



REGULAR MEETING AGENDA

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

March 8, 2023
3:00 p.m.

RINGING OF THE BELL:

1. CALL TO ORDER:
2. ROLL CALL & PLEDGE OF ALLEGIANCE:
3. AGENDA CHANGES:
4. CONFLICTS OF INTEREST: (Council disclosures are on file w/City Clerk & Sec. of State)
5. EMPLOYEE
INTRODUCTION: Charleeda Sprinkle, Executive Administrative Assistant
6. PUBLIC COMMENT: *Please limit comments to 5 minutes*
7. APPROVAL OF MINUTES: February 8, 2023
8. PUBLIC HEARINGS:
 - A. CB4, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion, and Improvement of City Streets and Roadways, Pursuant to C.R.S. § 38-6-101, C.R.S. § 31-25-201, Article XX, § 1 of the Colorado Constitution, and Article 8, Section 4 of the City of Black Hawk Home Rule Charter
Rescheduled to April 12, 2023
 - B. CB6, An Ordinance Approving the FTA Section 5311 Operating Grant Agreement Between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk, dba Black Hawk and Central City Tramway for 2023 in an Amount not to Exceed \$112,884.00
 - C. CB7, An Ordinance Approving an Affiliation Agreement with Coalitions and Collaborative (COCO) for Fiscal Hosting Services for Projects Facilitated Through the Clear Creek Watershed & Forest Health Partnership
 - D. CB8, An Ordinance Approving the Memorandum of Agreement for Local Jurisdiction Regulation of Conveyances Between the Colorado Department of Labor and Employment, Division of Oil and Public Safety and the City of Black Hawk
9. ACTION ITEMS:
 - A. Resolution 16-2023, A Resolution Authorizing a Change in the City's 457 Governmental Deferred Compensation Plan with Mission Square Retirement
 - B. Resolution 17-2023, A Resolution Approving the Professional Services Agreement Between the City of Black Hawk and PEH Architects in an Amount Not To Exceed \$291,170.00 for Design Services on the Copper Kitchen Pizzeria
 - C. Local Liquor Authority Consideration of a Request for a New Retail Liquor Store License for Peak to Peak Market, LLC dba Peak to Peak Liquors at 7320 Black Hawk Blvd., Suite 1A and to set the Boundaries of the Neighborhood and Set a Date for Public Hearing
10. CITY MANAGER REPORT:
11. CITY ATTORNEY REPORT:

12. EXECUTIVE SESSION:

Executive Session to instruct negotiators regarding City-owned land on Gregory Hill, the Gregory Street HARD District, other City-owned property, and potential property acquisition pursuant to C.R.S § 24-6-402(4)(e).

13. ADJOURNMENT:



City of Black Hawk New Employee Introduction



Charleeda Sprinkle
PT Executive Admin Assistant

My primary job here is to write Standard Operating Procedures. I qualify because I hold a teaching degree with a minor in English; I'm an author of 5 books; and worked from 1998-2012 as an administrative assistant, proofreader, writer, and assistant editor for a non-profit organization in Israel. I am also naturally gifted as an organizer, so I think that way too, writing SOPs and teaching materials in an easy-to-follow, step-by-step manner.

I love to travel, but other than family visits, I have seldom traveled just for pleasure. From 2010-2017, I went on 8 mission trips to 4 countries in Africa to teach Bible to pastors who don't have the advantage of seminary: raising funds, finding teaching staff, organizing classes, and writing my own curriculum. I continue to teach and write Bible studies locally.

I have 2 girls and 5 grandchildren that live close-by and one girl and 2 grandchildren in Alaska, so they keep me busy. I visit Alaska once or twice a year, and I recently returned to Israel for a 3-week visit.

I work only 12 hours a week to help fund my travel and keep me from becoming a couch potato! Melissa Greiner found me through Robert Half temp agency. I started working in City Hall and then was moved to CP&D. After working through the agency for almost a year, the City decided there were enough SOPs to write to hire me. I have found everyone here very friendly and the overall atmosphere very pleasant. Thank you for hiring me!



**City of Black Hawk
City Council**

February 8, 2023

MEETING MINUTES

New leaseholders Nicolas Spencer and fiancé Sage Lofland, scheduled to be married in September, both rang the bell to open the meeting.

1. **CALL TO ORDER:** Mayor Spellman called the regular meeting of the City Council to order on Wednesday, February 8, 2023 at 3:00 p.m.
2. **ROLL CALL:** Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Staff Present: City Attorney Hoffmann, City Manager Cole, Police Chief Moriarty, Fire Chief Woolley, Fire Marshal Walsh, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Water Resource Engineer Dallam, Maintenance Services Manager Jackson, City Engineer Reed, Community Planning & Development Director Linker, and Deputy City Clerk Martin.
- PLEDGE OF ALLEGIANCE:** Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance.
3. **AGENDA CHANGES:** Deputy City Clerk Martin said that agenda item #8A, Ordinance 4, was rescheduled to the February 22nd meeting.
4. **CONFLICTS OF INTEREST:** City Attorney Hoffmann asked Council to declare any Conflicts of Interest on any issue appearing on the agenda this afternoon other than those previous disclosures and conflicts that have already been disclosed and are on file with the City Clerk and Secretary of State. City Council noted no conflicts.

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

5. EMPLOYEE
INTRODUCTION:

Brad Dallam, Water Resource Engineer

Public Works Director Isbester was very excited to introduce the City's new Water Resource Engineer. He comes with over 30 years of experience, most recently with the City of Lafayette, and a big endorsement from previous Water Resource Engineer Jim Ford. Alderman Bennett told him he had to be here five years minimum. He was warmly welcomed!

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

7. APPROVAL OF
MINUTES:

January 25, 2023

**MOTION TO
APPROVE**

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

MOTION PASSED

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

8. PUBLIC HEARINGS:

A. CB4, An Ordinance Stating the Intent of the City of Black Hawk to Acquire Certain Property for the Construction, Expansion, and Improvement of the City Streets and Roadways, Pursuant to C.R.S.

Mayor Spellman reiterated that this item was continued to the February 22, 2023 meeting.

B. CB5, An Ordinance Approving the Water Storage Agreement Between the City of Black Hawk and the City of Golden

Mayor Spellman read the title and opened the public hearing.

Public Works Director Isbester and Water Resource Engineer Dallam introduced this item. Isbester said this was a housekeeping agreement with the City of Golden; we get water from them yearly through the Vidler Tunnel if we don't have room to store it at Green Lake or Georgetown Lake. He said it is the first water we use to start augmenting. Alderman Midcap had a few questions about the arrangement with Golden. Isbester confirmed if we don't store it, it will just go downstream, and over time we could lose those water rights.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB5, an Ordinance approving the Water Storage Agreement between the City of Black Hawk and the City of Golden open and invited anyone wanting to address the Board either “for” or “against” the proposed Ordinance to come forward. No one wished to speak, and Mayor Spellman declared the Public Hearing closed.

MOTION TO APPROVE Alderman Johnson **MOVED** and was **SECONDED** by Alderman Midcap to approve CB5, an Ordinance approving the Water Storage Agreement between the City of Black Hawk and the City of Golden.

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

9. ACTION ITEMS:

A. Resolution 13-2023, A Resolution Approving the Purchase of 1 Pick-up Truck

Mayor Spellman read the title.

Maintenance Services Manager Jackson requested the purchase of one additional pick-up truck, which was already approved in the budget. Alderman Bennett wanted to make sure they had enough employees to drive the new trucks.

MOTION TO APPROVE Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to approve Resolution 13-2023, a Resolution approving the purchase of 1 pick-up truck.

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

B. Resolution 14-2023, A Resolution Approving the Commercial Lease with Peak to Peak Market, LLC for the Property Located at 7320 Black Hawk Blvd., Suite 1A, Black Hawk, Colorado

Mayor Spellman read the title.

Finance Director Hillis introduced this item. Lessee Nick Spencer and Sage Lofland joined him. The lease is for the convenience store and calls for an initial five-year term, with two one-year options and terms similar to the previous lease. When asked when they would be open for business, Mr. Spencer replied by March 1st at the latest, and they would submit their application for a Retail Liquor Store license tomorrow. There was a round of applause and congratulations for the new owners.

**MOTION TO
APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Moates to approve Resolution 14-2023, a Resolution approving the Commercial Lease with Peak to Peak Market, LLC for the property located at 7320 Black Hawk Blvd., Suite 1A, Black Hawk, Colorado.

MOTION PASSED

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

C. Resolution 15-2023, A Resolution To Temporarily Waive the Payment of Certain Enumerated Occupational Taxes as Otherwise Imposed Pursuant to Article IX of Chapter 4 of the Black Hawk Municipal Code

Mayor Spellman read the title.

City Attorney Hoffmann explained there were a few more minor Occupational Taxes that were collected previously with Business License fees, and since the City eliminated the Business License fees in compliance with SB22-032, that these additional Occupational Taxes should also be temporarily waived.

**MOTION TO
APPROVE**

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 15-2023, a Resolution to temporarily waive the payment of certain enumerated Occupational Taxes as otherwise imposed pursuant to Article IX of Chapter 4 of the Black Hawk Municipal Code.

MOTION PASSED

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

**10. CITY MANAGER
REPORT:**

City Manager Cole had nothing to report.

**11. CITY ATTORNEY
REPORT:**

City Attorney Hoffmann had nothing to report.

**12. EXECUTIVE
SESSION:**

None.

13. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council adjourned at 3:10 p.m.

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Mayor

COUNCIL BILL 4
ORDINANCE 2023-4
AN ORDINANCE STATING THE
INTENT OF THE CITY OF
BLACK HAWK TO ACQUIRE
CERTAIN PROPERTY FOR THE
CONSTRUCTION, EXPANSION,
AND IMPROVEMENT OF CITY
STREETS AND ROADWAYS,
PURSUANT TO C.R.S. § 38-6-101,
C.R.S. § 31-25-201, ARTICLE XX,
§ 1 OF THE COLORADO
CONSTITUTION, AND ARTICLE
8, SECTION 4 OF THE CITY OF
BLACK HAWK HOME RULE
CHARTER

RESCHEDULED TO
APRIL 12, 2023

**COUNCIL BILL 6
ORDINANCE 2023-6
AN ORDINANCE
APPROVING THE FTA
SECTION 5311 OPERATING
GRANT AGREEMENT
BETWEEN THE COLORADO
DEPARTMENT OF
TRANSPORTATION,
DIVISION OF TRANSIT AND
RAIL AND THE CITY OF
BLACK HAWK dba BLACK
HAWK AND CENTRAL
CITY TRAMWAY FOR 2023
IN AN AMOUNT NOT TO
EXCEED \$112,884.00**

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Acceptance of 2023 FTA Section 5311 Operating Grant administered by Colorado Department of Transportation, Division of Transit and Rail, for the Black Hawk and Central City Tramway.

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

MOTION TO APPROVE Council Bill 6, Ordinance 2023-6, an Ordinance approving the FTA Section 5311 Operating Grant Agreement between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk dba Black Hawk and Central City Tramway for 2023 in an amount not to exceed \$112,884.00.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: The City was successful in being awarded an FTA 5311 grant for operating the shuttle service. This grant is administered by CDOT. This grant amount is \$112,884.00 and requires a 50% match. This is the same grant program we have been fortunate to receive since 2018. This grant is typically used to offset some of the costs incurred with our contract operator MV.

AGENDA DATE: March 8, 2023

WORKSHOP DATE: March 8, 2023

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X]Yes []No

STAFF PERSON RESPONSIBLE: Thomas Isbester

DOCUMENTS ATTACHED: Grant Agreement

RECORD: []Yes []No

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

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

SUBMITTED BY:



Thomas Isbester, Public Works Director

REVIEWED BY:



Stephen N. Cole, City Manager

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB6

ORDINANCE NUMBER: 2023-6

TITLE: AN ORDINANCE APPROVING THE FTA SECTION 5311 OPERATING GRANT AGREEMENT BETWEEN THE COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION OF TRANSIT AND RAIL AND THE CITY OF BLACK HAWK dba BLACK HAWK AND CENTRAL CITY TRAMWAY FOR 2023 IN AN AMOUNT NOT TO EXCEED \$112,884.00

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

Section 1. The City of Black Hawk hereby approves the FTA Section 5311 Operating Grant Agreement between the Colorado Department of Transportation, Division of Transit and Rail and the City of Black Hawk dba Black Hawk and Central City Tramway for 2023 in an amount not to exceed \$112,884.00, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.

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

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

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

READ, PASSED AND ORDERED POSTED this 8th day of March, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CB6

EXHIBIT A

STATE OF COLORADO SUBAWARD AGREEMENT

COVER PAGE

State Agency Department of Transportation	Agreement Number / PO Number 23-HTR-ZL-00070 / 491003111
Subrecipient CITY OF BLACK HAWK	Agreement Performance Beginning Date The Effective Date
Subaward Agreement Amount Federal Funds-Operating Maximum Amount (50%) \$112,884.00 Local Funds-Operating Local Match Amount (50%) \$112,884.00 Agreement Total \$225,768.00	Initial Agreement Expiration Date June 30, 2024 Fund Expenditure End Date June 30, 2024 Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104 and 23 USC §149.
Agreement Purpose In accordance with 49 USC §5311, the purpose of this Agreement is to provide capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000, where many residents often rely on public transit to reach their destinations. The work to be completed under this Agreement by the Subrecipient is more specifically described in Exhibit A.	
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work and Budget. 2. Exhibit B – Sample Option Letter. 3. Exhibit C – Federal Provisions. 4. Exhibit D – Required Federal Contract/Agreement Clauses. 5. Exhibit E – Verification of Payment. <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Exhibit C – Federal Provisions. 2. Exhibit D – Required Federal Contract/Agreement Clauses. 3. Colorado Special Provisions in §17 of the main body of this Agreement. 4. The provisions of the other sections of the main body of this Agreement. 5. Exhibit A – Statement of Work and Budget. 6. Executed Option Letters (if any). 	
Principal Representatives <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> For the State: Shilpa Kulkarni Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 shilpa.kulkarni@state.co.us </div> <div style="width: 45%;"> For Subrecipient: Tom Isbester CITY OF BLACK HAWK PO BOX 68 BLACK HAWK, CO 80422 tisbester@cityofblackhawk.org </div> </div>	

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

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

<p align="center">SUBRECIPIENT CITY OF BLACK HAWK</p> <p>DocuSigned by: By: <u>Thomas Isbester</u> A3F041E3998C445...</p> <p>Name: <u>Thomas Isbester</u></p> <p>Title: <u>Public Works Director</u></p> <p>Date: <u>2/9/2023</u></p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <p>DocuSigned by: By: <u>Amber Blake</u> F854C7673FF6408...</p> <p>Name: <u>Amber Blake</u></p> <p>Title: <u>Director</u></p> <p>Date: <u>2/9/2023</u></p>
<p align="center">2nd State or Subrecipient Signature if needed</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p align="center">N/A</p> <p align="center">By: Assistant Attorney General</p> <p>Date: _____</p>
<p align="center">In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p align="center">DocuSigned by: <u>Shoshana M. Lew</u> BD4801C6CEAC478</p> <p align="center">By: Department of Transportation</p> <p align="center">Effective Date: <u>2/9/2023</u></p>	

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

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

B. Initial Term

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

C. Extension Terms - State’s Option

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

D. End of Term Extension

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

E. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

F. Subrecipient's Termination Under Federal Requirements

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

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

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

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

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

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

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

4. STATEMENT OF WORK AND BUDGET

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

5. PAYMENTS TO SUBRECIPIENT

A. Subaward Maximum Amount

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

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

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

v. Federal Recovery

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

C. Matching Funds

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

D. Reimbursement of Subrecipient Costs

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

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

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

E. Close-Out

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

6. REPORTING - NOTIFICATION

A. Quarterly Reports

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

B. Litigation Reporting

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

C. Performance and Final Status

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

D. Violations Reporting

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

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

7. SUBRECIPIENT RECORDS

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

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

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

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

E. Data Protection and Handling

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

F. Safeguarding PII

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

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

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

C. Disclosure to the State

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

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

10. INSURANCE

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

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Additional Insured

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

E. Primacy of Coverage

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

F. Cancellation

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

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

G. Subrogation Waiver

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

H. Public Entities

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

I. Certificates

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

11. BREACH OF AGREEMENT

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

12. REMEDIES

A. State's Remedies

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

i. Termination for Breach of Agreement

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

a. Obligations and Rights

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

b. Payments

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

c. Damages and Withholding

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

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

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

B. Subrecipient's Remedies

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

13. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

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

14. NOTICES and REPRESENTATIVES

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

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

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

B. Exclusive Property of the State

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

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

C. Exclusive Property of Subrecipient

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

16. GENERAL PROVISIONS

A. Assignment

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

B. Subcontracts

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

C. Binding Effect

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

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

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

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

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

K. External Terms and Conditions

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

L. Severability

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

M. Survival of Certain Agreement Terms

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

N. Taxes

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

O. Third Party Beneficiaries

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

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations

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

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

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

T. Federal Provisions

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

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

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

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

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

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

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

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

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

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

et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Subrecipient shall be liable for damages.

