owner, and shall furnish at its expense any and all bonds and cash or other deposits required by law or required by any lawful body having the right to make demand therefor.
- F. The Design-Builder 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.
- G. The Design-Builder shall provide traffic control plans and provide all traffic control necessary for all Work that requires closures of public roadways, lanes, or sidewalks. The Design-Builder 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.
- H. The Design-Builder 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. The Design-Builder 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 Design-Builder 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 Design-Builder.

Section 9      Protection of Work, Property, and Persons

- A. The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the Work. The Owner will not be responsible for Design-Builder's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto. The Design-Builder shall take all 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 Design-Builder 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 Design-Builder 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 Design-Builder shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. The Design-Builder shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Design-Builder shall notify owners of adjacent utilities when prosecution of the Work may affect them. The Design-Builder shall remedy at its expense all damage, injury, or loss to any property or person caused, directly or indirectly, in whole or in part, by the Design-Builder, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, 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 Design-Builder. 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 Design-Builder 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 Design-Builder, without special instruction or authorization from the Owner, shall act to prevent threatened damage, injury, or loss.

- F. The Design-Builder shall at all times conduct Work in such a manner as to cause the least inconvenience and greatest protection to the general public. The Design-Builder shall furnish and maintain 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 incidental to the Agreement and no extra compensation for it will be allowed.
- G. Throughout the performance of the Work or in connection with this Agreement, the Design-Builder 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 compactly 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 Design-Builder 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 Design-Builder. 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 Design-Builder and shall be included in the prices bid for the related items of Work. The Owner shall not be responsible to the Design-Builder for the existence of utilities not shown on the plans or drawings and the Design-Builder remains obligated under this paragraph for all hidden utilities.
- I. The Design-Builder 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 the act, omission, neglect, or misconduct in the prosecution or non-prosecution of the Work on the part of the Design-Builder, such property shall be restored by the Design-Builder at the Design-Builder'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. The Design-Builder shall be responsible for making all arrangements at its own expense 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 Design-Builder 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



Design-Builder. 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     Design-Builder's Responsibility

- A. The Design-Builder shall be responsible for all the Work under this Agreement until completion and final acceptance by the Owner.
- B. The Design-Builder shall supervise and direct the Work. It shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- C. The Design-Builder 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 Design-Builder's employees.
- D. The Design-Builder 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.
- E. The Design-Builder 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 Design-Builder may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due to the Design-Builder 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. In case of rejection by the Owner, the Design-Builder shall replace the tool or tools at no extra cost to the Owner.
- G. Upon completion and before final acceptance of the Work, the Design-Builder 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.
- H. The Design-Builder shall keep one record set of the Contract Documents annotated to show all changes made during construction.

- I. The Design-Builder 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 Design-Builder.
- J. Upon completion of the Work, the Design-Builder shall, at its expense, remove from the vicinity of the Work, all plant, buildings, rubbish, unused materials, concrete forms, and other like material, belonging to the Design-Builder 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 Design-Builder 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. 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.
  - 1. A Change Order shall be based upon agreement among the Owner and Design-Builder; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Design-Builder.
  - 2. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.
  - 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 Design-Builder, the applicable unit prices shall be equitably adjusted; provided 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 Design-Builder, signed by the Design-Builder 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 Design-Builder 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 Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder'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 Design-Builder indicates the agreement of the Design-Builder 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 Design-Builder 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 determined by the Owner 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 five percent (5%) of such Work's actual cost for Design-Builder 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 Design-Builder's own forces, Design-Builder'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 Design-Builder 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 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 Design-Builder 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 conditions cost or overhead, such as but not limited to, the cost of Design-Builder and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses.
6. Pending final determination of actual cost to the Owner, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Design-Builder 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 Design-Builder 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 – DESIGN-BUILDER'S CONSTRUCTION SCHEDULE**

#### Section 1      Preconstruction Conference

A preconstruction conference shall be scheduled at the time the Design-Build Amendment is executed. The Design-Builder, at the preconstruction conference, shall prepare and submit, for review and concurrence by the Owner, a Design-Builder's construction schedule for the Work, in such form and detail as the Owner may require. The schedule shall not exceed time limits under the Contract Documents, shall be revised as required herein and at appropriate 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 Design-Builder'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), the Design-Builder shall submit to the Owner, for its review and approval, a narrative description of the means and methods which Design-Builder 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. To ensure such timely completion, Design-Builder 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, Design-Builder shall not be entitled to an adjustment in the Contract Sum or the Contract Time.

## Section 2      Schedule of Submittals

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

## Section 3      Conformance to Schedule

The Design-Builder shall conform to the most recent schedules.

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

- A. The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents, and the Work embraced shall be commenced on a date specified in the Notice to Proceed.
- B. The Design-Builder 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 Design-Builder 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 and economic conditions and other factors prevailing in the locality of the Work during the period such Work is to be performed.
- C. If the Design-Builder 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 Design-Builder shall pay to the Owner the amount of liquidated damages and not as penalty the sum of **Five Hundred Dollars (\$500.00)** for each calendar day that the Design-Builder shall be in default after the time stipulated in the Contract Documents.
- D. The Owner will charge the Design-Builder, and may deduct from the partial and final payment for the Work, all architectural, engineering, construction management, and other

Consultant expenses incurred by the Owner in connection with any Work accomplished after the specified completion date.

- E. The Design-Builder 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 Design-Builder 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 Design-Builder, including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather conditions that could not be reasonably anticipated; 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 Design-Builder 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 Design-Builder'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 Design-Builder 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 Design-Builder 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.
- B. The Design-Builder hereby agrees that estimates of the value of all Work provided to the Owner shall be for Work actually performed upon the Project and that all such Work, including labor and materials, has been paid. The determination of the amount of Work completed on each application for payment by the Design-Builder shall be subject to approval by the Owner. However, such determination by the Owner shall not be construed as acceptance of the Work.
1. Before the first application for payment, the Design-Builder 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, supported by such evidence of correctness as the Owner may direct. 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 or other format as approved by the Owner. 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 3% 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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. Should any Subcontractor of the Design-Builder or Supplier of said Design-Builder refuse to furnish any warranty and/or release or waiver, the Owner in its sole discretion, may refuse to certify final payment. The Design-Builder 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 Design-Builder, 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 Design-Builder 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.

6. 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.
7. The acceptance by the Design-Builder of final payment shall be and shall operate as a release to the Owner from all claims and all liability to the Design-Builder for all things done or furnished in connection with this Work and for every act and neglect of the Owner and others relating to or arising out of the Work other than claims in stated amounts as may be specifically expected by the Design-Builder with the consent of the Owner. Any payment, however, final or otherwise, will not release the Design-Builder or its sureties from any obligations under the Contract Documents or the performance bond and labor and material payment bond.

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

- A. During the life of the Contract and for a period of two (2) years after final acceptance, the Design-Builder shall promptly remove from the premises all Work rejected by the Owner for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Design-Builder shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of other 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 condemned Work.
- B. All removal and replacement Work shall be done at the Design-Builder's expense. If the Design-Builder does not take action to remove such rejected Work within ten (10) days after receipt of written notice, the Owner may remove such Work and store the materials all at the expense of the Design-Builder.

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

- A. Unless otherwise provided in this Agreement, the Design-Builder shall furnish and make available, at no cost, 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 Design-Builder shall be responsible for and at its sole cost all heating and protection of facilities and Work.



- B. The Design-Builder shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor. The facilities of existing, nearby buildings are not available for construction use.

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

### **Section 1      Indemnification**

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

The Design-Builder, 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 Design-Builder, or at the option of the City, Design-Builder agrees to pay the City or reimburse the City for defense costs incurred by the City in connection with any such liability, claims, or demands. The Design-Builder, 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 Design-Builder 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 Design-Builder pursuant to Section 1 above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Design-Builder 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 Design-Builder 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 Design-Builder 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 interests provision.
  3. Protective Liability and Property Damage Insurance covering the liability of the Owner, including any employee, officer, or agent of the Owner with respect to all operations under the Agreement by the Design-Builder 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 Design-Builder, as described in this Section 2, shall be increased to the same limits as described above for the Design-Builder'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 Design-Builder's owned, hired, and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Design-Builder has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Design-Builder providing services to the Owner under this Agreement.
- C. To the extent that liability results from the acts or omissions of the Design-Builder, 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 Design-Builder shall be solely responsible for any deductible losses under any policy required herein.

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

### Section 3      Certificates of Insurance

- A. The certificate of insurance provided by the Design-Builder shall be completed by the Design-Builder'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:

Matt Reed  
Project Manager  
City of Black Hawk  
P.O. Box 68  
Black Hawk, Colorado 80422

- B. Failure on the part of the Design-Builder 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 Design-Builder to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to the Design-Builder 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 Design-Builder 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 Design-Builder of all undertakings, covenants, terms, conditions, and agreements of the Contract Documents, and upon the prompt payment by the Design-Builder 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 Design-Builder 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 Design-Builder. 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 Design-Builder 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 Design-Builder. 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 Design-Builder 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 Design-Builder 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 of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, 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. Site conditions which an experienced and prudent contractor could have anticipated by visiting the Site, becoming familiar with the local conditions under which the Work is to be performed, and correlating its observations with the requirements of the Contract Documents shall not be considered as claims for concealed or unknown conditions, nor shall the locations of utilities which differ from locations provided by the utility companies. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or the required time for performance of any part of the Work, will recommend 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 Design-Builder 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 Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in the Contract Documents.

- F. Claims for additional cost. If the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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 Design-Builder 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 Design-Builder, 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 Design-Builder shall give Written Notice to the Owner within ten (10) days of any dispute/claim arising under this Contract upon which the Design-Builder seeks compensation or change from the Contract Documents; otherwise, the Design-Builder'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 Design-Builder 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 Design-Builder. Such notice shall state the extent and the effective date of such suspension, and on the effective date thereof the Design-Builder 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 Design-Builder 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 Design-Builder shall be entitled to be reimbursed for all additional expense incurred by reason of such suspension as agreed upon by the Design-Builder 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 Design-Builder. Such notice shall state the extent and effective date of such termination and on the effective date thereof, the Design-Builder 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 Design-Builder'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 Design-Builder: (1) its direct costs (excluding 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 Design-Builder may incur as a result of such termination, all as approved by the Owner plus ten percent (10%) of such costs (excluding costs under (2) above) 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 lesser of (a) the total aggregate Contract Sum specified in the Agreement; or (b) that proportion of the aggregate total Contract Sum specified in the date of termination that bears to the entire Work to

be performed hereunder. Any payment under this Article 13, Section D.(2) shall be made upon the expiration of the period within which liens may be filed under the laws of the state of Colorado, subject, however, to withholding by the Owner for the reasons and in the manner provided in those provisions pertaining to withholding of payments for liens.

