

RESOLUTION NO. 1701

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
ACCEPTING AN AGREEMENT CONVEYING A UTILITY
EASEMENT TO THE CITY OF GOLDEN FROM JEFFERSON
COUNTY AND ACCEPTING PUBLIC IMPROVEMENTS
CONSTRUCTED BY JEFFERSON COUNTY**

WHEREAS, Jefferson County owns and operates a Road & Bridge/Fleet Shop located at 21401 Golden Gate Canyon Road; and

WHEREAS, Jefferson County constructed public improvements when the facility was originally constructed; and

WHEREAS, Jefferson County has submitted record drawings for the public improvements; and

WHEREAS, the City has inspected the improvements and found them to fully conform to City standards; and

WHEREAS, the City is ready to issue a certified final acceptance of the public improvements; and

WHEREAS, Jefferson County has provided an easement agreement conveying a utility easement for these public improvements; and

WHEREAS, the City of Golden desires to construct a pipeline connected to the public improvements to deliver potable water to its municipal facilities; and


WHEREAS, Jefferson County has provided an easement agreement conveying the utility easement necessary to construct such a pipeline; and

WHEREAS, City Council has considered the easement conveyance to the City of Golden.

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

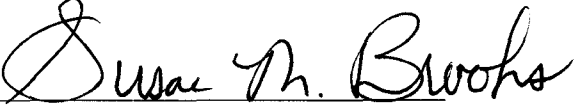
City Council accepts the easement agreement, substantially in the form attached hereto as Exhibit A. The Mayor is authorized to execute such agreement.

Adopted this 24th day of August, 2006.



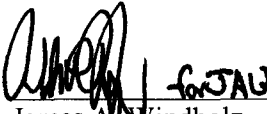
Charles J. Baroch
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

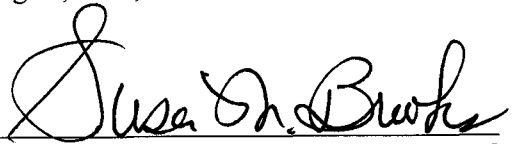
Approved as to form:



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 24th day of August, A.D., 2006.

(SEAL)

ATTEST: 

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

Exhibit A

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into by and between the **COUNTY OF JEFFERSON, STATE OF COLORADO**, a body politic and corporate (“Grantor”) and the **CITY OF GOLDEN, STATE OF COLORADO**, a municipal corporation, whose address is 911 10th Street, Golden, Colorado 80401 (“Grantee”).

RECITALS

Grantee has requested, and Grantor is willing to convey, an easement, over a portion of real property, owned by Grantor, legally described at Exhibit A, attached hereto and incorporated herein (the “Easement Property”).

NOW THEREFORE, in consideration of \$10 and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which are hereby acknowledged by Grantor, the parties hereby agree as follows:

ARTICLE I: GRANT OF EASEMENT

1. In accordance with the terms herein, Grantor hereby grants to Grantee a nonexclusive permanent easement over, under and across the Easement Property for the installation of water lines, together with all rights and privileges as are necessary to the reasonable and proper use of the Easement Property, including the construction, repair and maintenance of related improvements (the “Easement Improvements”) for the limited purposes stated herein.

2. Grantor reserves the right to use and occupy the Easement Property for any purpose not inconsistent with the rights and privileges granted herein and which would not unreasonably interfere with Grantee’s use thereof.

ARTICLE II: GENERAL PROVISIONS

3. Upon completion of the construction or of any subsequent maintenance of the Easement Improvements, Grantee shall, at its sole cost and expense, and to the satisfaction of the Grantor, promptly restore the Easement Property as closely as possible to its condition prior to installation of the Easement Improvements.

4. Grantor shall not be liable to Grantee or any other person or entity whatsoever for any injury or damage to persons or property occasioned by reason of the sue by Grantee, its contractors, subcontractors, agents, employees, licensees, or invitees of the Easement Property, failure to maintain the Easement Improvements, or by reason of any act or thing done or omitted to be done during the term of this Easement Agreement by Grantee, its contractors, subcontractors, agents, employees, licensees, or invitees.