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

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

EXHIBIT A, STATEMENT OF WORK AND BUDGET

Project Description*		2023 FTA 5311 Operating_ BHWK						
Federal Awarding Agency					Federal Transit Administration (FTA)			
Federal Regional Contact					Cindy Terwilliger			
Federal Award Date					To Be Determined			
Project End Date					June 30, 2024			
FAIN		To Be Determined			CFDA#		20.509	
CFDA Title		Formula Grants for Rural Areas Program						
Subrecipient		Black Hawk, City of			UEID #		NZ3ZU3CCPAY6	
Contact Name		Tom Isbester			Vendor #		2000406	
Address		PO Box 68 Black Hawk, CO 80422-0068			Phone #		(303) 582-1324	
Email		tisbester@cityofblackhawk.org			Indirect Rate		N/A	
Total Project Budget							\$225,768.00	
Budget	WBS**	ALI	Federal Funds		Local Funds		Total	
Operating	22-11-4042.BHWK.600	30.09.01	50%	\$112,884.00	50%	\$112,884.00	\$225,768.00	
Total Project Amount Encumbered via this Subaward Agreement							\$225,768.00	

*This is not a research and development grant.

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

***FAIN and Date of Federal Award is not available at time execution of contract. This information will reside in DTRs official Transit/Rail Grants system and will be available upon request

A. Project Description

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

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

This funding is provided to support the services described above for calendar year 2023 (January 1 – December 31).

B. Performance Standards

1. Project Milestones

Milestone Description	Original Estimated Completion Date
Submit Reimbursement Request in COTRAMS	Monthly
Submit Progress Reports to GU Manager	Quarterly
Submit Final Reimbursement Request in COTRAMS	9/1/2024
IMPORTANT NOTE: All milestones in this Statement of Work (except for the final reimbursement request) must be completed no later than the expiration date of this Subaward Agreement: June 30, 2024 .	

2. Performance will be reviewed throughout the duration of this Subaward Agreement. City of Black Hawk shall report to the CDOT Project Manager whenever one or more of the following occurs:
 - a. Budget or schedule changes;
 - b. Scheduled milestone or completion dates are not met;
 - c. Identification of problem areas and how the problems will be resolved; and/or
 - d. Expected impacts and the efforts to recover from delays.
3. City of Black Hawk will report on quarterly performance using the Program Measure Report in COTRAMS:
 - a. Performance measures established for the FTA Section 5311 Program (*Funds Expended, Fare Revenues, Sources of Expended Funds, Service Data, and Volunteer Resources*) will be tracked and reported on by City of Black Hawk; and
4. Performance will be reviewed based on:
 - a. Completion of 5311 Program Measure Reports/Quarterly Reports in COTRAMS, and
 - b. Completion of annual National Transit Database (NTD) Report.
5. City of Black Hawk will assist with DBE reporting to FTA using the Biannual FTA DBE Report in COTRAMS:
 - a. Contracts awarded, payments made, and contracts completed between City of Black Hawk and prime contractors; and
 - b. Contracts awarded, payments made, and contracts completed between City of Black Hawk's prime contractors and their subcontractors.
6. Reports will be submitted in COTRAMS by City of Black Hawk on or before the following due dates:
 - a. Quarter 1 (for January 1-March 31 reporting period) due April 28th;
 - b. Quarter 2 (for April 1-June 30 reporting period) due July 28th;
 - c. Quarter 3 (for July 1-September 30 reporting period) due October 28th;
 - d. Quarter 4 (for October 1-December 31 reporting period) due January 28th.

C. Project Budget

1. The Total Project Budget is \$225,768.00. CDOT will pay no more than 50% of the eligible, actual operating costs, up to the maximum amount of \$112,884.00. CDOT will retain any remaining balance of the federal share of FTA-5311 Funds. City of Black Hawk shall be solely responsible for all costs incurred in the project in excess of the amount paid by CDOT from Federal Funds for the federal share of eligible, actual costs. For CDOT accounting purposes, the Federal Funds of \$112,884.00 (50%) for operating costs, and matching Local Funds of \$112,884.00 (50%) for operating costs will be encumbered for this Subaward Agreement.
2. No refund or reduction of the amount of City of Black Hawk's share to be provided will be allowed unless there is at the same time a refund or reduction of the federal share of a proportionate amount.
3. City of Black Hawk may use eligible federal funds for the Local Funds share, but those funds cannot be from other Federal Department of Transportation (DOT) programs. City of Black Hawk's share, together with the Federal Funds share, must be enough to ensure payment of Total Project Budget.
4. Per the terms of this Subaward Agreement, CDOT shall have no obligation to provide state funds for use on this project. CDOT will administer Federal Funds for this Project under the terms of this Subaward Agreement, provided that the federal share of FTA funds to be administered by CDOT are made available and remain available. City of Black Hawk shall initiate and prosecute to completion all actions necessary to enable City of Black Hawk to provide its share of the Total Project Budget at or prior to the time that such funds are needed to meet the Total Project Budget.

D. Allowable Costs

1. City of Black Hawk shall agree to adhere to the provisions for allowable and unallowable costs cited in the following regulations: 2 CFR 200.420 through 200.475; FTA C 5010.1E Chapter VI: Financial Management; Master Agreement, Section 6 "Non-Federal Share;" and 2 CFR 200.102. Other applicable requirements for cost allowability not cited previously, shall also be considered.

2. City of Black Hawk's operating expenses are those costs directly related to system operations. City of Black Hawk at a minimum, should consider the following items as operating expenses: fuel, oil, drivers and dispatcher salaries and fringe benefits, and licenses.
3. If City of Black Hawk elects to take administrative assistance, eligible costs may include but are not limited to: general administrative expenses (e.g., salaries of the project director, secretary, and bookkeeper); marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of administering drug and alcohol testing. Additionally, administrative costs for promoting and coordinating ridesharing are eligible as project administration if the activity is part of a coordinated public transportation program.

E. Reimbursement Eligibility

1. City of Black Hawk must submit invoice(s) monthly via COTRAMS. Reimbursement will apply only to eligible expenses that are incurred within the period of performance (January 1 – December 31) of this Subaward Agreement.
2. Reimbursement requests must be within the limits of Section D., Allowable Costs, of this Subaward Agreement. City of Black Hawk will be reimbursed based on the ratio of Federal Funds share and Local Funds share set forth in the Project Budget above.
3. City of Black Hawk must submit the final invoice within sixty (60) calendar days of June 30, 2024, and submit a Grant Closeout and Liquidation (GCL) Form in COTRAMS within fifteen (15) days of issuance of the final reimbursement payment.

F. Training

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

G. Restrictions on Lobbying

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

H. Special Conditions

1. City of Black Hawk will comply with all requirements imposed by CDOT on City of Black Hawk so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.
2. City of Black Hawk must permit CDOT and their auditors to have access to City of Black Hawk's records and financial statements as necessary, with reasonable advance notice.
3. Record retention shall adhere to the requirements outlined in 2 CFR 200.334 and FTA C 5010.1E.
4. City of Black Hawk cannot request reimbursement for costs on this project from more than one Federal Awarding Agency or other federal awards (i.e., no duplicate billing).
5. City of Black Hawk must obtain prior CDOT approval, in writing, if FTA funds are intended to be used for payment of a lease or for third-party contracts.
6. If receiving FTA 5311 funding, City of Black Hawk shall advertise its fixed route and/or rural based service as available to the general public and service will not be explicitly limited by trip purpose or client type.

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

EXHIBIT B, SAMPLE OPTION LETTER

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

1. OPTIONS:

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

2. REQUIRED PROVISIONS:

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

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

3. OPTION EFFECTIVE DATE:

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

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

1. APPLICABILITY OF PROVISIONS

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

2. DEFINITIONS

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

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

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

3. COMPLIANCE

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

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

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

5. TOTAL COMPENSATION

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

6. REPORTING

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

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

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING

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

8. SUBRECIPIENT REPORTING REQUIREMENTS

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

9. PROCUREMENT STANDARDS

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

10. ACCESS TO RECORDS

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

11. SINGLE AUDIT REQUIREMENTS

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

12. CONTRACT PROVISIONS FOR SUBRECIPIENT CONTRACTS

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

for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

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

13. CERTIFICATIONS

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

14. EXEMPTIONS

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

15. EVENT OF DEFAULT

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

EXHIBIT D, REQUIRED FEDERAL CONTRACT/AGREEMENT CLAUSES**All FTA-Assisted Third-Party Contracts and Subawards from the Current FTA Master Agreement**
[FTA MA(30)]**Section 3(l) – No Federal government obligations to third-parties by use of a disclaimer**

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

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

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

False or Fraudulent Statements or Claims.

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

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

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

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

3(G) – Federal Changes

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

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

12 – Civil Rights

- (c) Nondiscrimination – Title VI of the Civil Rights Act. The Subrecipient agrees to, and assures that each Third party Participant, will:

- (1) Prohibit discrimination on the basis of race, color, or national origin,
- (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;
 - (ii) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
- (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 CFR § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.

- (d) Equal Employment Opportunity.

- (1) Federal Requirements and Guidance. The Subrecipient agrees to, and assures that each Third Party Participant will prohibit discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.;
 - (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;
 - (iii) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
 - (iv) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of the Master Agreement;
 - (v) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;" and
 - (vi) Follow other federal guidance pertaining to EEO laws, regulations, and requirements.
- (2) Specifics. The Subrecipient agrees to, and assures that each Third Party Participant will:
 - (i) Affirmative Action. Take affirmative action that includes, but is not limited to:
 - (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
 - (ii) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and
- (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - (i) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR chapter 60; and
 - (ii) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

(h) Nondiscrimination on the Basis of Disability. The Subrecipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability:

- (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities;
 - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of “employer;”
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- (2) Federal regulations and guidance, including:
 - (i) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR part 37;
 - (ii) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR part 1192 and 49 CFR part 38;
 - (iv) U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR part 39;
 - (v) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR part 35;
 - (vi) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR part 36;
 - (vii) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR part 1630;
 - (viii) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR part 64, Subpart F;
 - (ix) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR part 1194;
 - (x) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR part 609;
 - (x) FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
 - (xi) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Incorporation of FTA Terms – 16.a.

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

Energy Conservation – 26.j

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

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

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

Applicable to Awards exceeding \$25,000

From Section 4. Ethics.

- (a) Debarment and Suspension. The Subrecipient agrees to the following:
- (1) It will comply with the following requirements of 2 CFR part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR part 1200.
 - (2) It will not enter into any “covered transaction” (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any Third Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by-
 - (i) U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200;
 - (ii) U.S. OMB regulatory guidance, “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 CFR part 180; and
 - (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Subrecipients or Third Party Participants.
 - (3) It will review the U.S. GSA “System for Award Management – Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs,” if required by U.S. DOT regulations, 2 CFR part 1200.
 - (4) It will that its Third Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
 - (5) If the Subrecipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Subrecipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Subrecipient is located or implements the underlying Agreement,
 - (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement, or
 - (iii) FTA Chief Counsel.

Applicable to Awards exceeding the simplified acquisition threshold (\$100,000-see Note)

Note: Applicable when tangible property or construction will be acquired

Section 15. Preference for United States Products and Services.

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

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

Section 39. Disputes, Breaches, Defaults, and Litigation.

- (a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving the Award, the accompanying underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) Notification to FTA; *Flow Down Requirement*. If a current or prospective legal matter that may affect the Federal Government emerges, the Subrecipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Subrecipient is located. The Subrecipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
 - (3) *Additional Notice to U.S. DOT Inspector General*. The Subrecipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Subrecipient is located, if the Subrecipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Subrecipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Subrecipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Subrecipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Subrecipient, including divisions tasked with law enforcement or investigatory functions.
- (c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Agreement. Notwithstanding the preceding sentence, the Subrecipient may return all liquidated damages it receives to its Award Budget for its Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Subrecipient receives FTA’s prior written concurrence.
- (d) Enforcement. The Subrecipient must pursue its legal rights and remedies available under any third party agreement, or any federal, state, or local law or regulation.

Applicable to Awards exceeding \$100,000 by Statute

From Section 4. Ethics.

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

Section 26. Environmental Protections – Clean Air and Clean Water

- (d) Other Environmental Federal Laws. The Subrecipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to “Protection of Wetlands,” and Executive Order No. 11988, as amended, “Floodplain Management.”

Applicable with the Transfer of Property or Persons**Section 15. Preference for United States Products and Services.**

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

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

Applicable to Construction Activities**Section 24. Employee Protections.**

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

From Section 16

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

From Section 23

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

Section 12 Civil Rights D(3)

Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:

- (i.) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR chapter 60, and
- (ii) Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

Applicable to Nonconstruction Activities

From Section 24. Employee Protections

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

Applicable to Transit Operations

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

Section 28. Charter Service.

- (a) **Prohibitions.** The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, “Charter Service,” 49 CFR part 604, any other Federal Charter Service regulations, federal requirements, or federal guidance.
- (b) **Exceptions.** Apart from exceptions to the Charter Service restrictions in FTA’s Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)-type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Subrecipient uses that federal assistance for FTA program purposes only, and
 - (2) FTA’s Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Subrecipient uses that federal assistance for program purposes only.
- (c) **Violations.** If it or any Third Party Participant engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA’s Charter Service regulations, 49 CFR part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

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

From Section 35 Substance Abuse

c. Alcohol Misuse and Prohibited Drug Use.

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

Applicable to Planning, Research, Development, and Documentation Projects**Section 17. Patent Rights.**

- a. **General.** The Subrecipient agrees that:
 - (1) Depending on the nature of the Agreement, the Federal Government may acquire patent rights when the Subrecipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the underlying Agreement; or
 - (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Subrecipient will notify FTA immediately and provide a detailed report satisfactory to FTA.

- b. **Federal Rights.** The Subrecipient agrees that:
 - (1) Its rights and responsibilities, and each Third Party Participant's rights and responsibilities, in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof, and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Subrecipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200 et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR part 401.
- c. **License Fees and Royalties.** Consistent with the applicable U.S. DOT Common Rules, the Subrecipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Agreement are program income and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

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

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

Miscellaneous Special Requirements

From Section 12. Civil Rights.

- (e) *Disadvantaged Business Enterprise*. To the extent authorized by applicable federal laws, regulations, or requirements, the Subrecipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Agreement as follows:
- (1) *Statutory and Regulatory Requirements*. The Subrecipient agrees to comply with:
 - (i) Section 11101(e) of IIIA;
 - (ii) U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
 - (2) *DBE Program Requirements*. A Subrecipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 the requirements of 49 CFR part 26.
 - (3) *Special Requirements for a Transit Vehicle Manufacturer (TVM)*. The Subrecipient agrees that:
 - (i) *TVM Certification*. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR part 26; and

- (ii) *Reporting TVM Awards.* Within 30 days of any third party contract award for a vehicle purchase, the Subrecipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA's electronic award management system. The Subrecipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
- (4) *Assurance.* As required by 49 CFR § 26.13(a):
 - (i) *Recipient Assurance.* The Subrecipient agrees and assures that:
 - (A) It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR part 26;
 - (B) It must take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - (C) Its DBE program, as required under 49 CFR part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
 - (D) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
 - (ii) *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance.* The Subrecipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - (A) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR part 26;
 - (B) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - (C) Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of subparagraph 12.e(4)(b) (of FTA MA(23)) is a material breach of their subagreement, third party contract, or third party subcontract, as applicable; and
 - (D) The following remedies, or such other remedy as the Subrecipient deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- (5) *Remedies.* Upon notification to the Subrecipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

From Section 12. Civil Rights.

- (h) *Nondiscrimination on the Basis of Disability.* The Subrecipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability:
 - (1) Federal laws, including:
 - (i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities;
 - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

- (2) Federal regulations and guidance, including:
- (i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR part 37;
 - (ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR part 1192 and 49 CFR part 38;
 - (iv) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 CFR part 39;
 - (v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR part 35;
 - (vi) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR part 36;
 - (vii) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR part 1630;
 - (viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR part 64, Subpart F;
 - (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR part 1194;
 - (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR part 609,
 - (xi) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
 - (xii) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Section 16. Procurement.

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

State Requirements

Section 37. Special Notification Requirements for States.