E. Termination for Default:

1. The Owner shall have the right to terminate the employment of the Design-Builder after giving ten (10) days Written Notice of the termination to the Design-Builder in the event of any default by the Design-Builder. 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. It shall be considered a default by the Design-Builder whenever the Design-Builder:
  - 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 contract.
2. Upon termination of the Agreement by the Owner for default by the Design-Builder, no further payments shall be due to the Design-Builder 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 Design-Builder. If the cost of completing the Work shall exceed the unpaid balance, the Design-Builder 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 Design-Builder'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 Design-Builder; 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 Design-Builder 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 Design-Builder's Work depends upon the work of any other trade contractor, the Design-Builder 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 Design-Builder 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.
- C. The Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder Agreement.
- F. Nothing herein shall be construed in any way as giving the Design-Builder 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 Design-Builder 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 Agreement, the Design-Builder shall submit the names of all Subcontractors, including contact persons, phone numbers, and addresses to the Owner. The Design-Builder shall also promptly notify all parties of any changes in Subcontractors or Subcontractor contact information.
- C. The Design-Builder 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 Design-Builder is responsible for the acts and omissions of persons directly employed by it.
- D. The Design-Builder shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Design-Builder by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors and to give the

Design-Builder the same power as regards terminating any subcontract that the Owner may exercise over the Design-Builder 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 Design-Builder shall guarantee all materials and equipment furnished and Work performed for a period of two (2) years from the date of final acceptance of the Agreement by the Owner that the Work is free from all defects due to faulty materials or workmanship and that the Design-Builder 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 Design-Builder should fail to make such repairs, adjustments, or other Work that may be made necessary by such defects, the Owner may do so and charge the Design-Builder 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 Design-Builder before any such equipment, material, or construction is ordered and incorporated in Work by the Design-Builder.

#### **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 Design-Builder, and the Design-Builder 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 Design-Builder or any Subcontractor or Supplier and charged to the Owner. If sales tax is paid to any Subcontractor or Supplier for any reason, the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder each binds itself and its partners, successors, executors, administrators, and assigns to this Agreement. Neither the Owner nor the Design-Builder 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 Design-Builder.

H. Illegal Aliens

- 1. Certification. By entering into this Agreement, Design-Builder hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform Work under the Agreement and that Design-Builder 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. Design-Builder shall not:
  - a. Knowingly employ or contract with an illegal alien to perform Work under this Agreement; or
  - b. Enter into a contract with a Subcontractor that fails to certify to Design-Builder that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform Work under this Agreement.
- 3. Verification
  - a. Design-Builder 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. Design-Builder 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 Design-Builder obtains actual knowledge that a Subcontractor performing Work under this Agreement knowingly employs or contracts with an illegal alien who is performing Work under the Agreement, Design-Builder shall:
  - i. Notify the Subcontractor and the City within three (3) days that Design-Builder has actual knowledge that the Subcontractor is employing or contracting with an illegal alien 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 illegal alien who is performing Work under the Agreement; except that Design-Builder shall not terminate the contract with the Subcontractor if during such three (3) days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien who is performing Work under the Agreement.
- 4. Duty to comply with investigations. Design-Builder 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 Design-Builder is complying with the terms of this Agreement.
- 5. If Design-Builder does not currently employ any employees, Design-Builder shall sign the No Employee Affidavit attached hereto.
- 6. If Design-Builder wishes to verify the lawful presence of newly hired employees who perform Work under the Agreement via the Department Program, Design-Builder 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 Design-Builder 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. Design-Builder 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 Design-Builder 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

APPROVED AS TO FORM:

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

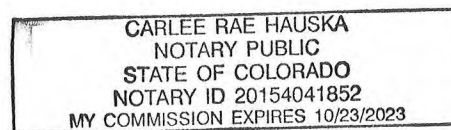
**ROCHE CONSTRUCTORS, INC.**

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

Name: Thomas J. Roche

Title: President & CEO

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Weld )



The foregoing instrument was acknowledged before me this 31st day of March, 2020 by Thomas J. Roche, as President & CEO of Roche Constructors, Inc.

My commission expires: 10/23/23

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**PROSPECTIVE DESIGN-BUILDER'S CERTIFICATE REGARDING EMPLOYING OR  
CONTRACTING WITH AN ILLEGAL ALIEN**

FROM: Roche Constructors, Inc.  
(Prospective *Design-Builder*)


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

Project Name Police Station 2<sup>nd</sup> Floor Renovation

Bid Number N/A Project No. 20003

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

Executed this 31st day of March, 2020.

Prospective Design-Builder 

By: Thomas J. Roche

Title: President & CEO

## NO EMPLOYEE AFFIDAVIT

(To be completed if Design-Builder has zero employees)

**1. Check and complete one:**

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

**OR**

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

**2. Check one.**

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

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

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

**OR**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



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

3/24/20  
73 of 122

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

**AND**

### **Documents that Serve to Prove Identification:**

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

**EXHIBIT A**  
**SCOPE OF WORK**

**POLICE STATION 2<sup>ND</sup> FLOOR RENOVATION**

City of Black Hawk, Colorado

March 24, 2020

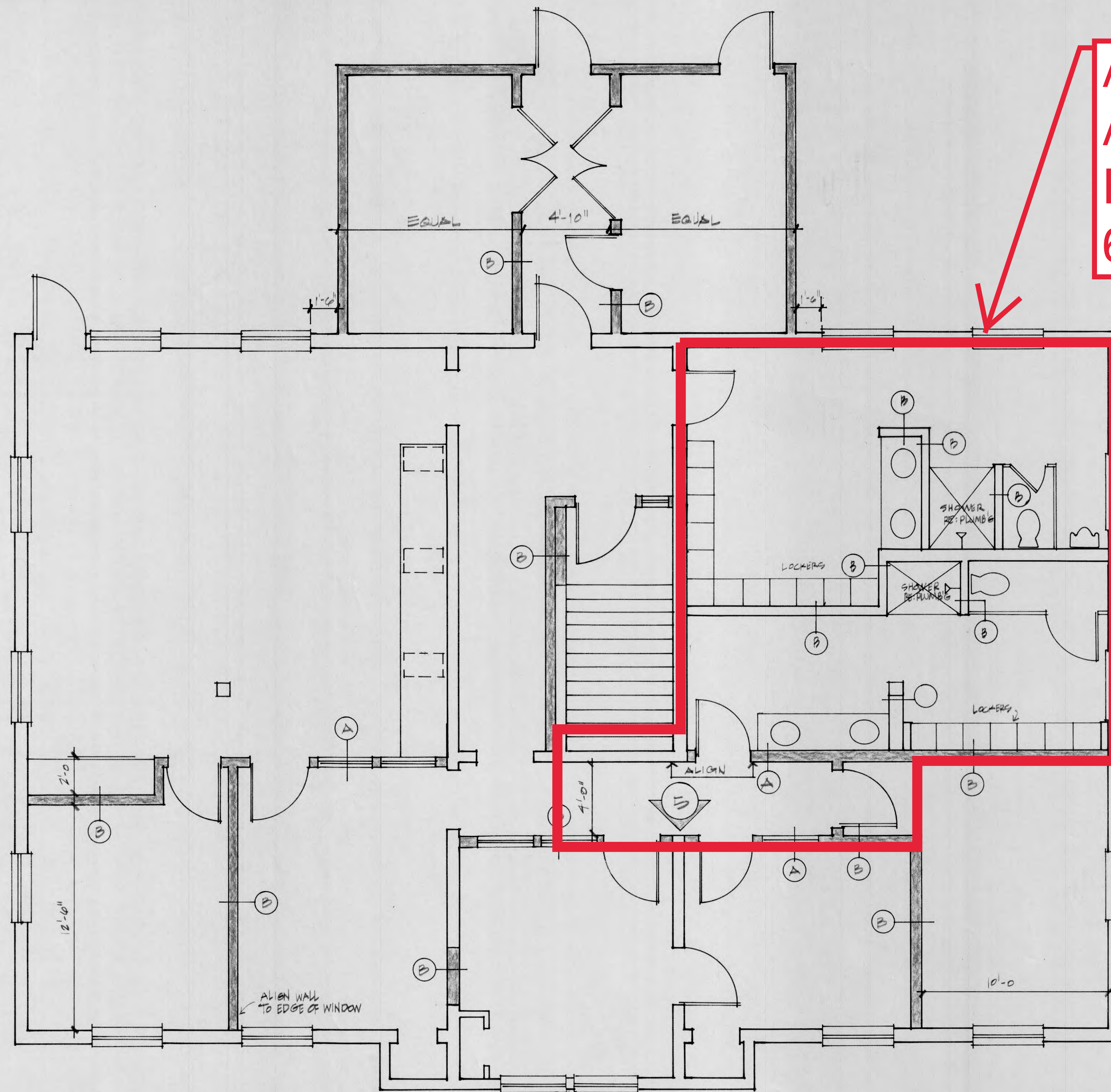
The City of Black Hawk will use the Design-Build with a Guaranteed Maximum Price method of contracting. The Scope of Work to be provided by the Design-Builder will include assistance to the City during the process of pre-construction, construction, and the warranty period. Specific tasks to be performed by the Design-Builder include those generally performed by Design-Build service providers in the construction community.

The City of Black Hawk intends to renovate a portion of the 2<sup>nd</sup> floor of the Police Station located at 221 Church Street. An existing 2<sup>nd</sup>-level floor plan of the Police Station, showing the approximate area to be renovated, is included herein as Exhibit A-1. A conceptual floor plan of the work area is included herein as Exhibit A-2. The scope includes:

- A. Facilitate a kick-off meeting with City staff to determine needs and desires of the City related to this renovation. Expect three (3) additional on-site meetings with City staff during the design phase of the project, at approximately the 30%, 60%, and 90% stages of construction plan development. It is expected that the floor plan provided in Exhibit A-2 will be modified to meet ADA and other code requirements. However, the Design-Builder should not expect to prepare additional conceptual options. If, for some reason, additional concepts are requested by the City, a Change Order will be issued to the Design-Builder to pay for these additional design costs.
- B. Review existing floor plan, mechanical plan, and electrical plans, as provided by the City. Existing structural plans are not available.
- C. Perform an as-built survey of the work area to obtain accurate measurements. Perform semi-destructive investigations as necessary to determine existing conditions. It appears that none of the walls to be removed are load-bearing, but that shall be confirmed by the Design-Builder and their design team prior to submitting for a Building Permit.
- D. Perform complete design of the renovation, including preparation of necessary structural calculations and other code-required data. Obtain a building permit from the City. Structural work shall include analysis of design loads, since the proposed change in room designations may result in greater live loads. Design-Builder shall examine the existing structure to ensure any increased design loads can be safely accommodated. The Building Permit and subsequent inspections will be provided at no cost to the Design-Builder.
- E. Perform cost estimating services throughout the design process with the goal of establishing a Guaranteed Maximum Price (GMP). The GMP must be approved by City Council prior to the start of construction.
- F. The City is in the process of performing hazardous materials testing. Any hazardous material abatement, if necessary, will occur prior to construction by the Design-Builder.
- G. Perform demolition of building components within the area to be renovated.

