

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB4

ORDINANCE NUMBER: 2018-4

TITLE: AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF GEORGETOWN AND THE CITY OF BLACK HAWK FOR THE DESIGN AND CONSTRUCTION MANAGEMENT OF THE GEORGETOWN LAKE LAGOON DREDGING PROJECT

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 Memorandum of Understanding between the City and the Town of Georgetown for the Design and Construction Management of the Georgetown Lake Lagoon Dredging Project 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.

Section 2. 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 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 14th day of March, 2018.

ATTEST:


Melissa A. Greiner, CMC, City Clerk


David D. Spellman, Mayor



**MEMORANDUM OF UNDERSTANDING
BETWEEN
TOWN OF GEORGETOWN, COLORADO AND CITY OF BLACK HAWK, COLORADO
FOR THE DESIGN AND CONSTRUCTION MANAGEMENT OF GEORGETOWN LAKE LAGOON
DREDGING PROJECT**

This Memorandum of Understanding ("MOU") is executed by the parties on the dates shown below, and is effective on March 14, 2018, by and between the Town of Georgetown, Colorado ("Georgetown"), and the City of Black Hawk, Colorado, ("Black Hawk"), each a "Party" and collectively, the "Parties".

Recitals

- A. The Parties each own and operate municipal water systems which supply water to their residents and other customers within their respective service areas.
- B. Georgetown owns and controls Georgetown Lake, an on-channel reservoir located on Clear Creek, in Clear Creek County, Colorado.
- C. The Parties are parties to the Vidler Agreement, as defined herein, pursuant to which Black Hawk, as successor-in-interest to Vidler Water Company, is presently authorized to store up to 100 acre-feet of water in Georgetown Lake on the terms and conditions of the Vidler Agreement. The Vidler Agreement is not intended to be, and is not modified by this MOU.
- D. The Parties have entered into the Supplemental Storage Agreement, as defined herein, whereby Black Hawk may store an additional 54.5 acre-feet of water in Georgetown Lake. The Supplemental Storage Agreement is not intended to be, and is not modified by this MOU.
- E. The Parties have determined that the sediment build-up in the lagoon section of Georgetown Lake needs to be removed. Removal of the sediment will be accomplished using the Construction Management at Risk (CMAR) method and the Project (as defined below) is anticipated to be completed by November 2018.
- F. Georgetown, as owner of Georgetown Lake and Georgetown Lake Dam, will be responsible for, and will make final decisions concerning the Project, including but not limited to employment and oversight of a Project Manager, and final decisions regarding requests for proposal, selection of the CMAR contractors, contracting documents and processes, subject to provisions set forth below in this MOU.
- G. Georgetown will be the contracting party for all contracts related to the Project as herein defined, and will pay the costs of the Project, and Black Hawk will reimburse a portion of such costs, as set forth in this MOU.
- H. This MOU is intended to set forth the Parties' respective roles and duties, in the exercise of powers lawfully authorized to each of the Parties, in connection with construction of the Project, and the sharing of costs, all as authorized by the provisions of Section 18(2)(a) and (2)(b) of Article XIV of the Colorado Constitution and Sections 29-1-201 et seq., C.R.S., regarding intergovernmental relationships.

- I. The governing bodies of Georgetown and Black Hawk have each authorized by resolution the execution and delivery of this MOU.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained and the mutual benefits to the Parties, the receipt and sufficiency of which are acknowledged, Georgetown, and Black Hawk acknowledge and agree as follows:

Section 1. Term.

This MOU shall become effective on execution by both parties, and shall remain in effect until terminated as herein provided. This MOU may be terminated by agreement of the parties. In addition, this MOU will automatically terminate following occurrence of the last of the following events: issuance of final completion documents, expiration of all construction warranties, completion of all warranty work, expiration of all warranties on the warranty work, and final resolution of all warranty claims. The Parties acknowledge that an intergovernmental agreement between them, dated January 8, 2014, addresses operation, maintenance, repair and replacement of the Georgetown Lake, the Georgetown Lake Dam, the outlet, and related infrastructure ("O&M Agreement"). The O&M Agreement is not intended to be, and is not modified by this MOU.

Section 2. Georgetown as Owner.

The Parties acknowledge that Georgetown owns Georgetown Lake and Georgetown Dam, and will therefore be responsible for hiring the Project Manager, and for final decisions regarding the Project, with Black Hawk reimbursing its share of such costs under the provisions of this MOU.

Section 3. Definitions.

The following terms shall have the meanings set forth below:

"Administrative Officers" collectively shall mean the Town Administrator for the Town of Georgetown and the City Manager of the City of Black Hawk.

"Black Hawk" shall mean the City of Black Hawk, Colorado, a municipal corporation of the State of Colorado and a home rule city or any successor municipal corporation or governmental entity owning its water system.

"Construction Manager at Risk (CMAR)" shall mean the Firm or any other firm (such as subcontractor or joint-venture partner) that will provide construction services and have responsible charge of construction of the Project.

"Georgetown" shall mean the Town of Georgetown, Colorado, a territorially-chartered Town, or any successor municipal corporation or governmental entity owning its water system.

