

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB5

ORDINANCE NUMBER: 2023-5

**TITLE: AN ORDINANCE APPROVING THE WATER STORAGE AGREEMENT
BETWEEN THE CITY OF BLACK HAWK AND THE CITY OF
GOLDEN**

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

Section 1. The City of Black Hawk hereby approves the Water Storage Agreement between the City of Black Hawk and the City of Golden, 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.


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.

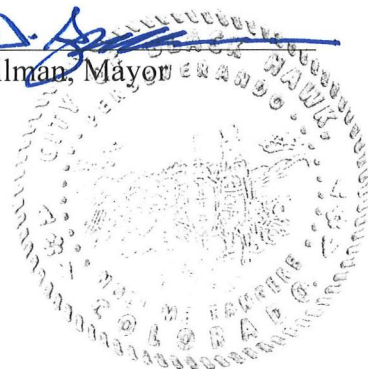
Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 8th day of February, 2023.

ATTEST:


Melissa A. Greiner, CMC, City Clerk


David D. Spellman, Mayor



WATER STORAGE AGREEMENT

This AGREEMENT dated this 8 Day of Feb, 2023, is entered into between the City of Golden, a Colorado municipal corporation ("Golden") and the City of Black Hawk, a Colorado municipal corporation ("Black Hawk").

Recitals

WHEREAS C.R.S. § 29-1-201, as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, § 18(2); and

WHEREAS, the purpose of Part 2 of Article 1 of Title 29, C.R.S., is to implement the aforesaid provisions of the Colorado Constitution and authorize the Parties to enter into intergovernmental agreements; and

WHEREAS, C.R.S. § 29-1-203(1) provides, inter alia, that governmental units may cooperate with one another to provide any function, service, or facility lawfully authorized to each of the contracting units;

WHEREAS, Black Hawk and Golden entered into an Assignment and Water Delivery Agreement dated June 7, 2007, pursuant to which Black Hawk is entitled to delivery from Golden of 100 acre-feet of fully consumable water between June 1, 2023, and October 31, 2023 (the "2023 Golden delivery"); and

WHEREAS, Golden owns and controls a reservoir known as Guanella Reservoir, an off-channel reservoir located adjacent to the West Fork of Clear Creek in Sections 29 and 30, Township 3 South, Range 74 West of the 6th P.M., in Clear Creek County, Colorado; and

WHEREAS, this Agreement is intended to authorize Black Hawk to store up to 100 acre-feet of the 2023 Golden delivery in Guanella Reservoir subject to the limitations herein; and

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows.

1. Black Hawk shall be entitled to store up to 100 acre-feet of the 2023 Golden delivery in Guanella Reservoir. Depending on the source of the water delivered by Golden to Black Hawk, such storage may be by diversion of water into storage from the West Fork of Clear Creek, by exchange from Clear Creek, and/or by book-over of Golden's water previously stored in Guanella Reservoir.
2. Any water stored by Black Hawk in Guanella Reservoir pursuant to this Agreement shall be owned by Black Hawk and Golden on a 50%/50% basis.
3. Black Hawk will be charged pro rata with evaporation loss on its stored water at the same rate as applied to other waters stored in Guanella Reservoir, which will reduce Black Hawk's storage account under this Agreement.
4. Any water stored by Black Hawk in Guanella Reservoir during 2023 under this Agreement after evaporation loss is assessed and owned by Black Hawk, shall be removed from storage on or

before June 15, 2024. Black Hawk will coordinate with Golden on the timing and rate of release it desires for such water in a manner consistent with Golden's operations of Guanella Reservoir. Any water owned by Black Hawk pursuant to this agreement and remaining in storage in Guanella after June 15, 2024 may be released by Golden or may be booked over into Golden's storage accounts.

5. Golden and Black Hawk shall provide each other with all necessary accounting information relating to water stored by Black Hawk hereunder and, to the extent necessary, shall provide said information to the Division Engineer and/or Water Commissioner. To the extent any approvals are necessary in implementing this Agreement, those shall be Black Hawk's exclusive responsibility.

6. The term of this Agreement shall commence on the date of mutual execution and terminate on July 1, 2024. This Agreement may be renewed annually upon mutual written agreement of the Parties.

7. Black Hawk acknowledges that this Agreement provides for storage of raw water only. Neither party makes representations with respect to the quality of water diverted into or stored in Guanella Reservoir, or released therefrom, nor assumes responsibility therefor.

8. Nothing herein modifies any of the obligations of Golden and Black Hawk as set forth in the Assignment and Water Delivery Agreement dated June 7, 2007, except as may be expressly modified herein by allowing storage of up to 100 AF of the 2023 Golden delivery in Guanella Reservoir and the subsequent release of a portion thereof.

9. Notice: Any required notice, demand, or conveyance of information shall be sent via U.S. mail or fax, or telephone call and subsequent mailing or fax to:

Golden:

Utilities Director
City of Golden
1445 Tenth Street
Golden, CO 80401
Fax: 303.384.8161

With copy to:

Steve Bushong
Bushong & Holleman PC
1525 Spruce Street, Suite 200
Boulder, Colorado 80302
Fax: 800-803-6648

Black Hawk:

Director of Public Works
City of Black Hawk
P.O. Box 68
987 Miners Mesa Road
Black Hawk, CO 80422
Fax: 303.582.2250

With copy to:

David L. Kueter
Holsinger Law, LLC
1800 Glenarm Place, Suite 500
Denver, CO 80202
Fax: 303 496-1025

The above individuals and addresses may be modified at any time by written notice.

10. Entire Agreement; Amendments. This Agreement constitutes the entire agreement among the parties. This Agreement may be altered, amended or revoked only by an instrument in writing signed by both parties.

11. Assignment. This Agreement, and the rights, interests and obligations hereunder, may not be assigned by Black Hawk without Golden's prior written consent.

12. Indemnification. To the extent permitted by law, Black Hawk agrees to indemnify, defend and hold harmless Golden and its agents from and against all claims, causes of action, costs, expenses, judgments, damages and any other liabilities of any kind arising out of this Agreement and/or arising out of Black Hawk's storage and subsequent use of water in Guanella Reservoir pursuant to this Agreement.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in triplicate.

CITY OF GOLDEN, a Colorado Municipal Corporation

By: _____
Laura Weinberg, Mayor

Date: _____

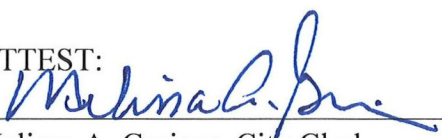
ATTEST:

CITY OF BLACK HAWK, a Colorado Municipal Corporation

By:  _____
David D. Spellman, Mayor

Date: February 8, 2023

ATTEST:

 _____
Melissa A. Greiner, City Clerk