

RESOLUTION NO. 1571

A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING AN AGREEMENT BETWEEN THE CITY OF
GOLDEN AND THE CHURCH DITCH AUTHORITY
REGARDING THE INSTALLATION AND MAINTENANCE OF A
LINING STRUCTURE WITHIN THE CHURCH DITCH RIGHT
OF WAY

WHEREAS, the City of Golden desires to install improvements within the Church Ditch right of way in an attempt to address water mitigation concerns in areas proximate and adjacent to or within the Church Ditch; and


WHEREAS, the City of Golden has agreed to install improvements subject to the terms and conditions of an Agreement at the sole cost and expense of the City, save a twenty-five thousand dollar (\$25,000.00) contribution by the Church Ditch Authority; and

WHEREAS, the City will have the right, but not the obligation to maintain the improvements as described within said Agreement.

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


The Agreement between the City of Golden and the Church Ditch Authority regarding the installation and maintenance of improvements within the Church Ditch right of way, is approved in substantially the form attached hereto and made a part of this resolution. The Mayor is authorized to execute the agreement on behalf of the City.

Adopted the 26th day of May, 2005.



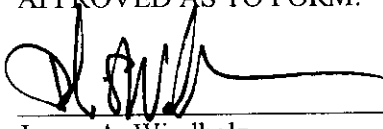
Charles J. Baroch
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:

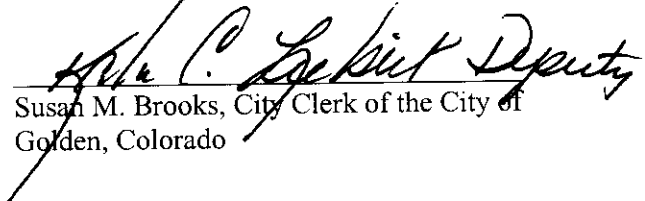


James A. Windholz
City Attorney

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 26thth day of May, A.D., 2005.

(SEAL)

ATTEST:



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

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement is made and entered into the 20th day of June, 2005, by and between the CHURCH DITCH WATER AUTHORITY, a Colorado a body corporate and politic (the "Authority"), and the CITY OF GOLDEN, a Colorado home rule municipality (the "City").

RECITALS:

WHEREAS, the Church Ditch, a carrier ditch owned, operated and maintained by the Authority, traverses property located in the Golden city limits;

WHEREAS, the City desires to install certain water diversion infrastructure, including certain facilities within the Church Ditch right-of-way in an attempt to address water migration concerns in the City of Golden, including areas proximate and adjacent to or within the Church Ditch;

WHEREAS, the City specifically desires to install and maintain certain facilities within the Church Ditch (hereafter referred to as the "Project Area") in order to address certain areas within the City adjacent to the Church Ditch in which the presence of water has been found, which can be caused by a number of different factors, including, but not limited to, the presence of high groundwater, the inclusion of stormwater into the Church Ditch, and historic seepage of the Church Ditch; and

WHEREAS, the City, in cooperation with the Church Ditch, desires to install the improvements as more particularly described in **Exhibit A** (the "City Lining Structure"), attached hereto and incorporated herein by this reference, within the Church Ditch right-of-way, subject to the terms and conditions contained within this Agreement at the sole cost and expense of the City, save a twenty-five thousand dollar (\$25,000.00) contribution by the Authority as more particularly described hereinbelow.

NOW, THEREFORE, based upon the mutual covenants and promises of the parties hereto as set forth hereinbelow, the amount and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **LICENSE AGREEMENT**

a. Subject to the terms and conditions of this Agreement, the Authority grants to the City an Irrevocable License to install and maintain the City Lining Structure within the Church Ditch right-of-way, as more particularly described in Exhibit A. The City acknowledges that such license does not extend to, or permit any activity or facilities that will interfere with the maintenance, operation, lateral and subjacent support, and use of the Church Ditch, or degrade the water quality of the Ditch.

b. The City shall return the Ditch to its original condition upon completion of the initial installation of the City Lining structure, or upon completion of lining maintenance

activities.

c. The Authority shall give the City written notice if a deficiency in construction or maintenance of the City's Lining Structure is noted by the Authority. The City shall initiate corrective actions within five (5) business days after receipt of the written notice. If after the five (5) days no corrective action has been initiated, the Authority may correct the deficiency and invoice the City for all costs incurred by the Authority in making the corrective actions. The City shall reimburse the Authority within thirty (30) calendar days from the date of said invoice.

d. City Lining Structure Maintenance. The City shall have the right, but not the obligation to maintain the City Lining Structure which is licensed under this Agreement, except that the City shall be obligated to maintain the City Lining Structure to the extent that maintenance is required to prevent interference with ditch operations. The City and its contractors will promptly remove all construction trash that has been discarded in the Ditch when the Ditch is running water. Any construction trash generated by the City's construction of the Ditch Improvements and located in the Church Ditch or in the areas adjacent to the Ditch used by the Authority for access shall be removed by the City prior to the first flush of water or promptly if the Ditch is running water.

