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. INTRODUCTION OF NEW EMPLOYEES: Ellie Younger, Communications Officer

6. EXECUTIVE SESSION:

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

7. PUBLIC COMMENT: Please limit comments to 5 minutes

8. APPROVAL OF MINUTES: April 10, 2019

9. PUBLIC HEARINGS:

None

10. ACTION ITEMS:

   A. Resolution 22-2019, A Resolution Amending the City of Black Hawk 2018 Budget

   B. Resolution 23-2019, A Resolution Awarding the Bid and Approving the Design-Build Contract Between the City of Black Hawk and Concrete Express, Inc. in an Amount Not To Exceed $108,500.00 for Pre-Construction Services Pertaining to the Bobtail Street Rail Slab Project

   C. Resolution 24-2019, A Resolution Awarding the Bid and Approving the Contract Between the City of Black Hawk and Grapes & Sons Excavating in an Amount Not To Exceed $58,300.00 for Construction of the Gregory Street Phase 2 Excavation Project

11. CITY MANAGER REPORTS:

12. CITY ATTORNEY:

13. EXECUTIVE SESSION:

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

14. ADJOURNMENT:
ELLIE YOUNGER
COMMUNICATIONS OFFICER I

Ellie Younger grew up in Clear Creek County. She graduated high school from Dakota Ridge, and went to Red Rocks Community College for EMT school. She worked for CDOT as a dispatcher before coming to Black Hawk to be a dispatcher. Her mom works for Clear Creek County Sheriff’s Office in the Investigations unit. Her father owns Allied Towing and she grew up working on cars and fixing things. In high school Ellie played football, soccer, and was on the POMS team. On her weekends Ellie snowmobiles in the winter and in the summer she wakeboards.
1. CALL TO ORDER: The regular meeting of the City Council was called to order on Wednesday, April 10, 2019, at 3:00 p.m. by Mayor Spellman.

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

Staff present: City Attorney Hoffmann, City Manager Cole, Police Commander Jantz, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Senior Civil Engineers Ford and Reed, Water Superintendent Fredericks, Community Planning and Development Administrator Linker, and Deputy City Clerk Martin.

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

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

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

City Attorney Hoffmann asked the 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. EXECUTIVE SESSION: City Attorney Hoffmann recommended item number 2 only for Executive Session for specific legal issues related to Gregory Street and Intergovernmental issues.
MOTION TO ADJOURN INTO EXECUTIVE SESSION

Alderman Bennett MOVED and was SECONDED by Alderman Johnson to adjourn into Executive Session at 3:03 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 RESUME TO OPEN, REGULAR SESSION OF MEETING

Alderman Bennett MOVED and was SECONDED by Alderman Johnson to reconvene to the open, regular session of the meeting at 3:15 p.m.

MOTION PASSED

There was no discussion, and the motion PASSED unanimously.

6. INTRODUCTION OF NEW EMPLOYEES: Justin Storms, Communications Officer
   Troy Cooper, Police Sergeant
   Commander Jantz introduced the City’s newest employees and provided their background. They were warmly welcomed.

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

8. APPROVAL OF MINUTES: March 13, 2019

MOTION TO APPROVE

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

MOTION PASSED

There was no discussion and the motion passed unanimously.

9. PUBLIC HEARINGS:

   A. CB34, 2018-34, An Ordinance Adopting the City of Black Hawk Comprehensive Plan (continued from December 12, 2018)

      Mayor Spellman read the title and re-opened the public hearing.
City Attorney Hoffmann introduced this item and said the recommendation at this time is to continue this indefinitely as staff does not know the precise time the updated Comprehensive Plan will be finished, yet he believes it should be sometime later this year. Staff will continue to work on refining it, and the Clerk’s office will re-notice the public hearing when it is ready to come back before Council.

MOTION TO APPROVE  
Alderman Bennett MOVED and was SECONDED by Alderman Armbright to continue indefinitely CB34, 2018-34, an Ordinance adopting the City of Black Hawk Comprehensive Plan.

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

10. ACTION ITEMS:

A. Resolution 19-2019, A Resolution Approving the Cooperation Agreement Including a License Agreement and a Temporary Construction Easement Between the City of Black Hawk and the Rocky Mountain Free Evangelical Church

Mayor Spellman read the title.

City Attorney Hoffmann introduced this agreement that would grant a License Agreement to allow the City to evaluate the church structure as part of the Gregory Street project, and a Temporary Construction Easement for the entire church property for one year, with a one year extension, if necessary. In exchange, the City will provide a space and move all of their furniture to 271 Gregory Street, and will also rehabilitate the exterior of the church property during the duration of the Temporary Construction Easement. He said this agreement was reviewed by the Church Board and was found to be acceptable.

MOTION TO APPROVE  
Alderman Armbright MOVED and was SECONDED by Alderman Bennett to approve Resolution 19-2019, a Resolution approving the Cooperation Agreement including a License Agreement and a Temporary Construction Easement between the City of Black Hawk and the Rocky Mountain Free Evangelical Church.

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

B. Resolution 20-2019, A Resolution Approving the Purchase of a 2019 Hurco Waterline Valve Exerciser & Vacuum Trailer from Ten Point Sales and Marketing, LLC in an Amount Not to Exceed $76,990.45

Mayor Spellman read the title.
Public Works Water Superintendent Fredericks and Senior Civil Engineer Ford were present to introduce this item for the Water Department.

MOTION TO APPROVE

Alderman Johnson MOVED and was SECONDED by Alderman Moates to approve Resolution 20-2019, a Resolution approving the purchase of a 2019 Hurco Waterline Valve Exerciser & Vacuum Trailer from Ten Point Sales and Marketing, LLC in an amount not to exceed $76,990.45.

MOTION PASSED

There was no discussion, and the motion PASSED unanimously.

C. Resolution 21-2019, A Resolution Approving the Agreements for Asbestos Abatement and Interior Demolition of Various Properties with Weecycle Environmental Consulting in a Total Amount Not to Exceed $75,870.00

Mayor Spellman read the title.

Community Planning and Development Administrator Linker explained that the Asbestos Survey showed asbestos in all the sheet flooring and floor tile in the mobile home at 500 Chase Street and in the windows of 426 Gregory Street. She noted that once they get into the mitigation of the mobile home, they may find that the whole thing will have to be dismantled to perform additional work, so she has prepared a Change Order, if needed.

Linker added that Weecycle will also provide interior demolition for 211, 221, and 261 Gregory Street to open those buildings up for the architects to prepare their drawings for the Gregory Street Redevelopment Project. She said those buildings were found to be free of asbestos.

Alderman Bennett questioned why the mobile home just couldn’t be torn down, and staff said the asbestos would still have to be removed first.

MOTION TO APPROVE

Alderman Armbright MOVED and was SECONDED by Alderman Johnson to approve Resolution 21-2019, a Resolution approving the agreements for Asbestos Abatement and Interior Demolition of various properties with Weecycle Environmental Consulting in a total amount not to exceed $75,870.00.

MOTION PASSED

There was no discussion, and the motion PASSED unanimously.
11. CITY MANAGER REPORTS: City Manager Cole had nothing to report.

12. CITY ATTORNEY: City Attorney Hoffmann had nothing to report.

13. EXECUTIVE SESSION: City Attorney Hoffmann recommended that Council continue its Executive Session, subject to the previous motion, as they did not finish discussing all of the items. Mayor Spellman made a Motion to adjourn back into Executive Session at 3:30 p.m.

MOTION TO ADJOURN

Alderman Bennett MOVED and was SECONDED by Alderman Johnson to adjourn the Executive Session at 4:10 p.m.

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

13. ADJOURNMENT: Mayor Spellman declared the Regular Meeting of the City Council closed at 4:10 p.m.

Melissa A. Greiner, CMC
City Clerk

David D. Spellman
Mayor
RESOLUTION 22-2019
A RESOLUTION AMENDING THE CITY OF BLACK HAWK 2018 BUDGET
TITLE: A RESOLUTION AMENDING THE CITY OF BLACK HAWK 2018 BUDGET

WHEREAS, upon due and proper notice, published or posted in accordance with the law, a public hearing was held on April 24, 2019 on the proposed amendments to the 2018 budget, and interested persons were given the opportunity to register any objections to the proposed amended budget.

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

Section 1. That the budget as amended and attached hereto, is hereby approved and adopted as the 2018 amended budget of the City of Black Hawk.

Section 2. That the amended budget hereby approved and adopted shall be signed by the Mayor and made a part of the public records of the City.

Section 3. That the sums for 2018, on the attached amended budget, are hereby appropriated from the revenue of each fund, for the purposes stated.

RESOLVED AND PASSED this 24th day of April, 2019.

________________________________________
David D. Spellman, Mayor

ATTEST:

________________________________________
Melissa A. Greiner, City Clerk
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: 2018 Budget Amendment

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

MOTION TO APPROVE: Resolution 22-2019, A Resolution amending the City of Black Hawk 2018 Budget.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: See Attached.

