

RESOLUTION NO. 1239

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING A WATER CARRIAGE AGREEMENT BETWEEN
THE CITY OF GOLDEN AND THE AGRICULTURAL DITCH
AND RESERVOIR COMPANY, AND ITS WHOLLY OWNED
SUBSIDIARY, THE GOLDEN CANAL AND RESERVOIR
COMPANY**

WHEREAS, the City of Golden plans to design and construct a municipal golf course on approximately 180 acres; and

WHEREAS, the City owns certain water rights that it wishes to use to irrigate the proposed golf course but needs a means to deliver the water; and

WHEREAS, the Agricultural Ditch and Reservoir Company, and its wholly owned subsidiary, the Golden Canal and Reservoir Company own and operate the Welch Ditch which transverses the proposed golf course; and

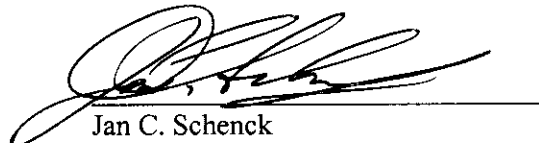
WHEREAS, the companies wish to abandon the Welch Ditch below the proposed golf course and the city is willing to make certain improvements which would facilitate such abandonment and to cooperate with the companies in certain ways in implementing such abandonment; and

WHEREAS, the parties wish to provide formally in this agreement for such matters.


THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

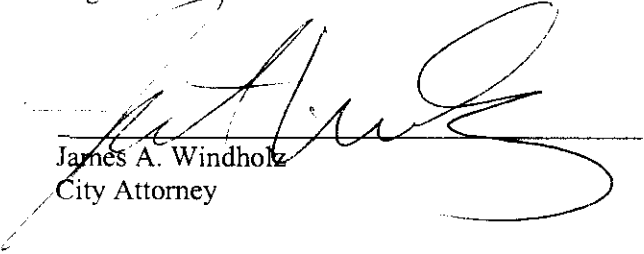
The Welch Ditch Carriage Agreement is approved by City Council in substantially the form attached as Exhibit "A". The Mayor is authorized to sign said agreement on behalf of the City.

Adopted this 11th day of October, 2001.


Jan C. Schenck
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 11th day of October, A.D., 2001.

(SEAL)

ATTEST:


Susan M. Brooks, City Clerk of the City of
Golden, Colorado

WELCH DITCH CARRIAGE AGREEMENT

This Welch Ditch Carriage Agreement (this "Agreement") is entered into effective on this _____ day of _____, 2001, by and between the CITY OF GOLDEN, a Colorado municipal corporation (the "City") and THE AGRICULTURAL DITCH AND RESERVOIR COMPANY and its wholly owned subsidiary, THE GOLDEN CANAL AND RESERVOIR COMPANY, each of which is a Colorado nonprofit corporation (the "Companies").

RECITALS

R-1 The City plans to design and construct a municipal golf course (the "Proposed Golf Course") on approximately 180 acres located generally in the South ½ of Section 34 and the Southwest 1/4 of Section 35, Township 3 South, Range 70 West, 6th P.M. and the Northwest 1/4 of Section 2, Township 4 South, Range 70 West, 6th P.M., City of Golden, County of Jefferson, State of Colorado.

R-2 The City owns certain water rights (separate from any rights held as a stockholder in or user from either of Companies) that it wishes to use to irrigate the Proposed Golf Course but needs a means to deliver such water thereto.

R-3 The Companies own and operate the Welch Ditch which traverses the Proposed Golf Course.

R-4 The parties have discussed a carriage agreement to allow delivery of water from the City's said water rights to the Proposed Golf Course through the Welch Ditch.

R-5 The Companies wish to abandon the Welch Ditch below the Proposed Golf Course, and the City is willing to make certain improvements that would facilitate such abandonment and to cooperate with the Companies in certain ways in implementing such abandonment, as provided in this Agreement.

