

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB4

ORDINANCE NUMBER: 2021-4

TITLE: AN ORDINANCE APPROVING AN AMENDMENT TO THE WATER STORAGE AGREEMENT BETWEEN THE CITY OF BLACK HAWK AND THE TOWN OF GEORGETOWN

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 amendment to the water storage agreement between the City of Black Hawk and the Town of Georgetown, amending the Intergovernmental Agreement Between Town of Georgetown and City of Black Hawk Regarding Supplement Water Storage in Georgetown Lake dated December 12, 2012, 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 27th day of January, 2021.

ATTEST:


Melissa A. Greiner, CMC, City Clerk


David D. Spellman, Mayor



**AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
BETWEEN TOWN OF GEORGETOWN AND CITY OF BLACK HAWK
REGARDING SUPPLEMENTAL WATER STORAGE
IN GEORGETOWN LAKE**

This Amendment ("Amendment") amends the Intergovernmental Agreement between Town of Georgetown and City of Black Hawk Regarding Supplemental Water Storage in Georgetown Lake dated December 12, 2012 ("Supplemental Storage Agreement"), is executed on the dates shown below, and is effective on January 27, 2021, ("effective date") 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 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.
- C. The Parties are parties to the Vidler Agreement (which 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), pursuant to which Black Hawk, as successor-in-interest to Vidler Water Company, is authorized to store up to 100 acre-feet of water in Georgetown Lake.
- D. The Supplemental Storage Agreement authorizes Black Hawk to store an additional 54.5 acre-feet of water in Georgetown Lake, in addition to the amount that may be stored pursuant to the Vidler Agreement. When the Supplemental Storage Agreement was executed, the capacity of Georgetown Lake was understood by the Parties to be 386.25 acre-feet.
- E. The Parties also entered into a separate written memorandum of understanding dated March 14, 2018, for the design and construction management of the Georgetown Lake lagoon dredging project ("Dredging Project Agreement"). The dredging project ("Dredging Project") contemplated by the Dredging Project Agreement has been completed and has resulted in creation of an additional 43.04 acre-feet of storage capacity in Georgetown Lake ("2020

Additional Storage Capacity”). The total storage capacity of Georgetown Lake following the Dredging Project is 429.29 acre-feet.

- F. The Vidler Agreement and the Supplemental Storage Agreement include provisions for allocation of Additional Storage Capacity (defined in paragraph 6.2 of the Supplemental Storage Agreement); however, the Parties disagree how these provisions are applied to allocation of the 2020 Additional Storage Capacity.
- G. This Amendment is intended to set forth the Parties’ agreement regarding allocation of the 2020 Additional Storage Capacity, and to provide a method for allocating Additional Storage Capacity that may be developed in the future.

NOW, THEREFORE, to resolve their disputes and differences, and 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:

1. Following the Dredging Project, the Georgetown Lake Capacity is 429.29 acre-feet and the 2020 Additional Storage Capacity is 43.04 acre-feet.
2. Black Hawk may store its water rights and supplies in 5.60 acre-feet of the 2020 Additional Storage Capacity (“Black Hawk Additional Storage Capacity”) without compensating Georgetown for such additional storage capacity as provided in the Vidler Agreement. Upon execution of this Amendment, the Black Hawk Additional Storage Capacity, 5.60-acre feet, shall be included in the Black Hawk Total Storage Capacity in Georgetown Lake, as defined and referenced in the Supplemental Storage Agreement. The remaining 2020 Additional Storage Capacity, 37.44 acre-feet, will be included in the Georgetown Total Storage Capacity, as defined and referenced in the Supplemental Storage Agreement.
3. With inclusion of the Black Hawk Additional Storage Capacity in the Black Hawk Total Storage Capacity, Black Hawk has a contractual right to store its water rights and supplies in a total capacity of 160.1 acre-feet in Georgetown Lake, subject to the terms and conditions of the Vidler Agreement and the Supplemental Storage Agreement as amended by this Amendment. With inclusion of the remaining 2020 Additional Storage Capacity in the Georgetown Total Storage Capacity, Georgetown has the right to store its water rights and supplies in the remaining capacity of 269.19 acre-feet in Georgetown Lake.
4. Commencing on the effective date of this Amendment, the Ratio defined in paragraph 4.0 of the Supplemental Storage Agreement is amended to reflect that the ratio of the Georgetown Total Storage Capacity to the Georgetown Lake Capacity is 62.7% and the ratio of the Black Hawk Total Storage Capacity to the Georgetown Lake Capacity is 37.3%. This revised Ratio will be used for all calculations in which the Ratio, as defined in the Supplemental Storage Agreement, is applied in the Vidler Agreement, Supplemental Storage Agreement, the January 8, 2014 Intergovernmental Agreement for Operation and Maintenance of Georgetown Lake (the “O&M Agreement”), and any other agreements in which the Ratio is applied, until such time as the Ratio is revised by written agreement.