"Georgetown Lake" shall mean that certain on-channel reservoir located on Clear Creek, in the SE 1/4 and portions of the NE 1/4 of Section 5, and the NE 1/4 of Section 8, Township 4 South, Range 74 West of the 6th P.M. in Clear Creek County, Colorado, as shown on the map attached as **Exhibit A**, with the inlet located 800 feet

from the east section line and 1900 feet from the north section line of Section 5, Township 4 South, Range 74 West of the 6th P.M.

“Parties” shall mean Georgetown and Black Hawk.

“Project” shall mean pre-design planning, design, and construction of the Georgetown Lake Lagoon Dredging Project.

“Project Costs” shall mean the costs reasonably and necessarily required for the Project, including but not limited to

- Pre-design planning and feasibility studies, including related Project Manager fees and expenses
- Project management
- Engineering and engineering reports, design, plans and specifications
- Permitting
- Construction
- Inspection
- Costs of auditor and other professional consultant advice regarding the Project (but not including each Party’s legal fees incurred in the negotiation, preparation or performance of this MOU)
- Contingencies
- Such other expenses as may be reasonably necessary or incident to the feasibility, design, acquisition, permitting, construction, installation, and inspection of the Project and preparing the Project for operation, but not including each Party’s interest payments.

Project Costs shall not include the costs of contributions from outside agencies (i.e., CDOT).

“Project Manager” for the Project shall mean a qualified independent consultant, which may be a firm that includes one or more licensed professional engineers in good standing in the State of Colorado, selected and retained by Georgetown to serve as Project Manager in accordance with this MOU. As of the date of this MOU, the Project Manager that has been selected and retained by Georgetown is Orsatti Water Consultants, which is party to a Professional Services Agreement with Georgetown dated December 12, 2017. Nothing herein shall be deemed to alter or amend said Professional Services Agreement. References herein to the “Project Manager” will also include to any successor Project Manager.

“Supplemental Storage Agreement” shall mean the agreement dated December 12, 2012, between the Parties which authorizes Black Hawk to store 54.5 acre-feet of water in Georgetown Lake, in addition to the amounts that may be stored pursuant to the Vidler Agreement.

“Vidler Agreement” shall mean, collectively, all of the following contracts: that certain Water Supply and Storage Agreement dated August 17, 2000 (recorded with the Clear Creek County Clerk & Recorder at Reception No. 204247), the Memorandum of Understanding Concerning Georgetown Lake dated February 28, 2001 (recorded with the Clear Creek County Clerk & Recorder at Reception No.

209122), the Assignment and Water Delivery Agreement between the City of Golden and City of Black Hawk dated June 7, 2007 (recorded with the Clear Creek County Clerk & Recorder at Reception No. 245159), and the Memorandum of Understanding Concerning Georgetown Lake dated July 24, 2007 (recorded with the Clear Creek County Clerk & Recorder at Reception No. 245867, with the Gilpin County Clerk and Recorder at Reception No. 134541, and with the Jefferson County Clerk and Recorder at Reception No. 2007117138.)

Section 4. Parties' Participation.

(a) Parties' Representatives. The Parties, Georgetown and Black Hawk, are the stakeholders in the Project, and wish to assure the proper oversight and completion of the Project. Each Party will identify a person to represent that Party in Project oversight and implementation as described herein. Each Party's representative shall serve at the pleasure of the appointing Party, shall be an employee or consultant of such Party, and shall be compensated by such appointing Party. Failure of a Party to appoint a representative or to fill a vacancy shall not prevent the other Party from acting as set forth in Section 4(b) below. The Project Manager shall provide input and assistance to the Parties' representatives as set forth herein.

(b) Role of the Parties' Representatives. The Parties' representatives will meet as they deem appropriate during the course of the Project prior to issuance of final completion documentation for the Project. (During the warranty period, the representatives will meet as needed.) At all such meetings, the Project Manager, and others as needed, will provide information and updates regarding the progress of the Project, and the work being performed by the Project Manager and engineers, contractors and others involved with the Project. The Parties' representatives shall review and comment on all requests for proposals, responses to requests for CMAR proposals, and Project invoices that have been approved for payment. The Parties' representatives may request information from the Project Manager as needed, and will provide input and recommendations to the Project Manager and the Parties regarding the Project. The Project Manager and Georgetown will give due consideration to the input and recommendations of Black Hawk's representative, but neither the Project Manager nor Georgetown is obligated to follow the advice or recommendations of Black Hawk's representative. Therefore, for the term of this MOU, Black Hawk shall have no liability for the errors and omissions of the Project Manager and/or Georgetown, provided, however, that the foregoing limitation of liability does not apply to liability rising from or in connection with errors or omissions by design, engineering, or other professionals who are not the Project Manager, and shall not be deemed a waiver of any protections of the Colorado Governmental Immunity Act (C.R.S. § 24-10-101 *et seq.*)

(c) Actions by the Parties' Representatives. The Parties' representatives shall make recommendations by consensus. Only if the Parties' representatives are unable to reach consensus, after reasonable good-faith efforts to do so, may the Parties' representatives make individual recommendations to the Project Manager.

