



REVISED
REGULAR MEETING AGENDA

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

June 10, 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://us02web.zoom.us/j/86022637322>

Or join by phone:

888-475-4499 (Toll-Free)

Webinar ID: 860 2263 7322

International numbers available: <https://zoom.us/u/aekAkAaLfF>

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

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: May 27, 2020
7. PUBLIC HEARINGS:
 - A. CB14, An Ordinance Ratifying and Approving the Grant Agreement Between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk
 - B. CB15, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion and Improvement of City Streets and Roadways, Pursuant to C.R.S. § 38-6-101, C.R.S. § 31-25-201, Article XX, § 1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter
 - C. Resolution 45-2020, A Resolution Conditionally Approving the Special Review Use Permit for the Golden Gilpin Mill

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

- D. Resolution 46-2020, A Resolution Denying a Variance to Allow a Height Variance which would Allow a Structure 103 Feet in Height
- E. Resolution 47-2020, A Resolution Conditionally Approving a Certificate of Architectural Compatibility and a Site Development Plan for the T Mobile Facility Located at 821 Miners Mesa Road

8. ACTION ITEMS:

- A. Resolution 48-2020, A Resolution Approving the City of Black Hawk Fee Schedule, as Amended
- B. Resolution 49-2020. A Resolution Forgiving Certain Device Taxes for the Month of May, 2020, Payable in June of 2020 and Deferring Certain Water Fees
- C. Resolution 50-2020, A Resolution in Support of Proposed Initiative No. 257, "Local Voter Approval of Gaming Limits in Black Hawk, Central City, and Cripple Creek," on the 2020 General Election Ballot

9. CITY MANAGER REPORTS:

10. CITY ATTORNEY:

11. EXECUTIVE SESSION:

12. ADJOURNMENT:

MISSION STATEMENT

The mission of the City of Black Hawk is to progressively provide cost effective programs and services of the highest quality to the community



**City of Black Hawk
City Council**

May 27, 2020

MEETING MINUTES

1. **CALL TO ORDER:** The regular meeting of the City Council was called to order on Wednesday, May 27, 2020, at 3:00 p.m. by Mayor Spellman.
2. **ROLL CALL:** Present were: Mayor Spellman, Aldermen Armbright, Bennett, Midcap, Moates, and Torres.

Excused Absence: Alderman Johnson.

Virtual/Present Staff: City Attorney Hoffmann, City Manager Cole, Acting Police Chief/Commander Cooper, Fire Chief Woolley, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Community Planning & Development Director Linker, Baseline Planning Consultant Harris, IT Manager Muhammad, and Deputy City Clerk Martin.
- PLEDGE OF ALLEGIANCE:** Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.
3. **AGENDA CHANGES:** Deputy City Clerk Martin confirmed 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 audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. There were no objections noted.
5. **PUBLIC COMMENT:** Deputy City Clerk Martin confirmed no one had signed up to speak.

6. APPROVAL OF
MINUTES:

May 13, 2020, Regular Council Meeting
May 21, 2020, Special Council Meeting

**MOTION TO
APPROVE**

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

MOTION PASSED

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

7. PUBLIC HEARINGS:

A. CB13, An Ordinance Amending Chapter 16 of the Black Hawk Municipal Code to Amend the Uses by Right in the Commercial/Business Services (CBS) Zoning District

Mayor Spellman read the title and opened the public hearing.

Baseline Planning Consultant Harris introduced this item to add distillery use as a permitted use in the CBS Zoning District.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB13, an Ordinance amending Chapter 16 of the Black Hawk Municipal Code to amend the uses by right in the Commercial/Business Services (CBS) Zoning District open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one wished to speak, and Mayor Spellman declared the Public Hearing closed.

**MOTION TO
APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve CB13, an Ordinance amending Chapter 16 of the Black Hawk Municipal Code to amend the uses by right in the Commercial/Business Services (CBS) Zoning District.

MOTION PASSED

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

8. ACTION ITEMS:

None

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 items number 2 and 5 for Executive Session for specific legal issues related to pending litigation and potential legislation.

**MOTION TO
ADJOURN INTO
EXECUTIVE
SESSION**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to adjourn into Executive Session at 3:02 p.m. to hold a conference with the City's attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b), and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).

MOTION PASSED

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

**MOTION TO
ADJOURN**

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

MOTION PASSED

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

City Council resumed its regular open meeting.

**MOTION TO
APPROVE**

Alderman Moates made a **MOTION** and was **SECONDED** by Alderman Midcap, to authorize the City Manager to execute the Grant Agreement with the Colorado Department of Transportation Cares Act funding subject to ratification at the June 10, 2020, City Council meeting

MOTION PASSED

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

12. ADJOURNMENT:

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

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Mayor

**COUNCIL BILL 14
ORDINANCE 2020-14
AN ORDINANCE
RATIFYING AND
APPROVING THE GRANT
AGREEMENT BETWEEN
THE COLORADO
DEPARTMENT OF
TRANSPORTATION,
DIVISION OF TRANSIT
AND RAIL AND THE CITY
OF BLACK HAWK**

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

COUNCIL BILL NUMBER: CB14

ORDINANCE NUMBER: 2020-14

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

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

Section 1. The City of Black Hawk hereby ratifies and approves the Grant Agreement between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.

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

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

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

READ, PASSED AND ORDERED POSTED this 10th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk



CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT:

Approve Council Bill 14, an Ordinance ratifying the authorization for the City Manager to execute the CARES Act Grant between the Colorado Department of Transportation, DTR and the City of Black Hawk dba Black Hawk and Central City Tramway for 2020 in an amount Not to Exceed \$108,353.00.

RECOMMENDATION:

If City Council chooses to approve Council Bill 14, the recommended motion is as follows: "Approve Council Bill 14, an Ordinance ratifying and approving the Grant Agreement between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City was successful in receiving a grant from the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Distribution from CDoT was based on previously awarded 5311 Grant funding. This grant allows reimbursement of transit related expenses related to the coronavirus and requires no local match. This Grant allows reimbursement retroactive to January 20, 2020 and expires December 31, 2020. We will be able to submit reimbursement requests for all cleaning, maintenance and fuel for the transit service as well as any startup costs once the service resumes. Once this funding is fully exhausted, we will still have our 5311 Operating Grant that requires the 50% match.

FUNDING SOURCE:

WORKSHOP DATE: June 10, 2020

ORIGINATED BY: Thomas Isbester

STAFF PERSON RESPONSIBLE: same

PROJECT COMPLETION DATE: December 31, 2020

DOCUMENTS ATTACHED: Grant Agreement

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

SUBMITTED BY:

Thomas Isbester, Public Works Director

REVIEWED BY:

Stephen N. Cole, City Manager

STATE OF COLORADO SUBAWARD AGREEMENT

COVER PAGE

State Agency Department of Transportation	Agreement Number / PO Number 20-HTR-ZL-03223 / 491002189
Subrecipient CITY OF BLACK HAWK	Agreement Performance Beginning Date The later of the Effective Date or May 14, 2020
Subaward Agreement Amount Federal Funds Maximum Amount (100%) \$108,353.00 Local Funds Local Match Amount (0%) \$0.00 Agreement Total \$108,353.00	Initial Agreement Expiration Date December 31, 2020 Fund Expenditure End Date December 31, 2020 Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the CARES Act, FAST ACT, MAP-21, SAFETEA_LU, 49 USC §53.
Agreement Purpose CARES Act provides funds to prevent, prepare for, and respond to COVID-19. CARES Act funds are available for all FTA Section 5307 and 5311 recipients (including those in large urban areas), to support capital, operating, administrative, and other expenses (generally eligible under those programs) incurred in response to economic or other conditions caused by COVID-19. The work to be completed under this Agreement by the Subrecipient is more specifically described in Exhibit A.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work and Budget. 2. Exhibit B – Sample Option Letter. 3. Exhibit C – Federal Provisions. 4. Exhibit D – Required Federal Contract/Agreement Clauses. 5. Exhibit E – Verification of Payment. <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Exhibit C – Federal Provisions. 2. Exhibit D – Required Federal Contract/Agreement Clauses. 3. Colorado Special Provisions in §17 of the main body of this Agreement. 4. The provisions of the other sections of the main body of this Agreement. 5. Exhibit A – Statement of Work and Budget. 6. Executed Option Letters (if any). 	
Principal Representatives For the State: 05/14/2020 Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 12/31/2020	For Subrecipient: Tom Isbester CITY OF BLACK HAWK PO BOX 68 BLACK HAWK, CO 80422 tisbester@cityofblackhawk.org

SIGNATURE PAGE**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

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

<p align="center">SUBRECIPIENT CITY OF BLACK HAWK</p> <p><i>Stephen Cole</i></p> <hr/> <p>Stephen Cole</p> <hr/> <p>By: Print Name of Authorized Individual</p> <p align="center">5/27/2020</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <p><i>David Krutsinger</i></p> <hr/> <p>By: David Krutsinger, Director Division of Transit and Rail</p> <p align="center">5/27/2020</p> <p>Date: _____</p>
<p align="center">2nd State or Subrecipient Signature if needed</p> <hr/> <hr/> <p>By: Print Name of Authorized Individual</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General N/A</p> <hr/> <p>By: Assistant Attorney General</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p><i>Jon Copelmann</i></p> <hr/> <p>By: Department of Transportation</p> <p align="center">5/28/2020</p> <p>Effective Date: _____</p>	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred before the Effective Date, except as described in **§5.D**, or after the Fund Expenditure End Date.

B. Initial Term

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

C. Extension Terms - State’s Option

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

D. End of Term Extension

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

E. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

F. Subrecipient's Termination Under Federal Requirements

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

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this subaward agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Subrecipient is debarred or suspended under §24-109-105, C.R.S., at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit A.
- E. **"Business Day"** means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
- F. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **"Deliverable"** means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Subrecipient's Work that is intended to be delivered by Subrecipient.

- H. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- I. **“End of Term Extension”** means the time period defined in **§2.D**.
- J. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- K. **“Extension Term”** means the time period defined in **§2.C**.
- L. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program.
- M. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. Federal Transit Administration (FTA) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- N. **“FTA”** means Federal Transit Administration.
- O. **“Goods”** means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.
- P. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- Q. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- R. **“Initial Term”** means the time period defined in **§2.B**.
- S. **“Master Agreement”** means the FTA Master Agreement document incorporated by reference and made part of FTA’s standard terms and conditions governing the administration of a project supported with federal assistance awarded by FTA.
- T. **“Matching Funds”** (Local Funds, or Local Match) means the funds provided by Subrecipient as a match required to receive the Grant Funds and includes in-kind contribution.
- U. **“Party”** means the State or Subrecipient, and “Parties” means both the State and Subrecipient.
- V. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- W. **“Recipient”** means the State agency shown on the Signature and Cover Pages of this Agreement, for the purposes of this Federal Award.
- X. **“Services”** means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- Y. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party

who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

- Z. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- AA. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- BB. **“State Records”** means any and all State data, information, and records regardless of physical form.
- CC. **“Subaward Maximum Amount”** means an amount equal to the total of Grant Funds for this Agreement.
- DD. **“Subcontractor”** means any third party engaged by Subrecipient to aid in performance of the Work. “Subcontractor” also includes sub-recipients of Grant Funds.
- EE. **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Contractor is a Subrecipient.
- FF. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- GG. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- HH. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK AND BUDGET

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

5. PAYMENTS TO SUBRECIPIENT

A. Subaward Maximum Amount

Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Subrecipient any amount under this Agreement that exceeds the Subaward Maximum Amount shown on the Cover Page of this Agreement as “Federal Funds Maximum Amount”.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
- b. Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Agreement.

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

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

D. Reimbursement of Subrecipient Costs

- i. The State shall reimburse Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of **§5**, this Agreement, and Exhibit A. However, any costs incurred by Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Subrecipient for costs or expenses incurred or performance by the Subrecipient prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the

Subrecipient. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement.

- ii. The State shall reimburse Subrecipient's allowable costs, not exceeding the Subaward Maximum Amount shown on the Cover Page of this Agreement and on Exhibit A for all allowable costs described in this Agreement and shown in Exhibit A, except that Subrecipient may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Subrecipient provides notice to the State of the change, the change does not modify the Subaward Maximum Amount or the Subaward Maximum Amount for any federal fiscal year or State Fiscal Year, and the change does not modify any requirements of the Work.
- iii. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:
 - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
 - b. Equal to the actual net cost to Subrecipient (i.e. the price paid minus any items of value received by Subrecipient that reduce the cost actually incurred).
- iv. Subrecipient's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Subrecipient shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

E. Close-Out

Subrecipient shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement. To complete close-out, Subrecipient shall submit to the State all Deliverables (including documentation) as defined in this Agreement and Subrecipient's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement due to Subrecipient's failure to submit required documentation, then Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Quarterly Reports

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

B. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement.

C. Performance and Final Status

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

D. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance

allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. SUBRECIPIENT RECORDS

A. Maintenance

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

B. Inspection

Subrecipient shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by the State or that governmental entity. Subrecipient shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Subrecipient and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Work.

D. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

Subrecipient shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subrecipient shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Subrecipient shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Subrecipient shall immediately forward any request or demand for State Records to the State's Principal Representative identified on the Cover Page of the Agreement.

B. Other Entity Access and Nondisclosure Agreements

Subrecipient may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement.

Subrecipient shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Subrecipient shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Subrecipient becomes aware of any Incident, Subrecipient shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Subrecipient can establish that Subrecipient and its agents, employees, and Subcontractors are not the cause or source of the Incident, Subrecipient shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subrecipient shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Subrecipient shall make all modifications as directed by the State. If Subrecipient cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Subrecipient shall reimburse the State for the reasonable costs thereof. The State may, in its sole discretion and at Subrecipient's sole expense, require Subrecipient to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Subrecipient shall provide the State with the results of such audit and evidence of Subrecipient's planned remediation in response to any negative findings.

E. Data Protection and Handling

Subrecipient shall ensure that all State Records and Work Product in the possession of Subrecipient or any Subcontractors are protected and handled in accordance with the requirements of this Agreement, including the requirements of any Exhibits hereto, at all times. As used in this section, the protections afforded Work Product only apply to Work Product that requires confidential treatment.

F. Safeguarding PII

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

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

- D. Subrecipient acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Subrecipient further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Agreement. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Subrecipient employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Subrecipient shall provide a disclosure statement as described in §9.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Agreement. Subrecipient may also be subject to such penalties as are allowed by law.**

10. INSURANCE

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

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Additional Insured

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

E. Primacy of Coverage

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

F. Cancellation

All insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient and

Subrecipient shall forward such notice to the State in accordance with **§14** within seven days of Subrecipient's receipt of such notice.

G. Subrogation Waiver

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

H. Public Entities

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

I. Certificates

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

11. BREACH OF AGREEMENT

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

12. REMEDIES

A. State's Remedies

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

i. Termination for Breach of Agreement

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State (i) secure that right to use such Work for the State and Subrecipient;

(ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Subrecipient's Remedies

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

13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

14. NOTICES and REPRESENTATIVES

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

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Subrecipient agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Awarding Agency's and State's purposes. All Work Product shall be delivered to the State by Subrecipient upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Subrecipient are the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination

of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Subrecipient

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

16. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

Subrecipient shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subaward would also be considered a Subrecipient, then the subcontract or subaward entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in **§16.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

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

K. External Terms and Conditions

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

L. Severability

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

M. Survival of Certain Agreement Terms

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

N. Taxes

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

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§16.A**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations

- i. Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or

Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

- ii. Subrecipient, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date and maintain at all times during the term of this Agreement, at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

T. Federal Provisions

Subrecipient shall comply with all applicable requirements of Exhibits C and D at all times during the term of this Agreement.

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

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

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

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

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

Subrecipient shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold Subrecipient harmless; requires the State to agree to binding arbitration; limits Subrecipient's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

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

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

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

Department program. If Subrecipient fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Subrecipient shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Subrecipient, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Subrecipient **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S., prior to the Effective Date of this Agreement.

EXHIBIT A, STATEMENT OF WORK AND BUDGET

Project Description*		2020 CARES Act 5311 Administrative and Operating					
Federal Awarding Agency					Federal Transit Administration (FTA)		
Federal Regional Contact					Cindy Terwilliger		
Federal Award Date					To Be Determined		
Project End Date					December 31, 2020		
FAIN		To Be Determined			CFDA#	20.509	
CFDA Title		Formula Grants for Rural Areas Program					
Subrecipient		City of Black Hawk			DUNS #	008384836	
Contact Name		Tom Isbester			Vendor #	2000406	
Address		987 Miners Mesa Road Black Hawk, CO 80422-0068			Phone #	(303) 582-1324	
Email		tisbester@cityofblackhawk.org			Indirect Rate	N/A	
Total Project Budget							\$108,353.00
Budget	WBS**	ALI	Federal Funds		Local Funds		Total
Administrative	20-11-5CARE.BHWK.620	11.79.00	100%	\$15,000.00	0%	\$0.00	\$15,000.00
Operating	20-11-4CARE.BHWK.300	30.09.01	100%	\$93,353.00	0%	\$0.00	\$93,353.00
Total Project Amount Encumbered via this Subaward Agreement							\$108,353.00

*This is not a research and development grant.

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

A. Project Description

City of Black Hawk shall maintain the existence of public transportation services through the following goals:

1. Support transit operations to prevent, prepare for, and respond to COVID-19 (see Section D for more details);
2. Enhance access to health care, education, employment, public services, recreation, social transactions, and other basic needs;
3. Assist in the maintenance, development, improvement and use of public transportation in their Transportation Planning Region (TPR);
4. Encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in their TPR through the coordination of programs and services; and
5. Encourage mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development.

This funding is provided to support the services described above for calendar year 2020 (January 20 – December 31).

B. Performance Standards

1. Project Milestones

Milestone Description	Original Estimated Completion Date
Submit Reimbursement Request in COTRAMS	6/30/2020
Submit Final Reimbursement Request in COTRAMS	12/30/2020
IMPORTANT NOTE: All milestones in this Statement of Work (except for the final reimbursement request) must be completed no later than the expiration date of this Subaward Agreement: December 31, 2020.	

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

C. Project Budget

- The Total Project Budget is \$108,353.00. CDOT will pay 100% of the eligible, actual administrative costs, up to the maximum amount of \$15,000.00, and 100% of the eligible, actual operating costs, up to the maximum amount of \$93,353.00. CDOT will retain any remaining balance of the federal share of CARES Act FTA-5311 Funds. City of Black Hawk shall be solely responsible for all costs incurred in the project in excess of the amount paid by CDOT from Federal Funds for the federal share of eligible, actual costs. For CDOT accounting purposes, the Federal Funds of \$15,000.00 (100%) for administrative costs and \$93,353.00 (100%) for operating costs, will be encumbered for this Subaward Agreement.
- No refund or reduction of the amount of City of Black Hawk's share to be provided will be allowed unless there is at the same time a refund or reduction of the federal share of a proportionate amount.
- Per the terms of this Subaward Agreement, CDOT shall have no obligation to provide state funds for use on this project. CDOT will administer Federal Funds for this Project under the terms of this Subaward Agreement, provided that the federal share of FTA funds to be administered by CDOT are made available and remain available. City of Black Hawk shall initiate and prosecute to completion all actions necessary to enable City of Black Hawk to provide its share of the Total Project Budget at or prior to the time that such funds are needed to meet the Total Project Budget.

D. Allowable Costs

- City of Black Hawk shall agree to adhere to the provisions for allowable and unallowable costs cited in the following regulations: 2 CFR 200.420 through 200.475; FTA C 5010.1E Chapter VI: Financial Management; Master Agreement, Section 6 "Non-Federal Share;" and 2 CFR 200.102. Other applicable requirements for cost allowability not cited previously, shall also be considered.
- City of Black Hawk's operating expenses (net fare revenue) are eligible beginning January 20, 2020. Those costs include 1) paying administrative leave of operations personnel due to reductions in services or quarantine; 2) paratransit service operating expenses; 3) Charter service in response to the COVID-19 emergency (up to 45 days without a waiver); 4) items having a useful life of less than one year, including personal protective equipment and cleaning supplies; 5) Operating expenses related to the response to COVID-19; 6) Operating expenses related to the pandemic preparedness; and 7) costs directly related to system operations. City of Black Hawk at a minimum, should consider the following items as operating expenses: fuel, oil, drivers and dispatcher salaries and fringe benefits, and licenses.

3. If City of Black Hawk elects to take administrative assistance, eligible costs may include but are not limited to: general administrative expenses (e.g., salaries of the project director, secretary, and bookkeeper); marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of administering drug and alcohol testing. Additionally, administrative costs for promoting and coordinating ridesharing are eligible as project administration if the activity is part of a coordinated public transportation program.
4. If City of Black Hawk has already submitted invoices through its 2020 normal 5311 grant agreement, then these expenses are no longer eligible for CARES Act funds.

E. Reimbursement Eligibility

1. City of Black Hawk must submit invoice(s) monthly via COTRAMS. Reimbursement will apply only to eligible expenses that are incurred within the period of performance (January 20 – December 31) of this Subaward Agreement.
2. Reimbursement requests must be within the limits of Section D., Allowable Costs, of this Subaward Agreement. City of Black Hawk will be reimbursed based on the ratio of Federal Funds share and Local Funds share set forth in the Project Budget above.
3. City of Black Hawk must submit the final invoice within sixty (60) calendar days of December 31, 2020, and submit a Grant Closeout and Liquidation (GCL) Form in COTRAMS within fifteen (15) days of issuance of the final reimbursement payment.

F. Training

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

G. Restrictions on Lobbying

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

H. Special Conditions

1. City of Black Hawk will comply with all requirements imposed by CDOT on City of Black Hawk so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.
2. City of Black Hawk must permit CDOT and their auditors to have access to City of Black Hawk's records and financial statements as necessary, with reasonable advance notice.
3. Record retention shall adhere to the requirements outlined in 2 CFR 200.333 and FTA C 5010.1E.
4. City of Black Hawk cannot request reimbursement for costs on this project from more than one Federal Awarding Agency or other federal awards (i.e., no duplicate billing).
5. City of Black Hawk must obtain prior CDOT approval, in writing, if FTA funds are intended to be used for payment of a lease or for third-party contracts.
6. If receiving FTA 5311 funding, City of Black Hawk shall advertise its fixed route and/or rural based service as available to the general public and service will not be explicitly limited by trip purpose or client type.

7. If receiving FTA 5311 funding, City of Black Hawk shall maintain and report annually all information required by NTD and any other financial, fleet, or service data.
8. If receiving FTA 5311 or 5339 funding, City of Black Hawk will ensure subcontractors and subrecipients comply with FTA Drug and Alcohol Regulations.
9. City of Black Hawk will comply with the Federal Transit Administration (FTA) Drug and Alcohol Regulations, to include on time submission to FTA's Drug and Alcohol Management Information System (DAMIS).
10. City of Black Hawk shall ensure that it does not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, national origin, sex, age or disability in accordance with Title VI of the Civil Rights Act of 1964.
11. City of Black Hawk shall seek to ensure non-discrimination in its programs and activities by developing and maintaining a Title VI Program in accordance with the "Requirements for FTA Subrecipients" in CDOT's Title VI Program Plan and Federal Transit Administration Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients." The Party shall also facilitate FTA's compliance with Executive Order 12898 and DOT Order 5610.2(a) by incorporating the principles of environmental justice in planning, project development and public outreach in accordance with FTA Circular 4703.1 "Environmental Justice Policy Guidance for Federal Transit Administration Recipients."
12. City of Black Hawk will provide transportation services to persons with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.
13. City of Black Hawk shall develop and maintain an ADA Program in accordance with 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services, FTA Circular 4710.1, and any additional requirements established by CDOT for FTA Subrecipients.
14. City of Black Hawk shall ensure that it will comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FTA guidance, and any other federal, state, and/or local laws, rules and/or regulations. In any contract utilizing federal funds, land, or other federal aid, City of Black Hawk shall require its subrecipients and/or contractors to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.
15. City of Black Hawk shall agree to produce and maintain documentation that supports compliance with the Americans with Disabilities Act to CDOT upon request.
16. City of Black Hawk shall update its Agency Profile in COTRAMS with any alterations to existing construction or any new construction in accordance with FTA Circular 4710.1.
17. If applicable, City of Black Hawk will adopt a Transit Asset Management Plan that complies with regulations implementing 49 U.S.C. § 5326(d).
18. City of Black Hawk shall include nondiscrimination language and the Disadvantaged Business Enterprise (DBE) assurance in all contracts and solicitations in accordance with DBE regulations, 49 CFR part 26 and CDOT's DBE program.

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Department of Transportation	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Subrecipient Insert Subrecipient's Full Legal Name, including "Inc.", "LLC", etc...	Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract
Subaward Agreement Amount Federal Funds Maximum Amount (%) \$0.00 Local Funds Local Match Amount (%) \$0.00 Agreement Total \$0.00	Option Agreement Number Insert CMS number or Other Contract Number of this Option Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year Current Agreement Expiration Date Month, Day, Year

1. OPTIONS:

A. Option to extend for an Extension Term or End of Term Extension.

2. REQUIRED PROVISIONS:

A. **For use with Option 1(A):** In accordance with Section(s) 2.B/2.C of the Original Agreement referenced above, the State hereby exercises its option for an additional term/end of term extension, beginning Insert start date and ending on the current agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

B. **For use with Options 1(A):** The Subaward Agreement Amount table on the Agreement's Cover Page is hereby deleted and replaced with the Current Subaward Agreement Amount table shown above.

3. OPTION EFFECTIVE DATE:

A. The effective date of this Option Letter is upon approval of the State Controller or ____, whichever is later.

STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director By: _____ David Krutsinger, Director, Division of Transit & Rail Date: _____	In accordance with §24-30-202, C.R.S., this Option Letter is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Option Letter Effective Date: _____
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EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS

- 1.1. The Contract to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Contract, or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Federal Provisions shall control.

2. DEFINITIONS

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.1.1. Awards may be in the form of:
- 2.1.1.1.1. Grants;
- 2.1.1.1.2. Contracts;
- 2.1.1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 2.1.1.1.4. Loans;
- 2.1.1.1.5. Loan Guarantees;
- 2.1.1.1.6. Subsidies;
- 2.1.1.1.7. Insurance;
- 2.1.1.1.8. Food commodities;
- 2.1.1.1.9. Direct appropriations;
- 2.1.1.1.10. Assessed and voluntary contributions; and
- 2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 2.1.1.2. Award **does not** include:
- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 2.1.1.2.3. Any award classified for security purposes; or
- 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Contract” means the Agreement or Subaward Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Contract or Subaward Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes Subrecipients and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 2.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

- 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 2.1.5.2. A foreign public entity;
- 2.1.5.3. A domestic or foreign non-profit organization;
- 2.1.5.4. A domestic or foreign for-profit organization; and
- 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Sub award to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.10. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subrecipient. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the sub recipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the sub recipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

- 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.18. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 2.1.19. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.20. "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE

- 3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS

- 4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

5. TOTAL COMPENSATION

- 5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 5.1.2. In the preceding fiscal year, Contractor received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub awards subject to the Transparency Act; and
 - 5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING

- 6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in this Exhibit

are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS

- 8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Sub award was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;
 - 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:
 - 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Sub recipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

- 12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.
- 12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.1.1. During the performance of this contract, the contractor agrees as follows:
- 12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants

- for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - 12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - 12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - 12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - 12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - 12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”
 - 12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 12.1.3. **Rights to Inventions Made Under a Contract or Contract.** If the Federal Award meets the definition of “funding Contract” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Contract,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.
- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subawards of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

13. CERTIFICATIONS

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed, or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT D, REQUIRED FEDERAL CONTRACT/AGREEMENT CLAUSES

All FTA-Assisted Third-Party Contracts and Subawards from the Current FTA Master Agreement [FTA MA(23)]

Section 3.l. – No Federal government obligations to third-parties by use of a disclaimer

No Federal/State Government Commitment or Liability to Third Parties. Except as the Federal Government or CDOT expressly consents in writing, the Subrecipient agrees that:

- (1) The Federal Government or CDOT do not and shall not have any commitment or liability related to the Agreement, to any Third-Party Participant at any tier, or to any other person or entity that is not a party (FTA, CDOT or the Subrecipient) to the Agreement, and
- (2) Notwithstanding that the Federal Government or CDOT may have concurred in or approved any Solicitation or Third-Party Agreement at any tier that may affect the Agreement, the Federal Government and CDOT does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA, CDOT, or the Subrecipient) to the Agreement.

Section 4.f. – Program fraud and false or fraudulent statements and related acts

False or Fraudulent Statements or Claims.

- (1) Civil Fraud. The Subrecipient acknowledges and agrees that:
 - (a) Federal laws, regulations, and requirements apply to itself and its Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31.
 - (b) By executing the Agreement, the Subrecipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Subrecipient provides to the Federal Government and CDOT.
 - (c) The Federal Government and CDOT may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Subrecipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) Criminal Fraud. The Subrecipient acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Subrecipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

Section 9. Record Retention and Access to Sites of Performance.

- a. Types of Records. The Subrecipient agrees that it will retain, and will require its Third-Party Participants to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Subrecipient agrees that it will comply with the record retention requirements in the applicable U.S. DOT Common Rule. Records pertaining to its Award, the accompanying Agreement, and any Amendments thereto must be retained from the day the Agreement was signed by the authorized FTA or State official through the course of the Award, the accompanying Agreement, and any Amendments thereto until three years after the Subrecipient has submitted its last or final expenditure report, and other pending matters are closed.
- c. Access to Recipient and Third-Party Participant Records. The Subrecipient agrees and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary’s duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General’s duly authorized representatives, and to the Subrecipient and each of its Subrecipient,
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Subrecipient or Third-Party Participant within books, records, accounts, or other locations, and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- d. Access to the Sites of Performance. The Subrecipient agrees to permit, and to require its Third-Party Participants to permit, FTA and CDOT to have access to the sites of performance of its Award, the accompanying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with State and the U.S. DOT Common Rules.

- e. Closeout. Closeout of the Award does not alter the record retention or access requirements of this section of the Master Agreement.

3.G – Federal Changes

Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance.

The Subrecipient agrees to comply with all applicable federal requirements and federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient's Agreement or this Master Agreement. At the time the FTA Authorized Official (CDOT) awards federal assistance to the Subrecipient in support of the Agreement, the federal requirements and guidance that apply then may be modified from time-to-time and will apply to the Subrecipient or the accompanying Agreement.

12 – Civil Rights

- a. Nondiscrimination – Title VI of the Civil Rights Act. The Subrecipient agrees to, and assures that each Third-Party Participant, will:
 - (1) Prohibit discrimination on the basis of race, color, or national origin,
 - (2) Comply with:
 - (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.,
 - (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and
 - (c) Federal transit law, specifically 49 U.S.C. § 5332, and
 - (3) Follow:
 - (a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance,
 - (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and
 - (c) All other applicable federal guidance that may be issued.
- b. Equal Employment Opportunity.
 - (1) Federal Requirements and Guidance. The Subrecipient agrees to, and assures that each Third-Party Participant will, prohibit, discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.,
 - (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
 - (c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement,
 - (d) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients," and
 - (e) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability,
 - (2). Specifics. The Subrecipient agrees to, and assures that each Third-Party Participant will:
 - (a) Prohibited Discrimination. Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent, as provided in Executive Order No. 11246 and by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations,
 - (b) Affirmative Action. Take affirmative action that includes, but is not limited to:
 - 1 Recruitment advertising, recruitment, and employment,
 - 2 Rates of pay and other forms of compensation,
 - 3 Selection for training, including apprenticeship, and upgrading, and
 - 4 Transfers, demotions, layoffs, and terminations, but
 - (c) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and
 - (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and

- (b) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- c. Nondiscrimination on the Basis of Disability. The Subrecipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability:
 - (1) Federal laws, including:
 - (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities,
 - (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but
 - 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer,"
 - (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities,
 - (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
 - (e) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
 - (2) Federal regulations and guidance, including:
 - (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37,
 - (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27,
 - (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38,
 - (d) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,
 - (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,
 - (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,
 - (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
 - (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F,
 - (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194,
 - (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609,
 - (k) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and
 - (l) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Incorporation of FTA Terms – 16.a.

- a. Federal Laws, Regulations, Requirements, and Guidance. The Subrecipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements,
 - (2) To comply with the applicable U.S. DOT Common Rules, and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

Energy Conservation – 26.j

- a. Energy Conservation. The Subrecipient agrees to, and assures that its Subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Applicable to Awards exceeding \$10,000**Section 11. Right of the Federal Government to Terminate.**

- a. Justification. After providing written notice to the Subrecipient, the Subrecipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
 - (1) The Subrecipient has failed to make reasonable progress implementing the Award,
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award, or
 - (3) The Subrecipient has violated the terms of the Agreement, especially if that violation would endanger substantial performance of the Agreement.
- b. Financial Implications. In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that the obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Subrecipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Agreement, and require the Subrecipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- c. Expiration of the Period of Performance. Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with “no year” funds can receive FTA assistance to the extent FTA deems appropriate.

Applicable to Awards exceeding \$25,000

From Section 4. Ethics.

- a. Debarment and Suspension. The Subrecipient agrees to the following:
 - (1) It will comply with the following requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200.
 - (2) It will not enter into any arrangement to participate in the development or implementation of the Underlying Agreement with any Third-Party Participant that is debarred or suspended except as authorized by:
 - (a) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200,
 - (b) U.S. OMB regulatory guidance, “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180, including any amendments thereto,
 - (c) Executive Orders No. 12549, “Uniform Suspension, Debarment, or Exclusion of Participants from Procurement or Nonprocurement Activity,” October 13, 1994,” 31 U.S.C. § 6101 note, as amended by Executive Order No. 12689, “Debarment and Suspension,” August 16, 1989, 31 U.S.C. § 6101 note, and
 - (d) Other applicable federal laws, regulations, or guidance regarding participation with debarred or suspended Subrecipients or Third-Party Participants.
 - (3) It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200.
 - (4) It will include, and require each Third-Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
 - (a) Complies with federal debarment and suspension requirements, and
 - (b) Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.
 - (5) If the Subrecipient suspends, debars, or takes any similar action against a Third-Party Participant or individual, the Subrecipient will provide immediate written notice to the:
 - (a) FTA Regional Counsel for the Region in which the Subrecipient is located or implements the Agreement,
 - (b) FTA Headquarters Manager that administers the Grant or Cooperative Agreement, or
 - (c) FTA Chief Counsel.

Applicable to Awards exceeding the simplified acquisition threshold (\$100,000-see Note)*Note: Applicable when tangible property or construction will be acquired***Section 15. Preference for United States Products and Services.**

Except as the Federal Government determines otherwise in writing, the Subrecipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j).

Section 39. Disputes, Breaches, Defaults, or Other Litigation.

- a. FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving the Award, the accompanying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- b. Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges, the Subrecipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Subrecipient is located.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
 - (3) If the Subrecipient has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the Subrecipient, or other person has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Subrecipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Subrecipient is located.
- c. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Agreement. Notwithstanding the preceding sentence, the Subrecipient may return all liquidated damages it receives to its Award Budget for its Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Subrecipient receives FTA's prior written concurrence.
- d. Enforcement. The Subrecipient must pursue its legal rights and remedies available under any third-party agreement, or any federal, state, or local law or regulation.

Applicable to Awards exceeding \$100,000 by Statute

From Section 4. Ethics.

- a. Lobbying Restrictions. The Subrecipient agrees that neither it nor any Third-Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Agreement, including any extension or modification, according to the following:
 - (1) Laws, Regulations, Requirements, and Guidance. This includes:
 - (a) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,
 - (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and
 - (c) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and
 - (2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Subrecipient's or Subrecipient's proper official channels.

Section 26. Environmental Protections – Clean Air and Clean Water

Other Environmental Federal Laws. The Subrecipient agrees to comply or facilitate compliance and assures that its Third Party Participants will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act,

Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management.")

Applicable with the Transfer of Property or Persons

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Subrecipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- a. Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with 49 U.S.C. § 5323(j),
- b. Cargo Preference. Preference – Use of United States-Flag Vessels. The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 C.F.R. part 381, and
- c. Fly America. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 – 301-10.143.

Applicable to Construction Activities

Section 24. Employee Protections.

- a. Awards Involving Construction. The Subrecipient agrees to comply and assures that each Third-Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (a) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act"),
 - (b) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, and
 - (c) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (2) Wage and Hour Requirements of:
 - (a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - (3) "Anti-Kickback" Prohibitions of:
 - (a) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874,
 - (b) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145, and
 - (c) U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 C.F.R. part 3.
 - (4) Construction Site Safety of:
 - (a) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
 - (b) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.

From Section 16

- b. Bonding. The Subrecipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - 1 Construction. As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
 - 2 Activities Not Involving Construction. For each Project or related activities implementing the Agreement not involving construction, the Subrecipient will not impose excessive bonding and will follow FTA guidance.

From Section 23

- c. Seismic Safety. The Subrecipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. part 41, specifically, 49 C.F.R. § 41.117.

Section 12 Civil Rights D.3

- d. Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - a. U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and
 - b. Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

Applicable to Nonconstruction Activities

From Section 24. Employee Protections

- a. Awards Not Involving Construction. The Subrecipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Applicable to Transit Operations

- a. Public Transportation Employee Protective Arrangements. As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Subrecipient agrees to comply and assures that each Third-Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
 - (1) U.S. DOL Certification. When its Awarded, the accompanying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 – 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Subrecipient agrees that the certification issued by U.S. DOL is a condition of the Agreement and that the Subrecipient must comply with its terms and conditions.
 - (2) Special Warranty. When its Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Subrecipient agrees that its U.S. DOL Special Warranty is a condition of the Agreement and the Subrecipient must comply with its terms and conditions.
 - (3) Special Arrangements for Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310. The Subrecipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not “necessary or appropriate” to apply the conditions of 49 U.S.C. § 5333(b) to any Subagreement participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by- case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 28. Charter Service.

- a. Prohibitions. The Recipient agrees that neither it nor any Third-Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 C.F.R. part 604, any other Federal Charter Service regulations, federal requirements, or federal guidance.
- b. Exceptions. Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:

- (1) FTA's Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)-type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Subrecipient uses that federal assistance for FTA program purposes only, and
 - (2) FTA's Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Subrecipient uses that federal assistance for program purposes only.
- c. Violations. If it or any Third Party Participant engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA's Charter Service regulations, 49 C.F.R. part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

- a. Prohibitions. The Subrecipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, "School Bus Operations," 49 C.F.R. part 605, and any other applicable federal "School Bus Operations" laws, regulations, federal requirements, or applicable federal guidance.
- b. Violations. If a Subrecipient or any Third-Party Participant has operated school bus service in violation of FTA's School Bus laws, regulations, or requirements, FTA may require the Subrecipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Subrecipient or Third Party Participant from receiving federal transit assistance.

From Section 35 Substance Abuse

c. Alcohol Misuse and Prohibited Drug Use.

- (1) Requirements. The Subrecipient agrees to comply and assures that its Third-Party Participants will comply with:
 - (a) Federal transit laws, specifically 49 U.S.C. § 5331,
 - (b) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. part 655, and
 - (c) Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 C.F.R. part 40.
- (2) Remedies for Non-Compliance. The Subrecipient agrees that if FTA determines that the Subrecipient or a Third-Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 C.F.R. part 655, the Federal Transit Administrator may bar that Subrecipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Applicable to Planning, Research, Development, and Documentation Projects

Section 17. Patent Rights.

- a. General. The Subrecipient agrees that:
 - (1) Depending on the nature of the Agreement, the Federal Government may acquire patent rights when the Subrecipient or Third-Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Agreement; or
 - (3) When a patent is issued or patented information becomes available as described in the preceding section 17.a.(2) of this Master Agreement (FTA MA(23)), the Subrecipient will notify FTA immediately and provide a detailed report satisfactory to FTA.
- b. Federal Rights. The Subrecipient agrees that:
 - (1) Its rights and responsibilities, and each Third-Party Participant's rights and responsibilities, in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof, and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the

Subrecipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200 et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401.

- c. License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Subrecipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Agreement are program income and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- a. Definition of "Subject Data." As used in this section, "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Agreement. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Agreement.
- b. General Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of the Agreement:
 - (1) Prohibitions. The Subrecipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) Exceptions. The prohibitions do not apply to publications or reproductions for the Subrecipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- c. Federal Rights in Data and Copyrights. The Subrecipient agrees that:
 - (1) General. It must provide a license to its "subject data" to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes, and
 - (2) U.S. DOT Public Access Plan – Copyright License. The Subrecipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Subrecipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- d. Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Subrecipient and its Third-Party Participants. Therefore, the Subrecipient agrees that:
 - (1) Publicly Available Report. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Agreement that FTA may publish or make available for publication on the Internet.
 - (2) Other Reports. It must provide other reports related to the Award that FTA may request.
 - (3) Availability of Subject Data. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third-Party Participant at any tier, except as the Federal Government determines otherwise in writing.
 - (4) Identification of Information. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.
 - (5) Incomplete. If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes "subject data" and must be delivered as the Federal Government may direct.
 - (6) Exception. This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Subrecipient's use and acquired with FTA capital program assistance.
- e. License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Subrecipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Agreement are program income and must be used in compliance with applicable federal requirements.

- f. **Hold Harmless.** Upon request by the Federal Government, the Subrecipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Subrecipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- g. **Restrictions on Access to Patent Rights.** Nothing in this section of this Master Agreement (FTA MA(23)) pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- h. **Data Developed Without Federal Assistance or Support.** The Subrecipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Subrecipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- i. **Requirements to Release Data.** The Subrecipient understands and agrees that the Federal Government may be required to release data and information the Subrecipient submits to the Federal Government as required under:
 - (1) The Freedom of Information Act (FOIA), 5 U.S.C. § 552,
 - (2) The U.S. DOT Common Rules,
 - (3) U.S. DOT Public Access Plan, which provides that the Subrecipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at: <http://ntl.bts.gov/publicaccess/howto comply.html>, or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Agreement, and any Amendments thereto.

Miscellaneous Special Requirements

From Section 12. Civil Rights.

- a. **Disadvantaged Business Enterprise (and Prompt Payment and Return of Retainage).** To the extent authorized by applicable federal laws, regulations, or requirements, the Subrecipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Agreement as follows:
 - (1) **Statutory and Regulatory Requirements.** The Subrecipient agrees to comply with:
 - (a) Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note,
 - (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and
 - (c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement (FTA MA(23)).
 - (2) **DBE Program Requirements.** A Subrecipient that receives planning, capital and/or operating assistance and that will award prime third-party contracts exceeding \$250,000 the requirements of 49 C.F.R. part 26.
 - (3) **Special Requirements for a Transit Vehicle Manufacturer (TVM).** The Subrecipient agrees that:
 - (a) **TVM Certification.** Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, and
 - (b) **Reporting TVM Awards.** Within 30 days of any third-party contract award for a vehicle purchase, the Subrecipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA's electronic award management system. The Subrecipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
 - (4) **Assurance.** As required by 49 C.F.R. § 26.13(a):
 - (a) **Recipient Assurance.** The Subrecipient agrees and assures that:

- 1 It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26,
 - 2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts,
 - 3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and
 - 4 Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of the Master Agreement (FTA MA(23)).
- (b) Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance. The Subrecipient agrees and assures that it will include the following assurance in each subagreement and third-party contract it signs with a Subrecipient or Third-Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
- 1 The Subrecipient, each Third-Party Contractor, and each Third-Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26,
 - 2 The Subrecipient, each Third-Party Contractor, and each Third-Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable,
 - 3 Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of subparagraph 12.e(4)(b) (of FTA MA(23)) is a material breach of their subagreement, third party contract, or third party subcontract, as applicable, and
 - 4 The following remedies, or such other remedy as the Subrecipient deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Subrecipient, Third Party Contractor, or Third-Party Subcontractor from future bidding as non-responsible.
- (5) Remedies. Upon notification to the Subrecipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

From Section 12. Civil Rights.

- b. Nondiscrimination on the Basis of Disability. The Subrecipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability:
- (1) Federal laws, including:
 - (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities,
 - (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - 1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but
 - 2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer,”
 - (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities,
 - (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
 - (e) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
 - (2) Federal regulations and guidance, including:
 - (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. part 37,
 - (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
 - (c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and 49 C.F.R. part 38,

- (d) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,
- (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,
- (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,
- (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F,
- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194,
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609,
- (k) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and
- (l) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Section 16. Procurement. For Assignability

- a. Federal Laws, Regulations, Requirements, and Guidance. The Subrecipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third-party procurements,
 - (2) To comply with the applicable U.S. DOT Common Rules, and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

State Requirements

Section 37. Special Notification Requirements for States.

