Ringing of the Bell:

1. Call to Order:

2. Roll Call & Pledge of Allegiance:

3. Agenda Changes:

4. Conflicts of Interest: (Council disclosures are on file w/City Clerk & Sec. of State)

5. Public Comment: Please limit comments to 5 minutes

6. Approval of Minutes: August 8, 2018

7. Public Hearings:
   A. CB15, An Ordinance Calling a November 6, 2018 Special Election to be Coordinated with Gilpin County and Submitting a Ballot Question to City Voters
   B. CB16, An Ordinance Adding a New Article XX to Chapter 6 of the Black Hawk Municipal Code Entitled Short-Term Rental Properties
   C. CB17, An Ordinance Amending Article IV of Chapter 13 of the Black Hawk Municipal Code Regarding the City’s Watershed Protection District
   D. Resolution 50-2018, A Resolution Conditionally Approving the Certificate of Appropriateness and the Site Development Plan for the Canyon Parking Lot (Continued from July 25 and August 8)
   E. Resolution 52-2018, A Resolution Approving the Third Amendment to the Subdivision/Site Improvement Agreement Between the City of Black Hawk and JIJE, LLC
   F. Resolution 53-2018, A Resolution Approving the Enhanced Sales Tax Incentive Program Agreement Between the City of Black Hawk and the Lodge Casino, LLC and the Gilpin Casino, LLC

8. Action Items:
   A. Resolution 54-2018, A Resolution Approving the City of Black Hawk Fee Schedule, As Amended
   B. Resolution 55-2018, A Resolution Awarding the Bid and Approving the Design-Build Contract Between the City of Black Hawk and Symmetry Builders, Inc. in an Amount Not To Exceed $58,094.00 For Pre-Construction Services Pertaining to the Fire Station Restroom Renovation Project
   C. Resolution 56-2018, A Resolution Approving a Lease Agreement with Canon Solutions America, Inc. for Copier Equipment
   D. Resolution 57-2018, A Resolution Approving the Professional Services Agreement with Keller Rohrback, L.L.P. Regarding the Pursuit of Claims for Damages and Injunctive Relief Against Pharmaceutical Companies and/or Pharmaceutical Distributers Who Manufacture, Market and Sell Prescription Opioids, and Other Related Services as Necessary
E. Resolution 58-2018, A Resolution Authorizing the Execution of Necessary Agreements with Xcel Energy for the Undergrounding of the Primary Electric, Street Light Circuit, and Residential Services Along Chase Street in an Amount Not to Exceed $435,178.00

F. Resolution 59-2018, A Resolution Awarding the Bid and Authorizing an Agreement with Vance Brothers in the Amount of $89,809.32 for the Black Hawk Slurry Seal Project


10. CITY MANAGER REPORTS:

11. CITY ATTORNEY:

12. EXECUTIVE SESSION:

13. ADJOURNMENT:
1. CALL TO ORDER: The regular meeting of the City Council was called to order on Wednesday, August 8, 2018, 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 Lewis, Police Chief Cole, Fire Chief Woolley, Finance Director Hillis, City Clerk/Administrative Services Director Greiner, Public Works Director Isbester, Street Superintendent Schaller, Street Maintenance Workers Feltis and Godin, Community Planning and Development Administrator Linker, Baseline Consultant Harris, and Deputy City Clerk Martin.

PLEDGE OF ALLEGIANCE: Mayor Spellman led the meeting in the recitation of the Pledge of Allegiance and asked for a moment of silence in honor of long-time resident of over 50 years, former Mayor of six years, and former Alderman of over 18 years Wilhelm (Bill) Lorenz who passed away a week ago.

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. INTRODUCTION OF NEW EMPLOYEES: Terry Feltis, Street Maintenance Worker I
Fred Godin, Street Maintenance Worker I

Street Superintendent Schaller introduced both employees and provided a brief background on each. Terry grew up in Black Hawk and is trying to relocate back to the area, and Fred is local to Central City. They were both warmly welcomed.

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

7. APPROVAL OF MINUTES: July 25, 2018

MOTION TO APPROVE

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

MOTION PASSED

There was no discussion and the motion passed unanimously.

8. PUBLIC HEARINGS:

A. CB13, An Ordinance Approving the Inclusion of Property into the Black Hawk Business Improvement District and Changing the Boundaries of the District Consistent Therewith

Mayor Spellman read the title and opened the public hearing.

City Attorney Hoffmann introduced this item related to the Saratoga Casino property, which is not currently included within the Business Improvement District. He added it is a condition of a previous Council approval.

PUBLIC HEARING:

Mayor Spellman declared a Public Hearing on CB13, an Ordinance approving the inclusion of property into the Black Hawk Business Improvement District and changing the boundaries of the District consistent therewith open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

No one came forward to speak and Mayor Spellman declared the Public Hearing closed.
Alderman Johnson MOVED and was SECONDED by Alderman Bennett to approve CB13, an Ordinance approving the inclusion of property into the Black Hawk Business Improvement District and changing the boundaries of the District consistent therewith.

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

B. CB14, An Ordinance Approving a Memorandum of Understanding Between the Colorado Department of Public Health and Environment and the City of Black Hawk for Fire Services to the North Clear Creek Water Treatment Plant

Mayor Spellman read the title and opened the public hearing.

Fire Chief Woolley introduced this item and said it has been revised for a term of five years, as opposed to annual renewals.

PUBLIC HEARING: Mayor Spellman declared a Public Hearing on CB14, an Ordinance approving a Memorandum of Understanding between the Colorado Department of Public Health and Environment and the City of Black Hawk for Fire Services to the North Clear Creek Water Treatment Plant open and invited anyone wanting to address the Board either “for” or “against” the proposed ordinance to come forward.

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

Alderman Moates MOVED and was SECONDED by Alderman Bennett to approve CB14, an Ordinance approving a Memorandum of Understanding between the Colorado Department of Public Health and Environment and the City of Black Hawk for Fire Services to the North Clear Creek Water Treatment Plant.

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

C. Resolution 50-2018, A Resolution Conditionally Approving the Certificate of Appropriateness and the Site Development Plan for the Canyon Parking Lot

Mayor Spellman read the title and reopened the public hearing from July 25.

City Attorney Hoffmann explained that this item was continued for a few reasons: one, so that Council could see and evaluate renderings of the proposed sign introduced at the last meeting; and two, he and Mr. Steve Jones, attorney for the applicant, have been working on an
amendment to the Subdivision Improvement Agreement (SIA) and the language was not complete at the time. He said today’s meeting was to receive direction on what Council feels would be the appropriate improvements necessary for the approval of the Certificate of Appropriateness and Site Development Plan for the Canyon Parking Lot, and then bring it back another time for approval.

Baseline Consultant Harris went over the application again from July 25 to remind Council of the project and proposal. He said since the last meeting, the applicant has put together two sign options, which were included in the packet. Option A is with 25’ tall letters, up lit from light poles in the parking lot, with no colored sculpted concrete, just shotcrete and mesh as discussed at the last meeting. Option B is with 20’ tall letters internally lit, so no light would be shining up from the parking lot, and they are proposing colored sculpted concrete only on the smaller wall section facing Main Street next to the Dakota site. Harris said that staff has reviewed their new proposal and agree that an appropriate solution to not having the entire wall colored sculpted concrete, as was their recommendation two weeks ago, could be the sign, yet staff suggests the following: 25’ letters instead of 20’, put a circle around the logo so that the bird does not fade away in the daylight, add the “wedge” to the portion next to the Dakota site facing Main Street so that area is complete with colored sculpted concrete, and once excavation is done then choose the same colored mesh to match the color of the rock, instead of matching the existing mesh on the existing upper back wall.

Dave Gruenewald and Steve Jones, of Jacobs Entertainment, addressed Council. Mr. Gruenewald repeated from the last meeting that in an effort to offer an alternative to staff’s previous recommendation of sculpting the entire site, Jacobs has offered a sign, along with some sculpted concrete, in order to reduce their costs. He said they have come back with two proposals: the 25’ high lettered sign first proposed two weeks ago; and as a sign of goodwill, he said they are willing to spend a couple hundred thousand dollars to provide colored sculpted concrete to the smaller section of wall next to the Dakota property because this is a prominent rock face right on Main Street, but to add this the sign size would be reduced down to 20’ letters to compensate for the cost. He said he could not accept staff’s recommendation on the disc/circle proposed for the hawk due to its diameter. The hawk is close to 40’ so the disc would have to be at least 50’ and would be too expensive. He said his objective is to help solve what has been a problem for 20 years, just not all at once and they are already bearing a lot of costs with public improvements and excavation fees.

Mayor Spellman clarified costs for a clearer understanding. Mr. Gruenewald confirmed that the 25’ high lettered sign would cost $600,000, currently without the enhancements that staff is
recommending, and that at the July 25 meeting he did say the estimate they received to use color sculpted concrete on the entire cut was $1,500,000, including the “wedge” and Main Street portions. He confirmed that the “wedge” portion alone is $300,000, and the Main Street portion is $200,000.

Mayor Spellman said that Council was working under an assumption that the entire cost would be $4,000,000 based on estimates the City had received when staff looked into the costs, in case they had to step in to finish the project. Council thought the $1,500,000 number was much more reasonable. Discussion ensued on the sign itself and potentially leaving the “wedge” portion out in order to minimize costs. Mayor Spellman took a straw poll and Council really does not care for the sign, so it was just a matter of the colored sculpted concrete. Mayor Spellman said that if Council took out the “wedge” and the sign, the cost would be brought down to $1,200,000 and if they took staff’s recommendation to add the disc/circle, it would bring just the sign price up to possibly $800,000.

The Mayor then asked Council how much of the cut do they think is reasonable to ask the applicant to complete with colored sculpted concrete. Mr. Gruenewald thought a good compromise would be to leave out the “wedge” and sculpt the two faces. Council really wants the entire site completed and tossed around the idea of asking the applicant to pay for it all and the City would provide a rebate for the cost of the “wedge”, perhaps through device fees over a certain period of time. City Attorney Hoffmann said the City does have an existing program in the Municipal Code for sharing back sales tax, and was more inclined to do a share back with sales tax as opposed to device tax, that way the City shares in their success. It is called the Enhanced Sales Tax Incentive Program (ESTIP) and he explained the City would have to run some numbers and come back with a proposal for a base number, and any number over that base number is what would be shared back at a percentage amount to reach the $300,000 number or a term of years, whichever were to happen first.

Mr. Hoffmann said this has been done before and one of the differences between this proposal and the other applicant is that this proposal will not generate any new net sales tax, so the City will have to artificially create a base number, but it can be done. Mayor Spellman suggested combining the Lodge and Gilpin Casinos together to do this as it is all Jacobs Entertainment, in order to figure out sales tax on both properties. Jacobs’ Attorney Mr. Smith said it couldn’t be 25 years to repay, because the applicant would not be incentivized to comply. Mayor Spellman thought no later than five years to pay it back. Sales Tax generated was discussed and how the comps given away at the properties take away from the sales tax generated. Mayor Spellman suggested maybe a combination of sales tax and device fees. He
confirmed, when asked by Council that if the applicant’s estimate goes over and above the $300,000 for the “wedge”, that it would not be the City’s responsibility, the City is only in it for $300,000. Alderman Midcap wanted to confirm that if the entire project went above the $1,500,000 the City would not be contributing any additional funds. Mayor Spellman confirmed the City would only be contributing $300,000.

Mr. Hoffmann was concerned that if it is not paid off in five years and both casinos were still doing the same level of business that’s one thing, but if they dial back for any reason that could put the City at risk, and part of the Sales Tax Share Back program is to share in their success, and as it stands this discussion would be putting risk on the City that is incumbent on the success of their property. Mayor Spellman thought for a guaranteed $300,000 the entire site gets colored sculpted concrete, so it’s worth some possible downside spread out over five years, and it would be future revenue, so really not taking anything out of the bank right now. He went on to say with all the new parking spaces being created, hopefully this will generate more gaming revenue the applicant is after. Mr. Hoffmann said that if the City puts out a number and a five-year term and the applicant doesn’t generate that number, then technically the City would have to backfill that amount, so it could be out of pocket money. It was decided to talk more about the details internally.

Mayor Spellman reiterated Council’s choices: to require the applicant to take on the cost of $1,500,000 to sculpt the entire site, leave the “wedge” out entirely, or come up with $300,000 over five years to clean up this site once and for all. It was decided to direct the applicant to move forward with sculpting the entire site (all shotcrete will be sculpted, including the slope stabilization) with the ESTIP program to cover the “wedge” and to come back to the next meeting on August 12. The applicant is asking in return to receive their permits quickly. City Manager Lewis suggested continuing this hearing to September 12 instead of August 22, as his staff has not seen anything be submitted in a timely manner. Mr. Gruenewald respectfully disagreed with that statement. Mayor Spellman suggested continuing to the next meeting and at that time they can continue it again if needed.

Mr. Hoffmann and Mr. Jones feel comfortable that the SIA agreement language will be done within the week. Mr. Hoffmann stated that the applicant desires to add to the revised agreement the transfer of whatever is left over from the Dakota site security monies, minus the portion the City has to keep, to the Canyon site once excavation at the Dakota site is complete. He said they have to complete the Dakota site in order to allow it to be transferred, and this way at all times the City would be secured both in terms of whatever excavation or public improvements may be remaining in the agreement. Community
Planning and Development Administrator Linker was concerned about the timeframe to receive items in for the next packet. It was decided by 10:00 a.m. on Monday the applicant would have everything in, which would give staff enough of time to review and prepare for the packet.

**MOTION TO CONTINUE**

Alderman Moates MOVED and was SECONDED by Alderman Torres to continue Resolution 50-2018, a Resolution conditionally approving the Certificate of Appropriateness and the Site Development Plan for the Canyon Parking Lot to August 22 City Council meeting.

**MOTION PASSED**

There was no discussion and the motion PASSED unanimously.

D. Resolution 51-2018, A Resolution Conditionally Approving the Certificate of Appropriateness for an Amendment to the Lodge Casino Comprehensive Sign Plan

Mayor Spellman read the title and opened the public hearing.

Baseline Consultant Harris introduced this item and said as per Municipal Code, this proposal exceeds what can be approved administratively.

Angela Renfro, of BSC Signs, was present on behalf of the Lodge Casino to present the proposal. She said there was one minor change from the packet and that is a change of illuminated color from green to white halo illuminated letters on the entrance sign, because she could not find a green color to match the green of the Lodge letters.

**PUBLIC HEARING:**

Mayor Spellman declared a Public Hearing on Resolution 51-2018, a Resolution conditionally approving the Certificate of Appropriateness for an amendment to the Lodge Casino Comprehensive Sign Plan open and invited anyone wanting to address the Board either “for” or “against” the proposed resolution to come forward.

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

**MOTION TO APPROVE**

Alderman Bennett MOVED and was SECONDED by Alderman Armbright to approve Resolution 51-2018, a Resolution conditionally approving the Certificate of Appropriateness for an amendment to the Lodge Casino Comprehensive Sign Plan.

**MOTION PASSED**

There was no discussion and the motion PASSED unanimously.
9. ACTION ITEMS:

None

10. CITY MANAGER REPORTS: City Manager Lewis had nothing to report.

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

12. EXECUTIVE SESSION: City Attorney Hoffmann recommended items number 2 and 5 for Executive Session for specific legal issues related to potential legislation.

**MOTION TO ADJOURN INTO EXECUTIVE SESSION**

Alderman Bennett MOVED and was SECONDED by Alderman Johnson to adjourn into Executive Session at 3:58 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) and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).

**MOTION PASSED**

There was no discussion and the motion PASSED unanimously.

**MOTION TO ADJOURN**

Alderman Bennett MOVED and was SECONDED by Alderman Johnson to adjourn the Executive Session at 4:30 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 4:30 p.m.
COUNCIL BILL 15
ORDINANCE 2018-15
AN ORDINANCE CALLING
A NOVEMBER 6, 2018
SPECIAL ELECTION TO
BE COORDINATED WITH
GILPIN COUNTY, AND
SUBMITTING A BALLOT
QUESTION TO CITY
Voters
TITLE: AN ORDINANCE CALLING A NOVEMBER 6, 2018 SPECIAL ELECTION TO BE COORDINATED WITH GILPIN COUNTY, AND SUBMITTING A BALLOT QUESTION TO CITY VOTERS

WHEREAS, the City of Black Hawk desires to conduct a special election on November 6, 2018, as part of the state general election, so that City voters may consider expanding the City's use tax to match the scope of the City's existing sales tax;

WHEREAS, Section 1 of Article III of the City of Black Hawk Home Rule Charter as well as Article X, Sec. 20, of the Colorado Constitution (also known as TABOR) declare that ballot issues on tax matters may be considered by City voters in the state general election, which is held on the Tuesday succeeding the first Monday in November of even-numbered years;

WHEREAS, pursuant to the provisions of the Uniform Election Code of 1992, C.R.S. § 1-1-101, et seq., and the City’s authority regarding the conduct of its elections, the City will coordinate its November 6, 2018, special election with Gilpin County.

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

Section 1. The following ballot question shall be submitted to the registered electors of the City of Black Hawk at the November 6, 2018, special election:

Ballot Question No. 1 – Use Tax:

SHALL CITY OF BLACK HAWK TAXES BE INCREASED BY AN ESTIMATED TWO MILLION DOLLARS ($2,000,000.00) ANNUALLY IN THE FIRST FULL FISCAL YEAR (2019) AND BY WHATEVER ADDITIONAL AMOUNTS ARE COLLECTED ANNUALLY THEREAFTER BY THE LEVY OF A USE TAX OF SIX PERCENT (6%) FOR THE PRIVILEGE OF STORING, USING, DISTRIBUTING, OR CONSUMING IN THE CITY ANY ARTICLES OF TANGIBLE PERSONAL PROPERTY OR ANY TAXABLE SERVICES PURCHASED, LEASED OR RENTED FROM SOURCES INSIDE OR OUTSIDE THE CITY ON WHICH A CITY SALES TAX HAS NOT BEEN PAID; SHALL ALL REVENUES DERIVED FROM SUCH USE TAX BE USED FOR GENERAL MUNICIPAL AND GOVERNMENTAL PURPOSES; AND SHALL THE CITY BE AUTHORIZED TO COLLECT, RETAIN, AND SPEND ALL SUCH
Section 2. The November 6, 2018, special municipal election shall be coordinated with Gilpin County pursuant to the Uniform Election Code of 1992, as amended.

Section 3. Safety Clause. The Board of Aldermen hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 5. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 22nd day of August, 2018.

_______________________________
David D. Spellman, Mayor

ATTEST:

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

SUBJECT: Creating a Special Election to be Coordinated with the County on November 6, 2018 and Submitting a Ballot Question.

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

MOTION TO APPROVE: Ordinance 2018-15, An Ordinance Calling a November 6, 2018 Special Election to be Coordinated with Gilpin County and Submitting a Ballot Question to City Voters.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: The City desires to conduct a special election on November 6, 2018, as part of the state general election, so that City voters may consider expanding the City's use tax to match the scope of the City's existing 6.00% sales tax.

AGENDA DATE: August 22, 2018

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X] Yes [ ] No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: Ordinance

RECORD: [ ] Yes [X] No

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

SUBMITTED BY: Reviewed By:

Lance Hillis, Finance Director
Jack D. Lewis, City Manager
COUNCIL BILL 16
ORDINANCE 2018-16
AN ORDINANCE ADDING
A NEW ARTICLE XX TO
CHAPTER 6 OF THE
BLACK HAWK
MUNICIPAL CODE
ENTITLED SHORT-TERM
RENTAL PROPERTIES
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. The City of Black Hawk Municipal Code is amended by the addition thereto of a new Article XX of Chapter 6, establishing licensing regulations for Short-Term Rental properties, to read as follows:

ARTICLE XX

Short-Term Rental Properties

Sec. 6-701. Intent and purpose.

(a) It is the intent of the City Council to establish licensing regulations to safeguard the public health, safety and welfare by regulating and controlling the use and occupancy of short-term rental properties in the City.

(b) This Article shall apply to short-term rental properties only as defined herein. This Article shall not apply to motels, hotels, bed and breakfasts, or other establishments providing lodging for the general public.

(c) This Article shall not supersede or affect any private conditions, covenants or restrictions applicable to a parcel of property.

Sec. 6-702. Definitions.

As used in this Article, the following words shall have the meaning ascribed below:

Bed and Breakfast shall have the same meaning as in Section 16-24 of the Black Hawk Municipal Code.

Hotel and motel shall have the same meaning as in Section 16-24 of the Black Hawk Municipal Code.
Lease means an agreement or act by which an owner gives to a tenant, for valuable consideration, possession, and use of property or a portion thereof for a definite term, at the end of which term the owner has an absolute right to retake control and use of the property.

Owner means the record owner of a dwelling or dwelling unit who intends to lease or who leases the unit as a short-term rental.

Short-term rental shall have the same meaning as in Section 16-24 of the Black Hawk Municipal Code.

Sec. 6-703. License Required.

(a) A valid license is required for each short-term rental in the City. The City Clerk may require a certificate of occupancy in the City Clerk's discretion.

(b) Licenses shall be issued by the City Clerk, provided the requirements of this Article are met.

Sec. 6-704. Application/Fee.

(a) Applications shall include the required license fee, and other documents and/or information as required by the City Clerk.

(b) All applicants for a short-term rental license shall complete and file with the application a License-Holder Affidavit of Inspection ensuring compliance with Section 6-706 of this Article.

(c) The annual license fees under this Article shall be set by resolution of the City Council adopting the City of Black Hawk Fee Schedule.

(d) Applications for structures or other temporary dwellings that do not have a certificate of occupancy permitting such a use shall not be processed for a license.

Sec. 6-705. License Term.

(a) The license term shall be for a period of one (1) year from the date of issuance of a short-term rental license.

(b) Issuance of a short-term rental license shall not create a continued right to operate a short-term rental property beyond the annual term of the license. All short-term rentals shall be subject to amendments to this Article.

(c) An application for renewal shall be submitted not less than thirty (30) days prior to the date of expiration of the existing license.
Sec. 6-706. Health and Safety Standards.

Each short-term rental property shall be licensed and in compliance with all applicable standards established under this Article as follows:

(a) Each short-term rental property shall have a posting of the following information in a conspicuous place and manner available to renters:

(1) The short-term rental license number;

(2) The contact information of the property owner or manager;

(3) The contact information for all emergency services;

(4) Fire escape routes (if a multi-story building); and

(5) Method and timing of trash disposal and recycling.

(b) Each short-term rental shall ensure that the address number of the rental property is visible and easy to read from the road to the front of the building.

(c) Each short-term rental shall ensure that all smoke and carbon monoxide detectors are in working order and in compliance with Article IX, Chapter 7 of this Code.

(d) Each short-term rental shall ensure that fire extinguishers are present and maintained as required by the International Fire Code, as adopted in Section 18-2(b)(1).

(e) Each short-term rental shall ensure that the property is serviced by water and sanitation systems that have been approved to meet all state health standards.

(f) Each short-term rental shall ensure the exterior and interior of the property are in good repair, including, but not limited to, kitchen facilities that are provided which shall be maintained in good repair.

(g) Each short-term rental shall ensure that there are no active hazards present.

(h) Each short-term rental shall ensure that the property is pest and vermin free.

(i) Each short-term rental shall comply with the applicable provisions of the City's zoning and subdivision regulations with respect to adopted bulk standards, including, but not limited to, height, setbacks, area, lot coverage, external signage and parking.
Sec. 6-707. Advertising.

All advertising for a short-term rental property shall include the short-term rental license number. No property may be advertised for lease until a license has been issued.

Sec. 6-708. Suspension.

A license may be suspended:

1. When any money due to the City has not been paid. This includes failure to pay civil penalties, fines, taxes, or any other money owed to the City.

2. When any activity conducted by the licensee, his or her agent, or an occupant of a short-term rental violates any federal, state, or local rule, regulation, or law.

3. Upon failing to comply with the terms and conditions of the license.

4. Upon any grounds of suspension provided by ordinance.

Sec. 6-709. Revocation.

A license may be revoked by the City:

1. When it appears that the license was obtained by fraud, misrepresentation or false statements within the application;

2. When it appears that the use of the property as a short-term rental property is a public nuisance as defined by this Code or statute or violates any federal, state, or local rule, regulation, or law.

3. Upon failing to comply with the terms and conditions of the license.

4. Upon any ground of revocation provided by this Code.

Sec. 6-710. Renewal.

(a) Upon receipt of a timely renewal application, the City Clerk shall review the application and shall administratively approve renewal of the license, provided that the property has not been in violation of this Article, has not had its short-term rental license suspended, and has not been the subject of a nuisance violation conviction or plea of guilty or no contest. Otherwise, the renewal application shall be reviewed by the City Council at a public hearing upon notice being delivered via first class mail to the owners of the short-term rental property.
and posting of notice of the hearing at a conspicuous location on the subject
property.

(b) In deciding whether to renew the license, the City Council shall
consider the severity of the violation, the culpability of licensee, any measures
taken to remedy the violation and to ensure it will not reoccur.

**Sec. 6-711. Violations and Penalty.**

(a) It is unlawful for any owner or occupant of a short-term rental
property to violate any provision of this Article or any other applicable provisions
of this Code.

(b) In addition to the suspension and revocation proceedings pursuant
to Sections 6-708 and 6-709, violations of this Article shall be subject to the
penalties set forth in Article IV of Chapter 1 of this Code. Each separate act in
violation of this Article, and each and every day or portion thereof during which
any separate act in violation of this Article is committed, continued, or permitted,
shall be deemed a separate offense. Any remedies provided for in this Article shall
be cumulative and not exclusive and shall be in addition to any other remedies
provided by law.

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

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

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

READ, PASSED AND ORDERED POSTED this 22\textsuperscript{nd} day of August, 2018.

 ATTEST:

David D. Spellman, Mayor

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

SUBJECT: An Ordinance to consider the Addition of a New Article XX to Chapter 6 of the Black Hawk Municipal Code.

RECOMMENDATION:

MOTION TO APPROVE Council Bill 16, Ordinance Number 2018-16, An Ordinance Adding a New Article XX to Chapter 6 of the Black Hawk Municipal Code Entitled Short Term Rental Properties

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Article XX of Chapter 6, of the Black Hawk Municipal Code will establish licensing regulations to safeguard the public health, safety, and welfare by regulating an controlling the use and occupancy of short-term rental properties in the City.

AGENDA DATE: August 22, 2018
WORKSHOP DATE: N/A
FUNDING SOURCE: N/A
DEPARTMENT DIRECTOR APPROVAL: [X]Yes [ ]No
STAFF PERSON RESPONSIBLE: Melissa Greiner
City Clerk/Administrative Services Director
DOCUMENTS ATTACHED: Ordinance 2018-17
RECORD: [ ]Yes [X]No
CITY ATTORNEY REVIEW: [X]Yes [ ]N/A
SUBMITTED BY: REVIEWED BY:
Melissa A. Greiner
City Clerk/Administrative Services Director
Jack D. Lewis
City Manager
COUNCIL BILL 17
ORDINANCE 2018-17
AN ORDINANCE
AMENDING ARTICLE IV
OF CHAPTER 13 OF THE
BLACK HAWK
MUNICIPAL CODE
REGARDING THE CITY’S
WATERSHED
PROTECTION DISTRICT
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB17

ORDINANCE NUMBER: 2018-17

TITLE: AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 13 OF THE
BLACK HAWK MUNICIPAL CODE REGARDING THE CITY’S
WATERSHED PROTECTION DISTRICT

WHEREAS, Article IV of Chapter 13 of the City of Black Hawk Municipal Code is intended to protect the watershed of the City of Black Hawk;

WHEREAS, it has become apparent that the sources of potential pollution should be more specifically identified in order to protect the City’s watershed; and

WHEREAS, based on the expansion of the City of Black Hawk’s water system with the addition of the Hidden Valley Water Treatment Plant, the City’s Watershed Protection District has expanded, necessitating this revision to the map of the City’s Watershed Protection District.

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

Section 1. Section 13-62 of the City of Black Hawk Municipal Code is amended to read as follows:


There is hereby established the "Black Hawk Watershed Protection District", which is hereby defined as that territory within the County of Gilpin, the County of Clear Creek, and State of Colorado lying within a five (5) mile radius above the point or points at which the City obtains its municipal water supply from natural streams or from groundwater aquifers. Said District is more particularly described in the map attached hereto as Appendix A and incorporated herein by this reference.

Section 2. Section 13-63 of the City of Black Hawk Municipal Code is amended to read as follows:

Sec. 13-63. Polluting Water Supply Unlawful.

It shall be unlawful for any person, firm or corporation to engage in any activities within the City of Black Hawk Watershed Protection District, if such activities have the effect of causing the quality or quantity of the City water supply to deteriorate to the point where there is a potential threat to the health,
safety and welfare of the citizens of the City of Black Hawk, including, but not limited to, the following activities:

(1) Excavating, grading, filling or surfacing.

(2) Altering water drainage courses.

(3) Conducting surface and/or subsurface mining activities.

(4) Road construction or improvements.

(5) Constructing or installing an onsite sewer disposal system.

(6) Removing vegetation on more than one acre.

(7) Oil and gas drilling operations.

(8) Using, handling storing or transmitting toxic or hazardous substances, including, but not limited to, radioactive materials.

(9) Using, handling, storing, or transporting flammable or explosive materials, except for domestic purposes or within vehicular fuel storage tanks.

(10) Allowing pollution and run-off into the water supply which has the effect or potential of altering the physical, chemical, biological or radiological integrity of the water.

(11) Having, keeping, or maintaining any buildings, privy, pen, yard or corral for stock animals within 1000 feet of the banks of streams.

(12) Bathing or allowing any stock animals to bathe in streams.

Section 3. Section 13-65 of the City of Black Hawk Municipal Code is amended to read as follows:


The City of Black Hawk and the County of Gilpin have formulated an intergovernmental agreement, Appendix (included as part of this document) to identify, notify and implement the water quality intent of this ordinance.

Section 4. The City of Black Hawk Municipal Code is amended by the addition thereto of a new Section 13-66 to read as follows:

Sec. 13-66. Inspection.

(a) Whenever it is necessary to make an inspection to enforce any provision of this ordinance, the City Manager or his designee may go upon any land located within the Black Hawk Watershed Protection District at any
reasonable time to inspect the same or to perform any duty imposed hereunder; provided that if such land or premises is occupied, such inspector shall first present proper credentials and request entry; and if such land or premises is unoccupied, he shall first make a reasonable effort to locate the owner or occupant or other person or persons having charge or control over the land or premises, and upon locating the owner, occupant or other person or persons shall present proper credentials and request entry. If entry is refused, such person shall give the owner or occupant, or if the owner or occupant cannot be located after reasonable effort, he shall leave at the building or premises, a twenty-four (24) hours' written notice of intention to inspect. The notice given to the owner or occupant or left on the premises as aforesaid shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by the Municipal Judge of the City, or judge of any other court having jurisdiction.

(b) After the expiration of the 24-hour period from the giving or leaving of such notice, the authorized inspector may appear before the Municipal Judge of the municipal court, or judge of any other court having jurisdiction, and upon a showing of probable cause, shall obtain a search warrant entitling him to enter the land or the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of unoccupied land or premises, the person may enter into the premises or upon the land using such reasonable force as may be necessary to gain entry therein.

(1) For purposes of this subsection, a determination of "probable cause" will be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular land or premises at issue in order to obtain a search warrant. It is unlawful for any owner or occupant of the building or premises to resist reasonable force used by the authorized inspector, acting pursuant to this subsection.

(2) Whenever an emergency situation exists in relationship to the enforcement of any of the provisions of this ordinance, an authorized inspector upon a presentation of proper credentials or identification, in the case of an unoccupied premises or land may enter into any premises or upon any land within the Black Hawk Watershed Protection District. In emergency situations, such person or his authorized representative may use such reasonable force as may be necessary to gain entry into the premises or upon the land.

(3) For purposes of this subsection, an emergency situation includes any situation where there is imminent danger to the Black Hawk Watershed Protection District. It is unlawful for any owner or occupant of the premises or land to resist reasonable force used by the authorized official acting pursuant to this subsection.
(c) The Municipal Judge of the City of Black Hawk shall have power to issue search warrants upon the showing of probable cause for the implementations as provided in Subsection (a) of this Section.

Section 5. The City of Black Hawk Municipal Code is amended by the addition thereto of a new Section 13-67 to read as follows:

Sec. 13-67. Abatement Notice.

In addition to the penalty provided by Section 13-69 hereof, the owner, occupant or person in control of any premises which are found to be in violation of any provision of this ordinance will be given a ten (10) day notice in writing to abate and remove the condition. However, where an emergency condition exists as defined in Section 13-66, this ten (10) day notice shall not apply.

Section 6. The City of Black Hawk Municipal Code is amended by the addition thereto of a new Section 13-68 to read as follows:

Sec. 13-68. Enforcement and Abatement.

If any person, or any owner or occupant of any premises upon whom notice is served as provided by Section 13-67 hereof does not abate or remove the conditions described in the notice within the 10-day period provided, the City may at its discretion and in lieu of obtaining a court injunction, proceed to abate the condition causing the pollution or contamination of the water supply and shall charge the person or owner or occupant of the premises with all of the cost of the abatement or removal. This ordinance may be enforced by the designated police officers of the City.

Section 7. The City of Black Hawk Municipal Code is amended by the addition thereto of a new Section 13-69 to read as follows:

Sec. 13-69. Penalty.

Any person violating any of the terms of this ordinance is guilty of a misdemeanor and upon conviction thereof shall be subject to the penalties set forth in Section 1-73 of this Black Hawk Municipal Code. Each day of the violation, after the ten (10) day notification period, shall be deemed a separate and additional violation.

Section 8. The City of Black Hawk Municipal Code is amended by the addition thereto of a new Section 13-70 to read as follows:

Sec. 13-70. Remedies.

The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.
Section 9. The City of Black Hawk Municipal Code is amended by the addition thereto of a new Section 13-71 to read as follows:

Sec. 13-71. Exemption.

The City of Central's water system current and future shall be exempt from this ordinance.

Section 10. Safety Clause. The Board of Aldermen hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 11. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 12. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 22nd day of August, 2018.

_______________________________
David D. Spellman, Mayor

ATTEST:

Melissa A. Greiner, CMC, City Clerk
SUBJECT:
Approve Council Bill 17, an Ordinance amending Article IV of Chapter 13 of the Black Hawk Municipal Code regarding the City’s Watershed Protection District.

RECOMMENDATION:
If City Council chooses to approve Council Bill 17, an Ordinance amending Article IV of Chapter 13 of the Black Hawk Municipal Code regarding the City’s Watershed Protection District, the recommended motion is as follows: “Approve Council Bill 17 an Ordinance amending Article IV of Chapter 13 of the Black Hawk Municipal Code regarding the City’s Watershed Protection District”.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
In 1986, the City established a Watershed Protection District by Ordinance 86-1 to protect the raw water quality entering the City’s water system. In 1988, the Ordinance was amended to include protection from additional sources of pollution. Because of the expansion of the City of Black Hawk’s water system with the addition of the Hidden Valley Water Treatment Plant, the City’s Watershed Protection District has expanded, necessitating this revision to the map of the City’s Watershed Protection District. This Ordinance will amend Article IV of Chapter 13 to include the area protecting the Hidden Valley Water Treatment Plant intakes.

FUNDING SOURCE: Not Applicable
WORKSHOP DATE: August 22, 2018
ORIGINATED BY: Jim Ford
STAFF PERSON RESPONSIBLE: Jim Ford
PROJECT COMPLETION DATE: August 22, 2018
DOCUMENTS ATTACHED: Watershed Protection District Ordinance
CITY ATTORNEY REVIEW: [ ]Yes [ ]No [ ]N/A INITIALS__________

SUBMITTED BY: REVIEWED BY:

Thomas Isbester, Public Works Director  Jack D. Lewis, City Manager
APPENDIX A

City of Black Hawk
Source Water Protection Area
RESOLUTION 50-2018

A RESOLUTION CONDITIONALLY APPROVING THE CERTIFICATE OF APPROPRIATENESS AND THE SITE DEVELOPMENT PLAN FOR THE CANYON PARKING LOT

(continued from July 25 and August 8)
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK  

Resolution No. 50-2018  

TITLE: A RESOLUTION CONDITIONALLY APPROVING THE CERTIFICATE OF APPROPRIATENESS AND THE SITE DEVELOPMENT PLAN FOR THE CANYON PARKING LOT  

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

Section 1. Findings of Fact.  

A. Application has been made by the property owners, Dakota/Canyon, LLC, and Jacobs Entertainment LLC for a certificate of appropriateness and a site development plan for certain property located at 131 Main Street (the “Property”), within the City of Black Hawk, Colorado.  

B. Public notice has been given of such subdivision by one publication in a newspaper of general circulation within the City and the official newspaper of the City at least fifteen (15) days before the public hearing;  

C. Notice of such proposed hearing was posted on the property for fifteen (15) consecutive days prior to said hearing; and  

D. The application complies with the criteria set forth in Chapter 16 of the Black Hawk Municipal Code.  

Section 2. The City Council hereby determines to approve the Certificate of Appropriateness with the following conditions:  

A. No excavation pursuant to the revised grading and excavation plan shall occur without approval of a new City of Black Hawk Excavation Permit; and  

B. All applicable building and electrical permits shall be obtained prior to construction; and  

C. Any Public Works permit, including, but not limited to, street closure and/or sidewalk closure permits shall be obtained prior to construction activities occurring; and  

D. A detailed Safety Plan(s) must be submitted or the existing plan must be revised so that the existing Safety Plan is valid for the revised project; and  

E. A Blasting Permit shall be issued by the City of Black Hawk Fire Department if any blasting will occur on the property; and  

1
F. A complete detailed materials board with colors and specified samples and sheets of all items (lights, rail, stone, grout color, light pole base finish, etc.) to be used shall be provided to staff to ensure compliance with the City Council approval of the Certificate of Appropriateness; and

G. All proposed signage requires Certificate of Appropriateness and Sign Plan approval by City Council; and

H. Cut Wall Finish: The exact same (Dakota site wall finish) colored/stained concrete shall be continued from the west edge of the recently completed Dakota site to the point of the same wall that is directly behind the Canyon Casino building from the surface of the site to the very topside of the existing cut wall; and

I. The applicant shall update the COA/SDP document to include the following note. ‘Stones on screen wall are to be adhered to the concrete foundation wall in an Ashlar Pattern, with a dry-stack appearance, and a tinted grout is only to be used on the top side of the wall to be near the stone color to best blend in with the natural stones. Sample wall cover shall be provided by the applicant and subsequently inspected by City Staff in advance of completing the entire screen wall.’; and

J. The applicant shall provide a Materials Board that is acceptable to the City Council at the August 22, 2018 meeting and needs to address and include more specificity related to the proposed 3-foot-tall concrete light pole bases related to texture, finish and color in the form of a rendering and photo demonstrating the end look proposed. The concept of just painting the concrete light pole base is not acceptable. Agreement on finish, texture and color shall be added to the SDP sheets prior to the Mayor signing the approval block on the mylars indicating final approval of the SDP.

Section 3. The City Council hereby determines to approve the Site Development Plan (the “SDP”) attached hereto as Exhibit A, with the following conditions:

A. The final SDP shall be signed with an approval line and kept in the records of the Community Planning and Development Department; and

B. All construction of the parking lot and related improvements shall match the final SDP, as approved by City Council and staff including plans to show the entire rear cut wall to be sculpted colored concrete on the backside of the site; and

C. All applicable public works, building and electrical permits must be obtained prior to construction; and
D. The floodplain/channel improvements requirements as set forth in the recorded Canyon Black Hawk Subdivision Agreement with the agreed upon solution requiring the applicant to complete specific improvements to the nearby North Clear Creek channel and to submit a LOMR for all resulting impacts to the floodplain boundaries and base flood elevations (as applicable) which must include but not be limited to the 500-year storm event shall be incorporated into the amended SIA for this project and the applicant shall complete the channel improvements prior to any surface work for the private improvements on what will be the final form excavated site for this project; and

E. Improvements to public facilities, roads, utilities and infrastructure shall be completed in compliance with an amended Subdivision Agreement (the "SIA") to be finalized and recorded prior to a Final Inspection by the City in accordance with Section 18-254 of the Municipal Code; and

F. Plans submitted to date are not considered Final Construction Plans for public and private improvements which mean that the submittal to the City of final public and private improvement construction plans (to be approved by the City staff) and slope stabilization plans and cost estimates shall be required prior to the issuance of a Public Way Permit or Building Permit for such work and such plans shall include all specified improvements within the right-of-way as set forth in the recorded SIA, and private construction plans shall also be provided to the City prior to any installation of any of these improvements; and

G. Pedestrian access routes shall be in compliance with the Americans with Disabilities Act; and

H. Until the City staff completes a final site inspection in accordance with the process and regulations in Section 18-254 of the Municipal Code for all of the required private improvements shown on the SDP, the North Clear Creek channel improvements, the LOMR, and the Public Improvements, the parking lot shall not be used for parking of vehicles for any use including customer parking, and that staff shall not release the private improvement surety for the excavation portion for the site until the Final Private and Public Improvements Compliance Inspection is completed by the City and in advance of that the Engineer or Architect of Record shall submit documents to the City demonstrating that the private improvements were completed according to the approved plans; and

I. The applicant shall improve and maintain the Miners Mesa Road haul route with six inches of quality road base, grade, roll and apply a binding agent to the road surface from the Mesa down to Lake Gulch Road.
RESOLVED AND PASSED this 22nd day of August, 2018.

_______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, CMC, City Clerk
NOTICE OF PUBLIC HEARING

Notice is hereby given that the City of Black Hawk Board of Aldermen shall hold a public hearing concerning a request to approve a Certificate of Appropriateness, Variance, and Site Development Plan to construct a parking lot, all located on property described in Exhibit A and generally located at 131 Main Street, pursuant to the City of Black Hawk zoning ordinance.

The public hearing is to be held before the City of Black Hawk Board of Aldermen on Wednesday, July 25, 2018 at 3:00 p.m. or as soon as possible thereafter. The public hearing shall be held in the City of Black Hawk Council Chambers, located at 211 Church Street, Black Hawk, CO 80422, or at such other time of place in the event this hearing is adjourned.

ALL INTERESTED PARTIES MAY ATTEND

Melissa A. Greiner
City Clerk

EXHIBIT A

Lot 1, Canyon Black Hawk Subdivision Filing 1, City of Black Hawk, County of Gilpin, State of Colorado.
CITY OF BLACK HAWK
REQUEST FOR COUNCIL ACTION

SUBJECT: This request for Council action serves as an update to the original Council meeting (7-25-2018) item and report for the Canyon Parking Lot: for a Certificate of Appropriateness (CoA) and Site Development Plan (SDP) for the construction of a parking lot and associated improvements (P-17-23-B).

RECOMMENDATION: Staff recommends that City Council open the public hearing, have staff and the applicant present the revised project, and take any public comments on the application if anyone desires, then discuss the options presented and work toward finding consensus with one of three alternatives provided by the applicant or staff. Once City Council and staff and the applicant have had a chance to discuss the options outlined in the staff report and staff’s recommendation then City Council will need to evaluate all information and work toward a consensus on the proposed CoA and SDP. At this time staff recommends the following motion.

MOTION TO APPROVE to Resolution 50-2018 concerning a Certificate of Appropriateness and Site Development Plan:

1. CERTIFICATE OF APPROPRIATENESS:
   Staff recommends City Council consider a MOTION TO APPROVE the Certificate of Appropriateness with the ten (10) conditions (A. thru J.) listed in the staff report recommendation; and

2. SITE DEVELOPMENT PLAN:
   Staff recommends City Council consider a MOTION TO APPROVE the Site Development Plan with the nine (9) conditions (A. thru I.) listed in the staff report recommendation.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
The City of Black Hawk has received an amended application from Dakota/Canyon, LLC/Jacobs Entertainment, LLC (applicant) concerning its property located at 131 Main Street related to a proposed parking lot. This amended application follows the January 24, 2018 approval (Resolution 2-2018) of P-17-23, a CoA/SDP for the construction of a parking garage and associated improvements on the same property. See the Staff Report included with this Request for Council Action.

The SUBDIVISION IMPROVEMENTS AGREEMENT is a separate agenda item and will be heard under Resolution 52-2018. As of Monday morning August 20, 2018 staff and the applicant may be close to completing the SIA and the Exhibit C documents. Staff will update the City Council at the August 22, 2018 meeting with the status of the SIA and associated documents. Staff may recommend approval of such SIA by the Wednesday City Council meeting.
AGENDA DATE: August 22, 2018
(Continued from July 25, 2018 & August 8, 2018)

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [ X ] Yes [ ] No

STAFF PERSON RESPONSIBLE: Cynthia Linker, CP&D
Vincent Harris, Baseline Corporation

DOCUMENTS ATTACHED:
1. Resolutions for approval of the SDP/COA.

RECORD: [X] Yes [ ] No

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

SUBMITTED BY: REVIEWED BY:
Cynthia L. Linker, CP&D Administrator

8/21/18

Vincent Harris, AICP, Baseline Corporation

8/21/18

Jack D. Lewis, City Manager
Staff Report
CITY OF BLACK HAWK
PLANNING / LAND USE

STAFF REPORT: Canyon Parking Lot: Amendment #1 to Certificate of Appropriateness for Excavation & Construction, Site Development Plan, and a Subdivision Improvement Agreement (Second Revised submittal application)

For: City Council
Project: Canyon Parking Lot – Case number P-17-23-B
Property Address: 131 Main Street
Applicants: Dakota/Canyon, LLC, Jacobs Entertainment LLC
Zoning: Gaming Outstanding Lodging and Dining (GOLD) District
Prepared by: Vincent Harris, AICP, Baseline Corporation
Reviewed by: Cynthia Linker, CP&D Administrator

Background and Revised Application:
This is another revised staff report related to the ‘Canyon property’ and proposed development of a parking lot on the site. The City of Black Hawk originally received an application from Dakota/Canyon, LLC/Jacobs Entertainment, LLC requesting to amend the January 2018 approved Site Development Plan for a three floor parking garage. On July 25, 2018 the City Council did not take any action except to continue this public hearing since the previously proposed excavated wall treatment with wire mesh from bottom of new cut to top of existing cut, about 125 feet high, was not acceptable to City Council. Then on August 8, 2018 the applicant came back with a very large scale illuminated BLACK HAWK sign and City Council also found that not acceptable. Now the applicant is proposing to complete the referred to ‘Bobtail Wall’ with a sculpted and stained concrete wall finish that matches the recently completed wall on the Dakota site by the applicant.

This new amendment and now resubmitted application continues to propose demolition of existing walls, major excavation, rock walls, landscaping, and public improvements including a sidewalk along Main Street and street improvements as well as a sculpted and stained concrete wall. The proposed finished wall is to extend from the west end of the new Dakota wall to the area directly behind the closed Canyon Casino building from ground level to the very top of the wall.

This revised application submitted for review is for a Certificate of Appropriateness (COA) for excavation of the land under the existing parking lot, hillside and features on the site; a Site Development Plan (SDP) for the construction of the new parking lot, retaining walls, landscaping, and grading and now the sculpted stained concrete wall.

