REGULAR MEETING AGENDA

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

February 27, 2019
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 13, 2019

7. PUBLIC HEARINGS:

None

8. ACTION ITEMS:

A. Resolution 13-2019, A Resolution Awarding the Bid and Approving the Construction Manager/General Contractor (CMGC) Contract Between the City of Black Hawk and Roche Constructors, Inc. in an Amount Not to Exceed $26,452.00 for Pre-Construction Services Pertaining to the Gregory Street Phase 2 Project

B. Resolution 14-2019, A Resolution Awarding the Bid and Approving the Design-Build Contract Between the City of Black Hawk and Harrison Western Construction Corporation, Inc. in an Amount Not to Exceed $125,195.00 for Pre-Construction Services Pertaining to the Bobtail Street Sculpted and Stained Shotcrete Project

C. Resolution 15-2019, A Resolution Authorizing Certain Individuals to Act on Behalf of the City with BOK Financial Securities/BOKF, NA

9. CITY MANAGER REPORTS:

10. CITY ATTORNEY:

11. EXECUTIVE SESSION:

12. ADJOURNMENT:
Visiting City Attorney Hilary Graham rang the bell to open the meeting.

1. CALL TO ORDER: The regular meeting of the City Council was called to order on Wednesday, February 13, 2019, by Mayor Spellman immediately following a work session.

2. ROLL CALL: Present were: Mayor Spellman, Aldermen Armbright, Bennett, Johnson, Midcap, Moates, and Torres.

Staff present: Visiting City Attorney Graham, Acting City Manager Cole, Acting Police Chief Lloyd, Fire Chief Woolley, Finance Director Hillis, Public Works Director Isbester, Senior Civil Engineers Ford and Reed, City Clerk/Administrative Services Director Greiner, Community Planning & Development Administrator Linker, IT Manager Muhammad, and Deputy City Clerk Martin.

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

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

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

Visiting City Attorney Graham asked the audience if there were any objections to any member of Council voting on any issue on the agenda this afternoon. The audience had no objections.

5. PUBLIC COMMENT: Deputy City Clerk Martin confirmed that no one had signed up to speak.
6. APPROVAL OF MINUTES: January 23, 2019

MOTION TO APPROVE

Alderman Bennett MOVED and was SECONDED by Alderman Armbright to approve the Minutes as presented, with Aldermen Johnson and Torres abstaining.

MOTION PASSED

There was no discussion, and the motion passed with two abstentions.

7. PUBLIC HEARINGS:

A. CB7, An Ordinance Amending Various Sections of the Black Hawk Municipal Code Regarding 3.2 Beer

Mayor Spellman read the title and opened the public hearing.

Visiting City Attorney Graham introduced this item and said that the State Liquor Code was recently amended to remove reference to 3.2 Beer, now considered Fermented Malt Beverage; this Ordinance makes those same changes to the City’s Municipal Code.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB7, an Ordinance amending various sections of the Black Hawk Municipal Code regarding 3.2 Beer open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

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

MOTION TO APPROVE

Alderman Moates MOVED and was SECONDED by Alderman Torres to approve CB7, an Ordinance amending various sections of the Black Hawk Municipal Code regarding 3.2 Beer.

MOTION PASSED

There was no discussion, and the motion PASSED unanimously.

8. ACTION ITEMS:

A. Resolution 8-2019, A Resolution Approving the City of Black Hawk Fee Schedule, As Amended

Mayor Spellman read the title.
City Clerk/Administrative Services Director Greiner introduced this housekeeping item to reflect those changes to the State’s Liquor Code.

MOTION TO APPROVE
Alderman Bennett MOVED and was SECONDED by Alderman Johnson to approve Resolution 8-2019, a Resolution approving the City of Black Hawk Fee Schedule, as amended.

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

B. Resolution 9-2019, A Resolution Approving the 2019 Fireworks Production Contract Between the City of Black Hawk and Western Enterprises, Inc.

Mayor Spellman read the title.

City Clerk/Administrative Services Director Greiner said staff had met with the production company and it will be a similar contract to last year’s show, with only a 5.6% cost increase due to higher tariffs from overseas suppliers.

MOTION TO APPROVE
Alderman Armbright MOVED and was SECONDED by Alderman Moates to approve Resolution 9-2019, a Resolution approving the 2019 Fireworks Production Contract between the City of Black Hawk and Western Enterprises, Inc.

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

C. Resolution 10-2019, A Resolution Authorizing the Filing of a Petition for Inclusion of City-Owned Property into the Silver Dollar Metropolitan District

Mayor Spellman read the title.

Visiting City Attorney Graham introduced this item. Mayor Spellman noted that it was the sliver of property at the intersection of Black Hawk Street and Highway 119 that was proposed to be included.

MOTION TO APPROVE
Alderman Bennett MOVED and was SECONDED by Alderman Torres to approve Resolution 10-2019, a Resolution authorizing the filing of a Petition for Inclusion of City-Owned Property into the Silver Dollar Metropolitan District.

MOTION PASSED
There was no discussion, and the motion PASSED unanimously.
D. Resolution 11-2019, A Resolution Approving the Professional Services Agreement Between the City of Black Hawk and Baseline Engineering Corporation in an Amount Not to Exceed $139,145.00 for Civil Engineering Services Pertaining to the Gregory Street Phase 2 Project

Mayor Spellman read the title.

Senior Civil Engineer Reed introduced this item and said at the last meeting Council had approved the contract for Architectural services for the Phase 2 project; this contract is for the Civil Engineering services for the project. He said they sole sourced with Baseline Engineering due to the long-standing history of successful projects with them, and they are also the City’s on-call engineers.

MOTION TO APPROVE

Alderman Midcap MOVED and was SECONDED by Alderman Johnson to approve Resolution 11-2019, a Resolution approving the Professional Services Agreement between the City of Black Hawk and Baseline Engineering Corporation in an amount not to exceed $139,145.00 for Civil Engineering services pertaining to the Gregory Street Phase 2 Project.

MOTION PASSED

There was no discussion, and the motion PASSED unanimously.


Mayor Spellman read the title.

Community Planning & Development Administrator Linker introduced this item and mentioned that Weecycle is the City’s on-call Environmental services consultant. She said they had provided a proposal for opening up the interior of those identified Gregory Street buildings to aid PEH Architects in their design drawings for the Gregory Street Phase 2 project. When asked about asbestos, Linker said it was found in the putty of the windows of 305 Gregory and throughout 351 Gregory. She said the Abatement Contractor for asbestos would start on 351 Gregory first. She added that the Abatement Contractor would not start on 305 Gregory until a contractor is selected for the whole project. She noted that according to State regulations the windows from 305 Gregory could not be donated or reused, they must be bagged and disposed.
MOTION TO APPROVE  
Alderman Moates MOVED and was SECONDED by Alderman Torres to approve Resolution 12-2019, a Resolution approving the Weecycle Environmental Consulting proposal for the selective interior non-asbestos containing material demolition of 305 Gregory, 311 Gregory, 321 Gregory, and 351 Gregory in a total amount not to exceed $66,910.00.

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

9. ACTING CITY MANAGER REPORTS:  
Acting City Manager Cole had nothing to report.

10. CITY ATTORNEY:  
Visiting City Attorney Graham had nothing to report.

11. EXECUTIVE SESSION:  
Visiting City Attorney Graham recommended item number 2 only for Executive Session for potential legislation and to inform Council of a citizen complaint.

MOTION TO ADJOURN INTO EXECUTIVE SESSION  
Alderman Bennett MOVED and was SECONDED by Alderman Johnson to adjourn into Executive Session at 3:09 p.m. to hold a conference with the City’s attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b).

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

MOTION TO ADJOURN  
Alderman Bennett MOVED and was SECONDED by Alderman Johnson to adjourn the Executive Session at 3:33 p.m.

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

12. ADJOURNMENT:  
Mayor Spellman declared the Regular Meeting of the City Council closed at 3:33 p.m.
RESOLUTION 13-2019
A RESOLUTION AWARDING THE BID AND APPROVING THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CMGC) CONTRACT BETWEEN THE CITY OF BLACK HAWK AND ROCHE CONSTRUCTORS, INC. IN AN AMOUNT NOT TO EXCEED $26,452.00 FOR PRE-CONSTRUCTION SERVICES PERTAINING TO THE GREGORY STREET PHASE 2 PROJECT
TITLE: A RESOLUTION AWARDING THE BID AND APPROVING THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CMGC) CONTRACT BETWEEN THE CITY OF BLACK HAWK AND ROCHE CONSTRUCTORS, INC. IN AN AMOUNT NOT TO EXCEED $26,452.00 FOR PRE-CONSTRUCTION SERVICES PERTAINING TO THE GREGORY STREET PHASE 2 PROJECT

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

Section 1. The City Council hereby awards the bid and approves the construction manager/general contractor (CMGC) contract between the City of Black Hawk and Roche Constructors, Inc. in an amount not to exceed $26,452.00 for pre-construction services related to the Gregory Street Phase 2 project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 27th day of February, 2019.

_______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, CMC, City Clerk
SUBJECT:
Approve Resolution 13-2019, a Resolution awarding the construction manager/general contractor (CMGC) contract for the Gregory Street Phase 2 project to Roche Constructors, Inc.

RECOMMENDATION:
If City Council chooses to approve Resolution 13-2019, a Resolution awarding the construction manager/general contractor (CMGC) contract between the City of Black Hawk and Roche Constructors, Inc., the recommended motion is as follows: “Approve Resolution 13-2019, a Resolution awarding the bid and approving the Construction Manager/General Contractor (CMGC) contract between the City of Black Hawk and Roche Constructors, Inc. in an amount not to exceed $26,452.00 for pre-construction services pertaining to the Gregory Street Phase 2 project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
The City intends to redevelop the area along the north side of Gregory Street between Church and High Streets into a commercial plaza area. The existing City-owned buildings in this area (305/311, 321, and 351 Gregory Street) will be renovated, along with the existing structures at 211 and 221 Gregory Street. Two new buildings will be constructed: A public restroom building and a structure that will display one of the City’s antique fire trucks and other historic Fire Department memorabilia. The church at 331 Gregory Street will likely receive an exterior rehabilitation treatment similar to the recent City Hall brick restoration project. Finally, the City desires to renovate the Bobtail Mine building, and move the structure currently at 261 Gregory Street to a location between the Mine building and the Lace House, converting it into a public restroom facility.

To prosecute this work, the City has chosen to pursue a construction manager/general contractor (CMGC) method of contracting. The intention is for the CMGC to be brought under contract at a point early in the design process. They will provide input into constructability, scheduling, and costs of the project, among other issues. Their first detailed cost estimate will provide direction for the City regarding which portions of the project will need to be postponed or which can be added to the scope, based on the City’s budget.

To select a CMGC, the City publicly advertised a Request for Qualifications on November 29th, 2018. Of the seven CMGC qualification packages received by the City, three CMGC finalists were invited to respond to a Request for Proposal, which was released on January 11, 2019. Of the two finalists that submitted Proposals, Roche Constructors, Inc. provided the lowest proposed costs and fees.

The goal over the next few months will be to create and refine cost estimates for construction of the Gregory Street Phase 2 project, until the City and the CMGC reach agreement on a Guaranteed Maximum Price for construction. At that time, an Amendment to this CMGC contract will be brought before City Council to establish the GMP and authorize construction.

WORKSHOP DATE: February 27, 2019

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: Spring, 2021

DOCUMENTS ATTACHED: CMGC Contract

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

SUBMITTED BY: Thomas Isbester, Public Works Director

REVIEWED BY: Stephen N. Cole, Acting City Manager
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CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of ____________, 2019, by and between the City of Black Hawk, State of Colorado, a body politic and corporate, hereinafter referred to as the "City" or “Owner” and Roche Constructors, Inc., hereinafter referred to as the "Contractor".

ARTICLE 1 - GENERAL PROVISIONS AND SERVICES

A. The Contractor shall commence and fully complete design and construction of the Gregory Street Phase 2 project, which is described in Exhibit A, which is attached hereto and made a part hereof ("Project").

B. The Contractor shall retain Subcontractors at the Contractor’s expense as necessary to complete the Work.

C. The Contractor shall commence the Work required by the Contract Documents within ten (10) calendar days after the date of the notification to proceed and will complete the same on or before December 31, 2020, unless the period for completion is extended otherwise by the Contract Documents. The Contractor agrees to pay as liquidated damages, and not as a penalty, the sum of Two Thousand Dollars ($2,000.00) for each consecutive calendar day's delay in completing this Project after the completion date specified herein, excluding any approved extensions of time.

D. The Contractor agrees to perform all of the preconstruction work described in the Contract Documents and to comply with the terms therein for an amount not to exceed Twenty-Six Thousand Four Hundred Fifty-Two Dollars ($26,452), as shown in Exhibit B.

ARTICLE 2 - DEFINITIONS

A. Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1. Addenda - Written or graphic instruments issued prior to the execution of the Agreement that modify or interpret the Contract Documents, drawings, and specifications, by additions, deletions, clarifications, or corrections.

2. Bid – The offer or proposal of the Bidder submitted in the prescribed form setting forth the prices for the Work to be performed.

3. Bidder – Any person, firm, or corporation submitting a Bid for the Work.

4. Bonds – Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Contractor and its surety in accordance with the Contract Documents.
5. **Change Order** – A written order to the Contractor authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Sum and/or Contract Time.

6. **Construction Change Directive** – A written order directed to the Contractor and signed by the Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.

7. **Consultant** – A person or entity providing professional services for the Contractor or the Owner to execute a portion of the Work. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services. Consultants include architects and engineers, as applicable.

8. **Contractor** – The person, firm, or corporation with whom the City of Black Hawk has executed this Agreement. Also known as the Construction Manager/General Contractor or CMGC. The Contractor shall be lawfully licensed by the City of Black Hawk.

9. **Contract Documents** – The contract (“Agreement”), including advertisement for Bids, information for Bidders, Bid, Bid bond agreement, Bid schedule, labor and material payment bond, performance bond, notice of award, notice to proceed, Change Orders, general conditions, special conditions, general specifications, special specifications, scopes of Work, addenda, drawings, schedules, and any and all other documents or papers included or referred to in the foregoing documents are part of the Contract Documents.

10. **Contract Sum** – The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

11. **Contract Time** – The number of calendar days stated in the Contract Documents for Substantial Completion of the Work.

12. **Date of Award** – Date of award of contract shall mean the date formal notice of such award, approved by the Owner, has been delivered to the intended awardee, or mailed to it at the main business address shown in its proposal by the Owner or its authorized representative.

13. **Day** – Unless herein otherwise expressly defined, Day shall mean calendar day.

14. **Major Equipment or Major Equipment Items** – Installation of major equipment to be furnished and placed under the Agreement awarded to the Contractor and/or installations of major equipment to be furnished by the Owner and received, unloaded, stored, and placed by the Contractor under the Agreement awarded to the Contractor.
15. **Notice of Award** – The written notice of the acceptance of the Bid by the Owner to the successful Bidder.

16. **Notice to Proceed** – Written communication issued by the Owner to the Contractor authorizing it to proceed with the Work and establishing the date of commencement of the Work.

17. **Owner or City** – The City of Black Hawk, Colorado, a home rule municipality. The Public Works Director, Project Manager, or their designee of the Owner is the Owner’s representative.

18. **Project** – Construction of the Project described in **Exhibit A**.

19. **Shop Drawings** – All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

20. **Site** – The lands and other places on, under, in, or through which the Work is to be executed or carried out and any other lands or places provided by the Owner for the purposes of the Agreement together with such other places as may be specifically designed in the Contract Documents as forming part of the Site.

21. **Special Conditions** – Supplemental conditions that apply to specific aspects of the Project or modifications to the general conditions that are to be adhered to in the Project.

22. **Subcontractor** – An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site. All Subcontractors shall be lawfully licensed by the City of Black Hawk.

23. **Submittal** – Any submission to the Owner for review and approval demonstrating how the Contractor proposes to conform to the Contract Documents. Submittals include, but are not limited to Shop Drawings, product data, and samples.

24. **Substantial Completion** – That date as certified by the Owner when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended. All major systems shall be operational, all safety features shall be completed, and final inspections by all applicable local and state officials must be received by the Owner prior to achieving Substantial Completion.

25. **Supplier** – Any person, supplier, or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who
does not perform labor at the Site. A Supplier is not a Subcontractor who purchases an item of equipment from a manufacturer.

26. **Work** – The preconstruction, construction, and related services required to fulfill the Contractor’s obligations under the Contract Documents. The Work includes all labor, materials, equipment, and services provided or to be provided by the Contractor. The Work may constitute the whole or a part of the Project.

27. **Written Notice** – Written Notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice.

**ARTICLE 3 - DESCRIPTION OF WORK AND SERVICES**

Section 1  **Process to Establish Guaranteed Maximum Price**

A. The Contractor shall advise the Owner on proposed Site use and improvements, selection of materials, building systems, and equipment, as applicable. The Contractor shall provide the Owner with recommendations on constructability, availability of materials and labor, schedule, installation and construction, alternative designs or materials, budgeting, life-cycle data, and value engineering.

B. The Contractor shall schedule and conduct meetings with the Owner, Consultants, and any other necessary individuals or entities to discuss and evaluate the ongoing design of the Project. The evaluation shall address possible alternative approaches to design and construction of the Project and include the Contractor’s recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, and phasing.

C. The Contractor shall prepare a written report to summarize the Contractor’s evaluation of the Project design. The report shall include a proposed Project schedule and a control estimate for the cost of the Work organized by trade categories.

D. The Owner shall review the Contractor’s written report and, if acceptable, provide the Contractor and Consultants written consent to proceed to the development of the construction drawings and specifications. The Owner shall also provide written consent to the Contractor to proceed to development of the Contractor’s proposal. The Contractor’s proposal shall, at a minimum, include the following:

1. A list of preliminary design documents and other information upon which the Contractor’s proposal is based.
2. The proposed Contract Sum organized by trade categories, including allowances, contingencies, updates to the Contractor’s Fee and Cost Proposal, and other items that comprise the proposed Contract Sum. A schedule of values shall be provided by which each application for payment will be evaluated.
3. The proposed Project schedule, including the proposed date that the Contractor shall achieve Substantial Completion.