- a. Types of Information. To the extent required under federal law, the State, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
 - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project,
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized, and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents. The State agrees to provide the information required under this provision in the following documents:
 - (1) applications for federal assistance, (2) requests for proposals, or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications..

EXHIBIT E, VERIFICATION OF PAYMENT

This checklist is to assist the Subrecipient in preparation of its billing packets to State. This checklist is provided as guidance and is subject to change by State. State shall provide notice of any such changes to Subrecipient. All items may not apply to your particular entity. State's goal is to reimburse Subrecipients as quickly as possible and a well organized and complete billing packet helps to expedite payment.

☐ **Verification of Payment –**

- ✓ General Ledger Report must have the following:
 - Identify check number or EFT number;
 - If no check number is available, submit Accounts Payable Distribution report with the General Ledger;
 - In-Kind (must be pre-approved by State) and/or cash match;
 - Date of the report;
 - Accounting period;
 - Current period transactions; and
 - Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable:
 - copies of checks;
 - check registers; and
 - paycheck stub showing payment number, the amount paid, the check number or electronic funds transfer (EFT), and the date paid.
- ✓ State needs to ensure that expenditures incurred by the local agencies have been paid by Party ***before*** State is invoiced by Party.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

☐ **In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by State prior to any Work taking place.**

- ✓ If in-kind or cash match is being used for the Local Match, the in-kind or cash match portion of the project must be included in the project application and the statement of work attached to the Agreement or purchase order. FTA does not require pre-approval of in-kind or cash match, but State does.
- ✓ General ledger must also show the in-kind and/or cash match.

☐ **Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by State prior to applying it to the reimbursements.**

- ✓ If indirect costs are being requested, an approved indirect letter from State or your cognizant agency for indirect costs, as defined in 2 CCR §200. 19, must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

☐ **Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.**

- ✓ Submit an approval letter from the cognizant agency for indirect costs, as defined in 2 CCR §200. 19, that verifies fringe benefit, or
- ✓ Submit the following fringe benefit rate proposal package to State Audit Division:
 - Copy of Financial Statement;
 - Personnel Cost Worksheet;
 - State of Employee Benefits; and
 - Cost Policy Statement.

**COUNCIL BILL 15
ORDINANCE 2020-15
AN ORDINANCE STATING
THE INTENT OF THE CITY OF
BLACK HAWK TO ACQUIRE
CERTAIN PROPERTY FOR
THE CONSTRUCTION,
EXPANSION AND
IMPROVEMENT OF CITY
STREETS AND ROADWAYS,
PURSUANT TO C.R.S. § 38-6-
101, C.R.S. § 31-25-201,
ARTICLE XX, § 1 OF THE
COLORADO CONSTITUTION,
AND ARTICLE 8, SECTION 4
OF THE CITY OF BLACK
HAWK HOME RULE
CHARTER**

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

COUNCIL BILL NUMBER: CB15

ORDINANCE NUMBER: 2020-15

TITLE: AN ORDINANCE STATING THE INTENT OF THE CITY OF BLACK HAWK TO ACQUIRE CERTAIN PROPERTY FOR THE CONSTRUCTION, EXPANSION AND IMPROVEMENT OF CITY STREETS AND ROADWAYS, PURSUANT TO C.R.S. § 38-6-101, C.R.S. § 31-25-201, ARTICLE XX, § 1 OF THE COLORADO CONSTITUTION, AND ARTICLE 8, SECTION 4 OF THE CITY OF BLACK HAWK HOME RULE CHARTER

WHEREAS, the City of Black Hawk, Colorado possesses the power of eminent domain pursuant to the provisions of Article XX, § 1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter, as well as C.R.S. § 38-1-101, *et seq.*, C.R.S. § 38-6-101, *et seq.*, and C.R.S. § 31-25-201;

WHEREAS, the City of Black Hawk wishes to acquire the property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Subject Property"), as part of the construction and improvement of the City's roadway system;

WHEREAS, said Subject Property is to be acquired for the construction, expansion and improvement of the City street and roadway system, as authorized by and within the meaning of Article XX, § 1 of the Colorado Constitution, Article 8, Section 4 of the City of Black Hawk Home Rule Charter, C.R.S. § 38-6-101, and C.R.S. § 31-25-201.

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

Section 1. Notice is hereby given that the City of Black Hawk, Colorado, intends to acquire the Subject Property.

Section 2. The acquisition of the Subject Property serves the public purpose of constructing, expanding and improving the City's street and roadway system, thereby providing City streets that are necessary and essential to the City's ability to provide such public facilities within the meaning of C.R.S. § 38-6-101 and C.R.S. § 31-25-201. Said purposes are specifically authorized as set forth above and pursuant to Article XX, § 1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter.

Section 3. The City further finds and determines as follows:

A. The City of Black Hawk finds that consistent with its home rule eminent domain authority, the purpose of providing City streets, roadways, public areas, and associated facilities for which the Subject Property is sought constitutes a valid public purpose within

the meaning of Article XX, § 1 of the Colorado Constitution, C.R.S. § 38-6-101, and C.R.S. § 31-25-201; and

B. That it is necessary and essential that the City acquire the Subject Property for the public purpose set forth herein.

Section 4. The staff of the City is directed to comply with all requirements of applicable law in the conduct of the within authorized eminent domain action.

Section 5. In the prosecution of the within authorized eminent domain action, the City shall retain all rights and powers lawfully delegated to it by the Colorado Constitution, the City of Black Hawk Home Rule Charter, and C.R.S. § 38-1-101, *et seq.*

Section 6. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 7. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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

READ, PASSED AND ORDERED POSTED this 10th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

EXHIBIT A

The Dale Lode Mining Claim, U.S. Mineral Survey No. 13338, as described in U.S. Patent recorded October 10, 1931, in Book 103, Page 366,

Excepting therefrom any portion embraced in Survey Nos. 328, 670, 871, 7799, 10737, 11571, 12784, and the Little Raven lode Claim unsurveyed, as excepted in said Patent,

And Excepting therefrom any portion conveyed to City of Central by Deeds recorded: August 24, 1999, in Book 677, Page 284; August 25, 1999, in Book 677, Page 309; September 1, 1999, in Book 678, Page 56; September 2, 1999, in Book 678, Page 79; September 2, 1999, in Book 678, Page 83; September 2, 1999, in Book 678, Page 85; September 2, 1999, in Book 678, Page 88; September 14, 1999, in Book 678, Page 390; September 27, 1999, in Book 679, Page 348; and September 11, 2003, Reception No. 118944,

County of Gilpin, State of Colorado

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Acquisition of the Dale Lode #13338

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

MOTION TO APPROVE CB15, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion and Improvement of City Streets and Roadways, Pursuant to C.R.S. § 38-6-101, C.R.S. § 31-25-201, Article XX, § 1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City of Black Hawk wishes to acquire the property through eminent domain as part of the construction and improvement of the City's roadway system.

AGENDA DATE: June 10, 2020

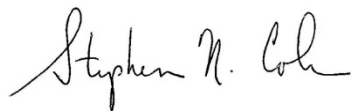
FUNDING SOURCE: 305-3101-4317102

STAFF PERSON RESPONSIBLE: Stephen N. Cole, City Manager

RECORD: Title Company will record documents

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

REVIEWED BY:



Stephen N. Cole, City Manager

RESOLUTION 45-2020
A RESOLUTION
CONDITIONALLY
APPROVING THE
SPECIAL REVIEW USE
PERMIT FOR THE
GOLDEN GILPIN MILL

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

Resolution No. 45-2020

**TITLE: A RESOLUTION CONDITIONALLY APPROVING THE SPECIAL
REVIEW USE PERMIT FOR THE GOLDEN GILPIN MILL**

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

Section 1. The City Council hereby approves a Special Review Use Permit for the
Golden Gilpin Mill located at 7593 State Highway 119, subject to the following conditions:

- A. Approval of a minor subdivision plat is required prior to construction of any structures on the property, including Mill Site #10 and Mill Site #11;
- B. A Certificate of Architectural Compatibility (COAC) is required prior to construction of any new structures, modification of the exterior of any existing structures, or any other site improvements;
- C. Approval of a Site Development Plan (SDP) is required prior to commencement of any construction of new buildings associated with the mining/milling activities. The SDP must address, at a minimum, site distance triangle issues and access along State Highway 119, bridge rating, finished floor elevations in relation to the 100-year floodplain, and all other requirements outlined in Sec. 16-362. - Site development standards of the Black Hawk Municipal Code;
- D. The Special Review Use permit is valid for operation between the Golden Gilpin Mill, and further authorizes the acceptance of minerals from the Bates-Hunter mine. Acceptance of minerals from other mines other than the Bates-Hunter Mine will require an amendment to this permit;
- E. Confirmation from the applicant that there is no injury to others' water rights for water from North Clear Creek;
- F. State regulated sound levels will need to be adhered to at all times and need to be monitored and mitigation techniques will need to be implemented if necessary;
- G. No waters, chemicals, or other spoils from the milling operations will be allowed to enter the sanitary sewer system; and
- H. All relevant building permits and public works permits are required prior to any site improvements or construction of same either before or after a Site Development Plan is approved and are the responsibility of the applicant.

Section 2. The Special Review Use Permit shall be effective for the term set forth in Section 16-363, subsection (c)(2). No specific term is otherwise provided by this approval.

RESOLVED AND PASSED this 10th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Black Hawk Board of Aldermen shall hold a public hearing concerning a request for a Special Review Use to establish mining/milling and tourism uses on property described in Exhibit A and generally located at 7593 State Highway 119, Black Hawk, Colorado, pursuant to the City of Black Hawk zoning ordinance.

The public hearing is to be held before the City of Black Hawk Board of Aldermen on Wednesday, June 10, 2020, at 3:00 p.m. or as soon as possible thereafter. The City of Black Hawk is hosting virtual City Council meetings via Zoom in response to the Coronavirus COVID-19 until further notice. There are no physical meetings at this time. This meeting will accommodate public engagement via a Zoom URL and/or phone number to join. Please go to the City of Black Hawk's website for further instructions prior to the meeting.

ALL INTERESTED PARTIES MAY ATTEND

Melissa A. Greiner, CMC
City Clerk

EXHIBIT A

MILL SITE #10 AND MILL SITE #11, CITY OF BLACK HAWK, COUNTY OF GILPIN,
STATE OF COLORADO.

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: To consider allowing as a Special Review Use a mining/milling and tourism use on the property at 7593 Highway 119 for the Golden Gilpin Mill project.

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

MOTION TO APPROVE Resolution No. 45-2020, a Resolution approving a Special Review Use permit to allow mining/milling and tourism uses for the property located at 7593 State Highway 119 with the following conditions:

1. Approval of a minor subdivision plat is required before the construction of any structures on the property, including Mill Site #10 and Mill Site #11.
2. A Certificate of Architectural Compatibility (COAC) is required prior to the construction of any new structures, modification of the exterior of any existing structures, or any other site improvements.
3. Approval of a Site Development Plan (SDP) is required prior to the commencement of any construction of new buildings associated with the mining/milling activities. The SDP must address including but not limited to site distance triangle and access along Highway 119, bridge rating, finished floor elevations in relation to the 100-year floodplain, and all other requirements outlined in Sec. 16-362. - Site development standards.
4. The Special Review Use permit is valid for operation between the Golden Gilpin Mill and the Bates-Hunter mine. Acceptance of minerals from other mines other than the Bates-Hunter Mine will require an amendment to this permit.
5. Confirmation that there is no injury to others' water rights for water from North Clear Creek.
6. State regulated sound levels will need to be adhered to at all times and need to be monitored and mitigation techniques will need to be implemented if necessary.
7. No waters/chemicals from the milling operations will be allowed to enter the sanitary sewer system.
8. All relevant building permits and public works permits are required prior to any site improvements or construction of same either before or after (in accordance with City Code) a Site Development Plan is approved and are the responsibility of the applicant.
9. Duration of the Approved Special Review Use shall operate or discontinue in accordance with all of Section 16-363 (Special Review Use permits) including but not limited to terms of process; transferability; duration; and suspension of the use permit.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

See Staff Report attached to this RFCA with a complete overview and explanation of the proposed Special Review Use permit requested by the applicant, Matt Collins of Black Fox Mining LLC.



AGENDA DATE:

June 10, 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 No. 45-2020
Public Hearing Notice
Staff Report
Combined Application

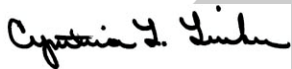
RECORD:

☐ Yes ☒ No

CITY ATTORNEY REVIEW:

☒ Yes ☐ N/A

SUBMITTED BY:



Cynthia L. Linker, CP&D Director

REVIEWED BY:



Stephen N. Cole, City Manager



Vincent Harris, AICP, Baseline Corporation

BLACK HAWK



Staff Report

**CITY OF BLACK HAWK
PLANNING / LAND USE**

Date prepared: May 26, 2020
Meeting Date: June 10, 2020

STAFF REPORT: Special Review Use: Golden Gilpin Mill
For: City Council
Project: P-17-20 Golden Gilpin Mill SRU
Property Address: 7593 Highway 119, Black Hawk, CO 80422
Applicants: Matt Collins, PE - Black Fox Mining, LLC
Zoning: Environmental Character Preservation (ECP)
Prepared by: Julie Esterl - Baseline Corporation
Approved by: Vincent Harris, AICP - Baseline Corporation
Reviewed by: Cynthia Linker, CP&D Director



BACKGROUND:

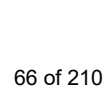
In June of 2017, the applicant, Matt Collins of Black Fox Mining LLC, initiated discussions with the City of Black Hawk regarding the status of the Golden Gilpin Mill. Because the property was/is zoned Environmental Character Preservation (ECP) and because the mining/milling use had been discontinued since 2011, the re-use of the site for 'Mining/Milling operations/use' would require a Special Review Use (SRU) permit. At the request of the property owner, George Otten Jr., Mr. Collins began cleaning up the site. In May 2018 he applied for and received a Certificate of Architectural Compatibility for repairs to the mill's roof and exterior, and was issued a building permit for structural improvements to the mill.

In October of 2019, the City of Black Hawk received an application request for the SRU permit from Matt Collins on behalf of the George E. Otten Jr. Trust, BH Mining LLC, and the Central City Consolidated Mining Company. The request is for the reactivation of the site, congruent with its historic use as a mineral processing facility, serving the nearby Bates-Hunter Mine located in Central City. The Golden Gilpin Mill is located in Black Hawk at 7593 Highway 119 (see Figure 1). In addition, the request includes 'Tourism' as an additional special use. The property is currently owned by the George E. Otten Jr. Trust. Mr. Collins is authorized to act on behalf of the Trust.

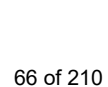
ZONING:

The Golden Gilpin Mill property consists of two parcels: Mill Site #10 (parcel number 1833-072-01-022) and Mill Site #11 (parcel number 1833-072-01-035). Both parcels are located in the Environmental Character Preservation (ECP) zone district. Per Section 16-76 (c) (3) regarding Special Review Uses within the ECP Zone District: "*Mining and mining related uses, including mining heritage uses, such as a mining museum which preserves the community's mining heritage, may be permitted if they are not a threat to public health and safety and do not adversely impact surrounding land uses.*" Portions of both properties are also located within the FEMA 100 Year Flood Boundary. (See Figure 2).

P-17-20 Golden Gilpin Mill SRU



P-17-20 Golden Gilpin Mill SRU



SITE HISTORY:

The applicant prepared a “Project Description” dated 10/25/2019 which is included in the application materials attached to this staff report. The Site History and other information outlined below have been taken from this Project Description and summarized in this staff report. Additional details regarding the site’s history and other topics outlined below and throughout this staff report can be found in the Project Description.

The Golden Gilpin Mill site was originally developed in the early 1860’s as a mineral processing facility. The current mill building was constructed in 1932 and was used for milling operations intermittently into the 1970’s. An outline of the site’s more recent history and ownership is listed below.

- Mr. George E. Otten, Jr. purchased the property in 1989.
- Mr. Otten established the Central City Consolidated Mining Company and was issued a permit from the Colorado Division of Reclamation Mining and Safety (DRMS) for operation of both the Bates-Hunter Mine and the Golden Gilpin Mill – DRMS permit number M1990-041.
- Some remediation of the Golden Gilpin site, as part of the Central City/Clear Creek Superfund Site, occurred in 2008. Work performed included stabilizing the historic tailings pile to prevent mobilization of the material. The work did not include capping the waste pile so as to specifically allow future mine-related activities at the mill under DRMS permit number M1990-041.
- A ‘Temporary Cessation of Activity’ was requested by and granted to Mr. Otten in 2011.
- The Temporary Cessation expired in 2016.
- Mr. Otten entered into an Option Agreement with Mr. Franklin H. Levy which allows Mr. Levy to commence rehabilitation and mining activities on the site. Mr. Levy subsequently established BH Mining Company, LLC in order to execute this work. The applicant, Matt Collins, is the registered contact for the DRMS permit and is the General Manager of BH Mining Company.
- Following the expiration of the Temporary Cessation, Mr. Otten was required to perform some site reclamation including the removal of trash, stockpiled materials and idled equipment. This work began in 2017 and still continues sporadically.
- In July 2017, the applicant, Matt Collins, presented a proposal to the City of Black Hawk Development Review Committee. Those plans were, and still are, to re-commence mineral processing and to accommodate limited educational and historic tourism in what would be one of the only active, small-scale, mineral processing facilities in the State of Colorado.
- Mr. Otten passed away in January of 2018, and the ownership of the property transferred to his family through the George E. Otten Jr. Trust.
- In October 2019, Mr. Collins formally submitted the application for the Special Review Use for mining/milling and tourism uses at the Golden Gilpin Mill site.

PLANNED USES:

The planned use of the site is to re-commence mineral processing and to accommodate limited educational and historic tourism thru this proposed Special Review Use (SRU) permit (if approved by the Black Hawk City Council). Modern regulatory concerns limit the ability for the general public to have access to a working mill, and as such, limited tourism is planned. Some options for limited tourism include tours by appointment, establishing an information kiosk (possibly located on City owned property, if granted, across Highway 119), and a possible extension of the Tramway Trail with a spur that runs along the west property boundary.

MINERAL PROCESSING ACTIVITY:

The site would process mineralized rock produced from the Bates-Hunter Mine located in Central City. The existing DRMS permit number M1990-041 allows up to 70,000 tons of material to be processed each year. This equates to approximately 200 tons per day, and is likely much more than the mill is capable of processing. It is anticipated that the mill would likely not exceed 50 tons per day.

Material will be delivered to the site by small dump truck or dump trailer of no more than 15-ton capacity per load and is not expected to exceed 4 trips per day. The same trucks that deliver material will haul tailings away from the mill site back to the mine. Refer to route maps included with the application.

Crushing and grinding of the material will be conducted inside the building, and a water mist will be used to minimize dust.

Once the material is ground into a fine sand, the sand is separated by gravity using a jig and shaker table. Large materials are returned to the grinder, and smaller material goes to a conditioning tank where chemical reagents are introduced. These reagents may include a variety of chemicals, all of which are non-toxic, non-SARA III (Superfund Amendments and Reauthorization Act) listed chemicals used in very small quantities (e.g. 0.1-0.3 lb./ton of ore). Refer to the Project Description for a list of chemicals commonly used in mineral processing.

From the conditioner tank, the slurry is then treated in froth flotation cells which are analogous to a household blender. In these cells, valuable constituents are floated to the surface of the froth where they are mechanically scraped off as a concentrate. This concentrate is then dewatered using a disk vacuum filter. A Mineral Process Flowsheet is included with the application materials and is shown below in Figure 3.

[illegible]

Tailings from the processing will be dewatered on site and transported offsite to the Bates-Hunter mine for re-deposition underground. This approach is a modern, environmentally preferred solution for placement of mineral processing tailings, solving many of the problems created by surface deposition of tailings and enhancing the environmental restoration of the mine site as well.

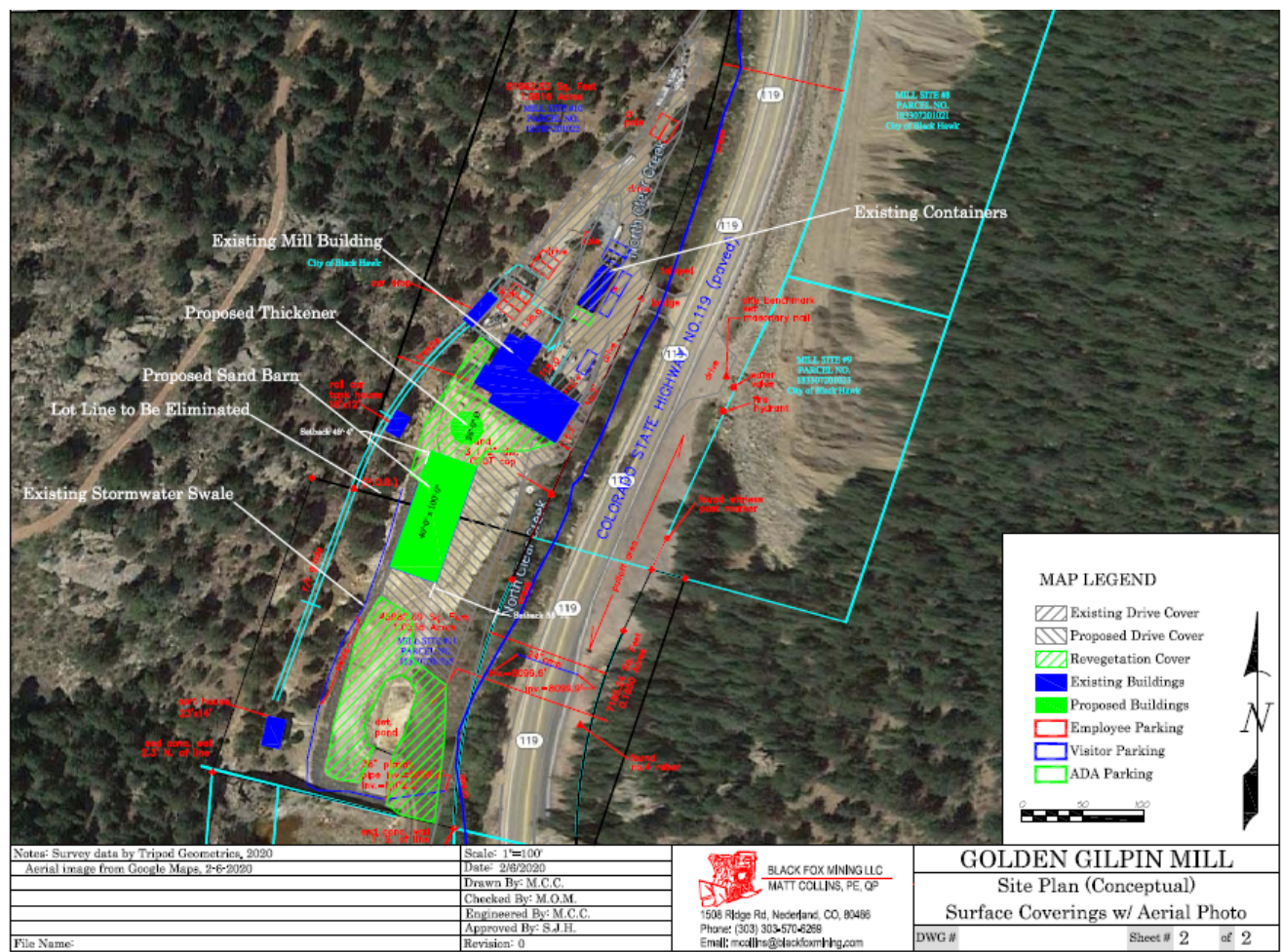
All process water will be recycled into the plant. The processing is a net consumer of water, which will be supplied as needed under existing water rights to the mill from North Clear Creek. Water use in the processing circuit will be approximately 3.5 tons of water per ton of mill feed, with new water being consumed at the rate of approximately 0.35 tons per ton of mill feed. No process water will be discharged to the environment. The mill building foundation includes a sump to collect any spillage within the plant for re-use.

Although a site plan is not required for the issuance of a Special Review Use permit, the applicant has provided a conceptual site plan showing the planned improvements. The applicant has been working with Palmer Engineering & Forensics, LLC and Timber Products Inspection, Inc. in order to determine the scope of work necessary to restore the building for re-use. Phase 1 of these efforts includes structural repairs and the replacement of the roof, which have been completed. The scope of Phase 2 will include further improvements to the building, the addition of required utilities, and the construction of additional

structures including a thickener (clarifier) and a sand barn. The proposed sand barn is located across the property line between Mill Site #10 and Mill Site #11. A minor subdivision will be required to join these lots prior to construction of the sand barn. Site Development Plan approval will also be required prior to operation of the mill and must be prepared in accordance with Sec. 16-362 of the Black Hawk Municipal Code. - Site development standards.

A Conceptual Plan dated 2/5/2020 is included in the application materials attached to this staff report and shown in Figure 4.

Figure 4: Conceptual Plan



STAFFING AND OPERATION:

The mill is planned to operate 24 hours a day, seven days a week. Five (5) employees are planned for the day shift and two (2) employees are planned for the night shift. Each shift will be 12 hours in length.

Limited tours, by appointment only, may be offered between the hours of 10:00 a.m. and 4:00 p.m. seven days a week. Mill operators will serve as tour guides for no more than 32 guests per day.

SITE SAFETY:

The site will be regulated under the Code of Federal Regulation (“30CFR”) which is administered by the Mine Safety and Health Administration (“MSHA”). In addition, BH Mining has implemented a Health and Safety Plan (“HASP”) for the Golden Gilpin Mill project.

All visitors to the Golden Gilpin Mill site shall receive Hazard Training as per 30CFR48.31 and shall be issued appropriate Personal Protective Equipment (“PPE”) for use during their site visit. This applies to all persons on a tour as well.

TRAFFIC & PARKING:

In February 2018, Fehr & Peers Transportation Consultants completed a traffic analysis and conceptual parking layout for the Golden Gilpin Mill. As requested by referral agencies during their review of the application, the traffic analysis was updated in January 2020. Some traffic questions regarding access permits and sight triangle are unresolved, however these issues can be worked out during the Site Development Process should the SRU permit be granted.

PERMITTING:

The Golden Gilpin Mill and the Bates-Hunter Mine operate under the Colorado Division of Reclamation Mining and Safety (DRMS) permit M1990-041 which was issued in 1990 and is still active. Files regarding this permit exceed the reasonable number of pages to include in this staff report, but may be found online at <https://dnrweblink.state.co.us/drms/search.aspx?dbid=0> by performing a search for “M1990041”.

The Golden Gilpin Mill and the Bates-Hunter Mine are also regulated by the Colorado Department of Public Health and Environment Water Quality Control Division - Colorado Discharge Permit System permit number CO0043168. The current permit is included with the application materials attached to this staff report.

In addition, the Golden Gilpin Mill is regulated by State and Federal laws. Refer to the Permitting Overview letter from the applicant dated 5/1/2020 for more information.

FINAL RECLAMATION:

The final reclamation for the site under DRMS permit M1990-041 allows for the existing buildings and structures to remain. All materials and equipment outside of the building shall be removed. The site shall be stabilized for erosion from stormwater and all foreseeable environmental hazards shall be mitigated, to the extent possible. There is no date set for final reclamation, as this is a performance standard, subject to the operation of the permit which includes the active Bates-Hunter Mine. The operator envisions many years, perhaps decades, of operation of this permit and believes that a working mill facility would be far more attractive to the general public than a non-working facility. With this in mind, it is likely that the owner and operator of the site will delay reclamation indefinitely, opting to keep the site active and attractive to tourism, as well as functional for mineral processing.

Applicable City of Black Hawk Regulations

Excerpts from:

City of Black Hawk Zoning Code Chapter 16 – Zoning

Sec. 16-7. Relationship to the Comprehensive Plan and other adopted plans.

It is the intent of the Board of Aldermen that this Chapter implement the planning policies adopted by the Board of Aldermen as reflected in the Comprehensive Plan and other related plans and planning documents. While the Board of Aldermen reaffirms its commitment that this Chapter and any amendment to it be in conformity with the adopted planning policies, the Board of Aldermen hereby expresses its intent that neither this Chapter nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

Staff Comment: The Black Hawk 2020 Comprehensive Plan serves as a guiding document related to future zoning decisions that the City Council may see presented to the City for consideration. The property in question is located in the Maryland Mountain Recreation Area designated in the 2020 Comprehensive Plan. The Maryland Mountain Recreation Area has the following goals:

- Transition from a local gaming area to a regional resort destination
- Promote heritage tourism
- Strengthen outdoor recreational opportunities
- Expand public transportation

The proposed special uses can promote the goals of transitioning to a regional resort destination and promoting heritage tourism. In addition, the special uses are consistent with the uses outlined in the Comprehensive Plan for the Maryland Mountain Recreation Area which includes interpretive heritage tourism.

The owner and operator of the site believe that the site is a rare example of a working historic gold mill and is well suited to educational tourism. This type of tourism occurs throughout the historic mining areas of Colorado however, this may be the only example of a working tourist mill in the state. The granting of the special uses can benefit the “City of Mills” and promote the goals of the Black Hawk 2020 Comprehensive Plan.

Sec. 16-363. - Special review use permits.

(a) Uses which require a special review use permit are those which may be allowed in the zoning district in which they are listed if it can be demonstrated that the use, in the proposed location, is compatible with the district characteristics, purposes, dimensional regulations and supplementary regulations for the zoning district in which the use is proposed of the zoning purposes of the district, the particular site and the surrounding area. Uses stipulated in this Chapter as requiring a special review use permit shall only be allowed with prior issuance of such permit by the Board of Aldermen as described below.

Staff Comment: The Golden Gilpin Mill property is located in the Environmental Character Preservation (ECP) zone district. The ECP zoned district replaced all existing M zones as defined in the May 1991 zoning ordinance. The purpose of the ECP zone district is “to preserve environmentally and culturally sensitive areas that are prominent features of the community, and protect public health and

safety.” Permitted uses in the ECP district include: one (1) single-family dwelling unit, common open space areas, agriculture, horticulture, silviculture, grazing activities, and public facilities.

Special review uses include “*Mining and mining related uses, including mining heritage uses, such as a mining museum which preserve the community's mining heritage, may be permitted if they are not a threat to public health and safety and do not adversely impact surrounding land uses.*”

The land uses surrounding the Golden Gilpin Mill property include vacant land and outdoor recreation. The proposed mining/milling and tourism uses are consistent with the ECP zone district characteristics and purpose and are compatible with the surrounding land uses.

Sec. 16-365. Rezoning procedures, amendments to zoning ordinance and special review use permits.

(a) The City may from time to time amend the number, shape or boundaries of any zoning district, the uses permitted within a zoning district, any regulation of or within a zoning district or any other provision of this Chapter.

Staff Comment: The applicant is requesting the approval of a special review use as allowed within the Environmental Character Protection zone district, specifically for the property located at 7593 State Highway 119.

(e) Procedure for special review use permits and amending the Zoning Ordinance or the Zoning Map. Amendments to this Chapter or to the Zoning Map or the procurement of a special review use permit shall be processed in the following manner:

(1) Submittal of application. The applicant must submit to the Planning Department the materials necessary for the application to be heard by the Board of Aldermen. The Planning Department shall have ten (10) days to review the submittal for completeness.

Staff Comment: The applicant has submitted the materials necessary for review and hearing before the Board of Aldermen. Special Review Uses follow the same procedure, generally, as a Rezoning.

(2) The Planning Department will send the application out for referrals to various agencies for comment. These agencies will have twenty-five (25) days to respond.

Staff Comment: The application was sent out on three referrals: October 31, 2019, March 24, 2020, and May 5, 2020. Most of the referral comments were addressed during these three rounds of review. Outstanding items have been addressed as conditions of approval.

(3) A hearing is scheduled before the Board of Aldermen as provided in Section 16-369.

Staff Comment: A public hearing was set before the Board of Alderman for June 10, 2020.

(4) Board of Aldermen hearing. The Board of Aldermen conducts a public hearing to consider the application. Notice of the hearing shall be given as provided in Section 16-369. The Board of Alderman, at the public hearing and after review and discussion of the proposal, shall take one (1) of the following actions:

- a. Approval of the application, without conditions.*
- b. Conditional approval of the application, indicating for the record what condition shall be attached to the proposal.*
- c. Disapproval of the application, indicating for the record the reason for the recommendation of denial.*

Staff Comment: A public hearing was set and newspaper and sign posting notices were provided as required in Section 16-369.

(5) Basis for approval. The Board of Aldermen shall give consideration to and satisfy themselves of the criteria set forth below on land use applications identified in Section 16-361 except subdivisions:

a. That a need exists for the proposal;

Staff Comment: A need does exist (if City Council agrees that the proposed uses are compatible to the site and the area) for the proposed Special Review Use permit in order to allow the owner the ability to establish the only working mill of this kind in the State of Colorado. If approved, it will promote the goals of the City as outlined in the Black Hawk 2020 Comprehensive Plan.

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

Staff Comment: The 2020 Comprehensive Plan identifies this area as the Maryland Mountain Recreation Area and encourages heritage tourism in order to meet City goals including: transitioning from a local gaming area to a regional resort destination and promoting heritage tourism.

c. That there has been an error in the original zoning; or

Staff Comment: Not applicable.

d. That there have been significant changes in the area to warrant a zone change;

Staff Comment: The mining/milling use was established on the property in the 1860's. The existing mill was built in 1932 was used as a mill off and on through the 1970's. In 1989 when George Otten Jr. purchased the property, the site was zoned for mining and was a permitted use then. Because the mining use was discontinued at the time the property was rezoned to ECP, the mining/milling use became a special review use in the ECP District. Had the property been in operation at that time, the mining/milling use would have become a grandfathered use only if it had continued non-stop since. Since the mill was not in operation at that time, the use now needs an approved Special Review Use permit to operate in the City.

e. That adequate circulation exists in the area of the proposal and traffic movement would not be significantly impeded by the development resulting from the proposal; and

Staff Comment: The applicant has provided an updated traffic analysis of the site with the re-establishment of the mining/milling use. This updated traffic analysis is satisfactory to Stolfus Engineering, the traffic engineering referral consultant for the City, and nearly all of their comments have been addressed to date, with some items that can be addressed with a Site Development Plan application at a later date.

f. That any additional cost for municipal-related services resulting from the proposal will not be incurred by the City.

Staff Comment: All costs related to the re-establishment of the mining/milling use will be incurred by the applicant, the property owner and the mill operator. The City of Black Hawk will not incur any municipal-related improvement costs.

STAFF SUMMARY:

Staff from Baseline Corporation has evaluated the information provided by Matt Collins requesting the special review use permit for the property located at 7593 State Highway 119 allowing for mining/milling and tourism. Conceptual plans for the property include improvements to the existing mill building and the construction of additional structures used for mineral processing. The development of this property with these proposed uses can be consistent with the Black Hawk Comprehensive Plan and City goals. In addition, the application was received and processed in accordance with the Municipal Code.

In summary, Staff recommends approval of the Special Use Review permit allowing mining/milling and tourism at 7593 State Highway 119 with the following conditions:

1. Approval of a minor subdivision plat is required prior to construction of any structures on the property including Mill Site #10 and Mill Site #11.
2. A Certificate of Architectural Compatibility (COAC) is required prior to construction of any new structures, modification of the exterior of any existing structures or any other site improvements.
3. Approval of a Site Development Plan (SDP) is required prior to commencement of any construction of new buildings associated with the mining/milling activities. The SDP must address including but not limited to site distance triangle and access along Highway 119, bridge rating, finished floor elevations in relation to the 100-year floodplain, and all other requirements outlined in Sec. 16-362. - Site development standards.
4. The Special Review Use permit is valid for operation between the Golden Gilpin Mill and the Bates-Hunter mine. Acceptance of minerals from other mines other than the Bates-Hunter Mine will require an amendment to this permit.
5. Confirmation that there is no injury to others' water rights for water from North Clear Creek.
6. State regulated sound levels will need to be adhered to at all times and need to be monitored and mitigation techniques will need to be implemented if necessary.
7. No waters/chemicals from the milling operations will be allowed to enter the sanitary sewer system.
8. All relevant building permits and public works permits are required prior to any site improvements or construction of same either before or after (in accordance with City Code) a Site Development Plan is approved and are the responsibility of the applicant.
9. Duration of the Approved Special Review Use shall operate or discontinue in accordance with all of Section 16-363 (Special review use permits) including but not limited to terms of process; transferability; duration; and suspension of the use permit.

FINDINGS:

City Council may *approve, conditionally approve, or deny* a special review use request. To support this proposal, the following findings can be used:

The proposed special review use for 7593 State Highway 119 is consistent with the City of Black Hawk 2020 Comprehensive Plan and the City of Black Hawk Municipal Code Sections 16-363. - Special review use permits. 16-365. Rezoning procedures, amendments to zoning ordinance and special review use permits as noted and evaluated in the staff report presented to City Council.

RECOMMENDATION:

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

MOTION TO APPROVE Resolution No. 45-2020, a Resolution approving a Special Review Use permit to allow mining/milling and tourism uses for the property located at 7593 State Highway 119 with the following conditions:

1. Approval of a minor subdivision plat is required prior to construction of any structures on the property including Mill Site #10 and Mill Site #11.
2. A Certificate of Architectural Compatibility (COAC) is required prior to construction of any new structures, modification of the exterior of any existing structures or any other site improvements.
3. Approval of a Site Development Plan (SDP) is required prior to commencement of any construction of new buildings associated with the mining/milling activities. The SDP must address including but not limited to site distance triangle and access along Highway 119, bridge rating, finished floor elevations in relation to the 100-year floodplain, and all other requirements outlined in Sec. 16-362. - Site development standards.
4. The Special Review Use permit is valid for operation between the Golden Gilpin Mill and the Bates-Hunter mine. Acceptance of minerals from other mines other than the Bates-Hunter Mine will require an amendment to this permit.
5. Confirmation that there is no injury to others' water rights for water from North Clear Creek.
6. State regulated sound levels will need to be adhered to at all times and need to be monitored and mitigation techniques will need to be implemented if necessary.
7. No waters/chemicals from the milling operations will be allowed to enter the sanitary sewer system.
8. All relevant building permits and public works permits are required prior to any site improvements or construction of same either before or after (in accordance with City Code) a Site Development Plan is approved and are the responsibility of the applicant.
9. Duration of the Approved Special Review Use shall operate or discontinue in accordance with all of Section 16-363 (Special review use permits) including but not limited to terms of process; transferability; duration; and suspension of the use permit.

ATTACHMENTS:

1. Combined Land Development Application and related documents

Applicant's Submittal



LAND USE APPLICATION FORM

City of Black Hawk
Community Planning and Development

211 Church Street, P.O. Box 68
Black Hawk, CO 80422

Phone: 303-582-0615
Fax: 303-582-2239

www.cityofblackhawk.org

DATE: 10/25/19

APPLICANT NAME: Matt Collins, P.E.

APPLICANT ADDRESS: 1508 Ridge Rd., Nederland, CO 80466

APPLICANT MAILING ADDRESS: 1508 Ridge Rd., Nederland, CO 80466

APPLICANT CONTACT NUMBER: 3035706269 EMAIL ADDRESS: mcollins@blackfoxmining.com

PROPERTY OWNER NAME: George E. Otten, Jr.

PROPERTY OWNER ADDRESS: Attn: Darrel B. Otten, P.O. Box 2011, Farmington, NM 87499

PROPERTY OWNER MAILING ADDRESS: Attn: Darrel B. Otten, P.O. Box 2011, Farmington, NM 87499

PROPERTY OWNER CONTACT NUMBER: 5058015165 EMAIL ADDRESS: dboford@msn.com

PROJECT NAME: Golden Gilpin Mill

PROJECT ADDRESS: 7593 Highway 119, Black Hawk, CO 80422

PROJECT DESCRIPTION: Special Review Use (Mining/Tourism)

IS PROPERTY WITHIN CITY LIMITS: YES ☒ NO ☐

PRESENT ZONING: ECP CURRENT USE: Mining (Milling)

NAME OF EXISTING PLANNED UNIT DEVELOPMENT (IF APPLICABLE): n/a

NAME OF EXISTING SUBDIVISION PLAT (IF APPLICABLE): n/a

GILPIN COUNTY ASSESSOR'S I.D. NO.(S): See Attachments EXISTING PROPERTY SIZE: 0.94 ACRES/SQ.FEET

(PLEASE ATTACH A COPY OF SURVEY/PLAT.)

EXISTING BUILDING SIZE: 3292 SQ. FT. AND/OR NUMBER OF EXISTING RESIDENTIAL UNITS: 0

APPLICANT HAS READ AND ACKNOWLEDGES THE FOLLOWING:

For informational purposes, the Black Hawk Adopted Fee Schedule and Section 16-370 of the Black Hawk Municipal Code establishes the requirement for applicants to pay fees to cover the costs the City may incur by having City approved consultants evaluate and process applications.

APPLICANT AGREES TO THE FOLLOWING CERTIFICATION STATEMENT AND AFFIDAVIT:

I, as the applicant, hereby certify that I believe to the best of my knowledge that all information supplied with this application is true and accurate and that consent of the property owner listed above, without which the requested action cannot lawfully be accomplished, has been granted. Permission is also hereby granted to the City of Black Hawk staff and their consultants to physically enter upon and inspect the subject property and take photographs as necessary for preparation of the case. In addition, I have read and understand the Black Hawk Adopted Fee Schedule and Section 16-370 of the Black Hawk Municipal Code, and by signing this application I am agreeing that I am authorized to sign on behalf of the property owner, or business-owner, or applicant and commit and agree to the payment of any and all fees associated with processing this application and further agree to pay City of Black Hawk invoices associated with the processing of this application.

The application must be submitted in person to the Community Planning and Development office. A complete submittal of one (1) hard copy set and one (1) electronic copy in PDF format on flash drive, as well as the receipt of application fee payment, must accompany the application. Application fees may be paid online at: <http://www.cityofblackhawk.org/city-departments/community-planning-development/>

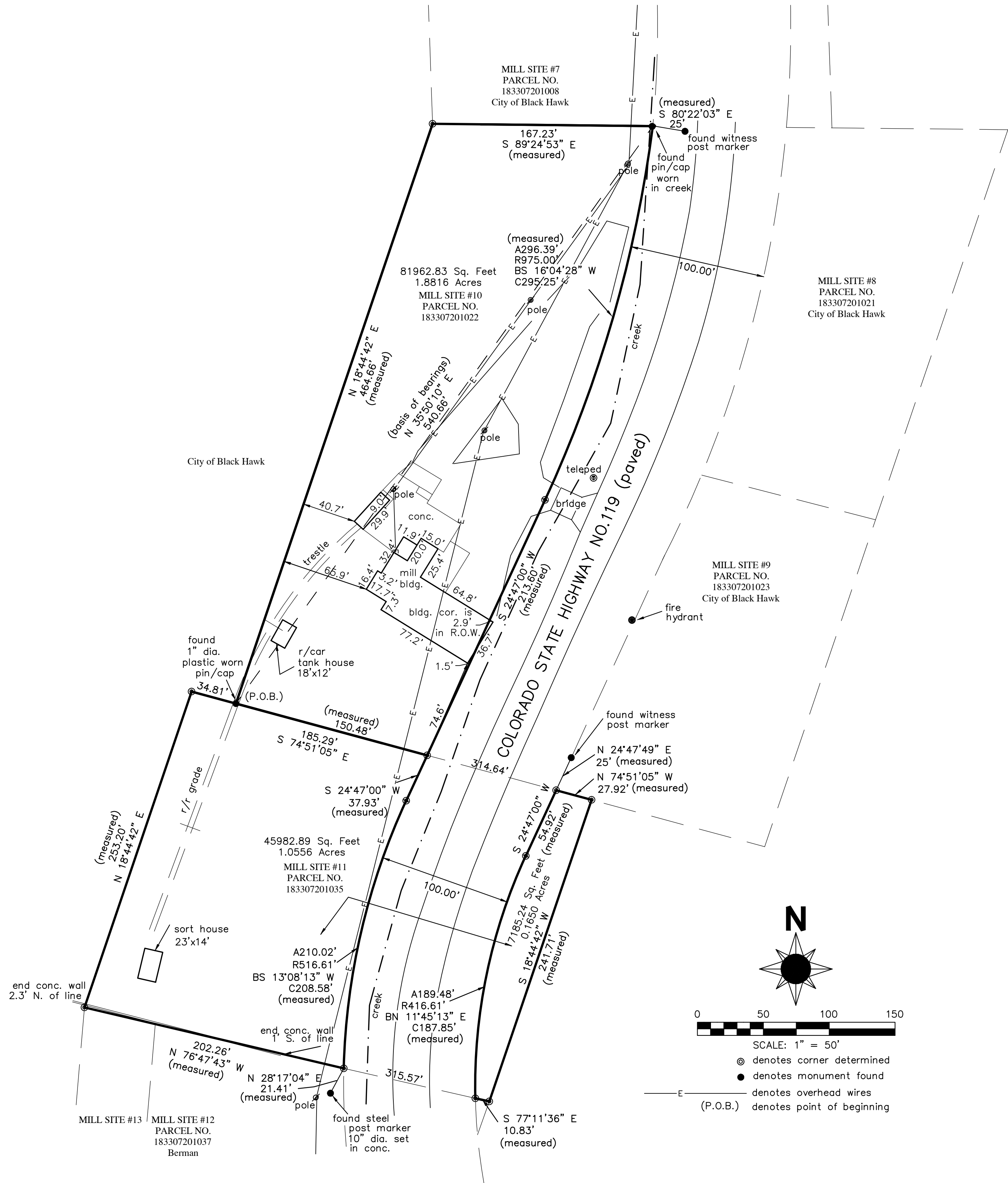
Matt Collins,
P.E.

