



SPECIAL MEETING AGENDA

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

June 17, 2020
12:00 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/83653432530>

Or join by phone:

888-475-4499 (Toll-Free)

Webinar ID: 836 5343 2530

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. EXECUTIVE SESSION:

The City Council will be meeting in Executive Session to hold a conference with the City's attorney to receive legal advice on specific legal questions, specifically pending litigation, pursuant to C.R.S. § 24-6-402(4)(b).

4. AGENDA CHANGES:

5. CONFLICTS OF INTEREST: (Council disclosures are on file w/City Clerk & Sec. of State)

6. PUBLIC COMMENT: *Please limit comments to 5 minutes*

7. PUBLIC HEARINGS:

- A. Resolution 51-2020, A Resolution Approving the Amended and Restated Intergovernmental Agreement By and Between The City of Central, The City of Black Hawk, Gilpin County, and The Black Hawk-Central City Sanitation District
- B. Resolution 52-2020, A Resolution Approving the Settlement Agreement and Mutual Release Between The City of Central, The City of Black Hawk, Proximo Distillers, LLC, and RSM Partners, LLC

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

8. ACTION ITEMS:

None

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

RESOLUTION 51-2020
A RESOLUTION
APPROVING THE
AMENDED AND
RESTATED
INTERGOVERNMENTAL
AGREEMENT BY AND
BETWEEN THE CITY OF
CENTRAL, THE CITY OF
BLACK HAWK, GILPIN
COUNTY, AND THE
BLACK HAWK-CENTRAL
CITY SANITATION
DISTRICT

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

Resolution No. 51-2020

**TITLE: A RESOLUTION APPROVING THE AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY
OF CENTRAL, THE CITY OF BLACK HAWK, GILPIN COUNTY, AND
THE BLACK HAWK-CENTRAL CITY SANITATION DISTRICT**

WHEREAS, the City of Central, the City of Black Hawk, Gilpin County, and the Black Hawk-Central City Sanitation District entered into that certain Intergovernmental Agreement dated September 29, 1999 (the "1999 IGA"), to identify growth areas for Central, Black Hawk, and to subject certain properties located in unincorporated Gilpin County to the joint planning provisions of the 1999 IGA;

WHEREAS, the City of Black Hawk desires to approve that certain Amended and Restated Intergovernmental Agreement (the "Agreement") in the form attached to this Resolution as **Exhibit 1**;

WHEREAS, Paragraph 13 of the 1999 IGA further sets forth that the 1999 IGA shall be terminated before the end of the term only with the written consent of Central, Black Hawk, and Gilpin County, as expressed in a joint resolution passed by a majority vote of each City Council, and the Board of County Commissioners, respectively;

WHEREAS, the City of Black Hawk intends that this Resolution constitute a joint resolution within the meaning of Paragraph 13 of the 1999 IGA;

WHEREAS, the City of Black Hawk held a public hearing on the approval of the Agreement on June 17, 2020; and

WHEREAS, the City of Black Hawk desires to approve the Agreement and further desires to authorize the Mayor to execute the same on behalf of the City.

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

Section 1. The foregoing recitals and findings are incorporated herein as findings and conclusions of the City Council.

Section 2. The City Council hereby approves the Agreement, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 17th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Amended and Restated IGA, Central City, Black Hawk, Gilpin County and Black Hawk–Central City Sanitation District

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

MOTION TO APPROVE Resolution 51-2020, A Resolution Approving the Amended and Restated Intergovernmental Agreement By and Between the City of Central, the City of Black Hawk, Gilpin County, and the Black Hawk-Central City Sanitation District

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

AGENDA DATE: June 17, 2020

STAFF PERSON RESPONSIBLE: Corey Y. Hoffmann, City Attorney

DOCUMENTS ATTACHED: Resolution 51-2020 and Amended and Restated IGA

RECORD: [X]Yes []No

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

SUBMITTED BY:



Corey Y. Hoffmann, City Attorney

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the City of Central, Colorado ("Central"), the City of Black Hawk, Colorado ("Black Hawk"), the County of Gilpin, Colorado (the "County") (only as to Section 1), and the Black Hawk-Central City Sanitation District (the "District"), with the District applicable only as to Section 4 of this Agreement (collectively, the "Parties"), and shall be effective as of the date of mutual execution by the Parties ("Effective Date").

RECITALS:

A. The Parties entered into that certain Intergovernmental Agreement dated September 29, 1999 (the "1999 IGA") to identify growth areas for Central, Black Hawk, and to subject certain properties located in unincorporated Gilpin County to the joint planning provisions of the 1999 IGA.

B. The Parties acknowledge and agree that this Agreement shall supersede and replace in its entirety, the 1999 IGA. The Parties further agree that the 1999 IGA shall be terminated as of the Effective Date of this Agreement.

C. Central and Black Hawk desire to establish growth areas for their respective cities as described herein, and generally depicted on **Exhibit 1**, attached hereto and incorporated herein by this reference (the "**Master Exhibit**"), for the purpose of planning for and regulating the use of the land within these described growth areas, so as to provide planned and orderly use of the land which includes, but is not limited to, the establishment of roads, phased development of services and facilities, regulating the location of activities and developments which may result in significant changes in population density and protecting the environment in a manner consistent with constitutional rights.

D. Central desires to annex certain real property within the growth area for Central to the extent described herein ("**New Central City Growth Area**") for the purpose of providing a full-service municipality, including but not limited to, certain residential, commercial and industrial uses consistent with Central's Comprehensive Plan.

E. Black Hawk supports Central's desire to annex within the New Central City Growth Area to the extent described herein in order to establish a full service municipality so long as Central's annexations have no material effect on: (i) access into Black Hawk, which includes the State Highway 119 corridor as described herein or any alternate access that is developed by Black Hawk to I-70 or State Highway 119 as described herein; (ii) the New Black Hawk Growth Area as described herein; or (iii) the proposed annexation into Black Hawk as described herein.

F. Black Hawk desires to annex certain real property within the growth area for Black Hawk to the extent described herein ("**New Black Hawk Growth Area**") consistent with Black Hawk's Comprehensive Plan.

G. Central supports Black Hawk's desire to annex within the New Black Hawk Growth Area to the extent described herein, so long as Black Hawk's annexations have no material effect on: (i) the Central City Parkway; (ii) the New Central City Growth Area as described herein; or (iii) the proposed annexation into Central as described herein.

H. Central and Black Hawk both desire to achieve certainty regarding access to and from Lake Gulch Road as a municipal roadway for access in both Central and Black Hawk.

I. The County seeks to terminate its involvement in the 1999 IGA, and is a party to this Agreement only to effectuate the termination of the 1999 IGA.

J. In order to accomplish the development contemplated within the areas that Central and Black Hawk desire to annex, the District agrees to include these areas into the service area of the District and the District further agrees to serve these areas, subject to the terms and conditions of this Agreement.

K. Central and Black Hawk are authorized to enter into this Intergovernmental Agreement pursuant to the Local Government Land Use Control Act, C.R.S. §§ 29-20-101 through 107, as amended, (the "Act"), for the purpose of planning and regulating the development of the land described herein.

L. Central and Black Hawk are also authorized by the Act to adopt, after notice and public hearing, binding and enforceable development plans for areas within their jurisdictions.

M. Central and Black Hawk, after notice and public hearing, have approved mutually binding and enforceable development and master plans and/or comprehensive plans to the extent described in this Agreement; and will be revisiting their respective plans subsequent to the revision described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. **Termination of 1999 IGA.** The 1999 IGA is hereby terminated, and replaced with the provisions of this Agreement.

2. **New Central City Growth Area.** The Central City Growth Area is described in **Exhibit 1.A**, which is attached hereto and incorporated by this reference (the “**New Central City Growth Area**”). Central may annex, within its sole discretion and pursuant to the procedures required by the Municipal Annexation Act of 1965, as amended, any and all land located within the New Central City Growth Area, provided that Central's land uses within the New Central City Growth Area are and shall be consistent with Central's 2017 Comprehensive Plan, as amended. Black Hawk shall not annex any land within the New Central City Growth Area.

3. **New Black Hawk Growth Area.** The Black Hawk Growth Area is described in **Exhibit 1.B**, which is attached hereto and incorporated by this reference (the “**New Black Hawk**”).

Growth Area”). Black Hawk may annex within its sole discretion and pursuant to the procedures required by the Municipal Annexation Act of 1965, as amended, any and all land located within the New Black Hawk Growth Area, provided that Black Hawk's land uses within the New Black Hawk Growth Area are and shall be consistent with Black Hawk's 2020 Comprehensive Plan. Central shall not annex any land within the New Black Hawk Growth Area.

In addition, no noxious or objectionable land uses shall be permitted within the “Bulge” area, which area is part of the New Black Hawk Growth Area and is more specifically depicted on the map attached hereto and incorporated herein as **Exhibit 2**. Such prohibited land uses shall be generally consistent with Central Municipal Code Sec. 16-3-309 (uses prohibited in all zones), which include disposal of radioactive wastes, nuclear power generation, intensive agriculture, waste incinerator, and other highly impactful uses which typically require a discharge permit. Provided, however, that the restrictions applicable to the Bulge shall specifically not include non-intensive agricultural uses including but not limited to the husbandry of elk, buffalo, and bees, the growing of crops for use in producing beverage alcohol or for direct sale to consumers, and agritourism operations including but not limited to the operation of a pumpkin patch, which uses shall be allowed within the Bulge.

4. **District Service to the Central City and Black Hawk Growth Areas.** The District will provide sanitary sewer service to real property in the New Black Hawk Growth Area and the New Central City Growth Area, subject to an Extraterritorial Service Agreement or Infrastructure Construction Agreement to be established at the time of application for service, conditioned upon availability of plant capacity, plan and construction review and approval according to standards adopted for the entire District; construction of public infrastructure by the applicant, compliance with the District's Rules, Regulations and Resolutions in effect for the entire District at the time of the application; the District's ability to comply with all laws and regulations for providing service to the real property; and, an arrangement satisfactory to the District for third-party ownership and maintenance in accordance with the requirements of the District.

a. Service to the New Black Hawk Growth Area will be provided according to the Intergovernmental Service Agreement, as amended, between the District and Black Hawk dated October 26, 1994 (the "Black Hawk Service Agreement").

b. Service to the New Central City Growth Area will be provided in accordance with the terms and conditions set forth in that certain letter agreement between the District and Central City dated May 15, 1997 and approved by Central City on June 17, 1997, as amended (the "Central Service Agreement").

5. **Annexations Outside of City Growth Areas.** Central and Black Hawk shall not annex any land located outside of their respective growth areas as defined in **Exhibits 1, 1.A. and 1.B.**, during the term of this Agreement, unless agreed to in writing by Central and Black Hawk.

6. **Extraterritorial Service.**

a. Black Hawk shall not provide any police or fire service within the New Central City Growth Area, unless approved in writing by Central.

b. Central shall not provide any police or fire service within the Black Hawk Growth Area unless approved in writing by Black Hawk.

c. Black Hawk shall be responsible for fire protection service within and along the Highway 119 Corridor from Mile Marker 9.0 to the junction of Highway 119 and Highway 6 from Black Hawk. The Highway 119 Corridor shall be defined as that area outside of the corporate boundaries of Black Hawk that includes all commercial areas immediately accessed from Highway 119, any other type of structure, including residential and industrial structures, accessed by Highway 119, and all other incidents, such as traffic accidents, where the course of conduct causing the incident begins on Highway 119. In the event Central annexes property adjacent to Highway 119 within the New Central City Growth Area, Central shall be responsible for fire protection services for the property annexed, but Black Hawk shall at all times retain responsibility for fire protection services on Highway 119, including traffic accidents where the course of conduct begins on Highway 119. Any residential subdivision located within unincorporated Gilpin County as of the date of this Agreement, immediately accessed from Highway 119 and any individual commercial or residential structures not directly or immediately accessed from Highway 119 or a frontage road paralleling Highway 119 constructed during the term of the IGA, shall be excluded from the Highway 119 Corridor as herein defined. Black Hawk shall respond to requests for fire protection service along the Highway 119 Corridor, except when Black Hawk does not have personnel readily available to respond to such request. For purposes of this Agreement, Black Hawk agrees that it will have personnel readily available unless Black Hawk is providing fire protection services within the corporate limits of Black Hawk or providing mutual aid to another public entity at the time of the request.

7. Covenants Not to Interfere.

a. Black Hawk and Central covenant not to materially interfere with any annexation and/or development proposal which is planned to occur outside of their respective growth boundary, to the extent that such annexation or development proposed is consistent with and does not materially alter the terms of this Agreement or the applicable Comprehensive Plan.

b. To the extent Central annexes property which may require access to such property from State Highway 119, Central agrees that Black Hawk shall have the ability to enforce Black Hawk's access permitting requirements, or the requirements of the Colorado Department of Transportation's access permitting requirements, as either may be applicable, to assure that access along State Highway 119 remains unimpeded to Black Hawk. Moreover, in no event shall Central be authorized under this Agreement to annex any portion of State Highway 119 as part of the annexation of property adjacent to State Highway 119. In addition, Central shall assist in providing any property necessary for the widening of State Highway 119, including requiring the dedication of property for the widening of State Highway as a condition of annexation, and in no event shall Central object or otherwise impede plans for the widening of State Highway 119.

c. Black Hawk and Central covenant not to block or otherwise impair access to Lake Gulch Road within their respective jurisdictions, in order to assure that Lake Gulch Road is and shall be a municipal through roadway with unimpeded access for travel in both directions.

8. **Term and Termination.** This Agreement shall commence on the Effective Date and shall terminate on December 31, 2045. Prior to the termination of the Agreement, the Parties agree to meet and confer in good faith regarding the extension of this Agreement for one (1) additional 10-year term.

This Agreement shall be terminated before the end of the term only with the written consent of Central and Black Hawk, as expressed in a joint resolution passed by a majority vote of each City Council.

9. **Remedies.** To the extent permitted by law, each party hereto shall have the right to enforce each and every provision of this Agreement with the remedy of specific performance or any other remedy that exists at law or equity, including those remedies described in C.R.S. § 29-20-105(2)(g).