AGENDA DATE: April 24, 2019

WORKSHOP DATE: N/A

FUNDING SOURCE: Fund Balance

DEPARTMENT DIRECTOR APPROVAL: [X] Yes [ ] No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: Amendment Detail by Account

RECORD: [ ] Yes [X] No

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

SUBMITTED BY: REVIEWED BY:

Lance Hillis, Finance Director Stephen N. Cole, City Manager
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RESOLUTION 23-2019
A RESOLUTION
AWARDING THE BID AND
APPROVING THE DESIGN-
BUILD CONTRACT
BETWEEN THE CITY OF
BLACK HAWK AND
CONCRETE EXPRESS, INC. IN AN AMOUNT NOT TO EXCEED $108,500.00 FOR PRE-CONSTRUCTION SERVICES PERTAINING TO THE BOBTAIL STREET RAIL SLAB PROJECT
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 23-2019

TITLE:  A RESOLUTION AWARDING THE BID AND APPROVING THE DESIGN-BUILD CONTRACT BETWEEN THE CITY OF BLACK HAWK AND CONCRETE EXPRESS, INC. IN AN AMOUNT NOT TO EXCEED $108,500.00 FOR PRE-CONSTRUCTION SERVICES PERTAINING TO THE BOBTAIL STREET RAIL SLAB 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 Concrete Express, Inc. in an amount not to exceed $108,500.00 for pre-construction services related to the Bobtail Street Rail Slab project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 24th day of April, 2019.

_______________________________
David D. Spellman, Mayor

ATTEST:

_____________________________
Melissa A. Greiner, CMC, City Clerk
SUBJECT:
Approve Resolution 23-2019, a Resolution awarding the design-build contract for the Bobtail Street Rail Slab project to Concrete Express, Inc.

RECOMMENDATION:
If City Council chooses to approve Resolution 23-2019, a Resolution awarding the design-build contract between the City of Black Hawk and Concrete Express, Inc., the recommended motion is as follows: “Approve Resolution 23-2019, a Resolution awarding the bid and approving the design-build contract between the City of Black Hawk and Concrete Express, Inc. in an amount not to exceed $108,500.00 for pre-construction services pertaining to the Bobtail Street Rail Slab project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
There is an existing rail slab constructed along the north side of Bobtail Street. This slab ends at a point above the eastern edge of the new St. Charles Carriage House. The City intends to extend this rail slab westward to a point near Bobtail Street’s intersection with Gregory Street. Railings and streetlights will be added to the rail slab extension, and it will be stained to match the existing rail slab. The new rail slab will be designed to make smooth transitions on either side of the Bobtail Street entrance to the St. Charles Carriage House.

The design-build method of contracting has been selected for this project. A Request for Qualifications was publicly advertised on February 5, 2019. Four contractors submitted qualification packages, three of which were invited to submit Proposals. One of these three contractors dropped out, so the City received two Proposals. Of these two Proposals, Concrete Express, Inc. (CEI) provided the lowest fee proposal.

Approval of this Resolution would authorize CEI to proceed with a geotechnical investigation, design of the rail slab, and other pre-construction tasks. Over the next few months, CEI 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: Bobtail Rail Slab: 305-3101-431-75-62

WORKSHOP DATE: April 24, 2019

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: January 31, 2019

DOCUMENTS ATTACHED: Design-Build Contract

CITY ATTORNEY REVIEW: [ ] Yes [ X ] No [ ] N/A INITIALS__________
SUBMITTED BY:

Thomas Isbester, Public Works Director

REVIEWED BY:

Stephen N. Cole, City Manager
CITY OF BLACK HAWK, COLORADO

BLACK HAWK

Contract Documents for

DESIGN-BUILDER
BOBTAIL STREET RAIL SLAB
Black Hawk, CO 80422

April 2019
# TABLE OF CONTENTS

**ARTICLE 1 - GENERAL PROVISIONS AND SERVICES** .................................................. 2

**ARTICLE 2 - DEFINITIONS** .................................................................................. 2

**ARTICLE 3 – DESCRIPTION OF WORK AND SERVICE** ........................................ 5

**ARTICLE 4 – DESIGN-BUILDER’S CONSTRUCTION SCHEDULE** ............................ 18

**ARTICLE 5 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES** ................. 19

**ARTICLE 6 - CONTRACT SUM** ........................................................................... 20

**ARTICLE 7 - CORRECTION OF WORK** ................................................................. 22

**ARTICLE 8 - TEMPORARY FACILITIES AND SERVICES** .................................... 22

**ARTICLE 9 - INDEMNIFICATION AND INSURANCE** ........................................... 23

**ARTICLE 10 - PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS** .......... 25

**ARTICLE 11 – CLAIMS AND DISPUTES** .......................................................... 26

**ARTICLE 12 - RESOLUTION OF CLAIMS AND DISPUTES** ............................... 28

**ARTICLE 13 - TERMINATION** ........................................................................... 29

**ARTICLE 14 - SIMULTANEOUS WORK BY OTHERS** .......................................... 30

**ARTICLE 15 - SUBCONTRACTING** ...................................................................... 31

**ARTICLE 16 - GUARANTY** ................................................................................ 32

**ARTICLE 17 - SALES TAX** ................................................................................ 32

**ARTICLE 18 - MISCELLANEOUS PROVISIONS** .................................................... 32

**ARTICLE 19 – ATTACHMENTS, SCHEDULES, AND SIGNATURES** ....................... 36
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 Concrete Express, 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 Rail Slab 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 December 20, 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 pre-construction Work described in the Contract Documents and to comply with the terms therein for an amount not to exceed One Hundred Eight Thousand Five Hundred Dollars ($108,500), 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-Build's obligations under the Contract Documents. The Work includes all labor, materials, equipment, and services provided or to be provided by the Design-Build. 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-Builder 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-Builder shall be done at the Design-Builder's risk.

D. The Design-Builder 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-Builder shall carry out the Work in accordance with the additional detail drawings and instructions.

Section 3  Materials, Services and Facilities

A. The Design-Builder shall, in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Contract Documents. The Design-Builder 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-Builder 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-Builder 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-Builder 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-Build 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-Build 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-Build 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-Build 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-Build 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-Build at the Design-Build’s expense. Bench marks and survey stakes shall be preserved by the Design-Build, and in case of their destruction or removal by the Design-Build, its employees, or others, they shall be replaced at the Design-Build’s expense and its sureties shall be liable therefor.

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

E. The Design-Build 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-Builder 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 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

23
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 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-Builders 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

CONCRETE EXPRESS, INC.

By:

Name: JOSEPH M. O'DEA
Title: VICE PRESIDENT

STATE OF COLORADO
COUNTY OF Denver

) ss.

The foregoing instrument was acknowledged before me this 18th day of April, 2019 by Joseph M. O'Dea, Vice President of Concrete Express, Inc., as Vice President of Concrete Express, Inc.

My commission expires: October 15, 2020

Witness my hand and official seal.

JESSICA A. RAY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084035981
MY COMMISSION EXPIRES OCTOBER 15, 2020

36

4/17/19
52 of 119
PROSPECTIVE DESIGN-BUILDER'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: Concrete Express, Inc.  
(Prospective Design-Builder)

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

Project Name Bobtail Street Rail Slab

Bid Number N/A  
Project No. 19002

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 18th day of April, 2019.

Prospective Design-Builder Concrete Express, Inc.

By:  

Title: JOSEPH M. O'DEA  
VICE PRESIDENT
NO EMPLOYEE AFFIDAVIT

(To be completed if Design-BUILDER has zero employees)

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:
  o A valid Colorado Driver’s license or a Colorado identification card
  o A United States military card or a military dependent’s identification card
  o A United States Coast Guard Merchant Mariner card
  o A Native American tribal document or
  o 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
  o 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

4/17/19

38
DEPARTMENT PROGRAM AFFIDAVIT

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

I, Joseph M. O'Dea, 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.

JOSEPH M. O'DEA
VICE PRESIDENT

Design-Build Signature

4/18/2019
Date

STATE OF COLORADO

COUNTY OF Denver

The foregoing instrument was subscribed, sworn to and acknowledged before me this 18th day of April, 2019, by Joseph M. O'Dea, as Vice President of Concrete Express, Inc.