E. Preparation of the Contractor’s proposal will likely be an iterative process. The Contractor shall revise the Contract Sum and Project schedule as necessary prior to agreement between the Owner and Contractor on a final proposal. The Contractor shall strive to eliminate allowances wherever possible and decrease Contractor’s contingencies until the Owner and Contractor agree on a final Contractor’s proposal.

F. If the Owner and Contractor agree on a proposal, the Owner and Contractor shall execute an amendment setting forth the terms of their Agreement. The final Contract Sum as agreed upon by the Owner and Contractor will become established as the Guaranteed Maximum Price (“GMP”) in the GMP Amendment.

1. The GMP guarantees to the Owner the price for which all Work will be completed within the Contract Time.
2. The GMP, unless changed by Change Order or Construction Change Directive, represents the absolute limit of obligation or liability that the Owner may have insofar as the cost for full and final completion of the Work and the total of all payments to the Contractor or its Subcontractors.
3. Should additional amounts over and above the GMP be required to be expended to achieve completion of the Work, liability for and payment of such additional amounts shall be the sole responsibility of the Contractor.
4. Should the final cost of the Work be less than the GMP, the difference shall inure to the benefit of the Owner and no claim for all or any portion of said difference shall be valid against or payable by the Owner.

G. Construction shall not commence prior to execution of the GMP Amendment.

Section 2 Drawings and Specifications

A. The Contractor shall coordinate with the Consultants to provide Project drawings and specifications to the Owner for approval. The Contractor shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the Owner.

B. In case of conflict between the drawings and specifications, the specifications shall govern, unless directed otherwise by the Owner and Consultants. In case of conflict between the special specifications and the general specifications, the special specifications shall govern. Figure dimensions on drawings will govern over scale dimensions, and detailed drawings shall govern over general drawings. Notwithstanding the above, a document which is more restrictive or requires greater responsibility or increased compliance by the Contractor shall govern.
C. Any discrepancies found between the drawings and specifications and Site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the Owner and Consultants in writing, who will promptly resolve such inconsistencies or ambiguities in writing. Work done on unreported discrepancies, inconsistencies or ambiguities by the Contractor shall be done at the Contractor's risk.

D. The Contractor may be furnished additional instructions and detail drawings by the Owner and Consultants as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.

Section 3  Materials, Services and Facilities

A. The Contractor shall, in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Contract Documents. The Contractor shall, at its sole cost, risk, and expense, construct, equip, provide purchase, pay for, and furnish all of the materials, services, and equipment necessary to provide the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall be in accordance with such Contract Documents, as well as all local, state, and federal governmental codes, ordinances, and regulations as they apply to performance of the Work.

B. In addition to the requirements for major equipment items previously given, the Contractor shall submit to the Owner a complete listing of the manufacturers of each item of equipment or assembly fabricated off the Site that is proposed to be furnished for the Project, together with sufficient information, including shop assembly and detail drawings, manufacturers' specifications, and performance data, to demonstrate clearly that the materials and equipment to be furnished comply with the provisions and intent of the Contract Documents. If the information shows any deviation from the contract requirements, the Contractor shall notify the Owner of the deviation and state the reason for it in writing. Acceptance of substitute material or equipment that deviates from the specifications shall be determined by the Owner and Consultants.

C. Only first class materials and materials which conform to the requirements of the specifications shall be incorporated in the Work. All materials shall be new unless specified to be otherwise.

D. When requested by the Owner, the Contractor shall furnish a written statement of the origin, composition, and manufacturer of any or all materials (manufactured, produced or grown) that are to be used in the Work. The sources of supply of each material used will be approved by the Owner and Consultants before delivery is started. If, at any time, sources previously approved fail to produce materials acceptable to the Owner and Consultants, the Contractor shall furnish materials from other approved sources.

E. Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work
shall be located so as to facilitate prompt inspection. Material or equipment stored off-site shall be insured by the Contractor. Proof of insurance shall be submitted to Owner prior to request for payment for such material or equipment.

F. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer.

G. Materials, supplies, and equipment shall be in accordance with samples submitted by the Contractor and approved by the Owner and Consultants.

H. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or any Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

I. The Contractor shall retain, for the benefit of the Owner, all materials and supplies that are purchased for the project but are not used as a part of the project. The Owner may take any of the materials and supplies that are used in the project for any City purpose. Any materials and supplies not taken by the Owner shall be removed from the Site by the Contractor.

Section 4 Submittals

A. The Contractor shall submit Shop Drawings, samples, and O&M manuals as may be necessary for the prosecution of the Work, as required by the Contract Documents, on a timely basis so that the Project schedule is not affected. The Owner and Consultants will promptly review all Submittals. All such Submittals will be approved and signed by the Consultants, and will be null and void unless authorized by such signature. Review and approval of any Submittal by the Owner or Consultants will not release the Contractor from responsibility for any deviations from the Contract Documents. The approval of any Submittal that substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order.

B. All drawings and details on items of major equipment will be reviewed by the Owner and Consultants only after the complete set of drawings and details covering the entire equipment package to be furnished under a particular major equipment item are submitted. Drawings submitted on a piecemeal basis covering only parts of the equipment package will be held for checking until the entire set of drawings are received.

C. The Contractor shall submit to the Owner and Consultants Shop Drawings showing detail of structural wood trusses, structural steel and concrete reinforcing steel, bending details, piping details, and of other items necessary for the proper installation of materials into the completed Work, as provided by this Agreement.

D. The Contractor shall make any indicated corrections on the Submittals returned and shall resubmit corrected Submittals until final approval is obtained.
E. The Contractor shall have no claims for damages or extension of time on account of any delay in the Work resulting from the review, revision and resubmittal of a Submittal when the review, revision and resubmittal is due to changes to the original Submittal required by the Owner or Consultants.

F. Each Shop Drawing shall be dated and shall be identified with the name of the Project, the division, if any, the contract item number, and the name of the Contractor.

G. When submitted for review by the Owner and Consultants, Submittals shall bear the Contractor’s certification that it has reviewed, checked, and approved the Submittals and that they are in conformance with the requirements of the Contract Documents.

H. Portions of the Work requiring a Submittal shall not begin until the Submittal has been approved by the Owner and Consultants. A copy of each approved sample shall be kept in good order by the Contractor at the Site and shall be available to the Owner and Consultants. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Owner’s approval of the Submittals.

I. By approving and submitting Shop Drawings and samples, the Contractor thereby represents that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, and that it has checked and coordinated each Shop Drawing and sample with the requirements of the Work and of the Contract Documents.

Section 5 Records, Accounts and Audits

A. The Contractor agrees to keep one complete set of records and books of account on a recognized cost accounting basis (satisfactory to the Owner), showing all expenditures, of whatever nature, made pursuant to the provisions of this Contract.

B. The Contractor shall furnish the Owner with such records, information and data as may be reasonable. The Owner shall at all reasonable times be afforded the opportunity to inspect and/or audit the above-specified books and records of the Contractor.

Section 6 Inspection and Testing

A. All materials and equipment used in the construction of the project will be subject to adequate inspection and testing in accordance with generally accepted standards.

B. The Contractor shall give sufficient advance notice of placing orders to permit tests to be completed before materials are incorporated in the Work.

C. The Owner shall bear costs for all inspection and testing services required by the Contract Documents, unless specifically noted in the specifications for special inspection and testing services, such as, by way of example, welding inspections on off-site assemblies. The Contractor shall make arrangements for all tests, inspections, and approvals with an independent testing laboratory or entity acceptable to and contracted by the Owner.
D. Neither observations by the Owner or Consultants, tests, nor approvals by persons other than the Owner will relieve the Contractor from its obligations to perform the Work in accordance with the requirements of the Contract Documents.

E. The Owner and its representatives shall, at all times, have access to the Work and to locations where materials or equipment are being manufactured, stored, or prepared for use under these Contract Documents, and they shall have full facilities for unrestricted inspection of such materials, equipment, and Work including full access to purchasing and engineering information to the extent of uncovering, testing, or removing portions of the finished Work. The Owner shall be furnished with such information as may be required regarding materials used and the process of manufacture for the various items of equipment. Observations by the Owner of equipment or materials during its manufacture will be performed by or for the Owner solely in an effort to detect discrepancies and defects as early as possible, when they can be most readily corrected, and the Work thereby expedited. No acceptance of equipment or materials will be construed to result from such observations by the Owner. Any inspections or tests or waivers thereof will not relieve the Contractor of responsibility for meeting all requirements of these Contract Documents.

F. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all Work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The Contractor shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.

G. In case of disputes between the Contractor and the Owner as to materials furnished or manner of performing the Work, the Owner will have authority to reject materials or suspend the Work until the question at issue can be decided by the Owner. The Owner is authorized to revoke, alter, enlarge, relax, or release any requirements of Project drawings and specifications, and to approve or accept any portion of the Work, and to issue instructions contrary to the drawings and specifications.

Section 7 Construction Review

A. The Owner will periodically observe the construction of all Work covered by this Contract. The Owner is authorized to determine the amount or quantities of the several items of Work which are to be paid for under this Agreement; to order field changes within the scope of the Agreement and to render decisions on any questions which may arise relative to the execution of the Work covered by this Agreement. The Owner has the authority to suspend Work. The Contractor shall not suspend any portion of the Work nor resume suspended Work without the written authority of the Owner.

B. Whenever in the drawings, plans, or Contract Documents the terms "as ordered", "as directed", or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory", or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment as to the Work, it is intended that such requirement,
direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents. The use of any such term or adjective shall not be effective to assign to the Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility for the Project. The Owner will not be responsible for the acts or omissions of the Contractor or any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

C. If any Work has been covered which the Owner has not been specifically requested to observe prior to its being covered, or if the Owner considers it necessary or advisable that covered Work be inspected or tested, the Contractor at the request of the Owner shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Owner may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, and an appropriate Change Order will be issued.

Section 8 Surveys, Permits, and Regulations

A. The Owner will furnish all land surveys together with a suitable number of bench marks adjacent to the Work as shown in the Contract Documents. The Contractor shall provide detailed construction staking.

B. At the beginning of the construction or as the Work progresses, a surveyor at the Owner's expense shall install property corners and set bench marks.

C. Any additional surveying or re-surveying shall be done by the Contractor at the Contractor’s expense. Bench marks and survey stakes shall be preserved by the Contractor, and in case of their destruction or removal by the Contractor, its employees, or others, they shall be replaced at the Contractor’s expense and its sureties shall be liable therefor.

D. The Contractor shall be responsible for elevations used in computing its bid.

E. The Contractor shall secure and pay for all necessary permits, fees, and licenses in connection with the performance of the Work and shall pay all municipal and other governmental fees in connection therewith except those expressly provided by the specifications as being the responsibility of the Owner, and shall furnish at its expense any and all bonds and cash or other deposits required by law or required by any lawful body having the right to make demand therefor.

F. The Contractor shall procure a zero-cost Temporary Use Permit from the City’s Community Planning and Development Department for any dumpster, staging area,
parking area, sanitary facilities, or other temporary facilities that will be necessary for the Work.

G. The Contractor shall provide traffic control plans and provide all traffic control necessary for all Work that requires closures of public roadways, lanes, or sidewalks. The Contractor shall procure a zero-cost Street Closure Permit from the City’s Public Works Department for each roadway, lane, or sidewalk closure necessary to complete the Work.

H. The Contractor shall specifically be responsible for registering with the City Clerk pursuant to Article VII of Chapter 6 of the Black Hawk Municipal Code, and shall further be responsible for requiring that all Subcontractors register with the City Clerk pursuant to Article VII of Chapter 6 of the Black Hawk Municipal Code, and pay the necessary registration fee. The Contractor shall similarly require that each Subcontractor provide any required certificate of insurance to the City Clerk pursuant to Section 6-222 of the Black Hawk Municipal Code.

I. The Owner will provide rights-of-way and permanent and temporary easements as shown on the plans for construction purposes. Any additional land actually needed by the Contractor for performance of the Work, proper location of its plant and equipment, or the storage of materials and supplies for the Work, shall be furnished by the Contractor.

Section 9 Protection of Work, Property, and Persons

A. The Contractor shall be responsible for initiating and maintaining all safety precautions and programs in connection with the Work. The Owner will not be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to all employees on the Work who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site, and other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

B. The Contractor shall, at all times, consult with and obtain the approval of the Owner for the storage of material, operation of equipment, placing of temporary structures, or dispositions of any surplus or waste materials upon property of the Owner anywhere outside the limits of construction. The Contractor shall comply with all state, federal, and local laws related to the storage or placement of any supplies, equipment, structures, or any other materials.

C. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. The Contractor shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Contractor shall notify owners of adjacent utilities when prosecution of the Work may affect them. The Contractor shall remedy at its expense all damage, injury, or loss to any property or person caused, directly or indirectly, in whole or in part,
by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of
them, or anyone for whose acts any of them may be liable, except damage or loss
attributable to the fault of the Contract Documents or to the acts or omissions of the
Owner or anyone for whose acts the Owner may be liable, and not attributable, directly or
indirectly, in whole or in part, to the fault or negligence of the Contractor. Notwithstanding
the provisions of C.R.S. § 13-20-802.5(2), for purposes of this
Agreement, the measure of damages shall never be deemed to be the fair market value of
the real property without an alleged construction defect.

D. The Contractor shall observe all rules and regulations of the health department having
jurisdiction and shall take precautions to avoid creating unsanitary conditions.

E. In emergencies affecting the safety of persons or the Work or property at the Site or
adjacent thereto, the Contractor, without special instruction or authorization from the
Owner, shall act to prevent threatened damage, injury, or loss.

F. The Contractor shall at all times conduct Work in such a manner as to cause the least
inconvenience and greatest protection to the general public. The Contractor shall furnish
and maintain barricades, warning signs, red flags, lights, and temporary passageways as
may be necessary to protect the Work and to safeguard the public. The cost of furnishing
and maintaining the above facilities shall be incidental to the Agreement and no extra
compensation for it will be allowed.

G. Throughout the performance of the Work or in connection with this Agreement, the
Contractor shall construct and adequately maintain suitable and safe crossings over
trenches and such detours as are necessary to care for public and private traffic. The
material excavated from trenches shall be compactly deposited along the sides of the
trench or elsewhere in such a manner as shall give as little inconvenience as possible to
the traveling public, to adjoining property owners, to other contractors, or to the City.

H. In performing the Work, the Contractor shall take the necessary action, including making
arrangements with the owners or operators of existing power, cable, and telephone lines,
fiber-optic and telemetry lines, gas, water, sewer, and other utilities or installations that
may be encountered, whether privately or publicly owned, to prevent interference with the
conditions, operations, and maintenance of the respective utilities in a manner satisfactory
to the owners or operators of the respective utilities. Relocation or repair of utilities
encountered even though not shown on the plans, shall be the responsibility of the
Contractor. The cost of the above measures, including maintaining of guards, watchmen,
signals, barricades, and temporary structures, making any necessary repairs and other
cooperative or corrective Work shall be borne by the Contractor and shall be included in
the prices bid for the related items of Work. The Owner shall not be responsible to the
Contractor for the existence of utilities not shown on the plans or drawings and the
Contractor remains obligated under this paragraph for all hidden utilities.

I. The Contractor shall be responsible for the preservation of all private or public property
along and adjacent to the Work and shall take all necessary precautions to prevent
damage or injury thereto. Such preservation and protection shall include but not be
limited to, trees, stone walls, fences, mail boxes, monuments, irrigation ditches, driveways, road access culverts, underground pipelines, and structures. Such preservation and protection shall apply to all underground pipelines and utilities whether public, private, or individually owned that are in or adjacent to the right-of-way. When direct or indirect damage is done to public or private property on account of the act, omission, neglect, or misconduct in the prosecution or non-prosecution of the Work on the part of the Contractor, such property shall be restored by the Contractor at the Contractor’s expense to a condition similar or equivalent to that which existed before such damage or injury was done, and brought up to current codes if applicable. The Contractor shall be responsible for making all arrangements at its own expense for moving and operating equipment at temporary crossings of telephone and transmission lines, railroad tracks, irrigation ditches, and pipelines.

Section 10 Communication with the Owner

The Contractor shall designate a responsible member of its organization at the Site, whose duty shall be designated as the contact person for all communication between the Owner and the Contractor. Said designated representative shall also be responsible to attend such meetings as may be required to ensure coordination and adequate performance of the Work.

Section 11 Scope of Work

The scope of Work is described in the Contract Documents which are appended hereto and incorporated herein by this reference as Exhibit A.

Section 12 Contractor’s Responsibility

A. The Contractor shall be responsible for all the Work under this Agreement until completion and final acceptance by the Owner.

B. The Contractor shall supervise and direct the Work. It shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

C. The Contractor shall employ on the Work only such persons who are competent and skilled in their assignments. Any employee who obstructs the progress of the Work through incompetence or other means, or conducts himself or herself improperly shall be discharged or removed from the Work when so requested by the Owner. This section shall not create a duty for the Owner to evaluate or assess the competence or skills of the Contractor’s employees.

D. The Contractor warrants that all materials and equipment furnished and incorporated by it in the Project shall be new, unless otherwise specified, and that all Work under this Agreement shall be of good quality, free from fault and defects, and in conformity with the Contract Documents. All Work not conforming to these standards shall be considered defective. The warranty provided herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
E. The Contractor agrees that if it should fail or neglect to prosecute the Work diligently and properly, or fail to perform any provisions of this Agreement, that the Owner, after three (3) days written notice to said Contractor may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due to the Contractor pursuant to this Agreement.

F. Tools furnished with any equipment may be used for erection purposes when approved by the Owner and shall be turned over to the Owner after completion of the erection in a condition acceptable to the Owner. In case of rejection by the Owner, the Contractor shall replace the tool or tools at no extra cost to the Owner.

G. Upon completion and before final acceptance of the Work, the Contractor shall remove from the Site of the Work and property of the Owner, all machinery, equipment, surplus materials, rubbish, barricades, signs, and temporary structures and shall leave the premises in a condition which is satisfactory to the Owner.

H. The Contractor shall keep one record set of the Contract Documents annotated to show all changes made during construction.

I. The Contractor shall be responsible for the acts and omissions of all its employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Contractor.

J. Upon completion of the Work, the Contractor shall, at its expense, remove from the vicinity of the Work, all plant, buildings, rubbish, unused materials, concrete forms, and other like material, belonging to the Contractor or used under its direction during construction, and in the event of its failure to do so, the same may be removed by the Owner, and the Contractor and its surety or sureties shall be liable for the cost thereof. Also during the construction of the Work, the Site, partially finished structures, and material stockpiles shall be kept in a reasonable state of order and cleanliness.