10. **General Provisions.**

a. **Notices.** All notices, demands, requests, or other communications required under this Agreement which are in writing shall be deemed to be received only if delivered personally or mailed by registered or certified mail, return-receipt requested, in a postage paid envelope, or sent by facsimile transmission, or sent by Federal Express addressed to the party at the address it has designated below or to such other address as any party may from time to time designate to the others by notice given pursuant to this Section 10.a.

City of Black Hawk

Stephen N. Cole, City Manager - SCole@cityofblackhawk.org or current City Manager
City of Black Hawk
P.O. Box 17
Black Hawk, Colorado 80422

With copy to:

Corey Y. Hoffmann – cyhoffmann@hpwclaw.com
Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, Colorado 80202

City of Central

Daniel R. Miera, City Manager - manager@cityofcentral.co or current City Manager
City of Central
P.O. Box 249
Central City, Colorado 80427

With Copy to:

Marcus A. McAskin – marcus@mcm-legal.com or current City Attorney
Michow Cox & McAskin LLP
6530 South Yosemite Street, Suite 200
Greenwood Village, CO 80111

Black Hawk – Central City Sanitation District

Lynn M. Hillary, District Administrator – lynn@bhccsd.com – or current Administrator
Black Hawk – Central City Sanitation District
P.O. Box 362
Black Hawk, Colorado 80422

With Copy to:

Kim J. Seter, Esq. - kseter@svwpc.com
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111

Any party may change the address for notice by notice to the other Parties or person or firm designated as specified herein. Any such notice, demand, request or other communication shall be deemed to have been given upon such personal delivery, facsimile transmission, or three (3) days following when the same is mailed or sent by regular mail, or one (1) day following when the same is sent by overnight delivery.

b. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. It is specifically agreed that insolvency or bankruptcy of any party shall not terminate this Agreement.

c. No Vested Rights. This Agreement shall not grant any status or right to any third party, specifically any owner of any property, to make any claim as a third-party beneficiary, or for deprivation of any right, violation of any vesting of rights, or inverse or other condemnation. This Agreement is for the benefit of the Parties only to resolve issues between the Parties.

d. Interpretation of Agreement. Because this Agreement is the result of mutual negotiation and drafting, in the event this Agreement is deemed to be ambiguous or vague, the Parties agree with the rule of construction that "ambiguities shall be construed against the drafter" shall not apply.

e. Choice of Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado.

f. Attorney Fees. Should any party employ attorneys to enforce against any other party hereto, any provisions hereof, or to protect its interest or recover damages from any other party hereto for breach of this Agreement, the non-prevailing party in any action or part thereof agrees to pay the prevailing party all reasonable costs, damages, and expenses, including attorney fees expended or incurred in connection therewith.

g. Invalidity of Terms. If any term, claim, clause or provision of this Agreement shall be judged to be invalid, the validity and effect of any other term, claim, clause or provision shall not be affected; and such invalid term, claim, clause or provision shall be deemed deleted from this Agreement in a manner to give effect to the remaining terms, claims, clauses or provisions.

h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which when taken together shall constitute one and the same Agreement.

i. Authority. Each of the undersigned represents as to itself that each has the authority to execute this Agreement.

j. Forum Selection. Any action brought to enforce the terms and provisions of this Agreement or alleging a breach hereof shall be brought only in the District Court in Gilpin County, Colorado.

k. Consents/Approvals. Wherever this Agreement calls for the consent or approval of any party hereto, with respect to which consent or approval under this Agreement is not self-executing, in order to be effective, such consent or approval shall be in the form of a Resolution duly enacted by the City Council or District Board as appropriate.

l. Compliance with Law. Nothing herein appearing shall be construed to excuse either city from compliance with all statutory procedures set forth in the Municipal Annexation Act of 1965, as amended.

m. Recordation of Agreement. The Parties shall record this Agreement in the real estate records of Gilpin County, Colorado.

n. Entire Agreement. This Agreement constitutes the entire understanding, contract, and agreement between the Parties as to the subject matters herein set forth, and this Agreement only supersedes prior written or oral understandings, agreements, and commitments, formal or informal, relative thereto between all the Parties hereto. No change, modification, alteration, or amendment to this Agreement shall be binding upon the Parties except as specifically expressed in writing, making reference to this Agreement and signed by all of the Parties hereto agreeing to be bound thereby.

o. Boundary Arbitration. It is mutually agreed and understood that the growth boundaries have not been surveyed and legal descriptions created to define the areas described in **Exhibits 1, 1.A, 1.B and 2** have not been prepared by a professional land surveyor. The areas defined have been created using Geographic Information System (GIS) data. If the boundary line(s) between growth areas are in dispute, it is mutually agreed to solicit professional impartial arbitration to determine the boundary line. The arbitrator shall be selected by mutual written consent of Central City and Black Hawk. It is mutually agreed that both Central and Black Hawk will accept the results of this arbitration, without appeal or a subsequent legal action in an effort to overturn the arbitrator's decision. The arbitrator's decision shall be based on 1) **Exhibits 1, 1.A, 1.B and 2** incorporated in this Agreement, 2) by the GIS lines shown in the Exhibit(s) in

relation to the aerial photography used at the time this Agreement was executed and 3) by the property lines that parallel or share the growth lines in question, at the time this Agreement was executed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) set forth below.

CITY OF CENTRAL, COLORADO

BY: 

Jeremy Fey, Mayor

ATTEST: 

Reba Bechtel, City Clerk

DATE: June 16, 2020

CITY OF BLACK HAWK, COLORADO

BY: _____
David D. Spellman, Mayor

ATTEST: _____
Melissa Greiner, City Clerk

DATE: _____

COUNTY OF GILPIN, COLORADO

BY: _____
Ron Engels, Chair

ATTEST: _____
Sharon Cate, Deputy to the Board of County Commissioners

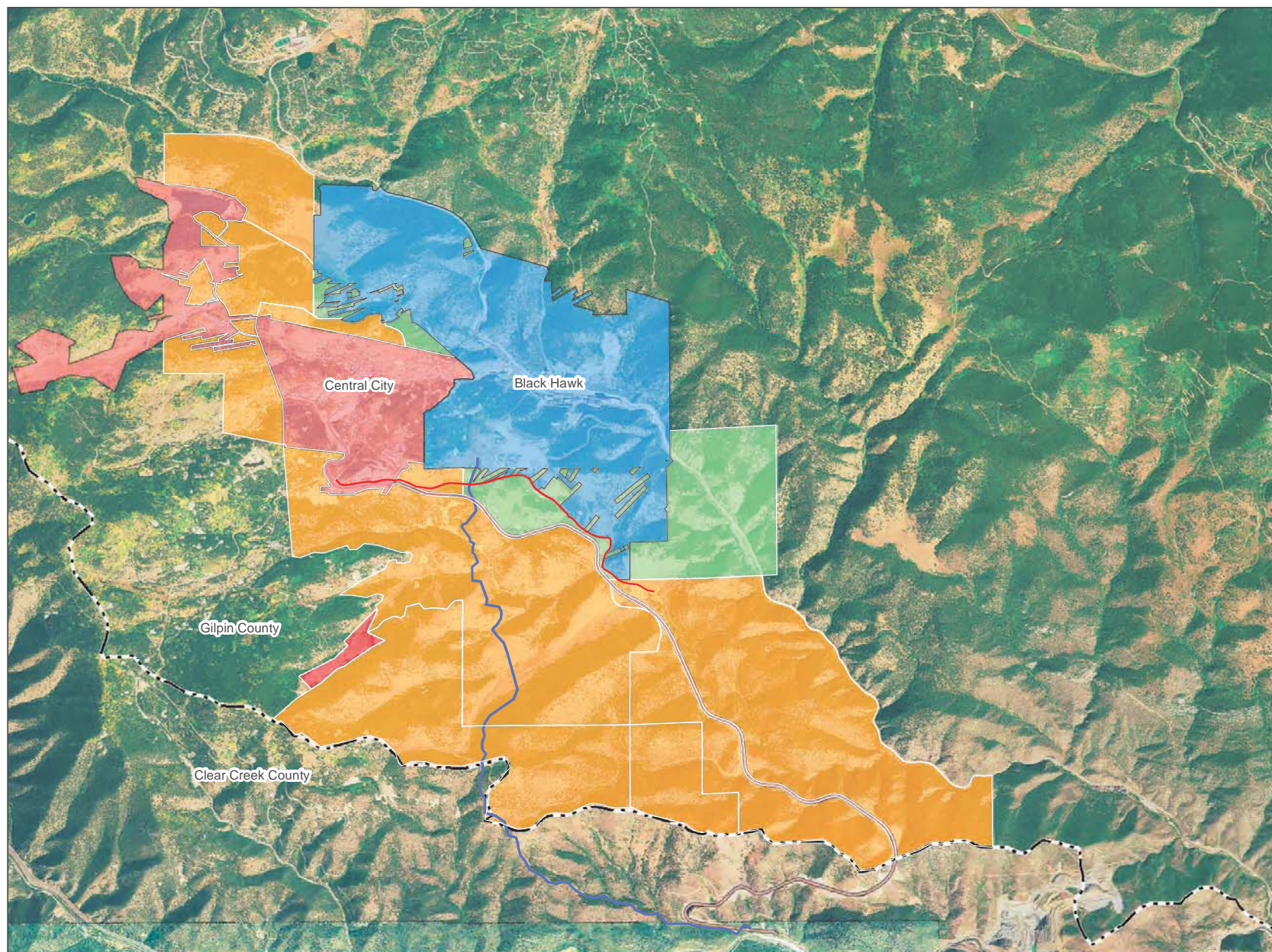
DATE: _____

BLACK HAWK-CENTRAL SANITATION DISTRICT (ONLY AS TO SECTION 4 OF THIS AGREEMENT)

BY: _____

ATTEST: _____

DATE: _____



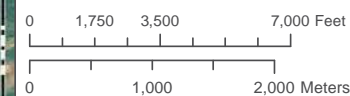
Amended and Restated
Intergovernmental
Agreement

Exhibit 1
Master Exhibit

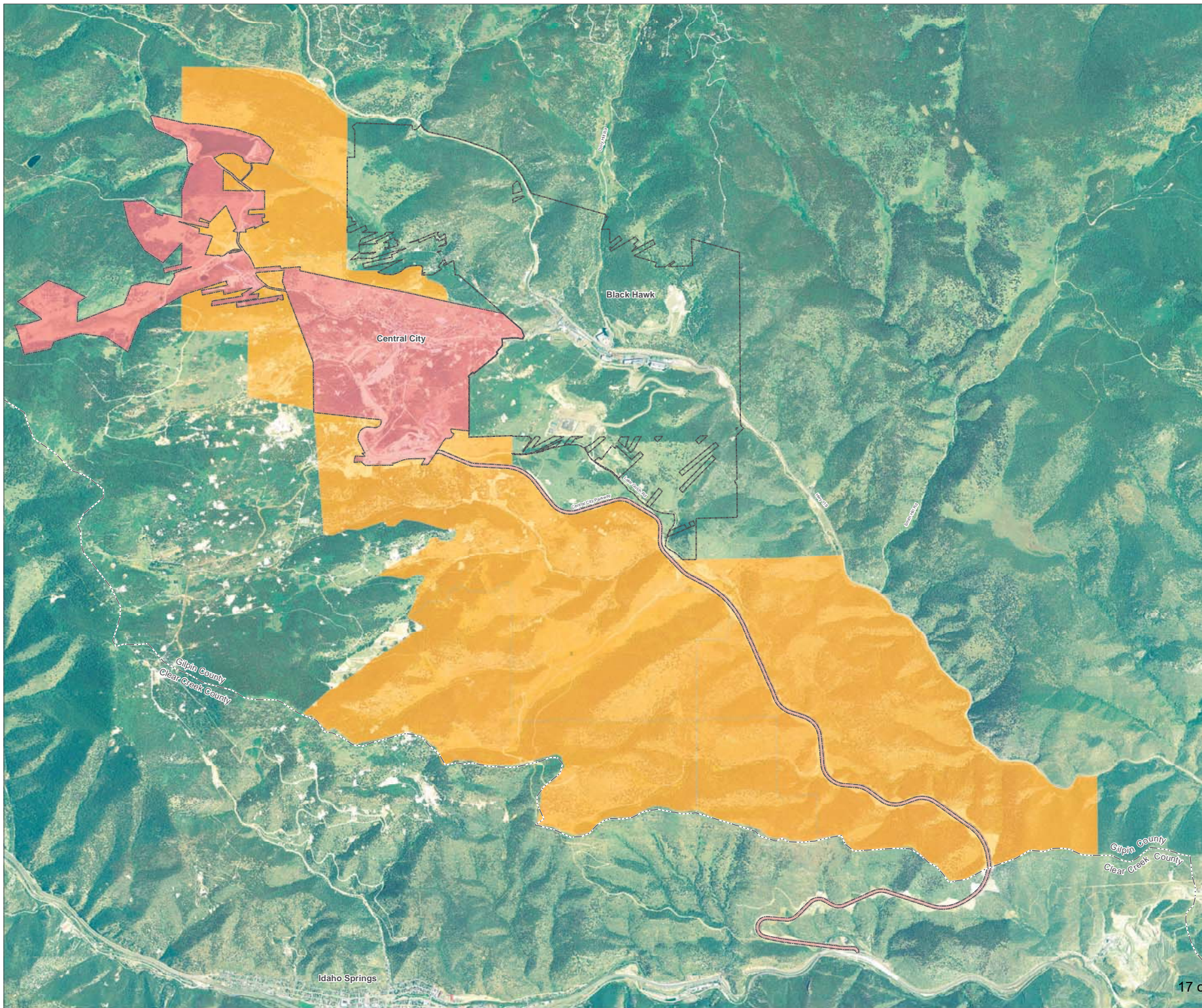
6-9-2020

Legend

- Lake Gulch Road
- Hidden Valley Pipeline Easement
- Central City Growth Area
- Black Hawk Growth Area
- Church Placer Excluded



