

RESOLUTION NO 1589

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING AN AGREEMENT WITH HARMONY VILLAGE
PERTAINING TO DELIVERY OF WATER TO HARMONY
VILLAGE**

WHEREAS, Jefferson County School District R-1, the Colorado School of Mines, Consolidated Mutual Water Company, the Golden Canal & Reservoir Company, and the Agricultural Ditch & Reservoir Company are willing to contribute to the funding of a pump station, pipeline and ancillary facilities to deliver irrigation water from facilities associated with or near Golden's water treatment plant to the Welch Ditch at approximately 19th street, for delivery to the Fossil Trace Golf Course, Golden High School and other locations as may be determined by Golden; and

WHEREAS, these facilities would replace Welch Ditch; and

WHEREAS, Welch Ditch delivers irrigation water diverted under the priorities of the ditch to Harmony Village. The right to receive and use water from the Welch Ditch is a contract right quantified in terms of GCRC contract inches; and


WHEREAS, Harmony Village owns one GCRC contract inch; and

WHEREAS, Golden is willing to provide water to Harmony Village to replace the water Harmony Village has received under its on GCRC inch

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

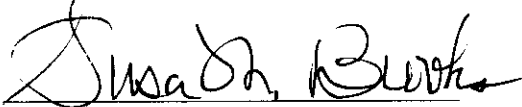
City Council hereby approves the agreement with Harmony Village in essentially the same form as the copy of such agreement accompanying this resolution.

Adopted this 25th day of August, 2005.



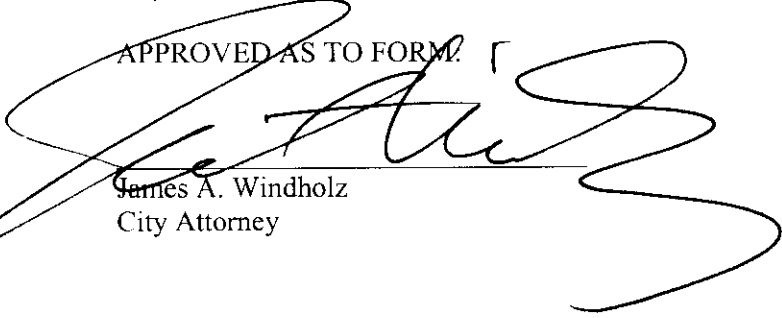
Charles J. Baroch
Mayor

ATTEST:



Susan M. Brooks, MMC
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 25th day of August, A.D., 2005.

(SEAL)

ATTEST:

A handwritten signature in black ink, appearing to read "Susan M. Brooks", written over a horizontal line.

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

WATER SUPPLY AGREEMENT

This Agreement, dated this 29th day of July, 2005, is between Harmony Water Rights Corporation, a Colorado Corporation with a business address of 1015 Cottonwood Circle, Golden CO ("Harmony"), and the City of Golden, a municipal corporation under the laws of the State of Colorado ("Golden").

WHEREAS, the Welch Ditch is owned by The Golden Canal & Reservoir Company (GCRC). The Welch Ditch diverts under its various water rights, when in priority, and the right to receive and use that non-potable water in the Welch Ditch for irrigation purposes is a contract right quantified in terms of inches in the ditch.

WHEREAS, Harmony owns one inch in the Welch Ditch which entitles it to receive a portion of the water being diverted in any given year in the Welch Ditch for irrigation. Harmony's inch is used within the development known as Harmony Village.

WHEREAS, Golden uses the Welch Ditch to convey non-potable irrigation water to the Fossil Trace golf course by agreement with GCRC.

WHEREAS, GCRC seeks to reduce diversions and/or retire portions of the Welch Ditch which is difficult to maintain. Under agreements being entered into among Golden, GCRC, the Jefferson County School District R-1 (R-1) and other parties, Golden will construct a pump and pipeline (the "Pipeline") to deliver non-potable irrigation water to the Welch Ditch beginning at 19th Street in Golden, for subsequent delivery to the Fossil Trace golf course and the Golden High School (operated by R-1), and GCRC will convey to Golden its right-of-way in the Welch Ditch from 19th Street to the golf course.