Section 13  Changes in the Work

A. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, only by Change Order or Construction Change Directive, subject to the limitations stated in this Article and elsewhere in the Contract Documents.

1. A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor.

2. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.
3. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted; provided however, that Owner may increase the number of units without change in the unit price, if reasonable.

B. **CHANGE ORDERS.** The Contract Sum and the Contract Time may be changed only by Change Order. Methods used in determining adjustments to the Contract Sum may include those listed in Subsection C below. A Change Order is a written order to the Contractor, signed by the Contractor and the Owner, stating their agreement upon all of the following:

1. A change in the Work;

2. The amount of the adjustment in the Contract Sum, if any; and

3. The extent of the adjustment in the Contract Time, if any.

C. **CONSTRUCTION CHANGE DIRECTIVES.** A Construction Change Directive is a written order directed to the Contractor and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

1. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

2. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

   a. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

   b. By unit prices stated in the Contract Documents or subsequently agreed upon;

   c. By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

   d. By the method provided in Subparagraph (C)(5).

3. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the
Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

4. A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time and the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

5. If the Contractor does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed five percent (5%) of such Work's actual cost for Contractor and ten percent (10%) of such Work's actual cost to be apportioned between any and all Subcontractors and sub-Subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this subparagraph, actual costs shall be defined as and limited to the following:

a. Costs of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

b. Costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;

c. Reasonable rental costs of machinery and equipment, exclusive of hand tools, obtained and used specifically for such Work, whether rented from the Contractor or others; and

d. Costs of premiums for all bonds (if any), permit fees, and sales, use, or similar taxes directly attributable to such Work. Actual cost does not include any item which could be deemed to be a general conditions cost or overhead, such as but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses.

6. Pending final determination of actual cost to the Owner, amounts not in dispute may be included in applications for payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are
involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

7. If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be determined in accordance with Article 5 hereof.

8. When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

Section 14  Contract Documents

In case of conflict between this Agreement, the general conditions of the contract for construction, and the supplementary conditions, this Agreement will govern.

ARTICLE 4 – CONTRACTOR’S CONSTRUCTION SCHEDULE

Section 1  Preconstruction Conference

A preconstruction conference shall be scheduled at the time the GMP Amendment is executed. The Contractor, at the preconstruction conference, shall prepare and submit, for review and concurrence by the Owner, a Contractor’s construction schedule for the Work, in such form and detail as the Owner may require. The schedule shall not exceed time limits under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for the expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days for submission to the Owner with Contractor’s applications for payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Agreement (as the same may be extended as provided in the Contract Documents), the Contractor shall submit to the Owner, for its review and approval, a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time.

Section 2  Schedule of Submittals

The Contractor shall prepare and keep current, for approval by the Owner and Consultants, a schedule of Submittals which is coordinated with the Contractor’s construction schedule and allows the Owner and Consultants reasonable time to review Submittals.
Section 3  Conformance to Schedule

The Contractor shall conform to the most recent schedules.

ARTICLE 5 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES

A. The date of beginning and the time for completion of the Work are essential conditions of the Contract Documents, and the Work embraced shall be commenced on a date specified in the Notice to Proceed.

B. The 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 Contractor and the Owner, that the Contract Time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work during the period such Work is to be performed.

C. If the Contractor shall fail to complete the Work within the Contract Time, or extension of time granted by the Owner through a Change Order or Construction Change Directive, then the Contractor shall pay to the Owner the amount of liquidated damages and not as penalty the sum of Two Thousand Dollars ($2,000.00) for each calendar day that the Contractor shall be in default after the time stipulated in the Contract Documents.

D. The Owner will charge the Contractor, and may deduct from the partial and final payment for the Work, all architectural, engineering, construction management, and other Consultant expenses incurred by the Owner in connection with any Work accomplished after the specified completion date.

E. The 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 the Contractor has promptly given written notice of such delay to the Owner.

   1. To any preference, priority, or allocation order duly issued by the Owner.

   2. To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather conditions that could not be reasonably anticipated; and

   3. To any delays of Subcontractors occasioned by any of the causes specified in subparagraphs 1 and 2 of this paragraph E.

F. The Contractor waives any right of recovery or reimbursement or by whatever name, as against the Owner, as a result of any delay or increase on overhead cost incurred by the
Contractor's association with any action or inaction on the part of any other trade contractor or Supplier.

ARTICLE 6 - CONTRACT SUM

A. The City Council of the City of Black Hawk has appropriated the money necessary to fund this project. The Owner shall pay the Contractor the Contract Sum in current funds for the performance of the Work, subject to any additions and deletions by written Change Order. Notwithstanding anything to the contrary contained in this Agreement, no Change Order or other form of directive by the Owner requiring additional compensation, which causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Original Contract Amount, unless the Contractor is given written assurance by the City of Black Hawk that lawful appropriations have been made by the City Council of the City of Black Hawk to cover the cost of the additional Work.

B. The Contractor hereby agrees that estimates of the value of all Work provided to the Owner shall be for Work actually performed upon the Project and that all such Work, including labor and materials, has been paid. The determination of the amount of Work completed on each application for payment by the Contractor shall be subject to approval by the Owner. However, such determination by the Owner shall not be construed as acceptance of the Work.

1. Before the first application for payment, the Contractor shall submit to the Owner a schedule of values to be allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Consultants or Subcontractors, supported by such evidence of correctness as the Owner may direct. This schedule shall be used to monitor the progress of the Work and as a basis for making progress payments hereunder. Application for monthly progress payments shall be made in writing in accordance with this Contract and shall be submitted on AIA Document G702 and AIA Document G703 or other format as approved by the Owner. Applications for payment shall be submitted to the Owner on a monthly basis. Approved applications for payment that remain unpaid thirty (30) days after the application date are subject to an interest rate of 12% per year.

2. Pursuant to Colo. Rev. Stat. § 24-91-103, as may be amended, where the Original Contract Amount exceeds one hundred fifty thousand dollars ($150,000.00), the Owner will retain five percent (5%) of the calculated value of completed Work from each progress payment up until the Work is completed satisfactorily and finally accepted by the Owner. If the Owner finds satisfactory progress is being made in any phase of the Work, the Contractor may make written request of the Owner for payment of the withheld percentage. The Owner may agree to payment of the withheld percentage if the Owner finds satisfactory and substantial reasons exist for the payment. The Contractor must provide written approval to the Owner from any surety furnishing bonds for the contract Work in order to receive said payment of the withheld percentage.
3. Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance by the Owner and upon receipt of final application for payment, the Owner will promptly make such final field review subject to the final payment requirements contained in Colo. Rev. Stat. § 38-26-107, as amended. If the Owner finds that the Work is acceptable under the Contract Documents, a final certificate of payment will be issued. Neither final payment nor the remaining retention shall become due until the Contractor submits to the Owner an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work, have been paid or otherwise satisfied. Likewise, final payment shall not be made until the consent of the surety to final payment has been obtained, and if required by the Owner, such other data establishing payment or satisfaction of all obligations, including releases, final lien waivers, and receipts and warranties, if any, have been provided to the Owner for the use and benefit of the Owner. Should any Subcontractor of the Contractor or Supplier of said Contractor refuse to furnish any warranty and/or release or waiver, the Owner in its sole discretion, may refuse to certify final payment. The Contractor may then furnish sufficient bonds satisfactory to the Owner to indemnify the Owner against any such liens.

4. Before final payment will be made to the Contractor, the Owner is required to comply with State statutes regarding publication of a notice of final settlement specifying the date of such final settlement.

5. Any unpaid supplier of materials, equipment, services, or labor may file a verified statement with the Owner indicating the amount due and owing on or before the date set for final settlement.

6. Before final payment will be made, the Contractor shall provide final electronic files and one hard-copy set of as-built drawings and specifications to the Owner, updated to reflect the final condition of the Project.

6. Notwithstanding anything else to the contrary contained herein, such final payment by the Owner shall not be construed as a waiver of any claims affecting or arising from:

   a. Unsettled liens;

   b. Faulty or defective Work appearing after Substantial Completion;

   c. Failure of the Work to comply with the requirements of the Contract Documents;

   d. Terms of any special warranties required by the Contract Documents.

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

ARTICLE 7 - CORRECTION OF WORK

A. During the life of the Contract and for a period of two (2) years after final acceptance, the Contractor shall promptly remove from the premises all Work rejected by the Owner for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of other trade contractors destroyed or damaged by such removal or replacement. The Owner, however, may at its discretion elect to accept an equitable reduction in Contract Sum or a refund instead of correction of the condemned Work.

B. All removal and replacement Work shall be done at the Contractor’s expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of written notice, the Owner may remove such Work and store the materials all at the expense of the Contractor.

ARTICLE 8 - TEMPORARY FACILITIES AND SERVICES

A. Unless otherwise provided in this Agreement, the Contractor shall furnish and make available, at no cost, all temporary facilities, including all power needed for heating and protection of facilities and Work. It is the expressed intent of the parties that the Contractor shall be responsible for and at its sole cost all heating and protection of facilities and Work.

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

ARTICLE 9 - INDEMNIFICATION AND INSURANCE

Section 1 Indemnification

The 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 Agreement, to the extent that such injury, loss, or damage is attributable to the act, omission, error, professional error, mistake, negligence, or other fault of the Contractor, the Contractor’s
employees, Subcontractors, or anyone else employed directly or indirectly by the Contractor, Contractor’s employees, Consultants, or Subcontractors.

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 2 Insurance

A. The Contractor agrees to obtain and maintain during the life of this Agreement, a policy or policies of insurance against all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 1 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 1 above, by reason of its failure to obtain and maintain during the life of this Agreement insurance in sufficient amounts, durations, or types.

B. The Contractor shall obtain and maintain during the life of this Agreement, and shall cause any Subcontractor to obtain and maintain during the life of this Agreement, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor pursuant to Section 1 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers’ Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the Work under this Agreement, and Employers Liability Insurance with minimum limits of Five Hundred Thousand Dollars ($500,000) each incident, Five Hundred Thousand Dollars ($500,000) disease—policy limit, and Five Hundred Thousand Dollars ($500,000) disease—each employee.

2. General Public Liability Insurance to be written with a limit of liability of not less than One Million Dollars ($1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than Two Million Dollars ($2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and
completed operations) shall be not less than One Million Dollars ($1,000,000) for all damages arising out of injury to or destruction of property in any one accident and not less than Two Million Dollars ($2,000,000) for all damages arising out of injury to, or destruction of property, including the City's property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

3. Protective Liability and Property Damage Insurance covering the liability of the Owner, including any employee, officer, or agent of the Owner with respect to all operations under the Agreement by the Contractor or its Subcontractors shall be obtained and maintained during the life of the Agreement. The limits of the Owner's Protective Liability Policy, to be provided by the Contractor, as described in this Section 2, shall be increased to the same limits as described above for the Contractor's General Public Liability Insurance.

4. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars ($1,000,000) each occurrence and One Million Dollars ($1,000,000) aggregate with respect to each of the 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 Agreement.

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 Agreement shall rest with the Contractor's Insurer.

Section 3 Certificates of Insurance

A. The certificate of insurance provided by the Contractor shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Owner prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated, or materially changed until at least 30 days' prior written notice has been given to the Owner. The completed certificate of insurance shall be sent to:
Matt Reed  
Project Manager  
City of Black Hawk  
P.O. Box 68  
Black Hawk, Colorado 80422

B. Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Owner may immediately terminate this Agreement, or at its discretion the Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the Contractor to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to the Contractor from the Owner.

C. The Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. The parties hereto understand and agree that the Owner is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the Owner, its officers, or employees.

**ARTICLE 10 – PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS**

The Contractor shall within ten (10) days after the receipt of a notice of award, furnish the Owner with a performance bond and a payment bond in penal sums equal to the amount of the Contract Sum, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions, and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents. Such bonds shall be executed by the Contractor and a corporate bonding company licensed to transact such business in the state in which the Work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Contractor. If at any time a surety on any such bond is declared bankrupt, or loses its right to do business in the state in which the Work is to be performed, or is removed from the list of Surety Companies accepted on Federal Bonds, the Contractor shall within ten (10) days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Contractor. No further payments will be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Owner.
ARTICLE 11 - CLAIMS AND DISPUTES

A. Definition. A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. The term “claim” also includes other disputes between the Owner and Contractor arising out of or relating to the Agreement. Claims must be made by Written Notice. The responsibility to substantiate claims shall rest with the party making the claim.

B. Time limits on claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

C. Continuing performance. Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Contractor shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

D. Waiver of claims: Final Payment. The making of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

1. Liens, claims, security interests, or encumbrances arising out of the Agreement and unsettled;

2. Failure of the Work to comply with the requirements of the Contract Documents;

3. Terms of special warranties required by the Contract Documents; or

4. Faulty or defective Work appearing after Substantial Completion.

E. Claims for concealed or unknown conditions. If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Site conditions which an experienced and prudent contractor could have anticipated by visiting the Site, becoming familiar with the local conditions under which the Work is to be performed, and correlating its observations with the requirements of the Contract Documents shall not be considered as claims for concealed or unknown conditions, nor shall the locations of utilities which differ from locations provided by the utility companies. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor’s cost of, or the required time for performance of any part of
the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Owner has given notice of the decision. If the Contractor disputes the Owner’s determination or recommendation, the Contractor may proceed as provided in the Contract Documents.

F. Claims for additional cost. If the Contractor wishes to make claim for an increase in the Contract Sum, Written Notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by the Owner. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) failure of payment by the Owner, (4) termination of the Agreement by the Owner, (5) Owner’s suspension, or (6) other reasonable grounds, claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive.

G. Claims for additional time. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor’s claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary.

H. Injury or damage to person or property. Subject to the parties’ obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party’s employees or agents, or of others for whose acts such party is legally liable, Written Notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for additional cost or time related to this claim is to be asserted, it shall be filed as provided in Article 3, Section 13.

**ARTICLE 12 - RESOLUTION OF CLAIMS AND DISPUTES**

A. When either the Contractor or the Owner makes a claim, the other party shall review the claim and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the claimant indicating when the other party expects to take action; (3) reject the claim in whole or in part, stating the reasons for rejection; (4) approve the claim; or (5) suggest a compromise. When a claim is made against the Contractor, the Owner may
also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

B. If a claim has been resolved, the Owner will prepare or obtain appropriate documentation.

C. If a claim has not been resolved, the party making the claim shall within ten (10) days after the preliminary response from the other party, take one or more of the following actions: (1) submit additional supporting data requested by the other party; (2) modify the initial claim; or (3) notify the other party that the initial claim stands.

D. If a claim has not been resolved after consideration of the foregoing, either party may file for non-binding mediation to be held in the place where the Project is located, unless another location is mutually agreed upon. If the parties fail to resolve their dispute through mediation, final dispute resolution shall be by litigation in a court of competent jurisdiction.

E. The dispute clause does not preclude the considerations of questions of fact or law in connection with decisions provided for in Paragraph A above. Nothing in this Agreement, however, shall be construed as making final a decision of an administrative official, representative, or City Council on a question of fact or law.

F. As between the parties of this Agreement, as to all acts or failure to act by either party of this Agreement, any applicable statute of limitation shall commence to run from the date of the agreed party’s discovery of such act or failure to act.

G. The Contractor shall give Written Notice to the Owner within ten (10) days of any dispute/claim arising under this Contract upon which the Contractor seeks compensation or change from the Contract Documents; otherwise, the Contractor’s dispute/claim shall be deemed waived. Said ten (10) days Written Notice shall not be deemed to run from the date of discovery in this instance but from the date the dispute/claim has arisen.

ARTICLE 13 - TERMINATION

A. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party; provided that no such termination may be effected unless the other party is given (1) not less than ten (10) days Written Notice of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination.

B. This Agreement may be suspended or terminated in whole or in part, in writing, by the Owner for its convenience; provided that no such termination may be effected unless the Contractor is given (1) not less than ten (10) days Written Notice of intent to suspend or terminate; and (2) an opportunity for consultation with the Owner prior to suspension or termination.
C. Suspension for Convenience: The Owner, for its own convenience, may suspend the Agreement in whole or in part at any time by Written Notice to the Contractor. Such notice shall state the extent and the effective date of such suspension, and on the effective date thereof the Contractor shall promptly suspend such Work to the extent specified, and during the period of such suspension shall properly care for and protect all Work, materials, housing, and equipment on hand for construction under the Agreement. The Contractor also shall promptly supply the Owner with copies of all outstanding orders for materials, equipment, and services, and shall take such action relative to such orders as may be directed by the Owner. If the performance of the Work is thus suspended, the Contractor shall be entitled to be reimbursed for all additional expense incurred by reason of such suspension as agreed upon by the Contractor and the Owner.

D. Termination for Convenience:

1. The Owner may for its own convenience terminate Work under the Agreement in whole or in part at any time by Written Notice to the Contractor. Such notice shall state the extent and the effective date of such termination and on the effective date thereof, the Contractor will, and as to the extent directed, stop Work under the Agreement and the placement of further orders of subcontracts under the Agreement, terminate Work under order and subcontracts under the Agreement, and take any necessary action to protect property in the Contractor’s possession in which the Owner has or may acquire an interest.

2. In the event of such termination, the Owner shall pay to the Contractor: (1) its direct costs (excluding overhead) for all Work done in conformity with the Agreement to the effective date of such termination and (2) other costs pertaining to the Work which the Contractor may incur as a result of such termination, all as approved by the Owner plus ten percent (10%) of such costs (excluding costs under (2) above) for overhead and profit, provided, however, that in no event shall the total amount to be paid under this Article 13, Section D.(2) plus payments previously made, exceed the lesser of (a) the total aggregate Contract Sum specified in the Agreement; or (b) that proportion of the aggregate total Contract Sum specified in the date of termination that bears to the entire Work to be performed hereunder. Any payment under this Article 13, Section D.(2) shall be made upon the expiration of the period within which liens may be filed under the laws of the state of Colorado, subject, however, to withholding by the Owner for the reasons and in the manner provided in those provisions pertaining to withholding of payments for liens.