My commission expires: October 15, 2020

JESSICA A. RAY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20080356981
MY COMMISSION EXPIRES OCTOBER 15, 2020

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 RAIL SLAB
City of Black Hawk, Colorado
April 17, 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 of Black Hawk intends to construct a concrete rail slab with a steel railing and streetlights along the north side of Bobtail Street. The proposed rail slab will tie into the end of an existing rail slab, then extend westward approximately 300 feet to a point near the Gregory/ Bobtail Street intersection. The scope includes:

A. Perform a topographic survey of the area to assist with preparing the alignment and dimensions of the proposed rail slab.
B. Perform a geotechnical investigation to evaluate existing conditions and provide design parameters for the proposed rail slab, anchors, etc.
C. Design and construct approximately 300 lineal feet of concrete rail slab system to match the existing rail slab, railing, and handrail along the north side of Bobtail Street. Design and construct tie-in points at the Bobtail Street entrance to the adjacent parking structure.
D. Incorporate a concrete retaining wall into the rail slab where necessary. The City’s expectation is for all retaining wall sections to be structural concrete with a stone veneer to match other Gregory Street retaining walls.
E. Design-Builder shall generally match the appearance of the existing rail slab; however, Design-Builder shall also make improvements where possible, including an improved design for the grouted joints that are popping out from the existing rail slab.
F. Coordinate with Xcel Energy for design and installation of a fully-functional streetlight system.
G. Remove and replace sidewalk, curb/gutter, and asphalt pavement as necessary to facilitate the work.
H. With reasonable notice and 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.
I. 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. Bobtail Road may also be used as a storage and parking area during weekly closures.
## EXHIBIT B
**DESIGN-BUILDER FEE PROPOSAL**
**BOBTAIL STREET RAIL SLAB**
RFP Issued March 12, 2019

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<tr>
<th>Item #</th>
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<td>• Construction Cost Estimating and Value Analysis</td>
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<tr>
<td></td>
<td>• Scheduling, Phasing, and Logistics Planning</td>
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<td></td>
<td>w/Above</td>
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<tr>
<td></td>
<td>• Constructability Reviews</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• Subcontractor Procurement and Scope Validation</td>
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<td></td>
<td>• Meetings, Conference Calls, and Travel</td>
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CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER 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: ACORD, Inc. - Colorado Division
1-303-534-4567
1705 17th Street
Suite 100
Denver, CO 80202

INSURED: Concrete Express, Inc.
2027 West Colfax Avenue
Denver, CO 80204

CONTACT: NAME: [Redacted]
PHONE: [Redacted]
FAX: [Redacted]
E-MAIL ADDRESS: [Redacted]
INSURER(S) AFFORDING COVERAGE: NAIC#:
INSURER A: TRAVELERS PROD CAS CO OF AMER 25674
INSURER B: TRAVELERS IND CO 25658
INSURER C: [Redacted]
INSURER D: [Redacted]
INSURER E: [Redacted]
INSURER F: [Redacted]

COVERAGE: CERTIFICATE NUMBER: 55972316

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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<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
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<td>ANY AUTO</td>
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<td>05/01/18</td>
<td>05/01/19</td>
<td>X STATUTE</td>
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</table>

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

City of Black Hawk, Owners, officers and employees are included as Additional Insureds on the General, Automobile, and Excess Liability Policies if required by written contract or agreement and with respect to work performed by Insured subject to the policy terms and conditions. This Insurance is Primary on the General Liability Policy subject to the policy terms and conditions. Severability of Interests applies on the General and Automobile Liability Policies subject to the policy terms and conditions.

CERTIFICATE HOLDER: KK: Bobtail Rail Slab Design.
City of Black Hawk
PO Box 68
Black Hawk, CO 80422
USA

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: [Signature]

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COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED
(CONTRACTORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
   a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
   b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of your work to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

2. The insurance provided to the additional insured by this endorsement is limited as follows:
   a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
   b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
      i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
      ii. Supervisory, inspection, architectural or engineering activities.
   c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other Insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other Insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other Insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other Insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".

4. As a condition of coverage provided to the additional insured by this endorsement:
   a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
COMMERCIAL GENERAL LIABILITY

i. How, when and where the "occurrence" or offense took place;

ii. The names and addresses of any injured persons and witnesses; and

iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:

i. Immediately record the specifics of the claim or "suit" and the date received; and

ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.

d) The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to SECTION V. — DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

a. After the signing and execution of the contract or agreement by you;

b. While that part of the contract or agreement is in effect; and

c. Before the end of the policy period.
COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. Aircraft Chartered With Pilot
B. Damage To Premises Rented To You
C. Increased Supplementary Payments
D. Incidental Medical Malpractice
E. Who Is An Insured – Newly Acquired Or Former Organizations
F. Who Is An Insured -- Broadened Named Insured – Unnamed Subsidiaries
G. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises
H. Blanket Additional Insured – Lessors Of Leased Equipment
I. Blanket Additional Insured – States Or Political Subdivisions – Permits
J. Knowledge And Notice Of Occurrence Or Offense
K. Unintentional Omission
L. Blanket Waiver Of Subrogation
M. Amended Bodily Injury Definition
N. Contractual Liability – Railroads

PROVISIONS

A. AIRCRAFT CHARTERED WITH PILOT
   The following is added to Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

   This exclusion does not apply to an aircraft that is:
   (a) Chartered with a pilot to any insured;
   (b) Not owned by any insured; and
   (c) Not being used to carry any person or property for a charge.

B. DAMAGE TO PREMISES RENTED TO YOU
   1. The first paragraph of the exceptions to the property in Exclusion j., Damage To Property, in Paragraph 2. of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY is deleted.
   2. The following replaces the last paragraph of Paragraph 2., Exclusions, of SECTION I – COVERAGES – COVERAGE A. BODILY

INJURY AND PROPERTY DAMAGE LIABILITY:

Exclusions c. and g. through n. do not apply to "premises damage". Exclusion f.(1)(a) does not apply to "premises damage" caused by:
   a. Fire;
   b. Explosion;
   c. Lightning;
   d. Smoke resulting from such fire, explosion, or lightning; or
   e. Water;
   unless Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title.

A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of SECTION III – LIMITS OF INSURANCE.
COMMERCIAL GENERAL LIABILITY

3. The following replaces Paragraph 6. of SECTION III - LIMITS OF INSURANCE:
Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.
The Damage To Premises Rented To You Limit will be:
a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
b. $300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph 4. of the definition of "insured contract" in the DEFINITIONS Section:
a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the DEFINITIONS Section:
"premises damage" means "property damage" to:
a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:
(b) That is insurance for "premises damage";

7. Paragraph 4.b.(1)(c) of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted.

C. INCREASED SUPPLEMENTARY PAYMENTS
1. The following replaces Paragraph 1.b. of SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGE:
b. Up to $2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGE:
d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

D. INCIDENTAL MEDICAL MALPRACTICE
1. The following is added to the definition of "occurrence" in the DEFINITIONS Section:
"Occurrence" also means an act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of SECTION II - WHO IS AN INSURED:
Paragraph (1)(d) above does not apply to "bodily injury" arising out of providing or failing to provide:
(i) "incidental medical services" by any of your "employees" who is a nurse practitioner, registered nurse, licensed practical nurse, nurse assistant, emergency medical technician or paramedic; or
(ii) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.
3. The following is added to Paragraph 5 of SECTION III – LIMITS OF INSURANCE:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2, Exclusions, of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

Sale Of Pharmaceuticals

"Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the DEFINITIONS Section:

"Incidental medical services" means:

a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

6. The following is added to Paragraph 4.b., Excess Insurance, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The insurance is excess over any valid and collectible other insurance available to the insured, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" or "volunteer workers" for "bodily injury" that arises out of providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4. of SECTION II – WHO IS AN INSURED:

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

F. WHO IS AN INSURED – BROADENED NAMED INSURED – UNNAMED SUBSIDIARIES

The following is added to SECTION II – WHO IS AN INSURED:

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if you maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such subsidiary.
G. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an Insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and

b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.

b. The insurance provided to such premises owner, manager or lessor does not apply to:

   (1) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

   (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, lessor or manager.

c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

H. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is an equipment lessor and that you have agreed in a written contract or agreement to include as an insured on this Coverage Part is an Insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that committed, subsequent to the execution of that contract or agreement; and

b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

a. The limits of insurance provided to such equipment lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.

b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

I. BLANKET ADDITIONAL INSURED – STATES OR POLITICAL SUBDIVISIONS – PERMITS

The following is added to SECTION II – WHO IS AN INSURED:

Any state or political subdivision that has issued a permit in connection with operations performed by you or on your behalf and that you are required
by any ordinance, law or building code to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of such operations.

The Insurance provided to such state or political subdivision does not apply to:

a. Any "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or

b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

J. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., Duties In The Event of Occurrence, Offense, Claim or Suit, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

e. The following provisions apply to Paragraph a. above, but only for the purposes of the Insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:

(1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by you (If you are an individual), any of your partners or members who is an individual (If you are a partnership or joint venture), any of your managers who is an individual (If you are a limited liability company), any of your "executive officers" or directors (If you are an organization other than a partnership, joint venture or limited liability company) or any "employee" authorized by you to give notice of an "occurrence" or offense.

(2) If you are a partnership, joint venture or limited liability company, and none of your partners, joint venture members or managers are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any Individual who is:

(i) A partner or member of any partnership or joint venture;

(ii) A manager of any limited liability company; or

(iii) An executive officer or director of any other organization; that is your partner, joint venture member or manager; or

(b) Any "employee" authorized by such partnership, joint venture, limited liability company or other organization to give notice of an "occurrence" or offense.

(3) Notice to us of such "occurrence" or of an offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the Insurance provided under this Coverage Part may apply.

However, if this Coverage Part includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants", which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

K. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., Representations, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this Insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

L. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:
COMMERCIAL GENERAL LIABILITY

If the insured has agreed in a contract or agreement to waive that insured’s right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

a. "Bodily injury" or "property damage" that occurs; or

b. "Personal injury" or "advertising injury" caused by an offense that is committed; subsequent to the execution of that contract or agreement.