R-6 The parties now wish to provide formally in this Agreement for such matters;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. Carriage. The City may use, in the manner provided in this Agreement, and during the irrigation season, as hereinafter defined, excess capacity in the Welch Ditch to divert and carry up to 2.0 cubic feet per second (cfs) of flow, plus a proportional share of ditch loss, to be diverted from Clear Creek, through the Welch Ditch headgate and thence to the Proposed Golf Course. The City anticipates the delivery of approximately 300 acre feet of water per irrigation season to the Proposed Golf Course in this fashion. From time to time within the irrigation season, the City may divert more than the 2.0 cfs plus a proportional share of ditch loss, as above recited, provided that the Welch Ditch has available capacity and that the Companies' Ditch Superintendent has been notified and has approved the increased flow rate. The Companies agree that such approval will not be withheld unreasonably. For purposes of this paragraph the "irrigation season" shall begin on the later of April 1 or the date that the Welch Ditch can reasonably be opened in light of physical conditions then existing and continue through October 31. Notwithstanding the foregoing, the City shall also be entitled, to divert and carry water for the additional period from March 1 until the commencement of the irrigation season, as just defined, provided that the opening of the Ditch and the diversion and carriage of its water shall be accomplished by the City utilizing its own forces, at its own expense, but subject to the oversight of the Companies' Ditch Superintendent. Such oversight shall be directed toward protecting the Ditch and its appurtenances and the reasonable interests of the Companies and said Ditch Superintendent shall not direct the work being done by the City's forces but shall exercise such oversight only through contact with the City's designated supervisory person-

nel. The City agrees to heed said Ditch Superintendent's recommendations so long as reasonable and directed towards the ends provided in the preceding sentence and shall bear full responsibility for accomplishment of the work and shall not attempt to hold the Companies or their directors, officers, agents or employees responsible for any damage or claim resulting from the work. If the City wishes, in any year, to utilize the foregoing provisions permitting the diversion and carriage of water prior to the commencement of the irrigation season, it (i) shall so advise the Companies and their Ditch Superintendent, in writing, at least 48 hours prior to the proposed start of work to open the Ditch, providing the particulars of the proposed diversion, (ii) shall heed the advice of the Companies' Ditch Superintendent in the manner provided above, (iii) shall indemnify the Companies against the claims of City employees, contractors or other third parties related to actions taken for the opening of and running water through the Ditch prior to the commencement of the irrigation season, provided that such claims are not the result of the Companies' previous failure(s) to maintain and operate the Applicable Section of the Welch Ditch as required in this Agreement, and (iv) shall repair, at the City's expense, any damage, beyond reasonable and ordinary wear and tear, to the Ditch resulting from the opening and use of the Ditch prior to commencement of the irrigation season. If and to the extent that the requirements of the Proposed Golf Course reasonably require it, the City shall also be entitled to the diversion and carriage of its water through the Ditch between October 31 and November 30 of any given year utilizing its own forces as earlier provided in this Section 1 and in accordance with and subject to the provisions of this Section 1 related to carriage prior to the irrigation season but applied to carriage after, and provided that it shall give the Companies and their Ditch Superintendent reasonable advance notice of the City's re-

quirements and that the City shall cooperate with the Companies to attempt to avoid any unnecessary interference with the accomplishment of the Companies' other operations during such extended period. Nothing in this Section 1 shall be interpreted to minimize the Companies' obligations to utilize ordinary and reasonable care in maintaining and operating the Applicable Section of the Welch Ditch pursuant to Section 10.3 of this Agreement or to require the City to indemnify the Companies against claims resulting from their failure so to maintain and operate the Applicable Section, but that obligation shall not be interpreted to impose on the Companies an obligation to maintain or operate the Applicable Section of the Welch Ditch outside the irrigation season as defined in this Section 1.

1.1 For this purpose, "excess capacity" shall mean capacity in the Welch Ditch available after the Companies' own requirements for carriage at any given time have been met. The parties do not anticipate that, under ordinary circumstances, due to the priorities of the decrees of the Companies and the nature of their delivery systems and needs of their respective stockholders and users, there will be a shortage of capacity to meet the Companies' requirements and, in addition, to permit the carriage of up to 2.0 cfs (plus a proportional share of ditch loss) of the City's water. If, at any time, extraordinary circumstances should prevent the carriage of 2.0 cfs (plus a proportional share of ditch loss) of the City's water in addition to the Companies' then requirements for carriage, the parties agree to cooperate to attempt to accommodate their respective interests as fairly as possible in the circumstances.