E. Termination for Default:

1. The Owner shall have the right to terminate the employment of the Contractor after giving ten (10) days Written Notice of the termination to the Contractor in the event of any default by the Contractor. In the event of such termination, the Owner may take possession of the Work and of all materials, tools, and equipment thereon and may finish the Work by whatever method and means it may select. It shall be considered a default by the Contractor whenever the Contractor:
a. Disregards or violates important provisions of the Contract Documents or the Owner’s instructions, or fails to prosecute the Work according to the Agreement schedule of completion, including extensions thereof;

b. Fails to provide a qualified representative, competent workmen or Subcontractors, or proper materials, or fails to make prompt payment therefor; and

c. Fails to submit a completion schedule within fourteen (14) days after award of contract.

2. Upon termination of the Agreement by the Owner for default by the Contractor, no further payments shall be due to the Contractor until the work is completed. If the unpaid balance of the contract amount shall exceed the cost of completing the Work including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the Work shall exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount of the cost incurred by the Owner in implementing the Work, and the damage incurred through the Contractor’s default, shall be approved by the Owner.

3. The provisions of this Article 13, Section D.(2) shall not apply in the event of default of the Contractor; provided, however, that the provisions of Article 13, Section D.(2) shall apply in the event of substantial failure by the Owner to fulfill its obligations under this Agreement.

ARTICLE 14 - SIMULTANEOUS WORK BY OTHERS

A. The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other trade contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its Work with theirs.

B. If the proper execution or results of any part of the Contractor’s Work depends upon the work of any other trade contractor, the Contractor shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report defects shall constitute an acceptance of the other trade contractors’ work as fit and proper for the addition of its work thereto, except as to defects which may develop in the other trade contractors’ work after the execution of its Work.

C. The Contractor shall coordinate its operations with those of other trade contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the Work.

D. The Contractor, including its Subcontractors, shall keep informed of the progress and the detail work of other trade contractors and shall notify the Owner immediately of lack of
progress, defective workmanship, or lack of coordination on the part of other trade contractors. Failure of the Contractor to keep informed of the Work progressing on the Site and failure to give notice of lack of progress, defective workmanship, or lack of coordination by others shall be construed as acceptance by it of the work and the status of work as being satisfactory for proper execution of its own Work.

E. All materials and labor shall be furnished at such times as shall be for the best interest of all trade contractors concerned, to the end that the combined work of all may be properly and fully completed on time per this Contractor Agreement.

F. Nothing herein shall be construed in any way as giving the Contractor a claim as against the Owner resulting in any revised schedule based upon delay caused by any other trade contractor or supplier.

**ARTICLE 15 - SUBCONTRACTING**

A. The Contractor may utilize the services of specialty Subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty Subcontractors.

B. Before execution of the Agreement, the Contractor shall submit the names of all Subcontractors, including contact persons, phone numbers, and addresses to the Owner. The Contractor shall also promptly notify all parties of any changes in Subcontractors or Subcontractor contact information.

C. The Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is responsible for the acts and omissions of persons directly employed by it.

D. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

E. Nothing contained in this Agreement will create any contractual relation between any Subcontractor and the Owner.

**ARTICLE 16 - GUARANTY**

A. The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of two (2) years from the date of final acceptance of the Agreement by the Owner that the Work is free from all defects due to faulty materials or workmanship and that the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such
reparis, adjustments, or other Work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The performance bond shall remain in full force and effect through the guarantee period.

B. Whenever in the specifications a guarantee or maintenance bond is required to be furnished for any item of equipment, material, or portion of the Work, such guarantee shall be submitted to the Owner and a written approval will be issued to the Contractor before any such equipment, material, or construction is ordered and incorporated in Work by the Contractor.

ARTICLE 17 - SALES TAX

The Owner has received an exemption granted by the Colorado State Department of Revenue that provides for tax-free purchases or materials. The Owner will provide this exemption certificate to the Contractor, and the Contractor shall ensure that all Subcontractors and Suppliers engaged for the Work receive the same certificate. The Owner reserves the right to require such additional information and/or documentation as may be necessary to ensure that no sales taxes are paid by the Contractor or any Subcontractor or Supplier and charged to the Owner. If sales tax is paid to any Subcontractor or Supplier for any reason, the Contractor is responsible for applying to the Sales Tax Division of the Colorado Department of Revenue for a refund.

ARTICLE 18 - MISCELLANEOUS PROVISIONS

A. This Agreement is made and entered into subject and conformable to the laws of the State of Colorado and the Charter of the City of Black Hawk. To the extent any provision hereof is inconsistent with said laws and Charter, said laws and Charter shall control.

B. The Contractor shall comply with all federal and state laws and local ordinances and regulations which affect those engaged or employed in the Work or which affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations, and decrees, and shall protect and indemnify the Owner against any claim or liabilities arising solely from or based solely on the violations of such law, ordinance, regulation, order, or decree, whether by itself, its sub-consultants, agents, or employees.

C. The Contractor shall take affirmative action to not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, or handicap, if otherwise qualified.

D. In the event any provision of this Agreement is held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.

E. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver or a subsequent breach of the same by the other party.
F. The Owner and the Contractor each binds itself and its partners, successors, executors, administrators, and assigns to this Agreement. Neither the Owner nor the Contractor will assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

G. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Owner and the Contractor.

H. Illegal Aliens

1. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform Work under the Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform Work under the Agreement.

2. Prohibited Acts. Contractor shall not:
   
   a. Knowingly employ or contract with an illegal alien to perform Work under this Agreement; or

   b. Enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform Work under this Agreement.

3. Verification

   a. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform Work under this Agreement through participation in either the E-Verify Program or the Department Program.

   b. Contractor shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

   c. If Contractor obtains actual knowledge that a Subcontractor performing Work under this Agreement knowingly employs or contracts with an illegal alien who is performing Work under the Agreement, Contractor shall:

      i. Notify the Subcontractor and the City within three (3) days that Contractor has actual knowledge that the Subcontractor is
employing or contracting with an illegal alien who is performing Work under the Agreement; and

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

4. Duty to comply with investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

5. If Contractor does not currently employ any employees, Contractor shall sign the No Employee Affidavit attached hereto.

6. If Contractor wishes to verify the lawful presence of newly hired employees who perform Work under the Agreement via the Department Program, Contractor shall sign the Department Program Affidavit attached hereto.

I. Keep Jobs in Colorado Act. Pursuant to the Keep Jobs in Colorado Act, C.R.S. 8-17-101 et seq. (the “Act”) and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the “Rules”), the Contractor shall employ Colorado labor to perform at least eighty percent (80%) of the Work and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, “Colorado labor” means any person who is a resident of the state of Colorado at the time of this Project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide qualification. A resident of the state is a person who can provide a valid Colorado driver’s license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate for any fiscal year.
ARTICLE 19 - ATTACHMENTS, SCHEDULES, AND SIGNATURES

It is further mutually agreed that this Agreement and the Contract Documents constitute the entire Agreement between the Owner and the Contractor and supersede all prior or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written amendment.

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

CITY OF BLACK HAWK, COLORADO

By: ____________________________
    David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

______________________________
Corey Y. Hoffmann, City Attorney

CONTRACTOR Roche Constructors, Inc.

By: ____________________________
    Name: Thomas J. Roche

Title: President & CEO

STATE OF COLORADO )
    ) ss.
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 19th day of February 2019 by Thomas J. Roche, as President & CEO of Roche Constructors, Inc.

My commission expires: 10/23/19

Witness my hand and official seal.

______________________________
Notary Public
PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: Roche Constructors, Inc. (Prospective Contractor)

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

Project Name Gregory Street Phase 2

Bid Number N/A Project No. 18015

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

Executed this 19th day of February, 2019.

Prospective Contractor Roche Constructors, Inc.

By: Thomas J. Roche

Title: President & CEO
NO EMPLOYEE AFFIDavit

1. Check and complete one:

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

OR

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

2. Check one.

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

_The City must verify this statement by reviewing one of the following items:_

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

OR

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

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

__________________________  __________________________
Signature                  Date
DEPARTMENT PROGRAM AFFIDAVIT

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

I, Thomas J. Roche, as a public contractor under contract with the City of Black Hawk (the “City”), hereby affirm that:

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

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

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

______________________________
Contractor Signature

February 19, 2019

Date

STATE OF COLORADO

) ss.

COUNTY OF Weld

The foregoing instrument was subscribed, sworn to and acknowledged before me this 19th day of February, 2019, by Thomas J. Roche as President & CEO of Roche Constructors, Inc.

My commission expires: 10/23/19

(SEAL)

Notary Public

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ACCEPTABLE DOCUMENTS FOR
LAWFUL PRESENCE VERIFICATION

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

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

OR

Documents that Only Serve to Prove Citizenship/Lawful Presence:

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

AND

Documents that Serve to Prove Identification:

- A Driver’s License or Identification Card Regardless of the State of Issuance
- School Identification Card with Photograph
- Identification Card Issued by Federal, State or Local Government
- A Driver’s License Issued by a Canadian Government Authority
EXHIBIT A
SCOPE OF SERVICES/BASIS OF DESIGN
CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CMGC)
GREGORY STREET PHASE 2
City of Black Hawk, Colorado
February 15, 2019

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

A. A hardscaped plaza area will be constructed on the north side of Gregory Street between High and Church Streets. The plaza area will consist of several retaining walls, staircases, ADA-accessible ramps, handrails, and landscaping areas.

1. Work will include demolition of the existing handrail along the north side of Gregory Street. New handrails shall match the existing handrail and will be placed along the top of new retaining walls as required by code.
2. Retaining walls shall be concrete with stone veneer to match other retaining walls along Gregory Street.
3. Stairs shall be constructed of Grip Strut treads with sloped concrete poured at least one foot below the treads.
4. The main plaza area shall consist of vehicle-rated concrete pavers underlain with sand.
5. The patio areas shall be stamped concrete.
6. The ramp shown at the east end of the plaza shall be constructed of lumber, as it is temporary and will be removed when a future developer constructs a building at the northwest corner of Gregory and Church Streets.
7. Plaza lighting will be provided by pedestrian lighting with a “Hawk” silhouette.
8. A small pocket park will be constructed at the southeastern corner of Gregory and Bobtail Streets.

B. Four wood-frame structures along the north side of Gregory Street will be reconstructed.

1. The two buildings at 305 and 311 Gregory Street will be combined to form the McAfee House. The building at 321 Gregory Street will be known as the Woodbury House and the building at 351 Gregory Street will be the Norton House.
2. Interiors for these properties shall be painted drywall with flooring yet to be determined. Floorplans will be open with the exception of the second level of the McAfee and Norton Houses. One bathroom will be constructed in each building with plumbing roughed in for a second bathroom.
3. It is possible that some of the historic structure members and/or the building exteriors will be re-used, but new spread-footing foundations will be required. Therefore,
moving the shell from the existing foundation and replacing it on a new foundation may be considered, as well as jacking up the existing shell and constructing a new foundation underneath.

4. The Woodbury and McAfee Houses will be raised a few feet each. The Norton House will be relocated approximately 5’ towards the north.

5. These structures will not be equipped with fire suppression systems.

6. An asphalt access path will be constructed from a point behind the Woodbury House eastward to Church Street. Contractor shall assume that the proposed retaining wall north of this path will be constructed by others under a separate contract.

C. Two new structures will be constructed: A display structure that will house one of the City’s antique fire engines, and a building containing public restrooms.

D. The existing wood frame structures at 211 and 221 Gregory Street will be renovated.

1. Exterior work will include new windows, doors, siding, and roofing.

2. The buildings will be divided into three separate spaces with open floorplans and finishes similar to those described above for the other existing structures.

3. Contractor shall assume that there will be no proposed elevators. Stairs will be the only way to access the upper level.

4. An existing fire suppression system will need to be removed and a new system installed.

E. The 900-square foot Bobtail Mine masonry building on the south side of Gregory Street at High Street will be rehabilitated. A wooden deck will be constructed around this structure, and other pedestrian hardscape will be constructed in the vicinity. The building shall remain as an open floorplan with no restrooms.

F. A 300-square foot building currently known as 261 Gregory Street will be relocated from a point northeast of the Gregory/Church intersection to a point on the south side of Gregory Street, just west of the Bobtail Mine building. This building will be converted into two restrooms.

G. Utility work will consist of extending services to each building, plus replacing approximately 570 lineal feet of an existing poured-in-place drainage flume with a new 9’ x 5’ concrete box culvert.

H. An existing staircase on the north side of Gregory Street near 241 Gregory Street will be widened to form a “Grand Staircase”. The staircase will be constructed of Grip Strut treads with sloped concrete poured at least one foot below the treads. Retaining wall and handrail modification and construction will be required to accommodate the Grand Staircase.

I. The area along the north side of Gregory Street between High and Church Streets will be available for the Contractor to use as a staging, storage, and laydown area. A safe pedestrian route must be maintained through/around this area at all times. A safe pedestrian path to the church must also be maintained. The Crooks Palace parking lot may be available for use as a staging, storage, and laydown area during construction of the properties at 211 and 221 Gregory Street.

J. Contractor parking is available in the paved parking lot at the northwest corner of Gregory and High Streets.
K. The building at 271 Gregory Street, located at the northeast corner of Gregory and Church Streets, is available for the Contractor to lease from the City as a construction office. The rent is $1,500 per month, which includes water and sewer but does not include power, phone, fiber, or cable utilities.

L. The City is contracting directly with professional design firms to perform the design work required for the Project. The Contractor shall coordinate with these consultants per the terms and conditions in the CMGC contract.
# EXHIBIT B-1
CONSTRUCTION MANAGER/GENERAL CONTRACTOR FEE PROPOSAL
GREGORY STREET PHASE 2
RFP Issued January 11, 2019

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|                       | CMGC's Proposed Fee on Change Orders | 10.0%    |
### EXHIBIT B-2
CONSTRUCTION MANAGER/GENERAL CONTRACTOR COST PROPOSAL
GREGORY STREET PHASE 2
RFP Issued January 11, 2019

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| 2     | CMGC'S TOTAL PROPOSED COSTS                          |           |      |           | $1,713,723 |
## EXHIBIT B-3
CMGC FEE AND COST PROPOSAL SUMMARY
GREGORY STREET PHASE 2
RFP Issued January 11, 2019

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<td>2.J</td>
<td>Other Expenses</td>
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<tr>
<td>2</td>
<td>CMGC'S TOTAL PROPOSED COSTS</td>
<td>$1,713,723</td>
</tr>
</tbody>
</table>

CMGC'S TOTAL FEE + COST PROPOSAL $2,743,268
CERTIFICATE OF LIABILITY INSURANCE

1/1/2020

DATE (MM/DD/YYYY) 2/18/2019

PRODUCER
Lockton Companies
8110 E. Union Avenue
Suite 700
Denver CO 80237
(303) 414-6000

INSURED
Roche Constructors, Inc.
361 7th Avenue
Greeley CO 80634

CONTACT
NAME: 
PHONE: 
FAX: 
E-MAIL: 
J.A.D. No. Ext.: 
A.C. No.: 
ADDRESS: 
INSURER(S) AFFORDING COVERAGE NAIC #
INSURER A: The Continental Insurance Company 35289
INSURER B: Transportation Insurance Company 20494
INSURER C: 
INSURER D: National Fire Insurance Co of Hartford 20478
INSURER E: 
INSURER F: 

COVERAGE INFORMATION

COVERAGE
COMMERCIAL GENERAL LIABILITY
AUTOMOBILE LIABILITY
UMBRELLA LIABILITY
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY

CANCELLATION

See Attachments

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

AUTHORIZED REPRESENTATIVE

CERTIFICATE HOLDER

15897404
City of Black Hawk
Attn: Matt Reed, Project Manager
PO Box 68
Black Hawk, CO 80422

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project RE: Gregory Street Phase 2. City of Black Hawk the Owner's officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner are included as Additional Insured if required by written contract. If the policies are cancelled by the issuing company during the policy term, for other than non-payment of premium, 30 days' notice will be provided to the Certificate Holder.

ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD

© 1988-2013 ACORD CORPORATION. All rights reserved.
WAIVER OF OUR RIGHT TO RECOVER FROM OTHER ENDORSEMENT

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

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

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

Endorsement Effective Policy No. Endorsement No. Premium $
Insured Roche Constructors Inc 6016344595
Insurance Company

Copyright 1983 National Council on Compensation Insurance.

Miscellaneous Attachment: M518446
Master ID: 1443418, Certificate ID: 15897404
Policy #6016184346

25. WAIVER OF SUBROGATION - BLANKET

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

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

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

However, this waiver applies only when the Named Insured has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:
1. is in effect or becomes effective during the term of this Coverage Part; and
2. was executed prior to the bodily injury, property damage or personal and advertising injury giving rise to the claim.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
CONTRACTORS EXTENDED COVERAGE ENDORSEMENT
- BUSINESS AUTO PLUS -

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE
A. Who Is An Insured

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

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,

b. The insurance afforded by this provision A.1. does not apply to any such entity that is an "insured" under any other liability "policy" providing "auto" coverage.

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

The insurance afforded by this provision A.2.:

a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.

b. Does not apply to:

(1) "Bodily injury" or "property damage" caused by an "accident" that occurred before you acquired or formed the organization; or

(2) Any such organization that is an "insured" under any other liability "policy" providing "auto" coverage.

3. Any person or organization that you are required by a written contract to name as an additional insured is an "insured" but only with respect to their legal liability for acts or omissions of a person, who qualifies as an "insured" under

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

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

1. Which are no longer in force; or

2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

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

1. In a.(2), the limit for the cost of bail bonds is changed from $2,000 to $5,000; and

2. In a.(4), the limit for the loss of earnings is changed from $250 to $500 a day.

C. Fellow Employee

Section II, Paragraph B.5 does not apply.

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

PHYSICAL DAMAGE COVERAGE

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

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

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

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:
Section II - Who Is An insured and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.

Page 1 of 3

C. Loss of Use Expenses

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

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

D. Hired "Autos"

The following is added to Section III.

Paragraph A.:

5. Hired "Autos"

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

a. Any covered "auto" you lease, hire, rent or borrow without a driver; and

b. Any covered "auto" hired or rented by your "employee' without a driver, under a contract in that individual "employee"s name, with your permission, while performing duties related to the conduct of your business.

c. The most we will pay for any one "accident" or "loss" is the actual cash value, cost of repair, cost of replacement or $75,000, whichever is less, minus a $500 deductible for each covered auto. No deductible applies to "loss" caused by fire or lightning.

d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned "autos."

e. Such physical damage coverage for hired "autos" will:

(1) Include loss of use, provided it is the consequence of an "accident" for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.