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

EXHIBIT E, VERIFICATION OF PAYMENT

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

☐ **Verification of Payment –**

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

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

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

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

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

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

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

**COUNCIL BILL 7
ORDINANCE 2023-7
AN ORDINANCE
APPROVING AN
AFFILIATION
AGREEMENT WITH
COALITIONS AND
COLLABORATIVE (COCO)
FOR FISCAL HOSTING
SERVICES FOR PROJECTS
FACILITATED THROUGH
THE CLEAR CREEK
WATERSHED & FOREST
HEALTH PARTNERSHIP**



CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Council Bill 7, Ordinance 2023-7, an Ordinance approving the affiliation agreement with Coalitions and Collaborative (COCO) for fiscal hosting services so Black Hawk can participate in regional wildfire mitigation projects.

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

MOTION TO APPROVE Council Bill 7, Ordinance 2023-7 An Ordinance Approving an Affiliation Agreement with Coalitions and Collaborative (COCO) for Fiscal Hosting Services for Projects Facilitated through the Clear Creek Watershed & Forest Health Partnership.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

In July of 2022, The City of Black Hawk approved an MOU to become a participant in the Clear Creek Watershed and Forest Health Partnerships. This is an organization that's mission is to reduce wildfire fuel and develop mitigation projects. The organization does not have a funding mechanism or corporate structure to legally use and appropriate funds. COCO was envisioned to be the financial affiliated corporation in the creation of the Partnership and is now being implemented.

Partnership does not create any obligation or commitment to Black Hawk to financially or otherwise participate in any of the projects, but if there is a project in the future that Black Hawk feels would be beneficial to the City, being affiliated with this organization would provide a mechanism to do so.

AGENDA DATE: March 8, 2023

FUNDING SOURCE: N/A

STAFF PERSON RESPONSIBLE: TI/BD

DOCUMENTS ATTACHED: agreement

RECORD ☐ Yes ☐ No

CoBH Certificate of Insurance Required ☐ Yes ☐ No

CITY ATTORNEY REVIEW: ☐ Yes ☐ No ☐ N/A INITIALS _____

SUBMITTED BY:

Thomas Isbester, Public Works Director

REVIEWED BY:

Stephen N. Cole, City Manager

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

COUNCIL BILL NUMBER: CB7

ORDINANCE NUMBER: 2023-7

TITLE: AN ORDINANCE APPROVING AN AFFILIATION AGREEMENT WITH COALITIONS AND COLLABORATIVE (COCO) FOR FISCAL HOSTING SERVICES FOR PROJECTS FACILITATED THROUGH THE CLEAR CREEK WATERSHED & FOREST HEALTH PARTNERSHIP

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

Section 1. The City of Black Hawk hereby approves an Affiliation Agreement with Coalition and Collaborative (COCO), as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City of Black Hawk.

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

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

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

READ, PASSED AND ORDERED POSTED this 8th day of March, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CB7

EXHIBIT A

COCO Affiliate Agreement

THIS Agreement is made and entered into by and between the Parties set forth in section I below, effective as of the Effective Date set forth in section 2 below.

I. PARTIES:

	COCO	Affiliate Member
Organization Name	Coalitions & Collaboratives, Inc. (COCO)	City of Black Hawk
Mailing Address	PO Box 746	PO Box 68
	40 Cherokee Ave.	201 Selak Street
	Lake George, CO 80827	Black Hawk, CO 80422
Principal Office Street Address	40 Lake George, CO 80827	201 Selak Street
Contact Number	719-412-3749	303-582-2221
Contact Email	Jonathan.Bruno@co-co.org	
Contract Contact	Administration: Joy Reis / joy.reis@co-co.org Contract Manager(s) Jonathan Bruno & Esther Duke / esther.duke@co-co.org	
	SIGNATURE:	SIGNATURE:
	Date:	Date:

WHEREAS, COCO is a 501(c)(3) nonprofit organization whose mission is to foster on-the-ground conservation efforts that protect and restore natural resources and local communities, by supporting affiliate group who produce collective impacts through stakeholder-driven efforts;

WHEREAS, the Affiliate member is a part of a coalition or collaborative group, as defined by COCO's bylaws;

WHEREAS, the Affiliate member wishes to have support services from COCO;

WHEREAS, the Affiliate member agrees to abide by and support the COCO purpose and objectives to the fullest extent possible (see Exhibits), and to not adopt any purpose that detracts from or conflicts with COCO's tax exempt status;

WHEREAS, COCO and the Affiliate member both have a vested interest in the success and growth of both organizations at all levels; and

WHEREAS, COCO and the Affiliate member have determined that it is in their best interests to enter into this Agreement in order to set forth in writing the terms and conditions of their affiliation.

NOW THEREFORE, in consideration of the premises set forth above and the promises set forth below, the sufficiency and receipt of which are hereby acknowledged, the parties hereby agree as follows:

II. TERMS AND CONDITIONS OF THE Agreement

1. **Independent Affiliate Member, Relationship of the Parties.** The parties aver that:
 - A. The Affiliate member is not subject to COCO's control as to the means and methods of accomplishing their mission, but COCO may specify and control the result to be accomplished if COCO is providing funding, financial management/fiscal hosting, and/or HR services as appropriate, and as defined in an annual work plan;
 - B. This Agreement shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties beyond the work to be completed pursuant to the annual work plan that COCO and the Affiliate member develop.
3. **Term.** This Agreement shall commence on the Effective Date, which shall be the later of the date it is signed by COCO's CEO; or a separate date as specified here: _____. This agreement shall terminate one year from the Effective Date, but may be renewed via email confirmation of both parties for up to three successive one-year terms.
4. **Cost of Service.** COCO invoices all affiliates and affiliate members monthly for actual costs incurred. Costs are described in COCO Fiscal Policy (Exhibit B)
5. **Liability & Representations.**
 - A. COCO and the Affiliate member expressly acknowledge and agree that COCO and the Affiliate member are, and intend to remain, separate entities and as such shall not incur any liability, obligation, or expense on behalf of the other, unless otherwise provided in writing by COCO's Chief Executive Officer or Executive Committee and an authorized representative of the Affiliate, pursuant to correspondence, agreements and approved work plans.
 - B. The Affiliate member may not enter into any affiliations, contracts, or other binding agreements with a third party on behalf of COCO, unless authorized in writing by COCO's COCO's Chief Executive Officer or Executive Committee and an authorized representative of the Affiliate, pursuant to correspondence, agreements and approved work plans.

- C. The conduct of the Affiliate member and its members and any other legal obligations, fees, costs, or other related financial fees and charges undertaken by the Affiliate member and outside of COCO's management are the sole responsibility of the individual Affiliate member and may not be passed onto COCO under any conditions. COCO retains no legal or financial liability for actions of the Affiliate member outside its relationship with COCO.
 - D. Affiliate member officers and officials shall speak only on behalf of the Affiliate member and recognize they may not speak or act on behalf of COCO.
6. **Force Majeure.** Neither the Affiliate member nor COCO shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this Agreement "force majeure" means acts of God; acts of the public enemy; acts of the any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; public health emergencies, including conditions related to COVID-19; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Notwithstanding the foregoing, in the event of a delay or failure of performance by the Affiliate member under this section exists for a period of 30 days, or for a shorter period if such delay or failure is not reasonably capable of being remedied within 30 days, COCO shall have the right to terminate this Agreement without further obligation.
7. **Default.** A party will be considered in default of its obligations under this Agreement if such party should substantially fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. Substantial failure to satisfy the Terms and Conditions set forth in this contract shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Affiliate member. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as provided herein below.
8. **Remedies.** In addition to any other remedies provided for in this Agreement, and without limiting its remedies otherwise available at law, COCO may exercise the following remedial actions if the Affiliate member substantially fails to satisfy or perform the duties and obligations in this Agreement:
- a. Suspend the Affiliate member's performance pending necessary corrective action as specified by COCO without the Affiliate member's entitlement to adjustment in price/cost or schedule; and/or
 - b. Withhold payment to the Affiliate member until the necessary services or corrections in performance are satisfactorily completed and/or acceptable goods are provided; and/or
 - c. Request the removal from work on this Agreement of employees or agents of the Affiliate member whom COCO justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this Agreement COCO deems to be contrary to the its interest; and/or
 - d. Deny payment for those services or obligations which have not been performed and/or for goods that have not been provided and which due to circumstances caused by the Affiliate member cannot be performed, or if performed would be of no value to COCO. Denial of the amount of payment must be reasonably related to the value of work or performance lost to COCO; and/or
 - e. Terminate this Agreement for default. The above remedies are cumulative and COCO, in its sole discretion, may exercise any or all of them individually or simultaneously.
9. **Termination for Convenience:** COCO or the Affiliate member may terminate this Agreement at any time by giving written notice of termination to the other party, and specifying the effective date thereof, at least fourteen (14) days before the effective date of such termination. Upon receipt of such notice:

- a. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared owed to the other party shall be completed within 60 days of termination effective date
- b. All payments shall be made to the other party within 60 days of termination effective date.

10. Representatives and Notice.

- a. Representatives. For the purpose of this Agreement, the individuals identified in Section I, PARTIES above are hereby designated representatives of the respective parties, referred to as "Contract Contacts" herein. Either party may from time to time designate in writing new or substitute representatives. With respect to the representative(s) of each party, the Contract Contact shall have the authority to inspect and reject services, approve invoices for payment, and act otherwise with regard to all legal matters and negotiations on behalf of the party.
- b. Notice. All notices required to be given under this Agreement shall be deemed given when actually delivered to the designated representative(s) of the party to be given notice by (i) certified mail, return receipt; or (ii) by hand delivery or courier service, if a signed receipt is obtained upon delivery.
- c. A party may change its designated representative(s) or address at any time by written notice in the same manner as for any other notice. The initial representatives of the parties shall be the persons whose names and addresses are set forth in Article I, Parties, herein above.

11. Legal Authority. The Affiliate member warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Affiliate member to its terms. The person(s) executing this Agreement on behalf of the Affiliate member warrant(s) that such person(s) have full authorization to execute this Agreement.

12. Non-Assignment. The parties shall not assign this Agreement to a third party without written approval of the other party.

13. Binding effect; Third Party Beneficiaries. This Agreement is binding upon the heirs, personal representatives, successors, and permitted assigns of both parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to COCO and the Affiliate member. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of COCO and the Affiliate member that any such person or entity, other than COCO or the Affiliate member, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

14. Entire Agreement. This Agreement, including the exhibits incorporated herein by reference, constitutes the entire agreement between the parties, and supersedes any previous Agreements, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Agreement.

15. Amendment. No modification or amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the parties.

16. Survival of Certain Agreement Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of this Agreement shall survive such termination date and shall be enforceable as provided herein in the event of such failure to perform or comply by the Affiliate member.

17. **Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
18. **Severability.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
19. **Counterparts.** This Agreement may be executed with any number of counterparts, each of which, when executed and delivered will constitute an original, but all such counterparts will constitute one and the same instrument.
20. **Priority of Interpretation:** The provisions of this Agreement shall govern the relationship of COCO and the Affiliate member. In the event of conflicts or inconsistencies between this Agreement and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: first, the Special Provisions if incorporated within this Agreement, second, the terms and provisions of this Agreement; third, the Exhibits listed above in the order they appear.
21. **COMPLIANCE WITH LAW.** Affiliate member shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, those laws applicable to discrimination and unfair employment practices. The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution. E
22. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** The signatories aver that to their knowledge, no employee of COCO, nor any other COCO official, including members of COCO's Board of Directors, has any personal or beneficial interest in the service or property described in this Agreement. Affiliate member has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Affiliate member's services and Affiliate member shall not employ any person having such known interests.

III. EXHIBITS INCORPORATED BY REFERENCE

The following exhibits are attached and hereby made a part of this Agreement:

Exhibit A: COCO Purpose & Objectives

Exhibit B: Fiscal Hosting Policy

Exhibit C: Federal Funds Addendum

Exhibit A: COCO Purpose & Objectives

COCO's purpose is to increase on-the-ground efforts to protect, enhance, and restore natural resources through collaborative conservation. Our objectives include:

1.) Capitalize on economies of scale:

- Employ a consistent and consolidated bookkeeping and financial management approach for all affiliates operating under the group determination, or affiliates utilizing financial management or human resources (HR) services;
- All affiliates operating under the group determination or utilizing financial management services will have their revenue and expenses tracked utilizing separate accounts so each affiliate member's funds are recognized separately and uniquely, and each affiliate member can "own" its own assets, seek its own grants and donations, and budget funds for its own mission, while still being accountable, transparent, and consistent with OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; the Federal Single Audit Act; and the nonprofit requirements of the Internal Revenue Code;
- Reduce insurance costs through group purchased insurance for general liability, umbrella liability, and similar insurances. Each group will need its own Directors & Officers (D&O) policy, though affiliates utilizing HR services will benefit from lower cost D&O.
- Increase payroll efficiencies with more people in the system. Costs for certain employee benefits go down as group size increases, and better benefits can attract and increase the retention of employees. Administrative costs for the payroll function and other HR functions decrease slightly on a per employee basis by combining staffs.
- All staff working under the group determination or for affiliates utilizing HR services will be paid by the COCO payroll system.
- Although paid by COCO, staff and other expenses will be allocated to the respective affiliates (or affiliate members, as applicable) against their revenue class in order to assure that each affiliate is responsible for defining and complying with budget expectations and to assure each affiliate that the money they are raising is appropriately going to their own work;
- The opportunity for purchasing supplies in bulk, such as erosion control blankets or seed, to reduce the cost of projects.

2.) Provide a shared pool of experts and experience:

- Have the ability to hire certain staff that are shared among the group of member affiliates. For example, we may hire a staff Professional Engineer who is shared across projects and programs of the varying affiliates, or a full-time facilitator who can work with the various affiliates on things like strategic planning, developing Community Wildfire Protection Plans, Source Water Protection Plans, or other similar plans, through stakeholder-driven processes;
- Computer systems—COCO already has developed tools like cloud-based databases, and has a robust GIS program that will be shared across affiliates to provide consistent data development and outcome reporting to funders and stakeholders;
- Create a shared leadership training program that builds board and staff capacity and knowledge in a uniform fashion and creates shared apprenticeship and exchange of know-how between staff of the various organizations;

- Apply consistent policies and procedures across organizations for high accountability and transparency and utilized standardized forms, data sets, etc;
- And, act as a training ground for emerging professionals through internship programs, and association with Americorp and affiliated programs, such as VISTA, NCCC, youth corps, and veteran's green corps.

3.) Create a sense of community and support that helps people and businesses derive benefit from participating in collaborative conservation activities:

- Leveraging COCO's various partners, partnerships and networks between affiliates;
- Increases crew-member retention as positions are created across areas, and allows for upward growth for younger crew members;
- Engage funders with a new high-impact model that's based on a proven organizational model;
- Increase volunteerism opportunities for outdoor stewardship and public safety related to natural disasters and their recovery.

4.) Increase awareness for watershed-and other natural-resource-related issues across the country:

- Consistent messages from various affiliates;
- Engage more citizens on-the-ground activities;
- Increase recognition in the funder community;
- Create synergy and energy for new affiliates by connecting them to others.

5.) Provide start-up support to new organizations:

- COCO will be able to assist new affiliates with funding support during their formative period from donations made to COCO.
- Provide technical support and training to staff and boards of new organizations.

6.) Provide competitiveness for larger and different grants and donations to be shared across multiple entities.

- Many funders are looking for ways to increase the impact of their contributions by supporting the expansion of scalable, successful models, and COCO does that.

EXHIBIT B TO Affiliate Agreement

Fiscal Hosting

COCO was established to assist other collaborative-types of conservation organizations, and as such, may fiscally host or manage external coalitions (nonprofits) or collaborative groups. As such, COCO has the following financial policies related to our hosting of organizations:

- All funds for hosted organizations will be tracked by accounting staff in such fashion as to provide for clear accountability of each organization's assets, donations, funds, etc.
- Reports of finances will be provided at least quarterly, or monthly if volume of transactions warrants more frequent reporting, to the Contract Contact (Executive Director, treasurer, or other designated individual for the fiscally hosted organization).
- Contract Contact shall provide COCO accounting staff with information necessary for creating billing codes or classifications for tracking funding in the fashion they need for analysis of program outcomes and reporting back to funders and supporters.
- The Contract Contact may request a meeting to review financials with COCO CEO and accounting staff at any time.
- If the fiscally hosted organization is a 501(c)(3) nonprofit, Contract Contact is responsible for maintaining the organization's status with the Secretary of State, assuring submittals to the IRS, and other management duties, but COCO staff will work to assure that the Contract Contact has pertinent information in timely fashion to meet these obligations.
- COCO has a set 2% per annum charge against managed funds, which is calculated monthly, plus any direct fees charged by banks or other fund managers. This is charged on average funds of prior month (balance times 0.0016 per month). Managed funds are large funds that kept in an endowment or restricted account with an investment strategy to grow the principal.
- COCO will establish a separate money market account for managing funds in excess of \$2,000. Interest will be credited back to the organization. COCO will transfer funds as needed to cover bills and expenses paid out of COCO's accounts.
- If the organization has less than \$2,000 in cash assets, the funds may be commingled in COCO's checking account or savings account, but will still be tracked separately and fully documented.
- COCO will charge actual expenses to group through invoicing for payroll (program management services), supplies and materials, equipment, contracts and contractors, and other similar expenses that are incurred for the affiliate's program of work.
- COCO will charge a 5% indirect rate on the above charges, plus a prorated portion of insurance costs that are shared among organizations (includes life/disability for paid staff, general liability, umbrella liability, environmental liability). Proration of insurance will be based on percentage of payroll (either actual staff or contracted) for the previous period.
- Vehicles owned by COCO or CUSP and used by an affiliate organization are charged a daily usage fee of \$25, which covers auto insurance, depreciation, and general maintenance. Charges are also established on other equipment (and shared on Smartsheet), and will be reviewed with an affiliate prior to their using the equipment.
- If an organization no longer wishes to be fiscally hosted by COCO, they should notify us in writing, and we will close out their account and submit their money to another fiscal host or them directly if they have become a registered nonprofit, within 30 days of notification.