Currently the applicant has a contractor on the site and excavation has already started with the existing excavation permit. The SDP, as currently proposed, utilizes the two (2) approved variances (Resolution No. 3-2018 approved on January 24, 2018) to the existing zoning standards (GOLD District standards) including the required front yard setback and the required landscape buffer in the setback.

As for the Subdivision Improvements Agreement (SIA) it is now in a form and near ready for a review and final approval by the City Council. The SIA needs to include several Exhibits including Exhibit C summarizing the costs for the private excavation improvements (including the sculpted stained concrete wall finish) as well as the costs for the Main Street public improvements and for North Clear Creek
improvements that are needed to be completed by the applicant. As of Tuesday August 21, 2018 while writing this staff report, staff and the applicant are working to complete the Exhibit C estimates and may have it completed by the August 22, 2018 meeting. Staff can update City Council at the meeting.

**APPLICANTS PROPOSAL:** The image below is from the SDP and COA sheets recently submitted from the applicant. Both photos prepared by staff to provide a perspective for the entire rear Bobtail wall.
Lastly, at the August 8, 2018 City Council meeting discussion took place between the applicant and City Council to have the City provide payments (reimbursement for a portion of the sculpted concrete wall) up to a total of $300,000 thru the Enhanced Sales Tax Incentive Program (ESTIP) that has been used elsewhere in the City is based on sales tax generated from retail sales that qualify. The two properties of the Lodge Casino and the Gilpin Casino are the businesses that will be used to provide/share in the payments to the owner from the City. The length of time for the ESTIP for this project is to last no longer than 5 years from date of approval. The ESTIP is a separate agenda item and will be approved heard under Resolution 53-2018.

Current Conditions
The property is 3.6 acres in size. The recently approved (January 2018) Canyon Black Hawk Minor Subdivision Plat resulted in converting this property into a single platted lot, Lot 1 Canyon Black Hawk Subdivision Filing #1. Also in January 2018 a Subdivision/Site Improvements Agreement (SIA) was approved and recorded in conjunction with the Canyon Black Hawk Plat. It was subsequently amended twice as part of the Canyon Parking Garage SDP. The newly needed and proposed SIA will be the Third Amendment to the original SIA which is the agreement we are very close to completion and to include the Exhibit C cost estimates for public improvements as well as private improvements that include the excavation costs. Staff believes these Exhibit C cost estimates would be the relevant costs to excavate the entire cut wall on the rear (southern) portion of the proposed parking lot, as well as the sculpted and stained concrete finish to be installed on the ‘Bobtail Wall’. The applicant can evaluate staff’s cost estimate and communicate any differences of opinion or costs in advance of the City Council meeting if there are any differences of opinion. The SIA shall be reviewed under Resolution 52-2018 when available. It should be noted that Staff is still waiting for the calculations breakdown for numbers provided in the proposed SIA as of early afternoon of August 21 while preparing this staff report.

The property is bounded by Main Street on the north and Bobtail Street on the south. To the west is the now vacant Canyon Casino building and property. To the east is the recently approved and currently under construction Dakota parking lot. The excavation and sculpted concrete wall improvements on the Dakota property are now complete and some of the surface parking lot improvements have started to be installed.

An Excavation Permit for the Canyon property (this subject property) was granted to the applicant, Dakota/Canyon, LLC/Jacobs Entertainment, LLC for commencement of construction work based upon the previously approved Canyon Parking Garage SDP approval and slightly different excavation project with minor limits differences. Excavation activities under the existing excavation permit have already been initiated on the property. Much of the site edge retaining wall along Main Street has also been demolished as the proposed parking lot will essentially be at street grade/level.

Existing Zoning
The property is located within the Gaming Outstanding Lodging & Dining (GOLD) Zone District. Sec. 16-97 of the Black Hawk Municipal Code states:

(b) Purpose. The purpose for the GOLD zoning district is to recognize and encourage the sustained economic viability of the community by allowing gaming and entertainment and encouraging a complementary mix of restaurant and lodging accommodations in a manner which recognizes the continuing viability of the City as a destination resort community.

(c) Objectives. The objectives of the GOLD zoning district are to:
(1) Allow gaming and entertainment as the stimulus for the continued revitalization and sustained economic viability of the community.
(2) Encourage a safe pedestrian-oriented environment with transportation features that minimize vehicular traffic and visual impact on the historical character of the City.
(3) Minimize noise and traffic impacts of gaming and related activities on residential neighborhoods.

(d) Use regulations.
   (1) Permitted principal uses.
      a. Gaming and entertainment, including casinos established pursuant to State statute, provided that casino activities may not represent more than thirty-five percent (35%) of the gross floor area of the building or structure in which they are contained.
      b. Retail and services.
      c. Lodging accommodations.
      d. Restaurants.
      e. Bars and lounges.
      f. Indoor recreation and amusement.

   g. Parking. (emphasis added)

(e) Dimensional regulations.
   (2) Minimum setbacks.
      a. Front yard: ten (10) feet. (Variance previously granted to waive this setback)
      b. Side yard: zero (0) feet.
      c. Rear yard: zero (0) feet.

   (4) Maximum height: thirty (30) feet.

(f) Development standards.
   (1) All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:
      a. Reduce disruption to the existing terrain, vegetation or other natural site features;
      b. Improve pedestrian or vehicle safety within the site and egressing from it; and
      c. Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

   (2) All development including buildings, walls and fences shall be so sited to:
      a. Complement existing development in scale and location;
      b. Provide an adequate system of sidewalk or an off-road system of pedestrian and bicycle trails of greater than four (4) feet in width;
      c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping; and
      d. Follow the existing terrain and avoid trees, rock outcroppings and natural drainage patterns.

Proposed Improvements
The newly amended project proposes to not have the previously approved three level parking garage from the development plan and as an alternative to have only a surface parking lot. The newly proposed parking lot (without the garage) is proposing to contain 207 parking spaces.
The previously approved SDP planned for a parking garage with 302 parking spaces and a surface lot, associated with the garage construction, with 97 parking spaces. The total proposed parking spaces under the previously approved development plan was 399 spaces. The new SDP proposes a reduction of 192 parking spaces from the previously approved SDP.

The amended proposal continues to propose access to the new parking lot from the east, through the adjacent Dakota parking lot access drive. The amended grading plan adjusts the previously approved grading so that vehicles can traverse through the Canyon parking lot when either entering or exiting from the Dakota parking lot.

The planned access is designed in the same location as previously approved. In addition to the parking facilities, the applicant also proposes to provide landscaping, public street and infrastructure improvements.

Construction of the amended project will require excavation of the site surface and portions of the hillside between Bobtail Street and Main Street. According to submitted documentation approximately 47,000 cubic yards of material will be excavated from the site. This is compared to the previously approved garage excavation requiring approximately 81,100 cubic yards of excavated material. So far the Lace House knoll has already been excavated with the existing excavation permit. However, this proposal and amended excavation plan will not include excavating what the applicant terms the “Wedge” portion of the site located in the southeast portion of the rock face, as was originally approved with the garage development. This Wedge area is the transition area between connecting the recently constructed wall behind the Dakota site to the full height rear wall behind this proposed Canyon parking lot site.

The amended parking lot will contain approximately 76,000 sq. ft. (1.75 acres) of paved parking surface. This equates to approximately 48% of the lot.

A City of Black Hawk excavation permit has already been issued for previously approved parking garage SDP. A revised excavation permit will be required for this amended Site Development Plan if approved. At this time the applicant is seeking entitlements in the form of a Certificate of Appropriateness and a Site Development Plan. This new SDP proposes to carry forward the same Main Street improvements which Council approved as part of the previous parking garage SDP, including the widening of Main Street to accommodate the addition of a center lane dedicated to an eastbound and westbound left turn lane.

The applicant has previously indicated that the currently proposed parking improvements are not the final development plan for this site/property. The applicant has not provided any information as to their intent for later development on this land. Staff anticipates that there will be additional development proposed on the site in the future.

In a short summary, the applicant is requesting City Council approval of the following items:

1. Certificate of Appropriateness (COA) for Excavation and Construction of Improvements – Resolution 50-2018
2. Site Development Plan (SDP) – Resolution 50-2018
3. Subdivision Improvements Agreement (SIA) – Resolution 52-2018
4. Enhanced Sales Tax Incentive Program (ESTIP) – Resolution 53-2018
Following are some photos to assist in understanding the current conditions of the proposed project.

**FIG. 1 - EXISTING SITE PHOTO– CANYON SITE**

![Canyon Site Photo](image)

**FIG. 2 - EXISTING SITE PHOTO INCLUDING DAKOTA SITE AND CANYON SITE**

![Site Photo](image)
FIG. 3 - PROPOSED CANYON PARKING LOT SITE PLAN

FIG. 4 - PROPOSED CANYON LANDSCAPING PLAN
Applicable City of Black Hawk Regulations

Excerpts from:

City of Black Hawk
Municipal Code
Chapter 16 – Zoning

CERTIFICATES OF APPROPRIATENESS:

16-368. City Council Historic Review Process. Any person seeking to renovate the exterior of, add to or construct a new building shall be subject to the following procedures. Any such renovation, construction or demolition shall be subject to the City’s design standards.

16-368(4) A Certificate of Appropriateness is required for all work that is not Routine Maintenance... as follows:

b. Major Work... Nonresidential projects except those non-residential projects locally designated as local historic landmarks shall be reviewed and are to be determined to be approved, denied, or approved with conditions by the Black Hawk City Council.

16-368(5) Procedure to authorize the erection, construction, reconstruction, alterations to or demolition of improvements on residential or non-residential properties.

a. No building permit or site development plan shall be issued unless accompanied by a Certificate of Appropriateness (COA) issued by the City Council for any of the following acts:

1. Construction of a new building, structure or improvement;
2. Alteration or reconstruction of, or addition to, the exterior of any improvement;
3. Demolition of any improvement;
4. Construction or erection of or addition to any improvement upon any land located within the City;
5. Excavation requiring an excavation permit.

Staff comment: The construction of the parking lot, associated screening wall, improvements and the modifications to the hillside require a COA. The excavation of the hillside and lower portion of the site that now sits above the ground elevation on Main Street - requires a COA.

16-368(5)(f): Criteria for determining appropriateness of proposed erection, construction, reconstruction or alteration. In determining the appropriateness of a proposed site plan or building permit for erection, construction or alteration of a building, the HPC and/or City Council shall consider the following:

1. All plans, drawings and photographs as may be submitted by the applicant;

Staff comment: The applicant has submitted plans detailing the proposed excavation, layout and access points for the parking lot. A materials exhibit has been submitted by the applicant and is included with this staff report. An actual materials board with samples will be required to be presented at the Council hearing for approval as the applicant has indicated they will provide a materials board and sample colors at the City Council hearing.
2. Information presented at a public hearing held concerning the proposed work:
Staff comment: A representative of the applicant will be available to provide a presentation and overview of their proposed project and any additional information they choose to convey at the City Council meeting and can respond to additional questions of Council.

3. The purpose of this Chapter:
Staff comment: The purpose of this Chapter is to ensure that all development, and in this case, the excavation of the site including the hillside and construction of a parking lot meets the Zoning Regulations & Design Guidelines of the City of Black Hawk. The property is zoned GOLD. The purpose of the GOLD zoning district is to recognize and encourage the sustained economic viability of the community by allowing gaming and entertainment and encouraging a complementary mix of restaurant and lodging accommodations in a manner which recognizes the continuing viability of the City as a destination resort community. The GOLD District development standards have been used in evaluating the project as well. Staff finds that the third proposed site grading, parking lot and associated improvements do meet all of the zoning standards with some very minor clarifications related to the screen wall along Main Street. See below.

4. Compliance with this Code and the payment of all fees required by this Code;
Staff comment: The applicants have paid all necessary fees required to date by the ordinances of the City.

5. The historical and architectural style, the general design, arrangement, texture, materials and color of the development, building or structure in question or its appurtenance fixtures; the relationship of such features to similar features of the other buildings within the City and the position of the building, structure, park or open space in relation to public rights-of-way and to other buildings and structures in the City;
Staff comment: The proposed rock cut treatment on the rear and exposed rock cut wall, in staff’s opinion, is now consistent with the City’s commercial design guidelines. Staff was particularly concerned with the previous proposal to utilize mesh fencing material on significant portions of new rock wall cuts and to leave significant portions of the existing exposed rock cuts in their current untreated/unsculpted state. Now the newly sculpted and stained concrete finish does meet the City’s Commercial Design Guidelines.

6. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the City which cause it to possess a special character or special historical or aesthetic interest or value;
Staff comment: As noted above, Staff finds that the newly proposed rock cut treatments and surface finish are in character with, and meet the aesthetic interest of the City.

7. The appropriate residential or commercial design standards for the City;
Staff comment: The proposed development of the parking lot itself does meet the City’s Commercial Design Guidelines as well as the proposed cut wall finish with the sculpted concrete. The proposal is in compliance with the critical visual and rock cut treatment guidelines. A further review of the appearance is provided below in the Site Development Plan section. One item for City Council consideration in the COA approval is the “Screen Wall” finish and a proposed condition is included in the staff recommendation. The exact same screen wall (details and photo reference of the existing/previous wall on this site along Main Street) is proposed here and as was approved at the Dakota site. Staff noticed the sample wall finish (on the Dakota site now under
construction) with the rock cover was not well crafted. Staff is currently working with the applicant to ensure the best quality outcome of the entire wall (spans approximately 950 feet including this site and the Dakota site) along Main Street. The sample wall on the Dakota site has poor spacing (too much space between stacked rocks on facing) and also wider gaps between the rocks on the top side of the wall than should be seen, which are then filled with a wide mortar fill that is grey in appearance not really blending the natural colors of the stone they have used. So, staff recommends that more clarity be provided on the detail sheet for the screen wall to direct better attention and construction technique to the finish expected and desired (and as provided and shown on the applicants screen/retaining wall constructed 25 years ago in the photo they used as the example on the Dakota COA) for the 950 foot long screen wall on the two affected sites. Staff suggests the following wording be included in the COA resolution providing direction to update the detail for the screen wall.

- **Screen Wall Condition:** Stones on screen wall are to be adhered to the concrete foundation wall in an Ashlar Pattern, with a dry-stack appearance, and a tinted grout is only to be used on the top side of the wall to be near the stone color to best blend in with the natural stones. Sample wall cover shall be provided by the applicant and subsequently inspected by City Staff in advance of completing the entire screen wall.

Following is the screen wall detail from the proposed SDP sheet om the Landscape Plan.

Lastly, the detail for the light pole bases does not provide enough specificity or clarity as to the end look and proposed finish to be included on the 3 foot tall concrete bases for the light poles in the parking lot. The finish proposed is a “Smooth trowel finish with a Benjamin Moore paint color of ‘Jackson Tan’. Staff desires to see a rendering or photo of what is proposed that clarifies
the finish and the look for the concrete pole bases. A condition is proposed to be added to provide more clarity of this proposed approach.

SITE DEVELOPMENT PLAN:

Sec. 16-362. Site development standards and procedures for establishing vested property rights.

16-362(b). General Requirements.
(1) Site development regulations shall apply to all areas within the City that are in accordance with at least one (1) of the following:
   a. All uses located within the following zone districts:
      
      CG - Core Gaming, MG - Millsite Gaming, TG - Transitional Gaming, HD - Hillside Development-Mixed Use [etc.]

      Staff comment: The GOLD zone district was adopted by Ordinance 2013-47 on October 23, 2013, replacing the subject property’s previous zoning.

(6) No site development plan will be approved unless all components of the proposed development comply with the Black Hawk Zoning and Subdivision Ordinances and all other applicable ordinances.

Staff comment: The SDP has been reviewed against the development standards in the GOLD zone district and other applicable sections of the Zoning Ordinance and the approved

P-17-2-B Canyon Parking Lot COA/SDP Staff Report
Page 11
variances to not have to adhere to the front setback and landscape strip requirement along Main Street. The proposed Site Development Plan conforms.

(8) No vested rights shall be created except by a site specific development plan approved by the Board of Aldermen. If the applicant wishes the approval of the site development plan to create vested property rights pursuant to Article 68 of Title 24, C.R.S., the plan shall include a statement that it is being submitted for designation as a site specific development plan. Failure to include such statement or to comply with any other condition of this Chapter regarding site specific development plans shall result in no vested property rights being created by the approval of the site development plan. Notwithstanding anything herein to the contrary, vested property rights may be created by a development agreement between the City and the applicant or landowner.

Staff comment: The applicant has included the vested property rights statement on the cover of the site development plan.

Sec. 16-362(c). Application and site development plan submittal requirements.
Staff comment: Section 16-362(c) outlines the required submittal items that must accompany an application for a Site Development Plan. The submitted SDP contains the necessary submittal materials. Since there is not any type of building to be built on this property to issue a Certificate of Occupancy for, staff requests a condition be included in the Resolution for the SDP indicating that 'Until the City staff completes a final inspection in accordance with the process and regulations in Section 18-254 of the Municipal Code for all of the required private improvements shown on the SDP, the North Clear Creek channel improvements, the LOMR, and the Public Improvements, the parking lot shall not be used for parking of vehicles for any use including customer parking, and that staff shall not release the private improvement surety for the excavation portion for the site until all items listed above are completed and the Final Public and Private Improvements Compliance Inspection is completed by Black Hawk staff. Such condition shows up as Condition H of the SDP'.

COMPLIANCE WITH COMMERCIAL DESIGN GUIDELINES

In evaluating the appropriateness of the proposal and compliance with the City of Black Hawk’s Commercial Design Guidelines, staff focused on the following sections for the Guidelines:

Section 4 Site Design
C. Topography and Grade
G. Parking and Parking Structures
I. Surface Parking Lots

It is Staff’s conclusion that, the proposal meets all of the Design Guidelines with the one additional condition related to the Screen Wall discussed above. There are several critical Guidelines which are worth consideration and discussion. Those critical Guidelines include:

1.) Section 4 C.VI. Visually minimize the impact of any cuts with earth berms, rock forms, or stone retaining walls.
2.) Section 4 C.X - Using mesh or netting of any kind is an inappropriate reclamation method and may only be used as a temporary device to help establish vegetation, under the condition that it will be entirely obscured within 24 months.
3.) Section 4 C.XI - The uses of cementitious or plastic coverings, such as gunite, are appropriate only when they are finished to resemble the surrounding rock and only if they are not visible from a public right-of-way.
Staff’s perspective is that the very large cut completed many years ago and the additional cut under way has an existing unattractive appearance and finish not permissible or even supportive with today’s development standards and techniques. Mesh overlaid onto the cut is not attractive or desired. Since at some point in time in the future, this proposed parking lot site may develop with a multi-floor high tower, then in the meantime having the entire rear wall finished with a sculpted and stained concrete wall is acceptable.

**COMPLIANCE WITH GOLD ZONING DISTRICT STANDARDS**

The GOLD Zoning District contains the following standards:

(f) Development standards.

(1) All development shall be designed so that for the given location, egress points, grading and other elements of the development satisfy the requirements set forth below to the greatest extent practicable:

   a. Reduce disruption to the existing terrain, vegetation or other natural site features;
   b. Improve pedestrian or vehicle safety within the site and egressing from it; and
   c. Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

(2) All development including buildings, walls and fences shall be so sited to:

   a. Complement existing development in scale and location;
   b. Provide an adequate system of sidewalk or an off-road system of pedestrian and bicycle trails of greater than four (4) feet in width;
   c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping; and
   d. Follow the existing terrain and avoid trees, rock outcroppings and natural drainage patterns.

Staff finds that the proposal is in compliance with the above GOLD District development standards in paragraph (f).

**STAFF COMMENTS:**

The revised application has been processed through a very condensed review process in order to try to accommodate the continued public hearing now to August 22, 2018. Comments were solicited from city departments, and this new application resubmittal is ready for the City Council to review and take action on the request. As of Tuesday August 21, final work is in progress with both the City Attorney and the applicant’s attorney and staff to get an SIA completed with an Exhibit C (public and private improvements) related to the site and a staff recommended option for City Council.

Reviewing the desired finishes to walls in Black Hawk is critical. Following are visuals/pictures of the desired and undesirable wall finishes in the City.
FIG. 5 - DESIRABLE SCULPTED CONCRETE AND STACKED ROCK WALL – IN COMPLIANCE WITH DESIGN STANDARDS

FIG. 6 - RECENTLY COMPLETED DAKOTA PARKING LOT WALL TREATMENT – IN COMPLIANCE WITH DESIGN STANDARDS
The following are photos of existing slope stabilization technique examples in the City of Black Hawk that are not in compliance with the City of Black Hawk Design Guidelines.

FIG. 7 - UNDESIRABLE SHOTCRETE AND MESH AT CANYON PROPERTY

Staff Summary
Based on the revised application for the SDP and COA application staff recommends CONDITIONAL APPROVAL of Resolution 50-2018 with the outlined conditions listed herein and in the proposed Resolution. Also, following are three items of consideration which have been discussed, addressed and agreed to with the applicant related to Floodplain Hazard mitigation, the Miners Mesa Haul road deterioration, and the Subdivision Improvements Agreement (SIA).

Floodplain Hazard
The potential for flooding hazards on this site was a significant concern during the review and approval process for the previously approved Canyon Parking Garage SDP. Resolution of the flooding hazard concern for the Canyon Parking Garage SDP was a point of considerable discussion between the applicant and City staff. After considerable time and resources, a solution was arrived at which was acceptable to both the applicant and the City/City Council. The agreed upon solution required the applicant to complete specific improvements to the nearby North Clear Creek channel and to submit a LOMR for all resulting impacts to the floodplain boundaries and base flood elevations (as applicable) based on site grading improvements which must include but not be limited to the 500-year storm event. This solution was incorporated into the previous Subdivision/Site Improvement Agreement (garage project) for this property and needs to continue to be included and accomplished in the revised SIA. With the new SIA proposed for this project this accommodation and requirement needs to be carried over as a condition of approval for this current parking lot SDP application.
**Haul Route**

The current haul route being used by the applicant to haul the excavated materials from this site with the existing excavation permit utilizes Miners Mesa Road. Serious deterioration of the roadway has occurred because of these trucks taking this route. Repairs and continued maintenance to this roadway are necessary. A condition of approval is recommended below which would require the applicant to improve and maintain the Miners Mesa Road haul route with six inches of quality road base, grade, roll and apply a binding agent to the road surface from the Mesa down to Lake Gulch Road.

**Subdivision Improvements Agreement**

A Subdivision/Site Improvements Agreement was approved and recorded in conjunction with the Canyon Black Hawk Plat, and was subsequently amended twice as part of the Canyon Parking Garage SDP. The newly needed and proposed SIA will be the Third Amendment to the original SIA. Staff and the applicant may have a satisfactory SIA document and Cost Estimates for the Exhibit C to be included in the SIA. As of Tuesday afternoon August 21, 2018 when this report was completed staff sent comments to the applicant on the SIA. Hopefully, it will be provided to the City Council at the City Council meeting on Wednesday August 22, 2018.

**FINDINGS:**

1. City Council may approve, conditionally approve, or deny a Certificate of Appropriateness (COA) or continue the public hearing agenda item to a later date. To approve this proposal, the following finding can be used:

   *The proposed plans are in compliance with the City of Black Hawk Municipal Code and Commercial Design Guidelines.*

2. City Council may approve, conditionally approve, or deny a Site Development Plan (SDP) or continue the public hearing agenda item to a later date. To approve this proposal, the following finding can be used:

   *The proposed and agreed upon plans are in compliance with the City of Black Hawk Municipal Code and Commercial Design Guidelines as noted in Finding 1 above.*
RECOMMENDATIONS:
If City Council gets to a decision at the August 22, 2018 meeting and public hearing the following is what may be used to Approve Resolution No. 50 - 2018. Staff recommends CONDITIONAL APPROVAL of the Certificate of Appropriateness and the Site Development Plan as submitted with the additional suggested conditions related to the Screen Wall finish and note to be added to the COA and SDP documents.

Staff recommends CONDITIONAL APPROVAL of the following motions.

1. **CERTIFICATE OF APPROPRIATENESS:**
   - Staff recommends *City Council* consider a MOTION TO CONDITIONALLY APPROVE the Certificate of Appropriateness with the following conditions:
     - A. No excavation pursuant to the revised grading and excavation plan shall occur without approval of a new City of Black Hawk Excavation Permit; and
     - B. All applicable building and electrical permits shall be obtained prior to construction; and
     - C. Any Public Works permit, including, but not limited to, street closure and/or sidewalk closure permits shall be obtained prior to construction activities occurring; and
     - D. A detailed Safety Plan(s) must be submitted or the existing plan must be revised so that the existing Safety Plan is valid for the revised project.; and
     - E. A Blasting Permit shall be issued by the City of Black Hawk Fire Department if any blasting will occur on the property; and
     - F. A complete detailed materials board with colors and specified samples and sheets of all items (lights, rail, stone, grout color, light pole base finish, etc.) to be used shall be provided to staff to ensure compliance with the City Council approval of the Certificate of Appropriateness; and
     - G. All proposed signage requires Certificate of Appropriateness and Sign Plan approval by City Council; and
     - H. Cut Wall Finish: The exact same (Dakota site wall finish) colored/stained concrete shall be continued from the west edge of the recently completed Dakota site to the point of the same wall that is directly behind the Canyon Casino building from the surface of the site to the very topside of the existing cut wall; and
     - I. The applicant shall update the COA/SDP document to include the following note. ‘*Stones on screen wall are to be adhered to the concrete foundation wall in an Ashlar Pattern, with a dry-stack appearance, and a tinted grout is only to be used on the top side of the wall to be near the stone color to best blend in with the natural stones. Sample wall cover shall be provided by the applicant and subsequently inspected by City Staff in advance of completing the entire screen wall.*’
     - J. The applicant shall provide a Materials Board that is acceptable to the City Council at the August 22, 2018 meeting and needs to address and include more specificity related to the proposed 3 foot tall concrete light pole bases related to texture, finish and color in the form of a rendering and photo demonstrating the end look proposed. The concept of just painting the concrete light pole base is not acceptable. Agreement on finish, texture and color shall be added to the SDP sheets prior to the Mayor signing the approval block on the mylars indicating final approval of the SDP.
2. **SITE DEVELOPMENT PLAN:**
   Staff recommends *City Council* consider a **MOTION TO CONDITIONALLY APPROVE** the Site Development Plan with the following conditions:

A. The final SDP shall be signed with an approval line and kept in the records of the Community Planning and Development Department; and

B. All construction of the parking lot and related improvements shall match the final SDP, as approved by City Council and staff including plans to show the entire rear cut wall to be sculpted colored concrete on the backside of the site; and

C. All applicable public works, building and electrical permits must be obtained prior to construction; and

D. The floodplain/channel improvements requirements as set forth in the recorded Canyon Black Hawk Subdivision Agreement with the agreed upon solution requiring the applicant to complete specific improvements to the nearby North Clear Creek channel and to submit a LOMR for all resulting impacts to the floodplain boundaries and base flood elevations (as applicable) which must include but not be limited to the 500-year storm event shall be incorporated into the amended SIA for this project and the applicant shall complete the channel improvements prior to any surface work for the private improvements on what will be the final form excavated site for this project; and

E. Improvements to public facilities, roads, utilities and infrastructure shall be completed in compliance with an amended Subdivision Agreement (the "SIA") to be finalized and recorded prior to a Final Inspection by the City in accordance with Section 18-254 of the Municipal Code; and

F. Plans submitted to date are not considered Final Construction Plans for public and private improvements which mean that the submittal to the City of final public and private improvement construction plans (to be approved by the City staff) and slope stabilization plans and cost estimates shall be required prior to the issuance of a Public Way Permit or Building Permit for such work and such plans shall include all specified improvements within the right-of-way as set forth in the recorded SIA, and private construction plans shall also be provided to the City prior to any installation of any of these improvements; and

G. Pedestrian access routes shall be in compliance with the Americans with Disabilities Act; and

H. Until the City staff completes a final site inspection in accordance with the process and regulations in Section 18-254 of the Municipal Code for all of the required private improvements shown on the SDP, the North Clear Creek channel improvements, the LOMR, and the Public Improvements, the parking lot shall not be used for parking of vehicles for any use including customer parking, and that staff shall not release the private improvement surety for the excavation portion for the site until the Final Private and Public Improvements Compliance Inspection is completed by the City and in advance of that the Engineer or Architect of Record shall submit documents to the City demonstrating that the private improvements were completed according to the approved plans; and

I. The applicant shall improve and maintain the Miners Mesa Road haul route with six inches of quality road base, grade, roll and apply a binding agent to the road surface from the Mesa down to Lake Gulch Road.
3. **SUBDIVISION IMPROVEMENTS AGREEMENT:**
   This agenda item will be heard under Resolution 52-2018. As of Monday morning August 20, 2018 staff and the applicant may be close to completing the SIA and the Exhibit C documents. Staff will update the City Council at the August 22, 2018 meeting with the status of the SIA and associated documents. Staff may recommend approval of such SIA by the Wednesday City Council meeting.

**ATTACHMENTS:**
1. Resolutions for approval of the SDP/COA.
Applicant’s Submittal
City of Black Hawk
Community Planning and Development
211 Church Street
P.O. Box 68
Black Hawk, CO 80422
Ph: 303-582-0615 Fax: 303-582-2239

Site Development Plan and COA - Application - Amendment No. 1

DATE: 23 AUG 18  APPLICANT NAME: DAKOTA/CANYON, LLC - a Delaware Limit Liability Corporation
APPLICANT ADDRESS: 17301 West Colfax Ave., Suite 250 Golden, Colorado 80401
APPLICANT MAILING ADDRESS: 17301 West Colfax Ave., Suite 250 Golden, Colorado 80401
APPLICANT CONTACT NUMBER: 303-929-4113  EMAIL ADDRESS: mhuff@dsspcm.com
PROPERTY OWNER NAME: DAKOTA/CANYON, LLC - a Delaware Limit Liability Corporation
PROPERTY OWNER ADDRESS: 17301 West Colfax Ave., Suite 250 Golden, Colorado 80401
PROPERTY OWNER MAILING ADDRESS: 17301 West Colfax Ave., Suite 250 Golden, Colorado 80401
PROPERTY OWNER CONTACT NUMBER: (216) 862-1601  EMAIL ADDRESS: dgruenewald@jacobsinvestmentsinc.com
PROJECT NAME: Canyon Surface Parking Lot
PROJECT ADDRESS: 131 Main St, Black Hawk, CO 80422
PROJECT DESCRIPTION: Mass Excavation, Surface Parking

IS PROPERTY WITHIN CITY LIMITS: YES ☐ NO ☐
PRESENT ZONING: COBH - HR, HD, GD and CG  CURRENT USE: Surface Parking
NAME OF EXISTING PLANNED UNIT DEVELOPMENT (IF APPLICABLE): Unknown
NAME OF EXISTING SUBDIVISION PLAT (IF APPLICABLE): Canyon Black Hawk Subdivision Filing NO 1
GILPIN COUNTY ASSESSOR'S I.D. NO. (S): SEE ATTACHED  EXISTING PROPERTY SIZE: 3.640 AC ☐ or SF ☐
(PLEASE ATTACH A COPY OF SURVEY/PLAT.)
EXISTING BUILDING SIZE: 67,532  SQ. FT. AND/OR NUMBER OF EXISTING RESIDENTIAL UNITS: NA

APPLICANT READ AND ACKNOWLEDGE THE FOLLOWING

FOR INFORMATIONAL PURPOSES, SECTION 16-370 OF THE BLACK HAWK MUNICIPAL CODE ESTABLISHES THE REQUIREMENT FOR APPLICANT TO PAY FEES TO COVER THE COSTS THE CITY MAY INCUR BY HAVING THE CITY APPROVED CONSULTANTS EVALUATE AND PROCESS APPLICATIONS. IF YOU HAVE ANY QUESTIONS RELATED TO THIS, PLEASE CONTACT COMMUNITY PLANNING AND DEVELOPMENT FOR CLARIFICATION.

APPLICANT AGREES TO THE FOLLOWING CERTIFICATION STATEMENT AND AFFIDAVIT:

I, as the applicant, hereby certify that to the best of my knowledge and believe, all information supplied with this application is true and accurate and that consent of the property owner listed above, without which the requested action cannot lawfully be accomplished, has been granted. Permission is also hereby granted to the City of Black Hawk staff and their consultants to physically enter upon and inspect the subject property and take photographs as necessary for preparation of the case. In addition, I have read and understand Section 16-370 of the Black Hawk Municipal Code, the adopted Black Hawk Fee Schedule and by signing this application I am agreeing that I am authorized to sign on behalf of the property owner, or business-owner, or applicant and commit and agree to the payment of any and all fees associated with processing this application and further agree to pay City of Black Hawk invoices associated with the processing of this application.

A complete submittal is a minimum of five (5) hard copy sets and one electronic in PDF format must accompany application.

CoBH Staff and its Consultants will maintain Workers Compensation, Automobile and Liability insurance while on the property.

SIGNATURE OF APPLICANT:  

[Signature]

DATE: 23 AUG 18

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CITY OF BLACK HAWK PLANNING DEPT.
RESOLUTION 52-2018
A RESOLUTION APPROVING THE THIRD AMENDMENT TO THE SUBDIVISION/SITE IMPROVEMENT AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND JIJIE, LLC

(nothing received)
RESOLUTION 53-2018
A RESOLUTION APPROVING THE ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND THE LODGE CASINO, LLC AND THE GILPIN CASINO, LLC
STATE OF COLORADO 
COUNTY OF GILPIN 
CITY OF BLACK HAWK

Resolution No.53-2018

TITLE: A RESOLUTION APPROVING THE ENHANCED SALES TAX INCENTIVE PROGRAM AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND THE LODGE CASINO, LLC AND THE GILPIN CASINO, LLC

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

Section 1. The Enhanced Sales Tax Incentive Program Agreement attached hereto as Exhibit A, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

RESOLVED AND PASSED this 22nd day of August, 2018.

________________________________________
David D. Spellman, Mayor

ATTEST:

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

SUBJECT: An Agreement with the Lodge Casino and the Gilpin Casino to Participate in the ENHANCED SALES TAX INCENTIVE PROGRAM.

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


SUMMARY AND BACKGROUND OF SUBJECT MATTER: The Developer (The Lodge Casino & The Gilpin Casino) is incurring eligible improvements for public and/or public-related purposes and qualifies to participate in the Enhanced Sales Tax Incentive Program. The developer will be eligible for a rebate of the Enhanced Sales Tax generated over the next five years with a maximum rebate of $300,000.

AGENDA DATE: August 22, 2018

WORKSHOP DATE: N/A

FUNDING SOURCE: Future Sales Tax Revenue

DEPARTMENT DIRECTOR APPROVAL: [X] Yes [ ] No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: Resolution & Agreement

RECORD: [ ] Yes [X] No

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

SUBMITTED BY: [X] Yes [ ] N/A

REVIEWED BY:

Lance Hillis, Finance Director

Jack D. Lewis, City Manager
THE ENHANCED SALES TAX INCENTIVE PROGRAM

THIS AGREEMENT, made and entered into this ___ day of ______________, 2018, by and between The Lodge Casino, LLC, a Delaware limited liability company and The Gilpin Casino, LLC, a Delaware limited liability company, hereinafter referred to collectively as the "Developer", and the CITY OF BLACK HAWK, COLORADO, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, the City adopted an Ordinance enacting the ENHANCED SALES TAX INCENTIVE PROGRAM (the "ESTIP Program") to encourage in part the establishment of retail sales tax generating business within the City; and

WHEREAS, the Developer desires to participate in the ESTIP Program and to share in the enhanced sales tax derived from the properties operated by the Developer (the “Property”) to the extent allowed in this Agreement and/or the ESTIP Program.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises, and agreements of each of the parties hereto, to be kept and performed by each of them, the parties agree as follows:

1. Term. Subject to the terms and conditions of this Agreement, the term of this Agreement shall commence on January 1, 2019 and terminate on December 31, 2023.

2. Qualification of Property for the ESTIP Program. The City agrees that the Property qualifies for the ESTIP Program and the Eligible Improvements are improvements for public and/or public-related purposes that will enhance the competitive position of the Developer within the City. The following provisions shall apply for each year in which the ESTIP Program is in effect for the Property:

   a. One Hundred Percent (100%) of the "Enhanced Sales Taxes" collected by the City and derived from the Property shall be segregated by the City to be utilized for the ESTIP herein established and approved.

   b. In determining the amount of "Enhanced Sales Taxes," the "base amount" as defined in the ordinance and agreed to by the City and the Developer shall be Ten Thousand Dollars ($10,000.00) per month for each year within the five-year term of this Agreement.

   c. It is agreed that Enhanced Sales Taxes of at least Sixty Thousand Dollars ($60,000.00) a year are reasonably likely to be generated in the first year and each year thereafter on the Property.
d. The Developer shall share in the Enhanced Sales Taxes derived from the Property in the amount of one hundred (100%) of the Enhanced Sales Taxes for the five (5) year term of the Agreement.

e. Enhanced Sales Taxes from the Property shall be shared and the Developer's share thereof shall be disbursed on a quarterly basis as provided herein commencing on the date that the approved Eligible Improvements are completed and accepted on a probationary basis. The maximum period of time that this Agreement shall be in effect is five (5) years (commencing on January 1, 2019 or until the sum of Three Hundred Thousand Dollars ($300,000.00) derived from Enhanced Sales Taxes defined herein, have been paid to Developer for reimbursement for such improvements, whichever occurs first, at which time this Agreement shall terminate. It is expressly understood by the parties that this Agreement will terminate as provided in Paragraph 1 of this Agreement or upon the occurrence of the earlier to be reached of the maximum time as provided in the preceding sentence (whether or not the maximum amount to be shared has been reached) or disbursement of the maximum amount to be shared as provided in the preceding sentence (whether or not the maximum time set forth has expired); provided however, in the event the amount of Three Hundred Thousand Dollars ($300,000.00) has not been paid to Developer by December 31, 2023 as set forth hereunder, the City shall pay Developer any such amount remaining due and owing in a lump sum on or before January 31, 2024.

f. This Agreement is a personal agreement between the City and the Developer and is not transferable and does not run with the land and shall not be recorded against the Property. Further, this Agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision.

g. Any Enhanced Sales Taxes subject to this Agreement shall be escrowed in the event there is a legal challenge to the ESTIP or the approval of this Agreement.

h. The obligations, benefits and/or the provisions of this Agreement may not be assigned in whole or in part without the express authorization of the Black Hawk City Council and no third party shall be entitled to rely upon or enforce any provisions hereon.

i. At the end of the term of this Agreement as provided for herein, any monies segregated by the City Council which have not been expended as hereunder provided may be transferred to another account of the City or used in any manner determined by the City in its sole discretion, excluding any amounts escrowed pursuant to paragraph 2.g. of this Agreement.
j. The Developer shall be deemed the "owner or proprietor" of the Property solely entitled to reimbursement provided for herein for purposes of this Agreement and the ESTIP whether or not the Developer owns all or any portion of the Property at the relevant time, since the Developer is coordinating the installation of the Eligible Improvements.

3. Nonappropriations/Multi-Fiscal Year Obligations. Notwithstanding anything in this Agreement to the contrary, this Agreement is specifically subject to annual appropriation of sufficient funds to pay Enhanced Sales Taxes as provided by this Agreement. In the event that appropriation of sufficient funds is not made in any year, resulting in the inability of the City to pay Enhanced Sales Taxes hereunder, shall not be obligated to make payment of the non-appropriated amounts in such year.

4. Subordination. Notwithstanding anything in this Agreement to the contrary, the Developer shall have no right, claim, lien, or priority in or to the City’s sales tax revenue superior to or on parity with the rights, claims, or liens of the holders of any sales tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales taxes, existing or hereafter issued by the City, and that all rights of the Developer are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such sales tax revenue bonds, notes, certificates, or debentures, issued by the City and payable from or secured by any sales taxes.

5. Subdivision Agreement. The construction and installation of the Public Improvements shall be governed according to the Subdivision Agreement, as amended, entered into between the parties hereto regarding the Property.

6. Remedies. The Developer waives any constitutional claims against the City arising out of a breach of this Agreement. The Developer's remedies against the City under this Agreement are limited to breach of contract claims.

7. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the parties shall cooperate to cure any legal defects in this Agreement or the ESTIP.

8. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Gilpin County, Colorado.

9. Notice. All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective upon the earlier of actual receipt or seventy-two (72) hours after deposit in the United States
Mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the City:  
Finance Director  
P.O. Box 68  
Black Hawk, Colorado 80422

Copy to:  
Corey Y. Hoffmann, City Attorney  
511 16th Street, Suite 610  
Denver, Colorado 80202

Notice to the Developer:  
Attn:

Copy to:
10. Entire Agreement - Amendments. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement between the Developer and the City acting pursuant to City Council authorization.

CITY OF BLACK HAWK, COLORADO

By: ______________________________
David D. Spellman, Mayor

ATTEST:

______________________________
Melissa A. Greiner, CMC, City Clerk

APPROVED AS TO FORM:

______________________________
Corey Y. Hoffmann, City Attorney

DEVELOPER

By: ______________________________

STATE OF______________ )
____________________________ ) ss.
COUNTY OF ________________ )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this ________ day of ________________, 2018, by ______________________ as the ________ of _______________________

My commission expires: ______________________________

(S E A L)

______________________________
Notary Public
RESOLUTION 54-2018
A RESOLUTION APPROVING THE CITY OF BLACK HAWK FEE SCHEDULE, AS AMENDED
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 54-2018

TITLE: A RESOLUTION APPROVING THE CITY OF BLACK HAWK FEE SCHEDULE, AS AMENDED

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

Section 1. The City of Black Hawk Fee Schedule, as amended, attached hereto as Exhibit A, is hereby approved.

RESOLVED AND PASSED this 22nd day of August, 2018.

_______________________________
David D. Spellman, Mayor

ATTEST:

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

SUBJECT: To consider a Resolution amending the 2018 City of Black Hawk Fee Schedule.

RECOMMENDATION:

MOTION TO APPROVE Resolution 54-2018, a Resolution amending the 2018 City of Black Hawk Fee Schedule, as amended.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
Incorporated into the accompanying Fee Schedule (Exhibit A) are changes proposed by City staff to support CB16, Ordinance 2018-16, An Ordinance Adding a New Article XX to Chapter 6 of the Black Hawk Municipal Code Entitled Short Term Rental Properties.

AGENDA DATE: August 22, 2018

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X]Yes [ ]No

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

DOCUMENTS ATTACHED: Resolution 54-2018
Exhibit A - Amended 2018 Fee Schedule

RECORD: [ ]Yes [X]No

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

SUBMITTED BY: REVIEWED BY:
Melissa A. Greiner
City Clerk/Administrative Services Director
Jack D. Lewis
City Manager
## Business/Sales Tax License

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business License-New &amp; Renewal</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

## Gaming License

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation Device Fee</td>
<td>$40.80 per device/per year</td>
</tr>
<tr>
<td>Ambulance Fee (Silver Dollar Metro District Devices Excluded)</td>
<td>$2.50 per device/per month</td>
</tr>
<tr>
<td>General Device Fee (except live table games)</td>
<td>$1,050.00 per device/per year</td>
</tr>
<tr>
<td>General Device Fee on Table Games with Live Dealers</td>
<td>$4,200.00 per device/per year</td>
</tr>
</tbody>
</table>

## Liquor License

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Fee - new license</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Retail Liquor Store</td>
<td>$22.50</td>
</tr>
<tr>
<td>Liquor-licensed Drugstore</td>
<td>$22.50</td>
</tr>
<tr>
<td>Beer and Wine</td>
<td>$48.75</td>
</tr>
<tr>
<td>Beer and Wine for a Resort</td>
<td>$75.00</td>
</tr>
<tr>
<td>Hotel and Restaurant</td>
<td>$75.00</td>
</tr>
<tr>
<td>Tavern</td>
<td>$75.00</td>
</tr>
<tr>
<td>Optional Premises</td>
<td>$75.00</td>
</tr>
<tr>
<td>Club</td>
<td>$41.25</td>
</tr>
<tr>
<td>Retail Gaming Tavern</td>
<td>$75.00</td>
</tr>
<tr>
<td>Brew Pub</td>
<td>$75.00</td>
</tr>
<tr>
<td>Arts</td>
<td>$41.25</td>
</tr>
<tr>
<td>Racetrack</td>
<td>$75.00</td>
</tr>
<tr>
<td>Bed &amp; Breakfast</td>
<td>$3.75</td>
</tr>
<tr>
<td>3.2 Beer</td>
<td>$3.75</td>
</tr>
<tr>
<td>Annual Renewal Application Fee</td>
<td>$100.00</td>
</tr>
<tr>
<td>Late Renewal</td>
<td>$500.00</td>
</tr>
<tr>
<td>Special Event Liquor Permit</td>
<td>$100.00</td>
</tr>
<tr>
<td>Fingerprint Analysis (CBI Pass-Through Charge)</td>
<td>$38.50 each analysis</td>
</tr>
<tr>
<td>Corp/LLC Change (per person)</td>
<td>$100.00</td>
</tr>
<tr>
<td>Temporary Permit (same time as Transfer of Ownership)</td>
<td>$0.00</td>
</tr>
<tr>
<td>Temporary Permit (if not as same time as Transfer of Ownership)</td>
<td>$100.00</td>
</tr>
<tr>
<td>Change of Location</td>
<td>$750.00</td>
</tr>
<tr>
<td>Promotional Association Certification Application</td>
<td>$100.00</td>
</tr>
<tr>
<td>Attachment of a Licensed Premise</td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>Annual Renewal</strong></td>
<td>$100.00</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------</td>
</tr>
<tr>
<td><strong>Lodging License</strong></td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>Short-Term Rental License</strong></td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>Retail Marijuana License</strong></td>
<td></td>
</tr>
<tr>
<td>Initial Operating Fee</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>Annual Renewal and Operating Fee</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>late renewal</td>
<td>$500.00</td>
</tr>
<tr>
<td>Transaction Fee</td>
<td>$2.00</td>
</tr>
<tr>
<td>Change in Corporate Officers, Directors, or Manager</td>
<td>$100.00</td>
</tr>
<tr>
<td>Fingerprint Analysis (CBI Pass-Through Charge)</td>
<td>$38.50 each analysis</td>
</tr>
<tr>
<td><strong>Escort Services License</strong></td>
<td></td>
</tr>
<tr>
<td>Application Fee</td>
<td>$300.00</td>
</tr>
<tr>
<td>Application Investigation Fee (Police Department)</td>
<td>$250.00</td>
</tr>
<tr>
<td>Renewal Fee</td>
<td>$200.00</td>
</tr>
<tr>
<td><strong>Pawnbrokers Business License</strong></td>
<td></td>
</tr>
<tr>
<td>Application Fee</td>
<td>$2,200.00</td>
</tr>
<tr>
<td>Renewal Fee</td>
<td>$5.00</td>
</tr>
<tr>
<td>Investigation and Processing Fee</td>
<td>$200.00</td>
</tr>
<tr>
<td><strong>Sexually Oriented Business License</strong></td>
<td></td>
</tr>
<tr>
<td>Application Fee</td>
<td>$750.00</td>
</tr>
<tr>
<td>Renewal Fee</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>Transfer of Ownership</td>
<td>$200.00</td>
</tr>
<tr>
<td>Manager's License</td>
<td>$250.00</td>
</tr>
<tr>
<td><strong>Misc. Licenses/Permits</strong></td>
<td></td>
</tr>
<tr>
<td>Dog License Annual Fee (Males &amp; spayed females)</td>
<td>$3.00</td>
</tr>
<tr>
<td>Dog License Annual Fee (Unspayed females)</td>
<td>$5.00</td>
</tr>
<tr>
<td>Newsrack Permit</td>
<td>$0.00</td>
</tr>
<tr>
<td>Public Assembly Permit (for profit organizations)</td>
<td>$100.00</td>
</tr>
<tr>
<td>Recreational Vehicle and Equipment Permit</td>
<td>$0.00</td>
</tr>
<tr>
<td>Mobile Auto Repair Permit and Annual Renewal</td>
<td>$25.00</td>
</tr>
<tr>
<td>Street Vendor Conditional Use Permit</td>
<td>$100.00 for 6 months for each vehicle used</td>
</tr>
<tr>
<td>Shuttle Owner/Operator Registration and Annual Renewal</td>
<td>$100.00</td>
</tr>
<tr>
<td>Private Social Club Permit</td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>Solicitation</strong></td>
<td></td>
</tr>
</tbody>
</table>

**EXHIBIT A**  
2018 City of Black Hawk Fee Schedule (amended 8/17/18)
<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Fee Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permit Fee</td>
<td>$100.00</td>
</tr>
<tr>
<td>Renewal Fee</td>
<td>$50.00</td>
</tr>
<tr>
<td>Fingerprint Fee/Background Check</td>
<td>$16.50</td>
</tr>
<tr>
<td>Identification Badge</td>
<td>$25.00</td>
</tr>
<tr>
<td>Replacement Identification Badge</td>
<td>$25.00</td>
</tr>
<tr>
<td><strong>Special Event Fees</strong></td>
<td></td>
</tr>
<tr>
<td>First day</td>
<td>$50.00</td>
</tr>
<tr>
<td>Each additional day</td>
<td>$30.00</td>
</tr>
<tr>
<td>Bicycle Event Permit</td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>Franchise Fees</strong></td>
<td></td>
</tr>
<tr>
<td>Cable Television Franchise Fee</td>
<td></td>
</tr>
<tr>
<td>New Application</td>
<td>per contract</td>
</tr>
<tr>
<td>Transfer</td>
<td>per contract</td>
</tr>
<tr>
<td>Gas and Electric Franchise</td>
<td>3% of all received revenues</td>
</tr>
<tr>
<td>Transfer</td>
<td>per contract</td>
</tr>
<tr>
<td><strong>Dory Hill Cemetery</strong></td>
<td></td>
</tr>
<tr>
<td>Plot Fee</td>
<td>$50.00</td>
</tr>
<tr>
<td>Burial Fee - Casket</td>
<td>$400.00</td>
</tr>
<tr>
<td>Burial Fee - Cremated Remains</td>
<td>$150.00</td>
</tr>
<tr>
<td><strong>Miscellaneous</strong></td>
<td></td>
</tr>
<tr>
<td>Code Books online</td>
<td>online</td>
</tr>
<tr>
<td>Open Records Request Research Fee</td>
<td>$30.00 after first hour/per hour</td>
</tr>
<tr>
<td>Copies made</td>
<td>$0.25 page</td>
</tr>
<tr>
<td>Public Hearing Notice Publication Fee</td>
<td>Actual Cost plus 15% City Administration Fee</td>
</tr>
</tbody>
</table>

**Reference:** Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16-370 - Fees

**Building Fees**

A Building Permit includes Building, Electrical, Structural plan reviews, fees and primary inspections. Reinspections are invoiced separately.

