



REGULAR MEETING AGENDA

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

March 13, 2024
3:00 p.m.

RINGING OF THE BELL:

1. CALL TO ORDER:

2. ROLL CALL & PLEDGE OF ALLEGIANCE:

3. AGENDA CHANGES:

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

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

6. APPROVAL OF MINUTES: February 28, 2024

7. PUBLIC HEARINGS:

A. Council Bill 6, An Ordinance Amending the City of Black Hawk Municipal Code Regarding Length of Stay in Lodging Facilities

B. Council Bill 7, An Ordinance Approving the 2023 FTA Section 5311 Grant for Three (3) ADA Accessible BOC Replacement Buses Administered by the Colorado Department of Transportation, Division of Transit and Rail, for the Black Hawk and Central City Tramway

8. ACTION ITEMS:

C. Resolution 25-2024 A Resolution Approving Amendment No. 1 to the General Contractor Agreement Executed on April 12, 2023, Between the City of Black Hawk and Roche Constructors, Inc., Establishing the Guaranteed Maximum Price (GMP) of \$497,058 for Construction of the Lace House Rehabilitation Project

D. Resolution 26-2024 A Resolution Approving Amendment No. 1 to the General Contractor Agreement Executed on April 12, 2023, Between the City of Black Hawk and Roche Constructors, Inc., Establishing the Guaranteed Maximum Price (GMP) of \$1,708,558 for Construction of the Gregory Point Site Improvements Project

E. Resolution 27-2024 A Resolution Approving An On-Call Service Agreement with Grasmick Electric Corporation in an Amount Not to Exceed \$25,000 for Calendar Year 2024

F. Resolution 28-2024 A Resolution Approving the Purchase of One (1) Ford Ranger Pickup Truck in the Amount of \$60,000

G. Resolution 29-2024 A Resolution Approving the Purchase of Three (3) Fully Equipped Marked Dodge Durango Police Patrol Vehicles in the Amount of \$204,114

H. Resolution 30-2024 A Resolution Amending the Residential Exterior Paint Program – Guide to Programs

9. CITY MANAGER REPORT:

10. CITY ATTORNEY REPORT:

11. EXECUTIVE SESSION:

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

AMERICANS WITH DISABILITY ACT NOTICE Any disabled person who plans to attend any governmental meeting of the City of Black Hawk and requires special assistance can contact City Hall at (303) 582-2221. Please make any request for assistance at least 24 hours before the scheduled meeting

12. Executive Session to hold a conference with the City Attorney to receive legal advice on specific legal issues regarding potential employee handbook revisions and regarding potential City legislation pursuant to C.R.S. § 24-6-402(4)(b), and to hold a conference with the City Attorney to receive legal advice on specific legal issues pursuant to C.R.S. § 24-6-402(4)(b), and to instruct negotiators pursuant to C.R.S § 24-6-402(4)(e) regarding City-owned land on Gregory Hill, the Gregory Street HARD District, other City-owned property and regarding negotiations with other governmental entities.

13. ADJOURNMENT:

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

AMERICANS WITH DISABILITY ACT NOTICE Any disabled person who plans to attend any governmental meeting of the City of Black Hawk and requires special assistance can contact City Hall at (303) 582-2221. Please make any request for assistance at least 24 hours before the scheduled meeting



**City of Black Hawk
City Council**

February 28, 2024

MEETING MINUTES

Information Specialist and Artist Extraordinaire, Corey Colombin 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 28, 2024, 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, Administrative Services Director/City Clerk Greiner, Finance Director Hillis, City Engineer Reed, Community Planning & Development Director Linker, Information Specialist Colombin, and Baseline Engineering Consultants Harris and Esterl.

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

3. **AGENDA CHANGES:** City Clerk Greiner stated there was a correction to Resolution 21-2024 and the packet was updated.

4. **CONFLICTS OF INTEREST:** City Attorney Hoffmann asked the 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 except for Alderman Midcap. Alderman Midcap disclosed that he owns a Bed and Breakfast and would not vote on the Short Term Rental item on the agenda. Attorney Hoffmann explained that Alderman Midcap was able to

vote on the matter of Short Term Rentals while owning a Bed and Breakfast in the City.

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. Besides Alderman Midcap's notation, no other conflicts were noted from the Council and no objections were received from the audience.

5. PUBLIC COMMENT: City Clerk Greiner confirmed no one had signed up to speak. Alderman Midcap commented that he had called 911 after coming upon a casino visitor who had fallen. Alderman Midcap commended staff and stated we have a great group of employees.

6. APPROVAL OF MINUTES:

February 14, 2024

MOTION TO APPROVE

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

MOTION PASSED

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

7. PUBLIC HEARINGS:

A. CB5, An Ordinance Amending Article IV of Chapter 16 of the City of Black Hawk Municipal Code Eliminating Short-Term Rentals as a Permitted Accessory Use in All Residential Zone Districts of the City

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann introduced this second of two Ordinances prohibiting short-term rentals. The first ordinance was for the licensing piece approved at the prior meeting (allowing existing licenses to remain); this ordinance is for the zoning code change in residential zone districts. This amendment allows for legal, non-conforming use for existing short-term licenses until such time the license expires or the property is sold. Baseline Engineering Consultant Harris explained the zoning change component.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB5, an Ordinance Amending the City of Black Hawk Municipal Code Eliminating Short-Term Rentals as a Permitted Accessory Use in All Residential Zone Districts of the City open, and invited anyone wanting to

address the Board either “for” or “against” the Ordinance to come forward.

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

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Torres to approve CB5, an Ordinance Amending the City of Black Hawk Municipal Code Eliminating Short-Term Rentals as a Permitted Accessory Use in All Residential Zone Districts of the City

MOTION PASSED

There was no discussion, and the motion **PASSED** with no one opposed to the motion and with Alderman Midcap’s recusal.

8. ACTION ITEMS:

B. Resolution 21-2024, A Resolution Approving A Policy Regarding Citizen Comments at City Council Meetings

Mayor Spellman read the title.

City Clerk Greiner explained a written policy governing the Public Comment Section at City Council meetings promotes clarity, transparency, accountability, and efficiency, and provides protection of the rights of all parties involved. A copy of the policy will be posted on the City’s website upon approval.

MOTION TO APPROVE

Alderman Armbright **MOVED** and was **SECONDED** by Alderman Johnson to approve Resolution 21-2024, A Resolution Approving a Policy Regarding Citizen Comments at City Council Meetings.

MOTION PASSED

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

C. Resolution 22-2024, A Resolution Acknowledging the Legal Nonconforming Structure Located at 187 Clear Creek Street

Mayor Spellman read the title.

Baseline Engineering Consultant Estrel introduced this item to acknowledge the structure at 187 Clear Creek as a legal nonconforming structure in its current location.

MOTION TO APPROVE

Alderman Moates **MOVED** and was **SECONDED** by Alderman Torres to approve Resolution 22-2024, a Resolution Acknowledging the Legal Nonconforming Structure Located at 187 Clear Creek Street

MOTION PASSED

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

D. Resolution 23-2024, A Resolution Approving the Acquisition of Certain Real Estate Known as the Lady B Mining Claim

Mayor Spellman read the title.

City Manager Cole explained the Lady B Mining claim is located on Gregory Hill. The property consists of 3.84 acres and the agreed-upon price is \$69,120.00. The property is being acquired for the future development of a city park/open space on Gregory Hill.

MOTION TO APPROVE

Alderman Midcap **MOVED** and was **SECONDED** by Alderman Bennett to approve Resolution 243-2024, A Resolution Approving the Acquisition of Certain Real Estate Known as the Lady B Mining Claim

MOTION PASSED

After a brief discussion the motion **PASSED** unanimously.

E. Resolution 24-2024, A Resolution Approving the Acquisition of Certain Real Estate Known as Lots 1-3, Block 43 Within the City of Black Hawk

Mayor Spellman read the title.

City Manager Cole explained the acquisition consists of three (3) residential lots located above Gregory Point. The agreed-upon price is \$10,000.00. The property is being acquired for the future development of a city park/open space on Gregory Hill.

MOTION TO APPROVE

Alderman Bennett **MOVED** and was **SECONDED** by Alderman Armbright to approve Resolution 24-2024, a Resolution Approving the Acquisition of Certain Real Estate Known as Lots 1-3, Block 43 Within the City of Black Hawk.

MOTION PASSED

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

9. CITY MANAGER
REPORT:

City Manager Cole informed Council that the Rick Thomas Distillery had submitted an application for a Liquor Sales Room with on-premises and off-premises consumption and the City, having no objections, forwarded the application to the Colorado Department of Revenue, Liquor Division.

10. CITY ATTORNEY
REPORT:

City Attorney Hoffmann had nothing to report and stated there was no need for an Executive Session.

11. ADJOURNMENT:

Mayor Spellman declared the Regular Meeting of the City Council adjourned at 3:15 p.m.

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Mayor

**COUNCIL BILL 6
ORDINANCE 2024-6
AN ORDINANCE
AMENDING THE CITY OF
BLACK HAWK
MUNICIPAL CODE
REGARDING LENGTH OF
STAY IN LODGING
FACILITIES**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB6

ORDINANCE NUMBER: 2024-6

TITLE: AN ORDINANCE AMENDING THE CITY OF BLACK HAWK MUNICIPAL CODE REGARDING LENGTH OF STAY IN LODGING FACILITIES

WHEREAS, Colorado law and the Black Hawk Municipal Code contemplate the purpose of lodging facilities as transient in nature;

WHEREAS, a fourteen (14) day occupancy limit for lodging facilities intended for transient stays serves the important public policy of preventing such accommodations from becoming substandard apartments without rights of tenancy and in violation of zoning laws and applicable building codes; and

WHEREAS, the City Council of the City of Black Hawk therefore desires to prohibit stays longer than fourteen (14) days to ensure safety of the guests and maintain the commercial nature of the property in accordance with its zoning designation and applicable building codes.

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

Section 1. The definition of *Lodging facility* in Section 6-241 is of the Black Hawk Municipal Code is amended as follows:

* * *

Lodging facility means any hotel, bed and breakfast, apartment hotel, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park, campground or hostel **providing transient accommodations** where two (2) or more rooms or accommodations are used for lodging.

* * *

Section 2. Section 6-247 is hereby added to the Black Hawk Municipal Code to read as follows:

Section 6-247. Limitations on duration of occupancy in lodging facility.

(a) It shall be unlawful for any person to put up or stay at the same lodging facility for longer than fourteen (14) days in a thirty (30) consecutive day period. It shall also be unlawful for the owner, operator, manager, or person in charge of a lodging facility to permit or allow a person to stay at the lodging facility more than fourteen (14) days in a thirty (30) consecutive day period.

(b) Notwithstanding subsection (a) of this Section, a stay longer than fourteen (14) days in a thirty (30) consecutive day period may occur when there is a written contract between the lodging facility for an onsite resident manager or employee to live at the lodging facility.

(1) It shall be unlawful for a lodging facility owner, operator, manager, or person in charge of a lodging facility to permit an onsite resident manager or employee of the lodging facility to live at the lodging facility for more than fourteen (14) days in a thirty (30) consecutive day period unless the room occupied is a dwelling unit as defined in Section 16-24 or is part of an approved Planned Unit Development.

Section 3. Section 16-24 of the Black Hawk Municipal Code is amended by the addition thereto of the following definition, to appear in alphabetical order.

* * *

Lodging accommodation or Lodging facility means any hotel, bed and breakfast, apartment hotel, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park, campground or hostel providing transient accommodations where two (2) or more rooms or accommodations are used for lodging, and shall be subject to the limitations on duration of occupancy under Section 6-247 of the Black Hawk Municipal Code.

Section 4. 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 5. 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 6. 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 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Black Hawk Board of Aldermen shall hold a public hearing concerning an Ordinance amending the City of Black Hawk Municipal Code regarding length of stay in lodging facilities.

The public hearing is to be held before the City of Black Hawk Board of Aldermen on Wednesday, March 13, 2024, at 3:00 p.m. or as soon as possible thereafter. The public hearing shall be held in the City of Black Hawk Council Chambers, located at 211 Church Street, Black Hawk, CO 80422, or at such other time or place in the event this hearing is adjourned.

ALL INTERESTED PARTIES MAY ATTEND

Melissa A. Greiner, CMC
City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT:

An Ordinance amending Article VIII of Chapter 6, Business Licenses and Regulations of the Municipal Code amending the definition of *Lodging Facility* and duration of occupancy in a Lodging Facility, and the addition of a definition for *Lodging Accommodation or Lodging Facility*.

RECOMMENDATION:

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

MOTION TO APPROVE Council Bill CB6, Ordinance Number 2024-6, an Ordinance Amending the City of Black Hawk Municipal Code Regarding Length of Stay in Lodging Facilities.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

City Council recently requested the City Attorney to prepare this Ordinance related to the length of stay in a Lodging Facility within the City limits. Many properties in the City allow Lodging Facilities and the GOLD (Gaming Outstanding Lodging and Dining) District have many existing hotels providing lodging in Black Hawk.

AGENDA DATE:

March 13, 2024

WORKSHOP DATE:

N/A

FUNDING SOURCE:

N/A

DEPARTMENT DIRECTOR APPROVAL:

Yes No

STAFF PERSON RESPONSIBLE:

Cynthia L. Linker
CP&D Director

DOCUMENTS ATTACHED:

Council Bill CB6
Ordinance 2024-6
Staff Report

RECORD:

Yes No

UPDATE GIS MAP:

Yes No

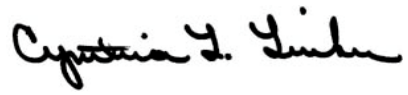
CoBH CERTIFICATE OF INSURANCE REQUIRED:

Yes No

CITY ATTORNEY REVIEW:

Yes N/A

SUBMITTED BY:



Cynthia L. Linker, CP&D Director

REVIEWED BY:



Stephen N. Cole, City Manager



Vincent Harris, AICP, Baseline Corporation

Staff Report

STAFF REPORT: Amendment to Chapter 6 Regarding Length of stay in Lodging Facilities

For: City Council
Project Number: P-24-01
Prepared by: Vincent Harris, AICP - Baseline Corporation
Approved by: Vincent Harris, AICP - Baseline Corporation
Reviewed by: Cynthia Linker, CP&D Director



BACKGROUND:

City Council recently requested the City Attorney to prepare this ordinance related to the length of stay in a Lodging Facility within the City limits. Many properties in the City allow Lodging Facilities and the GOLD (Gaming Outstanding Lodging and Dining) District has many existing hotels providing lodging in Black Hawk. Other zone districts also accommodate Lodging and these amended regulations will apply to all such accommodations in the city.

The desire with this amendment is related to limiting the length of stay for any person to put up or stay at the same lodging facility for longer than fourteen (14) days in a thirty (30) consecutive day period. If approved, this ordinance amendment shall also make it unlawful for the owner, operator, manager, or person in charge of a lodging facility to permit or allow a person to stay at the lodging facility more than fourteen (14) days in a thirty (30) consecutive day period.

Notwithstanding, a stay longer than fourteen (14) days in a thirty (30) consecutive day period may occur when there is a written contract between the lodging facility for an onsite resident manager or employee to live at the lodging facility. In addition, it shall be unlawful for a lodging facility owner, operator, manager, or person in charge of a lodging facility to permit an onsite resident manager or employee of the lodging facility to live at the lodging facility for more than fourteen (14) days in a thirty (30) consecutive day period unless the room occupied is a dwelling unit as defined in Section 16-24 or is part of an approved Planned Unit Development.

Following are the two new amended definitions that will appear in the Black Hawk code if this ordinance is approved.

Lodging facility means any hotel, bed and breakfast, apartment hotel, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park, campground or hostel providing transient accommodations where two (2) or more rooms or accommodations are used for lodging.

Lodging accommodation or Lodging facility means any hotel, bed and breakfast, apartment hotel, lodging house, motel, motor hotel, guest house, guest ranch, resort, mobile home, mobile home park, auto court, inn, trailer court, trailer park, campground or hostel providing transient accommodations where two (2) or more rooms or accommodations are used for lodging, and shall be subject to the limitations on duration of occupancy under Section 6-247 of the Black Hawk Municipal Code.

REQUEST:

City Staff is requesting the included ordinance amendment related to the length of stay that can be accommodated with staying in a Lodging Facility in the City of Black Hawk be approved.

APPLICABLE CITY OF BLACK HAWK REGULATIONS:

Sec. 1-47. - Amendments to Code.

Ordinances and parts of ordinances of a permanent and general nature, passed or adopted after the adoption of this Code, may be passed or adopted either in the form of amendments to the Code adopted by this Code or without specific reference to the Code. However, in either case, all such ordinances and parts of ordinances shall be deemed amendments to the Code, and all of the substantive, permanent and general parts of said ordinances and changes made thereby in the Code shall be inserted and made in the Code as provided in Section 1-50 hereof.

Sec. 1-50. - Supplementation of Code.

- *The City Clerk shall cause supplementation of the Code to be prepared and printed from time to time as he or she may see fit. All substantive, permanent and general parts of ordinances passed by the Board of Aldermen or adopted by initiative and referendum, and all amendments and changes in ordinances or other measures included in the Code prior to the supplementation and since the previous supplementation, shall be included.*
- *It shall be the duty of the City Clerk, or someone authorized and directed by the City Clerk, to keep up to date the copy of the book containing the Code required to be filed in the office of the City Clerk for the use of the public.*

STAFF SUMMARY:

Staff from Baseline Corporation, in conjunction with the City Attorney, have prepared the attached ordinance amending Chapter 6 of the City Code related to Lodging Facilities and length of stay.

Staff recommends approval of the Ordinance amending Chapter 6 – Article VIII. A detailed document of the proposed changes is attached to this staff report.

FINDINGS:

City Council may *approve, or deny* a proposed Ordinance to amend the City of Black Hawk Municipal Code Chapter 6.

RECOMMENDATION:

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

MOTION TO APPROVE Council Bill 6, Ordinance No. 2024-6, an Ordinance Amending the City of Black Hawk Municipal Code Regarding Length of Stay in Lodging Facilities.