EXHIBIT C TO Affiliate Agreement

Federal Funds Addendum

The following provisions shall be deemed incorporated and made a part of the Agreement:

1. Certification:

- a. Acceptance of this Agreement constitutes certification that the Affiliate member is not presently debarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- b. Acceptance of this Agreement constitutes certification that the Affiliate member is not delinquent on any Federal debt.
- c. Acceptance of this Agreement constitutes certification that to the best of the Affiliate member's knowledge and belief:
 - (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Affiliate member, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.
 - (2) If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Affiliate member shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The Affiliate member shall require that the language of this certification be included in the award documents for all subcontracts, awards, and agreements.
 - (4) The Affiliate member has not, in a three-year period preceding this Agreement, been convicted of or had a civil judgment against them in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or an Agreement under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving property; and are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense; and, have not had one or more public transactions (federal, state or local) terminated for cause or default.
- d. The Affiliate member agrees to notify COCO immediately if there is any change of status in a., b., c., or d. above.

2. Applicable Regulations; Audit:

The Uniform Administrative Requirements for Grants and Cooperative agreements, and the applicable OMB Circulars cited therein, shall govern the allowability and allocability of costs under this Agreement. COCO [and grant administrators] reserve the right to audit the Affiliate member's books and records for a period of three years after Agreement expiration or termination in order to validate the allowability of costs paid under this agreement, and any costs not allowable under the State and Federal procurement rules shall be reimbursed by the Affiliate member, or offset against current obligations due.

**COUNCIL BILL 8
ORDINANCE 2023-8
AN ORDINANCE
APPROVING THE
MEMORANDUM OF
AGREEMENT FOR LOCAL
JURISDICTION
REGULATION OF
CONVEYANCES BETWEEN
THE COLORADO
DEPARTMENT OF LABOR
AND EMPLOYMENT,
DIVISION OF OIL AND
PUBLIC SAFETY AND THE
CITY OF BLACK HAWK**

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Approval of the Memorandum of Agreement for Local Jurisdiction Regulation of Conveyance according to the Elevator and Escalator Certification Act Title 9 Article 5.5, Colorado Revised Statutes.

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

MOTION TO APPROVE *CB8 – Ordinance No. 2023-8 approving the Memorandum of Agreement for Local Jurisdiction Regulation of Conveyances between the Colorado Department of Labor and Employment, Division of Oil and Public Safety, and the City of Black Hawk.*

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Community Planning and Development recommends the City of Black Hawk renew its Memorandum of Agreement (MOA) with the Colorado Department of Labor and Employment, Division of Oil and Public Safety (OPS) for an additional five (5) years. This MOA is effective on July 1, 2023, and will terminate on June 30, 2028.

Executing this Agreement allows the City to operate and enforce a conveyance regulation program within its territory of authority with standards equal to or more stringent than those within the current OPS statute and regulations. Because the conveyances within the City operate non-stop, the advantage of Black Hawk acting as the Authority Having Jurisdiction (AHJ) is to ensure the provisions of the Elevator and Escalator Certification Act and regulations are strictly regulated and enforced. Black Hawk administers a program that is more stringent than the OPS statute to guarantee that the riding public and industry personnel are safe and protected from the hazards of dangerous conveyances.

City staff recommends approving CB8 – Ordinance No. 2023-8.

AGENDA DATE: March 8, 2023

WORKSHOP DATE: N/A

FUNDING SOURCE: 010-1901-4193319 – Prof Svs / Other Consultants
010-1901-4193322 – Prof Svs / Services Billed Out

DEPARTMENT DIRECTOR APPROVAL: ☒ Yes ☐ No

STAFF PERSON RESPONSIBLE: Cynthia L. Linker, CP&D Director

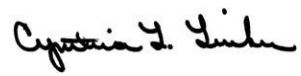
DOCUMENTS ATTACHED: CB8
Ordinance No. 2023-8
Memorandum of Agreement

RECORD: ☐ Yes ☒ No

CoBH CERTIFICATE OF INSURANCE REQUIRED [☐]Yes [☒]No

CITY ATTORNEY REVIEW: [☒]Yes [☐]N/A

SUBMITTED BY:



Cynthia L. Linker, CP&D Director

REVIEWED BY:



Stephen N. Cole, City Manager

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

COUNCIL BILL NUMBER: 08

ORDINANCE NUMBER: 2023-08

TITLE: AN ORDINANCE APPROVING THE MEMORANDUM OF AGREEMENT FOR LOCAL JURISDICTION REGULATION OF CONVEYANCES BETWEEN THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF OIL AND PUBLIC SAFETY AND THE CITY OF BLACK HAWK

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

Section 1. The City of Black Hawk hereby approves the Memorandum of Agreement for Local Jurisdiction Regulation of Conveyances Between the Colorado Department of Labor and Employment, Division of Oil And Public Safety and the City of Black Hawk, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City.

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

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

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

READ, PASSED AND ORDERED POSTED this 8th day of March, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CB8

EXHIBIT A

MEMORANDUM OF AGREEMENT
FOR LOCAL JURISDICTION REGULATION OF CONVEYANCES
Pursuant to the Elevator and Escalator Certification Act
Title 9 Article 5.5, Colorado Revised Statutes

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by the Colorado Department of Labor and Employment, Division of Oil and Public Safety ("OPS"), 633 17th Street, Suite 500, Denver, Colorado 80202-3610 and City of Black Hawk ("Authority Having Jurisdiction" or "AHJ"), located at 201 Selak Street, P.O. Box 68, Black Hawk, Colorado 80422 (collectively referred to as the "Parties").

I. BACKGROUND

The Elevator and Escalator Certification Act (the 'Act'), Title 9, Article 5.5, Sections 101 through 120, Colorado Revised Statutes (C.R.S.), declares that "in order to ensure minimum safety standards throughout Colorado, the regulation of conveyances is a matter of statewide concern". Conveyance Regulations, 7 Colorado Code of Regulations [CCR] 1101-8, have been promulgated to implement the requirements in the Act, and associated policies and guidance have been developed to further clarify requirements in regulations.

The Act allows a local authority having jurisdiction (AHJ) to enter into an MOA with OPS to regulate conveyances that are located within its territory (city, county or city and county) of authority. Following OPS's approval of the AHJ's conveyance standards and execution of this MOA, the AHJ will be considered an Approved AHJ.

Any reference in this MOA to a statute, regulation, or other authority shall be interpreted to refer to such authority then current, or as may have been changed or amended since the execution of this MOA. Documents incorporated herein and by reference to this MOA may be viewed on OPS website at ops.colorado.gov.

II. AUTHORITY AND PURPOSE

The principle authority for this MOA is contained in §9-5.5-112 (2), C.R.S. The Parties have entered into this MOA to:

- Identify the responsibilities of each party for ensuring the safety of conveyances within the State of Colorado through compliance with the Act, regulations, and associated policies and guidance.
- Formalize the cooperative working relationships between the Parties; and
- To provide procedures for communications, exchange of information, and resolution of problems as necessary to carry out the provisions of the Act and regulations.

III. EFFECTIVE DATE AND TERM

This MOA shall be effective on July 1, 2023, upon the satisfaction of OPS that the AHJ has developed a program that can adequately regulate conveyances within its territory. This MOA will terminate on June 30, 2028, unless terminated sooner as specified herein.

IV. RESPONSIBILITIES OF OPS

- A. OPS shall approve the AHJ entering into this MOA.
- B. OPS shall adopt nationally recognized conveyance safety standards.
- C. OPS shall require that all newly installed and existing conveyances in the State of Colorado are registered with OPS. This process will include the collection of a one-time registration fee from the conveyance owner.
- D. OPS shall require that all conveyance contractors, mechanics, temporary mechanics and inspectors conducting work in the State of Colorado are licensed through OPS.

V. RESPONSIBILITIES OF THE AHJ

- A. The AHJ shall operate and enforce a conveyance regulation program within its territory of authority with standards equal to or more stringent than those within current OPS statute and regulation.
- B. The AHJ shall relay information regarding conveyances within its territory to OPS on an annual frequency. This information shall be submitted to OPS no later than February 28th of each calendar year and shall include information from the previous calendar year. The information and information format shall be determined by OPS and shall be incorporated by reference herein to this MOA. This information shall also be provided to OPS upon request.

- C. The AHJ shall, in cooperation with OPS, establish a schedule for the AHJ to initially adopt standards listed in §9-5.5-112 (1), C.R.S. Following this initial adoption, the AHJ shall remain current in adoption of future standard versions within 12 months from the date at which OPS adopts the standard.
- D. The AHJ shall ensure that all new and existing conveyances regulated by OPS within the territory of the AHJ are registered with OPS prior to issuing a Certificate of Operation for those conveyances.
- E. The AHJ shall ensure that all conveyances within the AHJ territory are operating under a current Certificate of Operation.
- F. The AHJ shall ensure that all entities described in IV. D. above possess a valid license with OPS prior to conducting work in its territory. Information regarding unlicensed entities shall be reported to OPS immediately in order that OPS enforcement be initiated.
- G. Within 24 hours of notification received by the AHJ, the AHJ shall notify OPS of any accident resulting in injury to an individual.
- H. If the AHJ utilizes a subcontractor in the performance of its responsibilities under this MOA, the AHJ shall ensure that the subcontractor holds all required licenses and/or certification to perform their responsibilities and maintains adequate insurance coverage at all times while performing their responsibilities.
- I. The AHJ shall issue a construction permit to the conveyance owner or conveyance contractor prior to the installation or alteration of a regulated conveyance.
- J. If allowed per AHJ regulations, the AHJ shall review and make determination of approval or denial for all Alternate Materials and Methods Requests (AMMR - code variances) submitted by conveyance owners or contractors. The AHJ must notify OPS on all AMMR determinations.
- K. The AHJ shall make readily accessible to the general public any and all jurisdictional rules and applicable amendments to the adopted standards and codes that are deemed by OPS to be more stringent or restrictive. This information shall be reviewed, and updates as needed.

VI. ACCESS TO INFORMATION

- A. To the extent allowed by law, each party shall make available to each to the other party, at no cost, information regarding conveyances within its territory. Requests for information shall not impose an unreasonable resource burden on the other party.
- B. Upon reasonable notice to the AHJ during the term of this MOA, OPS may inspect and review AHJ's records with regard to this MOA.

VII. TERMINATION

The Parties may terminate this MOA for their convenience by notifying the other party in writing, as described in Section VIII C of this MOA of their intent to terminate this MOA. Such termination shall be effective thirty (30) calendar days following notice. Notwithstanding the above, OPS may terminate this MOA immediately if the AHJ fails to satisfactorily perform its responsibilities hereunder during the term of this MOA.

VIII. GENERAL PROVISIONS

A. Legal Authority

The parties warrant that each possesses actual, legal authority to enter into this MOA. The parties further warrant that each has taken all actions required by its applicable law, procedures, rules, or by-laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this MOA and bind that party to its terms. The person or persons signing this MOA, or any attachments or amendments hereto, also warrant(s) that such person(s) possesses actual, legal authority to execute this MOA, and any attachments or amendments hereto, on behalf of that party.

B. Notice of Pending Litigation

Unless otherwise provided for in this MOA, the AHJ shall notify OPS individuals, as listed below in C, within five (5) working days after being served with a summons, complaint, or other pleading in a case which involves any services provided under this MOA and which has been filed in any federal or state court or administrative agency.

C. Notice Procedure

All notices required to be given under this MOA shall be in writing and shall be deemed given when personally served or three (3) days after deposit in the United States Mail, certified mail, return receipt requested, and addressed to the following parties or to such other addressee(s) as may be designated by a notice complying with the foregoing requirements. When notice is sent via electronic mail (email) the notice shall be in the form of an official document signed by the responsible party and attached to the notification email.

For the AHJ:

Name & Title:	David D. Spellman, Mayor City of Black Hawk
Address:	201 Selak Street, POB 68 Black Hawk, CO 80422
Phone/Email:	CPDInquiry@cityofblackhawk.org 303-582-0615

For OPS:

Name & Title:	David Hutchcraft, Conveyance Program Manager
Address:	Colorado Department of Labor & Employment Division of Oil and Public Safety 633 17 th Street, Suite 500, Denver CO 80202
Phone/Email	303-319-5834, David.Hutchcraft@state.co.us

With a copy to:

Name & Title:	Mahesh Albuquerque, Director
Address:	Colorado Department of Labor & Employment Division of Oil and Public Safety 633 17 th Street, Suite 500, Denver CO 80202
Phone/Email	303-318-8502, Mahesh.Albuquerque@state.co.us

D. Independent Contractor

Neither AHJ nor any agent or employee of AHJ shall be or shall be deemed to be an agent or employee of OPS.

E. Third-Party Claims

Only to the extent that indemnification is consistent with any constitutional or statutory limitations on the AHJ's ability to indemnify others, to the extent permitted by law, the AHJ shall indemnify and hold OPS harmless against any third-party claims that may arise under this MOA as a direct result of the AHJ's performance or non-performance of its responsibilities hereunder.

F. Adherence To Applicable Laws.

At all times during the term of this MOA, both parties shall comply with all applicable federal and state laws, regulations, rules, or procedures, as these provisions currently exist or may hereafter be amended, all of which are incorporated herein by reference and made a part of the terms and conditions of this MOA.

G. Venue.

The Parties agree that exclusive venue for any action related to this MOA shall be filed in the City and County of Denver, Colorado.

H. Governmental Immunity Act

No term or condition of this MOA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

I. Entire Understanding

This MOA is the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect whatsoever, unless embodied in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written contract executed and approved by the Parties.

IX. APPROVALS

The Parties hereto have executed this MOA.

<div>By: _____</div> <div>David D. Spellman, Mayor City of Black Hawk</div> <div>Date: _____</div>	<div>Colorado Department of Labor and Employment Division of Oil and Public Safety</div> <div>By: _____</div> <div>Mahesh Albuquerque, Director</div> <div>Date: _____</div>
--	--

Additional AHJ Approving Parties signatures (if applicable)

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

By: _____

Date: _____

RESOLUTION 16-2023
A RESOLUTION
AUTHORIZING A CHANGE
IN THE CITY'S 457
GOVERNMENTAL
DEFERRED
COMPENSATION PLAN
WITH MISSION SQUARE
RETIREMENT

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: MissionSquare 457 In-Service Distributions at age 59.5

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

MOTION TO APPROVE Resolution 16-2023, a Resolution Authorizing a Change in the City's 457 Governmental Deferred Compensation Plan with Mission Square Retirement.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Changing the In-Service Distribution age from 70.5 to 59.5 allows employees more flexibility when transferring retirement funds to other investment options in addition to mutual fund investments with Mission Square.

AGENDA DATE: March 8, 2023

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: ☒ Yes ☐ No

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

DOCUMENTS ATTACHED: Mission Square Secure Act Election Form

RECORD: ☐ Yes ☒ No

CITY ATTORNEY REVIEW: ☒ Yes ☐ N/A

SUBMITTED BY:

REVIEWED BY:



Melissa A. Greiner, CMC
City Clerk
Administrative Services Director

Stephen N. Cole
City Manager

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

Resolution No. 16-2023

**TITLE: A RESOLUTION AUTHORIZING A CHANGE IN THE CITY’S 457
GOVERNMENTAL DEFERRED COMPENSATION PLAN WITH
MISSION SQUARE RETIREMENT.**

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

Section 1. The City Council hereby approves a change to the City’s 457 Governmental
Deferred Compensation Plan with Mission Square Retirement Authorizing In-Service
Distributions at age 59.5.

RESOLVED AND PASSED this 8th day of March, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

Use this form to adopt any of the provisions made available by The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 and related legislation.

A. In-Service Distributions at Age 59.5

The Plan will permit in-service withdrawals at age 59.5 (NOTE: Not applicable to 401(a) Profit Sharing Plans, as this provision is already available in your plan. You can change the in-service distribution age by submitting a revised Adoption Agreement.)