- H. Construct all elements of the 650+/- square-foot renovation, including plumbing, mechanical, electrical, built-in cabinets, evidence lockers, and electronic door access, as established during the design phase. Coordinate with Police Station staff throughout the project as necessary for phasing, access, etc. City Staff will remove furnishings, supplies, etc., from the work area prior to construction by the Design-Builder. Design-Builder shall assume that the entire work area can be constructed as a single phase.
- I. Provide one-year warranty for all construction, with the warranty period to begin on the date of Substantial Completion.



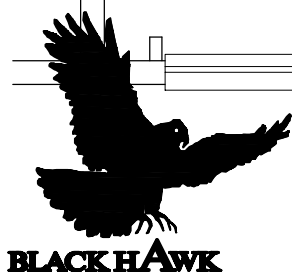
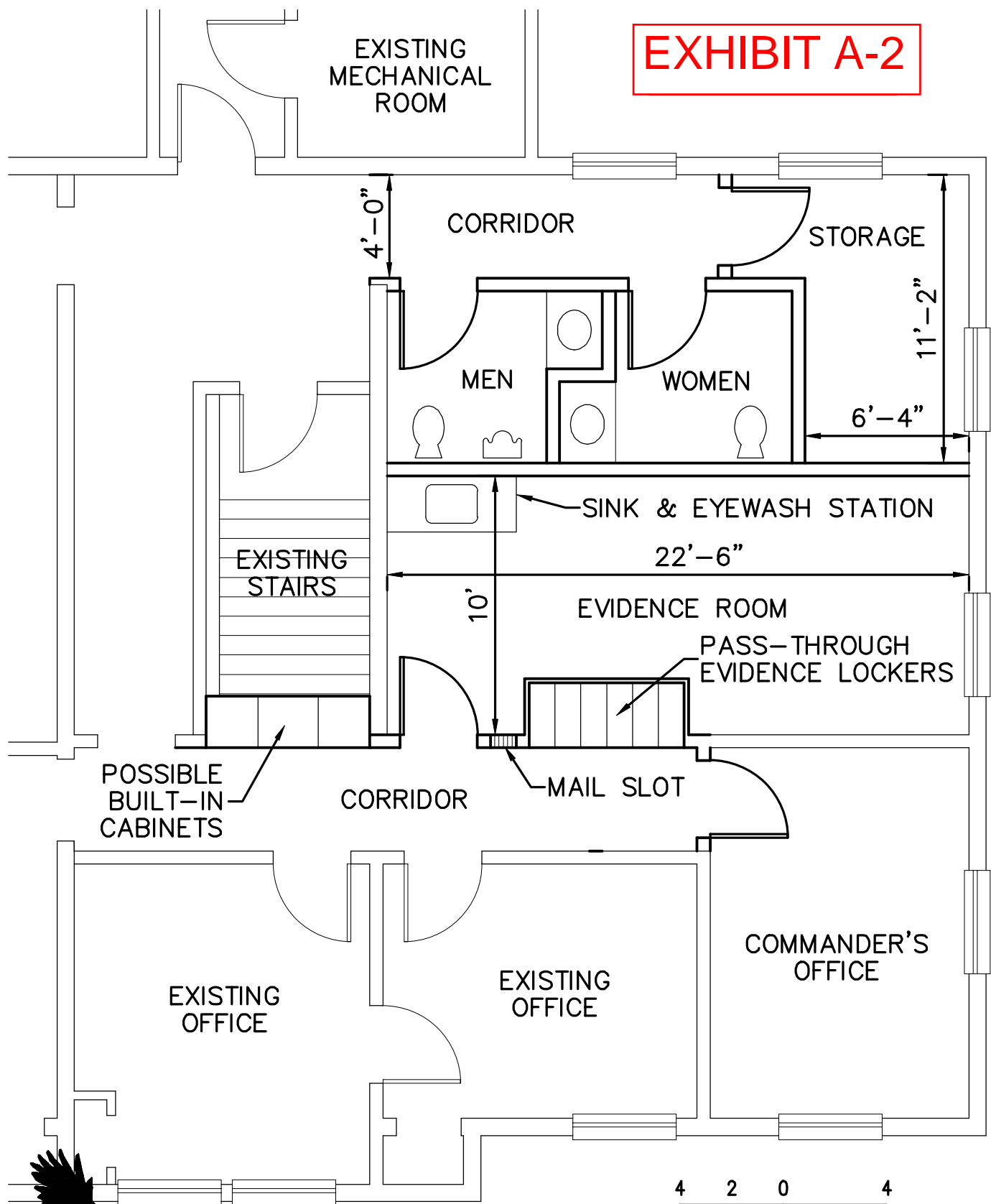


APPROXIMATE  
AREA TO BE  
RENOVATED  
650 S.F.

# EXHIBIT A-1 EXISTING 2ND-LEVEL FLOOR PLAN



**EXHIBIT A-2**



**POLICE STATION 2ND FLOOR RENOVATION**

NOVEMBER 1, 2019

**EXHIBIT B**  
**DESIGN-BUILDER FEE PROPOSAL**  
**POLICE STATION 2ND FLOOR RENOVATION**  
RFP Issued January 21, 2020

Item #	Description	Quantity	Unit	Unit Cost	Total Cost
Preconstruction Fee					
1.A.1	Preconstruction Services including, but not necessarily limited to the following:	1	LS	\$2,500	\$2,500
	• Construction Cost Estimating and Value Analysis				w/Above
	• Scheduling, Phasing, and Logistics Planning				w/Above
	• Constructability Reviews				w/Above
	• Subcontractor Procurement and Scope Validation				w/Above
	• Meetings, Conference Calls, and Travel				w/Above
1.A	Preconstruction Fee - Subtotal				\$2,500
Construction Fee (Assume \$250,000 Total Contract Sum)					
1.B.1	Home Office Overhead	1	LS	\$22,654	\$22,654
1.B.2	Home Office Profit	1	LS		w/Above
1.B	Construction Fee - Subtotal				\$22,654
Design Team Fees					
1.C.1	Design Team's Preconstruction Fee	1	LS	\$9,800	\$9,800
1.C.2	Design Team's Construction Fee	1	LS	\$3,000	\$3,000
1.C.3	Design Team's Reimbursables	1	LS	\$350	\$350
1.C	Design Team Fees - Subtotal				\$13,150
1	DESIGN-BUILDER'S TOTAL PROPOSED FEES				\$38,304
	DESIGN-BUILDER'S TOTAL PROPOSED PRECONSTRUCTION FEES				\$12,650
Design-Builder's Proposed Fee on Change Orders				10.0%	



# CERTIFICATE OF LIABILITY INSURANCE

1/1/2021

DATE (MM/DD/YYYY)

3/31/2020

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> Lockton Companies 8110 E. Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	<b>CONTACT NAME:</b>		
	<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>	
<b>INSURED:</b> 1358601 Roche Constructors, Inc. 361 71st Avenue Greeley CO 80634	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> National Fire Insurance Co of Hartford		20478
	<b>INSURER B:</b> The Continental Insurance Company		35289
	<b>INSURER C:</b> Transportation Insurance Company		20494
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

**COVERAGES****CERTIFICATE NUMBER:** 16678886**REVISION NUMBER:** XXXXXXXX

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
B	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	N	6016184346	1/1/2020	1/1/2021	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 \$
A	<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	Y	N	6016184344	1/1/2020	1/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
C	<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	6016344595 (AQS)	1/1/2020	1/1/2021	<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

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

RE: Police Station 2nd Floor Renovation Project. The City of Black Hawk, its officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the City of Black Hawk are included as Additional Insureds if required by written contract.

**CERTIFICATE HOLDER**

16678886  
City of Black Hawk  
PO Box 68  
Black Hawk, CO 80422

**CANCELLATION** See Attachments

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

AUTHORIZED REPRESENTATIVE

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Policy #6016184346

25. WAIVER OF SUBROGATION - BLANKET

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

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

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

However, this waiver applies only when the Named Insured has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this Coverage Part; and
2. was executed prior to the bodily injury, property damage or personal and advertising injury giving rise to the claim.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
CONTRACTORS EXTENDED COVERAGE ENDORSEMENT  
- BUSINESS AUTO PLUS -**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**I. LIABILITY COVERAGE**

**A. Who Is An Insured**

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

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that
- b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an "insured" under any other liability "policy" providing "auto" coverage.

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

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
  - (1) "Bodily injury" or "property damage" caused by an "accident" that occurred before you acquired or formed the organization; or
  - (2) Any such organization that is an "insured" under any other liability "policy" providing "auto" coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an "insured" but only with respect to their legal liability for acts or omissions of a person, who qualifies as an "insured" under

4. An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

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

1. Which are no longer in force; or
2. Whose limits have been exhausted.

**B. Bail Bonds and Loss of Earnings**

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

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

**C. Fellow Employee**

**Section II, Paragraph B.5** does not apply.

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

**PHYSICAL DAMAGE COVERAGE**

**A. Glass Breakage - Hitting A Bird Or Animal -Falling Objects Or Missiles**

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

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

**B. Transportation Expenses**

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

Section II - Who Is An Insured and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.

Page 1 of 3

#### C. Loss of Use Expenses

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

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

#### D. Hired "Autos"

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

##### 5. Hired "Autos"

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

- a. Any covered "auto" you lease, hire, rent or borrow without a driver; and
- b. Any covered "auto" hired or rented by your "employee" without a driver, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one "accident" or "loss" is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered auto. No deductible applies to "loss" caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned "autos."
- e. Such physical damage coverage for hired "autos" will:
  - (1) Include loss of use, provided it is the consequence of an "accident" for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
  - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per "accident."

#### E. Airbag Coverage

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

#### F. Electronic Equipment

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

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

- c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any permanently installed electronic equipment including its antennas and other accessories.
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

#### G. Diminution In Value

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

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

- a. Any covered "auto" of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered "auto" of the private passenger type hired or rented by your "employee" without a driver for a period of 30 days or less, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a "diminution in value" loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for "loss" to a covered "auto" in any one accident is the lesser of:
  - (1) \$5,000; or
  - (2) 20% of the "auto's" actual cash value (ACV).

**III. Drive Other Car Coverage - Executive Officers** The following is added to **Sections II and III:**

- 1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers," except:
  - a. An "auto" owned by that "executive officer" or a member of that person's household; or

- b. An "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos."