e. Coordination. All work covered under this Agreement shall be coordinated directly with the Church Ditch Water Authority's Manager of Ditch Maintenance and shall be timed to avoid interference with operations of the ditch.

f. Lateral and Subjacent Support of Church Ditch. The City shall not interfere with the lateral and subjacent support of the Ditch. The City or its agent(s) may perform earthwork adjacent to and on the Church Ditch Water Authority's easement, provided that the integrity and operation of the Ditch is not compromised.

2. COSTS AND MANNER OF CONSTRUCTION

a. The City's Lining Structure shall be constructed by the City in accordance with the engineering specifications that are attached hereto as **Exhibit A** and incorporated by this reference. The parties hereto expressly agree and acknowledge that nothing in this Agreement shall be construed as an approval by the Church Ditch Water Authority of the engineering specifications. Except for the contribution addressed in Paragraph 3 below, the City acknowledges and agrees that the Authority is not responsible for the design, construction and maintenance of the City's Lining Structure.

b. Any other miscellaneous costs associated with the construction of the City's Lining Structure, including but not limited to, costs associated with the purchase of certificates of insurance and construction bonds, shall be the sole obligation of the City.

d. Warranty of Lateral Support. The City hereby expressly warrants and guarantees the subjacent and lateral support of the Church Ditch in the area of and adjacent to the City's Lining Structure will not be compromised by reason of the installation and maintenance of the City's Lining Structure.

e. Erosion Control. The City will make reasonable efforts to prevent silt or debris associated with the construction of the City's Lining Structure from entering the Ditch during construction.

f. Taxes, Licenses, Permits and Regulations. In all operations connected with the construction of the City's Lining Structure, the City shall pay any applicable fees, charges and taxes imposed by law and shall obtain all licenses and permits necessary for completion. The City shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, when applicable relating to the performance of work and, particularly, in complying with those laws concerning the environment, worker's compensation, unemployment insurance, safety and health, state labor and materials, and equal employment opportunity.

g. Subcontractors. In all events, the City shall be responsible for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or by its contractors and subcontractors. No contractual relationship shall exist between the Church Ditch Water Authority and any contractor or subcontractor engaged to construct the City's Lining Structure.

3. CHURCH DITCH WATER AUTHORITY CONTRIBUTION

The Church Ditch Water Authority shall contribute the amount of Twenty-Five Thousand Dollars (\$25,000.00) to be used by the City to assist in paying the cost of constructing the City's Lining Structure. The Authority's contribution is intended solely as a good faith gesture to the City and its residents and is not and shall not be construed either as (a) an admission of liability as to any potential claims against the Authority, and (b) an approval, acknowledgement or representation that the City's Lining Structure shall adequately address the concerns of the City related to the presence of water in the area of the City's Lining Structure.

4. CITY OF GOLDEN STORMWATER DIVERSION INFRASTRUCTURE

Provided that the City is able to obtain the necessary right-of-way permits from the Colorado Department of Transportation, the City agrees to, within one (1) year of the date of this Agreement, commence implementation of stormwater diversion infrastructure as more particularly described in **Exhibit B**, attached hereto and incorporated herein by this reference. The City will use its best efforts to obtain the right-of-way permit from CDOT. If necessary, the City shall apply for and receive an Authority License for any work on the stormwater diversion infrastructure, prior to beginning any work on the stormwater diversion infrastructure.

5. CHURCH DITCH WATER AUTHORITY ACCESS-PROTECTION OF LINING

Nothing in this Agreement shall serve to impair the Authority's right of ingress and egress to the Ditch. The license rights granted by this Agreement shall be inferior to the rights

of the Authority to operate and maintain the Ditch, provided, however, that the Authority shall operate and maintain the Ditch in a manner to avoid damage to the City's Lining Structure. The Authority shall be responsible for damages caused to the City's Lining Structure by reason of the operation or maintenance of the Ditch.

6. INSURANCE

a. As it pertains to all construction of the City's Lining Structure by the City, the City shall obtain, and continuously maintain, a certificate for general liability insurance or self insurance, subject to customary exclusions, to meet the maximum limitations on judgments under the Colorado Governmental Immunity Act, as amended from time to time.

b. The City shall obtain, and continuously maintain worker's compensation insurance covering the City's employees, officers and agents to work within the Church Ditch easement.

c. The City shall furnish the Authority with copies of certificates of insurance for all liability policies obtained in compliance with this paragraph. All such certificates of insurance shall contain a provision that the company writing said policy will give the Authority, and its successors or assigns, at least thirty (30) days' notice in writing in advance of any cancellations or lapses, or the effective date of any reduction in the amount of insurance. By agreeing to obtain and maintain such insurance, no party to this Agreement waives or intends to waive the monetary limitations or any other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as from time to time amended.