1.2 Notwithstanding the provisions of Section 1.1 above, the Companies agree that they will not, during the continuance of this Agreement, enter into any carriage agreement with any other party that would adversely affect the carriage of water for the

City in accordance with the terms of this Agreement. The Companies agree to utilize the existing Welch Ditch right-of-way and their rights therein and thereto in carrying water for the City under this Agreement, but the Companies neither represent nor warrant that such rights are sufficient to permit the use of the existing right-of-way for such carriage. The City agrees that, if a third party shall claim that such rights are not sufficient, the City will bear the burden, at its expense, of defending the arrangement and the Companies agree to cooperate fully in such defense.

1.3 The City agrees that if damages are ever awarded against the Companies for damage caused by the carriage of water as contemplated herein, the City shall reimburse the Companies in an amount equal to the proportion that the volume of water being carried for the City in the Ditch at the time and location of the damage bears to the total volume of water being carried in the Ditch at that time and location, but only to the extent that such damage is not attributable to the Companies' failure to operate the Ditch with reasonable care or their failure otherwise to comply with the provisions of this Agreement. The Companies shall notify the City immediately after they become aware that such damages have occurred and the City shall be permitted to fully defend its interests in such a matter.

1.4 The provisions of Sections 1.2 and 1.3 shall survive any conveyance of the right-of-way or portions thereof to the City as provided in Section 11 of this Agreement.

1.5 Subject to the provisions of Section 1 of this Agreement permitting the City to carry water in the Ditch outside the irrigation season as there defined, the Companies reserve and retain full operational control over the Welch Ditch and its associated facilities necessary for the carriage of water under this Agreement. The Companies agree to exercise such control reasonably and with due regard for the interests of the City in

securing the carriage and delivery of its water in accordance with the terms of this Agreement.

2. City as Holder of Welch Ditch Inches. This Agreement shall not apply to water owned or held by the City as a contract user entitled to water from The Golden Canal and Reservoir Company or as a stockholder in The Agricultural Ditch and Reservoir Company. To that extent, the City shall be accorded its rights as a contract user or stockholder, as the case may be, outside the terms of this Agreement. The City does agree, however, as an essential term of this Agreement, that at all times during the continuance of this Agreement, it will retain ownership to at least an inch as a contract user in The Golden Canal and Reservoir Company.

3. Acre Foot Carriage Charge - Minimum Charge. Prior to December 31 of each year in which this Agreement has been in effect for at least a portion of the prior irrigation season, but not including 2001 if the Ditch is not used to carry water for the City in 2001, the City shall pay the Companies an amount equal to \$4 (adjusted as hereinafter provided) for each acre foot of water carried during such irrigation season, as measured at the clock-measuring flume-structure, plus a pro rata share of Repair and Improvement Costs as provided in Section 4 hereof. If the charge so calculated for any given year is less than \$1,200 (subject to the foregoing provision regarding 2001), and provided that the Ditch was operable for the carriage of the City's water, as provided in this Agreement, the City nevertheless agrees to pay \$1,200 as a minimum or readiness to serve charge for that year. The per acre foot charge and the minimum or readiness to serve charge shall be increased annually by the same percentage as the Consumer Price Index for the Denver Metropolitan Area for the most recent year available has increased subsequent to the date of this Agreement. The parties agree that, on the date of this Agreement, such Index was _____.

4. Share of Repair and Improvement Costs. In addition to the acre foot carriage charge provided in Section 3 above, the City shall pay a share of the annual cost of operation and maintenance of the following-described Section of the Welch Ditch, including any repairs, improvements or other expenses and including therein associated overhead items as further provided in this Section 4 (collectively "Repair and Improvement Costs") necessary to keep said section in reasonable operating condition. Costs incurred by the City for its operations conducted by its forces in accordance with Section 1 of this Agreement to permit the diversion and carriage of its water prior to the commencement of and after the end of the irrigation season as there defined shall not be included in Repair and Improvement Costs for this purpose and shall be borne solely by the City. The section of the Welch Ditch involved (the "Applicable Section") begins at and includes The Golden Canal and Reservoir Company's Clear Creek diversion works and headgate and extends to, but excludes, the proposed diversion and measuring structure at Kinney's Run Creek, provided for in Section 6 of this Agreement. The City's share of Repair and Improvement Costs shall be equal to the proportion that the volume of water carried for the City through the Applicable Section, as measured at the proposed Kinney's Run Creek diversion and measuring structure, bears to the total volume of water carried through said Section, similarly measured, on an average annual basis, after appropriate adjustments to reflect the turnout of any water before it reaches Kinney's Run Creek and any ditch loss associated therewith. The Companies' Repair and Improvement Costs for the Applicable Section shall be based on amounts expended or incurred as reflected in the books and records of the Companies and generally accepted accounting principles consistently applied. Routine costs shall utilize the rate provided for similar charges between the Companies, currently \$37 per man-hour of labor, as adjusted annually between the Com-