**COUNCIL BILL 7
ORDINANCE 2024-7
AN ORDINANCE
APPROVING THE 2023 FTA
SECTION 5311 GRANT FOR
THREE (3) ADA
ACCESSIBLE BOC
REPLACEMENT BUSES
ADMINISTERED BY THE
COLORADO DEPARTMENT
OF TRANSPORTATION,
DIVISION OF TRANSIT AND
RAIL, FOR THE BLACK
HAWK AND CENTRAL CITY
TRAMWAY**

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: 7

ORDINANCE NUMBER: 2024-7

TITLE: AN ORDINANCE APPROVING THE 2023 FTA SECTION 5311 GRANT FOR THREE (3) ADA ACCESSIBLE BOC REPLACEMENT BUSES ADMINISTERED BY THE COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION OF TRANSIT AND RAIL, FOR THE BLACK HAWK AND CENTRAL CITY TRAMWAY

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 2023 FTA Section 5311 Grant for Three (3) ADA Accessible BOC Replacement Buses administered by the Colorado Department of Transportation, Division of Transit and Rail, for the Black Hawk and Central City Tramway, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute any necessary documents 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 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

EXHIBIT**A****STATE OF COLORADO SUBAWARD AGREEMENT
COVER PAGE**

| | |
|---|--|
| State Agency Department of Transportation | Agreement Number / PO Number 24-HTR-ZL-00267 / 491003551 |
| Subrecipient CITY OF BLACK HAWK | Agreement Performance Beginning Date The Effective Date |
| Subaward Agreement Amount | Initial Agreement Expiration Date December 31, 2026 |
| Federal Funds Maximum Amount (80%) \$479,880.00 | Fund Expenditure End Date December 31, 2026 |
| Local Funds Local Match Amount (20%) \$119,970.00 | 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 Total \$599,850.00 | |
| 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 | |
| For the State: Robin Rocke Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 robin.rocke@state.co.us | For Subrecipient: Tom Isbester CITY OF BLACK HAWK PO BOX 68 BLACK HAWK, CO 80422 tisbester@cityofblackhawk.org |

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

| | |
|--|---|
| <p style="text-align: center;">SUBRECIPIENT CITY OF BLACK HAWK</p> <p>DocuSigned by: <i>Thomas Isbester</i></p> <p>By: _____ A3F041E3998C445...</p> <p>Name: <u>Thomas Isbester</u></p> <p>Title: <u>Public Works Director</u></p> <p>Date: <u>2/22/2024</u></p> | <p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshanna M. Lewis, Executive Director</p> <p>DocuSigned by: <i>Keith Stefanik</i></p> <p>By: _____ 63C1F827D40E4B3...</p> <p>Name: <u>Keith Stefanik</u></p> <p>Title: <u>Chief Engineer</u></p> <p>Date: <u>2/22/2024</u></p> |
| <p>2nd State or Subrecipient Signature if needed</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> | <p style="text-align: center;">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p style="text-align: center;">N/A</p> <p>By: Assistant Attorney General</p> <p>Date: _____</p> |
| <p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>DocuSigned by: <i>Jon Copelano</i></p> <p>By: Department of Transportation</p> <p>Effective Date: <u>2/22/2024</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**EXHIBIT A: STATEMENT OF WORK AND CONDITIONS**

| | | | |
|--|---|----------------------|---------------------|
| Project Description* | 2023_FTA5311_BLKHW_3 Replacements (Bus/BOC) | | |
| Federal Awarding Agency | Federal Transit Administration (FTA) | | |
| Federal Regional Contact | Cindy Terwilliger | | |
| Federal Award Date** | To Be Determined | | |
| Project End Date | December 31, 2026 | | |
| 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 804220068 | Phone # | (303) 582-1324 |
| Email | tisbester@cityofblackhawk.org | Indirect Rate | N/A |
| WBS*** | 21-11-0041.BHWK.111 | ALI | 11.12.04 |
| Total Project Budget | | | \$599,850.00 |
| Federal FTA-5311 Funds (at 80% or less) | | | \$479,880.00 |
| Local Funds (at 20% or more) | | | \$119,970.00 |
| Total Project Amount Encumbered via this Subaward Agreement | | | \$599,850.00 |

*This is not a research and development grant.

**The Federal Award Date and FAIN are not available at the time of execution of this Subaward Agreement. This information will be maintained in COTRAMS, CDOT's transit awards management system, and will be available upon request.

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

A. Project Description

City of Black Hawk shall use 2023 FTA-5311 funds, along with local matching funds, to purchase 3 buses as more fully described below. The purchase will support the goals of the Statewide Transit Plan.

City of Black Hawk shall use capital funds to purchase the following ADA compliant vehicle(s):

| ALI | QTY | Fuel Type | Description | FTA Amount |
|------------|------------|------------------|------------------------------------|-------------------|
| 11.12.04 | 3 | Gasoline | Replacements - Capital Bus < 30 FT | \$479,880.00 |

The Capital Asset(s) being purchased is/are replacing the following existing fleet vehicles:

| VIN | Fleet ID | COTRAMS Inventory | Year | Model | Make |
|-------------------|-----------------|--------------------------|-------------|--------------|-------------------------------|
| 5WEASSKN1EH498394 | B-Fleet | INV-00003033 | 2014 | Passport LF | EBC - Eldorado Bus (EBC Inc.) |
| 1FD4E4FS6EDA99074 | B-Fleet | INV-00004751 | 2014 | Aerotech | EBC - Eldorado Bus (EBC Inc.) |
| 1FD4E4FS8EDA99075 | B-Fleet | INV-00004750 | 2014 | Aerotech | EBC - Eldorado Bus (EBC Inc.) |

B. Performance Standards

1. Project Milestones

| Milestone Description | Original Estimated Completion Date |
|---|------------------------------------|
| Submit Procurement Concurrence Request (PCR) to CDOT Project Manager for Approval | 01/31/2024 |
| Submit Procurement Authorization (PA) and solicitation docs CDOT Project Manager for Approval | 01/31/2024 |
| Take Delivery of (First) Vehicle/Equipment/Project Property | 10/18/2024 |
| Take Delivery of and Accept All Vehicles/Equipment/Project Property | 9/2/2024 |
| Submit Reimbursement Request in COTRAMS | 10/15/2024 |
| 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: December 31, 2026. | |

2. City of Black Hawk shall use the Capital Asset(s) purchased in its transit operations and shall perform regularly recurring maintenance with specific performance measures tied to City of Black Hawk’s written maintenance plans, including manufacturer’s recommendations and warranty program(s). City of Black Hawk will measure whether this project is successful and improves the efficiency, effectiveness, and safety of transportation.
3. 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.
4. City of Black Hawk must comply and submit all reimbursements and reports associated, including the assignment of “Colorado Department of Transportation” as the lienholder on the Capital Asset(s), as a condition of project closeout.

C. Project Budget

1. The Total Project Budget is \$599,850.00. CDOT will pay no more than 80% of the eligible, actual project costs, up to the maximum amount of \$479,880.00. 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 \$479,880.00 (80%) and matching Local Funds of \$119,970.00 (20%), 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 the 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. Procurement

Procurement of the Capital Asset(s) will comply with state procurement procedures, the DTR Quick Procurement Guide, as well as FTA's requirements and 2 CFR 200.320. In addition to the state requirements outlined below, state and FTA procedures (where applicable) for purchase of the Capital Asset(s) must be followed and will be outlined prior to purchase.

1. The first step in the procurement process will be to obtain an Independent Cost Estimate (ICE).
2. The second step will be to obtain a Procurement Concurrence Request (PCR) approval from the CDOT Project Manager through COTRAMS.
3. Prior to entering into a purchasing agreement with the selected vendor, City of Black Hawk shall request a Purchase Authorization (PA), and submit a vendor quote for the Capital Asset(s) in COTRAMS. The PA must identify a manufacturer found on the FTA's certified transit vehicle manufacturer (TVM) list. Only those TVM's listed on FTA's TVM list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid on FTA funded vehicle procurements.
4. Upon delivery, City of Black Hawk shall be responsible for having the Capital Asset(s) inspected and accepted within **fifteen (15) calendar days of delivery**. If defects prevent acceptance of the Capital Asset(s), City of Black Hawk will contact the vendor to resolve any defects and notify CDOT.
5. City of Black Hawk shall be responsible for reimbursing the selected vendor within **forty-five (45) calendar days after acceptance** of the Capital Asset(s).

E. Reimbursement Eligibility

Requests for reimbursement for eligible project costs will be paid to City of Black Hawk upon submission of a complete reimbursement packet in COTRAMS for those eligible costs incurred during the Subaward Agreement effective dates.

Accepted reimbursement packets will include the following completed documents:

- Independent Cost Estimate (ICE)
- Procurement Concurrence Request (PCR)
- Purchase Authorization (PA)
- Signed Notice of Acceptance (NA)
- Signed Security Agreement (SA)
- Application for Title showing "Colorado Department of Transportation" as the lienholder
- Invoice
- Proof of Payment
- Post Delivery Certifications

City of Black Hawk must submit the final invoice within sixty (60) calendar days of acceptance of the Capital Asset(s), and submit a Grant Closeout and Liquidation (GCL) Form in COTRAMS within fifteen (15) calendar days of issuance of the final reimbursement payment.

F. Federal Interest-Service Life

The useful life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from revenue service. The minimum useful life in years refers to total time in transit revenue service, not time spent stockpiled or otherwise unavailable for regular transit use. The minimum useful life in miles refers to total miles in transit revenue service. Non-revenue miles and periods of extended removal from service do not count towards useful life. Changes in operating circumstances, including unforeseen difficulty maintaining vehicles, higher cost of fuel, and changes in local law limiting where vehicles can be operated are not exemptions from minimum useful life requirements.

FTA maintains its share of the remaining federal interest upon disposition of federally assisted property before the end of its useful life or for a value greater than \$5,000 after the useful life has been met, according to the provisions of FTA C 5010.E1 Chapter IV(4)(o)(1).

Minimum useful life is determined by years of service or accumulation of miles, whichever comes first, in accordance with FTA C. 5010.E1 Chapter IV(4)(f)(2).

City of Black Hawk shall not dispose or otherwise release the Capital Asset(s) to any other party while there is federal interest in the Capital Asset(s) without approval from the CDOT Project Manager.

City of Black Hawk is responsible for making the request to the CDOT Project Manager in a timely manner, providing appropriate documentation, if indicated, when a lien release is being requested in order to allow CDOT to process the release of a lien.

CDOT and City of Black Hawk will work in conjunction with Department of Revenue (DOR) to assure the lien is released according to state rules.

G. 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 individuals with disabilities.

H. Safety Data

City of Black Hawk and any subrecipients shall maintain and submit, as requested, data related to bus safety. This may include, but not be limited to, the number of vehicle accidents within certain measurement parameters set forth by CDOT, the number and extent of passenger injuries or claims, and the number and extent of employee accidents, injuries, and incidents.

I. Restrictions on Lobbying

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

J. Special Conditions

1. City of Black Hawk will comply with all requirements imposed by CDOT on City of Black Hawk so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.
2. City of Black Hawk must permit CDOT and their auditors to have access to City of Black Hawk's records and financial statements as necessary, with reasonable advance notice.
3. Record retention shall adhere to the requirements outlined in 2 CFR 200.333 and FTA C 5010.1.
4. Except as provided in this Subaward Agreement, City of Black Hawk shall not be reimbursed for any purchase, issued purchase order, or leased capital equipment prior to the execution of this Subaward Agreement.
5. 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).
6. City of Black Hawk must obtain CDOT approval, in writing, if FTA funds are intended to be used for payment of a lease or for third-party contracts.
7. City of Black Hawk shall document any loss, damage, or theft of FTA- or state-funded property, equipment, or rolling stock in COTRAMS.

8. 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.
9. If receiving FTA 5311 funding, City of Black Hawk shall maintain and report annually all information required by the National Transit Database (NTD) and any other financial, fleet, or service data.
10. If receiving FTA 5311 or 5339 funding, City of Black Hawk will ensure subcontractors and subrecipients comply with FTA Drug and Alcohol Regulations.
11. 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.
12. 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."
13. City of Black Hawk will provide transportation services to persons with disabilities in accordance with Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.
14. 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.
15. 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.
16. City of Black Hawk shall agree to produce and maintain documentation that supports compliance with the Americans with Disabilities Act to CDOT upon request.
17. City of Black Hawk shall provide CDOT with an equity analysis if the project involves choosing a site or location of a facility in accordance with FTA Circular 4702.1B.
18. 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.
19. City of Black Hawk will adopt a Transit Asset Management Plan that complies with regulations implementing 49 U.S.C. § 5326(d).
20. 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.
21. Meal delivery must not conflict with providing public transportation service or reduce service to public transportation passengers.

EXHIBIT B, SAMPLE OPTION LETTER

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| 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 <hr/> Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year <hr/> 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.
3. **OPTION EFFECTIVE DATE:**
 - A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

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| <p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> | <p>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.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Department of Transportation</p> <p>Option Letter Effective Date: _____</p> |
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EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant 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 Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with federal statutes, Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

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 Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.
 - 2.1.5. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1

- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime 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 Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. 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” or “Subgrantee” 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 does not include an individual who is a beneficiary of a federal program. For SLFRF Grants, a subrecipient relationship continues to exist for Expenditure Category 6.1 Revenue Replacement.
- 2.1.15. “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>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
 - 2.1.15.2. 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;

- 2.1.15.3. 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;
 - 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.15.6. 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.
- 2.1.16. “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.
- 2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. 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.
- 2.1.18. “Unique Entity ID Number” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. 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, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include terms or conditions that undermine efforts to stop COVID-19 or discourage compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID SYSTEM (UEI) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in SAM.gov at least annually.

5. TOTAL COMPENSATION.

- 5.1. Grantee 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 \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.3. 5.1.2.3 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. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 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. [INTENTIONALLY DELETED]

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 applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. 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 Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

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 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 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 Subpart 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 2 CFR 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 Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
- 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of “federally assisted construction Agreement” 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 Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).
- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement 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 agreement,” the Prime Recipient or 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, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal 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. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees 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 Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in 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 Agreement, 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.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing "Never Contract with the Enemy" in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime 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 Grantee 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.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant 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 Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT D, REQUIRED FEDERAL CONTRACT/AGREEMENT CLAUSES

Section 3(i) – 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. OT 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, debars, 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 IJA;
 - (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.

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Council Bill 7-2024 an Ordinance Approving the **2023** FTA Section 5311 Grant for 3 ADA Accessible BOC Replacment Buses administered by Colorado Department of Transportation, Divivision 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 7-2024 an Ordinance Approving the 2023 FTA 5311 Grant for 3 ADA Accessible BOC Replacement Buses

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Five of the Tramway buses have long exceeded their ‘useful life’ based on the FTA’s criteria. The fleet department has been doing a stand up job in keeping the current buses operational. We have had to take one out of service and use it for parts. We have replaced the engine in another.

The City was successful in being awarded a **2023** FTA 5311 grant for 3 Body on Chasis(BOC) ‘Cutaway’ replacement buses. This grant is administered by CDOT. The ongoing personnel issues at CDOT has caused this grant to languish for about a year. We were granted pre-award authority from CDOT and the units have been spec’d and ordered. The most recent delivery estimate is June of 2024. This grant is for \$599,850.00 of which the City/Tramway will be reimbursed for 80% or \$479,880.00 for a net cost of \$119,970.00 for three new buses.

The City approved the 2022 FTA 5311 grant for 2 BOC replacement buses in January. These are also due around the same timeframe.

AGENDA DATE: March 13, 2024

WORKSHOP DATE: March 13, 2024

FUNDING SOURCE: 204-4801-4817401 Capital Replacement-Transit

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

RESOLUTION 25-2024
A RESOLUTION APPROVING
AMENDMENT NO. 1 TO THE
GENERAL CONTRACTOR
AGREEMENT EXECUTED ON
APRIL 12, 2023 BETWEEN THE
CITY OF BLACK HAWK AND
ROCHE CONSTRUCTORS,
INC., ESTABLISHING THE
GUARANTEED MAXIMUM
PRICE (GMP) OF \$497,058 FOR
CONSTRUCTION OF THE
LACE HOUSE
REHABILITATION PROJECT

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

Resolution No. 25-2024

TITLE: A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE GENERAL CONTRACTOR AGREEMENT EXECUTED ON APRIL 12, 2023 BETWEEN THE CITY OF BLACK HAWK AND ROCHE CONSTRUCTORS, INC., ESTABLISHING THE GUARANTEED MAXIMUM PRICE (GMP) OF \$497,058 FOR CONSTRUCTION OF THE LACE HOUSE REHABILITATION PROJECT

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

Section 1. The City Council hereby approves Amendment No. 1 to the General Contractor Agreement executed on April 12, 2023 between the City of Black Hawk and Roche Constructors, Inc., establishing the Guaranteed Maximum Price (GMP) of \$497,058 for construction of the Lace House Rehabilitation project.

RESOLVED AND PASSED this 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk



CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT:

Approve Resolution 25-2024, a Resolution approving Amendment No. 1 to the General Contractor Agreement for the Lace House Rehabilitation project. Amendment No. 1 would establish the Guaranteed Maximum Price (GMP) for construction of this project.

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

MOTION TO APPROVE: Resolution 25-2024, a Resolution approving Amendment No. 1 to the General Contractor Agreement dated April 12, 2023, and therefore accepting the GMP of \$497,058 for construction of the Lace House Rehabilitation project

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Lace House is considered Colorado’s premier example of Carpenter Gothic architecture. It was restored in the late 1970s and opened for tours. In 2008, it was moved from its original location on Main Street to its current location in Gregory Point. It is the City’s vision to lead guided tours through the Lace House once again.

The exterior of the Lace House is in excellent condition. However, all interior finishes must be restored to bring the Lace House up to museum-quality standards. Structural, electrical, HVAC, and plumbing systems will also need to be modified to meet current building code requirements. The Lace House Renovation project would restore the interior of the Lace House to a high-quality showcase of Black Hawk mining-era interior finishes.

Approval of this Amendment would establish the GMP for construction of the Lace House Rehabilitation project and authorize construction to begin.

The original General Contractor Agreement with Roche Constructors, Inc. was approved by City Council on April 12, 2023.

FUNDING SOURCE: Program Expenses / Lace House: 203-0000-502-58-34

AGENDA DATE: March 13, 2024

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: Fall 2024

DOCUMENTS ATTACHED: Amendment No. 1

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

SUBMITTED BY:



Thomas Isbester, Public Works Director

REVIEWED BY:



Stephen N. Cole, City Manager

AMENDMENT NO. 1

ACCEPTANCE OF THE GUARANTEED MAXIMUM PRICE

Lace House Rehabilitation

March 13, 2024

This Amendment to the Agreement between the parties signing below shall establish the Scope of Work, Schedule, and Guaranteed Maximum Price, in accordance with the terms of the *General Contractor Agreement* for the Lace House Rehabilitation project, dated April 12, 2023. Terms capitalized in this document are specifically defined in the Agreement and in the Contract Documents incorporated therein.

A.1. SCOPE OF WORK

The Scope of Work includes construction of the Lace House Rehabilitation project, as described in the construction plans dated November 25, 2020, the *Project Manual* dated November 25, 2020, and other supporting documents provided to the Contractor during the selection process.

A.2. GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price for the Scope of Work is **Four Hundred Ninety-Seven Thousand Fifty-Eight Dollars (\$497,058)**, which is the maximum amount payable for performance of the Scope of Work in accordance with the Contract Documents, including this Amendment and its incorporated Exhibit B.

A.3. CONTRACT TIME

The date of Substantial Completion for the Scope of Work is hereby established as **September 30, 2024**.

A.4. AUTHORIZATION TO PROCEED

Based on the representations made herein, the General Contractor is hereby authorized to:

- 1) Conclude negotiations with bidders, and notify Owner of the intent to award subcontracts in accordance with the Agreement;
- 2) Commence construction in accordance with the Agreement, pending procurement of required insurance and bonds.