WHEREAS, Harmony and Golden desire to enter into this agreement to provide a non-potable irrigation water supply to Harmony Village using Golden's Pipeline in exchange for the conveyance of Harmony's contract inch in the Welch Ditch.

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

1. Water Delivery. Upon completion of the Pipeline, Golden shall provide to Harmony 2.0 acre-feet of non-potable water every year during the irrigation season (the "Water Delivery"), which is approximately equivalent to the amount of water delivered to Harmony under its inch in the Welch Ditch in an average year. The Water Delivery shall be subject to the following provisions:

A. Golden shall always make the Water Delivery to Harmony's current take out on the Welch Ditch which feeds a cistern, or at such other place as may be mutually acceptable to Golden and Harmony. The parties acknowledge that Golden intends to design and construct the Pipeline to deliver water to the existing Welch Ditch at 19th Street where it will flow past Harmony Village and that the Water Delivery is intended to be made in this fashion, or by pumping water back from the golf course

ponds served by the Welch Ditch. On rare occasions, such as during maintenance or necessary shutdowns of the Pipeline, Golden will make the Water Delivery by pumping water back from the golf course ponds that are also served by the Welch Ditch, but shall first provide notice to Harmony. Golden does not intend to change this delivery pattern unless it deems that changed circumstances require a modified method of delivery. Thus, although Golden intends to use the Welch Ditch, it cannot commit to using it in perpetuity. The rate and timing of the Water Delivery over the course of the irrigation season shall be mutually agreed upon by the parties, from time to time, based upon the timing of Harmony's irrigation needs and efficient operation of the Pipeline by Golden to meet other water delivery needs, but Golden agrees to make the Water Delivery available to Harmony in intervals no greater than every three days.

B. Golden shall make the Water Delivery using the same sources of water being delivered to the golf course through the Pipeline and Welch Ditch, or such other water as may be available to Golden for irrigation. Harmony shall use the Water Delivery for irrigation purposes within Harmony Village. Golden makes no warranties regarding the water quality of the Water Delivery. Since Harmony desires to use the water for irrigation of edible crops, Golden shall not use wastewater effluent to make the Water Delivery. Future water quality shall be generally consistent with what Harmony would have received under its inch delivered through the Welch Ditch.

C. Golden shall continue to provide the Water Delivery each and every year, regardless of stream flows on Clear Creek, so long as there is a development at Harmony Village that will use such water for irrigation at the current location of Harmony Village.

D. Golden and Harmony agree to cooperate in ensuring appropriate records are kept of the Water Delivery by Golden and taken by Harmony.

2. Payment for Water Delivery. Upon entering into this Agreement, Harmony shall convey its one inch in the Welch Ditch to R-1 by executing the quit claim deed attached hereto and providing it to Golden and Harmony agrees to relinquish any rights it has to receive water from the GCRC in the Welch Ditch or any other structure. Notwithstanding, Golden shall withhold the quitclaim deed from R-1 until the Pipeline is completed so that Harmony will continue to receive its water in the Welch Ditch until Golden can begin the Water Delivery. If the Pipeline is completed during the 2005 irrigation season, as expected, Golden shall begin making the Water Delivery in 2005, in the amount necessary, to ensure Harmony receives a combined total of 2.0 acre-feet of water in 2005 under its inch in the Welch Ditch and Golden's water supplies. Golden agrees the conveyance to R-1 contemplated herein constitutes the only required payment by Harmony for the Water Delivery and that there will be no additional assessments, fees or expenses of any kind in order to ensure the annual Water Delivery.

3. Penalty Provision. If for some unforeseen reason Golden cannot meet its Water Delivery obligation for any given year, Golden shall compensate Harmony for the shortage in the Water Delivery at the market rate for non-potable irrigation water on

{SEAL}

Karen Berg
Notary Public
My commission expires: 3-26-09