panies to reflect, as nearly as reasonably possible, the actual cost of labor and materials and associated overhead. Amounts due under this Section 4 shall be based on the fiscal year of the Companies (December 1 through November 30), shall be billed to the City on or about February 1 following the end of such fiscal year and shall be due and payable on or before the following March 1. Time sheets, invoices and other records shall be maintained by the Companies and may be examined by the City at any time prior to the date that payment is due. If no objection is made to any such billing on or before one year after payment is due, it shall not thereafter be questioned. If payment has not been made prior to the commencement of the irrigation season following such billing, the Companies shall not be required to permit the City to carry water in the Welch Ditch until payment is made. If the City wishes to object to any such billing, it shall do so by providing a written summary of its objections to the Companies within the aforesaid one year period. The City may, if it so chooses, pay any billing under protest and it shall then be entitled to carry water in said Ditch pending resolution of objection(s) made within such period. If the parties are unable to resolve such objections among themselves, the matter shall be submitted for dispute resolution as provided in Section 14 of this Agreement. Amounts unpaid when due shall bear interest at the interest rate provided by the Companies for delinquent assessments or user charges to their respective stockholders and users.

5. Disposition of Diversions. Water carried for the City pursuant to this Agreement shall be released to the Proposed Golf Course in the manner provided in Section 6 of this Agreement. All water not belonging to or not diverted for the benefit of the City pursuant to this Agreement shall be released into Kinney's Run Creek for delivery to Clear Creek or to the Agricultural Ditch, as the Companies shall, at any given time, determine. The City shall

be assessed the same percentage of carriage loss on its carried water as a contract inch holder in The Golden Canal and Reservoir Company would be assessed for the Applicable Section. The Companies shall be responsible for any carriage losses assessed by the State Engineer associated with using Kinney's Run Creek to carry water to the Agricultural Ditch.

6. Capital Improvements Required. The City shall design and install, at its sole expense, the improvements described in this Section 6, which, when completed and accepted by the Companies, shall become the property of the Companies, and shall be conveyed to the Companies by an appropriate instrument of conveyance as a contribution to their capital in such proportions as they shall direct. The City shall provide detailed cost figures for such improvements in order that they may be reflected on the books of the Companies.

6.1 A diversion and measuring structure on the Welch Ditch at a point near and westerly of its crossing over Kinney's Run Creek. The structure shall be capable of measuring the total flow in the Welch Ditch, the amount diverted into Kinney's Run Creek and the amount diverted to the Proposed Golf Course.

6.2 A diversion and measuring structure in a concrete box culvert that carries the flow of Kinney's Run Creek over the Agricultural Ditch to Clear Creek. This structure shall be capable of measuring and diverting up to 10 cfs of flow to the Agricultural Ditch and of diverting and measuring the low (or trickle) flow of Kinney's Run Creek prior to its flowing into Clear Creek.

6.3 The design of the structures described in this Section 6 shall be submitted to and approved by the Companies prior to the commencement of construction. The construction shall be accomplished diligently, in substantial accordance with the approved plans and specifications and in such fashion as to interfere as little as possible with the Companies' ongoing operations, and

shall be subject to inspection and approval by the Companies prior to acceptance of ownership by the Companies. The Companies agree not to withhold such approval unreasonably. The City shall provide as-built drawings for such structures. The City shall indemnify the Companies against any mechanics or materialmen's liens resulting from or associated with the design or construction.