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

- (1) Equal to the greatest of those coverages afforded any covered "auto"; and
  - (2) Excess over any other collectible insurance.
2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

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

#### IV. BUSINESS AUTO CONDITIONS

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

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

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

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

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

##### B. Transfer Of Rights Of Recovery Against Others To Us

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

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

This injury or damage must arise out of your activities under a contract with that person or organization. You must agree to that requirement prior to an "accident" or "loss."

##### C. Concealment, Misrepresentation or Fraud

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

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

##### D. Other Insurance

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

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

##### E. Policy Period, Coverage Territory

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

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

#### V. DEFINITIONS

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

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHER ENDORSEMENT**

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

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

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

Endorsement Effective	Policy No.	Endorsement No.
Insured		Premium \$
Roche Constructors Inc	6016344595	
Insurance Company	Countersigned by:	

Copyright 1983 National Council on Compensation Insurance.



## Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
  - A. in the performance of your ongoing operations subject to such **written contract**; or
  - B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
    1. the **written contract** requires you to provide the additional insured such coverage; and
    2. this **coverage part** provides such coverage.
- II. But if the **written contract** requires:
  - A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
  - B. additional insured coverage with "arising out of" language; or
  - C. additional insured coverage to the greatest extent permissible by law;then paragraph I. above is deleted in its entirety and replaced by the following:

**WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.
- III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
  - A. coverage broader than required by the **written contract**; or
  - B. a higher limit of insurance than required by the **written contract**.
- IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
  - A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
    1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
    2. supervisory, inspection, architectural or engineering activities; or
  - B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

## Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

### Primary and Noncontributory Insurance

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

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

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

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

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

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

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

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

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

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

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

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

All other terms and conditions of the Policy remain unchanged.

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

CNA75079XX (10-16)

Page 2 of 2

The Continental Insurance Co.

Insured Name: Roche Constructors, Inc.

Policy No: 6016184346

Endorsement No:

Effective Date: 1/1/2020

**RESOLUTION 34-2020**  
**A RESOLUTION**  
**AWARDING THE BID AND**  
**APPROVING THE**  
**CONTRACT BETWEEN**  
**THE CITY OF BLACK**  
**HAWK AND HIGH**  
**COUNTRY**  
**CONSERVATION, LLC IN**  
**AN AMOUNT NOT TO**  
**EXCEED \$260,436.80 TO**  
**CONSTRUCT THE**  
**MARYLAND MOUNTAIN**  
**TRAIL SYSTEM PROJECT**



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

**Resolution No. 34-2020**

**TITLE:       A RESOLUTION AWARDING THE BID AND APPROVING THE  
CONTRACT BETWEEN THE CITY OF BLACK HAWK AND HIGH  
COUNTRY CONSERVATION, LLC IN AN AMOUNT NOT TO EXCEED  
\$260,436.80 TO CONSTRUCT THE MARYLAND MOUNTAIN TRAIL  
SYSTEM PROJECT**

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

**Section 1.**     The City Council hereby awards the bid and approves the contract  
between the City of Black Hawk and High Country Conservation, LLC in an amount not to  
exceed \$260,436.80 to construct the Maryland Mountain Trail System project, and authorizes the  
Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 8<sup>th</sup> day of April, 2020.

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

ATTEST:

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



## CITY OF BLACK HAWK

### REQUEST FOR COUNCIL ACTION

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**SUBJECT:**

Approve Resolution 34-2020, a Resolution awarding the contract for construction of the Maryland Mountain Trail System project to High Country Conservation, LLC in the amount of \$260,436.80 plus a 20% project contingency of \$50,000 for a total construction budget of \$310,436.80.

**RECOMMENDATION:**

If City Council chooses to approve Resolution 34-2020, a Resolution awarding the contract between the City of Black Hawk and High Country Conservation, LLC, the recommended motion is as follows: “Approve Resolution 34-2020, a Resolution awarding the bid and approving the contract between the City of Black Hawk and High Country Conservation, LLC in the amount of \$260,436.80 to construct the Maryland Mountain Trail System Project.”

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Construction of the Hidden Treasure trailhead is nearing completion, and it would be ideal for the City to provide recreationalists with an extensive trail system soon after the trailhead opens to the public. A consultant designed a network of hiking and mountain biking trails on Maryland Mountain. Excluding the tramway main line trail, which has already been constructed, a total of 11.3 miles of trails are planned.

A Request for Proposals was publicly advertised on October 8, 2019. Of the four prospective trail-builders submitting proposals, two were qualified to complete the Maryland Mountain Trail System. Of the two qualified trail-builders, High Country Conservation, LLC submitted a price that was less than half of what the other qualified trail-builder proposed.

If their contract is approved, High Country Conservation, LLC would mobilize in early May and begin construction with two trail-building crews. If there aren't any significant delays caused by weather, equipment failures, the pandemic, etc., they expect to be finished constructing the entire 11.3-mile trail system by the end of 2020.

Actual trail routes will differ somewhat from the design drawings due to localized topography, obstacles, and natural features. High Country Conservation, LLC has provided cost-per-lineal-foot pricing for each type of trail, and the 20% owner's contingency would be used to pay for overages that will occur due to actual trail lengths exceeding the lengths shown on the design plan.

**FUNDING SOURCE:**

Program Expenses / Maryland Mountain Improvements:  
203-0000-502-58-17

**AGENDA DATE:**

April 8, 2020

**ORIGINATED BY:**

Tom Isbester / Matt Reed

**STAFF PERSON RESPONSIBLE:**

Tom Isbester / Matt Reed

**PROJECT COMPLETION DATE:** December 18, 2020

**DOCUMENTS ATTACHED:** Maryland Mountain Trail System Contract

**CITY ATTORNEY REVIEW:** ☐ Yes ☒ No ☐ N/A INITIALS \_\_\_\_\_

**SUBMITTED BY:**



\_\_\_\_\_  
Thomas Isbester, Public Works Director

**REVIEWED BY:**



\_\_\_\_\_  
Stephen N. Cole, City Manager

# **CITY OF BLACK HAWK, COLORADO**



**Contract Documents for**

**MARYLAND MOUNTAIN TRAIL SYSTEM**

Black Hawk, CO 80422

**March 2020**

## **TRADE CONTRACTOR AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **CITY OF BLACK HAWK**, State of Colorado, a Colorado municipal corporation (hereinafter referred to as the “City”) and High Country Conservation, LLC (hereinafter referred to as “Contractor”).

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

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

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

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

Section 4.     Times and Methods of Payment.

A.     Payment shall be made for services rendered upon completion and final acceptance of the work, and shall be due and owing within thirty (30) days of Contractor’s submittal of his invoice. Contractor shall submit invoices, at most, twice per month. If the City objects to any invoices submitted by Contractor, the City will so advise Contractor in writing, giving the reason within fourteen (14) days of receipt of such invoice.

B.     If the City fails to make payments due Contractor within thirty (30) days after receipt and acceptance of Contractor’s bill, Contractor may immediately suspend services under this Agreement until Contractor’s outstanding bills have been paid in full.

Section 5.     Project Authority. The City’s project manager or their successor or assign shall have final authority regarding trail routes and acceptance of the work.

Section 6.     Not Used.

Section 7.     Final Acceptance. Final acceptance of the Project shall follow inspection and approval of Contractor’s performance by the City, along with inspection by appropriate governmental officials pursuant to local, state and federal requirements, if necessary. The City shall have the right and authority to

determine the acceptability of Contractor's performance for conformity with this Agreement, which determination shall be conclusive and binding upon Contractor. Final acceptance by the City is subject to the provisions of this Contract, and in no manner affects or releases any warranties or guarantees with Contractor or manufacturers of Project equipment.

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

Section 8. Commencement and Completion of Performance. The services called for shall commence by April 15, 2020 (weather permitting) and end on December 18, 2020. Contractor shall commence any work requested by the City within ten (10) days of notification by the City. In the event Contractor fails to commence work within this time period, the City may take over the work and prosecute the same to completion. The date of beginning and the time for completion of the work are essential conditions of this Agreement. Contractor shall proceed with the work at such rate of progress to ensure full completion within the contract time. It is expressly understood and agreed by and between the City and Contractor that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed. If Contractor shall fail to complete the work within the contract time, or extension of time granted by the City, then Contractor shall pay to the City the amount of liquidated damages and not as penalty the sum of **Two Hundred Fifty and 00/100 Dollars (\$250.00)** for each calendar day that Contractor shall be in default after December 18, 2020. The City will charge Contractor, and may deduct from the partial and final payment for the work, all architectural, engineering, and construction management expenses incurred by the City in connection with any work accomplished after the specified completion date.

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

- A. to any preference, priority or allocation order duly issued by the City; and
- B. to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather.

Section 9. Termination.

- A. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, that no such termination may be effected unless the other party is given:
  - i. not less than ten (10) calendar days written notice of intent to terminate, and
  - ii. an opportunity for consultation with the terminating party prior to termination.
- B. This Agreement may be terminated in whole or in part in writing by the City for its convenience.
- C. Upon receipt of a termination action pursuant to paragraphs a. and b. above, Contractor shall promptly discontinue all services affected (unless the notice directs otherwise) and the City may take over the work and prosecute the same to completion by agreement with another party or otherwise.

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

The City is exempt from Colorado state sales and use taxes on materials to be permanently incorporated in the work. Accordingly, taxes for which the City is exempt shall not be included in the Agreement Price. The City shall, upon request, furnish Contractor with a copy of its Certificate of Tax Exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an exemption certificate and purchase the materials tax free. Pursuant to C.R.S. §39-26-708, Contractor and subcontractors

shall be liable to the State of Colorado for exempt taxes paid due to failure to apply for exemption certificates or for failure to use said certificates. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project and, particularly, in complying with those laws concerning the environment, workers' compensation, safety and health, state labor and materials, and equal employment opportunity.

Section 11. Indemnification.

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

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

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

Section 12. Insurance.

- A. The Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 11 above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 11 above, by reason of its failure to obtain and maintain during the life of this Contract insurance in sufficient amounts, durations, or types.



- B. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 11 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
1. Worker's Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of five hundred thousand dollars (\$500,000) each incident, five hundred thousand dollars (\$500,000) disease—policy limit, and five hundred thousand dollars (\$500,000) disease—each employee.
  2. General Public Liability Insurance to be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than one million dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one (1) accident and not less than two million dollars (\$2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
  3. Protective Liability and Property Damage Insurance covering the liability of the Owner, including any employee, officer, or agent of the Owner with respect to all operations under the Contract by the Contractor or his sub-contractors shall be obtained and maintained during the life of this Contract.

4. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Contractor providing services to the Owner under this contract.
- C. To the extent that liability results from the acts or omissions of the Contractor, all Insurance Policies and Certificates of Insurance issued for this project shall name as additional insured(s), the Owner, whether private or governmental, the Owner's officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner. The Contractor shall be solely responsible for any deductible losses under any policy required herein.
  - D. The insurance provided by the Contractor shall be primary to insurance carried by the Owner and all other additional insureds, and the principal defense of any claims resulting from the Contractor's obligations under the Contract shall rest with the Contractor's Insurer.

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

Section 14.    Subcontractors.    All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement. Contractor shall require any subcontractors to provide the City with a certificate of insurance which provides insurance coverage as provided by Section 12 of this Agreement. The certificate of insurance shall name the City as an additional insured and provide that the policy shall not be terminated without ten (10) days written notice to the City. In all events, Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments, and completion of performance of or to such subcontractors. Upon receipt of progress and final payments from the City, Contractor shall disburse the same immediately to subcontractors without any requirement of the City to supervise the same. The City may, but shall not be obligated to, require Contractor to furnish lien waivers for the work performed or materials furnished by subcontractors or material men prior to payment of progress payments or final payment. No contractual relationship shall exist between the City and any subcontractor because of the subletting of any part of the Project work.

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

- A.    Unit prices previously approved, which are attached hereto and incorporated by this reference.
- B.    An agreed lump sum.
- C.    The actual cost of labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work. In addition there will be added an amount to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work to cover the cost of general overhead and profit.

Section 16.    Work Rules.

- A.    Contractor shall perform all work hereunder in keeping with the rules and regulations that the City may promulgate at any time for the safe, orderly, and efficient conduct of all operations.
- B.    The City shall have the right to require of Contractor the immediate removal from the Project of any employee of Contractor or of his subcontractors who, in the discretion of the City, is not qualified to perform the work assigned to him, is guilty of improper conduct, or is not working in harmony with the other trades.
- C.    Nothing contained in this Agreement shall constitute Contractor as being an employee of the City, nor shall any employment relationship between the City and Contractor be created by the terms hereof.
- D.    Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the job site and for protection of the Project and shall hold the City and its authorized representatives harmless from any damage or loss incurred thereto.
- E.    Contractor shall promptly pay in full for any and all damage caused to the Project site by Contractor or by any subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services, or instruments for whose actions Contractor is responsible hereunder.
- F.    No material, equipment, tools, supplies, or instruments other than those

belonging to or leased by Contractor will be removed from the Project site by Contractor without the prior written approval of the City.

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

#### Section 17. Illegal Aliens

- A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.
- B. Prohibited Acts. Contractor shall not:
  - 1. Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
  - 2. Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. Verification.
  - 1. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.
  - 2. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
  - 3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:
    - a. Notify the subcontractor and the City within three (3) days

that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

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

- D. **Duty to Comply with Investigations.** Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.
- E. If Contractor does not currently employ any employees, Contractor shall sign the No Employee Affidavit attached hereto.
- F. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the Department Program Affidavit attached hereto.

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

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

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

- Section 21.     Waiver. No waiver by either party of any right, term, or condition of this Agreement shall be deemed or construed as a waiver of any other right, term, or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.
- Section 22.     Remedies. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition, or proceeding at law or in equity. In addition to any other remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.
- Section 23.     Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.
- Section 24.     Entirety. This Agreement constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings, or agreements pertaining to such matters are merged into, and are superseded by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

## CITY OF BLACK HAWK, COLORADO

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

**ATTEST:**

Melissa A. Greiner, City Clerk

**APPROVED AS TO FORM:**

Corey Y. Hoffmann, City Attorney

**HIGH COUNTRY CONSERVATION, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires: \_\_\_\_\_

Witness my hand and official seal.

Notary Public

**PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR  
CONTRACTING WITH AN ILLEGAL ALIEN**

FROM: \_\_\_\_\_  
(Prospective *Contractor*)

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

Project Name \_\_\_\_\_ Maryland Mountain Trail System \_\_\_\_\_

Bid Number \_\_\_\_\_ N/A \_\_\_\_\_ Project No. \_\_\_\_\_ 16007 \_\_\_\_\_

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Prospective Contractor \_\_\_\_\_

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

Title: \_\_\_\_\_



## NO EMPLOYEE AFFIDAVIT

(To be completed if Contractor has zero employees)

**1. Check and complete one:**

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

**OR**

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

**2. Check one.**

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

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

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

**OR**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DEPARTMENT PROGRAM AFFIDAVIT**

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

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

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

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

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

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(S E A L)

\_\_\_\_\_  
Notary Public

**ACCEPTABLE DOCUMENTS FOR  
LAWFUL PRESENCE VERIFICATION**

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

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

**OR**

**Documents that Only Serve to Prove Citizenship/Lawful Presence:**

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

**AND**

**Documents that Serve to Prove Identification:**

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

**EXHIBIT A**  
**SCOPE OF WORK**  
**TRAIL BUILDING PROJECT**  
**MARYLAND MOUNTAIN TRAIL SYSTEM**

City of Black Hawk, Colorado

March 12, 2020

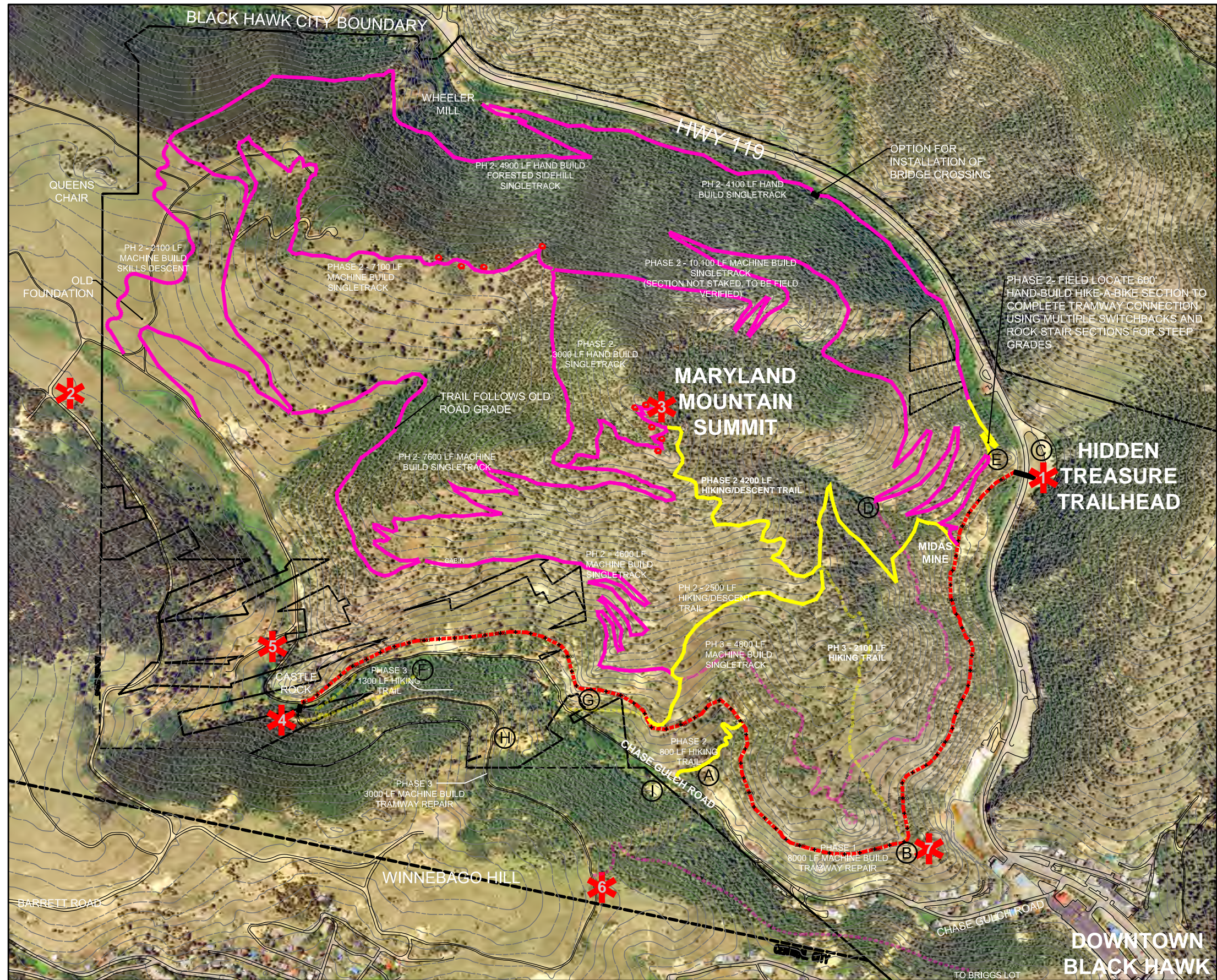
The Scope of Work to be provided by the Contractor shall include assistance to the City during the process of pre-construction, construction, and the one-year warranty period. Specific tasks to be performed by the Contractor include those generally performed by professional trail builders in the trail-building community.

The Contractor shall construct a multi-use trail system on Maryland Mountain, which is generally located north of Chase Gulch and west of State Highway 119 in the City of Black Hawk, Colorado. Total proposed trail length included within this Contract is expected to be approximately 11.3 miles. The Maryland Mountain Park Master Plan prepared by Mary Hart Design and dated August 16, 2019, a set of Tramway Mainline construction details prepared by Mary Hart Design and dated October 1, 2016, and Maryland Mountain Park Trail Construction Specifications dated September 26, 2019 are all included herein and referenced below. Project details are noted below:

- A. The Phase 1 Tramway Mainline, as shown in the Master Plan, has been constructed by others.
- B. The Hidden Treasure Trailhead, including the proposed bridge over Highway 119, is being constructed by others.
- C. The Maryland Mountain trail system will not exactly match the trail routes proposed in the Master Plan, but trail routes and destinations shall generally follow the concept presented in the Master Plan. Detailed route design and trail staking/flagging shall be provided by the Contractor. The constructed trail shall minimize construction impacts and future maintenance while providing a durable, high-quality trail experience. Flagged routes shall be approved by the City prior to construction.
- D. Contractor shall construct approximately 6.9 miles of machine-built singletrack mountain-biking trails. Ultimate trail width shall be 24" to 30" per the construction details. The maximum width of the trail corridor shall be less than 48".
- E. Contractor shall construct approximately 2.3 miles of hand-built singletrack mountain-biking trails. Ultimate trail width shall be 18" to 24" per the construction details. Maximum width of disturbance shall be less than 36".
- F. Contractor shall construct approximately 2.1 miles of hand-built hiking trails. Ultimate trail width shall be 18" to 24" per the construction details. Maximum width of disturbance shall be less than 36".
- G. Contractor shall construct approximately 600 feet of hand-built hike-a-bike trail through difficult terrain using switchbacks, rock stairs, and rock walls as necessary.
- H. Trail work shall include vegetation removal, grading, slope stabilization, and compaction.

