

STATE OF COLORADO  
COUNTY OF GILPIN  
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB6

ORDINANCE NUMBER: 2021-6

**TITLE: AN ORDINANCE APPROVING A WATER LEASE AGREEMENT  
BETWEEN THE CITY OF BLACK HAWK AND THE COUNTY OF  
CLEAR CREEK**

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 Water Lease Agreement between the City of Black Hawk and the County of Clear Creek, 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.

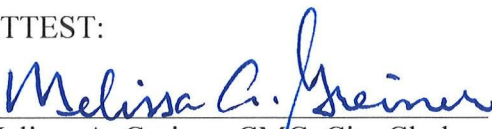
Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation 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 17<sup>th</sup> day of March, 2021.

ATTEST:

  
Melissa A. Greiner, CMC, City Clerk

  
David D. Spellman, Mayor



# Water Lease Agreement

THIS WATER LEASE AGREEMENT ("Agreement"), dated March 17, 2021, is by and between THE CITY OF BLACK HAWK ("Black Hawk"), a municipality of the State of Colorado, and THE COUNTY OF CLEAR CREEK, a county of the State of Colorado (the "**County**"). The County and Black Hawk are referred to individually as a Party and collectively as the Parties.

## WITNESSETH

WHEREAS, Black Hawk owns several water rights that, from time to time, are available to be leased, including certain water rights that are delivered through the Vidler Tunnel (the "Water Rights");

WHEREAS, should the current drought conditions continue into the spring and summer of 2021, the County seeks a supplemental water supply to be available on an as-needed basis; and

WHEREAS, Black Hawk desires to make available for lease, and the County desires to lease, water available under the Water Rights.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the County and Black Hawk agree as follows:

1. **Lease.** Black Hawk hereby leases to the County up to 30.0-acre feet of fully consumable water on an as-available and as-needed basis under the Water Rights between June 1 and August 31, 2021, subject to the terms and conditions set forth in this Agreement ("Leased Water").

2. **Price; Payment Terms.** The County shall pay to Black Hawk up to \$75,000, which is based on a water lease rate of \$2,500 per acre foot. The County shall pay Black Hawk for any deliveries of the Leased Water in accordance with paragraph 3 of this Agreement.

3. **Delivery.** Black Hawk shall deliver the Leased Water as follows: The County shall notify Black Hawk on or before June 1, 2021 of the amount of Leased Water the County requests be delivered. Black Hawk and the County shall coordinate and agree on the schedule on which the requested delivery will occur. Black Hawk may deliver the Leased Water to any point in the Clear Creek drainage at or upstream of the confluence of Clear Creek and the West Fork of Clear Creek where Black Hawk has water available under its Water Rights ("Places of Delivery"). The Leased Water will be considered delivered upon Black Hawk's release of water to the Places of Delivery. Black Hawk may, in its sole discretion, make deliveries from any source of water it wishes so long as the water delivered is fully consumable. Upon delivery, the County shall have the right to use and reuse any delivered water to extinction. The Parties acknowledge and agree that Black Hawk shall have the sole right and the sole discretion to determine the location that it intends to use for delivery purposes. Such delivery may include booking over of Black Hawk's water stored in Green Lake into the County's account. The Parties expressly acknowledge and agree that Black Hawk has made no representation or warranties regarding the quality of or fitness for any use of the water delivered hereunder. The Parties further acknowledge and agree that the County has no obligation to take delivery of any water under this Agreement, other than water deliveries requested by the County pursuant to this paragraph.

4. **Payment.** Once water is delivered in accordance with the terms of paragraph 3, the County shall pay for that amount of delivered Leased Water at the water lease rate set forth in paragraph 2 of this Agreement, which will be calculated by multiplying the amount (in acre-feet) of Leased Water that Black Hawk actually delivered by \$2,500. Black Hawk shall bill the County in September 2021 for water delivered pursuant to this Agreement. Payment shall be made to Black Hawk within 60 days of the date Black Hawk mails, or otherwise delivers, the statement to the County.

5. **Approvals:** The County is responsible for obtaining all approvals required by the State Engineer, Division 1 Engineer, and/or Water Court, as well as all other necessary approvals required for the lease of water contemplated hereunder. Black Hawk will cooperate with the County and the Water Commissioner as necessary to facilitate the administrative approval process.

6. **Assessments of Losses.** The County shall be solely responsible for all conveyance, transport, and use of the Leased Water downstream of the Places of Delivery. The County will pay all transit losses assessed by the Water Commissioner.

The County bears all risk of loss after Leased Water has been released in accordance with paragraph 3 hereof at one or more of the Places of Delivery.

7. **Term.** This Agreement is effective as of the date set forth above; however, Leased Water will be available for delivery under this Agreement between June 1 and August 31, 2021. Should the Parties desire to deliver Leased Water after August 31, 2021, the term of this Agreement may be extended through a subsequent writing of the Parties.

8. **Failure to deliver water.** If, for any reason Black Hawk is temporarily unable to satisfy its obligations for delivery of water to the County under this Agreement for any period of time, the Parties agree that any damages resulting to the County therefrom shall be limited to a pro rata refund of any payments made by the County under this Agreement. Black Hawk shall not be liable for any consequential, exemplary or punitive damages for failure to deliver water pursuant to this Agreement, and other than a pro rata refund of the total lease payment, no other damages may be asserted or paid by Black Hawk to the County as a result of the inability to delivery water. The County expressly waives any and all other claims of damages.

9. **Assignment.** This Agreement may not be assigned by the County without the prior written consent of Black Hawk, which consent may be withheld in Black Hawk's sole discretion. The County shall provide Black Hawk with notice of any intention to assign this Water Lease to any other third party.

10. **No Third-Party Beneficiaries.** This Agreement is intended for the benefit of the Parties hereto, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original upon execution and delivery to the other party.

12. **Governing Law.** This Agreement and its application shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date and year first above written.

*{Signature page follows.}*

Water Lease Agreement  
City of Black Hawk  
County of Clear Creek

CITY OF BLACK HAWK

By: David D. Spellman  
David D. Spellman, Mayor

Date: 3/17/2021

Attest: Melina A. Gini  
City Clerk & Recorder

THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF CLEAR CREEK

By: Keith P. Montag  
Keith Montag, County Manager

Date: 4-6-21

Attest: Edith Hoyer  
Clerk & Recorder