

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB17

ORDINANCE NUMBER: 2020-17

TITLE: AN ORDINANCE APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND GILPIN COUNTY REGARDING THE NOVEMBER 3, 2020 SPECIAL ELECTION

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

Section 1. The Intergovernmental Agreement between the City of Black Hawk and Gilpin County regarding the City's November 3, 2020 Special Election, attached hereto as **Exhibit A**, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

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.

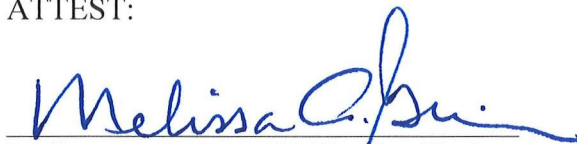
Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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 July, 2020.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk



**INTERGOVERNMENTAL AGREEMENT
FOR 2020 COORDINATED ELECTION**

THIS INTERGOVERNMENTAL AGREEMENT FOR 2020 COORDINATED ELECTION ("Agreement") is entered into by and between Gilpin County (County) by the Gilpin County Clerk and Recorder, hereinafter referred to as "County Clerk", and the City of Black Hawk, hereinafter referred to as "City" (each a "Party" and collectively, the "Parties").

RECITALS:

- A. The City plans to conduct a special election on November 3, 2020, ("Special Election") pursuant and subject to statutory and constitutional authority and requirements including without limitation Colorado Constitution Art. X, § 20 ("TABOR").
- B. The City has requested the County conduct a coordinated election using the procedures described in C.R.S. § 1-7-116.
- C. The County is agreeable to conducting a coordinated election with the City subject to the terms of this Agreement.
- D. The coordinated election may include other jurisdictions holding elections.
- E. The County Clerk has agreed to perform the coordinated election services set forth herein in consideration for the performance by the City of its obligations and payment of election expenses, costs and fees as set forth herein.
- F. This Agreement is authorized by C.R.S. §§ 29-1-203, and 1-1-111, and 1-7-116(2).
- G. C.R.S. § 1-1-111(2) authorizes the City to contract with the County Clerk to perform all duties of the City Clerk, in connection with the conduct of the 2020 coordinated election.

NOW, THEREFORE, in consideration of their mutual promises contained herein, the Parties agree as follows:

- 1. **Purpose.** Pursuant to the terms of this agreement, the County Clerk and the City agree to the scheduling of a coordinated election on November 3, 2020. Such coordinated election involves more than one political subdivision with overlapping boundaries, and the County Clerk shall serve as the Coordinated Election Official for the political subdivisions involved in this election. This election shall be held under the provision of Title 1 of the Colorado Revised Statutes, hereafter identified as "the Code".
- 2. **Designation of Officials.** The County Clerk will serve as the "Election Official" to act as the primary liaison between the City and the County for the Coordinated Election. The City has designated Melissa A. Greiner, City Clerk, CMC, to act as the primary liaison between the City and the County Clerk as Coordinated Election Official.
- 3. **Election responsibilities**
 - a. **County Clerk.** Except as otherwise specifically provided in this agreement, the County Clerk will perform all duties, provide all services and supplies and render all decisions required under the Code which otherwise would have been the responsibility of the City Clerk, as City election official and officer in a non-coordinated election for the City of Black Hawk.