- I. Contractor shall facilitate biweekly on-site progress meetings with the City. Contractor shall coordinate a final walk-through with the City following construction to identify any items that need correction.
- J. All trail construction shall conform to the guidelines and specifications presented in Trail Solutions, IMBA's Guide to Building Sweet Singletrack, as published by the International Mountain Bicycling Association.
- K. Contractor shall be familiar with backcountry operations and safety protocols as well as "leave no trace" practices.
- L. Where necessary, rock can be harvested on-site to be used in retaining walls.
- M. The Phase 3 "Mainline Repair", as depicted on the Master Plan, will be constructed by others under a separate contract.
- N. The Phase 4 "Future Connection to Briggs Lot", as depicted on the Master Plan, will be constructed under a separate contract.
- O. Trail identification and historic interpretive signage will be designed and installed by others.
- P. Contractor shall develop an operations and maintenance plan for the Maryland Mountain Trail System.





# PLAN LEGEND

	EXISTING HISTORIC TRAMWAY MAINLINE
	PHASE 2 AND PHASE 3 (DASHED) SINGLETRACK MTN BIKE TRAIL ROUTE
	PHASE 2 AND PHASE 3 (DASHED) HIKING TRAIL ROUTE
	TRAIL DESTINATION
	HISTORIC DESTINATION WITH INTERPRETATION
	TECHNICAL TRAIL
	PEDESTRIAN/BIKE BRIDGE

## TRAIL PHASES

PH 1 - HIDDEN TREASURE TRAILHEAD  
PH 1 - MAIN LINE = 8000'/1.5 MILES

PH 2 - MACHINE BUILD SINGLETRACK = 29,400'  
PH 2 - HAND BUILD SINGLETRACK = 12,000'  
PH 2 - HIKING TRAILS = 7500'  
PH 2 - HIKE A BIKE = 600'  
PH 2 - MACHINE BUILD SKILLS = 2100'  
SUBTOTAL = 51,600' / 9.8 MILES

PH 3 - MAINLINE REPAIR = 3000'  
PH 3 - MACHINE BUILD SINGLETRACK = 4800'  
PH 3 - HIKING TRAIL = 3400'  
SUBTOTAL = 11,200' / 2.1 MILES

PH 4 - FUTURE CONNECTION TO BRIGGS LOT AT GREGORY STREET TBD

TOTAL TRAILS = +/-13.4 MILES



## TRAIL SYSTEM DESTINATIONS

1. HIDDEN TREASURE TRAILHEAD / PARKING / RESTROOMS
  2. FUTURE POTENTIAL CONNECTION
  3. MARYLAND MOUNTAIN SUMMIT
  4. WATERFALL / CASTLE ROCK
  5. CONTINENTAL MILLS OUTPOST
  6. POTENTIAL CITY CONNECTION
  7. TRAMWAY OVERLOOK / REST-STOP
  8. HISTORICAL INTERPRETIVE OPPORTUNITIES
- A. BONANZA MILL  
B. SITE OF WRECKS OF ENGINES 2&3  
C. HIDDEN TREASURE MINE  
D. OLD CABIN  
E. DEEP MINESHAFT  
F. BELDEN MILL VIEWING AREA  
G. ROBERT EMMET MINE  
H. QUEEN OF THE WEST MINE  
I. SARATOGA MILL SKELETAL RECONSTRUCTION



**EXHIBIT A-1**

# Maryland Mountain Park Master Plan

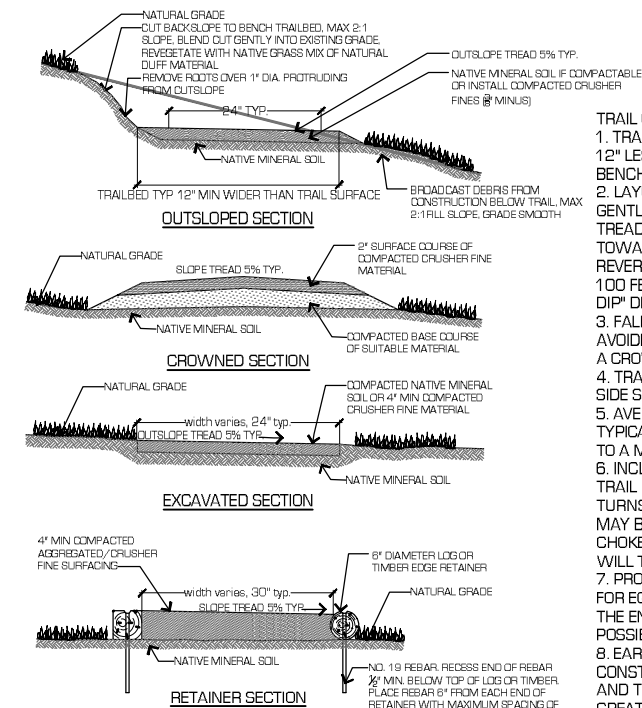
City of Black Hawk, CO

SCALE: 1" = 200'

August 16, 2019



# EXHIBIT A-2 DETAILS:

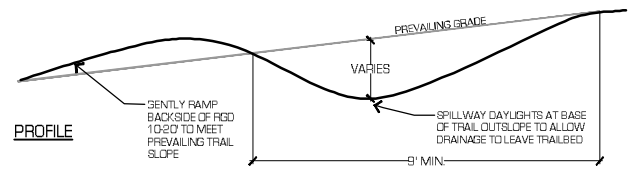
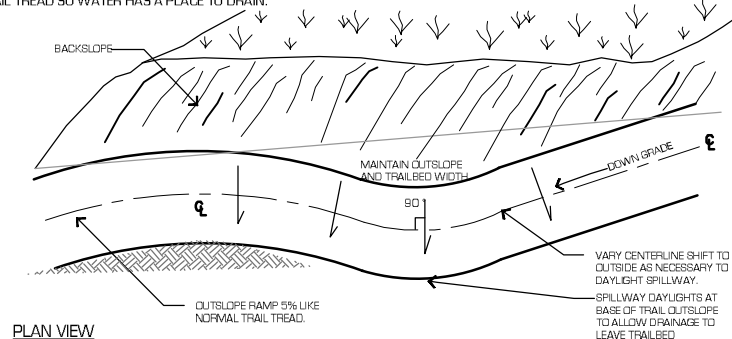


MACHINE-BUILD SINGLETRACK TRAIL SECTIONS

SCALE: 1/4" = 1'-0"

## GRADE DIP NOTES:

- GRADE DIPS ARE SUBTLE, NAVIGABLE SHAVED DOWN SECTIONS OF TRAIL FOLLOWED BY A GENTLE DIRT RAMP TO HELP COLLECT WATER AND DRAW IT OFF THE TRAIL TREAD.
- LOOK FOR A NATURAL ROLL OR CHANGE IN TRAIL GRADE THAT COULD BE ACCENTUATED WITH A RGD.
- ALTERNATIVE TRAIL DRAINAGE SOLUTION IS A "KNUCK" A KNUCK IS A 5'-10' SEMICIRCULAR SHAVED DOWN SECTION OF TRAIL THAT IS CANTED AT +/- 15% TO THE OUTSIDE TO SHED WATER FROM THE TRAILBED. THERE MUST BE LOWER GROUND ADJACENT TO TRAIL TREAD SO WATER HAS A PLACE TO DRAIN.

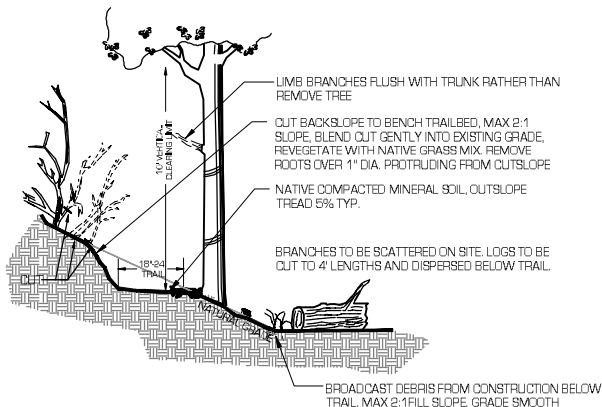


ROLLING GRADE DIP

SCALE: 1/4" = 1'-0"

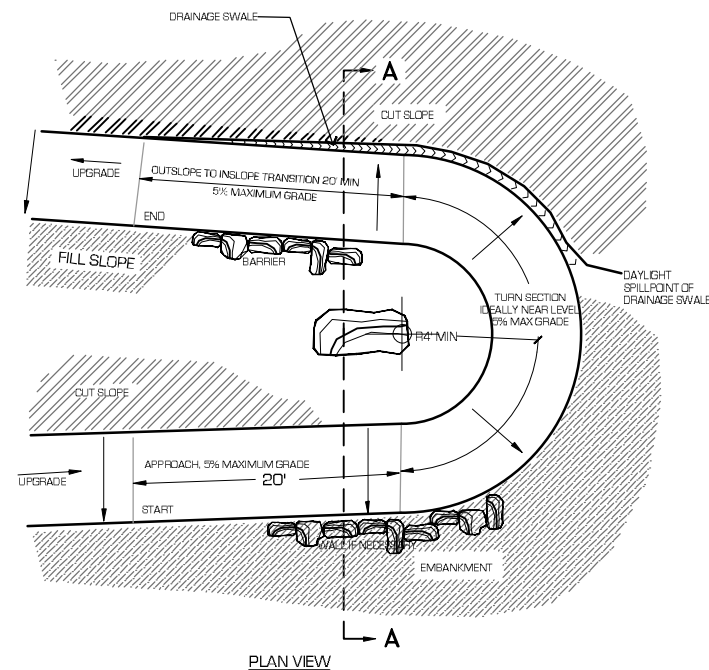
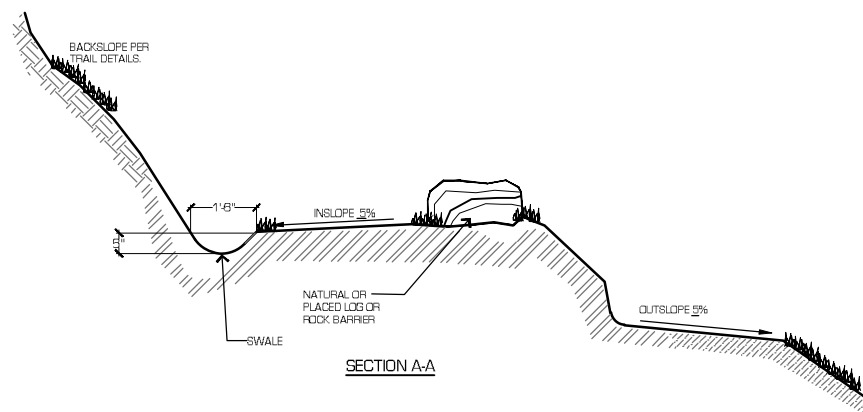
## TRAIL CONSTRUCTION NOTES:

