

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB31

ORDINANCE NUMBER: 2023-31

**TITLE: AN ORDINANCE APPROVING THE AUGMENTATION STATION
LEASE AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND
THE CITY OF NORTHGLENN**

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

Section 1. The City of Black Hawk hereby approves Northglenn's conditional use of the Black Hawk Augmentation station. Northglenn owns inches of the Church Ditch and desires to use those inches by conveying their water through the Black Hawk Augmentation Station, as more 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. Black Hawk will receive \$500 per year for this service.

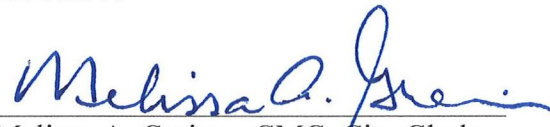
Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation 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.

ATTEST:


Melissa A. Greiner, CMC, City Clerk


David D. Spellman, Mayor



CHURCH DITCH AUGMENTATION STATION LEASE AGREEMENT

This AGREEMENT ("Agreement") is made and entered into this 9 day of August, 2023, by and between the **City of Black Hawk** ("Black Hawk"), a municipal corporation organized under the laws of the State of Colorado, whose address is 201 Selak Street, Black Hawk, Colorado, 80422, and the **City of Northglenn**, ("Northglenn"), a municipal corporation organized under the laws of the State of Colorado, whose address is 11701 Community Center Drive, Northglenn, Colorado 80233. Black Hawk and Northglenn may sometimes be referred to herein collectively as the "Parties."

RECITALS

- A. Black Hawk owns and operates the Black Hawk Church Ditch Augmentation Station ("Church Ditch Augmentation Station") located in Section 32 of T3S, R70W of the 6th P.M, in Jefferson County, Colorado, which delivers water to Clear Creek from the Church Ditch (also known as the Golden City and Ralston Creek Ditch); and
- B. Northglenn holds the right to receive deliveries on certain "inches" of water from the Church Ditch Water Authority diverted pursuant to the water rights decreed to the Church Ditch. Northglenn currently owns approximately 906.01758 Church Ditch inches upon which Northglenn owes a 3.6% return flow obligation to Clear Creek, plus assessed transit losses. Said return flows with transit losses will be delivered to Clear Creek through the City of Black Hawk's Church Ditch Augmentation Station. Northglenn may acquire additional inches in the future. Northglenn's current and future ownership of Church Ditch inches will be referred to herein as "Northglenn's Church Ditch inches"; and
- C. Northglenn desires to use the Church Ditch Augmentation Station to measure and deliver to Clear Creek water available pursuant to Northglenn's Church Ditch inches; and
- D. Black Hawk agrees to operate the Church Ditch Augmentation Station for the benefit of Northglenn for delivering to Clear Creek water available pursuant to Northglenn's Church Ditch inches under the terms of this agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, and mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Black Hawk agrees to operate the Church Ditch Augmentation Station to measure deliveries to Clear Creek for Northglenn's Church Ditch inches.
- 2. Northglenn will be assessed ditch losses, as assessed by the Church Ditch Water Authority, for water delivered at the Church Ditch Augmentation Station. Such ditch loss assessment by the Church Ditch Water Authority may vary by month depending on total Church Ditch diversions.

3. Use of the Church Ditch augmentation station to return water to Clear Creek for Northglenn's Church Ditch inches shall be on a space available basis, after deliveries to Clear Creek by Black Hawk for its own Church Ditch inches and after deliveries to Clear Creek by Black Hawk under Black Hawk's written agreement with the Colorado Historical Society for the Colorado Historical Society's 1.0 Church Ditch inch.
4. Operation: Northglenn shall contact Black Hawk to request use of the Augmentation Station for their return flows. Northglenn will inform Black Hawk of the amount of their requested return flows in cubic feet per second. Black Hawk will notify Northglenn if space is available for Northglenn's requested return flow within 24-hours. It is anticipated that Northglenn's flow change requests will not exceed Black Hawk's required flow adjustments. No more than one flow change may be requested by Northglenn per week.
5. Cost. There shall be a charge to Northglenn of \$500.00 per year for Black Hawk's operation of the Church Ditch Augmentation Station pursuant to this Agreement, to be paid on or before March 31st of each year.
6. Term of Agreement. The term of the Agreement will be for five years, beginning on the date of execution of this Agreement. If not otherwise terminated, this Agreement may be renewed annually upon written mutual agreement of the Parties after the five-year initial term.
7. Accounting. Northglenn is responsible for submitting the accounting for the diversions and for the returns contemplated herein to the Division Engineer's Office.
8. Termination. This Agreement may be terminated by Black Hawk or Northglenn by written agreement of the parties.
9. Notices. All notices and other communications under this Agreement shall be in writing. All such notices and communications shall be deemed to have been duly given: on the date of service, if delivered and served personally, or served via e-mail or facsimile on the person to whom notice is given; on the next business day after deposit for overnight delivery by a courier service such as Federal Express; or on the third day after mailing, if mailed to the Party to whom payment and notice is to be given by first class mail, postage prepaid, and properly addressed as follows:

Black Hawk: City of Black Hawk
 Public Works Director
 201 Selak Street
 P.O. Box 68
 Black Hawk, CO 80422
 Facsimile: (303) 582-2250
 E-mail: tisbester@cityofblackhawk.org

With a Copy to: David L. Kueter
Holsinger Law LLC
1800 Glenarm Place, Suite 500
Denver, CO 80202
Facsimile: (303) 496-1025
E-mail: dkueter@holsingerlaw.com

City of Northglenn: City of Northglenn
Tamara Moon
Environmental Manager
11701 Community Center Drive
Northglenn, CO 80233
E-mail: tmoon@northglenn.org

With a Copy to: Brent Bartlett
Fischer, Brown, Bartlett, Larsen and Irby, PC
1319 E. Prospect Rd.
Fort Collins, CO 80525
E-mail: brentbartlett@fbgpc.com

11. No Third Party Beneficiaries. This Agreement is for the sole benefit of and binds the Parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party.
12. Governmental Immunity. Nothing in this Agreement shall be construed to waive either Party's protection from liability or the limitations on liability due to sovereign immunity under the Colorado Governmental Immunity Act or otherwise.
13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
14. Negotiated Provisions. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Black Hawk and Northglenn have contributed substantially and materially to the preparation of this Agreement.
15. Authority. The Parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable law, to authorize their respective signatories to sign this Agreement for them and to bind them to its terms.

Executed as of the date first set forth above.

City of Black Hawk



David D. Spellman
Mayor

Approved as to content and form;

David L. Kueter
Attorney

City of Northglenn

Heather Geyer
City Manager

Approved as to content and form;

Brent Bartlett
Attorney