7. INDEMNIFICATION

To the extent permitted by law and without waiving any indemnity, immunity or defense provided to the City by the Colorado Governmental Immunity Act or the Colorado Constitution, the City shall indemnify, defend and hold the Authority, its agents, officers, employees, engineers and attorneys, harmless from and against all claims, damages and judgments, including reasonable attorneys' fees, losses and expenses of every nature, arising at any time out of any act or omission of the City, and its employees, subcontractors and their employees, and all other persons directly or indirectly involved in or performing work on the City's Lining Structure.

8. ASSIGNMENT

The parties shall not assign this Agreement without the other parties' written consent.

9. BENEFICIARIES TO AGREEMENT

This Agreement is not intended for the benefit of or enforcement by third parties not signatory to this Agreement. Further, the installation and maintenance of the City's Lining Structure is not intended for the benefit of the Authority, and the City shall have no liability to

the Authority in the event that the lining does not adequately address the migration of water in the area of the City's Lining Structure. The installation and maintenance of the City's Lining Structure is not, and shall not be construed as an admission of liability as to any potential claims against the City.

10. REMEDIES

None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by an appropriate action, petition or proceeding at law or in equity. Either party may exercise any remedy permitted by law. This Agreement shall be construed in accordance with the laws of the State of Colorado.

11. NOTICES

Whenever, under this Agreement, a provision is made for notice of any kind, such notice shall be in writing and signed by or on behalf of the party giving the notice. It shall be deemed effective upon hand delivery or mailing by registered or certified mail, postage prepaid, to the parties at the addresses set forth below:

CHURCH DITCH WATER
AUTHORITY:

Dale Kralicek, President
11701 Community Center Drive
Northglenn, Colorado 80233-8061

CITY OF GOLDEN:

City Manager
911 10th Street
Golden, CO 80401

or such other address as the parties shall designate by notice in writing.

12. AMENDMENT

This Agreement may be amended, from time to time, by written agreement of all the parties hereto. No amendment, modification or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

13. SEVERABILITY

If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement if the remaining provisions can be enforced to carry out the general intent of this Agreement.

14. WAIVER

No waiver by either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

15. ENTIRETY

This document constitutes the entire agreement between the parties concerning the subject matter herein, and all prior negotiations, representations, contracts, understandings or agreements pertaining to such matters are merged into, and are superseded by this document.

16. NONAPPROPRIATION

It is the intent of the parties hereto that the obligations specified in this Agreement shall remain effective only so long as each of such parties has duly appropriated funds for performing such obligations for the party's current fiscal year. If for any fiscal year of any such parties funds are not appropriated for such party's performance of its obligations under this Agreement, this Agreement shall become void and such party shall promptly give notice to the other party of the nonappropriation of funds. Notwithstanding anything herein to the contrary, it is the intent of the parties that this Agreement shall comply with Colorado law and, in particular, Article X, Section 20 of the Constitution of the State of Colorado so that to the extent this Agreement constitutes a multiple-fiscal year financial obligation of a party (such as the construction of the Replacement Section of the Church Ditch), such party shall, on or before the effective date, irrevocably pledge present cash reserves in an amount that is adequate to pay those obligations which will extend beyond the current fiscal year of such party.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto with the intent that it be effective as of the date first above written, whether or not the date of signing is some other date.

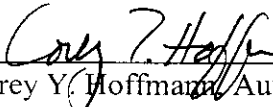
**THE CHURCH DITCH WATER
AUTHORITY**

By: Dale Kralovich
Title: President


ATTEST:

Eve Cravens
Secretary


APPROVED AS TO FORM:


Corey Y. Hoffmann, Authority Attorney

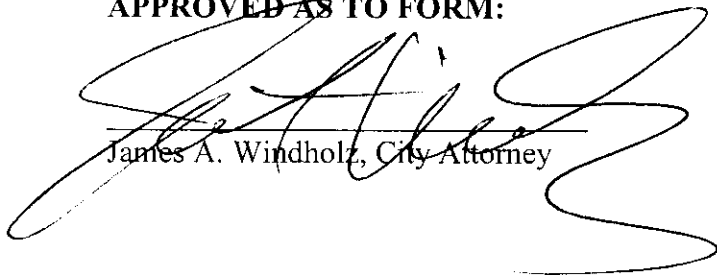
CITY OF GOLDEN

By: 
Charles J. Baroch, Mayor

ATTEST:


Susan Brooks, City Clerk

APPROVED AS TO FORM:


James A. Windholz, City Attorney