M. AMENDED BODILY INJURY DEFINITION
The following replaces the definition of "bodily injury" in the DEFINITIONS Section:

3. "Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

N. CONTRACTUAL LIABILITY – RAILROADS
1. The following replaces Paragraph c. of the definition of "insured contract" in the DEFINITIONS Section:
   c. Any easement or license agreement;

2. Paragraph f.(1) of the definition of "insured contract" in the DEFINITIONS Section is deleted.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BROAD FORM NAMED INSURED
B. BLANKET ADDITIONAL INSURED
C. EMPLOYEE HIRED AUTO
D. EMPLOYEES AS INSURED
E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS
F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS
G. WAIVER OF DEDUCTIBLE – GLASS
H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT
I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT
J. PERSONAL PROPERTY
K. AIRBAGS
L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS
M. BLANKET WAIVER OF SUBROGATION
N. UNINTENTIONAL ERRORS OR OMISSIONS

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

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

2. The following replaces Paragraph b. in B.5., Other Insurance, of SECTION IV – BUSINESS AUTO CONDITIONS:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your
COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

   (2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., Policy Period, Coverage Territory, of SECTION IV – BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction where any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

   (i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

   (ii) Neither you nor any other involved "insured" will make any settlement without our consent.

   (iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.
You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

(d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS
The following is added to Paragraph D., Deductible, of SECTION III – PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT
The following replaces the last sentence of Paragraph A.4.b., Loss Of Use Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

However, the most we will pay for any expenses for loss of use is $65 per day, to a maximum of $750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT
The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY
The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Personal Property
We will pay up to $400 for "loss" to wearing apparel and other personal property which is:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS
The following is added to Paragraph B.3., Exclusions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS
The following is added to Paragraph A.2.a., of SECTION IV – BUSINESS AUTO CONDITIONS:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

(a) You (if you are an individual);
(b) A partner (if you are a partnership);
(c) A member (if you are a limited liability company);
(d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
(e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION
The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV – BUSINESS AUTO CONDITIONS:

5. Transfer Of Rights Of Recovery Against Others To Us
We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by
such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS
The following is added to Paragraph B.2., Concealment, Misrepresentation, Or Fraud, of SECTION IV – BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.
Effective 05/01/18 - 05/01/19

TRAVELERS
ONE TOWER SQUARE
HARTFORD, CT 06183

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 03 13 (00)-01

POLICY NUMBER: VTC2KUB5644B05518

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS 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 requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:

ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER

ST ASSIGN:
RESOLUTION 24-2019

A RESOLUTION

AWARDING THE BID AND

APPROVING THE

CONTRACT BETWEEN

THE CITY OF BLACK

HAWK AND GRAPES &

SONS EXCAVATING IN AN

AMOUNT NOT TO

EXCEED $58,300.00 FOR

CONSTRUCTION OF THE

GREGORY STREET PHASE

2 EXCAVATION PROJECT
TITLE: A RESOLUTION AWARDING THE BID AND APPROVING THE CONTRACT BETWEEN THE CITY OF BLACK HAWK AND GRAPES & SONS EXCAVATING IN AN AMOUNT NOT TO EXCEED $58,300.00 FOR CONSTRUCTION OF THE GREGORY STREET PHASE 2 EXCAVATION PROJECT

WHEREAS, the City requires a discrete excavation project that pursuant to Section 1-191 of the Black Hawk Municipal Code shall be awarded after ample advertisement;

WHEREAS, the City has received a proposal from Grapes & Sons Excavating, a contractor that has previously been awarded projects following a traditional competitive bid process; and

WHEREAS, based on the nature of the discrete excavation project for the Gregory Street Phase 2 excavation, the City finds that the proposal received from Grapes & Sons Excavating was done after ample advertisement, and that awarding the project to Grapes & Sons Excavating is in the best interests of the City and necessary to avoid potential delays caused by a more elaborate bidding process.

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 contract between the City of Black Hawk and Grapes & Sons Excavating in an amount not to exceed $58,300.00 for construction of the Gregory Street Phase 2 Excavation project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 24th day of April, 2019.

_______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, CMC, City Clerk
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT:
Approve Resolution 24-2019, a Resolution awarding the contract for construction of the Gregory Street Phase 2 Excavation project to Grapes & Sons Excavating.

RECOMMENDATION:
If City Council chooses to approve Resolution 24-2019, a Resolution awarding the contract between the City of Black Hawk and Grapes & Sons Excavating, the recommended motion is as follows: “Approve Resolution 24-2019, a Resolution awarding the bid and approving the contract between the City of Black Hawk and Grapes & Sons Excavating in an amount not to exceed $58,300.00 for the construction of the Gregory Street Phase 2 Excavation project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
Design work for the overall Gregory Street Phase 2 project is underway. One of the first significant elements of construction will be to remove debris and excavate the area along the north sides of 305, 311, 321, and 351 Gregory Street. To accelerate the construction schedule, it has been suggested to award this excavation project separately from and prior to beginning construction on the overall Gregory Street Phase 2 project. This will allow the City and the design team to evaluate the resulting rock face and determine what additional treatment will be necessary to stabilize the slope.

At the time of this Request for Council Action, the City has received one proposal to complete this work. Therefore, it is suggested that the City sole-source this project and award it to Grapes & Sons Excavating. Grapes & Sons Excavating has a long history of successful projects for the City of Black Hawk, and has demonstrated the ability to be the lowest bidder in many previous competitive bidding environments. Soliciting additional bids may delay this work and result in higher costs to the City.


WORKSHOP DATE: April 24, 2019

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: June 28, 2019

DOCUMENTS ATTACHED: Trade Contractor Agreement

CITY ATTORNEY REVIEW: [ ]Yes [ X ]No [ ]N/A INITIALS__________
SUBMITTED BY:  
Thomas Isbester, Public Works Director

REVIEWED BY:  
Stephen N. Cole, City Manager
CITY OF BLACK HAWK, COLORADO

BLACK HAWK

Contract Documents for

GREGORY STREET PHASE 2 EXCAVATION
Black Hawk, CO 80422

April 2019
# TABLE OF CONTENTS

ARTICLE 1 - GENERAL PROVISIONS AND SERVICES ................................................................. 2
ARTICLE 2 - DEFINITIONS ........................................................................................................ 2
ARTICLE 3 – DESCRIPTION OF WORK AND SERVICES ...................................................... 5
ARTICLE 4 – TRADE CONTRACTOR’S CONSTRUCTION SCHEDULE .................................. 18
ARTICLE 5 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES .................................. 19
ARTICLE 6 - CONTRACT SUM .................................................................................................. 20
ARTICLE 7 - CORRECTION OF WORK .................................................................................... 22
ARTICLE 8 - TEMPORARY FACILITIES AND SERVICES ...................................................... 22
ARTICLE 9 - INDEMNIFICATION AND INSURANCE ............................................................ 22
ARTICLE 10 - PERFORMANCE, LABOR AND MATERIAL PAYMENT BONDS ......................... 25
ARTICLE 11 – CLAIMS AND DISPUTES .............................................................................. 26
ARTICLE 12 - RESOLUTION OF CLAIMS AND DISPUTES ................................................ 28
ARTICLE 13 - TERMINATION ............................................................................................... 29
ARTICLE 14 - SIMULTANEOUS WORK BY OTHERS ............................................................. 31
ARTICLE 15 - SUBCONTRACTING ......................................................................................... 31
ARTICLE 16 - GUARANTY ...................................................................................................... 32
ARTICLE 17 - SALES TAX ...................................................................................................... 32
ARTICLE 18 - MISCELLANEOUS PROVISIONS ................................................................... 32
ARTICLE 19 – ATTACHMENTS, SCHEDULES AND SIGNATURES ..................................... 36
TRADE 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 Grapes & Sons Excavating, hereinafter referred to as the "Trade Contractor".

ARTICLE 1 - GENERAL PROVISIONS AND SERVICES

A. The Trade Contractor will commence and fully complete the construction of the Gregory Street Phase 2 Excavation, which consists of removing trees, retaining walls, and miscellaneous structures and debris, and performing unclassified excavation of native material behind (north of) the existing properties at 305, 311, 321, and 351 Gregory Street, as described in Exhibit A, which is attached hereto and made a part hereof (the "Project").

B. The Trade Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described herein.

C. The Trade Contractor will 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 June 28, 2019, unless the period for completion is extended otherwise by the Contract Documents. The Trade Contractor agrees to pay as liquidated damages, and not as a penalty, the sum of Five Hundred Dollars ($500.00) for each consecutive calendar day's delay in completing this Contract after the completion dated specified herein, excluding any approved extensions of time.

D. The Trade Contractor agrees to perform all of the work described in the Contract Documents and to comply with the terms therein for an amount not to exceed Fifty-Eight Thousand Three Hundred and 00/100 Dollars ($58,300.00) as described in Article 6 of this Agreement.

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 which modify or interpret the Contract Documents, drawings and specifications, by additions, deletions, clarifications or corrections.