(2) Such coverage as is provided by this provision will be subject to a limit of $750 per "accident."

E. Airbag Coverage

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

F. Electronic Equipment

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

c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any permanently installed electronic equipment including its antennas and other accessories.

d. A $100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution in Value

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

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

a. Any covered "auto" of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and

b. Any covered "auto" of the private passenger type hired or rented by your "employee" without a driver for a period of 30 days or less, under a contract in that individual "employee"s name, with your permission, while performing duties related to the conduct of your business.

c. Such coverage as is provided by this provision is limited to a "diminution in value" loss arising directly out of accidental damage and not as a result of the failure to make repairs, faulty or incomplete maintenance or repairs; or the installation of substandard parts.

d. The most we will pay for "loss" to a covered "auto" in any one accident is the lesser of:

(1) $5,000; or

(2) 20% of the "auto"s actual cash value (ACV).

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

1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers," except:

a. An "auto" owned by that "executive officer" or a member of that person's household; or

Miscellaneous Attachment: M517959
Master ID: 1443418, Certificate ID: 15897404
b. An "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos."

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

(1) Equal to the greatest of those coverages afforded any covered "auto"; and

(2) Excess over any other collectible insurance.

2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

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

IV. BUSINESS AUTO CONDITIONS

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

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

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

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

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

B. Transfer Of Rights Of Recovery Against Others To Us

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

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

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

C. Concealment, Misrepresentation or Fraud

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

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

D. Other Insurance

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

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

E. Policy Period, Coverage Territory

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

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

V. DEFINITIONS

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

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.
Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. WHO IS AN INSURED is amended to include as an Insured any person or organization whom you are required by written contract to add as an additional insured on this coverage part, but only with respect to liability for bodily injury, property damage or personal and advertising injury caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:

A. in the performance of your ongoing operations subject to such written contract; or

B. in the performance of your work subject to such written contract, but only with respect to bodily injury or property damage included in the products-completed operations hazard, and only if:
   1. the written contract requires you to provide the additional insured such coverage; and
   2. this coverage part provides such coverage.

II. But if the written contract requires:

   A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or

   B. additional insured coverage with "arising out of" language; or

   C. additional insured coverage to the greatest extent permissible by law;

then paragraph I. above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an Insured any person or organization whom you are required by written contract to add as an additional insured on this coverage part, but only with respect to liability for bodily injury, property damage or personal and advertising injury arising out of your work that is subject to such written contract.

III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

   A. coverage broader than required by the written contract; or

   B. a higher limit of insurance than required by the written contract.

IV. The insurance granted by this endorsement to the additional insured does not apply to bodily injury, property damage, or personal and advertising injury arising out of:

   A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
      1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
      2. supervisory, inspection, architectural or engineering activities; or

   B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this coverage part.

V. Under COMMERCIAL GENERAL LIABILITY CONDITIONS, the Condition entitled Other Insurance is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this coverage part:

CNA75079XX (10-16)
Page 1 of 2
The Continental Insurance Co.
Insured Name: Roche Constructors, Inc.

Policy No: 6016184346
Endorsement No: 
Effective Date: 1/1/2019

65 of 118
Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

Primary and Noncontributory Insurance

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

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

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

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

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

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

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

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

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

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

A. is currently in effect or becomes effective during the term of this policy; and
B. was executed prior to:

1. the bodily injury or property damage; or
2. the offense that caused the personal and advertising injury;

for which the additional insured seeks coverage.

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

All other terms and conditions of the Policy remain unchanged.

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

CNA75079XX (10-16)
Page 2 of 2
The Continental Insurance Co.
Insured Name: Roche Constructors, Inc.

Policy No: 6016184346
Endorsement No:
Effective Date: 01/1/2019

66 of 118
RESOLUTION 14-2019
A RESOLUTION AWARDING THE BID AND APPROVING THE DESIGN-BUILD CONTRACT BETWEEN THE CITY OF BLACK HAWK AND HARRISON WESTERN CONSTRUCTION CORPORATION, INC. IN AN AMOUNT NOT TO EXCEED $125,195.00 FOR PRE-CONSTRUCTION SERVICES PERTAINING TO THE BOBTAIL STREET SCULPTED AND STAINED SHOTCRETE PROJECT
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK  

Resolution No. 14-2019

TITLE: A RESOLUTION AWARDING THE BID AND APPROVING THE DESIGN-BUILD CONTRACT BETWEEN THE CITY OF BLACK HAWK AND HARRISON WESTERN CONSTRUCTION CORPORATION, INC. IN AN AMOUNT NOT TO EXCEED $125,195.00 FOR PRE-CONSTRUCTION SERVICES PERTAINING TO THE BOBTAIL STREET SCULPTED AND STAINED SHOTCRETE PROJECT

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

Section 1. The City Council hereby awards the bid and approves the design-build contract between the City of Black Hawk and Harrison Western Construction Corporation, Inc. in an amount not to exceed $125,195.00 for pre-construction services related to the Bobtail Street Sculpted and Stained Shotcrete project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 27th day of February, 2019.

_______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, CMC, City Clerk
SUBJECT:
Approve Resolution 14-2019, a Resolution awarding the design-build contract for the Bobtail Street Sculpted and Stained Shotcrete project to Harrison Western Construction Corporation, Inc.

RECOMMENDATION:
If City Council chooses to approve Resolution 14-2019, a Resolution awarding the design-build contract between the City of Black Hawk and Harrison Western Construction Corporation, Inc., the recommended motion is as follows: “Approve Resolution 14-2019, a Resolution awarding the bid and approving the design-build contract between the City of Black Hawk and Harrison Western Construction Corporation, Inc. in an amount not to exceed $125,195.00 for pre-construction services pertaining to the Bobtail Street Sculpted and Stained Shotcrete project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
The City intends to construct a sculpted and stained Shotcrete wall along the south side of Bobtail Street from its intersection with Gregory Street to a point about 450’ east of the intersection. The main goal is to conceal the existing exposed mesh, rock bolts, and Shotcrete, and to create an aesthetically-appealing Shotcrete wall similar to the existing Shotcrete wall behind the Post Office.

The design-build method of contracting has been selected for this project. A Request for Qualifications was publicly advertised on November 30, 2018. Two contractors submitted qualification packages, and both were invited to submit Proposals. Of the two Proposals received by the City, Harrison Western Construction Corporation, Inc. provided the lowest proposed costs and fees.

Approval of this Resolution would authorize Harrison Western to proceed with a geotechnical investigation, design of the Shotcrete system, and other pre-construction tasks. Over the next two months, Harrison Western will prepare a Guaranteed Maximum Price (GMP) for construction of this project. An Amendment to this design-build contract will be brought before City Council to establish the GMP and authorize construction.

FUNDING SOURCE:
Sculpt & Stain Shotcrete Bobtail & Gregory:
305-3101-431-75-61

WORKSHOP DATE:
February 27, 2019

ORIGINATED BY:
Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE:
Tom Isbester / Matt Reed

PROJECT COMPLETION DATE:
July 31, 2019

DOCUMENTS ATTACHED:
Design-Build Contract

CITY ATTORNEY REVIEW: [ ] Yes [ X ] No [ ] N/A INITIALS__________
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DESIGN-BUILDER AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of ____________, 2019, by and between the City of Black Hawk, State of Colorado, a body politic and corporate, hereinafter referred to as the "City" or "Owner" and Harrison Western Construction Corporation, Inc., hereinafter referred to as the "Design-Builder".

ARTICLE 1 - GENERAL PROVISIONS AND SERVICES

A. The Design-Builder shall commence and fully complete design and construction of the Bobtail Street Sculpted and Stained Shotcrete Project, which is described in Exhibit A, which is attached hereto and made a part hereof ("Project").

B. The Design-Builder shall retain Consultants and Subcontractors at the Design-Builder’s expense as necessary to complete the Work.

C. The Design-Builder shall commence the Work required by the Contract Documents within ten (10) calendar days after the date of the notification to proceed and will complete the same on or before July 31, 2019, unless the period for completion is extended otherwise by the Contract Documents. The Design-Builder agrees to pay as liquidated damages, and not as a penalty, the sum of Two Thousand Dollars ($2,000.00) for each consecutive calendar day's delay in completing this Project after the completion date specified herein, excluding any approved extensions of time.

D. The Design-Builder agrees to perform all of the design work described in the Contract Documents and to comply with the terms therein for an amount not to exceed One Hundred Twenty-Five Thousand One Hundred Ninety-Five Dollars ($125,195), as shown in Exhibit B.

ARTICLE 2 - DEFINITIONS

A. Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1. Addenda - Written or graphic instruments issued prior to the execution of the Agreement that modify or interpret the Contract Documents, drawings, and specifications, by additions, deletions, clarifications, or corrections.

2. Bid – The offer or proposal of the Bidder submitted in the prescribed form setting forth the prices for the Work to be performed.

3. Bidder – Any person, firm, or corporation submitting a Bid for the Work.

5. **Change Order** – A written order to the Design-Builder authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Sum and/or Contract Time.

6. **Construction Change Directive** – A written order directed to the Design-Builder and signed by the Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.

7. **Consultant** – A person or entity providing professional services for the Design-Builder to execute a portion of the Work. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services. Consultants include architects and engineers, as applicable.

8. **Contract Documents** – The contract ("Agreement"), including advertisement for Bids, information for Bidders, Bid, Bid bond agreement, Bid schedule, labor and material payment bond, performance bond, notice of award, notice to proceed, Change Orders, general conditions, special conditions, general specifications, special specifications, scopes of Work, addenda, drawings, schedules, and any and all other documents or papers included or referred to in the foregoing documents are part of the Contract Documents.

9. **Contract Sum** – The total monies payable to the Design-Builder under the terms and conditions of the Contract Documents.

10. **Contract Time** – The number of calendar days stated in the Contract Documents for Substantial Completion of the Work.

11. **Date of Award** – Date of award of contract shall mean the date formal notice of such award, approved by the Owner, has been delivered to the intended awardee, or mailed to it at the main business address shown in its proposal by the Owner or its authorized representative.

12. **Day** – Unless herein otherwise expressly defined, Day shall mean calendar day.

13. **Design-Builder** – The person, firm, or corporation with whom the City of Black Hawk has executed this Agreement. The Design-Builder shall be lawfully licensed by the City of Black Hawk.

14. **Major Equipment or Major Equipment Items** – Installation of major equipment to be furnished and placed under the Agreement awarded to the Design-Builder and/or installations of major equipment to be furnished by the Owner and received, unloaded, stored, and placed by the Design-Builder under the Agreement awarded to the Design-Builder.
15. **Notice of Award** – The written notice of the acceptance of the Bid by the Owner to the successful Bidder.

16. **Notice to Proceed** – Written communication issued by the Owner to the Design-Builder authorizing it to proceed with the Work and establishing the date of commencement of the Work.

17. **Owner or City** – The City of Black Hawk, Colorado, a home rule municipality. The Public Works Director, Project Manager, or their designee of the Owner is the Owner’s representative.

18. **Project** – Construction of the Project described in Exhibit A.

19. **Shop Drawings** – All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Design-Builder, a Subcontractor, manufacturer, supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

20. **Site** – The lands and other places on, under, in, or through which the Work is to be executed or carried out and any other lands or places provided by the Owner for the purposes of the Agreement together with such other places as may be specifically designed in the Contract Documents as forming part of the Site.

21. **Special Conditions** – Supplemental conditions that apply to specific aspects of the Project or modifications to the general conditions that are to be adhered to in the Project.

22. **Subcontractor** – An individual, firm, or corporation having a direct contract with the Design-Builder or with any other Subcontractor for the performance of a part of the Work at the Site. All Subcontractors shall be lawfully licensed by the City of Black Hawk.

23. **Submittal** – Any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Contract Documents. Submittals include, but are not limited to Shop Drawings, product data, and samples.

24. **Substantial Completion** – That date as certified by the Owner when the construction of the project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it is intended. All major systems shall be operational, all safety features shall be completed, and final inspections by all applicable local and state officials must be received by the Owner prior to achieving Substantial Completion.

25. **Supplier** – Any person, supplier, or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who
does not perform labor at the Site. A Supplier is not a Subcontractor who purchases an item of equipment from a manufacturer.

26. **Work** – The design, construction, and related services required to fulfill the Design-Builder’s obligations under the Contract Documents. The Work includes all labor, materials, equipment, and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

27. **Written Notice** – Written Notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice.

**ARTICLE 3 - DESCRIPTION OF WORK AND SERVICES**

**Section 1** Process to Establish Guaranteed Maximum Price

A. The Design-Builder shall advise the Owner on proposed Site use and improvements, selection of materials, building systems, and equipment, as applicable. The Design-Builder shall provide the Owner with recommendations on constructability, availability of materials and labor, schedule, installation and construction, alternative designs or materials, budgeting, life-cycle data, and value engineering.

B. The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and evaluate the Owner’s basis of design, as presented in Exhibit A. The evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder’s recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, and phasing.

C. The Design-Builder shall prepare a written report to summarize the Design-Builder’s evaluation of the basis of design. The report shall include a proposed Project schedule and a control estimate for the cost of the Work organized by trade categories.

D. The Owner shall review the Design-Builder’s written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the preliminary design. The preliminary design shall include a site plan, building plans, sections, and elevations, identification of the structural systems, selections of major building systems, description of construction materials, and other information, as applicable.

E. The Owner shall review the Design-Builder’s preliminary design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder’s proposal. The Design-Builder’s Proposal shall, at a minimum, include the following:
1. A list of preliminary design documents and other information upon which the Design-Builder's proposal is based.

2. The proposed Contract Sum organized by trade categories, including allowances, contingencies, updates to the Design-Builder's Fee and Cost Proposal, and other items that comprise the proposed Contract Sum. A schedule of values shall be provided by which each application for payment will be evaluated.

3. The proposed Design-Builder's schedule, including the proposed date that the Design-Builder shall achieve Substantial Completion.

F. If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their Agreement. The final Contract Sum as agreed upon by the Owner and Design-Builder will become established as the Guaranteed Maximum Price ("GMP") in the Design-Build Amendment.

1. The GMP guarantees to the Owner the price for which all Work will be completed within the Contract Time.

2. The GMP, unless changed by Change Order or Construction Change Directive, represents the absolute limit of obligation or liability that the Owner may have insofar as the cost for full and final completion of the Work and the total of all payments to the Design-Builder or its Subcontractors.

3. Should additional amounts over and above the GMP be required to be expended to achieve completion of the Work, liability for and payment of such additional amounts shall be the sole responsibility of the Design-Builder.

4. Should the final cost of the Work be less than the GMP, the difference shall inure to the benefit of the Owner and no claim for all or any portion of said difference shall be valid against or payable by the Owner.

G. Upon agreement between the Owner and the Design-Builder on the Design-Builder's proposal, the Design-Builder shall prepare construction drawings and specifications.

H. Construction shall not commence prior to execution of the Design-Build Amendment.

Section 2 Drawings and Specifications

A. The Design-Builder shall provide Project drawings and specifications to the Owner for approval. The Design-Builder shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental Work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the Owner.

B. In case of conflict between the drawings and specifications, the specifications shall govern, unless directed otherwise by the Owner and Consultants. In case of conflict between the special specifications and the general specifications, the special specifications shall govern. Figure dimensions on drawings will govern over scale dimensions, and detailed drawings shall govern over general drawings. Notwithstanding
the above, a document which is more restrictive or requires greater responsibility or increased compliance by the Design-Builders shall govern.

C. Any discrepancies found between the drawings and specifications and Site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the Owner and Consultants in writing, who will promptly resolve such inconsistencies or ambiguities in writing. Work done on unreported discrepancies, inconsistencies or ambiguities by the Design-Builders shall be done at the Design-Builders risk.

D. The Design-Builders may be furnished additional instructions and detail drawings by the Owner and Consultants as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Design-Builders shall carry out the Work in accordance with the additional detail drawings and instructions.

Section 3 Materials, Services and Facilities

A. The Design-Builders shall, in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Contract Documents. The Design-Builders shall, at its sole cost, risk, and expense, construct, equip, provide purchase, pay for, and furnish all of the materials, services, and equipment necessary to provide the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. The Work shall be in accordance with such Contract Documents, as well as all local, state, and federal governmental codes, ordinances, and regulations as they apply to performance of the Work.

B. In addition to the requirements for major equipment items previously given, the Design-Builders shall submit to the Owner a complete listing of the manufacturers of each item of equipment or assembly fabricated off the Site that is proposed to be furnished for the Project, together with sufficient information, including shop assembly and detail drawings, manufacturers' specifications, and performance data, to demonstrate clearly that the materials and equipment to be furnished comply with the provisions and intent of the Contract Documents. If the information shows any deviation from the contract requirements, the Design-Builders shall notify the Owner of the deviation and state the reason for it in writing. Acceptance of substitute material or equipment that deviates from the specifications shall be determined by the Owner and Consultants.

C. Only first class materials and materials which conform to the requirements of the specifications shall be incorporated in the Work. All materials shall be new unless specified to be otherwise.

D. When requested by the Owner, the Design-Builders shall furnish a written statement of the origin, composition, and manufacturer of any or all materials (manufactured, produced or grown) that are to be used in the Work. The sources of supply of each material used will be approved by the Owner and Consultants before delivery is started. If, at any time,
sources previously approved fail to produce materials acceptable to the Owner and Consultants, the Design-Builder shall furnish materials from other approved sources.

E. Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. Material or equipment stored off-site shall be insured by the Design-Builder. Proof of insurance shall be submitted to Owner prior to request for payment for such material or equipment.

F. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer.

G. Materials, supplies, and equipment shall be in accordance with samples submitted by the Design-Builder and approved by the Owner and Consultants.

H. Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Design-Builder or any Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

I. The Design-Builder shall retain, for the benefit of the Owner, all materials and supplies that are purchased for the project but are not used as a part of the project. The Owner may take any of the materials and supplies that are used in the project for any City purpose. Any materials and supplies not taken by the Owner shall be removed from the Site by the Design-Builder.

Section 4 Submittals

A. The Design-Builder shall submit Shop Drawings, samples, and O&M manuals as may be necessary for the prosecution of the Work, as required by the Contract Documents, on a timely basis so that the Project schedule is not affected. The Owner and Consultants will promptly review all Submittals. All such Submittals will be approved and signed by the Consultants, and will be null and void unless authorized by such signature. Review and approval of any Submittal by the Owner or Consultants will not release the Design-Builder from responsibility for any deviations from the Contract Documents. The approval of any Submittal that substantially deviates from the requirements of the Contract Documents shall be evidenced by a Change Order.