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

CITY OF BLACK HAWK, COLORADO

By: _____
David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

ROCHE CONSTRUCTORS, INC.

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, as _____ of _____.

My commission expires: _____

Witness my hand and official seal.

Notary Public

EXHIBIT B

City of Black Hawk
Gregory Point Site Improvements & Lace House Rehabilitation
Black Hawk, Colorado
 Wednesday, February 28, 2024



I. Description of Work

Roche Constructors, Inc., (Roche) is pleased to submit this budget proposal letter for the Gregory Point Site Improvements located in Blackhawk, Colorado. The below pricing reflects all estimated supervision, labor, material, and equipment costs anticipated for completion of all work as detailed in the Permit Drawing Sets by PEH Architects dated August 7, 2022 and November 25, 2020 along with revised scope narrative from Matthew Reed provided on January 12, 2024.

II. Cost Summary

Roche agrees to perform all work as detailed in the above mentioned documents for the following costs:

| <u>Description of Work</u> | <u>Gregory Point Bid Amount</u> | <u>Lace House Bid Amount</u> |
|--------------------------------|---------------------------------|------------------------------|
| Surveying | \$ 19,300.00 | \$ - |
| Site Demolition & Earthwork | \$ 60,370.00 | \$ - |
| Landscaping | \$ 32,500.00 | \$ - |
| Concrete | \$ 351,965.00 | \$ 15,000.00 |
| Masonry | \$ 10,000.00 | \$ 3,000.00 |
| Steel | \$ 299,000.00 | \$ 3,000.00 |
| Carpentry | \$ 10,284.00 | \$ 80,148.00 |
| Joint Sealants & Caulking | \$ 8,300.00 | \$ 3,500.00 |
| Insulation | \$ - | \$ 6,500.00 |
| Roofing & Sheetmetal | \$ - | \$ 6,190.00 |
| Door, Frames & Hardware | \$ - | \$ 12,000.00 |
| Windows, Glass & Glazing | \$ - | \$ 39,000.00 |
| Drywall & Wall Coverings | \$ - | \$ 42,479.00 |
| Flooring: Tile & Carpet | \$ - | \$ 26,080.00 |
| Interior & Exterior Painting | \$ 29,230.00 | \$ 34,350.00 |
| Specialties | \$ - | \$ 3,620.00 |
| Mechanical: Plumbing & HVAC | \$ - | \$ 100,133.00 |
| Electrical | \$ 143,000.00 | \$ 20,500.00 |
| Technology | \$ 243,500.00 | \$ - |
| Cost of Work Sub Total: | \$ 1,207,449.00 | \$ 395,500.00 |
| General Conditions | \$ 223,446.00 | Included in Gregory Point |
| Insurance and Builders Risk | \$ 10,309.00 | \$ 2,898.00 |
| Payment & Performance Bonds | \$ 11,741.00 | \$ 3,266.00 |
| Construction Contingency - 5% | \$ 60,448.00 | \$ 19,800.00 |
| Owner's Contingency - 5% | \$ 60,448.00 | \$ 19,800.00 |
| Overhead & Fee | \$ 134,717.00 | \$ 55,794.00 |
| Project Total: | \$ 1,708,558.00 | \$ 497,058.00 |

III. Allowances:

The below allowances are incorporated into the pricing in the following amounts:

| | |
|--|---------------|
| Allowance 1: Repairs to existing landscape | \$ 20,000.00 |
| Allowance 2: New pavers at Barn patio (250 SF) | \$ 12,500.00 |
| Allowance 3: Stone retaining wall drilling, grouting and repairs (Note #3/A102 and Detail 8/A110) | \$ 10,000.00 |
| Allowance 4: Framing demolition for new mechanical | \$ 2,500.00 |
| Allowance 5: Door and window hardware | \$ 7,500.00 |
| Allowance 6: Storm windows at Lace House - "Indow" and "magnitate" supply | \$ 35,000.00 |
| Allowance 7: Flooring finishes at Lace House (carpet and tile) | \$ 18,730.00 |
| Allowance 8: Wood plank flooring | \$ 7,350.00 |
| Allowance 9: Site lighting poles (supply) | \$ 63,000.00 |
| Allowance 10: Low-volt Distribution: Site demolition, concrete modifications, raceways | \$ 342,159.00 |

and repairs to existing structures

IV. Clarifications & Assumptions

- Roche will provide prescribed soil preparation and seeding of non-irrigated native seed areas one time only
 - Upon substantial completion of the project, should the grass coverage not meet the requirements to obtain a Notice of Termination (N.O.T.), the Owner will agree to transfer the Stormwater Discharge Permit, as well as the liability for all upkeep and removal of control measures until N.O.T. can be obtained.
- Construction duration to be 91 calendar days
- Pricing assumes a five (8) hour day schedule: Monday - Friday, starting at 6am
- Over-time hours and shift differential pay is not included in proposal
- Construction assumed to take place during the summer months of 2024 (May - August)
- All deliveries to be coordinated through Roche daily and weekly
- Rough and finish grading for new sidewalks
- Minimal prep work and grading is included for the new concrete walks around the houses - no major excavation is included
- All concrete sidewalks to bear on native soil
- Erosion and sedimentation control with maintenance
- Landscape repairs and replacement
- All site flatwork is priced at a 4" thickness with no reinforcing or fiber mesh
- Concrete flatwork per revised plans
- Removal and replacement of concrete light pole bases
- Removal and replacement of concrete sidewalks for new electrical and technology conduit
- Fabrication and installation of ornamental railing per plans. All post caps to be installed per Detail 2/A110
- All wallpaper and carpet are to be owner-furnished and contractor installed
- Flooring and wall finishes are indicated in finish schedule as "TBD" and are carried as an allowance
- Complete restoration of (4) historic windows
- Selective restoration of (4) existing interior wood doors
- Roofing and sheetmetal per plans
- Plumbing outside of the Lace House foundation is not included within this proposal
- Black Hawk Domestic Service Detail to be in place and ready for connection at the Lace House building entry shut-off valve
- HVAC per plans and specs
- Existing light pole conduit figured to be suitable for re-use. No new conduit or wiring has been included in this proposal
- All light poles and fixtures are figured as contractor-furnished and contractor installed (allowance)
- All audio/visual, communications and surveillance equipment/devices to be contractor-furnished and contractor installed
- Low-volt design and final device location to be determined pending confirmation on final lay-out coordination with Owner

V. Exclusions

- Project design and engineering fees (by Owner)
- Building permits and development fees (by Owner)
- Plan review fees
- Taxes
- Sewer, water, storm drainage fees
- Tap fees
- All costs for testing and quality control (by Owner)
- Third-party material testing fees
- Traffic control for any off-site work
- **Winter/weather protection**
- Any dry utility (power or gas) fees for termination of the existing services and new services (by Owner)
- Removal of hazardous materials, including but not limited to, PCB, asbestos, lead paint removals (if required)
- Rock excavation, soil stabilization (lime or fly-ash), and dewatering
- Manned site security or surveillance equipment & services
- Commissioning of building systems & functions unless otherwise indicated
- Fire department radio amplification system
- Any inspections, testing, and/or fees required by the AHJ on any building system not included in this proposal
- Elevator work of any kind
- Asphalt of any kind
- **Fire alarm design and wiring**
- Relocate primary power source to existing transformer
- Arc flash study
- **Fire suppression design and installation**

VI. Insurance Requirements

The following insurance limits are included within the above costs by Roche and all subcontractors. Any insurance requirements above and beyond the below specified limits will result in additional cost impacts.

- **Commercial General Liability:**
 - \$ 1,000,000.00 Each Occurrence
 - \$ 300,000.00 Damage to Rented Premises (each occurrence)
 - \$ 10,000.00 Medical Expenses (any one person)
 - \$ 1,000,000.00 Personal and Advertising Injury
 - \$ 2,000,000.00 Per Project General Aggregate
 - \$ 2,000,000.00 Completed Operations/Projects Aggregate
- **Automobile Liability:**
 - \$ 1,000,000.00 Combined Single Limit
- **Umbrella Liability:**
 - \$ 1,000,000.00 Each Occurrence
 - \$ 1,000,000.00 Aggregate
- **Worker's Compensation / Employer's Liability:**
 - \$ 1,000,000.00 Each Accident
 - \$ 1,000,000.00 Disease - Each Employee
 - \$ 1,000,000.00 Disease - Policy Limit

Contractor will name the Owner as an additional insured on the general liability policy and will provide a wavier of subrogation on the worker's compensation policy.

Thank you for allowing us the opportunity to be a part of your team. Please contact us with any questions.

Sincerely,

ROCHE CONSTRUCTORS, INC.



Zach Pritchard
Project Estimator

RESOLUTION 26-2024
A RESOLUTION
APPROVING AMENDMENT
NO. 1 TO THE GENERAL
CONTRACTOR
AGREEMENT EXECUTED
ON APRIL 12, 2023
BETWEEN THE CITY OF
BLACK HAWK AND ROCHE
CONSTRUCTORS, INC.,
ESTABLISHING THE
GUARANTEED MAXIMUM
PRICE (GMP) OF \$1,708,558
FOR CONSTRUCTION OF
THE GREGORY POINT SITE
IMPROVEMENTS PROJECT

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

Resolution No. 26-2024

TITLE: A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE GENERAL CONTRACTOR AGREEMENT EXECUTED ON APRIL 12, 2023 BETWEEN THE CITY OF BLACK HAWK AND ROCHE CONSTRUCTORS, INC., ESTABLISHING THE GUARANTEED MAXIMUM PRICE (GMP) OF \$1,708,558 FOR CONSTRUCTION OF THE GREGORY POINT SITE IMPROVEMENTS PROJECT

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

Section 1. The City Council hereby approves Amendment No. 1 to the General Contractor Agreement executed on April 12, 2023 between the City of Black Hawk and Roche Constructors, Inc., establishing the Guaranteed Maximum Price (GMP) of \$1,708,558 for construction of the Gregory Point Site Improvements project.

RESOLVED AND PASSED this 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk



CITY OF BLACK HAWK

REQUEST FOR COUNCIL ACTION

SUBJECT:

Approve Resolution 26-2024, a Resolution approving Amendment No. 1 to the General Contractor Agreement for the Gregory Point Site Improvements project. Amendment No. 1 would establish the Guaranteed Maximum Price (GMP) for construction of this project.

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

MOTION TO APPROVE: Resolution 26-2024, a Resolution Approving Amendment No. 1 to the General Contractor Agreement dated April 12, 2023, Between the City of Black Hawk and Roche Constructors, Inc., Establishing the Guaranteed Maximum Price (GMP) of \$1,708,558 for Construction of the Gregory Point Site Improvements Project

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Gregory Point Site Improvements project includes:

- Replacing all deteriorating railings with new decorative metal railings.
- Replacing damaged sections of stone retaining walls and concrete sidewalks.
- Replacing all stand-alone light poles with “Hawk” light poles.
- Adding exterior speakers and other audio equipment.
- Adding a WiFi system and security cameras.
- Enlarging the patio area outside of the Barn.

While an elevator was originally proposed to reach the upper-level of Gregory Point, this elevator has been eliminated and will NOT be constructed with the Gregory Point Site Improvements project.

Approval of this Amendment would establish the GMP for construction of the Gregory Point Site Improvements project and authorize construction to begin.

The General Contractor Agreement with Roche Constructors, Inc. was approved by City Council on April 12, 2023.

FUNDING SOURCE: Program Expenses / Gregory Point: 203-0000-502-58-43

AGENDA DATE: March 13, 2024

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: Fall 2024

DOCUMENTS ATTACHED: Amendment No. 1

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

SUBMITTED BY:



Thomas Isbester, Public Works Director

REVIEWED BY:



Stephen N. Cole, City Manager

AMENDMENT NO. 1

ACCEPTANCE OF THE GUARANTEED MAXIMUM PRICE

Gregory Point Site Improvements

March 13, 2024

This Amendment to the Agreement between the parties signing below shall establish the Scope of Work, Schedule, and Guaranteed Maximum Price, in accordance with the terms of the *General Contractor Agreement* for the Gregory Point Site Improvements project, dated April 12, 2023. Terms capitalized in this document are specifically defined in the Agreement and in the Contract Documents incorporated therein.

A.1. SCOPE OF WORK

The Scope of Work includes construction of the Gregory Point Site Improvements project, as described in the construction plans dated August 7, 2020 and approved by SAFEbuilt on September 2, 2020, excluding all work pertaining to the elevator and Cooper Street improvements, the *Project Manual* dated June 26, 2020, excerpts from low voltage and audio system plans dated February 22, 2023, supplemental plans showing light pole replacement, speaker enclosure construction, patio expansion at the Barn, and other supporting documents provided to the Contractor during the selection and negotiation processes.

A.2. GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price for the Scope of Work is **One Million Seven Hundred Eight Thousand Five Hundred Fifty-Eight Dollars (\$1,708,558)**, which is the maximum amount payable for performance of the Scope of Work in accordance with the Contract Documents, including this Amendment and its incorporated Exhibit B.

A.3. CONTRACT TIME

The date of Substantial Completion for the Scope of Work is hereby established as **September 30, 2024**.

A.4. AUTHORIZATION TO PROCEED

Based on the representations made herein, the General Contractor is hereby authorized to:

- 1) Conclude negotiations with bidders, and notify Owner of the intent to award subcontracts in accordance with the Agreement;
- 2) Commence construction in accordance with the Agreement, pending procurement of required insurance and bonds.

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

CITY OF BLACK HAWK, COLORADO

By: _____
David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

ROCHE CONSTRUCTORS, INC.

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____, as _____ of _____.

My commission expires: _____

Witness my hand and official seal.

Notary Public

EXHIBIT B

City of Black Hawk
Gregory Point Site Improvements & Lace House Rehabilitation
Black Hawk, Colorado
 Wednesday, February 28, 2024



I. Description of Work

Roche Constructors, Inc., (Roche) is pleased to submit this budget proposal letter for the Gregory Point Site Improvements located in Blackhawk, Colorado. The below pricing reflects all estimated supervision, labor, material, and equipment costs anticipated for completion of all work as detailed in the Permit Drawing Sets by PEH Architects dated August 7, 2022 and November 25, 2020 along with revised scope narrative from Matthew Reed provided on January 12, 2024.

II. Cost Summary

Roche agrees to perform all work as detailed in the above mentioned documents for the following costs:

| Description of Work | Gregory Point Bid Amount | Lace House Bid Amount |
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| Overhead & Fee | \$ 134,717.00 | \$ 55,794.00 |
| Project Total: | \$ 1,708,558.00 | \$ 497,058.00 |

III. Allowances:

The below allowances are incorporated into the pricing in the following amounts:

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|--|---------------|
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and repairs to existing structures

IV. Clarifications & Assumptions

- Roche will provide prescribed soil preparation and seeding of non-irrigated native seed areas one time only
 - Upon substantial completion of the project, should the grass coverage not meet the requirements to obtain a Notice of Termination (N.O.T.), the Owner will agree to transfer the Stormwater Discharge Permit, as well as the liability for all upkeep and removal of control measures until N.O.T. can be obtained.
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- All deliveries to be coordinated through Roche daily and weekly
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- Minimal prep work and grading is included for the new concrete walks around the houses - no major excavation is included
- All concrete sidewalks to bear on native soil
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- All site flatwork is priced at a 4" thickness with no reinforcing or fiber mesh
- Concrete flatwork per revised plans
- Removal and replacement of concrete light pole bases
- Removal and replacement of concrete sidewalks for new electrical and technology conduit
- Fabrication and installation of ornamental railing per plans. All post caps to be installed per Detail 2/A110
- All wallpaper and carpet are to be owner-furnished and contractor installed
- Flooring and wall finishes are indicated in finish schedule as "TBD" and are carried as an allowance
- Complete restoration of (4) historic windows
- Selective restoration of (4) existing interior wood doors
- Roofing and sheetmetal per plans
- Plumbing outside of the Lace House foundation is not included within this proposal
- Black Hawk Domestic Service Detail to be in place and ready for connection at the Lace House building entry shut-off valve
- HVAC per plans and specs
- Existing light pole conduit figured to be suitable for re-use. No new conduit or wiring has been included in this proposal
- All light poles and fixtures are figured as contractor-furnished and contractor installed (allowance)
- All audio/visual, communications and surveillance equipment/devices to be contractor-furnished and contractor installed
- Low-volt design and final device location to be determined pending confirmation on final lay-out coordination with Owner

V. Exclusions

- Project design and engineering fees (by Owner)
- Building permits and development fees (by Owner)
- Plan review fees
- Taxes
- Sewer, water, storm drainage fees
- Tap fees
- All costs for testing and quality control (by Owner)
- Third-party material testing fees
- Traffic control for any off-site work
- **Winter/weather protection**
- Any dry utility (power or gas) fees for termination of the existing services and new services (by Owner)
- Removal of hazardous materials, including but not limited to, PCB, asbestos, lead paint removals (if required)
- Rock excavation, soil stabilization (lime or fly-ash), and dewatering
- Manned site security or surveillance equipment & services
- Commissioning of building systems & functions unless otherwise indicated
- Fire department radio amplification system
- Any inspections, testing, and/or fees required by the AHJ on any building system not included in this proposal
- Elevator work of any kind
- Asphalt of any kind
- **Fire alarm design and wiring**
- Relocate primary power source to existing transformer
- Arc flash study
- **Fire suppression design and installation**

VI. Insurance Requirements

The following insurance limits are included within the above costs by Roche and all subcontractors. Any insurance requirements above and beyond the below specified limits will result in additional cost impacts.


- **Commercial General Liability:**
 - \$ 1,000,000.00 Each Occurrence
 - \$ 300,000.00 Damage to Rented Premises (each occurrence)
 - \$ 10,000.00 Medical Expenses (any one person)
 - \$ 1,000,000.00 Personal and Advertising Injury
 - \$ 2,000,000.00 Per Project General Aggregate
 - \$ 2,000,000.00 Completed Operations/Projects Aggregate
- **Automobile Liability:**
 - \$ 1,000,000.00 Combined Single Limit
- **Umbrella Liability:**
 - \$ 1,000,000.00 Each Occurrence
 - \$ 1,000,000.00 Aggregate
- **Worker's Compensation / Employer's Liability:**
 - \$ 1,000,000.00 Each Accident
 - \$ 1,000,000.00 Disease - Each Employee
 - \$ 1,000,000.00 Disease - Policy Limit

Contractor will name the Owner as an additional insured on the general liability policy and will provide a wavier of subrogation on the worker's compensation policy.

Thank you for allowing us the opportunity to be a part of your team. Please contact us with any questions.

Sincerely,

ROCHE CONSTRUCTORS, INC.



Zach Pritchard
Project Estimator

RESOLUTION 27-2024
A RESOLUTION
APPROVING AN ON-CALL
SERVICE AGREEMENT
WITH GRASMICK
ELECTRIC
CORPORATION IN AN
AMOUNT NOT TO
EXCEED \$25,000 FOR
CALENDAR YEAR 2024

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

Resolution No. 27-2024

TITLE: A RESOLUTION APPROVING AN ON-CALL SERVICE AGREEMENT WITH GRASMICK ELECTRIC CORPORATION IN AN AMOUNT NOT TO EXCEED \$25,000.00 FOR CALENDAR YEAR 2024

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 On-Call Services Agreement with Grasmick Electric Corporation for electrical contracting services in an amount not to exceed \$25,000.00, and the Mayor is authorized to execute the Agreement on behalf of the City.