2. Architect – The Architect is the City of Black Hawk.

3. Bid – The offer or proposal of the bidder submitted in the prescribed form setting forth the prices for the work to be performed.
4. **Bidder** – Any person, firm or corporation submitting a bid for the work.

5. **Bonds** – Bid, Performance and Payment Bonds and other instruments of security, furnished by the Trade Contractor and his surety in accordance with the Contract Documents.

6. **Change Order** – A written order to the Trade 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 Price and/or Contract Time.

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

8. **Contract Documents** – The contract, 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 order, 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 Price** – The total monies payable to the Trade Contractor under the terms and conditions of the Contract Documents.

10. **Contract Time** – The number of calendar days stated in the Contract Documents for the 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 him at the main business address shown in his proposal by the Owner or its authorized representative.

12. **Day or Days** – Unless herein otherwise expressly defined, "day" shall mean calendar day or days.

13. **Drawings, Plans or Contract Documents** – The part of the Contract Documents which shows the characteristics and scope of the work to be performed and which has been prepared or approved by the Architect and/or Engineer.

14. **Engineer** – The Engineer is the City of Black Hawk.

15. **Field Order** – A written order effecting a change in the work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Owner or the Architect/Engineer to the Trade Contractor during construction.
16. **Major Equipment or Major Equipment Items** – Installation of major equipment to be furnished and placed under the contract awarded to the Trade Contractor and/or installations of major equipment to be furnished by the Owner and received, unloaded, stored, and placed by the Trade Contractor under the contract awarded to the Trade Contractor.

17. **Notice of Award** – The written notice of the acceptance of the bid by the Owner to the successful bidder.

18. **Notice to Proceed** – Written communication issued by the Owner to the Trade Contractor authorizing him to proceed with the work and establishing the date of commencement of the work.

19. **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.

20. **Project** – Construction of the Project described herein.

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

22. **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 contract together with such other places as may be specifically designed in the Contract Documents as forming part of the site.

23. **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.

24. **Subcontractor** – An individual, firm or corporation having a direct contract with the Trade Contractor or with any other subcontractor for the performance of a part of the work at the site.

25. **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.

26. **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.
27. **Trade Contractor** – The person, firm or corporation with whom the City of Black Hawk has executed this Agreement.

28. **Work** – All labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in the project. The work and the project are used interchangeably to mean the same thing.

29. **Written Notice** – Any notice to any party of the Agreement relative to any part of the Agreement in writing and considered delivered and the service thereof completed when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the work.

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

Section 1. **Drawings and Specifications.**

A. The intent of the drawings and specifications is that the Trade 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. One (1) copy of the drawings and specifications will be furnished to the Trade Contractor without charge upon request, and any additional copies which the Trade Contractor may request will be furnished at the cost of reproduction. The drawings and specifications are to be used only in connection with the work specified herein and are to be returned at the completion of the contract.

C. In case of conflict between the drawings and specifications, the specifications will govern, unless directed otherwise by the Owner and the Architect/Engineer. In case of conflict between the special specifications and the general specifications, the special specifications shall govern. Figure dimension on drawings will govern over scale dimensions, and detailed drawings will govern over general drawings. Notwithstanding the above, a document which is more restrictive or requires greater responsibility or increased compliance by the Trade Contractor shall govern.

D. 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 the Architect/Engineer, in writing, who will promptly resolve such inconsistencies or ambiguities in writing. Work done on unreported discrepancies, inconsistencies or ambiguities by the Trade Contractor shall be done at the Trade Contractor's risk.

E. The Trade Contractor may be furnished additional instructions and detail drawings by the Owner and the Architect/Engineer as necessary to carry out the work required by the
Contract Documents. All additional instructions and detail drawings shall be issued to the Trade Contractor by the Owner and the Architect/Engineer.

F. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Trade Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

Section 2. Materials, Services and Facilities.

A. It is understood that, except as otherwise specifically stated in the Contract Documents, the Trade Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the work within the specified time.

B. In addition to the requirements for major equipment items previously given, the Trade Contractor shall submit to the Owner and Architect/Engineer a complete listing of the manufacturers of each item of equipment or assembly fabricated off the site that are 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 Trade Contractor shall notify the Owner and Architect/Engineer 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 the Architect/Engineer.

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 Trade 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 Architect/Engineer before delivery is started. If, at any time, sources previously approved fail to produce materials acceptable to the Owner and Architect/Engineer, the Trade 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 Trade 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 Trade Contractor and approved by the Owner and the Architect/Engineer.

H. Materials, supplies or equipment to be incorporated into the work shall not be purchased by the Trade Contractor or the 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 Trade 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 project site by the Trade Contractor.

Section 3. Shop Drawings.

A. The Trade 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 Architect or Engineer will promptly review all shop drawings. All such drawings will be approved and signed by the Architect or Engineer, and will be null and void unless authorized by such signature. Review and approval of any shop drawing by the Architect or Engineer will not release the Trade Contractor from responsibility for any deviations from the Contract Documents. The approval of any shop drawings which 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 Architect or Engineer 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 Trade Contractor shall also submit to the Architect or Engineer 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 Trade Contractor shall make any indicated corrections on the drawings returned and shall resubmit corrected drawings until final approval is obtained.

E. The Trade Contractor shall have no claims for damages or extension of time on account of any delay in the work resulting from the rejection of material or from review, revision and resubmittal of drawings when the review, revision and resubmittal is due to changes to the original design documents, and other data for approval by the Architect or Engineer.
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 Trade Contractor.

G. When submitted for review by the Architect or Engineer, shop drawings shall bear the Trade Contractor's certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the Contract Documents.

H. The Trade Contractor shall submit the shop drawings in accordance with the general requirements.

I. Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the Architect or Engineer. A copy of each approved sample shall be kept in good order by the Trade Contractor at the site and shall be available to the Owner and Architect/Engineer.

J. By approving and submitting shop drawings and samples, the Trade Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, and that he has checked and coordinated each shop drawing and sample with the requirements of the work and of the Contract Documents.

Section 4. Records, Accounts and Audits.

A. The Trade 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 Trade 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 Trade Contractor.

Section 5. 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 Trade 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 will provide all inspection and testing services required by the Contract Documents, unless specifically noted in the contract specifications for special inspection and testing services, such as, by way of example, welding inspections on off-site assembly.

D. Neither observations by the Owner or Architect/Engineer, tests, nor approvals by persons other than the Owner or Architect/Engineer will relieve the Trade Contractor from his
obligations to perform the work in accordance with the requirements of the Contract Documents.

E. The Owner, the Architect/Engineer, and their 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 and the Architect/Engineer 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 and the Architect/Engineer 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 and the Architect/Engineer. Any inspections or tests or waivers thereof will not relieve the Trade 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 Trade 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 Trade Contractor and the Architect/Engineer 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 6. Construction Review

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

B. Neither the authority of the Architect/Engineer to act under the Contract nor any decision made by the Architect/Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the
Trade Contractor, any subcontractor, any supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

C. 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 of the Architect/Engineer 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 Architect/Engineer 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. Neither the Owner nor the Architect/Engineer will be responsible for the acts or omissions of the Trade Contractor or any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work.

D. Periodic observation of the work in progress by the Architect/Engineer will be done whenever the Trade Contractor is performing work that requires review as determined by the Architect/Engineer. The normal working time shall be during a regular 5-day, 40-hour work week, Monday through Friday. If the Trade Contractor elects to work more than 40 hours per week and observation is required during this overtime work as determined by the Architect/Engineer, the Architect/Engineer shall be paid by the Trade Contractor at the rate as specified in the billing schedule of the Architect/Engineer for all review time required over the normal 5-day, 40-hour work week. If the Architect/Engineer or his authorized representative is called to the job site to address problems created by the Trade Contractor, he will be paid by the 'Trade Contractor at the same rate as for overtime review as stated above. This payment shall be made by a credit to the Owner, and then the Architect/Engineer shall bill the Owner for the same.

E. If any work has been covered which the Architect/Engineer has not been specifically requested to observe prior to its being covered, or if the Architect/Engineer considers it necessary or advisable that covered work be inspected or tested, the Trade Contractor at the request of the Architect/Engineer shall uncover, expose or otherwise make available for observation, inspection or testing as the Architect/Engineer 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 Trade 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 Trade Contractor will be allowed an increase in the Contract Price 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 7. 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 Trade Contractor shall provide detailed construction staking.
B. At the beginning of the construction or as the work progresses, the Engineer 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 Trade Contractor or by the Engineer at the Trade Contractor's expense. Bench marks and survey stakes shall be preserved by the Trade Contractor and in case of their destruction, or removal by him, his employees, or others, they shall be replaced by the Engineer at the Trade Contractor's expense and his Sureties shall be liable therefor.

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

E. The Trade Contractor shall secure and pay for all necessary permits, fees and licenses in connection with the performance of its 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. Trade 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 Trade 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.

G. 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 Trade Contractor for the performance of the work, proper location of his plant and equipment, or the storage of materials and supplies for the work, shall be furnished by the Trade Contractor.

Section 8. Protection of Work, Property and Persons.