Civil Engineering plan reviews and inspections are NOT included in the Building Permit and collected separately using the Land Use fee schedule.
## Building Permit Fees Based on Total Valuation

<table>
<thead>
<tr>
<th>Total Valuation</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1.00 to $500</td>
<td>$23.50</td>
</tr>
<tr>
<td>$501 to $2,000</td>
<td>$23.50 for 1st $500 plus $3.05 for each additional $100, or fraction thereof, to and including $2,000</td>
</tr>
<tr>
<td>$2,001 to $25,000</td>
<td>$69.25 for the 1st $2,000 plus $14.00 for each additional $1,000, or fraction thereof, to and including $25,000</td>
</tr>
<tr>
<td>$25,001 to $50,000</td>
<td>$391.25 for the 1st $25,000 plus $10.10 for each additional $1,000, or fraction thereof, to and including $50,000</td>
</tr>
<tr>
<td>$50,001 to $100,000</td>
<td>$643.75 for the 1st $50,000 plus $7.00 for each additional $1,000, or fraction thereof, to and including $100,000</td>
</tr>
<tr>
<td>$100,001 to $500,000</td>
<td>$993.75 for the 1st $100,000 plus $5.60 for each additional $1,000, or fraction thereof, to and including $500,000</td>
</tr>
<tr>
<td>$500,001 to $1,000,000</td>
<td>$3,233.75 for the 1st $500,000 plus $4.75 for each additional $1,000, or fraction thereof, to and including $1,000,000</td>
</tr>
<tr>
<td>$1,000,001 and up</td>
<td>$5,608.75 for the 1st $1,000,000 plus $3.65 for each additional $1,000, or fraction thereof</td>
</tr>
</tbody>
</table>

### Initial Building Plan Review - initial review and one (1) response comments

65% of the Building Permit fee calculated above

### Additional Building Plan Review/Response Comments

$150.00 an hour plus 15% City Administration Fee

### Structural Engineering Review and Consulting Fee (3rd party)

Actual Cost plus 15% City Administration Fee. City reserves the right to have a 3rd party Structural Engineer perform an independent review. All associated costs above and beyond the standard permit fee shall be incurred and paid by the applicant or property owner.

### Building Consulting / Miscellaneous Services

$150.00 an hour plus 15% City Administration Fee - Includes all services not listed

### Inspections Outside of Normal Business Hours

$200.00 an hour with a two (2) hour minimum plus 15% City Administration Fee

### Re-Inspection Fee

- *Contractor/Homeowner not ready
- *Contractor/Homeowner not on site
- *Contractor/Homeowner disregards correction items

$150.00 an hour for each re-inspection plus 15% City Administration Fee

### Special Investigation Fee - starting work without a permit.

- 1st Occurrence: $500.00 plus 15% City Administration Fee
- 2nd Occurrence: $1000.00 plus 15% City Administration Fee
- 3rd Occurrence and Each Additional Occurrence: $1500.00 plus 15% City Administration Fee

### Expert Witness / Court Testimony

Actual Cost plus 15% City Administration Fee

### Excavation Permit (commercial and residential alteration or addition)

$7.00 per cubic yard

**Administration Fee:** A CoBH 15% City Administration Fee will be added to each invoice
<table>
<thead>
<tr>
<th>Electrical Fees</th>
<th>State Electrical Fee Schedule Effective April 16, 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical Only Plan Review - initial review and one (1) response comments</td>
<td>65% of the Electrical Permit fee calculated below.</td>
</tr>
<tr>
<td>Residential Electrical Only Installation: (New, Remodel, Addition) (Round sq. ft. up to next 100 for calculation).</td>
<td></td>
</tr>
<tr>
<td>Residential Installation (Based on enclosed living area only)</td>
<td></td>
</tr>
<tr>
<td><strong>LIVING AREA:</strong></td>
<td></td>
</tr>
<tr>
<td>≤ 1,000 sq. ft.</td>
<td>$67.00</td>
</tr>
<tr>
<td>1,001 sq. ft. but ≤ 1,500 sq. ft.</td>
<td>$101.00</td>
</tr>
<tr>
<td>1,501 sq. ft. but ≤ 2,000 sq. ft.</td>
<td>$135.00</td>
</tr>
<tr>
<td>≥ 2,001 sq. ft. ($135 + ($6.00 x each additional 100 sq. ft.)</td>
<td>Calculated Fee</td>
</tr>
<tr>
<td>Commercial and other fees: Including some residential installations that are not based on square footage (not living area, i.e., garage, shop, etc.) Fees in this section are calculated from the total cost to customer (contract price), including electrical materials, items and labor - whether provided by the contractor or the property owner.</td>
<td></td>
</tr>
<tr>
<td>Valuation of Installation (Based on cost to customer of labor, material and items)</td>
<td></td>
</tr>
<tr>
<td>≤ $2,000 = $67.00 (base fee)</td>
<td>$67.00</td>
</tr>
<tr>
<td>≥ $2,001 add $6.00 per thousand of job valuation (always round up the next $1000) to the Base Fee ($67.00)</td>
<td>Calculated Fee</td>
</tr>
<tr>
<td>Mobile/Modular/Manufactured Home Set (per unit)</td>
<td>$67.00</td>
</tr>
<tr>
<td>Temporary Heat Release</td>
<td>$33.00</td>
</tr>
<tr>
<td>Solar Permit Fees - Residential or Commercial</td>
<td></td>
</tr>
<tr>
<td>Fees are calculated from the total cost to customer (contract price), including materials, items and labor - whether provided by the contractor or the property owner.</td>
<td></td>
</tr>
</tbody>
</table>
Valuation of Installation
(Based on cost to customer of labor, material and items)

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than $2000 (Base Fee)</td>
<td>$67.00</td>
</tr>
<tr>
<td>≥ $2,001 add $6.00 per thousand of job valuation (always round up the next $1000) to the Base Fee ($67.00)</td>
<td>Calculated Fee</td>
</tr>
</tbody>
</table>

House Bill 11-1199 placed a cap on solar permit fees of:
$500.00 for residential installation and;
$2000.00 for commercial installations.
Caps on the permit fee are a combination of the solar (DC) installers permit and the electrical (AC) permit. Whichever one is issued first, the total fee for the second permit combine with the fee for the first permit cannot exceed the cap fees shown above.

Re-Inspection Fee:
A re-inspection fee may be assessed when additional inspections are required when the job is not ready for inspection (if 5 or more correction items are cited), access is not provided, violations from the last inspection are not completed, etc.

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50.00 plus 15% City Administration Fee</td>
<td></td>
</tr>
</tbody>
</table>

1. Ensure that the work is completed within the time limitation of the permit.
2. Install electrical according to the currently adopted edition of the Colorado electrical Code (NEC).
3. Request an electrical inspection prior to covering and a final inspection prior to occupancy.
4. Temporary construction meters require a separate permit application from any other activity.

Conveyance Fees

<table>
<thead>
<tr>
<th>INSPECTION SERVICES</th>
<th>PER UNIT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TYPE</strong></td>
<td><strong>PER UNIT</strong></td>
<td><strong>DESCRIPTION</strong></td>
</tr>
<tr>
<td>Hydraulic Periodic</td>
<td>$155.00</td>
<td>1-1.5 hours. Includes initial inspection plus one follow-up on a TCO.</td>
</tr>
<tr>
<td>Hydraulic Roped Periodic</td>
<td>$210.00</td>
<td>1.5-2 hours. Includes initial inspection plus one follow-up on a TCO.</td>
</tr>
<tr>
<td>Traction Periodic</td>
<td>$210.00</td>
<td>1.5-2 hours. Includes initial inspection plus one follow-up on a TCO.</td>
</tr>
<tr>
<td>Temporary Certificate of Operation (TCO) 2nd Follow-up</td>
<td>$310.00</td>
<td>Follow-up on TCO as necessary.</td>
</tr>
<tr>
<td>Hydraulic 5 Year</td>
<td>$210.00</td>
<td>Witnessed annual safety test (2 hours). Includes initial inspection plus one follow-up on a TCO.</td>
</tr>
<tr>
<td>Hydraulic Roped 5 Year</td>
<td>$375.00</td>
<td>Witnessed annual safety test (3 hours). Includes initial inspection plus one follow-up on a TCO.</td>
</tr>
</tbody>
</table>
## EXHIBIT A

### 2018 City of Black Hawk Fee Schedule (amended 8/17/18)

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>FEE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traction 5 Year</td>
<td>$520.00</td>
<td>Witnessed safety test with weights (4 hours). Includes initial inspection plus one follow-up on a TCO.</td>
</tr>
<tr>
<td>Escalator Annual</td>
<td>$675.00</td>
<td>Colorado - Category 5 test annual.</td>
</tr>
<tr>
<td>Plan Review</td>
<td>$475.00</td>
<td>Includes initial review and 1 response. Plan will be reviewed for code compliance before work begins</td>
</tr>
<tr>
<td>Like Plan Review</td>
<td>80%</td>
<td>Elevators of the same nature in the same bank will be at 80% of the per unit cost</td>
</tr>
<tr>
<td>Revised Plan Review</td>
<td>$155.00 Per Hour</td>
<td>Plan will be reviewed for code compliance before work begins</td>
</tr>
<tr>
<td>Lift Periodic(platform, chair, etc.)</td>
<td>$155.00</td>
<td>All lifts other than those described above</td>
</tr>
<tr>
<td>Dumbwaiter Periodic</td>
<td>$155.00</td>
<td>Typically small units, only used for material</td>
</tr>
<tr>
<td>Hydraulic Acceptance</td>
<td>$525.00</td>
<td>Initial safety test performed with weights. New construction, modernization or turnover</td>
</tr>
<tr>
<td>Traction Acceptance</td>
<td>$525.00</td>
<td>Initial safety test performed with weights. New construction, modernization or turnover</td>
</tr>
<tr>
<td>Escalator Acceptance</td>
<td>$700.00</td>
<td>Initial safety test. All safety test items checked. New construction, modernization or turnover</td>
</tr>
<tr>
<td>Dumbwaiter/Lift Acceptance</td>
<td>$355.00</td>
<td>Initial safety test. All safety test items checked. New construction, modernization or turnover</td>
</tr>
<tr>
<td>Any Re-inspect Fee</td>
<td>Same as initial fee</td>
<td></td>
</tr>
<tr>
<td>Inspections Outside of Normal Business Hours</td>
<td>Same as initial fee with a two (2) hour minimum</td>
<td></td>
</tr>
<tr>
<td><strong>CONSULTING SERVICES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TYPE</strong></td>
<td><strong>PER UNIT/ PER HOUR DESCRIPTION</strong></td>
<td></td>
</tr>
<tr>
<td>Maintenance Evaluation &lt; 10 Tractions</td>
<td>$525/per unit</td>
<td>Provide a detailed evaluation of maintenance performed along with code items in a professional report</td>
</tr>
<tr>
<td>Maintenance Evaluation &gt; 10 Tractions</td>
<td>$420/per unit</td>
<td>Provide a detailed evaluation of maintenance performed along with code items in a professional report</td>
</tr>
<tr>
<td>Maintenance Evaluation &lt; 10 Hydraulic</td>
<td>$455/per unit</td>
<td>Provide a detailed evaluation of maintenance performed along with code items in a professional report</td>
</tr>
<tr>
<td>Maintenance Evaluation &gt; 10 Hydraulic</td>
<td>$360/per unit</td>
<td>Provide a detailed evaluation of maintenance performed along with code items in a professional report</td>
</tr>
<tr>
<td>OSHA 10 hour training - 10 person min</td>
<td>$1500/per unit</td>
<td>For those wishing to obtain their OSHA 10 hour card</td>
</tr>
<tr>
<td>OSHA 30 hour training - 10 person min</td>
<td>$3900/per unit</td>
<td>For those wishing to obtain their OSHA 30 hour card</td>
</tr>
<tr>
<td>Conveyance Operation Training</td>
<td>$135/per hour</td>
<td>Provides owners/manager/maintenance personnel with knowledge of all operations of chosen conveyances</td>
</tr>
<tr>
<td>Required Presence</td>
<td>$135/per hour</td>
<td>Any necessary request for our presence i.e. meetings, etc. Travel time not included</td>
</tr>
<tr>
<td>Compliance Training</td>
<td>$135/per hour</td>
<td>Help owners/managers/maintenance understand their part in keeping units code compliant</td>
</tr>
<tr>
<td>DRC Attendance / Once a Month</td>
<td>N/C</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT A

2018 City of Black Hawk Fee Schedule (amended 8/17/18)

| Capitol Plans | $840/unit | Review of conveyance with plan for future improvements and necessary repairs. Includes performance review |
| Contract Review | $780/unit | Review current contract and help in writing new contracts |
| Providing operator to run conveyance | $155/per hour | If necessary to perform work in hoistway, an operator can be provided that qualifies under state statute |
| Conveyance Incident Investigation | $135/per hour | Incident investigation is conveyance taken out of service |
| Consulting / Miscellaneous Services | $135/per hour | Includes all miscellaneous services not listed |

**PERMITS**

<table>
<thead>
<tr>
<th>TYPE</th>
<th>PERMIT FEE</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Minor Alteration/Commercial</td>
<td>$575.00</td>
<td>Fee Includes: Plan Review and 1 Inspection/ If additional work by the Inspector is indicated the hourly consulting rate shall apply</td>
</tr>
<tr>
<td>**Major Alteration/Commercial</td>
<td>$865.00</td>
<td>Fee Includes: Plan Review and 1 Inspection/ If additional work by the Inspector is indicated the hourly consulting rate shall apply</td>
</tr>
<tr>
<td>Residential Elevator, Platform Lift or Dumbwaiter</td>
<td>$575.00</td>
<td>Fee Includes: Plan Review and 1 Inspection/ If additional work by the Inspector is indicated the hourly consulting rate shall apply</td>
</tr>
<tr>
<td>Special Investigation Fee - Starting work without a permit</td>
<td>1st Occurrence plus 15% City Administration Fee 1st Occurrence plus 15% City Administration Fee 1st Occurrence plus 15% City Administration Fee</td>
<td>2nd Occurrence plus 15% City Administration Fee 3rd Occurrence and Each Additional plus 15% City Administration Fee</td>
</tr>
<tr>
<td>Expert Witness / Court Testimony</td>
<td>Actual Cost plus 15% City Administration Fee</td>
<td></td>
</tr>
</tbody>
</table>

*Minor Alteration includes: cab finishes, valve work, power unit install, door operator replacement, re-rope/brake suspension, escalator handrails |

**Major Alteration includes: controller, signal fixtures, rotating equipment, drive(multiple components), fire alarm, fire recall |

**Administration Fee:** a CoBH 15% City Administration Fee will be added to each Conveyance invoice and permit fee |

**Electrical Permit:** if a electrical permit is required, the cost shall fall under the Electrical Permit Fee Schedule as adopted by the CoBH |

**Building Permit:** If a building permit is also required, the cost shall fall under the Building Permit Fee Schedule as adopted by the CoBH |

**Fire Permit:** If a fire permit is also required, the cost shall fall under the Fire Permit Fee Schedule as adopted by the CoBH |
### MISC. Fees

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor Registration</td>
<td>(However a Business License is required) $0.00</td>
</tr>
<tr>
<td>Right-of-Way Use Permit</td>
<td>$30.00</td>
</tr>
<tr>
<td>Street Cut Permit</td>
<td>$300.00 for 1 to 100sf and $2/sf for any additional</td>
</tr>
<tr>
<td>Historic Landmarking</td>
<td>Consultant Fee plus 15% City Administration Fee</td>
</tr>
<tr>
<td>Development in Flood Hazard Permit</td>
<td>Consultant Fee plus 15% City Administration Fee</td>
</tr>
<tr>
<td>Public Hearing Notice Publication Fee</td>
<td>Actual Cost plus 15% City Administration Fee</td>
</tr>
<tr>
<td>Fire and Police Protection Fee at time of Building Permit</td>
<td></td>
</tr>
<tr>
<td>Multifamily Residential</td>
<td>$70.00 per occupant/multiply fee x peak period occupant load as per IBC</td>
</tr>
<tr>
<td>Commercial</td>
<td>$14.00 per occupant/multiply fee x peak period occupant load as per IBC</td>
</tr>
<tr>
<td>Industrial</td>
<td>$70.00 per occupant/multiply fee x peak period occupant load as per IBC</td>
</tr>
<tr>
<td>Change of Use</td>
<td>Consultant Fee plus 15% City Administration Fee</td>
</tr>
<tr>
<td>Redevelopment</td>
<td>Consultant Fee plus 15% City Administration Fee</td>
</tr>
<tr>
<td>Industrial</td>
<td>Consultant Fee plus 15% City Administration Fee</td>
</tr>
<tr>
<td>Off-site commercial parking space fee (Parking Impact Fee)</td>
<td>$2,000.00 per space</td>
</tr>
<tr>
<td>Inspection Record Card Replacement</td>
<td>$50.00 per card plus 15% City Administration Fee</td>
</tr>
</tbody>
</table>

**Reference:** Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16-370 - Fees

### Utilities

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disconnect/Reconnect Fees</td>
<td></td>
</tr>
<tr>
<td>Notice of disconnection due to delinquency or failure to maintain</td>
<td>$60.00</td>
</tr>
<tr>
<td>Reconnection charge due to delinquency or failure to maintain</td>
<td>$500.00</td>
</tr>
<tr>
<td>Disconnection/shut off for convenience (&gt;7 days)</td>
<td>$200.00</td>
</tr>
<tr>
<td>Reconnection charge for convenience (&gt;7 days)</td>
<td>$500.00</td>
</tr>
<tr>
<td>Commercial Fire Flow Testing</td>
<td></td>
</tr>
<tr>
<td>Permit (&gt;48 hours in advance of test)</td>
<td>$150.00</td>
</tr>
<tr>
<td>Penalty for failure to acquire permit</td>
<td>$5,000.00</td>
</tr>
</tbody>
</table>

### Sign Fees

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Sign Application / Plan Review</td>
<td>$100.00 Additional Land Use Fees apply and will be collected under the Formal Sign Plan Application, i.e. Certificate of Appropriateness.</td>
</tr>
<tr>
<td>Formal Sign Application / Plan Review</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Sign Permit Fees Based on Total Valuation</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>--</td>
</tr>
<tr>
<td>$1.00 to $500</td>
<td>$23.50</td>
</tr>
<tr>
<td>$501 to $2,000</td>
<td>$23.50 for 1st $500 plus $3.05 for each additional $100, or fraction thereof, to and including $2,000</td>
</tr>
<tr>
<td>$2,001 to $25,000</td>
<td>$69.25 for the 1st $2,000 plus $14.00 for each additional $1,000, or fraction thereof, to and including $25,000</td>
</tr>
<tr>
<td>$25,001 to $50,000</td>
<td>$391.25 for the 1st $25,000 plus $10.10 for each additional $1,000, or fraction thereof, to and including $50,000</td>
</tr>
<tr>
<td>$50,001 to $100,000</td>
<td>$643.75 for the 1st $50,000 plus $7.00 for each additional $1,000, or fraction thereof, to and including $100,000</td>
</tr>
<tr>
<td>$100,001 to $500,000</td>
<td>$993.75 for the 1st $100,000 plus $5.60 for each additional $1,000, or fraction thereof, to and including $500,000</td>
</tr>
<tr>
<td>$500,001 to $1,000,000</td>
<td>$3,233.75 for the 1st $500,000 plus $4.75 for each additional $1,000, or fraction thereof, to and including $1,000,000</td>
</tr>
<tr>
<td>$1,000,001 and up</td>
<td>$5,608.75 for the 1st $1,000,000 plus $3.65 for each additional $1,000, or fraction thereof</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Special Investigation Fee - starting work without a permit</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$500.00</td>
<td>1st Occurrence plus 15% City Administration Fee</td>
</tr>
<tr>
<td>$1000.00</td>
<td>2nd Occurrence plus 15% City Administration Fee</td>
</tr>
<tr>
<td>$1500.00</td>
<td>3rd Occurrence and Each Additional Occurrence plus 15% City Administration Fee</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expert Witness / Court Testimony</th>
<th>Actual Cost plus 15% City Administration Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous Services</td>
<td>Consultant Fee plus 15% City Administration Fee - Includes all services not listed</td>
</tr>
</tbody>
</table>

| Administration Fee: | a CoBH 15% City Administration Fee will be added to each invoice |

| Electrical Permit: | if a electrical permit is required, the cost shall fall under the Electrical Permit Fee Schedule as adopted by the CoBH |

| Building Permit: | If a building permit is also required, the cost shall fall under the Building Permit Fee Schedule as adopted by the CoBH |

| Fire Permit: | If a fire permit is also required, the cost shall fall under the Fire Permit Fee Schedule as adopted by the CoBH |

<table>
<thead>
<tr>
<th>Reference: Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16-370 - Fees</th>
<th>Land Use Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial - Preliminary Land Use Application / Plan Review</td>
<td>$200.00 Initial fee for Commercial Land Use Submittals</td>
</tr>
<tr>
<td>Service</td>
<td>Fee</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>----------------------------------------------------</td>
</tr>
<tr>
<td>Commercial - Formal Land Use Application / Plan Review</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Boundary Line Agreement</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Certificate of Appropriateness</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Civil Engineer Plan Review and Inspections</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Disconnection of Property</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Planned Unit Development</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Site Development Plan</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Special Review Use</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Subdivisions</td>
<td></td>
</tr>
<tr>
<td>Preliminary Subdivision Processing Fee</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Final Subdivision Development Fee</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Minor Subdivision</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Site Development Commercial Plat</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Street Plan and Easement Vacation</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Variance</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Residential Land Use Fees</td>
<td>Reference Ordinance 2017-9 adopted June 14, 2017 and Municipal Code Section 16-370. No fees for land use associated applications shall be charged or collected if the residence for which the application is made was constructed prior to 1991 and is located with the Historic Residential (HR) Zoning District, and all land use applications are made in accordance with the Municipal Code of the City of Black Hawk, as adopted by City Council. This includes professional and/or consulting service fees. Reference Ordinance 2017-9 and Black Hawk Municipal Code Section 16-370 for additional conditions.</td>
</tr>
<tr>
<td>Restaurant Grills and Air Quality Compliance</td>
<td>Consultant Fee plus 15% City Administration Fee (Reimbursement Agreement &amp; Escrow Funds may apply)</td>
</tr>
<tr>
<td>Recording Fee</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Temporary Use or Temporary Structure Permits</td>
<td>$100.00 plus Security Deposit, if applicable.</td>
</tr>
<tr>
<td>Water System Development Fees</td>
<td></td>
</tr>
</tbody>
</table>
### 2018 City of Black Hawk Fee Schedule

#### Nonresidential, in Gaming District
- $16.00 per square foot

#### Hotel
- $900.00 per room

#### Nonresidential, outside of Gaming District
- $8.00 per square foot

#### Expert Witness / Court Testimony
- Actual Cost plus 15% City Administration Fee

#### Miscellaneous Services
- Consultant Fee plus 15% City Administration Fee

#### Reference:
Black Hawk Municipal Code - Article XVII - Application Procedures and Submittal Requirements - Section 16-370 - Fees

### False Alarm Fees
- **6th-10th occurrence**: $50.00
- **11th-15th occurrence**: $100.00
- **Over 16th occurrence**: Discretionary

### Police Department Fees
- **Sex Offender Registration**: $100.00 initial registration
  - **Renewal**: $50.00
- **Fingerprints (Residents Only)**: $20.00
- **Portable Breath Test (PBT)**: $20.00
- **VIN Checks (Residents Only)**: $0.00
- **Copies onto CDs**: $25.00

### Fire Department Fees
(Contact Fire Dept. for further details)

#### Commercial Business and Multi-Residential Plan Reviews
- **0-1,000 sq. ft.**: $100.00
- **1,001-2,500 sq. ft.**: $200.00
- **2,501-5,000 sq. ft.**: $400.00
- **5,001-7,500 sq. ft.**: $800.00
- **7,501-10,000 sq. ft.**: $1,000.00
- **10,001 + sq. ft.**: $1,000.00 plus 0.05/square foot
- **Site Plans**: $100.00
- **2nd Review of above plans**: $0.00
- **Each review beyond 2nd**: 1/2 of original fee

#### Commercial Inspections
- **Scheduled Inspection**: $150.00 per hour
- **Compliance Verification**: $150.00 per hour
- **System Test/Install**: $150.00 per hour
- **Follow-up Inspections**: $75.00 per hour
<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Code Violation</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Special Investigation Fee - starting work without a permit.</td>
<td>$500.00</td>
<td>1st Occurrence plus 15% City Administration Fee</td>
</tr>
<tr>
<td></td>
<td>$1000.00</td>
<td>2nd Occurrence plus 15% City Administration Fee</td>
</tr>
<tr>
<td></td>
<td>$1500.00</td>
<td>3rd Occurrence and Each Additional Occurrence plus 15% City Administration Fee</td>
</tr>
<tr>
<td>CPR and First Aid Training for City residents and City staff</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>CPR and First Aid Training for businesses</td>
<td>$25.00</td>
<td>person includes certification card</td>
</tr>
<tr>
<td>Fire Extinguisher Training for City residents and City Staff</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Fire Extinguisher Training for businesses</td>
<td>$10.00</td>
<td>person for businesses</td>
</tr>
<tr>
<td>Temporary Fire Watch</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Consultation</td>
<td>$0.00</td>
<td></td>
</tr>
<tr>
<td>Outside Agency Support for Inspections</td>
<td>$50.00</td>
<td>hour</td>
</tr>
<tr>
<td>Blasting and Storage of Explosives Permit</td>
<td>$100.00</td>
<td></td>
</tr>
</tbody>
</table>
RESOLUTION 55-2018

A RESOLUTION
AWARDING THE BID AND
APPROVING THE DESIGN-
BUILD CONTRACT
BETWEEN THE CITY OF
BLACK HAWK AND
SYMMETRY BUILDERS,
INC. IN AN AMOUNT NOT
TO EXCEED $58,094.00 FOR
PRE-CONSTRUCTION
SERVICES PERTAINING
TO THE FIRE STATION
RESTROOM RENOVATION
PROJECT
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 55-2018

TITLE: A RESOLUTION AWARDING THE BID AND APPROVING THE
DESIGN-BUILD CONTRACT BETWEEN THE CITY OF BLACK HAWK
AND SYMMETRY BUILDERS, INC. IN AN AMOUNT NOT TO EXCEED
$58,094.00 FOR PRE-CONSTRUCTION SERVICES PERTAINING TO
THE FIRE STATION RESTROOM RENOVATION 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 Symmetry Builders, Inc. in an amount not to
exceed $58,094.00 for pre-construction services related to the Fire Station Restroom Renovation
project, and authorizes the Mayor to execute the same on behalf of the City.

RESOLVED AND PASSED this 22nd day of August, 2018.

_______________________________
David D. Spellman, Mayor

ATTEST:

_______________________________
Melissa A. Greiner, CMC, City Clerk
SUBJECT: Approve Resolution 55-2018, a Resolution awarding the contract for design and construction of the Fire Station Restroom Renovation project to Symmetry Builders, Inc.

RECOMMENDATION:
If City Council chooses to approve Resolution 55-2018, a Resolution awarding the design-build contract between the City of Black Hawk and Symmetry Builders, Inc., the recommended motion is as follows: “Approve Resolution 55-2018, a Resolution awarding the Bid and approving the design-build contract between the City of Black Hawk and Symmetry Builders, Inc. in an amount not to exceed $58,094.00 for pre-construction services pertaining to the Fire Station Restroom Renovation Project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
Additional bathroom and shower facilities are necessary for Fire Department and Ambulance Authority employees residing at the Fire Station. The design-build method of delivery was chosen for this project. A Request for Qualifications was publicly advertised, and the City received a total of six submissions from contractors. Three finalists were selected to prepare formal Proposals, which were received by the City on June 12, 2018. Interviews with each of the finalists were held on June 15, 2018. After final negotiations on June 18, 2018, the selection panel chose the team led by Symmetry Builders to complete this project.

Since then, Symmetry Builders has been issued an interim programming design contract to prepare multiple floor plan options. An option that will add three restrooms to the 2nd level is recommended by the project team for construction.

To create more space in the Fire Station, the Fire Department administrative Staff would be permanently relocated to the office suite above the convenience store at 137 Clear Creek Street. A kitchenette within this office suite would be constructed by Symmetry Builders, and pre-construction costs for this kitchenette are included herein.

A Design-Build Amendment will be necessary to establish a Guaranteed Maximum Price (GMP) for this project. A subsequent Resolution will be presented at a later City Council meeting to approve the Design-Build Amendment and the GMP.

FUNDING SOURCE: Fire Restroom Expansion: 305-3101-431-75-58

WORKSHOP DATE: August 22, 2018

ORIGINATED BY: Tom Isbester / Matt Reed

STAFF PERSON RESPONSIBLE: Tom Isbester / Matt Reed

PROJECT COMPLETION DATE: April 30, 2019
DOCUMENTS ATTACHED: Design-Build Contract and Exhibits

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

SUBMITTED BY: REVIEWED BY:

Thomas Isbester, Public Works Director

Jack D. Lewis, City Manager
AGREEMENT made as of the Twenty-Third day of August in the year Two Thousand Eighteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Black Hawk
201 Selak Street
Black Hawk, CO 80422

and the Design-Builder:
(Name, legal status, address and other information)

Symmetry Builders, Inc.
5069 Silver Peak Ave
Suite 1
Dacono, CO 80514

for the following Project:
(Name, location and detailed description)

City of Black Hawk Fire Station Renovation
196 Clear Creek Street
Black Hawk, CO 80422
And as further described in Exhibit "D" – Basis of Design

The Owner and Design-Builder agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.
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ARTICLE 1  GENERAL PROVISIONS
§ 1.1 Owner’s Criteria
This Agreement is based on the Owner’s Criteria set forth in this Section 1.1, requirements for the Project (the "Basis of Design") set forth in Exhibit "D" – Basis of Design.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner’s design documents" where appropriate.)

§ 1.1.1 The Owner’s program for the Project:
(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

See Exhibit "D" – Basis of Design
§ 1.1.2 The Owner’s design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner’s design requirements, including any performance specifications for the Project.)

See Exhibit "D" – Basis of Design

§ 1.1.3 The Project’s physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

See Exhibit "D" – Basis of Design

§ 1.1.4 The Owner’s anticipated Sustainable Objective for the Project, if any:
(Identify the Owner’s Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™, 2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner’s Sustainable Objective.)

See Exhibit "D" – Basis of Design

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder’s services, are as follows:
(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

§ 1.1.6 The Owner’s budget Design-Builder’s conceptual estimate for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner’s budget, and if known, a line item breakdown of costs.)

Exhibit "E" – Control Estimate #1

§ 1.1.7 The Owner’s design and construction milestone dates: Design-Builder’s design and construction milestone dates are attached as Exhibit "F" – Design-Builder’s Project Schedule:

.1 Design phase milestone dates:

See Exhibit "F" – Design-Builder’s Project Schedule

.2 Submission of Design-Builder Proposal:

See Exhibit "F" – Design-Builder’s Project Schedule

.3 Phased completion dates:

See Exhibit "F" – Design-Builder’s Project Schedule

.4 Substantial Completion date:

See Exhibit "F" – Design-Builder’s Project Schedule

.5 Other milestone dates:

See Exhibit "F" – Design-Builder’s Project Schedule
§ 1.1.8 The Owner requires the Design-Builder to retain the following: an Architect, Consultants and Contractors at the Design-Builder’s cost as necessary to complete the Work:
(List name, legal status, address and other information.)

.1 Architect

See Exhibit "H" – Key Firms and Personnel

.2 Consultants

See Exhibit "H" – Key Firms and Personnel

.3 Contractors

See Exhibit "H" – Key Firms and Personnel

§ 1.1.9 Additional Owner’s Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

See Exhibit "D" – Basis of Design

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner’s Criteria Exhibit "D" – Basis of Design complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner’s Criteria Exhibit "D" – Basis of Design conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict in writing, together with the Design-Builder’s recommendations for modifications to resolve such conflicts.

§ 1.1.11 If there is a change in the Owner’s Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™ – 2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

Jack Lewis
City of Black Hawk
201 Selak St
Black Hawk, CO 80422
jlewis@cityofblackhawk.org
(303) 582-2200

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the Design-Builder’s Submittals are as follows:
(List name, address and other information.)

Matthew Reed
City of Black Hawk
§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

1. Geotechnical Engineer
2. Commissioning Agent
3. All others to be retained by Design-Builder

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Brad Chope
5069 Silver Street
Dacono, CO 80514
bchope@symmetrybuilders.net
(303) 444-1044

§ 1.2.5 Neither the Owner’s nor the Design-Builder’s representative shall be changed without ten days’ written notice
to the other party. The Design-Builder’s proposed replacement representative shall be approved by the Owner in
writing prior to being assigned to the project. Such Owner’s approval shall not be unreasonably withheld.

§ 1.3 Binding Dispute Resolution
For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute
resolution shall be the following:
(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution
below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be
resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 14.4
[X ] Litigation in a court of competent jurisdiction
[ ] Other: (Specify)

§ 1.4 Definitions
§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and
Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents listed in the documents
defined in Article 16 of this Agreement, other documents listed in and incorporated into this Agreement; and
 Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract
signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.
§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service. Design Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.
§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

See Exhibit "G" – Design-Builder’s Fee & Cost Proposal

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit "J" – Hourly Rates

<table>
<thead>
<tr>
<th>Individual or Position</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Used</td>
<td></td>
</tr>
</tbody>
</table>

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Fees paid for securing approval of authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, standard form documents;
.5 Postage, handling and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner; and
.8 All taxes levied on professional services and on reimbursable expenses; and
.9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, Expenses prior to the execution of the Design-Build Amendment, the compensation shall be the expenses the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred, plus an administrative fee of percent (%), of the expenses incurred; will be billed at actual cost as supported by receipts and other similar documentation; and will not exceed the topset shown in Exhibit "G" – Design-Builder’s Fee & Cost Proposal.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder’s approvable invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

Three (3.0) % per year

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment Work or termination of this Agreement, whichever occurs first.
§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment
For the Design-Builder’s performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder’s behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction in a good workmanlike manner, fully execute the Work described in, and reasonably inferable from the Design-Build Documents. The Design-Builder shall at its sole cost, risk, and expense construct, equip, provide purchase, pay for, and furnish all of the Work necessary to provide the results intended by the Design-Build Documents, as well as all local, state and federal governmental codes, ordinances and regulations as they apply to performance of the Work.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner’s Criteria, Exhibit "D" – Basis of Design, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing, together with the Design-Builder’s written recommendation for modifying Exhibit "D" – Basis of Design to eliminate such violation. Upon verification by the Owner that a change to the Owner’s Criteria Exhibit "D" – Basis of Design is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.3.3 The Design-Builder shall not be entitled to any adjustments in the Contract Sum or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Design-Builder, or any entity affiliated with the Design-Builder, for portions of the Project other than the Work, such as, without limitation, other projects for this Owner or nearby this site, whether such work or other services are performed under contract with the Owner or an independent third party.

§ 3.1.3.4 The Design-Builder shall proceed with performance of the Work as required by the Design-Build Documents and shall not modify such requirements in accordance with any substitution request, value engineering, or other recommendations unless such recommendations are accepted by the Owner in a Modification. The Design-Builder shall not be entitled to receive any additional fees as a result of substitution request, value engineering, or other recommendations submitted by the Design-Builder.

§ 3.1.3.5 During the performance of the Work, the Design-Builder shall keep a competent superintendent at the Project site, fully authorized to act on behalf of the Design-Builder. Notice from the Owner to such superintendent, in connection with defective Work, instructions for performance of the work or any and all other issues arising under this Agreement shall be considered notice of such issues to the Design-Builder.
§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder’s employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that Design-Builder agree that the services of the Design-Builder’s Architect and the Design-Builder’s other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder Owner.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports
§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:
.1 Work completed for the period;
.2 Project schedule status;
.3 Submittal schedule and status report, including a summary of outstanding Submittals;
.4 Responses to requests for information to be provided by the Owner;
.5 Approved Change Orders and Change Directives;
.6 Pending Change Order and Change Directive status reports;
.7 Tests and inspection reports;
.8 Status report of Work rejected by the Owner;
.9 Status of Claims previously submitted in accordance with Article 14;
.10 Cumulative total of the Cost of the Work to date including the Design-Builder’s compensation and Reimbursable Expenses, if any;
.11 Current Project cash-flow and forecast reports; and
.12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:
.1 Design-Builder’s work force report;
.2 Equipment utilization report; and
.3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder’s Schedules
§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner’s information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for adequate periods of time required for the Owner’s review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner.

§ 3.1.10 Certifications. Upon the Owner’s written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner
and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder’s Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder’s Submittals

§ 3.1.11.1 Prior No less than thirty (30) days prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner’s approval. The Owner’s approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder’s schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents, and the impact of such deviation on the Owner’s future costs of ownership at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner’s approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional’s written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder shall defend and hold the Owner harmless against any claim, demand, loss, or damage by any breach of this warranty, and Design-Builder acknowledges it shall not limit such warranty by the provisions of Section 11.2.

§ 3.1.12.1 When written warranties are specified, the document shall include the following information:

Name and address of Project and Owner;
Article, materials, or systems covered;
Name and address of Installer;
Name and address of Design-Builder; and
Signature of individual authorized to sign contracts for the company issuing the warranty.

§ 3.1.12.2 The following minimum warranty terms shall be incorporated:
.1 Duration shall be one year or as otherwise specified, dated from the Date of Substantial Completion;
.2 The article, material or system is free from defective materials and workmanship;
.3 Costs of repair or replacement shall not accrue to the Owner, including without limitation repair or replacement of other work disturbed by, or because of, repair or replacement; and
.4 The warranty period of one year, or as otherwise specified, shall recommence upon the identification and completion by Design-Builder and acceptance by Owner of any warranty claim during the initial one-year warranty period.

§ 3.1.12.3 Warranties which are provided by a manufacturer for his/her product shall be received by the Design-Builder, filled out and filed with the manufacturer or other appropriate entity for the Owner. Certificates or registration stubs shall be included with the record documents submitted for the Owner upon completion of the Work. The Owner shall administrate manufacturer’s warranties/guarantees after expiration of the Design-Builder’s warranty.

§ 3.1.12.4 Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or material supplied under the Contract Documents before final completion and written acceptance by the Architect and Owner shall not be construed as evidence of the Owner’s acceptance of same, or the commencement of any warranty periods.

§ 3.1.12.5 The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner deems proper. The Design-Builder shall make no claims for damage or injury to, or breaking of, any parts of such work which may be caused by weakness or insufficiency of structural parts, or by defective materials or workmanship.

§ 3.1.12.6 The Design-Builder may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Design-Builder’s prior approval and under its observation as may be required by either of them. Equipment and/or materials shall be replaced or returned to "as new" condition prior to acceptance by the Owner.

§ 3.1.12.7 The Design-Builder agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer’s warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer’s warranties.

§ 3.1.12.8 If necessary as a matter of law, the Design-Builder may retain the right to enforce directly any such manufacturers’ warranties during the one (1) year period following the date of Substantial Completion described in Section 12.2.2.

§ 3.1.13 Royalties, Patents and Copyrights
§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner’s Criteria. Exhibit "D" – Basis of Design. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner’s Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner in writing. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

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§ 3.1.14 Indemnification
§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner’s agents and employees, employees and consultants (the "Indemnities") from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that which would otherwise exist as to a party or person described in this Section 3.1.14.
§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers’ compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 The Design-Builder’s indemnity obligations under this Section 3.1.14 shall also specifically include, without limitation, all fines, penalties, damages, liability, safety violations, costs, expenses (including, without limitation, reasonable attorneys’ fees), and punitive damages (if any) arising out of, or in connection with any:

1. Violation of or failure comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Design-Builder, a Subcontractor or any person or entity for whom either is responsible;
2. Means, procedures, techniques, safety precautions, or sequences of execution or performance of the Work; and
3. Failure to secure and pay for permits, fees, approvals, licenses, and inspection as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Design-Builder, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.1.14.4 The Design-Builder shall indemnify and hold harmless all of the Indemnitees set out in Section 3.1.14 from and against any costs and expenses (including reasonable attorneys’ fees) incurred by any of the Indemnitees in enforcing any of the Design-Builder’s defense, indemnity, and hold-harmless obligations under this Contract.

§ 3.1.14.5 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.

§ 3.1.15 Contingent Assignment of Agreements
§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

1. assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, or termination by the Owner for convenience, pursuant to Section 13.2.4; and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder’s rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder’s or other entity’s obligations under the agreement.

§ 3.1.16 Design-Builder’s Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
§ 4.1 General
§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner’s Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent
with the Owner’s Criteria, Exhibit "D" – Basis of Design, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner’s Criteria

§ 4.2 Evaluation of the Basis of Design

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner’s Criteria as set forth in Section 1.1 The Basis of Design as set forth in Exhibit "D" – Basis of Design. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner’s Criteria – Basis of Design. The preliminary 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, or phased construction. The preliminary evaluation shall consider, without limitation, cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder’s evaluation of the Owner’s Criteria – Basis of Design. The report shall also include

1. allocations of program functions, detailing each function and their square foot areas;
2. a preliminary estimate proposed Control Estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner’s Criteria – Basis of Design to conform to the Owner’s budget;
3. a preliminary schedule, proposed Design-Builder’s Project Schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder’s Proposal; and dates of periodic design review sessions with the Owner; and
4. the following:
   (List additional information, if any, to be included in the Design-Builder’s written report.)

Other information and draft Exhibits to this Agreement as the Owner and Design-Builder agree are appropriate in the meeting described in Section 4.2.1

§ 4.2.3 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 as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner’s Criteria – Basis of Design unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner’s issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner’s Criteria – Basis of Design, and shall include the following:

1. Confirmation of the allocations of program functions;
2. Site plan;
3. Building plans, sections and elevations;
4. Structural system;
5. Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
6. Outline specifications or sufficient drawing notes describing construction materials; and

7. Such other information the Owner and Design-Builder agree in writing to be appropriate.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder’s Proposal. The Preliminary Design shall not modify the Owner’s Criteria – Basis of Design unless the Owner and Design-Builder execute a Modification.
§ 4.4 Design-Builder’s Proposal
§ 4.4.1 Upon the Owner’s issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder’s Proposal to the Owner. The Design-Builder’s Proposal shall include the following:

.1 A list of the Preliminary Design documents and other information, including the Design-Builder’s clarifications, assumptions and deviations from the Owner’s Criteria, Basis of Design, upon which the Design-Builder’s Proposal is based;

.2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated proposed Control Estimate detailing cost organized by trade categories, allowances, contingencies, Design-Builder’s Fee and Cost Proposal, and other items that comprise the Control Estimate detailing the proposed Contract Sum;

.3 The proposed Design-Builder’s Project Schedule showing the detailed work plan supporting date the Design-Builder shall achieve Substantial Completion;

.4 An enumeration of any qualifications and exclusions, if applicable;

.5 A list of the Design-Builder’s key personnel, Contractors and suppliers; and proposed Exhibit “H” – Key Firms & Personnel;

.6 The date on which the Design-Builder’s Proposal expires;

.7 Such other information the Owner and Design-Builder agree in writing to be appropriate.

