

RESOLUTION NO. 1127

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE EXECUTION OF AN ANNEXATION
AGREEMENT WITH THE L.H. KILGROE CONSTRUCTION
COMPANY**

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WHEREAS, the L.H. Kilgroe Construction Company (Annexor) has filed a petition to annex certain properties to the City of Golden, Colorado; and


WHEREAS, the City of Golden, Colorado, is in the process of determining whether the annexation is appropriate, and if so, the zoning that should apply to the land; and

WHEREAS, the City and Annexor wish to agree as to certain conditions and provisions under which the property may be annexed in the event that the City determines annexation is appropriate.

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

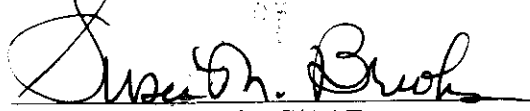
The Mayor is authorized to execute on behalf of the City of Golden, an Annexation Agreement with the L.H. Kilgroe Construction Company, the substance of said annexation agreement substantially complying with the agreement attached hereto as Exhibit 1.

Adopted the 14th day of September, 2000.



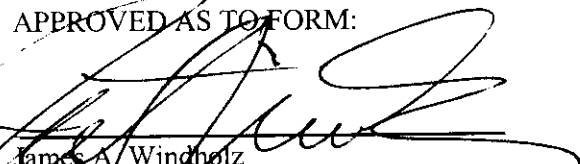
Jan C. Schenck
Mayor

ATTEST:



Susan M. Brooks, CMC/AAE
City Clerk

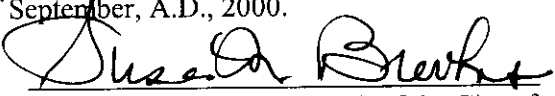
APPROVED AS TO FORM:



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 14th day of September, A.D., 2000.

(SEAL)

ATTEST: 

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

**ANNEXATION AGREEMENT
KILGROE PROPERTY ANNEXATION NO. 3**

This Agreement is effective the 22 day of December, 2000, by and between **L.H. Kilgroe Const. Co.** (Annexor) and the **City of Golden**, a Colorado home rule municipal corporation (City). 2

WHEREAS, the Annexor holds fee title to 100 percent of the property described in Exhibit A, attached hereto, located on the west side of State Highway 93 near Golden Gate Canyon Road, (hereinafter the "Annexation Property"); and

WHEREAS, the Annexor desires that the Annexation Property be annexed to and be subject to the jurisdiction of the City, upon and subject to the terms and conditions set forth herein, all of which conditions are agreeable to the Annexor; and

WHEREAS, Annexor has filed a Petition to annex the Annexation Property to the City; and

WHEREAS, the parties desire to include in this Agreement certain provisions, understandings and agreements regarding the Annexation Property and its annexation; and

THEREFORE, in consideration of the recitals, premises, mutual covenants and agreements herein contained, the parties agree as follows:

1. Annexation. The annexation of the Annexation Property shall be in accordance with the Colorado Municipal Annexation Act of 1965, as amended, the Golden Municipal Code and all applicable laws.

2. Zoning, Subdivision. The Annexor has requested that the Annexation Property be zoned Planned Unit Development (PUD) as described in the Golden Municipal Code, and that the Kilgroe Property Annexation No.3 Official Development Plan be approved which zoning and Official development Plan are in accordance with the comprehensive plan, Vision 2010. Zoning of the Property shall be considered simultaneously with the Petition for Annexation by the City as allowed by the Colorado Municipal Annexation Act of 1965.

3. Application of City Laws - City Services. Except as expressly provided herein, all city ordinances, regulations, codes, policies and procedures in existence and as the same may change from time to time, shall be applicable to the use and development of the Annexation Property, upon annexation. Upon annexation, the City shall provide all customary municipal services to the Property, to the same extent and upon the same terms and conditions as such services are provided to other properties throughout the City.