A. The Trade Contractor shall be responsible for initiating and maintaining all safety precautions and programs in connection with the work. Neither the Owner nor the Architect/Engineer will be responsible for Trade Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. The Trade 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 Trade 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 Trade 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 Trade Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He shall erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protection. He shall notify owners of adjacent utilities when prosecution of the work may affect them. The Trade Contractor shall remedy at his expense all damage, injury, or loss to any property or person caused, directly or indirectly, in whole or in part, by the Trade 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 the Architect/Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Trade Contractor. Notwithstanding the provisions of C.R.S. § 13-20-802.5(2), for purposes of this Contract, 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 Trade 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 Trade Contractor, without special instruction or authorization from the Owner or the Architect/Engineer, shall act to prevent threatened damage, injury or loss.

F. The Trade Contractor shall at all times conduct and work in such a manner as to cause the least inconvenience and greatest protection to the general public. The Trade 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 contract and no extra compensation for it will be allowed.

G. Throughout the performance of the work or in connection with this Contract, the Trade 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 Trade Contractors, or to the City.
H. In performing the work, the Trade 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 Trade 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 Trade Contractor and shall be included in the prices bid for the related items of work. Neither the Owner nor the Architect/Engineer shall be responsible to the Trade Contractor for the existence of utilities not shown on the plans or drawings and the Trade Contractor remains obligated under this paragraph for all hidden utilities.

I. The Trade 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 Trade Contractor, such property shall be restored by the Trade Contractor at the Trade 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 Trade Contractor shall be responsible for making all arrangements at his own expense for moving and operating equipment at temporary crossings of telephone and transmission lines, railroad tracks, irrigation ditches and pipelines.

Section 9. Communication with the Owner and the Architect/Engineer.

The Trade 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 or the Architect/Engineer and the Trade 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 10. 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 11.  Trade Contractor's Responsibility.

A. The Trade Contractor shall be responsible for all the work under this Contract until completion and final acceptance by the Owner.

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

C. The Trade 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 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 Trade Contractor's employees.

D. The Trade Contractor warrants that all materials and equipment furnished and incorporated by him in the project shall be new, unless otherwise specified, and that all work under this Trade Contract 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 Trade Contractor agrees that if he should fail or neglect to prosecute the work diligently and properly, or fail to perform any provisions of this Trade Contract, that the Owner, after three (3) days written notice to said Trade 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 Trade Contractor pursuant to this Contract.

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

I. The Trade Contractor shall be responsible for the acts and omissions of all his employees and all subcontractors, their agents and employees and all other persons performing any of the work under a contract with the Trade Contractor.
J. Upon completion of the work, the Trade Contractor shall, at his or its expense, remove from the vicinity of the work, all plant, buildings, rubbish, unused materials, concrete forms and other like material, belonging to him or used under his direction during construction, and in the event of his failure to do so, the same may be removed by the Owner and the Trade Contractor, his 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 12. Changes in the Work.

A. CHANGES. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change Directive, or Order for a Minor Change in the Work, 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, Trade Contractor, and the Architect/Engineer; a Construction Change Directive requires agreement by the Owner and the Architect/Engineer and may or may not be agreed to by the Trade Contractor; a Field Order may be issued by the Owner or the Architect/Engineer alone.

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

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 Trade 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 Trade Contractor, signed by the Trade Contractor, the Owner and the Architect/Engineer, 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 Trade Contractor and signed by the Owner and the Architect/Engineer, 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 Trade Contractor shall promptly proceed with the change in the work involved and advise the Owner and the Architect/Engineer of the Trade 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 Trade Contractor indicates the agreement of the Trade Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

5. If the Trade 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 or the Architect/Engineer 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 Trade 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 Trade Contractor’s own forces, Trade 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 Trade Contractor shall keep and present, in such form as the Owner and the Architect/Engineer 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 Trade 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 Trade 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 Trade 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 Architect/Engineer. 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 Trade 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.

D. MINOR CHANGES IN THE WORK

1. The Architect/Engineer, with consent from the Owner, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Trade Contractor. The Trade Contractor shall carry out such written orders promptly.
2. The Owner may at any time as the need arises, order changes within the scope of work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents or in the time required for performance of the work, an equitable adjustment will be authorized by Change Order.

3. The Owner also may, at any time, by issuing a field order, make changes in the details of the work. The Trade Contractor shall proceed with the performance of any changes in the work so ordered by the Owner unless the Trade Contractor believes that such field order entitles him to a change in Contract Price or Contract Time, or both, in which event he shall give the Owner written notice thereof within ten (10) days after the receipt of the ordered change, and the Trade Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the Owner.


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

ARTICLE 4 – TRADE CONTRACTOR'S CONSTRUCTION SCHEDULE

Section 1. Preconstruction Conference.

A preconstruction conference shall be scheduled at the time the Notice of Award is issued. The Trade Contractor, at the preconstruction conference, shall prepare and submit, for review and concurrence by the Owner and the Architect/Engineer, a Trade 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 and the Architect/Engineer with Trade 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 Contract (as the same may be extended as provided in the Contract Documents), the Trade Contractor shall submit to the Owner and the Architect/Engineer, for their review and approval, a narrative description of the means and methods which Trade 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, Trade 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, Trade Contractor shall not be entitled to an adjustment in the Contract Sum or the Schedule.
Section 2.  Schedule of Submittals.

The Trade Contractor shall prepare and keep current, for approval by the Owner and the Architect/Engineer, a schedule of submittals which is coordinated with the Trade Contractor's construction schedule and allows the Owner and the Architect/Engineer reasonable time to review submittals.

Section 3.  Conformance to Schedule.

The Trade 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 Trade 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 Trade 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 Trade 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 Trade Contractor shall pay to the Owner the amount of liquidated damages and not as penalty the sum of Five Hundred Dollars ($500.00) for each calendar day that the Trade Contractor shall be in default after the time stipulated in the Contract Documents.

D. The Owner will charge the Trade 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 Trade 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 Trade 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 Trade 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 abnormal and unforeseeable weather; 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 Trade Contractor waives any right of recovery or reimbursement or by whatever name, as against the Owner or the Architect/Engineer, as a result of any delay or increase on overhead cost incurred by the Trade Contractor's association with any action or inaction on the part of any other trade contractor or supplier.

ARTICLE 6 - CONTRACT SUM

Section 1. Monthly or Progress Payments.

A. The City Council of the City of Black Hawk has appropriated the money necessary to fund this project. The Owner shall pay the Trade Contractor in current funds for the performance of the work, subject to any additions and deletions, by written Change Order, the total sum not to exceed Fifty-Eight Thousand Three Hundred and 00/100 Dollars ($58,300.00) (the “Original Contract Amount”). Notwithstanding anything to the contrary contained in this Agreement, no Change Order or other form of directive by the Owner requiring additional compensable work to be performed, which causes the aggregate amount payable under this Agreement, to exceed the amount appropriated for the Original Contract Amount, unless the Trade 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 Architect/Engineer has, by separate agreement with the Owner, agreed to include in its monthly work estimate to the Owner, a review of the Trade Contractor's estimates of the value of all work, labor, and materials of the Trade Contractor incorporated into the Project. The Trade Contractor hereby agrees that estimates provided to the Architect/Engineer for review for the Owner shall be for work actually performed upon the Project and that all such work, including labor and materials, have been paid. The determination of the amount of work completed on each application for payment by the Trade Contractor shall be reviewed and certified by the Architect/Engineer and shall thereafter be subject to approval by the Owner. Such determination, however, by the Architect/Engineer or approval by the Owner shall not be construed as acceptance of the work.

1. Before the first application for payment, the Trade Contractor shall submit to the Owner and the Architect/Engineer 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 subcontractors, supported by such evidence of correctness as the Owner or Architect/Engineer 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 and shall be submitted to the Owner on or before the twentieth (20th) day of each month. Applications received on time will be paid on or before the twentieth (20th) day of the following month, providing that the Owner approves such recommendations of the Architect/Engineer. Applications received after the twentieth (20th) day of each month shall be paid after the Owner’s next pay period.

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 may retain up to five percent (5%) of the calculated value of completed work from each progress payment up until the contract is completed satisfactorily and finally accepted by the Owner. If the Owner finds satisfactory progress is being made in any phase of the contract, the Trade 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 Trade 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 Trade Contractor that his work is ready for final inspection and acceptance by the Owner and upon receipt of final application for payment, the Owner and the Architect/Engineer 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 Architect/Engineer finds that the work is acceptable under the Contract Documents, he will recommend to the Owner that a final certificate of payment be issued. Neither final payment nor the remaining retention shall become due until the Trade Contractor submits to the Owner and the Architect/Engineer 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 and the Architect/Engineer for the use and benefit of the Owner. Should any subcontractor of the Trade Contractor or supplier of said Trade Contractor refuse to furnish any warranty and/or release or waiver, the Owner in its sole discretion, may refuse to certify final payment. The Trade Contractor may then furnish sufficient bonds satisfactory to the Owner to indemnify the Owner against any such liens.

4. 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,

4/18/19

98 of 119
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.