§ 4.4.2 Submission of the Design-Builder’s Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 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.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
§ 5.1 Construction Documents
§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents. Prior to execution of the Agreement, the Design-Builder and each Subcontractor have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climatic conditions; (ii) anticipated labor supply and costs; (iii) availability and cost of materials, tools, and equipment; and (iv) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Design-Builder shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Design-Builder or any Subcontractor to have complied with the requirements of this Section 5.1.1.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner’s information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction
§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment and issuance by the Owner of a written Notice to Proceed.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner’s right to reject the Design-Builder’s Proposal.
§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder’s best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.2.5 The Design-Builder shall carefully check its own work and that of Subcontractors as the work is being performed.

§ 5.2.6 During the finishing stages of the project, the Design-Builder shall make frequent inspections of the Work in the presence of the Owner and Architect and the applicable Subcontractor(s) involved, if any, and the Architect shall identify incorrect and faulty Work.

§ 5.2.7 The Design-Builder shall ensure that incorrect or faulty Work is corrected immediately.

§ 5.2.8 The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Design-Build Documents either by activities or duties of the Owner or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Design-Builder.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6. The Design-Builder shall also submit to the Owner, for each proposed substitution:

1. A full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog "cut sheets", warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

2. A written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable;

3. The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

4. The adjustment, if any, in the time of completion of the Contract and the Contractor’s Construction Schedule in the event the substitution is acceptable; and

5. Proposals for substitutions shall be submitted to the Owner in sufficient time to allow no less than ten (10) business days for review.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder’s employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.3.4 All work under this Agreement shall be performed in a skillful and workmanlike manner in accordance with the highest industry standards.

§ 5.3.5 The Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Design-Builder shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.
§ 5.4 Taxes

The Design-Builder shall, to the extent the Owner is not exempted under this Agreement, pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. In no event should the Owner pay the Design-Builder for taxes that were not properly due and duly paid.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any permit. The Owner shall also pay for any applicable gas, water, sewer and electrical service application fees; assessments against the property, including property tax, developmental excise and similar taxes; sewer, water, and related utility tap fees; and sewer plant improvement fees. The Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder’s cost of, or time required for, performance of any part of the Work, shall 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 Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner’s determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.3.1 In no event shall any adjustment in the Contract Sum or Contract Time be made for conditions which should have been known to the Design-Builder or would have been noticed by a Design-Builder of similar size and experience pursuant to his/her on-site inspection; by way of or conditions referenced in any other inspections or tests concerning the site which have been made available to the Design-Builder or have been performed by the...
Design-Builder or its Subcontractors; are part of the Design-Build Documents; or are part of the materials provided by the Design-Builder to be used in constructing the improvements.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.5.5 The Design-Builder shall comply with all applicable laws, statutes, rules, codes, orders, regulations, and ordinances, including but not limited to all immigration, environmental and safety laws, statutes, rules, codes, orders and regulations.

§ 5.5.6 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 (a) 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.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

.1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 the Design-Builder’s costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder’s costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.
§ 5.8 Documents and Submittals at the Site
The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed. The Design-Builder shall make available to the Owner for inspection and copying the record copy of the drawings, specifications, addenda, Change Orders and other Modifications, including all such documents maintained by the Design-Builder in electronic format, upon reasonable request of the Owner and, in any event, within twenty-four (24) hours of receipt by Design-Builder of a request from Owner for such review and/or copying. The Owner may request the record copy of the As-Built Documents, specifications, addenda, Change Orders and other modifications of the Work to be updated before Substantial Completion to reflect the most current condition of the Project, as additional Cost of the Work paid as a Change Order at the Owner’s expense. The Owner may require the Design-Builder to furnish the As-Built Documents in electronic format and may make copies of them prior to completion of the Work at the Owner’s expense.

§ 5.9 Use of Site
The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.1 The Design-Builder shall provide final electronic files and one “hard” copy of the Drawings and Specifications to the Owner updated to reflect the final condition of the Project with the final Application for Payment as a condition precedent to final payment.

§ 5.9 Use of Site, Delivery, & Storage
The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.1 The Design-Builder shall coordinate the Design-Builder’s operations with, and secure the approval of, the Owner before using any portion of the site.

§ 5.9.2 The Design-Builder shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the Project site; all property at the Project site; and all persons or property adjacent thereto.

1. The Design-Builder acknowledges the Project site comprises and/or may be adjacent to existing structures and that these site areas may be occupied during the performance of some portions of this Contract.

2. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause interference with adjacent stakeholders or create hazardous conditions.

3. The Design-Builder shall be responsible for the mitigation and/or abatement of all noise, dust, fumes, traffic or other by-product of construction activity that, in the opinion of the Owner or the Architect, have an adverse affect on the quality of life or productivity for Project stakeholders, the Owner’s current operations, or the Owner’s employees. Such mitigation and/or abatement shall be performed in manner and with a result completely and wholly acceptable to the Owner.

4. The Design-Builder shall control its personnel and the Subcontractors on site, especially regarding the use of alcohol or profanity, dressing in an inappropriate manner, parking in an inappropriate place, or other activities deemed to be inappropriate, to the satisfaction of the Owner. Repeat offenses will cause the Owner to require, through the Design-Builder, the temporary or permanent removal of the offending individuals, Subcontractor(s) or Sub-subcontractor(s) from the site.
The Design-Builder shall, at a minimum, secure the site by erecting and maintaining a 6’-0” chain link fence around the perimeter of the construction site. This fence shall remain intact until such time the site becomes secure in the opinion of the Design-Builder, as a result of construction progress (by way of example, and without limitation, completion of site grading and backfill, installation of doors and windows, etc.).

The Design-Builder shall furnish and maintain sufficient sanitary facilities for its own forces and those of any Subcontractor or Sub-subcontractor. The facilities of any existing, nearby buildings will not be available for construction use.

The Design-Builder is advised that the project site area is subject to, among other inclement weather, unpredictable and high winds. When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings and stored materials on site and fully protect the Work, as necessary, from injury or damage by any cause and to prevent possible damage caused by flying materials and debris.

The Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas.

The access to the site shall be maintained in compliance with all local, state, and Federal code and life safety requirements for ingress by first responders and other similar emergency requirements.

The Owner shall be responsible for snow removal to the limits of the construction site only so far that the Design-Builder will have access to the entrance to the construction area.

The Design-Builder shall notify all public utility companies a minimum of two (2) business days prior to the commencement of any work by it or its Subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Owner to proceed has been given to the Design-Builder. If the utility service must be interrupted, the Design-Builder shall, at Design-Builder’s sole cost and expense, notify the head of the local administrative services (by way of example only, and without limitation, the city manager, the mayor, the city or county clerk, etc. as applicable) and the utility users affected by the interruption.

The Design-Builder shall exercise due diligence in seeing that all equipment, material, and supplies are delivered in advance of the time they are needed for the Work, and shall properly store and protect same at the Design-Builder’s expense.

The Design-Builder shall not deliver any materials to the site which are not to be installed by same Design-Builder without fifteen (15) day’s advance notice in writing to the Owner of the location, date, and time of such delivery to allow proper coordination. Such materials shall be received jointly by a representative of the Design-Builder and a representative of the Owner.

Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder’s consent to cutting or otherwise altering the Work.

Cleaning Up

The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder’s tools, construction equipment, machinery and surplus materials from and about the Project.

If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.
§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner’s Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner’s own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.13.1.5 The Design-Builder accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Design-Build Documents. The Design-Builder shall be responsible for such pre-purchased items, if any, as if the Design-Builder were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Design-Build Documents shall also apply to any pre-purchased items, unless the Design-Build Documents specifically provide otherwise.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder’s construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder’s Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder’s Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Design-Builder’s Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor’s delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.
§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.14.6 Should the Design-Builder wrongfully delay or cause damage to the work or property of any separate contractor, the Design-Builder shall, upon due notice, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute. If such separate contractor sues or initiates a judicial proceeding against the Owner on account of any delay or damage alleged to have been caused by the Design-Builder, the Owner shall notify the Design-Builder who shall defend such proceedings at the Design-Builder’s expense. The Owner may fund the defense of such proceedings contemplated by this Section but, in any event, if any judgment or award against the Owner arises therefrom, the Design-Builder shall pay to satisfy it to the extent of Design-Builder’s responsibility.

§ 5.14.7 Should any such separate contractor wrongfully delayed or damaged by the Design-Builder or persons for whom the Design-Builder is responsible per Section 5.14.6 make a claim against the Indemnitees, or bring any action against the Indemnitees, on account of the damage alleged to have been so sustained, the Design-Builder shall hold the Indemnitees harmless and defend them against any such claim or suit, and shall reimburse to the Indemnitees the cost including, without limitation, reasonable, additional attorney’s fees incurred defending such suit, and if any judgment against the Indemnitees arises there from, the Design-Builder shall pay or satisfy it and shall pay all costs incurred by the Indemnitees.

§ 5.14.8 Should the Design-Builder be caused damage by any separate contractor, by reason of such separate contractor’s failure to perform properly under his/her contract with the Owner, no action will lie against the Owner, and the Owner shall have no liability therefore, but the Design-Builder may assert his/her claims for damages directly against such separate contractor and the Owner shall assign such rights to Design-Builder.

§ 5.15 Owner’s Right to Clean Up
If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6   CHANGES IN THE WORK
§ 6.1 General
§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. Except as permitted in Section 1.4.1 and Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Design-Builder or a change in any time period provided for in the Design-Builder.

§ 6.2 Change Orders
A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder’s compensation; and
.3 The extent of the adjustment, if any, in the Contract Time.
§ 6.2.1 Methods used in determining adjustments to the Contract Sum may include those listed in Sections 6.3.3, 6.3.7 and 6.3.10.

§ 6.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builders compensation, or Contract Time. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builders compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builders compensation, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;
.4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builders, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builders agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builders compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builders agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builders compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builders compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount calculated using the sum of the actual costs allowed in Sections 6.3.7.1 through 6.7.3.5, and using the percentages shown in Section 7.3.12 below. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

.1 Additional verifiable and reasonable costs of professional services;
.2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
.3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
.4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
.5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
.6 Additional costs of supervision and field office verifiable payroll and subsistence costs incurred by the Design-Builder, Subcontractor and Subcontractors of field personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder’s compensation, shall be actual net cost. 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 net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner’s interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder’s compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder’s compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 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 referred to the Architect for determination. The Architect may consult with the Owner in connection with such determination either at the direction of the Owner or at the Architect’s discretion.

§ 6.3.12 In Subparagraph 6.3.6, the allowance for the combined total of onsite and offsite overhead, insurance and profit included in the total cost to the Owner shall be based on the following schedule:

.1 For the Design-Builder, for Work performed by the Design-Builder’s own forces, ten percent (10%) of the cost;
.2 For the Design-Builder, for Work performed by the Design-Builder’s Subcontractor, five percent (5%) of the amount due the Subcontractor;
.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor or Sub-subcontractor’s own forces, ten percent (10%) of the cost;
.4 For each Subcontractor, for Work performed by the Subcontractor’s Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor;
.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7;
.6 Under no circumstance shall costs of the Design-Builder’s supervisory, management, administrative or other office personnel, regardless of where stationed, be paid as cost of the Work under 7.3.7. Conversely, the Design-Builder shall be compensated for their labor within the overhead and profit percentage specified in Section 7.3.12 below.
In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can immediately be seen by inspection, shall be accomplished by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also.

When both additions and credits are involved in any change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

Overtime, when specifically authorized by the Owner and not as a requirement for the Design-Builder to fulfill its obligations under this Agreement, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

§ 7.5 Supporting Information
Notwithstanding the above, requests for an adjustment in the Contract Sum or adjustment in the Contract Time shall be in a form and accompanied by supporting information with a level of detail wholly acceptable to the Owner and Architect. The Design-Builder shall also comply with all provisions of Articles 8 and 14 with respect to claims. The required information shall be provided by the Design-Builder in less than twenty-one (21) days from the Design-Builder’s request for an adjustment in the Contract Sum or Contract Time. Failure to timely provide this information in the proper form may be, in and of itself, grounds for rejection of the request, at the sole discretion of the Owner.

ARTICLE 7 OWNER’S RESPONSIBILITIES
§ 7.1 General
§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner’s approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder’s schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 7.1.3 The Owner may obtain independent review(s) of the Design-Builder’s Design Documents, or of any document or other materials submitted by the Design-Builder, by a separate architect, engineer, contractor, cost estimator or any other consultant they deem necessary and put under contract to or cause to be employed by the Owner. Such independent review shall be undertaken at the Owner’s expense in a timely manner and shall not delay the orderly progress of the Work. The Design-Builder shall cooperate with such Owner’s other consultants fully, and respond to their reviews and comments in writing in a timely and comprehensive manner. This provision shall not be interpreted to require the Owner to obtain an independent review or imply that the Owner is in any way assuming responsibility for the work of the Design-Builder.

§ 7.2 Information and Services Required of the Owner
§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner’s control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner’s control.
§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner’s expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. Omissions and conflicts thus discovered by the Design-Builder will be promptly communicated to the Owner in writing, after the Design-Builder has carefully scrutinized such information for consistency with other information about the Work. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Design-Build Documents and the Design-Builder’s Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.2.11 The Owner shall furnish information and services under the Owner’s control when (1) such services are reasonably required by the scope of the Work; (2) are scheduled by the Design-Builder in the approved Design-Builder’s Project Schedule; (3) and requested by the Design-Builder in writing reasonably in advance of the date required by the Design-Builder to allow the Owner to procure of the requested information and/or consultant(s), and such consultant(s) to provide the requested information and/or services in the normal course of the consultant(s)’ business.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner’s action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule,
§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder’s rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder’s failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner’s Right to Stop Work
If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner’s Right to Carry Out the Work
If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day/four-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 Extent of Owner Rights

§ 7.10.1 The rights stated in this Article 7 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner granted in the Design-Build Documents; at law; or in equity.

§ 7.10.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work. Notwithstanding anything else herein, and without limitation, any review(s), independent or otherwise, or approval(s) by the Owner of the Design-Build Documents, the Contract Documents, the Design-Builder’s Construction Management Plan(s), the Design-Builder’s Construction Schedule, shop drawings, submittals, meeting minutes or
other Design-Builder’s services, deliverables or activities; nor the exercising of any of the rights and authority granted to the Owner in the Design-Build Documents shall in any way reduce, diminish, or otherwise affect the Design-Builder’s responsibilities, duties and accountability to the Owner for, without limitation, the construction means, methods, techniques, sequences, procedures or for safety precautions, and the provision of the Work per the requirements of the Design-Build Documents.

ARTICLE 8  TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder’s failure to obtain insurance required under this Contract. Unless the date of commencement is established by a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five (5) days or other agreed period before commencing the Work to permit the timely filing of any documents or notices required of the Owner prior to such commencement of the Work.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Attention is directed to the fact that the Work is urgently needed by the Owner; for this reason it shall be agreed that the Design-Builder will substantially complete all Work under the Contract within the time established in the Design-Build Documents and the most recently approved Design-Builder’s Construction Schedule. The Design-Builder shall begin the Work on the date of commencement as defined in the Design-Build Documents; carry the Work forward with adequate resources; furnish, without limitation such labor, supervision, materials, facilities, and equipment; and work such hours, including night shifts, overtime operations, and Sundays and/or holidays, as may be necessary to ensure the progress and completion of both the Work and the Project as reflected by the most recently approved Design-Builder’s Construction Schedule.

§ 8.1.4 The Design-Builder shall achieve specific Contractual Milestone dates (if any), Substantial Completion, and Final Completion within the times stated in the Design-Build Documents, and such dates shall be adhered to and shall be the last acceptable dates for completion of Work required for those milestones and completions, unless and until modified by the Owner in writing.

§ 8.1.5 The Design-Builder understands and agrees that all Work must be performed in an orderly and closely coordinated sequence so that the dates for Contractual Milestones (if any), Substantial Completion, and Final Completion, may be met by the both the Design-Builder as well as the respective Multiple Prime Contractors.

§ 8.1.6 The Design-Builder shall also complete the Work in all of its details for final acceptance as expeditiously as possible after Substantial Completion.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, transportation, unavoidable casualties or other causes beyond the Design-Builder’s control; causes; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

§ 8.2.4 Any claims for extension of time shall be made in writing to the Owner and Architect not more than ten (10) days after commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim
is necessary. The Design-Builder shall provide an estimate of the probable effect of such delay on the progress of work within five (5) days of the first date the Design-Builder should reasonably be expected to have calculated the impact of such delay, but in no event more than fifteen (15) days after the commencement of the delay, with weekly updates to the impact if the delay is of an ongoing nature.

§ 8.2.5 Extensions of the Contract Time will be made for delays due to weather conditions only when such conditions are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by the National Climatic Data Center’s (NCDC’s) Surface Data US at https://www.ncdc.noaa.gov/cag/regional/mapping/-1/pcp/201804/60/value or other data as mutually agreed by the Owner and Design-Builder for the Project area. In allowing delays for weather, the Owner will be entitled to consider weather conditions prevailing throughout the entire Contract period. Extensions of time due to weather or other allowable reasons will be granted on the basis actual impacts of those work days lost with each separate extension figured to the nearest whole calendar day. The extension of the contract completion time for weather conditions will occur only in the event that the weather in question affected critical activities on the most current Design-Builder’s Construction Schedule, and at least one half of the work force allocated to that item of work was also adversely affected by the same weather conditions.

§ 8.3 Design-Builder’s Obligations after Delay

§ 8.3.1 If either the Work actually in place falls behind as reflected by the currently updated Master Project Schedule or Design-Builder’s Construction Schedule, or it becomes apparent or likely in the reasonable opinion of the Owner that the Work will not be completed within the Contract Time or in accordance with the Design-Builder’s Construction Schedule, the Design-Builder agrees it shall, as necessary, take some or all of the following actions (hereinafter referred to collectively as “Extraordinary Measures”) at no additional cost to the Owner, as required to substantially eliminate, in the judgement of the Owner, the backlog of Design-Builder’s Work on the Project:

§ 8.3.2 Increase quantities of, without limitation, labor, supervision, material deliveries, equipment on site, and crafts as necessary;

§ 8.3.3 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing;

§ 8.3.4 Reschedule activities to achieve maximum practical concurrence of accomplishment; and

§ 8.3.6 These Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Design-Build Documents. The Owner’s right to require Extraordinary Measures is solely for the purpose of ensuring the Design-Builder’s compliance with the Design-Builder’s Construction Schedule.

§ 8.3.7 In the event of a delay, the Owner may also require the Design-Builder to immediately submit a Proposed Recovery Schedule as specified in Section 8.3.1 above. If the Proposed Recovery Schedule is not satisfactory, the Owner may unilaterally establish a new Proposed Recovery Schedule acceptable to the Owner; issue it as a Construction Change Directive; and the Design-Builder shall comply therewith. The Owner may also require the Design-Builder to take any of the Extraordinary Measures to make up the lag in scheduled progress, all without additional cost to the Owner.

§ 8.3.8 Failure of the Design-Builder to substantially comply with the requirements of this Section 8.3 shall be considered grounds for a determination by the Owner that the Design-Builder is in breach of this Agreement by failing to prosecute the Work and that of the Project so as to ensure its completion within both the Contract Time and the updated Design-Builder’s Construction Schedule.

§ 8.3.9 The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 8.3.

§ 8.4 Owner’s Rights after Delay

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§ 8.4.1 Likewise, in the event the Design-Builder fails, or appears likely to fail, to complete a critical portion of Work on time or to complete a Contractual Milestone Date or completion date as evidenced by the most recently approved Design-Builder’s Construction Schedule, the Owner shall have the right to impose any or all of the following options:

§ 8.4.2 Require the Design-Builder to substantiate the capability to get back on schedule within ten (10) business days;

§ 8.4.3 Require the Design-Builder to take some or all of the Extraordinary Measures, and do whatever else is required by the Owner until Design-Builder confirms, to the satisfaction of the Owner, the progress of the Work is in compliance and congruence with the most recently approved Design-Builder’s Construction Schedule, such measures being at no extra cost to Owner;

§ 8.4.4 Withhold progress payment, or portions thereof, until such time as the Design-Builder is in compliance and congruence with the most recently approved Design-Builder’s Construction Schedule; and

§ 8.4.5 Contact or visit the factory, plant or distribution center whose production or delivery schedule may be critical to the scheduled completion of a portion of the contract work, and expedite same, at Design-Builder’s expense.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
§ 9.1 Contract Sum
The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values
Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder, meet with the Owner, at the Preconstruction Conference with a proposed Schedule of Values. The Design-Builder’s Schedule of Values will be reviewed by the Owner in the context of the Design-Builder’s proposed Construction Management Plan, including but not limited to the Design-Builder’s Construction Schedule therein. The values assigned to each work activity in the Schedule of Values should be generated by the projected earned value of the activities in the Design-Builder’s Construction Schedule, rounded to the nearest five dollars, and equal in aggregate to the Design-Builder’s and Subcontractor’s contract amount(s). The Schedule of Values shall allocate the entire Contract Sum to the various portions of the Work and be prepared in such form and supported by such additional data to substantiate its accuracy as the Owner may require. This schedule, Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder’s Applications for Payment.

§ 9.3 Applications for Payment
§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder’s right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with all applicable statutes:

A duly executed and acknowledged sworn statement showing all Subcontractors and material suppliers with whom the Design-Builder has entered into subcontracts, the amount of each such subcontract, the invoice from and the amount requested for any Subcontractor and material supplier in the requested
§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner’s title to such materials and equipment or otherwise protect the Owner’s interest, and stored materials and equipment are properly tagged as to material and job identification; are available for inspection by the Owner; and such requests for payment must be accompanied by documentary evidence as specified, without limitation, in Sections 5.9 and the insurance required by Exhibit “B” – Insurance and Bonds, which supports the request’s validity; quantity and value of materials, proper material acceptance and storage; and including insurance on the materials as evidenced by a Certificate of Insurance or otherwise protects the Owner’s interests. Such request, shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Such materials shall be:

.1 Protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, and the Lender (if any);

.2 Specifically marked for use on the Project; and

.3 Segregated from other materials at the storage facility.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, Work covered by an Application for Payment will pass to the Owner no later than the time of payment—either by incorporation into the construction or receipt of payment by the Design-Builder, whichever occurs first. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder’s knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder’s Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner’s reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.1 The issuance of a Certificate for Payment will constitute a representation by the Design-Builder to the Owner, based on the Design-Builder’s evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Design-Build Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Design-Build Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Design-Build Documents prior
Thereafter, the accumulated retainage may be held without additional retainage, except that should the Design-Builder at any time fail to keep current with the approved progress schedule; fail to assure payment to Subcontractors, Sub-subcontractors and suppliers as required hereunder; or fails to promptly and diligently correct Work that does not comply with the Design-Build Documents, certification of ninety percent (90%) shall automatically again become effective and shall apply as long as the Design-Builder lags behind such progress or fails to assure such payment.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner’s determination that the Work has not progressed to the point indicated in the Design-Builder’s Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

.1 defective Work, including design and construction, not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
.3 failure of the Design-Builder to make sure payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Design-Build Documents.
.8 Design-Builder’s failure to obtain necessary permits or licenses or to comply with applicable codes, regulations, or other laws;
.9 failure to fully execute the Contract with all associated documents as required;
.10 liens filed for any portion of the Work; or
.11 failure of the Design-Builder to comply with any provisions of the Design-Build Documents, including without limitation Section 8.3.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld or less all associated damages, costs and expenses, suffered or accrued by the Owner. In the event the Owner withholds certification and the Owner withholds payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 The Design-Builder shall not stop work or terminate the Contract if the Owner’s Lender (if any) should refuse to issue any certificate because the Application for Payment does not conform with the requirements of Sections 9.3, 9.4, 9.5 or any other portion of these General Conditions, as supplemented herein.
§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments-The Design-Builder shall not withhold from any Subcontractor sums due the Subcontractor for completed Work which has been paid for by the Owner. Sums withheld by the Owner from the Design-Builder for deficiencies solely attributable to the Design-Builder shall not be grounds for the Design-Builder to withhold sums due to any Subcontractor. All sums paid to the Contractor for labor, materials, or equipment for the Work or Project shall be considered trust funds to be used by the Contractor for payment to those persons and entities to the extent providing labor, materials and/or equipment incorporated into the Work or Project. Payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing. However, notwithstanding the above, nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.6.8 The Design-Builder agrees to keep the Work and the site of the Project and all project bonds free and clear of all verified claims related to labor and materials furnished in connection with the Work.

§ 9.6.9 Notwithstanding anything to the contrary contained in the Design-Build Documents, verified claim is filed or there is evidence to believe that any verified claim may be filed at any time during the progress of the Work or the duration of this Contract, the Owner may refuse to make any payment otherwise due the Design-Builder or may withhold from any payment due the Design-Builder a sum sufficient in the opinion of the Owner to pay all obligations and expenses necessary to satisfy such verified claim. The Owner may withhold such payment unless or until the Design-Builder, within ten (10) calendar days after demand therefore by the Owner, shall furnish satisfactory evidence.
that the indebtedness and any verified claim in respect thereof has been satisfied, discharged, and released of record, or that the Design-Builder has legally caused such verified claim to be released of record pending the resolution of any dispute between the Design-Builder and the person or persons filing the verified claim. If the Design-Builder fails to furnish satisfactory evidence within ten (10) calendar days of the demand thereof, the Design-Builder and the Owner shall meet within two (2) additional business days to review and agree in writing on the Design-Builder’s action plan for disposing of the verified claim in question. Failing an agreement satisfactory to the Owner, the Owner may discharge such indebtedness in any manner and may deduct the amount thereof, together with any and all losses, costs, damages, and attorney’s fees suffered or incurred by the Owner from any sum payable to the Design-Builder under the Design-Build Documents, including but not limited to final payment and retained amounts.

§ 9.6.10 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, at the Owner’s sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (ii) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.7 Failure of Payment
If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days’ written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder’s reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion
§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.1, all major systems are operational, and all safety features are completed and Owner’s receipt of written confirmation after final inspections by the applicable electrical, plumbing, fire department, health department, and other local and state officials having jurisdiction, stating the project is ready for occupancy by the Owner. In addition to the other requirements of the Design-Build Documents, and without limitation the Design-Builder must also have obtained the written approval and issuance of any occupancy permits required by the laws of local government(s) and the State of Colorado before the Contractor shall be deemed to have achieved Substantial Completion.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. The Design-Builder shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents. The Design-Builder will also provide the Owner a comprehensive list of all claims previously and properly made in writing and identified by the Design-Builder as unsettled at the time of Substantial Completion.

§ 9.8.3 Upon receipt of the Design-Builder’s list, the Owner shall make an inspection observation to determine whether the Work or designated portion thereof is substantially complete. If the Owner’s inspection observation discloses any item, whether or not included on the Design-Builder’s list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection observation by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties’ obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.
§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner’s signature a Certificate of Substantial Completion that shall, upon the Owner’s signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner’s acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.6 The Design-Builder’s acceptance of payment per Section 9.8.5 shall constitute a waiver for all purposes of all claims by the Design-Builder against the Owner and the Architect, except those previously and properly made in writing and identified in the list provided by the Design-Builder as unsettled at the time of Substantial Completion per Sections 9.8.2.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by as such occupancy or use has been consented to by the Design-Builder in advance herein, the Design-Builder shall obtain by endorsement or otherwise, similar consent from the insurer providing property insurance and authorized by secure authorization for such use from the public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder’s written notice that the Work is ready for final inspection observation and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection, observation. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner’s property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, and will not be cancelled or allowed to expire until at least forty-five days written notice is given the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer’s warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims,
security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by
the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the
Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond
satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If
such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the
Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such
liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of
the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by
the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the
Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than
retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to
payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the
Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions
governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 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 Design-Build Documents; or
3. terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance Application for and acceptance of final payment by the Design-Builder shall constitute a waiver
of claims by the Design-Builder against the Owner except those previously made in writing and identified by the
Design-Builder as unsettled at the time of final Application for Payment arising after the waiver given at Substantial
Completion payment described in Sections 9.8.2 and 9.8.6.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs
The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and
programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property
§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent
damage, injury or loss to
1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site,
   under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or
   other person or entity providing services or work for the Design-Builder; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways,
   or structures and utilities not designated for removal, relocation or replacement in the course of
   construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances,
codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their
protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance
of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings
against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the
safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder’s sole cost and
expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any
damage to such property or improvements shall be promptly repaired by the Design-Builder.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are
necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under
supervision of properly qualified personnel, and the Design-Builder shall give the Owner reasonable advance written notice of such planned activities.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder’s obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder’s organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder’s superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Design-Builder shall immediately report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately electronically, as well as by telephone or messenger to the Owner.

§ 10.3 Hazardous Materials

§ 10.3.1 Hazardous materials include any material in such quantity, concentration, and physical or chemical characteristics including but not limited to ignitability or toxicity, so as to be capable of posing an unreasonable risk to health, safety and/or property if released into the atmosphere, transported, stored, or disposed of. The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder’s written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, Order duly processed and approved, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder’s reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and

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expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in the
affected area, if in fact the material or substance presents the risk of bodily injury or death as described in
Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to
bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work
itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking
indemnity start-up, both as specified in Article 6. The term "rendered harmless" shall be interpreted to mean, without
limitation that levels of hazardous materials, including but not limited to asbestos and polychlorinated biphenyls, are
less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have
any responsibility for any substance or material that is brought to the Project site by the Design-Builder, any
Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Design-Builder agrees
not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items
that are hazardous or toxic.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder
brings to the site unless such materials or substances are required by the Owner’s Criteria. The Owner shall be
responsible for materials or substances required by the Owner’s Criteria, except to the extent of the Design-Builder’s
fault or negligence in the use and handling of such materials or substances.

§ 10.3.4 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation
of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the
Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are
due to the Owner’s fault or negligence.

§ 10.3.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government
agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as
required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense
thereby incurred.

§ 10.4 Emergencies
In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder’s
discretion, to prevent threatened damage, injury or loss.

§ 10.5 Site Visits
Anyone other than the Owner’s designated representatives and other consultants visiting the job site who is not
employed by a Design-Builder shall be required to register with the Design-Builder’s site office before proceeding
onto the job site.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK
§ 11.1 Uncovering of Work
The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the
Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the
Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time
and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of
uncovering and correcting the Work shall be at the Design-Builder’s expense and the Design-Builder shall not be
entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in
which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as
appropriate.

§ 11.2 Correction of Work
§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the
Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after
Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work,
specifically including but not limited to additional testing and inspections, the cost of uncovering and replacement,
and replacement the cost of any additional supervision, material, labor, equipment, rental charges, home office
overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work of
both the Design-Builder and the Project, and restore Work by the Design-Builder and others necessarily damaged in

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the course of rectifying the non-complying conditions; as well as, and compensation for any design consultant
employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the
Design-Builder’s expense.

§ 11.2.1.1 If prior to the date of Substantial Completion the Design-Builder, a Subcontractor, or anyone for whom
either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical,
plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall
cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Design-Builder
shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the
Design-Builder, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of
them, or anyone for whose acts they may be liable or for which the Design-Builder is otherwise responsible.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder’s obligations under Section 3.1.12, if, within one year after the date of
Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties
established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build
Documents, or within such longer period as may be prescribed by law, any of the Work is found not to be in
accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after
receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written
acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the
one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the
Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the
Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming
Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in
accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first
performed after Substantial Completion by the period of time between Substantial Completion and the actual
completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by also be extended by the period of time
between Substantial Completion and the actual completion of the corrective Work performed by the Design-Builder
pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the
requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the
Owner.

§ 11.2.4 The Design-Builder shall bear the costs costs of correcting destroyed or damaged construction of the Owner or
separate contractors, whether completed or partially completed, caused by the Design-Builder’s correction or removal
of Work that is not in accordance with the requirements of the Design-Build Documents. These costs specifically
include, but are not limited to such additional supervision, material, labor, equipment rental charges, home office
overhead, and other expenditures necessitated to both rectify the non-complying conditions, protect adjacent Work,
and restore Work by the Design-Builder and others necessarily damaged in the course of rectifying the non-complying
conditions.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to
other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for
correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to
correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build
Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish
the Design-Builder’s liability with respect to the Design-Builder’s obligations other than specifically to correct the
Work.

§ 11.2.6 The Contractor’s obligations under this Section 11.2 shall, without limitation, survive acceptance of the Work
under the Contract and termination of the Contract.
§ 11.3 Acceptance of Nonconforming Work
If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. In the event final payment has been made by the Owner subsequent to accepting such non-conforming Work, the Design-Builder shall pay the Owner, the reduction in the Contract Sum occasioned by such acceptance.

ARTICLE 12   COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them–Design Documents. Design Documents are the product of work made for hire. These are and shall remain the sole property of the Owner. The Design-Builder assigns to Owner all remaining proprietary rights that the Design-Builder may possess in the Design Documents including, without limitation, all copyright and other intellectual property rights. Disputes between the parties shall not impact this transfer of ownership, neither will a termination of this Agreement. In the event of a dispute between the parties regarding payment for Basic or Additional Services, the Design-Builder is not obligated to deliver additional Design Documents or services for which it claims that it has not been paid, but the Owner’s right to use the Design Documents and other services in its possession shall not be restricted.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. Project is the property of the Owner, and, without limitation, the Design-Builder may not use the Design Documents for any purpose not related to the Project without the Owner’s prior written consent.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.1 or 13.2.1 the license granted in this Section 12.3 shall terminate. Design-Builder, the Architect, Consultants, Contractor and any other person or entity providing services or work for any of them are authorized to use and reproduce the Design Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Design Documents. The Design-Builder Architect, Consultants, Contractor and any other person or entity providing services or work for any of them may not use the Design Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from include in its agreements with the Architect, Consultants, and Contractors, commitments that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder’s licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder’s Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner’s written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and

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expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner’s alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service Design Documents without the author’s written authorization or uses the Instruments of Service Design Documents without retaining the authors of the Instruments of Service Design Documents, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner’s alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.4 When requested by the Owner, the Design-Builder shall furnish to the Owner the most current Design Documents, to include, without limitation all the most current drawings, design and engineering calculations, specifications, and any other information which the Design-Builder, Architect or the Design-Builder’s Consultant(s) have created in connection with or for the Project. At a minimum this information shall be provided in electronic format compatible with the most recent versions of the industry standard software for such information. Specifically, drawings shall be compatible with AutoCADD; design and engineering calculations compatible with MS Excel; and specifications with MS Word. All layers and information shall be fully accessible (not "PDF", "protected", or "plot" files).

§ 12.5 Submittal or distribution of the Design Documents or any portion thereof to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner’s reserved rights.

§ 12.6 The Design-Builder, at any time upon the request of the Owner, shall immediately return and surrender to the Owner, without limitation, all electronic and hard copies of any Project-related materials, records, notices, memoranda, recordings, drawings, specifications, mock-ups and any other documents furnished by the Architect to the Design-Builder.

§ 12.7 The representations and warranties contained in the Design-Build Documents shall survive the complete performance of the Work or earlier termination of this Agreement.

ARTICLE 13 TERMINATION OR SUSPENSION
§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment
§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder’s option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days’ written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any verifiable expenses reasonably and properly incurred in the interruption and resumption of the Design-Builder’s Work. The Design-Builder’s compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for verifiable expenses reasonably and properly incurred in the interruption and resumption of the Design-Builder’s Work. The Design-Builder’s compensation for, and time to complete, the remaining Work shall be equitably adjusted as mutually agreed upon in writing by the Owner and Design-Builder.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days’ written notice.
§ 13.1.4 Either party may terminate this Agreement upon not less than seven days’ written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days’ written notice to the Design-Builder for the Owner’s convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder’s compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
3. Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
4. The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder’s request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days’ written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner’s obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days’ written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

1. fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
2. repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
3. fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with the time stated in their respective agreements with the Design-Builder;
4. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
5. is otherwise guilty of substantial breach of a provision of the Design-Build Documents.
§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder’s surety, if any, seven days’ written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

.1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

.2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include be as specified in Article 7 profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner’s convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, the Design-Builder shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of Upon such termination for the Owner’s convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Design-Build Documents and Owner’s further instructions. The Design-Builder waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, lost opportunity costs, and potential and actual unabsorbed overhead costs. The Owner shall be credited for (1) payments previously made to the Design-Builder for the terminated portion of the Work; (2) claims that the Owner has against the Design-Builder under the Contract; and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Design-Builder that are part of the Contract.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and

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matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a 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, in Section 8.3.4 and 8.3.5 shall be given.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction, in accordance with Section 8.3.5.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

2. damages incurred by the Design-Builder for principal office expenses including but not limited to the compensation of personnel stationed there, for losses of financing, business and reputation, impairment to or loss of bonding capacity, loss of business opportunities unabsorbed home office overhead, and for loss of profit except anticipated profit arising directly from the properly completed Work.
This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder’s response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner’s expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner’s initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision or request another method of alternative dispute resolution (ADR) other than mediation, as the parties may agree in writing at any time, subject to the terms of Section 14.2.6.1. Section 14.2.6.1, except that under no circumstances shall the agreed upon ADR include binding arbitration or binding mediation.

§ 14.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation or join in another method of ADR within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation agree to ADR within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution ADR proceedings with respect to the initial decision, and will default to litigation.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder’s default, the Owner may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic’s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.
§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 11.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. Contract may be subject to nonbinding mediation or other ADR as mutually agreed by the parties.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation or ADR’s costs and fees and any filing fees equally if such process is utilized. The mediation or ADR shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided...
that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law
The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4. State of Colorado, and venue shall be in the District Court of Gilpin County; the place where the Project is located.

§ 15.2 Successors and Assigns
§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 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.

§ 15.4 Rights and Remedies
§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections
§ 15.5 Tests and Inspections, and Quality Management
§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until
after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner’s expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect’s services and expenses and all costs specified in Section 11.2 shall be at the Design-Builder’s expense. The Design-Builder also agrees the cost of testing, inspection, and approval services required for the convenience of the Design-Builder in scheduling and performance of the Work, and the cost of such similar services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Design-Builder.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.5.7 It is the intent of the Design-Build Documents to require the Design-Builder to control the quality of the Work using the processes specified in the Design-Builder’s Quality Management, Commissioning and Turnover Plan contained within the most recent Construction Management Plan approved by the Owner. Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work, and shall conform to the most recently approved Design-Builder’s Construction Schedule.

§ 15.5.8 The responsibility for implementing the Quality Management, Commissioning and Turnover Plan is the Design-Builder’s, as is the obligation to provide the Work and a complete and functional project per the Design-Build Documents. Notwithstanding anything herein, or in subsequently approved Quality Management, Commissioning and Turnover Plans, the Owner’s approval of such plan(s) does not relieve the Design-Builder in any way of this responsibility.

§ 15.5.9 The Design-Builder shall be in charge of testing and inspections of the Work, including but not limited to, the services of a certified testing laboratory which shall be contracted to and paid for by the Owner and which will perform the tests as called for in the Design-Build Documents. The conditions that apply to materials testing and inspections include, but are not limited to the following:

1. The frequency and type of Quality Control testing shall be established by the Design-Builder, and shall be sufficient to insure the delivery of the Work and a complete and functional project per the Design-Build Documents. The type and amount of testing required by the Design-Build Documents shall be seen as the minimum required, and shall be increased, if in the opinion of the Design-Builder, more testing is needed to meet the above requirements of the Design-Builder.

2. The Design-Builder shall concurrently provide the Owner copies of all test results it receives within three (3) business days of receipt of same.

3. The Owner shall provide such Quality Assurance testing as it deems adequate for its own needs. The Owner shall distribute the results of its own Quality Assurance tests as it, at its sole discretion, deems appropriate. The provision of Quality Assurance testing by the Owner, or lack thereof shall in no manner affect the responsibilities of the Design-Builder under this Agreement.
§ 15.5.10 The Design-Builder’s Quality Management, Commissioning and Turnover Plan shall specify that prior to completion and acceptance of any building system or phase, consistent with the Contract and applicable codes, Design-Builder will review, in detail, the steps for completing testing of all building systems with the Owner. This plan shall be coordinated with and shall be made part of the Design-Builder’s Construction Schedule. All testing shall be of each complete system, before covering, or of individually separable larger portions of each system and shall be performed in the presence of the appropriate Owner’s consultant(s), representatives of the Owner, and at its option.

§ 15.5.11 All equipment, testing instruments, instruction materials and incidentals required for proper testing of such systems and thorough instruction of the Owner’s operating personnel on each system’s operations and maintenance shall be provided by the Design-Builder, Subcontractor or Sub-subcontractor responsible for providing and installing the equipment.

§ 15.5.12 The Design-Builder shall layout and mark any plantings, shrubs and trees which will require removal a minimum of five (5) business days prior to their removal. The Design-Builder shall notify the Owner in writing immediately upon completion of this marking, and the Owner will have the location of these marked plantings, shrubs and trees reviewed and approved (if correct) by the Owner. The Owner will then give permission for removal in writing to the Design-Builder. Plantings, shrubs, and trees shall not be removed or damaged without such permission.

§ 15.6 Confidential Information
If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.6.2 See Exhibit "I" – Confidentiality of the Project for more direction on confidentiality.

§ 15.7 Capitalization
Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation
§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 Release of Retainage at Substantial Completion
Notwithstanding any other provision in the Design-Build Documents to the contrary, upon Substantial Completion of the Work the Owner shall be entitled to retain from the Contract Sum due to the Design-Builder an amount equal to the greater of: (a) the product obtained by multiplying eight (8) times the total cost of completion of the Punch List items as estimated by the Owner; or (b) twenty-five thousand dollars ($25,000), whichever is greater.

§ 15.10 Measurement
Before ordering any material or doing any Work, the Design-Builder shall verify all measurements for Work completed at the Project and shall be responsible for their accuracy. Any differences found shall be submitted to the
Owner for consideration before proceeding with the Work. The Design-Builder shall use its utmost efforts to identify discrepancies in dimensions in a timely fashion and notify the Owner of these prior to commencing any Work affected by the ambiguous dimensions. No extra charge or compensation shall be allowed because of differences between actual measurements and the dimensions indicated on the drawings.

§ 15.11 Addressing the Owner's Additional Needs and Concerns

§ 15.11.1 Notwithstanding the above, the Owner has a unique set of stakeholders and organizational structure that creates special challenges the Design-Builder must completely and successfully address to the satisfaction of the Owner in the performance of the Work under this Agreement. The actions that shall be taken to address these special challenges include, but are not limited to, the following:

1. The Design-Builder shall provide the Superintendent once per month for a scheduled meeting with the Owner for a progress update on the project if requested by the Owner. A walk-through of the site may be held as a part of this meeting, which shall be scheduled for 4pm or shortly thereafter on a standard business day.

2. In addition to the meetings required to complete the Project, it is anticipated the Owner may request tours from time to time of the project and the site. The Design-Builder shall indicate in writing when such activity will be permitted and when the site is off limits. These requirements shall be coordinated through the Owner.

§ 15.12 Additional Provisions

§ 15.12.1 In the event that any provision herein is held to be unlawful or against public policy, such provision shall be modified to make it valid, or if modification is not possible, such provision shall be deleted and the remainder of this Agreement shall remain in full force and effect.

§ 15.12.2 Notwithstanding the above, it is the intent of the Design-Build Documents to comply with Colorado law, and specifically, and without limitation, with §13-21-111.5(6), C.R.S. Therefore, to the extent that liability arises under Sections 3.1.7, 4.2.5.1, 6.2.7, or under other provisions of the Design-Build Documents for acts for which a party hereto is only partially responsible, liability for resulting damages, if any, shall be apportioned between or among the responsible parties based upon their relative percentages of fault.

§ 15.12.3 Each party hereto agrees to, without limitation, perform all acts; provide all services, material, equipment, labor and supervision; and to make, execute, and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Design-Build Documents.

§ 15.12.4 All exhibits referred to in the Design-Build Documents are, by reference, incorporated herein for all purposes.

§ 15.12.5 The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of the Design-Build Documents.

§ 15.12.6 Any specific requirement in this Contract that require responsibilities or obligations of the Design-Builder also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor, Sub-subcontractor or supplier of any tier. The omission of a reference to a Subcontractor in connection with any of the Design-Builder’s responsibilities or obligations shall not be construed to diminish, abrogate, limit any responsibilities or obligations of a Subcontractor, Sub-subcontractor or supplier of any tier under the Design-Build Documents or the applicable subcontract.

§ 15.12.7 The provisions of the Design-Build Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a written document signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Design-Build Documents or any of the Design-Builder’s duties or obligations under or arising out of the Design-Build Documents. Any change, waiver, approval, or consent granted to the Design-Builder shall be limited to the specific material restated in the written document signed by Owner, and shall not relieve Design-Builder of any other of the duties and obligations under the Design-Build Documents. No "constructive" changes under any Agreement with the Owner shall be allowed.
§ 15.12.8 The Design-Builder shall provide and file, as required by law, all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Design-Builder shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 15.12.9 The Design-Builder shall provide Owner with copies of all notices received by Design-Builder from Subcontractors, Sub-subcontractors, and/or suppliers to Design-Builder.

§ 15.12.10 Section 39-26-114 C.R.S. provides for tax free purchases of materials provided an exemption is applied for and granted by the Sales Tax Division of the Colorado Department of Revenue. Owner has received such exemption and will provide the Design-Builder with a tax exemption number, and Design-Builder shall insure that all Subcontractors, Sub-subcontractors and suppliers engaged for the Work receive same. The Owner reserves the right to require such additional information and/or documentation as may be necessary to insure that no sales taxes are paid by the Design-Builder or any Subcontractor, Sub-subcontractor or supplier and charged to the Owner. If sales tax is required to be paid to any Subcontractor, Sub-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.

§ 15.12.11 Owner affirmatively represents that its governing body has duly appropriated such sums which are equal to or in excess of the contract amount, and that such contract amount may be lawfully paid by Owner to Design-Builder subject to the terms and conditions of the Design-Build Documents. In the event that Owner approves a Change Order, Construction Change Directive or other additional compensable Work to be performed by Design-Builder, (other than that contemplated by the Design-Build Documents under any remedy-granting provision), Owner will issue a written assurance at the time of such approval that such additional compensation to be paid has also been duly appropriated by the Owner’s governing body.

§ 15.1.12 In addition to provisions of the Design-Build Documents, the statutory requirements of Title 38, Article 26 shall be applicable, including but not limited to:

1. The Owner shall retain ten percent (10%) of the progress payments until such time as the Work is fifty percent (50%) completed.

2. Except as hereinafter provided, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Design-Build Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of any of the Owner’s rights to retainage in connection with other payments to the Design-Builder; or any other right or remedy that the Owner has under the Design-Build Documents, at law or in equity.

3. Before final payment may be made to the Design-Builder, the Owner is required to comply with State of Colorado statutes regarding publication of a notice of final settlement specifying the date of such final settlement pursuant to C.R.S.§38-26-107.

4. Any unpaid supplier of materials, equipment, services or labor (including the Design-Builder and any Subcontractors, Sub-subcontractors, and suppliers) may file a verified statement with Owner of the amount due and owing on or before the date set for final settlement.

5. The Design-Builder acknowledges that the Owner is required by law to withhold from final settlement payment the total amount of all such claims for a period of ninety (90) days after the date of final settlement, even if such amounts exceed the retainage.