6.4 The structure to be constructed at the intersection of Kinney's Run Creek and the Welch Ditch (as provided in Section 6.1 of this Agreement) shall be the sole responsibility of the Companies, physically, to operate and maintain; however, the costs associated with its operation, maintenance, replacement or improvements shall be divided equally between the City and the Companies, shall not therefore be treated as part of Repair and Improvement Costs as provided in Section 4 of this Agreement, and shall be billed separately to the City but at the same time as billings made by the Companies under Section 4 of this Agreement and subject to the provisions of Section 4 in other respects.

6.5 The arrangements provided in this Agreement, together with the abandonment of a portion of the Welch Ditch below the Proposed Golf Course will necessarily result, at times, in water's flowing back to Clear Creek through Kinney's Run Creek that would not, or might not, otherwise have gone into Kinney's Run Creek. This Agreement is entered into by the Companies on the understanding that channel improvements or maintenance to Kinney's Run Creek will not be required to accommodate such flows, and the City agrees that it will not require the Companies to participate in the cost of any such channel improvements should they prove necessary, provided that waters so returned to Kinney's Run Creek do not exceed ten cubic feet per second of water exclusive of any stormwaters within the Welch Ditch.

7. Companies' Change of Point of Diversion. If the Companies should change their point of diversion for the Welch Ditch

from that described in Section 1 of this Agreement to another location, the City may, at its sole option, exercise one of the following alternatives: (i) participate in the cost (but not including therein costs attributable to a legal proceeding to authorize such change in point of diversion), if any, of that relocation and continue this Agreement in accordance with the remaining applicable terms for carriage of its water utilizing the changed point of diversion, provided that the Companies shall not, in such event, become obligated for additional capital costs to provide service to the Proposed Golf Course and that the Companies shall not become obligated to operational costs for such service except to the extent that the Companies utilize portions of the Welch Ditch being used to provide such service; (ii) terminate this Agreement; or (iii) take over the sole operation and cost of repairs and improvements for such portion of the Welch Ditch no longer used by the Companies as may be necessary to deliver water to the Proposed Golf Course. If alternative (iii) is elected, the Companies shall convey said portion of the Welch Ditch to the City in the same manner and for the same price as set forth in Section 11.4 of this Agreement and, to the extent that the City continues to use some portion of the Companies' remaining infrastructure, the Agreement shall be modified in a reasonable manner to reflect equitably the changed circumstances, which modification shall be mutually acceptable to the parties, and subject to arbitration under Section 14 if a mutual agreement is not reached.

7-A. Abandonment of Portions of Ditch. The City understands that the Companies intend to abandon portions of the existing Welch Ditch below Kinney's Run Creek. The Companies agree, subject to the further provisions of this Section 7-A, to take any actions they deem necessary to such abandonment. The City agrees to cooperate with the Companies by taking reasonable measures to help ensure that the City is not providing any stormwater inflows into

the segments of the Ditch to be abandoned. The City intends to obliterate portions of the Ditch within the Proposed Golf Course easterly of Kinney's Run Creek, and the Companies agree that this will be acceptable provided that it does not interfere with the Companies' operations within the 2001 irrigation season. The City also understands that the Companies intend to obliterate all or substantial portions of the existing Ditch between the Proposed Golf Course and Golden Road, which will permit stormwaters which previously may have entered into and flowed down the Ditch to flow overland into a tributary of Kinney's Run Creek southerly of Golden Road. The City agrees that the provision of the foregoing sentence is acceptable to it and that it will not object thereto or make or attempt to make any requirement of the Companies regarding the flow of such stormwaters into such tributary of Kinney's Run Creek.

8. Improvements by City. The City may make improvements to the Applicable Section of the Welch Ditch at its own expense, subject to advance review and approval by the Companies. The procedure utilized for such review may be in accordance with the Companies' routine policies concerning such matters so long as they are reasonable in the circumstances, and the Companies agree not to withhold approval unreasonably.

9. Water Accounting. The parties shall share diversion records and other information that may be needed for an accurate accounting of the water rights involved in this Agreement and in a format that is acceptable to the State Engineer and shall otherwise cooperate in good faith in the administration necessary to the performance of this Agreement.