5. The acceptance by the Trade Contractor of final payment shall be and shall operate as a release to the Owner from all claims and all liability to the Trade 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 Trade Contractor with the consent of the Owner. Any payment, however, final or otherwise, will not release the Trade Contractor or his 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 Trade 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 Trade 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 price or a refund instead of correction of the condemned work.

B. All removal and replacement work shall be done at the Trade Contractor's expense. If the Trade 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 Trade Contractor.

**ARTICLE 8 - TEMPORARY FACILITIES AND SERVICES**

Unless otherwise provided in this Contract, the Trade 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 Trade Contractor shall be responsible for and at its sole cost all heating and protection of facilities and work.

**ARTICLE 9 - INDEMNIFICATION AND INSURANCE**

Section 1. Indemnification.

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

The Trade 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 Trade Contractor, or at the option of the City, Trade 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 Trade 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 Trade Contractor agrees to obtain and maintain during the life of this Contract, a policy or policies of insurance against all liability, claims, demands and other obligations assumed by the Trade 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 Trade 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 Contract insurance in sufficient amounts, durations, or types.

B. The Trade Contractor shall obtain and maintain during the life of this Contract, and shall cause any subcontractor to obtain and maintain during the life of this Contract, the minimum insurance coverages listed below. Such coverages shall be obtained and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by the Trade 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. Worker's Compensation Insurance to cover obligations imposed by applicable law for any employee engaged in the performance of the work under this Contract, and Employers Liability Insurance with minimum limits of Five Hundred Thousand Dollars ($500,000) each incident, Five Hundred Thousand Dollars ($500,000) disease—policy limit, and Five Hundred Thousand Dollars ($500,000) disease—each employee.

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

3. Protective Liability and Property Damage Insurance covering the liability of the Owner, including any employee, officer or agent of the Owner with respect to all operations under the Contract by the Trade Contractor or his sub-contractors shall be obtained and maintained during the life of the Contract. The limits of the Owner's Protective Liability Policy, to be provided by the Trade Contractor, as described in this Section 2, shall be increased to the same limits as described above for the Trade 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 Trade 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 Trade Contractor has no owned automobiles, the requirements of this paragraph shall be met by each employee of the Trade Contractor providing services to the Owner under this Contract.

C. To the extent that liability results from the acts or omissions of the Trade 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 the Architect/Engineer and its agents and employees, and any other person(s), company(ies), or entity(ies) deemed necessary by the Owner. The Trade Contractor shall be solely responsible for any deductible losses under any policy required herein.

D. The insurance provided by the Trade Contractor shall be primary to insurance carried by the Owner, the Architect/Engineer, and all other additional insureds, and the principal defense of any claims resulting from the Trade Contractor's obligations under the Contract shall rest with the Trade Contractor's Insurer.

Section 3. Certificates of Insurance.

A. The certificate of insurance provided by the Trade Contractor shall be completed by the Trade 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 contract. No other form of certificate shall be used. The certificate shall identify this Contract 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 Trade 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 contract, 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 Trade Contractor to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to the Trade 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 contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the Owner, its officers or employees.

**ARTICLE 10 - PERFORMANCE, LABOR AND MATERIAL PAYMENT BONDS**

The Trade 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 Price, conditioned upon the performance by the Trade Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the prompt payment by the Trade 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 Trade 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 Trade 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 Trade 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 Trade 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 Contract. The term “claim” also includes other disputes between the Owner and Trade Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

B. **Decision of Architect or Engineer.** Claims may, upon request of both the Trade Contractor and the Owner, be referred initially to the Architect or Engineer for action as provided in Article 3, Section 12.

C. **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.

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

E. **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 Contract 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.

F. **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, familiarizing himself with the local conditions under which the Work is to be performed and correlating his 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 Architect or Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Trade 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 Architect or Engineer 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 Architect or Engineer shall so notify the Owner and Trade 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 Architect or Engineer has given notice of the decision. If the Owner and Trade Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect or Engineer for initial determination, subject to further proceeding pursuant to these Contract Documents.

G. Claims for Additional Cost. If the Trade 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 Owner and the Architect or Engineer. 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 Trade Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect or Engineer, (2) an order by the Owner to stop the Work where the Trade Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect or Engineer, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner’s suspension, or (7) 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.

H. Claims for additional time. If the Trade Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Trade 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.

I. 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 Contract 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 12.

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

A. The Architect or Engineer (if the matter is referred to the Architect or Engineer for initial decision) will review claims 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 parties indicating when the Architect or Engineer expects to take action; (3) reject the claim in whole or in part, stating the reasons for rejection; (4) recommend approval of the claim by the other party; or (5) suggest a compromise. The Architect or Engineer 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 Architect or Engineer (or at the Owner's option, 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 Architect or Engineer, take one or more of the following actions: (1) submit additional supporting data requested by the Architect or Engineer; (2) modify the initial claim; or (3) notify the Architect or Engineer that the initial claim stands.

D. If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect or Engineer, the Architect or Engineer will notify the parties in writing that the decision of the Architect or Engineer will be made within seven (7) days, which decision will be considered advisory only and not binding on the parties in the event of litigation in respect of the claim. Upon expiration of such time period, the Architect or Engineer will render to the parties the written decision of the Architect or Engineer relative to the claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Trade Contractor's default, the Architect or Engineer may, but is not obligated to, notify the surety and request the surety's assistance in resolving the claim.

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 Trade Contractor shall give written notice to the Owner within ten (10) days of any dispute/claim arising under this Contract upon which the Trade Contractor seeks compensation or change from the Contract Documents; otherwise, the Trade 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 (delivered by certified mail, return receipt requested) 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 Trade Contractor is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) 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 contract in whole or in part at any time by written notice to the Trade Contractor. Such notice shall state the extent and the effective date of such suspension, and on the effective date thereof the Trade 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 and materials, housing and equipment on hand for construction under the contract. The Trade 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 Trade Contractor shall be entitled to be reimbursed for all additional expense incurred by reason of such suspension as agreed upon by the Trade Contractor and the Owner.

D. Termination for Convenience:

1. The Owner may for its own convenience terminate work under the contract in whole or in part at any time by written notice to the Trade Contractor. Such notice shall state the extent and effective date of such termination and on the effective date thereof, the Trade Contractor will, and as to the extent directed, stop work under the contract and the placement of further orders of subcontracts under the contract, terminate work under order and subcontracts under the contract, and take any necessary action to protect property in the Trade 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 Trade Contractor: (1) its direct costs (excluding overhead) for all work done in conformity with the Contract to the effective date of such termination and (2) other costs pertaining to the work which the Trade 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 Price specified in the contract; or (b) that proportion of the aggregate total Contract Price specified in the date of termination 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 Trade Contractor after giving ten (10) days written notice of the termination to the Trade Contractor in the event of any default by the Trade 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 he may select. It shall be considered a default by the Trade Contractor whenever he shall:

   a. Disregard or violate important provisions of the Contract Documents or the Owner's instructions, or fail to prosecute the work according to the agreement schedule of completion, including extensions thereof;

   b. Fail to provide a qualified representative, competent workmen or subcontractors, or proper materials, or fail to make prompt payment therefor; and

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

2. Upon termination of the contract by the Owner for default by the Trade Contractor, no further payments shall be due to the Trade 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 Trade Contractor. If the cost of completing the work shall exceed the unpaid balance, the Trade 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 Trade 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 Trade 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 Trade 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 his work with theirs.

B. If the proper execution or results of any part of the Trade Contractor's work depends upon the work of any other trade contractor, the Trade Contractor shall inspect and promptly report to the Owner and the Architect/Engineer any defects in such work that render it unsuitable for such proper execution and results. Failure of the Trade 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 his work thereto, except as to defects which may develop in the other trade contractors' work after the execution of his work.

C. The Trade Contractor shall coordinate his 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 Trade Contractor, including his subcontractors, shall keep informed of the progress and the detail work of other trade contractors and shall notify the Owner and the Architect/Engineer immediately of lack of progress, defective workmanship, or lack of coordination on the part of other trade contractors. Failure of the Trade 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 him of the work and the status of work as being satisfactory for proper execution of his 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 Trade Contractor Agreement.

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

ARTICLE 15 - SUBCONTRACTING

A. The Trade 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 contract, the Trade Contractor shall submit the names of all subcontractors, including contact persons, phone numbers, and addresses to the Owner and the Architect/Engineer. The Trade Contractor shall also promptly notify all parties of any changes in subcontractors or subcontractor contact information.
C. The Trade Contractor shall be fully responsible to the Owner for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

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

E. Nothing contained in this Contract will create any contractual relation between any subcontractor and the Owner.

**ARTICLE 16 - GUARANTY**

A. The Trade 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 Contract by the Owner that the work is free from all defects due to faulty materials or workmanship and that the Trade 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 Trade Contractor 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 Trade 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 Trade Contractor before any such equipment, material or construction is ordered and incorporated in work by the Trade Contractor.

**ARTICLE 17 - SALES TAX**

The Trade Contractor and all of his subcontractors must make application to the Colorado State Department of Revenue for a certificate of exemption to permit the purchase of building materials for the construction of this project without payment of the sales tax. Prior to the start of construction, the Trade Contractor shall furnish copies of such certificates to the Owner. Applications and certificates must be on forms provided by the Department of Revenue.