B. All drawings and details on items of major equipment will be reviewed by the Owner and Consultants only after the complete set of drawings and details covering the entire equipment package to be furnished under a particular major equipment item are submitted. Drawings submitted on a piecemeal basis covering only parts of the equipment package will be held for checking until the entire set of drawings are received.

C. The Design-Builder shall submit to the Owner and Consultants Shop Drawings showing detail of structural wood trusses, structural steel and concrete reinforcing steel, bending details, piping details, and of other items necessary for the proper installation of materials into the completed Work, as provided by this Agreement.
D. The Design-Builder shall make any indicated corrections on the Submittals returned and shall resubmit corrected Submittals until final approval is obtained.

E. The Design-Builder shall have no claims for damages or extension of time on account of any delay in the Work resulting from the review, revision and resubmittal of a Submittal when the review, revision and resubmittal is due to changes to the original Submittal required by the Owner or Consultants.

F. Each Shop Drawing shall be dated and shall be identified with the name of the Project, the division, if any, the contract item number, and the name of the Design-Builder.

G. When submitted for review by the Owner and Consultants, Submittals shall bear the Design-Builder's certification that it has reviewed, checked, and approved the Submittals and that they are in conformance with the requirements of the Contract Documents.

H. Portions of the Work requiring a Submittal shall not begin until the Submittal has been approved by the Owner and Consultants. A copy of each approved sample shall be kept in good order by the Design-Builder at the Site and shall be available to the Owner and Consultants. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

I. By approving and submitting Shop Drawings and samples, the Design-Builder thereby represents that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, and that it has checked and coordinated each Shop Drawing and sample with the requirements of the Work and of the Contract Documents.

Section 5 Records, Accounts and Audits

A. The Design-Builder agrees to keep one complete set of records and books of account on a recognized cost accounting basis (satisfactory to the Owner), showing all expenditures, of whatever nature, made pursuant to the provisions of this Contract.

B. The Design-Builder shall furnish the Owner with such records, information and data as may be reasonable. The Owner shall at all reasonable times be afforded the opportunity to inspect and/or audit the above-specified books and records of the Design-Builder.

Section 6 Inspection and Testing

A. All materials and equipment used in the construction of the project will be subject to adequate inspection and testing in accordance with generally accepted standards.

B. The Design-Builder shall give sufficient advance notice of placing orders to permit tests to be completed before materials are incorporated in the Work.
C. The Owner shall bear costs for all inspection and testing services required by the Contract Documents, unless specifically noted in the specifications for special inspection and testing services, such as, by way of example, welding inspections on off-site assemblies. The Design-Builder shall make arrangements for all tests, inspections, and approvals with an independent testing laboratory or entity acceptable to and contracted by the Owner.

D. Neither observations by the Owner or Consultants, tests, nor approvals by persons other than the Owner will relieve the Design-Builder from its obligations to perform the Work in accordance with the requirements of the Contract Documents.

E. The Owner and its representatives shall, at all times, have access to the Work and to locations where materials or equipment are being manufactured, stored, or prepared for use under these Contract Documents, and they shall have full facilities for unrestricted inspection of such materials, equipment, and Work including full access to purchasing and engineering information to the extent of uncovering, testing, or removing portions of the finished Work. The Owner shall be furnished with such information as may be required regarding materials used and the process of manufacture for the various items of equipment. Observations by the Owner of equipment or materials during its manufacture will be performed by or for the Owner solely in an effort to detect discrepancies and defects as early as possible, when they can be most readily corrected, and the Work thereby expedited. No acceptance of equipment or materials will be construed to result from such observations by the Owner. Any inspections or tests or waivers thereof will not relieve the Design-Builder of responsibility for meeting all requirements of these Contract Documents.

F. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all Work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The Design-Builder shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.

G. In case of disputes between the Design-Builder and the Owner as to materials furnished or manner of performing the Work, the Owner will have authority to reject materials or suspend the Work until the question at issue can be decided by the Owner. The Owner is authorized to revoke, alter, enlarge, relax, or release any requirements of Project drawings and specifications, and to approve or accept any portion of the Work, and to issue instructions contrary to the drawings and specifications.

Section 7  Construction Review

A. The Owner will periodically observe the construction of all Work covered by this Contract. The Owner is authorized to determine the amount or quantities of the several items of Work which are to be paid for under this Agreement; to order field changes within the scope of the Agreement and to render decisions on any questions which may arise relative to the execution of the Work covered by this Agreement. The Owner has the authority to suspend Work. The Design-Builder shall not suspend any portion of the Work nor resume suspended Work without the written authority of the Owner.
B. Whenever in the drawings, plans, or Contract Documents the terms "as ordered", "as directed", or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory", or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents. The use of any such term or adjective shall not be effective to assign to the Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility for the Project. The Owner will not be responsible for the acts or omissions of the Design-Builder or any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

C. If any Work has been covered which the Owner has not been specifically requested to observe prior to its being covered, or if the Owner considers it necessary or advisable that covered Work be inspected or tested, the Design-Builder at the request of the Owner shall uncover, expose, or otherwise make available for observation, inspection, or testing as the Owner may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Design-Builder shall bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Design-Builder will be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction, and an appropriate Change Order will be issued.

Section 8 Surveys, Permits, and Regulations

A. The Owner will furnish all land surveys together with a suitable number of bench marks adjacent to the Work as shown in the Contract Documents. The Design-Builder shall provide detailed construction staking.

B. At the beginning of the construction or as the Work progresses, a surveyor at the Owner's expense shall install property corners and set bench marks.

C. Any additional surveying or re-surveying shall be done by the Design-Builder at the Design-Builder’s expense. Bench marks and survey stakes shall be preserved by the Design-Builder, and in case of their destruction or removal by the Design-Builder, its employees, or others, they shall be replaced at the Design-Builder’s expense and its sureties shall be liable therefor.

D. The Design-Builder shall be responsible for elevations used in computing its bid.

E. The Design-Builder shall secure and pay for all necessary permits, fees, and licenses in connection with the performance of the Work and shall pay all municipal and other governmental fees in connection therewith except those expressly provided by the specifications as being the responsibility of the Owner, and shall furnish at its expense
any and all bonds and cash or other deposits required by law or required by any lawful body having the right to make demand therefor.

F. The Design-Builder shall procure a zero-cost Temporary Use Permit from the City’s Community Planning and Development Department for any dumpster, staging area, parking area, sanitary facilities, or other temporary facilities that will be necessary for the Work.

G. The Design-Builder shall provide traffic control plans and provide all traffic control necessary for all Work that requires closures of public roadways, lanes, or sidewalks. The Design-Builder shall procure a zero-cost Street Closure Permit from the City’s Public Works Department for each roadway, lane, or sidewalk closure necessary to complete the Work.

H. The Design-Builder shall specifically be responsible for registering with the City Clerk pursuant to Article VII of Chapter 6 of the Black Hawk Municipal Code, and shall further be responsible for requiring that all Subcontractors register with the City Clerk pursuant to Article VII of Chapter 6 of the Black Hawk Municipal Code, and pay the necessary registration fee. The Design-Builder shall similarly require that each Subcontractor provide any required certificate of insurance to the City Clerk pursuant to Section 6-222 of the Black Hawk Municipal Code.

I. The Owner will provide rights-of-way and permanent and temporary easements as shown on the plans for construction purposes. Any additional land actually needed by the Design-Builder for performance of the Work, proper location of its plant and equipment, or the storage of materials and supplies for the Work, shall be furnished by the Design-Builder.

Section 9 Protection of Work, Property, and Persons

A. The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the Work. The Owner will not be responsible for Design-Builder’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto. The Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to all employees on the Work who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Site, and other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

B. The Design-Builder shall, at all times, consult with and obtain the approval of the Owner for the storage of material, operation of equipment, placing of temporary structures, or dispositions of any surplus or waste materials upon property of the Owner anywhere outside the limits of construction. The Design-Builder shall comply with all state,
federal, and local laws related to the storage or placement of any supplies, equipment, structures, or any other materials.

C. The Design-Builder shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. The Design-Builder shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. The Design-Builder shall notify owners of adjacent utilities when prosecution of the Work may affect them. The Design-Builder shall remedy at its expense all damage, injury, or loss to any property or person caused, directly or indirectly, in whole or in part, by the Design-Builder, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except damage or loss attributable to the fault of the Contract Documents or to the acts or omissions of the Owner or anyone for whose acts the Owner may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Design-Builder. Notwithstanding the provisions of C.R.S. § 13-20-802.5(2), for purposes of this Agreement, the measure of damages shall never be deemed to be the fair market value of the real property without an alleged construction defect.

D. The Design-Builder shall observe all rules and regulations of the health department having jurisdiction and shall take precautions to avoid creating unsanitary conditions.

E. In emergencies affecting the safety of persons or the Work or property at the Site or adjacent thereto, the Design-Builder, without special instruction or authorization from the Owner, shall act to prevent threatened damage, injury, or loss.

F. The Design-Builder shall at all times conduct Work in such a manner as to cause the least inconvenience and greatest protection to the general public. The Design-Builder shall furnish and maintain barricades, warning signs, red flags, lights, and temporary passageways as may be necessary to protect the Work and to safeguard the public. The cost of furnishing and maintaining the above facilities shall be incidental to the Agreement and no extra compensation for it will be allowed.

G. Throughout the performance of the Work or in connection with this Agreement, the Design-Builder shall construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for public and private traffic. The material excavated from trenches shall be compactly deposited along the sides of the trench or elsewhere in such a manner as shall give as little inconvenience as possible to the traveling public, to adjoining property owners, to other contractors, or to the City.

H. In performing the Work, the Design-Builder shall take the necessary action, including making arrangements with the owners or operators of existing power, cable, and telephone lines, fiber-optic and telemetry lines, gas, water, sewer, and other utilities or installations that may be encountered, whether privately or publicly owned, to prevent interference with the conditions, operations, and maintenance of the respective utilities in a manner satisfactory to the owners or operators of the respective utilities. Relocation or repair of utilities encountered even though not shown on the plans, shall be the responsibility of the Design-Builder. The cost of the above measures, including
maintaining of guards, watchmen, signals, barricades, and temporary structures, making
any necessary repairs and other cooperative or corrective Work shall be borne by the
Design-Builder and shall be included in the prices bid for the related items of Work. The
Owner shall not be responsible to the Design-Builder for the existence of utilities not
shown on the plans or drawings and the Design-Builder remains obligated under this
paragraph for all hidden utilities.

I. The Design-Builder shall be responsible for the preservation of all private or public
property along and adjacent to the Work and shall take all necessary precautions to
prevent damage or injury thereto. Such preservation and protection shall include but not
be limited to, trees, stone walls, fences, mail boxes, monuments, irrigation ditches,
driveways, road access culverts, underground pipelines, and structures. Such preservation
and protection shall apply to all underground pipelines and utilities whether public,
private, or individually owned that are in or adjacent to the right-of-way. When direct or
indirect damage is done to public or private property on account of the act, omission,
neglect, or misconduct in the prosecution or non-prosecution of the Work on the part of
the Design-Builder, such property shall be restored by the Design-Builder at the Design-
Builder’s expense to a condition similar or equivalent to that which existed before such
damage or injury was done, and brought up to current codes if applicable. The Design-
Builder shall be responsible for making all arrangements at its own expense for moving
and operating equipment at temporary crossings of telephone and transmission lines,
railroad tracks, irrigation ditches, and pipelines.

Section 10 Communication with the Owner

The Design-Builder shall designate a responsible member of its organization at the Site, whose
duty shall be designated as the contact person for all communication between the Owner and the
Design-Builder. Said designated representative shall also be responsible to attend such meetings
as may be required to ensure coordination and adequate performance of the Work.

Section 11 Scope of Work

The scope of Work is described in the Contract Documents which are appended hereto and
incorporated herein by this reference as Exhibit A.

Section 12 Design-Builder’s Responsibility

A. The Design-Builder shall be responsible for all the Work under this Agreement until
completion and final acceptance by the Owner.

B. The Design-Builder shall supervise and direct the Work. It shall be solely responsible for
the means, methods, techniques, sequences, and procedures of construction.

C. The Design-Builder shall employ on the Work only such persons who are competent and
skilled in their assignments. Any employee who obstructs the progress of the Work
through incompetence or other means, or conducts himself or herself improperly shall be
discharged or removed from the Work when so requested by the Owner. This section
shall not create a duty for the Owner to evaluate or assess the competence or skills of the Design-Builder’s employees.

D. The Design-Builder warrants that all materials and equipment furnished and incorporated by it in the Project shall be new, unless otherwise specified, and that all Work under this Agreement shall be of good quality, free from fault and defects, and in conformity with the Contract Documents. All Work not conforming to these standards shall be considered defective. The warranty provided herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

E. The Design-Builder agrees that if it should fail or neglect to prosecute the Work diligently and properly, or fail to perform any provisions of this Agreement, that the Owner, after three (3) days written notice to said Design-Builder may, without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due to the Design-Builder pursuant to this Agreement.

F. Tools furnished with any equipment may be used for erection purposes when approved by the Owner and shall be turned over to the Owner after completion of the erection in a condition acceptable to the Owner. In case of rejection by the Owner, the Design-Builder shall replace the tool or tools at no extra cost to the Owner.

G. Upon completion and before final acceptance of the Work, the Design-Builder shall remove from the Site of the Work and property of the Owner, all machinery, equipment, surplus materials, rubbish, barricades, signs, and temporary structures and shall leave the premises in a condition which is satisfactory to the Owner.

H. The Design-Builder shall keep one record set of the Contract Documents annotated to show all changes made during construction.

I. The Design-Builder shall be responsible for the acts and omissions of all its employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work under a contract with the Design-Builder.

J. Upon completion of the Work, the Design-Builder shall, at its expense, remove from the vicinity of the Work, all plant, buildings, rubbish, unused materials, concrete forms, and other like material, belonging to the Design-Builder or used under its direction during construction, and in the event of its failure to do so, the same may be removed by the Owner, and the Design-Builder and its surety or sureties shall be liable for the cost thereof. Also during the construction of the Work, the Site, partially finished structures, and material stockpiles shall be kept in a reasonable state of order and cleanliness.

Section 13 Changes in the Work

A. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, only by Change Order or Construction Change Directive, subject to the limitations stated in this Article and elsewhere in the Contract Documents.
1. A Change Order shall be based upon agreement among the Owner and Design-Builder; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Design-Builder.

2. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

3. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Design-Builder, the applicable unit prices shall be equitably adjusted; provided however, that Owner may increase the number of units without change in the unit price, if reasonable.

B. CHANGE ORDERS. The Contract Sum and the Contract Time may be changed only by Change Order. Methods used in determining adjustments to the Contract Sum may include those listed in Subsection C below. A Change Order is a written order to the Design-Builder, signed by the Design-Builder and the Owner, stating their agreement upon all of the following:

1. A change in the Work;

2. The amount of the adjustment in the Contract Sum, if any; and

3. The extent of the adjustment in the Contract Time, if any.

C. CONSTRUCTION CHANGE DIRECTIVES. A Construction Change Directive is a written order directed to the Design-Builder and signed by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

1. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

2. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

   a. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
b. By unit prices stated in the Contract Documents or subsequently agreed upon;

c. By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

d. By the method provided in Subparagraph (C)(5).

3. Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

4. A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time and the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

5. If the Design-Builder does not respond promptly to the Construction Change Directive or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed five percent (5%) of such Work's actual cost for Design-Builder and ten percent (10%) of such Work's actual cost to be apportioned between any and all Subcontractors and sub-Subcontractors. For Work performed by Design-Builder's own forces, Design-Builder's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed ten percent (10%). In such case, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this subparagraph, actual costs shall be defined as and limited to the following:

a. Costs of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

b. Costs of materials, supplies, and equipment, including costs of transportation, whether incorporated or consumed;

c. Reasonable rental costs of machinery and equipment, exclusive of hand tools, obtained and used specifically for such Work, whether rented from the Design-Builder or others; and

d. Costs of premiums for all bonds (if any), permit fees, and sales, use, or similar taxes directly attributable to such Work. Actual cost does not
include any item which could be deemed to be a general conditions cost or
overhead, such as but not limited to, the cost of Design-Builder and
Subcontractor supervisory personnel assigned to the Work, and field office
and related expenses.

6. Pending final determination of actual cost to the Owner, amounts not in dispute
may be included in applications for payment. The amount of credit to be allowed
by the Design-Builder to the Owner for a deletion or change which results in a net
decrease in the Contract Sum shall be actual net cost as confirmed by the Owner.
When both additions and credits covering related Work or substitutions are
involved in a change, the allowance for overhead and profit shall be figured on the
basis of the net increase, if any, with respect to that change.

7. If the Owner and Design-Builder do not agree with the adjustment in Contract
Time or the method for determining it, the adjustment or the method shall be
determined in accordance with Article 5 hereof.

8. When the adjustments in the Contract Sum and Contract Time are determined as
provided herein, such determination shall be effective immediately and shall be
recorded by preparation and execution of an appropriate Change Order.

Section 14 Contract Documents

In case of conflict between this Agreement, the general conditions of the contract for
construction, and the supplementary conditions, this Agreement will govern.

ARTICLE 4 – DESIGN-BUILDER'S CONSTRUCTION SCHEDULE

Section 1 Preconstruction Conference

A preconstruction conference shall be scheduled at the time the Design-Build Amendment is
executed. The Design-Builder, at the preconstruction conference, shall prepare and submit, for
review and concurrence by the Owner, a Design-Builder’s construction schedule for the Work, in
such form and detail as the Owner may require. The schedule shall not exceed time limits under
the Contract Documents, shall be revised as required herein and at appropriate intervals as
required by the conditions of the Work and Project, shall be related to the entire Project to the
extent required by the Contract Documents, and shall provide for the expeditious and practicable
execution of the Work. The schedule shall indicate the proposed starting and completion dates
for the various subdivisions of the Work as well as the totality of the Work. The schedule shall
be updated every thirty (30) days for submission to the Owner with Design-Builder’s applications
for payment. Each schedule shall contain a comparison of actual progress with the estimated
progress for such time stated in the original schedule. If any schedule submitted sets forth a date
for Substantial Completion for the Work or any phase of the Work beyond the date(s) of
Substantial Completion established in the Agreement (as the same may be extended as provided
in the Contract Documents), the Design-Builder shall submit to the Owner, for its review and
approval, a narrative description of the means and methods which Design-Builder intends to
employ to expedite the progress of the Work to ensure timely completion of the various phases of
the Work as well as the totality of the Work. To ensure such timely completion, Design-Build
shall take all necessary action including, without limitation, increasing the number of personnel
and labor on the Project and implementing overtime and double shifts. In that event, Design-
Builder shall not be entitled to an adjustment in the Contract Sum or the Contract Time.