- i. **Ballots.** Duties include performing all services necessary for the City's coordinated mail ballot election, including preparation of mail ballots and mail ballot voter materials, including UOCAVA ballots, receiving and processing applications for mail ballots, arranging for printing of all mail ballots and official ballots, mailing mail ballot packages to all active registered electors eligible to vote in the City's November 3, 2020, coordinated election at the last mailing address appearing in the County Clerk's records, as well as receipt of mail ballot materials, and preparation for opening and counting of ballots.
 - ii. **Judges.** Duties also include appointing, training by conducting formal training sessions, paying, overseeing performance, and as required by law, providing written materials to a sufficient number of qualified election judges to adequately service the number of electors anticipated to vote at the coordinated election.
 - b. **City.** The City is responsible for the accuracy and legality of the information which it furnishes to the County and, subject to the limitations set forth herein, shall defend and hold harmless the County and the County Clerk from and against any claims or liability arising therefrom. Prior to the submission of the prepared ballot to the printer, the County Clerk will provide a proof of the ballot to the City. City shall then proofread the ballot and advise the County Clerk in writing of any changes or corrections within the 4-hour time period required by the County Clerk. The City shall certify its portion of the consolidated ballot to the County Clerk. The ballot content must be provided in Microsoft Word format, attached in an email to the County Clerk at elections@gilpincounty.org. The content must be formatted exactly as the City wishes it to appear on the November 3, 2020, ballot.
4. **Ballot Issue Notices.** The City shall certify the ballot content to the County Clerk by September 4, 2020, pursuant to C.R.S. § 1-5-203(3)(a). The City shall provide the full text of the ballot issue notice including all information required by law including, but not limited to, pro and con summaries of up to 500 words each, and fiscal information, to the County Clerk no later than 12:00 noon on September 21, 2020, pursuant to C.R.S. §1-7-904. By that same date, the City shall provide the County Clerk with a list of out-of-county voters – active registered electors who do not reside within the County for purposes of mailing notice pursuant to C.R.S. § 1-7-906(2). The City shall be solely responsible for the notice's preparation, accuracy, and the language contained therein. The ballot content, information and pro and con summaries provided by the City to the County Clerk must be provided in Microsoft Word document format, attached in an e-mail to the County Clerk at elections@gilpincounty.org. The County Clerk shall be responsible for combining the City's text of the notice for all political subdivisions participating in the coordinated election. At least thirty (30) days before the election, the County Clerk as Coordinated Election Official shall mail the ballot issue notice to each address of active registered electors who reside in the County as required by law pursuant to C.R.S. § 1-7-906(1) as well as active registered electors who do not reside in the County pursuant to C.R.S. § 1-7-906(2), but in any case not later than October 2, 2020, as required pursuant to Article X Section 20 (3) (b) of the Colorado Constitution. The City, however, shall be responsible for contacting the Gilpin County Assessor's Office to obtain a list of out-of-county voters and must provide that information to the County Clerk so that the County Clerk can timely mail the required notice to each address of active registered electors who do not reside within the County pursuant to C.R.S. §1-7-906(2).
5. **Canvass of Votes.** The County Clerk shall select and appoint a board of canvassers to canvass the votes provided that the City at its option may designate one of its members or one eligible elector from the City to assist the County Clerk in the survey of the returns for the City. If the City desires to appoint one of its members or an eligible elector to assist, it shall make the appointment and notify the County Clerk

no later than fifteen (15) days prior to the election (October 19, 2020). The canvass of votes will be conducted by the County Clerk and will be completed no later than twenty-two (22) days after the election (November 25, 2020). Official results of the canvass will be provided to the City. Any certificates of election which are required by law to be forwarded to another division of government shall be the responsibility of the City. If the City determines that a separate canvass board is necessary, the City shall arrange for such board at the City's expense. The County Clerk will be present at such canvass and in no event will the election records leave the premises. In the event a recount of the City's election is necessary, such recount will be conducted by the County Clerk under the provisions provided by law at the expense of the City.