- HAND BUILD TRAIL AND PLATFORM WIDTH IS TYPICALLY 18"-24" WIDE, THOUGH MAY VARY 6" LESS OR MORE DEPENDING ON SITE CONDITIONS.
- LAYOUT SHALL FOLLOW "ROLLING CONTOUR" PRINCIPALS - THIS SECTION TYPICALLY TRAVERSES A STEEP HILLSIDE. USE OUTSLOPED TREAD AND GENTLE UNDULATIONS/ GRADE REVERSALS TOWARD DOWNHILL EDGE TO MINIMIZE EROSION. GRADE REVERSALS ARE RECOMMENDED TO BE INSTALLED EVERY 50 - 100 FEET TO FORCE WATER TO DRAIN OFF THE TRAIL. SEE "GRADE DIP" DETAIL.
- TRAIL GRADE SHOULD NOT EXCEED HALF THE GRADE OF THE SIDE SLOPE IT IS CROSSING. AVERAGE OR OVERALL TRAIL GRADE IS TO BE LESS THAN 10%. TYPICAL GRADES OF LESS THAN 6% WITH SHORT SECTIONS UP TO A MAXIMUM OF 20% ARE RECOMMENDED.



HAND BUILD SINGLETRACK

SCALE: NTS



ROLLING CROWN SWITCHBACK

SCALE: 1/4" = 1'-0"



DRAWING NO.: 5

DRAWING TITLE: ADD/ALT SCOPE CONSTRUCTION DETAILS

REVISIONS NO. DATE ISSUE

Tramway Mainline  
Black Hawk, CO

SCALE: AS SHOWN  
NOTE: IF THIS DRAWING IS NOT 24"x36", IT HAS BEEN REVISED FROM ITS ORIGINAL SIZE. SCALE IS NO LONGER APPLICABLE.



**EXHIBIT A-3**  
**Maryland Mountain Park Trail Construction Specifications**  
**City of Black Hawk, CO**  
**9.26.19**

**General Standards for Mountain Bike Trails**

**1. Trail Design**

Design of all routes must be guided by the sustainable trail principles promulgated by the 2004 edition of IMBA's *Trail Solutions: IMBA's Guide to Building Sweet Singletrack*.

**2. Trail Flagging**

Trail corridor should be pin flagged at a minimum of 50' intervals. All trees requiring removal over 3" DBH shall be marked with flagging tape indicating they are to be removed. Client must approve the final alignment before construction can commence.

**3. Corridor clearing**

Corridor clearing shall be confined to within three (3) feet of trail and backslope edges. Woody material such as stumps, logs, and brush shall be removed from the trail tread. Debris shall be treated as follows: Cut and scatter all branches and brush with no debris left within 10 feet of trail or arranged to blend into the landscape; butt-ends of any sawed limbs placed facing away from trail. Any downslope spoils must be distributed such that no berm is present. Spoils must be stabilized with a covering of forest duff.

**4. Tread**

The trail tread shall consist of packed earth or rock. Any stumps should be excavated and removed from the trail tread. All tread shall be constructed with a maximum of three (3) feet wide bench whenever possible. Trail width specification applies to active tread only, backslope is not included. Trail slope will typically follow the "Half Rule" – that the tread grade is not greater than half the percentage of the slope it travels across. If fill is required, it should be supported by a stone retaining wall sufficient to support equestrian use. Backslope of trail should be graded to a 3 to 1 slope until it matches the existing slope.

**5. Trail Slope**

Trail grade should average 8% or less and slope max target will be 15 % to prevent user-based erosion, except if armored or surface is built of rock or wood. Typically, 5% outslope is to be provided on all treads for drainage unless in a bermed condition.

**6. Rocks**

Maximum size rock material to be left in trail shall not protrude more than three (3) inches from the tread surface, unless trail difficulty incorporates stone challenge elements. All rock embedded in the trail surface should be stable. When used in structures, care will be taken to match rock to the immediate surroundings. Excess tool marks on rocks are not acceptable. Non-native rock may not be imported into a work area without approval of Client.

**7. Trail, Finished Condition**

Hand finish and grading of backslope, down slope spoils, and drainage features shall leave a surface that matches the texture of the surrounding forest floor while enabling water to drain off the trail.

**8. Turns**

All turns should have a minimum radius of eight (8) feet and can be either a traditional rolling crown switchback or, on slopes with a maximum cross grade of 20%, an insloped turn with an entrance and exit rolling grade dip.



## **9. Grade reversals**

Grade reversals are to be installed at appropriate intervals to prevent erosion. A designed grade reversal or constructed rolling grade dip should generally occur at least every 100 feet. Any grade reversal must be strongly anchored to discourage short cutting.

## **10. Invasive species**

All hand tools and mechanized equipment should be free of invasive seeds and clean of any dirt and mud when entering a project site. Equipment transported from a site with invasives to another site should be cleaned.

## **11. Mechanized Equipment Best Practices**

All track marks will be raked smooth. Impacted area will be finished to have a *nature shape* – spoils piles rounded, smoothed and cleared of significant brush, blade edges blended. When applicable, machinery shall not travel over finished trail construction for removal from the project site. A spill kit will be onsite whenever mechanized equipment is operated. Scarring of trees is to be avoided. Significant and repeated scarring may result in a financial penalty of \$100 per tree over 4" diameter at breast height ("DBH").

## **12. Switchbacks**

The switchback unit includes any walls, armoring, and drainage features associated with the structure. All switchbacks will be constructed in the "rolling crown" style. Uphill leg of switchback will have a strong grade reversal to maximize lifespan of structure. Entry and exit legs will have a grade of less than 20% unless armored by stone. Interior of legs will be strongly anchored to discourage short cutting. Turn platform will have a radius range of between 6' and 9' to allow access by skilled equestrians while maintaining a backcountry esthetic. Any retaining structures will be constructed of stone and comply with all Rock Retaining Wall specifications. If multiple switchbacks are required, they will be sited to minimize "stacking." Where feasible, insloped turns can be substituted for switchbacks with the approval of a Client's representative.

## **13. Insloped Turn**

The insloped turn unit includes any walls, armoring, and drainage features associated with the structure. Each insloped turn includes a Grade Reversal or Rolling Grade Dip before and after. The dips for these drainage features should be a minimum of 6' long and can have a cross slope of up to 15%. Uphill dip should be sited to minimize unweighting effects for higher speed users. Turning radius should be consistent and greater than 8'. Cross slope on the trail tread in the turn should be no more than 20%. Turns with a running grade over 20% in the apex should have a rock armored drain 2' wide following the inside the turn.

## **14. Rock Armor**

Armor trail tread surface where necessary with stone pitching at least 10" deep. Stones should be stable and aligned perpendicular to the direction of travel. Variance in the surface height of stones can be no more than 1". Each end of a pitched section shall be supported by larger "bookend" stones embedded in the ground. Additional guide stones may be required if the final surface of the trail appears more rugged than the adjacent landscape.

## **15. Rock Retaining Walls**

Rock retaining walls should be stable and battered (inclined back into the slope) a minimum of 15% from vertical. All walls should have rubble backing of at least 6" in depth behind the wall to allow for drainage and to prevent damage from frost heaves. The base of the wall should be placed on firm compacted mineral soil or rock outcroppings. Any small stones used to "chink" larger stones in place should be placed in the back of the wall. The top of the wall should not be counted in the width of the trail tread. The top layer of stones should be stable and large enough to avoid being dislodged by shared use traffic. Deadmen (stones that extend from the

wall into the slope) should be used to ensure integrity. There should one deadman for every 5 square feet of wall.

### **Multi-use, Machine Build Singletrack Mountain Bike Trail**

- Machine Construction with maximum machine width of 48"
- Maximum average grade 8-10%, maximum sustained grade 20% short distances
- Trail corridor 5' feet wide maximum, trail ceiling 10-12 feet high
- Finished trail tread intended to be 18"- 24" wide compacted outsloped natural surface trail, tread to be generally free of obstructions. Trail tread will be 36" to 48" wide until vegetation regrows narrowing the trail tread to 18" - 24".
- Rolling grade designed with drainage features such as nicks where necessary, downslope berm material to be dispersed on site

### **Hand Build Singletrack Mountain Bike Trail**

- Hand built construction
- Maximum average grade 10-12%, Maximum sustained grade 25% short distances
- Trail tread corridor 24"-30" width, trail ceiling 8-10 feet high
- Finished trail tread 18"-24" wide generally using full bench cut, compacted outsloped natural surface
- Clear corridor of existing trees, major trees at sides of corridor may remain and be limbed for height clearance. Tree material to be cut up into portable sections and dispersed on site.
- Cut trees flush and/or remove based on trail disturbance and structural integrity, finished trail tread will have obstructions, rocks, roots etc that will remain as technical elements
- Rolling grade designed with drainage features such as nicks where necessary, downslope berm material to be dispersed on site
- Switchback radius maximized for terrain and rideability, minimum 4-6 feet

### **Hiking Trail Only (or non-climbing mountain bike trail)**

- Hand built construction
- Maximum average grade 15%, Maximum sustained grade 30% short distances
- Clear corridor of existing trees, major trees at sides of corridor may remain and be limbed for height clearance. Tree material to be cut up into portable sections and dispersed on site.
- Cut trees flush and/or remove based on trail disturbance and structural integrity, finished trail tread will have obstructions, rocks, roots etc that will remain as technical elements.
- Trail corridor maximum 4 feet wide, trail ceiling 8-10 feet high
- Finished trail tread 18-24" wide natural compacted outsloped surface
- Designed with drainage features where necessary
- Switchback radius maximized for terrain, minimum 4 feet
- Incorporate rock steps if needed

# EXHIBIT B

## Pricing

### Maryland Mountain Trail Network

Project Item	Per Unit Price	Units	\$0.00
Trail Design, Flagging, Basic Mapping	Lump Sum	8000	\$8,000.00
Bike Trail Construction	\$3.90 per linear foot	48576 ft (9.2 miles)	\$189,446.40
Hiking Trail Construction	\$3.30 per linear foot	11088 ft (2.1 miles)	\$36,590.40
600 ft hike-a-bike	\$29.00 per linear foot	600	\$17,400.00
Optional Bridge	From \$1800 to \$2200 per linear foot	TBD	\$0.00
Optional Marketing (including race events)	Lump Sum	2500	\$2,500.00
Optional Kiosk installation	\$1200 per unit installed3 (estimate 3)		\$3,600.00
Optional Trail Signage installation	\$32.00 per unit installed (estimate 19)	19	\$608.00
Contingency	Lump Sum	9000	\$9,000.00
Total without option items:			\$260,436.80
<del>Total with option items:</del>			<del>\$267,144.80</del>