RESOLVED AND PASSED this 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk



CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Approve a Resolution approving an On-Call Contract between the City of Black Hawk and Grasmick Electric Corp. in the amount not to exceed \$25,000

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

MOTION TO APPROVE Resolution 27-2024, a Resolution Approving an On-Call Agreement with Grasmick Electric Corporation in an Amount not to Exceed \$25,000.00 for Calendar Year 2024

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Grasmick Electrical Corp has personnel with significant experience working in/on/ around City of Black Hawk water plants, pump stations and vaults. The city utilizes on call contractors to supplement our existing staff. Having an additional electrical contractor was felt to be in the best interest of the City.

AGENDA DATE: March 13, 2024

FUNDING SOURCE: 501-3151-460- 45 04

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:

REVIEWED BY:

Thomas Isbester, Public Works Director

Stephen N. Cole, City Manager

TRADE CONTRACTOR AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2024, by and between the **CITY OF BLACK HAWK**, State of Colorado, a Colorado municipal corporation (hereinafter referred to as the “City”) and Grasmick Electric Corp (hereinafter referred to as “Contractor”).

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

Section 1. Scope of Work. Contractor shall perform all work in accordance with industry standards, on an on-call basis defined for each project (and may be modified by addendum by the Director of Public Works or his appointee and agreed upon by Contractor) and incorporated by this reference, including furnishing all supervision, labor, equipment, and materials therefor (the “Project”).

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

Section 3. Agreement Price. The City shall pay Contractor for the performance of work and completion of defined on-call Projects, as described in Attachment A, not to exceed the aggregate of \$25,000 unless previously approved

Section 4. Times and Methods of Payment.

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

- B. If the City fails to make payments due Contractor within sixty (60) days after receipt and acceptance of Contractor’s bill, Contractor may, after giving seven (7) days written notice to the City, suspend services under this Agreement until Contractor’s outstanding bills have been paid in full.

Section 5. Not Used.

Section 6. Not Used.

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

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

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

Section 8. Commencement and Completion of Performance. The services called for shall be completed by the date described in Exhibit A. Contractor shall commence any work requested by the City within ten (10) days of notification by the City. In the event Contractor fails to commence work within this time period, the City may take over the work and prosecute the same to completion. The date of beginning and the time for completion of the work are essential conditions of this Agreement. Contractor shall proceed with the work at such rate of progress to ensure full completion within the contract time. It is expressly understood and agreed by and between the City and Contractor that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed. If Contractor shall fail to complete the work within the contract time, or extension of time granted by the City, then Contractor shall pay to the City the amount of liquidated damages and not as penalty the sum of Zero **Dollars (\$000.00)** for each calendar day that Contractor shall be in default after as described in Exhibit A. The City will charge Contractor, and may deduct from the partial and final payment for the work, all architectural, engineering and construction management expenses incurred by the City in connection with any work accomplished after the specified completion date.

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

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

Section 9. Termination.

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

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

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

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

Section 11. Indemnification.

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

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

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

Section 12. Insurance.

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

B. Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Contractor pursuant to Section 11 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of five hundred thousand dollars (\$500,000) each incident, five hundred thousand dollars (\$500,000) disease—policy limit, and five hundred thousand dollars (\$500,000) disease—each employee.
2. General Public Liability Insurance to be written with a limit of liability of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than one million dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one (1) accident and not less than two million dollars (\$2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.
3. Protective Liability and Property Damage Insurance covering the liability of the Owner, including any employee, officer or agent of the Owner with respect to all operations under the Contract by the Contractor or his sub-contractors shall be obtained and maintained during the life of this Contract.

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

Section 13. Warranties and Guarantees. Contractor hereby represents, warrants and guarantees to the City all workmanship, equipment and materials on or made a part of the Project and its structures for a period of two (2) years from and after the date of final acceptance of the work by the City as provided by this Agreement.

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

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

- A. Unit prices previously approved, which are attached hereto and incorporated by this reference.

ment and
e will be
ent (15%)
head and

City and Contractor be created by the terms hereof.

- D. Contractor is responsible for the safety of any of its materials, tools, possessions, and rented items stored on the job site and for protection of the Project and shall hold the City and its authorized representatives harmless from any damage or loss incurred thereto.
- E. Contractor shall promptly pay in full for any and all damage caused to the Project site by Contractor or by any subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services, or instruments for whose actions Contractor is responsible hereunder.

- F. No material, equipment, tools, supplies, or instruments other than those belonging to or leased by Contractor will be removed from the Project site by Contractor without the prior written approval of the City.
- G. Contractor agrees to report immediately to the City, in writing, any and all property damage and/or personal injury that occurs on the Project site during the course of Contractor's performance.

Section 17. Assignment. Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the City. The terms of this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

Section 18. Amendment. This Agreement may be amended from time to time by agreement between the parties hereto. No amendment, modification, or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

Section 19. Severability. If any term, section, or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

Section 20. Waiver. No waiver by either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 21. Remedies. None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts.

Section 22. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

Section 23. Entirety. This Agreement constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations,

RESOLUTION 28-2024
A RESOLUTION
APPROVING THE
PURCHASE OF ONE (1)
FORD RANGER PICKUP
TRUCK IN THE AMOUNT
OF \$60,000.00

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

Resolution No. 28-2024

TITLE: A RESOLUTION APPROVING THE PURCHASE OF ONE (1) FORD RANGER PICKUP TRUCK IN THE AMOUNT OF \$60,000.00

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

Section 1. The City Council hereby approves the purchase of one Ford Ranger Pickup Truck, from Phil Long Ford of Denver, LLC in the amount of \$60,000.00

RESOLVED AND PASSED this 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: Approve purchase of a budgeted Ford Ranger crew cab truck for the Fire Department

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

MOTION TO APPROVE Resolution 28-2024, A Resolution Approving the Purchase of One Ford Ranger PickUp Truck in the Amount of \$60,000.00

SUMMARY AND BACKGROUND OF SUBJECT MATTER: During the 2024 budget approval process, one replacement vehicle for the Fire Department was approved to be purchased. The new vehicle will become the Chiefs vehicle and his existing truck will be repurposed within the Fire Department. The new truck will have a topper, light and accessory package appropriate for fire. There is a time constraint on getting the orders in before the order bank closes. Staff is still waiting on final pricing for the accessories. The order will include:

Ford Ranger crew cab with topper and accessories \$60,000.00

Again, this was an approved budgeted item under the 2024 budget.

AGENDA DATE: March 13, 2024

FUNDING SOURCE: 305-3101-431-7559

DEPARTMENT DIRECTOR APPROVAL: Yes No

STAFF PERSON RESPONSIBLE: Steve Jackson/Chris Woolley

DOCUMENTS ATTACHED: quote

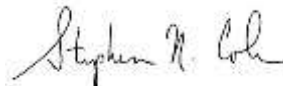
RECORD: Yes No

CoBH CERTIFICATE OF INSURANCE REQUIRED Yes No

CITY ATTORNEY REVIEW: Yes N/A

SUBMITTED BY:

REVIEWED BY:



Thomas Isbester, Public Works Director

Stephen N. Cole, City Manager



Preview Order E005 - R4H - Ranger 4x4 Crw Cab XLT: Order Summary Time of Preview: 01/30/2024 04:34:07 Receipt: NA

Dealership Name: Phil Long Ford of Denver, LLC

Sales Code : F56002

| | | | | | | | |
|---------------|------------------|---------------|-------|--------------|----------|-------------|------|
| Dealer Rep. | Elizabeth Welker | Type | Fleet | Vehicle Line | RangerNA | Order Code | E005 |
| Customer Name | City of Black | Priority Code | D1 | Model Year | 2024 | Price Level | 425 |

| DESCRIPTION | MSRP | DESCRIPTION | MSRP |
|-----------------------------|---------|------------------------------|---------|
| R4HO RANGER 4X4 CRW CAB XLT | \$39595 | 255/70 R17 A/T TIRE | \$0 |
| .128.7 INCH WHEELBASE | \$0 | CONNECTED NAVIGATION | \$0 |
| TOTAL BASE VEHICLE | \$39595 | SPORT APPEARANCE PACKAGE | \$0 |
| HOT PEPPER RED MET TINT CC | \$495 | .17" GRAY PTD ALUM WHL-SPORT | \$0 |
| PREMIUM CLOTH SEATS | \$0 | SPECIAL FLEET ACCOUNT CREDIT | \$0 |
| EBONY INTERIOR TRIM | \$0 | FUEL CHARGE | \$0 |
| EQUIPMENT GROUP 300A | \$0 | PRICED DORA | \$0 |
| .XLT SERIES | \$0 | ADVERTISING ASSESSMENT | \$0 |
| .2.3L ECOBOOST ENGINE | \$0 | DESTINATION & DELIVERY | \$1595 |
| .10-SPEED AUTO TRANSMISSION | \$0 | | |
| | | | MSRP |
| TOTAL BASE AND OPTIONS | | | \$41685 |
| XLT BASE DISCOUNT | | | \$-500 |
| TOTAL | | | \$41185 |

ORDERING FIN: QB859 END USER FIN: QN258

Topper *+* *6180*
+ *47,365*

Customer Name:
Customer Address:

Customer Email:
Customer Phone:

X

Customer Signature

Date

This order has not been submitted to the order bank.

This is not an invoice.



EQUIPMENT

Since 1912

PHILLON
Customer: Phil Long Ford of Denver
7887 W. Tufts Ave.
Littleton CO 80123

Contact:
Phone: (303) 973-5337
2nd:
Email:

O.J. Watson Company, Inc.
5335 Franklin Street
Denver, Colorado 80216
303-295-2885 or 800-332-2124
Fax: 303-296-8049
www.ojwatson.com

Quotation

Page 1 of 2

Salesperson: Craig Arndt

Quote Number: CWA1411
Quote Date: 1/25/2024
Quote valid until: 2/24/2024
Revision Number: 0

Work Order:

Build Information:

| | | | |
|---------------------|------------------|------------|-----------|
| Year / Make / Model | 2024 Ford Ranger | End User | Blackhawk |
| Cab Configuration | CREW | Unit # | |
| Fuel Type | GAS | Item / PO# | |
| CA / CT | 5' | | |
| Rear Axle | SRW | | |

Quoted Items:

Description of Work

O.J. Watson is pleased to quote you the following installed truck equipment:

LEER MILE HIGH 100RCC FIBERGLASS COMMERCIAL TOP FOR A 2024 FORD RANGER WITH 5' BED

HEADLINER
PAINTED SIDE ACCESS DOORS WITH SS DROP T-HANDLE
SOLID REAR DOOR WITH SS DROP T-HANDLE
TOOLBOXES ON BOTH SIDES
NO WINDOWS SOLID FRONT
12 VOLT LED INTERIOR DOME LIGHT
LED BRAKE LIGHT
FACTORY MATCHED ~~WHITE~~ IN COLOR
Red

INSTALLATION AND WIRING OF DOME LIGHT INCLUDED

Total Price Not Including Options: \$6180.00

Optional Items:

| Options | Amount | Accepted Yes / No |
|---------|--------|----------------------|
|---------|--------|----------------------|

Notes:

Temporary Repricing & Surcharge Disclaimer:

It is with regret that due to the extreme instability of current market costs, all pricing presented will be valid for thirty (30) days from quotation date. Any quotations extending beyond the thirty (30) day period will be subject to costing evaluation and possible repricing. Additionally, an accepted quotation involving deliveries extending beyond ninety (90) days will be subject to costing evaluation at time of delivery and may be subject to a surcharge of up to, but not exceeding 12% of quoted price. We greatly appreciate your business and count on your understanding through these unprecedented times. **We look forward to returning to our normal pricing terms as quickly as market conditions allow.**

➤ All pricing is good for -30- days from date of quotation

RESOLUTION 29-2024
A RESOLUTION
APPROVING THE
PURCHASE OF THREE (3)
FULLY EQUIPPED
MARKED DODGE
DURANGO POLICE
VEHICLES IN THE
AMOUNT OF \$204,114.00

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 29-2024

TITLE: A RESOLUTION APPROVING THE PURCHASE OF THREE (3) FULLY EQUIPPED MARKED DODGE DURANGO POLICE PATROL VEHICLES IN THE AMOUNT OF \$204,114.00

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

Section 1. The City Council hereby approves the purchase of three (3) fully equipped marked Dodge Durango police patrol vehicles in the amount of \$204,114.00.

RESOLVED AND PASSED this 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: The Police 2024 Budget was approved to replace three patrol vehicles. This is a request to move forward with the purchase of three full equipped marked patrol Dodge Durango.

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

MOTION TO APPROVE Resolution 29-2024, A Resolution Approving the Purchase of Three (3) Fully Equipped Marked Dodge Durango Police Patrol Vehicles in the amount of \$204,114.00

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

This is a request to move forward with the purchase of three fully equipped marked patrol Dodge Durango.

Price Breakdown:

Johnson Auto Plaza:

\$43,530 X 3 = \$130,500

Av-Tech Equipment:

\$23,497 X 3 = \$70,491

The Artworks Decal (Police Package X3):

\$3,123

Total Cost Not to Exceed \$204,114 (\$68,038 per vehicle)

AGENDA DATE: 3/13/2024

WORKSHOP DATE: None

FUNDING SOURCE: 2024 Police Budget

DEPARTMENT DIRECTOR APPROVAL: [X]Yes []No

STAFF PERSON RESPONSIBLE: Chief Moriarty and Steve Jackson

DOCUMENTS ATTACHED: Yes

RECORD: []Yes [X]No

UPDATE GIS MAP: []Yes [X]No

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

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

SUBMITTED BY:



Michelle Moriarty, Chief of Police

REVIEWED BY:



Stephen N. Cole, City Manager

RESOLUTION 30-2024
A RESOLUTION
AMENDING THE
RESIDENTIAL EXTERIOR
PAINT PROGRAM-GUIDE
TO PROGRAMS

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 30-2024

TITLE: A RESOLUTION AMENDING THE RESIDENTIAL EXTERIOR PAINT PROGRAM - GUIDE TO PROGRAMS

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

Section 1. The City of Black Hawk Residential Exterior Paint Program—Guide to Programs, dated March 2024, attached hereto as **Exhibit A** and incorporated herein by this reference, is hereby approved.

Section 2. The March 2024 Residential Exterior Paint Program—Guide to Programs shall apply to exterior paint projects commencing after the effective date of this Resolution.

RESOLVED AND PASSED this 13th day of March, 2024.

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

EXHIBIT A

RESIDENTIAL EXTERIOR PAINT PROGRAM - GUIDE TO PROGRAMS



CITY OF BLACK HAWK

**RESIDENTIAL EXTERIOR PAINT PROGRAM
GUIDE TO PROGRAMS**

TABLE OF CONTENTS

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| SECTION 1: PROGRAM OVERVIEW | Page 2 |
| SECTION 2: INCOME TAX LIABILITY | Page 4 |
| SECTION 3: RESIDENTIAL EXTERIOR PAINT PROGRAM | Page 5 |
| Exhibit I: Residential Exterior Paint Program – Agreement | |
| Exhibit II: Federal and State Tax Liability Reimbursement - Forms | |

SECTION 1: PROGRAM OVERVIEW

A. PURPOSE

1. The City of Black Hawk established the Residential Exterior Paint Program to preserve the architectural character of residential properties within the Historic Residential District.
2. The Program provides a Property Owner with the resources and financial assistance needed to maintain the exterior paint on its residential buildings.
3. The Program pledges the continuation and enhancement of a functional, sustainable, healthy, and vibrant residential community.

B. DEFINITIONS

1. **Application:** A formal request to participate in the Exterior Residential Paint Program. Applications are accepted and considered on a first-come, first-served basis in the order received.
2. **Board of Aldermen:** An elected six-member panel authorized with decision-making powers for the governance of the City of Black Hawk.
3. **Building Official:** The City official is charged with the responsibility of administering and enforcing the City's building codes.
4. **Building Permit:** A building permit is an official approval to construct a new building or expand or remodel an existing one. Its purpose is to ensure the construction project follows all relevant regulations, including building standards, land use, and environmental protection.
5. **Certificate of Architectural Compatibility:** Land use process to document an exterior improvement to a property, such as a color change.
6. **City of Black Hawk (City):** The authority having jurisdiction over the Residential Exterior Paint Program.
7. **City Council:** The elected Board of Aldermen, plus the Mayor.
8. **Construction Hard Costs:** Costs related to labor, materials, and overhead.
9. **For the Benefit of Process:** The process where a Property Owner endorses grant fund transactions over to the Paint Contractor within three (3) business days of receiving a request from CP&D.

- 10. Grant Program Agreement:** The legal agreement that makes specific Exterior Residential Paint Fund proceeds available for exterior painting of residential properties within the City Limits of the City of Black Hawk. The Property Owner agrees to use the funds per the agreed-upon parameters outlined in the document.
- 11. Grant Recipient:** Any person or their authorized agent / designated representative to whom the City of Black Hawk awards a Residential Exterior Residential Paint grant.
- 12. Guide to Programs:** This policy and procedures document outlines the parameters of the Residential Exterior Paint Program.
- 13. Historic Preservation Consultant:** a qualified professional who is an individual licensed or appropriately experienced in the discipline within which a recommendation is needed.
- 14. Municipal Code:** A collection of municipal ordinances and laws enacted and enforced by the City of Black Hawk.
- 15. Outbuildings:** Accessory structures to the original building.
- 16. Paint Contractor:** The contracting company selected to oversee and manage the painting and construction work under the Exterior Residential Paint Program.
- 17. Program:** The Residential Exterior Residential Paint Program is a private project by the Property Owner but reimbursed by the City.
- 18. Property Owner:** Property Owner per recorded City documents or designated representative as provided with written permission via a signed and notarized "Power-of-Attorney" from the Property Owner. The appointed representative can act on behalf of the Property Owner in specified or all legal and financial matters.
- 19. Qualified Properties:** All residential properties are located within the Historic Residential District of the Black Hawk city limits.
- 20. Residential Design Guidelines:** Guidelines developed to help preserve the City's character with exterior improvements to buildings.
- 21. Scope of Work:** This is a guide to help the Paint Contractor and Property Owner understand what the Project covers and does not cover. The document identifies project requirements and the work to be performed during the project and includes details on the timeline.
- 22. Substantial Completion:** The stage in the work's progress when the job, or designated portion thereof, is sufficiently complete per the Scope of Work to close the project.

23. Temporary Construction Easement: A legal document providing the Grantee (City of Black Hawk) full access to the Property under consideration to complete the Scope of Work. The easement is only valid for the duration of the construction period.

24. Temporary Use Permit: A permit issued by the City of Black Hawk to allow private property to be used for alternate uses (storage, staging, etc.) for a limited time.