6. During such ninety (90) day period, any unpaid Subcontractor, Sub-subcontractor or supplier may commence an action to seek payment if such claim is not settled. Such Subcontract, Sub-subcontractor and supplier must comply with all provisions of Title 38, Article 26 of the Colorado Revised Statutes.

7. At the expiration of the ninety (90) day period, Owner shall pay any retained funds which are not the subject of litigation properly commenced pursuant to Title 38, Article 26 of the Colorado Revised Statutes.
§ 15.12.13 In the event the Owner is required to further advertise the completion of the Work or the Project under any local, state or Federal law, the Design-Builder shall notify the Owner of such requirement(s) in writing not less than thirty (30) days in advance, and attach a copy of the specific advertising and noticing required.

§ 15.12.14 The Design-Builder shall, in addition to compliance with the requirements of Section 3.7.6 and without limitation, not knowingly employ or contract with an illegal alien to perform any of the Work under this Agreement. The Design-Builder shall not knowingly contract with a Subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (ii) fails to certify to the Design-Builder that the Subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§ 15.12.14.1 The Design-Builder has verified or attempted to verify through participation in the basic pilot program of the State of Colorado ("Basic Pilot Program") that the Design-Builder does not employ any illegal aliens or the Design-Builder verifies that the Design-Builder has not been accepted into the Basic Pilot Program prior to entering into this Agreement. The Design-Builder further verifies that if the Design-Builder has not been accepted into the Basic Pilot Program, the Design-Builder will apply to participate in the Basic Pilot Program every three months until the Design-Builder is accepted or this Agreement is completed, whichever is earlier. If the Basic Pilot Program is discontinued, this Section 15.12.12.1 shall not be required or be effective.

§ 15.12.14.2 The Design-Builder shall not use Basic Pilot Program procedures to undertake pre-employment screening of job applicants while performing under this Agreement.

§ 15.12.14.3 If Design-Builder obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Design-Builder shall:

.1 Notify the Subcontractor and the Owner within three (3) days that the Design-Builder has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and,

.2 Terminate the subcontract with the Subcontractor if, within three (3) days of receiving notice that the Design-Builder has actual knowledge that the Subcontractor is employing or contracting with an illegal alien, the Subcontractor does not stop employing or contracting with the illegal alien. The Design-Builder shall not terminate the contract with the Subcontractor if during the three (3) days, the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

§ 15.12.14.4 The Design-Builder shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to Section 8-17.5-102(5), C.R.S.

§ 15.12.14.5 In addition to any other legal or equitable remedy, and notwithstanding anything to the contrary in the Design-Build Document the Owner may be entitled to for a breach of the Agreement, if the Owner terminates this Agreement, in whole or in part, due to Design-Builder’s breach of the obligations set forth above in this Section 13.12.14 Design-Builder shall be liable for actual and consequential damages to the Owner.

§ 15.12.15 It is the express intention of the parties that this Agreement is not to be construed as a contractual waiver of any immunities or defenses provided by the Colorado Governmental Immunity Act, Section 24-10-101 and following, Colorado Revised Statutes, or other statutes or common law.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

.1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
.2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
.3 AIA Document A111™–2014, Exhibit B, Insurance and Bonds
.4 AIA Document A111™–2014, Exhibit C, Sustainable Projects, if completed

Statutes. Otherwise, funds will be paid pursuant to further order of the Court in the event of litigation commenced pursuant to statute.
Exhibit C, Project Management Process, or the following:

- Exhibit "D" - Basis of Design
- Exhibit "E" - Control Estimate # 01
- Exhibit "F" - Design-Builder's Project Schedule
- Exhibit "G" - Design-Builder's Fee & Cost Proposal
- Exhibit "H" - Key Firms and Personnel
- Exhibit "I" - Confidentiality of the Project
- Exhibit "J" - Hourly Rates
- Exhibit "K" - Rental Rates
- Exhibit "L" - Alternates with Costs and Expiration Dates
- Exhibit "M" - Unit Costs
- Exhibit "N" - Allowances
- Exhibit "O" - Schedule of Values
- Exhibit "P" - Disputed Work Schedule
- Exhibit "Q" - Illegal Alien Certification
- Exhibit "R" - No Employee Affidavit
- Exhibit "S" - Department Program Affidavit
- Exhibit "T" - Schedule of Exhibits

This Agreement entered into as of the day and year first written above.

OWNER (Signature)
David D. Spellman, Mayor
(Printed name and title)

DESIGN-BUILDER (Signature)
Henry Zurbrugg, President
(Printed name and title)

ATTEST:

(Signature)
Melissa A. Greiner, City Clerk
(Printed name and title)

APPROVED AS TO FORM:

Corey Hoffman, City Attorney
(Printed name and title)
STATE OF COLORADO
COUNTY OF WELD

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 1st day of
August, 2018, by Henry Jones as the President.

My commission expires: [Signature]

(SEAL) ERIN MAITKEN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 16994018405
MY COMMISSION EXPIRES DECEMBER 28, 2021

Notary Public
Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 20:07:41 on 08/14/2018 under Order No. 7142427647 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

Chris Squadra, Principal

(Title)

August 15th, 2018

(Dated)
City of Blackhawk Fire Station Renovation

Contract Exhibits
Exhibit A - Design Build Amendment

This Exhibit to be provided by November 14, 1018, or as otherwise mutually agreed in writing.
Exhibit B - Insurance and Bonds
Section B.1. Insurance.

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

B. Design Builder 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 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. 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 Design Builder 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 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 contract.

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 the Engineer and its agents 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, the Engineer, and all other additional insureds, and the principal defense of any claims resulting from the Design Builder's obligations under the Contract shall rest with the Design Builder's Insurer.

Section B.2. 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 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:

Director of Public Works  
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 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 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 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.
## Certificate of Liability Insurance

**This Certificate is Issued as a Matter of Information Only and Confers No Rights Upon the Certificate Holder. This Certificate Does Not Affirmatively or Negatively Amend, Extend or Alter the Coverage Afforded by the Policies Below. This Certificate of Insurance Does Not Constitute a Contract Between the Issuing Insurer(s), Authorized Representative or Producer, and the Certificate Holder.**

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

**Producer:**
Moody Insurance Agency, Inc.
8055 East Tufts Avenue
Suite 1000
Denver, CO 80237

**Insured:**
Symmetry Builders Inc
5009 Silver Peak Ave
Suite 1
Dacono, CO 80514

**Certificate Number:** 18-198800

**Issuing Insurer(s):**
- Charter Oak Fire Ins Co
- Travelers Prop Cas Co of America
- Co of America 25619
- Co of America 25674
- Travelers Prop Cas Co
- Charter Oak Fire Ins Co
- Travelers Prop Cas Co

**Coverages:**

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**Address:**
Pam Thompson
pam.thompson@moodyins.com
(303) 824-8600
(303) 370-0118

**City:**
Dacono, Suite 5049

**County:**
Symmetry Builders Inc
5009 Silver Peak Ave
Suite 1
Dacono, CO 80514

**Description of Operations / Locations / Vehicles:**
Programming Design Services for the Fire Station Restroom Renovation
City of Black Hawk is included as additional insured with respect to general liability.

**Certificate Holder:**
City of Black Hawk
PO Box 58
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:**

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Exhibit C - Sustainable Projects

Not Used
Exhibit D - Basis of Design
I. General Information

The Design Builder shall provide, without limitation, all the expertise, supervision, labor, materials, equipment and other resources necessary to design and construct all components of the project identified in and reasonably inferable from this Basis of Design.

The following conceptual scope of work is provided as an outline of the City’s criteria for the project, which are provided for the Design-Builder candidate’s use in preparing their response to the Request for Proposals, and the initial Preliminary Design submittal from the selected candidate, after that firm has confirmed the Basis of Design.

A. 01 00 00 General Requirements

a. Administration: The Design Builder shall be solely responsible for the management and administration of the Work, coordinating all activities necessary to perform the Work, and reporting and documenting all Work.

   i. Meetings: The Design Builder shall conduct weekly project meetings with the Owner to coordinate the design development and construction. The Design Builder shall prepare the agenda and record and distribute minutes of all meetings.

b. The Design Builder shall provide their own temporary heat and weather protection as required to protect their work until accepted by the Owner. The Contractor shall provide temporary heat compliant with all local, State and Federal codes, regulations and ordinances for the fire station if required due to any shut down of systems.

c. The Contractor shall be responsible for all cutting and patching as it affects their scope and the accomplishment of their work. Patch-back of work previously demolished by the Contractor as required to provide a complete and operable system shall also be the responsibility of the Contractor.

d. The Contractor will be required to provide all pedestrian, landscaping & existing improvements protection and traffic control as defined by the Contract Documents or as normally required to protect the safety of persons and property and the interests of the Owner. The Contractor is solely responsible for the safety of all personnel in or around the work area.

e. The Contractor shall comply with all federal, state and local safety laws and other regulations applicable to their Work. The Contractor is responsible for all permits required for the Work being performed and must coordinate directly with all Authorities Having Jurisdiction (AHJ’s) including permitting coordination with the City of Black Hawk.

f. Meet all International Building Code (IBC) requirements adopted by the City of Black Hawk including the applicable compliance method to meet the International Existing Building Code.
g. The Design Builder shall provide all debris containment, debris storage and debris removal in their contract, as well as all work necessary to provide a clean site at the end of each working day, as required by the Owner. The site and all Owner’s improvements thereon shall be returned to the Owner undamaged and consistent with their condition the day before Notice to Proceed.

h. A Safety and Hazardous Communications Plan, including, without limitation, all applicable Material Safety Data Sheets (MSDS) shall be required from the Contractor prior to commencing work on the site. Strict adherence to the plan is required.

i. The Contractor, their employees, and subcontractors shall not have access to the Owner’s or any other adjacent premises at any time for the purpose of using restroom or other facilities. The Design Builder shall provide all necessary facilities for workers.

j. Temporary Facilities: The Design Builder is responsible for any temporary facilities required. No portion of the existing fire station (except the attic space) shall be used for the Design Builder’s office, staging, or other uses, except as specifically identified herein.

k. Temporary utilities will be provided by the Owner per below. Wiring, plumbing, terminations and continuity checks for these utilities will be at the Design Builder’s sole expense.
   i. Water: Water may be accessed from a hose bib inside the apparatus bay at near the bottom of the west stairwell.
   ii. Electricity: Design Builder will be provided power from one point in the attic space, and one exterior power outlet. Assume all other existing power outlets will be in use by the building occupants.

l. Staging: Equipment may be staged off site as shown in Attachment One – Design Builder’s Parking and Staging Area during the work period. Design Builder shall provide fencing and is responsible for the security of the staging area.

m. Trash/Recycling: Design Builder is responsible for removing all trash and debris from the site.

n. Fire Station Operation: The fire station operates 24 hours per day, 7 days per week and must remain operational throughout the project. Operational is defined as a facility that can house and immediately dispatch emergency responder personnel and their equipment, and otherwise be used for its intended purpose.
   i. Apparatus Bay: Only the northern-most apparatus bay may be used by the Design Builder to perform the work. Use shall be limited to temporary staging (1 work day or less) for deliveries. Use of this apparatus bay is limited to daytime hours only. This bay must be available for fire engine parking every night. Vehicles in the apparatus bay may not keep engines running (engine idling) to avoid contamination of the air in the apparatus bay.
   ii. Parking: There is no parking available on fire station property for Design Builder personnel. Design Builder personnel may park in the Parking and Staging area identified in Attachment One – Design Builder’s Parking and Staging Area.
   iii. Deliveries: Deliveries may use the northern-most apparatus bay. If other deliveries are required, they must be coordinated with the Owner at least three (3) business days in advance in writing, so delivery vehicles do not block fire department vehicles from emergency dispatch. Emergency dispatch will be required from all operating apparatus bays and the parking lot on the North side of the fire station.
   iv. Stairwells: Design Builder shall use the West stairwell.
   v. Noise Restrictions: Fire station personnel must be able to sleep between the hours of 6pm to 7am daily. Work outside these hours must not be audible to fire station occupants and must be approved in writing at least three (3) days in advance of performing the work.
vi. Dormitories: Dormitories may be closed for a portion of the work as required with at least three (3) business days in advance in writing. Temporary sleeping facilities must be provided if necessary to maintain a minimum of eight (8) beds in at least three (3) different rooms at all times.

o. Impact Analysis: Provide, within one week of award, a Logistics Plan and Impact Analysis that defines the planned impact to operations at the fire station including but not limited to:
   i. Utility Shut Downs: Provide specific dates, and durations of shutdowns for each utility. Provide an explanation of how temporary service will be provided (if required) to maintain operation of the fire station.
   ii. Proposed Construction Work Hours and Days.
   iii. Location of Delivery Area and Staging Area.
   iv. Room Closure Schedule: Provide room name, dates, and duration of closures expected.
   v. Temporary Facilities Description
   vi. Material Delivery: Describe any materials that cannot be delivered via the West stairwell. Describe your proposed plan for delivering these materials and the impact to the operations of the station.
   vii. Other: Any other information that will impact the operations of the existing facility.

p. Schedule: Provide a Critical Path Method schedule showing all scheduled activities on the project. Provide an updated schedule monthly with each application for payment. When periodic update indicates the Work is 7 or more calendar days behind the current approved schedule, submit a separate recovery schedule indicating means by which the Design Builder intends to regain compliance with the schedule. Indicate changes to working hours, working days, crew sizes, and equipment required to achieve compliance, and date by which recovery will be accomplished. At a minimum, the schedule shall include the following activities:
   i. Notice to Proceed
   ii. Design Milestones
   iii. Permitting Steps
   iv. Major Shop Drawing Submittals
   v. Material Procurement Steps
   vi. Start of Construction
   vii. Utility Shut Downs
   viii. Heating System Shut Downs
   ix. Permanent Heating Startup
   x. Occupied Space Shut Downs (dormitories, bathrooms, kitchen, etc.)
   xi. Substantial Completion
   xii. Final Completion

q. Adverse Weather Conditions: Adverse weather conditions are those that are normal weather conditions for the site and time of year, but that can, depending on the Work to be performed, cause defective Work or impact project schedule. In the project schedule, the Design Builder shall identify the number of assumed adverse weather days that will impact the Work in a separate line item identified as “Normal Weather Days”. The number of days assumed shall be consistent with the local 10 year average data as defined by the National Climatic Data Center. The “Normal Weather Days” activity shall be placed on the Critical Path of the project schedule.

r. Abnormal Weather Conditions: Abnormal weather conditions are weather conditions experienced that fall outside of the extreme ranges of weather data published by the National Climatic Data Center for the region for the ten (10) year period immediately preceding the date of the Contract. If abnormal weather conditions are the basis for a request for an extension of the Contract Time, such request shall be documented by data substantiating that weather conditions were unusually severe for the period of time and could not have been reasonably anticipated. Regardless of actual weather conditions, any Day in which the Design Builder is able to work eighty percent
(80%) or more of its scheduled work force shall not be counted as an abnormal weather Day for purposes of calculating weather related time extensions.

s. Shop Drawings, Product Data, and Samples: Product data for all permanent, significant materials not specifically referenced in this RFP must be submitted and approved by the Owner. Shop drawings, product data, and samples must be approved in writing by the designer of record with cc: to the Owner.

t. Commissioning: The Owner will engage an independent commissioning agent (CxA) to commission the systems. The Design Builder shall coordinate with CxA as required.

u. Quality Control: Design Builder is responsible for all quality control of the Work. Design Builder shall provide a written, project-specific Quality Control Plan for approval by the Owner within 30 days of receipt of NTP. Quality Control Plan must be approved by the Owner prior to the start of construction.

v. As-Built Plans: The Design Builder shall provide As-Built drawings (in PDF) and Record Drawings (in fully accessible CAD files and PDFs, not “plot” files) at the end of the project and prior to Final Acceptance.

w. Materials Testing and Inspections: The Design Builder is responsible for coordination with an independent 3rd party testing and inspections agency for testing and inspections as required by AHJ's, designers of record, and applicable authorities. The testing and inspections agency will be contracted to the Owner and paid for outside the Design Builder’s scope. The Design Builder is responsible for all coordination with testing agency and tracking and confirming receipt of all required test reports in a timely manner from the testing agency.

x. Attic Stock: Provide the following attic stock:
   i. Lighting: Two (2) extra lamps of each type of lamp;
   ii. HVAC Filters: One complete set of filters (one filter per piece of equipment);
   iii. Fuses: One complete set of fuses (if applicable); and
   iv. Others as specified by the designer of record.

y. Operations & Maintenance: Provide operations and maintenance data and recommendations for all Work, together with training of Owner's staff on all operations and maintenance requirements for the Work.

z. Design: Attachment Five – Conceptual Architectural Plan shows the proposed layout of the desired improvements.

B. 02 00 00 Existing Conditions

a. Existing Facilities: Design Builder is responsible for protecting all existing facilities. Design Builder is responsible for repairing damage made to existing facilities. Design Builder is responsible for providing photographs documenting the conditions of the existing facility prior to beginning the work (referred to as ’pre-work photos’). Pre-work photos must be delivered to the Owner prior to beginning any work on site.

b. Selective Demolition: Design Builder shall perform all demolition required for the improvements.

c. Hazardous Materials: The Design Builder is responsible for notifying the Owner if hazardous materials are encountered during the Work.

d. A portion of the existing concrete wall at the west end of the locker room will have to be removed
to provide access to the locker room. The final configuration of the locker room will determine the extent of the demolition. The roof diaphragm is connected to the top of the wall and at least one roof beam rests on the wall where the new access opening is shown. The roof framing may need to be modified to provide adequate clearance and the existing concrete wall may need to be strengthened.

e. The existing steel framing may need to be modified or penetrated to accommodate the relocation of mechanical and plumbing systems.

f. Vertical clearances to the existing structural steel may not be adequate at the northeast and northwest corners of the locker room and this should be studied during the design phase of the project.

g. The scope of existing conditions work above is provided for clarification, but is by no means complete. The Design Builder shall familiarize themselves with the existing conditions by scheduling a site visit. The original conditions can be researched in the drawings provided for the existing fire station, but these may not reflect modifications since they were completed.

C. 03 00 00 Concrete

a. Concrete work will involve normal weight concrete on metal deck and possibly new foundations if the new work is supported by columns. Concrete strength will need to be at least 3,500 psi and no air entrainment is necessary. See Attachment Six – Conceptual Structural Plan for more information on the proposed structural components.

D. 04 00 00 Masonry

a. Masonry work will involve the patching of existing CMU partitions and construction of new partitions. Masonry work is non-structural, no minimum strength required.

E. 05 00 00 Metals

a. The existing structural steel is A36, A500, or A588. New work will include structural framing and possibly the cover plating or strengthening of existing steel elements. New materials should match the properties of the existing materials. Any modifications to existing structural elements must be designed by a structural engineer.

b. New walkways will be needed to access mechanical equipment. These walkways will be composed of structural framing members with bar grating, supported from the existing structural elements.

c. If new columns are needed they shall be A53 or A500 steel.

F. 06 00 00 Wood, Plastics, and Composites

a. No structural wood is to be used in this project. Blocking and miscellaneous wood can be any common material.

b. Millwork and solid surface countertops shall match the quality of those components in the existing Black Hawk Emergency Operations Center (EOC).

G. 07 00 00 Thermal and Moisture Protection

a. Provide and install necessary thermal and moisture protection as required to meet current
standards of the industry, and all local, State and Federal codes and regulations.

H. 08 00 00 Openings
   a. Provide and install doors as required for proposed improvements as required to meet current standards of the industry, and all local, State and Federal codes and regulations.

I. 09 00 00 Finishes
   a. All finishes shall match the quality the finishes in the EOC. Substitution requests from the EOC standard must be approved by the Owner in writing.
   b. Provide access panels for all valves, filters, fuses, or any other components requiring maintenance access.

J. 10 00 00 Specialties
   a. Design Builder shall provide all bathroom furnishings including but not limited to soap dispensers, toilet paper dispensers, trash cans, hand driers, towel hooks, mirrors, and shower curtains to match the standards in the EOC.
   b. Provide two keys for each accessory to the Owner.

K. 11 00 00 Equipment
   a. Not used.

L. 12 00 00 Furnishings
   a. All moveable furnishings will be provided and installed by the Owner.

M. 13 00 00 Special Construction
   a. Not used.

N. 14 00 00 Conveying Equipment
   a. Not used.

O. 21 00 00 Fire Suppression
   a. Not used.

P. 22 00 00 Plumbing
   a. Plumbing fixtures and materials shall be the same products as used in the EOC restrooms. Design documents for the EOC are attached for reference as Attachment Three – EOC Construction Drawings. A sampling of applicable fixtures for reference purposes include:
   b. Water Closets
      Kohler, Wellworth Model K-3458 floor mounted tank type, elongated bowl, pressure assisted 1.8 gallon per flush siphon jet action, vitreous china and Benexe seat model 527-SS.
   c. Urinals
Kohler Dexter, Model K-5016-T Vitreous China, wall hung, washout type, 1.0 gallon per flush, wall hangers, Zurn ZER-60003AV-WS1-CPW manual flush valve, chrome plated, ADA/ANSI compliant.

d. Lavatories
Moen model 22224 single compartment 21” x 16” 20 ga, stainless steel, with Delta model 400-DST April 30, 2018. Single handle faucet with chrome finish and thermostatic mixing valve.

e. Floor Drains
Sioux Chief, Model 832, 6.5 inch diameter, nickel bronze strainer, PVC body with Flashing clamp, integral “trap-guard” accessory.

f. Showers and Enclosures
Aquatic, shower enclosure Model 6030BFSC-ADA, installed in accordance with manufacturers recommendations. 60” x 30” x 72 Fittings to be Delta Model T13H132 pressure mixing valve with 1.5 GPM head and chrome handle.

Q. 23 00 00 Heating, Ventilation, and Air Conditioning (HVAC)

a. A set of Permitted Mechanical Construction drawings dated 10/12/94 as issued by Haller & Larson LTD Architects and McFall, Konkel & Kimball Mechanical Engineers is provided as Attachment Two – Fire Station Record Drawings that shows the general routing of ductwork, the location of furnaces, unit heaters, exhaust fans and plumbing isometrics used for construction; specifically as it pertains to the proposed modifications under consideration in the 3rd floor attic. Drawings to be utilized for mechanical reference include:
   i. M-1  Mechanical Legend, Abbreviations and General Notes dated 10/12/94
   ii. M-2  Plumbing Waste, Vent and Water Piping drawing for 1st and 2nd floor dated 10/12/94
   iii. M-3  Mechanical 1st and 2nd floor mechanical plans with addendums and changes dated 1/20/95

b. The proposed location of the new restrooms/showers is located in the Attic and would reside in the same location as the current location of the (4) furnaces, existing restroom exhaust system, and the (2) attic plenum gas fired unit heaters. All of this equipment will need to be relocated and ductwork modified to accommodate the addition of the proposed restroom addition. Changes required (and not all inclusive) would include:
   i. Relocation of FURN-1, 2, 3, and 4
   ii. Relocation of UH-6 and UH-7
   iii. Relocation of EF-2 and associated ductwork
   iv. Rerouting and moving the horizontal and vertical ductwork associated with furnaces FURN-1,2,3 and 4.
   v. Moving and rerouting the flues and combustion air associated with UH-6 and UH-7
   vi. Reconfiguring the waste, vent, and water piping currently residing in the 2nd floor to accommodate the addition of the fixtures proposed in the 3rd floor attic.

c. Any proposed mechanical subcontractor will need to verify existing conditions and capacities in order to move forward. The project considers the addition within an attic space that is over existing toilet rooms on the 2nd floor. The existing slab will need to be expanded to accommodate water piping and waste and vent piping.

d. Although not shown on the Scheme C drawing from Allred & Associates, gas-fired unit heaters are also within this space that would need to be relocated and incorporated into the overall renovation design.

e. Following is a sampling of photos showing the condition in the attic that will need to be modified. Note: The equipment as scheduled and noted on drawing M-4 dated 10/12//94 is close to representing the equipment installed
Photo 1 – Looking East: East End Furnace and Exhaust Ductwork.
Photo 2 – Looking North: Exhaust ductwork and exhaust fan currently residing on the slab that will ultimately house the addition of the attic shower area. Note: supply air duct through the existing slab will need to be moved to below to slab and reconnected.
Photo 3 – Looking Southeast: This entire furnace assembly with humidifier noted below currently resides where the stairwell is proposed to enter the new restroom. This assembly will have to be moved either North or South of the existing location to a new slab location.
Photo 4 – Looking West: This furnace and supply and return air ductwork, along with a slab penetration for a lower level supply air grille will need to be located to and extended slab to the North (right hand side of picture) in order to clear the way for the addition of the shower/restroom.
Photo 5 – Looking Northeast: All horizontal ductwork will need to be relocated to the North (to the left in this photo) to allow for the attic concrete slab to be increased in size.
Photo 6 – Area Behind South Wall: The wall to the left in this photo will need to move the right (South) to expand the slab or have an access door cut into it to allow access to new equipment locations and access platforms. Ductwork will need to be moved to the South (to the right) to allow for the platform for the relocated furnaces.
Photo 7 - Looking East: Photo showing cabinet unit heater that will need to be relocated.

R. 25 00 00 Integrated Automation
   a. Not used.

S. 26 00 00 Electrical
   a. Provide and install all necessary electrical and lighting systems necessary for proposed modifications. Light fixtures shall be the same make and model and level of finish as the lighting in the EOC. Please see Attachment Four – EOC Luminaire Cut Sheets for more information.

T. 27 00 00 Communications
   a. Provide and install station dispatching speaker(s) to match the quality of the existing speakers in the facility.

U. 28 00 00 Electronic Safety and Security
   a. Provide and install all necessary fire detection and alarm systems necessary for proposed modifications to be compliant with all local, State and Federal codes, regulations and ordinances.
V. 33 00 00 Utilities

a. Utility shut offs that will affect fire station operation must be coordinated with the Owner. Temporary services must be provided as needed to maintain a fully operational fire station. Existing utilities include but are not limited to electricity, gas, sewer, water, and communications.

i. Electricity: If electricity will be shut down, temporary power must be provided to the facility.

ii. If existing showers will be shut down, fire department personnel may use showers at the EOC if shut down is less than 1 day

iii. If existing showers will be shut down for more than one (1) day, the Design Builder will provide a temporary shower facility on site for the fire department personnel’s use.

iv. If the kitchen will be shut down, provide food of a quality acceptable for fire station personnel.
List of Attachments

- Attachment One – Design Builder Parking & Staging Area
- Attachment Three – EOC Construction Drawings
- Attachment Four – EOC Luminaire Cut Sheets
- Attachment Five – Conceptual Architectural Plan
- Attachment Six – Conceptual Structural Plan
Fire Station RR Renovation

Attachment Two – Fire Station Record Drawings

From Haller & Larson Ltd.
Dated: October 12, 1994

Fire Station Record Drawings can be downloaded from the link below:

https://peakprogramvalue.sharefile.com/d/sa5063b69b34493db
FEATURES & SPECIFICATIONS

INTENDED USE — For applications that require the clean appearance of a low profile, brightness controlled wraparound. Provides broad distribution of light for offices, schools and corridors. Certain airborne contaminants can diminish integrity of acrylic. Click here for Acrylic Environmental Compatibility table for suitable uses.

CONSTRUCTION — Metal parts are formed from code-gauge steel. Primarily diffuser is 100% acrylic with sequentially welded luminous ends. Continuous side flanges on fixture body provide tight trap and continuous diffuser support to prevent accidental opening and simplify maintenance.

Finish: Five stage iron-phosphate pretreatment assure superior paint adhesion and rust resistance.

Painted parts finished with high-glass, high-reflectivity baked white polyester enamel (low VOC).

OPTICS — Curved prismatic diffuser with linear side prisms minimize lamp image and provides high angle brightness control. Luminous endplates soften appearance for improved aesthetics.

ELECTRICAL — Thermally protected, resettable, Class P, HIP, non-PCB, UL Listed, CSA certified ballast is standard. Luminaire is suitable for damp locations: AWM, TFN or THHN wire used throughout, rated for required temperatures.

UL/CSA Listed ballast disconnect w/straight leads and leads provided standard.

LISTINGS — UL Listed to US and Canadian safety standards. Optional Canada CSA or Mexico NOM.

WARRANTY — 1-year limited warranty. Complete warranty terms located at www.arcolibrands.com/CustomerResources/Terms_and_conditions.aspx

Note: Specifications subject to change without notice.

Owner-DB Agreement - Exhibit D - Basis of Design for the City of Black Hawk’s Fire Station RR Renovation Attachment Four - EOC Luminaire Cut Sheets

ORDERING INFORMATION

For shortest lead times, configure products using standard options (shown in bold).

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<th>Options</th>
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</thead>
<tbody>
<tr>
<td>LB 2 lamps, 10' wide</td>
<td>17</td>
<td>32W T8 (48&quot;)</td>
<td>120</td>
<td>GEB1015 Electronic ballast, &lt;10% THD, instant start</td>
</tr>
<tr>
<td></td>
<td>32</td>
<td>32W T8 (48&quot;)</td>
<td>277</td>
<td>GB1015 Electronic ballast, &lt;10% THD, programmed start</td>
</tr>
<tr>
<td></td>
<td>1035</td>
<td>105W T5 (20-6&quot;)</td>
<td>1247</td>
<td>GB1015S Electronic ballast, &lt;10% THD, programmed start</td>
</tr>
<tr>
<td></td>
<td>2635</td>
<td>29W T5 (46-6&quot;)</td>
<td>3487</td>
<td>GB1015S Electronic ballast, &lt;10% THD, programmed start</td>
</tr>
<tr>
<td></td>
<td>3415</td>
<td>34W T5 R0 (46-6&quot;)</td>
<td>5478</td>
<td>LMVOLTS MVOLT* Internal fast-blow fuse</td>
</tr>
</tbody>
</table>

Accessories: Order as separate catalog number.

- SQ Swivel-arm hanger (specify in 2" increments)
- 1B Ceiling spacer (adjusts from 1-1/2" to 2-1/2" from ceiling)

Notes:
1. Electronic ballast 120V through 277V only.
2. Only available with 1415 or 2415.
3. Not available with 18-2’ configuration.
4. Must specify voltage.
LB Low-Profile Wraparound, Narrow Body

**MOUNTING DATA**
For rearmount installation, surface or stem mounting. Stem mounting not available on LB units.

**Individual installation** — Two single-stem hangers required.

**Row installation** — One hanger per fixture plus one per row required. See ACCESSORIES below for hangering devices.

**DIMENSIONS**
Inches (centimeters). Subject to change without notice.

A = 144 x 12 (3,655 x 305) Oval Hck
B = 113/4 x 17/4 x (6, x 6, x 4,000)
C = 20 x 15/4 x (6, x 6, x 4,000)

**PHOTOMETRICS**
Calculated using the zonal cavity method in accordance with E.I.S.N.A. 414140 procedure. Floor reflectances are 20%. Lamp configurations shown are typical. Full photometric data on these and other configurations available upon request.

**Test 8 BAL16520 - LB 2 32 MVOLT**

**Coefficients of Utilization:**
%

<table>
<thead>
<tr>
<th>pt</th>
<th>20%</th>
</tr>
</thead>
<tbody>
<tr>
<td>pc</td>
<td>50% 10%</td>
</tr>
<tr>
<td>0</td>
<td>103 103</td>
</tr>
<tr>
<td>1</td>
<td>89 89</td>
</tr>
<tr>
<td>2</td>
<td>79 79</td>
</tr>
<tr>
<td>3</td>
<td>70 70</td>
</tr>
<tr>
<td>4</td>
<td>56 56</td>
</tr>
<tr>
<td>5</td>
<td>50 50</td>
</tr>
<tr>
<td>6</td>
<td>46 46</td>
</tr>
<tr>
<td>7</td>
<td>42 42</td>
</tr>
<tr>
<td>8</td>
<td>38 38</td>
</tr>
<tr>
<td>9</td>
<td>35 35</td>
</tr>
</tbody>
</table>

**Test 8 LTL 1992A - LB 2 2AT5 GEB5**

**Coefficient of Utilization - Zonal Cavity Method**

**Effective Floor Cavity Reflectance: 20%**

**Zonal Luminous Summary**

<table>
<thead>
<tr>
<th>Zone</th>
<th>Lumen %</th>
<th>Lamp %</th>
<th>Capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td>0° - 30°</td>
<td>133,015.5</td>
<td>33,3</td>
<td>28.3</td>
</tr>
<tr>
<td>0° - 60°</td>
<td>2,263.3</td>
<td>38.4</td>
<td>43.1</td>
</tr>
<tr>
<td>0° - 60°</td>
<td>3,676.3</td>
<td>62.3</td>
<td>69.9</td>
</tr>
<tr>
<td>0° - 90°</td>
<td>5133.6</td>
<td>76.8</td>
<td>83.3</td>
</tr>
<tr>
<td>90° - 180°</td>
<td>1342.9</td>
<td>13.1</td>
<td></td>
</tr>
<tr>
<td>0° - 180°</td>
<td>5265.0</td>
<td>89.1</td>
<td>100.0</td>
</tr>
</tbody>
</table>

LITHONIA LIGHTING®
An Acuity Brands Company

FLUORESCENT: One Lithonia Way, Conyers, GA 30012 Phone: 800-858-7783 Fax: 770-929-8789 www.lithonia.com © 2007-2014 Acuity Brands Lighting, Inc. All rights reserved. Rev. 02/04/14
FEATURES & SPECIFICATIONS
INTERIOR — Typical applications include corridors, lobbies, conference rooms and private offices.
CONSTRUCTION — Galvanized steel mounting/plaster frame, galvanized steel junction box with bottom-hinged access covers and spring latches. Reflectors are retained by tension springs.
Vertically adjustable mounting brackets with commercial bar hangers provide 3-3/4" total adjustment.
Two combination 1/2"-3/4" and four 1/2" knockouts for straight-through conduit runs. Capacity: 8 (4 in, 4 out). No. 12 AWG conductors, rated for 90°C.
Accommodates 32"-4" joint spacing.
Passive cooling thermal management for 25°C standard; high ambient (40°C) option available. Light engine and drivers are accessible from above or below ceiling.
Max ceiling thickness 1-1/2".
OPTICS — LEDS are binned to a 3-step 50/50/80 CRI minimum.
LED light source concealed with diffusing optical lens.
General illumination with 1.0 500/1% and 5% cutoff to source and source image.
Self-flanged anodized reflectors in specular, semi-specular, or matte diffuse finishes. Also available in white and black painted reflectors.
ELECTRICAL — Multi-volt (120-277V, 50/60Hz) elfed/ED 0-10V dimming drivers mounted to junction box, 70% or 1% minimum dimming level available.
0-10V dimming fixture requires two (2) additional low-voltage wires to be pulled.
70% lumen maintenance at 50,000 hours.
LISTINGS — Certified to US and Canadian safety standards. Damp location standard (wet location, covered ceiling optional).
Actual performance may differ as a result of end-user environment and application.
All values are design or typical values, measured under laboratory conditions at 25°C.
Note: Specifications subject to change without notice.

ORDERING INFORMATION
Lead times will vary depending on options selected. Consult with your sales representative.

Example: LDN1 15/15 065AR MVOLT EZ10

<table>
<thead>
<tr>
<th>Series</th>
<th>Color Temperature</th>
<th>Lumens</th>
<th>Aperture/Trim Color</th>
<th>Finish</th>
<th>Voltage</th>
</tr>
</thead>
<tbody>
<tr>
<td>LDN1 6&quot; round</td>
<td>2700K</td>
<td>5000 lumens</td>
<td>25</td>
<td>2500 lumens</td>
<td>120V, Multi-volt</td>
</tr>
<tr>
<td></td>
<td>3000K</td>
<td>1000 lumens</td>
<td>30</td>
<td>3000 lumens</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3500K</td>
<td>1500 lumens</td>
<td>40</td>
<td>4000 lumens</td>
<td></td>
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<td></td>
<td>4000K</td>
<td>2000 lumens</td>
<td>50</td>
<td>5000 lumens</td>
<td></td>
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</tbody>
</table>

Driver Options
<table>
<thead>
<tr>
<th>Options</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>EZ10 elfed/ED 10% 0-10V</td>
<td>Single fuse</td>
</tr>
<tr>
<td>EZ1 elfed/ED 1% 0-10V</td>
<td>White painted flange</td>
</tr>
</tbody>
</table>

**Specify**

Voltage: Row Information: Colors/Finishes: Switching Options: Ceiling Type: Suspension Lengths: Specific Dimming Ballasts (if required): Other:

No dimming required. Is EZ10 the standard option?
**LDN6**

* All dimensions are inches (centimeters) unless otherwise noted.

**LDN6 1500 LUMEN**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/8 (18.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 3000 LUMEN**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/4 (18.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 5000 LUMEN**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/8 (18.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 CP**
- Max. Spacing above 3000 Lumens: 24 x 24 x 14
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/8 (18.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 1500 EL-ELR**
- Max. Spacing above 3000 Lumens: 24 x 24 x 14
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/8 (18.1)
- Overlap trim: 7-1/2 (19.1)

**Notes**
- Tested in accordance with IESNA LM-79-08.
- Tested to current IES and NEMA standards under stabilized laboratory conditions.
- GNI 80 typical.

---

**Lithonia Lighting**
An Acuity Brands Company

DOWNTURNING: One Lithonia Way Conyers, GA 30012 
Phone: 800-315-6935 Fax: 770-860-3129 www.lithonia.com 
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LDN6

ADDITIONAL DATA

<table>
<thead>
<tr>
<th>MANUFACTURER</th>
<th>PART NO.</th>
<th>POWER BOOSTER AVAILABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lutron*</td>
<td>DV175TV</td>
<td>CN100</td>
</tr>
<tr>
<td></td>
<td>DV1757TV</td>
<td>PS100</td>
</tr>
<tr>
<td></td>
<td>NVA-T77TV</td>
<td>AM150-15W</td>
</tr>
<tr>
<td></td>
<td>NVA-T7TV</td>
<td>AM150-15W</td>
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<tr>
<td>Leviton*</td>
<td>AW1MC7-20W</td>
<td>CN100</td>
</tr>
<tr>
<td></td>
<td>AW1MC7-1W</td>
<td>PS100</td>
</tr>
<tr>
<td>Synergy*</td>
<td>ISO BC</td>
<td>RDMFC</td>
</tr>
<tr>
<td></td>
<td>DL1/PCS</td>
<td>RDMFC</td>
</tr>
<tr>
<td>Douglas Lighting Controls</td>
<td>WPC-5721</td>
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</tr>
<tr>
<td>Entertainment Technology</td>
<td>Tag Glide T6400/AM120 (120V)</td>
<td>Tag Glide Neolux (GHT500/AM130 (120V)</td>
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<tr>
<td></td>
<td>CS00705/AMU</td>
<td></td>
</tr>
<tr>
<td>Honeywell</td>
<td>EL7350/109</td>
<td>EL7350/109 (optional)</td>
</tr>
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<td></td>
<td>EL7350/109</td>
<td>EL7350/109 (optional)</td>
</tr>
<tr>
<td>HUNT Dimming</td>
<td>Preset: slide P5-000-IV and P5-015-WH</td>
<td>Preset: slide P5-000-IV-WH and P5-015-WH-WH</td>
</tr>
<tr>
<td></td>
<td>Remote mounted unit: LS-010</td>
<td></td>
</tr>
<tr>
<td>Levich Electronic Products</td>
<td>Software</td>
<td>PX</td>
</tr>
<tr>
<td>PDM Electrical Products</td>
<td>WPC-5721</td>
<td></td>
</tr>
<tr>
<td>Scaffold Controls</td>
<td>BKE with DALL interface port</td>
<td>BKE with DALL interface port</td>
</tr>
<tr>
<td>Wattstopper*</td>
<td>LS-4 used with (LD-101 and ICD-150)</td>
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</table>

EL/ELR AVAILABILITY/COMPATIBILITY - INITIAL LUMENS

<table>
<thead>
<tr>
<th>Lumen package</th>
<th>Watts</th>
<th>Initial lumens</th>
<th>Emergency LED driver</th>
</tr>
</thead>
<tbody>
<tr>
<td>600</td>
<td>12</td>
<td>300</td>
<td>P31050</td>
</tr>
<tr>
<td>1000</td>
<td>18</td>
<td>575</td>
<td>P31050</td>
</tr>
<tr>
<td>1500</td>
<td>35</td>
<td>640</td>
<td>P31050</td>
</tr>
<tr>
<td>2000</td>
<td>35</td>
<td>690</td>
<td>P31050</td>
</tr>
</tbody>
</table>

LUMEN OUTPUT MULTIPLIERS - FINISH

<table>
<thead>
<tr>
<th>Finish</th>
<th>Clear (AR)</th>
<th>White (WH)</th>
<th>Black (BK)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specular (LS)</td>
<td>1.0</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Semi-specular (LS)</td>
<td>0.950</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Matte diffus (LD)</td>
<td>0.85</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Painted</td>
<td>N/A</td>
<td>0.87</td>
<td>0.73</td>
</tr>
</tbody>
</table>

LUMEN OUTPUT MULTIPLIERS - CCT

<table>
<thead>
<tr>
<th>CCT</th>
<th>2700K</th>
<th>3000K</th>
<th>3500K</th>
<th>4000K</th>
</tr>
</thead>
<tbody>
<tr>
<td>R90</td>
<td>0.950</td>
<td>0.966</td>
<td>1.000</td>
<td>1.025</td>
</tr>
</tbody>
</table>

nLight® Control Accessories:

Order as separate catalog number. Visit www.sensortouch.com/ldn6 for complete listing of nlight controls.

WallPod stations
- On/Off
- On/Off & Raise/Lower
- Graphic Touchscreen
- Photocell controls
- Dimming

Model number
- nPOD (color)
- nPOD DX (color)
- nPOD GFX (color)
- nPOD AGX

Occupancy sensors
- Small motion 360°, ceiling (PIR / dual tech)
- Large motion 360°, ceiling (PIR / dual tech)
- Wide view (PIR / dual tech)
- Wall Switch w/ Raise/Lower (PIR / dual tech)
- Cat-5 cables (plenum rated)
  - 10G, CATS 10FT
  - 15G, CATS 15FT

Model number
- nCM 9 / nCM P07 9
- nCM 10 / nCM P07 10
- nWV 16 / nWV P07 16
- nWSX LV DX / nWSX P07 LV DX
- Model number
  - CATS 10FT J1
  - CATS 15FT J1

Lithonia Lighting
An Acuity Brands Company

189
**FEATURES & SPECIFICATIONS**

**INTENDED USE**— Typical applications include corridors, lobbies, conference rooms, and private offices.

**CONSTRUCTION**— Galvanized steel mounting/gracile frame; galvanized steel junction box with bottom-hinged access cover and spring latch. Reflectors are retained by tension springs. Vertically adjustable mounting brackets with commercial bar hangers provide 4-3/4" total adjustment. Two combination 5/16"-3/4" and four 5/16" knockouts for straight-through conduit runs. Capacity: 8 (4 in, 4 out). No. 12 AWG conductors, rated for 90°C. Accommodates 12"-24" joint spacing.

Passive cooling thermal management for 25°C standard; high ambient (40°C) option available. Light engine and drivers are accessible from above or below ceiling.

Max ceiling thickness 1-1/2".

**OPTICS**— LEDs are binned to a 3-step SDCR: 80 CR minimum. LED light source concealed with diffusing optical lens. General illumination lighting with 1.0 50/50 and 55° cutoff to source and source image. Self-flanged anodized reflectors in specular, semi-specular, or matte diffuse finishes. Also available in white and black painted reflectors.

**ELECTRICAL**— Multi-volt (120-277V, 500mA) edLED 0-10V dimming drivers mounted to junction box. 10% or 1% minimum dimming level available. 0-10V dimming fixture requires two (2) additional low-voltage wires to be pulled. 700 lumen maintenance at 50,000 hours.

**LISTINGS**— Certified to US and Canadian safety standards. Damp location standard (wet location, covered ceiling optional).

**WARRANTY**— 5-year limited warranty. Complete warranty terms located at [www.valumetrix.com/ContractorResources/Terms_and_conditions.pdf](http://www.valumetrix.com/ContractorResources/Terms_and_conditions.pdf).

Actual performance may differ as a result of end-user environment and application. All values are design or typical values, measured under laboratory conditions at 25°C. Note: Specifications subject to change without notice.

---

**ORDERING INFORMATION**

Lead times will vary depending on options selected. Consult with your sales representative.

<table>
<thead>
<tr>
<th>Series</th>
<th>Color Temperature</th>
<th>Lumen</th>
<th>Aperture/Trim Color</th>
<th><strong>Specify</strong></th>
<th><strong>Voltage</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>LDN6</td>
<td>4000K</td>
<td>25000</td>
<td>LED Downlight</td>
<td>120</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3000K</td>
<td>18000</td>
<td>AR Clear</td>
<td>120</td>
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<tr>
<td></td>
<td>2700K</td>
<td>15000</td>
<td>LWD Wallwash</td>
<td>277</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2500K</td>
<td>12000</td>
<td>WR White</td>
<td>120</td>
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<td></td>
<td>2300K</td>
<td>10000</td>
<td>BR Black</td>
<td>277</td>
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<td></td>
<td>2100K</td>
<td>8000</td>
<td>LS Specular</td>
<td>277</td>
<td></td>
</tr>
</tbody>
</table>

**Driver Options**

- **EZ10**: edLED 10% 0-10V
- **EZ1**: edLED 1% 0-10V

- **Specify**: Single fuse, White painted flange, Black painted flange, Battery pack (remote), Battery pack, night dimming pack contains 0-10V edLED drivers.

- NPS40/EDR: Night dimming pack controls 0-10V edLED drivers. IR controls fixtures on emergency circuit.

- HA0: High ambient option
- CP: Chicago Pentum
- WL: Wall location
- RRI: RELOC+ ready luminaire connectors enable a simple and consistent factory installed option across all AR luminaire brands. Refer to RRI for complete nomenclature. Available only in RRLA, RRLB, RRLAE, and RRLCE25.

---

**Notes**

1. Overall height varies based on luminaire package: refer to dimensional chart on page 3.
2. Not available with finishers.
3. Not available with emergency options.
4. Must specify voltage 120V or 277V.
5. Available with clear (AR) reflector only.

---

**Accessories**

- **EAC DSM 125**: Compact interruptible emergency AC power system
- **EAC DSM 125**: Compact interruptible emergency AC power system
- **GRA68 32**: Oversized trim ring with 8" outside diameter
- **SCA6**: Sloped ceiling adapter. Refer to **TEFL-SCA** for more options.
LDN6

* All dimensions are inches (centimeters) unless otherwise noted.

**LDN6 1500 LUMEN**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-3/8 (19.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 3000 LUMEN**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/4 (19.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 5000 LUMEN**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/8 (18.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 CP**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/4 (19.1)
- Overlap trim: 7-1/2 (19.1)

**LDN6 1500 EL-ELR**
- Aperture: 6-1/4 (15.9)
- Ceiling Opening: 7-1/4 (19.1)
- Overlap trim: 7-1/2 (19.1)

---

**Notes**
- Tested in accordance with ESMA LM-29-08.
- Tested to current IES and NEMA standards under stabilized laboratory conditions.
- ONT 80 typical.