☒ Yes ☐ No ("No" is the default provision under the Plan if no selection is made.)

B. Qualified Birth and Adoption Distribution

The plan will permit participants to receive, upon written request, a distribution of up to \$5,000 per qualifying birth or adoption (not to exceed \$5,000 across all retirement accounts of the participant. (Note to 401(a) Money Purchase Plan Sponsors: such a withdrawal can only be undertaken if the participant meets the plan's existing in-service withdrawal criteria.)

Such a distribution is exempt from the 10% early distribution tax penalty and is exempt from the mandatory 20% withholding; and can be repaid into the account without regard to the usual 60-day time limit for rollovers if elected. A qualified adoption distribution would be limited to the adoption of children who are under age 18 or who are physically or mentally incapable of self-support.

☐ Yes ☒ No ("No" is the default provision under the Plan if no selection is made.)

401(a) Money Purchase Plan and 401(a) Profit Sharing Plan Sponsors Only: Please indicate whether you wish to waive the limit of two in-service withdrawals per year to allow for one or more Qualified Birth and Adoption distribution.

☐ Yes ☐ No ("No" is the default provision under the Plan if no selection is made.)

If you elect to offer a Qualified Birth and Adoption distribution, please indicate whether plan participants will be able to roll a Qualified Birth and Adoption distribution back into the plan regardless of whether the plan allows for other incoming rollovers.

☐ Yes ☐ No ("Yes" is the default provision under the Plan if no selection is made.)

C. MissionSquare Retirement Income Advantage In-Service Distribution (NOTE: only applicable to plans that have the MissionSquare Retirement Income Advantage as an available investment option).

In the event the MissionSquare Retirement Income Advantage Fund is no longer an investment option under the plan, a Participant shall, upon written request, be permitted to roll these assets to another plan. Such a distribution can be undertaken regardless of the participants eligibility pertaining to in-service distributions.

☐ Yes ☒ No ("No" is the default provision under the Plan if no selection is made.)

By signing below, we intend to amend the plan to allow these procedures as of the date below or as soon as administratively feasible. Please submit one form per plan number.

Employer Plan Number: 303813 Employer Plan Name: City of Black Hawk

Signature of Authorized Plan Representative: _____

Print Name: Melissa A. Greiner Title: City Clerk/Administrative Services Dir Date: 03 / 08 / 2023 (MM/DD/YYYY)

This form can be returned by email, fax, or mail using the information below.

Email to: PlanAdoptionServices@msqplanservices.org
Fax to: (202) 682-6439
ATTN: Workflow Management Team

Mail to: MissionSquare Retirement
ATTN: Workflow Management Team
777 North Capitol Street, NE, Suite 600
Washington, DC 20002-4240

AC: 48364-0720-W2624

RESOLUTION 17-2023

**A RESOLUTION
APPROVING THE
PROFESSIONAL
SERVICES AGREEMENT
BETWEEN THE CITY OF
BLACK HAWK AND PEH
ARCHITECTS IN AN
AMOUNT NOT TO
EXCEED \$291,170.00 FOR
DESIGN SERVICES ON
THE COPPER KITCHEN
PIZZERIA**



CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Resolution 17-2023, a Resolution approving the Professional Services Agreement with PEH Architects for design services on the Copper Kitchen Pizzeria.

RECOMMENDATION:

Motion to approve Resolution 17-2023, A Resolution Approving the Professional Services Agreement with PEH Architects for Design Services on the Copper Kitchen Pizzeria in the Amount of \$291,170.00

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Gregory Street Plaza is complete, except for a vacant lot that remains between the McAfee House and Church Street, at the old Lilly Belle's site. A proposal has been put forth to relocate the existing structure currently located at 271 Gregory Street to this vacant area, and redevelop it into a restaurant and taproom to be known as the Copper Kitchen Pizzeria.

On November 10, 2021, City Council approved a contract with PEH Architects to complete conceptual design services for the Copper Kitchen Pizzeria project. PEH has completed the conceptual stage of this project, and they are ready to move forward with a full set of construction plans. This Professional Services Agreement would authorize PEH Architects to complete a full set of architectural and engineering plans necessary to obtain a building permit.

FUNDING SOURCE: 271 Gregory St. Rehabilitation: 203-0000-502-58-48

AGENDA DATE: March 8, 2023

ORIGINATED BY: Matt Reed/Tom Isbester

STAFF PERSON RESPONSIBLE: Matt Reed/Tom Isbester

PROJECT COMPLETION DATE: Design to be completed by June 5, 2023

DOCUMENTS ATTACHED: Professional Services Agreement

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

SUBMITTED BY:

Thomas Isbester, Public Works Director

REVIEWED BY:

Stephen N. Cole, City Manager

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

Resolution No. 17-2023

TITLE: A RESOLUTION APPROVING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND PEH ARCHITECTS IN AN AMOUNT NOT TO EXCEED \$291,170.00 FOR DESIGN SERVICES ON THE COPPER KITCHEN PIZZERIA

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 Professional Services Agreement between the City of Black Hawk and PEH Architects in an amount not to exceed \$291,170.00 for design services on the Copper Kitchen Pizzeria, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 8th day of March, 2023.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2023, by and between the **CITY OF BLACK HAWK**, State of Colorado, a Colorado municipal corporation (hereinafter referred to as the "City") and **PEH Architects** (hereinafter referred to as "Contractor").

RECITALS:

- A. The City requires miscellaneous professional architectural and engineering services for the Copper Kitchen Pizzeria Project (the "Project").
- B. Contractor has held itself out to the City as having the requisite expertise and experience to perform the required work for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Contractor shall provide to the City professional architectural and engineering services for the Project.

I. SCOPE OF SERVICES

Contractor shall complete the scope of services as summarized in **Exhibit A** attached hereto and incorporated herein by this reference. Contractor shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations, and responsibilities for the Project.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Contractor with reports and such other data as may be available to the City and reasonably required by Contractor to perform hereunder. No project information shall be disclosed by Contractor to third parties without the prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Contractor shall be returned to the City. Contractor is authorized by the City to retain copies of such data and materials at Contractor's expense.

III. OWNERSHIP OF WORK PRODUCT

The City acknowledges that Contractor's documents produced under this Agreement are instruments of professional services. Nevertheless, upon payment to Contractor pursuant to this Agreement, all work, data, drawings, designs, plans, reports, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed for this Project are, and shall be, the sole and exclusive property of the City. However, any reuse of the documents by the City without prior written authorization by Contractor other than for the specific intended purpose of this Agreement will be at the City's sole risk. Contractor will provide the City with a ten (10) day written notice prior to disposal of Project documents it has retained, during which time the City may take physical possession of same at the storage site.

IV. COMPENSATION

- A. Compensation shall not exceed **Two hundred ninety-one thousand one hundred seventy dollars (\$291,170.00)** for the work described in **Exhibit A**. Payment shall be made in accordance with the schedule of charges in **Exhibit A**. Invoices shall be itemized and include hourly breakdown for all personnel and other charges.
- B. Contractor may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Contractor under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the City. Reimbursable costs actually incurred shall be supported by detailed statements, including hourly breakdowns for all personnel and other charges.
- C. The City has the right to ask for clarification on any Contractor invoice after receipt of the invoice by the City.
- D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Contractor may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Contractor may terminate this Agreement. Upon receipt of payment in full for services rendered, Contractor will continue with all authorized services.
- E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Contractor's certification that services required herein by Contractor have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF WORK

Contractor shall commence work upon the execution of this Agreement. The design portion of this Agreement shall be completed by **June 30, 2023**. The construction administration portion of this agreement shall be completed by **July 31, 2024**.

VI. PROFESSIONAL RESPONSIBILITY

- A. Contractor hereby represents that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

- B. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.
- C. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by Contractor under this Agreement. Contractor shall, without additional compensation, correct or resolve any errors or deficiencies in its designs, drawings, specifications, reports, and other services which fall below the standard of professional practice.
- D. Approval by the City of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Contractor of responsibility for technical adequacy of the work. Neither the City's review, approval, nor acceptance of, nor payment for any of the services shall be construed to operate as a waiver of any rights under this Agreement, and Contractor shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.
- E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VII. COMPLIANCE WITH LAW

The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

VIII. INDEMNIFICATION

- A. **INDEMNIFICATION – GENERAL:** The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate, or assume the defense of the Contractor or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions, or proceedings of any kind are not the result of professional negligence, the Contractor, to the fullest extent permitted by law, shall defend, indemnify, and hold harmless the City, its Council members, officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions, or proceedings of any kind or nature whatsoever, including worker's compensation claims, in any way resulting from or arising from the services rendered by Contractor, its employees, agents, or subcontractors, or others for whom the Contractor is legally liable, under this Agreement; provided, however, that the Contractor need not indemnify or save harmless the City, its Council members, its officers, agents, and employees from damages resulting from the negligence of the Council members, officials, officers, directors, agents, and employees.
- B. **INDEMNIFICATION FOR PROFESSIONAL NEGLIGENCE:** The Contractor shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the

City, its Council members, and any of its officials, officers, directors, and employees from and against damages, liability, losses, costs, and expenses, including reasonable attorney fees, but only to the extent caused by or arising out of the negligent acts, errors, or omissions of the Contractor, its employees, agents, or subcontractors, or others for whom the Contractor is legally liable, in the performance of professional services under this Agreement. The Contractor is not obligated under this subparagraph VIII.B. to indemnify the City for the negligent acts of the City, its Council members, or any of its officials, officers, directors, agents, and employees.

- C. **INDEMNIFICATION – COSTS:** Contractor shall, to the fullest extent permitted by law, defend, investigate, handle, respond to, and provide defense for and defend against, any such liability, claims, or demands at the sole expense of Contractor or, at the option of the City, agrees to pay the City or reimburse the City for the defense costs incurred by the City in connection with any such liability, claims, or demands. Contractor shall, to the fullest extent permitted by law, defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the City, its Council members, officials, officers, directors, agents, and employees, the City shall reimburse Contractor for the portion of the judgment attributable to such act, omission, or other fault of the City, its Council members, officials, officers, directors, agents, and employees.

IX. INSURANCE

- A. The Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section VIII above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section VIII above, by reason of its failure to obtain and maintain during the life of this Contract insurance in sufficient amounts, durations, or types.
- B. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section VIII above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
1. **Worker's Compensation Insurance** to cover obligations imposed by applicable law for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of six hundred thousand dollars (\$600,000) each incident, one million five

hundred thousand dollars (\$1,500,000) disease—policy limit, and one million five hundred thousand dollars (\$1,500,000) disease—each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements under this paragraph.

2. **Commercial General Liability Insurance** with minimum combined single limits of six hundred thousand dollars (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual products, and completed operations. This policy shall contain a severability of interests provision.
3. **Professional Liability Insurance** with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.
4. **The policy required by Paragraph 2 above shall be endorsed to include the City and the City's officers, employees, and consultants as additional insureds.** The policy required in Paragraphs 1 and 2 above shall be primary insurance, and any insurance carried by the City, its officers, its employees, or its Contractors shall be excess and not contributory insurance to that provided by Contractor. No additional insured endorsement to the policy required by Paragraph 1 above shall contain any exclusion for bodily injury or property damage arising from completed operations. Contractor shall be solely responsible for any deductible losses under any policy required above.
5. The certificate of insurance provided for the City shall be completed by Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated, or materially changed until at least thirty (30) days prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Black Hawk
P.O. Box 68
Black Hawk, Colorado 80422-0068
Attn: **City Clerk**

6. Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any

and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-114 et seq., 13 Colo. Rev. Stat., as from time to time amended, or otherwise available to the City, its officers, its employees, or agents.

X. NON-ASSIGNABILITY

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

XI. TERMINATION

This Agreement shall terminate upon the City's providing Contractor with thirty (30) days advance written notice. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Contractor.

XII. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Gilpin, State of Colorado.

XIII. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is the employee of the City for any purpose.

XIV. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

XV. NOTICE

Any notice or communication between Contractor and the City which may be required, or which may be given, under the terms of this Agreement, shall be in writing and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City:

City of Black Hawk
P.O. Box 68
Black Hawk, Colorado 80422-0068
Attn: City Clerk

The Contractor:

PEH Architects
1720 14th Street, Suite 100
Boulder, Colorado 80302
Attn: Peter Heinz

XVI. ENTIRE AGREEMENT

This Agreement and the attached exhibits constitute the entire Agreement between Contractor and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

CITY OF BLACK HAWK, COLORADO

By: _____
David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

PEH Architects

By: _____
Its: _____
[Signature]
PRESIDENT

STATE OF COLORADO)
) ss.
COUNTY OF Gilpin)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this
1 day of MARCH, 20 23, by
Peter E. Heinz as the PRESIDENT of
PEH Architects INC.

My commission expires: 8/16/25

(SEAL)

ERIN SCULLY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20014025022
MY COMMISSION EXPIRES AUGUST 16, 2025

[Signature]
Notary Public

PEH ARCHITECTS
 1720 14th Street Suite 100
 Boulder, Colorado 80302
 303-442-0408

EXHIBIT A

11/9/2018
 REV: 12/21/18

REV 2/15/23

Gregory Street Plaza Project
 Black Hawk, Colorado

Summary of Architectural/Engineering Fees

Building	Size	Construction Cost		A/E Fee	
		SF	\$/SF Ttl.	%	Ttl.
Fire Truck Display	800	550	440,000	13.5%	59,400
Public Restrooms	400	550	<u>220,000</u>	13.5%	<u>29,700</u>
<i>Subtotal New Construction</i>			660,000		89,100
305 Gregory - McAfee#1	742	750	556,500	12.0%	66,780
Addition	126	550	69,300	12.0%	8,316
(N) 1 story connector	220	550	121,000	12.0%	14,520
128 + 92 = 220					
311 Gregory - McAfee#2	1,605	750	1,203,750	12.0%	144,450
Addition	<u>300</u>	550	<u>165,000</u>	12.0%	<u>19,800</u>
<i>Subttl. for entire McAfee</i>	2,993		1,368,750		253,866
321 Gregory - Woodbury	1,834	850	1,430,520	10.0%	143,052
Addition	<u>442</u>	550	<u>243,100</u>	10.0%	<u>24,310</u>
<i>Sbttotal for Woodbury</i>	2,276		1,673,620		167,362
351 Gregory - Norton	2,114	750	1,608,000	10.0%	160,800
Bunk House	275	625	171,875	12.0%	<u>20,625</u>
<i>Subtotal Rehabilitation Construction</i>			5,569,045		602,653
Bobtail Building	800	650	520,000	12.0%	62,400
Bobtail Deck surround	1,100	175	192,500	12.0%	<u>23,100</u>
<i>Subtotal Bobtail Building</i>			712,500		85,500
Master Plan stairs	6,300	125	787,500	7.0%	55,125
Master Plan Ret walls	212	520	110,240	7.0%	7,717
<i>Subtotal Master Plan</i>			<u>897,740</u>		<u>62,842</u>
Totals			7,839,285		840,095

2/15/23

307 Gregory - Copper Kitchen Pizzeria

Renno/Move existing portion	982	900 [1]	883,800		
Addition	1,668	660 [1]	1,100,880		
Event Deck	1,113	210 [1]	233,730		
Entry Patio	634	175	<u>110,950</u>		
<i>Subtotals</i>			2,329,360	12.5% [2]	291,170
Paid Hourly (Jan & Feb 2023) on new pizzeria concept					<u>-33,880</u>
<i>Total Copper Kitchen Pizzeria A/E fee</i>					[3] 257,290

[1] A 20% escalation factor from 2018 was used for calculating \$/SF construction costs.

[2] A combination adjusted A/E percentage was used for calculating fee.