Section 5. Duties of the Project Manager. The Project Manager shall have the duties described in its contract with Georgetown, as the same may be revised from time to time, which duties include, but are not limited to the following:

(a) Submittal Review: The Project Manager will review and approve approximately 15-20 submittals by the CMAR verifying compliance with different aspects of the design before beginning portions of the Project. Electronic copies of these reviews will be provided to Georgetown, the CMAR and Black Hawk.

(b) Requests for Information: The Project Manager will conduct an active communication process with the CMAR and the engineering team to assure Project scheduling is maintained.

(c) Monthly Pay Application Certification: The Project Manager will review, confirm, and certify each pay application request from the CMAR, and will deliver the certified pay application to Georgetown for contractor payment. The Project Manager will simultaneously provide copies of the certified pay application to Black Hawk, CWCB and CDOT.

(d) Part-Time Construction Observation: The Project Manager will provide one half day construction observation visit per week during the 3-month construction period, supplemented with active daily communication to provide cost effective monitoring of day to day construction activities and the CDPHE dewatering discharge permit compliance. Each site visit will be documented by a field observation memo to report the conditions found and any recommendations made.

(e) Periodic Construction Meetings: As scheduled by the CMAR, the Project Manager, and the Parties' representatives will attend periodic construction meetings to coordinate ongoing construction activities. The Parties' representatives may request additional construction meetings as they deem appropriate.

(f) Permit Compliance Verification: The Project Manager will provide bi-weekly inspections of the Project site to confirm CMAR compliance with NEPA permit requirements. Each site visit will be documented by a field observation memo to report the conditions found and any recommendations made. Copies of the field observation memos will be provided to the Parties' representatives upon request.

(g) Final Hydrographic Survey and Quantities Confirmation: The Project Manager will provide a post-dredge hydrographic survey of the subsurface sediment conditions of the dredged area. This will include "As-Built" Plans" and volume analysis to confirm final removed material quantities and payment to the CMAR. The "As-Built" Plans" and volume analysis will be provided to the Parties' representatives.

(h) Construction Record documents: The Project Manager will prepare final construction record documents and deliver electronic .dwg files to Georgetown as required for Project documentation and funding agencies requirements, and will provide copies thereof to Black Hawk.

(i) Point of Contact. The Project Manager will be the point of contact for the engineers, contractors, consultants, governmental authorities and others during the design, engineering, construction, installation, inspection, and initial operation of the Project, and for all design changes, requests for information, change orders, work orders and the like concerning the Project. Nothing

herein prohibits either Party from responding to requests made to it for information pursuant to the Colorado Open Records Act or similar statute, from responding to requests for information from the news media or the public, or from providing updates and information to its constituents or the public.

(j) Change Orders. The Project Manager shall review and approve all requested change orders, and shall inform the Parties' representatives before any approval of a requested change order in excess of \$500.00.

Section 6. Project Cooperation.

The Parties agree to cooperate with each other to facilitate the efficient and cost-effective pre-design planning, design, construction, and implementation of the Project, and to cooperate in finalizing temporary storage of water stored in the Lake if the Lake is fully or partly drained during the Project, and cooperate in the exchange of such temporarily stored water back to the Lake following completion of the Project. Any releases of water required by the Project will be made in accordance with any relevant water court decrees and/or administrative requirements, and will be allocated between the Parties according to the Ratio as defined in the O&M Agreement, unless otherwise agreed by the Parties at the time a release is made.

Section 7. Ownership and Operation of Georgetown Lake.

(a) Ownership. Notwithstanding this MOU and the Parties' sharing of the Project Costs as herein set forth, Georgetown shall continue to own Georgetown Lake and Georgetown Lake Dam, and all infrastructure, equipment and other property now existing and in use in connection with Georgetown Lake.

(b) Operation. Georgetown Lake shall continue to be operated in accordance with the O&M Agreement and Section 6 above.

Section 8. Individual Responsibilities of Parties.

(a) Participation of Party Representatives. Each Party shall be responsible for assuring that its representative is available as needed to attend meetings and provide input as set forth in this MOU.

(b) Storage and Release of Water. During construction of the Project, Georgetown Lake will be operated pursuant to the O&M Agreement and Section 6.

(c) Recordkeeping and Accounting. Both during construction of the Project and thereafter, each Party shall continue to be responsible for maintaining its own records and accounting in accordance with its own water rights decrees and state administrative requirements, and each Party shall timely provide information required for any combined accounting for Georgetown Lake required by any water court decrees or administrative requirements.

(d) Duties of Owner. Georgetown shall be responsible in performing its duties set forth in Recitals F and G in a timely manner to complete the Project.

Section 9. Estimate of Project Costs and Source of Payment.