Section 2  Schedule of Submittals

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

Section 3  Conformance to Schedule

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

ARTICLE 5 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES

A. The date of beginning and the time for completion of the Work are essential conditions of
the Contract Documents, and the Work embraced shall be commenced on a date specified
in the Notice to Proceed.

B. The Design-Builder shall proceed with the Work at such rate of progress to ensure full
completion within the Contract Time. It is expressly understood and agreed, by and
between the Design-Builder and the Owner, that the Contract Time for the completion of
the Work described herein is a reasonable time, taking into consideration the average
climatic and economic conditions and other factors prevailing in the locality of the Work
during the period such Work is to be performed.

C. If the Design-Builder shall fail to complete the Work within the Contract Time, or
extension of time granted by the Owner through a Change Order or Construction Change
Directive, then the Design-Builder shall pay to the Owner the amount of liquidated
damages and not as penalty the sum of Two Thousand Dollars ($2,000.00) for each
calendar day that the Design-Builder shall be in default after the time stipulated in the
Contract Documents.

D. The Owner will charge the Design-Builder, and may deduct from the partial and final
payment for the Work, all architectural, engineering, construction management, and other
Consultant expenses incurred by the Owner in connection with any Work accomplished
after the specified completion date.

E. The Design-Builder will not be charged with liquidated damages or any excess cost when
the delay in completion of the Work is due to the following, and the Design-Builder has
promptly given written notice of such delay to the Owner.

1. To any preference, priority, or allocation order duly issued by the Owner.
2. To unforeseeable causes beyond the control and without the fault or negligence of the Design-Builder, including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather conditions that could not be reasonably anticipated; and

3. To any delays of Subcontractors occasioned by any of the causes specified in subparagraphs 1 and 2 of this paragraph E.

F. The Design-Builder waives any right of recovery or reimbursement or by whatever name, as against the Owner, as a result of any delay or increase on overhead cost incurred by the Design-Builder’s association with any action or inaction on the part of any other trade contractor or Supplier.

ARTICLE 6 - CONTRACT SUM

A. The City Council of the City of Black Hawk has appropriated the money necessary to fund this project. The Owner shall pay the Design-Builder the Contract Sum in current funds for the performance of the Work, subject to any additions and deletions by written Change Order. Notwithstanding anything to the contrary contained in this Agreement, no Change Order or other form of directive by the Owner requiring additional compensation, which causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Original Contract Amount, unless the Design-Builder is given written assurance by the City of Black Hawk that lawful appropriations have been made by the City Council of the City of Black Hawk to cover the cost of the additional Work.

B. The Design-Builder hereby agrees that estimates of the value of all Work provided to the Owner shall be for Work actually performed upon the Project and that all such Work, including labor and materials, has been paid. The determination of the amount of Work completed on each application for payment by the Design-Builder shall be subject to approval by the Owner. However, such determination by the Owner shall not be construed as acceptance of the Work.

1. Before the first application for payment, the Design-Builder shall submit to the Owner a schedule of values to be allocated to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Consultants or Subcontractors, supported by such evidence of correctness as the Owner may direct. This schedule shall be used to monitor the progress of the Work and as a basis for making progress payments hereunder. Application for monthly progress payments shall be made in writing in accordance with this Contract and shall be submitted on AIA Document G702 and AIA Document G703 or other format as approved by the Owner. Applications for payment shall be submitted to the Owner on a monthly basis. Approved applications for payment that remain unpaid thirty (30) days after the application date are subject to an interest rate of 3% per year.
2. Pursuant to Colo. Rev. Stat. § 24-91-103, as may be amended, where the Original Contract Amount exceeds one hundred fifty thousand dollars ($150,000.00), the Owner will retain five percent (5%) of the calculated value of completed Work from each progress payment up until the Work is completed satisfactorily and finally accepted by the Owner. If the Owner finds satisfactory progress is being made in any phase of the Work, the Design-Builder may make written request of the Owner for payment of the withheld percentage. The Owner may agree to payment of the withheld percentage if the Owner finds satisfactory and substantial reasons exist for the payment. The Design-Builder must provide written approval to the Owner from any surety furnishing bonds for the contract Work in order to receive said payment of the withheld percentage.

3. Upon receipt of written notice from the Design-Builder that the Work is ready for final inspection and acceptance by the Owner and upon receipt of final application for payment, the Owner will promptly make such final field review subject to the final payment requirements contained in Colo. Rev. Stat. § 38-26-107, as amended. If the Owner finds that the Work is acceptable under the Contract Documents, a final certificate of payment will be issued. Neither final payment nor the remaining retention shall become due until the Design-Builder submits to the Owner an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work, have been paid or otherwise satisfied. Likewise, final payment shall not be made until the consent of the surety to final payment has been obtained, and if required by the Owner, such other data establishing payment or satisfaction of all obligations, including releases, final lien waivers, and receipts and warranties, if any, have been provided to the Owner for the use and benefit of the Owner. Should any Subcontractor of the Design-Builder or Supplier of said Design-Builder refuse to furnish any warranty and/or release or waiver, the Owner in its sole discretion, may refuse to certify final payment. The Design-Builder may then furnish sufficient bonds satisfactory to the Owner to indemnify the Owner against any such liens.

4. Before final payment will be made to the Design-Builder, the Owner is required to comply with State statutes regarding publication of a notice of final settlement specifying the date of such final settlement.

5. Any unpaid supplier of materials, equipment, services, or labor may file a verified statement with the Owner indicating the amount due and owing on or before the date set for final settlement.

6. Before final payment will be made, the Design-Builder shall provide final electronic files and one hard-copy set of as-built drawings and specifications to the Owner, updated to reflect the final condition of the Project.

6. Notwithstanding anything else to the contrary contained herein, such final payment by the Owner shall not be construed as a waiver of any claims affecting or arising from:
a. Unsettled liens;

b. Faulty or defective Work appearing after Substantial Completion;

c. Failure of the Work to comply with the requirements of the Contract Documents;

d. Terms of any special warranties required by the Contract Documents.

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

ARTICLE 7 - CORRECTION OF WORK

A. During the life of the Contract and for a period of two (2) years after final acceptance, the Design-Builder shall promptly remove from the premises all Work rejected by the Owner for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Design-Builder shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of other trade contractors destroyed or damaged by such removal or replacement. The Owner, however, may at its discretion elect to accept an equitable reduction in Contract Sum or a refund instead of correction of the condemned Work.

B. All removal and replacement Work shall be done at the Design-Builder’s expense. If the Design-Builder does not take action to remove such rejected Work within ten (10) days after receipt of written notice, the Owner may remove such Work and store the materials all at the expense of the Design-Builder.

ARTICLE 8 - TEMPORARY FACILITIES AND SERVICES

A. Unless otherwise provided in this Agreement, the Design-Builder shall furnish and make available, at no cost, all temporary facilities, including all power needed for heating and protection of facilities and Work. It is the expressed intent of the parties that the Design-Builder shall be responsible for and at its sole cost all heating and protection of facilities and Work.
B. The Design-Builder shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor. The facilities of existing, nearby buildings are not available for construction use.
ARTICLE 9 - INDEMNIFICATION AND INSURANCE

Section 1  Indemnification

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

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

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

Section 2  Insurance

A. The Design-Builder agrees to obtain and maintain during the life of this Agreement, a policy or policies of insurance against all liability, claims, demands, and other obligations assumed by the Design-Builder pursuant to Section 1 above. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Design-Builder shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Section 1 above, by reason of its failure to obtain and maintain during the life of this Agreement insurance in sufficient amounts, durations, or types.

B. The Design-Builder shall obtain and maintain during the life of this Agreement, and shall cause any Subcontractor to obtain and maintain during the life of this Agreement, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Design-Builder pursuant to Section 1 above. In the case of any claim-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers’ Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the Work under this Agreement, and Employers Liability Insurance with minimum limits of Five Hundred
Thousand Dollars ($500,000) each incident, Five Hundred Thousand Dollars ($500,000) disease—policy limit, and Five Hundred Thousand Dollars ($500,000) disease—each employee.

2. General Public Liability Insurance to be written with a limit of liability of not less than One Million Dollars ($1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, sustained by any one person and not less than Two Million Dollars ($2,000,000) for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by two or more persons in any one accident. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of General Public Liability Insurance for broad form property damage (including products and completed operations) shall be not less than One Million Dollars ($1,000,000) for all damages arising out of injury to or destruction of property in any one accident and not less than Two Million Dollars ($2,000,000) for all damages arising out of injury to, or destruction of property, including the City’s property, during the policy period. The General Public Liability Insurance policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

3. Protective Liability and Property Damage Insurance covering the liability of the Owner, including any employee, officer, or agent of the Owner with respect to all operations under the Agreement by the Design-Builder or its Subcontractors shall be obtained and maintained during the life of the Agreement. The limits of the Owner's Protective Liability Policy, to be provided by the Design-Builder, as described in this Section 2, shall be increased to the same limits as described above for the Design-Builder's General Public Liability Insurance.

4. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars ($1,000,000) each occurrence and One Million Dollars ($1,000,000) aggregate with respect to each of the Design-Builder's owned, hired, and non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. If the Design-Builder has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Design-Builder providing services to the Owner under this Agreement.

C. To the extent that liability results from the acts or omissions of the Design-Builder, all Insurance Policies and certificates of insurance issued for this Project shall name as additional insured(s), the Owner, whether private or governmental, the Owner's officers and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner. The Design-Builder shall be solely responsible for any deductible losses under any policy required herein.

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

Section 3 Certificates of Insurance

A. The certificate of insurance provided by the Design-Builder shall be completed by the Design-Builder’s insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Owner prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated, or materially changed until at least 30 days’ prior written notice has been given to the Owner. The completed certificate of insurance shall be sent to:

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

B. Failure on the part of the Design-Builder to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Owner may immediately terminate this Agreement, or at its discretion the Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by the Design-Builder to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to the Design-Builder from the Owner.

C. The Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. The parties hereto understand and agree that the Owner is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the Owner, its officers, or employees.

ARTICLE 10 – PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS

The Design-Builder shall within ten (10) days after the receipt of a notice of award, furnish the Owner with a performance bond and a payment bond in penal sums equal to the amount of the Contract Sum, conditioned upon the performance by the Design-Builder of all undertakings, covenants, terms, conditions, and agreements of the Contract Documents, and upon the prompt payment by the Design-Builder to all persons supplying labor and materials in the prosecution of the Work provided by the Contract Documents. Such bonds shall be executed by the Design-Builder and a corporate bonding company licensed to transact such business in the state in which
the Work is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these bonds shall be borne by the Design-Builder. If at any time a surety on any such bond is declared bankrupt, or loses its right to do business in the state in which the Work is to be performed, or is removed from the list of Surety Companies accepted on Federal Bonds, the Design-Builder shall within ten (10) days after notice from the Owner to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bond shall be paid by the Design-Builder. No further payments will be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

**ARTICLE 11 – CLAIMS AND DISPUTES**

A. **Definition.** A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. The term “claim” also includes other disputes between the Owner and Design-Builder arising out of or relating to the Agreement. Claims must be made by Written Notice. The responsibility to substantiate claims shall rest with the party making the claim.

B. **Time limits on claims.** Claims by either party must be made within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes, or reasonably should have recognized, the condition giving rise to the claim, whichever is later. An additional claim made after the initial claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

C. **Continuing performance.** Pending final resolution of a claim, including litigation, unless otherwise directed by Owner in writing, the Design-Builder shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

D. **Waiver of claims: Final Payment.** The making of Final Payment shall constitute a waiver of claims by the Owner except those arising from:

1. Liens, claims, security interests, or encumbrances arising out of the Agreement and unsettled;

2. Failure of the Work to comply with the requirements of the Contract Documents;

3. Terms of special warranties required by the Contract Documents; or

4. Faulty or defective Work appearing after Substantial Completion.

E. **Claims for concealed or unknown conditions.** If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to
exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Site conditions which an experienced and prudent contractor could have anticipated by visiting the Site, becoming familiar with the local conditions under which the Work is to be performed, and correlating its observations with the requirements of the Contract Documents shall not be considered as claims for concealed or unknown conditions, nor shall the locations of utilities which differ from locations provided by the utility companies. The Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder’s cost of, or the required time for performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Owner has given notice of the decision. If the Design-Builder disputes the Owner’s determination or recommendation, the Design-Builder may proceed as provided in the Contract Documents.

F. Claims for additional cost. If the Design-Builder wishes to make claim for an increase in the Contract Sum, Written Notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by the Owner. No such claim shall be valid unless so made. Prior notice is not required for claims relating to an emergency endangering life or property. If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Owner, (2) an order by the Owner to stop the Work where the Design-Builder was not at fault, (3) failure of payment by the Owner, (4) termination of the Agreement by the Owner, (5) Owner’s suspension, or (6) other reasonable grounds, claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive.

G. Claims for additional time. If the Design-Builder wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder’s claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary.

H. Injury or damage to person or property. Subject to the parties’ obligations and responsibilities under the Contract Documents in general and Article 11 hereof in particular, if either party to the Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party’s employees or agents, or of others for whose acts such party is legally liable, Written Notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim for
additional cost or time related to this claim is to be asserted, it shall be filed as provided in Article 3, Section 13.

ARTICLE 12 - RESOLUTION OF CLAIMS AND DISPUTES

A. When either the Design-Builder or the Owner makes a claim, the other party shall review the claim and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the claimant indicating when the other party expects to take action; (3) reject the claim in whole or in part, stating the reasons for rejection; (4) approve the claim; or (5) suggest a compromise. When a claim is made against the Design-Builder, the Owner may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

B. If a claim has been resolved, the Owner will prepare or obtain appropriate documentation.

C. If a claim has not been resolved, the party making the claim shall within ten (10) days after the preliminary response from the other party, take one or more of the following actions: (1) submit additional supporting data requested by the other party; (2) modify the initial claim; or (3) notify the other party that the initial claim stands.

D. If a claim has not been resolved after consideration of the foregoing, either party may file for non-binding mediation to be held in the place where the Project is located, unless another location is mutually agreed upon. If the parties fail to resolve their dispute through mediation, final dispute resolution shall be by litigation in a court of competent jurisdiction.

E. The dispute clause does not preclude the considerations of questions of fact or law in connection with decisions provided for in Paragraph A above. Nothing in this Agreement, however, shall be construed as making final a decision of an administrative official, representative, or City Council on a question of fact or law.

F. As between the parties of this Agreement, as to all acts or failure to act by either party of this Agreement, any applicable statute of limitation shall commence to run from the date of the agreed party's discovery of such act or failure to act.

G. The Design-Builder shall give Written Notice to the Owner within ten (10) days of any dispute/claim arising under this Contract upon which the Design-Builder seeks compensation or change from the Contract Documents; otherwise, the Design-Builder's dispute/claim shall be deemed waived. Said ten (10) days Written Notice shall not be deemed to run from the date of discovery in this instance but from the date the dispute/claim has arisen.
ARTICLE 13 - TERMINATION

A. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party; provided that no such termination may be effected unless the other party is given (1) not less than ten (10) days Written Notice of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination.

B. This Agreement may be suspended or terminated in whole or in part, in writing, by the Owner for its convenience; provided that no such termination may be effected unless the Design-Builder is given (1) not less than ten (10) days Written Notice of intent to suspend or terminate; and (2) an opportunity for consultation with the Owner prior to suspension or termination.

C. Suspension for Convenience: The Owner, for its own convenience, may suspend the Agreement in whole or in part at any time by Written Notice to the Design-Builder. Such notice shall state the extent and the effective date of such suspension, and on the effective date thereof the Design-Builder shall promptly suspend such Work to the extent specified, and during the period of such suspension shall properly care for and protect all Work, materials, housing, and equipment on hand for construction under the Agreement. The Design-Builder also shall promptly supply the Owner with copies of all outstanding orders for materials, equipment, and services, and shall take such action relative to such orders as may be directed by the Owner. If the performance of the Work is thus suspended, the Design-Builder shall be entitled to be reimbursed for all additional expense incurred by reason of such suspension as agreed upon by the Design-Builder and the Owner.

D. Termination for Convenience:

1. The Owner may for its own convenience terminate Work under the Agreement in whole or in part at any time by Written Notice to the Design-Builder. Such notice shall state the extent and effective date of such termination and on the effective date thereof, the Design-Builder will, and as to the extent directed, stop Work under the Agreement and the placement of further orders of subcontracts under the Agreement, terminate Work under order and subcontracts under the Agreement, and take any necessary action to protect property in the Design-Builder’s possession in which the Owner has or may acquire an interest.

2. In the event of such termination, the Owner shall pay to the Design-Builder: (1) its direct costs (excluding overhead) for all Work done in conformity with the Agreement to the effective date of such termination and (2) other costs pertaining to the Work which the Design-Builder may incur as a result of such termination, all as approved by the Owner plus ten percent (10%) of such costs (excluding costs under (2) above) for overhead and profit, provided, however, that in no event shall the total amount to be paid under this Article 13, Section D.(2) plus payments previously made, exceed the lesser of (a) the total aggregate Contract
Sum specified in the Agreement; or (b) that proportion of the aggregate total Contract Sum specified in the date of termination that bears to the entire Work to be performed hereunder. Any payment under this Article 13, Section D,(2) shall be made upon the expiration of the period within which liens may be filed under the laws of the state of Colorado, subject, however, to withholding by the Owner for the reasons and in the manner provided in those provisions pertaining to withholding of payments for liens.