4. Fees and Costs. The Annexor shall pay the application fees for annexation and zoning of the Annexation property and prepare and pay the costs of the annexation survey(s) and PUD zoning document(s) for the Annexation property. In the event that legal proceedings are initiated by third parties within one hundred eighty (180) days of the adoption of the annexation ordinance(s) to challenge the annexation(s), and Annexor is made a party to such proceedings, the City shall defend such action on behalf of the City and Annexor, to the extent that a conflict of interest does not preclude such dual representation. 3

5. City Utilities. The City shall provide water and wastewater services to the Annexation Property, upon the effective date of the annexation ordinance for such property, Said water and wastewater services shall be in accordance with this paragraph and the requirements of Chapter 13 of the Municipal Code. The parties acknowledge that the Annexor is in possession of four water tap connections, which water connections provide service to portions of the Annexation Property or adjacent property concurrently requested to be annexed under a separate petition and which, upon annexation of the Annexation Property, may be continued or used as a credit toward additional system development fees to provide upgraded water service to the lot served by the existing tap. These existing water tap connections include: No.35-5014 (3/4 inch); No.35-5012 (2 inch); No.35-5010 (2 inch); No.35-5000 (1 inch). Except as specifically provided herein, additional water and wastewater services will be provided for properties annexed to the City, upon satisfaction of all of the requirements of Chapter 13.04 and 13.08 of the Municipal Code including the requirement that the property owner construct all necessary improvements which shall comply with the Golden Water and Wastewater Specifications, pay all applicable fees, and provide water rights as necessary to serve the property, or a cash fee in lieu of water rights, to the City. Said cash fee in lieu of water rights may be phased and will be submitted according to a phasing plan approved by the City with the final subdivision plat(s) for the affected property, or issuance of the building permit for construction or renovation of a building requesting additional water or wastewater service. The calculation of necessary water rights shall be based upon an independent determination by the City's water engineer of the water requirements of the proposed development phase. The value of any cash fee in lieu of water rights shall be based upon the then current value of water, as determined by the City's water attorney. However if the City's determination in this regard either as to water requirements or value or both is deemed excessive by Annexor's professional consultants, the following procedure shall be utilized: Annexor's professional consultants promptly shall confer with the City's engineer and/or water attorney, in order to negotiate a water rights payment mutually acceptable to the parties and, if such agreement cannot be reached within fifteen days of the date upon which the consultants confer, the matter shall be submitted to binding arbitration to be held within fifteen additional days before a panel consisting of one water attorney and one water engineer chosen by mutual agreement among the City's engineer and water attorney and Annexor's professional consultants. the parties shall share equally the cost of such arbitration and shall abide by the results thereof.

In addition to the requirements listed above, the Annexor will be required to contribute to the expansion of the "6260 pump station" to house new pumps that are capable of delivering fire flows meeting the City's criteria to the portion of the Property within the 6260 pressure zone. The Annexor will be required to contribute the cost of such improvements. The provisions for this contribution will be included in the Subdivision Development Agreement for the first final plat within the portion of the Property to be served by the 6260 pressure zone.

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6. School Land Dedication. A cash fee in lieu of school land dedication will be assessed in conjunction with the final subdivision plat for any residential development proposed within the Property.

7. Open Space Dedication. The open space dedications for the Property will be determined and made at the time of final subdivision plat, but will include as a minimum the 19.89 acre open space parcel designated on the PUD zoning for the Property. The parties acknowledge that the applicant may propose that land dedications within the Property also satisfy the requirement for the adjacent property submitted to the city for rezoning under the name of Kilgroe Annexation No.2.

8. Public Improvements. The construction of public improvements necessitated by development of the Property will be determined at the time of final subdivision plat, final site planning, or development of property based upon the requirements and standards in place at that time.

9. Special Districts. The City shall upon annexation initiate actions necessary to assure exclusion of the Property from any and all special districts which provide municipal services to the Property of a type that the City provides to its citizens. The Annexor shall bear the related costs and legal fees for said exclusion.

10. Assignment. The rights, duties and obligations of the Annexor hereunder may be assigned to another person or entity only with the consent of the City. In such event, the assignee shall assume all of the rights, duties and obligations of the Annexor hereunder and the Annexor shall be correspondingly relieved from all such liabilities, duties and obligations. Notwithstanding anything herein to the contrary, however, the City hereby consents to Annexor's partial assignments of the credit against system development and/or tap fees as set forth in paragraph 5, above.