(a) Cost and Cash Flow Projection. After the pre-construction design of the Project has been completed, the Project Manager shall prepare, or cause to be prepared, and submit to the Parties' representatives a written pro-forma estimate of the total Project Costs, together with a planned Project timeline and a pro-forma Project cash flow requirement schedule identifying the costs that are expected to be incurred throughout the Project, presented in monthly increments. The timeline, pro-forma estimate and cash flow schedules shall be updated or revised as necessary to keep the Parties apprised of any significant changes in estimated or actual Project Costs, construction timeline, or cash flow requirements and all updates and revisions shall be submitted to the Parties' representatives by the Project Manager.

(b) Increase in Project Costs. If, at any time or from time to time after the adoption of the Parties' respective budgets and securing of funding, the Project Manager estimates that the actual Project Costs will be greater than the Project Costs set forth in the Parties' respective annual budgets, then such Party shall, to the extent permitted by law, prepare and adopt an amended annual budget including sufficient amounts to pay its share of all actual Project Costs for the current calendar year and shall approve supplemental appropriations consistent with the amended budget, or shall otherwise borrow or obtain grants for its share of such actual Project Costs.

(c) Black Hawk's Reimbursement Percentage. Black Hawk shall reimburse to Georgetown its allocation percentage of Project Costs as set forth in paragraph 10(a). Black Hawk agrees that prior to commencement of the Project CMAR contract, it will appropriate, borrow, or obtain grants for sufficient funds to reimburse to Georgetown Black Hawk's allocation percentage as defined in Paragraph 10(a) of the estimated pro-forma Project Costs. Black Hawk will also provide confirmation reasonably acceptable to Georgetown that it has appropriated, borrowed or otherwise obtained sufficient funds to reimburse Georgetown for Black Hawk's allocation percentage of the estimated Project Costs, and that these funds will be used to reimburse to Georgetown for Black Hawk's allocation percentage of the actual Project Costs, including approved change orders, as set forth in this MOU.

(d) Payment Options. Each Party reserves the right to provide for the payment of its share of the Project Costs through the issuance of bonds or indebtedness as each Party deems appropriate. Black Hawk acknowledges that Georgetown may be required to encumber the Project property or infrastructure as a condition of financing the Project, and agrees to such encumbrance. Black Hawk shall not encumber any Project property or infrastructure, or any other property belonging to Georgetown, without Georgetown's prior written consent.

(e) Use of Lawfully Available Funds. The Parties agree that all payments required from Parties under this MOU shall be made only from funds lawfully available for such purposes, specifically including the revenues of each of the Party's municipal water or utility systems, the proceeds of any bonds or indebtedness incurred by a Party for such purposes, or any grants that are available to be used for the Project.

Section 10. Allocation of Project Costs.

(a) Allocation Percentages. In accordance with the O&M Agreement, the Parties agree that Georgetown shall pay 60% of the Project Costs pursuant to Section 11 of this MOU, and Black Hawk shall pay 40% of the Project Costs pursuant to Section 11 of this MOU.

(b) Transfer or Assignment of Vidler Agreement. Any transfer or assignment of Black Hawk's rights under the Vidler Agreement and the Supplemental Storage Agreement will be made subject to Black Hawk's payment requirements of this MOU.

Section 11. Billing and Payment of Project Costs.

(a) Review of Invoices. In accordance with its contract and the requirements of any entities (other than Georgetown and Black Hawk), the Project Manager shall timely review all unpaid pay applications or invoices received during the preceding month, and shall certify under his professional seal that the invoiced Project work was performed, and was performed satisfactorily in accordance with the Project design and plans. The Project Manager will provide the certified pay applications and invoices to the Parties' representatives as provided in Section 5 with a recommendation of payment. The Parties' representatives will review the certified pay applications and invoices and address any questions they may have with the Project Manager. Following the Parties' representatives' review of the invoices, the Project Manager will provide the certified invoices to Georgetown. The Project Manager will provide a summary to the Parties' representatives of the invoices submitted for payment to Georgetown each month. Georgetown shall make payment to the CMAR for the certified amount of the invoice.

If the Project Manager fails to certify any payment application, invoice or any part of a payment application or invoice for payment, the Project Manager will seek to resolve the dispute with the invoicing entity, and will submit any proposed resolution to the Parties' representatives prior to recommending such resolution to Georgetown and Black Hawk.

(b) Invoices for Black Hawk's Cost Share. As set forth in sub-section (a) above, Georgetown shall submit an invoice to Black Hawk for its pro rata share of the amount submitted to Georgetown for payment. The invoice to Black Hawk shall show (1) Black Hawk's percentage share of the Project Costs for the preceding month; (2) any amount paid with respect to previous monthly invoices; and (3) any amount that was previously billed but remains unpaid as of the date of the invoice. Such monthly invoice to Black Hawk shall include the back-up documents and invoices from each contractor, consultant and supplier. The monthly invoices and back up documents and invoices shall be hand-delivered, sent via email attachment, or mailed by first class United States mail to Black Hawk.