Digitally signed by Matt Collins, P.E.
DN: cn=Matt Collins, P.E., o=Black
Fox Mining LLC, ou,
email=mcollins@blackfoxmining.llc,
c=US
Date: 2019.10.25 16:44:09 -06'00'

SIGNATURE OF APPLICANT:

DATE: 10/25/2019

ALTA/NSPS Land Title Survey
MILL SITE NO.10 & MILL SITE NO.11 CITY OF BLACK HAWK
LOCATED IN THE NW 1/4 OF SEC.7 T-3-S R-72-W OF THE 6th P.M.
CITY OF BLACK HAWK, COUNTY OF GILPIN, STATE OF COLORADO



NOTES:

1. SURVEY COMMENCED 12-15-17, SURVEY COMPLETED 1-10-18.
2. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY COMBINS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE 18-4-508,C.R.S.
3. PORTIONS OF SUBJECT PROPERTY ARE LOCATED WITHIN FEMA 100 YEAR FLOOD ZONE AE, FIRM COMMUNITY PANEL NUMBER 080077 0001 C, CITY OF CENTRAL CITY, COLORADO GILPIN COUNTY, EFFECTIVE DATE: 2-16-94, AS SHOWN HEREON.
4. THE DISTANCE MEASUREMENTS USED HEREON ARE IN US SURVEY FEET.
5. CORNERS SET ARE 18" NO. 5 REBAR WITH A 1 1/2" ALUMINUM CAP STAMPED 33197.
6. NEW LEGAL DESCRIPTIONS PREPARED ARE THE SAME REAL ESTATE DESCRIBED IN THE EXISTING RECORD LEGAL DESCRIPTIONS. COURSES AND DISTANCES ARE DETERMINED BY ACTUAL SURVEYED LOCATIONS IN THE FIELD.
7. NO POSTED OR RECORD ADDRESS FOR SUBJECT PROPERTY.
8. POSITION OF STATE HIGHWAY NO.119 DETERMINED BY FOUND SURVEY MONUMENTS.

BASIS OF BEARINGS: (ASSUMED)

THE BASIS OF BEARINGS OF THIS SURVEY IS THE LINE BETWEEN THE FOUND MONUMENTS AS SHOWN AND DESCRIBED HEREON, THE LINE BETWEEN THE FOUND PIN/CAP MARKING THE SW CORNER OF MILL SITE NO.10 AND THE FOUND PIN/CAP MARKING THE NE CORNER OF MILL SITE NO.10, IS ASSUMED TO BEAR N 35°50'10" E AND MEASURES 540.66 FEET.

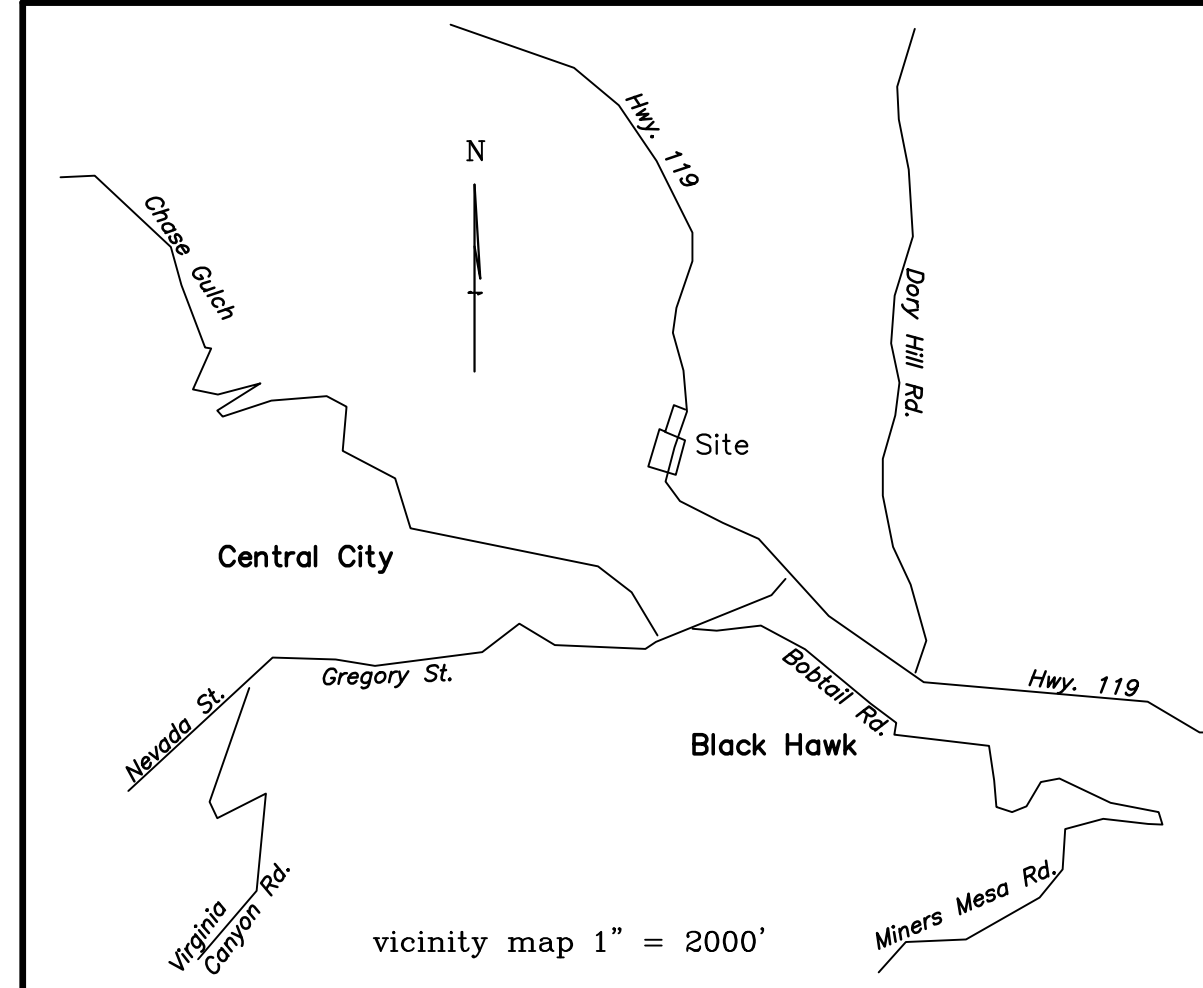
LEGAL DESCRIPTION: (current record description)
per Gilpin County Records

MILL SITE #10, PARCEL NO. 183307201022
AND MILL SITE #11, PARCEL NO. 183307201035
CITY OF BLACK HAWK,
COUNTY OF GILPIN,
STATE OF COLORADO.

PROPERTY DESCRIPTION:
(as measured and monumented)

MILL SITE #10, PARCEL NO. 183307201022
A CERTAIN PARCEL OF LAND LOCATED IN THE NW 1/4 SECTION 7 TOWNSHIP 3 SOUTH RANGE 72 WEST OF THE 6TH P.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SW CORNER OF MILL SITE #10 PARCEL NO.183307201022;
THENCE N 18°44'42" E 464.66 FEET TO THE NW CORNER OF MILL SITE #10;
THENCE S 89°24'53" E 167.23 FEET TO A POINT ON THE WESTERLY R.O.W. LINE OF STATE HIGHWAY 119;
THENCE ON AN ARC TO THE RIGHT ALONG SAID WESTERLY R.O.W. LINE HAVING A RADIUS OF 975.00 FEET, AN ARC LENGTH OF 296.39 FEET AND A CHORD THAT BEARS S 16°04'28" W AND MEASURES 295.25 FEET TO A POINT;
THENCE CONTINUING ALONG SAID WESTERLY R.O.W. LINE S 24°47'00" W 213.60 FEET TO A POINT ON SAID WESTERLY R.O.W. LINE;
THENCE N 74°51'05" W 150.40 FEET TO THE POINT OF BEGINNING.
CONTAINING 1.8816 ACRES MORE OR LESS.
CITY OF BLACK HAWK,
COUNTY OF GILPIN,
STATE OF COLORADO.

MILL SITE #11, PARCEL NO. 183307201035
A CERTAIN PARCEL OF LAND LOCATED IN THE NW 1/4 SECTION 7 TOWNSHIP 3 SOUTH RANGE 72 WEST OF THE 6TH P.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SW CORNER OF MILL SITE #10 PARCEL NO.183307201022;
THENCE S 74°51'05" E 314.64 FEET TO THE NE CORNER OF MILL SITE #11;
THENCE S 18°44'42" W 241.71 FEET TO THE SE CORNER OF MILL SITE #11;
THENCE N 76°47'43" W 315.57 FEET TO THE SW CORNER OF MILL SITE #11;
THENCE N 18°44'42" E 253.20 FEET TO THE NW CORNER OF MILL SITE #11;
THENCE S 74°51'05" E 34.81 FEET TO THE POINT OF BEGINNING.
EXCEPTING AND EXCLUDING ANY PORTION OF STATE HIGHWAY NO. 119.
CONTAINING 1.0556 ACRES MORE OR LESS.
CITY OF BLACK HAWK,
COUNTY OF GILPIN,
STATE OF COLORADO.



SURVEYOR'S CERTIFICATE:		
To: George Otten:		
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 1, 4, 7(a), 8, 11 and 13 of table A thereof. The field work was completed on 1-10-18.		
Date of Plat or Map: 1-15-18	SIGNED: Date: 1-15-18 Seal:	
Peter M. Palombo P.L.S. 33197		
Tripod Geometrics Surveying LLC Peter M. Palombo PLS 865 Orman Dr. Boulder, CO 80303 PLS 33197 Bus: (720) 849-7509 peterpalombo@aol.com		
Proj.# DWG.: ms_10_11_GoldGilpALTA.dwg	DATE OF PREPARATION: 1-15-18	1 OF 1

Golden Gilpin Mill Site
7593 Highway 119
Black Hawk, CO 80422

For

George E. Otten, Jr.
c/o Darrell B. Otten
P.O. Box 2011
Farmington, NM 87499

BH Mining Company, LLC
P.O. Box 581
Black Hawk, CO 80422

Central City Consolidated Mining Company
c/o Matt Collins
1508 Ridge Rd.
Nederland, CO 80466

Completed by

Matt Collins, PE
General Manager
Black Fox Mining LLC



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1 Introduction

In June of 2017, Black Fox Mining LLC (“Black Fox”) submitted a Land Development Application on behalf of Mr. George Otten, President, Central City Consolidated Mining Company (“CCMC”) to the City of Black Hawk for the reactivation of the Golden Gilpin Mill, under Colorado Mined Land Reclamation Board Permit M-1990-041. Due to a documented temporary cessation of activity at the site between 2011 and the present, the State of Colorado’s permitted use of the site is no longer an existing, non-conforming use, and now falls under the new land use and zoning regulations implemented by the City of Black Hawk. Under Chapter 16 of the Black Hawk Municipal Code (“Municipal Code”), the site is zoned as an Environmental Character Preservation District (“ECP” District). This zoning replaces the previous Mining District (“M” District) designation. Pursuant to the Municipal Code, mining and mining related uses (milling) are permitted as Special Review Uses (“SRU”) within an the ECP District.

This document supplements the Land Use Application for the reactivation of the site, congruent with its historic use as a mineral processing facility, serving the nearby Bates-Hunter Mine. It is the intent of this document to provide a description of the planned activity and proposed use of the site for SRU approval by the City of Black Hawk and to provide supporting information requested subsequent to the Development Review Committee meeting of July 19, 2017.

2 Site Information

The site is comprised of two Gilpin County parcels of land located within the City of Black Hawk, in Gilpin County, Colorado. The parcel numbers are 1833-072-01-022 “Millsite 10,” and 1833-072-01-035 “Millsite 11”.

The address of the Golden Gilpin Mill is: 7593 Highway 119, Black Hawk, CO, 80422. Access to the site is via Colorado Highway 119. The property is immediately adjacent to the highway right-of-way.

3 Land Use Designation

The site is currently zoned as an “Environmental Character Preservation District” under the City of Black Hawk’s Municipal Code (“zoning ordinance of the City of Black Hawk, Colorado “, Ord. 94-11 §1, 1994).

Under the zoning ordinance of the City of Black Hawk, sites zoned “ECP” may have been formerly zoned “M” (Mining).

Pursuant to the Municipal Code: *Sec. 16-74. Purpose.*

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“The purpose of the ECP zoning district is to preserve environmentally and culturally sensitive areas that are prominent features of the community, and protect public health and safety.”

Objective 2 of Sec. 16-75 states:

“The objectives of the ECP zoning district are to: ...

(2) Protect distinctive features of the City’s mining heritage, which are a cultural amenity to the community.”

Sec. 16-76. Use Regulations state that Special Review Uses include *“Mining and mining related uses, including mining heritage uses, such as a mining museum which preserve the community’s mining heritage, may be permitted if they are not a threat to public health and safety and do not adversely impact surrounding land uses.”*

4 Historic Use

The Golden Gilpin Mill site was originally developed in the early 1860’s as a mineral processing facility, because of the availability of water from North Clear Creek and the relatively flat ground upon which to construct the modest facilities of that era. At least two mills were located on this site, the Prize Mill and the Meade (“Mead” or “Gunnell”) Mill. Both the Prize and Mead Mills were “stamp” mills, where mineral rich rock is pounded, rather than the current practice of grinding, using heavy steel “stamps” that are raised and dropped on the material. The Prize Mill had twenty-five stamps and the Meade Mill had twenty stamps. The Meade Mill possessed the distinction of receiving the first ore shipped by the Gilpin Tramway in 1887 from the Gunnell Mine which operated as late as 1938.

The current mill building was constructed in 1932 and operated intermittently into the 1970’s as a custom or toll mill for various mines in Colorado. Much of the material processed at the site in the latter half of the 20th century came from the adjacent Smith Mine. Mr. George E. Otten, Jr., purchased the property in 1989 to process material from the Bates-Hunter Mine located in Central City. A permit for operation of the site under Colorado Revised Statutes (“C.R.S.”) 34-32-110 and the Colorado Mined Land Reclamation Board Mineral Rules and Regulations was issued in 1990 to Mr. Otten’s Central City Consolidated Mining Company. On March 8, 2011, Mr. Otten filed for, and was granted, Temporary Cessation of Activity under that permit. This Cessation expired on March 8, 2016.

5 EPA Designation

In 1982, the entire Central City/Clear Creek Superfund Site was nominated for listing on the National Priorities List (“NPL”). Added to the NPL in 1983, the Central City/Clear

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Creek Superfund site includes four operable units. The Golden Gilpin Mill was originally located within Operable Unit #3 (“OU3”) however, after administrative restructuring, remedial actions for the Golden Gilpin Mill Site fell under Operable Unit #4 (“OU4”). Remedial actions for the Golden Gilpin Mill Site consisted of addressing “low-level threat wastes” by capping or installing physical barriers to stormwater erosion of the historic mill tailings.

Declared a priority area within the Central City/Clear Creek Superfund Study Area, some remediation of the Golden Gilpin Mill Site occurred from June of 2008 through September of 2008. This remediation was managed by the Colorado Department of Public Health and the Environment (“CDPHE”) in coordination with the United States Environmental Protection Agency (“EPA”). Considered a relatively small, straight forward project, all phases of remediation were judged to have proceeded smoothly, and final demobilization occurred on September 22, 2008. The work performed focused on stabilizing the historic tailings pile to prevent mobilization of the material, which presents a “low-level” potential environmental threat from elevated levels of metals in the mill waste. The design for the remediation, while stabilizing and containing the waste pile, and addressing storm event run-off, omitted capping the waste pile so as to specifically allow future mine-related activities at the Mill under a permit from the Colorado Division of Reclamation Mining and Safety (“DRMS”).

6 Current Use

Following the expiration of the Temporary Cessation, Mr. Otten was required to perform some site reclamation (cleanup) pursuant to the permit conditions. This work consisted of general trash removal, removal of stockpiles of materials and idled equipment, as well as general site cleanup. This work began in 2017 and continues sporadically. Mr. Otten passed away in January of 2018. His family and Trust survive as owners/operators of the site.

The site is active under Colorado Mined Land Reclamation Board permit number M1990-041.

On October 4, 2016, prior to Mr. Otten’s death, Mr. Otten and Mr. Franklin H. Levy entered into an Option Agreement wherein Mr. Levy has rights to “*commence rehabilitation and mining activities on the* [Bates-Hunter Mine and Gilpin Mill]. Mr. Levy has created BH Mining Company, LLC (“BHMC”), a business entity for the execution of this work. Mr. Matt Collins is the registered contact for the Colorado Division of Reclamation, Mining and Safety (“DRMS”) administered permit and is also the General Manager of BH Mining Company, LLC in Colorado.

BH Mining Company, LLC, in conjunction with the Otten family, the George E. Otten, Jr. Trust and the Central City Consolidated Mining Company, has assumed the active role of site rehabilitation, including cleanup, evaluation, engineering and planning for the desired activities proposed in this document.

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7 Planned Use

All parties involved in the ownership and use of the site would like the site to continue to process minerals, as has been the history of the site since the 1860's.

As proposed to the City of Black Hawk Development Review Committee on July 2017, the planned use of the site is to re-commence mineral processing and to accommodate limited educational and historic tourism in what would be one of the only active, small scale, mineral processing facilities in the State of Colorado.

Reactivating the Golden Gilpin Mill provides several significant advantages and benefits to the Community. Specifically,

- Transition of the site from a largely unused and unoccupied property to a secured, functional business location eliminates the public safety concern that the property had evolved into since it was deactivated many years ago. During preliminary site cleanup, we observed evidence of recent trespassing, related vandalism, and the presence of graffiti promoting further illegal activities such as drug use. Since initiating reactivation-related activities, security of the property from and for the general public has been improved, as unauthorized openings have been covered, doors now include updated locking mechanisms, and temporary lighting has been installed to improve safety inside the buildings. The result is a more secure, more-safe property compared to previous conditions at the location. As such, initiation of the project has mitigated potential *“threats to public safety”* and *“adverse impacts on surrounding land uses,”* as identified in the City of Black Hawk Zoning Code, Article IV, Division 3, Section 16, by virtue of improved control of the site.
- As a result of moisture-related decay, several areas of the building have deteriorated to the extent that structural failure will be an eventuality in the face of continued inaction to mitigate. Pursuant to land use provisions and standards for property zoned as Environmental Character Preservation per the Black Hawk Zoning Code (see above for specific reference), our planned repair of such dilapidation directly addresses the Code with respect to the objective to *“(2) Protect distinctive features of the City’s mining heritage, which are a cultural amenity to the community.”* Thus, repair and strengthening of the building appears to be in direct alignment with this particular directive of the City Code.
- The current exterior appearance of the building and grounds might be argued as being an eyesore within the Community due to the deteriorated condition of the roofing, absence of recent painting, and uncontrolled growth of flora at various, limited locations around the property. As such, restoration of the structure, and improvements to the grounds, as reviewed and approved by the City, are anticipated to significantly improve the visual impact of the site, with corresponding positive effects realized by adjacent land uses.

- A principal Community heritage that is the historic mining that formed the basis for the Community is embodied in the Golden Gilpin Mill. Our project is anticipated to preserve that heritage pursuant to the provisions of the Black Hawk Zoning Code wherein Section 16-76.(c)(3) states *“Mining and mining related uses, including mining heritage uses, such as a mining museum which preserve the community’s mining heritage, may be permitted if they are not a threat to public health and safety and do not adversely impact surrounding land uses.”* As discussed above herein, we believe that restoration of the mill and improvements to the grounds are consistent with *improving* public safety and *lessening* threats to public health, while *reducing* the adverse impacts to surrounding land use by eliminating the “eyesore” character some might see in the property in its unrestored and deteriorated condition.
- The presence of a working gold mill, the singular working mill in the Black Hawk/Central City district, is anticipated to generate some increased level of interest, excitement, and attraction by local, National, and International history buffs that frequent the area looking to see a glimpse of the past. We anticipate that such interest will attract additional people to the area who are seeking positive learning experiences through a better understanding of history.
- Our original desire for full-time tourism within the mill itself appears to be somewhat stifled by modern regulatory concerns related to members of the general public accessing a working industrial environment. However, we see potential opportunities to participate with the general public by:
 - Offering limited mill tours by appointment only, or on a very specific schedule;
 - Working with the City to establish an information kiosk located on the east side of Highway 119 that is directly related to the working Golden Gilpin Mill and its extensive history that is directly across the road. Such a kiosk could be interactive with various media walking visitors through the property’s history, the restoration of the property, and most exciting, perhaps televised live-feed from various cameras positioned strategically within the restored structure.
 - Possible extension of the Tramway Trail such that a spur of the trail runs along the west property boundary, thus allowing fairly close access to view the property and its historic features such as the trestle, the tippie, the train service building, etc.
 - Continuing our interaction with the City of Black Hawk as a proactive community member working to promote the City’s goals regarding tourism and other activities peripheral to the gaming industry that our operations can contribute to.

7.1 Scale of Operation

Congruent with the history of the site, the existing equipment and the planned activity at the Bates-Hunter Mine in Central City, the site would process mineralized rock produced from the Bates-Hunter Mine under the combined Colorado Division of Reclamation, Mining and Safety (“CODRMS”) Permit (M1990-041) which allows up to 70,000 tons of material to be processed per year (equivalent to under 200 tons per day). This is the maximum throughput allowed under current permitting, but is likely far greater than the site is capable of processing. Existing equipment at the site is designed around the Hardinge 6x22 conical ball mill, which is the primary grinding machine. This mill has a manufacturer rated capacity of between 60 and 72 tons per 24-hour period. The planned operation of the site is to begin at a very limited capacity of several tons per day, ramping up to several tens of tons per day. At this time, it is not anticipated that the site will ever process more than 50 tons per 24-hour period however, any condition of the requested Special Review Use permit should not be less than the current DMRS 110(1) permit limitation of 70,000 tons per year.

The tourism component of the operation will be secondary to, and resultant from, the mineral processing activity. At this time, BHMC envisions that tours will be limited to eight visitors per tour (thirty-two visitors per day) between the hours of 10:00AM and 4:00PM, seven days per week.

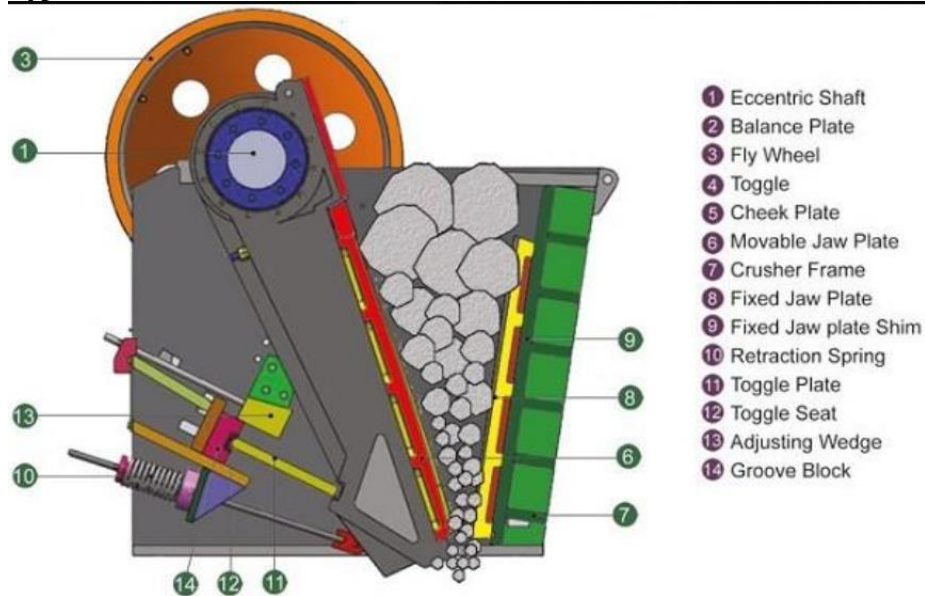
7.2 Mineral Processing Activity

Material will be delivered to the site by small dump truck or dump trailer of no more than 15-ton capacity per load. The frequency of loads will vary depending on mine production, but is not expected to exceed four trips per day on average. Trucks delivering feed material to the mill will back-haul tailings materials from the processing to the mine.

7.2.1 Crushing

Material will be delivered to the coarse ore bin located at the top of the existing ramp on the northwest corner of the mill building. This bin feeds a 10x21 Telsmith jaw crusher which reduces the size of the feed to gravel. The crushed material is conveyed vertically to the fine ore bin on the southwest corner of the building. Crushing is done inside the building, reducing external noise. High-pressure/low-volume water mist will be used to minimize dust generation from this process.

Figure 1 - Typical Jaw Crusher Section



7.2.2 Grinding

A small belt feeder conveys the material from the bin to the Hardinge 6x22 conical ball mill where water is added to the process. The ball mill uses steel balls (<4" diameter) to grind the material to a fine sand.

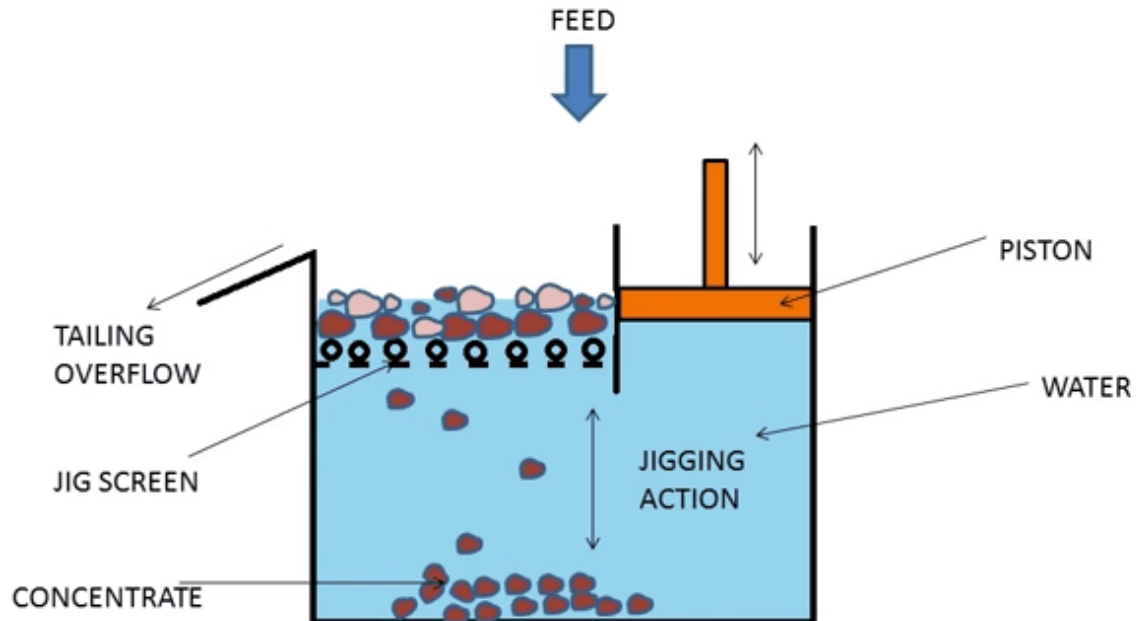
Figure 2 - Hardinge 6x22 Conical Ball Mill



7.2.3 Gravity Concentration

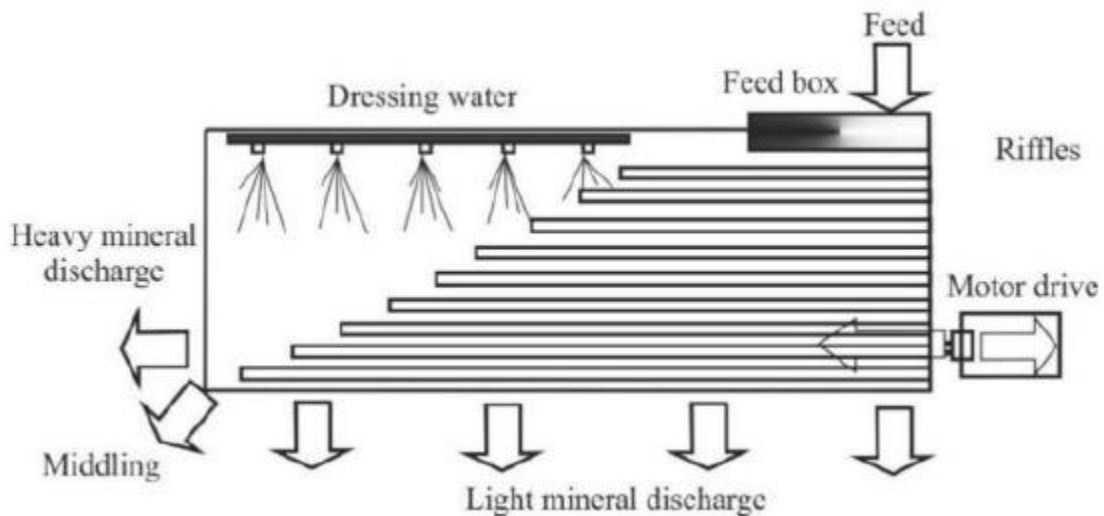
The sand exits the ball mill and crosses a duplex jig, which is a gravity separation device (and not a chemical process).

Figure 3 - Section of a Jig Machine



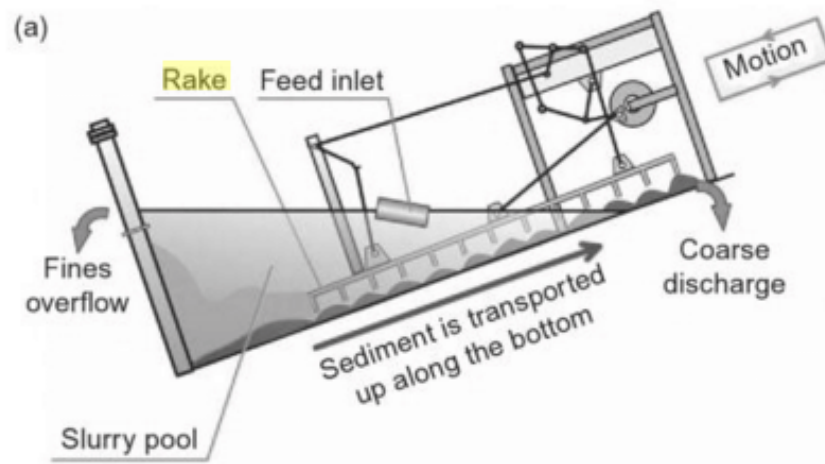
The jig produces a concentrate which will be further concentrated on a Wilfley shaker table (also not a chemical process).

Figure 4 - Schematic of a Shaking Table



Final gravity concentrate will be transported offsite in small quantities for sale or further pyrometallurgical processing. Materials passing the jig are sized in a double rake classifier (image) where materials too large for further processing are returned to the ball mill for additional grinding.

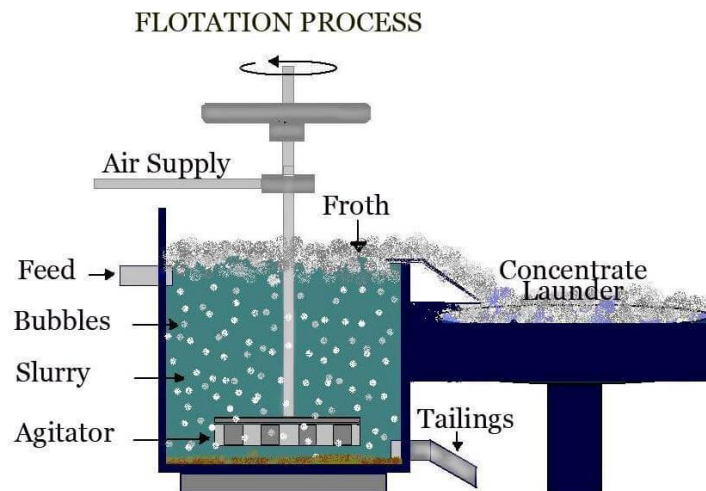
Figure 5 - Section of a Rake Classifier



7.2.4 Froth Flotation

Materials sized small enough to continue through the process will flow to a conditioning tank where chemical reagents are introduced. These reagents may include frothers (e.g. pine oil, polyglycol ether, aliphatic alcohols), modifiers (e.g. soda ash, lime, copper sulfate, salts) and collectors (e.g. amyl-xanthates, isopropyl-xanthates), all of which are non-toxic, non-SARA III (Superfund Amendments and Reauthorization Act) listed chemicals used in very small quantities (e.g. 0.1-0.3 lb./ton of ore). From the agitated conditioner tank, the slurry is then treated in froth flotation cells (the plant has at least fourteen of these cells available) which are analogous to a household blender. In these cells, valuable constituents are floated to the surface of the froth where they are mechanically scraped off as a concentrate. This concentrate is then dewatered using a disk vacuum filter.

Figure 6 - Section of a Typical Froth Flotation Machine



7.2.5 Tailings Disposal

Tailings from the processing will be dewatered on site in a newly constructed building designed for that purpose. The dewatered tailings will be transported offsite to the Bates-Hunter mine for re-deposition underground as structural fill in the historic and newly excavated workings. This backfilling approach is a modern, environmentally preferred solution for placement of mineral processing tailings, solving many of the problems created by surface deposition of tailings and enhancing the environmental restoration of the mine site, as well.

7.2.6 Process Water

All process water will be recycled into the plant. The processing is a net consumer of water, which will be supplied as needed under existing water rights to the mill from North Clear Creek. Water use in the processing circuit will be approximately 3.5 tons of water per ton of mill feed, with new water being consumed at the rate of approximately 0.35 tons per ton of mill feed. No process water will be discharged to the environment. The mill building foundation includes a sump to collect any spillage within the plant for re-use.

8 Existing Structures

The Golden Gilpin Mill building is a structure that consists of at least two individual buildings connected by roofs and/or other structural and non-structural features. There are several outbuildings on the site. These will be described separately.

The Golden Gilpin Mill building is reported to have been constructed in 1932. The main portion of the building has a concrete foundation and, as typical of the era and technology available for mineral processing in the early 1930's, has several floor levels of varying elevation. The building is constructed of rough dimensioned lumber, with main "bent" frame structures supporting the roof and walls. Cladding of the building is with steel sheet metal of relatively thin gauge and roofing is mineral surfaced asphalt rolled fiberglass mat being replaced with Corten ® corrugated steel panels. A separate structure comprised of a coarse ore bin and coal bin adjoins a timber cribbed earthen ramp that was constructed about eight feet to the north of the main building. This structure was joined by a roof and enclosed to the main building. A fine ore bin tower was constructed on the west wall of the main building and connects to the coarse ore bin structure via an enclosed elevated walkway.

Trestle and Tipple

Just west of the main building and coarse ore bin is an historic rail trestle that leads to a tipple area and termination building. At this time, this structure is not planned for incorporation in the use of the site.

Train Service Building

Immediately south of the trestle is a small service building. At this time, this structure is not planned for incorporation in the use of the site.

Sorting Building

An open, roofed structure sits at the historic rail grade in proximity to the south west corner of the property. This structure is not planned for incorporation in the use of the site, at this time.

9 Repair and Improvements to Existing Structures

The Golden Gilpin Mill is a timber-framed building constructed in 1932. The Mill has suffered from neglect, vandalism, and long-term exposure to the elements. Our preliminary evaluation of the Mill has revealed that much of the structure appears to be sound, with spot locations of damage primarily as a result of moisture intrusion.

BHMC is actively pursuing restoration of the building through the following acts of due diligence:

- BHMC personnel have conducted an inspection of the building resulting in development of an in-house preliminary condition report;
- Palmer Engineering & Forensics, LLC (“PE&F”) personnel recovered several samples of wood from various structural elements of the building and had those samples analyzed for species type by Dr. Regis B. Miller, PhD, Information Specialist-Wood Identification and Tropical Woods, Madison, WI. The purpose of this investigation was to identify the appropriate wood design values for structural analysis of the Mill framing per the 2015 National Design Specification for Wood Construction;
- BHMC employed the services of Timber Products Inspection, Inc., of Conyers, GA, to perform Material-In-Structure (“MIS”) inspections of the primary wood framing elements of the building to establish wood structural-grade guidelines for the framing utilizing modern wood grading procedures. The information developed from these inspections was utilized in the performance of structural analyses of the Mill framing per the 2015 National Design Specification for Wood Construction, the 2015 International Building Code, and ASCE 7-10 entitled “Minimum Design Loads for Buildings and Other Structures;”
- PE&F has completed structural analysis of the roof and timber bent framing of the main mill building (Phase 1) and has provided Repair Plans and Calculations to BHMC for City review with respect to building permit approval (see the Phase 1 Repair Plans attached);

- PE&F is in the process of completing Phase 2 of the structural analysis and Repair Plan development; Phase 2 covers the remaining portion of the building outside of that under cover of the main shed roof of the main building.
- BHMC has identified the Whiteman Lumber Company of Cataldo, ID, as being a reliable provider of the rough sawn lumber and timber required to repair the building while maintaining the original rough-sawn appearance of the original framing. The Repair Plans are annotated such that wood grade and species documentation for the lumber and timber are provided by Whiteman upon product delivery, in order to ensure compliance with the structural requirements of the Repair Plans.
- Phase 1 repair, consisting of structural repair in the main portion of the building, minor demolition of a later addition, and re-roofing is nearing completion.

Upon completion of the Phase 2 structural analysis and subsequent development of Phase 2 repair plans, BHMC plans to begin on-the-ground restoration, repair, and strengthening of the building as soon as possible, subject to building permit approval by the City of Black Hawk. BHMC began this work during the third quarter of 2019.

9.1 Restroom Facilities

The site has no modern sanitary facilities. An historic multi-person outhouse exists on the far eastern portion of the property, across the creek and highway. The planned use of the site requires the installation of modern sanitary facilities. Conceptually, the site will need the construction, within the building, of a restroom capable of supporting the workforce of approximately 5 individuals. BHMC has identified at least one location within the existing Mill structure that is capable of containing such sanitary facilities without expansion of the building. The location of this occupiable space is reasonably compatible with the position of the structure relative to Highway 119 and the existing, buried sanitation elements within the highway right-of-way. Thus, BHMC anticipates that the planned new sanitary facilities within the Mill can be connected to the City of Black Hawk Sanitation District's existing service lines in a reasonably efficient manner. Upon approval of the Special Review Use for the site, BHMC will develop engineered plans for the water and sewer connections to the City facilities and will submit those to the City for approval and permitting.

9.2 Electrical Service

The site is serviced by Xcel Energy. Currently, the service is disconnected and temporary power is being supplied by small gas- or diesel-powered generators, as necessary. All of the existing electrical infrastructure within the building(s) will need to be replaced. This will be done, subsequent to the completion of structural repair and improvement to the building(s). BHMC employs a licensed Journeymen electrician who is very familiar with all aspects of commercial and mining electrical installations.

Additionally, PE&F employs licensed electrical engineers who are qualified to design the electrical systems that will be necessary for the safe operation of the site.

10 Planned Structures

BH Mining Company would like to construct a new building on parcel number 1833-072-01-035 “Millsite 11,” to handle and dewater tailings products generated by the milling process. The new building (or “Sand Barn,” per our planning documents) and a “thickener” or clarifier will be located such that it caps a portion of the historic tailings pile located on the south side of the property. We anticipate that such construction over the tailings will benefit both the community and the State, while providing BHMC a secure facility to remove process water from the tailing materials.

Figure 11 provides a tentative location for the Sand Barn on the subject parcel, Figure 7 provides a conceptual rendering of the proposed Sand Barn structure, and Figures 8 & 9 depict a building of similar dimensions and layout. Figure 10 provides an example of a clarifier associated with this type of dewatering.

Figure 7 - Conceptual Image of Sand Barn

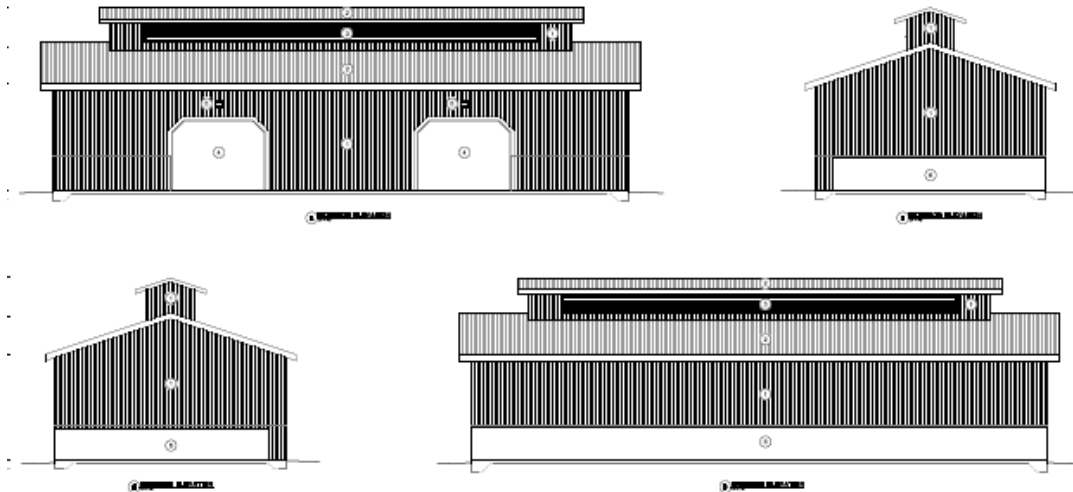


Figure 8 - Sand Barn (Front - Under Construction)



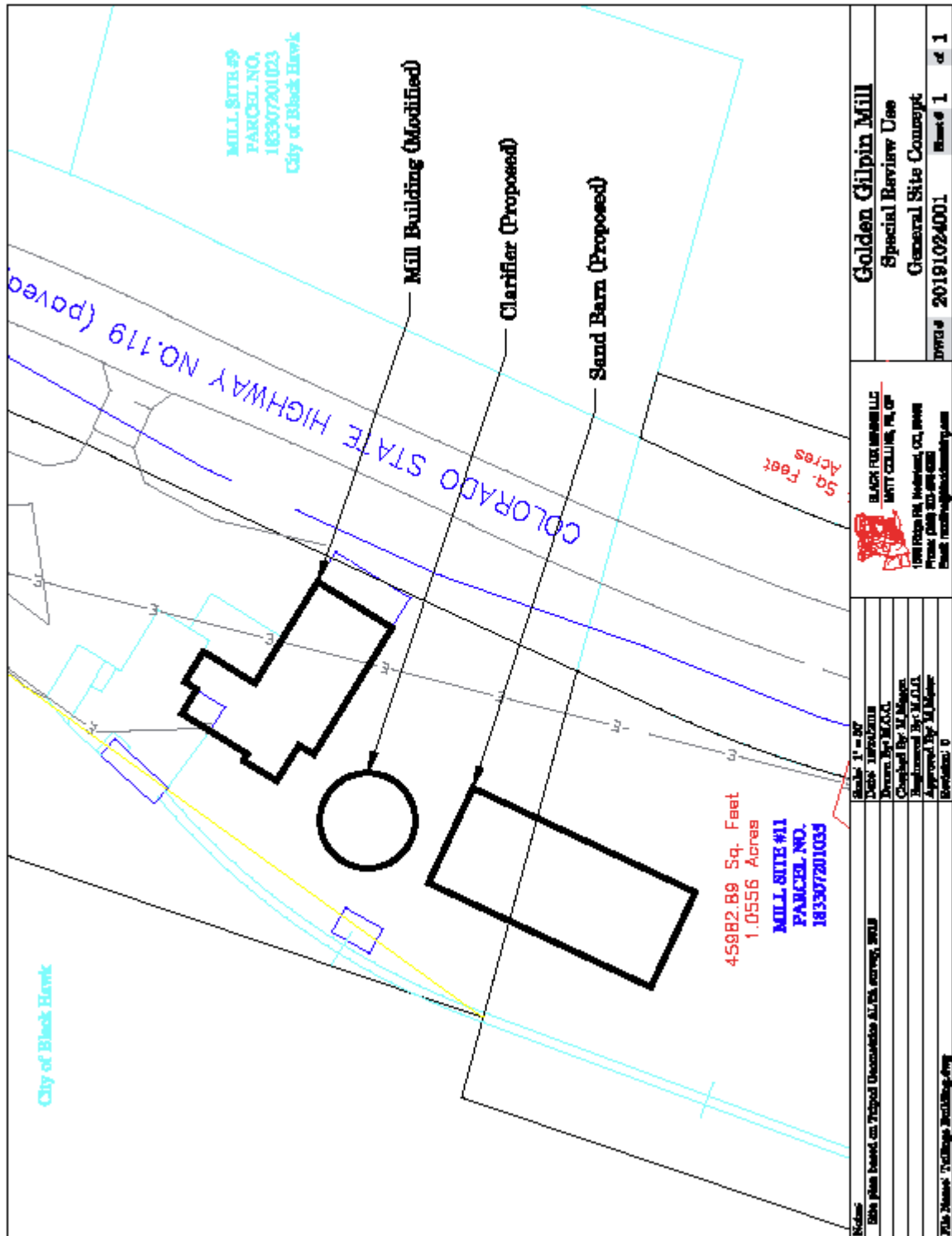
Figure 9 - Example Sand Barn (Rear)



Figure 10 - Example Clarifier (Under Construction)



Figure 11 - Conceptual Site Plan



The building is envisioned to be rectangular in shape with approximate outside dimensions of 44 ft. by 103 ft. The building foundation will be constructed of reinforced concrete, the structural framing will be pre-fabricated steel, and the roofing and siding will be corrugated, A606-4 Corten® weathering steel, matching the new roofing at the mill building. The interior of the building will contain an 8-ft-tall reinforced concrete “push wall” that provides a backstop for a small front-end loader to pick up and move dewatered tailings for permanent disposal off-site. Detailed architectural and structural plans for the building and clarifier will be submitted for review subsequent to approval of the SRU for the site.