SECTION 2: TAX LIABILITY

A. ACKNOWLEDGEMENT

1. Weather permitting, the painting timeframe is May 1 through September 30. Project start dates are staggered and may be accelerated or delayed.
2. Any Property Owner that makes a color change after City Council approval must withdraw from the Program and reapply the following year.
3. The Program is fully funded through the City's General Fund and not from revenues received or otherwise derived from the State Historical Fund.
4. All funding is subject to the annual budget and appropriation of the General fund by the City Council.
5. The Program is considered a **private project** by the Property Owner reimbursed by the City.
6. Funds awarded by the City under approved Grants are considered income under state and federal income tax laws and reported to the taxing authorities in the manner provided by applicable law.
7. As the recipient of a Grant, the Property Owner may be required to pay income or other taxes to state and federal taxing authorities.
8. The City has no responsibility or obligation concerning any tax liability to the Property Owner as a recipient of Grant funds or benefits received under the Program.
9. The City provides a one-time first-round reimbursement of a Property Owner's state and federal income tax liability as the Grant recipient. The second-round tax liability remains the Property Owner's responsibility. The Property Owner should consult their tax advisor about whether the one-time first-round reimbursement is income and increases state and federal income tax liability.

10. The City encumbers dollars in its accounting system to accommodate the one-time first-round tax reimbursement payment. The Property Owner is responsible for completing the required reimbursement paperwork and delivering the paperwork to the Finance Department during the calendar year following receipt of the Grant.
11. If the Property Owner does not submit a reimbursement request for the one-time first-round reimbursement within the time limits set forth, the encumbered funds will no longer be available for the State and Federal one-time tax payment reimbursement, and the City will reallocate the funds in the budget for other purposes.
12. The City does **NOT** reimburse the Property Owner for any additional state and federal income tax liability that might arise from the one-time first-round reimbursement.

SECTION 3: RESIDENTIAL EXTERIOR PAINT PROGRAM

A. LEGAL REQUIREMENTS

1. Eligible properties are located within the Historic Residential District of the Black Hawk city limits. Both historic and non-historic elements qualify under the Program.
2. Each Residential Property is considered to participate in the Program under an initial five (5) year cycle. Once a property has received funding under this cycle, the property reverts to an eight (8) year funding cycle.
3. The Program is not a substitute for routine maintenance or a Property Owner's insurance coverage.
4. Participation in the Program requires, at a minimum, for the Property Owner to complete an application, a grant program agreement setting forth the terms and conditions of participation in the Program, a W-9 form, sign and agree to the painting proposal, and the scope of work, abide by the conditions of the building permit, submit the required reimbursement forms for the check and payment request and the federal and state tax liability for the one-time first-round reimbursement.
5. The Property Owner may be required, as needed, to enter into a power-of-attorney if they cannot be present during the project, a temporary construction easement, a temporary use permit, or a certificate of architectural compatibility for a color change.
6. If a Property Owner owns multiple residential properties, an application must be made for each eligible Property. Properties are placed on the list in the order in which the applications are received on a first-come, first-served basis.

7. If a full site and building Grant under the Historic Restoration and Community Preservation Grant Program is granted within three (3) years of the City approving funding of a Residential Exterior Paint Grant, the Property Owner agrees to reimburse the City in full the total amount funded for hard construction costs before the Grant of the full site and building is approved and financed.
8. Neither a Property Owner nor a relative of the Property Owner can be the paint contractor, subcontractor, or material supplier.
9. A Property Owner shall not disburse cash funds to the Paint Contractor for any work performed.
10. Neither the Property Owner nor the Painting Contractor can receive an advancement of payments. The City pays Grant funds on a "draw" basis.
11. CP&D and the Property Owner inspect all work for Program compliance with the paint proposal and scope of work before submittal of any invoices from the Paint Contractor to CP&D.
12. Payments are made directly to the Property Owner after CP&D receives a detailed itemized invoice and lien waiver from the Paint Contractor. The Property Owner reviews, approves, and acknowledges seeing every invoice by placing a signature or initial on the invoice and signing the request for payment within three (3) business days of receiving the paperwork from CP&D via DocuSign.
13. The Property Owner promptly completes all Grant fund transactions by signing over the check processed by the City to the Paint Contractor as set forth herein regarding FBO (For the Benefit Of) payments within three (3) business days of the check's availability. CP&D has the Property Owner sign the check in person.

B. PROCESS

1. CP&D references the Residential Exterior Paint Program Spreadsheet to identify eligible Property Owners and sends each Property Owner an email to solicit their interest in participating.
2. If the Property Owner is interested in participating, CP&D sends an application via DocuSign. The Property Owner opens the application, signs it, and dates it by a predetermined deadline. Once the Property Owner completes this task, the document automatically returns to CP&D. CP&D accepts applications in the order received on a first-come, first-serve basis.

3. CP&D and the Paint Contractor will schedule a site visit with the Property Owner to create a current conditions report identifying significant repair items, scope of work, and paint colors.
4. A Property Owner requesting a color change discusses color options with their local paint suppliers, such as Sherwin-Williams, Benjamin Moore, or Behr. They may purchase test colors to create a final palette for submission to CP&D.
5. If required, CP&D schedules the Environmental Consultant to complete lead-based paint testing on each Property.
6. CP&D schedules a Zoom or in-person meeting with each Property Owner to review the legal documents: the paint proposal and scope of work, the guide to programs, the grant program agreement, tax liability, power of attorney, W9, temporary construction easements, significant repairs by the Property Owner, paint color finalization, payment process of Paint Contractor invoices that include a check and payment request form from the Property Owner.
7. If the Property Owner commits to the Program, CP&D sends the paint proposal and scope of work, guide to programs, and grant program agreement for their signature via DocuSign. Because a power of attorney, if required, and W9 require an original signature, the Property Owner signs this paperwork at CP&D. The Property Owner obtains a no-cost building permit if required by CP&D and completes the significant repairs identified in the Paint Proposal and scope of work by April 1. If needed, CP&D works with neighboring property owners to obtain temporary construction easement agreements, the Historic Preservation Consultant and Baseline Engineering for all color changes requiring an administratively approved certificate of architectural compatibility, and the Environmental Consultant for any required lead-based paint testing.
8. If colors change, the Property Owner provides the colors selected, and CP&D initiates an administratively approved certificate of architectural compatibility with the Historic Preservation Consultant. If the color change includes more than three (3) colors, the City Council reviews and approves the certificate for architectural compatibility.
9. CP&D finalizes the proposals with the Paint Contractor. If applicable, the Paint Contractor identifies his subcontractors. All subcontractor work requires a lien waiver with each pay application.
10. CP&D requests a resolution from the City Attorney, prepares the request for council action, and submits all information to the City Clerk for inclusion in the City Council packet for its first meeting in April.

11. The City Council reviews each application, guide to programs, grant program agreement, associated temporary construction easements, power of attorney, and the paint proposal and scope of work in the order received by CP&D. Each Application is approved, conditionally approved, or denied.
12. CP&D prepares a \$10.00 payment request and submits it to the Finance Department for each Grantor granting a Temporary Construction Easement to the City.
13. CP&D issues the notice to proceed to the paint contractor via email.
14. CP&D notifies the Property Owners by email if their Project is approved, conditionally approved, or denied by the City Council.
15. CP&D issues individual building permits to track each grant project. The Paint Contractor must complete the projects within two (2) months of the permit issue date. CP&D will inform the Property Owner if a no-cost building permit for significant repairs is required.
16. CP&D notifies each Property Owner to reconfirm the target start date. The Paint Contractor confirms with each Property Owner before mobilization.
17. The Property Owner or their power of attorney must be available during the Project and flexible with the proposed timeframe. The schedule is subject to change due to weather and project progress.
18. The Paint Contractor provides individual project drawdowns at least two (2) weeks before the estimated project start date to CP&D. CP&D obtains written approval from the Property Owner within (3) three business days of the Paint Contractor providing the samples.
19. The Paint Contractor uses high-quality products approved by the City.
20. The Paint Contractor follows all lead-based paint encapsulation standards to cover surfaces containing lead-based paint.
21. The Paint Contractor selects a sheen with a light gloss, low reflective finish, good at hiding surface imperfection, stays clean, is easily washed, and stands up to abrasion. Flat paint is not acceptable.
22. The Paint Contractor coats surfaces to include exterior siding, soffits, eaves, trim, metalwork, decks, porches, exterior wood doors, wood fences, wood windows, metal fences, previously painted gutters, downspouts, vertical concrete, and select outbuildings approved by the City.

23. The Paint Contractor is accountable for and assumes all responsibility when painting in adverse conditions. The Paint Contractor schedules work when weather conditions are per the manufacturer's specifications and ensures the siding is dry from dew and frost before applying paint. Work ceases in time to allow the paint to dry before dew and frost form.
24. The Contractor gently washes structure exteriors to remove all surface contamination, such as oil, grease, loose paint, dirt, foreign matter, rust, mold, mildew, or mortar efflorescence.
25. The Paint Contractor masks all areas requiring protection from overspray and takes into consideration any wind. During the Project, the Paint Contractor is responsible for material damaged by paint on surfaces such as brick, concrete, roofing, vehicles, landscaping, etc.
26. The Paint Contractor performs incidental repairs, scrapes, and sands all failing paint from the substrate, including peeling and bubbling areas. Patches and caulk all joints in exterior trim, including areas where wood joins siding, all other cracks, imperfections, windows, and small holes.
27. The Paint Contractor conceals all wood siding nail holes and resets any nails separating from the siding.
28. The Paint contractor preps and primes all exposed wood surfaces. The primer coat differs in color and applies at least one (1) coat primer.
29. The Paint Contractor, at a minimum, applies at least two (2) coats of the base coat paint per the manufacturer's recommendation and thickness.
30. If transitioning from a stain to paint, at a minimum, the Paint Contractor, at a minimum, applies per the manufacturer's recommendation with a minimum thickness of one (1) coat of primer and (2) coats of paint.
31. The Paint Contractor back-rolls all sprayed surfaces.
32. The Paint Contractor ensures, at a minimum, all stains are two (2) coats with a clear natural satin finish per the manufacturer's recommendation and thickness.
33. The Paint Contractor paints all doors and windows' top and bottom edges.
34. The Paint Contractor paints the bottom edges of all siding, corner stiles, shutters, and bay windows. Remove shutters before painting and reinstall.

35. The Paint Contractor paints all roof vents and flashing black or another specified color or leaves them raw per the Property Owner's preference. Mechanical vents located within the siding match the siding color.
36. The Paint Contractor excludes painting metal roofs.
37. The Paint Contractor ensures the job is free of runs, sags, cracking, and skips, with edges cut neatly.
38. The Property Owner inspects work from start to finish, immediately identifies issues, and shares this information with CP&D and the Paint Contractor.
39. The Property Owner provides the Paint Contractor access to the entire site and work area.
40. The Property Owner removes all items on and away from the structure, outbuildings, fences, decks, and porches.
41. The Property Owner keeps all pets out of the Paint Contractor's work area and removes all pet waste daily for the project's duration. The Paint Contractor is not permitted to bring animals on the site.
42. The Paint Contractor is responsible for trash removal, provides refuse collection containers, and keeps the site clean and debris-free, including cigarette butts, daily.
43. CP&D must review and approve all change orders from the approved paint proposal and scope of work before implementation. CP&D amends the grant program agreement to reflect the additional taxable income to the Property Owner. The amendment is approved, conditionally approved, or denied by the City Council.
44. The Property Owner, Paint Contractor, and CP&D attend onsite progress meetings as needed during the project's duration.
45. CP&D schedules a final inspection upon painting completion with the Property Owner and Paint Contractor to close the Project.
46. The Paint Contractor cleans the site upon substantial completion of work. All paint chips are captured and disposed of, areas are de-masked, and exterior windows are operable and paint-free.
47. The Paint Contractor leaves the Property Owner up to one (1) quart of each paint color, varnish, and stain for a touch-up and any warranty work. The Paint Contractor supplies the paint cans and marks each can, identifying the product. The Property Owner stores the products in a climate-controlled area.

48. The Paint Contractor provides a one (1) year limited warranty from the date of substantial completion, covering all manufacturer's defects in the products and 100% of the workmanship, including cracking, peeling, fading, or chipping. Items not covered in the limited warranty include:
 - a. Acts of God that include such items as damage from fire or weather such as tornado, flooding, hail, or hurricane-force winds;
 - b. Repairs or damage caused by the Property Owner or Tenant after the job is complete;
 - c. Existing structural damage, layers of old and peeling paint, or other problems with the house that may cause a paint job to fail;
 - d. Product failure due to misuse or lack of proper maintenance by the Property Owner or Tenant;
 - e. The Property Owner or Tenant making significant product alterations affecting its performance.
49. The City releases a deposit at the start of the Project and the final payment after the substantial completion inspection and project closeout with the Property Owner. Subcontract work requires a lien waiver.
50. CP&D receives the Paint Contractor invoice, and the Property Owner signs the invoice and check and payment request form via DocuSign within three (3) business days of CP&D notification.
51. CP&D submits the check request form and invoice to the Finance Department for payment.
52. The Property Owner endorses the check, in person, for the benefit of the Paint Contractor within three (3) business days of CP&D notification.
53. CP&D sends the endorsed check to the Paint Contractor.
54. The Property Owner completes the substantial completion acknowledgment form.
55. CP&D closes the building permit, tracks, and schedules a 1-year limited warranty walk with the Paint Contractor and Property Owner.
56. The Finance Department sends the Property Owner a 1099G by January 31 of the following year.
57. CP&D sends the Property Owner the Federal and State tax liability reimbursement forms by January 31 of the following year.
58. The Property Owner completes the federal and state tax liability reimbursement forms and returns them to the Finance Department for the one-time first-round reimbursement.

PROPERTY OWNER ACKNOWLEDGEMENT

I, _____ the Property Owner of the residential property addressed as _____
Black Hawk, Colorado, 80422, fully understand and agree to be bound by the terms and conditions of the Residential Exterior Paint Program documents set forth below:

1. Apply to participate in the Residential Exterior Paint Program;
2. Read and comply with the Residential Exterior Paint Program Guide to Programs;
3. Acknowledge the federal and state tax liability reimbursement process;
4. Meet with CP&D and the Paint Contractor to create a scope of work, finalize paint colors, and identify any substantial repairs;
5. Agree to be an active participant in the Project from start to finish or assign a power-of-attorney because I am physically unable to be in Black Hawk for the entire project;
6. Apply for a no-cost building permit for significant repairs if required by CP&D;
7. Acknowledge invoices, complete and submit the check and payment reimbursement forms within three (3) business days of invoice receipt;
8. Submit a completed W-9 form.

By: _____
Property Owner

Date: _____

EXHIBIT I

**RESIDENTIAL EXTERIOR PAINT PROGRAM
PROGRAM AGREEMENT**

Approved by Resolution 30-2024 on March 13, 2024



BLACK HAWK[®]

RESIDENTIAL EXTERIOR PAINT PROGRAM AGREEMENT

THIS RESIDENTIAL EXTERIOR PAINT PROGRAM AGREEMENT (the “***Agreement***”) is made as of the _____ day of _____, 2024, (the “***Effective Date***”) by and between the ***CITY OF BLACK HAWK***, a municipal corporation organized and existing under the laws of the State of Colorado (the “***City***”) and

(the “***Property Owner***”), whose Residential Property address is:

_____.

RECITALS

A. The City has made certain proceeds of the Exterior Paint Fund, available for the purpose of exterior painting of Residential Properties within the City Limits of the City of Black Hawk, when owners agree to use the funds in accordance with agreed upon specifications (the “***Residential Exterior Paint Program***”).

B. The Property Owner, who is the owner of a structure located at: _____, **Black Hawk, Colorado 80422**, (the “***Residential Property***”) submitted an application under the Exterior Paint Program.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants contained herein, the City and the Property Owner hereby agree as follows:

1. Exterior Paint Grant.

1.1 Grant. The City hereby agrees to reimburse Property Owner for work performed in compliance with this Agreement, an amount up to \$ _____
(Insert Grant Amount) (the “Grant”) for the exterior paint of a Residential Property.

1.2 Tax Payment. To the extent permitted by law, the City hereby agrees to reimburse Property Owner for personal state and federal income taxes owed by Property Owner that are directly attributable to funds disbursed under the Grant (the “Tax Burden”) for the year in which the Grant is received. Property Owner shall provide evidence of the Tax Burden that is satisfactory to the City, in its sole discretion, prior to any payment of the Tax Burden by the City. Regardless of whether the Property Owner requests payment from the City prior to payment of his/her taxes, or Property Owner pays the Tax Burden him/herself and requests a reimbursement from the City, the City shall make such payment directly to the Property Owner.

2. Agreement, Acknowledgement and Representation by Property Owner. The Property Owner hereby agrees with, and acknowledges and represents to the City that:

2.1 Review of Documents. The Property Owner (a) has read this Agreement and the applicable “Residential Exterior Paint Program Guide to Programs,” (b) fully understands the terms and conditions of the Grant as set forth therein, and (c) agrees to be bound by those terms and conditions.

2.2 Failure to Comply. Any failure by the Property Owner to comply with the terms and conditions of this Agreement shall terminate the Property Owner’s right to any Grant payments.

2.3 No Liability. The City shall be in no manner liable to the Property Owner for any monies expended by the Property Owner in connection with the Exterior Paint

Program, whether or not the Property Owner is actually paid any funds from the Grant.

3. **Undertaking.** The Property Owner will undertake the construction of improvements and other repairs of the Property approved by the City in a timely manner (the “**Project**”). The Property Owner has two (2) months to complete the Project, which time period shall begin upon the issuance of a building permit or upon disbursement of the first payment from the Grant by the City to begin the Project.

4. **Conditions Precedent to Disbursement of Funds.** Subject to Section 4 hereof, funds from the Grant shall be disbursed to the Property Owner upon satisfaction of:
 - 4.1 **Evidence of Construction Costs.** The Property Owner shall provide the City, or its designee, all invoices, paid statements, building permits and such other supporting documents or certifications of the Property Owner evidencing the reasonableness and the appropriateness of the cost of the construction amount as the City, or its designee, may reasonably require.
 - 4.2 **Building Permit.** If required by the nature of the project of the Residential Property as determined by the City in its sole discretion, the City, or its designee, shall be provided with a copy of the building permit issued by the City’s Building Official for the Project, which shall be in such form and with such content as the City, or its designee, may reasonably require.
 - 4.3 **Other Documents or Requirements.** The Property Owner shall provide the City, or its designee, such other documents as may be required by the City, or its designee, in its sole discretion to satisfy the requirements of this Agreement.
 - 4.4 **Completion of Improvements.** The Project shall have been satisfactorily completed in accordance with the City’s Residential Exterior Paint Program guidelines and design standards, as determined by the City or its designee, in its sole discretion, on or before two (2) months after the issuance of the building permit if required by the City, or on or before two (2) months after the first disbursement is made to the Property Owner, whichever date comes first.