Aerial Photograph Date: 2019
Date: 6-9-2020



Amended and Restated
Intergovernmental
Agreement

Exhibit 1.A
New Central City Growth Area

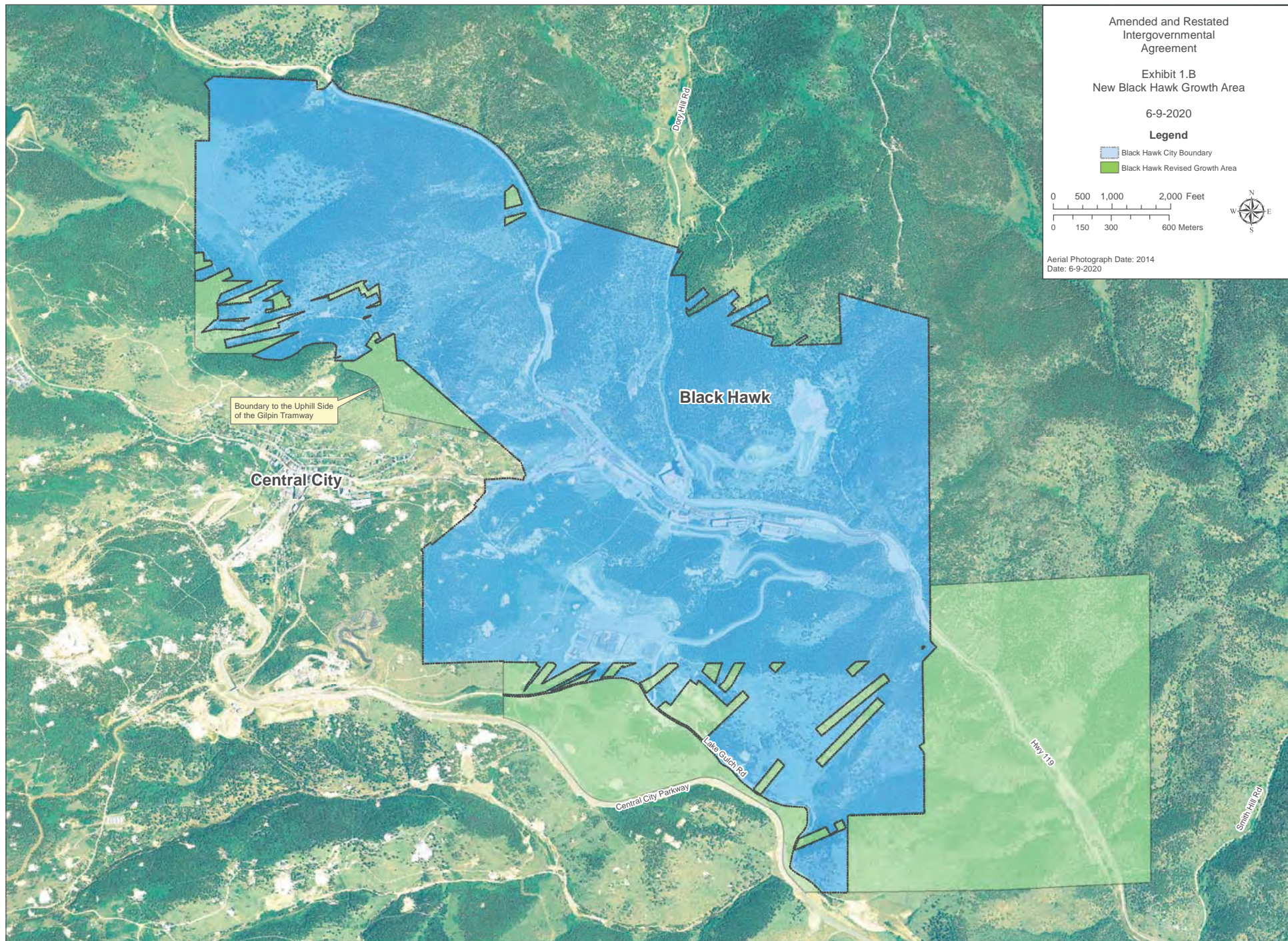
6-9-2020

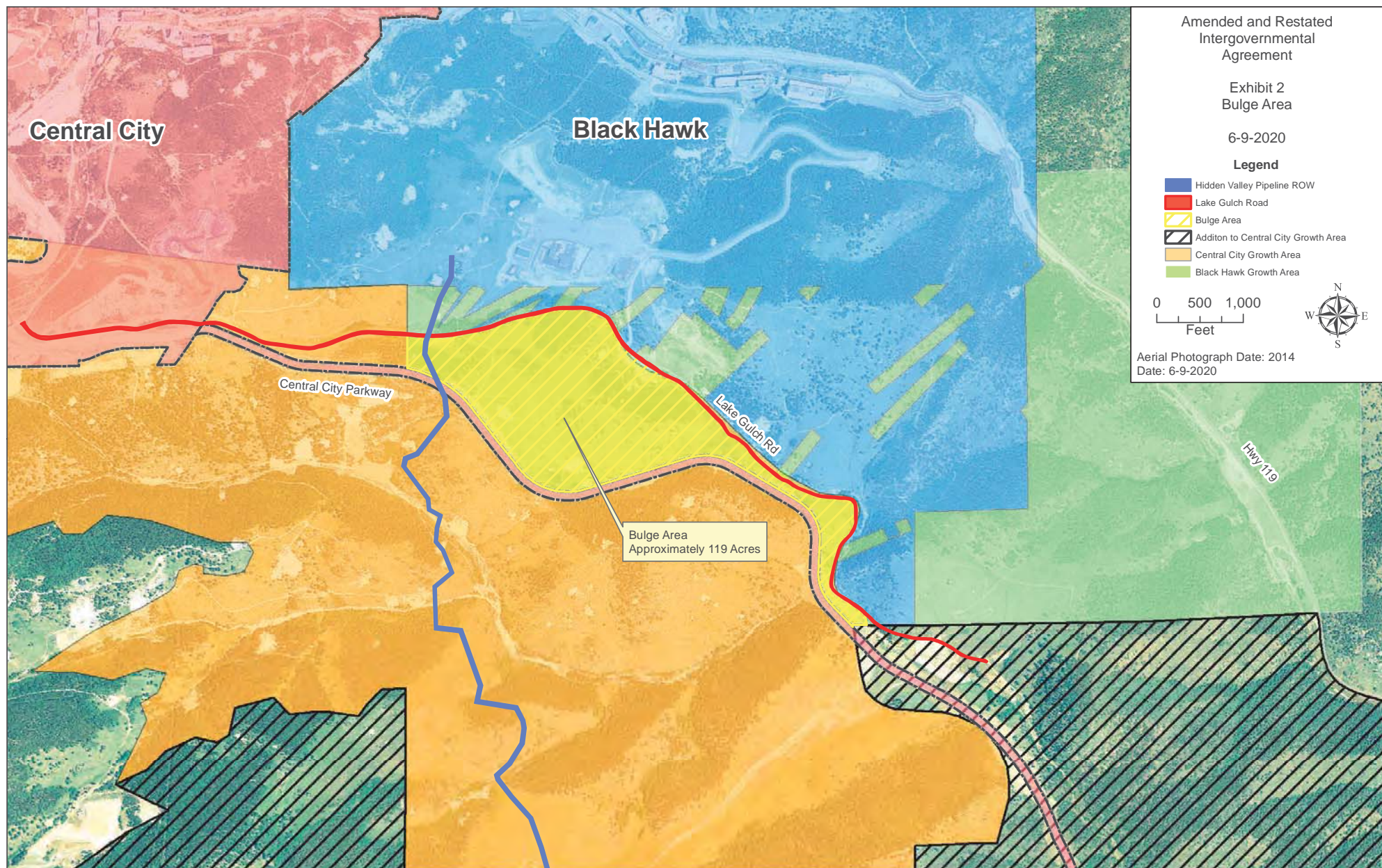
Legend

- Central City Boundary
- Central City Revised Growth Area

N
W E
S

0 500 1,000 2,000 Feet
0 300 600 Meters





RESOLUTION 52-2020
A RESOLUTION
APPROVING THE
SETTLEMENT
AGREEMENT AND
MUTUAL RELEASE
BETWEEN THE CITY OF
CENTRAL, THE CITY OF
BLACK HAWK, PROXIMO
DISTILLERS, LLC, AND
RSM PARTNERS, LLC

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

Resolution No. 52-2020

**TITLE: A RESOLUTION APPROVING THE SETTLEMENT AGREEMENT AND
MUTUAL RELEASE BETWEEN THE CITY OF CENTRAL, THE CITY OF
BLACK HAWK, PROXIMO DISTILLERS, LLC, AND RSM PARTNERS,
LLC**

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

Section 1. The City Council hereby approves the Settlement Agreement and Mutual
Release between the City of Central, the City of Black Hawk, Proximo Distillers, LLC, and RSM
Partners, LLC, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 17th day of June, 2020.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Settlement Agreement and Mutual Release

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

MOTION TO APPROVE Resolution 52-2020, A Resolution Approving the Settlement Agreement and Mutual Release Between the City of Bentral, the City of Black Hawk, Proximo Distillers, LLC, and RSM Partners, LLC

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

AGENDA DATE: June 17, 2020

STAFF PERSON RESPONSIBLE: Corey Y. Hoffmann, City Attorney

DOCUMENTS ATTACHED: Resolution 52-2020 and Settlement Agreement

RECORD: [X]Yes []No

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

SUBMITTED BY:



Corey Y. Hoffmann, City Attorney

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this “**Agreement**”) is entered into by and among the City of Central (“**Plaintiff**” or “**Central**”) and the City of Black Hawk (“**Black Hawk**”), Proximo Distillers, LLC (“**Proximo**”), and RSM Partners LLC (“**RSM**” and, together with Black Hawk and Proximo, each a “**Defendant**” and, collectively, “**Defendants**”). The above parties are hereinafter collectively referred to as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. WHEREAS, the Parties have been involved in a dispute involving, inter alia, Black Hawk’s March 25, 2020 approval of the annexation (the “**LGWR Annexation**”), initial zoning, and planned development approval supporting the development of the Lake Gulch Whiskey Resort (“**LGWR**”), a project proposed by Proximo on land for which Proximo is the contract buyer and RSM is the contract seller (the “**Dispute**”);

B. WHEREAS, Central filed a complaint against Defendants in Gilpin County District Court on March 25, 2020, Case No. 2020CV30009, which complaint Central amended in an April 6, 2020 filing with the Court, alleging breach of contract and breach of the covenant of good faith and fair dealing against Defendant Black Hawk and requesting declaratory judgment, preliminary injunction, and permanent injunction against all Defendants (the “**Lawsuit**”);

C. WHEREAS, Defendants filed Motions to Dismiss on May 12, 2020;

D. WHEREAS, the Parties wish to resolve and settle the Lawsuit and any disputes between them, including all claims that relate to the Dispute; and

E. WHEREAS, the Parties have agreed to terms of settlement after various negotiations and desire to memorialize the terms of their agreement;

NOW, THEREFORE, in consideration of the mutual agreements, promises, covenants, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The above recitals are true, are material to this Agreement and are incorporated herein by this reference.

2. **New IGA.** Central, Black Hawk, the Black Hawk-Central City Sanitation District (the “**District**”), and Gilpin County are all signatories to an Intergovernmental Agreement dated September 29, 1999 (the “**1999 IGA**”). As soon as practical following the execution of this Agreement, Central, Black Hawk, the

District, and Gilpin County shall approve and execute an agreement amending, restating and terminating the 1999 IGA and setting forth new terms of their agreement relating to the general subject matter of the 1999 IGA (the “**New IGA**”).

a. Terms and Finalization of New IGA. The New IGA shall be substantially in the form attached hereto as **Exhibit A**. Central and Black Hawk shall use all reasonable best efforts to complete the execution of the New IGA as required by their respective municipalities within one week of the effective date of this Settlement Agreement. As set forth and shown in **Exhibit A**, the Parties agree that substantive terms of the New IGA are as follows:

- i. Gilpin County will be a signatory to the New IGA solely for the limited purpose of terminating the 1999 IGA. Consistent with its previously-communicated request, Gilpin County will not obtain any rights or obligations under the New IGA, and all of its rights and obligations under the 1999 IGA shall be terminated upon execution of the New IGA.
- ii. Central and Black Hawk agree that the District shall remain a party under the New IGA and that the District shall execute the New IGA.
- iii. The growth areas designated for the purpose of planning for and regulating the future annexation and development of unincorporated areas into the respective cities under the New IGA will be as depicted on the map attached hereto and incorporated herein as **Exhibit 1 (including Exhibits 1.A and 1.B)** to the New IGA (collectively, the “**New Growth Areas**”).
- iv. The term of the New IGA shall be from the date of execution of the New IGA until December 31, 2045.
- v. The Proland Development Plan and the Gold Mountain Development Plan, each plan a component of the 1999 IGA, shall not be included or referenced in the New IGA and shall be terminated as of the effective date of the New IGA.
- vi. Land uses within the New Growth Areas reflected as the Central Growth Area on **Exhibit 1.A** to the New IGA (the “**New Central Growth Area**”) shall be consistent with Central’s 2017 Comprehensive Plan, as amended.
- vii. Land uses within the New Growth Areas reflected as the Black Hawk Growth Area on **Exhibit 1.B** to the New IGA (the “**New Black Hawk Growth Area**”) shall be consistent with Black Hawk’s 2020 Comprehensive Plan, as amended.

viii. No noxious or objectionable land uses shall be permitted within the “Bulge” area, which area is part of the New Black Hawk Growth Area and is more specifically depicted on the map attached hereto and incorporated herein as **Exhibit 2** to the New IGA (the “**Bulge**”). Such prohibited land uses shall be generally consistent with Central Municipal Code Sec. 16-3-309 (uses prohibited in all zones), which include disposal of radioactive wastes, nuclear power generation, intensive agriculture, waste incinerator, and other highly impactful uses which typically require a discharge permit. Provided, however, that the restrictions applicable to the Bulge shall also be consistent with the provisions of Section 8, below.

b. Relationship of Remainder of Agreement to New IGA. Notwithstanding anything set forth herein to the contrary, the remaining provisions of this Agreement shall be independent of the New IGA, and such provisions shall be immediately enforceable without regard to the status of approval of the New IGA. Without limitation, the Parties are sophisticated and have entered into this Agreement at arms’ length, satisfied that they have adequate knowledge to understand the benefits and obligations imposed pursuant to this Agreement. They recognize and agree that, even if approval of the New IGA is delayed or if negotiations regarding the New IGA break down and the 1999 IGA remains in effect, certain provisions of this Agreement immediately and irrevocably limit Central and/or Black Hawk’s right to enforce certain provision of the 1999 IGA. Additionally, and without limitation, and particularly given that Proximo will not be a party to the New IGA and will have no control over whether the New IGA is approved, Central and Black Hawk agree that any rights Proximo obtains under this Agreement, including, without limitation, the rights to annex property in the Bulge into Black Hawk and to construct additional phases of development related to the LGWR without interference from Central, and the obligations of Central pursuant to Section 14(e), shall accrue to Proximo immediately upon execution of this Agreement and shall be maintained, unabridged, without regard to Central and Black Hawk’s failure to approve the New IGA, and irrespective of such rights conflicting with the terms of the 1999 IGA.