Following cessation of mining and milling activities, we anticipate that the building could be readily repurposed for a variety of potential commercial and/or industrial uses. Thus, future reclamation of the building is not anticipated.

Currently, advancements in the planning of the Sand Barn include, but are not limited to:

- Development of conceptual elevations for the structure;
- Exploratory drilling by a Kumar & Associates, Inc. to determine foundation design requirements;
- Preliminary investigation of the effects of the North Clear Creek floodplain with respect to the optimal positioning of the building on the property and building design requirements related to potential impact by floodwaters.

No other structures are contemplated at this time.

11 Site Staffing

The use of the site will require a small staff of persons to operate and maintain the equipment. When tours will be given, it is anticipated that the operational staff will also function as tour guides. Project staffing is estimated at five employees on the day shift, with two employees on night shift. Shifts will be twelve hours in length, four days per week. Full capacity of the plant would require seven day per week coverage.

The day shift will operate the crushing circuit utilizing two employees, and two additional employees will be required to operate the gravity/flotation circuits. One mill manager will be on the day shift. The night shift will require two employees to operate the gravity/flotation circuits.

12 Operating Hours

The site will be operated twenty-four hours per day, seven days per week upon full scale work. It is likely that the site will begin operating four days per week until such time as the Bates-Hunter mine can produce sufficient material for the mill to operate at capacity. Allowing for holidays, the maximum number of work days per year is envisioned at three hundred and fifty.

Tourism activity at the site will be limited to the hours of 10:00 AM to 4:00 PM, seven days per week. This activity will be scheduled and tours must be reserved, in advance. The tourism component depends on the successful operation of the mill and will be subordinate to activity required to safely and effectively operate the plant.

13 Tourism Count

Given the need to operate the mill, and the complication posed by offering access to an industrial site for the general public, the operator envisions that the maximum number of visitors per day should be thirty-two. This equates to an estimated eleven-thousand-two-hundred persons per year.

14 Site Safety

The site will be regulated under the Code of Federal Regulation (“30CFR”) which is administered by the Mine Safety and Health Administration (“MSHA”). Under the 30CFR, MSHA safety inspections are expected to occur at least quarterly. To work at a 30CFR regulated site, all employees must have an entry level of 24 hours of New Miner training (30CFR§48.25). This training is renewed annually (8 hours per 30CFR§48.27) and each additional task the employees perform requires Task training (30CFR§48.27) that varies per task. All employees will also be trained annually or biannually (as required) in first aid and adult CPR/AED use.

In addition to the applicable regulations and training required, BH Mining has implemented a Health and Safety Plan (“HASP”) for the Golden Gilpin Mill project.

All visitors to the Golden Gilpin Mill site shall receive Hazard Training as per 30CFR48.31 and shall be issued appropriate Personal Protective Equipment (“PPE”) for use during their site visit. This applies to all tours, as well.

15 Traffic Impacts

On February 15, 2018, Fehr & Peers Transportation Consultants, completed a traffic analysis and conceptual parking layout for the Golden Gilpin Mill (please refer to the

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“Golden Gilpin Mill Traffic Study, Updated February 15, 2018”). Fehr & Peers determined that the current Level of Service grade (“LOS”) for the intersection of State Highway 119 and the Golden Gilpin Mill driveway is “A” or “free flow conditions for vehicle traffic”. With the full proposed activity, the LOS for this intersection remains at grade “A”. Sight distance from the Mill driveway was determined to be inadequate to meet the State of Colorado Highway Access Code requirements and recommended “cutting back some of the vegetation adjacent to the west side of SH 119 [State Highway 119] north of the driveway”. During 2018, the Colorado Department of Transportation, upon the request of BHMC, trimmed or removed virtually all of the vegetation on the west side of State Highway 119 north of the Golden Gilpin Mill driveway. This mitigation, in addition to the installation of signage (not yet installed) would be adequate to address the sight distance for traffic at this intersection. Fehr & Peers determined that auxiliary lanes are not necessary for the volume or type of vehicle traffic for the proposed use of the Golden Gilpin Mill.

16 Parking Adequacy

On February 15, 2018, Fehr & Peers Transportation Consultants, completed a conceptual parking layout for the Golden Gilpin Mill (please refer to the “Golden Gilpin Mill Traffic Study, Updated February 15, 2018”). The site has adequate room for parking for employees and visitors. The proposed parking arrangement is as presented on Page 2 of the Fehr & Peers “Golden Gilpin Mill Traffic Study, Updated February 15, 2018” (“Traffic Study”). The parking analysis included consideration for visitors congruent with the proposed limited tourism use of the site.

17 Environmental

Environmental impacts exist from all human endeavors and especially industrial natural resource extraction. At the Golden Gilpin mill, the regulatory oversight includes: Colorado Division of Reclamation, Mining & Safety, Colorado Department of Public Health and Environment (“CDPHE”), US Environmental Protection Agency (“USEPA”) and all Federal and State rulemaking regarding the National Environmental Protection Act, Clean Water Act, Clean Air Act, RCRA/CERCLA, etc. The primary agency responsible for impacts from the mining and milling process is the CODRMS. Stormwater impacts are regulated by the CDPHE under authority from the USEPA.

The site is already environmentally impaired from legacy mineral processing, when little or no environmental awareness (and consequently environmental regulations) existed. As a result, the site is an ideal candidate for continued mineral processing.

17.1 Chemicals

All chemicals used or stored on site will be in quantities less than the Emergency Planning and Community Right-to-know Act (“EPCRA”) reporting limits. Generally, all chemicals used will be non-toxic (non-listed in SARA III – List of Lists). Occasional use of listed chemicals (e.g. Sodium Hydroxide – a cleaner and pH modifier) may occur, but the quantities stored on site shall be small (e.g. Sodium Hydroxide – EPCRA limit is 1,000 pounds, site currently has less than 100 pounds stored). All chemicals are stored properly (i.e. flammable cabinets, sealed drums, acids separated from bases, etc.), are labeled properly and all employees receive Hazard Communication (“HazCom”) training per 30CFR§47, 29CFR§1910.1200. When the mill is operational, all chemical storage will be within the building, providing secondary containment, in the event of a small quantity spill. Large quantity spills will not be possible, as large quantities of chemicals shall not be stored at the site.

17.2 Mill Products

17.2.1 Mill Feed (Raw Ore)

Mined material that is delivered to the site will be stored under a roof in the existing coarse ore bin at the top of the ramp on the north side of the building. This storage prevents any potential stormwater contact with the raw ore and prevents any migration of the materials on or from the site.

17.2.2 Gravity Concentrate

Concentrates produced by the gravity recovery process will contain significant amounts of metals. These concentrates will represent a large portion of the revenue stream from the processing of mined materials. All gravity concentrates will be stored inside the building in plastic buckets or woven bulk bags, prior to shipment offsite. This storage will prevent any migration of these materials and potential impacts from metals or potentially acid generating minerals.

17.2.3 Flotation Concentrate

Concentrates produced by the flotation process will be stored inside the mill building in woven bulk bags, prior to shipment offsite. On occasion, these bags may be temporarily stored outside the building, awaiting shipment. The bags are weather resistant and suitable for such storage. As with the gravity concentrate, the migration of these materials could create environmental exposure to metals and potentially acid generating minerals. The product is valuable and it is in the best interest of the mill operator to keep

these materials safeguarded from potential loss which could expose the materials to stormwater.

17.2.4 Mill Tailings

The largest volumetric component of the raw mill feed will report to tailings. The tailings will be handled inside the mill building, pumped to a covered, circular clarifier and/or to the Sand Barn where it will be dewatered for covered shipment to the mine site in Central City. Upon arrival in Central City, the material will be combined with appropriate cementitious and/or flow modifying additives for re-placement underground in existing mine cavities. This is the current state-of-the-art emplacement for these potentially detrimental materials, as it eliminates exposure of these materials to stormwaters, fills voids underground preventing subsidence and may be placed in a manner to reduce acid rock drainage from underground mining.

17.3 Historic Mill Tailings

The proposed construction of a Sand Barn and Clarifier on the southern portion of the site, in combination with proper grading and installation of appropriate surface materials for operation (e.g. asphalt, topsoil, gravel, etc.) will effectively “cap” the historic tailings, completing the reclamation for this portion of the site. This will have a significant long-term benefit to the community in eliminating the threat of potential erosion and transport of metals from the site into North Clear Creek, above the majority of the City of Black Hawk.

17.4 Process Water

Mill process water will be sourced from the existing water rights to North Clear Creek. Maximum possible water consumption under full capacity of the mill under the existing DRMS permit shall be on the order of seven (7) acre-feet per year, far less than the water rights held by the operator (34.8 cubic feet of water per second).

Mill process water will be contained in the mill building, where a sump exists to capture any and all potential spills, in the covered clarifier and in the sump in the Sand Barn. Clarifiers of this type exist throughout Colorado at nearly all municipal water treatment facilities, and the concrete used for sump construction is non-permeable and designed to retain water in such uses.

The character of the process water shall be of insufficient quality to discharge to the environment, primarily due to the heavy loading of dissolved salts and calcium (total suspended solids). The neutral to basic pH of the water prevents metals from dissolving and contaminating the water. As a result, the environmental hazard that the water

presents, in the unlikely event of a spill, is not persistent and is generally limited to aesthetic, cosmetic or other technical short-term effects.

17.5 Storm Water

The site shall be required to implement a Storm Water Management Plan (“SWMP”) and will be managed under authority of the CDPHE. This may require specific permitting for the site, or may be managed under existing permits. At this time, EME Solutions, Inc is authoring a SWMP for the current and near-term conditions of the site.

17.6 Final Reclamation

The site is operated under DRMS permit M1990-041. This permit requires that the site be operated in a manner consistent with the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for Hard Rock, Metal and Designated Mining Operations. Specific standards for operating the site and for the reclamation of the site apply pursuant to this permit.

The final reclamation for the site under DRMS permit M1990-041 allows for the existing buildings and structures to remain. All materials and equipment outside of the building shall be removed. The site shall be stabilized for erosion from stormwater and all foreseeable environmental hazards shall be mitigated, to the extent possible. There is no date set for final reclamation, as this is a performance standard, subject to the operation of the permit which includes the active Bates-Hunter Mine. The operator envisions many years, perhaps decades, of operation of this permit. It is believed that a working mill facility, which this may provide the only example of, would be far more attractive to the general public than a non-working facility, of which several tourist sites exist within Colorado, already. With this in mind, it is likely that the owner and operator of the site will delay reclamation indefinitely, opting to keep the site active and attractive to tourism, as well as functional for mineral processing.

18 Summary

The major operational permit from the State of Colorado has existed since 1990. A condition of this permit is local regulatory approval. The owner and the operator of the Golden Gilpin Mill seek approval for the Special Review Use of the site as a working, tourist mineral processing facility.

In addition to using the facility as a mineral processing plant, which has been the use of the site since the early 1860’s, the owner and operator of the site believe that the site is a rare example of a working historic gold mill and is well suited to educational tourism. This type of tourism occurs throughout the historic mining areas of Colorado however, we know of no examples of a working tourist mill. While challenges to the combined use

Golden Gilpin Mill – Special Review Use – Project Description

of the site for industrial and tourism exist, the operator is well prepared to overcome the foreseeable obstacles. As the only remaining complete mill within the “City of Mills”, we believe that the granting of this use will benefit the City of Black Hawk and the surrounding community in many ways.

Respectfully submitted,

Matt Collins, P.E.

General Manager
Black Fox Mining LLC

Google Maps

Route Map.
Deliveries & Traffic TO
GOLDEN GREEN MINE SITE.



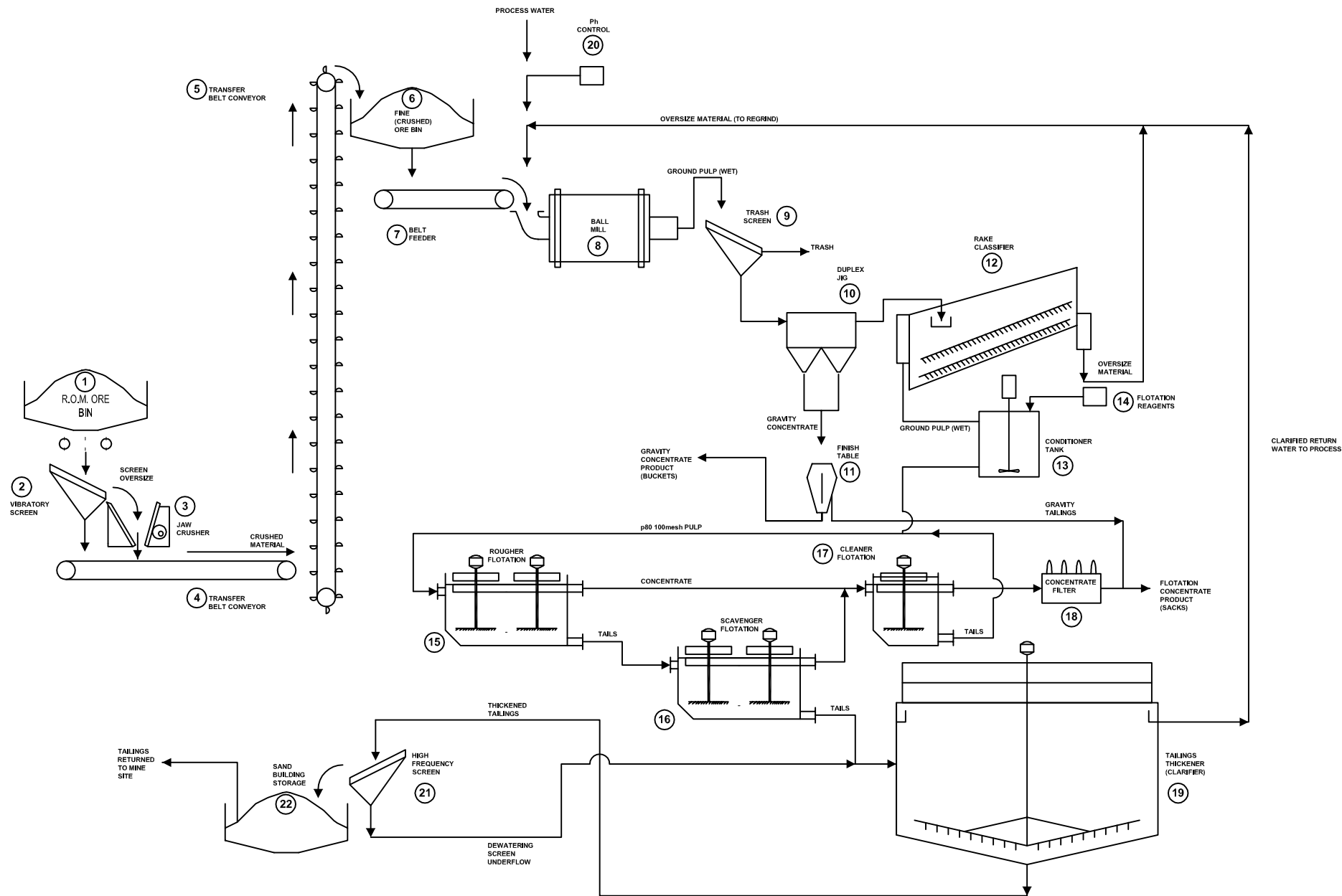
NA

Google Maps

Porte Mac
TRAFFIC FROM
GOLDEN GULCH Mac SITE



N4



Notes:	Scale: Not to Scale
	Date: 1/3/2020
	Drawn By: M.C.C.
	Checked By: M.O.M.
	Engineered By: M.C.C.
	Approved By: S.J.H.
File Name: GGM Flowsheet 1-3-2020.dwg	Revision: 0



BLACK FOX MINING LLC
MATT COLLINS, PE, QP

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Golden Gilpin Mill

Process Flowsheet

M1990-041

DWG # 20200103001

Sheet # 1 of 2

Number	Equipment	Notes
1	Coarse Ore Bin	Run of Mine (ROM) <6", 80 tons
2	Vibratory Screen	2'x6', 3/4"
3	Jaw Crusher	Telsmith 10"x21"
4	Transfer Belt	17'x12" troughing conveyor
5	Bucket Elevator	38'x10" belt, 10"x6" buckets
6	Fine Ore Bin	<1/2", 80 tons
7	Belt Feeder	6'x15" troughing conveyor
8	Ball Mill	Hardinge 6'x22" conical
9	Trash Screen	1/8" (#8 Punch Plate)
10	Mineral Jig	Denver Equipment, 12"x18" Duplex
11	Finishing Table	Wilfley #6
12	Rake Classifier	Dorr, Duplex, 4'6"x14'10"
13	Conditioner Tank	Denver Equipment
14	Reagent Feeder(s)	Denver Equipment, Cone Type
15	Rougher Flotation	Denver Equipment, #18, Sub-A, 2 cells
16	Scavenger Flotation	Denver Equipment, #18, Sub-A, 3 cells
17	Cleaner Flotation	Denver Equipment, #18, Sub-A, 1 cell
18	Concentrate Filter	Oliver, 4' diameter, 2 disk
19	Thickener	TBD
20	Reagent Feeder(s)	Clarkson, Wet Rotary
21	High Frequency Screen	Dewatering Screen, TBD
22	Dry Storage	Sand Barn w/Push Walls, 100'x40'

Notes:	Scale: Not to Scale
	Date: 1/3/2020
	Drawn By: M.C.C.
	Checked By: M.O.M.
	Engineered By: M.C.C.
	Approved By: S.J.H.
File Name: GGM Flowsheet 1-3-2020.dwg	Revision: 0



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Golden Gilpin Mill

Equipment List

M1990-041

DWG # 20200103001 Sheet # 20 of 2

MEMORANDUM

Date: January 3, 2020
To: Matt Collins, Black Fox Mining
From: Patrick Picard, AICP
Charles Alexander, PE, AICP

Subject: Golden Gilpin Mill Traffic Study UPDATED January 2020

DN19-0648

OVERVIEW

This memo presents a conceptual parking layout and traffic analysis findings for the proposed Golden Gilpin Mill that would be restored to an operating mill with a tourism component. The mill is located on the west side of SH 119 about 0.1 miles north of Merchant Street in the City of Black Hawk, Colorado. Access to the mill is off SH 119, which is managed by the Colorado Department of Transportation (CDOT). Traffic analysis performed as part of this study and presented in this memo includes the following:

- Existing and “plus-project” traffic operations at the driveway intersection on SH 119
- Trip generation by vehicle classification and other transportation related data to inform CDOT’s State Highway Access Permit Application
- Vehicle access related analysis
 - Field estimated site distance
 - Auxiliary lane needs per CDOT’s State Highway Access Permit Application

ASSUMPTIONS

The owner of the property is proposing to restore the existing historic mill for limited production milling operations and for educational and tourism purposes. The Golden Gilpin Mill has been in operation at various times in the past since the 1930’s and has an existing driveway off the west side of SH 119. The following operations plan for the mill was used to inform the parking layout and traffic analysis.



Mill Operations

- Eight employees on a split shift
 - Day shift: six employees (7AM-7PM)
 - Night shift: two employees (7PM-7AM)
- 20 tandem axle dump trucks entering/exiting per day to drop off rocks and pick up tailings¹
- 1-2 pickup trucks entering/exiting per week to pick up concentrate

Tourism Operations

- Tours offered 10 AM to 4 PM by reservation only
- One hour tours spaced at least 30 minutes apart from the end of one tour to the beginning of the next to avoid two tours on site at once
- Maximum of 8 visitors per tour (maximum 32 per day)

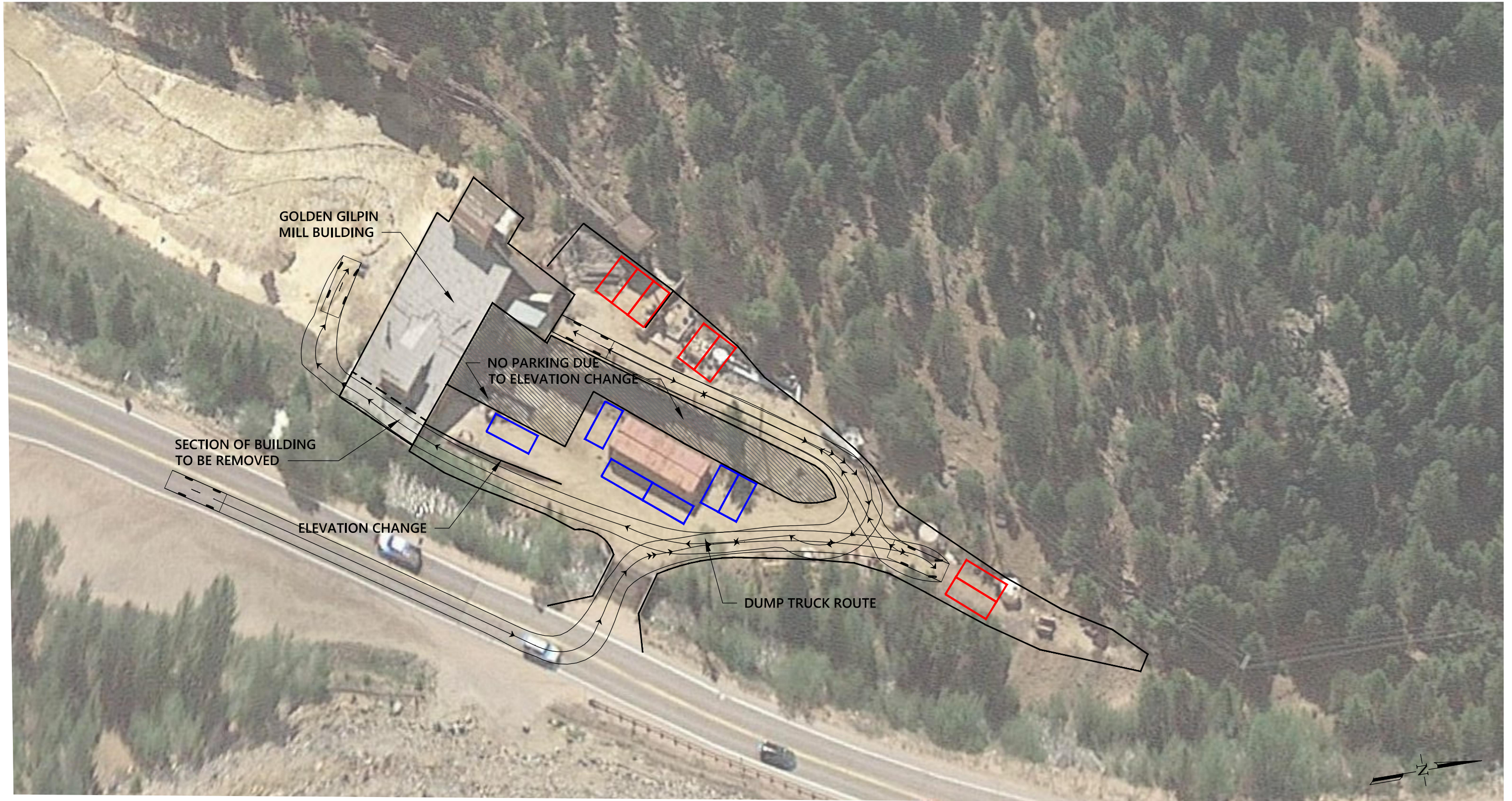
PARKING ANALYSIS

Parking for the mill site assumes a vehicle occupancy rate of 1.0 for employees, which conservatively assumes every employee would commute by personal vehicle, and 2.0 per visitors, which is a conservative estimate based on an average vehicle occupancy for social/recreational trips of 2.20 as published in the 2009 National Household Travel Survey (NHTS)². Thus, the typical daily maximum parking demand for the site would be ten parking spaces, including six for employees and four for visitors (based on a maximum of 8 visitors per tour). In addition to parking, sufficient space will be needed for internal circulation of the dump truck at the site. Mill operations require the dump truck to dump an ore load at the ore bin located at the top of the ramp and then travel around to the back of the mill to collect the tailings to take off-site.

A proposed parking layout for the Golden Gilpin Mill is shown on **Figure 1** that would meet both the anticipated parking demand and internal circulation needs. Figure 1 illustrates that the parking layout would provide up to seven employee parking spaces (one more than the typical daily maximum assumed to be needed), including five at the top of the ramp and two at the end of the switchback. Figure 1 also shows that this would allow up to six additional spaces to accommodate visitor parking (two more than the typical daily maximum assumed to be needed) in the lower level of the site. The layout assumes a dimension of 8.5' x 18' per parking space (8.5' x 20' for parallel spaces) and assumes the shipping containers would remain on-site (if the containers were removed from the site space would be available for additional parking). Figure 1 shows that this parking arrangement would allow full circulation of the dump truck into and out of the site - to the ore bin (at the top of the ramp) and to the tailings area around back - even when the mill is fully parked.

¹ Note: 20 dump truck trips per day is assumed for this analysis based on the maximum load the mill can produce per day (200 tons) per the CO-DRMS permit. According to the mill, one dump truck roundtrip per day is expected.

² U.S. Department of Transportation, Federal Highway Administration, 2009 National Household Travel Survey. URL: <http://nhts.ornl.gov>.



NOTES:

13 PARKING SPACES TOTAL

7EA - EMPLOYEE PARKING

6EA - VISITOR PARKING

PARALELL PARKING DIMENSIONS - 8.5' X 20'

90 DEGREE PARKING DIMENSIONS - 8.5' X 18'

MOST OF THE DEBRIS SHOWN IN AERIAL ARE NO LONGER ON SITE

CONCEPTUAL - NOT FOR CONSTRUCTION

DETAILED ENGINEERING DESIGN REQUIRED

LEGEND



VISITOR PARKING



EMPLOYEE PARKING



Figure 1
Golden Gilpin Mill Parking Study
Conceptual Parking Design Layout



In order to ensure that visitors park on-site and that driveways internal to the site are kept clear for vehicle and dump truck circulation, Fehr & Peers recommends that the mill operator take the following actions:

- Employees should be directed to park in the designated employee spaces in the upper ramp or switchback as shown in Figure 1
- "Visitor Parking" signs should be placed at each visitor parking space on days that tours are being conducted
- Visitors should be provided instructions when they make their reservation to park on-site (and not across the highway)
- Tours should be spaced at least 30 minutes apart (from the end of one tour to the beginning of another) to avoid overlap in visitor parking demand from separate tours

About once or twice a week a pickup truck will need to enter the site to haul out the ore concentrate. The truck will need to load adjacent to the mill in the lower area. In order for the pickup truck to access the mill, this will require that three of the six proposed visitor parking spaces be kept clear (including the two parallel spaces in front of the shipping container and the space closest to the mill building). Thus, it is recommended that loading of the ore concentrate be scheduled so that they do not occur during the same time as tours.

TRAFFIC ANALYSIS

Trip Generation & Other Data for CDOT State Highway Access Permit Application

Given the anticipated work shift of employees at the mill, the peak hours were assumed to be the peak hour of the generator (i.e. the Golden Gilpin Mill) as oppose to peak hour of adjacent traffic (on SH 119). Therefore the AM and PM peak hours would occur during shift changes, between 6:30 AM and 7:30 AM and between 6:30 PM and 7:30 PM. Two vehicle trips are assumed per employee (one inbound and one outbound) and two vehicle trips are assumed per every two visitors (one inbound and one outbound). **Figure 2** summarizes the trip generation by time of day. This data can be used to complete Section 17 of the CDOT State Highway Access Permit Application. Figure 2 shows that during both the AM and PM peak hour, a total of 10 vehicles would enter or exit the site, including two heavy duty trucks. Daily trip generation assumes 32 vehicle trips per day by visitors (16 entering and 16 exiting), plus 16 vehicle trips by employees, 40 dump truck trips, and 2 additional trips to account for occasional deliveries/maintenance vehicles (or the pickup truck taking the concentrate off-site), for a total of 90 trips per day (45 entering and 45 exiting).



Figure 2. Golden Gilpin Mill Vehicle Trip Generation

Time of Day	Vehicles Entering	Vehicles Exiting	# Passenger cars/ light trucks	# Multi-unit trucks	# Single-unit trucks	Total Vehicles
AM (6:30-7:30)	6	2	8	0	2	10
PM (6:30-7:30)	2	6	8	0	2	10
Daily	45	45	50	0	40	90

In addition to trip generation, Section 7 of the CDOT State Highway Access Permit Application asks for the distance in feet from the driveway of the mill to the nearest mile post and cross-street. This information is provided below. The proposed access is:

- About 1,600 feet south of mile post 8 on SH 119
- About 830 feet north of Merchant Street (the nearest cross street)

Traffic Operations (Level of Service)

Based on the trip generation a level-of-service (LOS) analysis was performed using Highway Capacity Manual methodology in Synchro (a traffic engineering software) during the peak hours of the generator (to correspond with employees shift changes) at the driveway intersection of the mill under existing conditions and under future conditions (existing "plus project"). About 80% of passenger vehicle traffic entering and exiting the site and 100% of truck traffic was assumed to be going to or coming from the south³. Therefore, the analysis assumes that five of the six passenger vehicle trips plus the dump truck entering the site in the AM peak hour would originate from the south and the three PM peak hour trips entering the site would also originate from the south. Traffic counts on SH 119 adjacent to the mill driveway were collected over a 24-hour period on Wednesday, January 17, 2018, when school was in session and weather conditions were fair.

LOS is reported on a grade scale from A to F, with A representing free-flow conditions for vehicular traffic and F representing highly congested conditions whereby the volume of vehicles exceeds the capacity of the street or intersection. At a side-street stop control intersection LOS is measured by average delay per vehicle on the approach with the highest delay. **Figure 3** shows the average delay and LOS grade during the peak hours at the Golden Gilpin Mill driveway and SH 119 intersection under existing conditions and existing conditions plus project. Results of the analysis demonstrate the intersection would continue to operate at LOS A after the mill restoration project is complete and the mill is operating as planned.

³ The majority of visitors and employees are expected to be from Black Hawk and the Denver area both of which are located south on SH 119 from the Golden Gilpin Mill.



Figure 3. Golden Gilpin Mill Vehicle Level of Service

Time of Day	AM Peak Hour (6:30 AM – 7:30 AM)	PM Peak Hour (6:30 PM – 7:30 PM)	Approach
Existing conditions	0 seconds/ LOS A	0 seconds/ LOS A	n/a
Existing conditions plus project	9 seconds/ LOS A	9 seconds/ LOS A	EB

Sight Distance

Sight distance from the mill driveway and along SH 119 was field measured following the guidelines of Section 4.3 of the State of Colorado Highway Access Code (March, 2002). Regulations are provided for measuring both sight distance along the highway and entering sight distance (from the driveway). Both the sight distance along the highway and entering sight distance were found to be about the same based on field measurements. Given that the requirements for entering sight distance in the Access Code are longer distance than the requirements for sight distance along the highway, entering sight distance was analyzed and is reported in this memo.

The segment of SH 119 adjacent to the Golden Gilpin Mill driveway is a two-lane road with a posted speed of 35 mph. The State of Colorado Highway Access Code directs that industrial sites be designed for sight-distance of a multi-unit truck to enter the highway unless there are expected to be less than 2 multi-unit trucks per day, in which case the sight distance of a single-unit truck over 10,000 lb. (gross vehicle weight) can be used. Given that zero multi-unit trucks are anticipated to access the site per day, the sight distance of a single-unit truck was used. The sight distance requirements can vary on highways with grades above 3%. Field measurements at various points along SH 119 around the driveway found the grade to be between 3% and 4.5% sloping downward from north to south. Per the Access Code, and given the slope of the highway, the sight distance requirements for a single-unit truck entering the highway from the Golden Gilpin Mill driveway would be 546 feet to the north and 410 feet to the south along SH 119.

Figure 4 summarizes the findings of the entering sight distance in both directions of SH 119 as measured in the field and how this compares to the requirement per the State of Colorado Highway Access Code. Results show that the sight distance to the south from the driveway is 470 feet, which would meet CDOT's requirements. The entering sight distance to the north was found to be 260 feet, which does not meet the standards identified in CDOT's Access Code. The sight distance to the north is about 50% of CDOT's standards for a location within this context. Based on field observations, we estimate that an additional 90-120 feet of sight distance to the north can be gained by cutting back some of the vegetation along the west side of the highway north of the driveway. We estimated this would increase the sight distance to the north to be about 350-380 feet. Additional mitigations may be necessary such as installing a sign along SH 119 north of the driveway warning drivers of the driveway. We suggest a W2-2 sign or a modified W1-10 sign (see the Manual of Uniform Traffic Control Devices).



Figure 4. Entering Sight Distance Field Measurements

Approach	Existing Sight Distance	Sight Distance with Mitigations	CDOT Access Code Requirements
From the south	470 feet	n/a	410 feet
From the north	260 feet	350-380 feet	546 feet

It should be noted that the dump trucks and the majority of the passenger vehicle traffic existing the site will be making a right turn out of the driveway onto SH 119. We estimate that about 20% of the passenger vehicles would be making a left turn on SH 119. Thus, about five vehicles per day would be making a left turn onto the highway (on a day when the maximum number of people allowed, 32, are booked for tours). The American Association of State Highways and Transportation Officials (AASHTO) documents that sight-distance can be shorter in length for vehicles making a right turn from a stop as compared to a left turn from a stop. **Figure 5** illustrates that AASHTO recommends a minimum distance of 335 feet for passenger cars making a right-turn onto a two-lane highway with a design speed of 35 mph. We estimate that this distance would be achievable by cutting back some of the vegetation adjacent to the west side of SH 119 north of the driveway. AASHTO recommends a minimum sight distance of 440 feet for single-unit trucks making a right-turn onto a two-lane highway with a design speed of 35 mph.

Figure 5. AASHTO Recommended Entering Sight Distance

Turn Movement	Sight distance for passenger car	Sight distance for single-unit truck
Right-turn	335 feet	440 feet
Left-turn	390 feet	490 feet

Based on these findings, if the owner of the property were to cut back some of the vegetation along the west side of the highway north of the driveway, the sight distance would meet the standards identified in AASHTO for about 45% of the vehicles entering SH 119 from the Golden Gilpin Mill. We estimate that only about five vehicles per day would be making a left turn onto the highway, all passenger vehicles. For this movement, assuming the vegetation is cleared, the sight distance would be about 90-97% of what is recommended in AASHTO. Additionally, 20 single-unit trucks would be making a right-turn from the mill onto the highway per day. For this movement, assuming the vegetation is cleared, we estimate the sight distance would be about 80-86% of what is recommended in AASHTO.

The sight distance recommendations provided by AASHTO are derived from studies of the time gap needed for certain movements. Using AASHTO standards the time gap required for passenger vehicles would be 7.5 seconds for a left-turning movement and 6.5 seconds for right-turning vehicles (two additional seconds are needed for single-unit trucks). Using the CDOT's Access Code guidance we observed and recorded the



time gap from when a vehicle enters the line of sight from the driveway (at the mill) to when the vehicle is at the driveway. Measurements were recorded for 12 different approaching vehicles in each direction of SH 119. The findings, illustrated in **Figure 6**, show that the average time gap observed was 8.7 seconds for vehicles approaching from the south and 4.6 seconds for vehicles approaching from the north.

Figure 6. Observed Time Gap

Approach	Average observed time gap	Observed range of time gap
From the south	8.7 seconds	7.5 - 10.5 seconds
From the north	4.6 seconds	3.4 - 5.6 seconds

The average time gap from the south is sufficient to meet AASHTO standards for a passenger car and single-unit truck making a left turn from the mill onto SH 119. The average time gap from the north is about 1.9 seconds short of meeting AASHTO standards for a passenger car making a right turn, about 2.9 seconds short of a passenger car making a left turn, and about 3.9 seconds short of meeting the AASHTO standards for a single-unit truck making a right turn. We estimate that clearing some of the vegetation adjacent to the highway would increase the sight distance by 1.8-2.4 seconds bringing the sight distance within the AASHTO standards for a passenger vehicle making a right turn onto the highway, which would account for about 20 of the estimated 45 vehicles per day entering the highway from the mill.

Auxiliary Lane Needs

CDOT classifies the segment of SH 119 through Black Hawk, CO as a Category NR-B (non-rural arterial). On these types of roads where the posted speed is 40 mph or less, section 3.11 of the State of Colorado Highway Access Code requires that a left-turn lane be constructed for driveways with a project peak hour left ingress turning volume greater than 25 vehicles per hour (vph). A right-turn lane is required for driveways with a projected peak hour right ingress turning volume of greater than 50 vph. Based on the operations plan, the projected peak hour left ingress turning movement at the Golden Gilpin Mill is expected to be 6 vph and the expected peak hour right ingress turning movement is expected to be about 1 vph. These peak hour volumes would not trigger a need for left turn lane or right turn lane on SH 119 at the Golden Gilpin Mill driveway. Per section 3.5 of the State of Colorado Highway Access Code it's unlikely that CDOT would require auxiliary turn lanes on SH 119 at the Golden Gilpin Mill given the low volume of vehicles forecast to use the driveway and within the context of SH 119.



SUMMARY OF FINDINGS

A parking and traffic analysis was performed for the proposed restoration of the Golden Gilpin Mill along SH 119 in Black Hawk, CO. The main purpose of the study was to:

1. Determine if the site could accommodate parking demand given the milling and educational/tourism operations planned at the mill;
2. Provide vehicle trip generation as well as other transportation related information required in the CDOT State Highway Access Permit Application;
3. Analyze traffic volumes to determine impacts to traffic on SH 119 adjacent to the mill; and
4. Determine what mitigations, if any, would be needed to meet the requirements described in the State of Colorado Highway Access Code.

The following list provides a summary of our findings, based on the analysis of anticipated parking demand, traffic conditions and field observations at the Golden Gilpin Mill site:

- **Parking** - The site would be able to accommodate the typical daily maximum parking demand at the mill (entirely on the west side of SH 119) for employees and tourists as well as provide adequate internal circulation of the dump truck to support mill operations. In order to ensure smooth parking operations and internal circulation we recommend that the mill operator take the following actions:
 - Employees should be directed to park in the designated employee spaces in the upper ramp or switchback as shown in Figure 1.
 - "Visitor Parking" signs should be placed at each visitor parking space on days that tours are being conducted.
 - Visitors should be provided instructions when they make their reservation to park on-site (and not across the highway).
 - Tours should be spaced at least 30 minutes apart (from the end of one tour to the beginning of another) to avoid overlap in visitor parking demand from separate tours.
 - Loading of the ore concentrate onto pick-up trucks should be scheduled so that they do not occur during the same time as tours.
- **CDOT State Highway Access Permit Application data:**
 - Section 7 - The proposed access is:
 - About 1,600 feet south of mile post 8 on SH 119
 - About 830 feet north of Merchant Street (the nearest cross street)
 - Section 17 – Peak hour trip generation:
 - 8 passenger cars and light trucks during peak hour
 - Two trucks and farm vehicles during peak hours
- **Traffic Operations** – Traffic analysis during the peak hours demonstrate the intersection of the Golden Gilpin Mill driveway and SH 119 operates at LOS A under existing conditions and would



continue to operate at LOS A after the mill restoration project is complete and the mill is operating as planned.

- **Sight Distance** – Entering sight distance and sight distance along the highway were found to be the same for the Golden Gilpin Mill driveway. Given that entering sight distance requires a longer distance, this was the measurement taken in the field and reported in this Memo.
 - Entering sight distance to the south along SH 119 was found to be 470 feet, which meets the standard of 410 feet provided in the State of Colorado Highway Access Code
 - Entering sight distance to the north along SH 119 was found to be 260 feet, which is about 50% of the standard provided in the State of Colorado Highway Access Code.
 - Given the shorter than required entering sight distance to the north we recommend the mill operator take the following actions:
 - Regularly cut back some of the vegetation along the west side of the highway north of the driveway (between SH 119 and the creek). We estimate this would increase the entering sight distance to the north by about 90-120 feet, which would allow the site to meet AASHTO sight distance standards for passenger vehicles making a right-turn from a stop (onto a two-lane highway with a posted speed of 35 mph), which would represent close to 50% of vehicle movement that will be made exiting the site.
 - Install and maintain a sign along SH 119 north of the Golden Gilpin Mill driveway alerting drivers of the driveway.
- **Auxiliary Lanes** – Trip generation analysis based on the mill operations plan found that vehicle volume entering the Golden Gilpin Mill driveway off SH 119 during the peak hours would be about five vph making a left-turn and one vph making a right-turn. Per the State of Colorado Highway Access Code the volumes of vehicles entering the site during peak hours would not trigger the need to add auxiliary left-turn or right-turn lanes on SH 119 at the intersection with the Golden Gilpin Mill driveway.

5/1/2020

Ms. Julie Esterl
Associate Planner
Baseline Engineering, Planning & Surveying
112 North Rubey Drive, Suite 210
Golden, CO 80403

VIA EMAIL

RE: Golden Gilpin Mill, Special Review Use Application, 2nd Referral Comments & Permitting Overview

Dear Ms. Esterl,

Please find attached, our responses to the second round of comments from the Development Review Committee (DRC) agencies regarding the requested Special Review Use to allow mining/milling and tourism at the Golden Gilpin Mill site located at 7593 Highway 119 in Black Hawk.

Second Referral Comments

- **Permits**

We note that there were several requests for copies of our State permits. These permits are public documents and are available online.

The Colorado Department of Public Health and Environment documents are available at: <https://environmentalrecords.colorado.gov/HPRMWebDrawer/Record?q=containerEx%3a32711&pageSize=15&start=1>

There are currently 276 records in this permit folder. We have attached the current permit to our response in digital and paper copy.

The Colorado Division of Reclamation, Mining and Safety permit records are available at:

<https://dnrweblink.state.co.us/drms/search.aspx?dbid=0>, using the “Permit No” of “m1990041”.

There are numerous records in this folder, which comprise the permit. This permit is more complicated in that there are several rounds of clarifications during the initial permitting and several Technical Revisions (TR) to the permit. We will submit a complete DVD record of this permit to the City of Black Hawk with our Second Referral Comments.