(c) Payments by Georgetown and Black Hawk. Black Hawk shall pay invoiced amounts within fifteen (15) days of the date on which it is invoiced by Georgetown. Georgetown shall timely make all payments to the invoicing entity. A disputed invoice will be resolved as provided in subsection (a), and will not be recommended for payment until the dispute has been resolved. Black Hawk will not be required to pay its share of a disputed invoice until the dispute is resolved. Notwithstanding the foregoing, Georgetown and Black Hawk may agree to payment of a disputed invoice, and Black Hawk will pay its share of the disputed invoice.

(d) Correction for Overpayment or Underpayment. Upon final completion of the Project, the Project Manager shall review all Project Costs paid by each Party to assure that all amounts were billed and paid in accordance with this MOU. Any overpayments or underpayments shall be corrected.

Section 12. Payment Disputes, Delinquency and Default.

(a) No Offset. All payments required to be made by each Party under the terms of this MOU shall be due and payable as provided in Section 11(c), and the Parties shall have no right of setoff, recoupment, or counterclaim against any payment which is to be made under this MOU. Should a dispute arise as to whether a Party is in compliance with its payment obligations hereunder, that Party shall nevertheless be obligated to continue to make the payments for its share of Project Costs as provided herein. If it is finally agreed or determined that either Party has overpaid amounts due under this MOU, the other Party shall reimburse the amount overpaid.

(b) Failure of a Party to Make Payment. In the event that a Party fails to make an approved payment within the time specified, the other Party may make such payment, if the other Party determines it is necessary or appropriate to do so in order to avoid delay in the Project or to avoid default under Project contracts, and the delinquent Party shall thereupon owe such sums to the non-defaulting Party that paid them. If said election to pay is made by the non-defaulting Party, all past due amounts owed by a defaulting Party shall bear interest at the rate of one percent (1%) per month from the date such payment is made by the non-defaulting Party until such amount has been paid in full by the defaulting Party to the non-defaulting Party. This Section 12(b) shall not apply to disputed invoices which are in the process of dispute resolution.

(c) Default Other than Nonpayment. If a Party fails or defaults in meeting its obligations under this MOU other than payment obligations, the other Party shall give Notice of Default, and the defaulting Party shall have a period of thirty (30) days from the date of delivery of such notice to cure the default, or, if the default is not one that can reasonably be cured in 30 days, the defaulting Party shall have a reasonable amount of time thereafter to complete such cure.

(d) Failure to Cure. In the event a Party is in default, has been provided notice, and shall not have cured such default within the cure period, the non-defaulting Party may enforce its rights hereunder as provided by law.

(e) No Forfeiture of Water Rights. It is not the intent of this MOU to require a sale or forfeiture of any water rights owned by a Party.

Section 13. Insurance.

(a) Georgetown shall maintain, or cause to be maintained, insurance of such types and in such amounts with respect to the Project as shall be reasonably available and as is usually carried by municipal water utilities constructing and operating water storage facilities, including the following:

General Liability Insurance,
Property insurance on the Project to the full insurable value of the Project,
Builder's Risk Insurance, if Georgetown deems necessary, in an amount commensurate with the Project Costs.

Black Hawk shall be named an additional insured or a loss payee, as appropriate, on the general liability and builder's risk insurance policies. The cost of such insurance shall be a Project Cost.

(b) The Parties acknowledge that the provisions of this Section requiring insurance, as well as the purchase of insurance or participation in any insurance pool by either or both Parties, are not intended to nor shall waive any of the immunities, defenses, and limitations of liability afforded to the Parties under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101 *et seq.*) (the "Act"), or any provision of statute or the common law. In the event any Party receives a notice of claim under the Act or otherwise, said Party shall promptly deliver a copy of the same to the other Party. The Parties agree to cooperate with one another in the defense of any claim or action brought against either of them in connection with their actions under this MOU.

Section 14. Records and Accounts.

(a) Accounting Records. The Project Manager will keep, and make available to the Parties' representatives at least monthly, accurate accounts and records of the Project and of the transactions relating to the Project in accordance with generally accepted accounting principles as applied to governmental units.

(b) Access to Books and Records. Each Party shall at all times have reasonable access to examine any and all books and records, including, but not limited to, computer or electronic format records, of the Project in the possession or control of the Parties' representatives or the Project Manager.

Section 15. Governmental Laws and Regulations.

(a) Compliance with Laws. The Project shall be planned, designed, engineered, and constructed in accordance with all governmental laws, ordinances, approvals, regulations and requirements applicable thereto.

(b) MOU Subject to Laws. This MOU shall be subject to all valid laws and regulations of the United States of America and the State of Colorado, and any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them, provided, however, that no ordinances enacted by either of the Parties shall impair the obligations of this MOU.

(c) Notwithstanding other provisions in this MOU to the contrary, the Parties understand and acknowledge that they are subject to Article X, § 20 of the Colorado Constitution ("TABOR").

- a. The parties do not intend to violate the terms and requirements of TABOR by the execution of this MOU.
- b. It is understood and agreed that this MOU does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this MOU to the contrary, all payment obligations of the parties are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the parties' current fiscal period ending upon the next succeeding December 31.

- c. Financial obligations of the parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible party and other applicable law.
- d. Failure of a party to make appropriation of amounts required in any fiscal year, if not promptly cured, shall result in termination of this MOU.