[3] A/E fee includes full service Architecture, consulting engineering includes: Civil, Landscape, Structural, Mechanical Plumbing & Electrical, Kitchen consultant, Interiors and Specifications.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/19/2022

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

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

PRODUCER Taggart & Associates, Inc. 1680 38th Street Suite 110 Boulder CO 80301		CONTACT NAME: Luz Amancha PHONE (A/C, No, Ext): 303-442-1484 FAX (A/C, No): 303-442-8822 E-MAIL ADDRESS: certificates@taggartinsurance.com		
INSURED PEH Architects, Inc. 1720 14th Street Suite 100 Boulder CO 80302 PEHARCH-01		INSURER(S) AFFORDING COVERAGE		NAIC #
		INSURER A: The Travelers Indemnity Company of America		25666
		INSURER B: The Travelers Indemnity Company of Connecticut		25682
		INSURER C:		
		INSURER D:		
		INSURER E:		
INSURER F:				

COVERAGES**CERTIFICATE NUMBER:** 1538163939**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			6805H707450	12/31/2022	12/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA-2R936386-22-47-G	12/31/2022	12/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

CERTIFICATE HOLDER**CANCELLATION**

City of Black Hawk
PO Box 68
Black Hawk, CO 80422-0068

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

AUTHORIZED REPRESENTATIVE



PEHARCH-01

CKING

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/6/2023

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

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PRODUCER PUI Agency of Colorado, Inc. P.O. Box 3412 Littleton, CO 80161	CONTACT NAME:	
	PHONE (A/C, No, Ext): (720) 465-9116	FAX (A/C, No): (248) 553-8305
	E-MAIL ADDRESS: CKing@profunderwriters.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Hartford Fire Insurance Co.	19682
INSURED PEH Architects, Inc. Peter Heinz, AIA d/b/a 1720 14th St. Suite 100 Boulder, CO 80302	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input type="checkbox"/> N/A						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	Professional Liab			34 OH 0493656-23	1/26/2023	1/26/2024	Each Claim 2,000,000
A	Professional Liab			34 OH 0493656-23	1/26/2023	1/26/2024	Aggregate 2,000,000

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

CERTIFICATE HOLDER

CANCELLATION

City of Black Hawk
PO Box 68
Black Hawk, CO 80422-0068

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

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/19/2022

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

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

PRODUCER Pinnacol Assurance 7501 E. Lowry Blvd. Denver, CO 80230-7006	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED PEH Architects Inc 1720 14th St Ste 100 Boulder, CO 80302	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Pinnacol Assurance	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
INSURER F :		
NAIC # 41190		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A	2097982	12/01/2022	12/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Unless otherwise stated in the policy provisions, coverage in Colorado only.

CERTIFICATE HOLDER

CANCELLATION

2298810
City of Black Hawk
PO Box 68
Black Hawk, CO 80422

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

AUTHORIZED REPRESENTATIVE

Pinnacol Assurance

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ACORD 25 (2016/03)

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**Local Liquor Authority
Consideration of a Request
for a New Retail Liquor Store
License for Peak to Peak
Market LLC dba Peak to
Peak Liquors at 7320 Black
Hawk Blvd, Suite 1A to set
the Boundaries of the
Neighborhood and to Set a
Date for Public Hearing**

CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT: Local Liquor Authority consideration of a request for a new Retail Liquor Store License for Peak to Peak Market LLC dba Peak to Peak Liquors at 7320 Black Hawk Blvd, Suite 1A, to set the boundaries of the neighborhood and to set a date for Public Hearing.

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

MOTION TO APPROVE the request for a new Retail Liquor Store License for Peak to Peak Market LLC dba Peak to Peak Liquors at 7320 Black Hawk Blvd, Suite 1A, to set the boundaries of the neighborhood and to set the date of the public hearing to April 12, 2023.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City Clerk's office received a new Retail Liquor Store license application from Peak to Peak Market LLC dba Peak to Peak Liquors on February 9, 2023, and it was deemed complete on February 9, 2023. The applicant requested concurrent review with the state.

As per Chapter 6, Article II, Section 6-61(a) of the Black Hawk Municipal Code, "The City Clerk shall place on the agenda of a City council meeting the request for a new liquor license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the City Clerk has received the application. The date the completed application is received by the City Clerk shall be deemed the date of filing of the application."

Section 6-61 (b) states, "The City Council shall set the boundaries of the neighborhood and shall set a date for public hearing. The public hearing shall be held not less than thirty (30) days from the date of the City Council meeting in which the application was presented." The next Council meeting to fall within this requirement would be April 12, 2023.

The applicant has included a letter to Council asking if the same results from the previous petition conducted a little over a year ago for the same license type at the exact location would be sufficient to satisfy the requirements of the neighborhood needs and desires. The previous business closed in January 2023.

AGENDA DATE: March 8, 2023

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X]Yes[]No

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

DOCUMENTS ATTACHED: Application

RECORD: [☐]Yes [☒]No

CITY ATTORNEY REVIEW: [☒]Yes [☐]N/A

SUBMITTED BY:

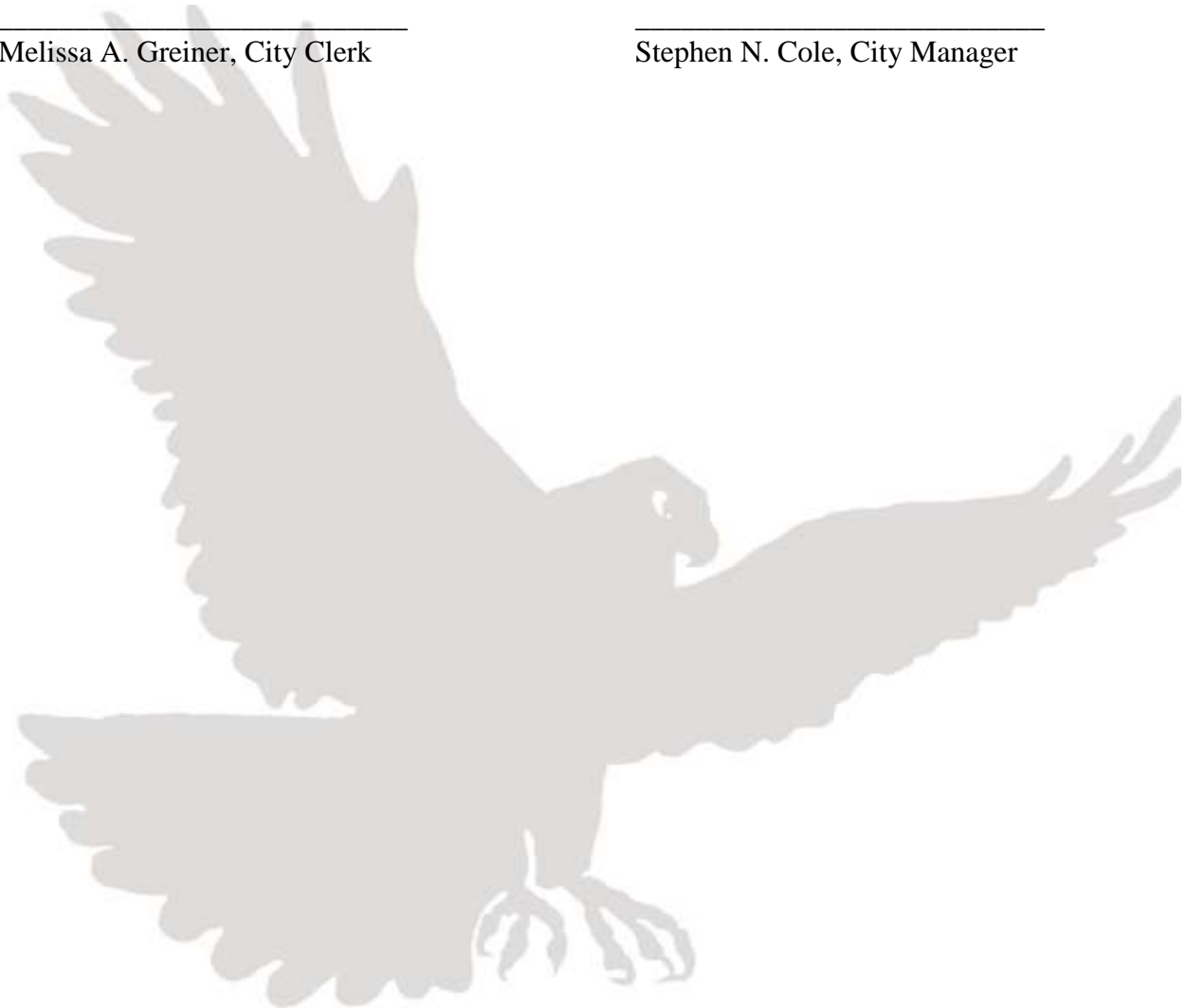


Melissa A. Greiner, City Clerk

REVIEWED BY:



Stephen N. Cole, City Manager



To: Black Hawk City Council

2/09/2023

Subject: Peak to Peak Market LLC liquor license application

This letter is to show that Municipal code chapter 6–64 (3) has been satisfied. I am including the copies of a recent petition from the previous owner of a liquor license held at the same location that closed up in January 2023. It is my belief that the same result would be true today as when the previous petition took place. So I would ask that these petitions be accepted by the Black Hawk City Council in lieu of redoing a new petition canvassing of the neighborhood.

Thank you for your consideration

Nicolas Spencer

Peak to Peak Market LLC

Reference

Sec. 6-64. - Consideration of factors.

Before entering any decision approving or disapproving the liquor license application, the City Council shall consider the following:

(3) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise;

FEB 09 2023

CITY OF BLACK HAWK
CLERK'S OFFICE

104 of 132 Page 1 of 6

Application Documents Checklist and Worksheet

Instructions: This checklist should be utilized to assist applicants with filing all required documents for licensure.

All documents must be properly signed and correspond with the name of the applicant exactly. **All** documents must be typed or legibly printed. Upon final State approval the license will be mailed to the local licensing authority. Application fees are nonrefundable. **Questions? Visit:** SBG.Colorado.gov/Liquor for more information

Items submitted, please check all appropriate boxes completed or documents submitted	
I.	Applicant information <input type="checkbox"/> A. Applicant/Licensee identified <input type="checkbox"/> B. State sales tax license number listed or applied for at time of application <input type="checkbox"/> C. License type or other transaction identified <input type="checkbox"/> D. Return originals to local authority (additional items may be required by the local licensing authority) <input type="checkbox"/> E. All sections of the application need to be completed <input type="checkbox"/> F. Master file applicants must include the Application for Master File form DR 8415 and applicable fees to this Retail License Application
II.	Diagram of the premises <input checked="" type="checkbox"/> A. No larger than 8½" X 11" <input checked="" type="checkbox"/> B. Dimensions included (does not have to be to scale). Exterior areas should show type of control (fences, walls, entry/exit points, etc.) <input type="checkbox"/> C. Separate diagram for each floor (if multiple levels) <input type="checkbox"/> D. Kitchen - identified if Hotel and Restaurant <input type="checkbox"/> E. Bold/Outlined Licensed Premises
III.	Proof of property possession (One Year Needed) <input type="checkbox"/> A. Deed in name of the applicant (or) (matching question #2) date stamped / filed with County Clerk <input checked="" type="checkbox"/> B. Lease in the name of the applicant (or) (matching question #2) <input type="checkbox"/> C. Lease assignment in the name of the applicant with proper consent from the landlord and acceptance by the applicant <input type="checkbox"/> D. Other agreement if not deed or lease. (matching question #2)
IV.	Background information (DR 8404-I) and financial documents <input checked="" type="checkbox"/> A. Complete DR 8404-I for each principal (individuals with more than 10% ownership, officers, directors, partners, members) <input type="checkbox"/> B. Fingerprints taken and submitted to the appropriate Local Licensing Authority through an approved State Vendor. Master File applicants submit results to the State using code 25YQHT with IdentoGO. Do not complete fingerprint cards prior to submitting your application. The Vendors are as follows: IdentoGO – https://uenroll.identogo.com/ Phone: 844-539-5539 (toll-free) Colorado Fingerprinting – http://www.coloradofingerprinting.com Appointment Scheduling Website: http://www.coloradofingerprinting.com/cabs/ Phone: 720-292-2722 Toll Free: 833-224-2227 Details about the vendors and fingerprinting in Colorado can be found on CBI's website here: https://cbi.colorado.gov/sections/biometric-identification-and-records-unit/employment-and-background-checks <input type="checkbox"/> C. Purchase agreement, stock transfer agreement, and/or authorization to transfer license <input type="checkbox"/> D. List of all notes and loans (Copies to also be attached)
V.	Sole proprietor/husband and wife partnership (if applicable) <input type="checkbox"/> A. Form DR 4679 <input type="checkbox"/> B. Copy of State issued Driver's License or Colorado Identification Card for each applicant
VI.	Corporate applicant information (if applicable) <input type="checkbox"/> A. Certificate of Incorporation <input type="checkbox"/> B. Certificate of Good Standing <input type="checkbox"/> C. Certificate of Authorization if foreign corporation (out of state applicants only)
VII.	Partnership applicant information (if applicable) <input type="checkbox"/> A. Partnership Agreement (general or limited). <input type="checkbox"/> B. Certificate of Good Standing
VIII.	Limited Liability Company applicant information (if applicable) <input checked="" type="checkbox"/> A. Copy of articles of organization <input checked="" type="checkbox"/> B. Certificate of Good Standing <input type="checkbox"/> C. Copy of Operating Agreement (if applicable) <input type="checkbox"/> D. Certificate of Authority if foreign LLC (out of state applicants only)
IX.	Manager registration for Hotel and Restaurant, Tavern, Lodging & Entertainment, and Campus Liquor Complex licenses when included with this application <input type="checkbox"/> A. \$30.00 fee <input type="checkbox"/> B. If owner is managing, no fee required

Name Peak to Peak Liquors	Type of License Retail Liquor	Account Number		
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):				
a. Been denied an alcohol beverage license?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
b. Had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
c. Had interest in another entity that had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
If you answered yes to 8a, b or c, explain in detail on a separate sheet.				
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
Waiver by local ordinance?		<input type="checkbox"/> <input type="checkbox"/>		
Other:				
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input type="checkbox"/>		
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
13. a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?		<input type="checkbox"/> <input type="checkbox"/>		
b. Are you a Colorado resident?		<input type="checkbox"/> <input type="checkbox"/>		
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership , lease or other arrangement?		<input checked="" type="checkbox"/> <input type="checkbox"/>		
<input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____				
a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:				
Landlord City of Black Hawk	Tenant Peak to Peak Market LLC	Expires 02-19-28		
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8½" X 11".				
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.				
Last Name NA	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.				
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:				
Has a local ordinance or resolution authorizing optional premises been adopted? <input type="checkbox"/> <input type="checkbox"/>				
Number of additional Optional Premise areas requested. (See license fee chart) <input type="text"/>				
18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.				

Name <i>Peak to Peak Liquors</i>	Type of License <i>Retail Liquor</i>	Account Number
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19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:

a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? ☐ Yes ☐ No
If "yes" a copy of license must be attached.

20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation Yes No

a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain? ☐ Yes ☐ No

b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain? ☐ Yes ☐ No

c. How long has the club been incorporated?

d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above? ☐ Yes ☐ No

21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:

a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached) ☐ Yes ☐ No

22. Campus Liquor Complex applicants answer the following:

a. Is the applicant an institution of higher education? ☐ Yes ☐ No

b. Is the applicant a person who contracts with the institution of higher education to provide food services? ☐ Yes ☐ No
If "yes" please provide a copy of the contract with the institution of higher education to provide food services.

23. For all on-premises applicants.

a. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints.

Last Name of Manager	First Name of Manager
----------------------	-----------------------

24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number. Yes No
☐ Yes ☐ No

25. Related Facility - Campus Liquor Complex applicants answer the following: ☐ Yes ☐ No

a. Is the related facility located within the boundaries of the Campus Liquor Complex?
If yes, please provide a map of the geographical location within the Campus Liquor Complex.
If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.

b. Designated Manager for Related Facility- Campus Liquor Complex

Last Name of Manager	First Name of Manager
----------------------	-----------------------

26. Tax Information. Yes No

a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? ☐ Yes ☒ No

b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? ☐ Yes ☒ No

27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all **Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with **ownership of 10% or more in the applicant**. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.**

Name <i>Nicolas Spinas</i>	Home Address, City & State <i>Central City, CO</i>	DOB <i>[REDACTED]</i>	Position <i>Member</i>	%Owned <i>100</i>
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned

Name <i>Peak to Peak Liquors</i>	Type of License <i>Retail Liquor</i>	Account Number
<p>** If applicant is owned 100% by a parent company, please list the designated principal officer on above.</p> <p>** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)</p> <p>** If total ownership percentage disclosed here does not total 100%, applicant must check this box:</p> <p><input type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.</p>		
Oath Of Applicant		
<p>I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.</p>		
Authorized Signature <i>[Signature]</i>	Printed Name and Title <i>Nicolas Spencer Member</i>	Date <i>2-8-23</i>
Report and Approval of Local Licensing Authority (City/County)		
Date application filed with local authority <i>2/9/2023</i>	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) <i>April 12, 2023</i>	
<p>The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:</p> <p><input checked="" type="checkbox"/> Fingerprinted</p> <p><input checked="" type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants</p> <p>That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license</p> <p>(Check One)</p> <p><input type="checkbox"/> Date of inspection or anticipated date _____</p> <p><input checked="" type="checkbox"/> Will conduct inspection upon approval of state licensing authority</p>		
<p><input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000? Yes <input type="checkbox"/> No <input type="checkbox"/> <i>NA</i></p> <p><input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.</p> <p><input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period? Yes <input type="checkbox"/> No <input type="checkbox"/> <i>NA</i></p>		
<p>The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. Therefore, this application is approved.</p>		
Local Licensing Authority for		Telephone Number <input type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print	Title
Signature	Print	Title
		Date

Tax Check Authorization, Waiver, and Request to Release Information

I, Nicolas Spencer am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of Peak to Peak Market LLC (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.