---

LDN6
LDN6

ADDITIONAL DATA

<table>
<thead>
<tr>
<th>MANUFACTURER</th>
<th>PART NO.</th>
<th>POWER BOOSTER AVAILABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lutron*</td>
<td>CL*MTR 70W</td>
<td>CN100</td>
</tr>
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<td></td>
<td>CL*MTR 70W</td>
<td>PS300</td>
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<td></td>
<td>AM1MG-70W</td>
<td></td>
</tr>
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<td></td>
<td>Leviton*</td>
<td>AM1MG-70W</td>
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<tr>
<td></td>
<td></td>
<td>Leviton Central Flourescent Control System</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Illumalite® IP7 Series</td>
</tr>
<tr>
<td>Synergy*</td>
<td>KG1 BC</td>
<td>RDMFC</td>
</tr>
<tr>
<td></td>
<td>SDL1PSC</td>
<td></td>
</tr>
<tr>
<td></td>
<td>DigitalEquinox (DE BC)</td>
<td></td>
</tr>
<tr>
<td>Douglas Lighting Controls</td>
<td>WPG-5721</td>
<td></td>
</tr>
<tr>
<td>Entertainment Technology</td>
<td>Top Glide TD400AM120 (120V)</td>
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<tr>
<td></td>
<td>Top Glide Nexstik (GHT400AM120) (120V)</td>
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</tr>
<tr>
<td>Honeywell</td>
<td>EL215A0919</td>
<td>EL215A1010 (optional)</td>
</tr>
<tr>
<td>HUNT Dimming</td>
<td>Prospect: PS-500-W and PS-100-WH</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prospect: PS-500-WH and PS-100-WH</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prospect: PS-500-WH and PS-100-WH</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prospect: PS-500-WH and PS-100-WH</td>
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<tr>
<td></td>
<td>Remote mounted unit: 70-010</td>
<td></td>
</tr>
<tr>
<td>Leviton*</td>
<td>Optional</td>
<td></td>
</tr>
<tr>
<td>PDM Electrical Products</td>
<td>WPG-5721</td>
<td></td>
</tr>
<tr>
<td>Scaffold Cables</td>
<td>TRC with DALL interface port</td>
<td>R/03 DALLiNeb Router</td>
</tr>
<tr>
<td>Wattstopper*</td>
<td>LS-4 used with (CD-101 and CD-108)</td>
<td></td>
</tr>
</tbody>
</table>

EL/ELR AVAILABILITY/COMPATIBILITY - INITIAL LUMENS

<table>
<thead>
<tr>
<th>Lumen package</th>
<th>Watts</th>
<th>Initial lumens EL/ELR</th>
<th>Emergency LED driver</th>
</tr>
</thead>
<tbody>
<tr>
<td>600</td>
<td>12</td>
<td>500</td>
<td>PS3050</td>
</tr>
<tr>
<td>1000</td>
<td>18</td>
<td>575</td>
<td>PS3050</td>
</tr>
<tr>
<td>1500</td>
<td>26</td>
<td>440</td>
<td>PS3050</td>
</tr>
<tr>
<td>2000</td>
<td>35</td>
<td>690</td>
<td>PS3050</td>
</tr>
</tbody>
</table>

LUMEN OUTPUT MULTIPLIERS - FINISH

<table>
<thead>
<tr>
<th>Specular (LS)</th>
<th>Clear (AR)</th>
<th>White (WR)</th>
<th>Black (BR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>1.0</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>0.95</td>
<td>0.85</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

LUMEN OUTPUT MULTIPLIERS - CCT

<table>
<thead>
<tr>
<th>80CRI</th>
<th>2700K</th>
<th>3000K</th>
<th>3500K</th>
<th>4000K</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.950</td>
<td>0.966</td>
<td>1.000</td>
<td>1.025</td>
<td></td>
</tr>
</tbody>
</table>

nLight® Control Accessories:

Order as separate catalog number. Visit www.sensoswitch.com/nlight for complete listing of nlight controls.
contractor to verify:

Voltage: Row Information:

Colors/Finishes: Switching Options:

Ceiling Type: Suspension Lengths:

Specific Dimming Ballasts
(if required)

Other:

**W4**

**Wall Mount**

![Diagram](image)

**WAL10**

- **Type:** W4
- **Job Name:** Contractor to Verify
- **Catalog Number:** WAL10-2T8-04'-TMW-SC-UNV-WM-RSE
- **Project:** R.A. CLARK EM AND OPERATIONS CENTER
- **Notes:** Prudential Ltg.

### Ordering

<table>
<thead>
<tr>
<th>Series</th>
<th>Lamp Rows</th>
<th>Nominal Length</th>
<th>Color/Finish</th>
<th>Circuiting</th>
<th>Voltage</th>
<th>Mounting</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAL10</td>
<td>1T8</td>
<td>02'</td>
<td>TMW* textured matte white</td>
<td>SC single circuit</td>
<td>120</td>
<td>WM direct to wall</td>
<td>EML*</td>
</tr>
<tr>
<td></td>
<td>2T8</td>
<td>03'</td>
<td>YGW gloss white</td>
<td>SC single circuit</td>
<td>277</td>
<td></td>
<td>EMH*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>04'</td>
<td>Y___ premium color</td>
<td>DC* dual circuit</td>
<td>347</td>
<td></td>
<td>DM</td>
</tr>
<tr>
<td></td>
<td></td>
<td>06'</td>
<td>CG custom color</td>
<td>DC* dual circuit</td>
<td>347</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>08'</td>
<td>*standard</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>R_&quot;*</td>
<td>*row length</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Applications
- Stairwells, lobbies, hallways, open offices, small offices, retail, bathrooms.

### Features
- A complement to the Pru11, this stylishly arched wall luminaire offers an appealing glow from its fully perforated housing. A 1" architectural reveal at the wall gives the fixture a floating appearance.

### Construction
- The housing, available in 2-, 3-, 4-, 6-, or 8-foot standard lengths, and finish plates are made of 20-gauge steel. The internal reflector is die-formed steel (white).

### Finish
- The standard exterior body color is textured matte white (TMW) or optional gloss white (YGW) using polyester powder paint. Refer to the Color Selector for paint colors.

### Electrical
- T8 fixtures have instant-start electronic ballasts with less than 20% THD. Fixtures are U.L. Damp labeled and I.B.E.W. manufactured. Maximum ballast size available: 2.4" width x 1.5" height.

### Mounting
- The fixture is to be mounted directly to wall.

### Options
- **EML**: emergency battery (600-700 lumens); **EMH**: emergency battery (1100-1400 lumens); **DM**: dimming (consult factory); **RSE**: rapid-start electronic; **10THD**: ballast with < 10% total harmonic distortion; **B**: specific ballast, specify manufacturer and catalog number (consult factory); **FH**: fixture fusing (slow blow); **QC**: quick-connect circuit assemblies; **ADC**: acrylic dust cover.

*All Pru11 companion luminaire

---

**Please note:** The content above is a natural representation of the text from the image. It may not include all the details or formatting of the original document.
FEATURES & SPECIFICATIONS

INTENDED USE — Provides a minimum of 50 minutes of illumination for the rated wattage upon loss of AC power. Ideal for applications requiring attractive unit equipment with quick installation. Certain airborne contaminants can diminish integrity of acrylic. Click here for Acrylic Environmental Compatibility table for suitable uses.

CONSTRUCTION — White, compact, low-profile contemporary design. Engineering-grade thermoplastic housing is impact-resistant, scratch-resistant and corrosion-proof. UL 94V-0 flame rating. UV-stable resin resists decoloration from natural and man-made light sources.

Low-profile, integrated test switch/pilot light. Easily visible bright red status indicator.

Unique top-in-and-swivel arrangement permits full range of direction of lamp head adjustment. Universal 3-box mounting pattern. Tool-less access for maintenance.

OPTICS — Two LED lamp heads with 12 series-parallel white LEDs each, provide redundant light sources to ensure emergency lighting performance. Typical LED lamp life is 70 years.

ELECTRICAL — Dual-voltage input capability (120/277V). Edge connector on printed circuit board ensures long-term durability.

Current-limiting charger maximizes battery life and minimizes energy consumption. Provides low operating costs.

Short-circuit protection — current-limiting charger circuitry protects printed circuit board from shorts.

Thermal compensation adjusts charger output to provide optimum charge voltage relative to ambient temperature.

Regulated charge voltage maintains constant-charge voltage over a wide range of load voltages. Prevents over- or under-charging that shortens battery life and reduces capacity.

Filtered charger input minimizes charge voltage ripple and extends battery life.

AC/DC reset allows battery connection before AC power is applied and prevents battery damage from deep discharge.

BATTERY: Sealed, maintenance-free nickel-cadmium battery delivers 90 minutes capacity to emergency lamps. Two-stage constant-current charge maximizes battery life and automatically recharges after battery discharge.

Low-voltage disconnect prevents excessively deep discharge that can permanently damage the battery. Optional high-output battery available to power both local and optional LED remote lamp heads simultaneously.

Self-Diagnostics (SD-Option) Single multi-color LED indicator to display two-state charging, test activation and three-state diagnostic test. Test switch provides manual activation of 30-second diagnostic testing for on-demand visual inspection. Self-diagnostic testing for 30 seconds every 10 days, 30 minutes at 14-day interval, and 90 minutes annually. Diagnostic evaluation of LED light source, AC to DC transfer, charging and battery condition.

INSTALLATION — Ceiling or wall-mount standard. Flexible conduit entry provision on top of the unit.


CONTRACTOR TO VERIFY:

| Voltage: | Row Information: |
| Colors/Finishes: | Switching Options: |
| Ceiling Type: | Suspension Lengths: |
| Specific Dimming Ballasts (if required): | Other: |

WARRANTY — 5-year limited warranty. (Battery is prorated). Complete warranty terms located at www.acuitybrands.com/ConsumerResources/Terms_and_Conditions.aspx.

Note: Actual performance may differ as a result of end-user environment and application.

All values are design or typical values, measured under laboratory conditions at 75°C. Specifications subject to change without notice.

<table>
<thead>
<tr>
<th>ELM2 Series</th>
<th>LED Lamp type</th>
<th>Housing</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>ELM2</td>
<td>LED Two 1.5W/3.6V white LED</td>
<td>(Blank) White</td>
<td>HO HIGH OUTPUT Ni-CAD BATTERY FOR 60 MIN.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SD SELF-DIAGNOSTICS</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>NOM MEETS MEXICO STANDARDS</td>
</tr>
</tbody>
</table>

Accessories: Order as separate catalog number.

- ELA QL004 SD: Single LED indoor remote head, white, self-diag 2,4
- ELA T QL004 SD: Twin LED indoor remote head, white, self-diag 2,4
- ELA QWPL004 SD: Single LED weather-proof remote head, gray, self-diag 2,4
- ELA TWPL004 SD: Twin LED weather-proof remote head, gray, self-diag 2,4
- ELA WGL: Weather guard, 15.9” x 13.1/2” h x 6” d (See spec sheet ELM2-LG)
- ELA QL004 SD: Single LED indoor remote head, white, self-diag 2,4
- ELA T QL004 SD: Twin LED indoor remote head, white, self-diag 2,4
- ELA QWPL004 SD: Single LED weather-proof remote head, gray, self-diag 2,4
- ELA TWPL004 SD: Twin LED weather-proof remote head, gray, self-diag 2,4
- ELA WGL: Weather guard, 15.9” x 13.1/2” h x 6” d (See spec sheet ELM2-LG)

Notes:
1. Not available with NOM.
2. Only available with HO option. See spec sheet ELA QL004.
3. Also available in black. Add “B” after ELA to order black finish. Example: ELA QL004 BD. See spec sheet ELM2-LG.
4. Only compatible with Quantum LED series.
ELM2 LED QUANTUM™ Thermoplastic Emergency Light

SPECIFICATIONS

<table>
<thead>
<tr>
<th>Electrical Primary Circuit</th>
<th>Supply voltage</th>
<th>Max amps</th>
<th>Max watts</th>
<th>HR/max watts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Typical LED life^1</td>
<td>120</td>
<td>0.04</td>
<td>1.44</td>
<td>2.04</td>
</tr>
<tr>
<td>10 years</td>
<td>277</td>
<td>0.03</td>
<td>1.44</td>
<td>2.04</td>
</tr>
</tbody>
</table>

BATTERY

Ni-Cd

<table>
<thead>
<tr>
<th>Voltage</th>
<th>Shelf life^2</th>
<th>Typical life^3</th>
<th>Maintenance^3</th>
<th>Optimum temperature^4</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.6</td>
<td>3 years</td>
<td>7-9 years</td>
<td>none</td>
<td>50-55°F (10-15°C)</td>
</tr>
</tbody>
</table>

1 Based on continuous operation.
2 At 1/3 C/D (25°C).
3 All life safety equipment, including emergency lighting path of egress, must be maintained, serviced and tested in accordance with all National Fire Protection Association and local codes. Failure to perform the required maintenance, service or testing could jeopardize the safety of occupants and void all warranties.
4 Optimum ambient temperature range where unit will provide capacity for 90 minutes. Higher and lower temperatures affect % runtime and capacity. Consult factory for detailed information.

Remote Output Capacity

<table>
<thead>
<tr>
<th>Standard unit</th>
<th>Unit/3-hour battery</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>4W</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

MOUNTING

All dimensions are inches (millimeters).
Shipping weight: 4.0 lbs (1.8 kgs)

Mounting Plate

1/2" knock-out

LAMP PHOTOMETRICS

QUANTUM LED SERIES — SINGLE COVERAGE
3W total White LEDs
Using a single unit at a typical 7.5’ mounting height delivers an average illuminance of 1.01fc over a distance of 24’ on a 3’ path of egress and 18’ on a 6’ path of egress.

Example of single ELM2 LED unit illuminating a 3’ path of egress

Example of single ELM2 LED unit illuminating a 6’ path of egress

QUANTUM LED SERIES — MULTIPLE COVERAGE
3W total White LEDs
Using multiple units at a typical 7.5’ mounting height delivers 25’ center-to-center spacing on a 3’ path of egress and 20’ center-to-center spacing on a 6’ path of egress.

Example of multiple ELM2 LED units illuminating a 3’ path of egress

Example of multiple ELM2 LED units illuminating a 6’ path of egress

EXTENDED RUN-TIME FOR HIGH-OUTPUT UNITS

<table>
<thead>
<tr>
<th>Product</th>
<th>Run time</th>
</tr>
</thead>
<tbody>
<tr>
<td>ELM2 LED HD (no remote)</td>
<td>3.9 hours</td>
</tr>
</tbody>
</table>

* Meets Life Safety Code standard minimum illuminance of 0.1 FC and average illuminance of 1.0 FC. Assumes open space with no obstructions, mounting height 7.5’, ceiling height: 9’ and reflectances: R0/65/00 Analysis based on independently tested photometrics.
**FEATURES & SPECIFICATIONS**

**INTENDED USE** — Suitable for applications requiring attractive edge-lit exit signage, universal installation and low energy consumption.

**CONSTRUCTION** — Extruded Brushed Aluminum finish.

Clear acrylic panels—letters measure 6” high with 3/4” stroke, with 100 ft viewing distance rating, based upon UL 924 standard.

For single-face clear panels, EXIT is seen as a reversed image from the back.

**OPTICS** — LEDs mounted on printed circuit board. The typical life of the exit LED lamp is 10 years.

Low energy consumption — less than 3 watts for AC only and less than 5 watts for battery back-up.

**ELECTRICAL** — Dual voltage input capacity (120/277V).

Battery (EL Option) — Sealed, maintenance free nickel-cadmium battery delivers 90 minutes capacity to emergency lamps. Test switch provides manual activation of 10-second diagnostic testing for on-demand visual inspection.

Self-diagnostic testing (EL Option Only) for 30 seconds every 10 days and 90 minutes annually. Diagnostic evaluation of LED light source, AC to DC transfer, charging and battery condition.

**INSTALLATION** — EDG – Universal surface (top, end or back) mounting. Canopy provided.

EDGR – Recessed mounting. Bar hanger and brackets provided for both new or restricted ceiling access installation applications. Back wall mount (WM) option.

Universal directional indicators. Field selected and attached.


**WARRANTY** — 3-year limited warranty. Complete warranty terms located at www.uniquebrands.com/terminologies/terminologies.png.

**NOTE**: Actual performance may differ as a result of end-user environment and application.

All values are design or typical values, measured under laboratory conditions at 25°C.

Specifications subject to change without notice.

---

**ORDERING INFORMATION**

For shortest lead times, configure products using **bolded** options. 

**Example:** EDG 1 R EL

### Family

<table>
<thead>
<tr>
<th>Housing color</th>
<th>Number of faces</th>
<th>Letter color</th>
<th>Operations</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>EDG <em>Surface Mount</em></td>
<td></td>
<td><strong>Red</strong></td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
<tr>
<td></td>
<td>1 Single face</td>
<td><strong>R</strong></td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
<tr>
<td></td>
<td>2 Double face</td>
<td><strong>R</strong></td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>W</strong> Green on clear (single face only)*</td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>W</strong> Green on mirror (single face only)*</td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>W</strong> Red on mirror*</td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>W</strong> Red on white*</td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>W</strong> Green on white*</td>
<td><strong>EL</strong> Nickel-cadmium Battery</td>
<td><strong>WM</strong> Recessed wall mount*</td>
</tr>
</tbody>
</table>

---

### Accessories: Order as separate item.

| ELS 512           | 12” stem kit with brushed aluminum canopy* |
| ELS 512          | 12” stem kit with brushed aluminum canopy* |

---

**Notes:**

1 For single-face clear panels, EXIT is seen as a reversed image from the back.
2 Available with single and double face.
3 White panel standard for double and single face.
4 Not available with EL and ED options.
5 Available with EL option only.
6 Available as EDGR single face only.
7 See spec sheet [link](#). Only available for EDG.
EDG-EDGR LED, Surface and Recessed Mount Edge-Lit Exits

SPECIFICATIONS

| ELECTRICAL |                  |                  |                  |                  |
|           | Type            | Typical LED Life | Supply Voltage   | EDG               | EDGR              |
|           |                 |                  |                  | Input Watts | Max amps. | Input Watts | Max amps. |
| Primary Circuit |                  |                  |                  |              |            |              |            |
| RED LED AC only | 70 years        | 120              | 2.5              | 0.020       | 3.8        | 0.050       |
| GREEN LED AC only | 70 years       | 277              | 2.8              | 0.030       | 4.5        | 0.036       |
| RED LED emergency | 70 years      | 120              | 2.2              | 0.020       | 3.8        | 0.030       |
| GREEN LED emergency | 70 years     | 277              | 2.2              | 0.030       | 4.5        | 0.020       |

| BATTERY (1 option) |                  |                  |                  |
|                   | Sealed Nickel-Cadmium |                  |                  |
| Shelf Life | Typical Life | Maintenance | Optimum temperature° |
| 3 years | 7-9 years | none | 10-32°C (50°F) |

Notes:
1. Based on continuous operation. The typical life of the exit LED lamp is 70 years.
2. At 77°F (25°C).
3. All save safety equipment, including emergency lighting for path of egress, must be maintained, renewed, and tested in accordance with all National Fire Protection Association (NFPA) and Local codes. Failure to perform the required maintenance, renew, or testing could jeopardize the safety of occupants and will void all warranties.
4. Optimum ambient temperature range where unit will provide capacity for 90 minutes. Higher and lower temperatures affect life and capacity. Consult battery for detailed information.

KEY FEATURES

Universal chevron indicators for field selection/installation.
FEATURES & SPECIFICATIONS

INTENDED USE — Suitable for applications requiring attractive edge-lit exit signages, universal installation and low energy consumption.

CONSTRUCTION — Extruded brushed aluminum finish.

Clear acrylic panels — lettering is 6" high with 3/4" stroke, with 100 ft viewing distance rating, based upon UL 924 standard.

For single-face clear panels, EXIT is seen as a reversed image from the back.

OPTICS — LEDs mounted on printed circuit board. The typical life of the exit LED lamp is 10 years.

Low energy consumption — less than 3 watts for AC only and less than 5 watts for battery back-up.

ELECTRICAL — Dual voltage input capacity (120/277V).

Battery: EL Option — Sealed, maintenance free nickel-cadmium battery delivers 90 minutes capacity to emergency lamps. Test switch provides manual activation of 10-second diagnostic testing for on-demand visual inspection.

Self-diagnostic testing (EL Option Only) for 30 seconds every 10 days and 90 minutes annually. Diagnostic evaluation of LED light source, AC to DC transfer, charging and battery condition.

INSTALLATION — EDG = Universal surface (top, end or back) mounting. Canopy provided.

EDGR = Reversed mounting. Bar hanger and brackets provided for both new or restricted ceiling access installation applications. Back wall mount (WMM) option.

Universal directional indicators. Field selected and attached.

LISTINGS — UL damp location listed 32°F-122°F (0°C-50°C) standard. Meets UL924, NFPA 101 (current Life Safety Code), NEC and OSHA Illumination Standards.


NOTE: Actual performance may differ as a result of end-user environment and application.

All values are design or typical values, measured under laboratory conditions at 25°C.

Specifications subject to change without notice.

ORDERING INFORMATION

For shortest lead times, configure products using bolded options.

Example: EDG 1 R 1 X2

Family

<table>
<thead>
<tr>
<th>Housing color</th>
<th>Number of Faces</th>
<th>Letter color</th>
<th>Operations</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>EDG Surface mount</td>
<td>1 Single face</td>
<td>R Red on clear</td>
<td>EL Nickel-cadmium Battery</td>
<td>blank</td>
</tr>
<tr>
<td>EDGR Reversed L edge-lit exit</td>
<td>2 Double face</td>
<td>G Green on clear</td>
<td>SD Self-diagonistics</td>
<td>WMM</td>
</tr>
<tr>
<td>ELA U512</td>
<td>12&quot; stem kit with brushed aluminum canopy</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ELA W U512</td>
<td>12&quot; stem kit with white canopy</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes:
1. For single-face clear panels, EXIT is seen as a reversed image from the back.
2. Available with single and double face.
3. White panel standard for double and single face.
4. Not available with EL and SD options.
5. Available with EL option only.
6. Available on EDGR single face only.
7. See spec sheet. Only available for EDG.
**EDG-EDGR LED, Surface and Recessed Mount Edge-Lit Exits**

**SPECIFICATIONS**

### ELECTRICAL

<table>
<thead>
<tr>
<th>Type</th>
<th>Typical LED Lifea</th>
<th>Supply Voltage</th>
<th>EDG</th>
<th>EDGR</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Input Watts</td>
<td>Max amps.</td>
</tr>
<tr>
<td>Red LED AC only</td>
<td>10 years</td>
<td>120</td>
<td>2.5</td>
<td>0.020</td>
</tr>
<tr>
<td>Green LED AC only</td>
<td>10 years</td>
<td>277</td>
<td>2.8</td>
<td>0.030</td>
</tr>
<tr>
<td>Red LED emergency</td>
<td>10 years</td>
<td>120</td>
<td>2.2</td>
<td>0.020</td>
</tr>
<tr>
<td>Green (10) emergency</td>
<td>10 years</td>
<td>277</td>
<td>2.2</td>
<td>0.030</td>
</tr>
</tbody>
</table>

### BATTERY (11 option)

<table>
<thead>
<tr>
<th>Shelf Lifeb</th>
<th>Typical Lifeb</th>
<th>Maintenance</th>
<th>Optimum Temperaturec</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 years</td>
<td>7-9 years</td>
<td>none</td>
<td>0°-32° (32°-90°)</td>
</tr>
</tbody>
</table>

**Notes**

1. Based on continuous operation. The typical life of the LED lamp is 10 years.
2. At 77°F (25°C).
3. All life safety equipment, including emergency lighting for paths of egress must be maintained, serviced, and tested in accordance with all National Fire Protection Association (NFPA) and local codes. Failure to perform the required maintenance, service, or testing could jeopardize the safety of occupants and will void all warranties.
4. Optimum ambient temperature range where unit will provide capacity for 90 minutes. Higher and lower temperatures affect life and capacity. Consult battery for detailed information.

**MOUNTING**

**EDG**

**EDGR**

**KEY FEATURES**

- Universal chevron indicators for field selection/installation.
**OVERVIEW**

The **CM** family of ceiling mount occupancy sensors provide a range sensor solutions for applications with finished ceilings (e.g. ceiling tiles, sheetrock, plaster). **CM** family sensors utilize 100% digital Passive Infrared (PIR) detection and are available with several lens options, providing flexibility for multiple mounting height and coverage pattern requirements. Dual technology (PDT) occupancy detection can also be added as an option for applications where occupants are stationary for long periods of time.

**FEATURES**

- 360° coverage pattern
- Push-button programmable, adjustable time delays, and multiple operating modes
- 100 hr lamp burn-in timer
- No field calibration or sensitivity adjustments required
- Convenient test mode
- Green LED indicator

**SPECIFICATIONS**

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<tr>
<th>Size:</th>
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<tbody>
<tr>
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<tr>
<td>Mounting:</td>
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<td>Current Draw:</td>
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<td>Rcmd. Power Pack:</td>
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ROHS compliant

**Warranty**

Five-year limited warranty. Complete warranty terms located at:
www.acuitybrands.com/Customers/Resources/Terms_and CONDITIONS.aspx

**Note:** Actual performance may differ as a result of end-user environment and application. Specifications subject to change without notice.

**ORDERING INFORMATION**

<table>
<thead>
<tr>
<th>CM Family</th>
<th>Detection Technology</th>
<th>Coverage Type</th>
<th>Relay</th>
<th>Additional Features (choose 1)</th>
<th>Temp / Humidity</th>
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<td>PIR</td>
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<td>Low temp/High humidity</td>
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<td>PDT* Dual Technology (PIR/Microphone)</td>
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<td>R Low Voltage Relay</td>
<td>P Photocell</td>
<td><strong>PDT</strong> option not available on CM 6 models</td>
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<td>10 Large Motion 360°</td>
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<td>ADC** Photocell/Dimming</td>
<td><strong>ADC</strong> option not available on CM6 models</td>
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<td>11 Hallway</td>
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**COVERAGE PATTERNS**

**SMALL MOTION 360° (Model # CM 9/CM PDT9)**

- Best choice for small motion (e.g. hand movements) detection
- 360° conical shaped pattern
- Provides 12 ft (3.66 m) radial coverage (~500 ft²) when mounted to standard 9 ft (2.74 m) ceiling
- 8 to 15 ft (2.44 to 4.57 m) mounting heights provide 10 to 20 ft (3.05 to 6.09 m) radial coverage
- Lens assembly is marked with a gray ring around lens to differentiate versus the #10 lens

1. Sensors with Microphonics™ provides overlapping detection of human activity over the complete PIR coverage area. Advanced filtering is also utilized to prevent non-occupant noises from keeping the lights on.

**LARGE MOTION 360° (Model # CM 10/CM PDT10)**

- Best choice for large motion detection (e.g. walking)
- 360° conical shaped pattern
- Provides ~24 ft (7.32 m) radial coverage (~2000 ft²) when mounted at 9 ft (2.74 m)
- 7 to 15 ft (2.13 to 4.57 m) mounting heights provide 16 to 36 ft (4.88 to 10.97 m) radial coverage
- Detection range improves when walking across beams compared to into beams

1. Sensors with Microphonics™ provides overlapping detection of human activity over the complete PIR coverage area. Advanced filtering is also utilized to prevent non-occupant noises from keeping the lights on.

**HIGH MOUNT 360° (Model # CM 6)**

- Best choice for 15 to 45 ft (4.57 to 13.72 m) mounting heights
- 15 to 20 ft (4.57 to 6.10 m) radial coverage overlaps area lit by a typical high bay fixture
- Excellent detection of large motion (e.g. walking) up to 35 ft (10.76 m)
- Excellent detection of extra large motion (e.g. forklifts) up to a 45 ft (13.72 m)

**HIGH MOUNT HALLWAY (Model # CM 11/CM PDT 111)**

- Best choice for large motion detection
- Provides 28 ft (8.53 m) of coverage when mounted to standard 9 ft (2.74 m) ceiling
- 7 to 15 ft (2.13 to 4.57 m) mounting heights provide 16 to 36 ft (4.88 to 10.97 m) hallway coverage

1. Sensors with Microphonics™ provides overlapping detection of human activity over the complete PIR coverage area. Advanced filtering is also utilized to prevent non-occupant noises from keeping the lights on.
**WIRING (DO NOT WIRE HOT)**

**STANDARD WIRING**
- **RED**: Power Input (12-24 VAC/VDC)
- **BLACK**: Common
- **WHITE**: Occupancy State (high VDC for occupied)

**PHOTOCELL/DIMMING OPTIONS (D, P, ADC)**
- **BLUE**: Direct output to power pack for providing photocell control and/or secondary dim time out. Output is high VDC with occupancy & low light. Output also held high during secondary dim time out. For multi-level control, use two power packs and connect White wire to primary load and Blue to daylight load.
- **VIOL/ w/ WHITE STRIPE**: Connect to 0-10 VDC control wire (typically Violet) from 0-10 VDC dimmable ballast.
- **GRAY from Ballast**: Connect to sensor Black wire

**INSTALLATION**
- Mount sensor directly to a ceiling tile or a metallic grid (two self-tapping screws provided).
- Sensor's mounting holes also align with 3.5" octagon or single gang handy box (screws not provided).
- Sensor will detect motions crossing segments more effectively than motions parallel to beams.
- For optimal detection, position sensor such that segments are crossed upon entrance and unable to view outside the space.
- **PDT models**: For maximum Microphonics sensitivity avoid locating sensor near HVAC air difusers

---

*At 9ft Mtg.*

**A:** When walking across beam, detection will occur at approximately 28 feet (8.53 m).

**B:** When walking into beam, detection will occur at approximately 24 feet (7.32 m)
OVERVIEW

The WSX Family of wall switch occupancy sensors provides simple and cost effective solutions for commercial and residential lighting control applications. All WSX Family sensors have a stylish low profile appearance, soft-click buttons, and provide small motion detection up to 20 ft (6.10 m), making them perfect for private offices, private rest rooms, closets, copy rooms, or any other small enclosed space. Additionally, all WSX Family sensors have a patent pending wiring method that enables them to function either with or without a neutral connection. WSX units come pre-configured for wiring without a neutral, however if connection to neutral is required by code, contractors can convert the unit in seconds.

FEATURES

- Compatible w/LEDs; electronic & magnetic ballasts, CFLs, & incandescents
- 100% passive detection, no potential for interference with other building systems
- Small motion detection to 20 ft
- Push-button programmable without removing cover plate - adjustable time delays & operating modes
- Dual technology (PDT) utilizes PIR/Microphonics™ detection (patented)
- Self-grounding mounting strap
- Device accommodates powering over ground or neutral connection (patent pending)
- Ultra low current leakage (<0.5 mA) when connected via ground
- Fully meets NEC 2011 Section 404.2C neutral requirements - no current leakage to ground when connected to neutral
- Line power and load wires are interchangeable - impossible to wire backwards (patented)
- Integrated Photocell (disabled by default) prevents light from turning on if sufficient daylight is present - not available in Nightlight versions
- Vandal resistant lens

Warranty

Five-year limited warranty. Complete warranty terms located at:
www.acuitybrands.com/CustomerResources/Terms_and_conditions.aspx

Note: Actual performance may differ as a result of end-user environment and application.
Specifications subject to change without notice.

ORDERING INFORMATION

### WSX SINGLE RELAY

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<td>Auto-on (default) or vacancy</td>
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<td>WSX PTD</td>
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<td>WSX PTD</td>
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### WSX DUAL RELAY

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<td>120/277VAC, 347VAC</td>
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<td>WSX 2P</td>
<td>Both poles vacancy (default)</td>
<td>347VAC</td>
<td>AL Lt. Almond, BK Black, GY Gray, RD Red</td>
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<td>WSX 2P</td>
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<tr>
<td>WSX 2P</td>
<td>Nightlight</td>
<td>347VAC</td>
<td>AL Lt. Almond, BK Black, GY Gray, RD Red</td>
<td>LT Low Temp/High Humidity</td>
</tr>
</tbody>
</table>

Notes:

1. Operating Modes reprogrammable via push-button except for VA version
2. Units factory set to Vacancy (Manual On) Operating Mode
3. Wallplates included in white or ivory only for 347 VAC units
4. Matching wall plate provided for 120/277 VAC units
SPECIFICATIONS

- Size: 2.74"H x 1.68"W x 1.63"D (not including ground strap)
- Weight: 5 oz
- Mounting: Single gang switch box
- Mounting Height: 30-48 in
- Maximum Load/Pole: (Relay) 800W @ 120VAC, 1200W @ 277VAC, 1500W @ 347VAC
- Minimum Load: None
- Motor Load: 1/4 HP
- Frequency: 50/60 Hz (timers are 1.2x for 50Hz)

COVERAGE PATTERNS

- Small motion (e.g., hand movements) detection up to 20 ft (6.10 m), ~625 ft²
- Large motion (e.g., walking) detection greater than 36 ft (10.97 m), ~2025 ft²
- Wall-to-Wall coverage
- Passive Dual Technology (Microphonics) provides overlapping detection of human activity over the complete PIR coverage area. Advanced filtering is utilized to prevent non-occupant noises from keeping the lights on.

WIRING TO GROUND (no NEUTRAL)

SINGLE RELAY

WIRE COLOR KEY

120/277 VAC WIRING
- BLACK*: Line 1 Input
- BLACK*: Load 1 Output
- BLUE*: Line 2 Input
- BLUE*: Load 2 Output

347 VAC WIRING (~347 Option)
Red wires replace black wires.

DUAL RELAY

Notes:
- Unit will draw power from either line connection.
- When switching 277 VAC or 347 VAC on both relays, the input line must be of the same phase.
Attachment Five - Programmatic Architectural Plan

Fire Station RR Renovation

SCALE: 1/4" = 1'-0"

2017 0718

SCHEME C

BLACK HAWK FIRE DEPARTMENT - SCHEME C
* = CHECK EXISTING ROOF BEAMS FOR NEW LOADS & STRENGTHEN AS REQUIRED WITH TOP & BOTTOM COVER PLATES

THIRD LEVEL PLAN

BY: DAVID WITTMAN
PROJECT NO. 18.0548
Exhibit E - Control Estimate #01
## Fire Station Restroom Renovation

**196 Clear Creek Street**  
**Black Hawk, Co**

### Concept Budget

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### Fire Station Restroom Renovation

196 Clear Creek Street  
Black Hawk, Co

**Concept Budget**

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| Subtotal (all groups) | | | | | | | $324,346 |

| Permit Fees & Insurances | | | | | | | |
| Plan Check Fees | 0.00% | $0 | | | By Others |
| Building Permit Fees | 0.00% | $0 | | | By Others |
| Local / Municipal Use Taxes | 0.00% | $0 | | | By Others |
| General Liability Insurance | 0.90% | $3,660 | | | |
| Builders Risk Insurance | 0.21% | $854 | | | |
| Labor, Material and Performance Bonds | 1.41% | $5,734 | | | |

| Subtotal Permits & Insurances | | | | | | | $10,249 |

| Overhead | 4.75% | $19,318 | | | |
| Fee | 4.75% | $19,318 | | | |
| Pricing Contingency | 10.00% | $33,459 | Project Contingency By Others |

| Total Project Cost | | | | | | | $406,689 |
Exhibit F - Design Builders Project Schedule
## Task Name

1. **Program Evaluation**
   - Duration: 42 days
   - Start: Thu 6/21/18
   - Finish: Wed 8/22/18

2. **Design Alternatives - Hand Sketch**
   - Duration: 4 days
   - Start: Wed 6/20/18
   - Finish: Fri 6/29/18

3. **Review Meeting - ROM Pricing**
   - Duration: 1 day
   - Start: Mon 7/9/18
   - Finish: Mon 7/16/18

4. **Update Sketches Based on Feedback**
   - Duration: 9 days
   - Start: Thu 7/5/18
   - Finish: Fri 7/13/18

5. **Pricing / Detailed Budget**
   - Duration: 5 days
   - Start: Mon 7/16/18
   - Finish: Fri 7/20/18

6. **Review Meeting - Detailed Pricing**
   - Duration: 1 day
   - Start: Mon 7/23/18
   - Finish: Mon 7/23/18

7. **Minor Revisions to Selected Plan**
   - Duration: 4 days
   - Start: Thu 7/26/18
   - Finish: Fri 7/27/18

8. **Present Plan to Jack**
   - Duration: 1 day
   - Start: Mon 7/30/18
   - Finish: Mon 7/30/18

9. **City Council Packets Due**
   - Duration: 1 day
   - Start: Fri 8/3/18
   - Finish: Fri 8/3/18

10. **City Council 1st**
    - Duration: 1 day
    - Start: Wed 8/8/18
    - Finish: Wed 8/8/18

11. **City Council 2nd - Approve**
    - Duration: 1 day
    - Start: Wed 8/22/18
    - Finish: Wed 8/22/18

12. **Design / Preconstruction Services**
    - Duration: 65 days
    - Start: Thu 8/16/18
    - Finish: Wed 11/14/18

13. **Site Visit / As Built Confirmation**
    - Duration: 5 days
    - Start: Thu 8/16/18
    - Finish: Wed 8/22/18

14. **60% CD Set Design for Review**
    - Duration: 20 days
    - Start: Thu 8/23/18
    - Finish: Wed 9/19/18

15. **Budget / Scope Review of 60% Set**
    - Duration: 10 days
    - Start: Thu 9/20/18
    - Finish: Wed 10/3/18

16. **Finalize Plans / Permit Set**
    - Duration: 15 days
    - Start: Wed 10/4/18
    - Finish: Wed 10/24/18

17. **Permit Review / Final Pricing**
    - Duration: 15 days
    - Start: Thu 10/25/18
    - Finish: Wed 11/14/18

18. **Construction Phase**
    - Duration: 76 days
    - Start: Thu 11/15/18
    - Finish: Thu 2/28/19

19. **Mobilization / Demo**
    - Duration: 5 days
    - Start: Thu 11/15/18
    - Finish: Wed 11/21/18

20. **Structural Reinforcing**
    - Duration: 5 days
    - Start: Thu 11/22/18
    - Finish: Wed 11/28/18

21. **Mezanine / HVAC Platform / Concrete**
    - Duration: 10 days
    - Start: Thu 11/29/18
    - Finish: Wed 12/19/18

22. **Relocate HVAC and MEP Items**
    - Duration: 5 days
    - Start: Thu 12/13/18
    - Finish: Wed 12/19/18

23. **Stair Well Modifications**
    - Duration: 5 days
    - Start: Thu 12/20/18
    - Finish: Wed 12/26/18

24. **Steel Stud Framing**
    - Duration: 3 days
    - Start: Thu 12/27/18
    - Finish: Mon 1/1/19

25. **MEP Rough**
    - Duration: 15 days
    - Start: Tue 1/1/19
    - Finish: Mon 1/19/19

26. **Drywall / finish**
    - Duration: 3 days
    - Start: Tue 1/22/19
    - Finish: Thu 1/24/19

27. **Millwork, Tile, Paint**
    - Duration: 15 days
    - Start: Fri 1/25/19
    - Finish: Thu 2/14/19

28. **MEP Trim**
    - Duration: 5 days
    - Start: Fri 2/15/19
    - Finish: Thu 2/21/19

29. **Substantial Completion**
    - Duration: 2 days
    - Start: Thu 2/21/19
    - Finish: Thu 2/21/19

30. **Project Closeout / Punch**
    - Duration: 3 days
    - Start: Fri 2/22/19
    - Finish: Thu 2/28/19

31. **Final Completion**
    - Duration: 3 days
    - Start: Thu 2/28/19
    - Finish: Thu 2/28/19
Exhibit G - Design Builder's Fee & Cost Proposal
# City of Black Hawk's Fire Station RR Renovation
Owner-Design Builder Agreement - Exhibit G
Fee & Cost Proposal Summary

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## 2.000 Design Builder's Proposal of Costs to Be Reimbursed (Not to Exceed Topset)

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Note: All bonds & insurance should assume a Design Builder's total contract amount of $ 400,000.

### 2.A Design Builder's Estimated Cost of Insurance - Subtotal 10,080

#### Percentage of Cost Proposed for Design Builder's Insurance on Change Orders 2.5%

### 2.B Design Builder's Onsite Staff

<table>
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<tr>
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### 2.C Design Builder’s Onsite Reimbursable Expenses

#### Mobilization

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#### Safety

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**Hoisting & Material Management**
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## Item # Description Quantity Unit Unit Cost Total Cost

### Permits & Fees

- **2.110** Building Permit
- **2.111** Plan Check Fee
- **2.112** Water Tap Fees
- **2.113** Sewer Tap Fees
- **2.114** Sanitary Tap Fees
- **2.115** Elevator Permit & Inspections
- **2.116** Mechanical & Electrical Permits & Inspections
- **2.117** Health Department Permits & Inspections
- **2.118** Other Government Fees\Permits Required for FCO

### Other Design Builder Onsite Reimbursable Costs

- **2.119** Other Design Builder’s Onsite Costs Needed for the Work: LS 0

### Subtotal

**2.000** Design Builder’s Estimated Onsite Reimbursable Expenses - Subtotal: 13,922

**2.000** Design Builder’s Total Proposed Costs to Be Reimbursed: 70,391
# Fire Station Restroom Renovation
196 Clear Creek Street
Black Hawk, Co

Program Evaluation Pricing (Including Option 4)

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<td>See Scheduled Dated July 5</td>
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Subtotal (all groups) $15,078

Permit Fees & Insurances
- Plan Check Fees: 0.00% $0 By Others
- Building Permit Fees: 0.00% $0 By Others
- Local / Municipal Use Taxes: 0.00% $0 By Others
- General Liability Insurance: 0.90% $154
- Builders Risk Insurance: 0.21% $36
- Labor, Material and Performance Bonds: 1.41% $242

Subtotal Permits & Insurances $432

Overhead: 4.75% $814
Fee: 4.75% $814
Pricing Contingency: 0.00% $0 N/A

Total Project Cost $17,138
Exhibit H - Key Firms and Personnel
Symmetry Builders, Inc. and PEH Architects have partnered for this project. Symmetry opted to team with PEH Architects due to their extensive resume of municipal projects and, specifically, their unmatched experience in Black Hawk, CO.

Symmetry Builders, Inc. and PEH Architects have selected key team members based on their experience in Design-Build projects such as this. The following team members are they critical team members for this project (resumes attached):

- **BRAD CHOPE, LEED AP | CHIEF ESTIMATOR, SYMMETRY BUILDERS, INC.**
- **ERIC PAICURICH | PROJECT MANAGER, SYMMETRY BUILDERS, INC.**
- **JACK HIETT | LEAD SUPERINTENDENT, SYMMETRY BUILDERS, INC.**
- **NATHAN PILLATZKE, AIA | PROJECT ARCHITECT, PEH ARCHITECTS**

**TEAM MEMBER AVAILABILITY**

- **BRAD CHOPE, LEED AP | CHIEF ESTIMATOR, SYMMETRY BUILDERS, INC.**
  - Misc. ongoing estimating responsibilities
- **ERIC PAICURICH | PROJECT MANAGER, SYMMETRY BUILDERS, INC.**
  - Brighton Fire Fleet Maintenance Facility (Complete July 2018)
  - Sil-Terhar Lincoln Dealership Renovation (Complete August 2018)
  - This project per the project schedule
- **JACK HIETT | LEAD SUPERINTENDENT, SYMMETRY BUILDERS, INC.**
  - Oversight of Symmetry’s Field Management Team (Ongoing)
- **NATHAN PILLATZKE, AIA | PROJECT ARCHITECT, PEH ARCHITECTS**
  - Construction Administration on MOB in Erie, CO (20-30 hours per week thru June 2018, then 8-16 hours per week thru December 2018)
  - Other ongoing corporate responsibilities (8-16 hours per week)
  - This project per the project schedule
SYMMETRY BUILDERS, INC.
Partner & Chief Estimator – August 2014 to Present

KRISCHE CONSTRUCTION
Lead Estimator – October 2011 to April 2014

GOLDEN TRIANGLE CONSTRUCTION
Estimator – December 2005 to October 2011
• Preconstruction and Estimating

Bachelor’s Degree in Construction Management, Colorado State University
LEED Accredited Professional

• Brighton Fire Fleet Maintenance Facility, Brighton, CO
• Four Mile Fire Station, Boulder County, CO
• Wildland Fire Station, Boulder, CO
• Golden Fire Station No.1, Golden, CO
• Aurora Fire Station No. 1, Aurora, CO
• Stapleton Fire Station, Denver, CO
• 30th & Larimer Mixed-Use Development, Denver, CO
• The Collective Climbing Facility, Denver, CO
• Long’s Peak Phase II, Dacono, CO
• Rocky Mountain Park Inn Hotel Renovation/Expansion, Estes Park, CO
• Thompson Valley School District Bus Depot/Maintenance Facility (3 Bldgs), Loveland, CO
• Tebo - Bell Supply, Evans, CO
• Etkin Johnson Warehouses
• 195 CTC Blvd, Louisville, CO
• Biodesix Laboratory and Office Tenant Finish, Boulder, CO
• SomaLogic, Boulder, CO
• WSM Industries, Denver, CO
• LoHi Gardens, Denver, CO
• Misc. Banfield Veterinary Facilities, Metro Denver, CO
• Broomfield Veterinary Hospital, Broomfield, CO
• Various Park Projects throughout Colorado
• Denver Public School McGlone Early Learning Center
• Aspen Creek and Eldorado ES Additions Boulder Valley School District
• Twin Peaks Charter Academy High School
• Various Projects for Denver Metro School Districts

Brad is involved in all of Symmetry’s projects in an estimating role. He manages his team of estimators and manages preconstruction efforts on projects requiring those services. His commitments will not impact his responsibilities on this project.
2005 – 2010 University of Nebraska at Kearney, Kearney, NE – BS Business Accounting

Eric is currently managing a few projects that are scheduled to complete in Q2 of 2018.
SYMMETRY BUILDERS, INC
Superintendent – June 2012 to Present

MILENDER WHITE CONSTRUCTION COMPANY
Field/Office Engineer – October 2011 to June 2012

NEXUS CORPORATION
Project Manager – June 2011 to October 2011

WILLMAR ELECTRIC SERVICE
Internship - May 2009 to August 2009
  • University of Nebraska at Kearney Internship – Construction Management
  • 2005 – 2009 University of Nebraska at Kearney, Kearney, NE – BS Construction Management
  • 2010 – 2011 Chadron State College, Chadron, NE Organizational Management

• OSHA 30 Hour Certification
• CPR / First Aid Certification

• Louisville Fire Station No.3 $ 2,900,000
• Four Mile Fire Station, Boulder County, CO $ 1,400,000
• City of Boulder Wildland Fire Station $ 3,200,000
• Long’s Peak Phase II, Dacono, CO (Ground-Up Tilt-Up Facility) $ 4,000,000
• Brighton Fire Fleet Maintenance Facility, Brighton, CO $ 2,500,000
• Sloan’s Row Townhomes, Denver, CO (25 New Row-Homes) $ 6,000,000
• WSM Industries, Denver, CO $ 792,000
• Cookler Duplex Project, Boulder, CO $ 2,500,000
• Misc. Banfield Veterinary Clinics, Colorado Locations $ 2,000,000
• Fourmile Fire Station, Boulder County, CO $ 1,550,000
• Arbour Square Apartments $ 36,000,000
• Federal 27 Veterans Apartments $ 4,300,000
• Spine Correction Center of the Rockies $ 950,000
• Attention Homes Addition & Renovation, Boulder CO $ 400,000
• 21 Pearl Townhomes, Boulder, CO (Ground-Up Row Homes) $ 1,600,000

Jack is currently on-site completing Long’s Peak Phase II in Dacono, CO. Upon completion he’s assisting our project team on projects in Frisco, CO and Denver, CO.
NATHAN PILLATZKE, AIA
PROJECT ARCHITECT

Education  
North Dakota State University  
Bachelor of Architecture  
2001

Professional Employment  
PEH ARCHITECTS  
Project Manager  
Boulder, Colorado  
2001

Bruce Hella Architecture Studio  
Intern Architect/Draftsman  
Fargo, North Dakota  
2000

Awards  
McKenzie Memorial Foundation – Certificate of Merit  
Masonry Competition Award – Honorable Mention  
NDSU Dean’s List  
2001  
1999  
1999-2001

Associations  
American Institute of Architects  
Boulder Green Building Guild

Computer Skills  
AutoCAD Architecture 2014, Auto-Des-Sys Form-Z, 3-D Studio Viz, Microsoft Office, Adobe Photoshop, Acrobat

Nathan graduated with a Bachelor’s of Architecture from North Dakota State University in Fargo in 2001. During his schooling, he placed in two design competitions and was also published in Form-Z, a biannual international magazine. While attending his last year at NDSU, Nathan worked for Bruce Hella Architectural Studio. It was at this firm that Nathan began to further develop his architectural skills into a more efficient and professional output of schematic design through construction documents. At BHAS he primarily focused on small and large-scale retail spaces, along with several residential additions and remodels.