E. Termination for Default:

1. The Owner shall have the right to terminate the employment of the Design-Builder after giving ten (10) days Written Notice of the termination to the Design-Builder in the event of any default by the Design-Builder. In the event of such termination, the Owner may take possession of the Work and of all materials, tools, and equipment thereon and may finish the Work by whatever method and means it may select. It shall be considered a default by the Design-Builder whenever the Design-Builder:

   a. Disregards or violates important provisions of the Contract Documents or the Owner's instructions, or fails to prosecute the Work according to the Agreement schedule of completion, including extensions thereof;

   b. Fails to provide a qualified representative, competent workmen or Subcontractors, or proper materials, or fails to make prompt payment therefor; and

   c. Fails to submit a completion schedule within fourteen (14) days after award of contract.

2. Upon termination of the Agreement by the Owner for default by the Design-Builder, no further payments shall be due to the Design-Builder until the work is completed. If the unpaid balance of the contract amount shall exceed the cost of completing the Work including all overhead costs, the excess shall be paid to the Design-Builder. If the cost of completing the Work shall exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The amount of the cost incurred by the Owner in implementing the Work, and the damage incurred through the Design-Builder’s default, shall be approved by the Owner.

3. The provisions of this Article 13, Section D.(2) shall not apply in the event of default of the Design-Builder; provided, however, that the provisions of Article 13, Section D.(2) shall apply in the event of substantial failure by the Owner to fulfill its obligations under this Agreement.

**ARTICLE 14 - SIMULTANEOUS WORK BY OTHERS**

A. The Owner reserves the right to let other contracts in connection with this project. The Design-Builder shall afford other trade contractors reasonable opportunity for the
introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its Work with theirs.

B. If the proper execution or results of any part of the Design-Builder's Work depends upon the work of any other trade contractor, the Design-Builder shall inspect and promptly report to the Owner any defects in such work that render it unsuitable for such proper execution and results. Failure of the Design-Builder to so inspect and report defects shall constitute an acceptance of the other trade contractors' work as fit and proper for the addition of its work thereto, except as to defects which may develop in the other trade contractors' work after the execution of its Work.

C. The Design-Builder shall coordinate its operations with those of other trade contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the Work.

D. The Design-Builder, including its Subcontractors, shall keep informed of the progress and the detail work of other trade contractors and shall notify the Owner immediately of lack of progress, defective workmanship, or lack of coordination on the part of other trade contractors. Failure of the Design-Builder to keep informed of the Work progressing on the Site and failure to give notice of lack of progress, defective workmanship, or lack of coordination by others shall be construed as acceptance by it of the work and the status of work as being satisfactory for proper execution of its own Work.

E. All materials and labor shall be furnished at such times as shall be for the best interest of all trade contractors concerned, to the end that the combined work of all may be properly and fully completed on time per this Design-Builder Agreement.

F. Nothing herein shall be construed in any way as giving the Design-Builder a claim as against the Owner resulting in any revised schedule based upon delay caused by any other trade contractor or supplier.

**ARTICLE 15 - SUBCONTRACTING**

A. The Design-Builder may utilize the services of specialty Subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty Subcontractors.

B. Before execution of the Agreement, the Design-Builder shall submit the names of all Subcontractors, including contact persons, phone numbers, and addresses to the Owner. The Design-Builder shall also promptly notify all parties of any changes in Subcontractors or Subcontractor contact information.

C. The Design-Builder shall be fully responsible to the Owner for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as the Design-Builder is responsible for the acts and omissions of persons directly employed by it.
D. The Design-Builder shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Design-Builder by the terms of the Contract Documents insofar as applicable to the Work of Subcontractors and to give the Design-Builder the same power as regards terminating any subcontract that the Owner may exercise over the Design-Builder under any provision of the Contract Documents.

E. Nothing contained in this Agreement will create any contractual relation between any Subcontractor and the Owner.

**ARTICLE 16 - GUARANTY**

A. The Design-Builder shall guarantee all materials and equipment furnished and Work performed for a period of two (2) years from the date of final acceptance of the Agreement by the Owner that the Work is free from all defects due to faulty materials or workmanship and that the Design-Builder shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Design-Builder should fail to make such repairs, adjustments, or other Work that may be made necessary by such defects, the Owner may do so and charge the Design-Builder the cost thereby incurred. The performance bond shall remain in full force and effect through the guarantee period.

B. Whenever in the specifications a guarantee or maintenance bond is required to be furnished for any item of equipment, material, or portion of the Work, such guarantee shall be submitted to the Owner and a written approval will be issued to the Design-Builder before any such equipment, material, or construction is ordered and incorporated in Work by the Design-Builder.

**ARTICLE 17 - SALES TAX**

The Owner has received an exemption granted by the Colorado State Department of Revenue that provides for tax-free purchases or materials. The Owner will provide this exemption certificate to the Design-Builder, and the Design-Builder shall ensure that all Subcontractors and Suppliers engaged for the Work receive the same certificate. The Owner reserves the right to require such additional information and/or documentation as may be necessary to ensure that no sales taxes are paid by the Design-Builder or any Subcontractor or Supplier and charged to the Owner. If sales tax is paid to any Subcontractor or Supplier for any reason, the Design-Builder is responsible for applying to the Sales Tax Division of the Colorado Department of Revenue for a refund.

**ARTICLE 18 - MISCELLANEOUS PROVISIONS**

A. This Agreement is made and entered into subject and conformable to the laws of the State of Colorado and the Charter of the City of Black Hawk. To the extent any provision hereof is inconsistent with said laws and Charter, said laws and Charter shall control.
B. The Design-Builder shall comply with all federal and state laws and local ordinances and regulations which affect those engaged or employed in the Work or which affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations, and decrees, and shall protect and indemnify the Owner against any claim or liabilities arising solely from or based solely on the violations of such law, ordinance, regulation, order, or decree, whether by itself, its sub-consultants, agents, or employees.

C. The Design-Builder shall take affirmative action to not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, or handicap, if otherwise qualified.

D. In the event any provision of this Agreement is held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties.

E. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver or a subsequent breach of the same by the other party.

F. The Owner and the Design-Builder each binds itself and its partners, successors, executors, administrators, and assigns to this Agreement. Neither the Owner nor the Design-Builder will assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

G. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Owner and the Design-Builder.

H. Illegal Aliens

1. Certification. By entering into this Agreement, Design-Builder hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform Work under the Agreement and that Design-Builder will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform Work under the Agreement.

2. Prohibited Acts. Design-Builder shall not:

a. Knowingly employ or contract with an illegal alien to perform Work under this Agreement; or
b. Enter into a contract with a Subcontractor that fails to certify to Design-
Builder that the Subcontractor shall not knowingly employ or contract
with an illegal alien to perform Work under this Agreement.

3. Verification

a. Design-Builder has confirmed the employment eligibility of all employees
who are newly hired for employment to perform Work under this
Agreement through participation in either the E-Verify Program or the
Department Program.

b. Design-Builder shall not use the E-Verify Program or the Department
Program procedures to undertake pre-employment screening of job
applicants while this Agreement is being performed.

c. If Design-Builder obtains actual knowledge that a Subcontractor
performing Work under this Agreement knowingly employs or contracts
with an illegal alien who is performing Work under the Agreement,
Design-Builder shall:

i. Notify the Subcontractor and the City within three (3) days that
Design-Builder has actual knowledge that the Subcontractor is
employing or contracting with an illegal alien who is performing
Work under the Agreement; and

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

4. Duty to comply with investigations. Design-Builder shall comply with any
reasonable request by the Colorado Department of Labor and Employment made
in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a)
to ensure that Design-Builder is complying with the terms of this Agreement.

5. If Design-Builder does not currently employ any employees, Design-Builder shall
sign the No Employee Affidavit attached hereto.

6. If Design-Builder wishes to verify the lawful presence of newly hired employees
who perform Work under the Agreement via the Department Program, Design-
Builder shall sign the Department Program Affidavit attached hereto.

I. Keep Jobs in Colorado Act. Pursuant to the Keep Jobs in Colorado Act, C.R.S. 8-17-101
et seq. (the “Act”) and the rules adopted by the Division of Labor of the Colorado
Department of Labor and Employment implementing the Act (the “Rules”), the Design-Builder shall employ Colorado labor to perform at least eighty percent (80%) of the Work and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, “Colorado labor” means any person who is a resident of the state of Colorado at the time of this Project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide qualification. A resident of the state is a person who can provide a valid Colorado driver’s license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days. Design-Builder represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate for any fiscal year.
ARTICLE 19 - ATTACHMENTS, SCHEDULES, AND SIGNATURES

It is further mutually agreed that this Agreement and the Contract Documents constitute the entire Agreement between the Owner and the Design-Builder and supersede all prior or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written amendment.

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

CITY OF BLACK HAWK, COLORADO

By: ___________________________
    David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

DESIGN-BUILDER

By: ___________________________
   Signature of Tom Szynakiewicz

Name: _________________________
   VP, HWCC

STATE OF COLORADO ) ss.
COUNTY OF JEFFERSON ) ss.

The foregoing instrument was acknowledged before me this 19th day of
February, 2019 by Tom Szynakiewicz, as
                                           of Harrison Western Construction

My commission expires: 6-28-2022

Witness my hand and official seal:

GYNTHIA N IENHAUS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 18984018015
MY COMMISSION EXPIRES JUNE 28, 2022
PROSPECTIVE DESIGN-BUILDER'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: Harrison Western Construction Corporation, Inc.  
(Prospective Design-Builder)

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

Project Name  Bobtail Street Sculpted and Stained Shotcrete

Bid Number  N/A  
Project No.  18016

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

Executed this 19th day of February, 2019.

Prospective Design-Builder  Harrison Western Construction Corporation

By:  

Title:  VP, HWCC
NO EMPLOYEE AFFIDAVIT

1. Check and complete one:

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

OR

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

2. Check one.

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

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

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

OR

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

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

__________________________  __________________________
Signature                        Date
DEPARTMENT PROGRAM AFFIDAVIT

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

I, Tom Szyrakiewicz, as a public contractor under contract with the City of Black Hawk (the “City”), hereby affirm that:

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

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

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

[Signature]
Design-Builder Signature

02/19/2019
Date

STATE OF COLORADO
)
COUNTY OF JEFFERSON  ) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 19 day of FEBRUARY, 2019, by Tom Szyrakiewicz, as VP of HARRISON WESTERN CONSTRUCTION.

My commission expires: 6-28-2022

(S E A L)  CYNTHIA A NIENHAUS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19984018015
MY COMMISSION EXPIRES JUNE 28, 2022

Notary Public
ACCEPTABLE DOCUMENTS FOR
LAWFUL PRESENCE VERIFICATION

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

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

OR

Documents that Only Serve to Prove Citizenship/Lawful Presence:

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

AND

Documents that Serve to Prove Identification:

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

BOBTAIL STREET SCULPTED AND STAINED SHOTCRETE
City of Black Hawk, Colorado
February 14, 2019

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

The City intends to construct a sculpted and stained Shotcrete wall along the south side of Bobtail Street from its intersection with Gregory Street to a point about 450’ east of the intersection. The main goal is to conceal the existing exposed mesh, rock bolts, and Shotcrete. The scope includes:

A. Perform a geotechnical investigation to determine if additional slope stability measures are required on this existing slope. If required, provide an engineered design for these additional stability measures and construct them.

B. Design and construct approximately 18,000 square feet of a sculpted and stained Shotcrete system. Final appearance of the Shotcrete shall closely resemble the existing sculpted and stained Shotcrete wall behind the City of Black Hawk Post Office at 145 Clear Creek Street.

C. With appropriate traffic control signage, Bobtail Road may be closed to traffic each week from 7:00 Monday morning through 1:00 Friday afternoon, excepting holidays.

D. An area at the northeast corner of Gregory Street and Church Street is available for the Design-Builder to use as a staging, laydown, and parking area.
# EXHIBIT B
## DESIGN-BUILDER FEE PROPOSAL
### BOBTAIL STREET SCULPTED AND STAINED SHOTCRETE

**RFP Issued January 10, 2019**

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**Construction Fee (Assumes $1,500,000 Total Contract Sum)**

| 1.B.1  | Home Office Overhead                                                         | 1        | LS    | $83,625   | $83,625    |
| 1.B.2  | Home Office Profit                                                           | 1        | LS    | $161,600  | $161,600   |
| 1.B.3  | Other Construction Fees                                                       | 1        | LS    | $0        | $0         |
| 1.B    | **Construction Fee - Subtotal**                                              |          |       |           | **$245,225**|

**Design Team Fees**

| 1.C.1  | Design Team's Preconstruction Fee                                           | 1        | LS    | $99,450   | $99,450    |
| 1.C.2  | Design Team's Construction Fee                                               | 1        | LS    | $12,000   | $12,000    |
| 1.C.3  | Design Team's Reimbursables                                                  | 1        | LS    | $0        |            |
| 1.C    | **Design Team Fees - Subtotal**                                              |          |       |           | **$111,450**|

| 1      | **DESIGN-BUILDER'S TOTAL PROPOSED FEES**                                     |          |       |           | **$382,420**|

|  | **DESIGN-BUILDER'S TOTAL PROPOSED PRECONSTRUCTION FEES**                     |          |       |           | **$125,195**|

Design-Builders Proposed Fee on Change Orders 15.0%
CERTIFICATE OF LIABILITY INSURANCE

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

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

**PRODUCER**
Lockton Companies
8110 E. Union Avenue
Suite 700
Denver CO 80237
(303) 414-6000

**INSURED**
Harrison Western Construction Corp.
1208 Quail Street
Lakewood, CO 80215

**CONTACT**
NAME: 
PHONE (Ac. No. Ext.): 
FAX (Ac. No.): 
EMAIL ADDRESS: 

**INSURER(S) AFFording COVERAGE**

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<tr>
<td>INSURER B: American Guarantee and Liab. Ins. Co.</td>
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<tr>
<td>INSURER C: American Mining Insurance Company</td>
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<tr>
<td>INSURER D: Steadfast Insurance Company</td>
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**CERTIFICATE NUMBER:** 15897199

**REVISION NUMBER:** XXXXXXX

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

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<td>PERSONAL &amp; ADV INJURY</td>
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<td>GENERAL AGGREGATE</td>
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<td>PRODUCTS - COMPOP AGG</td>
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<td>A X</td>
<td>AUTOMOBILE LIABILITY</td>
<td>ANY AUTO</td>
<td>OWNED AUTORS ONLY</td>
<td>SCHEDULED Autof only</td>
<td>N N</td>
<td>GLA-0384393-01</td>
<td>7/1/2018</td>
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<td>HIRED AUTORS ONLY</td>
<td>NON-OWNED Autof only</td>
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<td>BODILY INJURY (Per person)</td>
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<td>BODILY INJURY (Per accident)</td>
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<td>PROPERTY DAMAGE (Per accident)</td>
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<td>HIRED PD</td>
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<td>B X</td>
<td>UMBRELLA LIAB</td>
<td>OCCUR</td>
<td>CLAIMS-MADE</td>
<td>Y N</td>
<td>AUC-0384439-01</td>
<td>7/1/2018</td>
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<td>AGGREGATE</td>
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<td>C N</td>
<td>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</td>
<td>N/A</td>
<td>DESCRIPTI OF OPERATIONS below</td>
<td>Y N</td>
<td>AMWC113906</td>
<td>7/1/2018</td>
<td>7/1/2019</td>
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<td>E.L. DISEASE - EA EMPLOYEE</td>
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<td>E.L. DISEASE - POLICY LIMIT</td>
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<td>D N N</td>
<td>Contractors Prof Liab</td>
<td>Contractors Poll Liab</td>
<td>$2M each claim/policy aggregate</td>
<td>$2M per occ/policy aggregate</td>
<td>EOC-0384485-01</td>
<td>7/1/2018</td>
<td>7/1/2019</td>
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</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101; Additional Remarks Schedule, may be attached if more space is required)
Certificate holder is included as additional insured with respect to general liability and auto liability. General Liability coverage is primary and non-contributory with respect to additional insured. Coverage will not be cancelled, terminated, or materially changed until at least 30 days’ prior written notice has been given to the additional insured by Harrison Western Construction Corp.

**CERTIFICATE HOLDER**

| 15897199 | City of Black Hawk |
|          | Attn: Matt Reed - Project Manager |
|          | P.O. Box 68 |
|          | Black Hawk, CO 80422 |

**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE

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RESOLUTION 15-2019

A RESOLUTION
AUTHORIZING CERTAIN
INDIVIDUALS TO ACT ON
BEHALF OF THE CITY
WITH BOK FINANCIAL
SECURITIES/BOKF, NA
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 15-2019

TITLE: A RESOLUTION AUTHORIZING CERTAIN INDIVIDUALS TO ACT ON BEHALF OF THE CITY WITH BOK FINANCIAL SECURITIES/BOKF, NA

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

Section 1. The following are authorized individuals for securities, safekeeping transactions and opening checking accounts with BOK Financial Securities/BOKF, NA for the City of Black Hawk:

David D. Spellman, Mayor
Stephen N. Cole, Acting City Manager
Lance R. Hillis, Finance Director

Section 2. The above individuals are hereby authorized to effect securities safekeeping transactions with BOK Financial Securities / BOKF NA, to wit: to execute a Safekeeping Agreement with BOK Financial Securities/BOKF NA, to give BOK Financial Securities/BOKF NA the instructions required to buy, sell or otherwise dispose of money, securities and property of every kind; to receive all communications from BOK Financial Securities/BOKF NA; to enter into repurchase agreements with BOK Financial Securities/BOKF NA relating to or dealing in securities; and to execute any agreements relating to opening checking accounts and any documents relating to the foregoing matters.

RESOLVED AND PASSED this 27th day of February, 2019.

_______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, CMC, City Clerk
SUBJECT: Resolution authorizing certain individuals to act on behalf of the City with BOK Financial Securities.

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

MOTION TO APPROVE: Resolution 15-2019, A Resolution authorizing certain individuals to act on behalf of the City with BOK Financial Securities / BOKF, NA.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: Recently the City’s banking partner, Colorado Business Bank, was purchased by BOK Financial. In order to create new accounts and take advantage of additional services provided by BOK, a resolution authorizing certain individuals to act on behalf of the City is required. The attached Resolution 15-2019 will serve as that authorization.

AGENDA DATE: February 27, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X] Yes [ ] No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: N/A

RECORD: [ ] Yes [X] No

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

SUBMITTED BY: REVIEWED BY:

__________________________  ____________________________
Lance Hillis, Finance Director  Stephen N. Cole, Acting City Manager