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/06/2020

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> Valley Trust Insurance Group Staunton 829 Greenville Ave.  Staunton VA 24401		<b>CONTACT NAME:</b> Jordan M <b>PHONE (A/C No. Ext):</b> (540)885-5531 <b>FAX (A/C No):</b> (540)886-4057 <b>E-MAIL ADDRESS:</b> Jordan@VALLEYTRUSTINSURANCE.COM	
<b>INSURED</b> High Country Conservation LLC 2251 Chesnut Ave  Buena Vista VA 24416		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Erie Insurance Exchange <b>INSURER B:</b> Erie Flagship Insurance Company <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b> 26271 35947	

**COVERAGES****CERTIFICATE NUMBER:****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  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	Q28-0124993	04/01/2020	04/01/2021	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
							\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	E.L. EACH ACCIDENT \$						
	E.L. DISEASE - EA EMPLOYEE \$						
	E.L. DISEASE - POLICY LIMIT \$						

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

Project RE: Maryland Mountain Trail System. City of Black Hawk the Owner's officers and employees and any other person(s) company(ies) or entity(ies) deemed necessary by the Owner are included as additional insured if required by written contract. If the policies are cancelled by the issuing company during the policy term, for other than non-payment of premium, 30 days notice will be provided to the certificate holder.

**CERTIFICATE HOLDER****CANCELLATION**

City of Black Hawk Attn: Matt Reed, Project Manager 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 

Fax:

Email:

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ACORD 25 (2016/03)

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116 of 122

Progressive  
PO Box 94903  
Cleveland, OH 44101

1-800-444-4487

**PROGRESSIVE**  
COMMERCIAL

**Policy number: 01776020-0**

Underwritten by:  
Progressive Northern Insurance Co  
March 18, 2020  
Page 1 of 1

## Certificate of Insurance

### Certificate Holder

JOSHUA THOMAS  
2251 CHESTNUT  
BUENA VISTA, VA 24416

### Insured

JOSHUA THOMAS  
2251 CHESTNUT  
BUENA VISTA, VA 24416

### Agent/Surplus Lines Broker

USAA INS AGCY INC  
9800 FRDRCKSBRG HSVCW  
SAN ANTONIO, TX 78288

This document certifies that insurance policies identified below have been issued by the designated insurer to the insured named above for the period(s) indicated. This Certificate is issued for information purposes only. It confers no rights upon the certificate holder and does not change, alter, modify, or extend the coverages afforded by the policies listed below. The coverages afforded by the policies listed below are subject to all the terms, exclusions, limitations, endorsements, and conditions of these policies.

Policy Effective Date: Mar 1, 2020

Policy Expiration Date: Mar 1, 2021

### Insurance coverage(s)

### Limits

Bodily Injury/Property Damage	\$1,000,000 Combined Single Limit
Uninsured Motorist Bodily Injury	\$1,000,000 Combined Single Limit
Underinsured Motorist Bodily Injury	\$1,000,000 Combined Single Limit
Any Auto Bodily Injury/Property Damage	\$1,000,000 Combined Single Limit

### Description of Location/Vehicles/Special Items

#### Scheduled autos only

1993 DODGE D350/W350 3B7ME33C1PM103624

Uninsured Motorist Property Damage included in combined single limit

2018 SURE TRAC TRAILER 5JW1U1821J1223724

### Certificate number

07820A13020





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

**03/27/2020**

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> <b>Rick Baker &amp; Associates Insurance, Inc</b> <b>5360 Arapahoe Ave, Ste D</b> <b>Boulder, CO 80303</b> <b>License #: 27695</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>CONTACT NAME:</b> Olivia Blair</td> </tr> <tr> <td><b>PHONE (A/C, No, Ext):</b> (303)444-3334</td> <td><b>FAX (A/C, No):</b> (303)444-2716</td> </tr> <tr> <td colspan="2"><b>E-MAIL ADDRESS:</b> rick@rickbakerinsurance.com</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><b>INSURER(S) AFFORDING COVERAGE</b></td> <td style="text-align: center;"><b>NAIC #</b></td> </tr> <tr> <td><b>INSURER A :</b> Pinnacol Assurance</td> <td></td> </tr> <tr> <td><b>INSURER B :</b></td> <td></td> </tr> <tr> <td><b>INSURER C :</b></td> <td></td> </tr> <tr> <td><b>INSURER D :</b></td> <td></td> </tr> <tr> <td><b>INSURER E :</b></td> <td></td> </tr> <tr> <td><b>INSURER F :</b></td> <td></td> </tr> </table>	<b>CONTACT NAME:</b> Olivia Blair		<b>PHONE (A/C, No, Ext):</b> (303)444-3334	<b>FAX (A/C, No):</b> (303)444-2716	<b>E-MAIL ADDRESS:</b> rick@rickbakerinsurance.com		<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>	<b>INSURER A :</b> Pinnacol Assurance		<b>INSURER B :</b>		<b>INSURER C :</b>		<b>INSURER D :</b>		<b>INSURER E :</b>		<b>INSURER F :</b>	
<b>CONTACT NAME:</b> Olivia Blair																					
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<b>INSURER D :</b>																					
<b>INSURER E :</b>																					
<b>INSURER F :</b>																					
<b>INSURED</b> <b>HIGH COUNTRY CONSERVATION LLC</b> <b>2251 CHESTNUT AVE</b> <b>BUENA VISTA, VA 24416</b>																					

**COVERAGES** **CERTIFICATE NUMBER: 00005027-11270** **REVISION NUMBER: 1**

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

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	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
<b>A</b>	<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 <div style="float: right; text-align: right;">             Y / N  <input checked="" type="checkbox"/> Y N/A           </div>			<b>4222900</b>	<b>05/01/2020</b>	<b>05/01/2021</b>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>500,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>500,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>500,000</b>

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

## CERTIFICATE HOLDER

<b>City of Black Hawk</b> <b>201 Selak Ave</b> <b>BLACK HAWK, CO 80422</b>
--

## CANCELLATION

<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> <div style="background-color: black; width: 100px; height: 20px; margin: 5px 0;"></div> <p style="text-align: right;">(ORB)</p>
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**RESOLUTION 35-2020**  
**A RESOLUTION**  
**FORGIVING CERTAIN**  
**DEVICE TAXES FOR THE**  
**MONTH OF APRIL 2020,**  
**PAYABLE IN MAY OF 2020**  
**AND DEFERRING**  
**CERTAIN WATER FEES**

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

**Resolution No. 35-2020**

**TITLE:       A RESOLUTION FORGIVING CERTAIN DEVICE TAXES FOR  
THE MONTH OF APRIL 2020, PAYABLE IN MAY OF 2020 AND  
DEFERRING CERTAIN WATER FEES**

WHEREAS, pursuant to the Colorado Disaster Emergency Act, C.R.S. 24-33.5-701, *et seq.* (the "Act"), the Mayor of the City of Black Hawk (the "City") has issued an Order Declaring a Local Disaster Emergency in and for the City of Black Hawk, Colorado because of the COVID-19 pandemic, and such order has been extended by the City Council;

WHEREAS, the State of Colorado has further ordered that casinos across the State of Colorado be closed for a period of thirty (30) days, beginning March 17, 2020 because of the COVID-19 pandemic;

WHEREAS, the City desires to assist the gaming industry in the challenging times created by the necessary response to the COVID-19 pandemic;

WHEREAS, as a demonstration of its continuing support and appreciation of the gaming industry the City forgave the Device Tax for all devices in the City for the month of March 2020, payable in April 2020;

WHEREAS, the State of Colorado has further ordered that casinos across the State of Colorado remain closed through April 30, 2020 because of the COVID-19 pandemic;

WHEREAS, the financial hardship to the gaming industry continues, as the necessary response to the COVID-19 pandemic, therefore the City desires to grant further relief to the gaming industry by forgiving the Device Tax for all devices in the City for the month of April 2020, payable May 2020;

WHEREAS, the City desires to additionally assist the gaming industry in this financially challenging time by deferring the collection of the Base Water Fees and Consumption Fees for all gaming properties within the City for the months of March 2020 and April 2020;



WHEREAS, to implement deferring of the collection of the Base Water Fees and Consumption Fees, the City shall average the deferred fees over the remaining months of 2020 and invoice accordingly, and the City will not charge any late payment fees or interest on such deferred fees; and

WHEREAS, the City desires to unequivocally demonstrate to existing gaming companies within the City and gaming companies that would consider investing in the City in the future, that the City is a responsible and reliable partner in times of unprecedented challenges.

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

Section 1. The Mayor and Board of Alderman hereby resolve to forgive the payment of the City's Device Tax in full for the month of April 2020, payable in May 2020 because of the COVID-19 pandemic.

Section 2. The Mayor and Board of Alderman hereby resolve to defer the Base Water Fees and Consumption Fees for the months of March 2020 and April 2020, payable over the remaining months of 2020, without late fees or interest on such deferred fees, because of the COVID-19 pandemic.

RESOLVED AND PASSED this 8<sup>th</sup> day of April, 2020.

---

David D. Spellman, Mayor

ATTEST:

---

Melissa A. Greiner, CMC, City Clerk

# CITY OF BLACK HAWK

## REQUEST FOR COUNCIL ACTION

---

**SUBJECT:** Forgiving Certain Device Taxes for the Month of April 2020 payable in May 2020 and Deferring Certain Water Fees

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

**MOTION TO APPROVE** Resolution 35-2020, A Resolution Forgiving Certain Device Taxes for the Month of April 2020, Payable in May 2020 and Deferring Certain Water Fees

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Under the Colorado Disaster Emergency Act, the Mayor of the City of Black Hawk has issued an Order Declaring a Local Disaster Emergency in and for the City of Black Hawk Colorado because of the COVID-10 pandemic.

The State of Colorado has further ordered that casinos across the state of Colorado be closed because of the pandemic.

The City desires to assist the gaming industry in the challenging times created by the necessary response to the pandemic.

**AGENDA DATE:** April 8, 2020

**WORKSHOP DATE:** N/A

**FUNDING SOURCE:** N/A

**STAFF PERSON RESPONSIBLE:** Stephen N. Cole  
City Manager

**DOCUMENTS ATTACHED:** N/A

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

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

**SUBMITTED BY:**



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

**REVIEWED BY:**



Stephen N. Cole  
City Manager