5. **Disbursement.**

5.1 Grant Disbursement. The Property Owner is responsible for providing the City invoices for work on the Project. Each invoice shall contain sufficient detail regarding work that has been done, or will be performed, for each aspect of the Project. The invoice shall also relate directly to the items outlined on the original proposal or bid provided to the Property Owner by the Contractor. When the invoice is considered complete and payable, the City will write the check for the invoice amount directly to the Property Owner within two (2) weeks of this determination. The Property Owner is then responsible for the disbursement of these funds directly to the Contractor as outlined in the FBO (For the Benefit Of) payments process.

6. **Termination of the Grant.** In the event the Property Owner fails to satisfy the conditions precedent set forth in Section 4 hereof on or before, _____, 20____ (The "***Termination Date***"), the Property Owner's right to be paid the Grant or any portion thereof shall automatically terminate.

7. **Sale or Transfer of Property.**

7.1 Reimbursement. In the event the amount of the Grant plus the Tax Burden (the "***Combined Amount***") set forth in Section 1 exceeds fifty thousand dollars (\$50,000.00) and the Property Owner sells or transfers the Residential Property within five years of the Effective Date, the Property Owner shall reimburse the City the amount of the Combined Amount less an amount equal to one-sixtieth of the amount of the Combined Amount for each full month occurring between the date of this Agreement and the date of the sale or transfer of the Residential Property (the "***Reimbursement Amount***").

7.2 Security. In the event that Property Owner seeks to sell or transfer the Residential Property within five years of the Effective Date and Property Owner has not paid the City the Reimbursement Amount, prior to any sale or transfer Property Owner shall (1) notify the City of the intended sale or transfer; (2) execute a promissory note in

favor of the City for the Reimbursement Amount, which shall be calculated as if the Residential Property will be sold on the date of execution of the deed of trust (“*Estimated Reimbursement Amount*”); and (3) execute a deed of trust for the benefit of the City to secure the Estimated Reimbursement Amount. Should the Estimated Reimbursement Amount exceed the actual Reimbursement Amount, the City shall pay the difference back to the Owner after the transfer or sale and upon the City’s receipt of the Estimated Reimbursement Amount.

7.3 Avoidance of Security Requirement. Property Owner need not comply with the requirements of Section 7.2 if prior to the sale or transfer of the Residential Property, Property Owner deposits the Estimated Reimbursement Amount in an escrow account payable to the City upon the sale or transfer of the Residential Property. If upon the sale or transfer of the Residential Property, the Estimated Reimbursement Amount exceeds the actual Reimbursement Amount, the difference shall be returned to the Property Owner.

8. Non-Transferable. The rights granted to the Property Owner herein are non-transferable and may not be transferred or assigned. Any attempted transfer or assignment shall automatically be deemed to be null and void and shall be grounds for termination of this Agreement.

9. Notices. All notices required or permitted under this Agreement shall be deemed given upon personal delivery by hand to the authorized representatives of either the Property Owner or the City or three (3) days after being sent by certified mail, return receipt requested, postage prepaid, addressed to the respective party at its mailing address below:

If to the City:

**City of Black Hawk
P.O. Box 68
Black Hawk, CO 80422
ATTN: Community Planning & Development**

If to the Property Owner:

(Insert Name, Physical Address, Mailing Address, and Email Address)

Each Party may change its or his/her address as set forth herein by written notice to such effect directed to the other party.

10. Miscellaneous:

10.1 Amendments and Supplements: This Agreement may not be amended, modified or supplemented in any manner except by a written agreement executed by both the City and the Property Owner.

10.2 Severability. In the event any provision of this Agreement is deemed to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provisions shall not affect the remainder thereof.

10.3 Standard of Approval. Where within this Agreement, the approval of the City or its designee is required or permitted, the City or its designee may grant or withhold its approval or its consent in its sole, absolute and uncontrolled discretion.

10.4 Waiver. The waiver by the City, or its designee, of any failure by the Property Owner to comply with any of the terms and conditions of this Agreement must be in writing and in any event shall not be deemed to be a waiver of any subsequent failure of the Property Owner to comply with the terms or conditions of this Agreement.

10.5 Time of the Essence. Time is of the essence in the performance of each and every term and condition of this Agreement by the parties hereto.

10.6 Governing Law. This Agreement, its construction, validity and effect, shall be governed and construed by and in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the Property Owner and the City have executed this Agreement on the date first above written.

CITY OF BLACK HAWK, a municipal corporation organized and existing under the laws of the State of Colorado

CITY OF BLACK HAWK

David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

PROPERTY OWNER

By: _____
Property Owner

EXHIBIT II

**RESIDENTIAL EXTERIOR PAINT PROGRAM
FEDERAL AND STATE TAX LIABILITY REIMBURSEMENT – FORMS**

Approved by Resolution 30-2024 on March 13, 2024

City of Black Hawk

Community Planning and Development 211 Church Street
P.O. Box 68
Black Hawk, CO 80422
Ph: 303-582-0615 / 303-582-2223
CPDinquiry@cityofblackhawk.org

RESIDENTIAL EXTERIOR PAINT PROGRAM GRANT YEAR 2024

CHECK AND PAYMENT REQUEST FORM

FEDERAL AND STATE TAX LIABILITY REIMBURSEMENT

Property Street Address: _____

Applicant: _____
(As it appears on the grant, please print)

Mailing Address: _____

Telephone No.: _____

Check Payable To: _____

Tax Liability Grant Amount: \$ _____

Federal Tax Amount Requested: \$ _____ (010-1101-4115813)

State Tax Amount Requested: \$ _____ (010-1101-4115813)

All payment requests must be supported with a copy of a letter from the Certified Public Accountant specifying the specific tax liability amount for the tax year in question associated with the receipt of a grant pursuant to the General Fund Exterior Paint Grant Program or a copy of the grant recipient’s fully executed Federal and State tax return for the tax year in question indicating the specific tax liability associated with the receipt of a grant pursuant to the General Fund Exterior Paint Grant Program and a fully executed document in the form attached hereto as Exhibit A – Income Tax Liability and incorporated herein by this reference, signed by the grant recipient(s).

Incomplete or partial submittals will not be considered. The City reserves the right to refuse payment of any request which does not provide the necessary information or is not covered by the grant awarded.

Payments will be issued in accordance with City Procedures, with no exceptions.

I hereby acknowledge that all of the information provided in support of this payment request is accurate and correct.

Owner’s Signature: _____
Signature

_____ Date

**INCOME TAX LIABILITY REIMBURSEMENT
TAX YEAR 2024**

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

Dear Sir or Madam:

I have completed my **Federal and State Tax Returns for Tax Year 2024**, and I am requesting the City of Black Hawk issue a check to cover my total **Federal Income Tax Liability** for receipt of the exterior residential property painting grant for my property located at _____ in the amount of \$ _____.

I certify that for the **Federal Income Tax Return** filed for **Tax Year 2024**, my tax liability is \$ _____ and my tax liability would have been \$ _____ without reporting the grant.

AND

I certify that I will **NOT** submit an application for the Colorado Historical Preservation Income Tax Credit. I certify that for the **State Income Tax Return** filed for **Tax Year 2024**, my tax liability is \$ _____. My tax liability would have been \$ _____ without reporting the grant.

I certify that the above information is true and correct. To the extent the information is not correct, I understand that I may be held personally liable to repay all money received hereunder and to pay interest, costs, and attorneys' fees incurred by the City of Black Hawk in collecting such amounts and that I may also be subject to criminal prosecution.

Sincerely,

Owner's Signature

Date

CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT:

A Resolution amending the Residential Exterior Paint Program – Guide to Programs.

RECOMMENDATION:

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

MOTION TO APPROVE Resolution 30-2024, an Ordinance Amending the Residential Exterior Paint Program Guide to Programs.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The City created the Residential Exterior Paint Program Guide to Programs to provide recommendations, interpretations, administrative instructions, best practice guidance, and the Exterior Paint Program framework. Guidelines are informational and, like policies and procedures, may change frequently depending on the Program's needs.

Community Planning and Development performed a complete audit of the Exterior Paint Guide to Programs adopted by Resolution 13-2021 on March 17, 2021, and found the Guide redundant and cumbersome. Because the document repeated much of the information many times, Staff altered the Guide to make it simpler, more manageable, and more efficient.

The main takeaway is that the revised Residential Exterior Paint Program Guide to Programs is more manageable and convenient to use and understand.

AGENDA DATE:

March 13, 2024

WORKSHOP DATE:

N/A

FUNDING SOURCE:

N/A

DEPARTMENT DIRECTOR APPROVAL:

Yes No

STAFF PERSON RESPONSIBLE:

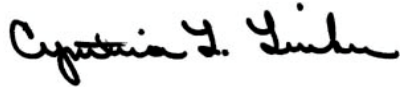
Cynthia L. Linker
CP&D Director

DOCUMENTS ATTACHED:

Resolution 30-2024
Exhibit A – Clean Version
Redlined Version

RECORD: []Yes [X]No
UPDATE GIS MAP: []Yes [X]No
CoBH CERTIFICATE OF INSURANCE REQUIRED: []Yes [X]No
CITY ATTORNEY REVIEW: [X]Yes []N/A

SUBMITTED BY:



Cynthia L. Linker, CP&D Director

REVIEWED BY:



Stephen N. Cole, City Manager



CITY OF BLACK HAWK

RESIDENTIAL EXTERIOR PAINT PROGRAM
GUIDE TO PROGRAMS

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Exhibit A: Residential Exterior Paint Program – Application

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Exhibit I: Residential Exterior Paint Program – Agreement

Exhibit II: Federal and State Tax Liability Reimbursement - Forms

SECTION 1: PROGRAM OVERVIEW

A. PURPOSE

- ~~1. The Program preserves the architectural character of the residential properties within the Historic Residential District.~~
- ~~2. The Program provides the Property Owner with the resources and financial assistance needed to maintain the exterior paint on residential buildings.~~
- ~~3. The Program pledges the continuation and enhancement of a functional, sustainable, healthy, and vibrant residential community.~~

SECTION 1: PROGRAM OVERVIEW

A. PURPOSE

- ~~4. The City of Black Hawk established the Residential Exterior Paint Program to preserve the architectural character of residential properties within the Historic Residential District.~~
- ~~5. The Program provides a Property Owner with the resources and financial assistance needed to maintain the exterior paint on its residential buildings.~~
- ~~6. The Program pledges the continuation and enhancement of a functional, sustainable, healthy, and vibrant residential community.~~

B. DEFINITIONS

- ~~1. Application: A formal request to participate in the Exterior Residential Paint Program. Applications are considered in the order received.~~
- ~~2. Board of Aldermen: An elected six-member panel authorized with decision-making powers for the governance of the City of Black Hawk.~~
- ~~3. Building Official: The City official is charged with the responsibility of administering and enforcing the City's building codes.~~
- ~~4. Certificate of Architectural Compatibility: Land use process to document an exterior improvement to a property, such as a color change.~~
- ~~5. City of Black Hawk Residential Design Guidelines: Guidelines developed to help preserve the City's character with exterior improvements to buildings.~~

~~Approved by Resolution 13-2021 on March 17, 2021~~

Approved by Resolution 30-2024 on March 13, 2024

- ~~6. City Council: The elected Board of Aldermen, plus the Mayor.~~
- ~~7. City Manager: The City Manager is the chief administrative officer for all departments of the City, is appointed by the City Council, and shall have and exercise all the administrative powers vested in the City.~~
- ~~8. City Staff: An employee of the City of Black Hawk or an entity designated by the City of Black Hawk to act on their behalf in administering the contract documents, coordinating design professionals, overseeing construction progress, and reviewing paperwork required as part of the Program~~
- ~~9. Construction Hard Costs: Costs related to labor, materials, and overhead.~~
- ~~10. Construction Soft Costs: Costs related to fees, permits, insurance, and other costs not directly associated with the physical installation of the Scope of Work.~~
- ~~11. Exterior Residential Paint Program: A funding source from the City of Black Hawk administered directly between the Property Owner and Paint Consultant.~~
- ~~12. Grant Program Agreement: The legal agreement that makes specific Exterior Residential Paint Fund proceeds available for exterior painting of residential properties within the City Limits of the City of Black Hawk. The Property Owner agrees to use the funds per the agreed upon parameters outlined in the document.~~
- ~~13. Grant Recipient: Any person or their authorized agent / designated representative who the City of Black Hawk awards an Exterior Residential Paint grant.~~
- ~~14. Guide to Programs: This policy and procedures document outlines the parameters of the Residential Exterior Paint Program.~~
- ~~15. Municipal Code: A collection of municipal ordinances and laws enacted and enforced by the City of Black Hawk.~~
- ~~16. Outbuildings: Accessory structures to the original building.~~
- ~~17. Paint Consultant: The contracting company selected to oversee and manage the painting and construction work under the Exterior Residential Paint Program.~~
- ~~18. Property Owner: Property Owner per recorded City documents or designated representative as provided with written permission via a signed and notarized "Power of Attorney" from the Property Owner. The appointed representative can act on behalf of the Property Owner in specified or all legal and financial matters.~~
- ~~19. Qualified Professional: An individual licensed or appropriately experienced in the discipline within which a recommendation is needed.~~

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- ~~20. Residential Properties: Properties within the City Limits of Black Hawk.~~
- ~~21. Site Vist Checklist /Scope of Work: This is a guide to help the Paint Consultant and Property Owner understand what the Project covers and does not cover. The document identifies project requirements and the work to be performed during the project and includes details on the timeline.~~
- ~~22. Substantial Completion: The stage in the work's progress when the job, or designated portion thereof, is sufficiently complete per the Scope of Work to close out the project.~~
- ~~23. Temporary Construction Easement: A legal document providing the Grantee (City of Black Hawk) full access to the Property under consideration to complete the Scope of Work. The easement is only valid for the duration of the construction period.~~
- ~~24. Temporary Use Permit: A permit issued by the City of Black Hawk to allow private property to be used for alternate uses (storage, staging, etc.) for a limited amount of time.~~

B. DEFINITIONS

- 1. Application:** A formal request to participate in the Exterior Residential Paint Program. Applications are accepted and considered on a first-come, first-served basis in the order received.
- 2. Board of Aldermen:** An elected six-member panel authorized with decision-making powers for the governance of the City of Black Hawk.
- 3. Building Official:** The City official is charged with the responsibility of administering and enforcing the City's building codes.
- 4. Building Permit:** A building permit is an official approval to construct a new building or expand or remodel an existing one. Its purpose is to ensure the construction project follows all relevant regulations, including building standards, land use, and environmental protection.
- 5. Certificate of Architectural Compatibility:** Land use process to document an exterior improvement to a property, such as a color change.
- 6. City of Black Hawk (City):** The authority having jurisdiction over the Residential Exterior Paint Program.
- 7. City Council:** The elected Board of Aldermen, plus the Mayor.
- 8. Construction Hard Costs:** Costs related to labor, materials, and overhead.

9. **For the Benefit of Process:** The process where a Property Owner endorses grant fund transactions over to the Paint Contractor within three (3) business days of receiving a request from CP&D.
10. **Grant Program Agreement:** The legal agreement that makes specific Exterior Residential Paint Fund proceeds available for exterior painting of residential properties within the City Limits of the City of Black Hawk. The Property Owner agrees to use the funds per the agreed-upon parameters outlined in the document.
11. **Grant Recipient:** Any person or their authorized agent / designated representative to whom the City of Black Hawk awards a Residential Exterior Residential Paint grant.
12. **Guide to Programs:** This policy and procedures document outlines the parameters of the Residential Exterior Paint Program.
13. **Historic Preservation Consultant:** a qualified professional who is an individual licensed or appropriately experienced in the discipline within which a recommendation is needed.
14. **Municipal Code:** A collection of municipal ordinances and laws enacted and enforced by the City of Black Hawk.
15. **Outbuildings:** Accessory structures to the original building.
16. **Paint Contractor:** The contracting company selected to oversee and manage the painting and construction work under the Exterior Residential Paint Program.
17. **Program:** The Residential Exterior Residential Paint Program is a private project by the Property Owner but reimbursed by the City.
18. **Property Owner:** Property Owner per recorded City documents or designated representative as provided with written permission via a signed and notarized "Power-of-Attorney" from the Property Owner. The appointed representative can act on behalf of the Property Owner in specified or all legal and financial matters.
19. **Qualified Properties:** All residential properties are located within the Historic Residential District of the Black Hawk city limits.
20. **Residential Design Guidelines:** Guidelines developed to help preserve the City's character with exterior improvements to buildings.
21. **Scope of Work:** This is a guide to help the Paint Contractor and Property Owner understand what the Project covers and does not cover. The document identifies project requirements and the work to be performed during the project and includes details on the timeline.

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- 22. Substantial Completion:** The stage in the work's progress when the job, or designated portion thereof, is sufficiently complete per the Scope of Work to close the project.
- 23. Temporary Construction Easement:** A legal document providing the Grantee (City of Black Hawk) full access to the Property under consideration to complete the Scope of Work. The easement is only valid for the duration of the construction period.
- 24. Temporary Use Permit:** A permit issued by the City of Black Hawk to allow private property to be used for alternate uses (storage, staging, etc.) for a limited time.

SECTION 2: TAX LIABILITY

A. ACKNOWLEDGEMENT

- ~~1. Receipt of a Residential Exterior Paint Grant is taxable income to the Property Owner.~~
- ~~2. Under this Residential Exterior Paint Program, funds awarded under the State and Federal income tax laws are considered income.~~
- ~~3. The City reports approved and awarded Grants to State and Federal taxing authorities in the manner provided by applicable law.~~
- ~~4. As the recipient of a Grant, the Property Owner may be required to pay income or other taxes to State and Federal authorities due to receiving a Grant under this Program.~~
- ~~5. The Property Owner should consult with their tax advisor about whether the one-time first-round reimbursement is income and gives rise to additional State and Federal income tax liability.~~
- ~~6. The City has no responsibility or obligation concerning any tax liability to the Property Owner as a recipient of Grant funds or benefits received under the Residential Exterior Paint Program.~~
- ~~7. The City is not responsible for the payment of any tax liability associated with participation in the Residential Exterior Paint Program.~~
- ~~8. The City of Black Hawk provides a one-time first-round reimbursement of a Property Owner's State and Federal income tax liability in association with a Residential Exterior Paint Grant's receipt. The second-round tax liability is the full financial responsibility of the Property Owner.~~
- ~~9. The City encumbers dollars in its accounting system to accommodate a one-time first-round payment of the tax reimbursement. The Property Owner is responsible for completing the necessary paperwork for such amount and delivering it to the City of Black Hawk Finance Department.~~
- ~~10. A Property Owner is required to submit documentation for the one-time first-round tax payment reimbursement during the calendar year(s) following the Grant funds' receipt.~~
- ~~11. Suppose the one-time first-round reimbursement is not requested within the time limits set forth herein. In that case, the encumbered funds will no longer be available to the Property Owner for State and Federal tax payment reimbursement. Such encumbered funds will be reallocated back into the City budget for other purposes.~~

- ~~12. The City of Black Hawk does NOT reimburse the Property Owner for any additional State and Federal income tax liability that might arise from the one-time first-round reimbursement.~~
- ~~13. Regardless of the City's agreement to compensate Grant recipients for the one-time first-round State and Federal tax burden of a Grant, the obligation to pay any taxes, including the second round, remains the Property Owner's responsibility as the Grant recipient.~~
- ~~14. The Residential Exterior Paint **Grant Program Agreement** sets forth the terms and conditions of participation in the Program.~~

SECTION 2: TAX LIABILITY

A. ACKNOWLEDGEMENT

1. Weather permitting, the painting timeframe is May 1 through September 30. Project start dates are staggered and may be accelerated or delayed.
2. Any Property Owner that makes a color change after City Council approval must withdraw from the Program and reapply the following year.
3. The Program is fully funded through the City's General Fund and not from revenues received or otherwise derived from the State Historical Fund.
4. All funding is subject to the annual budget and appropriation of the General fund by the City Council.
5. The Program is considered a **private project** by the Property Owner reimbursed by the City.
6. Funds awarded by the City under approved Grants are considered income under state and federal income tax laws and reported to the taxing authorities in the manner provided by applicable law.
7. As the recipient of a Grant, the Property Owner may be required to pay income or other taxes to state and federal taxing authorities.
8. The City has no responsibility or obligation concerning any tax liability to the Property Owner as a recipient of Grant funds or benefits received under the Program.
9. The City provides a one-time first-round reimbursement of a Property Owner's state and federal income tax liability as the Grant recipient. The second-round tax liability remains the Property Owner's responsibility. The Property Owner should consult their

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tax advisor about whether the one-time first-round reimbursement is income and increases state and federal income tax liability.