5. Black Hawk's right to use the Black Hawk Additional Storage Capacity is its final and only entitlement or right to use the 2020 Additional Storage Capacity, and Black Hawk forever relinquishes any and all rights of first refusal, claims, entitlement or right to use up to 27% of the 2020 Additional Storage Capacity (11.62 acre-feet) as provided in the Vidler Agreement and the Supplemental Storage Agreement, and all rights of first refusal, claims, entitlement or rights to use any of the 2020 Additional Storage Capacity in excess of the Black Hawk Additional Storage Capacity. This Amendment constitutes a full and final settlement of any right of first refusal, claims, entitlements or rights Black Hawk may have to use the 2020 Additional Storage Capacity.

6. Operation of Georgetown Lake and use of the Parties' respective storage capacities (as such capacities are revised pursuant to this Amendment) will be in accordance with Supplemental Storage Agreement, the O&M Agreement, and, as applicable, the Vidler Agreement.

7. The Parties acknowledge that future dredging or other activities may result in a further increase in the Additional Storage Capacity beyond the 2020 Additional Storage Capacity. As provided in the Supplemental Storage Agreement, if the Parties agree in writing to enlarge the capacity of Georgetown Lake above 429.29 acre-feet by dredging, dam alterations, or other means, the costs of each such future enlargement shall be borne by the Parties pursuant to the Ratio that is in effect at the time such enlargement project is commenced. Each time Additional Storage Capacity is developed by the Parties, 14% of such Additional Storage Capacity will be made available to Black Hawk without compensating Georgetown for such Additional Storage Capacity as provided in the Vidler Agreement. Each time Additional Storage Capacity is developed by the Parties, Black Hawk shall have no right or entitlement to use any portion of such Additional Storage Capacity in excess of 14% unless the Parties agree in writing, and attach such agreed-upon allocation as an addendum to this Amendment. The Parties may agree to a different allocation of any Additional Storage Capacity as provided in paragraph 6.2.3 of the Supplemental Storage Agreement. Each time Additional Storage Capacity is created in Georgetown Lake, the Ratio will be adjusted to reflect the Parties' respective allocations of storage capacity in Georgetown Lake. Black Hawk may not lease, sell, convey, assign, or transfer any rights to storage capacity, including any Additional Storage Capacity, except as provided in the Vidler Agreement and the Supplemental Storage Agreement as amended by this Amendment.

8. Contemporaneously with execution of this Amendment, Black Hawk will execute a stipulation to entry of a water court decree in Case No. 2019CW3018, *Application of the Town of Georgetown*, Water Court, Water Division No. 1, in the form of the Draft Proposed Ruling Dated December 3, 2019, or a form that is no less restrictive on Georgetown than the Draft Proposed Ruling Dated December 3, 2019. Black Hawk will not oppose future diligence applications or applications to make absolute the storage rights originally decreed to Georgetown Lake in Case No. 99CW12, consolidated with Case No. 2007CW324, in the total amount of 386 acre-feet.

9. Black Hawk will not oppose an application or applications by Georgetown for one or more storage rights (including one refill right for each storage right) in Georgetown Lake for the total amount of water that can be stored in the 2020 Additional Storage Capacity, or for the total amount of water (including one refill right for each storage right) that can be stored in any future Additional Capacity that may be developed, provided any such application and any decree entered thereon states that Black Hawk has a right to store its water rights and supplies in the Black Hawk Additional Storage Capacity and any other Additional Storage Capacity which Black Hawk may be entitled to

use in the future, so long as the Vidler Agreement and the Supplemental Storage Agreement remain in effect. Should a conditional decree or decrees be awarded to Georgetown for such storage rights, Black Hawk agrees not to oppose any diligence applications or applications to make such storage rights absolute.

