

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB7

ORDINANCE NUMBER: 2018-7

TITLE: AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND THE COLORADO HISTORICAL SOCIETY, DEPARTMENT OF HIGHER EDUCATION, STATE OF COLORADO

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 Agreement between the City of Black Hawk and the Colorado Historical Society, Department of Higher Education, State of Colorado regarding the use of the City's Church Ditch 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.

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 25th day of April, 2018.


David D. Spellman, Mayor

ATTEST:



Melissa A. Greiner, CMC City Clerk



EXHIBIT A

AGREEMENT

This AGREEMENT ("Agreement") is made and entered into this 25th day of April, 2018, 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 987 Miners Mesa Road, Black Hawk, Colorado, 80422, and the **Colorado Historical Society**, ("Historical Society"), Department of Higher Education, State of Colorado, whose address is 1200 Broadway, Denver, Colorado, 80203. Black Hawk and the Historical Society may sometimes be referred to herein collectively as "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.
- B. The Church Ditch diverts approximately 5,710.64 inches of water from Clear Creek for augmentation purposes.
- C. The Historical Society owns the right to receive 1-inch of Church Ditch water, conveyed to them in April of 1986 by the Adolph Coors Company. This represents 0.0175% of the Church Ditch total in-priority diversion rate.
- D. The Historical Society desires to use the Church Ditch Augmentation Station to divert, measure, and then return to Clear Creek the Historical Society's Church Ditch augmentation credits from the Church Ditch headgate to Clear Creek for the purpose of augmenting out of priority depletions upstream by the Historical Society.
- E. Black Hawk agrees to operate the Church Ditch Augmentation Station for the benefit of the Historical Society for returning to Clear Creek the augmentation credits attributable to the Historical Society's 1-inch of Church Ditch water.

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 returns made to Clear Creek for the Historical Society's one inch of Church Ditch water for augmentation purposes.
- 2. Unless otherwise requested by the Historical Society, Black Hawk shall return augmentation credits in the amount of 0.01 cubic feet per second (cfs) to Clear Creek during the months May through October when the Church Ditch is diverting. This represents the Historical Society's ownership in the Church Ditch, which is 0.01751% of the total in-priority diversion rate of 57 cfs (typical low flow amount) of Church Ditch. In the event that no other entity is returning water back to Clear Creek through the Augmentation Station, the Historical Society shall be required to return the minimum flow that is accurately measures by a 9-inch Parshall Flume (0.09 cfs), subject to any limits in the Historical Society's decrees. Nothing in this Agreement

shall require Black Hawk to deliver its own or any other party's water through the Church Ditch Augmentation Station solely for the purpose of maintaining returns on behalf of the Historical Society. The Historical Society may request a monthly release in April if a specific request is made by the Historical Society to the Church Ditch Authority, with a copy to Black Hawk, and the Church Ditch is actually operating at that time.

3. The Historical Society will be assessed transit loss, as assessed by the Church Ditch Authority, for water loss between the headgate and the turn back at the Augmentation Station. Such loss assessment by the Church Ditch Authority may vary by month depending on total Church Ditch diversions.
4. Black Hawk will report the timing and amounts of the monthly volume of water returned back to Clear Creek at the Augmentation Station via email to the Historical Society if the amount is less than the default amount of 0.01 cfs. Black Hawk is not responsible for reporting the amount of water diverted from and/or returned by the Historical Society to Clear Creek to the Water Commissioner or the Division Engineer.
5. Cost. There shall be an annual charge of \$500.00 to cover the cost of Black Hawk's operation of the Church Ditch Augmentation Station pursuant to this Agreement.
6. Term of Agreement. The term of the Agreement will be for 5 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 5-year initial term.
7. Accounting. The Historical Society 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 the Historical Society by written notice to the other party at any time.
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
 987 Miners Mesa Road
 P.O. Box 68
 Black Hawk, CO 80422
 (303) 582-1324

With a Copy to: Corey Hoffmann, City Attorney
Hayes, Phillips, Hoffmann & Carberry, P.C.
1530 Sixteenth Street, Suite 200
Denver, CO 80202-1468
(303) 825-6444

Historical Society: Colorado Historical Society
Water Resources Manager
1200 Broadway
Denver, CO 80203
(303) 866-4253

With a Copy to: Attorney General's Office
Water Conservation Unit
1525 Sherman Street
Denver, CO 80203

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 the Historical Society 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



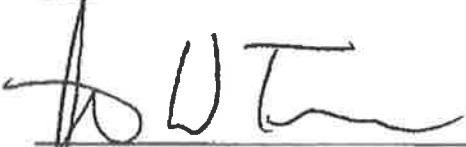
David D. Spellman
Mayor

Approved as to content and form;




(Attorney)

State of Colorado



Steve Turner
Executive Director
State Historic Preservation Officer
Colorado Historical Society

Approved as to content and form;



Jennifer Mele, No. 30720
Assistant Attorney General
Natural Resources Section

In accordance with § 24-36-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By:

A handwritten signature in blue ink, appearing to read "Robert Jaros", written over a horizontal line.

Effective Date:

4/30/18