10. Carriage Interruption - Quality - Quantity.

10.1 The parties understand and agree that the potential exists for partial or complete failure within the Applicable Section of the Welch Ditch and that, thereupon, water delivery may be interrupted. In such event, all parties agree to cooperate to the

fullest extent possible to restore water deliveries as promptly and efficiently as reasonably possible in the circumstances, and, provided that such efforts are made by each party, neither shall make any claims against the other for such interruption of service, subject, however, to the provisions of Sections 10.3 and 10.4 of this Agreement.

10.2 The City also agrees that the Companies shall not be responsible for the quality of the water delivered.

10.3 Subject to the further provisions of this Section 10.3 and of Section 1 of this Agreement limiting the Companies' responsibility related to carriage of City water outside the irrigation season, the Companies agree to utilize ordinary and reasonable care in maintaining and repairing the Welch Ditch as required for delivery to the Proposed Golf Course of the water provided by the City at the Welch Ditch headgate, less ordinary ditch losses, and consistent with this Agreement. The parties understand and agree that partial or complete failures of the Welch Ditch may occur for a number of reasons and that a partial or complete failure shall not, of itself, constitute evidence that the Companies have failed to utilize ordinary and reasonable care in maintaining and repairing said Ditch. The City agrees that the Companies are not responsible for the quantity of water available for diversion at the Welch Ditch headgate.

10.4 The City agrees that if it believes at any time that the Companies are not maintaining or repairing the Welch Ditch in accordance with the standard provided in Section 10.3 above, it will so advise the Companies and suggest remedial action(s) in connection therewith. The City further agrees that it will take reasonable action to mitigate any detrimental effects of such believed failures of maintenance or repair and that the liability of the Companies' for an established failure of maintenance or repair will be limited to the cost of providing substitute water as

required for the operation of the Proposed Golf Course, which cost shall in no event exceed the cost of domestic quality water.

11. Termination.

11.1 The City may terminate this Agreement without cause upon written notice delivered at least six months prior to April 1 of any given year. In the event that the City determines that it cannot deliver sufficient water through the Welch Ditch for its purposes, it may terminate this Agreement upon not less than 90 days' written notice to the Companies.

11.2 Either party shall be entitled to terminate this Agreement if the other party shall commit a material and substantial breach thereof which is not remedied within a reasonable period after written notice of such breach and subject to arbitration as provided in Section 14 of this Agreement.

11.3 The Companies, if they determine to cease operation of a portion of the Welch Ditch which would prevent it from continuing to deliver water to the Proposed Golf Course, may terminate this Agreement. In such event, the Companies shall give written notice of such termination to the City at least two years prior to the date of the termination, subject, however, to the further provisions of this Section 11.3 and of Section 11.4. If unexpected events beyond the control of the Companies prevent it from operating such a portion of the Welch Ditch without expenditures for repairs or improvements which the Companies determine, reasonably, would make continued operation of such portion of the Welch Ditch uneconomic to them, and if, given such unexpected events, a two year notice of termination is not feasible, the period of notice of termination may be shortened from two years to such shorter period as may be reasonable in the circumstances. The "unexpected events" contemplated in the prior sentence, include, but are not limited to, rock slides or other significant impediments to water carriage.

11.4 If the Companies elect to terminate this Agreement as permitted in Section 11.3 above, the City shall be entitled to purchase the Companies' interest in the portion of the Welch Ditch and Welch Ditch right-of-way necessary to permit the City to carry water to the Proposed Golf Course, at a reasonable price to be fixed by agreement of the parties hereto, and by arbitration under Section 14 of this Agreement if they are unable to agree on such price. In determining said price, the parties shall consider, among other things, the reason(s) that the Companies elected to cease operation of that portion of the Ditch, the cost of any repairs that may be required by the City to continue operation of that portion of the Ditch, and whether other parties are interested in purchasing said portion of the Ditch and right-of-way or some part(s) of said portion. If the parties decide that said portion of the Welch Ditch and Welch Ditch right-of-way have little monetary value under the circumstances and the City nonetheless elects to purchase the same to continue its water supply for the Golf Course, said portion shall be conveyed to Golden for a nominal fee. Any conveyance to Golden under this Section 11.4 shall be understood to be subject to the provisions of Section 1.2 of this Agreement and shall be by special warranty deed within 30 days after the price is determined, provided that the Companies shall be entitled to except from the warranties (i) any grants made prior to the date of this Agreement and (ii) any grants made thereafter if made as part of the usual course of administration of a Ditch right-of-way, including, solely for purposes of illustration, such matters as utility and road crossings and minor encroachments. This Section 11.4 of this Agreement and the right thereby acquired by the City to purchase some or all of the Welch Ditch right-of-way, which interest is pursuant to this nondonative transfer, shall survive the termination allowed under Section 11.3 to the extent necessary to complete the purchase process initiated in a timely fashion under the provisions of this