3. **Payment.** No later than three (3) business days after mutual execution of this Agreement, Proximo will pay Central one hundred and forty thousand (\$140,000.00) U.S. dollars in good funds as a one-time only payment to offset Central’s expenses associated with additional traffic on the Central City Parkway and Central’s rights-of-way, monitoring and enforcing weight limits on the Central City Parkway, additional public safety expenses incurred by Central, and any other impacts on Central, of any kind or nature whatsoever, caused by the LGWR or other property within the Bulge. The Parties agree and acknowledge that this is a one-time only payment in final settlement of the Dispute and the Lawsuit, and nothing in this Agreement shall be construed as obligating Proximo or any future owner or operator

of the LGWR or other property within the Bulge to make any ongoing or future payment to Central to offset future expenses related to the impacts of the LGWR or other property within the Bulge. Payment may be made by delivery of funds to Central's Finance Director at 141 Nevada Street, Central City, CO 80427 or such other address as Central may advise Proximo in writing.

4. **Development Restrictions in the Bulge.** Any Proximo or RSM property within the Bulge shall be burdened by perpetual restrictive covenants that run with the land, which Proximo shall record prior to any application to Black Hawk for Site Development Review affecting such property, and which RSM shall record within ninety (90) days of execution of this Agreement in the event that RSM continues to own such property on such date, in each case in the Records of Gilpin County. The restrictive covenants shall apply only to property within the Bulge and shall be provided to Central prior to recordation for the sole purpose of allowing Central to confirm that the restrictive covenants are consistent with the terms of this Section 4. The restrictive covenants shall effectuate the following development restrictions:

- a. The height of any and all development shall be no more than what is currently permitted in the approval of the LGWR Planned Unit Development (“**PUD**”).
- b. No freestanding sign or billboard may exceed sixteen (16) feet in height or one hundred (100) square feet in sign area without the advance written approval of Central.
- c. No electronic message centers shall be allowed.
- d. Any Comprehensive Sign Plan (“**CSP**”) application shall be referred to Central's Community Development Director for review and input at least sixty (60) days prior to the date on which the Black Hawk City Council is scheduled to approve, conditionally approve, or deny the CSP. Black Hawk City Council will consider any input provided by Central's Community Development Director and make good faith efforts to ensure that any CSP addresses or otherwise accounts for such input.
- e. No freestanding sign, billboard, or new “**Building**” as currently defined in Central's Municipal Code (to wit, “**BUILDING** means any permanent structure that provides a walled and roofed enclosure, that is designed for the shelter or enclosure of persons, animals, chattels or property”) shall be constructed within one hundred and fifty (150) feet of the centerline of the Central City Parkway.
- f. All lighting, including lighting used for any path or drive illumination, will be downcast and dark skies-compliant, which shall be deemed only to mean that any light not installed under a building canopy, including

but not limited to any landscaping, wayfinding or pedestrian walkway lighting, shall be within a fully shielded fixture and shall not exceed 1,000 lumens, so that in no case will light emitted from the light source be projected directly from the source into the sky. Notwithstanding the foregoing, the lighting of a building facade for architectural, aesthetic, or decorative purposes is permitted provided that upward aimed building facade lighting shall not exceed nine hundred lumens and shall be fully shielded and confined from projecting into the sky by eaves, roofs, or overhangs, and mounted as flush to a wall as possible.

5. **Signage Restrictions on State Highway 119.** Central shall refer any Sign Design Program application it receives related to any property adjacent to State Highway 119 to Black Hawk's Community Development Director for review and input at least thirty (30) days prior to the date on which Central's Planning Commission is scheduled to approve, conditionally approve, or deny the Sign Design Program. Central's Planning Commission will consider any input provided by Black Hawk's Community Development Director and make good faith efforts to ensure that any Sign Design Program addresses or otherwise accounts for such input.

6. **Notification of the GCSO for Special Events.** Pursuant to the PUD approval, special events are categorized as "Events, Large (greater than 250 attendees)" and are allowed subject to review of a Special Event Permit by Black Hawk. Proximo shall notify the Gilpin County Sheriff's Office ("GCSO") upon application to Black Hawk for any Large Event Special Event Permit.

7. **Advertising on Proximo's Buildings.** Nothing in this Agreement, including, without limitation, the provisions of Section 4, above, shall be construed as providing Central any authority to review or limit any signage or other form of advertising or copy affixed to or painted on any Building constructed as part of the PUD or within the Bulge except to the extent the advertising or copy is part of a CSP, in which case it will be referred to Central for review pursuant to Section 4.d above.

8. **Limitation of Prohibition on Noxious or Objectionable Uses Within the Bulge.** The noxious or objectionable uses prohibited within the Bulge under the New IGA shall specifically not include non-intensive agricultural uses including but not limited to the husbandry of elk, buffalo, and bees, the growing of crops for use in producing beverage alcohol or for direct sale to consumers, and agritourism operations including but not limited to the operation of a pumpkin patch. Such uses shall be allowed within the Bulge.

9. **Lake Gulch Road.** Black Hawk, Central, and Proximo agree as follows:

- a. Upon execution of this Agreement, Central shall be responsible for the maintenance, future improvement, and control of Lake Gulch Road from the current municipal boundary of Central proximate to Exit 7 of the Central City Parkway to the current boundary of the City of Black Hawk as modified by the LGWR Annexation, and Black Hawk shall be responsible for maintenance, future improvement, and control of that portion of Lake Gulch Road within the boundaries of Black Hawk consistent with the LGWR Annexation;
- b. Within one year of execution of this Agreement, Proximo shall petition Central for annexation of the lands underlying the current twenty-two (22)-foot-wide traveled way of Lake Gulch Road and, where Proximo owns or controls such lands, Proximo will petition for annexation of a fifty (50)-foot-wide swath generally centered on the centerline of Lake Gulch Road to provide for a future right-of-way for Lake Gulch Road. The petition will include lands only within the area generally described in **Exhibit B**, attached hereto and incorporated herein by this reference (“**Lake Gulch Road Annexation Map**”). Upon annexation and at Central’s request, Proximo agrees that it shall further cooperate in dedicating the aforementioned lands, to the extent that Proximo may legally do so, to Central, by Special Warranty Deed, for public right-of-way purposes. The boundaries of the lands subject to the petition for annexation will be finalized and agreed upon by Central and Proximo within six (6) months following the execution of this Agreement;
- c. Within thirty (30) days of execution of this Agreement, Black Hawk and Central shall seek a Quit Claim Deed from Gilpin County of the respective Cities’ portions of Lake Gulch Road identified set forth herein; and
- d. Black Hawk and Central agree that any development within their respective jurisdictions and any development or access required for properties located in unincorporated Gilpin County shall be able to utilize Lake Gulch Road as a municipal through roadway with unimpeded access for travel in both directions.

10. **Limitation on Construction/Delivery Truck Traffic on Central City Parkway.** Proximo shall prevent its contractors, deliverers, and vendors (its “**Vendors**”) from using the Central City Parkway for any truck having a gross vehicle weight rating of 19,501 pounds or greater used to transport construction vehicles or

materials and/or deliveries to or from the LGWR or other development within the Bulge (“**Commercial Traffic**”), unless the Central City Parkway is the only open route. The foregoing limitation shall not apply to common carriers, such as FedEx and UPS, or any Vendors not under contractual control of Proximo, it being understood that any and all subcontractors of Proximo’s general contractor engaged in the construction of the LGWR shall be deemed to be under the contractual control of Proximo. Proximo shall include in each relevant Vendor contract a provision substantially in the form attached hereto and incorporated herein as Exhibit C, as such form may be modified with Central’s approval, which approval shall not be unreasonably withheld, conditioned, or delayed. A violation of this Section 10 shall not be deemed a breach of this Agreement and instead shall subject Proximo and its Vendor, jointly and severally, to paying liquidated damages to Central in the amount of seven hundred and fifty (\$750.00) U.S. dollars per violation along with any reasonable attorney fees and costs incurred in enforcing this provision. The prevailing party in any action to enforce the terms of this Section 10 shall be entitled to reimbursement of its reasonable attorney fees and costs by the non-prevailing party. To the extent the prevailing party is awarded less than all of the relief requested, the prevailing party shall be entitled to reimbursement of its reasonable attorney fees and costs by the non-prevailing party in proportion to the percentage of the relief requested that is so awarded.

11. **Improvements to Lake Gulch Road in Proximity to Central City Parkway.** Black Hawk and Proximo will work collaboratively with Central to ensure that there are no impacts to the structural integrity of the Central City Parkway related to planned improvements to Lake Gulch Road (“**Future LGR Improvements**”) associated with the LGWR or other development within the Bulge. Black Hawk and Proximo agree to provide Central with copies of preliminary and final engineering plans associated with the Future LGR Improvements for review and comment. Black Hawk and Proximo will use commercially reasonable efforts to ensure that any concerns or problems identified by Central are addressed. Each Party will bear its own costs in undertaking any necessary engineering review.

12. **Extraterritorial Water Service by Black Hawk.** Black Hawk and Central agree to use reasonable best efforts to enter into an agreement whereby Black Hawk agrees to provide extraterritorial water service to properties located in Central upon annexation of such properties into Central under the New IGA (the “Water Service IGA”). The terms and conditions of extraterritorial tap fees and water service fees/rates will be capped, and Black Hawk and Central agree that the terms and conditions of such an agreement shall include, without limitation and by way of example, the impact of “return flows” on the ability to provide such extraterritorial water service, and the possibility of Black Hawk obtaining storage capacity from Central. Nothing in this Agreement shall include an obligation of Black Hawk or Central to construct the necessary infrastructure to connect to the Black Hawk water

system. The boundaries of property to be extraterritorially served by Black Hawk shall be agreed to by Black Hawk and Central in the Water Service IGA.

13. **Additional Terms.**

- a. Central consents to Black Hawk constructing a trailhead on the Briggs Lot/Colvin Tract, subject to applicable Central Land Development Code and Municipal Code requirements.
- b. Within thirty (30) days of execution of this Agreement, Black Hawk and Central agree to the following land exchange, as depicted in **Exhibit D**, attached hereto and incorporated herein by this reference:
 - i. Black Hawk shall convey to Central the following property: the Golden Gate Mineral Survey #12681, the Queen of the West Mineral Survey #425, the Road or Elephant Mineral Survey #296, the Somes Mineral Survey #385A, the AMS Mineral Survey #4556 (reserving access within said AMS Mineral Survey #4556 allowing Black Hawk access to other Black Hawk property at the top of Bates Hill), for a total acreage of approximately 4.13 acres; and
 - ii. Central shall simultaneously convey to Black Hawk the following property: that portion of the Maryland Second Discovery Mineral Survey #384A within Black Hawk and the Virginia Mining Claim Mineral Survey #467 for a total acreage of approximately 3.65 acres.
- c. Black Hawk and Central agree that the properties subject to the land exchange herein may only be used for open space and recreational trails.
- d. Black Hawk further agrees that it shall not erect any type of barrier to Black Hawk's trail system, and that Central shall be authorized, at Central's expense, to connect and have access to Black Hawk's trail system, generally known as the Maryland Mountain/Quartz Valley Trail System (including the Gilpin County Tramway), which shall authorize the construction by Central of a trailhead within Central's corporate boundaries.

- e. Central shall not interfere with the construction of the Bates Hill leg of the Black Hawk trail system commencing at the Briggs Lot/Colvin Tract through portions of Central as more particularly depicted on **Exhibit E**, attached hereto and incorporated herein by this reference, at Black Hawk's sole expense and subject to applicable Central Land Development Code and Municipal Code requirements, and the parties agree to the connection of the Black Hawk and Central trail systems to create an inter-city trail system.
- f. Black Hawk and Central shall consent to and agree to reasonably support without direct financial contribution each other's future grant applications for the design and construction of trail systems, including drafting letters of support as may be required by those agencies administering such grants.
- g. Black Hawk and Central shall consent to and agree to reasonably support without direct financial contribution the future construction of a sanitary sewer line by the water and sewer district down/through Russell Gulch to serve future development.

14. **Covenants Not to Interfere.** Effective immediately, and notwithstanding the status of approval of the New IGA:

- a. Black Hawk and Central shall not object to, challenge (by litigation or otherwise), or otherwise materially interfere with any annexation and/or development proposal which is planned to occur within the other Party's respective New Growth Area boundary as shown on **Exhibit 1** to the New IGA, unless such annexation or development proposal is materially inconsistent with the New IGA, the respective City's comprehensive development plan, or applicable provisions of this Agreement.
- b. Black Hawk and Central shall not annex any land located outside of their respective New Growth Area boundaries as shown on **Exhibit 1** to the New IGA without the prior written consent of the other Party.
- c. To the extent Central annexes property which may require access to such property from State Highway 119, Central agrees that Black Hawk shall have the ability to enforce Black Hawk's access permitting requirements, or the requirements of the Colorado Department of Transportation's access permitting requirements, as either may be applicable, to assure that access along State Highway 119 remains

unimpeded to Black Hawk. Moreover, Central shall not annex any portion of State Highway 119 as part of the annexation of property adjacent to State Highway 119. In addition, Central shall assist in providing any property necessary for the widening of State Highway 119, including requiring the dedication of property to Black Hawk for the widening of State Highway 119 as a condition of annexation, at no cost to Black Hawk, and in no event shall Central object or otherwise impede plans for the widening of State Highway 119.