- 10.** The City encumbers dollars in its accounting system to accommodate the one-time first-round tax reimbursement payment. The Property Owner is responsible for completing the required reimbursement paperwork and delivering the paperwork to the Finance Department during the calendar year following receipt of the Grant.
- 11.** If the Property Owner does not submit a reimbursement request for the one-time first-round reimbursement within the time limits set forth, the encumbered funds will no longer be available for the State and Federal one-time tax payment reimbursement, and the City will reallocate the funds in the budget for other purposes.
- 12.** The City does **NOT** reimburse the Property Owner for any additional state and federal income tax liability that might arise from the one-time first-round reimbursement.

SECTION 3: RESIDENTIAL EXTERIOR PAINT PROGRAM

A. ELIGIBILITY

- ~~1. Participation in the Residential Exterior Paint Program requires an **Application**—See **Exhibit A**.~~
- ~~2. Eligible properties are located within the Black Hawk City limits.~~
- ~~3. Each Residential Property is initially considered to participate in the Program under the initial five (5) year cycle. Once a Residential Property has received funding under the initial five (5) year cycle, the Property will revert to an eight (8) year funding cycle.~~
- ~~4. All funding is subject to the availability of grant funds. The City Manager allocates in the exercise of their sole discretion and is further subject to the annual budget and appropriation of the General Fund by the City of Black Hawk City Council.~~
- ~~5. Items covered under the Program include the preparation and painting of exterior siding, soffits, eaves, trim, metalwork, decks, porches, exterior wood doors, wood windows, wood fences, metal fences, previously painted gutters, downspouts, and vertical concrete. A site walk will identify incidental and major repairs.~~
- ~~6. The Property Owner undertakes the financial responsibility for repairs.~~
- ~~7. The Property Owner promptly undertakes the improvements and other repairs identified by the City. The Property Owner has two (2) months to complete the repairs and painting, which time period shall begin upon the issuance of a building permit by the City to start the Project.~~
- ~~8. The Property Owner assigns a Power of Attorney if they cannot physically be present during the entire Project.~~
- ~~9. Both historic and non-historic elements are eligible under the Program.~~

B. LEGAL REQUIREMENTS

- ~~1. Along with the approval of an Application by the City, the Property Owner must enter into legal agreements with the City which describe the terms for participation in the Residential Exterior Paint Program.~~
- ~~2. Participation in the Residential Exterior Paint Program requires at a minimum an **Application**, Residential Exterior Paint **Grant Program Agreement**, a W-9 Form, a Scope of Work, a Building Permit, a Check and Payment Request Reimbursement form, and **Federal and State Tax Liability Reimbursement**.~~

- ~~3. Additional documents such as a Power of Attorney, Temporary Construction Easement, Temporary Use Permit, or Certificate of Architectural Compatibility may also be required.~~
- ~~4. The Property Owner promptly undertakes the construction of improvements and other repairs of the Property identified by the City. The Property Owner has two (2) months to complete the Project, which time period shall begin upon the issuance of a building permit by the City to start the Project.~~
- ~~5. The Property Owner assigns a Power of Attorney if they cannot physically be present during the entire Project.~~

~~C. RESIDENTIAL EXTERIOR PAINT PROGRAM PROVISIONS~~

- ~~1. The Residential Exterior Paint Program is a private project by the Property Owner reimbursed by the City.~~
- ~~2. Property Owners recommended for funding are notified by email when the City makes a final decision.~~
- ~~3. Property Owners not selected by the City will be notified by email explaining the reason(s) for rejection. Those Property Owners may meet with City Staff to discuss the factors that resulted in the Application's rejection. The City schedules Board of Appeals hearings before the Black Hawk City Council acting as the Board of Appeals.~~
- ~~4. The City recommends the Property Owner consults with a qualified tax advisor on the financial impacts of participating in the Program.~~
- ~~5. If a Full Site and Building Grant under the Historic Restoration and Community Preservation Grant Program is Granted within three (3) years of the City Granting a Residential Exterior Paint Grant, the Property Owner agrees to reimburse the City in full the total amount funded for hard construction costs before the Grant of the Full Site and Building is approved and financed.~~
- ~~6. A Residential Exterior Paint Program Grant is only permitted to a Residential Property once every five (5) years. Once a Residential Property has received funding under the five (5) year cycle, the Property will revert to an eight (8) year funding cycle.~~
- ~~7. Neither a Property Owner nor a relative of the Property Owner can be the Paint Consultant, subcontractor, or material supplier.~~
- ~~8. The Property Owner assigns a Power of Attorney if they cannot physically be present in Black Hawk during the Project.~~

- ~~9. If a Property Owner owns multiple Residential Properties, an Application must be made for each eligible Property. Properties are placed on the list in the order in which the Applications are received.~~
- ~~10. The Property Owner undertakes the construction of improvements and other repairs of the Property approved by the City promptly. The Property Owner has two (2) months to complete the Project (repairs and paint), which time period shall begin upon the issuance of a building permit or upon disbursement of the first payment from the Grant by the City to start the Project.~~
- ~~11. The Program is not a substitute for routine maintenance or a Property Owner's property insurance coverage.~~
- ~~12. Failure to sign and enter into the necessary legal agreements will disqualify the Property Owner from participation in the Program.~~
- ~~13. When the City makes certain expenditures to benefit a property in reliance upon a signed Application, the Property Owner agrees to be bound by the terms and conditions in the Residential Exterior Paint Guide to Programs and to complete the Project outlined in the Scope of Work. The Property Owner further agrees that if they decide not to proceed with the Project, the Property Owner is responsible for reimbursing the City for all hard and soft costs incurred and other expenses.~~
- ~~14. The City does not specify colors for buildings. The Property Owner must first consider historic colors.~~
- ~~15. Color schemes consisting of three (3) colors (siding, trim, accent) are reviewed and approved administratively by the City. Any color scheme exceeding three (3) colors is reviewed and approved by City Council.~~
- ~~16. The City may hold a lien against the Property for improper work or to assure the Project is finished as approved. The lien is released when the City inspects and approves the Project as complete.~~
- ~~17. The City pays Grant funds on a "draw" basis; there is no advancement of payments to the Property Owner or Paint Consultant.~~
- ~~18. The Property Owner shall not disburse personal funds to the Paint Consultant for work performed.~~
- ~~19. All work is subject to inspection and review by the Property Owner and the City's Planning Department for compliance with City standards and processes before submitting invoices to the City.~~

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- ~~20. The Property Owner is responsible for reviewing, approving, and acknowledging each Paint Consultant invoice by placing their signature or initials on each invoice page (pay application) submitted to the City. City Staff assists the Property Owner with this process.~~
- ~~21. Payments are made directly to the Property Owner after the City receives the Paint Consultant's pay application with a detailed and itemized invoice and a signed Check and Payment Reimbursement Request form from the Property Owner for the approved Scope of Work.~~
- ~~22. Upon receipt of payment, the Property Owner promptly signs over the City of Black Hawk's check to the Paint Consultant as outlined in the FBO (For the Benefit Of) payments process.~~
- ~~23. A Property Owner cannot use Grant funds to get reimbursed in support of work or materials for the Project if completed before Grant approval.~~

SECTION 3: RESIDENTIAL EXTERIOR PAINT PROGRAM

A. LEGAL REQUIREMENTS

1. Eligible properties are located within the Historic Residential District of the Black Hawk city limits. Both historic and non-historic elements qualify under the Program.
2. Each Residential Property is considered to participate in the Program under an initial five (5) year cycle. Once a property has received funding under this cycle, the property reverts to an eight (8) year funding cycle.
3. The Program is not a substitute for routine maintenance or a Property Owner's insurance coverage.
4. Participation in the Program requires, at a minimum, for the Property Owner to complete an application, a grant program agreement setting forth the terms and conditions of participation in the Program, a W-9 form, sign, and agree to the painting proposal, and the scope of work, abide by the conditions of the building permit, submit the required reimbursement forms for the check and payment request and the federal and state tax liability for the one-time first-round reimbursement.
5. The Property Owner may be required, as needed, to enter into a power-of-attorney if they cannot be present during the project, a temporary construction easement, a temporary use permit, or a certificate of architectural compatibility for a color change.
6. If a Property Owner owns multiple residential properties, an application must be made for each eligible Property. Properties are placed on the list in the order in which the applications are received on a first-come, first-served basis.
7. If a full site and building Grant under the Historic Restoration and Community Preservation Grant Program is granted within three (3) years of the City approving funding of a Residential Exterior Paint Grant, the Property Owner agrees to reimburse the City in full the total amount funded for hard construction costs before the Grant of the full site and building is approved and financed.
8. Neither a Property Owner nor a relative of the Property Owner can be the paint contractor, subcontractor, or material supplier.
9. A Property Owner shall not disburse cash funds to the Paint Contractor for any work performed.
10. Neither the Property Owner nor the Painting Contractor can receive an advancement of payments. The City pays Grant funds on a "draw" basis.

11. CP&D and the Property Owner inspect all work for Program compliance with the paint proposal and scope of work before submittal of any invoices from the Paint Contractor to CP&D.
12. Payments are made directly to the Property Owner after CP&D receives a detailed itemized invoice and lien waiver from the Paint Contractor. The Property Owner reviews, approves, and acknowledges seeing every invoice by placing a signature or initial on the invoice and signing the request for payment within three (3) business days of receiving the paperwork from CP&D via DocuSign.
13. The Property Owner promptly completes all Grant fund transactions by signing over the check processed by the City to the Paint Contractor as set forth herein regarding FBO (For the Benefit Of) payments within three (3) business days of the check's availability. CP&D has the Property Owner sign the check in person.

B. PROCESS

1. CP&D references the Residential Exterior Paint Program Spreadsheet to identify eligible Property Owners and sends each Property Owner an email to solicit their interest in participating.
2. If the Property Owner is interested in participating, CP&D sends an application via DocuSign. The Property Owner opens the application, signs it, and dates it by a predetermined deadline. Once the Property Owner completes this task, the document automatically returns to CP&D. CP&D accepts applications in the order received on a first-come, first-serve basis.
3. CP&D and the Paint Contractor will schedule a site visit with the Property Owner to create a current conditions report identifying significant repair items, scope of work, and paint colors.
4. A Property Owner requesting a color change discusses color options with their local paint suppliers, such as Sherwin-Williams, Benjamin Moore, or Behr. They may purchase test colors to create a final palette for submission to CP&D.
5. If required, CP&D schedules the Environmental Consultant to complete lead-based paint testing on each Property.
6. CP&D schedules a Zoom or in-person meeting with each Property Owner to review the legal documents: the paint proposal and scope of work, the guide to programs, the grant program agreement, tax liability, power of attorney, W9, temporary construction easements, significant repairs by the Property Owner, paint color finalization, payment process of Paint Contractor invoices that include a check and payment request form from the Property Owner.

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7. If the Property Owner commits to the Program, CP&D sends the paint proposal and scope of work, guide to programs, and grant program agreement for their signature via DocuSign. Because the power of attorney, if required and W9 require an original signature, the Property Owner signs this paperwork at CP&D. The Property Owner obtains a no-cost building permit if required by CP&D and completes the significant repairs identified in the Paint Proposal and scope of work by April 1. CP&D works with neighboring property owners to obtain temporary construction easement agreements, if required and the Historic Preservation Consultant for any color change administratively approved certificate of architectural compatibility and the Environmental Consultant for any required lead-based paint testing.
8. If colors change, the Property Owner provides the colors selected, and CP&D initiates an administratively approved certificate of architectural compatibility with the Historic Preservation Consultant. If the color change includes more than three (3) colors, the City Council reviews and approves the certificate for architectural compatibility.
9. CP&D finalizes the proposals with the Paint Contractor. If applicable, the Paint Contractor identifies his subcontractors. All subcontractor work requires a lien waiver with each pay application.
10. CP&D requests a resolution from the City Attorney, prepares the request for council action, and submits all information to the City Clerk for inclusion in the City Council packet for its first meeting in April.
11. The City Council reviews each application, guide to programs, grant program agreement, associated temporary construction easements, power of attorney, and the paint proposal and scope of work in the order received by CP&D. Each Application is approved, conditionally approved, or denied.
12. CP&D prepares a \$10.00 payment request and submits it to the Finance Department for each Grantor granting a Temporary Construction Easement to the City.
13. CP&D issues the notice to proceed to the paint contractor via email.
14. CP&D notifies the Property Owners by email if their Project is approved, conditionally approved, or denied by the City Council.
15. CP&D issues individual building permits to track each grant project. The Paint Contractor must complete the projects within two (2) months of the permit issue date. CP&D will inform the Property Owner if a no-cost building permit for the significant repairs is required.
16. CP&D notifies each Property Owner to reconfirm the target start date. The Paint Contractor confirms with each Property Owner before mobilization.

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17. The Property Owner or their power of attorney must be available during the Project and flexible with the proposed timeframe. The schedule is subject to change due to weather and project progress.
18. The Paint Contractor provides individual project drawdowns at least two (2) weeks before the estimated project start date to CP&D. CP&D obtains written approval from the Property Owner within (3) three business days of the Paint Contractor providing the samples.
19. The Paint Contractor uses high-quality products approved by the City.
20. The Paint Contractor follows all lead-based paint encapsulation standards to cover surfaces containing lead-based paint.
21. The Paint Contractor selects a sheen with a light gloss, low reflective finish, good at hiding surface imperfection, stays clean, is easily washed, and stands up to abrasion. Flat paint is not acceptable.
22. The Paint Contractor coats surfaces to include exterior siding, soffits, eaves, trim, metalwork, decks, porches, exterior wood doors, wood fences, wood windows, metal fences, previously painted gutters, downspouts, vertical concrete, and select outbuildings approved by the City.
23. The Paint Contractor is accountable for and assumes all responsibility when painting in adverse conditions. The Paint Contractor schedules work when weather conditions are per the manufacturer's specifications and ensures the siding is dry from dew and frost before applying paint. Work ceases in time to allow the paint to dry before dew and frost form.
24. The Contractor gently washes structure exteriors to remove all surface contamination, such as oil, grease, loose paint, dirt, foreign matter, rust, mold, mildew, or mortar efflorescence.
25. The Paint Contractor masks all areas requiring protection from overspray and takes into consideration any wind. During the Project, the Paint Contractor is responsible for material damaged by paint on surfaces such as brick, concrete, roofing, vehicles, landscaping, etc.
26. The Paint Contractor performs incidental repairs, scrapes, and sands all failing paint from the substrate, including peeling and bubbling areas. Patches and caulk all joints in exterior trim, including areas where wood joins siding, all other cracks, imperfections, windows, and small holes.

27. The Paint Contractor conceals all wood siding nail holes and resets any nails separating from the siding.
28. The Paint contractor preps and primes all exposed wood surfaces. The primer coat differs in color and applies at least one (1) coat primer.
29. The Paint Contractor, at a minimum, applies at least two (2) coats of the base coat paint per the manufacturer's recommendation and thickness.
30. If transitioning from a stain to paint, at a minimum, the Paint Contractor, at a minimum, applies per the manufacturer's recommendation with a minimum thickness of one (1) coat of primer and (2) coats of paint.
31. The Paint Contractor back-rolls all sprayed surfaces.
32. The Paint Contractor ensures, at a minimum, all stains are two (2) coats with a clear natural satin finish per the manufacturer's recommendation and thickness.
33. The Paint Contractor paints all doors and windows' top and bottom edges.
34. The Paint Contractor paints the bottom edges of all siding, corner stiles, shutters, and bay windows. Remove shutters before painting and reinstall.
35. The Paint Contractor paints all roof vents and flashing black or another specified color or leaves them raw per the Property Owner's preference. Mechanical vents located within the siding match the siding color.
36. The Paint Contractor excludes the painting of metal roofs.
37. The Paint Contractor ensures the job is free of runs, sags, cracking, and skips, with edges cut neatly.
38. The Property Owner inspects work from start to finish, immediately identifies issues, and shares this information with CP&D and the Paint Contractor.
39. The Property Owner provides the Paint Contractor access to the entire site and work area.
40. The Property Owner removes all items on and away from the structure, outbuildings, fences, decks, and porches.
41. The Property Owner keeps all pets out of the Paint Contractor's work area and removes all pet waste daily for the project's duration. The Paint Contractor is not permitted to bring animals on the site.

42. The Paint Contractor is responsible for trash removal, provides refuse collection containers, and keeps the site clean and debris-free, including cigarette butts, daily.
43. CP&D must review and approve all change orders from the approved paint proposal and scope of work before implementation. CP&D amends the grant program agreement to reflect the additional taxable income to the Property Owner. The amendment is approved, conditionally approved, or denied by the City Council.
44. The Property Owner, Paint Contractor, and CP&D attend onsite progress meetings as needed during the project's duration.
45. CP&D schedules a final inspection upon painting completion with the Property Owner and Paint Contractor to close the Project.
46. The Paint Contractor cleans the site upon substantial completion of work. All paint chips are captured and disposed of, areas are de-masked, and exterior windows are operable and paint-free.
47. The Paint Contractor leaves the Property Owner up to one (1) quart of each paint color, varnish, and stain for a touch-up and any warranty work. The Paint Contractor supplies the paint cans and marks each can, identifying the product. The Property Owner stores the products in a climate-controlled area.
48. The Paint Contractor provides a one (1) year limited warranty from the date of substantial completion, covering all manufacturer's defects in the products and 100% of the workmanship, including cracking, peeling, fading, or chipping. Items not covered in the limited warranty include:
 - a. Acts of God that include such items as damage from fire or weather such as tornado, flooding, hail, or hurricane-force winds;
 - b. Damage caused by the Property Owner or Tenant after the job is complete;
 - c. Existing structural damage, layers of old and peeling paint, or other problems with the house that may cause a paint job to fail;
 - d. Product failure due to misuse or lack of proper maintenance by the Property Owner or Tenant;
 - e. The Property Owner or Tenant making significant product alterations affecting its performance.
49. The City releases a deposit at the start of the Project and the final payment after the substantial completion inspection and project closeout with the Property Owner. Subcontract work requires a lien waiver.
50. CP&D receives the Paint Contractor invoice, and the Property Owner signs the invoice and check and payment request form via DocuSign within three (3) business days of CP&D notification.