Black Fox Mining LLC
1508 Ridge Road, Nederland, CO 80466
(303) 570-6269



- **Traffic Study**

There was a request for the updated traffic study. We erroneously failed to provide this with our response to the First Referral Comments. It is attached hereto, digitally and in paper copy.

Permitting Overview

- **Federal Oversight – Environmental**

- At the Federal level, all environmental laws apply to the use of the Golden Gilpin Mill. These include the Resource Conservation and Recovery Act (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), the National Environmental Protection Act (“NEPA”), the Clean Water Act (“CWA”), the Clean Air Act (“CAA”), the Endangered Species Act (“ESA”), etc.
- The management of the regulatory issues in compliance with these laws is often delegated by the Environmental Protection Agency (“EPA”) to the States in which the activity is located. In Colorado, the Colorado Department of Public Health and Environment oversees all air and water permitting under the recognition by the EPA that Colorado’s environmental protection laws meet or exceed those of the Federal government.

- **Federal Oversight – Mill Tailings**

- The historic tailings at the Golden Gilpin Mill fall under CERCLA and are specifically listed in Operable Unit 3 (and 4) of the Central City/Clear Creek Superfund Site. This site was addressed under Record of Decision (“RoD”) in 1991, 2004 and 2006, with a remedy applied in 2008. This remedy addressed the historic tailings, leaving final capping to be done under the existing Colorado Division of Reclamation, Mining and Safety (“DRMS”) permit.
- Future tailings generated at the Golden Gilpin Mill fall under the M1990-041 DRMS permit. The current operator recognizes that the emplacement of tailings at the site is limited by geography and that the site is not ideal for permanent emplacement of tailings due to its proximity to North Clear Creek. The operator plans to utilize the current state-of-the-art disposal methods for mill tailings by emplacing them in mined-out areas of the Bates-Hunter mine. The emplacement of tailings within underground mines has numerous environmental advantages in the potential reduction of Acid Rock/Mine Drainage (“ARD”) and in mitigating surface subsidence. The proper emplacement of tailings requires significant engineering, utilizing specific properties of the candidate tailings and often requires the addition of rheologic and cementing agents. This type of tailings

emplacement falls under the jurisdiction of the EPA and is included in Underground Injection Control (“UIC”), Class V well regulation. This backfilling with tailings generated from the Golden Gilpin Mill will occur offsite, at the Bates-Hunter mine and will require a permit from the EPA. We have attached an EPA Study Fact Sheet (https://www.epa.gov/sites/production/files/2015-08/documents/fs_backfill_wells.pdf) to this submittal.

- **Federal Oversight – Safety**

- The United States Department of Labor has two (2) regulatory agencies for worksite safety: The Occupational Safety and Health Administration (“OSHA”); and the Mine Safety and Health Administration (“MSHA”). In brief, MSHA has authority over all mining and mineral processing sites and regulates under Title 30 of the Code of Federal Regulations (“30CFR”) whereas OSHA has authority over all other types of workplaces under Title 29 of the Code of Federal Regulations (“29CFR”). During construction, prior to the actual milling of mined material at the site, the Golden Gilpin Mill will be regulated under the 29CFR. Upon initiation of milling, the site will be regulated under the 30CFR. Generally, these regulations follow the same American National Standards Institute (“ANSI”) and National Institute of Occupational Safety and Health (“NIOSH”) standards, governing noise, dust, and other workplace safety issues. The 30CFR focuses much closer on issues specific to mining and mineral processing. The Bates Hunter Mine and Golden Gilpin Mill employ a significant number of active first responders trained under 30CFR§49, many of whom are “red card” carriers for the Front Range Mine Rescue team and are registered with the Colorado Volunteer Mobilizer (“CVM”).
- The Emergency Planning and Community Right to Know Act (“EPCRA”) governs the use of chemicals within the United States. The Golden Gilpin Mill does not and will not use or store chemicals in sufficient quantity to require listing and notification of the community. The operator of the Golden Gilpin Mill would voluntarily like to work with the Local Emergency Planning Committee (“LERC”) upon active milling, including disclosure of all information regarding the mineral processing chemicals that will be used and stored at the site and any emergency planning or resources we may have available.

- **Federal Oversight – Communication**

- The Bates Hunter mine has submitted, via a third-party supplier, an application to the Federal Communication Commission for the use of radio communication devices specific to the work at the mine and mill.

- **State of Colorado Oversight**

- Colorado Division of Reclamation, Mining and Safety (“DRMS”)

The Golden Gilpin Mill was permitted under the Colorado Mined Land Reclamation Act in 1990 as a captive mill to the Bates Hunter Mine. This permit, granted under Colorado Revised Statutes (“CRS”) 34-32-110, approved by the Colorado Mined Land Reclamation Board (“MLRB”) under the administration of the DRMS allows for the mining and milling of up to 70,000 tons per year. This is a statutory limit within this permit category, meant to differentiate smaller mining operations from larger operations (>70,000 tons per year). This permit applies conditions and operating constraints to the mining at the Bates-Hunter Mine in Central City and to the milling at the Golden Gilpin Mill. All reclamation of both sites is regulated by this permit and specific environmental standards for this permit and all general standards under the various environmental laws apply.

- Colorado Department of Public Health and Environment (“CDPHE”)

- **Treated Water Discharge** - The Bates Hunter Mine has a permit to discharge water to Gregory Gulch (Permit #: CO0043168). This permit allows for the discharge of up to 432,000 gallons per 24-hour period of treated water under specific numeric standards. Water from the Bates Hunter mine is pumped and treated with a lime precipitation and clarification method. Water quality is monitored on a weekly basis for metals, dissolved solids, and pH. These same criteria are also monitored quarterly, along with Whole Effluent Toxicity (“WET”) on two indicator species: fat-head minnows and ceriodaphnia dubia (water fleas).
 - **Stormwater** – The Bates Hunter Mine stormwater was originally managed under a separate permit number (Permit #: COR040194). This permit was combined with the treated water discharge permit and is now managed under permit number CO0043168. The Bates Hunter Mine has an active Storm Water Management Plan (“SWMP”), but is exempt from Spill Prevention Containment and Control (“SPCC”) as no chemicals are stored in sufficient quantity to warrant this. The Golden Gilpin Mill will be included in the CO0043168 permit for stormwater and will have its own SWMP (exempt from SPCC – no quantities of petroleum products stored). No waters other than stormwater will be discharged from this site.

- Colorado Department of Transportation

- The site has existing access from Colorado Highway 119, which appears to be adequate for the planned use of the site. If improvement or change to the existing access is required, the operator will submit a State Highway Access Permit Application.

At this time, the operator is unaware of any additional permits required from agencies other than the City of Black Hawk for the planned use of the property. It is possible, given the complicated nature of regulations surrounding business and specifically the mining and mineral processing industry, that additional permits may need to be acquired. It should be evident from the maintenance of the existing permits held and the application for the Special Review Use to the City of Black Hawk that the operator of the Golden Gilpin Mill site intends to follow all regulations, laws, statutes that may apply to the operation and site in good faith.

Thank you for your consideration,

Matt Collins, P.E.

Enc: P-17-20 GGM SRU Referral 2nd Resonse_5-1-2020
Updated Traffic Study, Fehr & Peers
AASHTO SU-30 Diagram
Black Hawk Fire Vehicle Turning Exhibits
DRMS Permit – *DVD only*
CDPHE Permit
DRMS/CDPHE MoU
EPA Remediation Summary
Class V UIC Study Fact Sheet

CC: Stephen Humphray, GS Mining Company, LLC
Darrell Otten, George E. Otten, Jr. Estate
Robyn Kube, Dietz and Davis, P.C.

Black Fox Mining LLC
1508 Ridge Road, Nederland, CO 80466
(303) 570-6269





STATE OF COLORADO

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT Water Quality Control Division

AUTHORIZATION TO DISCHARGE UNDER THE COLORADO DISCHARGE PERMIT SYSTEM PERMIT NUMBER CO0043168

In compliance with the provisions of the Colorado Water Quality Control Act, (25-8-101 et seq., CRS, 1973 as amended), for both discharges to surface and ground waters, and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.; the "Act"), for discharges to surface waters only, the

BH Mining Company LLC

is authorized to discharge from the Hunter Gold Mine WWTF wastewater treatment facility located 422 Gregory Street, Central City, CO 80427 Latitude: 39.801111° N, Longitude: -105.502778° W

to Gregory Gulch and North Clear Creek

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I and II hereof. All discharges authorized herein shall be consistent with the terms and conditions of this permit.

The applicant may demand an adjudicatory hearing within thirty (30) calendar days of the date of issuance of the final permit determination, per the Colorado Discharge Permit System Regulations, 61.7(1). Should the applicant choose to contest any of the effluent limitations, monitoring requirements or other conditions contained herein, the applicant must comply with Section 24-4-104 CRS and the Colorado Discharge Permit System Regulations. Failure to contest any such effluent limitation, monitoring requirement, or other condition, constitutes consent to the condition by the Applicant.

This permit and the authorization to discharge shall expire at midnight June 30, 2022.

Modified and Reissued and Signed this 30th day of April 2018

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Ellen Howard Kutzer, Permits Section Manager
Water Quality Control Division

Permit Summary

Modification #2 - Minor Modification Issued April 30, 2018, Effective April 30, 2018 (Transfer page 1).
Modification #1 - Minor Modification Issued August 31st, 2017 Effective August 31st, 2017 (Part I.D.2)
Originally Issued May 30, 2017 and Effective July 1, 2017

RESOLUTION 46-2020
A RESOLUTION DENYING
A VARIANCE TO ALLOW
A HEIGHT VARIANCE
WHICH WOULD ALLOW A
STRUCTURE 103 FEET IN
HEIGHT

RESOLUTION 47-2020
A RESOLUTION
CONDITIONALLY
APPROVING A
CERTIFICATE OF
ARCHITECTURAL
COMPATIBILITY AND A
SITE DEVELOPMENT
PLAN FOR THE T MOBILE
FACILITY LOCATED AT
821 MINERS' MESA ROAD

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

Resolution No. 46-2020

**TITLE: A RESOLUTION DENYING A VARIANCE TO ALLOW A HEIGHT
VARIANCE WHICH WOULD ALLOW A STRUCTURE 103 FEET IN
HEIGHT**

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

Section 1. Findings of Fact.

- A. An application has been made by Vertical Bridge Development, LLC (the "Applicant") for a variance to allow a Commercial Mobile Radio Services (CMRS) facility in excess of the height limitations in the Public Facilities Zone District on property located at 821 Miners' Mesa Road (the "Property"), within the City of Black Hawk, Colorado.
- B. Notice of such proposed hearing was posted on the property for fifteen (15) consecutive days prior to said hearing; and
- C. The application is being evaluated in accordance with the criteria set forth in Section 16-366(2) of the Black Hawk Municipal Code.

Section 2. The City Council hereby determines to DENY the variance for a Stealth/Faux CMRS tower structure with a proposed height of one hundred and three (103) feet, which is in excess of the height limitations in the Public Facilities Zone District, based on the applicant's failure to satisfy all of the necessary criteria set forth in Section 16-366(4) for a variance as follows:

- A. The City finds that there are no exceptional or extraordinary circumstances unique to the property or structure for which the variance is sought for which the strict enforcement of the provisions of the Black Hawk Zoning Code would cause an unnecessary hardship to the Applicant because the Applicant did not provide any evidence showing the effects of the terrain and topography, which would require a height variance. The additional fifty-eight (58) feet in height requested for the tower in this location does not appear warranted with any data provided or 'shading analysis' showing the issue and/or the effects for this location;
- B. The City further finds that the circumstances causing the Applicant's stated unnecessary hardship were created by the Applicant because the Applicant selected this Property, and no evidence was presented showing how the effects of a lower tower hinder this site from functioning;

C. The City further finds that the Applicant has not established that its alleged hardship is on the basis of lack of knowledge of the restrictions upon constructing or altering a structure, and that Applicant was aware of the height limitations when it leased the Property.

D. The City finds that the circumstances causing the unnecessary hardship are not particular to the land or structure for which the variance is sought, and Applicant has not provided sufficient evidence that a CMRS structure compliant with the height limitations would not provide coverage;

E. The City finds that the variance requested is not the minimum deviation from the Black Hawk Zoning Code because the Applicant has not provided sufficient evidence of a specific height that makes this Property useable vs. not useable for the proposed use;

F. The City finds that the granting of the variance may injure the appropriate use of adjacent conforming properties, may impair the view from adjacent property and may substantially diminish or impair property values within the surrounding area;

G. The City finds that the granting of the variance will not be consistent with the spirit, purpose and intent of the Black Hawk Zoning Code and may create a situation which alters the character of the area surrounding the property for which the variance is sought because the entire height of one hundred and three (103) feet is still a concern, and the additional 58-foot taller tower may significantly stand out on top of Miners Mesa;

H. The City finds that the granting of the variance will secure and in no way diminish the public safety and welfare; nor impair prevention of or increase risk of fire, flood, traffic congestion or other hazard. The City agrees that these criteria are satisfied;

I. The City finds that the granting of the variance is not necessary to cause substantial justice to be done because the Applicant has failed to substantiate the necessity of the proposed height variance; and

J. The City finds that the granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor allow the expansion or establishment of a nonconforming use. The City agrees that these criteria are satisfied.

RESOLVED AND PASSED this 10th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

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

Resolution No. 47-2020

**TITLE: A RESOLUTION CONDITIONALLY APPROVING A CERTIFICATE OF
ARCHITECTURAL COMPATIBILITY AND A SITE DEVELOPMENT
PLAN FOR THE T MOBILE FACILITY LOCATED AT 821 MINERS'
MESA ROAD**

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

Section 1. The City Council hereby conditionally approves a Certificate of
Architectural Compatibility and Site Development Plan for the T Mobile Facility located at 821
Miners' Mesa Road, with the following conditions:

- A. Development of the site shall be in accordance with the plan sheets provided to the
City with this application (as amended to be in conformance with an approved height for
the tower) and included in the staff report for this same project proposed by Vertical Bridge
Development, LLC;
- B. The Option and Lease Agreement with Vertical Bridge Development, LLC and the
City approved on January 23, 2019, shall be corrected and resubmitted to City staff for
inclusion to a future City Council agenda which corrects the legal descriptions and
references in such previously approved Agreement, prior to issuance of a building permit
for any work on the City property for this related CMRS tower; and
- C. All applicable building and electrical permits must be obtained prior to beginning
construction.

RESOLVED AND PASSED this 10th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Black Hawk Board of Aldermen shall hold a public hearing concerning a request for a Commercial Mobile Radio Service (CMRS) tower including a Certificate of Architectural Compatibility, Variance to Height allowed, and Site Development Plan for a T Mobile telecommunication facility for property described in Exhibit A and generally located at 821 Miners Mesa Road, Black Hawk, Colorado, pursuant to the City of Black Hawk zoning ordinance.

The public hearing is to be held before the City of Black Hawk Board of Aldermen on Wednesday, June 10, 2020, at 3:00 p.m. or as soon as possible thereafter. The City of Black Hawk is hosting virtual City Council meetings via Zoom in response to the Coronavirus COVID-19 until further notice. There are no physical meetings at this time. This meeting will accommodate public engagement via a Zoom URL and/or phone number to join. Please go to the City of Black Hawk's website for further instructions prior to the meeting.

ALL INTERESTED PARTIES MAY ATTEND

Melissa A. Greiner, CMC
City Clerk

EXHIBIT A

An interest in land, said interest being over a portion of the following described parent parcel:

PARCEL 1:

A portion of Miners' Mesa Subdivision Filing No. 4, City of Black Hawk, County of Gilpin, State of Colorado.

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North Half of Section 18, Township 3 South, Range 72 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado.

PARCEL 2:

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 2, recorded at Reception Number 130944 and Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North half of Section 15, Township 3 South, Range 72 West and the Northeast quarter of Section 13, Township 3 South, Range 73 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: To consider two (2) separate Resolutions. One for a Height Variance and one (1) for a Certificate of Architectural Compatibility and a Site Development Plan, for the construction of a 103-foot tall stealth CMRS telecommunications tower at 821 Miners Mesa Road.

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

MOTION TO DENY Resolution No. 46-2020, a Resolution proposing a Height Variance of 53 feet to allow a 103-foot tall Stealth/Faux CMRS tower structure for the T Mobile Facility at 821 Miners Mesa Road with the following Findings:

Findings: This variance application does not meet all the evaluation criteria outlined in Section 16-366 (4) as evidenced in the staff report analysis for this proposal. No direct data is found or understood to warrant a tower taller than 45 feet as allowed in the Public Facilities Zone District. All of the criteria in Section 16-366 (4) to review a requested variance is not met.

Note: Depending on the decision above the following motion may be used, but may need to be modified based on the decision on the requested Variance or tower height.

MOTION TO APPROVE Resolution No. 47-2020, a Resolution approving a Certificate of Architectural Computability and a Site Development Plan for the T Mobile Facility at 821 Miners Mesa Road with the following Findings and Conditions:

1. Development of the site shall be in accordance with the plan sheets provided to the City with this application (as amended to be in conformance with an approved height for the tower) and included in the staff report for this same project proposed by Vertical Bridge Development LLC;
2. The Option and Lease Agreement with Vertical Bridge Development LLC and the City approved on January 23, 2019 shall be corrected and resubmitted to City staff for inclusion to a future City Council agenda which corrects the legal descriptions and references in such previously approved Agreement, prior to issuance of a building permit for any work on the City property for this related CMRS tower; and
3. All applicable building and electrical permits must be obtained prior to beginning construction.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City of Black Hawk has received an application from Chris Stryker, a representative from Vertical Bridge Development LLC, requesting the construction of a multi-user telecommunication facility. The construction will consist of installing a 103-foot self-support tower and required radio/electrical equipment at the base. The proposed facility will be fenced and the tower will be designed as a faux water tower. Refer to the Staff Report included with this Request for Council Action.

AGENDA DATE:

June 10, 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 46-2020
Resolution 47-2020
Public Hearing Notice
Staff Report
Supporting Documents

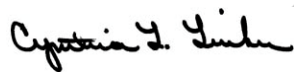
RECORD:

☐ Yes ☒ No

CITY ATTORNEY REVIEW:

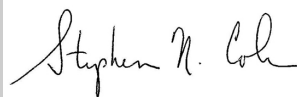
☒ Yes ☐ N/A

SUBMITTED BY:



Cynthia L. Linker, CP&D Director

REVIEWED BY:



Stephen N. Cole, City Manager



Vincent Harris, AICP, Baseline Corporation

BLACK HAWK



Staff Report

**CITY OF BLACK HAWK
PLANNING / LAND USE**

Date prepared: May 28, 2020
Meeting Date: June 10, 2020

**STAFF REPORT: T Mobile Facility: Height Variance for a Communications Tower,
Certificate of Architectural Compatibility, and Site Development Plan**

For: City Council
Project: P-19-12 T Mobile Facility COAC
Property Address: 821 Miners Mesa Road, Black Hawk, CO 80422
Applicants: Chris Stryker, Vertical Bridge
Zoning: Public Facilities (PF)
Prepared by: Melanie Nieske - Baseline Corporation
Approved by: Vincent Harris, AICP - Baseline Corporation
Reviewed by: Cynthia Linker, CP&D Director



BACKGROUND:

On May 10, 2019 the City of Black Hawk received an application request for a Certificate of Architectural Compatibility (COAC), a Height Variance, and Site Development Plan for a Communications Tower for T-Mobile from Chris Stryker, a representative of Vertical Bridge. The request involves a proposed 103-foot multi-user telecommunication facility at 821 Miners Mesa Road. The proposed location is zoned Public Facilities (PF) and is located at the City's material storage yard on Miners Mesa. The Black Hawk zoning regulations allow a tower on property zoned PF to be no taller than 45 feet above grade, therefore the variance requested is a deviation of 58 feet taller than allowed. The City approved a Lease Agreement in January 2019 with Vertical Bridge Development, LLC on January 23rd, 2019, for the installation and maintenance of a cellular tower facility on City property on Miners Mesa with no understanding of the need for a future variance. If this application is approved by City Council, then the approved Lease Agreement will need corrections approved in the near future with updated legal descriptions (recently discovered) for this subject lease area.

Telecommunication towers require a license from the Federal Communications Commission (FCC), so the project was reviewed under Section 106 of the National Historic Preservation Act (NHPA). The review found that the proposed tower will have no adverse effect on resources within the area of potential effects. The full review can be found in the attached documents.

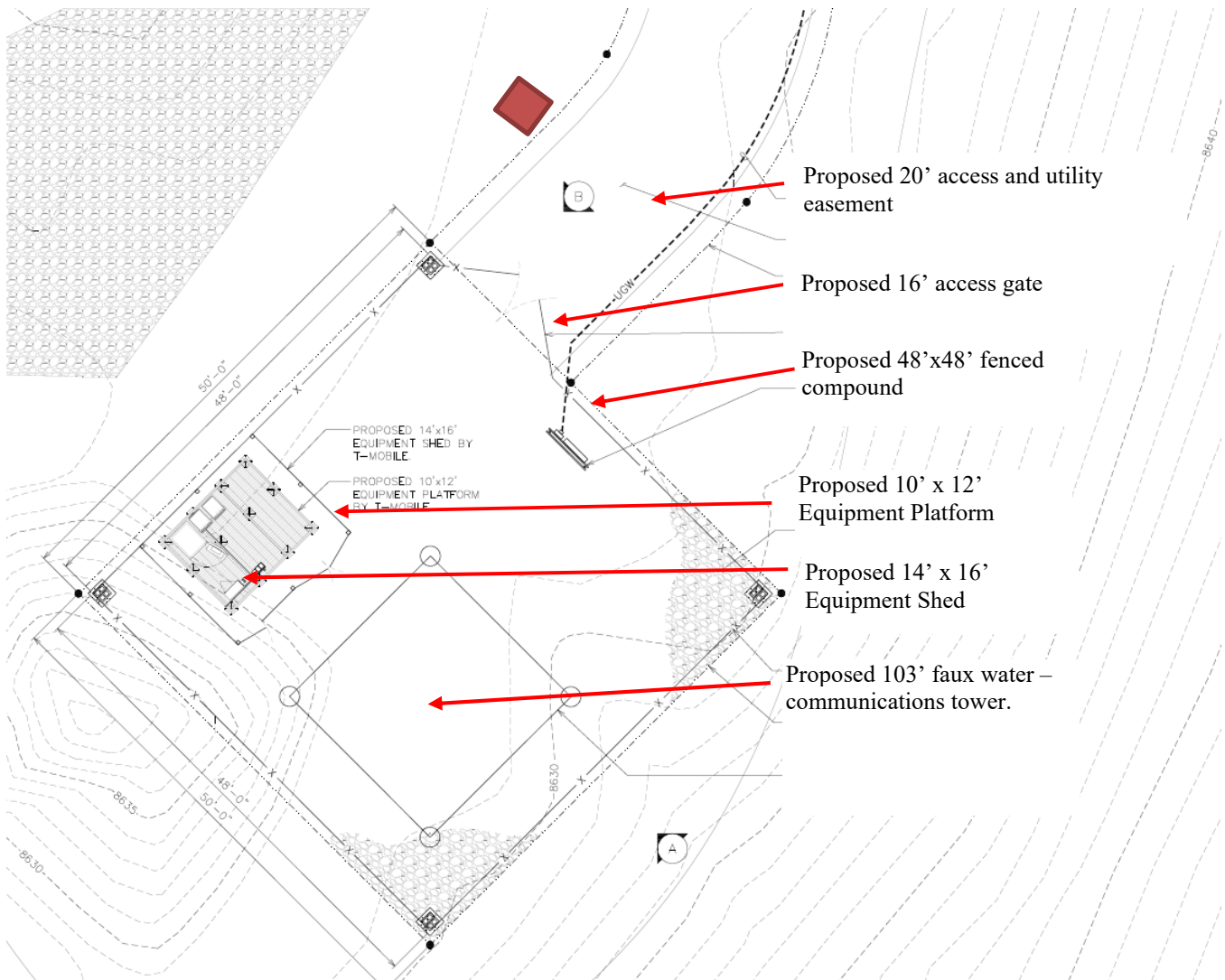
SITE

Vicinity Map



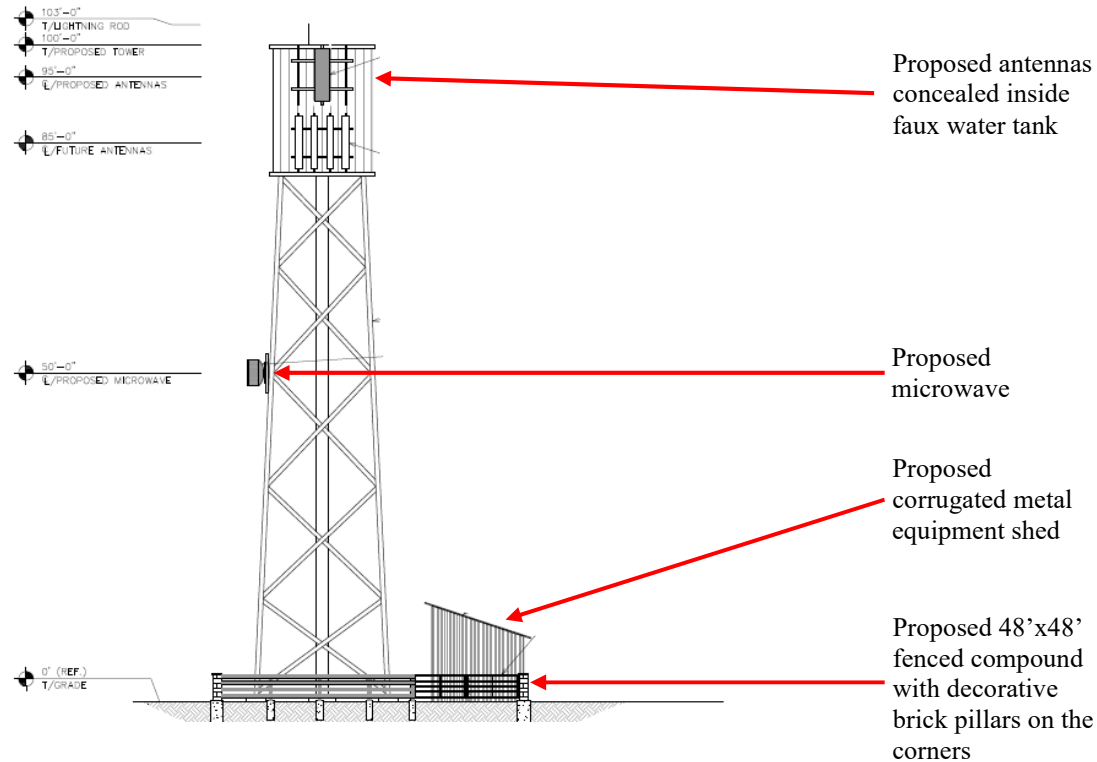
The extent of the proposed facility is identified below and includes:

- **Site Plan:** Within the 50'x50' lease area, the applicant is proposing a 48'x48' fenced compound to secure the tower and equipment. The compound will be accessed by a 20'-wide access easement and a 16'-wide access gate. Utilities are proposed to follow the access drive within the access and utility easement.



- **Site Elevation:** The applicant is proposing a 'stealth' tower concept that would align with the historic character and aesthetic interest of the City. The concept includes a faux wooden barrel at the top of the structure that resembles a historic water tower which will enclose the antennas. The support structure will also mimic a water tower appearance with wider support legs and will be painted a natural brown color. The equipment shed, at the base of the tower, is proposed to resemble a historic mining shed for equipment and will use corrugated metal material to enclose

the ground equipment. The 48'x48' compound fencing is proposed to use split-rail fencing and decorative brick columns at the corners.



- Proposed Materials:** The proposed equipment shed, at the base of the tower, is designed to resemble historic mining equipment and will use corrugated metal material to enclose the ground equipment. The 48'x48' compound fencing is designed to use split-rail fencing and decorative brick columns at the corners. Examples of the proposed materials and colors are shown below.



Example of faux water tower stealth design painted natural brown



Example of wooden split-rail fencing



Example decorative columns



P-19-12– T Mobile Facility H Example of corrugated metal equipment shed

The following portions of the report are separated into three sections, first is the evaluation of the Height Variance request, then the Certificate of Architectural Compatibility (COAC), and last the Site Development Plan (SDP). There are two separate motions to manage for this application; a first motion will be related to the Variance request, and then the COAC and SDP item together in a single second motion.

Applicable City of Black Hawk Regulations

Excerpts from:

*City of Black Hawk
Zoning Code
Chapter 16 – Zoning*

VARIANCE TO ALLOW PROPOSED TOWER HEIGHT

***Article XVII - Application Procedures and Submittal Requirements
Section 16-366. Variance and appeals.***

Section 16-366 (4) Decision of the Board of Appeals.

(The City Council serves as the Board of Appeals in accordance with the City Code for Variances.)

The applicant provided responses to each of the ten (10) criteria below for the requested height variance for the proposed communications tower. The Black Hawk zoning code for CMRS towers allows them to be 40 feet in height. In the PF zone district the maximum allowed height is 45 feet. A 103-foot tall tower is proposed which results in a 53 foot variance request.

a. After a public hearing, the Board of Appeals may modify the application of the regulations or provisions of this Chapter relating to the construction or alteration of buildings or structures or uses of land if the Board of Appeals finds that all of the following exist:

1. Due to exceptional and extraordinary circumstances unique to the property or structure for which the variance is sought, the strict enforcement of the provisions of this Chapter would cause an unnecessary hardship to the applicant;

Staff Comment: The applicant has indicated that the historic and current topography in the area provides ‘shading issues’ with their cellular panel equipment if the equipment is located on a tower, at this location, lower than 96 feet above ground. What staff did not see in anything provided by the applicant, is a technical analysis/document that may ‘visually’ show the effects of the terrain and topography. T-Mobile intends with the design of the faux water barrel on the top, that the top of the panels will actually be at an elevation of approximately 90 feet above grade with the bottom of the panel antennas at about 80 feet above grade. Refer to page 3 above for the diagram. The additional 53 feet in height requested for the tower in this location does not appear warranted with any data provided or ‘shading analysis’ showing the issue and/or the effects for his location. Systems as this have many different ways to accommodate coverages desired. But it appears to staff that functionally the tower proposed at 103 feet in height may allow full and complete coverage in one area it serves but we have no understanding what the effects are if the tower is lower (at 45 feet tall) at this location. Staff currently sees no specific reason for warranting a taller tower.

2. The circumstances causing the unnecessary hardship were not created by an owner or user of the property or by the applicant for the variance;

Staff Comment: The applicant has indicated the request is not caused by themselves but rather the existing mountainous and hilly terrain. Cell tower panels do work effectively to provide ‘coverage’ in many mountainous areas in the state as well as in this area. Again, staff sees no direct analysis or documentation of how the effects of a lower tower hinder this site from function in the T-Mobile system of towers throughout the mountainous areas nearby.

3. The hardship is not established on the basis of lack of knowledge of the restrictions upon constructing or altering a structure; nor by the purchasing of a property without knowledge of applicable restrictions; nor by showing that greater profit would result if the variance were granted;

Staff Comment: The applicant has indicated that their plan with the proposed 103-foot tower is also to provide the opportunity to see fewer towers and allowing co-location which, if approved at 103 feet in height, will allow other carriers to utilize the new tower in the future as well. Staff sees this option as useful and desirable so as to not have more or multiple towers proposed in the area and the future. However, staff understood that when the lease was approved for the site in January 2019 that the intent was to allow/have a tower on the site that met the height allowance in the zoning regulations.

4. The circumstances causing the unnecessary hardship are particular to the land or structure for which the variance is sought and do not apply generally to land and buildings in the zoning district in which the property is located;

Staff Comment: The applicant indicates that the existing terrain with drastic elevation changes in the area create a hardship to effectively provide the service for users of their service in the area. Staff still sees a need for more technical data explaining why a 45 foot tower (or a tower at some other height less than 103 feet) doesn’t work for this location.

5. The variance requested is the minimum deviation from this Chapter necessary to allow the same and no greater use as that allowed of other land or structures in the same zoning district;

Staff Comment: The applicant indicates that the request is the minimum variance proposed. Staff currently is not convinced of a specific height that makes this site useable vs. not useable for a communications tower. Maybe there is another height that is more than 45 feet and less than 103 feet that may functionally work to provide coverage?

6. The granting of the variance will not injure the appropriate use of adjacent conforming properties, will not impair an adequate supply of light and air, will not impair the view from adjacent property and will not substantially diminish or impair property values within the surrounding area;

Staff Comment: The applicant indicates that the ‘stealth’ designed tower will not inherently impair light, air or views to a detriment. Staff does very much desire this ‘barrel’ design over the first tower design which was a ‘lattice tower’ with little to no aesthetic character for the immediate area. If a tower is approved for this site, we recommend that the barrel design be incorporated.

7. The granting of the variance will be consistent with the spirit, purpose and intent of this Chapter and will not create a situation which alters the character of the area surrounding the property for which the variance is granted;

Staff Comment: The applicant indicates that the hillside to the west creates ‘shading’ issues for signals to and from the tower and such proposed design will provide an enhancement of the area. Staff suggests the quality of the design and option for two other carriers will be useful in the future and provide at least two more carrier options for their equipment. However, the entire height of 103 feet is still a concern and the additional 58 foot taller tower may significantly stand out on top of Miners Mesa.

8. The granting of the variance will secure and in no way diminish the public safety and welfare; nor impair prevention of or increase risk of fire, flood, traffic congestion or other hazard;

Staff Comment: Staff agrees that the proposed faux tower will not diminish the public health and safety as proposed. If the tower is not located here, then cell coverage is still available so not having any tower here doesn’t harm the general public safety here either.

9. The granting of the variance is necessary to cause substantial justice to be done; and

Staff Comment: The applicant and staff suggest that no injustice is included in this request, and that the applicant is not the only carrier that desires ‘Height’ in locations for towers. That is simply the nature of towers and how they work. The issue here seems to be at what height is appropriate for this location; and T-Mobile needs to substantiate at what height of a tower on this location provides a no useful value for this project on this site.

10. The granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor allow the expansion or establishment of a nonconforming use.

Staff Comment: The tower use is permitted (at a maximum height of 45 feet) and staff likes that one singular ‘stealth’ designed tower with the ability to have up to 3 providers with useful coverage is good.

Staff Summary on the Variance Request: As seen with the responses by staff which are responses to the applicants’ information to try and substantiate the requested 53 foot variance, staff is not convinced that the tower has to be 103 feet tall and likewise that a 45 foot tall tower in this location is useless. Staff does not recommend approval of a 58 foot variance with the current information and data provided. Staff suggests that the City Council hold the hearing, review this staff report, and hear from the applicant on their issues and concerns with the ability to have a 45 foot tower which is currently allowed, then decide if any variance for height may be warranted.

CERTIFICATE OF ARCHITECTURAL COMPATIBILITY

Note: Review of this component (COAC and SDP) of the proposed project is useful if some version of a height variance is approved for the proposed tower; or if the applicant indicates in the hearing on June 10, 2020 that they would desire to build the site with the allowed 45 foot tower.

Article XVII - Application Procedures and Submittal Requirements

Section 16-368. City council design review and computability process.

Section 16-368. (a) (3) Any person seeking to modify the exterior of, add to, or construct a new building shall be subject to the following procedures. Any such renovation, construction or demolition shall be subject to the City's design standards.

Section 16-368. (a) (5) The City shall not issue a building permit or site development plan for any of the following activities until a Certificate of Architectural Compatibility ("COAC") has been issued for the project.

- a. Construction of a new building, structure or improvement;*
- b. Alteration or reconstruction of, or addition to, the exterior of any improvement;*
- c. Demolition of any improvement;*
- d. Construction or erection of or addition to any improvement upon any land located within the City; or*
- e. Excavations requiring an excavation permit.*

Section 16-368. (e) (3) Except for applications seeking a COAC for demolition of a structure, which review is controlled by the criteria in subsection (4) below, in considering the issuance of a COAC, the City shall consider the following:

- a. All plans, drawings and photographs as may be submitted by the applicant;*
Staff Comment: The applicant has submitted plans that are included with this Staff Report.
- b. If a public hearing is required, any information presented at a public hearing held concerning the proposed work;*
Staff Comment: A representative of Vertical Bridge will provide additional information at the hearing on June 10, 2020 if needed, and any persons that wish to comment on the application
- c. The purpose of this Chapter;*
Staff Comment: The applicant has submitted concept and site plans that attempt to meet the purpose of this Chapter. The stealth tower design has incorporated materials and concepts that are compatible with the historic character of the City as well as with the newer envisioned area in the Miners Mesa District in accordance with the recently adopted 2020 Comprehensive Plan.
- d. Compliance with this Code and the payment of all fees required by this Code;*
Staff Comment: The applicants have and will continue to pay all necessary fees required by the ordinances of the City.

- e. *The effects of the proposed work upon the protection, enhancement, perpetuation and use of the City which cause it to possess a special character or special historical or aesthetic interest or value; and*

Staff Comment: The proposed stealth design of the tower does seem to fit with the historic character of the City and the location on Miners Mesa. The applicant worked with staff to propose a stealth tower design that will not negatively affect the historic or aesthetic interest of the site or the Miners Mesa District of the City.

- f. *Compliance with the City's residential or commercial design standards, as appropriate, including, but not limited to, reference to the historical and architectural style, the general design, arrangement, texture, materials and color of the development, building or structure in question or its appurtenance fixtures; the relationship of such features to similar features of the other buildings within the City the position of the building, structure, park or open space in relation to public rights-of-way and to other buildings and structures in the City.*

Staff Comment: The applicant has worked with staff to attempt to meet the commercial design standards. The proposed tower is designed to look like a historic wooden water tower and will be painted a natural brown color. The ground equipment will be concealed in a corrugated-metal shed designed to mimic the mining era. The entire facility will be secured with a split-rail fence and stone column corners.

Article XVIII - Commercial Mobile Radio Service Facilities

Section 16-397. Equipment storage shelters for CMRS facilities shall adhere to the following design standards to minimize impacts:

- (1) *Equipment storage shelters located outside shall be screened from view by vegetation, fencing or comparable screening.*
- (2) *No equipment storage shelter shall exceed fifteen (15) feet in height.*
- (3) *The total area of all equipment storage shelters shall not exceed four hundred (400) square feet per facility.*

Staff Comment: The equipment storage shelter will be enclosed by split rail fencing and stone corner columns. The shelter does not exceed 15 feet in height and the total area of the equipment storage shelter does not exceed 400 feet.

Section 16-398. Freestanding CMRS facilities.

- (b) *Minimum setback. A freestanding CMRS facility shall be set back from each property line one (1) foot of distance for every foot of facility height.*
- (c) *Maximum height. A freestanding CMRS facility, including antennae, shall not exceed the maximum structure height limit in the underlying zone district unless the administrative or other written approval specifically allows the facility to exceed that limit.*
- (d) *A freestanding CMRS facility shall meet the following design standards to minimize impacts:*
 - (1) *The facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area, subject to*

applicable Federal Aviation Administration (“FAA”) regulations.

(2) Existing land forms, vegetation and structures shall be used to screen the facility from view and blend in the facility with the surrounding environment, where feasible.

(3) Existing vegetation shall be preserved or enhanced, where feasible.

(4) The facility shall not be lighted unless required by the FAA.

(5) All freestanding CMRS facilities shall accommodate co-location of facilities, unless co-location is technically unfeasible.

(6) Any equipment that could be dangerous to persons or wildlife shall be adequately fenced.

(7) The diameter of a microwave dish antenna shall not exceed four (4) feet.

Staff Comment: The applicant has submitted a Variance Request for at 103-foot CMRS facility for City Council’s review and decision. The facility is designed to allow collocation with up to two more tenants and is adequately fenced to protect persons and wildlife. If a different height of a tower is ‘agreed’ to and approved by City Council, then minor revisions to the COAC and SDP plans will be needed.

Section 16-401. Application and approval procedures.

(c) City-owned property. The Board of Alderman shall hold a public hearing to decide on any application to locate a CMRS facility on city-owned property, following the procedure set forth in Section 16-369. At the public hearing, the Board of Alderman shall consider whether the proposed facility meets the design standards set forth in this Article, and issue a written decision approving or denying the application. The Board of Alderman may impose reasonable conditions of approval.

Staff Comment: The proposed T Mobile facility is located on a parcel of land owned by the City of Black Hawk and is zoned Public Facilities (PF). The applicant and the City of Black Hawk executed a lease agreement on January 23rd, 2019, for a 50’x50’ portion of property at 821 Miners Mesa Road for the proposed communications tower.

SITE DEVELOPMENT PLAN:

Article XVII - Application Procedures and Submittal Requirements

Sec. 16-362. Site development standards and procedures for establishing vested property rights.

16-362(b). General Requirements.

(1) Site development regulations shall apply to all areas within the City that are in accordance with at least one (1) of the following:

a. All uses located within the following zone districts:

CG - Core Gaming, MG - Millsite Gaming, TG - Transitional Gaming, HD - Hillside Development-Mixed Use [etc.]

c. Uses which are located or to be located within any other zone district which are specifically made subject to this Chapter by the Board of Aldermen

d. Uses which are located or to be located on property within any other zone district, and the owner or developer of the property requests an application of these site development plan requirements, subject to this Chapter.

(6) No site development plan will be approved unless all components of the proposed development comply with the Black Hawk Zoning and Subdivision Ordinances and all other applicable ordinances.

Staff comment: The SDP has been reviewed against the development standards in the Public Facilities zone district, and other applicable sections of the Zoning Ordinance. The SDP, as currently proposed is in compliance, in staff's opinion.

Sec. 16-362(c). Application and site development plan submittal requirements.

Staff comment: Section 16-362(c) outlines the required submittal items that must accompany an application for a Site Development Plan. The submitted SDP contains the necessary submittal materials which is included in the applicant's application submittal included herein.

STAFF SUMMARY:

Staff from Baseline Corporation has evaluated the information provided by Vertical Bridge for this project. Based on the three items before the City Council it is recommended that the Variance request be dealt with as a first action, because if the City Council does not approve the entire 53 foot height variance, the Site development Plan (SDP) and Certificate of Architectural Compatibility (COAC) items are a moot point, unless the applicant indicates in the hearing that they will intend to build a site with a 45 foot tall tower. If City Council approves the tower height Variance request (or a variance at a different height more than 45 feet tall), staff from Baseline Corporation recommends that the SDP and the COAC (with simple tower height corrections to an approved height) be approved regardless of the height approved. Staff suggests that the proposed facility and design setup is acceptable, creates the least obtrusive visual solution possible to provide the functions needed for a CMRS facility, and meets the Design Guidelines for communication equipment uses adopted by the City of Black Hawk.

This application submittal and architectural plan set is the last of many options the applicant and staff have discussed on the project since the original submittal of the application. Many variations and versions have been commented on and revised prior to this submittal.

In summary, Staff recommends that the Motion for the requested Variance be addressed first, then a second Motion for a Site Development Plan and a Certificate of Architectural Compatibility for the T-Mobile Facility proposed herein, subject to the following findings and motions with conditions:

FINDINGS:

City Council may *approve, conditionally approve, or deny* a Variance, a Site Development Plan, and a Certificate of Architectural Compatibility. The following motions can be used for each item:

The proposed T-Mobile CMRS Tower Facility proposed meets the intent of the criteria outlined in Section 16-366, Section 16-368, and Section 16-362 of the Municipal Code and those found in Black Hawk's Design Guidelines as noted and evaluated in the staff report presented to City Council.

RECOMMENDATION:

Staff recommends the following motions to the Mayor and Board of Aldermen:

MOTION TO DENY Resolution No. 46-2020, a resolution proposing a Height Variance of 53 feet to allow a 103-foot tall Stealth/Faux CMRS tower structure for the T Mobile Facility at 821 Miners Mesa Road with the following Findings:

Findings: This variance application does not meet all the evaluation criteria outlined in Section 16-366 (4) as evidenced in the staff report analysis for this proposal. No direct data is found or understood to warrant a tower taller than 45 feet as allowed in the Public Facilities Zone District. All of the criteria in Section 16-366 (4) to review a requested variance is not met.

Note: Depending on the decision above the following motion may be used, but may need to be modified based on the decision on the requested Variance or tower height.