The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101, et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.

The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.

By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.

Name (Individual/Business) <u>Nicolas Spencer</u>		Social Security Number/Tax Identification Number [REDACTED]	
Address [REDACTED]			
City <u>Central City</u>		State <u>Colorado</u>	Zip <u>80427</u>
Home Phone Number [REDACTED]		Business/Work Phone Number <u>NA</u>	
Printed name of person signing on behalf of the Applicant/Licensee			
Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information) <u>Nicolas Spencer</u>			Date signed <u>2-8-23</u>

Privacy Act Statement

Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).

Instructions: Please print this document for your records.

MyBizColorado

COLORADO DEPT OF REVENUE

Thank you for registering with the Colorado Department of Revenue!
Your electronic application has been received.
You will receive your Sales Tax License and/or Wage Withholding information in the
mail in the next 10 business days.

You may use this receipt as a temporary Sales Tax License in the interim.

Filing Information

Your filing information is as follows

Date: 2/1/23

Name: Peak to Peak Market LLC

Address: 7320 Black Hawk Blvd\n\nBlack Hawk,
Colorado 80422-5036

Sales Tax Account Number: 95540348

Sales Tax Filing Frequency: Monthly (\$300 in taxes/month or mo

Wage Withholding Account Number: N/A

Wage Withholding Filing Frequency: N/A

Websites

State of Colorado: www.colorado.gov

Colorado Department of Revenue: www.colorado.gov/revenue

Colorado Department of Revenue Online Customer Support Site:
revenuestateco.custhelp.com

File and pay your sales tax online: www.colorado.gov/RevenueOnline

Register to pay by EFT: www.colorado.gov/revenue/eft

Please wait 2-3 business days while we validate your registration before attempting to
access your account in Revenue Online. You will receive your license(s) in the mail within 10
business days. If you do not already have access to Revenue Online, you may use
information from that letter to sign-up.

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Peak to Peak Market LLC

is a

Limited Liability Company

formed or registered on 01/23/2023 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20231087044 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/06/2023 that have been posted, and by documents delivered to this office electronically through 02/08/2023 @ 09:16:13 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 02/08/2023 @ 09:16:13 in accordance with applicable law. This certificate is assigned Confirmation Number 14681971 .

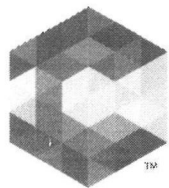


Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



Colorado Secretary of State

Colorado Secretary of State

ID#: 20231087044

Document #: 20231087044

Filed on: 01/23/2023 04:39:58 PM

Paid: \$1.00

Articles of Organization for a Limited Liability Company

filed pursuant to § 7-90-301 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

The domestic entity name of the limited liability company is Peak to Peak Market LLC

The principal office street address is 7320 Black Hawk Blvd Ste 1A
Black Hawk CO 80422
US

The principal office mailing address is PO Box 169
Black Hawk CO 80422
US

The name of the registered agent is Nicolas Daniel Spencer

The registered agent's street address is 7320 Black Hawk Blvd Ste 1A
Black Hawk CO 80422
US

The registered agent's mailing address is PO Box 169
Black Hawk CO 80422
US

The person above has agreed to be appointed as the registered agent for this entity.

The management of the limited liability company is vested in Members

There is at least one member of the limited liability company.

Person(s) forming the limited liability company

Nicolas Daniel Spencer
PO Box 169
Black Hawk CO 80422
US

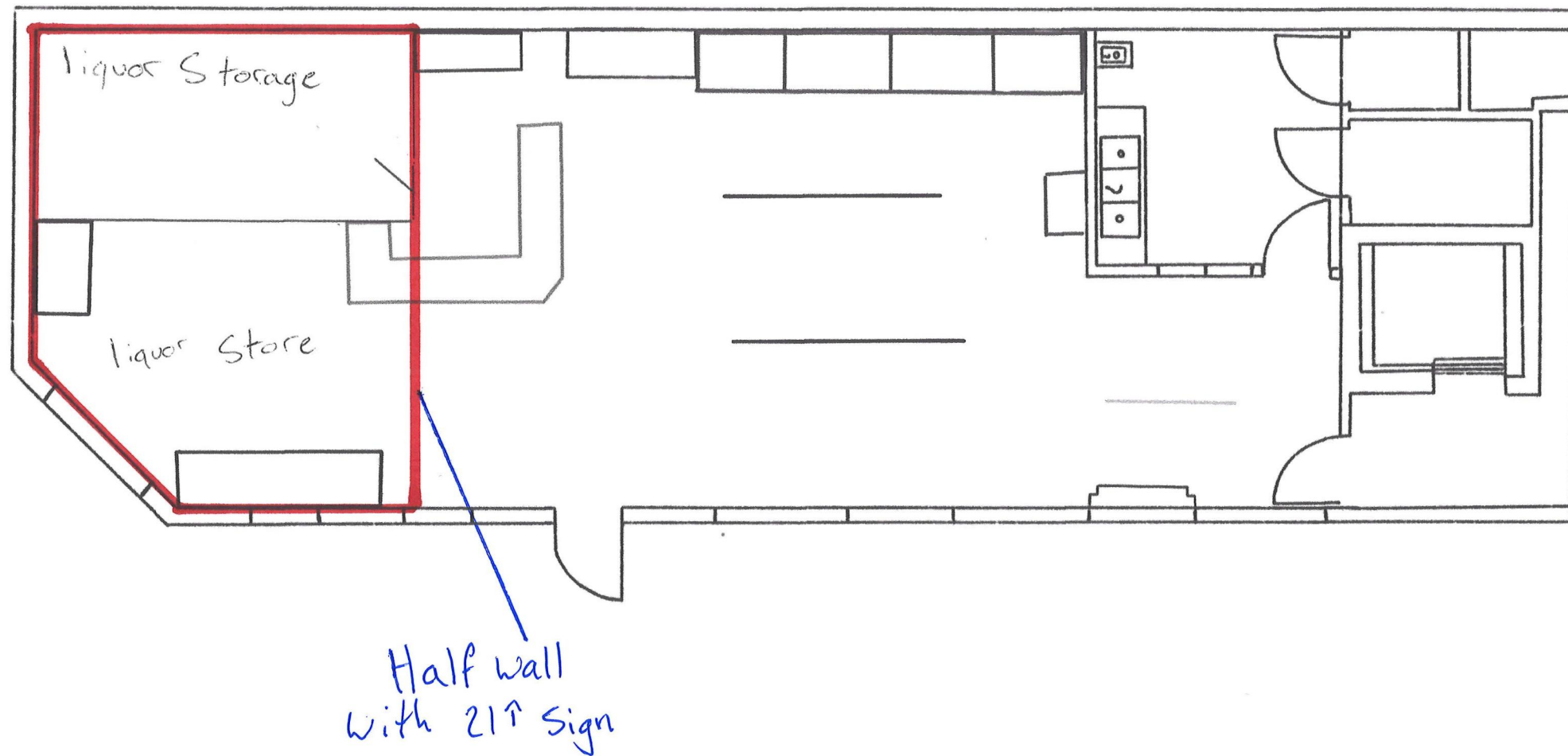
Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, ~~or that the~~ individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the

applicable, the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

Name(s) and address(es) of the individual(s) causing the document to be delivered for filing

Nicolas Daniel Spencer
PO Box 169
Black Hawk CO 80422
US



Commercial Lease

This Lease is made between the City of Black Hawk, herein called the City, and Peak to Peak Market, LLC, herein called Tenant. Tenant hereby offers to lease from City the premises situated in the City of Black Hawk, County of Gilpin, State of Colorado, and more particularly described as described as 7320 Black Hawk Blvd., Suite 1A, Black Hawk, Colorado 80422, 1st Floor, West Side (Approx. 1,308 Rentable Square Feet) (the "Premises") upon the following TERMS and CONDITIONS:

1. Term; Renewal; Rent; Termination.

A. Term. City demises the above Premises for an initial term of five (5) years, commencing on February 8, 2023, and expiring on February 29, 2028.

B. Renewal. Provided that Tenant is not in default of any terms or conditions of this Lease, Tenant may renew this Lease for two (2) additional one (1) year terms by providing no less than sixty (60) days advance notice of the intent to renew the Lease.

C. Rent. Subject to the provisions of subsection D. of this Section 2, Tenant shall pay rent to City in the amount of Nine Hundred and Fifteen dollars (\$915.00) per month for the first twelve months of this lease in advance on the first day of each month for that month's rental, during the term of this lease. Tenant shall upon execution of this Agreement pay an amount equal to the first month's rent, which shall constitute payment for the aforesaid first month's rent. The total amount of the first month's rent shall be Zero Dollars (\$0.00), which total amount takes into account the application of the rent credit set forth in subsection D of this Section 2 below. All rental payments shall be made to City, at the address of P.O. Box 68, Black Hawk, Colorado 80422, or such other location or in such other manner as may be mutually agreed upon by the Parties. Tenant shall also pay any possessory taxes which may be assessed against the Premises pursuant to Section 17 of this Lease. Commencing on the one-year anniversary of this lease and on each annual anniversary thereafter during the lease term, the rent shall be adjusted to include the most recent annual Denver-Aurora-Lakewood Consumer Price Index for All Urban Consumers.

D. Rent Credit. The Tenant shall be entitled to a credit towards the monthly lease payment in an amount equal to the average monthly City sales tax collected at the location for the previous twelve-month period ending January 31. This credit for the initial twelve-month period will be \$915.00 per month. Furthermore, the Rent Credit calculation for the twelve months beginning March 1, 2024 (Year 2) will be based on the most recent nine months' sales tax collections.

E. Damage Deposit. Tenant shall upon execution of this Lease provide a deposit in the amount of Five Hundred Dollars (\$500.00) as security against damage to the Premises, normal wear and tear excepted.

F. Termination. Unless otherwise provided by Section 16 of this Lease, City and Tenant may terminate this Lease upon ninety (90) days written notice with cause or at any earlier time upon mutual agreement between both parties. In the event of a conflict between this Section 1. Subsection F. and Section 16, the provisions of Section 16 shall control. Tenant may also

terminate this lease at any time without cause by providing City with one hundred twenty (120) days' advance written notice.

G. Holding Over. If Tenant remains in possession of all or any part of the Premises after the expiration of the term hereof, with or without the express or implied consent of the City, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and in such case, this Lease and such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained herein. A hold over monthly rental payment of the most recent monthly rent plus the current annual Denver-Aurora-Lakewood Consumer Price Index for All Urban Consumers shall be paid by Tenant to the City in advance on the first (1st) day of each calendar month in which the hold over continues.

2. **Use.**

A. Use as Convenience Store/Retail Liquor Store. Tenant shall use and occupy the Premises for a convenience store, a retail liquor store, and associated permitted activities. Tenant further covenants and agrees that the use of the Premises shall be at all times in accordance with applicable zoning regulations of the City. Moreover, the Parties hereto acknowledge and agree that the Premises do not include any parking spaces for the exclusive use of the Tenant. Tenant shall not use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables, or other inherently dangerous substance, chemical, thing, or device.

B. Liquor License. This Lease shall be effective for purposes of requirements of the Colorado Liquor Code, C.R.S. § 44-3-101, et seq., upon execution of the Lease. The City specifically consents to the application by Tenant for a liquor license as allowed by law, subject to the requirements of the Colorado Liquor Code.

C. Standards of Operation. It is the expectation of the City that the Tenant have the premises open to walk-up foot traffic during set retail hours seven (7) days a week. Tenant may reasonably modify hours and days based on the flow of traffic.

- (i) "High Season" from May 1 through September 30: Monday-Sunday from 8:00 am to 8:00 pm; and
- (ii) "Off Season" from October 1 through April 30: Monday-Sunday from 8:00 am to 7:00 pm.

D. On-Premise Prepared Food Sales. Tenant agrees to get written approval from the City prior to making available to the public any food prepared on the Premises that is inconsistent with the provisions of this Section 2, subsection D, and specifically Tenant may not provide any food that is prepared on site that would extend beyond a Limited Food Service License as defined by the Colorado Retail Food Establishment Rules and Regulations. Notwithstanding the above, the City agrees approval is hereby provided to allow Tenant to provide individual salads, fruit parfait, yogurt cups, fruit cups and berry cups.

3. **Care and Maintenance of Premises.** Tenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at his own expense and at all times, maintain the Premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations, and any other system or equipment upon the Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for all repairs required, excepting the roof, exterior walls, and structural foundations, which shall be maintained by City.

4. **Tenant Improvements and Alterations.**

A. Tenant Improvements. The Premises shall be delivered as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.

B. Suitability. As of the date of the execution of this Lease, Tenant has inspected the physical condition of the Premises and has received the same in "as is" condition. THE CITY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE CONDITION OR STATE OF THE PREMISES OR ITS FITNESS OR AVAILABILITY FOR ANY PARTICULAR USE, AND THE CITY SHALL NOT BE LIABLE TO TENANT FOR ANY LATENT OR PATENT DEFECT THEREON. Tenant may use said Premises for the uses specified in this Lease, so long as such uses conform with zoning and use restrictions of all authorities affecting the Premises, and Tenant will not do, or permit to be done, any action or thing which is contrary to any legal or insurable requirement, or which constitutes a public or private nuisance or waste.

C. Alterations. Tenant shall not, without first obtaining the written consent of City, which shall not be unreasonably withheld, make any alterations, additions, or improvements, in, to, or about the Premises. Tenant shall not suffer nor permit any mechanic's liens or public works claims to be filed against the Premises by reason of work, labor, service or materials supplied or claimed to have been supplied to Tenant as a result of an agreement with, or the assent of Tenant. Nothing in this Lease shall be construed as constituting the consent or request of City, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the Premises or any part thereof. Nothing in this Lease shall be construed as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens or public works claims against City's interest in the Premises. If any such mechanic's lien or public works claims shall at any time be filed against the Premises, Tenant shall cause the same to be discharged of record within thirty (30) days after the date Tenant has knowledge of such filing. If Tenant shall fail to discharge such mechanic's lien or public works claims within such period, then, in addition to any other right or remedy of City, City may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien. However, Tenant shall not be required to pay or discharge any such mechanic's lien or public works claims so long as Tenant shall in good faith proceed to contest the same by appropriate proceedings; provided, however, Tenant shall give notice in writing to City of its intention to contest the validity of such lien and/or claim.

5. **Ordinances and Statutes.** Tenant shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, occasioned by or affecting the use thereof by Tenant.

6. **Assignment and Subletting.** Tenant shall not assign this lease or sublet any portion of the Premises without prior written consent of the City, which consent shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the City, may terminate this lease.

7. **Utilities.** The City shall pay for water, sewer, electricity, and gas. Tenant shall be responsible in its own name for telephone services, including equipment and repairs. Tenant shall also be responsible for cable/data/internet/satellite service, equipment, and repairs if such services are determined to be necessary by Tenant. Tenant shall not use any equipment or devices that utilize excessive electrical energy (i.e., portable space heater) or that may, in the City's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

8. **Entry and Inspection.** Tenant shall permit City or City's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit City at any time within sixty (60) days prior to the expiration of this lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter.

9. **Possession.** If City is unable to deliver possession of the Premises at the commencement hereof, City shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Tenant shall not be liable for any rent until possession is delivered.

10. **Indemnification.** Tenant agrees that City shall not be liable for any damage, either to person or persons or property or the loss of property sustained by Tenant or City or by any other person or persons due to the use of the Premises, due to the happening of any accident, or due to any act or neglect of Tenant, or any occupant of the Premises, or the use or misuse of any instrumentality or agency in or connected with the Premises, or occasioned by any nuisance made or suffered thereon. Tenant agrees to save City harmless thereon and therefrom, and to indemnify City on account thereof.

11. **Insurance.**

A. Tenant (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against City, City's servants, agents, and employees, on account of any loss or damage occasioned to Tenant, as the case may be, its respective property, the Premises or its contents, the common areas, parking lots, and sidewalks located adjacent to the Premises or to the other improvements of the Premises arising from any risk and to the extent covered by fire and extended coverage insurance, provided that such waiver does not invalidate such policies or prohibit recovery thereunder.