5. To the full extent permitted by law, the Grantee indemnifies and holds Grantor harmless from any and all loss or damage, and claims of loss or damage, including without limitation attorney's fees, sustained or incurred by Grantor resulting from any loss or injury or damage to any person or property related to the exercise of rights granted herein, or any act or thing done or omitted to be done during the term of this Easement Agreement by Grantee, its contractors, subcontractors, agents, employees, licensees, or invitees, to the extent such loss, injury, or damage is caused by the negligence or willful misconduct of Grantee or its contractors, subcontractors, agents, employees, licensees, or invitees. The obligations of Grantee hereunder shall survive termination of this Easement Agreement.

6. If either party determines that the other party is in violation of the terms of this Easement Agreement (the "Alleging Party"), it shall give written notice of such violation and demand corrective action sufficient to cure the violation. If the other party fails to, at its sole cost and expense, cure the violation within thirty (30) days after receipt of the notice of such alleged breach, or under the circumstances where violations cannot reasonable by cured within such thirty (30) day period, if the other party fails to begin curing such violation within such thirty (30) day period and fails, at its sole cost and expense to continue diligently to cure such violation until finally cured, then the Alleging Party may institute a suit to enforce the terms of this Easement agreement (including by specific performance) to enjoin the violation by injunction, and to recover any damages to which such party may be entitled for violation of the terms of this Easement Agreement. The prevailing party to any legal action brought to enforce the terms of this Easement Agreement shall be entitled to all costs of suit, including, without limitation, reasonable attorney's fees.

7. Enforcement of the terms of this Easement Agreement will be at the discretion of the parties and any forbearance by either party to exercise its rights herein will not be deemed or construed to be a waiver of such breach or any subsequent breach of the same or any other term of this Easement Agreement or of any the parties' rights under this Easement Agreement. No delay or omission by any party in the exercise of any right or remedy will impair such right or remedy or be construed as a waiver.

8. Grantor makes no representation, nor will Grantor be liable to Grantee, with respect to title to the Easement Property and any prior encumbrance that may affect title to any portion of the Easement Property. This Easement Agreement is subject to all prior encumbrances, restrictions, rights, claims and interests of record, or otherwise.

9. Grantee covenants, represents, and warrants that : (a) Hazardous Materials will not be handled, treated, used, placed, stored, or otherwise kept, or transported on or across any portion of the Easement Property without the prior written approval of the Grantor; and upon such approval (b) any handling, transportation, storage, treatment, or usage of Hazardous Materials which may occur on or across any portion of the Easement Property will be in compliance with federal, state, and local laws, regulation, and ordinances. Grantee does hereby indemnify and hold harmless Grantor and its respective agents and employees from and against any and all claims, lawsuits, damages, costs, losses, judgments, of any nature whatsoever, including attorneys' fees, suffered or incurred by the Grantor, arising from a breach of the covenants and warranties contained in this paragraph, or as a result of conditions created or acts performed or omitted by Grantee, its employees, agents, contractors, permittees, invitees, or assigns. Such indemnity and covenant to hold harmless shall survive the termination of this Easement Agreement. The term "Hazardous Material" herein means any hazardous, toxic, or dangerous substances, materials, or wastes which are regulated under any applicable county, municipal, state, or federal law, rule, ordinance, direction, or regulation.

10. Grantee, at its sole cost and expense, shall repair or replace any improvements erected by Grantor on or within the Easement Property which are damaged or destroyed by Grantee during the course of Grantee's exercise of its rights hereunder. Grantee further agrees that the Grantor is only obligated to repair or replace any portion of Grantee's Easement Improvements damaged by their respective negligent use and occupancy of the Easement Property.

11. This Easement Agreement may be executed in counterparts, each of which, taken as a whole, shall constitute but a single instrument.

12. Nothing granted hereunder is intended to convey or imply the approval of any federal, state, or local regulatory or governmental agency, including Jefferson County, with respect to any actions which Grantee may desire to take under the terms of this Agreement or otherwise relating to the Easement Property.

13. The Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the County of Jefferson, State of Colorado.

14. This Easement shall run with the land and be binding upon and inure to the benefit of the parties, and their respective successors and assigns.

15. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable; this Agreement shall be

construed and enforces as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

16. This written Agreement constitutes the entire agreement of the parties. No provisions regarding the subject matter of this Agreement, other than those expressly set forth in this Agreement, will be of any force and effect. No modification, change or alteration of this Agreement will be of any force or effect, unless in writing and signed by the parties.

17. All notices, demands, requests, and other communication required or permitted under this Agreement will be in writing and will be deemed delivered when actually receive or, if by telecopy, on the next business day after receipt, or if earlier, and regardless of whether actually received or not, three days after deposit in the United States mails, first class, postage prepaid, registered or certified addressed as follows:

If to the Grantee: Public Works. Attn: Director
 1445 10th Street
 Golden, CO 80401

If to the Grantor: Property Management. Attn: Director
 700 Jefferson County Parkway, Suite 300
 Golden, CO 80419

with a copy to: Jefferson County Attorney's Office
 100 Jefferson County Parkway
 Golden, CO 80419-5500

Any party may change its address by giving to notice to the other party as provided above.

18. Each party expressly reserves the right to assert all defenses and liability limitations provided by law, including, without limitation, the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.* or any successor acts or provisions.

19. If Grantee shall abandon its rights herein granted and cease to use the same, all right, title and interest of Grantee hereunder shall ceases and terminate and the Grantor shall hold the Property, as the same may then be, free from Grantee's rights so abandoned and shall own all materials, structures, and facilities of the Grantee so abandoned.

20. Nothing contained in this Easement Agreement will be construed to entitle either party to bring any action against the other for any injury to or change in the Easement Property resulting from causes beyond a party's control, including, without limitation, use of the Easement Property by the general public, fire, flood, storm, and earth movement, or from any prudent action taken by either party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property, or injury of loss of life to any natural person, resulting from any such causes.

ARTICLE III: RELOCATION OF EASEMENT

21. Grantor may, at any time and in its sole discretion, relocated all or any portion of the Easement Property to other property owned by Grantor (the "Revised Easement Property"). In such instance, Grantor will send Grantee written notice of its intent to relocate the Easement Property and will include in such notice the legal description for the Revised Easement Property. Grantor will re-record this Easement Agreement to include the Revised Easement Property.

22. Within 180 calendar days of receipt of the notice from the Grantor, Grantee shall remove the Easement Improvements from the Easement Property and restore the Easement Property to its original condition to the satisfaction of Grantor. Grantee shall be entitled to construct and maintain the Easement Improvements on the Revised Easement Property in accordance with the terms and conditions of this Easement Agreement. Grantee shall be solely responsible for all costs and expenses associated with the relocation, restoration, and reconstruction of the Easement Property and Easement Improvements.

23. In the event that Grantee does not timely remove the Easement Improvements and/or restore the Easement Property as required above, Grantor may perform such removal and/or restoration and Grantee agrees to reimburse Grantor for all costs incurred upon receipt of an invoice from Grantor.

DATED this _____ day of _____, 2006

GRANTOR:

COUNTY OF JEFFERSON
STATE OF COLORADO

By: _____
J. Kevin McCasky, Chairmain
Board of County Commissioners

APPROVED AS TO FORM:

By: _____
Assistant County Attorney

STATE OF COLORADO)
) ss.



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Jefferson County, Colorado

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If to the Grantee: Public Works. Attn: Director
1445 10th Street
Golden, CO 80401

If to the Grantor: Property Management. Attn: Director
700 Jefferson County Parkway, Suite 300
Golden, CO 80419

with a copy to: Jefferson County Attorney's Office
100 Jefferson County Parkway
Golden, CO 80419-5500

Any party may change its address by giving to notice to the other party as provided above.

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20. Nothing contained in this Easement Agreement will be construed to entitle either party to bring any action against the other for any injury to or change in the Easement Property resulting from causes beyond a party's control, including, without limitation, use of the Easement Property by the general public, fire, flood, storm, and earth movement, or from any prudent action taken by either party under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property, or injury of loss of life to any natural person, resulting from any such causes.

ARTICLE III: RELOCATION OF EASEMENT

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