- d. Central hereby agrees and covenants not to sue, challenge, or appeal any development-related approval or permit sought by or issued to Proximo in connection with Proximo's development of the LGWR or property within the Bulge, in any way or in any forum, whether asserted pursuant to C.R.C.P. 106(a)(4) or on any other basis, or take any other action to interfere with Proximo's development plans for the LGWR or the Bulge (a "**Development Approval Challenge**") to the extent such development approval request does not materially breach the terms of this Agreement. Central also shall not support, finance, encourage, or cooperate with any Development Approval Challenge brought by any other party, except to the extent specifically required by law, such as to comply with a third-party subpoena. While this provision is intended to bar Central from interfering with Proximo's development plans, it shall not be construed to prevent Central from seeking to enforce its specific rights set forth herein by a breach of contract action or specific performance/injunctive action.

15. **Mutual Releases.** In consideration of the agreements and conditions of this Agreement, Central and its affiliates, and the agents, employees, representatives, successors, predecessors, tenants, and assigns of each of the foregoing, release, discharge, and forever hold harmless Defendants and their affiliates, and the respective agents, employees, representatives, successors, predecessors, tenants, and assigns of each of the foregoing, from claims, demands, rights of action, damages, liabilities, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, which were or could have been asserted in the Lawsuit or in any lawsuit pertaining to the Dispute. Defendants and their affiliates and the respective agents, employees, representatives, successors, predecessors, tenants, and assigns of each of the foregoing, release, discharge, and forever hold harmless Central and its affiliates, and the agents, employees, representatives, successors, predecessors, tenants, and assigns of each of the foregoing, from claims, demands, rights of action, damages, liabilities, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, which were or could have been asserted in a lawsuit pertaining to the Dispute.

16. **Event of Default.** In the event of any breach of any provision of this Agreement, the non-breaching Parties shall provide written notice to the breaching Party of the alleged breach, and the breaching Party shall have thirty (30) days from the effective date of such written notice within which to cure the alleged breach. In the event the alleged breach cannot reasonably be cured within such thirty (30) day period, the breaching Party shall have such additional time as may be reasonably necessary to complete the cure, provided that the cure is commenced within such thirty (30) day period and in no event shall any Party be afforded more than ninety (90) days to cure any Event of Default, and the breaching Party uses reasonably diligent efforts to complete the cure. Failure to cure the breach within the applicable cure period shall be considered an “**Event of Default**”.

17. **Remedies.** Upon the occurrence of an Event of Default, the non-breaching Parties shall have the right to bring an action against the breaching Party for damages and/or declaratory and/or specific performance and/or injunctive relief. Black Hawk and Central specifically agree that the legislative determination to approve this Settlement Agreement and Mutual Release includes the legislative determination to approve the New IGA in substantially the form attached hereto as **Exhibit A**. Therefore, because Black Hawk and Central specifically agree that they have exercised their legislative authority to approve the New IGA by approving this Settlement Agreement and Mutual Release, Black Hawk and Central consent to the availability of specific performance as a remedy to compel performance of the obligation to approve the New IGA because it is not compelling the exercise of either Party’s legislative authority, said authority already having been exercised by the approval of this Settlement Agreement and Mutual Release.

18. **Notices.** Any notice to be made or given pursuant to this Agreement shall be made in writing, and shall be sent by nationally-recognized overnight carrier (such as Federal Express), for next-day delivery, to the applicable Party at the addresses that follow, with copy by email as specified:

If to Central:	City of Central Attn: City Manager 141 Nevada Street P.O. Box 249 Central City, CO 80427 Email: manager@cityofcentral.co
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With a copy to:	Michow Cox & McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, CO 80111 Attn: Marcus McAskin
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Email: marcus@mcm-legal.com

If to Black Hawk:

City of Black Hawk
Attn: City Manager
201 Selak Street
Black Hawk, CO 80422
email: SCole@cityofblackhawk.org

With a copy to:

Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202
Attention: Corey Y. Hoffmann, Esq.
email: cyh@hpwclaw.com

If to Proximo:

Proximo Distillers, LLC
3 Second Street, Suite 1101
Jersey City, NJ 07302
Attention: Dean Mades
email: dmades@proximospirits.com

With a copy to:

Frascona, Joiner, Goodman and Greenstein, P.C.
4750 Table Mesa Drive
Boulder, CO 80305
Attention: Harmon Zuckerman, Esq.
email: harmon@frascona.com

If to RSM:

Sean W. Doyle, Esq., #30004
950 S. Cherry Street, #1220
Denver, CO 80246
email: sdoyle@spaethanddoyle.com

With a copy to:

RSM Partners LLC
1001 Oak Knoll Place
Bryan, TX 77802
Attention: Carl Deddens, President
email: cdeddens@maplewoodadvisors.com

Such notices shall be deemed effective two (2) days after deposited with such nationally recognized carrier. Any Party may change the notice information that shall apply for such Party by delivery of a notice to all other Parties in accordance with the then-applicable notice information.

19. **Stipulation for Dismissal.** Within three (3) business days of execution of this Agreement, the Parties shall cooperate to file a stipulation for dismissal of the Lawsuit with prejudice, in the form attached to this Agreement as **Exhibit F.** Central shall also, within three (3) business days of execution of this Agreement, file with the Court an unopposed motion for release of lis pendens, in the form attached to this Agreement as **Exhibit G.**

20. **Agreement Voluntary.** The Parties agree and expressly state that they have entered into this Agreement voluntarily and without compulsion.

21. **Authority.** Prior to execution, the City Council of Central and the City Council of Black Hawk shall approve this Agreement at a public meeting. Any individual signing this Agreement on behalf of an entity or organization represents and warrants that such individual has the authority to do so, and that upon the execution of this Agreement by such individual (and the execution by the other Parties), this Agreement shall be binding upon and enforceable against such entity or organization.

22. **Attorneys' Fees and Costs.** The Parties shall bear their own respective attorneys' fees and costs with regard to the preparation, review, and execution of this Agreement and as incurred in the Dispute and the Lawsuit.

23. **Governing Law.** This Agreement will be interpreted according to the laws of the State of Colorado.

24. **Construction of the Agreement.** In the event that this Agreement must be construed or interpreted, it shall not be construed or interpreted against any Party as the author.

25. **Execution in Counterparts.** This Agreement may be executed in counterparts, including signatures by facsimile or other means of electronic signature and transmission, and each counterpart shall constitute an original.

26. **Additional Cooperation.** The Parties agree to take all other actions and execute such other documents as may be necessary to effectuate this Agreement.

27. **Amendments.** This Agreement may only be amended in a writing signed by all Parties.

28. **Severance.** In the event any provision of this Agreement is found to be unenforceable, it shall be modified to the extent necessary to make it enforceable or

be severed, and the remainder of this Agreement shall remain in full force and effect to the fullest extent provided by law.

29. **Complete Agreement.** This Agreement is the complete understanding and agreement of the Parties and supersedes, merges, and voids any and all prior agreements or understandings, written or verbal. Anything that does not plainly and expressly appear in writing in the text of this Agreement has not been agreed upon.

[signature pages to follow]

The Parties have executed this Settlement Agreement and Mutual Release on the dates noted below.

CITY OF CENTRAL




Jeremy Fey, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF GILPIN)

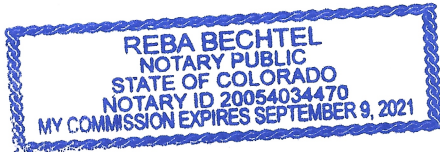
The foregoing instrument was acknowledged before me this 16th day of June, 2020
by Jeremy Fey.

Witness my hand and official seal.



Notary Public

My commission expires: 9/9/2021.



CITY OF BLACK HAWK

David D. Spellman, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of June, 2020
by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____.

PROXIMO DISTILLERS, LLC

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of June, 2020
by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____.

RSM PARTNERS LLC

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of June, 2020
by _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____.

APPROVED AS TO FORM

Marcus McAskin
Attorney for Plaintiff City of Central

Corey Y. Hoffmann
Attorney for Defendant City of Black Hawk

Harmon Zuckerman
Attorney for Defendants Proximo Distillers, LLC

Bill Kyriagis
Attorney for Defendants Proximo Distillers, LLC

Sean Doyle
Attorney for Defendants RSM Partners LLC

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the City of Central, Colorado ("Central"), the City of Black Hawk, Colorado ("Black Hawk"), the County of Gilpin, Colorado (the "County") (only as to Section 1), and the Black Hawk-Central City Sanitation District (the "District"), with the District applicable only as to Section 4 of this Agreement (collectively, the "Parties"), and shall be effective as of the date of mutual execution by the Parties ("Effective Date").

RECITALS:

A. The Parties entered into that certain Intergovernmental Agreement dated September 29, 1999 (the "1999 IGA") to identify growth areas for Central, Black Hawk, and to subject certain properties located in unincorporated Gilpin County to the joint planning provisions of the 1999 IGA.

B. The Parties acknowledge and agree that this Agreement shall supersede and replace in its entirety, the 1999 IGA. The Parties further agree that the 1999 IGA shall be terminated as of the Effective Date of this Agreement.

C. Central and Black Hawk desire to establish growth areas for their respective cities as described herein, and generally depicted on **Exhibit 1**, attached hereto and incorporated herein by this reference (the "**Master Exhibit**"), for the purpose of planning for and regulating the use of the land within these described growth areas, so as to provide planned and orderly use of the land which includes, but is not limited to, the establishment of roads, phased development of services and facilities, regulating the location of activities and developments which may result in significant changes in population density and protecting the environment in a manner consistent with constitutional rights.

D. Central desires to annex certain real property within the growth area for Central to the extent described herein ("**New Central City Growth Area**") for the purpose of providing a full-service municipality, including but not limited to, certain residential, commercial and industrial uses consistent with Central's Comprehensive Plan.

E. Black Hawk supports Central's desire to annex within the New Central City Growth Area to the extent described herein in order to establish a full service municipality so long as Central's annexations have no material effect on: (i) access into Black Hawk, which includes the State Highway 119 corridor as described herein or any alternate access that is developed by Black Hawk to I-70 or State Highway 119 as described herein; (ii) the New Black Hawk Growth Area as described herein; or (iii) the proposed annexation into Black Hawk as described herein.

F. Black Hawk desires to annex certain real property within the growth area for Black Hawk to the extent described herein ("**New Black Hawk Growth Area**") consistent with Black Hawk's Comprehensive Plan.

G. Central supports Black Hawk's desire to annex within the New Black Hawk Growth Area to the extent described herein, so long as Black Hawk's annexations have no material effect on: (i) the Central City Parkway; (ii) the New Central City Growth Area as described herein; or (iii) the proposed annexation into Central as described herein.

H. Central and Black Hawk both desire to achieve certainty regarding access to and from Lake Gulch Road as a municipal roadway for access in both Central and Black Hawk.

I. The County seeks to terminate its involvement in the 1999 IGA, and is a party to this Agreement only to effectuate the termination of the 1999 IGA.

J. In order to accomplish the development contemplated within the areas that Central and Black Hawk desire to annex, the District agrees to include these areas into the service area of the District and the District further agrees to serve these areas, subject to the terms and conditions of this Agreement.

K. Central and Black Hawk are authorized to enter into this Intergovernmental Agreement pursuant to the Local Government Land Use Control Act, C.R.S. §§ 29-20-101 through 107, as amended, (the "Act"), for the purpose of planning and regulating the development of the land described herein.

L. Central and Black Hawk are also authorized by the Act to adopt, after notice and public hearing, binding and enforceable development plans for areas within their jurisdictions.

M. Central and Black Hawk, after notice and public hearing, have approved mutually binding and enforceable development and master plans and/or comprehensive plans to the extent described in this Agreement; and will be revisiting their respective plans subsequent to the revision described in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. **Termination of 1999 IGA.** The 1999 IGA is hereby terminated, and replaced with the provisions of this Agreement.

2. **New Central City Growth Area.** The Central City Growth Area is described in **Exhibit 1.A**, which is attached hereto and incorporated by this reference (the “**New Central City Growth Area**”). Central may annex, within its sole discretion and pursuant to the procedures required by the Municipal Annexation Act of 1965, as amended, any and all land located within the New Central City Growth Area, provided that Central's land uses within the New Central City Growth Area are and shall be consistent with Central's 2017 Comprehensive Plan, as amended. Black Hawk shall not annex any land within the New Central City Growth Area.

3. **New Black Hawk Growth Area.** The Black Hawk Growth Area is described in **Exhibit 1.B**, which is attached hereto and incorporated by this reference (the “**New Black Hawk**”).

Growth Area”). Black Hawk may annex within its sole discretion and pursuant to the procedures required by the Municipal Annexation Act of 1965, as amended, any and all land located within the New Black Hawk Growth Area, provided that Black Hawk's land uses within the New Black Hawk Growth Area are and shall be consistent with Black Hawk's 2020 Comprehensive Plan. Central shall not annex any land within the New Black Hawk Growth Area.

In addition, no noxious or objectionable land uses shall be permitted within the “Bulge” area, which area is part of the New Black Hawk Growth Area and is more specifically depicted on the map attached hereto and incorporated herein as **Exhibit 2**. Such prohibited land uses shall be generally consistent with Central Municipal Code Sec. 16-3-309 (uses prohibited in all zones), which include disposal of radioactive wastes, nuclear power generation, intensive agriculture, waste incinerator, and other highly impactful uses which typically require a discharge permit. Provided, however, that the restrictions applicable to the Bulge shall specifically not include non-intensive agricultural uses including but not limited to the husbandry of elk, buffalo, and bees, the growing of crops for use in producing beverage alcohol or for direct sale to consumers, and agritourism operations including but not limited to the operation of a pumpkin patch, which uses shall be allowed within the Bulge.