B. Tenant further covenants and agrees that from the date hereof Tenant will procure and maintain throughout the term, at its sole cost and expense, the following types of insurance in the amounts specified and, in the form, hereinafter provided:

- i. Comprehensive broad form general public liability insurance protecting the Premises and Tenant's use thereof against claims for personal injury and death occurring upon, in or about the Premises, such insurance to afford protection to the **limit of not less than two million dollars (\$2,000,000)** combined single limit. The insurance coverage required under this subsection B shall, in addition, extend to any liability of Tenant arising out of the indemnities provided for in Section 10.
- ii. Workers' compensation insurance covering all persons employed for such work.
- iii. Fire and extended coverage Renter's Insurance covering the Premises for injury or damage by the elements, or through any other cause, and all alterations, extensions, and improvements thereto and on the Premises and replacements thereof, including all appurtenances, whether on the Premises or extending beyond the boundaries thereof, against loss or damage by fire and the risks contemplated within the extended and malicious mischief (as such endorsements may customarily be written in Colorado from time to time), in an amount not less than the full actual replacement cost of the Premises, common areas, and appurtenances, and sufficient to prevent City or Tenant from becoming a co-insurer of any partial loss and the applicable provisions of the policies, and specifically including the Tenant's contents.
- iv. Business interruption insurance and/or loss of "rental value" insurance.
- v. During the course of any construction or repair of improvements on the Premises initiated by Tenant, Tenant shall provide "Builders Risk Insurance."

C. All policies or insurance provided for in this Section 11 shall be issued by solvent and responsible insurance companies licensed to do business in the State of Colorado with a general policy holder's rating of not less than "A" and a financial rating of "AAA", as rated in the most current available "Bests" Insurance Reports, and qualified to write such policies in the State of Colorado. Each policy shall be issued in the names of City and Tenant, and their designees. Said policies shall be for the mutual and joint benefit and protection of City and Tenant and such policy of insurance, or a certificate thereof, shall be delivered to each of City and any such other parties in interest prior to the commencement of the term and thereafter within thirty (30) days prior to the expiration of each policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All such policies of insurance shall contain provisions that (a) the company writing said policy will give to City and such other parties in interest at least thirty (30) days' notice in writing in advance of any cancellations or lapses, or the effective date of any reduction in the amounts of insurance; and (b) the insurer waives the right of subrogation against City and against City's agents and representatives. All such public liability, property damage, and other casualty policies shall be written as primary policies which do not contribute to and are not in excess of coverage which City may carry. All such public liability and property damage policies shall contain a provision that City and any such other parties in interest, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its servants, agents, and employees by reason of the negligence of Tenant. Tenant's failure to provide and keep in force

any of the insurance policies required hereunder shall be regarded as a material default hereunder, entitling City to exercise any or all of the remedies provided in this Lease in the event of Tenant's default.

D. The placement of any insurance by Tenant shall not be construed as any waiver or modification of City's rights under the Colorado Governmental Immunity Act.

12. **Eminent Domain.** If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Tenant's use of the Premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Tenant. Tenant shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Tenant may file a claim for any taking of fixtures and improvements owned by Tenant, and for moving expenses.

13. **Destruction of Premises.** In the event of a partial destruction of the Premises during the term hereof, from any cause, City shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Tenant shall be entitled to a proportionate reduction of rent, beginning with the date of the partial destruction, while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Tenant on the Premises. If such repairs cannot be made within said sixty (60) days, City, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated beginning with the date of the partial destruction, and in the event that City shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised Premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, City may elect to terminate this lease whether the demised Premises be injured or not. A total destruction of the building in which the Premises may be situated shall terminate this lease.

14. **Guaranty of Lease.** The undersigned does hereby personally guarantee to City and to its successors or assigns the prompt payment of all amounts due from Tenant to City under this Lease. To guaranty such performance, Tenant shall provide upon approval of this Lease the amount of Two Thousand Five Hundred Dollars (\$2,500.00) as a personal guaranty. Such personal guaranty shall only be utilized by the City in the event Tenant terminates the Lease without the one hundred twenty (120) days' notice required by Section 2. subsection F of this Lease So long as Tenant remains in compliance with the terms of the Lease as it relates to notice of termination, said personal guaranty shall be returned to Tenant at the termination of the Lease, without any interest accruing thereon.

15. **Inspection of Records.** City shall have the right, upon reasonable notice to inspect the records of Tenant, including the financial records of Tenant so long as said inspection is reasonably related to a business or municipal purpose of the City pursuant to the terms of this Lease.

16. **City's Remedies on Default.** If Tenant defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, City may give Tenant notice of such default and if Tenant does not cure any such default within thirty (30) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Tenant does not commence such curing within thirty (30) days and thereafter proceed with reasonable diligence, in good faith to cure such default), then City may terminate this lease on no less than fifteen (15) days' notice to Tenant. On the date specified in such notice the term of this lease shall terminate, and Tenant shall then quit and surrender the Premises to City, without extinguishing Tenant's liability. If this lease shall have been so terminated by City, City may at any time thereafter resume possession of the Premises by any lawful means and remove Tenant or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

17. **Taxes.**

A. **Real Property Taxes.** Tenant shall pay all real property taxes, general, and special assessments ("real property taxes"), levied and assessed against the Premises.

B. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Tenant shall pay to City upon presentation of paid tax bills an amount equal to one hundred percent (100 %) of the increase in taxes upon the land and building in which the leased Premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Tenant shall be proportionate to the portion of the lease term included in such year.

18. **Rules and Regulations.** Tenant agrees that at all times during the term of this Lease, it shall at its own cost and expense:

A. Keep the Premises, common areas, parking lots and sidewalks located adjacent to the Premises in good, neat, and clean condition.

B. Not park trucks or delivery vehicles outside the Premises so as to unreasonably interfere with the use of any driveways, walks, roadways, highways, streets, malls, or parking areas.

C. Keep the Premises clean and free from refuse, rubbish, and dirt at all times; and store all trash, rubbish, and garbage within the Premises in the areas set aside therefor.

D. Obtain and maintain in effect all permits and licenses necessary for the operation of Tenant's business as herein provided.

E. Keep the outside area immediately adjoining the Premises reasonably clean and free from snow, ice, dirt, and rubbish, and keep that area free from any obstruction or merchandise.

F. All contractors of Tenant shall fully comply with the Occupational Safety and Health Act of 1970 (Chapter XVII, Title XIX of the United States Code) (OSHA) of applicable state statute adopted pursuant to OSHA. It shall be Tenant's obligation to ensure that its contractors fully comply with the provisions and standards as contained in such Act.

19. **Attorney's Fees.** In case suit should be brought for recovery of the Premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the Premises, the City shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

20. **Waiver.** No failure of City to enforce any term hereof shall be deemed to be a waiver.

21. **Notices.** All notices, demands and requests required to be given by either party to the other shall be in writing. All notices, demands and requests shall either be hand-delivered or shall be sent by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth below, or at such other addresses as the parties may designate in writing delivered pursuant to the provisions hereof. Any notice when given as provided herein shall be deemed to have been delivered on the date personally served, or two (2) days subsequent to the date that said notice was deposited with the United States Postal Service.

To Lessor: City of Black Hawk
Attn: Lance Hillis, Finance Director
P.O. Box 68
Black Hawk, CO 80422

To Lessee: Peak to Peak Market, LLC
Attn: Nicolas Spencer
P.O. Box 169
Black Hawk, CO 80422

22. **Assigns, Successors.** This lease is binding upon and inures to the benefit of the assigns and successors in interest to the parties.

23. **Subordination.** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

23. **Radon Gas Disclosure.** As required by law, the City makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in the City of Black Hawk. Additional information regarding radon and radon testing may be obtained from the Gilpin County Health Department.


24. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Signed this 8 day of February, 2023.

CITY OF BLACK HAWK, COLORADO

By: 
David. D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk

TENANT

Peak to Peak Market, LLC

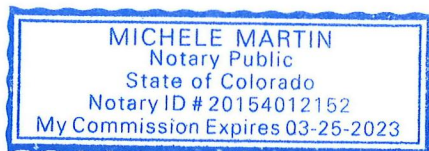
By: 
Nicolas D. Spencer, Member

STATE OF COLORADO)
) ss.
COUNTY OF Gilpin)

Subscribed and sworn to before me this 8 day of February, 2023, by
Nicolas D. Spencer as Member of Peak to Peak Marketing, LLC.

My Commission expires: 3/25/2023

[SEAL]





Notary Public

TENANT

Peak to Peak Market, LLC

By:


Chuck Spencer, Member

STATE OF COLORADO)

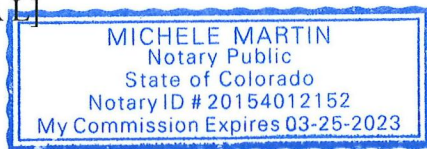
) ss.

COUNTY OF Gilpin)

Subscribed and sworn to before me this 8 day of February, 2023, by
Chuck Spencer as Member of Peak to Peak Marketing, LLC.

My Commission expires: 3/25/2023

[S E A L]




Notary Public



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/7/2023

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

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

PRODUCER Leavitt Recreation & Hospitality 942 14th Street Sturgis SD 57785	CONTACT NAME: Shawna Royer PHONE (A/C, No, Ext): (800)525-2060 E-MAIL ADDRESS: shawna-royer@leavitt.com FAX (A/C, No): (866)465-2797
INSURED Peak to Peak Market, LLC DBA: Peak to Peak Market PO BOX 169 Black Hawk CO 80422	INSURER(S) AFFORDING COVERAGE INSURER A: Ohio Security Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 24082

COVERAGES**CERTIFICATE NUMBER:**23/24 COI**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X		BKS65794749	2/8/2023	2/8/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Location - 7320 Black Hawk Blvd Suite 1A, Black Hawk, CO, 80422

IT IS UNDERSTOOD AND AGREED THAT THE CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED, BUT ONLY WITH RESPECT TO ITS LIABILITY ARISING OUT OF THE ACTIVITIES OF THE NAMED INSURED.

CERTIFICATE HOLDER**CANCELLATION**

City of Black Hawk PO BOX 68 Black Hawk, CO 80422	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Damian Petty/KAEVAN
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Additional Named Insureds

Other Named Insureds

Peak to Peak Market

Doing Business As



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

2/7/2023

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

AGENCY Leavitt Recreation & Hospitality 942 14th Street Sturgis SD 57785	PHONE (A/C, No, Ext): (800) 525-2060	COMPANY Ohio Security Insurance Company PO Box 7202 Portsmouth NH 03802-7202
FAX (A/C, No): (866) 465-2797	E-MAIL ADDRESS: damian-petty@leavitt.com	
CODE:	SUB CODE:	
AGENCY CUSTOMER ID #: 00039405		
INSURED Peak to Peak Market, LLC DBA: Peak to Peak Market PO BOX 169 Black Hawk CO 80422	LOAN NUMBER	POLICY NUMBER BKS65794749
	EFFECTIVE DATE 2/8/2023	EXPIRATION DATE 2/8/2024
	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
THIS REPLACES PRIOR EVIDENCE DATED:		

PROPERTY INFORMATION

LOCATION/DESCRIPTION 7320 Black Hawk Blvd Suite 1A Black Hawk, CO 80422
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Tenant Improvements & Betterments, Replacement Cost, Special form	2,000	1,000
Contents, Replacement Cost, Special form	15,000	1,000
Business Income , Special form	25,000	1,000

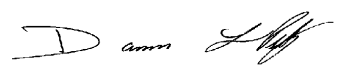
REMARKS (Including Special Conditions)

LOCATION - 7320 Black Hawk Blvd Suite 1A, Black Hawk, CO, 80422
COINSURANCE - 80%

CANCELLATION

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

ADDITIONAL INTEREST

NAME AND ADDRESS City of Black Hawk PO BOX 68 Black Hawk, CO 80422	MORTGAGEE <input checked="" type="checkbox"/>	LOSS PAYEE <input type="checkbox"/>	ADDITIONAL INSURED <input type="checkbox"/>
LOAN #			
AUTHORIZED REPRESENTATIVE Damian Petty/KAEVAN 			

Additional Named Insureds

Other Named Insureds

Peak to Peak Market

Doing Business As

RECEIVED

FEB 09 2023

CITY OF BLACK HAWK
CLERK'S OFFICE

Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license

Notice: This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". **Any deliberate misrepresentation or material omission may jeopardize the license application.** (Please attach a separate sheet if necessary to enable you to answer questions completely)

1. Name of Business <i>Peak to Peak Liquors</i>		Home Phone Number [REDACTED]	Cell Phone Number [REDACTED]	
2. Your Full Name (last, first, middle) <i>Spencer Nicolas Daniel</i>		3. List any other names you have used <i>Nick Spencer</i>		
4. Mailing address (if different from residence) <i>P.O. Box 169 Black Hawk Co, 80422</i>		Email Address <i>PeaktoPeakmarket@gmail.com</i>		
5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)				
Street and Number		City, State, Zip		To
Current [REDACTED]		<i>Central City Co, 80427</i>		<i>2019 2023</i>
Previous <i>7471 Windwood Way</i>		<i>Parke Co, 80134</i>		<i>2007 2019</i>
6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)				
Name of Employer or Business		Address (Street, Number, City, State, Zip)		To
<i>Denver West Central City</i>		<i>605 Lake Gulch Rd Central City Co, 80427</i>		<i>2019 2023</i>
<i>Zimbore</i>		<i>7011 W Titon Rd. Co, 80125</i>		<i>2021 2021</i>
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.				
Name of Relative		Relationship to You		Name of Licensee
8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.) ☐ Yes ☒ No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.) ☐ Yes ☒ No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.) ☐ Yes ☒ No

Personal and Financial Information

Unless otherwise provided by law, the personal information required in question #13 will be treated as confidential. The personal information required in question #13 is solely for identification purposes.

13a. Date of Birth [REDACTED]		b. Social Security Number [REDACTED]		c. Place of Birth Danville Indiana		d. U.S. Citizen <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
e. If Naturalized, state where				f. When		g. Name of District Court	
h. Naturalization Certificate Number		i. Date of Certification		j. If an Alien, Give Alien's Registration Card Number		k. Permanent Residence Card Number	
l. Height 6'1"	m. Weight 150	n. Hair Color Brown	o. Eye Color Brown	p. Gender Male	q. Do you have a current Driver's License/ID? If so, give number and state. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No # [REDACTED] State Colorado		

14. Financial Information.

a. Total purchase price or investment being made by the applying entity, corporation, partnership, limited liability company, other.
\$ 10,000

b. List the total amount of the **personal** investment, made by the person listed on question #2, in this business including any notes, loans, cash, services or equipment, operating capital, stock purchases or fees paid. \$ 10,000

* If corporate investment only please skip to and complete section (d)

** Section b should reflect the total of sections c and e

c. Provide details of the personal investment described in 14b. You must account for all of the sources of this investment. (Attach a separate sheet if needed)

Type: Cash, Services or Equipment	Account Type	Bank Name	Amount
Cash	Savings	First Bank	10,000

d. Provide details of the corporate investment described in 14 (a). You must account for all of the sources of this investment. (Attach a separate sheet if needed)


Type: Cash, Services or Equipment	Loans	Account Type	Bank Name	Amount

e. Loan Information (Attach copies of all notes or loans)

Name of Lender	Address	Term	Security	Amount

Oath of Applicant

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature 	Print Signature Nicolas Spencer	Title Member	Date 2-8-23
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Michele G. Martin

From: Nicolas Spencer <peaktopeakmarket@gmail.com>
Sent: Monday, February 13, 2023 12:00 AM
To: Michele G. Martin
Subject: Fwd: Identogo Service Confirmation - 25YQ6K- Local (City/County) Liquor Licensure

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

Hello Michele, here is my confirmation for identogo. if you need something after i go and complete it please let me know. Thank you for your time.

----- Forwarded message -----

From: <no-reply@uemail.identogo.com>
Date: Sun, Feb 12, 2023 at 11:33 PM
Subject: Identogo Service Confirmation - 25YQ6K- Local (City/County) Liquor Licensure
To: <PeaktoPeakMarket@gmail.com>



Service Details:

Customer:	NICOLAS D SPENCER
UE ID:	UZBN-4KV97K
Service:	25YQ6K - Local (City/County) Liquor Licensure
CBI Account Number:	CONCJ5296 - CITY OF BLACK HAWK - CITY CLERK
Amount Due:	\$53.50
Appointment Time:	2/14/2023 @ 01:30 PM (MST)
Appointment Location:	IdentoGO 7475 W 5th Ave Ste 209 Lakewood, CO 80226-1674

We accept the following methods of payment: Authorization Code, Business Check, Money Order, Credit Card
*Personal checks and cash **will not be** accepted*

IMPORTANT!

YOU WILL BE REQUIRED TO BRING THE FOLLOWING DOCUMENTS TO YOUR ENROLLMENT.
Legal Name must match exactly on all identification documents brought to enrollment.

1. Driver's
License
issued by
a State or
outlying
possession
of the U.S.

All ID Documents must be the originals. Copies will not be accepted.

**ALL CUSTOMERS MUST WEAR A FACE COVERING TO ENTER OUR CENTERS UNLESS
EXEMPTED DUE TO AGE OR A MEDICAL CONDITION.**

Status as of 02/13/23

Pre-Enrolled

You have successfully pre-enrolled.

Please provide 24 hours' notice when cancelling / rescheduling an appointment.

[Click here to check your status or manage your appointment](#)

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