10. Georgetown will not oppose an application or applications by Black Hawk for one or more storage rights in Georgetown Lake for 60.1 acre-feet, representing the amount of water that can be stored in Georgetown Lake by Black Hawk in excess of the 100 acre-feet decreed in Case No. 2007CW327¹, and a refill right in the total amount of 160.1 acre-feet (including the right to one refill pursuant to the 60.1 acre-foot storage right and one right to refill the 100 acre-foot capacity provided to Black Hawk pursuant to the Vidler Agreement, inasmuch as the decree in Case No. 2007CW327 did not decree a refill right), or an application or applications for the amount of water (including one refill right) that can be stored by Black Hawk in any future Additional Storage Capacity that may be developed and made available to Black Hawk, provided such application and any decree entered thereon states that Black Hawk's right to store its water rights in Georgetown Lake is subject to the terms of the Vidler Agreement, the Supplemental Storage Agreement and any amendments thereto, and any other agreements between Black Hawk and Georgetown. Should a conditional decree or decrees be awarded to Black Hawk for such storage rights, Georgetown agrees not to oppose any Black Hawk diligence applications or applications to make such water rights absolute.

11. If future measurements of Georgetown Lake or any water court proceedings involving the 2020 Additional Storage Capacity result in a determination that the 2020 Additional Storage Capacity is greater or less than 43.04 acre-feet, references herein to "2020 Additional Storage Capacity" shall refer to the additional storage capacity as finally determined by such measurements or water court proceedings. References to the Black Hawk Additional Storage Capacity will refer to an amount equal to 13% of the 2020 Additional Storage Capacity as determined by such measurements or water court proceedings, and the Black Hawk Total Storage Capacity, the Georgetown Total Storage Capacity and the Ratio shall be adjusted accordingly.

12. Except as otherwise amended herein, the Supplemental Storage Agreement remains in full force and effect. The Vidler Agreement and the O&M Agreement remain in full force and effect.

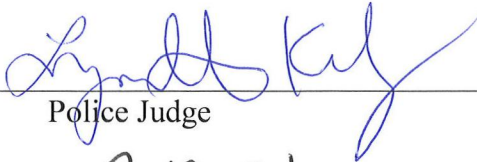
13. Each Party represents to the other that it is duly authorized to enter into this Amendment and that it has obtained all consents and authorizations necessary to enter into this Amendment and complete the transactions contemplated herein, and that upon execution and delivery, this Amendment will constitute a valid and binding obligation of the Party, enforceable in accordance with its terms, subject, however, to the effects of bankruptcy, insolvency, reorganization and similar laws.

14. This Amendment 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 Amendment to be executed by their duly authorized officers, on the dates shown below for each Party.


¹ The amount of 60.1 acre-feet includes 54.5 acre-feet that may be stored in Georgetown Lake pursuant to the Supplemental Storage Agreement and 5.6 acre-feet of water that may be stored in the 2020 Additional Storage Capacity pursuant to this Amendment.

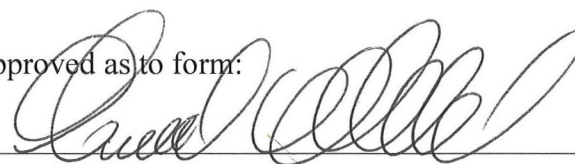
TOWN OF GEORGETOWN, COLORADO

By 
Police Judge

Date 2-10-21

Attest:


Town Clerk

Approved as to form: 

CITY OF BLACK HAWK, COLORADO

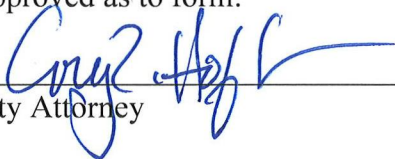
By 
Mayor

Date 1/27/2021

Attest:


City Clerk

Approved as to form:


City Attorney