Section 16. Notices.

Any notice, request, demand or statement provided for in this MOU shall be in writing and shall be considered to have been duly delivered when personally delivered, sent by a recognized overnight delivery service (prepaid), or sent by registered or certified mail, postage prepaid, return receipt requested, (provided that invoices sent hereunder may be sent by first class mail or email attachment as herein provided), addressed as follows to the party entitled to receive same:

- (a) Georgetown Kent Brown
 Town Administrator
 Town of Georgetown
 404 6th Street
 Georgetown, CO 80444

 With a copy to: Gerald E. Dahl, Town Attorney
 Murray Dahl Kuechenmeister & Renaud LLP
 710 Kipling Suite 300
 Lakewood CO 80215
- (b) Black Hawk Jack D. Lewis, City Manager
 City of Black Hawk
 211 Selak Street
 P.O. Box 68
 Black Hawk, CO 80422

 With a copy to: Corey Hoffmann, City Attorney
 Hoffmann, Parker, Wilson & Carberry, P.C.
 511 Sixteenth Street, Suite 610
 Denver, CO 80202-1468
 Telephone: (303) 825-6444
 Facsimile: (303) 825-1269

Either party may change its address or contact information for purposes of this MOU by giving notice of such change as provided in this Section. Notwithstanding the provisions of this Section 16, Project Cost invoices to Black Hawk shall be provided as set forth in Section 11.

Section 17. Severability.

If any provision of this MOU shall be held by a court of competent jurisdiction to contravene or be invalid under the laws of the State of Colorado or the United States, such contravention or invalidity shall not invalidate the whole MOU but the MOU shall be construed as though not

containing that particular provision and the rights and obligations of the Parties shall be construed and enforced accordingly.

Section 18. Governing Law; Jurisdiction; Venue; Attorney Fees.

This MOU shall be governed and construed in accordance with the laws of the State of Colorado. Each Party hereby expressly and irrevocably agrees and consents that any suit, action or proceeding arising out of or relating to this MOU and the transactions contemplated hereby shall be instituted by either Party hereto exclusively in any State court sitting in Clear Creek County, Colorado or, if federal jurisdiction exists, exclusively in the Federal court sitting in the City and County of Denver, State of Colorado and, by the execution and delivery of this MOU, each Party expressly waives any objection which it may have now or hereafter to the venue of any such suit, action or proceeding.

Section 19. Counterparts.

This MOU may be executed in several counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

Section 20. Intent of Agreement.

This MOU is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any way the powers and responsibilities of the Parties or any other entity not a party hereto. Nor shall this MOU or any provision hereof be deemed a waiver, abrogation, or diminishment of any governmental immunity available to the Parties.

Section 21. Amendments.

This MOU may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by both of the Parties.

Section 22. Assignability.

(a) Assignment to Successor Governmental Entity. Neither Party, without the written approval of the other Party, may assign its rights and obligations under this MOU except to a governmental entity that succeeds to ownership of that Party's municipal water system, which governmental entity shall become a "Subsequent Party" upon execution by the other Party and by the Subsequent Party of an Amendment to this MOU whereby the Subsequent Party agrees to be bound by all terms and conditions of this MOU and agrees to assume all obligations of the former Party under this MOU. Such written Amendment shall by its written terms release the former Party from all further obligations under this MOU, but shall not release the former Party from any payment obligations incurred prior to the date of such Amendment. Upon execution of such Amendment by the remaining Party and the Subsequent Party, the Subsequent Party shall be entitled to all rights of the former Party under this MOU and shall be obligated for all further obligations of the former Party under this MOU.

(b) Assignment to Another Governmental Entity. Except as set forth in subsection (c) below, a Party may assign all of its rights and obligations under this MOU to another governmental

entity only upon written approval by the other Party, which may be withheld for any reason. Such assignment or transfer shall only be effective upon the execution by both of the Parties and by the other governmental entity of an Amendment to this MOU setting forth all terms and conditions of the assignment and transfer and all the rights and obligations of the transferee, which then shall become a Subsequent Party under this MOU. Neither Party may assign its rights or obligations hereunder to a person or entity that is not a governmental entity.

(c) Assignment of Vidler Agreement and Supplemental Storage Agreement by Black Hawk. If Black Hawk assigns the Vidler Agreement and Supplemental Storage Agreement as provided in such agreements, the assignee shall succeed to all rights and obligations of Black Hawk hereunder, as set forth in Section 24 below.

(d) Void Assignment. Any assignment of any of a Party's rights or obligations under this MOU in violation of this Section shall be void and of no force and effect.

Section 23. Termination of Project.

(a) Termination. The Parties intend that the Project will only be terminated by mutual written agreement or for causes beyond their reasonable control (to which the Parties shall first agree in writing), that render the Project infeasible, including without limitation financial or legal restrictions, provided, however, that if Black Hawk terminates the Vidler Agreement and the Supplemental Storage Agreement prior to completion of the Project, the provisions of Section 10 and Section 24 shall apply.

