

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB30

ORDINANCE NUMBER: 2023-30

TITLE: AN ORDINANCE APPROVING A BILLING AGREEMENT FOR THE SECTION 401 OF THE CLEAN WATER ACT; STATE WATER QUALITY CERTIFICATION BETWEEN THE CITY OF BLACK HAWK AND THE STATE OF COLORADO; DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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

Section 1. The City of Black Hawk hereby approves a reimbursement agreement with the State of Colorado, Department of Public Health and Environment (CDPHE) for their review of a permit application for the construction of a raw water reservoir being proposed by the City of Black Hawk. CDPHE is a cooperating agency with review authority for projects that require a Corp of Engineers permit. The state has decided that each applicant shall bear the expense of the review. To that end, the reimbursement agreement is particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City of Black Hawk.

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

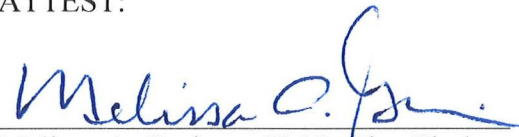
Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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

READ, PASSED AND ORDERED POSTED this 9th day of August, 2023.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk





July 21, 2023

City of Black Hawk
Attn: Bradley Dallam
Water Resource Engineer
1040 Dory Hill Road
Black Hawk, CO 80422

Re: City of Black Hawk, Black Hawk Water Supply Project, Billing Agreement for the Section 401 of the Clean Water Act, State Water Quality Certification

Dear Mr. Bradley Dallam:

The Colorado Department of Public Health and Environment, Water Quality Control Division ("Division"), has been asked to review the water quality analysis and analytical approaches with which the City of Black Hawk ("City") will prepare an Environmental Assessment ("EA") for the Black Hawk Water Supply Project ("Project"). The purpose of the Division's early involvement is to ensure that the data and analyses used for the EA can also support the Division's 401 Water Quality Certification ("401 Certification") process.

Pursuant to §25-8-502(1.2)(a), C.R.S., the Division assigns projects requiring 401 Certification a tier, ranging from one to four, based on several factors, including project complexity, potential impacts, and the expected level of public participation. The Division has determined that, due to the high degree of technical complexity, the potential for water quality impacts, and the likelihood of public participation, the Project qualifies as a Tier 3 project. Applicants are required to pay the actual costs of review for Tier 3 projects based on calculated hourly fees.

In addition to Division staff time to participate in the EA review process to the extent that it is relevant to future 401 Certification, the complexity and scale of the Project will require that the Division contract with a consultant who can provide technical assistance in the analysis and review of water quality data, models, and technical reports. The Division will charge the applicant for contractor costs. Once the Division enters into a contract with a consultant for the Project, it will inform the City of the contractor selected and the contractor's hourly rates. Contractor fees will vary depending on the nature and complexity of the review required at a given time.

To secure the Division's participation in the EA review process in preparation for the City's future request for 401 Certification, the City agrees to pay Tier 3 project fees calculated based on hours worked by Division staff and its contractor. Division staff includes, but is not limited to, technical and regulatory staff, supervisory staff, and administrative and fiscal support. The Division will bill the City on a monthly basis following months in which it and/or its contractor performs work on the Project. The City will submit full payment to the Division within 30 days of receiving each invoice. If the Division does not receive full payment within



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30 days, the Division and its contractor will cease all work on the Project until the City submits payment.

While the exact amount of Division staff and contractor time is currently unknown, the division estimates that costs will not exceed a cumulative amount of \$25,000 between July 1, 2023 and June 30, 2024. The Division will revisit the work and fees quarterly to determine if an adjustment is warranted. If the Division determines that adjustment is necessary, it will provide the City with a new billing agreement.

By signing this billing agreement, the City accepts its terms and allows the Division to participate in the EA review process for the Project as it relates to future 401 Certification, with contractor support as needed. The Division cannot proceed with the Project unless the City signs the billing agreement. If the City wishes for the Division to cease participation in the EA review process, the City must send the Division separate notice to that effect. Upon receipt of such notice, the Division will withdraw from the EA review process.

Sincerely,

Sarah Wheeler

Sarah Wheeler
Environmental Data Unit Manager
Water Quality Control Division

As an authorized representative of the City of Black Hawk hereby agrees to the billing charges as described above and agrees to pay these charges when invoiced:

_____
Sign date

David D. Spellman, Mayor
Print Name