Since joining the PEH team, Nathan has designed, managed and administered many fixed fee bid projects funded by public funds, bonds, and grants. Over the past 10 years, he has managed restoration, rehabilitation or preservation of over 25 historic structures in Black Hawk all funded by state historic grants. These project required preparation of bid documents and specifications, and review of general contractor qualifications and bids, while designing within the guidelines of the Secretary Of The Interior to meet the property owner’s, state historic society’s and city council’s rehabilitation goals. Nathan was the lead architect on the design-build, with McKinstry, for the Eco-Cycle, CHaRM, and ReSource Recycling Facility, a project with numerous challenges. The recycling facility was constrained by a fixed Guaranteed Maximum Price budget created by a City of Boulder bond initiative, funded by the trash tax.

In addition, Nathan has participated in numerous projects, ranging from obtaining entitlements for mixed-use developments, to retail tenant finishes and university labs. His efficiency in standardized AutoCAD 3D drafting and knowledge of wood-frame and masonry construction are a successful addition to the team in the development of construction documents. To add to his technical base of knowledge, Nathan is also skilled in the production of visual representation. Whether it is by hand or with many of the numerous photo-enhancing or digital modeling programs, Nathan possesses the skills and knowledge that can contribute to any design.
Exhibit I - Confidentiality of the Project

This Exhibit to be provided by August 1, 2018, or as otherwise mutually agreed in writing.

The intent of this Exhibit is to formalize the communication plan about the project to third parties.
Exhibit J - Hourly Rates
### 2018 Labor Rates

#### Executive Staff

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
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<tbody>
<tr>
<td>CEO / President</td>
<td>$102.04</td>
</tr>
<tr>
<td>COO / Vice President</td>
<td>$93.66</td>
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<tr>
<td>Project Principal / Executive</td>
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#### Operational / Office Staff

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<tr>
<th>Position</th>
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<tbody>
<tr>
<td>Senior Project Manager</td>
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<td>LEED AP</td>
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<td>Safety Coordinator</td>
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<td>Scheduler</td>
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<table>
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<td>Estimator II</td>
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#### Accounting / HR Staff

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#### Field Staff

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<td>Superintendent I</td>
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<td>Superintendent II</td>
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<td>Foreman</td>
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<td>Carpenter II</td>
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<td>Equipment Operator II</td>
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<td>SWMP / BMP Supervisor</td>
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<td>Traffic Control Supervisor</td>
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<td>Laborer</td>
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Exhibit K - Rental Rates
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<th>Unit</th>
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<th>Equip Cost</th>
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<td>Mo</td>
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<td>Day</td>
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<td>Mo</td>
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<td>Generator - 15 HP</td>
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### 2018 Equipment Master

**Project: Blackhawk Fire**  
**Job No.: TBD**  
**Month: TBD**

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### 2018 Equipment Master

**Project:** Blackhawk Fire  
**Job No.:** TBD  
**Month:** TBD

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<td>Mo</td>
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<td>$0.00</td>
</tr>
</tbody>
</table>
Exhibit L - Alternates With Cost and Expiration Dates

Provided With Exhibit A by November 14, 1018, or as otherwise mutually agreed in writing.
Exhibit M - Unit Cost

Provided With Exhibit A by November 14, 2018, or as otherwise mutually agreed in writing.
Exhibit N - Allowances

Provided With Exhibit A by November 14, 1018, or as otherwise mutually agreed in writing.
Exhibit O - Schedule of Values

Provided With Exhibit A by November 14, 1018, or as otherwise mutually agreed in writing.
Exhibit P - Disputed Work Schedule

Only Used if Needed
DESIGN BUILDER'S CERTIFICATE REGARDING EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN

FROM: Symmetry Builders, Inc. (Design Builder)

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

Project Name: Fire Station Restroom Renovation

Bid Number: N/A              Project No.: 13006

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 ___________ day of ____________________, 2018.

Prospective Design Builder:________________________

By: _________________________________

Title: ________________________________
A141 Owner-Design Builder Agreement – Exhibit R – NO EMPLOYEE AFFIDAVIT

1. Check and complete one:

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

OR

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

2. Check one.

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

   *The City must verify this statement by reviewing one of the following items:*
   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 Design Builder’s citizenship/lawful presence and identity.

OR

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

   *Design Builder 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
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.

____________________________________   ____________
Design Builder Signature       Date

STATE OF COLORADO   )
) ss.
COUNTY OF    )

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of ____________, 2018, by _________________________ as ___________________ of _________________________.

My commission expires:

(S E A L)  
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 drivers 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 or 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 Z - Schedule of Exhibits
### Schedule of Exhibits

<table>
<thead>
<tr>
<th>Originator</th>
<th>Date to be Provided</th>
<th>Exhibit</th>
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<tbody>
<tr>
<td>Design Builder</td>
<td>November 14, 2018</td>
<td>Exhibit &quot;A&quot; – Design-Build Amendment, if executed</td>
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<tr>
<td>Owner</td>
<td>July 5, 2018</td>
<td>Exhibit &quot;B&quot; – Insurance and Bonds</td>
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<td>Exhibit &quot;C&quot; – Sustainable Projects (Not Used)</td>
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<td>Design Builder</td>
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<td>Exhibit &quot;D&quot; – Basis of Design</td>
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<td>Design Builder</td>
<td>July 5, 2018</td>
<td>Exhibit &quot;E&quot; – Control Estimate # 01</td>
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<td>Design Builder</td>
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<td>Exhibit &quot;F&quot; – Design-Builder’s Project Schedule</td>
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<td>Design Builder</td>
<td>July 5, 2018</td>
<td>Exhibit &quot;G&quot; – Design-Builder’s Fee &amp; Cost Proposal</td>
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<tr>
<td>Design Builder</td>
<td>July 5, 2018</td>
<td>Exhibit &quot;H&quot; – Key Firms and Personnel</td>
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<td>Design Builder</td>
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<td>Exhibit &quot;I&quot; – Confidentiality of the Project</td>
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<td>Design Builder</td>
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<td>Exhibit &quot;J&quot; – Hourly Rates</td>
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<td>Exhibit &quot;K&quot; – Rental Rates</td>
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<td>Exhibit &quot;L&quot; – Alternates with Costs and Expiration Dates</td>
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<td>Exhibit &quot;M&quot; – Unit Costs</td>
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<td>Exhibit &quot;N&quot; – Allowances</td>
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<tr>
<td>Design Builder</td>
<td>November 14, 2018</td>
<td>Exhibit &quot;O&quot; – Schedule of Values</td>
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<td>Design Builder</td>
<td>If Needed</td>
<td>Exhibit &quot;P&quot; – Disputed Work Schedule</td>
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<td>Exhibit &quot;Q&quot; – Illegal Alien Certification</td>
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<td>Exhibit &quot;S&quot; – Department Program Affidavit</td>
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<tr>
<td>Design Builder</td>
<td>July 5, 2018</td>
<td>Exhibit &quot;Z&quot; – Schedule of Exhibits</td>
</tr>
</tbody>
</table>
RESOLUTION 56-2018
A RESOLUTION
APPROVING A LEASE
AGREEMENT WITH
CANON SOLUTIONS
AMERICA, INC. FOR
COPIER EQUIPMENT
TITLE: A RESOLUTION APPROVING A LEASE AGREEMENT WITH CANON SOLUTIONS AMERICA, INC. FOR COPIER EQUIPMENT

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

Section 1. The City Council hereby approves the Unified Lease Agreement with Canon Solutions America, Inc. attached hereto as Exhibit A (the “Lease Agreement”), for the lease of copier equipment, and authorizes the Mayor to execute the Lease Agreement on behalf of the City.

RESOLVED AND PASSED this 22\textsuperscript{nd} day of August, 2018.

_______________________________
David D. Spellman, Mayor

ATTEST:

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

SUBJECT: A RESOLUTION APPROVING A LEASE AGREEMENT WITH CANON SOLUTIONS AMERICA, INC. FOR COPIER EQUIPMENT.

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

MOTION TO APPROVE: Resolution 56-2018, A Resolution Approving a Lease Agreement with Canon Solutions America, Inc. for Copier Equipment.

SUMMARY AND BACKGROUND OF SUBJECT MATTER: The City’s current 60-month lease of six (6) copiers is set to expire in late August 2018. Staff identified the current copier needs and initiated the procurement process to replace the aging equipment. The RFP resulted in 9 responses, with Canon Solutions, USA scoring highest. The total contract value over the 60-month period will be $90,540. This is a savings of over $46,000 from our current agreement.

AGENDA DATE: August 22, 2018

WORKSHOP DATE: N/A

FUNDING SOURCE: N/A

DEPARTMENT DIRECTOR APPROVAL: [X] Yes [ ] No

STAFF PERSON RESPONSIBLE: Lance Hillis, Finance Director

DOCUMENTS ATTACHED: Resolution, Lease Agreement

RECORD: [ ] Yes [X] No

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

SUBMITTED BY: Reviewed by:

__________________________ __________________________________
Lance Hillis, Finance Director Jack D. Lewis, City Manager
Salesperson: Patricia Ann Kent
Order Date: 7/18/2018

Customer ("You"): Customer Account:
Company Legal Name: Black Hawk, City of
Doing Business As:
Billing Address: P.O. Box 68
City: Black Hawk
State: CO
Zip: 80422
Contact: Tarik Muhammad
E-mail: tmuhammad@cityofblackhawk.org

Organization Information
Federal Tax Identification Number (TIN):

Fleet
Under separate
Limited Liability Company
No
Limited Liability Partnership
Non-Profit Corporation
State or Local Government
Sole Proprietorship

Title: _____________________________________

Personal Guaranty

The undersigned (whether one or more are specified, “Guarantor(s)” in consideration of CANON SOLUTIONS AMERICA, INC. ("CSA") entering into a unified lease agreement (together with any schedules or supplements thereto, "Agreement") with the customer identified above ("Customer"), irrevocably and unconditionally, jointly and severally, guarantee to Lessor (as defined in the Agreement) and its successors and assigns, the payment when due of all amounts owed under the Agreement (whether at maturity or upon the occurrence of an event of default or otherwise) and the performance by Customer of all terms of the Agreement and any other transaction between Customer and Lessor (or CSA as assigned to Lessor) collectively, "Liabilities". If Customer shall fail to pay or perform any Liabilities when due, Guarantors shall, upon demand, pay any amounts which may be due from Customer and take any action required of Customer under the Agreement. This is an absolute and continuing guaranty and Guarantors' liability under this Guaranty is primary and will not be affected by any settlement, extension, renewal or modification of the Agreement or any discharge or release of Customer's obligations, whether by agreement or operation of law.

If any payment applied by Lessor on the Liabilities is thereafter set aside, recovered or required to be returned for any reason (including without limitation the bankruptcy, insolvency or reorganization of Customer or any other person), the Liabilities to which such payment was applied shall for the purposes of this Guaranty be deemed to have continued in existence, notwithstanding such application and, this Guaranty shall be enforceable as to such Liabilities as fully as if such application had never been made. This Guaranty may be terminated only upon sixty (60) days' prior written notice to CSA and Lessor, and such termination shall be effective only as to Liabilities arising under schedules, supplements, or agreements entered into after the effective date of termination and shall not affect Lessor's rights under this Guaranty arising out of the Agreement or other agreements entered into prior to such date. Guarantors waive all damages, demands, presentments and notices of every kind and nature, any rights of set-off, and any defenses available to a guarantor (other than the defense of payment and performance in full) under applicable law. Guarantors further waive any (i) notice of the incoming of indebtedness by Customer and the acceptance of this Guaranty, (ii) right to require suit against Customer or any other party before enforcing this Guaranty and (iii) right of subrogation to Lessor's rights against Customer until the Liabilities are satisfied in full. Any (a) renewals and extensions of time of payment, (b) release, substitution or compromise of or realization upon the Equipment, other guaranties or any collateral security and (c) exercise of any other right under this or any other agreement between Lessor (or CSA as assigned by Lessor) and Customer or any third party, may be made, granted and effected by Lessor without notice to Guarantors and without in any manner affecting Guarantors' liability under this Guaranty.

Guarantors shall pay all expenses (including attorneys' fees and legal expenses) paid or incurred by Lessor in endeavoring to collect the Liabilities or any part thereof and in enforcing the Guaranty. THIS GUARANTY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. ANY ACTION BETWEEN GUARANTORS AND LESSOR SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF CAMDEN OR BURLINGTON, NEW JERSEY, OR AT LESSOR'S SOLE OPTION, IN THE STATE WHERE ANY GUARANTOR, CUSTOMER OR EQUIPMENT IS LOCATED. GUARANTORS, BY THEIR EXECUTION AND DELIVERY HEREOF, IRREVOCABLY WAIVE OBJECTIONS TO JURISDICTION OF SUCH COURTS AND OBJECTIONS TO SERVICE OF PROCESS THEREOF. GUARANTORS, BY THEIR EXECUTION AND DELIVERY HEREOF, AND CSA AND LESSOR, BY THEIR ACCEPTANCE HEREOF, HEREBY IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDINGS.

Guarantors agree that CSA and Lessor may accept a facsimile or other electronic transmission of this Guaranty as an original, and that facsimile or electronically transmitted copies of Guarantors' signatures will be treated as an original for all purposes.

Printed Name: Signature: _________________________________ (no title) Date: ________________________
Address: Phone: ____________________________

Printed Name: Signature: _________________________________ (no title) Date: ________________________
Address: Phone: ____________________________

BY YOUR SIGNATURE BELOW, YOU AGREE TO LEASE THE ITEMS LISTED ON SCHEDULE A OR IN ANY ADDENDUM(S) TO THIS AGREEMENT. YOU ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT, INCLUDING THE GENERAL TERMS AND CONDITIONS, WHICH ARE INCORPORATED HEREIN BY REFERENCE. The undersigned and CSA have each caused this Agreement to be executed as of the date first written below.

Customer's Authorized Signature: ____________________________ Date: ________________________
Printed Name: ____________________________ Title: ____________________________

CSA Authorized Signature: ____________________________ Date: ________________________
Printed Name: ____________________________ Title: ____________________________

UNIFIED LEASE AGREEMENT
#ULF S0846703

SL5-109F CFS-1210 March 2018
1. LEASE OF EQUIPMENT AND SOFTWARE

1.1 Listed Items, Commencement of Lease. CSA shall supply, for lease by you pursuant to this Agreement, the Equipment specified on Schedule A and such additions thereto as may be added to Schedule A at the request of Lessor, and for which CSA shall be paid such additional charges as may be applicable, together with all accessories thereto, including Software, if applicable, pursuant to separate support contracts, if applicable. CSA shall assign to you, the Lessee, all rights to possession of the Equipment, the Software and all accessories thereto provided to you under separate agreement between CSA and you shall be governed solely by the terms of such separate agreement between CSA and you and not governed by this Agreement. CSA may terminate its maintenance obligations as to any Equipment if you relocate it to a site outside CSA’s service coverage area. CSA may, at its option, (i) substitute comparable Equipment or (ii) prepay any balance of the term of its maintenance obligations as to such Equipment and refund any balance of its fees for such Equipment that you have paid in advance. CSA shall supply, for lease by you pursuant to this Agreement, the Equipment specified on Schedule A and such additions thereto as may be added to Schedule A at the request of Lessor, and for which CSA shall be paid such additional charges as may be applicable, together with all accessories thereto, including Software, if applicable, pursuant to separate support contracts, if applicable. CSA shall assign to you, the Lessee, all rights to possession of the Equipment, the Software and all accessories thereto provided to you under separate agreement between CSA and you shall be governed solely by the terms of such separate agreement between CSA and you and not governed by this Agreement. CSA may terminate its maintenance obligations as to any Equipment if you relocate it to a site outside CSA’s service coverage area. CSA may, at its option, (i) substitute comparable Equipment or (ii) prepay any balance of the term of its maintenance obligations as to such Equipment and refund any balance of its fees for such Equipment that you have paid in advance.

2. MAINTENANCE. YOU SHALL RECEIVE THE MAINTENANCE DESCRIBED IN THIS SECTION.

2.1 Routine Maintenance. CSA shall perform routine maintenance services, including but not limited to, replacing any consumables that have been used, repairs that are required by applicable law, and any other services necessary to maintain the Equipment in proper working condition. CSA shall make available to you at your request, a replacement unit of like type and quality without a charge in addition to the amount charged for routine maintenance services, in connection with the repair or replacement of an equipment if the cause of the repair or replacement is not attributable to you or your employees, agents or representatives, and CSA shall have the right to charge you for any additional charges as may be incurred by CSA in connection with such repair or replacement. CSA may terminate its maintenance obligations as to any Equipment if you relocate it to a site outside CSA’s service coverage area. CSA may, at its option, (i) substitute comparable Equipment or (ii) prepay any balance of the term of its maintenance obligations as to such Equipment and refund any balance of its fees for such Equipment that you have paid in advance.

2.2 Level 1 and 2 Support. CSA shall provide Level 1 and 2 support services in connection with the repair or replacement of an Equipment if the cause of the repair or replacement is not attributable to you or your employees, agents or representatives, and CSA shall have the right to charge you for any additional charges as may be incurred by CSA in connection with such repair or replacement. CSA may terminate its maintenance obligations as to any Equipment if you relocate it to a site outside CSA’s service coverage area. CSA may, at its option, (i) substitute comparable Equipment or (ii) prepay any balance of the term of its maintenance obligations as to such Equipment and refund any balance of its fees for such Equipment that you have paid in advance.

3. SOFTWARE.

3.1 Software. CSA shall supply, for lease by you pursuant to this Agreement, the Software specified on Schedule A and such additions thereto as may be added to Schedule A at the request of Lessor, and for which CSA shall be paid such additional charges as may be applicable, pursuant to separate support contracts, if applicable. CSA shall assign to you, the Lessee, all rights to possession of the Software, the Equipment and all accessories thereto provided to you under separate agreement between CSA and you shall be governed solely by the terms of such separate agreement between CSA and you and not governed by this Agreement. CSA may terminate its maintenance obligations as to any Equipment if you relocate it to a site outside CSA’s service coverage area. CSA may, at its option, (i) substitute comparable Equipment or (ii) prepay any balance of the term of its maintenance obligations as to such Equipment and refund any balance of its fees for such Equipment that you have paid in advance.
ULF #
are not in default of this Agreement and Maintenance under this Agreement has not been
canceled or terminated.
4.
DATA. You acknowledge that the hard drive(s) on the Equipment, including attached
devices, may retain images, content or other data that you may store for purposes of normal
operation of the Equipment (“Data”). You acknowledge that Lessor is not storing Data on
behalf on you and that exposure or access to the Data by CSA or Lessor, if any, is purely
incidental to the services performed by CSA or Lessor or any other disposition of the
Equipment by you. Neither CSA nor Lessor nor or any of their affiliates has an obligation to
erase or overwrite Data upon your return of the Equipment to CSA or Lessor. You are solely
responsible for: (A) your compliance with applicable law and legal requirements pertaining to
data privacy, storage, security, retention and protection; and (B) all decisions related to erasing
or overwriting Data. Without limiting the foregoing, you should, (i) enable the Hard Disk Drive
(HDD) data erase functionality that is a standard feature on certain Equipment and/or (ii) prior
to return or other disposition of the Equipment, utilize the HDD (or comparable) formatting
function (which may be referred to as “Initialized All Data/Settings” function) if found on the
Equipment to perform a one pass overwrite of Data or, if you have higher security
requirements, you may purchase from CSA at current rates an appropriate option for the
Equipment, which may include (a) an HDD Data Encryption Kit option which disguises
information before it is written to the hard drive using encryption algorithms, (b) an HDD Data
Erase Kit that can perform up to a 3-pass overwrite of Data (for Equipment not containing data
erase functionality as a standard feature), or (c) a replacement hard drive (in which case you
should properly destroy the replaced hard drive). You shall indemnify Lessor, CSA, their
subsidiaries, directors, officers, employees and agents from and against any and all costs,
expenses, liabilities, claims, damages, losses, judgments or fees (including reasonable
attorneys' fees) arising or related to the storage, transmission or destruction of the Data. The
terms of this section shall solely govern as to Data, notwithstanding that any provisions of this
Agreement or any separate confidentiality or data security or other agreement now or hereafter
entered into between you and CSA or Lessor applies, or could be construed to apply to Data.
5.
LIMITED WARRANTY; EXCLUSIONS & LIMITATIONS; INDEMNIFICATION
5.1 Limited Warranty. Equipment is warranted only as provided in the manufacturer’s
warranty provided with the Equipment (for CANON brand Equipment, the manufacturer’s
warranty is provided by Canon U.S.A., Inc.). End user warranties, if any, for Listed Software
are provided solely by the developers or suppliers of the Listed Software. So long as you are
not in breach or default of this Agreement, Lessor assigns to you, solely for the purpose of
making and prosecuting any such claim, the rights, if any, which Lessor may have under all
such warranties for the Listed Items.
5.2 Disclaimer of Warranties. LESSOR IS NOT A MANUFACTURER, DEALER, OR
SUPPLIER OF THE LISTED ITEMS. AS BETWEEN YOU AND LESSOR, THE LISTED
ITEMS ARE LEASED “AS IS” AND ARE OF A SIZE, DESIGN, AND CAPACITY SELECTED
BY YOU. LESSOR HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND,
EXPRESS OR IMPLIED, WITH RESPECT TO THE LISTED ITEMS. The warranties, if any,
provided for any of the Listed Items are enforceable by you only against the Canon company
or third party making such warranties, not against any Lessor. CSA is not an agent or
representative of Lessor and is not authorized to waive or alter any of Lessor’s rights or make
any representation for Lessor about the Listed Items, except to the extent set forth in this
Agreement. EACH OF CSA AND LESSOR EXPRESSLY DISCLAIMS ALL WARRANTIES,
EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND
FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE USE OR PERFORMANCE OF
THE LISTED ITEMS OR CSA’S SERVICES. THE FURNISHING OF MAINTENANCE UNDER
THIS AGREEMENT DOES NOT ASSURE UNINTERRUPTED OPERATION OR USE OF ANY
OF THE LISTED ITEMS.
5.3 Limitation of Liability. NEITHER CSA NOR LESSOR SHALL BE LIABLE FOR
INJURY OR DAMAGE EXCEPT TO THE EXTENT CAUSED BY SUCH PARTY’S
NEGLIGENCE OR WILLFUL MISCONDUCT. NEITHER CSA NOR LESSOR SHALL BE
LIABLE FOR EXPENDITURES FOR SUBSTITUTE EQUIPMENT OR SERVICES, LOSS OF
REVENUE OR PROFIT, LOSS, CORRUPTION OR RELEASE OF DATA, FAILURE TO
REALIZE SAVINGS OR OTHER BENEFITS, STORAGE CHARGES; OR INCIDENTAL,
SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN
CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY ON
WHICH THE CLAIM IS BASED AND EVEN IF CSA OR LESSOR HAS BEEN ADVISED OF THE
POSSIBILITY OF SUCH DAMAGES.
5.4 Indemnification. You shall reimburse Lessor for and defend Lessor against any claim
for losses or injury caused by the Listed Items, before and after the Lease Term ends.
6.
ADDITIONAL LEASE REQUIREMENTS.
6.1 Warranty of Business Purpose; Maintenance. You warrant that the Listed Items will
not be used for personal, family or household purposes. If at any time for any reason
whatsoever CSA’s maintenance obligations have terminated, at your sole expense you shall
keep the Equipment in good working order and supply and install replacement parts and
accessories when required to maintain the Equipment. Any such replacements shall be the
property of Lessor and shall be deemed Equipment.
6.2 Risk of loss; Insurance. Effective upon delivery to you, you shall bear the entire risk of
any loss or theft of or damage to the Equipment (“Loss”). You shall obtain and maintain during
the term hereunder including all renewals and extensions, at your expense, (a) property
insurance for the full replacement value of the Equipment and (b) comprehensive public
liability and property damage insurance. All such insurance shall provide for a deductible not
exceeding $5,000 and be in form and amount and with companies satisfactory to Lessor. Each
insurer providing such insurance shall name Lessor as additional insured and loss payee and
provide Lessor 30 days’ prior written notice of alteration or cancellation. You shall deliver
certificates or other evidence of insurance to Lessor. You appoint Lessor as your attorney-infact solely to make claim for, receive payment of, and execute and endorse documents,
checks, or drafts for any Loss. If within 10 days after request you fail to deliver satisfactory
evidence of such insurance to Lessor, then Lessor shall have the right, but not the obligation,
to obtain insurance covering Lessor’s interests in the Equipment, and add the costs of
maintaining such insurance, and an administrative fee, to the amounts due from you under this
Agreement. Lessor and any of its affiliates may make a profit on the foregoing. You shall
promptly (i) repair or replace any Equipment subject to a Loss or (ii) pay to Lessor the
Remaining Lease Balance (defined below). No Loss shall relieve you of any obligation under
this Agreement.
7.
DEFAULT; REMEDIES. You shall be in default of this Agreement if: (a) you fail to make
any Payments when due or perform any of your other obligations under this Agreement; (b)
you fail to make payments when due of any indebtedness to Lessor; (c) you or any guarantor
of your obligations (“Guarantor”) cease doing business as a going concern; (d) you or any
Guarantor become insolvent or make an assignment for the benefit of creditors; (e) a petition
or proceeding is filed by or against you or any Guarantor under any bankruptcy or insolvency
law; (f) a receiver, trustee, conservator, or liquidator is appointed for you, any Guarantor, or
any of your or any Guarantor’s property; (g) any statement, representation or warranty made
by you or any Guarantor to CSA or Lessor is incorrect in any material respect; or (h) you or

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S0846703

any Guarantor who is a natural person die. If you are in default, you shall pay for Lessor’s
reasonable collection and other costs, and without limiting any of CSA’s rights hereunder or
under applicable law, Lessor may exercise (on behalf of itself and, as applicable, CSA) any
one or all of the following remedies: (1) declare all unpaid Fixed Payments immediately due
and payable, with Lessor retaining title to the Listed Items; (2) terminate any and all
agreements with you; (3) without notice, demand or legal process, retake possession of the
Listed Items (and you authorize Lessor to enter upon the premises where the Listed Items may
be found) and (A) retain the Listed Items and all Payments and other sums paid, (B) re-lease
the Listed Items and recover from you the amount by which the Remaining Lease Balance
exceeds the value attributed to the Listed Items by Lessor for purposes of calculating the
payments under the new lease agreement, or (C) sell the Listed Items and recover from you
the amount by which the Remaining Lease Balance exceeds the net amount received by
Lessor from such sale; or (4) pursue any other remedy permitted at law or in equity. Lessor
may sell the Listed Items after preparing them or not and may disclaim warranties of title and
the like. If the Listed Items are not available for sale, you shall be liable for the Remaining
Lease Balance and any other amounts due. The “Remaining Lease Balance” shall be the sum
of: (i) all Fixed Payments then owed by you to Lessor; (ii) the present value of all remaining
Fixed Payments for the full Lease Term; (iii) the Purchase Option of the Listed Items indicated
on the face of this Agreement; plus (iv) any applicable taxes, expenses, charges, and fees. For
purposes of determining present value, Fixed Payments shall be discounted at 3% per year.
8.
SECURITY; WAIVER. You authorize Lessor to file any form of financing or continuation
statements and amendments thereto. THE LEASE CREATED BY THIS AGREEMENT IS
INTENDED AS A "FINANCE LEASE" AS THAT TERM IS DEFINED IN ARTICLE 2A OF THE
UNIFORM COMMERCIAL CODE (“UCC 2A) AND LESSOR IS ENTITLED TO ALL
BENEFITS, PRIVILEGES AND PROTECTIONS OF A LESSOR UNDER A FINANCE LEASE.
YOU WAIVE YOUR RIGHTS AS A LESSEE UNDER UCC 2A SECTIONS 508-522, AND YOU
IRREVOCABLY WAIVE ANY RIGHT TO NOTICE THEREOF. If the lease is determined not to
be a true lease, you grant Lessor a security interest in the Listed Items. Your exact legal name,
your chief executive office address, and your jurisdiction of organization are as set forth on
page 1; if you change any of them or the corporate structure, you shall provide prior written
notice to Lessor 30 days before such change. Upon request, you will execute and deliver to
Lessor such documents as required or appropriate.
9.
GENERAL
9.1 Choice of Law and Forum. THIS AGREEMENT AND ALL CLAIMS, DISPUTES AND
CAUSES OF ACTION RELATING THERETO, WHETHER SOUNDING IN CONTRACT, TORT
OR STATUTE, SHALL FOR ALL PURPOSES BE GOVERNED BY THE LAWS OF NEW
JERSEY WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. YOU CONSENT TO
THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT
LOCATED WITHIN CAMDEN OR BURLINGTON COUNTY, NEW JERSEY, OR AT
LESSOR’S OPTION IN ANY STATE WHERE YOU OR THE EQUIPMENT ARE LOCATED.
YOU WAIVE OBJECTIONS TO THE JURISDICTION OF SUCH COURTS, OBJECTIONS TO
VENUE AND TO CONVENIENCE OF FORUM. ANY SUIT, OTHER THAN ONE SEEKING
PAYMENT OF AMOUNTS DUE, SHALL BE COMMENCED, IF AT ALL, WITHIN 1 YEAR OF
THE DATE THAT THE CLAIM ACCRUES. THE PARTIES IRREVOCABLY WAIVE ANY
RIGHT TO A JURY TRIAL IN ANY SUIT BETWEEN THEM.
9.2 Entire Agreement; Electronic Acceptance. This Agreement shall be binding upon you
when you sign it, upon CSA when CSA has installed the Equipment, and upon Lessor when you
have accepted the Listed Items. All provisions of this Agreement, including Section 4, which by
their nature can be construed to survive the expiration or termination of the Agreement shall so
survive. CSA or Lessor may insert missing or correct other information including the Listed
Item description, serial number, and location; and corrections to your legal name; but
otherwise this Agreement (together with any separate agreement entered into between you and
CSA as described in Section 2.3 above) constitutes the entire agreement between the parties with
respect to the subject matter hereof. Any purchase order utilized by you shall be for your
administrative convenience only, and any terms therein which conflict with, vary from or
supplement the provisions of this Agreement shall be deemed null and void. No representation
or statement shall be binding upon Lessor or CSA as a warranty or otherwise unless it is
contained in the original of this Agreement. This Agreement shall not be modified or amended
except in a written amendment signed by an authorized signer of CSA and you. If a court finds
any provision to be unenforceable, the remaining provisions shall remain in full force and effect.
You expressly disclaim having relied upon any statement concerning the capability, condition,
operation, performance or specifications of the Listed Items, except to the extent set forth in the
original of this Agreement. CSA or Lessor may accept electronic images of this Agreement or
any Acceptance Certificate as originals, and electronic copies of your signature will be treated
as original for all purposes.
9.3 Joint and Several Liability; Assignment. If more than one entity executes this
Agreement as the Customer, your obligations shall be joint and several. YOU SHALL NOT
ASSIGN OR PLEDGE THIS AGREEMENT, NOR SHALL YOU SUBLET OR LEND ANY
LISTED ITEMS. Each of CSA and Lessor may pledge or assign its rights under this
Agreement. If a Lessor assigns its rights, the assignee will have the same rights and benefits
that the Lessor had and shall not have any obligations hereunder. The rights of the assignee
will not be subject to any claims, defenses, or setoffs that you may have against the Lessor.
9.4 Notices. All notices required or permitted under this Agreement shall be sufficient if
delivered personally, sent via facsimile or other electronic transmission, or mailed to such party
at the address set forth on page 1 or at such other address as such party may designate in
writing from time to time. Notices shall be effective 3 days after deposit in the U.S. mail, duly
addressed, or upon delivery via personal or express delivery, facsimile or other electronic
transmission. You shall send all notices regarding lease provisions to Lessor only, and all
notices regarding maintenance provisions to CSA only.
Address for notices to Canon Solutions Address for notices to Canon Financial
America, Inc.:
Services, Inc.:
300 Commerce Square Blvd.
158 Gaither Drive, Suite 200
Burlington, NJ 08016
Mount Laurel, NJ 08054
Attn: Customer Service Department
Attn: Customer Service Department
Phone: (800) 613-2228
Phone: (800) 220-0330
Fax: (800) 220-4002
Fax: (856) 813-5122
Email: customercare@csa.canon.com
Email: customer@cfs.canon.com
9.5 USA PATRIOT Act; Credit information. To help the government fight the funding of
terrorism and money laundering activities, federal law requires all financial institutions to
obtain, verify, and record information that identifies each person who enters into a lease. This
means that when you enter into a lease, Lessor may ask for, among other things: (a) your
federal tax identification number and (b) your date of birth, if you are a sole proprietor. Lessor
may also ask to see identifying documents. You authorize your credit references, any credit
reporting agency, or any third party (including Lessor) to collect any credit information and to
release the same to Lessor, its affiliates, and their respective designees or assignees.

252


Ship To Information

<table>
<thead>
<tr>
<th>Delivery Address: 201 Selak Street, City Hall 2nd Floor</th>
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<tbody>
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<tr>
<td>State: CO Zip: 80422</td>
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<tr>
<td>Delivery Contact: Tarik Muhammad</td>
</tr>
<tr>
<td>Fax #:</td>
</tr>
<tr>
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Connectivity Contact: Tarik Muhammad

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Earliest Delivery Date: 8/3/2018

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Alternate Meter Read Method: ________
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### Connectivity Contact:
- Name: Tarik Muhammad
- Phone #: 303.582.2280
- Email: tmuhammad@cityofblackhawk.org
- Elevator: Yes
- Loading Dock: Yes
- Earliest Delivery Date: 8/3/2018
- # of Steps: 0
- Hours of Operation: 9-5

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- Equipment excluded from Maintenance
- Corporate Advantage
- Equipment under separate MPS agreement billed by CSA

**Covered Images Included**
- B & W
- Color

**Start Meter**
- B & W
- Color

**Excess per Image Charge**
- B & W
- Color

Alternate Meter Read Method: _____

**Covered Images Included**
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**Excess per Image Charge**
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**Connectivity Contact:**

- i/T Phone #: 303.582.2280
- E-Mail: tmuhammad@cityofblackhawk.org

**Elevator:** Yes [ ] No [x]

**Loading Dock:** Yes [x] No [ ]

**Earliest Delivery Date:** 8/3/2018

**# of Steps:** 0

**Hours of Operation:** 9-5

**Special Instructions:**

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**Alternate Meter Read Method:**

*ImageWARE Remote unless noted above*

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**IntSupplies**

- Pre-Installed Supplies Installed in Machine

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**Corporate Advantage**

- Yes [x] No [ ]

**Equipment under separate MPS agreement billed by CSA**

- Yes [x] No [ ]

**Covered Images Included**

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<th>Color</th>
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<th>Color</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

**Alternate Meter Read Method:**

---

**IntSupplies**

- Pre-Installed Supplies Installed in Machine
### Customer Information

**Customer Name:** Black Hawk, City of

- **Delivery Address:** 987 Miners Mesa Road, Pub Works
- **City:** Black Hawk
- **State:** CO
- **Zip:** 80422
- **Contact:** Tarik Muhammad
- **Fax #:**
- **Phone #:** 303.582.2280
- **E-Mail:** tmuhammad@cityofblackhawk.org
- **Earliest Delivery Date:** 8/3/2018
- **Hours of Operation:** 9-5

### Equipment and Software ("Listed Items")

<table>
<thead>
<tr>
<th>Item Code</th>
<th>Product Description</th>
<th>Qty</th>
<th>Serial #</th>
</tr>
</thead>
<tbody>
<tr>
<td>0605C039</td>
<td>IRADVC5535IV2</td>
<td>1</td>
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</tr>
<tr>
<td>0609C002</td>
<td>CASSETTE FEEDING UNIT-AM1</td>
<td>1</td>
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<tr>
<td>0615C002</td>
<td>INNER FINISHER-H1</td>
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<tr>
<td>1972V064</td>
<td>ESP NEXT GEN PCS POWER FILTER (120V/15A) XG-P</td>
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<td>2368V120</td>
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<td>IntSupplies</td>
<td>Pre-Installed Supplies Installed in Machine</td>
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</tr>
</tbody>
</table>

### Equipment Maintenance Information

Complete the following information, if Maintenance is selected on the face page. Maintenance is automatically selected herein unless you choose the option to exclude Maintenance by checking box(es) below.

- Equipment excluded from Maintenance
- Equipment under separate MPS agreement billed by CSA

#### Covered Images Included
- **B & W**
- **Color**

#### Start Meter
- **B & W**
- **Color**

#### Excess per Image Charge
- **B & W**
- **Color**

Alternate Meter Read Method: _______

Key to Meter Read Method: ImageWARE Remote unless noted above (or) W = myCSA website
### Ship To Information

**Delivery Address:** 196 Clear Creek Street, Fire

**City:** Black Hawk  
**County:** GILPIN  
**State:** CO  
**Zip:** 80422

**Delivery Contact:** Tarik Muhammad  
**Fax #:**

**E-Mail:** tmuhammad@cityofblackhawk.org

**I/T Phone #:** 303.582.2280  
**E-Mail:**  
**Elevator:** Yes  
**Loading Dock:** Yes

**Earliest Delivery Date:** 8/3/2018  
**# of Steps:** 0  
**Hours of Operation:** 9-5

---

### Equipment and Software ("Listed Items")

<table>
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</tr>
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### Equipment Maintenance Information

Complete the following information, if Maintenance is selected on the face page. Maintenance is automatically selected herein unless you choose the option to exclude Maintenance by checking box(es) below.

- [ ] Equipment excluded from Maintenance
- [ ] Corporate Advantage
- [ ] Equipment under separate MPS agreement billed by CSA

**Covered Images Included**

- [ ] B & W
- [ ] Color

**Start Meter**

- [ ] B & W
- [ ] Color

**Excess per Image Charge**

- [ ] B & W
- [ ] Color

---

**Alternate Meter Read Method:** ______

---

**Key to Meter Read Method:** ImageWARE Remote unless noted above (or) W = myCSA website
#ULF S0846703

Customer Name: Black Hawk, City of

### Ship To Information

- **Delivery Address:** 221 CHURCH ST POLICE DEPARTMENT
- **City:** Black Hawk
- **State:** CO
- **Zip:** 80422
- **Phone #:** 303.582.2280
- **Fax #:**
- **E-Mail:** tmuhammad@cityofblackhawk.org
- **Elevator:** Yes
- **Loading Dock:** Yes
- **Earliest Delivery Date:** 8/3/2018
- **# of Steps:** 15
- **Hours of Operation:** 9-5

### Equipment and Software ("Listed Items")

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</tr>
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</table>

### Equipment Maintenance Information

- **Equipment excluded from Maintenance**
- **Corporate Advantage**
- **Equipment under separate MPS agreement billed by CSA**

Complete the following information, if Maintenance is selected on the face page. Maintenance is automatically selected herein unless you choose the option to exclude Maintenance by checking box(es) below.

- **Covered Images Included**
  - **B & W**
  - **Color**
  - **Start Meter**
    - **B & W**
    - **Color**
  - **Excess per Image Charge**
    - **B & W**
    - **Color**

Alternate Meter Read Method: _____

Key to Meter Read Method:  ImageWARE Remote unless noted above (or) W =myCSA website
SPECIAL LEASED EQUIPMENT REIMBURSEMENT & RETURN AGREEMENT

Related to agreement #  S0846703

Salesperson  Patricia Ann Kent  Order Date:  7/18/2018

Customer (“you”):  Black Hawk, City of Black Hawk
Company:  Black Hawk, City of Black Hawk
Address:  P.O. Box 68
City:  Black Hawk
State:  CO
Zip:  80422

End of Lease Conditions and Lease Return Instructions:

Lease Term Status:  [ ] Original Term  [ ] In Renewal Term(s)
Lease End Date (or end of Renewal Term if applicable):  Complete in table below

Lease non-renewal notification requirement:  (Check one)
[ ] 30 Days  [ ] 60 Days  [ ] 90 Days  [ ] Other ______

Return Options:  (Check one)
[ ] CSA will Return the Equipment to the Leasing Company subject to the Terms and Conditions of this Agreement
[ ] CSA will not pick up and return the Equipment to the Leasing Company
Leasing Company:  All Copy
Lease #:  556459

Customer Reimbursement:
Promotional Customer Reimbursement ..... $ _______________
Other (describe) ..... $ _______________
Total _____________________________ $ _______________

PLEASE PRINT EQUIPMENT LOCATION INFORMATION BELOW:

<table>
<thead>
<tr>
<th>Brand</th>
<th>Model / Accessory Description</th>
<th>Serial #</th>
<th>Meter Reading</th>
<th>Lease End Date</th>
<th>Street</th>
<th>City</th>
<th>State</th>
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<tr>
<td>Canon</td>
<td>IRADVC5235</td>
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<td>Aug 15, 2018</td>
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</table>

CSA shall not be liable for injury or damage except to the extent caused by CSA’s negligence or willful misconduct. CSA shall not be liable for losses of revenue or profit, loss, corruption or release of data; failure to realize savings or other benefits; storage charges or incidental, special, punitive or consequential damages arising out of or in connection with this agreement regardless of the legal theory on which the claim is based and even if CSA has been advised of the possibility of such damages. This agreement and all claims, disputes and causes of action relating thereto, whether sounding in contract, tort or statute, shall be governed by and construed in accordance with the laws of the State of New York. You consent to the exclusive jurisdiction and venue of any State or Federal Court located within the City of New York upon service of process made in accordance with the applicable statutes and rules of the State of New York or the United States. Any suit or other seeking payment of amounts due hereunder, shall be commenced, if at all, within one (1) years of the date that the claim accrues. The parties irrevocably waive any right to a jury trial in any suit between them.

DATA. You acknowledge that the hard drive on the Equipment may retain images, content or other data that you may store for purposes of normal operation of the Equipment (“Data”). You acknowledge that CSA is not storing Data on behalf of you and that exposure or access to the Data by CSA, if any, is purely incidental to the services performed by CSA. Neither CSA nor any of their affiliates has an obligation to erase or overwrite Data upon Your return of the Equipment to CSA or any leasing company. You are solely responsible for: (i) Your compliance with applicable law and legal requirements pertaining to data privacy, storage, security, retention and protection; and (ii) all decisions related to erasing or overwriting Data. The terms of this section shall solely govern as to Data, notwithstanding that any provisions of this Agreement or any separate confidentiality or data security or other agreement now or hereafter entered into between you and CSA could be construed to apply to Data.

Customer’s Authorized Signature ____________________________

Printed Name  Patricia Ann Kent  Title  IT Manager  Date  259

SLS-006 July 2017 CSA
GOVERNMENTAL ENTITY

Complete Legal Name: Black Hawk, City of ("Customer")

THIS MUNICIPAL FISCAL FUNDING ADDENDUM ("ADDENDUM") WILL BE OF NO FORCE OR EFFECT IF THE CUSTOMER IS NOT A STATE OR A POLITICAL SUBDIVISION OF A STATE WITHIN THE MEANING OF SECTION 103(C) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

Customer warrants that it has funds available to pay Payments payable pursuant to the Unified Lease Agreement (the "Agreement") between Customer and CSA until the end of its current appropriation period and warrants that it presently intends to make Payments in each appropriation period from now until the end of this Agreement. The officer of Customer responsible for preparation of Customer's annual budget shall request from its legislative body or funding authority funds to be paid to the Lessor under this Agreement. If notwithstanding the making in good faith of such request in accordance with appropriate procedures and with the exercise of reasonable care and diligence, such legislative body or funding authority does not appropriate funds to be paid to the Lessor for the Equipment, Customer may, upon prior written notice to CSA and the Lessor, effective upon the exhaustion of the funding authorized for the then current appropriation period, return the Equipment to the Lessor, at Customer's expense and in accordance with this Agreement, and thereupon, Customer shall be released of its obligation to make Payments to the Lessor due thereafter, provided: (1) the Equipment is returned to the Lessor as provided for in the Agreement; (2) the above described notice states the failure of the legislative body or funding authority to appropriate the necessary funds as the reason for cancellation; and (3) such notice is accompanied by payment of all amounts then due to the Lessor under this Agreement. In the event Customer returns the Equipment pursuant to the terms of this Agreement, the Lessor shall retain all sums paid by Customer. Customer's Payment obligations under this Agreement in any fiscal year shall constitute a current expense of Customer for such fiscal year, and shall not constitute indebtedness or a multiple fiscal year obligation of Customer under Customer's state constitution, state law or home rule charter. Nothing in this Agreement shall constitute a pledge by Customer of any taxes or other monies, other than as appropriated for a specific fiscal year for this Agreement and the Equipment.

The undersigned represents and warrants to CSA and the Lessor that all action required to authorize the execution and delivery of this Addendum on behalf of the above referenced Customer by the following signatory has been duly taken and remains in full force and effect. Customer agrees that CSA and the Lessor may accept a facsimile or other electronic transmission of this Addendum as an original, and that facsimile or electronically transmitted copies of Customer's signature will be treated as an original for all purposes.