4. **District Service to the Central City and Black Hawk Growth Areas.** The District will provide sanitary sewer service to real property in the New Black Hawk Growth Area and the New Central City Growth Area, subject to an Extraterritorial Service Agreement or Infrastructure Construction Agreement to be established at the time of application for service, conditioned upon availability of plant capacity, plan and construction review and approval according to standards adopted for the entire District; construction of public infrastructure by the applicant, compliance with the District's Rules, Regulations and Resolutions in effect for the entire District at the time of the application; the District's ability to comply with all laws and regulations for providing service to the real property; and, an arrangement satisfactory to the District for third-party ownership and maintenance in accordance with the requirements of the District.

a. Service to the New Black Hawk Growth Area will be provided according to the Intergovernmental Service Agreement, as amended, between the District and Black Hawk dated October 26, 1994 (the "Black Hawk Service Agreement").

b. Service to the New Central City Growth Area will be provided in accordance with the terms and conditions set forth in that certain letter agreement between the District and Central City dated May 15, 1997 and approved by Central City on June 17, 1997, as amended (the "Central Service Agreement").

5. **Annexations Outside of City Growth Areas.** Central and Black Hawk shall not annex any land located outside of their respective growth areas as defined in **Exhibits 1, 1.A. and 1.B.**, during the term of this Agreement, unless agreed to in writing by Central and Black Hawk.

6. **Extraterritorial Service.**

a. Black Hawk shall not provide any police or fire service within the New Central City Growth Area, unless approved in writing by Central.

b. Central shall not provide any police or fire service within the Black Hawk Growth Area unless approved in writing by Black Hawk.

c. Black Hawk shall be responsible for fire protection service within and along the Highway 119 Corridor from Mile Marker 9.0 to the junction of Highway 119 and Highway 6 from Black Hawk. The Highway 119 Corridor shall be defined as that area outside of the corporate boundaries of Black Hawk that includes all commercial areas immediately accessed from Highway 119, any other type of structure, including residential and industrial structures, accessed by Highway 119, and all other incidents, such as traffic accidents, where the course of conduct causing the incident begins on Highway 119. In the event Central annexes property adjacent to Highway 119 within the New Central City Growth Area, Central shall be responsible for fire protection services for the property annexed, but Black Hawk shall at all times retain responsibility for fire protection services on Highway 119, including traffic accidents where the course of conduct begins on Highway 119. Any residential subdivision located within unincorporated Gilpin County as of the date of this Agreement, immediately accessed from Highway 119 and any individual commercial or residential structures not directly or immediately accessed from Highway 119 or a frontage road paralleling Highway 119 constructed during the term of the IGA, shall be excluded from the Highway 119 Corridor as herein defined. Black Hawk shall respond to requests for fire protection service along the Highway 119 Corridor, except when Black Hawk does not have personnel readily available to respond to such request. For purposes of this Agreement, Black Hawk agrees that it will have personnel readily available unless Black Hawk is providing fire protection services within the corporate limits of Black Hawk or providing mutual aid to another public entity at the time of the request.

7. Covenants Not to Interfere.

a. Black Hawk and Central covenant not to materially interfere with any annexation and/or development proposal which is planned to occur outside of their respective growth boundary, to the extent that such annexation or development proposed is consistent with and does not materially alter the terms of this Agreement or the applicable Comprehensive Plan.

b. To the extent Central annexes property which may require access to such property from State Highway 119, Central agrees that Black Hawk shall have the ability to enforce Black Hawk's access permitting requirements, or the requirements of the Colorado Department of Transportation's access permitting requirements, as either may be applicable, to assure that access along State Highway 119 remains unimpeded to Black Hawk. Moreover, in no event shall Central be authorized under this Agreement to annex any portion of State Highway 119 as part of the annexation of property adjacent to State Highway 119. In addition, Central shall assist in providing any property necessary for the widening of State Highway 119, including requiring the dedication of property for the widening of State Highway as a condition of annexation, and in no event shall Central object or otherwise impede plans for the widening of State Highway 119.

c. Black Hawk and Central covenant not to block or otherwise impair access to Lake Gulch Road within their respective jurisdictions, in order to assure that Lake Gulch Road is and shall be a municipal through roadway with unimpeded access for travel in both directions.

8. **Term and Termination.** This Agreement shall commence on the Effective Date and shall terminate on December 31, 2045. Prior to the termination of the Agreement, the Parties agree to meet and confer in good faith regarding the extension of this Agreement for one (1) additional 10-year term.

This Agreement shall be terminated before the end of the term only with the written consent of Central and Black Hawk, as expressed in a joint resolution passed by a majority vote of each City Council.

9. **Remedies.** To the extent permitted by law, each party hereto shall have the right to enforce each and every provision of this Agreement with the remedy of specific performance or any other remedy that exists at law or equity, including those remedies described in C.R.S. § 29-20-105(2)(g).

10. **General Provisions.**

a. **Notices.** All notices, demands, requests, or other communications required under this Agreement which are in writing shall be deemed to be received only if delivered personally or mailed by registered or certified mail, return-receipt requested, in a postage paid envelope, or sent by facsimile transmission, or sent by Federal Express addressed to the party at the address it has designated below or to such other address as any party may from time to time designate to the others by notice given pursuant to this Section 10.a.

City of Black Hawk

Stephen N. Cole, City Manager - SCole@cityofblackhawk.org or current City Manager
City of Black Hawk
P.O. Box 17
Black Hawk, Colorado 80422

With copy to:

Corey Y. Hoffmann – cyhoffmann@hpwclaw.com
Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, Colorado 80202

City of Central

Daniel R. Miera, City Manager - manager@cityofcentral.co or current City Manager
City of Central
P.O. Box 249
Central City, Colorado 80427

With Copy to:

Marcus A. McAskin – marcus@mcm-legal.com or current City Attorney
Michow Cox & McAskin LLP
6530 South Yosemite Street, Suite 200
Greenwood Village, CO 80111

Black Hawk – Central City Sanitation District

Lynn M. Hillary, District Administrator – lynn@bhccsd.com – or current Administrator
Black Hawk – Central City Sanitation District
P.O. Box 362
Black Hawk, Colorado 80422

With Copy to:

Kim J. Seter, Esq. - kseter@svwpc.com
Seter & Vander Wall, PC
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111

Any party may change the address for notice by notice to the other Parties or person or firm designated as specified herein. Any such notice, demand, request or other communication shall be deemed to have been given upon such personal delivery, facsimile transmission, or three (3) days following when the same is mailed or sent by regular mail, or one (1) day following when the same is sent by overnight delivery.

b. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties. It is specifically agreed that insolvency or bankruptcy of any party shall not terminate this Agreement.

c. No Vested Rights. This Agreement shall not grant any status or right to any third party, specifically any owner of any property, to make any claim as a third-party beneficiary, or for deprivation of any right, violation of any vesting of rights, or inverse or other condemnation. This Agreement is for the benefit of the Parties only to resolve issues between the Parties.

d. Interpretation of Agreement. Because this Agreement is the result of mutual negotiation and drafting, in the event this Agreement is deemed to be ambiguous or vague, the Parties agree with the rule of construction that "ambiguities shall be construed against the drafter" shall not apply.

e. Choice of Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Colorado.

f. Attorney Fees. Should any party employ attorneys to enforce against any other party hereto, any provisions hereof, or to protect its interest or recover damages from any other party hereto for breach of this Agreement, the non-prevailing party in any action or part thereof agrees to pay the prevailing party all reasonable costs, damages, and expenses, including attorney fees expended or incurred in connection therewith.

g. Invalidity of Terms. If any term, claim, clause or provision of this Agreement shall be judged to be invalid, the validity and effect of any other term, claim, clause or provision shall not be affected; and such invalid term, claim, clause or provision shall be deemed deleted from this Agreement in a manner to give effect to the remaining terms, claims, clauses or provisions.

h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes, and all of which when taken together shall constitute one and the same Agreement.

i. Authority. Each of the undersigned represents as to itself that each has the authority to execute this Agreement.

j. Forum Selection. Any action brought to enforce the terms and provisions of this Agreement or alleging a breach hereof shall be brought only in the District Court in Gilpin County, Colorado.

k. Consents/Approvals. Wherever this Agreement calls for the consent or approval of any party hereto, with respect to which consent or approval under this Agreement is not self-executing, in order to be effective, such consent or approval shall be in the form of a Resolution duly enacted by the City Council or District Board as appropriate.

l. Compliance with Law. Nothing herein appearing shall be construed to excuse either city from compliance with all statutory procedures set forth in the Municipal Annexation Act of 1965, as amended.

m. Recordation of Agreement. The Parties shall record this Agreement in the real estate records of Gilpin County, Colorado.

n. Entire Agreement. This Agreement constitutes the entire understanding, contract, and agreement between the Parties as to the subject matters herein set forth, and this Agreement only supersedes prior written or oral understandings, agreements, and commitments, formal or informal, relative thereto between all the Parties hereto. No change, modification, alteration, or amendment to this Agreement shall be binding upon the Parties except as specifically expressed in writing, making reference to this Agreement and signed by all of the Parties hereto agreeing to be bound thereby.

o. Boundary Arbitration. It is mutually agreed and understood that the growth boundaries have not been surveyed and legal descriptions created to define the areas described in **Exhibits 1, 1.A, 1.B and 2** have not been prepared by a professional land surveyor. The areas defined have been created using Geographic Information System (GIS) data. If the boundary line(s) between growth areas are in dispute, it is mutually agreed to solicit professional impartial arbitration to determine the boundary line. The arbitrator shall be selected by mutual written consent of Central City and Black Hawk. It is mutually agreed that both Central and Black Hawk will accept the results of this arbitration, without appeal or a subsequent legal action in an effort to overturn the arbitrator's decision. The arbitrator's decision shall be based on 1) **Exhibits 1, 1.A, 1.B and 2** incorporated in this Agreement, 2) by the GIS lines shown in the Exhibit(s) in

relation to the aerial photography used at the time this Agreement was executed and 3) by the property lines that parallel or share the growth lines in question, at the time this Agreement was executed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date(s) set forth below.

CITY OF CENTRAL, COLORADO

BY: _____
Jeremy Fey, Mayor

ATTEST: _____
Reba Bechtel, City Clerk

DATE: _____

CITY OF BLACK HAWK, COLORADO

BY: _____
David D. Spellman, Mayor

ATTEST: _____
Melissa Greiner, City Clerk

DATE: _____

COUNTY OF GILPIN, COLORADO

BY: _____
Ron Engels, Chair

ATTEST: _____
Sharon Cate, Deputy to the Board of County Commissioners

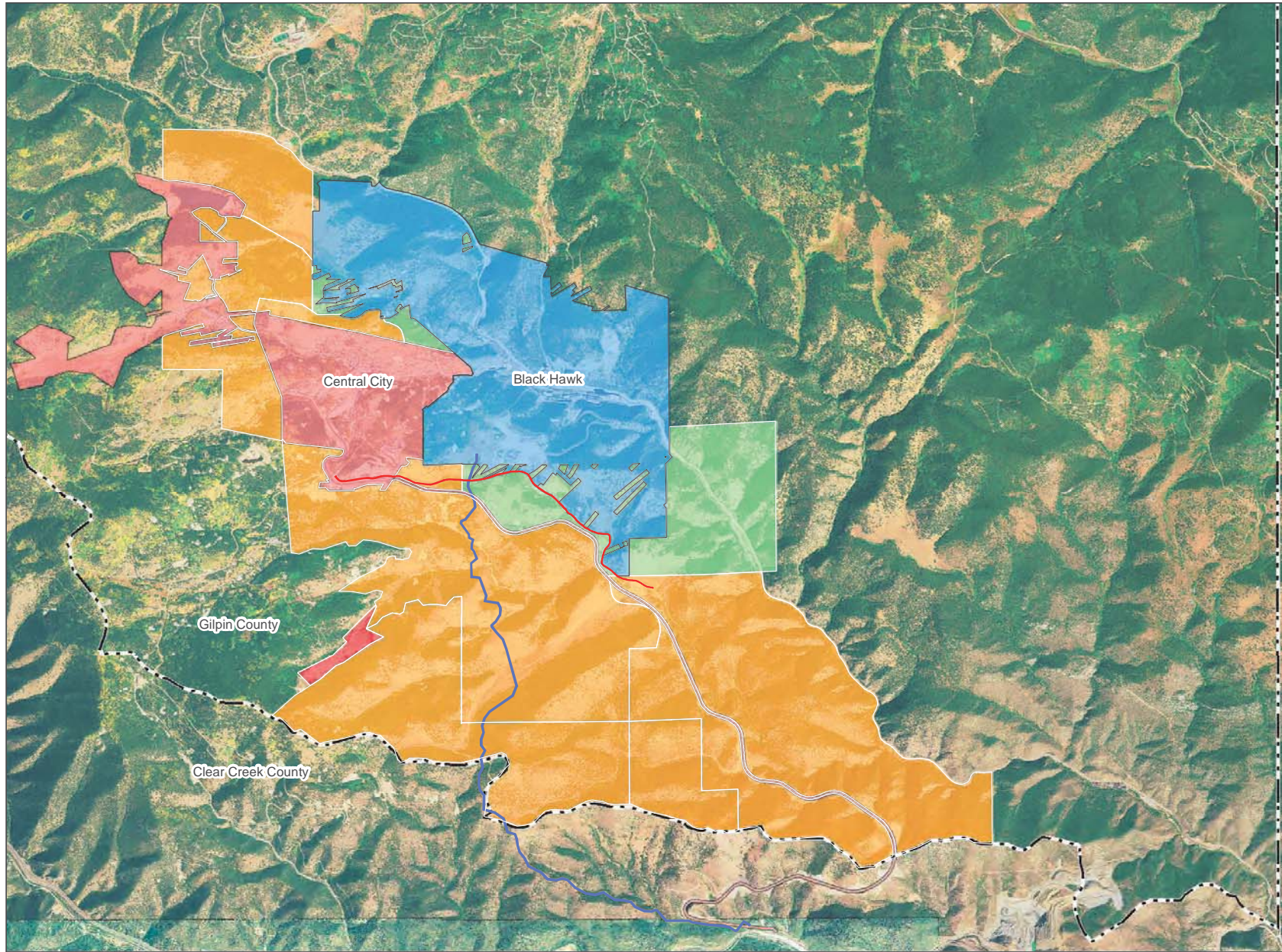
DATE: _____

BLACK HAWK-CENTRAL SANITATION DISTRICT (ONLY AS TO SECTION 4 OF THIS AGREEMENT)