Section 11.4. If the interest acquired by the City pursuant to this Section 11.4 is ever determined subject to the statutory rule against perpetuities then, and only then, said interest shall terminate 89 years and 364 days from the date of this Agreement if said interest has not already vested before that termination date.

12. Specific Condition. As a specific condition to the effectiveness of this Agreement, the City shall be required to agree to sell the 93 contract inches as a user under The Golden Canal and Reservoir Company which the City has recently acquired, to a purchaser presently a contract user under The Golden Canal and Reservoir Company who will continue to take delivery of said 93 contract inches through the Welch Ditch System, and who is otherwise reasonably acceptable to the Companies. If such sale and purchase is not consummated on or before 60 days after the Effective Date of this Agreement, unless the parties to this Agreement then mutually agree otherwise, this Agreement shall thereupon terminate.

13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns in accordance with its terms.

14. Dispute Resolution. The parties hereby submit all controversies, claims and matters of difference hereunder to arbitration in Jefferson County, Colorado, according to the rules and practices of the American Arbitration Association from time to time in force, except that if such rules and practices shall conflict with the Colorado Rules of Civil Procedure or other provisions of Colorado law then in force, such Colorado rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. Without limiting the generality of the foregoing, the following shall be considered controversies for this purpose: (a) all questions relating to the breach of any obligation or condition hereunder, or relating to the termination of this Agreement, (b) all questions relating to representations, negotia-

tions and other proceedings leading to the execution hereof, (c) failure of a party to deny or reject a claim or demand of another party, and (d) all questions as to whether the right to arbitrate any question exists. Arbitration may proceed in the absence of a party if notice of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such proceedings. Such awards shall be final and binding on all parties to the extent and in the manner provided by the Colorado Rules of Civil Procedure. All awards may be filed with the Clerk of the District Court in Jefferson County, Colorado, as a basis of declaratory or other judgment and of the issuance of execution, and, at the election of the party making such filing, with the clerk of one or more other courts, state or federal, having jurisdiction over the party against whom such an award is rendered or its property. No party shall be considered in default hereunder during the pendency of arbitration proceedings relating to such default.

15. Section Headings. The section headings are inserted for ease of reference, are not part of this Agreement and shall not be used in interpreting its provisions.

16. Entire Agreement. The terms and conditions stated in this Agreement incorporate and integrate all prior negotiations and agreements and constitute the entire Agreement between the parties on its subject matter, and may not be modified unless the parties or their respective successors and assigns mutually [agree, in writing, to such modifications.

17. Effective Date. The Effective Date of this Agreement shall be the date on which all parties have signed this Agreement, evidenced by the endorsements of such dates beneath the signature

blocks, and such date shall be inserted on page 1 of this Agreement.

CITY OF GOLDEN, a Colorado
municipal corporation

ATTEST:

By _____
Date: _____, 2001

THE AGRICULTURAL DITCH AND
RESERVOIR COMPANY

ATTEST:

Assistant Secretary

By _____
Vice President
Date: _____, 2001

THE GOLDEN CANAL AND RESERVOIR
COMPANY

ATTEST:

Assistant Secretary

By _____
Vice President
Date: _____, 2001

STATE OF COLORADO)
 : ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this _____
day of _____, 2001, by _____
as _____ of the City of Golden, a Colorado
municipal corporation.

Witness my hand and official seal.

My commission expires: _____

[SEAL]

Notary Public

STATE OF COLORADO)
 : ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by Richard J. Plastino, as Vice President of The Agricultural Ditch and Reservoir Company, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[SEAL]

STATE OF COLORADO)
 : ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2001, by Richard J. Plastino, as Vice President of The Golden Canal and Reservoir Company, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

[SEAL]