6. **Cancellation of Election.** If all or any portion of the City's portion of the election is cancelled under the provision of C.R.S. § 1-5-208(1.5), the City shall notify the County Clerk in writing by 4:30 PM, September 1, 2020. If all or any portion of the City's portion of the election is cancelled under the provisions of CRS § 1-5-208(2), the City shall notify the County Clerk in writing by 4:30 PM, October 9, 2020. The City will still be liable for all costs payable by City under this Agreement up to the point of cancellation of the election. The City shall provide notice by publication of the cancellation of the Election, and a copy of the notice shall be posted in the office of the County Clerk as the Coordinated Election Official.
7. **Payment of Costs.** The City shall pay the County Clerk for the City's pro rata share of the actual costs of services and supplies related to the conduct of the coordinated election, whether or not a cancellation or partial cancellation has occurred under paragraph 6 above. The City shall pay the actual costs within twenty (20) days of receipt of the County Clerk's invoice. The estimated costs for the conduct of the Election by the County Clerk under this Agreement including without limitation the cost of preparing this Agreement, are set forth in the attached **Exhibit A**. The Parties acknowledge and agree that if a partial cancellation of the election occurs in accordance with C.R.S. § 1-5-208(1.5), the City's pro rata share of actual costs may be lower than the estimate set forth in **Exhibit A**. City acknowledges that the actual costs of services and supplies is unknown at this time and that such costs may exceed estimated costs.
8. **Colorado Open Records Act. (CORA).** The City shall be primarily responsible for responding to requests under C.R.S. §24-72-201, *et seq.*, for inspection of public records relating to the City's election conducted pursuant to this Agreement. All such requests received by the County Clerk, shall be forwarded immediately to the City for response. The County Clerk will cooperate with the City in the collection and copying of records requested. The City shall be responsible for any determination required as to whether the election records requested may be inspected under CORA. The City shall hold harmless the County Clerk from any claims or liabilities arising from denial of inspection by the City and for any costs not otherwise reimbursed to the County Clerk for CORA request compliance or from litigation involving the County Clerk. The City shall assume all cost of defending the County Clerk against any such claims including without limitation attorney's fees and costs incurred by the County for the County Attorneys' representation of the County and County Clerk in such matters, provided that the County Clerk's actions are within her scope of authority under CORA.
9. **Election Challenges.** In the event of any challenge or other legal action contesting the election or the conduct of the election where the contest involves a City candidate or ballot issue, the City shall indemnify the County and shall bear all costs of the City and the County Clerk in defending such challenge or other legal action and of any liability resulting therefrom including costs, expenses, and attorney fees. The City shall retain the right to appoint special outside counsel to defend the City against any challenge or other legal action related to a City candidate or ballot issue. If a new election or other procedure must be conducted as a result of such challenge or recount or other legal action, the City shall pay its proportional share of actual costs of the new election or other procedure. Notwithstanding the

foregoing, if a court determines that an act or omission of the County Clerk or of the City made necessary the new election or other procedure, or if the court otherwise makes a determination regarding the comparative degree of fault or negligence of the County Clerk and the City, the Party more at fault shall pay the entire cost of any liability resulting therefrom and of any new election or other procedure ordered by a court, or the Parties shall pay all such costs related to the new election or other procedure in such amounts as may be determined by the court.

10. **General Provisions.** This Agreement may be amended only in writing and following the same formality as the execution of this initial Agreement. If any provision of the Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such holdings shall not affect the validity, legality, or enforceability of the remaining provisions.
11. **TABOR.** The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that the Agreement does not create a multi-fiscal-year direct or indirect debt or obligation within the meaning of TABOR and therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31.
12. **Further Assurances.** The Parties shall execute any other documents and take any other action necessary to carry out the intent of this Agreement.
13. **Governing Law, Jurisdiction & Venue.** This Agreement and the rights of the Parties under it will be governed by and constructed in accordance with the laws of the State of Colorado. The courts of the State of Colorado shall have sole and exclusive jurisdiction of any disputes or litigation arising under this Agreement. Venue for any and all legal actions arising under this Agreement shall lie in the District Court for and in the County of Gilpin, State of Colorado.
14. **Paragraph Headings.** The paragraph headings in this Agreement are for reference only and shall not affect the interpretation or meaning of any provision of this Agreement.
15. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original. Delivery of an executed signature page by email transmission will constitute effective and binding execution and delivery of this Agreement.
16. **Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.
17. **Immunities Preserved.** It is the intention of the Parties that this Agreement shall not be construed as a contractual waiver of any immunities or defenses provided by the Colorado Governmental Immunities Act, C.R.S. § 24-10-101, *et seq.*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective this 25th day of August, 2020.

GILPIN COUNTY

By: Sharon McCormick
Sharon McCormick
Gilpin County Clerk and Recorder
Date: 8/25/2020

Gail Watson
Gail Watson, Chair
Board of County Commissioners
Date: 08/25/2020

Attest: Sharon Cate

CITY OF BLACK HAWK

By: David D. Spellman
Name: David D. Spellman
Title: Mayor
Date: July 22, 2020
Attest: Melissa C. Greiner

Exhibit A

Estimated Costs for City Election

November 2020

115 Voters x \$6.75 cost per voter = \$776.25

Cost estimates include set up fees, postage, printing, processing

Legal - Attorney's Fees = \$0 at this time additional legal fees may apply in the event of subsequent legal consultation on election matters, challenges, or CORA requests or other election matters related to Black Hawk's election.

Total: \$ _____