MOTION TO APPROVE Resolution No. 47-2020, a resolution approving a Certificate of Architectural Computability and a Site Development Plan for the T Mobile Facility at 821 Miners Mesa Road with the following Findings and Conditions:

1. Development of the site shall be in accordance with the plan sheets provided to the City with this application (as amended to be in conformance with an approved height for the tower) and included in the staff report for this same project proposed by Vertical Bridge Development LLC;
2. The Option and Lease Agreement with Vertical Bridge Development LLC and the City approved on January 23, 2019 shall be corrected and resubmitted to City staff for inclusion to a future City Council agenda which corrects the legal descriptions and references in such previously approved Agreement, prior to issuance of a building permit for any work on the City property for this related CMRS tower; and
3. All applicable building and electrical permits must be obtained prior to beginning construction.

ATTACHMENTS:

- Land Development Application Form
- Letter of Intent
- Variance Request
- Lease Exhibit
- Survey
- Lease Agreement
- Cultural Resources Report
- Legal Description

Applicant's Submittal



LAND USE APPLICATION FORM

City of Black Hawk
Community Planning and Development

211 Church Street, P.O. Box 68
Black Hawk, CO 80422

Phone: 303-582-0615
Fax: 303-582-2239

www.cityofblackhawk.org

DATE: _____

APPLICANT NAME: _____

APPLICANT ADDRESS: _____

APPLICANT MAILING ADDRESS: _____

APPLICANT CONTACT NUMBER: _____ EMAIL ADDRESS: _____

PROPERTY OWNER NAME: _____

PROPERTY OWNER ADDRESS: _____

PROPERTY OWNER MAILING ADDRESS: _____

PROPERTY OWNER CONTACT NUMBER: _____ EMAIL ADDRESS: _____

PROJECT NAME: _____

PROJECT ADDRESS: _____

PROJECT DESCRIPTION: _____

IS PROPERTY WITHIN CITY LIMITS: YES ☐ NO ☐

PRESENT ZONING: _____ CURRENT USE: _____

NAME OF EXISTING PLANNED UNIT DEVELOPMENT (IF APPLICABLE): _____

NAME OF EXISTING SUBDIVISION PLAT (IF APPLICABLE): _____

GILPIN COUNTY ASSESSOR'S I.D. NO.(S): _____ EXISTING PROPERTY SIZE: _____ ACRES/SQ.FEET

(PLEASE ATTACH A COPY OF SURVEY/PLAT.)

EXISTING BUILDING SIZE: _____ SQ. FT. AND/OR NUMBER OF EXISTING RESIDENTIAL UNITS: _____

APPLICANT HAS READ AND ACKNOWLEDGES THE FOLLOWING:

For informational purposes, the Black Hawk Adopted Fee Schedule and Section 16-370 of the Black Hawk Municipal Code establishes the requirement for applicants to pay fees to cover the costs the City may incur by having City approved consultants evaluate and process applications.

APPLICANT AGREES TO THE FOLLOWING CERTIFICATION STATEMENT AND AFFIDAVIT:

I, as the applicant, hereby certify that I believe to the best of my knowledge that all information supplied with this application is true and accurate and that consent of the property owner listed above, without which the requested action cannot lawfully be accomplished, has been granted. Permission is also hereby granted to the City of Black Hawk staff and their consultants to physically enter upon and inspect the subject property and take photographs as necessary for preparation of the case. In addition, I have read and understand the Black Hawk Adopted Fee Schedule and Section 16-370 of the Black Hawk Municipal Code, and by signing this application I am agreeing that I am authorized to sign on behalf of the property owner, or business-owner, or applicant and commit and agree to the payment of any and all fees associated with processing this application and further agree to pay City of Black Hawk invoices associated with the processing of this application.

The application must be submitted in person to the Community Planning and Development office. A complete submittal of one (1) hard copy set and one (1) electronic copy in PDF format on flash drive, as well as the receipt of application fee payment, must accompany the application. Application fees may be paid online at: <http://www.cityofblackhawk.org/city-departments/community-planning-development/>

SIGNATURE OF APPLICANT: Chris C. Stryker DATE: _____

303.859.0344

chris@strykersiteservices.com

strykersiteservices.com



PO Box 1558 | Denver, CO. 80201

March 25, 2020

City of Black Hawk
201 Selak St.
Black Hawk, CO. 80422

RE: Proposed Vertical Bridge Development, LLC Multi-User Telecommunication Facility (US-CO-5063 Black Hawk)

To Whom it May Concern,

Vertical Bridge Development, LLC is proposing to construct a 100' multi-user telecommunication facility within a 50' x 50' leased area adjacent to Miners Mesa Road. The installation will consist of installing a 100' stealth tower with antenna arrays concealed within a barrel-like enclosure on the top. The proposed facility will also include a farm-style wooden fence round the leased area with brick/stone ornamental corner posts and our tenants required radio/electrical equipment placed within a wooden shelter at the base of the tower to conceal the equipment. The tower will be designed to accommodate up to three (3) tenants in order to reduce the number of towers required in the area. If you have any questions or require additional information, please do not hesitate to call either myself at the number below or Matt Grugan with Vertical Bridge Development, LLC (applicant) @ 678-488-1866. Thank you in advance for your consideration.

Chris C. Stryker

Chris C. Stryker
Manager, Stryker Site Services, LLC
Contractor for Vertical Bridge
(303) 859-0344 (voice)



Sec. 16-402. Height Limit.

In no case shall a CMRS facility located on property owned by the City or in any public right-of-way exceed forty (40) feet in height.

(Ord. 2016-14 §2)

Sec. 16-366. Variances and appeals.

(2) Variances.

Requests for relief from the regulations and development standards of this Chapter may be taken to the Board of Appeals when the strict application of this Chapter will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding.

(4) Decision of the Board of Appeals.

a. After a public hearing, the Board of Appeals may modify the application of the regulations or provisions of this Chapter relating to the construction or alteration of buildings or structures or uses of land if the Board of Appeals finds that all of the following exist:

1. **Due to exceptional and extraordinary circumstances unique to the property or structure for which the variance is sought, the strict enforcement of the provisions of this Chapter would cause an unnecessary hardship to the applicant;**

Response: RESPONSE ON ADDITIONAL SHEET

2. **The circumstances causing the unnecessary hardship were not created by an owner or user of the property or by the applicant for the variance;**

Response: RESPONSE ON ADDITIONAL SHEET

3. **The hardship is not established on the basis of lack of knowledge of the restrictions upon constructing or altering a structure; nor by the purchasing of a property without knowledge of applicable restrictions; nor by showing that greater profit would result if the variance were granted;**

Response: RESPONSE ON ADDITIONAL SHEET

4. **The circumstances causing the unnecessary hardships are particular to the land or structure for which the variance is sought and do not apply generally to land and buildings in the zoning district in which the property is located;**

Response: RESPONSE ON ADDITIONAL SHEET

5. **The variance requested is the minimum deviation from this Chapter necessary to allow the same and no greater use as that allowed of other land or structures in the same zoning district;**

Response: RESPONSE ON ADDITIONAL SHEET

6. **The granting of the variance will not injure the appropriate use of adjacent conforming properties, will not impair an adequate supply of light and air, will not impair the view from adjacent property and will not substantially diminish or impair property values within the surrounding area;**
Response: RESPONSE ON ADDITIONAL SHEET
7. **The granting of the variance will be consistent with the spirit, purpose, and intent of this Chapter and will not create a situation which alters the character of the area surrounding the property for which the variance is granted;**
Response: RESPONSE ON ADDITIONAL SHEET
8. **The granting of the variance will secure and in no way diminish the public safety and welfare; nor impair prevention of or increase risk of fire, flood, traffic congestion or other hazard;**
Response: RESPONSE ON ADDITIONAL SHEET
9. **The granting of the variance is necessary to cause substantial justice to be done; and**
Response: RESPONSE ON ADDITIONAL SHEET
10. **The granting of the variance will not allow uses or densities not permitted in the zoning district in which it is granted nor allow the expansion or establishment of a nonconforming use.**
Response: RESPONSE ON ADDITIONAL SHEET

ANSWERS TO THE VARIANCE REQUEST QUESTIONS:

4 (1): Due to the extreme topography challenges present in the City of Black Hawk, the Miners Mesa location is the optimal location to effectively cover the surrounding roadways, (Miners Mesa, Hwy 119, Central City Parkway, etc) and households/businesses effectively. T-Mobile has determined the lowest RAD center that will effectively cover the area efficiently would be 96', which is the basis of our 103' tower request. Anything lower will have shading issues created by the topo elevation changes. The additional height will also deter more towers from being added in the city and county as the taller structure height will accommodate additional future tenants who will be able to cover the area much more effectively from the available RADs (85', 75', 65' etc) than from a 40' tower as outlined in the City code.

4 (2): The hardship that caused the request for additional tower height which T-Mobile need to meet its coverage objective is due to the existing terrain surrounding the City of Black Hawk. As mentioned in 4(1), a 40' tower will not provide the height needed for the anchor tenant or any future tenants to meet the minimum coverage requirements.

4 (3): The request for the additional tower height is not one of negligence or profit, it is a request of need, and our tenant's need should also promote collocation opportunities for future carriers needs. What usually holds true for one carrier is true for all carriers, meaning if T-Mobile needs the additional height, so will others. By allowing our application to be approved for a 103' structure, the tower facility will not only provide T-Mobile the height needed to meet their coverage objectives, but it will allow space for multiple users, thus reducing the need for multiple towers in the area.

4 (4): The height variance request is due solely on the fact that the existing terrain and drastic elevation changes in the surrounding area cause the need and hardship.

4 (5): Correct - for T-Mobile to meet the coverage objective and provide adequate space for future tenants, 103' is the minimum acceptable height required.

4 (6): No, the proposed facility was requested to be stealth in nature causing Vertical Bridge to propose the water tower style tower. The proposed tower will not impair the supply of light and/or air, nor impair or impact the view from adjacent properties. The proposed style was selected specifically to enhance the area's history and blend into the surroundings rather than stand out aesthetically. The upgrade from our original proposed lattice tower to the stealth water tank should positively affect property values within the surrounding area.

4 (7): As mentioned in 4(6) above, the tower has been redesigned to a stealth water tower which better represents the City's historic charm and enhances the character of the surrounding area. There is an existing tower structure that sits 2,750' to the west of our proposed tower, behind the public works department offices. That existing tower was vetted by T-Mobile for collocation prior to pursuing a new tower. The hillsides immediately behind the existing tower causes shading and does not allow optimal coverage to the surrounding area.

4 (8): The proposed facility will enhance public safety by providing much needed wireless coverage & E911 capabilities to visitors and residents of the area. Because the facility will be unmanned once built,

there will be no increase in traffic. The facility will be composed primarily of hardscapes and non-flammable materials and does not require any water or wastewater services eliminating risks of fire, flood and other potential impacts and hazards.

4 (9): Granting the variance will create one tower with the capability to hold multiple tenants thus providing a better outcome for the city and surrounding community than a proliferation of short towers in the community.

4 (10): The proposed use is allowed through the City of Black Hawk Land Use. The variance will not establish a non-conforming use.

TOPOGRAPHIC SURVEY

VERTICAL BRIDGE SITE US-CO-5063 – BLACK HAWK

SITUATED IN THE NORTH HALF OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 72 WEST OF THE 6TH P.M.

COUNTY OF GILPIN, STATE OF COLORADO

SURVEYOR'S CERTIFICATE

I hereby certify to: Vertical Bridge REIT, LLC, a Delaware limited liability company, its subsidiaries, and their respective successors and/or assigns; Toronto Dominion (Texas) LLC, as Administrative Agent, for itself and on behalf of the lenders parties from time to time to that certain Second Amended and Restated Loan Agreement dated June 17, 2016 with Vertical Bridge Holdco, LLC, as borrower, and Vertical Bridge Holdco Parent, LLC, as parent, as may be amended, restated, modified or renewed, their successors and assigns as their interests may appear; and Fidelity National Title Insurance Company,

that on September 5, 2019, a topographic survey was conducted under my supervision using the normal standard of care of Professional Land Surveyors and the map hereon accurately represents said survey, to the best of my knowledge.

This drawing does not represent a Land Survey, Land Survey Plat, Improvement Land Survey Plat or Improvement Location Certificate and any monuments or boundary lines shown are for information only and are not to be relied on.

This survey relied upon a Title Commitment by Fidelity National Title Insurance Company Commitment No. 28722703 for legal descriptions and easements.

This survey does not constitute a title search by this surveyor or Daley Land Surveying, Inc. of the property shown and described hereon to determine:

1. Ownership of this tract of land.
2. Rights-of-way, easements and encumbrances recorded or unrecorded affecting this tract of land.
3. Compatibility of this description with those of adjacent tracts of land.



Job No. 1606-058
For and on behalf of
Daley Land Surveying, Inc.
17011 Lincoln Ave., #361
Parker CO. 80134
303 953 9841
Robert Daley, PLS 35597

SURVEYOR'S NOTES:

BASIS OF BEARINGS:
The bearings shown on this survey are referenced to the North line of the Northwest Quarter of Section 18, Township 3 South, Range 72 West of the 6th P.M. assumed to bear North 89°07'56" West, 3189.57 feet (North 89°07'56" West, 3189.57 feet record). Monumented by a 3/4" aluminum cap stamped BLM 1979 at the North Quarter Corner of said Section 18 and by an 3/4" aluminum cap stamped BLM 1979 at the Northwest Corner of said Section 18.

COORDINATE SYSTEM AND DATUM:
Horizontal coordinates are referenced to NAD83, Vertical datum is NAVD88 and originates from the local C.O.R.S. network, utilizing the Geoid12A model.

UTILITIES:
The utilities which are readily visible upon the ground, such as manholes, power and light poles, inlets, etc. were located by field surveys and shown hereon. Sub-surface utilities, if shown, are the result of field surveys of utility location marks provided by others.

FLOOD ZONE:
Site is not shown to be in a designated Special Flood Hazard Area (Zone A) per Map Index 080075B, Sheet 10 of 14, Original Identification Date June 10, 1977 and converted by letter March 1, 1986 or Zone C, Area of Minimal Flooding (No Shading), per FEMA Map 080076 0001 B (Only Panel Printed), Effective Date October 16, 1994.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

SPECIFIC SURVEYOR'S NOTES:

1. Based upon this survey there does not appear to be any visible encroachments affecting the Lease Area, or the Access and Utility Easement.
2. The Access and Utility Easement described on this survey was calculated to intersect the west line of Miners Mesa Road, a Public Road.
3. The Lease Area lies entirely within the Parent Parcel, the Access and Utility Easement does not appear to lie entirely within the Parent Parcel, a portion of the Access and Utility Easement crosses Tract A, Miners Mesa Subdivision, Filing No. 4.

LEGAL DESCRIPTION PARENT TRACT (from Title Commitment):

Fidelity National Title Insurance Company Commitment No. 28722703.
Effective Date of Commitment: July 15, 2019 @ 8:00 am Number: Customer US-CO-5063.

EXHIBIT "A" Legal Description

An interest in land, said interest being over a portion of the following described parent parcel:

PARCEL 1:
A portion of Miners' Mesa Subdivision Filing No. 4, City of Black Hawk, County of Gilpin, State of Colorado.

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North Half of Section 18, Township 3 South, Range 72 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows:

Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said section is assumed to bear N 89°07'56" W, 3189.57 feet, with all bearings contained herein relative thereto; thence S 05°(7)11'32" E, 1007.08 feet to a point along the boundary of said subdivision and the true point of beginning, thence along said boundary the following eleven (11) courses:

1. S 25°00'00" W, 123.62 feet;
 2. Thence S 48°59'00" W, 265.96 feet;
 3. Thence N 89°24'55" W, 80.13 feet;
 4. Thence N 31°43'30" W, 23.14 feet;
 5. Thence N 89°53'30" W, 112.47 feet;
 6. Thence S 50°23'44" W, 2(8)9.28 feet;
 7. Thence N 89°49'34" W, 52.75 feet;
 8. Thence N 26°33'00" W, 20.36 feet;
 9. Thence N 00°00'00" W, 167.44 feet;
 10. Thence S 63°22'30" W, 36.21 feet;
 11. Thence N 89°38'25" W, 149.29 feet;
- Thence N 00°21'35" E, 130.67 feet; thence N 39°43'00" E, 174.51 feet; thence along the arc of a curve to the right 321.30 feet, having a radius of 300.00 feet, a central angle of 61°22'45" and which chord bears N 70°24'22" E. 305.23 feet; thence S 78°54'15" E. 215.72 feet to a point along the boundary of said subdivision; thence along said subdivision the following two (2) courses:
1. S 78°54'15" E, 180.87 feet;
 2. Thence along the arc of a curve to the left 101.53 feet, having a radius of 540.16 feet, a central angle of 10°46'09" and which chord bears S 84°17'19" E, 101.38 feet to the true point of beginning, containing 5.66 acres more or less.

PARCEL 2:
A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 2, recorded at Reception Number 130944 and Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North half of Section 15, Township 3 South, Range 72 West and the Northeast quarter of Section 13, Township 3 South, Range 73 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows:

Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said Section is assumed to bear N 89°07'56" W, 3189.57 feet, with all bearings contained herein relative thereto, thence S 31°(9)54'55(6)" W, 1512.82 feet to a point along the boundary of Miners' Mesa Subdivision Filing No. 3 and the true point of beginning; thence along said subdivision boundaries the following thirteen (13) courses:

1. N 89°38'25" W, 626.52 feet;
 2. Thence N 50°26'38" W, 82.08 feet;
 3. Thence S 39°30'37" W, 66.89 feet;
 4. Thence N 89°38'25" W, 1662.40 feet;
 5. Thence N 00°35'52" E, 17.08 feet;
 6. Thence S 87°59'17" W, 405.04 feet;
 7. Thence N 39°00'00" E, 1259.38 feet;
 8. Thence S 52°52'43" E, 132.70 feet;
 9. Thence N 37°07'17" E, 293.28 feet;
 10. Thence S 53°00'01" E, 82.44 feet;
 11. Thence S 10°53'44" W, 493.10 feet;
 12. Thence S 80°02'49" E, 149.42 feet;
 13. Thence N 10°55'57" E, 294.78 feet;
- Thence S 75°07'40" E, 1199.64 feet; thence along the arc of a curve to the right 101.55 feet, having a radius of 275.00 feet, a central angle of 21°09'31" and which chord bears S 67°90'01" E, 100.98 feet; thence S 57°15'16" E. 68.07 feet; thence along the arc of a curve to the left 481.99 feet, having a 16"radius of 500.00 feet, a central angle of 52°56'24" and which chord bears S 85°43'28" E, 445.73 feet; thence along the arc of a curve to the left 210.00 feet, having a radius of 400.00 feet, a central angle of 30°05'20" and which chord bears S 54°45'40" W, 207.68 feet; thence S 39°43'00" W, 52.58 feet; thence S 00°21'35" W, 288.36 feet to the true point of beginning, containing 41.74 acres more or less.

Together with and subject to a right of way over the following described parcel:

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North half of Section 18, Township 3 South, Range 72 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows: Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said section is assumed to bear N 89°07'56" W, 3169.57 feet, with all bearings contained herein relative thereto; thence S 11°03'33" W 876.17 feet to a point along the boundary of Miners Mesa Subdivision Filing No. 3 and the true point of beginning; thence along said boundary S 11°03'33" W, 100.00 feet; thence N 78°54'15" W, 215.72 feet; thence along the arc of a curve to the left 321.38 feet, having a radius of 300.00 feet, a central angle of 61°22'45" and which chord bears S 70°24'22" W, 306.23 feet; thence S 39°43'00" W, 174.51 feet; thence N 00°21'E, 157.69 feet; thence N 39°43'00" E, 52.58 feet; thence along the arc of a curve to the right 428.51 feet, having a radius of 400.00 feet, a central angle of 61°22'45" and which chord bears N 70°24'22" E, 408.31 feet; thence S 78°54'15" E, 215.66 feet to the true point of beginning, containing 1.62 acres more or less.

AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Western Diversified Properties, LLC, a Colorado limited liability company by Warranty Deed dated January 22, 1996, unrecorded individually, located in Deed Book 607, Page 058. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Miner's Mesa Commercial Metropolitan District by Warranty Deed dated December 20, 1996 and recorded December 26, 1996 in Deed Book 612, Page 481. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Miner's mesa Development, LLC 1/k/a Western Diversified Properties, LLC by Special Warranty Deed dated May 29, 2000 and recorded September 06, 2000 in Deed Book 702, Page 08. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Club Vista Properties II, LLC, a Nevada limited liability company by Special Warranty Deed dated May 21, 2012 and recorded May 21, 2012 in Instrument No. 146438.



Rev:	Date:	Description:	By:
1	9/10/19	Survey	AV
2	9/16/19	Lease/Easement	AV
3	11/06/19	Rev. Lease/Easement	AV
4	12/02/19	Rev. Title	AV
5	12/04/19	Comments	AV

PROJECT INFORMATION:		
SITE NAME:	BLACK HAWK	
SITE ADDRESS:	821 MINERS MESA ROAD BLACK HAWK, CO 80427	
VERTICAL BRIDGE SITE NUMBER: US-CO-5063		
DRAWN BY:	CHK BY:	APV BY:
AV	RD	RD

LAND SURVEY

Sheet Number:

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TOPOGRAPHIC SURVEY

VERTICAL BRIDGE SITE US-CO-5063 – BLACK HAWK

SITUATED IN THE NORTH HALF OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 72 WEST OF THE 6TH P.M.

COUNTY OF GILPIN, STATE OF COLORADO

EXCEPTIONS LISTED IN TITLE COMMITMENT:

- Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment. Affects Parcel, Lease Area, Access and Utility Easement – Not survey related
- Rights or claims of parties in possession not shown by the public records. Affects Parcel, Lease Area, Access and Utility Easement – Not survey related
- Easements, or claims of easements, not shown by the public records. Affects Parcel, Lease Area, Access and Utility Easement – Not survey related
- Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records. Affects Parcel, Lease Area, Access and Utility Easement – Not survey related
- Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. Affects Parcel, Lease Area, Access and Utility Easement – Shown hereon, if any.
- Taxes and special assessments which are not shown as existing liens by the public records. Affects Parcel, Lease Area, Access and Utility Easement – Not survey related
- The property insured herein is now listed as tax-exempt for the year 2018. This policy is subject to all taxes which may be hereafter levied against said property. Affects Parcel, Lease Area, Access and Utility Easement – Not survey related
- Patent recorded on 04/10/1872 in Deed Book 53, Page 188. Does not appear to affect Parcel, not plotted
- Patent recorded on 05/13/1874 in Deed Book 56, Page 555. Does not appear to affect Parcel, not plotted
- Patent recorded on 07/14/1874 in Deed Book 58, Page 49. Does not appear to affect Parcel, not plotted
- Patent recorded on 06/05/1876 in Deed Book 62, Page 144. Does not appear to affect Parcel, not plotted
- Patent recorded on 07/21/1877 in Deed Book 62, Page 456. Does not appear to affect Parcel, not plotted
- Patent recorded on 09/01/1880 in Deed Book 71, Page 453. Does not appear to affect Parcel, not plotted
- Patent recorded on 12/11/1882 in Deed Book 93, Page 61. Does not appear to affect Parcel, not plotted
- Patent recorded on 07/18/1883 in Deed Book 93, Page 449. Does not appear to affect Parcel, not plotted
- Patent recorded on 01/05/1886 in Deed Book 93, Page 245. Does not appear to affect Parcel, not plotted
- Patent recorded on 02/25/1893 in Deed Book 101, Page 33. Does not appear to affect Parcel, not plotted
- Patent recorded on 01/30/1894 in Deed Book 101, Page 57. Does not appear to affect Parcel, not plotted
- Patent recorded on 11/19/1902 in Deed Book 101, Page 185. Does not appear to affect Parcel, not plotted
- Patent recorded on 04/23/1894 in Deed Book 102, Page 138. Does not appear to affect Parcel, not plotted
- Patent recorded on 03/14/1983 in Deed Book 110, Page 378. Does not appear to affect Parcel, not plotted
- Patent recorded on 02/23/1906 in Deed Book 136, Page 150. Does not appear to affect Parcel, not plotted
- Patent recorded on 10/15/1912 in Deed Book 162, Page 122. Does not appear to affect Parcel, not plotted
- Quit Claim Deed from The City of Black Hawk, a municipal corporation to E. A. Hart, dated 12/12/1928 and recorded 01/17/1929 in Deed Book 202, Page 65. Does not appear to affect Parcel, not plotted
- Order and Decree Creating District recorded on 07/26/1968 in Deed Book 259, Page 288. Affects Parcel, Lease Area, Access and Utility Easement – Blanket in nature
- Deed from The City of Black Hawk to Gilpin County, a body politic and corporate, dated 09/03/1968 and recorded 10/03/1968 in Deed Book 260, Page 308. Does not appear to affect Parcel, not plotted
- Except the coal, oil, gas and other minerals underlying the surface of said land and all rights and easements in favor of the estate of said coal, oil, gas and other minerals; including, but not limited to, express or implied easements in, over and under that estate for the entry and removal of minerals. This policy should not be construed as insuring against loss or damage resulting to the surface of the land or any improvements thereon caused by surface entry or by the removal of the oil, gas, and other minerals lying thereunder. See instrument recorded on 12/13/1968 in Deed Book 261, Page 284. Affects Parcel, Lease Area, Access and Utility Easement – Blanket in nature
- Except the coal, oil, gas and other minerals underlying the surface of said land and all rights and easements in favor of the estate of said coal, oil, gas and other minerals; including, but not limited to, express or implied easements in, over and under that estate for the entry and removal of minerals. This policy should not be construed as insuring against loss or damage resulting to the surface of the land or any improvements thereon caused by surface entry or by the removal of the oil, gas, and other minerals lying thereunder. See instrument recorded on 12/13/1968 in Deed Book 261, Page 291. Affects Parcel, Lease Area, Access and Utility Easement – Blanket in nature

EXCEPTIONS LISTED IN TITLE COMMITMENT:

- Except the coal, oil, gas and other minerals underlying the surface of said land and all rights and easements in favor of the estate of said coal, oil, gas and other minerals; including, but not limited to, express or implied easements in, over and under that estate for the entry and removal of minerals. This policy should not be construed as insuring against loss or damage resulting to the surface of the land or any improvements thereon caused by surface entry or by the removal of the oil, gas, and other minerals lying thereunder. See instrument recorded on 09/24/1979 in Deed Book 322, Page 368. Affects Parcel, Lease Area, Access and Utility Easement – Blanket in nature
- Patent recorded on 12/08/1981 in Deed Book 342, Page 212. Does not appear to affect Parcel, not plotted
- Easement in favor of Western Diversified Builders, Inc., a Colorado corporation, set forth in instrument recorded on 02/10/1995 in Deed Book 576, Page 255. Does not appear to affect Parcel, not plotted
- Development and Access Agreement dated 11/30/1994, by and between Western Diversified Builders, Inc. and Houston Mining & Resources, Inc., recorded on 02/23/1995 in Deed Book 576, Page 470; Amendment to Development and Access Agreement, dated 11/26/1997 and recorded 12/02/1997 in Deed Book 630, Page 205. Does not appear to affect Parcel, not plotted
- Ratification of Easements in favor of Western Diversified Builders, Inc., a Colorado corporation, set forth in instrument recorded on 07/14/1995 in Deed Book 583, Page 331. Affects Parcel, Lease Area, Access and Utility Easement – Not survey related
- Historic Preservation and Conservation Easement in favor of City of Black Hawk, Colorado, set forth in instrument recorded on 10/02/1995 in Deed Book 588, Page 072. Does affect Parcel, not plotted
- Second Amendment to Replacement Water Facilities Agreement, dated 08/14/1996 and recorded 09/09/1996 in Deed Book 607, Page 056; First Amendment to Replacement Water Facilities Agreement dated 04/10/1996, by and between The City of Black Hawk, Colorado and Western Diversified Properties, LLC, recorded on 09/09/1996 in Deed Book 607, Page 058. Does not affect Parcel, not plotted
- Order and Decree Creating District recorded on 12/12/1996 in Deed Book 612, Page 177. Does not affect Parcel, not plotted
- Order and Decree Creating District recorded on 12/12/1996 in Deed Book 612, Page 185. Affects Parcel, Blanket in nature
- Non-Exclusive Water Pipelines Easement Agreement in favor of Miners Mesa Commercial Metropolitan District, set forth in instrument recorded on 12/23/1996 in Deed Book 612, Page 364; Substitution of Legal Description for Non-Exclusive Water Pipeline Easement Agreements and Quit Claim, dated 08/22/2001 and recorded 10/10/2001 in Deed Book 733, Page 390. Does not affect Parcel, not plotted
- Non-Exclusive Access Easement in favor of Miners Mesa Commercial Metropolitan District, set forth in instrument recorded on 12/23/1996 in Deed Book 612, Page 368. Does not affect Parcel, not plotted
- Non-Exclusive Access Easement in favor of City of Black Hawk, set forth in instrument recorded on 12/26/1996 in Deed Book 612, Page 476. Does not affect Parcel, not plotted
- Easement Agreement in favor of Western Diversified Properties, LLC, set forth in instrument recorded on 12/30/1996 in Deed Book 613, Page 071. Does not affect Parcel, not plotted
- Non-Exclusive Water Pipelines Easement Agreement in favor of City of Black Hawk, set forth in instrument recorded on 01/27/1997 in Deed Book 614, Page 221. Does not affect Parcel, not plotted
- Statement recorded on 02/05/1997 in Deed Book 615, Page 37. Affects Parcel, Blanket in nature
- Statement recorded on 02/05/1997 in Deed Book 615, Page 45. Affects Parcel, Blanket in nature
- Order for Exclusion, dated 03/25/1997 and recorded 03/25/1997 in Deed Book 617, Page 203. Affects Parcel, Not survey related
- Order of Inclusion, dated 03/25/1997 and recorded 03/25/1997 in Deed Book 617, Page 204. Affects Parcel, Blanket in nature
- Order for Exclusion, dated 03/25/1997 and recorded 03/25/1997 in Deed Book 617, Page 220. Affects Parcel, Not survey related
- Order of Inclusion, dated 03/25/1997 and recorded 03/25/1997 in Deed Book 617, Page 222. Does not appear to affect Parcel, Blanket in nature
- Development Fee Agreement dated 03/15/1997, by and between Miners Mesa Commercial Metropolitan District of Gilpin County, Colorado and Miner's Mesa Development, LLC, a Colorado limited liability company, and Dakota/Blackhawk, LLC, a Colorado limited liability company and the owners of substantially all of the real property with District, recorded on 04/09/1997 in Deed Book 618, Page 171. Affects Parcel, Blanket in nature
- Sewer Line Reimbursement Agreement dated 12/10/1997, by and between Miner's Mesa Development, LLC and The City of Black Hawk, recorded on 05/01/1998 in Deed Book 640, Page 222. Affects Parcel, Blanket in nature
- Definition of Exclusive Access Easement in favor of City of Black Hawk, Colorado, set forth in instrument recorded on 05/01/1998 in Deed Book 640, Page 248. Does not affect Parcel, not plotted
- Definition of Non-Exclusive Access Easement in favor of City of Black Hawk, Colorado, set forth in instrument recorded on 05/01/1998 in Deed Book 640, Page 251; Revision of Easement recorded on 09/05/2006 in Instrument No. 130939. Does not affect Parcel, not plotted

EXCEPTIONS LISTED IN TITLE COMMITMENT:

- Definition of Non-Exclusive Access Easement in favor of City of Black Hawk, Colorado, set forth in instrument recorded on 05/01/1998 in Deed Book 640, Page 254. Does not affect Parcel, not plotted
- Permanent Non-Exclusive Access and Utility Easement Agreement in favor of Miner's Mesa Development, LLC, set forth in instrument recorded on 01/19/1999 in Deed Book 660, Page 197. Does not affect Parcel, not plotted
- Permanent Non-Exclusive Access and Utility Easement Agreement in favor of City of Black Hawk, Colorado, set forth in instrument recorded on 01/19/1999 in Deed Book 660, Page 202. Does not affect Parcel, not plotted
- Ordinance Number 96-34 recorded on 04/27/1999 in Deed Book 668, Page 335. Affects Parcel, Blanket in nature
- Agreement in Lieu of Condemnation and Amendment of Pre-Existing Agreements, dated 03/29/2000 and recorded 04/10/2000 in Deed Book 692, Page 92. Does not affect Parcel, not plotted
- Permanent Non-Exclusive Access and Utility Easement Agreement in favor of Miner's Mesa Development, LLC, set forth in instrument recorded on 04/10/2000 in Deed Book 692, Page 180. Does not affect Parcel, not plotted
- Easement Reserved in Special Warranty Deed in favor of Miner's Mesa Development, LLC f/k/a Western Diversified Properties, LLC, set forth in instrument recorded on 09/06/2000 in Deed Book 702, Page 8. Does not affect Parcel, not plotted
- Leaseback of Returned Parking Lands dated 08/30/2000, by and between City of Black Hawk, Colorado and Miner's Mesa Development, LLC, recorded on 09/18/2000 in Deed Book 702, Page 355. Does not affect Parcel, Blanket in nature
- Court Order of Exclusion, dated 01/12/2001 and recorded 01/22/2001 in Deed Book 710, Page 318. Does not affect Parcel, not plotted
- Court Order of Inclusion, dated 01/12/2001 and recorded 01/22/2001 in Deed Book 710, Page 320. Does not affect Parcel, not plotted
- Subdivision Agreement dated 12/11/1996, by and between The City of Black Hawk, Colorado and Western Diversified Properties, LLC, recorded on 04/25/2003 in Instrument No. 116927; First Addendum to Subdivision Agreement, dated 09/05/1997 and recorded 09/15/1997 in Deed Book 626, Page 172; Second Addendum to Subdivision Agreement, dated 11/10/1997 and recorded 05/01/1998 in Deed Book 640, Page 204; Fourth Addendum to Subdivision Agreement, dated 03/23/2000 and recorded 10/06/2000 in Deed Book 704, Page 39 and re-recorded on 10/23/2000 in Deed Book 705, Page 47. Does not affect Parcel, not plotted
- Certificate of Termination and Cancellation of Plat and Subdivision Agreement as Amended recorded on 12/08/2005 in Instrument No. 128357. Does not appear to affect Parcel, Blanket in nature
- Notice of Special District Authorization or Issuance of General Obligation Indebtedness recorded on 04/17/2006 in Instrument No. 129623. Affects Parcel, Blanket in nature
- Easement in favor of Public Service Company of Colorado, set forth in instrument recorded on 11/01/2006 in Instrument No. 131452. Does not affect Parcel, not plotted
- Utility Easement Agreement in favor of Public Service Company of Colorado, set forth in instrument recorded on 08/08/2008 in Instrument No. 137037. Does not affect Parcel, not plotted
- Utility Easement Agreement in favor of Public Service Company of Colorado, set forth in instrument recorded on 08/22/2008 in Instrument No. 137190. Does not affect Parcel, not plotted
- Utility Easement in favor of Public Service Company of Colorado, a Colorado corporation, set forth in instrument recorded on 09/21/2011 in Instrument No. 144876. Does not appear to affect Parcel, not plotted
- Matters as shown and noted on Plat recorded in Instrument No. 147817. Does not affect Parcel, Lease Area, Access and Utility Easement, plotted
- Ordinance Number: 2015-17 recorded on 09/14/2015 in Instrument No. 154696. Affects Parcel, Lease Area, Access and Utility Easement, Blanket in nature
- Matters as shown and noted on Plat recorded in Plat Book 702, Page 189. Does not affect Parcel, Lease Area, Access and Utility Easement, plotted
- Lease Back of Returned Parking Lands dated 08/30/2000, by and between City of Black Hawk, Colorado and Miner's Mesa Development, LLC, recorded on 09/18/2000 in Deed Book 702, Page 358. Affects Parcel, Access and Utility Easement, plotted
- Matters as shown and noted on Plat recorded in Plat Book 733, Page 414. Affects Parcel, Lease Area, Access and Utility Easement, plotted
- Matters as shown and noted on Plat recorded in Instrument No. 130944. Affects Parcel, Lease Area, Access and Utility Easement, plotted
- Matters as shown and noted on Plat recorded in Instrument No. 132292. Affects Parcel, Lease Area, Access and Utility Easement, plotted
- Matters as shown and noted on Plat recorded in Instrument No. 146097. Affects Parcel, Lease Area, Access and Utility Easement, plotted
- Matters as shown and noted on Plat recorded in Instrument No. 147815. Affects Parcel, Lease Area, Access and Utility Easement, Blanket in nature
- Terms and conditions of Memorandum of Option to Lease dated 01/23/2019 by and between City of Black Hawk, a Colorado municipal corporation, and Vertical Bridge Development, LLC, a Delaware limited liability company, recorded on 05/02/2019 in Instrument No. 163458. Affects Parcel, Lease Area, plotted



Rev:	Date:	Description:	By:
1	9/10/19	Survey	AV
2	9/16/19	Lease/Easement	AV
3	11/06/19	Rev. Lease/Easement	AV
4	12/02/19	Rev. Title	AV
5	12/04/19	Comments	AV

PROJECT INFORMATION:

SITE NAME: BLACK HAWK

SITE ADDRESS: 821 MINERS MESA ROAD
BLACK HAWK, CO 80427

VERTICAL BRIDGE SITE NUMBER: US-CO-5063

DRAWN BY:	CHK BY:	APV BY:
AV	RD	RD

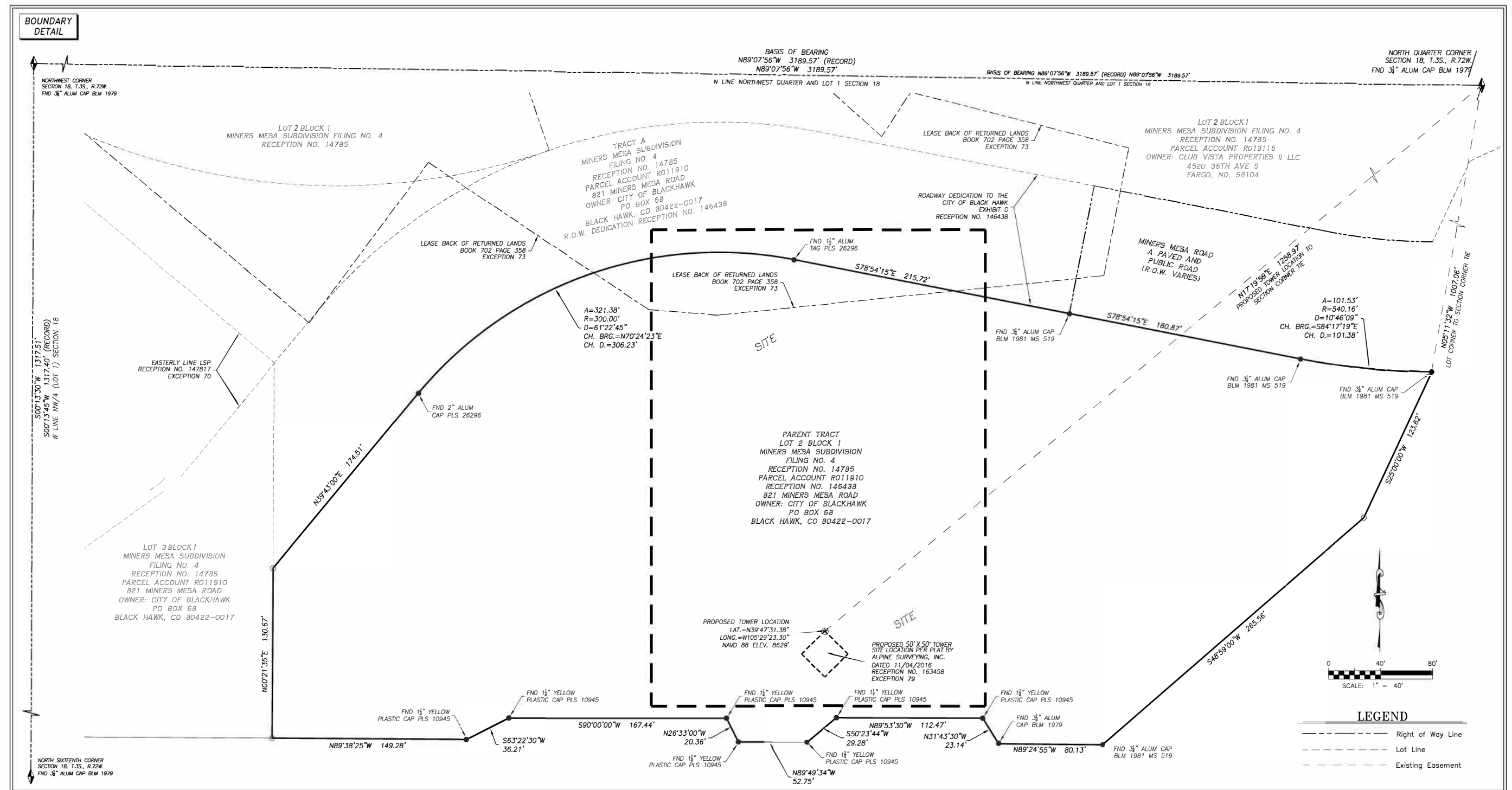
LAND SURVEY

Sheet Number:

LS2

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TOPOGRAPHIC SURVEY
VERTICAL BRIDGE SITE US-CO-5063 – BLACK HAWK
SITUATED IN THE NORTH HALF OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 72 WEST OF THE 6TH P.M.
COUNTY OF GILPIN, STATE OF COLORADO



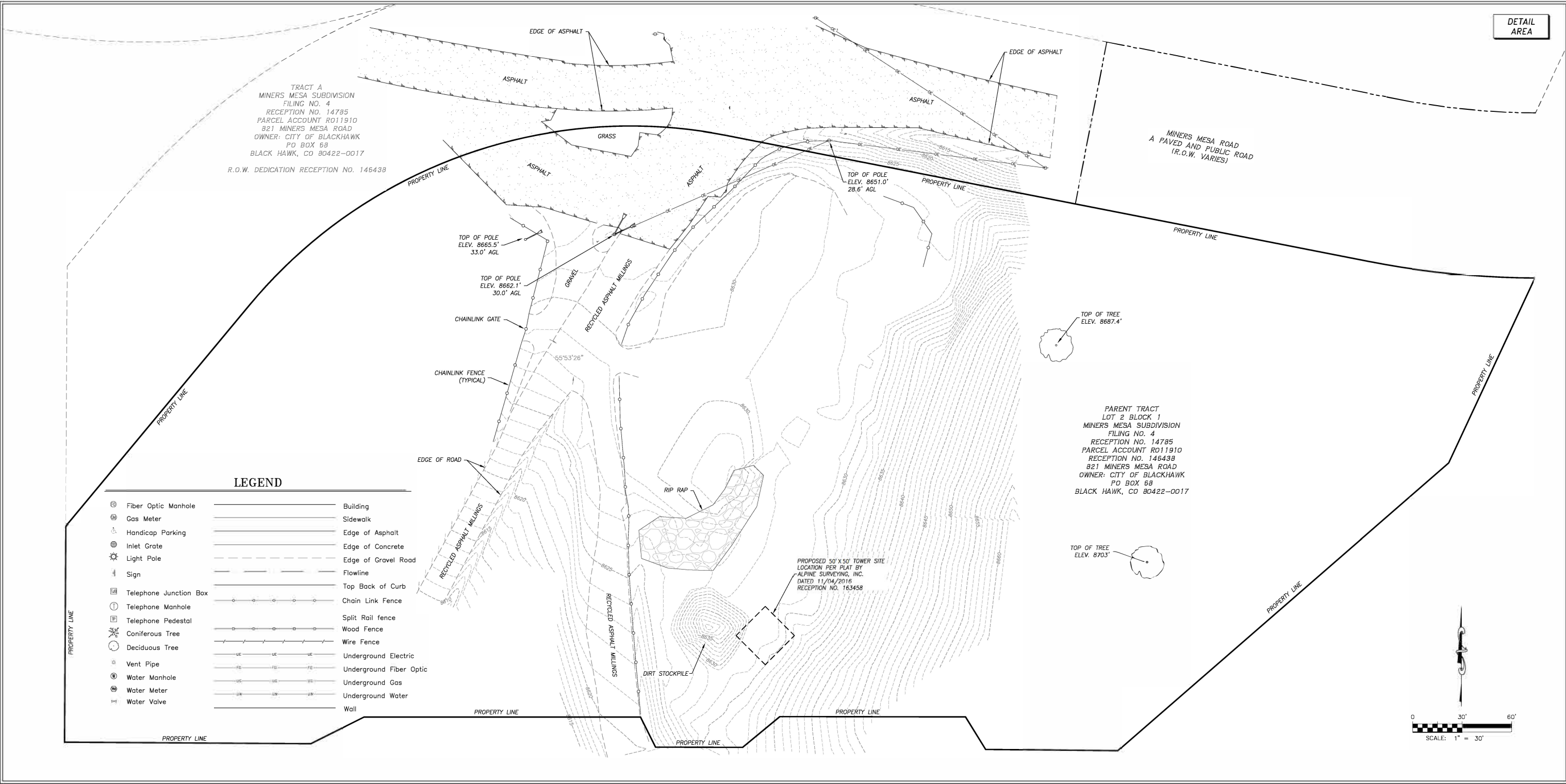
Rev:	Date:	Description:	By:
1	9/10/19	Survey	AV
2	9/16/19	Lease/Easement	AV
3	11/06/19	Rev. Lease/Easement	AV
4	12/02/19	Rev. Title	AV
5	12/04/19	Comments	AV