(b) Ownership of Property Paid for as Project Costs. All personal property, reports, studies, design drawings and/or specifications or other items that are paid for as Project Costs shall be and remain the property of Georgetown. Black Hawk shall have the right to copies of any Project reports, studies, design drawings and/or specifications, or other documents for its own use other purposes, upon payment of reasonable copying costs, if such information cannot be provided electronically.

Section 24. Black Hawk's Termination or Assignment of Vidler Agreement and Supplemental Storage Agreement.

(a) Termination of Vidler Agreement and Supplemental Storage Agreement. The Parties acknowledge that Black Hawk may terminate the Vidler Agreement and Supplemental Storage Agreement in accordance with their respective terms, subject to Black Hawk's responsibility for its share of Project Costs incurred prior to the date of termination, as set forth in Section 10 of this MOU.

(b) Assignment of Vidler Agreement and Supplemental Storage Agreement. Black Hawk may also assign its rights and obligations pursuant to the Vidler Agreement and Supplemental Storage Agreement, subject to Georgetown's approval, and Black Hawk agrees that any such assignments shall also require the assignee to comply with all terms and conditions of this MOU.

Section 25. No Waiver.

Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder.

Section 26. Force Majeure.

No party shall be held liable for a failure to perform hereunder due to wars, strikes, acts of God, natural disasters, drought, force majeure, or other similar occurrences outside of the reasonable control of that party.

Section 27. Interpretation and Construction.

Titles and paragraph headings shall not be used to alter the meaning of this MOU. This MOU was prepared and negotiated jointly by the Parties and their respective legal counsel, and shall not be construed against either Party as the drafting party.

Section 28. Binding Agreement - Recording.

This MOU is binding upon the Parties hereto, their successors and assigns, and may be recorded by either Party at its expense.

Section 29. Authorization of Signatures.

The Parties acknowledge and represent to each other that all approvals and procedures necessary to validly contract and execute this MOU have been performed and that the persons signing for each party have been duly authorized to do so.

Section 30. Counterparts.

This MOU may be signed using counterpart signature pages, with the same force and effect as if all parties signed on the same signature page.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their duly authorized officers, on the dates shown below for each Party.



TOWN OF GEORGETOWN, COLORADO

By Matthew W. SKeen
Police Judge

Date 3-14-18

Attest:

[Signature]
Town Clerk

Approved as to form:

CITY OF BLACK HAWK, COLORADO

By [Signature]
Mayor

Date 4/25/2018

Attest:


[Signature]
City Clerk

Approved as to form:

[Signature]



Transmittal Sheet

Date: 20-Apr-18
To: Melissa Greiner
From: Jim Ford 
Re: Georgetown Lake Dredging MOU

Copies	Date	Description
2	2018	Memorandum of Understanding
2		Certificate of Insurance

Melissa,

Council approved this MOU at the 14-Mar-18 Council meeting.

I now have the signatures from Georgetown and the Certificate of Insurance showing City of Black Hawk as additionally insured.

This MOU is now ready for our signatures.

Please keep one copy for our records and send one copy back to Georgetown at:

Town of Georgetown
P.O. Box 426
Georgetown, CO 80444
Attn: Jennifer Yobski, Town Clerk

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YY)
04/10/2018PRODUCER LIC #N/A 1-303-757-5475
CIRSA
3665 Cherry Creek North Drive
Denver, CO 80209

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGEINSURED
Town of Georgetown
PO Box 426
Georgetown, CO 80444INSURER A: CIRSA
INSURER B: See Attached Schematic
INSURER C:
INSURER D:
INSURER E:**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	LIAB 01-2018	01/01/18	01/01/19	EACH OCCURRENCE	\$ 10,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$ 10,000,000
	<input checked="" type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 0
	<input checked="" type="checkbox"/> \$10m POL E&O Aggregate				PERSONAL & ADV INJURY	\$ 10,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$ 10,000,000
A	AUTOMOBILE LIABILITY	LIAB 01-2018	01/01/18	01/01/19	COMBINED SINGLE LIMIT (Ea accident)	\$ 5,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS					
	<input type="checkbox"/> NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
	EXCESS LIABILITY				EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
A	OTHER	PR 01-2018	01/01/18	01/01/19		\$ 1,000,000
B	Property (Primary)	See Attached Schematic	01/01/18	01/01/19	Prop Pool Limit	\$ 500,000,000
	Property (Excess Prop)					\$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Certificate Holder is Additional Insured on Liability Policies and Loss Payee on Property if required by contract. As respects for Dredging Project at the Lagoon-Georgetown Lake.