BY: _____

ATTEST: _____

DATE: _____



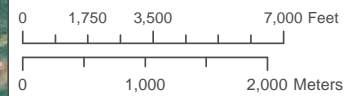
Amended and Restated
Intergovernmental
Agreement

Exhibit 1
Master Exhibit

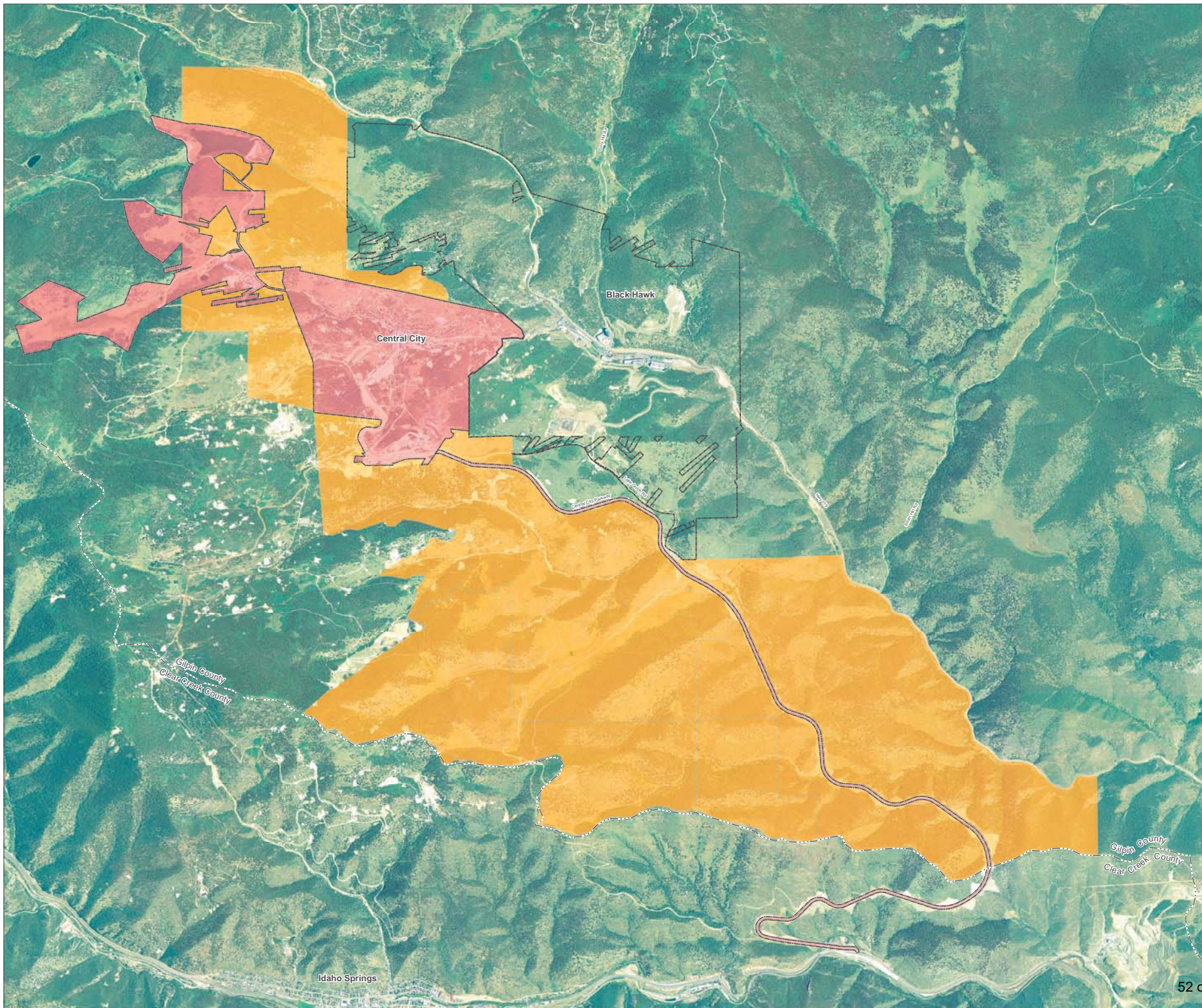
6-9-2020

Legend

- Lake Gulch Road
- Hidden Valley Pipeline Easement
- Central City Growth Area
- Black Hawk Growth Area
- Church Placer Excluded



Aerial Photograph Date: 2019
Date: 6-9-2020

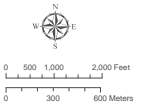


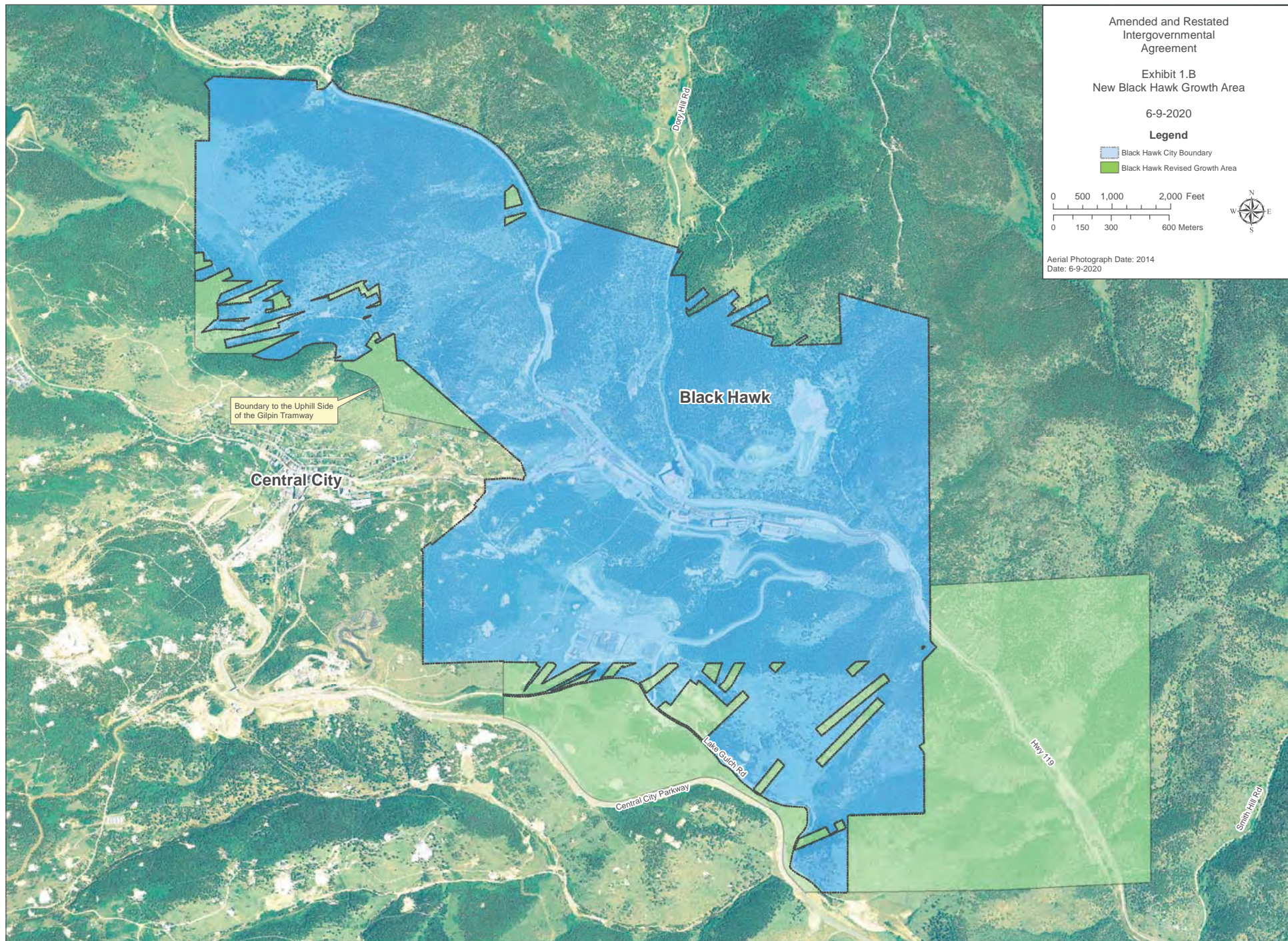
Amended and Restated
Intergovernmental
Agreement

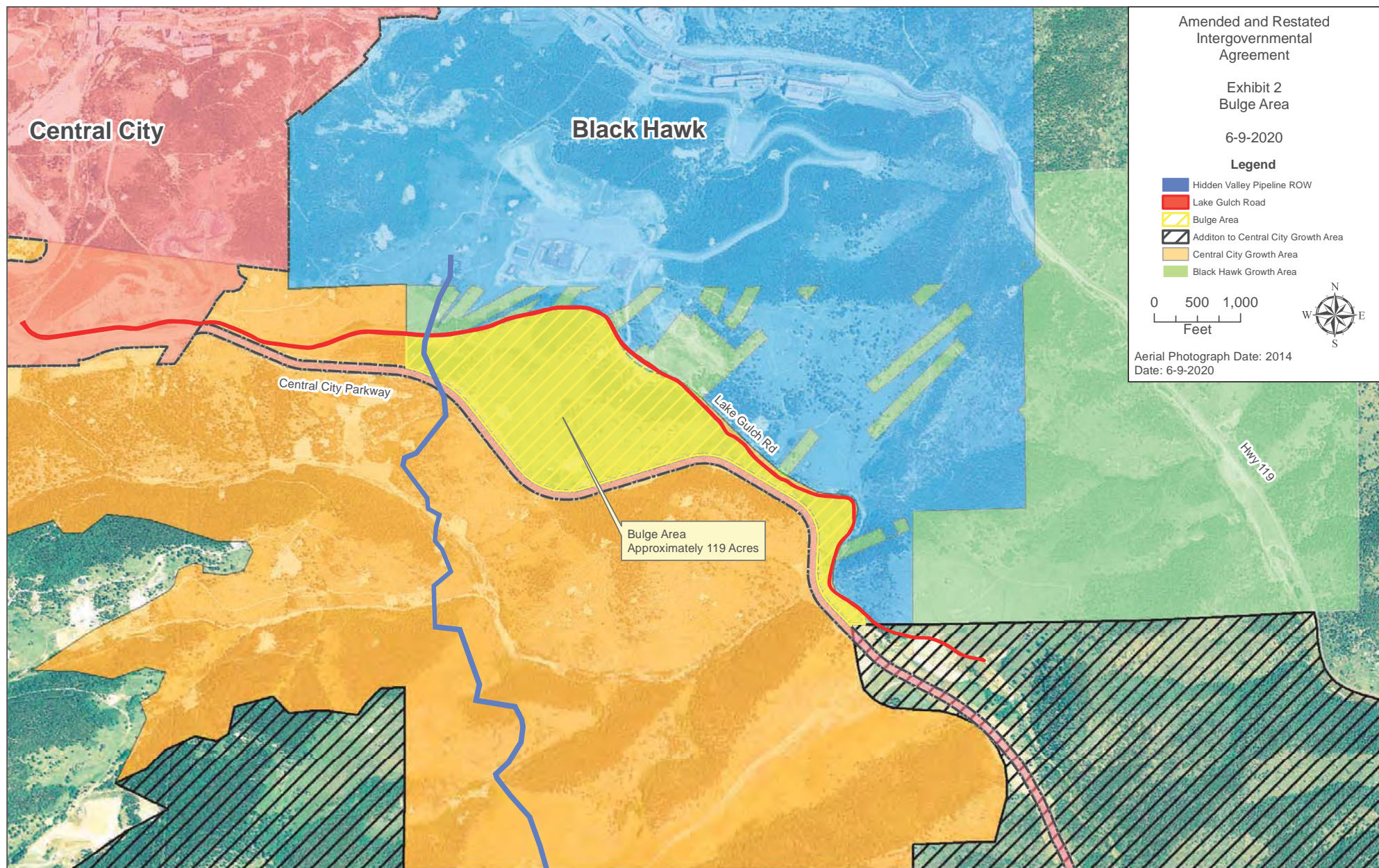
Exhibit 1.A
New Central City Growth Area

