

RESOLUTION NO. 1607

A RESOLUTION OF THE GOLDEN CITY COUNCIL
ACCEPTING AN AGREEMENT CONVEYING A UTILITY
EASEMENT TO THE CITY OF GOLDEN FROM WILLIAM D.
HILLEN

1-6

31/00
CJ

WHEREAS, the City of Golden has constructed a sanitary sewer line across Tract A of Berthouds Addition to Golden; and

WHEREAS, William D. Hillen has provided an easement agreement conveying the City a utility easement necessary for 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:

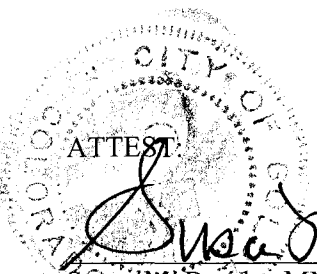
City Council accepts the easement agreement, substantially in the form attached hereto as Exhibit A. The Mayor is authorized to execute such agreement.

Adopted this 27th day of September, 2005.

Cy Baroch
Charles J. Baroch
Mayor

RESCANNED-DATE 12-6-05

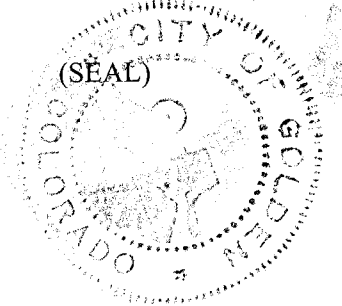
Correct Code on Label



ATTEST:
Susan M. Brooks
Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:
James A. Windholz
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 27th day of October, A.D., 2005.



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

EASEMENT 2

THIS EASEMENT, effective this 1st day of Nov 2005, by and between William D. Hillen, ("Owner"), and the CITY OF GOLDEN, 911 10th Street, Golden, Colorado 80401, a municipal corporation, ("City").

RECITALS

- A. Owner holds fee title to property located in the City of Golden, County of Jefferson, State of Colorado described as "Tract A of Berthouds Addition to Golden" with is hereinafter referred to as "Tract A".
- B. The City operates and maintains a system of sanitary sewer mains throughout the City of Golden
- C. The City has installed a sanitary sewer line that traverses a portion of Tract A.
- D. Owner anticipates the future development of Tract A in a manner that will require the relocation of the sanitary sewer line that currently traverses Tract A.
- E. The parties wish to agree with respect to their respective rights and obligations regarding the existing sanitary sewer line across Tract A and with respect to the subsequent relocation of that sanitary sewer line to accommodate redevelopment of Tract A.

AGREEMENT

1. Consideration. For and in consideration of a residential water tap and meter, and a residential sewer tap at a residence under construction at 2303 Fossil Trace Drive (Lot 3, Parfet Subdivision Filing No. 1) , the receipt of which is hereby acknowledged, Owner hereby sells, conveys and grants unto the City an exclusive and permanent easement and right-of-way over, upon, across, through, and under the property as shown and described in Exhibit A attached to and made part hereof ("Property"), for the uses and purposes and upon the terms hereinafter set forth.

2. Purpose. This easement and right-of-way is for the purpose of granting the City the right to construct, inspect, maintain, operate and use for the construction, maintenance, improvement and operation of a sanitary sewer outfall line and associated appurtenances ("Improvement(s)"), upon, across, over, under, through, and within the Property.

3. Relocation of Sanitary Sewer Line Upon Tract A. At such time as Owner is prepared to develop Tract, Owner may, upon written notice to the City, require the abandonment of the existing line across Tract A and, at the City's sole option, relocation of the Improvement(s), to a new location on Tract A in order to accommodate such development. Unless modified by further agreement of the parties, the relocated sanitary sewer line shall run from the point of terminus of the

3
existing line on Plateau Parkway, in an easterly direction for 110 feet, thence north to the northern boundary line of Tract A. A substituted easement, 10 feet on either side of the relocated sanitary sewer line, shall be conveyed by Owner to the City under the same terms and conditions as is described in this "Easement", the exact legal description being substituted for the Property as referenced herein. The parties shall execute a recordable document to reflect the exact new location of the Property.