PROJECT INFORMATION:			
SITE NAME:		BLACK HAWK	
SITE ADDRESS:		821 MINERS MESA ROAD	
		BLACK HAWK, CO 80427	
VERTICAL BRIDGE SITE NUMBER: US-CO-5063			
DRAWN BY:		CHK BY:	APV BY:
AV		RD	RD

LAND SURVEY
Sheet Number:

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TOPOGRAPHIC SURVEY
VERTICAL BRIDGE SITE US-CO-5063 - BLACK HAWK
SITUATED IN THE NORTH HALF OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 72 WEST OF THE 6TH P.M.
COUNTY OF GILPIN, STATE OF COLORADO



Rev:	Date:	Description:	By:
1	9/10/19	Survey	AV
2	9/16/19	Lease/Easement	AV
3	11/06/19	Rev. Lease/Easement	AV
4	12/02/19	Rev. Title	AV
5	12/04/19	Comments	AV

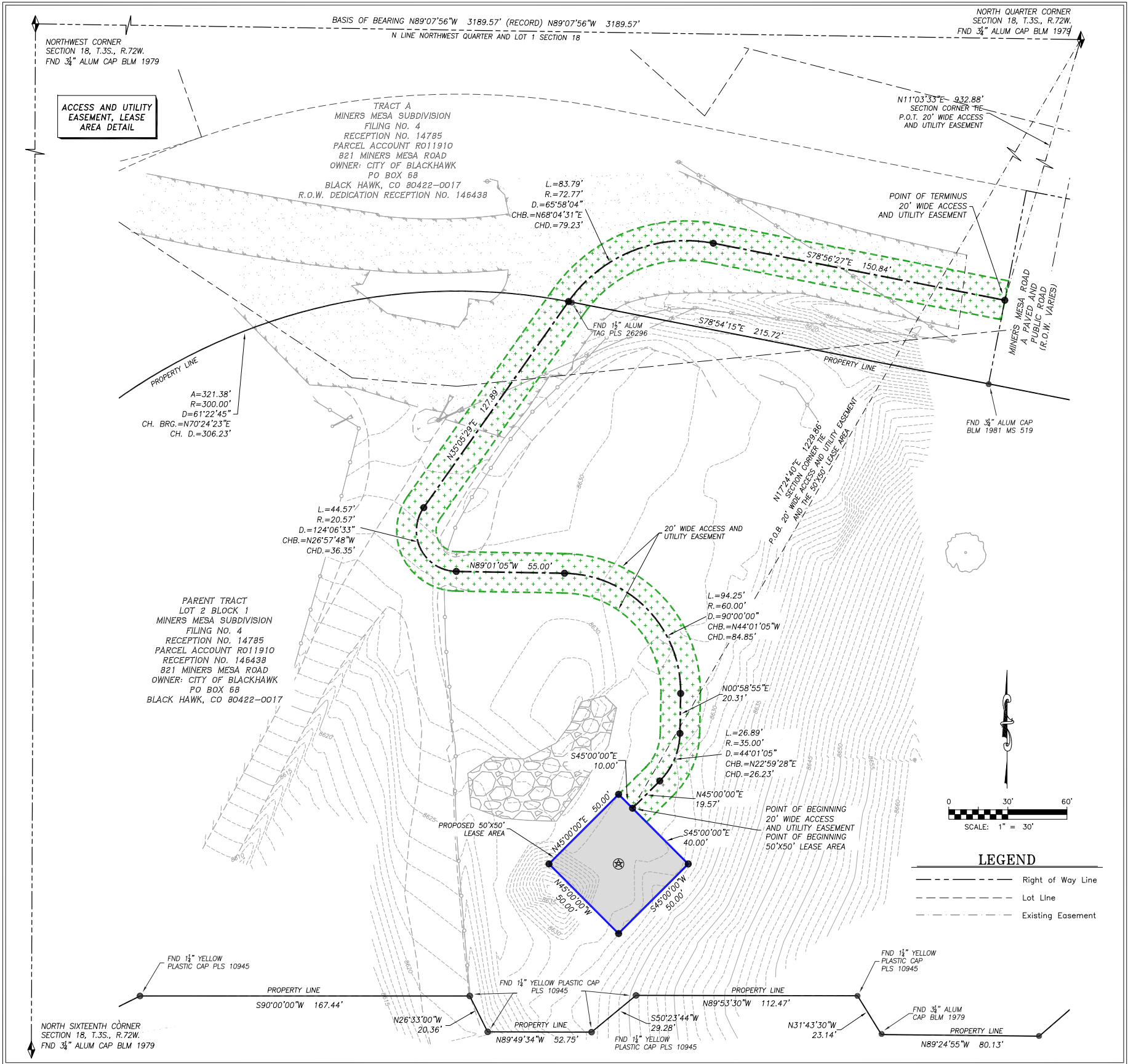
PROJECT INFORMATION:		
SITE NAME:	BLACK HAWK	
SITE ADDRESS:	821 MINERS MESA ROAD BLACK HAWK, CO 80427	
VERTICAL BRIDGE SITE NUMBER: US-CO-5063		
DRAWN BY:	CHK BY:	APV BY:
AV	RD	RD

LAND SURVEY

Sheet Number:

LS4

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TOPOGRAPHIC SURVEY
VERTICAL BRIDGE SITE US-CO-5063 - BLACK HAWK
SITUATED IN THE NORTH HALF OF SECTION 18,
TOWNSHIP 3 SOUTH, RANGE 72 WEST OF THE 6TH P.M.
COUNTY OF GILPIN, STATE OF COLORADO

20' WIDE ACCESS AND UTILITY EASEMENT:
A 20' wide strip of land over and across Lot 2 Block 1 and Tract A, Miners Mesa Subdivision Filing No. 4 as described at Reception No. 14785 of the Public Records of Gilpin County (Parent Tract), located in the North Half of Section 18, Township 3 South, Range 72 West of the 6th Principal Meridian, County of Gilpin, State of Colorado, said 20' wide strip being 10.00 feet on both sides of the following described centerline:

For the purpose of this description, the bearings are referenced to the north line of the Northwest Quarter of Section 18, Township 3 South, Range 72 West of the 6th P.M. assumed to bear North 89°07'56" West, 3189.57 feet. Monumented by a 3/4" aluminum cap stamped BLM 1979 at Northeast Corner of said Section 18 and by 3/4" aluminum cap stamped BLM 1979 at the North Quarter Corner of said Section 18.

Beginning at a point on the northeasterly line of the hereinafter described 50'x50' Lease Area, whence the North Quarter Corner of Section 18, Township 3 South, Range 72 West of the 6th P.M. bears North 17°24'40" East, a distance of 1229.86 feet, said point also being the Point of Beginning of said hereinafter described 50'x50' Lease Area;

THENCE North 45°00'00" East, a distance of 19.57 feet;
THENCE along a curve to the left, an arc length of 26.89 feet, said curve having a radius of 35.00 feet, a delta angle of 44°01'05", a chord bearing of North 22°59'28" East and a chord length of 26.23 feet;
THENCE North 00°58'55" East, a distance of 20.31 feet;
THENCE along a curve to the left, an arc length of 94.25 feet, said curve having a radius of 60.00 feet, a delta angle of 90°00'00", a chord bearing of North 44°01'05" West and a chord length of 84.85 feet;
THENCE North 89°01'05" West, a distance of 55.00 feet;
THENCE along a curve to the right, an arc length of 44.57 feet, said curve having a radius of 20.57 feet, a delta angle of 124°06'33", a chord bearing of North 26°57'48" West and a chord length of 36.35 feet;
THENCE North 35°05'29" East, a distance of 127.89 feet to the north line of said Lot 2, Block 1, the south line of said Tract A, Miners Mesa Subdivision, Filing No. 4, whence the nearest property corner bears South 79°03'27" East, a distance of 1.60 feet;
THENCE along a curve to the right, an arc length of 83.79 feet, said curve having a radius of 72.77 feet, a delta angle of 65°58'04", a chord bearing of North 68°04'31" East and a chord length of 79.23 feet;
THENCE South 78°56'27" East, a distance of 150.84 feet to the east line of said Tract A, Miners Mesa Subdivision, Filing No. 4, the west Right-of-Way line of Miners Mesa Road, and the Point of Terminus, whence the North Quarter Corner of said Section 18, Township 3 South, Range 72 West bears North 11°03'33" East, a distance of 932.88 feet.

Containing 12462 Square Feet, or 0.286 Acres, more or less.

The sidelines of said easement to be lengthened or shortened to intersect the northeasterly line of the hereinafter described 50'x50' Lease Area and the east line of said Tract A.

50'x50' LEASE AREA LEGAL DESCRIPTION:
A parcel of land over and across Lot 2 Block 1, Miners Mesa Subdivision Filing No. 4 as described at Reception No. 14785 of the Public Records of Gilpin County (Parent Tract), located in the North Half of Section 18, Township 3 South, Range 72 West of the 6th Principal Meridian, County of Gilpin, State of Colorado, said parcel being more particularly described as follows:

For the purpose of this description, the bearings are referenced to the north line of the Northwest Quarter of Section 18, Township 3 South, Range 72 West of the 6th P.M. assumed to bear North 89°07'56" West, 3189.57 feet. Monumented by a 3/4" aluminum cap stamped BLM 1979 at Northeast Corner of said Section 18 and by 3/4" aluminum cap stamped BLM 1979 at the North Quarter Corner of said Section 18.

Beginning at a point on the northeasterly line of the 50'x50' Lease Area, whence the North Quarter Corner of Section 18, Township 3 South, Range 72 West of the 6th P.M. bears North 17°24'40" East, a distance of 1229.86 feet;

THENCE South 45°00'00" East, a distance of 40.00 feet;
THENCE South 45°00'00" West, a distance of 50.00 feet;
THENCE North 45°00'00" West, a distance of 50.00 feet;
THENCE North 45°00'00" East, a distance of 50.00 feet;
THENCE South 45°00'00" East, a distance of 10.00 feet to the Point of Beginning.

Containing 2500 Square Feet, or 0.057 Acres, more or less.



Rev:	Date:	Description:	By:
1	9/10/19	Survey	AV
2	9/16/19	Lease/Easement	AV
3	11/06/19	Rev. Lease/Easement	AV
4	12/02/19	Rev. Title	AV
5	12/04/19	Comments	AV

PROJECT INFORMATION:			
SITE NAME:		BLACK HAWK	
SITE ADDRESS:		821 MINERS MESA ROAD BLACK HAWK, CO 80427	
VERTICAL BRIDGE SITE NUMBER: US-CO-5063			
DRAWN BY:		CHK BY:	APV BY:
AV		RD	RD

LAND SURVEY
Sheet Number:

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Landlord:

City of Black Hawk
201 Selak Street
Black Hawk, CO 80422

Tenant:

Vertical Bridge Development, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487
Site #: US-CO-5063
Site Name: Blackhawk

OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT (this "**Agreement**") is made this 23rd day of January, 2019 (the "**Effective Date**"), by and between City of Black Hawk, a Colorado municipal corporation (the "**Landlord**"), whose address is 201 Selak Street, Black Hawk, CO 80422, and Vertical Bridge Development, LLC, a Delaware limited liability company (the "**Tenant**"), whose address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487.

WHEREAS, the Landlord owns certain real property located in the County of Gilpin, in the state of Colorado, that is more particularly described and/or depicted in **Exhibit 1** attached hereto (the "**Property**"); and,

WHEREAS, the Tenant desires to lease from Landlord a certain portion of the Property measuring approximately 50' x 50' (approximately 2,500 square feet) (the "**Premises**"), which Premises is more particularly described and/or depicted in **Exhibit 2** attached hereto, for the erection of a communications tower.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree:

1. OPTION TO LEASE.

(a) Landlord grants to Tenant the exclusive option to lease the Premises.

(b) From and after the date of this Agreement as set forth above for the time period set forth below (the "**Option Period**"), and at any time during the Term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant shall be authorized to apply for Government Approvals on behalf of Landlord and Landlord agrees to reasonably cooperate with such applications. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property. Tenant will disclose any defects found during the investigation. Tenant will restore the Property to its condition as it existed at the commencement of the Option Period (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(c) In consideration of Landlord granting Tenant the Option Period, Tenant agrees to pay Landlord the sum of Three Thousand Dollars (\$3,000.00) within thirty (30) business days of the full execution of this Agreement. The Option Period will be for an initial term of one (1) year from the Effective Date (the "**Initial Option Period**") and may be renewed by Tenant for an additional one (1) year upon written notification to Landlord and the payment of an additional Three Thousand Dollars (\$3,000.00) no later than ten (10) days prior to the expiration date of the Initial Option Period.

(d) During the Initial Option Period and any extension thereof, Tenant may commence the Initial Term of this Agreement by notifying Landlord in writing. If Tenant commences the Initial Term, then Landlord leases the Premises to the Tenant subject to the terms and conditions of this Agreement. If Tenant does not commence this Agreement during the Initial Option Period or any extension thereof, this Agreement will terminate and the parties will have no further liability to each other.

2. TERM.

(a) This Agreement shall commence on the first day of the month in which Tenant begins construction (the "**Commencement Date**"). Unless extended or sooner terminated as herein provided, the initial term shall be for a period of five (5) years following the Commencement Date ("**Initial Term**").

(b) Tenant shall have the option to extend the Term of this Agreement for seven (7) successive terms of five (5) years each (each a "**Renewal Term**"). Each Renewal Term shall commence automatically, unless Tenant delivers notice to Landlord of its intent not to renew, such notice to be delivered not less than thirty (30) days prior to the end of the then-current Term. For purposes of this Agreement, "**Term**" shall mean the Initial Term and any applicable Renewal Term(s).

3. RENT.

(a) Tenant shall pay rent to Landlord beginning at Commencement Date a monthly rental payment of Two Thousand Dollars (\$2,000.00) ("**Rent**"), at the address set forth above on or before the fifth (5th) day of each calendar month in advance. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days from Commencement Date.

(b) Beginning on the commencement date of the first Renewal Term and each five-year anniversary of each Renewal Term thereafter throughout the remainder of the Term and Renewal Term(s), if any, the Rent shall be increased by an amount equal to ten percent (10%) of the amount of the Rent for the previous Term or previous Renewal Term, as the case may be, which sum shall be payable in equal monthly installments in advance as herein set forth.

4. [INTENTIONALLY DELETED]

5. TAXES. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the communication facility located on the Premises. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property and Premises. Tenant shall pay as additional Rent any increase in real property taxes levied against Premises, which are directly attributable to Tenant's use of the Premises (but not, however, taxes attributable to periods prior to the Commencement Date such as roll-back or greenbelt assessments) if Landlord furnishes proof of such increase to Tenant. In the event that Landlord fails to pay when due any taxes affecting the Premises or any easement relating to the Premises, Tenant shall have the right but not the obligation to pay such taxes and deduct the full amount of the taxes paid by Tenant on Landlord's behalf from future installments of Rent. Notwithstanding the foregoing, Tenant shall not have the obligation to pay any tax, assessment, or

charge that Tenant is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed, provided that no lien attaches to the Property.

6. **USE.** The Premises are being leased for the purpose of erecting, installing, operating and maintaining radio or communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "**Communication Facilities**"). Tenant may, subject to the foregoing, make any improvement, alteration or modification to the Premises as are deemed appropriate by Tenant for the permitted use herein. Tenant shall have the right to clear the Premises of any trees, vegetation, or undergrowth which, in Tenant's sole opinion, interferes with Tenant's use of the Premises for the intended purposes. Tenant shall have the exclusive right to install and operate upon the Premises communications towers, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary so long as all applicable zoning and building requirements are met.

7. **ACCESS AND UTILITIES.** At all times during the Term of this Agreement, Tenant, and its guests, agents, customers, lessees, sublessees and assigns shall have the unrestricted, exclusive right to use, and shall have free access to, the Premises seven (7) days a week, twenty-four (24) hours a day. Landlord for itself, its successors and assigns, hereby grants and conveys unto Tenant, its customers, employees, agents, invitees, sublessees, sublicensee's, successors and assigns a nonexclusive easement (i) for ingress and egress, (ii) for construction, installation, maintenance, and operation of the Communication Facilities, and (iii) for the construction, installation, operation and maintenance of underground electric and other utility facilities (including wires, poles, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Premises, subject to the terms and conditions herein set forth. Landlord agrees to cooperate with Tenant's efforts to obtain such utilities and services. If there are utilities already existing on the Premises which serve the Premises, Tenant may utilize such utilities and services. The rights granted to Tenant herein shall also include the right to partially assign its rights hereunder to any public or private utility company or authority to facilitate the uses contemplated herein, and all other rights and privileges reasonably necessary for Tenant's safe and efficient use and enjoyment of the easements for the purposes described above. Notwithstanding anything to the contrary that may be set forth herein, Tenant agrees that all utilities to be installed by Tenant shall be underground.

8. **EQUIPMENT, FIXTURES AND REMOVAL.** All improvements, equipment or other property attached to or otherwise brought onto the Premises shall at all times be the personal property of Tenant and/or its subtenants and licensees. Tenant or its customers shall have the right to erect, install, maintain, and operate on the Premises such equipment, structures, fixtures, signs, and personal property as Tenant may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Premises, shall not be deemed to be part of the Premises, but shall remain the property of Tenant or its customers provided any improvements comply with applicable zoning and building codes and requirements. Within ninety (90) days after the expiration or earlier termination of this Agreement (the "**Removal Period**"), Tenant shall remove its improvements including any tower and restore the Premises to grade and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent at the rate in effect upon the expiration or termination of this Agreement.

9. **ASSIGNMENT AND SUBLEASE.** This Agreement may be sold, assigned or transferred by Tenant without any approval or consent of Landlord to Tenant's lender, principal, affiliates, subsidiaries, subsidiaries of its principal or to any entity which acquires all of or substantially all of Tenant's assets or ownership interests by reasons of merger, acquisition or other business reorganization (a "**Pre-Approved**

Assignment”). As to transfers or assignments which do not constitute a Pre-Approved Assignment, Tenant will provide notice to Landlord, to include the name, address and contact information of the assignee of such assignment. Upon any assignment by Tenant pursuant to the foregoing, Tenant will be relieved of all liability hereunder. Notwithstanding anything to the contrary herein including the foregoing set forth in this Section, Tenant shall have the exclusive right to sublease or grant licenses without Landlord’s consent to use the radio tower or any other tower or structure or equipment on the Premises, but no such sublease or license shall relieve or release Tenant from its obligations under this Agreement. Landlord may assign this Agreement only in its entirety and only to any person or entity who or which acquires fee title to the Property, subject to Section 16. Landlord may not subdivide the Property without Tenant’s prior written consent.

10. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) Landlord warrants and represents that it is the owner in fee simple of the Premises, free and clear of all liens and encumbrances except as to those which may have been disclosed to Tenant, in writing prior to the execution hereof, and that it alone has full right to lease the Premises for the Term set out herein.

(b) Landlord shall not do or knowingly permit anything that will interfere with or negate any special use permit or approval pertaining to the Premises or cause any tower on the Premises to be in nonconformance with applicable local, state, or federal laws. Landlord shall cooperate with Tenant in any effort by Tenant to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. Landlord agrees to execute any necessary applications, consents or other documents as may be reasonably necessary for Tenant to apply for and obtain the proper zoning approvals required to use and maintain the Premises and the tower site.

(c) Landlord has complied and shall comply with all laws with respect to the Premises. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Premises by Landlord or, to the knowledge of Landlord, by any prior owner or user of the Premises. To the knowledge of Landlord, there has been no release of or contamination by hazardous materials on the Premises.

(d) Tenant shall have access to all utilities required for the operation of the Tenant’s improvements on the Premises that are existing on the Property.

(e) There currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Premises; there are no outstanding options or rights of first refusal to purchase the Premises or any portion thereof or interest therein; and there are no parties (other than Landlord) in possession of the Premises.

11. HOLD OVER TENANCY. Should Tenant or any assignee, sublessee or licensee of Tenant hold over the Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

12. INDEMNITIES. Tenant agrees to indemnify, defend and hold harmless Landlord, its elected officials, employees, agents, representatives, successors, assigns, (collectively, the “Landlord Parties”), from and against all claims and liabilities (including reasonable attorneys’ fees and court costs) (“Losses”) caused by or arising out of (i) Tenant’s breach of any of its obligations, covenants, representations or warranties contained herein, or (ii) Tenant’s acts or omissions with regard to the Agreement. Tenant will

indemnify the Landlord Parties from and against any mechanic's liens or liens of contractors and sub-contractors engaged by or through Tenant.

13. WAIVERS. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communication Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. Landlord will not assert any claim whatsoever against Tenant for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by Landlord as a result of the construction, maintenance, operation or use of the Premises by Tenant.

14. INSURANCE. Tenant shall maintain insurance as follows:

(a) Worker's Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the work by Tenant under this Agreement 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.

(b) General Public Liability Insurance to be written with a limit of liability of not less than Three Million Dollars (\$3,000,000) 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 policy shall contain a severability of interests provision.

(c) To the extent that liability results from the acts or omissions of the Tenant, all Insurance Policies and Certificates of Insurance issued for this project shall name as additional insured(s), the City and the City's officers and employees. The Tenant shall be solely responsible for any deductible losses under any policy required herein.

(d) The certificate of insurance provided by the Tenant shall be completed by the Tenant'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 City prior to commencement of this Agreement. No other form of certificate shall be used. The insurance coverage provided for herein may be maintained pursuant to master policies of insurance covering other tower locations of Tenant and its corporate affiliates. All insurance policies required to be maintained by Tenant hereunder shall be with responsible insurance companies, authorized to do business in the state where the Premises are located if required by law, and shall provide for cancellation only upon ten (10) days' prior written notice to Landlord. Tenant shall evidence such insurance coverage by delivering to Landlord, if requested, a copy of all such policies or, at Tenant's option, certificates in lieu thereof issued by the insurance companies underwriting such risks.

(e) Failure on the part of the Tenant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement.

The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this contract, 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.

15. INTERFERENCE. During the Term of this Agreement, Landlord, its successors and assigns, will not grant any ground lease, license, or easement with respect to the Premises. In addition, during the Term of this Agreement, Landlord, its successors and assigns, will not grant any ground lease, license, or easement with respect to the Property (outside of the Premises) and any property adjacent or contiguous to the Property that is fee owned by the Landlord: (a) for any of the uses contemplated in Section 6 herein; or (b) if such lease, license, or easement would detrimentally impact Tenant's Communications Facilities or economic opportunities at the Premises, or the use thereof. Tenant acknowledges that an adjacent site is an active material storage and processing yard that will continue to operate. Landlord shall not cause or permit the construction of radio or communications towers on the Property or on any other property of Landlord adjacent or contiguous to or in the immediate vicinity of the Property, except for towers constructed by Tenant. Landlord and Tenant intend by this Agreement for Tenant (and persons deriving rights by, through, or under Tenant) to be the sole parties to market, use, or sublease any portion of the Property for wireless communications or broadcast facilities during the Term of this Agreement. Landlord agrees that this restriction on the use of the Property is commercially reasonable, not an undue burden on Landlord, not injurious to the public interest, and shall be specifically enforceable by Tenant (and persons deriving rights by, through or under Tenant) in a court of competent jurisdiction. The foregoing restriction shall run with the land and be binding on the successors and assigns of Landlord. Tenant acknowledges: the existence of a 50' Self Support Tower located approximately 2,160 feet due west of the Premises at Lat: 39.793064, Long: -105.497530; and, that this Agreement does not restrict any future facilities at the current premises where the SST is located.

16. RIGHT OF FIRST REFUSAL. In the event that Landlord determines to sell, transfer, license or otherwise convey any interest, whether fee simple interest, easement interest, leasehold, or otherwise, and whether direct or indirect by way of transfer of ownership interests in Landlord if Landlord is an entity, which interest underlies or affects any or all of the Premises (the "ROFR Property") to any third party, during the Option Period or Term, Landlord shall offer Tenant a right of first refusal to purchase the Premises (or such larger portion of Landlord's property that encompasses the Premises, if applicable) or such interest proposed to be conveyed. Landlord shall provide a copy of any offer to purchase or acquire, or any executed purchase agreement or letter of intent ("Offer"), to Tenant which copy shall include, at a minimum, the purchase or acquisition price, proposed closing date, and financing terms ("Minimum Terms"). Within thirty (30) days of receipt of such Offer, Tenant shall provide written notice to Landlord of Tenant's election to purchase the ROFR Property on the same Minimum Terms; provided, the closing date shall be no sooner than sixty (60) days after Tenant's purchase election notice. In such event, Landlord agrees to sell the ROFR Property to Tenant subject to Tenant's payment of the purchase price and compliance with a purchase and sale agreement to be negotiated in good faith between Landlord and Tenant. If Tenant provides written notice that it does not elect to exercise its rights of first refusal to purchase the ROFR Property, or if Tenant does not provide notice of its election within the thirty (30) day period, Tenant shall be deemed to have waived such right of first refusal only with respect to the specific Offer presented (and any subsequent Offers shall again be subject to Tenant's continuing right of first refusal hereunder), and Landlord shall be permitted to consummate the sale of the ROFR Property in accordance with the strict terms of the Offer ("Permitted Sale"). If Landlord does not consummate the Permitted Sale within ninety (90) days of the date of Tenant's waiver of its rights of first refusal, such Offer shall be deemed to have lapsed.

17. SECURITY. The parties recognize and agree that Tenant shall have the right to safeguard and protect its improvements located upon or within the Premises. Consequently, Tenant may elect, at its expense, to construct such enclosures and/or fences as Tenant reasonably determines to be necessary to

secure its improvements, including the tower(s), building(s), and related improvements situated upon the Premises. Tenant may also undertake any other appropriate means to restrict access to its communications towers, buildings, and related improvements.

18. FORCE MAJEURE. The time for performance by Landlord or Tenant of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of Landlord or Tenant, as the case may be.

19. CONDEMNATION. Notwithstanding any provision of this Agreement to the contrary, in the event of condemnation of the Premises, Tenant may seek an award for the value of Tenant's improvements on and/or at the Premises.

20. DEFAULT. The failure of Tenant or Landlord to perform any of the covenants of this Agreement shall constitute a default. The non-defaulting party shall give the other written notice of such default, and the defaulting party shall cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, if the defaulting party shall proceed promptly after the receipt of such notice to cure such default, and shall pursue curing such default with due diligence, the time for curing shall be extended for such period of time as may be necessary to complete such curing, however, in no event shall this extension of time be in excess of sixty (60) days, unless agreed upon by the non-defaulting party.

21. REMEDIES. Should the defaulting party fail to cure a default under this Agreement, the other party shall have all remedies available either at law or in equity, including the right to terminate this Agreement.

22. [INTENTIONALLY DELETED]

23. ADDITIONAL TERMINATION RIGHT. If at any time during the Term of this Agreement, Tenant determines, in its sole and absolute discretion, with or without cause, that the Premises is no longer suitable or desirable for Tenant's intended use and/or purposes, Tenant shall have the right to terminate this Agreement upon sixty (60) days prior written notice to Landlord.

24. PRIOR AGREEMENTS. The parties hereby covenant, recognize and agree that the terms and provisions of this Agreement shall constitute the sole embodiment of the arrangement between the parties with regard to the Premises, and that all other written or unwritten agreements, contracts, or leases by and between the parties with regard to the Premises are hereby terminated, superseded and replaced by the terms hereof.

25. [INTENTIONALLY DELETED]

26. [INTENTIONALLY DELETED]

27. [INTENTIONALLY DELETED]

28. [INTENTIONALLY DELETED]

29. QUIET ENJOYMENT. So long as Tenant is not in default under this Agreement beyond the applicable notice and cure period, Landlord covenants and agrees that Tenant shall peaceably and quietly hold and enjoy the Premises throughout the Term, without any hindrance, molestation or ejection by Landlord, its successors or assigns or by those claiming by, through or under them.

30. NOTICES. All notices, requests, claims, demands, and other communications hereunder shall be in writing and may be hand delivered (provided the deliverer provides proof of delivery) or sent by nationally-established overnight courier that provides proof of delivery, or certified or registered mail (postage prepaid, return receipt requested). Notice shall be deemed received on the date of delivery as

demonstrated by the receipt of delivery. Notices shall be delivered to a party at such party's address below, or to such other address that a party below may provide from time to time:

If to Landlord:

City of Black Hawk
201 Selak Street
P.O. Box 68
Black Hawk, CO 80422
Attn: City Clerk

If to Tenant:

Vertical Bridge Development, LLC
750 Park of Commerce Drive
Suite 200
Boca Raton, FL 33487
Attn: General Counsel

If to Lender:

Toronto Dominion (Texas) LLC
31 West 52nd Street
New York, NY 10019
Attn: Admin Agent
Fax No. 416-982-5535

31. MISCELLANEOUS.

(a) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

(b) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

(c) All attached exhibits are hereby incorporated by this reference as if fully set forth herein.

(d) Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party's rights hereunder, shall not waive such rights.

(e) This Agreement shall be governed by and construed in accordance with the laws of the state in which the leased Premises are located.

(f) This Agreement constitutes the entire Agreement and understanding of the parties and supersedes all offers, negotiations and other lease agreements with regard to the leased Premises. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

(g) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(h) A short-form Memorandum of Option to Lease (and a short-form Memorandum of Lease in the event Tenant exercises its option to lease the Premises) may be recorded at Landlord or Tenant's option in the form as depicted in Exhibit 3 and Exhibit 4 attached hereto.

(i) Landlord shall keep the terms of this Agreement confidential, and shall not disclose any terms contained within this Agreement to any third party other than such terms as are set forth in the Memorandum of Option and Lease.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by a party hereto.

WITNESSES:

Melissa A. Greiner
Name: Melissa A. Greiner
Stephen Cole
Name: STEPHEN COLE

LANDLORD:

City of Black Hawk
a Colorado municipal corporation

By: [Signature]
Name: David D. Spellman
Title: Mayor
Date: 1/23/19

WITNESSES:

Christopher Carrick
Name: Christopher Carrick
Rachel Williamson
Name: Rachel Williamson

TENANT:

Vertical Bridge Development, LLC
a Delaware limited liability company

By: [Signature]
Name: ALEX GELMAN
Title: CEO
Date: 1/19/18



EXHIBIT 1

Legal Description of the Property (Parent Parcel)
(may be updated by Tenant upon receipt of final legal description from title)

LEGAL DESCRIPTION PARENT TRACT:

PARCEL 1:

A portion of Miners' Mesa Subdivision Filing No. 4, City of Black Hawk, County of Gilpin, State of Colorado.

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North Half of Section 18, Township 3 South, Range 72 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows:

Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said section is assumed to bear N 89°07'56" W, 3189.57 feet, with all bearings contained herein relative thereto; thence S 05°(7)11'32" E, 1007.08 feet to a point along the boundary of said subdivision and the true point of beginning, thence along said boundary the following eleven (11) courses:

1. S 25°00'00" W, 123.62 feet;
2. Thence S 48°59'00" W, 265.96 feet;
3. Thence N 89°24'55" W, 80.13 feet;
4. Thence N 31°43'30" W, 23.14 feet;
5. Thence N 89°53'30" W, 112.47 feet;
6. Thence S 50°23'44" W, 2(8)9.28 feet;
7. Thence N 89°49'34" W, 52.75 feet;
8. Thence N 26°33'00" W, 20.36 feet;
9. Thence N 00°00'00" W, 167.44 feet;
10. Thence S 63°22'30" W, 36.21 feet;
11. Thence N 89°38'25" W, 149.29 feet;

Thence N 00°21'35" E, 130.67 feet; thence N 39°43'00" E, 174.51 feet; thence along the arc of a curve to the right 321.30 feet, having a radius of 300.00 feet, a central angle of 61°22'45" and which chord bears N 70°24'22" E, 305.23 feet; thence S 78°54'15" E, 215.72 feet to a point along the boundary of said subdivision; thence along said boundary the following two (2) courses:

1. S 78°54'15" E, 180.87 feet;
2. Thence along the arc of a curve to the left 101.53 feet, having a radius of 540.16 feet, a central angle of 10°46'09" and which chord bears S 84°17'19" E, 101.38 feet to the true point of beginning, containing 5.66 acres more or less.

PARCEL 2:

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 2, recorded at Reception Number 130944 and Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North half of Section 15, Township 3 South, Range 72 West and the Northeast quarter of Section 13, Township 3 South, Range 73 West of the Sixth Principal

Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows:

Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said Section is assumed to bear N 89°07'56" W, 3189.57 feet, with all bearings contained herein relative thereto, thence S 31°(9)54'55(6)" W, 1512.82 feet to a point along the boundary of Miners Mesa Subdivision Filing No. 3 and the true point of beginning; thence along said subdivision boundaries the following thirteen (13) courses:

1. N 89°38'25" W, 626.52 feet;
2. Thence N 50°26'38" W, 82.08 feet;
3. Thence S 39°30'37" W, 66.89 feet;
4. Thence N 89°38'25" W, 1662.40 feet;
5. Thence N 00°35'52" E, 17.08 feet;
6. Thence S 87°59'17" W, 405.04 feet;
7. Thence N 39°00'00" E, 1259.38 feet;
8. Thence S 52°52'43" E, 132.70 feet;
9. Thence N 37°07'17" E, 293.28 feet;
10. Thence S 53°00'01" E, 82.44 feet;
11. Thence S 10°53'44" W, 493.10 feet;
12. Thence S 80°02'49" E, 149.42 feet;
13. Thence N 10°55'57" E, 294.78 feet;

Thence S 75°07'40" E, 1199.64 feet; thence along the arc of a curve to the right 101.55 feet, having a radius of 275.00 feet, a central angle of 21°09'31" and which chord bears S 67°90'01" E, 100.98 feet; thence S 57°15'16" E, 68.07 feet; thence along the arc of a curve to the left 481.99 feet, having a 16" radius of 500.00 feet, a central angle of 52°56'24" and which chord bears S 85°43'28" E, 445.73 feet; thence along the arc of a curve to the left 210.00 feet, having a radius of 400.00 feet, a central angle of 30°05'20" and which chord bears S 54°45'40" W, 207.68 feet; thence S 39°43'00" W, 52.58 feet; thence S 00°21'35" W, 288.36 feet to the true point of beginning, containing 41.74 acres more or less.

Together with and subject to a right of way over the following described parcel:

A parcel of land, located within Lot 2, Block 1, Miners ' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North half of Section 18, Township 3 South, Range 72 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows: Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said section is assumed to bear N 89°07'56" W, 3169.57 feet, with all bearings contained herein relative thereto; thence S 11°03'33" W 876.17 feet to a point along the boundary of Miners Mesa Subdivision Filing No. 3 and the true point of beginning; thence along said boundary S 11°03'33" W, 100.00 feet; thence N 78°54'15"W, 215.72 feet; thence along the arc of a curve to the left 321.38 feet, having a radius of 300.00 feet, a central angle of 61°22'45" and which chord bears S 70°24'22" W, 306.23 feet; thence S 39°43'00" W, 174.51 feet; thence N 00°21'E, 157.69 feet; thence N 39°43'00" E, 52.58 feet; thence along the arc of a curve to the right 428.51 feet, having a radius of 400.00 feet, a central angle of 61°22'45" and which chord bears N 70°24'22" E, 408.31 feet; thence S 78°54'15" E, 215.66 feet to the true point of beginning, containing 1.62 acres more or less.

AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Western Diversified Properties, LLC, a Colorado limited liability company by Warranty Deed dated January 22, 1996, unrecorded individually, located in Deed Book 607, Page 058. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Miner's Mesa Commercial

Metropolitan District by Warranty Deed dated December 20, 1996 and recorded December 26, 1996 in Deed Book 612, Page 481. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Miner's mesa Development, LLC f/k/a Western Diversified Properties, LLC by Special Warranty Deed dated May 29, 2000 and recorded September 06, 2000 in Deed Book 702, Page 08. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Club Vista Properties II, LLC, a Nevada limited liability company by Special Warranty Deed dated May 21, 2012 and recorded May 21, 2012 in Instrument No. 146438.

The Parent Tract containing 5.66 acres.

EXHIBIT 2

Premises

(The below may be replaced with a final survey and legal description of the Premises)

50'x50' LEASE AREA LEGAL DESCRIPTION:

A parcel of land over and across Lot 2 Block 1, Miners Mesa Subdivision Filing No. 4 as described at Reception No. 14785 of the Public Records of Gilpin County (Parent Tract), located in the North Half of Section 18, Township 3 South, Range 72 West of the 6th Principal Meridian, County of Gilpin, State of Colorado, said parcel being more particularly described as follows:

For the purpose of this description, the bearings are referenced to the north line of the Northwest Quarter of Section 18, Township 3 South, Range 72 West of the 6th P.M. assumed to bear North 89°07'56" West, 3189.57 feet. Monumented by a 31/4" aluminum cap stamped BLM 1979 at Northeast Corner of said Section 18 and by 31/4" aluminum cap stamped BLM 1979 at the North Quarter Corner of said Section 18.

Beginning at a point on the northeasterly line of the 50'X50' Lease Area, whence the North Quarter Corner of Section 18, Township 3 South, Range 72 West of the 6th P.M. bears North 17°24'40" East, a distance of 1229.86 feet;

THENCE South 45°00'00" East, a distance of 40.00 feet;
THENCE South 45°00'00" West, a distance of 50.00 feet;
THENCE North 45°00'00" West, a distance of 50.00 feet;
THENCE North 45°00'00" East, a distance of 50.00 feet;
THENCE South 45°00'00" East, a distance of 10.00 feet to the Point of Beginning.

Containing 2500 Square Feet, or 0.057 Acres, more or less.

20' WIDE ACCESS AND UTILITY EASEMENT:

A 20' wide strip of land over and across Lot 2 Block 1 and Tract A, Miners Mesa Subdivision Filing No. 4 as described at Reception No. 14785 of the Public Records of Gilpin County (Parent Tract), located in the North Half of Section 18, Township 3 South, Range 72 West of the 6th Principal Meridian, County of Gilpin, State of Colorado, said 20' wide strip being 10.00 feet on both sides of the following described centerline:

For the purpose of this description, the bearings are referenced to the north line of the Northwest Quarter of Section 18, Township 3 South, Range 72 West of the 6th P.M. assumed to bear North 89°07'56" West, 3189.57 feet. Monumented by a 31/4" aluminum cap stamped BLM 1979 at Northeast Corner of said Section 18 and by 31/4" aluminum cap stamped BLM 1979 at the North Quarter Corner of said Section 18.

Beginning at a point on the northeasterly line of the hereinafter described 50'X50' Lease Area, whence the North Quarter Corner of Section 18, Township 3 South, Range 72 West of the 6th P.M. bears North 17°24'40" East, a distance of 1229.86 feet, said point also being the Point of Beginning of said hereinafter described 50'X50' Lease Area;

THENCE North 45°00'00" East, a distance of 19.57 feet;

THENCE along a curve to the left, an arc length of 26.89 feet, said curve having a radius of 35.00 feet, a delta angle of 44°01'05", a chord bearing of North 22°59'28" East and a chord length of 26.23 feet;
THENCE North 00°58'55" East, a distance of 20.31 feet;
THENCE along a curve to the left, an arc length of 94.25 feet, said curve having a radius of 60.00 feet, a delta angle of 90°00'00", a chord bearing of North 44°01'05" West and a chord length of 84.85 feet;
THENCE North 89°01'05" West, a distance of 55.00 feet;
THENCE along a curve to the right, an arc length of 44.57 feet, said curve having a radius of 20.57 feet, a delta angle of 124°06'33", a chord bearing of North 26°57'48" West and a chord length of 36.35 feet;
THENCE North 35°05'29" East, a distance of 127.89 feet to the north line of said Lot 2, Block 1, the south line of said Tract A, Miners Mesa Subdivision, Filing No. 4, whence the nearest property corner bears South 79°03'27" East, a distance of 1.60 feet;
THENCE along a curve to the right, an arc length of 83.79 feet, said curve having a radius of 72.77 feet, a delta angle of 65°58'04", a chord bearing of North 68°04'31" East and a chord length of 79.23 feet;
THENCE South 78°56'27" East, a distance of 150.84 feet to the east line of said Tract A, Miners Mesa Subdivision, Filing No. 4, the west Right-of-Way line of Miners Mesa Road, and the Point of Terminus, whence the North Quarter Corner of said Section 18, Township 3 South, Range 72 West bears North 11°03'33" East, a distance of 932.88 feet.

Containing 12462 Square Feet, or 0.286 Acres, more or less.

The sidelines of said easement to be lengthened or shortened to intersect the northeasterly line of the hereinafter described 50'X50' Lease Area and the east line of said Tract A.

Memorandum

To: Black Hawk Historic Preservation Commission **Date:** October 8, 2019
Company: City of Black Hawk **Phone:** 303.582.0615
From: Ashley L. Bushey, Architectural Historian **Pinyon Project #:** 118123401
Delivery Method: via email at clinker@cityofblackhawk.org
Subject: Review of A Cultural Resources Survey for the Black Hawk Project [Terracon, 2019]
Regarding Section 106 Review for Installation of a Telecommunication Tower by
Vertical Bridge

Project Description and Regulatory Framework

Vertical Bridge proposes to construct a 103-foot-tall telecommunications tower at 987 Miners Mesa Road, Black Hawk, Colorado. Because telecommunications towers require a license from the Federal Communications Commission (FCC), the project triggers review under Section 106 of the National Historic Preservation Act (NHPA). Section 106 asks that projects identify historic and potentially historic resources within the project's Area of Potential Effects (APE) and evaluate the project's potential to affect those resources, both directly and indirectly. Details regarding the execution of specific Section 106 programs may be specified in a Programmatic Agreement (PA). In the case of the subject project, Section 106 compliance is guided by the *National Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (Nationwide FCC PA) [Terracon, 1].

Area of Potential Effects (APE)

The Nationwide FCC PA specifies an APE should include a direct and visual APE. The Nationwide FCC PA stipulates the direct APE should be limited to the area of potential ground disturbance for the project, and the visual APE should encompass the geographic area where the project has the potential to introduce visual elements that diminish the setting of historic resources – where the setting is a character defining feature of the historic resource.

The APE for this project appears to be appropriate [Terracon, 26; 30]. The APE for direct effects is defined by “a dirt and gravel pit environment comprised of a proposed self-sustaining lattice, proposed lease area, and an access and utility easement.” The APE for visual effects includes a half-mile radius from the location of the proposed tower, which follows the Nationwide FCC PA methodology stipulating a half-mile radius for towers under 200 feet tall.

Determinations of Eligibility/Historic Resource Identification

Most Section 106 evaluations in Colorado begin with a file search of the History Colorado Office of Archaeology and Historic Preservation (OAHP) COMPASS database for previously identified resources within the APE. Detailed results of this file search are provided [Terracon 6-25]. Typical Section 106 compliance review would include a review of potentially historic, unrecorded resources. The Nationwide FCC PA specifies, for the visual APE, only records available from the State Historic Preservation Office (SHPO)/Tribal Historic Preservation Office (THPO) must be incorporated into the Section 106 review. The report, therefore, follows the methodology established in the Nationwide FCC PA.

The APE for direct effects does not contain previously recorded historic or archaeological resources, nor does it contain potentially historic built environment (architectural) resources [Terracon, 30]. The APE for direct effects was evaluated for archaeological potential by a qualified archaeologist conducting a pedestrian survey of the area. This level of effort is typical for Section 106 compliance projects. Results of the pedestrian survey were reviewed by a Principal Investigator; no resources were identified.

The report does reflect a discrepancy with regard to the number of historic resources identified within the visual APE – the report indicates 19 sites recommended eligible to the National Register of Historic Places in some report locations [Terracon, 6; 32], and 14 sites in others [Terracon, 26; 31].