**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 Trade 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 and the Architect/Engineer 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 subconsultants, agents, or employees.

C. The Trade 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 Trade Contractor each binds itself and its partners, successors, executors, administrators, and assigns to this Agreement. Neither the Owner nor the Trade 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 Trade Contractor.

H. Illegal Aliens.

1. Certification. By entering into this Agreement, Trade 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 Trade 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. Trade 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 Trade Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

3. Verification.

a. Trade 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. Trade 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 Trade 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, Trade Contractor shall:

i. Notify the subcontractor and the City within three (3) days that Trade 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 Trade 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. Trade 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 Trade Contractor is complying with the terms of this Agreement.

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

6. If Trade Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Trade 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 Trade 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. Trade 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 Trade 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

GRAPES & SONS EXCAVATING

By: [Signature]

Name: Holly Grapes

Title: Manager

STATE OF COLORADO  )
 ) ss.
COUNTY OF Calpín )

The foregoing instrument was acknowledged before me this 19th day of April, 2019, by Holly Grapes, Manager of Grapes & Sons Excavating, LLC.

My commission expires: 10-24-2020

Witness my hand and official seal.

_______________________________
Kyla Crawford
Notary Public
PROSPECTIVE CONTRACTOR'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: Grapes & Sons Excavating
(Prospective Contractor)

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

Project Name Gregory Street Phase 2 Excavation

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 19 day of April, 2019.

Prospective Contractor Holly Grapes

By: Holly Grapes

Title: Manager
NO EMPLOYEE AFFIDAVIT

(To be completed if Trade Contractor has zero employees)

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

4/18/19  115 of 119
DEPARTMENT PROGRAM AFFIDAVIT

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

I. __________, 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 ("Contract") 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 Contract; and

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

__________________________ 4-19-19
Contractor Signature  Date

STATE OF COLORADO) ) ss.
COUNTY OF _________ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 19th day of April, 2019, by __________ as _________ of __________.

My commission expires: 10-24-2020

(SEAL)

__________________________
Notary Public
### ACCEPTABLE DOCUMENTS FOR LAWFUL PRESENCE VERIFICATION

<table>
<thead>
<tr>
<th>Documents that Serve to Prove Citizenship/Lawful Presence and Identification:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Colorado Driver’s License or Identification Card</td>
</tr>
<tr>
<td>• 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</td>
</tr>
<tr>
<td>• A United States Military Card of a Military Dependent’s Identification Card</td>
</tr>
<tr>
<td>• A United States Coast Guard or Merchant Mariner Card</td>
</tr>
<tr>
<td>• A Native American Tribal Document</td>
</tr>
<tr>
<td>• Certificate of Naturalization with Photograph</td>
</tr>
<tr>
<td>• Certificate of U.S. Citizenship with Photograph</td>
</tr>
<tr>
<td>• U.S. Passport (less than 5 years old)</td>
</tr>
<tr>
<td>• Northern Mariana Identification Card with Photograph</td>
</tr>
</tbody>
</table>

### OR

<table>
<thead>
<tr>
<th>Documents that Only Serve to Prove Citizenship/Lawful Presence:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• U.S. Birth Certificate</td>
</tr>
<tr>
<td>• Certification of Report of Birth from Department of State</td>
</tr>
<tr>
<td>• Report of Birth Abroad of a U.S. Citizen</td>
</tr>
<tr>
<td>• U.S. Citizen Identification Card</td>
</tr>
<tr>
<td>• Final Adoption Decree</td>
</tr>
<tr>
<td>• Evidence of U.S. Civil Service Employment before June 1, 1976</td>
</tr>
<tr>
<td>• Statement Provided by U.S. Consular Officer Certifying Citizenship</td>
</tr>
<tr>
<td>• 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.</td>
</tr>
<tr>
<td>• Early School Records</td>
</tr>
<tr>
<td>• Census Records</td>
</tr>
<tr>
<td>• Other Documents that Establish a U.S. Place of Birth or in Some Way Indicates U.S. Citizenship</td>
</tr>
</tbody>
</table>

### AND

<table>
<thead>
<tr>
<th>Documents that Serve to Prove Identification:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• A Driver’s License or Identification Card Regardless of the State of Issuance</td>
</tr>
<tr>
<td>• School Identification Card with Photograph</td>
</tr>
<tr>
<td>• Identification Card Issued by Federal, State or Local Government</td>
</tr>
<tr>
<td>• A Driver’s License Issued by a Canadian Government Authority</td>
</tr>
</tbody>
</table>
**Proposal**

Robert Grapes, Owner  
P.O. Box 571  
Black Hawk Colorado 80422  
Phone: (303)582-1131  
e-mail: bhgrapes@gmail.com

<table>
<thead>
<tr>
<th>Proposal submitted to:</th>
<th>Phone: 303-582-1324</th>
<th>Date: April 16, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Black Hawk</td>
<td>Direct: 303-582-2288</td>
<td></td>
</tr>
<tr>
<td>C/O Matt Reed</td>
<td>Cell:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td>Job Location:</td>
<td>County of Gilpin</td>
</tr>
<tr>
<td>P.O. Box 68</td>
<td>305, 311, 321, 351 Gregory St</td>
<td>State of Colorado</td>
</tr>
</tbody>
</table>

**WE PROPOSE** hereby to furnish material and labor complete in accordance with specifications below, for the sum of:

Payment to be made as follows: Payment is due upon completion and/or upon receipt of Invoice

**WE ACCEPT:** Visa, Master Card, American Express

All material is guaranteed to be as specified. All work to be completed  
in a workmanlike manner according to standard practices. Any alterations  
or deviation from specifications below involving extra costs will be executed  
only upon written orders, and will become an extra charge over and above  
the estimate. All agreements contingent upon strikes, accidents or delays  
beyond our control. Owner to carry fire, tornado and other necessary  
Insurance. Our workers are fully covered by Workman’s Compensation Insurance  

Authorized Signature  
**Holly Grapes, Manager**

NOTE: This proposal may be withdrawn by us if not accepted within 30 days.

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Move in</td>
<td>1,000.00</td>
</tr>
<tr>
<td>To excavate dirt and loose rock and haul to edge of town</td>
<td>$15.50 per CY</td>
</tr>
<tr>
<td><strong>NOTE: Price does not include any Hydraulic Hammer for rock breaking</strong></td>
<td><strong>EST. 3,000 CY = $46,500</strong></td>
</tr>
<tr>
<td>To remove roofs, porch, curbs, retaining walls, trees and stumps and haul debris away.</td>
<td>10,800.00</td>
</tr>
</tbody>
</table>

**Total** $11,800.00

**ESTIMATED GRAND TOTAL = $58,300**
**CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER**
FEDERATED MUTUAL INSURANCE COMPANY  
HOME OFFICE: P.O. BOX 328  
OWATONNA, MN 55060

**INSURED**  
GRAPES & SONS EXCAVATING  
PO BOX 571  
BLACK HAWK, CO 80422-0571

**CONTACT NAME:** CLIENT CONTACT CENTER  
**PHONE:** (A/C, No. Ext): 888-333-4949  
**FAX:** (A/C, No): 507-446-4664  
**E-MAIL ADDRESS:** CLIENTCONTACTCENTER@FEDINS.COM

**INSURER A:** FEDERATED MUTUAL INSURANCE COMPANY  
**INSURER B:**  
**INSURER C:**  
**INSURER D:**  
**INSURER E:**  
**INSURER F:**

**COVERAGES**

**CERTIFICATE NUMBER:** 13  
**REVISION NUMBER:** 0

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.

<table>
<thead>
<tr>
<th>INSR.</th>
<th>TYPE OF INSURANCE</th>
<th>ADJ. INSUR.</th>
<th>SUBWR</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A X</td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>CLAIMS-MADE</td>
<td>X OCCUR</td>
<td>N N</td>
<td>9817058</td>
<td>10/11/2018</td>
<td>10/11/2019</td>
</tr>
</tbody>
</table>

| A X   | AUTOMOBILE LIABILITY | ANY AUTO | OWNED AUTOS ONLY | SCHEDULED AUTOS | HIRED AUTOS ONLY | NON-OWNED AUTOS ONLY | N N | 9817058 | 10/11/2018 | 10/11/2019 | COMBINED SINGLE LIMIT (Per accident): $1,000,000 |

| A X   | EXCESS LIABILITY | OCCUR | CLAIMS-MADE | N N | 9817060 | 10/11/2018 | 10/11/2019 | EACH OCCURRENCE: $1,000,000 |

| A Y/N | WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY | N/A | N/A | 9817061 | 10/11/2018 | 10/11/2019 | E.L. EACH ACCIDENT: $500,000 |

|   |   |   |   |   |   |   | E.L. DISEASE - EA EMPLOYEE: $500,000 |

|   |   |   |   |   |   |   | E.L. DISEASE - POLICY LIMIT: $500,000 |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**

**CERTIFICATE HOLDER**

173-715-4  
CITY OF BLACKHAWK  
PO BOX 68  
BLACK HAWK, CO 80422-0068

**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

Michael C. Kern

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