

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB10

ORDINANCE NUMBER: 2020-10

TITLE: AN ORDINANCE APPROVING THE CHURCH DITCH/FARMERS HIGH LINE AUGMENTATION STATION LEASE AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND THE CITY OF ARVADA

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 Church Ditch/Farmers High Line Augmentation Station Lease Agreement between the City of Black Hawk and the City of Arvada, 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.

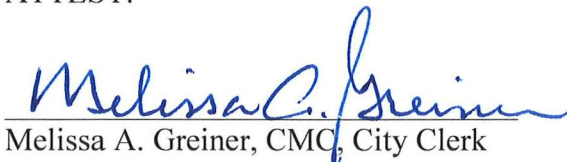
Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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 22nd day of April, 2020.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk



AGREEMENT

This AGREEMENT ("Agreement") is made and entered into this 22 day of April, 2020, by and between the **City of Black Hawk** (hereinafter, "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 **City of Arvada** (hereinafter, "Arvada"), a Colorado municipal corporation, whose address is 8101 Ralston Road, Arvada, Colorado 80002. Black Hawk and Arvada 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 under numerous priorities for its inchholders.
- C. As decreed in Case No. 2017CW3210, Arvada is entitled to use 80.0 inches of Church Ditch deliveries for municipal and other purposes, which at times may be subject to certain turnback provisions to Clear Creek. The 80.0 inches represent 1.40% of the Church Ditch total in-priority diversion flow rate.
- D. Arvada desires to utilize the Church Ditch Augmentation Station to divert, measure, and then return to Clear Creek Arvada's deliveries associated with 80.0 inches of Church Ditch for the purpose of meeting its decreed turnback requirements when required.
- E. Black Hawk agrees to allow Arvada to utilize the Church Ditch Augmentation Station when there is available capacity to return the farm headgate deliveries associated with 80.0 inches of Church Ditch water back to Clear Creek, or for any other decreed purpose.
- F. Arvada owns and operates the Farmers High Line Canal Ralston Creek Augmentation Station (FHL Augmentation Station), where the ditch crosses Ralston Creek in the SW1/4 of Section 1, T3S, R70W of the 6th P.M., in Jefferson County, Colorado.
- G. Black Hawk is entitled to use 1.15 shares of FHL water deliveries for municipal and other purposes pursuant to the decree in Case No. 12CW303.
- H. At certain times Black Hawk desires to utilize the FHL Augmentation Station to replace historical return flows owed to Ralston Creek as required by its decree.
- I. Arvada agrees to allow Black Hawk to utilize the FHL Augmentation Station when there is available capacity for making return flows attributed to its FHL shares to Ralston Creek and for any other authorized decreed purpose.

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. Upon notice to Black Hawk by Arvada and if there is sufficient unused capacity, Black Hawk agrees to allow Arvada to utilize the Church Ditch Augmentation Station to return to Clear Creek the amount of water associated with 80.0 inches of farm headgate deliveries (total river headgate minus assessed ditch loss) during the period from April 1st through October 31st whenever the Church Ditch is diverting and delivering water to inchholders. The delivery amount associated with the 80.0 inches will vary depending on the total amount of water being diverted at the Clear Creek river headgate by the Church Ditch. Arvada will contact the Church Ditch to arrange to have the 80.0 inches delivered through this augmentation station.
2. Upon notice to Arvada by Black Hawk and if there is sufficient unused capacity, Arvada agrees to allow Black Hawk to utilize the FHL Augmentation Station to deliver water to Ralston Creek from March 20th through November 10th whenever the FHL is diverting and delivering water to shareholders. Black Hawk will contact the FHL to arrange to have their share water delivered through this augmentation station.
3. If Black Hawk is the only entity utilizing the FHL Augmentation Station it will be able to retrieve its daily diversions for accounting purposes from the Colorado Division of Water Resources website. If the information is not available from the website or the FHL Augmentation Station is being utilized by multiple entities, Arvada will report the daily amount of water attributed to Black Hawk via email.
4. If Arvada is the only entity utilizing the Church Ditch Augmentation Station it will be able to retrieve its daily diversions from the Water Commissioner's weekly report. If the information is not available from the water commissioner or the Church Ditch Augmentation Station is being utilized by multiple entities, Black Hawk will report the daily amount of water attributed to Arvada via email.
5. Arvada may deliver more than 80.0 inches of Church Ditch water through the Church Ditch Augmentation Station as long as there is available unused capacity. Black Hawk is not restricted in the number of shares it can deliver through the FHL Augmentation Station as long as there is available unused capacity.
6. Black Hawk is not responsible for reporting the amount of water returned to Clear Creek on behalf of Arvada to the Water Commissioner or the Division Engineer.
7. Arvada is not responsible for reporting the amount of water delivered to Ralston Creek on behalf of Black Hawk to the Water Commissioner or the Division Engineer.
8. Operation. Arvada shall contact Black Hawk and inform them of the total number of inches they are requesting to be delivered through the Augmentation Station for their farm headgate turnback requirement. Black Hawk will notify Arvada if space is available for Arvada's requested turnback requirement within 24-hours. Arvada

cannot request a change in the number of inches to be delivered through the Augmentation Station more than once per week during the Church Ditch delivery season.

9. Cost. There shall be no charge assessed to either Black Hawk or Arvada for the operation of the Church Ditch Augmentation Station or the FHL Augmentation Station owned by the other Party pursuant to this Agreement.
10. Term of Agreement. The term of the Agreement will be in effect for as long as the augmentation stations are functional, subject to the right of either Party to terminate this agreement with 60 days' written notice.
11. Accounting. Each Party is responsible for submitting the accounting for their respective diversions herein to the Division Engineer's Office.
12. 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 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
 Email: tisbester@cityofblackhawk.org

With a Copy to: David Kueter, Water Attorney
 Holsinger Law, LLC
 1800 Glenarm Place, Suite 500
 Denver, CO 80202
 (720) 330-8253
 Email: dkueter@holsingerlaw.com

Arvada: City of Arvada
 Director of Utilities
 8101 Ralston Road
 Arvada, CO 80002
 (720) 898-7761
 Email: sisrael@arvada.org

13. 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.

14. 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.
15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
16. 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 City of Arvada have contributed substantially and materially to the preparation of this Agreement.
17. 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.
18. Assignment. Neither Party may assign its rights or delegate its duties under this Agreement without prior written consent of the other Party.

Executed as of the date first set forth above.

City of Black Hawk


Approved as to content and form;



David D. Spellman, Mayor


Corey Hoffmann, Attorney

City of Arvada

Approved as to content and form;


Marc Williams, Mayor


Rachel A. Morris, City Attorney