ACCEPTED

Canon Solutions America, Inc.  Customer

By: ________________________________  By: ________________________________
Title: ________________________________  Name: ________________________________
Date: ________________________________  Title: ________________________________
This Personal Property Tax Addendum ("Addendum") is made a part of the above mentioned Agreement (whether designated a lease, rental, Master Lease together with any Schedules thereto, or otherwise, the "Agreement"), by and between the above mentioned Customer ("Customer") and Canon Solutions America ("CSA") and as assigned to Canon Financial Services, Inc. ("Lessor") pursuant to which Customer is or shall become the renter or lessee of certain Equipment (as defined in the Agreement). Capitalized terms used herein but not defined will have the same meanings assigned to them in the Agreement.

1. Notwithstanding anything to the contrary contained in the Agreement regarding taxes, fees and other charges, in consideration of Lessor waiving Customer's obligation to reimburse Lessor for state and local personal property taxes on the Equipment, Customer agrees to pay Lessor the increased monthly payment set forth in the Agreement. Customer remains responsible for all other taxes, fines or penalties relating to the Agreement or the Equipment.

2. This Addendum supplements and amends the Agreement only to the extent and in the manner set forth herein, and in all other respects the Agreement remains in full force and effect.

Customer agrees that Lessor may accept a facsimile or other electronically transmitted copy of this Addendum as an original, and that facsimile or other electronically transmitted copies of Customer's signature will be treated as an original for all purposes.

---

Customer: Black Hawk, City of

---

ACCEPTED

<table>
<thead>
<tr>
<th>CANON SOLUTIONS AMERICA, INC.</th>
<th>CUSTOMER: Black Hawk, City of</th>
</tr>
</thead>
<tbody>
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<td>By:</td>
<td>By:</td>
</tr>
<tr>
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<td>Title:</td>
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</table>

CFS-1223 (08/16)
WHEREAS, Canon Solutions America, Inc. ("CSA"), and the above-described Customer have determined that it is for their mutual benefit to enter into this Unified Lease Agreement Addendum ("Addendum") to the above-described Unified Lease Agreement ("Agreement"). All capitalized terms used below that are not defined in this Addendum shall have the meanings set forth in the Agreement.

NOW, THEREFORE, for good and valuable consideration, intending to be legally bound, the parties hereby agree as follows:

1. Anything in the Agreement to the contrary notwithstanding, and subject to all of the terms and conditions set forth in this Addendum, the terms and conditions of the Agreement shall be modified as follows:

   This transaction shall be governed in all respects by the Terms and Conditions of Contract #CP-002-13 dated 10-1-2013 between Canon Solutions America, Inc. and DuPage County (the "Contract") and any terms and conditions in the Agreement which conflict with, vary from or supplement the Contract terms shall be deemed null and void.

2. It is expressly agreed by the parties that this Addendum is supplemental to the Agreement, and that the provisions thereof, unless specifically modified herein, shall remain in full force and effect and shall apply to this Addendum as though they were expressly set forth herein.

3. In the event of any conflict or inconsistency between the provisions of this Addendum and any provisions of the Agreement, the provisions of this Addendum shall in all respects govern and control.

4. CSA may accept a facsimile or other electronic transmission of this Addendum as an original, and facsimile or other electronically transmitted copies of Customer’s signature will be treated as an original for all purposes. THIS ADDENDUM SHALL BE EFFECTIVE WHEN IT HAS BEEN SIGNED BY CUSTOMER AND ACCEPTED BY CSA.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed as of the date set forth below.

Canon Solutions America, Inc.

By: ________________________________  By: ________________________________

Name: ______________________________  Name: ______________________________

Title: _______________________________  Title: _______________________________

Date: _______________________________  Date: _______________________________
WHEREAS, Canon Solutions America, Inc. ("CSA"), and the above-described Customer have determined that it is for their mutual benefit to enter into this Unified Lease Agreement Addendum ("Addendum") to the above-described Unified Lease Agreement ("Agreement"). All capitalized terms used below that are not defined in this Addendum shall have the meanings set forth in the Agreement.

NOW, THEREFORE, for good and valuable consideration, intending to be legally bound, the parties hereby agree as follows:

1. Anything in the Agreement to the contrary notwithstanding, and subject to all of the terms and conditions set forth in this Addendum, the terms and conditions of the Agreement shall be modified as follows:

   a. **Personal Guaranty**: The Personal Guaranty is deleted in its entirety.

   b. **Paragraph 5.4**: Paragraph 5.4 is amended by (i) adding “To the extent permitted by law” to the beginning of the first sentence; (ii) by adding “unless due to Lessor’s gross negligence or willful misconduct” after “the Listed Items”; and (iii) by adding “CSA shall indemnify, defend and hold Customer harmless for any loss, expense and liability incurred by Customer from third party claims, for bodily injury (including death) or tangible property damage (collectively, “Claims”), to the extent resulting from CSA’s willful misconduct or negligent performance of services pursuant to this Agreement; provided Customer shall give CSA prompt written notice of the Claim, allow CSA sole control over the defense and settlement thereof and provide CSA with such assistance, at CSA’s expense, as CSA shall reasonably request.” at the end of the paragraph.

   c. **Paragraph 8**: Paragraph 8 is amended by (i) deleting the first sentence in its entirety; and (ii) deleting “30 days before” and replacing with “within 30 days after” in the fifth sentence.

   d. **Paragraph 9.1**: Paragraph 9.1 is amended by: (i) deleting “NEW JERSEY” and replacing with “COLORADO” in the first sentence; and (ii) deleting “CAMDEN OR BURLINGTON, NEW JERSEY” and replacing with “GILPIN, COLORADO” in the second sentence.

2. It is expressly agreed by the parties that this Addendum is supplemental to the Agreement, and that the provisions thereof, unless specifically modified herein, shall remain in full force and effect and shall apply to this Addendum as though they were expressly set forth herein.

3. In the event of any conflict or inconsistency between the provisions of this Addendum and any provisions of the Agreement, the provisions of this Addendum shall in all respects govern and control.

4. CSA may accept a facsimile or other electronic transmission of this Addendum as an original, and facsimile or other electronically transmitted copies of Customer’s signature will be treated as an original for all purposes. THIS ADDENDUM SHALL BE EFFECTIVE WHEN IT HAS BEEN SIGNED BY CUSTOMER AND ACCEPTED BY CSA.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed as of the date set forth below.

---

**Canon Solutions America, Inc.**

By: ________________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________

**City of Black Hawk**

By: ________________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________
RESOLUTION 57-2018
A RESOLUTION APPROVING THE PROFESSIONAL SERVICES AGREEMENT WITH KELLER ROHRBACK, L.L.P. REGARDING THE PURSUIT OF CLAIMS FOR DAMAGES AND INJUNCTIVE RELIEF AGAINST PHARMACEUTICAL COMPANIES AND/OR PHARMACEUTICAL DISTRIBUTERS WHO MANUFACTURE, MARKET AND SELL PRESCRIPTION OPIOIDS, AND OTHER RELATED SERVICES AS NECESSARY
STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

Resolution No. 57-2018

TITLE: A RESOLUTION APPROVING THE PROFESSIONAL SERVICES AGREEMENT WITH KELLER ROHRBACK, L.L.P. REGARDING THE PURSUIT OF CLAIMS FOR DAMAGES AND INJUNCTIVE RELIEF AGAINST PHARMACEUTICAL COMPANIES AND/OR PHARMACEUTICAL DISTRIBUTERS WHO MANUFACTURE, MARKET AND SELL PRESCRIPTION OPIOIDS, AND OTHER RELATED SERVICES AS NECESSARY

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

Section 1. The City Council hereby approves the Professional Services Agreement with Keller Rohrback, L.L.P. regarding the pursuit of claims for damages and injunctive relief against pharmaceutical companies and/or pharmaceutical distributors who manufacture, market and sell prescription opioids, and other related services as necessary, and authorizes the execution of the necessary documents to approve the Agreement.

RESOLVED AND PASSED this 22nd day of August, 2018.

________________________________________
David D. Spellman, Mayor

ATTEST:

________________________________________
Melissa A. Greiner, CMC, City Clerk
SUBJECT: Professional Services Agreement with Keller Rohrback, L.L.P.

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

MOTION TO APPROVE Resolution 57, A Resolution Approving the Professional Services Agreement with Keller Rohrback, L.L.P. Regarding the Pursuit of Claims for Damages and Injunctive Relief Against Pharmaceutical Companies and/or Pharmaceutical Distributers Who Manufacture, Market and Sell Prescription Opioids, and Other Related Services as Necessary

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
This Professional Services Agreement engages Keller Rohrback, L.L.P. to pursue claims for damages and injunctive relief against pharmaceutical companies and/or pharmaceutical distributors who manufacture, market and sell prescription opioids, and other related services as necessary.

AGENDA DATE: August 22, 2018

WORKSHOP DATE: N/A

FUNDING SOURCE: Legal Services

STAFF PERSON RESPONSIBLE: Corey Y. Hoffmann, City Attorney

DOCUMENTS ATTACHED: Resolution

RECORD: [ ]Yes [ X ]No

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

SUBMITTED BY: REVIEWED BY:

Melissa A. Greiner, CMC
City Clerk/Administrative Services Director

Jack D. Lewis
City Manager
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made between the City of Black Hawk, a municipal corporation of the State of Colorado (“City”) and Keller Rohrback L.L.P. with its principal place of business located at 1201 Third Avenue, Suite 3200, Seattle, Washington (“Special Counsel”, collectively “the Parties”).

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

1. COORDINATION WITH DEPARTMENT OF LAW: Special Counsel shall fully coordinate all services under the Agreement with the City Attorney or the City Attorney’s designated representative (“City Attorney”). To provide the best possible legal representation and reduce costs and expenses, Special Counsel agrees whenever requested to utilize the staff of the City Attorney’s Office, together with other City personnel. As directed by the City Attorney, Special Counsel agrees to utilize and coordinate with any consultant retained by the City on matters related to Special Counsel’s work. Special Counsel acknowledges that one or more Assistant City Attorneys may be assigned to provide additional legal representation to the City on certain matters. If applicable, Special Counsel shall submit to the City for approval: budgets, work plans and case plans in such form as may be required by the City Department of Law.

2. PROFESSIONAL SERVICES TO BE PERFORMED:
   a. Special Counsel shall provide professional legal services, as provided by Section 6.3(c) of the City of Black Hawk Home Rule Charter, and in conformance with the Colorado Rules of Professional Conduct, in pursuing claims for damages and injunctive relief against pharmaceutical companies and/or pharmaceutical distributers who manufacture, market and sell prescription opioids, and other related services as necessary. Special Counsel is ready, willing, and able to provide these services and shall faithfully perform the services pursuant to the Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals who perform services of a similar nature to those described in the Agreement.
   b. Lynn Sarko shall serve as lead attorney for Special Counsel and shall direct the provision of services under this Agreement. Special Counsel shall supply the City with a copy of all pleadings, motions, briefs, interrogatories, requests for admissions, requests for production of documents, memorandum, orders and judgments of the court or arbitrator, contracts, agreements, memorandum, or other documents prepared by Special Counsel or any subcontractor hired by Special Counsel under this Agreement. Special Counsel agrees that the City Attorney shall have final authority over the use of all documents to be prepared in the above matters.
   c. Multi-Party Representation. The City acknowledges that the Special Counsel will represent not only the City in the litigation, but also other entities, including but not limited to the jurisdictions listed on Exhibit A (collectively, “the Colorado Cities and Counties”). By mutual agreement, the Parties may add additional participating jurisdictions to the Cities and Counties after the date this Agreement is executed. City agrees to the Special Counsel’s representation of other plaintiff entities. The City understands that it is one of multiple plaintiffs represented by Special Counsel in the opioid litigation. The City consents to such representation and waives any potential conflict that might arise from such representation. The City further understands the effect of joint representation on attorney-client confidentiality. Attorney-client communications are privileged and are protected against disclosure to a third party. By entering into this Agreement, the City waives any right it may have to require Special Counsel to disclose to the City any confidences the Special Counsel have obtained from any other plaintiff regarding similar litigation. By this Agreement, the City also authorizes and provides its consent for the Special Counsel to undertake aggregate settlement discussions of all claims the Special Counsel files on
behalf of the Colorado Cities and Counties and any other clients that Special Counsel represents. No city or county’s decision to settle claims in the litigation shall be binding on any other city or county.

3. **TERM:** The Agreement will commence on August 27, 2018 and will expire on the conclusion of all assigned litigation (the “Term”).

4. **PAYMENT:**
   a. Payment, if any, is based on a contingency fee, with all costs advanced by the Special Counsel, and if applicable, will include costs and expenses incurred by partner firms. Any payment obligation of the City is contingent upon receipt and supplemental appropriation of opioid litigation recovery collected pursuant hereto. Special Counsel shall advance court costs and the expenses of litigation, the repayment of which shall be contingent upon the successful recovery by the City of opioid litigation revenue from defendants pursuant hereto. The percentage below shall be applied to the net amount collected by the City after the subtraction of court costs and expenses. In the event that a court determines the award of attorneys’ fees upon resolution of the Special Counsel Matter, Special Counsel will receive an amount equal to the greater of the court-awarded attorneys’ fees or the contingency fee. Special Counsel fees shall not exceed an amount equal to $1000/hour (ONE THOUSAND DOLLARS PER HOUR) multiplied by the number of hours spent on this Special Counsel Matter.
   b. Special Counsel shall maintain on a monthly basis a written statement containing a contemporaneous record of the numbers of hours of legal services provided by individual attorneys and paralegals; the nature of such services; and the amount and nature of court costs incurred during each month. This contemporaneous record shall be maintained as Attorney-Client Confidential by the City as it will contain information about the legal strategy in the litigation. In no event shall the contingent fee referenced in Paragraph 4(a) above exceed an average rate of one thousand dollars per hour, as determined by dividing the amount of the contingent fee by the number of hours recorded by the lawyers and other professionals for Special Counsel in the statements sent to the City. Clerical work, including but not limited to transcription, photocopying, and document filing and organization, shall not be recorded or considered for these purposes.
   c. If the City obtains a recovery pursuant hereto, Special Counsel shall be reimbursed out of the recovery for its out of pocket costs and expenses incurred in the preparation and presentation of the City claims, including without limitation filing fees, costs of consultants, costs of expert witnesses, costs of obtaining records, deposition expenses, mileage, travel expenses, investigation costs, photographic expenses, copying expenses, lay witness fees, and computer access charges, as outlined in Exhibit B. Costs will be billed at actual cost or a standard per unit charge which the parties agree approximates actual cost. If an opposing party is awarded costs and attorney’s fees against the City due to the City dereliction, the City shall be responsible for payment thereof.
   d. The City payment obligation, whether direct or contingent, extends only to funds appropriated annually by the City legislative body, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.
   e. Calculation of Attorneys’ Fees.
      (1) Attorneys’ Fees are contingent with a flat rate contingency fee of 15% of sums recovered up to $500 million, total in aggregate for the Cities and Counties. As it is used in this Agreement, the term “sums recovered” includes, but is not limited to, any proceeds recovered as a result of the opioid litigation on behalf of the Cities and Counties, including the creation of a settlement fund. If more than $500 million is recovered, then the fee will be 15% on the first $500 million. On any additional amount over and above $500 million, the fee on that additional amount will be 10%.
For purposes of calculating the fee, costs and expenses will be deducted from the sums recovered before the fee is calculated.

Any Attorneys’ Fees will be divided between Keller Rohrback and Reilly Pozner in proportion to the lodestar (hourly rates multiplied by hours) for services performed by each firm, with Reilly Pozner to receive no less than 10 percent of the fee attributable to the Cities and Counties, and Keller Rohrback to receive the remainder, for a total of 100 percent.

5. TYPE OF ATTORNEYS’ FEE AGREEMENTS: The City has been informed and understands that there are several types of attorney fee arrangements: (1) time based, (2) fixed, (3) contingent, or (4) combinations of these types of fee arrangements. “Time based” means a fee that is determined by the amount of time involved such as so much per hour, day or week. “Fixed” means a fee that is based on an agreed amount regardless of the time or effort involved or the result obtained. “Contingent” means a certain agreed percentage or amount that is payable only upon attaining a recovery regardless of the time or effort involved. The City understands that not all attorneys offer all of these different types of fee arrangements, and the City acknowledges that it has the right to contact other attorneys to determine if they may provide such other fee arrangements for my case or matter. After such consideration or consultation, the City elected the fee arrangement set forth above.

6. STATEMENT OF SERVICES RENDERED: Special Counsel shall submit to the City a final disbursement statement identifying the amount of recovery, the phase of litigation during which the case is resolved, and other information and documentation required by the Colorado Supreme Court Rules governing contingent fees, or as requested by the City Attorney. The final disbursement statement must reference the Contract Control number of the Agreement set forth on the City signature page. A partner of Special Counsel shall verify the statement. The final disbursement statement shall be treated as a confidential attorney-client privileged document and will remain as such until and unless the City Attorney otherwise directs. Special Counsel shall also provide status reports and updates regarding the litigation as may be requested from time to time by the City Attorney.

7. STATUS OF SPECIAL COUNSEL: The status of the Special Counsel under this Agreement shall be that of licensed attorneys at law, providing professional legal services to the City under this Agreement, and neither Special Counsel nor its agents or personnel shall be considered employees of the City for any purpose whatsoever.

8. TERMINATION: The Parties may terminate this Agreement at any time, with or without cause upon (30) days written notice. Termination shall be subject to Court consent, if such consent is required. If the Special Counsel's services are terminated, it shall be paid only for that portion of services satisfactorily completed in accordance with this Agreement at the time of notice of such action, and only out of any opioid litigation recovery collected from distributor or manufacturers companies pursuant to proceedings initiated or defended hereunder.

9. EXAMINATION OF RECORDS: Any authorized agent of the City has the right to access and the right to examine any pertinent books, documents, papers and records of the Special Counsel, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

10. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Special Counsel. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

11. INSURANCE:
a. **General Conditions:** Special Counsel agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Special Counsel shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Special Counsel. Special Counsel shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Special Counsel. The Special Counsel shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. **Proof of Insurance – Workers’ Compensation, Commercial General Liability, and Professional Liability:** Special Counsel shall provide a copy of this Agreement to its insurance agent or broker. Special Counsel may not commence services or work relating to the Agreement prior to placement of coverage. Special Counsel certifies that the certificate of insurance attached as Exhibit C, preferably an ACORD certificate, complies with all insurance requirements of this Agreement with the exception of the Personal Automobile insurance requirement. Acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Special Counsel’s breach of this Agreement or of any of the City rights or remedies under this Agreement. The City may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability, Special Counsel and subcontractor’s insurer(s) shall name the City, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages, Special Counsel’s insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Special Counsel. Special Counsel shall include all such subcontractors as additional insured under its policies (with the exception of Workers’ Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Special Counsel agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. **Workers’ Compensation/Employer’s Liability Insurance:** Special Counsel shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims. Special Counsel expressly represents to the City, as a material representation
upon which the City is relying in entering into this Agreement, that none of the Special Counsel’s officers or employees who may be eligible under any statute or law to reject Workers’ Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Special Counsel executes this Agreement.

g. **Commercial General Liability:** Special Counsel shall maintain a Commercial General Liability insurance policy with limits of $1,000,000 for each occurrence, $1,000,000 for each personal and advertising injury claim, $2,000,000 products and completed operations aggregate, and $2,000,000 policy aggregate.

h. **Business Automobile Liability:** Special Counsel shall maintain business automobile liability with limits of $1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under the Agreement.

i. **Professional Liability:** Special Counsel shall maintain professional liability limits of $1,000,000.00 per claim and $1,000,000.00 aggregate policy limit.

j. **Additional Provisions:**

1. For Commercial General Liability, the policies must provide the following:
   
   A. That this Agreement is an Insured Contract under the policy;
   
   B. Defense costs are in excess of policy limits;
   
   C. A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
   
   D. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

2. For claims-made coverage:
   
   E. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
   
   F. Special Counsel shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits.

3. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Special Counsel will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

12. **DEFENSE AND INDEMNIFICATION**

a. Special Counsel agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims shall have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Special Counsel or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City. For professional services provided under this contract, the foregoing shall be interpreted to comply with the Colorado and other applicable attorney Rules of Professional Conduct, and in a manner that shall not negate coverage under Special Counsel’s malpractice insurance policies.
b. Special Counsel’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Special Counsel’s duty to defend and indemnify City shall arise even if City is the only party sued by Claimant and/or Claimant alleges that City’s negligence or willful misconduct was the sole cause of Claimant’s damages.

c. Special Counsel will defend any and all Claims brought or threatened against City and will pay on behalf of City, any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City exclusive remedy.

d. Except as otherwise expressly provided in subparagraph 11(a) above, insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Special Counsel under the terms of this indemnification obligation. The Special Counsel shall obtain, at its own expense, any additional insurance that it deems necessary for the City protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

13. **COLORADO GOVERNMENTAL IMMUNITY ACT**: In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, et seq.

14. **TAXES, CHARGES AND PENALTIES**: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the [City specific law]. The Special Counsel shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

15. **ASSIGNMENT; SUBCONTRACTING**: Except as specifically authorized hereunder, the Special Counsel shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the City Attorney’s prior written consent. Except as specifically authorized hereunder, any assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City. The City Attorney has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement on account of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Special Counsel shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

16. **INUREMENT**: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns, provided assignments are consented to in accordance with the terms of the Agreement.

17. **NO THIRD-PARTY BENEFICIARY**: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Special Counsel receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

18. **NO AUTHORITY TO BIND CITY TO CONTRACTS**: The Special Counsel lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City of Black Hawk Home Rule Charter.
19. **SEVERABILITY**: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

20. **CONFLICT OF INTEREST**:
   
a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Special Counsel shall not hire, or contract for services with, any employee or officer of the City.

b. Special Counsel acknowledges that it and its attorneys are bound by the Colorado Rules of Professional Conduct applicable to Colorado attorneys, including without limitation Rule 1.7, which addresses a lawyer's engagement under circumstances involving a conflict of interest. Special Counsel shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement.

c. The City understands that it is one of multiple governmental plaintiffs being represented by Special Counsel in opioid litigation.

d. The City consents to such representation and waives any potential conflict that might arise from such representation of other governmental entities. The City recognizes and agrees that an aggregate settlement of multiple opioid cases at one time may be reached. In this scenario, the claims brought on behalf of the City may be settled only with the City’s prior approval. The City has final decision-making authority as to whether to accept any proposed settlement of the City’s claims. If the City rejects any such settlement proposal(s), the Special Counsel shall continue to represent the City through any trial and appellate proceedings of the City’s claims, except as indicated in Paragraph __, above. The City’s decision to reject the proposed settlement shall not prevent other clients represented by Special Counsel in opioid-related litigation from accepting an aggregate settlement or otherwise resolving their own claims.

e. Except to the extent indicated above, Special Counsel represents that it has disclosed any and all current or potential conflicts in interest and are not aware of any pending matters or proceedings in which they represent clients with positions or interests adverse to the City. Special Counsel will notify the City Attorney before undertaking to represent any client in such matters.

21. **NOTICES**: Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Special Counsel at the address first above written, and if to the City at:

   Corey Y. Hoffmann, City Attorney  
   Hoffmann, Parker, Wilson & Carberry, P.C.  
   511 16th Street, Suite 610  
   Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

22. **NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**:
   
a. This Agreement is subject to Article 17.5 of title 8 of the Colorado Revised Statutes, and any amendments (the “Certification Statute”).
b. The Special Counsel certifies that:
   (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
   (2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Special Counsel also agrees and represents that:
   (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
   (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Special Counsel that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
   (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
   (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Special Counsel to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
   (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Special Counsel will also then terminate such subconsultant or subcontractor and the City within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
   (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the [City specific law].

d. The Special Counsel is liable for any violations as provided in the Certification Statute. If Special Counsel violates any provision of this section or the Certification Statute, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Special Counsel shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Statute may also, at the discretion of the City, constitute grounds for disqualifying Special Counsel from submitting bids or proposals for future contracts with the City.

23. **DISPUTES:** All disputes between the City and Special Counsel arising out of or regarding the Agreement will be resolved by litigation in a court of competent jurisdiction.

24. **GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the City of Black Hawk Home Rule Charter, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of Gilpin County, State of Colorado.
25. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Special Counsel may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender expression or gender identity, marital status, or physical or mental disability. The Special Counsel shall insert the foregoing provision in all subcontracts.

26. **COMPLIANCE WITH ALL LAWS:** Special Counsel shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City of Black Hawk.

27. **LEGAL AUTHORITY:** Special Counsel represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Special Counsel represents and warrants that he has been fully authorized by Special Counsel to execute the Agreement on behalf of Special Counsel and to validly and legally bind Special Counsel to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Special Counsel or the person signing the Agreement to enter into the Agreement.

28. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

29. **ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

30. **INTELLECTUAL PROPERTY RIGHTS:** The City and Special Counsel intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Special Counsel and any subcontractor hereunder and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Special Counsel shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Special Counsel and any subcontractor hereunder (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

31. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Special Counsel’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

32. **ADVERTISING AND PUBLIC DISCLOSURE:** Special Counsel shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Special Counsel’s advertising or public relations materials without first obtaining the written approval of the City.
Attorney. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Special Counsel shall notify the City Attorney in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

33. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** [City specific law] Special Counsel consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

34. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by the Mayor of the City of Black Hawk.

35. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments will be, binding upon the parties and their successors and assigns.

36. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Special Counsel shall cooperate and comply with the provisions of the City of Black Hawk Municipal Code.

37. **DOCUMENT PRESERVATION.** City is aware of its obligation to preserve all information, documents and other tangible objects or electronically stored information that is potentially relevant to the Litigation. The City Attorney will inform the City, including those departments and employees who may possess such materials of their obligation to preserve them, taking into consideration any changes in the City’s data retention practices that may be required to preserve such materials or information. Special Counsel are available to assist the City in identifying and preserving relevant documents and electronic files.

EXHIBIT LIST:
EXHIBIT A – List of Colorado Cities and Counties
EXHIBIT B – Reimbursable Costs
EXHIBIT C – Certificate of Insurance

[Signatures appear on the following pages]
CITY OF BLACK HAWK, COLORADO:

KELLER ROHRBACK L.L.P.:

Lynn Lincoln Sarko, Managing Partner

August 21, 2018
EXHIBIT A

List of Colorado Cities and Counties

Adams County
Arapahoe County
Boulder County
City and County of Broomfield
City and County of Denver
City of Aurora
City of Black Hawk
City of Commerce City
City of Northglenn
Jefferson County
Larimer County
Teller County
Town of Hudson

and other interested Colorado cities and counties
EXHIBIT B

Reimbursable Costs

Federal Express/UPS/Local Courier, etc.
Postage Charges
Facsimile Charges
Long Distance
In-House Photocopying
Outside Photocopying
Hotels
Meals
Mileage
Air Travel
Deposition Costs
Lexis/Westlaw/Bloomberg
Witness and Expert Expenses
Court Fees
Service of Process Fees
Hearing and Trial Transcripts
Ground Transportation (Rental Car, Taxi)
Miscellaneous
**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 THESE 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).

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<tr>
<th>PRODUCER</th>
<th>Hub International Northwest LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>PHONE</td>
<td>(A/C, No, Ext): (425) 489-4500</td>
</tr>
<tr>
<td>FAX</td>
<td>(A/C, No): (425) 485-8489</td>
</tr>
<tr>
<td>E-MAIL</td>
<td><a href="mailto:now.info@hubinternational.com">now.info@hubinternational.com</a></td>
</tr>
</tbody>
</table>

**INSURED**

Keller Rohrback, LLP
Renee Griggs
1201 3rd Avenue, Ste. 3200
Seattle, WA 98101

**INSURERS**

- INSURER A: Continental Casualty Company
- INSURER B:
- INSURER C:
- INSURER D:
- INSURER E:
- INSURER F:

**COVERAGES**

1. **COMMERCIAL GENERAL LIABILITY**
   - CLAIMS-MADE
   - OCCUR

2. **AUTOMOBILE LIABILITY**
   - ANY AUTO
   - OWNED
   - SCHEDULED AUTOS
   - HIRED
   - NON-OWNED AUTOS

3. **UMBRELLA LIABILITY**
   - OCCUR
   - CLAIMS-MADE

4. **WORKERS COMPENSATION AND EMPLOYERS' LIABILITY**
   - ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N/A

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**

*Lawyers Professional Liability Deductible: $100,000 per claim*

**EVIDENCE OF INSURANCE**

**CERTIFICATE HOLDER**

Keller Rohrback, LLP
c/o Renee Griggs
1201 3rd Avenue, Ste. 3200
Seattle, WA

**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:

**COVERAGES**

- **COMBINED SINGLE LIMIT**
  - EACH OCCURRENCE $5,000,000
- **PERSONAL & ADV INJURY**
  - EACH OCCURRENCE $5,000,000
- **PRODUCTS - COMP/OP AGG**
  - EACH OCCURRENCE $5,000,000
- **PROPERTY DAMAGE**
  - EACH OCCURRENCE $5,000,000

**PER OCCURANCE**

- **BODILY INJURY (Per person)**
  - EACH OCCURRENCE $5,000,000
- **BODILY INJURY (Per accident)**
  - EACH OCCURRENCE $5,000,000
- **E.L. DISEASE - EA EMPLOYEE**
  - EACH OCCURRENCE $5,000,000
- **E.L. DISEASE - POLICY LIMIT**
  - EACH OCCURRENCE $5,000,000

**PER CLAIM/AGGREGATE**

- **PER OCCURANCE**
  - **E.L. EACH ACCIDENT**
    - EACH OCCURRENCE $5,000,000
  - **E.L. DISEASE - EA EMPLOYEE**
    - EACH OCCURRENCE $5,000,000
  - **E.L. DISEASE - POLICY LIMIT**
    - EACH OCCURRENCE $5,000,000

**PER CLAIM/AGGREGATE**

- **PER OCCURANCE**
  - **E.L. EACH ACCIDENT**
    - EACH OCCURRENCE $5,000,000
  - **E.L. DISEASE - EA EMPLOYEE**
    - EACH OCCURRENCE $5,000,000
  - **E.L. DISEASE - POLICY LIMIT**
    - EACH OCCURRENCE $5,000,000

**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:
POLICY NUMBER: UB-7J17264A-17-42-G
RENEWAL OF (IJUB-4521T15-9-16)

INSURER: TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

NCCI CO CODE: 13579

1. INSURED: KELLER ROHRBACK LLP
1201 THIRD AVE., STE. 3200
SEATTLE, WA 98101

PRODUCER: HUB INTL NORTHWEST LLC
PO BOX 3018
BOTHELL, WA 98041-3018

Insured is a LIMITED LIABILITY PARTNERSHIP
Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 12-01-17 to 12-01-18 12:01 A.M. at the insured's mailing address.

3. A. WORKERS COMPENSATION INSURANCE: Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:
AZ CA MT NY

B. EMPLOYERS LIABILITY INSURANCE: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:
Bodily Injury by Accident: $1,000,000 Each Accident
Bodily Injury by Disease: $1,000,000 Policy Limit
Bodily Injury by Disease: $1,000,000 Each Employee

C. OTHER STATES INSURANCE: Part Three of the policy applies to the states, if any, listed here:
AL AR CO CT DC DE FL GA HI IA ID IL IN KS KY LA MA MD ME MI MN MO MS NC NE NH NJ NM NV OK OR PA RI SC SD TN TX UT VA VT WI WV

D. This policy includes these endorsements and schedules:
SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY

DATE OF ISSUE: 10-17-17 SD
OFFICE: ELMIRA NY SRV CTR 700
PRODUCER: HUB INTL NORTHWEST LLC XV971
RESOLUTION 58-2018

A RESOLUTION
AUTHORIZING THE
EXECUTION OF
NECESSARY
AGREEMENTS WITH
XCEL ENERGY FOR THE
UNDERGROUNDING OF
THE PRIMARY ELECTRIC,
STREET LIGHT CIRCUIT,
AND RESIDENTIAL
SERVICES ALONG CHASE
STREET IN AN AMOUNT
NOT TO EXCEED
$435,178.00
Title: A Resolution Authorizing the Execution of Necessary Agreements With Xcel Energy for the Undergrounding of the Primary Electric, Street Light Circuit, and Residential Services Along Chase Street in an Amount Not to Exceed $435,178.00

Now, Therefore, Be It Resolved by the City Council of the City of Black Hawk, Colorado, That:

Section 1. The City Council hereby approves the execution of necessary agreements with Xcel Energy for the undergrounding of the primary electric, street light circuit, and residential services along Chase Street in an amount not to exceed $435,178.00, and authorizes the Mayor to execute the same on behalf of the City.

Resolved and Passed this 22nd day of August, 2018.

_______________________________
David D. Spellman, Mayor

Attest:

_______________________________
Melissa A. Greiner, CMC, City Clerk
SUBJECT:
Approve Resolution 58-2018, a Resolution authorizing the execution of necessary agreements with XCEL Energy for the Undergrounding of the primary electric, street light circuit, and residential services along Chase Street.

RECOMMENDATION:
If City Council chooses to approve Resolution 58-2018, the recommended motion is as follows: “Approve Resolution 58-2018, a Resolution authorizing the execution of necessary agreements with XCEL Energy for the undergrounding of the primary electric, street light circuit, and residential services along Chase Street in the amount not to exceed $435,178.00”.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
XCEL Energy has provided quotes for the primary electric undergrounding including the street light circuit and light fixtures for Chase Street. XCEL also provided quotes for 17 separate residential services. These quotes need to be executed to get the work on their schedule. The Quotes indicate that the lead time to construction will be at least 5 weeks. In addition to XCEL’s work, the City will separately contract for electrical work from the meter to each service panel made necessary by this undergrounding work. The City will separately contract for paving upon completion of the work.

FUNDING SOURCE: 203-0000-5025838 Underground Utilities
WORKSHOP DATE: August 22, 2018
ORIGINATED BY: Thomas Isbester
STAFF PERSON RESPONSIBLE: Thomas Isbester
PROJECT COMPLETION DATE: December 31, 2018
DOCUMENTS ATTACHED: XCEL quotes
CITY ATTORNEY REVIEW: [ ]Yes [ ]No [ ]N/A INITIALS__________

SUBMITTED BY: Thomas Isbester, Public Works Director
REVIEWED BY: Jack D. Lewis, City Manager
Good afternoon Tom,

I finally got the Chase street quotes approved. I am going to attach the quote letter for the distribution and street lights first, and then each service will be its own quote letter.

Let me know of any questions.

And as soon as you know if this is a go, please let me know so we can get the material ordered as soon as possible.

Thanks
Kelli

Kelli Fries
Xcel Energy | Responsible By Nature Designer
PO Box 640 Evergreen, CO 80437
E: kelli.fries@xcelenergy.com

xcelenergy.com/InstallAndConnect
Visit our website for more information about installing and connecting service with Xcel Energy!
July 30, 2018

CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at CHASE STREET, BLACK HAWK, GILPIN, Colorado

Dear Mr Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $407,766.61, which is non-refundable and payable in advance. If the Applicant elects to have the Company advance the Construction Payment for the duration of the construction period, Applicant will be billed by the Company in accordance with the Company’s tariffs, within 30 days after the construction of the Extension is complete. The Applicant will have 90 days thereafter to pay such bill.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $407,766.61 are received via the payment process, a work order will be issued and released so your project can be placed on
the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 30, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Jonathan Moe
Director Design Construction

Enc:

Re: Electric, OH-UG conversion, CHASE STREET, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $407,766.61 and this amount will be paid to Xcel Energy in 90 days of the construction completion date. I will send a signed copy of this letter with the applicable agreements.

Date: ______________________________

*Customer Signature: ______________________________

Title: ______________________________

Mailing address: ______________________________

* Confidential Information

Digitally signed by Jon Moe
DN: cn=Jon Moe, o=Gas Engineering -
PSCo, ou=Gas Engineering,
email=jonathan.t.moe@xcelenergy.com, c=US
Date: 2018.08.03 06:12:02 -06'00'
June 18, 2018

CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 120 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,567.85, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,567.85 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 18, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
                PO Box 640
                Evergreen, CO 80437

Kelly McBartlett

Enc:

Re: Electric, OH-UG conversion, 120 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,567.85 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________

*Customer Signature: ____________________________

Title: ____________________________

Mailing address: ____________________________

* Confidential Information

Revision May 22, 2018
CITY OF BLACK HAWK  
PO BOX 68  
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 130 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $599.84, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $599.84 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 18, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 130 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $599.84 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: 

*Customer Signature: ________________________________

Title: ________________________________

Mailing address: __________________________________________________________

_____________________________________________________

* Confidential Information
June 18, 2018

CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 140 CHASE ST, BLACK HAWK, Gilpin, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,750.12, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,750.12 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 18, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 140 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,750.12 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date:_____________________

*Customer Signature: _________________________

Title: _________________________

Mailing address: _________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 200 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $790.55, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining "Right-of-Way" at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner's signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $790.55 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of
the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 18, 2018. If you have any questions regarding this
project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 200 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $790.55 and this
amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a
signed copy of this letter with the applicable agreements.

Date: __________________________

*Customer Signature: __________________________

Title: __________________________

Mailing address: __________________________

______________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 210 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $688.66, which is non-refundable and payable in advance.

This proposal is contingent upon the following:
- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $688.66 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 18, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Technician

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 210 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $688.66 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ________________________________

*Customer Signature: ________________________________

Title: ________________________________

Mailing address: ________________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 220 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,440.01, which is non-refundable and payable in advance.

This proposal is contingent upon the following:
- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,440.01 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 18, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 220 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,440.01 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ________________________________

*Customer Signature: ________________________________

Title: ________________________________

Mailing address: ________________________________

__________________________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 410 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,052.62, which is non-refundable and payable in advance. If the Applicant elects to have the Company advance the Construction Payment for the duration of the construction period, Applicant will be billed by the Company in accordance with the Company’s tariffs, within 30 days after the construction of the Extension is complete. The Applicant will have 90 days thereafter to pay such bill.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,052.62 are received via the payment process, a work order will be issued and released so your project can be placed on
the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCO to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 9, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 410 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,052.62 and this amount will be paid to Xcel Energy in 90 days of the construction completion date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________

*Customer Signature: ____________________________

Title: ____________________________

Mailing address: ____________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 500 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $5,485.26, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $5,485.26 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 500 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $5,485.26 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________

*Customer Signature: ____________________________

Title: ____________________________

Mailing address: ____________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 401 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $319.37, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $319.37 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 401 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $319.37 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________

*Customer Signature: ____________________________

Title: ____________________________

Mailing address: ____________________________

______________________________

* Confidential Information
CITY OF BLACK HAWK  
PO BOX 68  
BLACK HAWK, CO 80422  

Subject: Request For Electric OH-UG conversion at 311 CHASE ST, BLACK HAWK,  
GILPIN, Colorado  

Dear Mr. Isbester,  

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,036.64, which is non-refundable and payable in advance.  

This proposal is contingent upon the following:  
- All work performed during our normal work hours.  
- Obtaining “Right-of-Way” at no cost to us.  
- Obtaining permits as needed.  
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.  
- There is an additional charge to open the transformer.  
- Providing final grade elevations, at our equipment locations.  
- Grade at trench location to be within 6 inches of the final grade.  

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.  

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.  

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,036.64 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 311 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,036.64 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ________________________________

*Customer Signature: ________________________________

Title: ________________________________

Mailing address: ________________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 301 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,664.98, which is non-refundable and payable in advance.

This proposal is contingent upon the following:
- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,664.98 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 301 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,664.98 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ________________________________

*Customer Signature: ________________________________

Title: ________________________________

Mailing address: ________________________________

______________________________

* Confidential Information

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Revision June 29, 2018
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 241 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,856.61, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,856.61 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries  
Xcel Energy Designer  

Mailing address:  
Public Service Company of Colorado  
PO Box 640  
Evergreen, CO 80437  

Kelly McBartlett  
Manager Gas and Electric Field Ops  

Enc:

Re: Electric, OH-UG conversion, 241 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,856.61 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: 

*Customer Signature: 

Title: 

Mailing address: 

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 235 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $3,715.97, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $3,715.97 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 235 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $3,715.97 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________

*Customer Signature: ____________________________

Title: ____________________________

Mailing address: ____________________________

________________________________________

* Confidential Information
CITY OF BLACK HAWK  
PO BOX 68  
BLACK HAWK, CO  80422

Subject: Request For Electric  
at 231 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric based upon information you have provided. This design is based upon Electric, as shown on the enclosed drawing. The cost to provide the requested Electric is $2,251.88, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $2,251.88 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.
This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, 231 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $2,251.88 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________

*Customer Signature: ____________________________

Title: ____________________________

Mailing address: ____________________________

______________________________

* Confidential Information
CITY OF BLACK HAWK  
PO BOX 68  
BLACK HAWK, CO  80422  

Subject: Request For Electric OH-UG conversion at 221 CHASE ST, BLACK HAWK, GILPIN, Colorado  

Dear Mr. Isbester,  

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,213.15, which is non-refundable and payable in advance.  

This proposal is contingent upon the following:  
- All work performed during our normal work hours.  
- Obtaining “Right-of-Way” at no cost to us.  
- Obtaining permits as needed.  
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.  
- There is an additional charge to open the transformer.  
- Providing final grade elevations, at our equipment locations.  
- Grade at trench location to be within 6 inches of the final grade.  

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.  

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.  

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,213.15 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 10, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 221 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,213.15 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: _________________________

*Customer Signature: _________________________

Title: _________________________

Mailing address: _________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 250 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $319.37, which is non-refundable and payable in advance.

This proposal is contingent upon the following:

- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $319.37 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 27, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 250 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $319.37 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________

*Customer Signature: ____________________________

Title: ____________________________

Mailing address: ____________________________

__________________________

* Confidential Information
CITY OF BLACK HAWK
PO BOX 68
BLACK HAWK, CO 80422

Subject: Request For Electric OH-UG conversion at 150 CHASE ST, BLACK HAWK, GILPIN, Colorado

Dear Mr. Isbester,

I have completed the engineering design and cost estimate to provide Electric OH-UG conversion based upon information you have provided. This design is based upon Electric OH-UG conversion, as shown on the enclosed drawing. The cost to provide the requested Electric OH-UG conversion is $1,657.91, which is non-refundable and payable in advance.

This proposal is contingent upon the following:
- All work performed during our normal work hours.
- Obtaining “Right-of-Way” at no cost to us.
- Obtaining permits as needed.
- No frost, in the ground, during construction or agreeing to pay for additional costs during frost conditions.
- There is an additional charge to open the transformer.
- Providing final grade elevations, at our equipment locations.
- Grade at trench location to be within 6 inches of the final grade.

If necessary our right-of-way agent will mail the right-of-way or easement documents to the appropriate landowners for their signature. This proposal is contingent upon receiving easements at no cost to us. Our right-of-way agent will need a copy of the Warranty Deed, the legal description, and the site drawing in order to prepare the easement for the landowner’s signature.

NOTE: You must personally contact the local telephone company, the local cable TV company and/or any other utility company to arrange for the installation and payment of any costs of their facilities if they need to be relocated or disconnected along with the OH-UG conversion.

If you accept the above costs and system design, please sign and date the second page of this letter and return this document to Public Service Company of Colorado, at the address shown below. After the signed and dated documents and total payment of $1,657.91 are received via the payment process, a work order will be issued and released so your project can be placed on the construction schedule. If a check is sent via the new payment process we are unable to accept checks with any sort of Lien Waiver because our Tariffs do not make an allowance for PSCo to accept checks printed or stamped with a lien waiver. Our current lead-time to begin work after
receiving the payment and signed documents is approximately 5 weeks. You will be notified of the week that our construction is scheduled to begin as soon as it is available.

This proposal will be valid until October 18, 2018. If you have any questions regarding this project, please call me at 303-445-4540.

Sincerely,

Kelli Fries
Xcel Energy Designer

Mailing address: Public Service Company of Colorado
PO Box 640
Evergreen, CO 80437

Kelly McBartlett
Manager Gas and Electric Field Ops

Enc:

Re: Electric, OH-UG conversion, 150 CHASE ST, BLACK HAWK

I have reviewed and approve of the enclosed design. I accept the cost of $1,657.91 and this amount will be paid to Xcel Energy in full prior to the scheduled construction date. I will send a signed copy of this letter with the applicable agreements.

Date: ____________________________________________________________________________

*Customer Signature: ____________________________________________________________________

Title: ____________________________________________________________________________

Mailing address: ____________________________________________________________________________

__________________________________________________________________________________

__________________________________________________________________________________

* Confidential Information
RESOLUTION 59-2018
A RESOLUTION
AWARDING THE BID AND
AUTHORIZING AN
AGREEMENT WITH
VANCE BROTHERS IN
THE AMOUNT OF
$89,809.32 FOR THE
BLACK HAWK SLURRY
SEAL PROJECT
STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK  

Resolution No. 59-2018  

TITLE: A RESOLUTION AWARDING THE BID AND AUTHORIZING AN AGREEMENT WITH VANCE BROTHERS IN THE AMOUNT OF $89,809.32 FOR THE BLACK HAWK SLURRY SEAL 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 authorizes an agreement with Vance Brothers for the Black Hawk Slurry Seal Project in the amount of $89,809.32.  

RESOLVED AND PASSED this 22nd day of August, 2018.  

________________________________________  
David D. Spellman, Mayor  
ATTEST:  

Melissa A. Greiner, CMC, City Clerk
SUBJECT: Approve Resolution 59-2018, a Resolution awarding the bid for the City of Black Hawk Slurry Seal Project to Vance Brothers.

RECOMMENDATION:
If City Council chooses to approve Resolution 59-2018, a Resolution awarding the bid and contract between the City of Black Hawk and Vance Brothers the recommended motion is as follows: “Approve Resolution 59-2018, a Resolution awarding the bid and authorizing an Agreement with Vance Brothers in the Amount of $89,809.32 for the Black Hawk Slurry Seal Project.”

SUMMARY AND BACKGROUND OF SUBJECT MATTER:
$100,000.00 was budgeted for asphalt maintenance in 2018, specifically to slurry seal sections of Main and Richman St. along with several city parking lots, so as to extend the life of the surface. This project was publicly advertised in the Weekly Register-Call. Two asphalt contractors submitted bids, Vance Brothers for the amount of $89,809.32 and A-1 Chip seal/Rocky Mountain Pavement in the amount of $104,945.13 as shown on the attached Bid Recording Sheet.

FUNDING SOURCE: Repairs and Maintenance / Streets: 010-3102-431-45-11

WORKSHOP DATE: August 22, 2018

ORIGINATED BY: Mike Schaller

STAFF PERSON RESPONSIBLE: Mike Schaller

PROJECT COMPLETION DATE: September 20, 2018

DOCUMENTS ATTACHED: n/a

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

SUBMITTED BY: REVIEWED BY:

Thomas Isbester, Public Works Director Jack D. Lewis, City Manager
# Bid Recording Sheet

**Owner:** City of Black Hawk  
**Date/Time:** August 13, 2018 @3:00pm

**Project:** 2018 Slurry Sealing Project

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Bid Bond</th>
<th>Addendum</th>
<th>Base Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-One Chip Seal/Rocky Mountain</td>
<td>Yes</td>
<td>None</td>
<td>$104,945.13 - Striping</td>
</tr>
<tr>
<td>Vance Brothers</td>
<td>Yes</td>
<td>None</td>
<td>$89,809.32</td>
</tr>
</tbody>
</table>