CERTIFICATE HOLDER

Y

ADDITIONAL INSURED; INSURER LETTER: A

CANCELLATION

City of Black Hawk

Jim Ford, P.E., Senior Civil Engineer
P.O. Box 68

Black Hawk, CO 80422

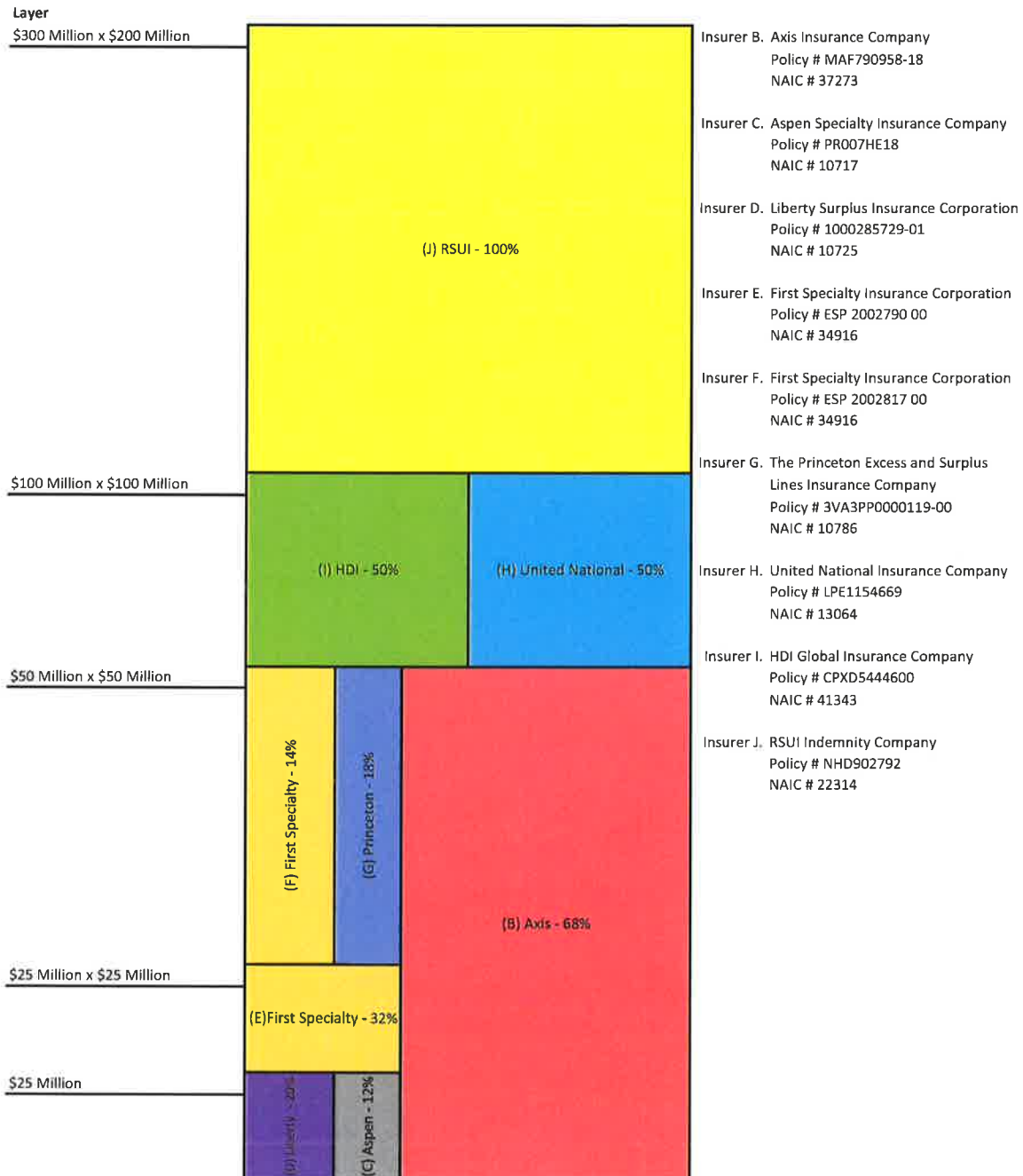
USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



Colorado Intergovernmental Risk Sharing Agency
Property Coverage Schematic
January 1, 2018 to January 1, 2019



Michele G. Martin

From: James Ford
Sent: Thursday, March 15, 2018 11:30 AM
To: Michele G. Martin
Subject: RE: BH AGR

Michele,

Georgetown will send me their COI once they receive it.

As far as the Builders Risk, that will not happen until the CMAR project moves into the construction phase of the project.

We are currently in the pre-construction/design phase of the project.

Jim

James R. Ford, P.E.
Senior Civil Engineer/Water Resources
City of Black Hawk, CO
(303) 895-7738 (cell)
(303) 582-1324 (office)
(303) 582-2237 (direct)
JFord@cityofblackhawk.org

From: Michele G. Martin
Sent: Thursday, March 15, 2018 10:36 AM
To: James Ford
Subject: FW: BH AGR

Hi Jim – how are you making out on getting the insurance to go with this agreement? Melissa will sign once we have the insurance, then I can send to you for Georgetown's signatures.

Thanks,

M

Michele Martin, CMC

Deputy City Clerk
City of Black Hawk
P.O. Box 68
Black Hawk, CO 80422
303-582-2221 office
303-582-0848 fax
MMartin@cityofblackhawk.org
www.cityofblackhawk.org

The City of Black Hawk is Colorado's Second Oldest Incorporated City!