Determinations of Effect

Visual APE: The report evaluates effects to two historic properties; Chemung-Belmont Mine (5GL.90) and Pittsburgh Extension Mine (5GL.852). Limited effects analysis is provided [Terracon, 26; 32], and the National Register of Historic Places Criteria under which these sites were considered eligible is not discussed. The rationale offered is that the site forms for these resources are not available online through the COMPASS database; forms are typically available through the SHPO office and are typically obtained to provide adequate detail in Section 106 effects analysis. The Chemung-Belmont Mine site is located directly across the street from the proposed tower. As the site type is listed in COMPASS as Historical Archaeology, and not Architectural, it is likely that the site is eligible for its archaeological features and not its architectural attributes. Therefore, it is likely that the recommended determination of *no adverse effect* is appropriate for these resources.

The report does not address effects to the Black Hawk – Central City National Historic Landmark (NHL) (5GL.7), which this reviewer sees as an oversight. That said, the proposed tower is only likely to be visible from the eastern section of the NHL along State Highway 119. Given the scale of current buildings and the limited number of contributing resources in this area, the proposed tower is unlikely to result in a determination of *adverse effect* with regard to the NHL.

Direct APE: Because no resources were identified in the direct APE, the report indicates a finding of “no known historic properties” [Terracon, 32]. There is no Section 106 finding by this title, but it appears to indicate “no historic properties affected.”

Summary and Conclusion

There are some minor concerns with the report, however, the overall methodology and conclusions appear appropriate for this undertaking and follow the stipulations of Nationwide FCC PA. This reviewer feels the determination of *no adverse effect* with regard to the effect of the proposed tower on resources within the APE is appropriate.

LEGAL DESCRIPTION PARENT TRACT:

Fidelity National Title Insurance Company Commitment No. 28722703.

Effective Date of Commitment: July 15, 2019 @ 8:00 am Number: Customer US-CO-5063.

EXHIBIT "A" Legal Description

An interest in land, said interest being over a portion of the following described parent parcel:

PARCEL 1:

A portion of Miners' Mesa Subdivision Filing No. 4, City of Black Hawk, County of Gilpin, State of Colorado.

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North Half of Section 18, Township 3 South, Range 72 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows:

Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said section is assumed to bear N 89°07'56" W, 3189.57 feet, with all bearings contained herein relative thereto; thence S 05°(7)11'32" E, 1007.08 feet to a point along the boundary of said subdivision and the true point of beginning, thence along said boundary the following eleven (11) courses:

1. S 25°00'00" W, 123.62 feet;
2. Thence S 48°59'00" W, 265.96 feet;
3. Thence N 89°24'55" W, 80.13 feet;
4. Thence N 31°43'30" W, 23.14 feet;
5. Thence N 89°53'30" W, 112.47 feet;
6. Thence S 50°23'44" W, 2(8)9.28 feet;
7. Thence N 89°49'34" W, 52.75 feet;
8. Thence N 26°33'00" W, 20.36 feet;
9. Thence N 00°00'00" W, 167.44 feet;
10. Thence S 63°22'30" W, 36.21 feet;
11. Thence N 89°38'25" W, 149.29 feet;

Thence N 00°21'35" E, 130.67 feet; thence N 39°43'00" E, 174.51 feet; thence along the arc of a curve

to the right 321.30 feet, having a radius of 300.00 feet, a central angle of 61°22'45" and which chord bears N 70°24'22" E, 305.23 feet; thence S 78°54'15" E, 215.72 feet to a point along the boundary of said subdivision; thence along said boundary the following two (2) courses:

1. S 78°54'15" E, 180.87 feet;
2. Thence along the arc of a curve to the left 101.53 feet, having a radius of 540.16 feet, a central angle of 10°46'09" and which chord bears S 84°17'19" E, 101.38 feet to the true point of beginning, containing 5.66 acres more or less.

PARCEL 2:

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 2, recorded at Reception Number 130944 and Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North half of Section 15, Township 3 South, Range 72 West and the Northeast quarter of Section 13, Township 3 South, Range 73 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows:

Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said Section is assumed to bear N 89°07'56" W, 3189.57 feet, with all bearings contained herein relative thereto, thence S 31°(9)54'55(6)" W, 1512.82 feet to a point along the boundary of Miners Mesa Subdivision Filing No. 3 and the true point of beginning; thence along said subdivision boundaries the following thirteen (13) courses:

1. N 89°38'25" W, 626.52 feet;
2. Thence N 50°26'38" W, 82.08 feet;
3. Thence S 39°30'37" W, 66.89 feet;
4. Thence N 89°38'25" W, 1662.40 feet;
5. Thence N 00°35'52" E, 17.08 feet;
6. Thence S 87°59'17" W, 405.04 feet;
7. Thence N 39°00'00" E, 1259.38 feet;
8. Thence S 52°52'43" E, 132.70 feet;
9. Thence N 37°07'17" E, 293.28 feet;
10. Thence S 53°00'01" E, 82.44 feet;
11. Thence S 10°53'44" W, 493.10 feet;
12. Thence S 80°02'49" E, 149.42 feet;
13. Thence N 10°55'57" E, 294.78 feet;

Thence S 75°07'40" E, 1199.64 feet; thence along the arc of a curve to the right 101.55 feet, having a radius of 275.00 feet, a central angle of 21°09'31" and which chord bears S 67°90'01" E, 100.98 feet; thence S 57°15'16" E, 68.07 feet; thence along the arc of a curve to the left 481.99 feet, having a 16" radius of 500.00 feet, a central angle of 52°56'24" and which chord bears S 85°43'28" E, 445.73 feet; thence along the arc of a curve to the left 210.00 feet, having a radius of 400.00 feet, a central angle of 30°05'20" and which chord bears S 54°45'40" W, 207.68 feet; thence S 39°43'00" W, 52.58 feet; thence S 00°21'35" W, 288.36 feet to the true point of beginning, containing 41.74 acres more or less.

Together with and subject to a right of way over the following described parcel:

A parcel of land, located within Lot 2, Block 1, Miners' Mesa Subdivision Filing No. 4, recorded at Reception Number 132292, located within the North half of Section 18, Township 3 South, Range 72 West of the Sixth Principal Meridian, City of Black Hawk, County of Gilpin, State of Colorado, more particularly described as follows: Commencing at the South quarter corner of said Section 7, thence the Southwest corner of said section is assumed to bear N 89°07'56" W, 3169.57 feet, with all bearings contained herein relative thereto; thence S 11°03'33" W 876.17

feet to a point along the boundary of Miners Mesa Subdivision Filing No. 4 and the true point of beginning; thence along said boundary S 11°03'33" W, 100.00 feet; thence N 78°54'15"W, 215.72 feet; thence along the arc of a curve to the left 321.38 feet, having a radius of 300.00 feet, a central angle of 61°22'45" and which chord bears S 70°24'22" W, 306.23 feet; thence S 39°43'00" W, 174.51 feet; thence N 00°21'E, 157.69 feet; thence N 39°43'00" E, 52.58 feet; thence along the arc of a curve to the right 428.51 feet, having a radius of 400.00 feet, a central angle of 61°22'45" and which chord bears N 70°24'22" E, 408.31 feet; thence S 78°54'15" E, 215.66 feet to the true point of beginning, containing 1.62 acres more or less.

AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Western Diversified Properties, LLC, a Colorado limited liability company by Warranty Deed dated January 22, 1996, unrecorded individually, located in Deed Book 607, Page 058. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Miner's Mesa Commercial Metropolitan District by Warranty Deed dated December 20, 1996 and recorded December 26, 1996 in Deed Book 612, Page 481. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Miner's mesa Development, LLC f/k/a Western Diversified Properties, LLC by Special Warranty Deed dated May 29, 2000 and recorded September 06, 2000 in Deed Book 702, Page 08. AND BEING a portion of the same property conveyed to The City of Black Hawk, Colorado from Club Vista Properties II, LLC, a Nevada limited liability company by Special Warranty Deed dated May 21, 2012 and recorded May 21, 2012 in Instrument No. 146438.

The Parent Tract containing 5.66 acres.

20' WIDE ACCESS AND UTILITY EASEMENT:

A 20' wide strip of land over and across Lot 2 Block 1 and Tract A, Miners Mesa Subdivision Filing No. 4 as described at Reception No. 14785 of the Public Records of Gilpin County (Parent Tract), located in the North Half of Section 18, Township 3 South, Range 72 West of the 6th Principal Meridian, County of Gilpin, State of Colorado, said 20' wide strip being 10.00 feet on both sides of the following described centerline:

For the purpose of this description, the bearings are referenced to the north line of the Northwest Quarter of Section 18, Township 3 South, Range 72 West of the 6th P.M. assumed to bear North 89°07'56" West, 3189.57 feet. Monumented by a 3 1/4" aluminum cap stamped BLM 1979 at Northeast Corner of said Section 18 and by 3 1/4" aluminum cap stamped BLM 1979 at the North Quarter Corner of said Section 18.

Beginning at a point on the northeasterly line of the hereinafter described 50'X50' Lease Area, whence the North Quarter Corner of Section 18, Township 3 South, Range 72 West of the 6th P.M. bears North 17°24'40" East, a distance of 1229.86 feet, said point also being the Point of Beginning of said hereinafter described 50'X50' Lease Area;

THENCE North 45°00'00" East, a distance of 19.57 feet;

THENCE along a curve to the left, an arc length of 26.89 feet, said curve having a radius of 35.00 feet, a delta angle of 44°01'05", a chord bearing of North 22°59'28" East and a chord length of 26.23 feet;

THENCE North 00°58'55" East, a distance of 20.31 feet;

THENCE along a curve to the left, an arc length of 94.25 feet, said curve having a radius of 60.00 feet, a delta angle of 90°00'00", a chord bearing of North 44°01'05" West and a chord length of 84.85 feet;

THENCE North 89°01'05" West, a distance of 55.00 feet;

THENCE along a curve to the right, an arc length of 44.57 feet, said curve having a radius of 20.57 feet, a delta angle of 124°06'33", a chord bearing of North 26°57'48" West and a chord length of 36.35 feet;

THENCE North 35°05'29" East, a distance of 127.89 feet to the north line of said Lot 2, Block 1, the south line of said Tract A, Miners Mesa Subdivision, Filing No. 4, whence the nearest property corner bears South 79°03'27" East, a distance of 1.60 feet;

THENCE along a curve to the right, an arc length of 83.79 feet, said curve having a radius of 72.77 feet, a delta angle of 65°58'04", a chord bearing of North 68°04'31" East and a chord length of 79.23 feet;

THENCE South 78°56'27" East, a distance of 150.84 feet to the east line of said Tract A, Miners Mesa Subdivision, Filing No. 4, the west Right-of-Way line of Miners Mesa Road, and the Point of Terminus, whence the North Quarter Corner of said Section 18, Township 3 South, Range 72 West bears North 11°03'33" East, a distance of 932.88 feet.

Containing 12462 Square Feet, or 0.286 Acres, more or less.

The sidelines of said easement to be lengthened or shortened to intersect the northeasterly line of the hereinafter described 50'X50' Lease Area and the east line of said Tract A.

50'x50' LEASE AREA LEGAL DESCRIPTION:

A parcel of land over and across Lot 2 Block 1, Miners Mesa Subdivision Filing No. 4 as described at Reception No. 14785 of the Public Records of Gilpin County (Parent Tract), located in the North Half of Section 18, Township 3 South, Range 72 West of the 6th Principal Meridian, County of Gilpin, State of Colorado, said parcel being more particularly described as follows:

For the purpose of this description, the bearings are referenced to the north line of the Northwest Quarter of Section 18, Township 3 South, Range 72 West of the 6th P.M. assumed to bear North 89°07'56" West, 3189.57 feet. Monumented by a 31/4" aluminum cap stamped BLM 1979 at Northeast Corner of said Section 18 and by 31/4" aluminum cap stamped BLM 1979 at the North Quarter Corner of said Section 18.

Beginning at a point on the northeasterly line of the 50'X50' Lease Area, whence the North Quarter Corner of Section 18, Township 3 South, Range 72 West of the 6th P.M. bears North 17°24'40" East, a distance of 1229.86 feet;

THENCE South 45°00'00" East, a distance of 40.00 feet;
THENCE South 45°00'00" West, a distance of 50.00 feet;
THENCE North 45°00'00" West, a distance of 50.00 feet;
THENCE North 45°00'00" East, a distance of 50.00 feet;
THENCE South 45°00'00" East, a distance of 10.00 feet to the Point of Beginning.

Containing 2500 Square Feet, or 0.057 Acres, more or less.

RESOLUTION 48-2020
A RESOLUTION
APPROVING THE CITY OF
BLACK HAWK FEE
SCHEDULE, AS AMENDED

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 48-2020

TITLE: A RESOLUTION APPROVING THE CITY OF BLACK HAWK FEE SCHEDULE, AS AMENDED

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

Section 1. The City of Black Hawk Fee Schedule, as amended, attached hereto as **Exhibit A**, is hereby approved.

RESOLVED AND PASSED this 10th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

EXHIBIT A

COBH MASTER FEE SCHEDULE AMENDMENT

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Business/Sales Tax License		
Business License-New & Renewal	\$50.00	
Gaming License Related Fees		
Transportation Device Fee	\$40.80	per device/per year
Ambulance Fee (Silver Dollar Metro District Devices Excluded)	\$2.50	per device/per month
General Device Fee (except live table games)	\$1,050.00	per device/per year
General Device Fee on Table Games with Live Dealers	\$4,200.00	per device/per year
Liquor License		
Application Fee - new license	\$1,000.00	
Retail Liquor Store	\$22.50	
Liquor-licensed Drugstore	\$22.50	
Beer and Wine	\$48.75	
Hotel and Restaurant	\$75.00	
Tavern	\$75.00	
Optional Premises	\$75.00	
Club	\$41.25	
Retail Gaming Tavern	\$75.00	
Brew Pub	\$75.00	
Arts	\$41.25	
Racetrack	\$75.00	
Distillery Pub	\$75.00	
Lodging & Entertainment	\$75.00	
Vitner's Restaurant	\$75.00	
Fermented Malt Beverage On Premises	\$3.75	
Fermented Malt Beverage Off Premises	\$3.75	
Fermented Malt Beverage On/Off Premises	\$3.75	
Art Gallery Permit	\$3.75	
Bed & Breakfast Permit	\$3.75	
Mini Bar Permit w/Hotel Restaurant License	\$48.75	
Annual Renewal Application Fee	\$100.00	
Late Renewal	\$500.00	
Special Event Liquor Permit	\$100.00	
Fingerprint Analysis (credit card payment through Idemia)	\$48.50	each analysis (\$38.50 + \$10 vendor service fee)

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Corp/LLC Change (per person)	\$100.00	
Change of Location	\$750.00	
Change of Manager (H&R, Tavern, L&E, and Campus Liquor Complex)	\$75.00	
Promotional Association Certification Application	\$100.00	
Attachment of a Licensed Premise	\$100.00	
Annual Renewal	\$100.00	
Lodging License		
Lodging License	\$100.00	
Short-Term Rental License	\$100.00	
Retail Marijuana License		
Initial Operating Fee	\$2,500.00	
Annual Renewal and Operating Fee	\$1,500.00	
late renewal	\$500.00	
Transaction Fee	\$2.00	
Change in Corporate Officers, Directors, or Manager	\$100.00	
Fingerprint Analysis (credit card payment through Idemia)	\$48.50	each analysis (\$38.50 + \$10 vendor service fee)
Escort Services License		
Application Fee	\$300.00	
Application Investigation Fee (Police Department)	\$250.00	
Renewal Fee	\$200.00	
Pawnbrokers Business License		
Application Fee	\$2,200.00	
Renewal Fee	\$5.00	
Investigation and Processing Fee	\$200.00	
Sexually Oriented Business License		
Application Fee	\$750.00	
Renewal Fee	\$1,000.00	
Transfer of Ownership	\$200.00	
Manager's License	\$250.00	
Misc. Licenses/Permits		
Dog License Annual Fee (Males & spayed females)	\$3.00	
Dog License Annual Fee (Unspayed females)	\$5.00	
Newsrack Permit	\$0.00	

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Public Assembly Permit (for profit organizations)	\$100.00	
Recreational Vehicle and Equipment Permit	\$0.00	
Mobile Auto Repair Permit and Annual Renewal	\$25.00	
Street Vendor Conditional Use Permit	\$100.00	for 6 months for each vehicle used
Shuttle Owner/Operator Registration and Annual Renewal	\$100.00	
Private Social Club Permit	\$100.00	
Solicitation		
Permit Fee	\$100.00	
Renewal Fee	\$50.00	
Fingerprint Fee/Background Check (credit card payment through Idemia)	\$26.50	each analysis (\$16.50 + \$10 vendor service fee)
Identification Badge	\$25.00	
Replacement Identification Badge	\$25.00	
Special Event Fees		
First day	\$50.00	
Each additional day	\$30.00	
Bicycle Event Permit	\$100.00	
Franchise Fees		
Cable Television Franchise Fee		
New Application	per contract	
Transfer	per contract	
Gas and Electric Franchise	3%	of all received revenues
Transfer	per contract	
Dory Hill Cemetery		
Plot Fee	\$50.00	
Burial Fee - Casket	\$400.00	
Burial Fee - Cremated Remains	\$150.00	
Miscellaneous		
Code Books	online	
Open Records Request Research Fee	\$33.58	after first hour/per hour
Copies made	\$0.25	page
Public Hearing Notice Publication Fee	Actual Cost	plus 15% City Administration Fee

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Reference: Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16-370 - Fees		
Building Fees		
<p>A Building Permit includes Building, Electrical, Structural plan reviews, fees and primary inspections. Reinspections are invoiced separately.</p> <p>Civil Engineering plan reviews and inspections are NOT included in the Building Permit and collected separately using the Land Use fee schedule.</p>		
Building Permit Fees Based on Total Valuation		
\$1.00 to \$500	\$23.50	
\$501 to \$2,000	\$23.50	for 1st \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$69.25	for the 1st \$2,000 plus \$14.00 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$391.25	for the 1st \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$643.75	for the 1st \$50,000 plus \$7.00 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$993.75	for the 1st \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$3,233.75	for the 1st \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$5,608.75	for the 1st \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof
Initial Building Plan Review - initial review and one (1) response comments	65%	of the Building Permit fee calculated above
Additional Building Plan Review/Response Comments	\$150.00	an hour plus 15% City Administration Fee
Structural Engineering Review and Consulting Fee (3rd party)	Actual Cost	actual cost plus 15% City Administration Fee. City reserves the right to have a 3rd party Structural Engineer perform an independent review. All associated costs above and beyond the standard permit fee shall be incurred and paid by the applicant or property owner.
Building Consulting / Miscellaneous Services	\$150.00	an hour plus 15% City Administration Fee - Includes all services not listed

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Inspections Outside of Normal Business Hours	\$200.00	an hour with a four (4) hour minimum plus 15% City Administration Fee
Re-Inspection Fee *Contractor/Homeowner not ready *Contractor/Homeowner not on site *Contractor/Homeowner disregards correction items	\$150.00	an hour for each re-inspection plus 15% City Administration Fee
Special Investigation Fee - starting work without a permit.	\$500.00 \$1000.00 \$1500.00	1st Occurrence plus 15% City Administration Fee 2nd Occurrence plus 15% City Administration Fee 3rd Occurrence and Each Additional Occurrence plus 15% City Administration Fee
Expert Witness / Court Testimony	Actual Cost	plus 15% City Administration Fee
Excavation Permit (commercial and residential alteration or addition)	\$7.00	per cubic yard
Administration Fee: a CoBH 15% City Administration Fee will be added to each invoice		
Electrical Fees		
Electrical Only Plan Review - initial review and one (1) response comments	65%	of the Electrical Permit fee calculated below.
Additional Electrical Plan Review/Response Comments	\$150.00	an hour plus 15% City Administration Fee
Residential Electrical Only Installation: (New, Remodel, Addition) (Round sq. ft. up to next 100 for calculation).		
Residential Installation (Based on enclosed living area only)		
LIVING AREA:		
≤ 1,000 sq. ft.	\$115.00	
1,001 sq. ft. but ≤ 1,500 sq. ft.	\$172.00	
1,501 sq. ft. but ≤ 2,000 sq. ft.	\$230.00	
≥ 2,001 sq. ft. (\$230.00 + (\$11.50 x each additional 100 sq. ft.))	Calculated Fee	
Commercial and other fees: Including some residential installations that are not based on square footage (not living area, i.e., garage, shop, etc.) Fees in this section are calculated from the total cost to customer (contract price), including electrical materials, items and labor - whether provided by the contractor or the property owner.		

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Valuation of Installation (Based on cost to customer of labor, material and items)		
≤ \$2,000 = \$115.00 (base fee)	\$115.00	
≥ \$2,001 add \$5.75 per thousand of job valuation (always round up the next \$1000) to the Base Fee (\$115.00)	Calculated Fee	
Mobile/Modular/Manufactured Home Set (per unit)	\$115.00	
Temporary Heat Release	\$33.00	
Solar Permit Fees - Residential or Commercial Fees are calculated from the total cost to customer (contract price), including materials, items and labor - whether provided by the contractor or the property owner.		
Valuation of Installation (Based on cost to customer of labor, material and items)		
Not more than \$2000 (Base Fee)	\$115.00	
≥ \$2,001 add \$6.00 per thousand of job valuation (always round up the next \$1000) to the Base Fee (\$115.00)	Calculated Fee	
House Bill 11-1199 placed a cap on solar permit fees of: \$500.00 for residential installation and; \$2000.00 for commercial installations. Caps on the permit fee are a combination of the solar (DC) installers permit and the electrical (AC) permit. Whichever one is issued first, the total fee for the second permit combine with the fee for the first permit cannot exceed the cap fees shown above.		
Special Investigation Fee - staring work without a permit.	\$500.00 \$1000.00 \$1500.00	1st Occurrence plus 15% City Administration Fee 2nd Occurrence plus 15% City Administration Fee 3rd Occurrence and Each Additional Occurrence plus 15% City Administration Fee
Expert Witness / Court Testimony	Actual Cost	plus 15% City Administration Fee

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Re-Inspection Fee: *Contractor/Homeowner not ready *Contractor/Homeowner not on site *Contractor/Homeowner disregards correction items A re-inspection fee may be assessed when additional inspections are required when the job is not ready for inspection (if 5 or more correction items are cited), access is not provided, violations from the last inspection are not completed, etc.	\$150.00	an hour for each re-inspection plus 15% City Administration Fee
1. Ensure that the work is completed within the time limitation of the permit. 2. Install electrical according to the currently adopted edition of the Colorado electrical Code (NEC). 3. Request an electrical inspection <i>prior</i> to covering and a final inspection <i>prior</i> to occupancy. 4. Temporary construction meters require a separate permit application from any other activity.		
Administration Fee	Calculated Fee	a CoBH 15% City Administration Fee will be added to each invoice
Conveyance Fees		
INSPECTION SERVICES		
TYPE	PER UNIT	DESCRIPTION
Hydraulic Periodic	\$155.00	1-1.5 hours. Includes initial inspection plus one follow-up on a TCO.
Hydraulic Roped Periodic	\$210.00	1.5-2 hours. Includes initial inspection plus one follow-up on a TCO.
Traction Periodic	\$210.00	1.5-2 hours. Includes initial inspection plus one follow-up on a TCO.
Temporary Certificate of Operation (TCO) 2nd Follow-up	\$310.00	Follow-up on TCO as necessary.
Hydraulic 5 Year	\$210.00	Witnessed annual safety test (2 hours). Includes initial inspection plus one follow-up on a TCO.
Hydraulic Roped 5 Year	\$375.00	Witnessed annual safety test (3 hours). Includes initial inspection plus one follow-up on a TCO.
Traction 5 Year	\$520.00	Witnessed safety test with weights (4 hours). Includes initial inspection plus one follow-up on a TCO.
Escalator Annual	\$675.00	Colorado - Category 5 test annual.
Plan Review	\$475.00	Includes initial review and 1 response. Plan will be reviewed for code compliance before work begins
Like Plan Review	80%	Elevators of the same nature in the same bank will be at 80% of the per unit cost
Revised Plan Review	\$155.00 Per Hour	Plan will be reviewed for code compliance before work begins

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Lift Periodic(platform, chair, etc.)	\$155.00	All lifts other than those described above
Dumbwaiter Periodic	\$155.00	Typically small units, only used for material
Hydraulic Acceptance	\$525.00	Initial safety test performed with weights. New construction, modernization or turnover
Traction Acceptance	\$525.00	Initial safety test performed with weights. New construction, modernization or turnover
Escalator Acceptance	\$700.00	Initial safety test. All safety test items checked. New construction, modernization or turnover
Dumbwaiter/Lift Acceptance	\$355.00	Initial safety test. All safety test items checked. New construction, modernization or turnover
Any Re-inspect Fee	Same as initial fee	
Inspections Outside of Normal Business Hours	Same as initial fee	with a two (2) hour minimum
CONSULTING SERVICES		
TYPE	PER UNIT/ PER HOUR	DESCRIPTION
Maintenance Evaluation < 10 Traction	\$525/per unit	Provide a detailed evaluation of maintenance performed along with code items in a professional report
Maintenance Evaluation \geq 10 Traction	\$420/per unit	Provide a detailed evaluation of maintenance performed along with code items in a professional report
Maintenance Evaluation < 10 Hydraulic	\$455/per unit	Provide a detailed evaluation of maintenance performed along with code items in a professional report
Maintenance Evaluation \geq 10 Hydraulic	\$360/per unit	Provide a detailed evaluation of maintenance performed along with code items in a professional report
OSHA 10 hour training - 10 person min	\$1500/per unit	For those wishing to obtain their OSHA 10 hour card
OSHA 30 hour training - 10 person min	\$3900/per unit	For those wishing to obtain their OSHA 30 hour card
Conveyance Operation Training	\$135/per hour	Provides owners/manager/maintenance personnel with knowledge of all operations of chosen conveyances
Required Presence	\$135/per hour	Any necessary request for our presence i.e. meetings, etc. Travel time not included
Compliance Training	\$135/per hour	Help owners/managers/maintenance understand their part in keeping units code compliant
DRC Attendance / Once a Month	N/C	
Capitol Plans	\$840/unit	Review of conveyance with plan for future improvements and necessary repairs. Includes performance review
Contract Review	\$780/unit	Review current contract and help in writing new contracts
Providing operator to run conveyance	\$155/per hour	If necessary to perform work in hoistway, an operator can be provided that qualifies under state statute
Conveyance Incident Investigation	\$135/per hour	Incident investigation is conveyance taken out of service

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Consulting / Miscellaneous Services	\$135/per hour	Includes all miscellaneous services not listed
PERMITS		
TYPE	PERMIT FEE	DESCRIPTION
*Minor Alteration/Commercial	\$575.00	Fee Includes: Plan Review and 1 Inspection/ If additional work by the Inspector is indicated the hourly consulting rate shall apply
**Major Alteration/Commercial	\$865.00	Fee Includes: Plan Review and 1 Inspection/ If additional work by the Inspector is indicated the hourly consulting rate shall apply
Residential Elevator, Platform Lift or Dumbwaiter	\$575.00	Fee Includes: Plan Review and 1 Inspection/ If additional work by the Inspector is indicated the hourly consulting rate shall apply
Special Investigation Fee - Starting work without a permit	\$500.00	1st Occurrence plus 15% City Administration Fee
	\$1,000.00	2nd Occurrence plus 15% City Administration Fee
	\$1500.00	3rd Occurrence and Each Additional plus 15% City Administration Fee
Expert Witness / Court Testimony	Actual Cost	plus 15% City Administration Fee
*Minor Alteration includes: cab finishes, valve work, power unit install, door operator replacement, re-rope/brake suspension, escalator handrails		
**Major Alteration includes: controller, signal fixtures, rotating equipment, drive(multiple components), fire alarm, fire recall		
Administration Fee: a CoBH 15% City Administration Fee will be added to each Conveyance invoice and permit fee		
Electrical Permit: if a electrical permit is required, the cost shall fall under the Electrical Permit Fee Schedule as adopted by the CoBH		
Building Permit: If a building permit is also required, the cost shall fall under the Building Permit Fee Schedule as adopted by the CoBH		
Fire Permit: If a fire permit is also required, the cost shall fall under the Fire Permit Fee Schedule as adopted by the CoBH		
MISC. Fees		
Contractor Registration (However a Business License is required)	\$0.00	
Right-of-Way Use Permit	\$30.00	

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Street Cut Permit	\$300.00	for 1 to 100sf and \$2/sf for any additional
Historic Landmarking	Consultant Fee	plus 15% City Administration Fee
Development in Flood Hazard Permit	Consultant Fee	plus 15% City Administration Fee
Public Hearing Notice Publication Fee	Actual Cost	plus 15% City Administration Fee
Fire and Police Protection Fee at time of Building Permit		
Multifamily Residential	\$70.00	per occupant/multiply fee x peak period occupant load as per IBC
Commercial	\$14.00	per occupant/multiply fee x peak period occupant load as per IBC
Industrial	\$70.00	per occupant/multiply fee x peak period occupant load as per IBC
Change of Use	Consultant Fee	plus 15% City Administration Fee
Redevelopment	Consultant Fee	plus 15% City Administration Fee
Industrial	Consultant Fee	plus 15% City Administration Fee
Off-site commercial parking space fee (Parking Impact Fee)	\$2,000.00	per space
Inspection Record Card Replacement	\$50.00	per card plus 15% City Administration Fee
Reference: Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16- 370 - Fees		
Utilities		
Disconnect/Reconnect Fees		
Notice of disconnection due to delinquency or failure to maintain	\$60.00	
Reconnection charge due to delinquency or failure to maintain	\$500.00	
Disconnection/shut off for convenience (>7 days)	\$200.00	
Reconnection charge for convenience (>7 days)	\$500.00	
Commercial Fire Flow Testing		
Permit (>48 hours in advance of test)	\$150.00	
Penalty for failure to acquire permit	\$5,000.00	
Sign Fees		
Sign Application	\$50.00	Additional Land Use Fees apply and shall be collected under the Formal Sign Plan Application, i.e. Certificate of Appropriateness, etc.
Sign Plan Review	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Sign Permit Fees Based on Total Valuation		
\$1.00 to \$500	\$23.50	

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

\$501 to \$2,000	\$23.50	for 1st \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$69.25	for the 1st \$2,000 plus \$14.00 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$391.25	for the 1st \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$643.75	for the 1st \$50,000 plus \$7.00 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$993.75	for the 1st \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$3,233.75	for the 1st \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$5,608.75	for the 1st \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof
Special Investigation Fee - staring work without a permit	\$500.00 \$1000.00 \$1500.00	1st Occurrence plus 15% City Administration Fee 2nd Occurrence plus 15% City Administration Fee 3rd Occurrence and Each Additional Occurrence plus 15% City Administration Fee
Expert Witness / Court Testimony	Actual Cost	plus 15% City Administration Fee
Miscellaneous Services	Consultant Fee	plus 15% City Administration Fee - Includes all services not listed
Administration Fee: a CoBH 15% City Administration Fee will be added to each invoice		
Electrical Permit: if a electrical permit is required, the cost shall fall under the Electrical Permit Fee Schedule as adopted by the CoBH		
Building Permit: If a building permit is also required, the cost shall fall under the Building Permit Fee Schedule as adopted by the CoBH		
Fire Permit: If a fire permit is also required, the cost shall fall under the Fire Permit Fee Schedule as adopted by the CoBH		
Reference: Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16-370 - Fees		
Land Use Fees		
Commercial Land Use Application	\$50.00	Initial fee for all Commercial Land Use Submittals

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Pre-Land Use Application Fee & DRC Meeting Deposit	\$350 \$550 \$1,050	Non-residential/Commercial buildings less than 1,000 sq. ft. Non-residential/Commercial buildings between 1,001 sq. ft. - 5,000 sq. ft. Non-residential/Commercial buildings more than 5,000 sq. ft. and all vacant land
Formal Land Use Application	Estimated Consultant Fee Deposit	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Commercial - Land Use Plan Review		
Boundary Line Agreement	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Certificate of Appropriateness	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Civil Engineer Plan Review and Inspections	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Disconnection of Property	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Planned Unit Development	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Site Development Plan	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Special Review Use	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Subdivisions		
Preliminary Subdivision Processing Fee	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Final Subdivision Development Fee	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Minor Subdivision	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Site Development Commercial Plat	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Street Plan and Easement Vacation	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Variance	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Residential Land Use Fees	Reference Ordinance 2017-9 adopted June 14, 2017 and Municipal Code Section 16-370.	No fees for land use associated applications shall be charged or collected if the residence for which the application is made was constructed prior to 1991 and is located with the Historic Residential (HR) Zoning District, and all land use applications are made in accordance with the Municipal Code of the City of Black Hawk, as adopted by City Council. This includes professional and/or consulting service fees. Reference Ordinance 2017-9 and Black Hawk Municipal Code Section 16-370 for additional conditions.
Restaurant Grills and Air Quality Compliance	Consultant Fee	plus 15% City Administration Fee (Reimbursement Agreement & Escrow Funds may apply)
Recording Fee	Actual Cost	
Temporary Use or Temporary Structure Permits	\$50.00	plus Security Deposit, if applicable.
Water System Development Fees		
Nonresidential, in Gaming District	\$16.00	per square foot
Hotel	\$900.00	per room
Nonresidential, outside of Gaming District	\$8.00	per square foot
Expert Witness / Court Testimony	Actual Cost	plus 15% City Administration Fee
Miscellaneous Services	Consultant Fee	plus 15% City Administration Fee
Reference: Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16-370 - Fees		
Police Department Fees		
Sex Offender Registration	\$100.00	initial registration
Renewal	\$50.00	
Portable Breath Test (PBT)	\$20.00	
VIN Checks (Residents Only)	\$0.00	
Copies onto CDs	\$25.00	
Fire Department Fees (Contact Fire Dept. for further details)		
New Construction, Addition, or Tenant Finish of Commercial and Multi-Residential Plan Reviews		Fee includes initial plan review, one round of response comments, one rough inspection, and one final inspection.
1 - 5,000 square feet	\$750.00	
5,001 - 10,000 square feet	\$750.00	plus \$0.05 per square foot over 5,000
10,001 - square feet or greater	\$1,000.00	plus \$0.05 per square foot over 10,001
Commercial Inspections		
Scheduled Annual Inspection	\$150.00	hour

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

First Re-inspection of violation noted during a Scheduled Annual Inspection	\$0.00	
Second or greater Re-inspection of violation noted during a Scheduled Annual Inspection	\$150.00	hour
Compliance Verification	\$150.00	hour
System Test	\$150.00	hour. Applies to testing and inspection of fire sprinkler, fire alarm system, and suppression system required in addition to those included in initial fee.
Re-inspection	\$150.00	hour. This inspection fee shall be assessed for each re-inspection when: 1) an inspection is scheduled and the contractor is unable to complete the inspection when the inspector arrives, 2) when corrections called out during a previous inspection are not made, or 3) when the contractor does not have the permit card or plans available for the inspector within a reasonable amount of time.
Outside Agency Support for Scheduled Inspections	\$50.00	hour. Assist adjacent fire agencies with fire and life safety inspections.
Parking Structures		Fee includes initial plan review, one round of response comments, one rough inspection, and one final inspection.
Separate or attached structure	1/2 new construction fee for same square footage (\$750.00 minimum fee)	
Automatic Fire Sprinkler System (NFPA 13, 13D, and 13R)		Fee includes initial plan review, one round of response comments, one rough inspection, one hydro inspection, and one final inspection.
New Fire Sprinkler System	\$0.05 per square foot of system coverage (\$750.00 minimum fee)	
Existing Fire Sprinkler System Modification (Relocate, remove, or add fire sprinklers)		Fee includes initial plan review, one round of response comments, one rough inspection, one hydro inspection, and one final inspection.
1 - 1,500 square feet of system coverage	\$500.00	
1,501 square feet or greater of system coverage	\$500.00	plus \$0.05 per square foot of system coverage
Fire Pump		Fee includes initial plan review, one round of response comments, one rough inspection, and one final inspection.
Fire Pump in fire sprinkler and/or standpipe system	\$300.00	per pump
Fire Alarm System		Fee includes initial plan review, one round of response comments, one rough inspection, and one final inspection.
1 -1,500 square feet of system coverage	\$500.00	
1,501 square feet or greater of system coverage	\$500.00	plus \$0.05 per square foot of system coverage

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Existing Fire Alarm System Modification (Relocate, remove, or add fire alarm device)		Fee includes initial plan review, one round of response comments one rough inspection, and one final inspection.
1 -1,500 square feet of system coverage	\$500.00	
1,501 square feet or greater of system coverage	\$500.00	plus \$0.05 per square foot of system coverage
False Alarm Fees		
Occurrence 6 to 10	\$50.00	per occurrence
Occurrence 11 to 15	\$100.00	per occurrence
Occurrence 15 or more	Discretionary	
Automatic Fire Suppression Systems for Commercial Cooking Operations		Fee includes initial plan review, one round of response comments, one rough inspection, and one final inspection.
Information review and inspection of a new system	\$200.00	per individual system
Modifications to an existing system	\$150.00	per individual system
Standpipe Systems		Fee includes initial plan review, one round of response comments, one rough inspection, one hydro inspection, and one final inspection.
New standpipe	\$450.00	per standpipe riser
Modification to existing standpipe system	\$300.00	per standpipe riser
Additional Plan Review/Response Comments		
Second or Greater Plan Review/Response Comments	\$150.00	per hour
Public Safety Radio Amplification System		
Information review and on-site testing of the system at final inspection.	\$300.00	
Special Investigation Fee - staring work without a permit.		
First Occurrence	\$500.00	
Second Occurrence	\$1,000.00	
Third or greater Occurrence	\$1,500.00	
Administration Fees/Misc		
Administration Fee for All Invoices	15%	To be included on all plan review and inspection invoices.
CPR and First Aid Training for City residents and City staff	\$0.00	
CPR and First Aid Training for businesses	\$25.00	person includes certification card
Fire Extinguisher Training for City residents and City Staff	\$0.00	
Fire Extinguisher Training for businesses	\$10.00	person for businesses
Temporary Fire Watch	\$0.00	
Site Plans	\$100.00	

2019 City of Black Hawk Fee Schedule (amended 10/9/19)

Outside Consultation/Third Party Review	Actual Cost plus 15% A	The Fire Department reserves the right to have a third party perform an independent review. All associated costs above and beyond the standard fee shall be incurred and paid by applicant or property owner.
Blasting and Storage of Explosives Permit	\$150.00	includes one site inspection

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: A Resolution amending the 2020 City of Black Hawk Fee Schedule.

RECOMMENDATION:

MOTION TO APPROVE Resolution 48-2020, a Resolution amending the 2020 City of Black Hawk Fee Schedule.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Incorporated into the accompanying Fee Schedule (Exhibit A) are changes proposed by City staff.

AGENDA DATE: June 10, 2020

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: ☒ Yes ☐ No

STAFF PERSON RESPONSIBLE: Cynthia L. Linker, CP&D Director

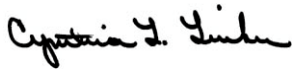
DOCUMENTS ATTACHED: Resolution 48-2020
Exhibit A - Amended 2020 Fee Schedule

RECORD: ☐ Yes ☒ No

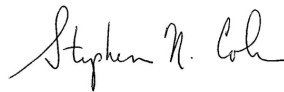
CITY ATTORNEY REVIEW: ☒ Yes ☐ N/A

SUBMITTED BY:

REVIEWED BY:



Cynthia L. Linker, CP&D



Stephen N. Cole, City Manager

RESOLUTION 49-2020
A RESOLUTION
FORGIVING CERTAIN
DEVICE TAXES FOR THE
MONTH OF MAY 2020,
PAYABLE IN JUNE OF 2020
AND DEFERRING
CERTAIN WATER FEES

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

Resolution No. 49-2020

**TITLE: A RESOLUTION FORGIVING CERTAIN DEVICE TAXES FOR
THE MONTH OF MAY 2020, PAYABLE IN JUNE 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 months of March and April 2020, payable in April and May 2020;

WHEREAS, the State of Colorado has further ordered that casinos across the State of Colorado remain closed through May 31, 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 May 2020, payable June 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, April and May 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 May 2020, payable in June 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, April and May 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 10th day of June, 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 May 2020 payable in June 2020 and Deferring Certain Water Fees

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

MOTION TO APPROVE Resolution 49-2020, A Resolution Forgiving Certain Device Taxes for the Month of May 2020, Payable in June 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: June 10, 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:

Lance Hillis

Lance R. Hillis
Finance Director

REVIEWED BY:

Stephen N. Cole

Stephen N. Cole
City Manager

**RESOLUTION 50-2020
RESOLUTION IN SUPPORT
OF PROPOSED
INITIATIVE NO. 257,
“LOCAL VOTER
APPROVAL OF GAMING
LIMITS IN BLACK HAWK,
CENTRAL CITY, AND
CRIPPLE CREEK,” ON
THE 2020 GENERAL
ELECTION BALLOT**

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

Resolution No. 50-2020

TITLE: RESOLUTION IN SUPPORT OF PROPOSED INITIATIVE NO. 257, “LOCAL VOTER APPROVAL OF GAMING LIMITS IN BLACK HAWK, CENTRAL CITY, AND CRIPPLE CREEK,” ON THE 2020 GENERAL ELECTION BALLOT

WHEREAS, Colorado has permitted limited stakes gaming in Black Hawk, Central City, and Cripple Creek, since 1991;

WHEREAS, of the twenty-three states that allow commercial betting, Colorado is one of only two states with betting limits and Colorado's limits are by far the most restrictive in the country;

WHEREAS, allowing the residents of the City of Black Hawk the right to vote on maximum single bets of any amount and adding games gives the residents the local control to determine what is in the best interest of their community;

WHEREAS, increasing betting limits and adding games will reasonably ensure the competitive and economic vitality of the Colorado gaming industry, as the industry contends with other gaming jurisdictions throughout the country;

WHEREAS, increasing betting limits and adding games has many collateral benefits for the City of Black Hawk and the State of Colorado; more out of state visitors will choose to experience Colorado gaming and all the other attractions Colorado has to offer over other states which will help bolster the economy, expand employment opportunities, and increase tax revenues;

WHEREAS, increasing betting limits and adding games will not only bring in visitors from other states but will enhance the gaming excitement for Coloradans who travel to other states, such as Nevada, keeping Colorado dollars here at home;

WHEREAS, increasing betting limits and adding games will serve to help drive and support the extension and development of new amenities in the City of Black Hawk establishing a more diversified resort destination which in turn will encourage additional and extended visitations to the City; and

WHEREAS, since limited stakes gaming is restricted to the three mountain communities of Black Hawk, Central City, and Cripple Creek, critical decisions about the future of gaming should reside with the residents of these communities,

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 officially declare their support for the Proposed Initiative No. 257 to give the residents of the City Black Hawk the ability to determine what is in the best interest of their community by allowing the residents to vote on betting limits and additional games.

RESOLVED AND PASSED this 10th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

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

SUBJECT: Support of Proposed Initiative No. 257

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

MOTION TO APPROVE Resolution 50, A Resolution in Support of Proposed Initiative No. 257, "Local Voter Approval of Gaming Limits in Black Hawk, Central City, and Cripple Creek," on the 2020 General Election Ballot

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Of the twenty-three states that allow commercial betting, Colorado is one of only two states with betting limits and Colorado's limits are by far the most restrictive in the country;

Allowing the residents of the City of Black Hawk the right to vote on maximum single bets of any amount and adding games gives the residents the local control to determine what is in the best interest of their community;

Increasing betting limits and adding games will reasonably ensure the competitive and economic vitality of the Colorado gaming industry, as the industry contends with other gaming jurisdictions throughout the country;

Increasing betting limits and adding games has many collateral benefits for the City of Black Hawk and the State of Colorado; more out of state visitors will choose to experience Colorado gaming and all the other attractions Colorado has to offer over other states which will help bolster the economy, expand employment opportunities, and increase tax revenues;

Increasing betting limits and adding games will not only bring in visitors from other states but will enhance the gaming excitement for Coloradans who travel to other states, such as Nevada, keeping Colorado dollars here at home;

Increasing betting limits and adding games will serve to help drive and support the extension and development of new amenities in the City of Black Hawk establishing a more diversified resort destination which in turn will encourage additional and extended visitations to the City; and

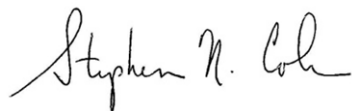
Since limited stakes gaming is restricted to the three mountain communities of Black Hawk, Central City, and Cripple Creek, critical decisions about the future of gaming should reside with the residents of these communities.

AGENDA DATE: June 10, 2020

STAFF PERSON RESPONSIBLE: Stephen N. Cole, City Manager

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

REVIEWED BY:



Stephen N. Cole, City Manager