51. CP&D submits the check request form and invoice to the Finance Department for payment.
52. The Property Owner endorses the check, in person, for the benefit of the Paint Contractor within three (3) business days of CP&D notification.
53. CP&D sends the endorsed check to the Paint Contractor.
54. The Property Owner completes the substantial completion acknowledgment form.
55. CP&D closes the building permit, tracks, and schedules a 1-year limited warranty walk with the Paint Contractor and Property Owner.
56. The Finance Department sends the Property Owner a 1099G by January 31 of the following year.
57. CP&D sends the Property Owner the Federal and State tax liability reimbursement forms by January 31 of the following year.
58. The Property Owner completes the federal and state tax liability reimbursement forms and returns them to the Finance Department for the one-time first-round reimbursement.

APPENDIX 1: REVIEW PROCEDURE AND CRITERIA FOR THE PROGRAM

1. APPLICATION EVALUATION AND CRITERION FOR SELECTION

- a. ~~Projects are selected and authorized upon completion of an Application and in the Order received.~~
- b. ~~The City considers the finished Application quality indicative of the Property Owner's ability to accomplish the proposed Project.~~
- c. ~~The review and approval process is discretionary and subject to the Black Hawk City Council's General Fund's annual budget and appropriation on a case-by-case eligibility basis.~~
- d. ~~The City reserves the right to reduce the Application amount, require alternative materials due to cost, longevity, appropriateness of materials, and quality, or request additional information to assist in the thorough review of any Application.~~
- e. ~~The City consults the Black Hawk Residential Design Guidelines and Black Hawk Municipal Code when reviewing the Residential Exterior Paint Program Application. The City may use any other necessary and appropriate criteria to evaluate, consider, and analyze the Application.~~
- f. ~~An application is approved, approved with conditions, or denied.~~
- g. ~~The City Staff may recommend denial of an application if:~~
 - ~~The Project does not meet the intent of the Program and guidelines;~~
 - ~~There are outstanding debts to the City or unresolved issues associated with City regulations;~~
 - ~~The City considers the Property Owner's manner of upkeep of the Property and may determine that significant deterioration or structural conditions exist on the structure;~~
 - ~~The Property Owner declines to complete the incidental or major repairs identified on the site walk;~~
 - ~~Property Owner's past performance in previous projects, including, but not limited to, any prior Grant expenditure and accomplishing the Project;~~
 - ~~The cost of the work is not commensurate with the projected benefit to be provided to the community.~~

2. ORIENTATION MEETING / DOCUMENT REVIEW

- a. ~~After Application approval, the Property Owner meets with City Staff to discuss the proposed Project. City Staff introduces the general features of the Program via a Zoom or In-person meeting.~~
- b. ~~City Staff reviews the respective agreements with the Property Owner; **Application—Exhibit A, Grant Program Agreement—Exhibit B**, Guide to Programs, W9, Scope of Work, Project Timeline, Building Permit, Power of Attorney, Temporary Construction Easement, Temporary Use Permit, Check and Payment Reimbursement Request Form, and **Federal and State Tax Liability Reimbursement—Exhibit C**.~~
- c. ~~Property Owners requesting a color change discuss color options with their local Sherwin-Williams or Benjamin Moore supplier and purchase test colors to create a final palette for submission to City Staff.
 - ~~Use the Virtual paint tool on their websites, and upload a photo of your home and try colors virtually:
<https://www.sherwin-williams.com/visualizer/#/active/scenes>
<https://www.benjaminmoore.com/en-us/color-overview/personal-color-viewer>~~
 - ~~Order 8" x 8" peel and stick samples to try on your home:
https://samples.sherwin-williams.com/?_ga=2.59917421.1581675296.1627420137-1900585580.1626191133
Benjamin Moore, choose a color, then select Peel And Stick~~
 - ~~Or you can order free 2" x 3" "ColorSnap color chips:
https://samples.sherwin-williams.com/?_ga=2.59917421.1581675296.1627420137-1900585580.1626191133
Benjamin Moore, choose color and Color Swatch.~~~~
- d. ~~After City Council approval, any Property Owner who makes a color change agrees to withdraw from the Program and can reapply the following year.~~

3. SCOPE OF WORK

- a. ~~The City hires the Paint Consultant.~~
- b. ~~The Paint Consultant has a current business license, carries the required insurance during the entire Project, and is familiar with lead-based paint safe practices. Evidence of such is verified before any work commences on the Project.~~

- ~~e. City Staff schedules, if required, a hazardous materials investigation (Lead Paint) to determine what, if any, dangerous materials may be present onsite. The Lead Paint report, if required, defines encapsulation requirements. The Paint Consultant and his personnel are familiar with performing the encapsulation safely.~~
- ~~d. Lead Paint testing and encapsulation are included in the Scope of Work; if required.~~
- ~~e. City Staff schedules a site visit with the Paint Consultant and Property Owner to identify existing conditions, incidental and major repairs and creates the Scope of Work considering the following elements:
 - ~~1) Lead paint encapsulation, incidental and major repairs, preparation, and paint.~~
 - ~~2) A low profile historic color scheme that highlights, not diminishes, the structure's architectural character and coordinates all façade elements — muted colors for the base and brighter colors for accents.~~
 - ~~3) Natural masonry finishes remain unpainted.~~~~
- ~~f. City Staff, the Paint Consultant, and Property Owner create and agree to a project-specific timeline. The Paint Consultant updates the project timeline throughout the entire Project until completion.~~
- ~~g. The Paint Consultant provides the Property Owner a minimum of one (1) gallon of each paint color, varnish, and stain for touch-ups and continued upkeep and maintenance of the surfaces painted under the Program.~~
- ~~h. City Staff schedules the Temporary Construction Easement public hearing before City Council if required.~~
- ~~i. City Staff submits to Finance the Temporary Construction Easement fee payable to neighboring Property Owner(s) as the Grantor, following City Council approval. City Staff includes a completed W-9 form from Grantor with the payment request.~~
- ~~j. City Staff completes the building permit application before the start of the project and informs the Property Owner.~~
- ~~k. The Paint Consultant completes the Temporary Use permit, if required.~~
- ~~l. The Property Owner is physically present during the entire project or assigns a Power-of-Attorney to another person.~~

~~4. DOCUMENT APPROVAL~~

- ~~a. The Property Owner signs all Program agreements; Application, Guide to Programs, Grant Program Agreement, completes and submits a W-9 Form, agree to create a Scope of Work, acknowledges the Federal and State Tax Liability Reimbursement, Building Permit, Temporary Construction Easement, the Check and Payment Reimbursement processes, and agrees to assign a Power of Attorney to another person to act in their best interest if they cannot be physically present for the entire project.~~
- ~~b. City Council reviews and approves the Temporary Construction Easement. City Staff requests a \$10.00 payment from Finance payable to the neighboring Property Owner(s) as the Grantor(s).~~
- ~~c. The City issues the Paint Consultant a Notice to Proceed.~~

~~5. PERMITTING~~

- ~~a. If the Property Owner has a color change, City Staff initiates for Administrative Approval, a Certificate of Architectural Compatibility per Black Hawk Municipal Code, Chapter 16, Article XVII—Application Procedures and Submittal Requirements—Section 16-368—City Council Design Review and Compatibility Process.~~
- ~~b. Subcontractors register for a business license and provide the required insurance with the City per the Black Hawk Municipal Code, Chapter 6, Article VII. Because this is a City project, the subcontractors pay no fee.~~
- ~~c. The Paint Consultant supplies a list of its subcontractors and corresponding City registration numbers for the Grant project.~~
- ~~d. The Paint Consultant maintains each individual project schedule from the beginning to the end of the Project and updates City Staff. City Staff informs the Property Owner of any schedule changes.~~
- ~~e. The City waives all building permit fees for residential projects, as outlined in Chapter 18, Section 18-5 of the Black Hawk Municipal Code; however, the City creates and issues a no-charge building permit and secures appropriate inspections.~~
- ~~f. The Paint Consultant may require a Temporary Use Permit, which City Staff executes.~~
- ~~g. The Paint Consultant provides individual project drawdowns two (2) weeks before the project timeframe to City Staff. City Staff obtains written approval from the Property Owner within (3) three business days of the Paint Consultant providing the samples.~~

6. RESIDENTIAL EXTERIOR PAINTING WORK COMMENCES

- ~~a. The Property Owner provides the Paint Consultant full access to the site and work area.~~
- ~~b. The Property Owner removes all items on and away from the structure, outbuildings, decks, and porches.~~
- ~~c. The Property Owner keeps all pets out of the Paint Consultants' work area.~~
- ~~d. The Property Owner removes daily all pet waste from the Paint Consultants' work area for the job's duration.~~
- ~~e. The Paint Consultant brings all necessary materials, supplies, equipment, and accessories to the site or work area.~~
- ~~f. The Paint Consultant is responsible for securing their equipment at all times. No persons are allowed on the site unless they have specific business.~~
- ~~g. The City is not responsible for the theft, loss, or damage to Paint Consultant materials, equipment, tools, or personal belongings on the site.~~
- ~~h. The Paint Consultant is responsible for trash removal, provides refuse collection containers, and keeps the site clean and free of debris, including cigarette butts.~~
- ~~i. The Paint Consultant is not permitted to bring animals on site.~~
- ~~j. The Paint Consultant performs the work according to the approved Scope of Work and is attached to the building permit.~~
- ~~k. City Staff and the Property Owner inspect the work and monitor the Project.~~
- ~~l. Change Order(s) from the approved Scope of Work must be reviewed and approved by the City before implementation. Because the approved Change Order amount is taxable income to the Property Owner, the Grant Program Agreement is amended, requiring City Council approval.~~
- ~~m. Onsite progress meetings are as needed with the Property Owner, Paint Consultant, and City Staff.~~

7. PAYMENTS

- ~~a. The Property Owner submits a Check and Payment Reimbursement Request form, with the Paint Consultant's invoice, for each requested payment within three (3) business days of invoice receipt. City Staff assists with this process.~~
- ~~b. With the initial Check and Payment Reimbursement Request form, the Property Owner attaches a completed W-9, if not previously provided.~~
- ~~c. All payments for approved work are by check from the City of Black Hawk payable to the Property Owner in an FBO (For the Benefit Of) format to include the company name of the Paint Consultant for the Project.~~
- ~~d. Once the Finance Department processes the Check and Payment Reimbursement Request, the Property Owner endorses the check for each requested payment over to the Paint Consultant within three (3) business days.~~
- ~~e. By signing the Residential Exterior Paint Guide to Programs, the Property Owner acknowledges and understands the payment process to the Paint Consultant for the contracted work and understands they are not to defraud the City or the Paint Consultant during any part of the process for the Project.~~
- ~~f. The Property Owner is responsible for submitting all payment requests within three (3) business days throughout the Project's duration.~~

8. RESIDENTIAL EXTERIOR PAINTING COMPLETED

- ~~a. When the preparation and painting work has been performed according to the approved Scope of Work, the City Staff, and the Property Owner conduct a final inspection with the Paint Consultant.~~
- ~~b. The Paint Consultant cleans the site upon completion of work. All paint chips are captured and disposed of, all areas de-masked, exterior windows are free of paint and operable.~~
- ~~c. The City will release the final payment due to the Paint Consultant after the final inspection and project closeout with the Property Owner.~~

APPENDIX 2: PREPARATION AND PAINTING

1. PREPARATION

- a. ~~Two (2) weeks before the Paint Consultant begins the Project, the Property Owner agrees to complete all necessary major repairs.~~
- b. ~~The Paint Consultant preps the Project by gently washing the exterior to remove all surface contamination, such as oil, grease, loose paint, dirt, foreign matter, rust, mold, mildew, or mortar efflorescence. Completes all incidental repairs such as sanding all chipping and peeling paint and patches and caulks all cracks and imperfections~~
- c. ~~The Paint Consultant repairs, at their expense, damage to any structure or property caused during the prep work.~~

2. PAINTING — PAINT CONSULTANT

- a. ~~Uses Benjamin Moore or Sherwin Williams products or recommends an alternate product to the City for approval.~~
- b. ~~Selects a sheen with a light gloss, low reflective finish, good at hiding surface imperfection, stays clean, is easily washed, and stands up to abrasion. Flat paint is not acceptable.~~
- c. ~~Coated Surfaces: exterior siding, soffits, eaves, trim, metalwork, decks, porches, exterior wood doors, wood fences, wood windows, metal fences, previously painted gutters, downspouts, and vertical concrete.~~
- d. ~~Before starting work, check products, color, and sheen to assure conformity to specified color and finish as described in the Scope of Work.~~
- e. ~~Mask all areas requiring protection from overspray and take into consideration any wind.~~
- f. ~~Is responsible for material damaged by paint covering surfaces such as brick, concrete, roofing, vehicles, landscaping, etc.~~
- g. ~~Leave the Property Owner with a minimum of one (1) gallon of each color, varnish, and stain for touch up. Supply the paint cans and marks each can identifying the product. The Property Owner stores the product in a temperature-controlled area protected from temperatures below 45°F or above 95°F.~~

3. **PRIMER/PAINT/VARNISH/STAIN APPLICATION:**

- a. ~~All failing paint, including peeling and bubbling areas, is scraped from the substrate.~~
- b. ~~Caulk all cracks, windows, and patch small holes.~~
- c. ~~Conceal all wood siding nail holes and reset any nails that may be separating from the siding.~~
- d. ~~Prep and prime all exposed wood surfaces following the Manufacture's recommendation and thickness. The primer coat differs in color.~~
- e. ~~Apply two (2) coats of each product or the Manufacture's recommendation and thickness.~~
- f. ~~If transitioning from a stain to paint, one (1) coat of primer and (2) coats of paint are applied per the Manufacture's recommendation and thickness.~~
- g. ~~If surfaces are sprayed, Paint Consultant back rolls all surfaces.~~
- h. ~~All stain is two (2) coats with a clear natural satin finish or the Manufacture's recommendation and thickness.~~
- i. ~~The job is free of runs, sags, cracking, and skips with edges cut neatly.~~
- j. ~~The Paint Consultant schedules work to apply paint when weather conditions are per the manufacturer's specifications.~~
 - ~~Siding is dry from dew and frost before applying paint, and work ceases in time to allow the paint to dry before dew and frost form.~~
 - ~~Painting exteriors below 45°F.~~
 - ~~The Paint Consultant assumes all responsibility and is accountable for painting under adverse conditions.~~
- k. ~~Paint the top and the bottom edge of all doors and windows.~~
- l. ~~Paint the bottom edge of all siding, corner stiles, shutters, and bay windows.~~
- m. ~~Paint all roof vents and flashing black or another specified color. Mechanical vents located within the siding match the siding color.~~
- n. ~~Caulk all joints in exterior trim, including areas where wood joins siding.~~
- o. ~~Consult with City Staff for appropriate sheen. Include sheen in the Scope of Work.~~
- p. ~~Sealant color to match siding or trim. Apply at windows, door frames, flashing, and jacks. Bed metal thresholds in sealant;~~

Approved by Resolution 13-2021 on March 17, 2021

Approved by Resolution 30-2024 on March 13, 2024

~~q. Provides a one (1) year limited warranty from substantial completion. This warranty is in addition to and is not limited to any other warranty or remedy required by law or by the Scope of Work and Program documents. All nonconforming work identified by the Property Owner and considered defective is corrected before the one (1) year warranty expires.~~

PROPERTY OWNER ACKNOWLEDGEMENT

I, _____, as the Property Owner of residential Property addressed as _____

Black Hawk, Colorado, 80422. I certify that I have submitted an Application to participate in the Program, read the Residential Exterior Paint Program Guide to Programs, agree to comply with the Federal and State Tax Liability Reimbursement process, agree to create a Scope of Work, consent to participate in the Program from start to finish or actively assign a Power of Attorney if I am physically unable to be in Black Hawk for the entire project, obtain a Building Permit, agree to a Temporary Construction Easement if required, complete and submit Check and Payment Reimbursement forms within three (3) business days of invoice receipt, and to provide a completed W-9 Form. I fully understand and agree to the Residential Exterior Paint Program documents set forth therein and agree to be bound by the terms and conditions of all Program documents.

By: _____
_____ Property Owner

Date: _____

PROPERTY OWNER ACKNOWLEDGEMENT

I, _____ the Property Owner of the residential property addressed as

Black Hawk, Colorado, 80422, fully understand and agree to be bound by the terms and conditions of the Residential Exterior Paint Program documents set forth below:

1. Apply to participate in the Residential Exterior Paint Program;
2. Read and comply with the Residential Exterior Paint Program Guide to Programs;
3. Acknowledge the federal and state tax liability reimbursement process;
4. Meet with CP&D and the Paint Contractor to create a scope of work, finalize paint colors, and identify any substantial repairs;
5. Agree to be an active participant in the Project from start to finish or assign a power-of-attorney because I am physically unable to be in Black Hawk for the entire project;
6. Apply for a no-cost building permit for significant repairs if required by CP&D;
7. Acknowledge invoices, complete, and submit the check and payment reimbursement forms within three (3) business days of invoice receipt;
8. Submit a completed W-9 form.

By: _____
Property Owner

Date: _____

EXHIBIT A

**~~RESIDENTIAL EXTERIOR PAINT PROGRAM
APPLICATION~~**

~~Approved by Resolution 13-2021 on March 17, 2021~~
Approved by Resolution 30-2024 on March 13, 2024

~~Approved by Resolution 13-2021 on March 17, 2021~~
Approved by Resolution 30-2024 on March 13, 2024

EXHIBIT B

**~~RESIDENTIAL EXTERIOR PAINT PROGRAM
PROGRAM AGREEMENT~~**

EXHIBIT I

**RESIDENTIAL EXTERIOR PAINT PROGRAM
PROGRAM AGREEMENT**

~~Approved by Resolution 13-2021 on March 17, 2021~~
Approved by Resolution 30-2024 on March 13, 2024

EXHIBIT C

**~~RESIDENTIAL EXTERIOR PAINT PROGRAM
FEDERAL AND STATE TAX LIABILITY REIMBURSEMENT – FORMS~~**

EXHIBIT II

**RESIDENTIAL EXTERIOR PAINT PROGRAM
FEDERAL AND STATE TAX LIABILITY REIMBURSEMENT – FORMS**

~~Approved by Resolution 13-2021 on March 17, 2021~~
Approved by Resolution 30-2024 on March 13, 2024