6-9-2020

- Legend**
- Central City Boundary
 - Central City Revised Growth Area







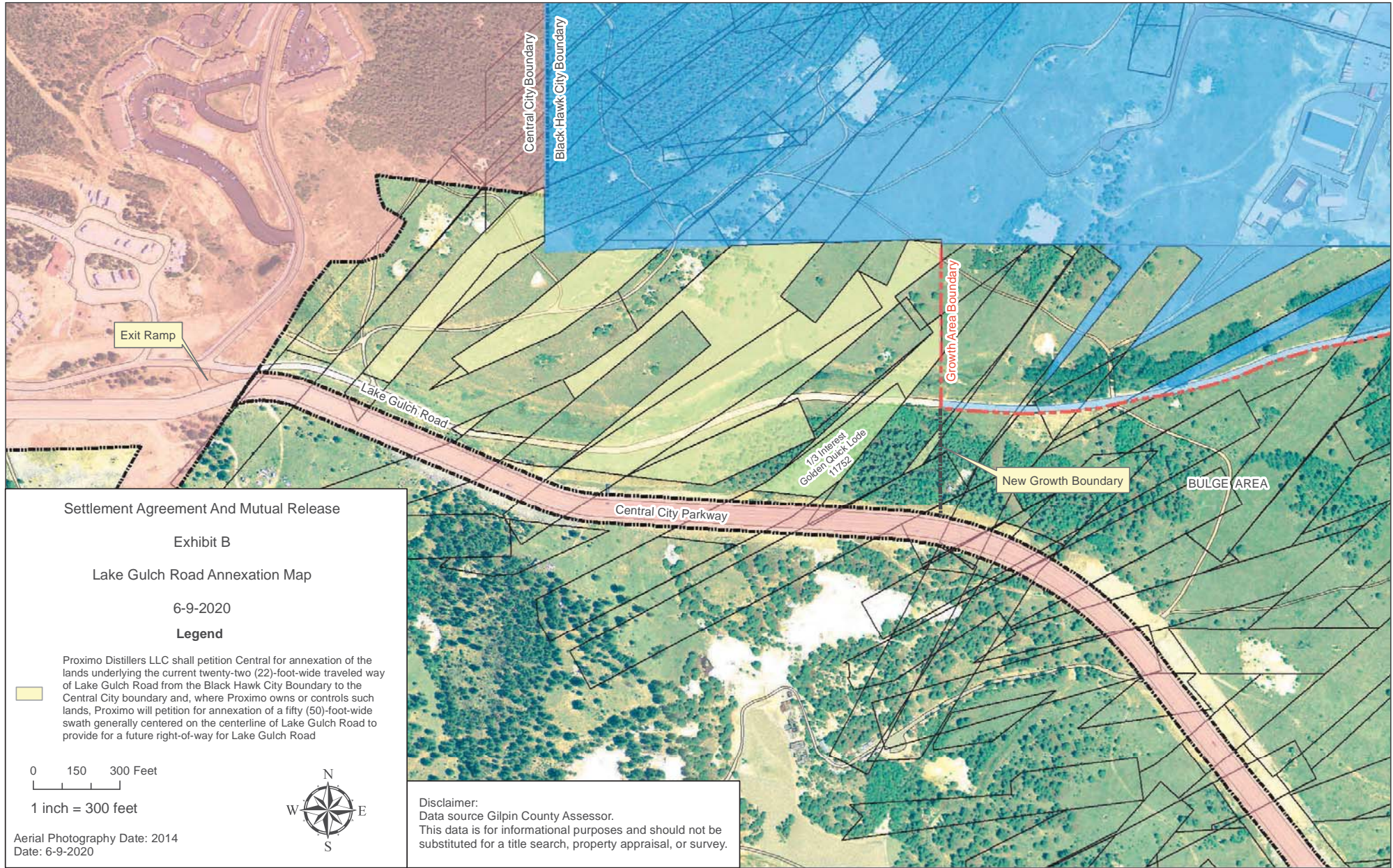
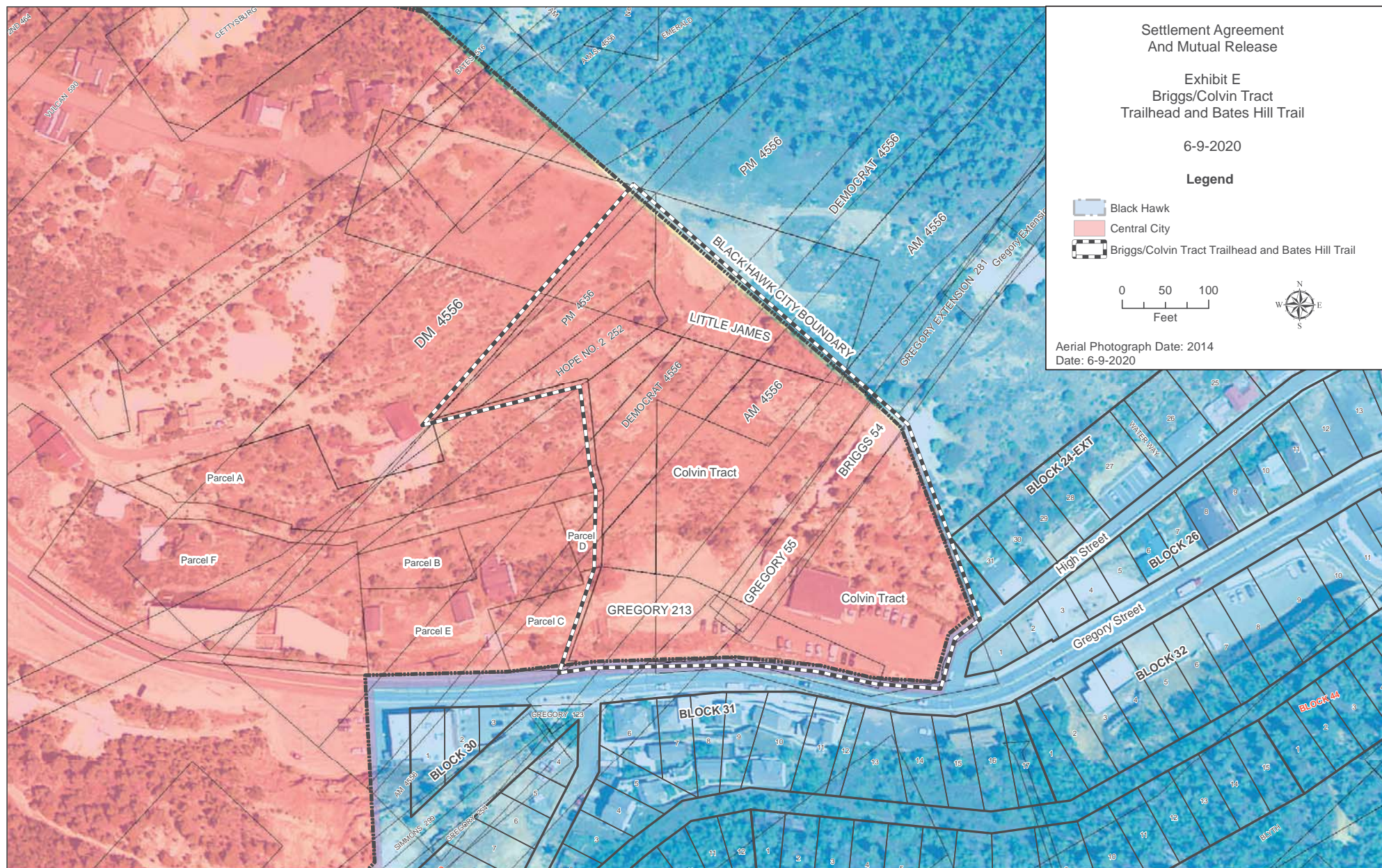


Exhibit C

Form of Vendor Contract Language

[Vendor] shall use State Highway 119 for all trucks having a gross vehicle weight rating of 19,501 pounds or greater used to transport construction vehicles or materials and/or deliveries to or from [the LGWR] (“**Restricted Traffic**”) and shall not use the Central City Parkway for any Restricted Traffic, in each case unless the Central City Parkway is the only open route. A violation of this provision subjects Proximo to liquidated damages payable to the City of Central in the amount of \$750 per violation, plus reasonable attorney fees and costs payable to Central City. Vendor shall indemnify Proximo fully for any such liquidated damages payable by Proximo.



<p>DISTRICT COURT, GILPIN COUNTY COLORADO</p> <p>Gilpin County Combined Court 2960 Dory Hill Road, Suite 200 Black Hawk, CO 80422</p>	<p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: 2020CV30009</p> <p>Division: G</p>
<p>Plaintiff(s):</p> <p>CITY OF CENTRAL,</p> <p>v.</p> <p>Defendant(s):</p> <p>CITY OF BLACK HAWK; PROXIMO DISTILLERS, LLC; RSM PARTNERS LLC.</p>	

<p><i>Attorneys for Plaintiff City of Central:</i></p> <p>CYLG, P.C. Eric R. Jaworski, Esq., #34941 Christopher A. Young, Esq., #34207 1750 N. High Street Denver, Colorado 80218 Phone No.: (303) 333-1252 ejaworski@cylgpc.com cyoung@cylgpc.com</p> <p><i>Attorneys for Defendant City of Black Hawk:</i></p> <p>Corey Y. Hoffmann, #24920 Ruthanne H. Goff, #50745 Hoffmann, Parker, Wilson & Carberry, P.C. 511 16th Street, Suite 610 Denver, CO 80202 Phone: (303) 825-6444 cyhoffmann@hpwclaw.com rhg@hpwlaw.com</p> <p><i>Attorneys for Defendant Proximo Distillers, LLC:</i></p> <p>Bill E. Kyriagis, #39112 Brian J. Connolly, #45860 David A. Brewster, #52481 Otten, Johnson, Robinson, Neff & Ragonetti, P.C. 950 Seventeenth Street, Suite 1600 Denver, Colorado 80202 Telephone: 303 825 8400 bkyriagis@ottenjohnson.com bconnolly@ottenjohnson.com dbrewster@ottenjohnson.com</p> <p><i>Attorneys for Defendant RSM Partners, LLC:</i></p> <p>Sean W. Doyle, #30004 Spaeth & Doyle, LLP 950 S. Cherry Street, #1220 Denver, CO 80246 Telephone: 303-209-0311 sdoyle@spaethanddoyle.com</p>	
<p align="center">STIPULATION FOR DISMISSAL WITH PREJUDICE</p>	

Each of the parties, by and through its respective undersigned counsel of record, and pursuant to C.R.C.P. 41(a)(1), file this Stipulation to Dismiss with Prejudice and request this Court enter an Order accepting this Stipulation and dismissing, with prejudice, all claims with each party to pay its own attorneys' fees and costs.

Dated this ____ day of _____, 2020.

CYLG, P.C.

By: Eric R. Jaworski

Eric R. Jaworski

Christopher A. Young

Attorneys for Plaintiff CITY OF
CENTRAL

HOFFMAN, PARKER, WILSON &
CARBERRY, P.C.

By: /s/ Corey Y. Hoffman

Corey Y. Hoffman

Ruthanne H. Goff

Attorneys for Defendant CITY OF
BLACK HAWK

OTTEN, JOHNSON, ROBINSON, NEFF
& RAGONETTI, P.C.

By: /s/ Bill E. Kyriagis

Bill E. Kyriagis

Brian J. Connolly

David A. Brewster

Attorneys for Defendant, PROXIMO
DISTILLERS, LLC

SPAETH & DOYLE, LLP

By: /s/ Sean Doyle

Sean Doyle

Attorneys for Defendant, RSM
PARTNERS, LLC

<p>DISTRICT COURT, COUNTY OF GILPIN, COLORADO</p> <p>Court Address: 2960 Dory Hill Road, Suite 200 Black Hawk, CO 80422</p>	<p align="center">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: CITY OF CENTRAL</p> <p>Defendants: CITY OF BLACK HAWK; PROXIMO DISTILLERS, LLC; RSM PARTNERS LLC</p>	
<p>Attorneys for Plaintiff:</p> <p>Name: CYLG, P.C. Eric R. Jaworski, Esq. Christopher A. Young, Esq.</p> <p>Address: 1750 N. High Street Denver, Colorado 80218</p> <p>Phone No.: (303) 333-1252</p> <p>Atty. Reg. #: 34941, 34207</p> <p>E-Mail: ejaworski@cylgpc.com; cyoung@cylgpc.com</p>	<p>Case No.: 20CV30009</p> <p>Division/Ctrm: G</p>
<p>STIPULATED MOTION FOR RELEASE OF <i>LIS PENDENS</i></p>	

Plaintiff City of Central (“Central”), by and through its attorneys CYLG, P.C., moves for a Release of *Lis Pendens* and states as follows:

Notice of Conferral: Counsel for Central has conferred with counsel for the respective defendants in this matter and they each have indicated their consent to the relief requested herein.

1. Plaintiff recorded a Notice of Commencement of Action (“Lis Pendens”) with the Gilpin County Clerk and Recorder on March 31, 2020 at Reception Number 165813 on the property known as:

SEE EXHIBIT A

Herein after referred to as the (“Property”).

2. The Parties have settled the dispute that related to the Property.

3. Pursuant to C.R.C.P. 41(a)(1)(B), the Parties have filed a Stipulated Notice of Dismissal, dismissing the lawsuit relating to that dispute and giving rise to the Lis Pendens.

4. As such, the *Lis Pendens* no longer encumbers the Property and should be released by order of the Court pursuant to C.R.S. 38-35-110(2)(c)(II).

WHEREFORE, Plaintiff City of Central, respectfully requests that the Court find that the Lis Pendens no longer encumbers the Property and enter an order releasing said Lis Pendens in this action.

Dated this _____ day of June, 2020.

CYLG, P.C.

s/ Eric R. Jaworski
Eric R. Jaworski, #34941

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ____ day of June, 2020, a true and correct copy of the foregoing **STIPULATED MOTION FOR RELEASE OF *LIS PENDENS*** was served via ICCES on the following:

Corey Y. Hoffman, Esq.
Ruthanne H. Goff, Esq.
Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202
Attorneys for City of Black Hawk

Bill E. Kyriagis, Esq.
Brian J. Connolly, Esq.
David A. Brewster, Esq.
Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 Seventeenth Street, Suite 1600
Denver, CO 80202
Attorneys for Proximo Distillers, LLC

Sean W. Doyle, Esq.
Spaeth & Doyle, LLP
950 S. Cherry Street, Suite 1220
Denver, CO 80246
Attorneys for RSM Partners, LLC

s/ Elizabeth Stibley
Elizabeth Stibley

DISTRICT COURT, COUNTY OF GILPIN, COLORADO Court Address: 2960 Dory Hill Road, Suite 200 Black Hawk, CO 80422	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: CITY OF CENTRAL Defendants: CITY OF BLACK HAWK; PROXIMO DISTILLERS, LLC; RSM PARTNERS LLC	Case No.: 20CV30009 Division/Ctrm: G
<p style="text-align: center;">ORDER RE: STIPULATED MOTION FOR RELEASE OF <i>LIS PENDENS</i></p>	

THE COURT, having received Plaintiff City of Central's Stipulated Motion for Release of *Lis Pendens*, and finding that said Motion was made for good cause, now grants the Release of *Lis Pendens*.

It is therefore, ORDERED that the *Lis Pendens* previously recorded March 31, 2020 at Reception Number 165813 is released concerning the following described property:

SEE EXHIBIT A

BY THE COURT:

District Court Judge