11. Notices. All notices, demands or other documents required or desired to be given to either party under this Agreement shall be made in writing and shall be deemed effective upon receipt and shall be personally delivered or mailed by certified mail as follows:

City: City Manager
City of Golden
911 - 10th Street
Golden, CO 80401

Annexor: L.H. Kilgroe Const. Co.
4500 Pine Ridge Road
Golden, CO 80403

With a copy to: Doug Reed
584 South Race Street
Denver, Colorado 80209

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12. Severability. If any covenant, stipulation or obligation of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the Agreement. The parties hereby declare that they would have entered into this Agreement and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

13. Binding Effect of Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and the assigns of the respective parties and, unless otherwise provided herein, shall run with the land from the time that Annexor acquires fee title to the Property. This Agreement shall be recorded in the records of the Clerk and Recorder of Jefferson County, State of Colorado, at the City's expense. The parties covenant and agree that they will cooperate with each other in accomplishing the terms, conditions and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.

14. Third Parties. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended nor shall be construed of confer upon or give any other person any rights, remedy or claim under or by reason of the Agreement.

15. Police Power. Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or release of the City's legislative, governmental or police powers to promote and protect, the health, safety, morals or general welfare of the municipality or its inhabitants. This Agreement shall not prohibit the enactment by the City of any fee, ordinance, resolution, rule or regulation which is of uniform and general application.

16. Remedies. It is understood and agreed by the parties that they shall have all available remedies for breach of this Agreement in law or in equity, including but not limited to specific performance and damages. In the event of litigation related to this Agreement, the prevailing party shall be awarded its costs, expert fees and legal fees.

17. No Vested Property Rights. It is understood and agreed by the parties that no vested Property rights are granted by this Agreement. The Annexor represents to the City that there are no vested rights to the Property from the County of Jefferson or any other governmental entity and the Annexor hereby waives and releases any rights which may have been so granted. 6

18. Disconnection. No right or remedy of disconnection of the described Property from the City shall accrue from this Agreement, other than that provided by Section 31-12-119, C.R.S. In the event the Property or any portion thereof is disconnected from the City at the Annexor's request, the City shall have no obligation to serve the disconnected Property except for the continuation of existing extra-territorial water and wastewater service as described in paragraph 5, and this Agreement shall be null and void and of no further force and effect as to such Property.

19. Initiative. If the annexation of the Property or any portion thereof is voided by initiative, the City agrees to continue providing water and sewer service to the Property so disconnected, for existing water and wastewater taps as described in paragraph 5.

20. Referendum. If the annexation of the Property or any portion thereof is challenged by a referendum, all provisions of the Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Property from the City, then this Annexation Agreement shall be null and void and of no further effect. If the referendum challenge fails, then the Annexor and the City shall continue to be bound by the annexation of the Property.

21. Court Order. In the event that the annexation of the Property or any portion thereof is voided by Final Action ("Final Action" means that no appeal can be made or the time to appeal has expired) of a court of proper jurisdiction (such Final Action not being associated with referendum or initiative matters), the City and the Annexor shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure the Annexation Agreement shall be deemed to be an agreement to annex the Property to the City pursuant to the Colorado Municipal Annexation Act of 1965. The Annexor shall reapply for annexation when the Initial Annexation Property becomes eligible for annexation as determined by the City.

22. Entire Agreement. This Agreement contains the entire agreement between the parties and shall not be amended except by written agreement executed with the same formality of this Agreement.

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23. Venue. This Agreement shall be governed by the laws of the State of Colorado with venue in the County of Jefferson.

L.H. Kilgroe Const. Co., a partnership

By: James A. Kilgroe
James A. Kilgroe, Partner

By: Lance H. Kilgroe
Lance H. Kilgroe, Partner

STATE OF Colorado)
)ss.
COUNTY OF JEFFERSON)

The foregoing Annexation Agreement was signed and sworn to before me by James A. Kilgroe this 22 day of December, 2000.

Witness my hand and official seal.

Notary Public: Penelope H. Johnson
My Commission Expires: September 06, 2003


STATE OF Colorado)
)ss.
COUNTY OF JEFFERSON)

The foregoing Annexation Agreement was signed and sworn to before me by Lance H. Kilgroe this 22 day of 2000. December, 2000.

Witness my hand and official seal.

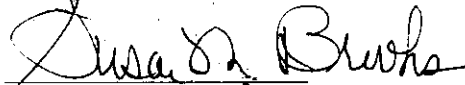
Notary Public: Penelope H. Johnson
My Commission Expires: September 06, 2003

CITY OF GOLDEN:

By: 
Ian C. Schenck,
Mayor

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ATTEST:


City Clerk