The City shall bear the cost of installation and the construction of the relocated sanitary sewer line. Such construction will be completed within 120 days of Owner's notice of his intention to require relocation of the easement and line. The City shall abandon and remove the existing sewer line across Tract A. The Owner may cause the relocation of the line to coincide with the development and be reimbursed for the relocation by the City at a rate not to exceed 10% of the unit cost in place for city's annual sewer replacement program. The City shall re-vegetate any disturbed area to its original condition.

Owner conveys and grants to the City a temporary right to use so much of the land adjoining the relocated sanitary sewer line as shall be reasonably necessary to enable workers and equipment to properly and conveniently construct and install such public improvements upon, within, over, under through and across said easement. Such temporary easement shall terminate upon completion of the installation of the relocated sanitary sewer line.

In the event that the Owner does not notify the City of his intention to develop the Property within 21 years of the death of William D. Hillen, then the right of the Owner to require such relocation shall terminate.

4. Hazardous Substances. Owner represents to the City, that to owner's knowledge as of the date of the execution of this Easement, and with respect to the Property: (1) the Property has never been used as a landfill or waste dump; (2) that there has been no installation in or production, disposal, or storage on the Property of any hazardous substances, including, without limitation, asbestos, by Owner, owner's tenants, or any previous owner or previous tenants, or any other activity which could have toxic results; (3) there is no underground storage tank on the Property; and (4) there is no proceeding or inquiry by any governmental authority or agency with respect thereto. Owner shall indemnify, defend and hold the City harmless from and against any and all claims, demands, and liabilities, costs and expenses (including expert fees and attorney fees) arising or resulting from a breach of the covenants and warranties contained in this paragraph. For the purposes of this Easement, hazardous substances means all hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.) and in Section 25-5-502 of the Colorado Revised Statutes, and petroleum or petroleum products.

5. Representations and Warranties of Owner.

(A) The Owner, for itself, its successors, assigns and all parties with interest in the Property, does hereby covenant and agree not to construct improvements of any kind or nature whatsoever on, over, across or under the Property or to take or fail to take any action of any kind or nature whatsoever which would interfere with the City's use of the Property for the purposes herein

4

granted.

(B) Owner hereby warrants and represents to the City that Owner is seized with fee title to the underlying real property and there are no other parties with interest; that the rights conveyed herein are free and clear of liens and encumbrances; and that Owner has sole and exclusive authority to enter into this Easement.

6. Survival of Indemnifications and Representations. All representations, obligations, warranties, liabilities, covenants and agreements of Owner in this Easement shall survive the consummation of the transactions contemplated in this Easement; provided, however, nothing contained herein shall imply or import a covenant on the part of Owner for quiet enjoyment.

7. Release. Owner hereby releases the City from any and all claims that Owner has, or may have, against the City as a result of the location, construction and use, including prior use, of the Improvements that currently traverse Tract A.

8. Notices. Any notices given under the provisions of this Easement shall be valid if deposited with the United States Postal Service addressed to Owner or to the City at the addresses stated above.

9. Binding Effect. This grant of the Easement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto, their successors, assigns, and all parties in interest, provided nothing contained herein shall be construed to be an abandonment or dedication of such public way to any public entity.

10. Attorneys Fees and Costs. In the event of any litigation between the parties relating to this Easement, the prevailing party shall be entitled to costs and reasonable expert and attorney fees incurred in connection with such litigation.

11. Complete Agreement. This Easement consists of all the agreements, understandings, and promises between the parties with respect to the subject matter of this Easement, and there are no agreements, understandings or promises between the parties other than those set forth in this Easement.

12. Governing Law. This Easement and all of the terms and provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado, with venue in Jefferson County.

By: W.D. Hillen
William D. Hillen, Owner

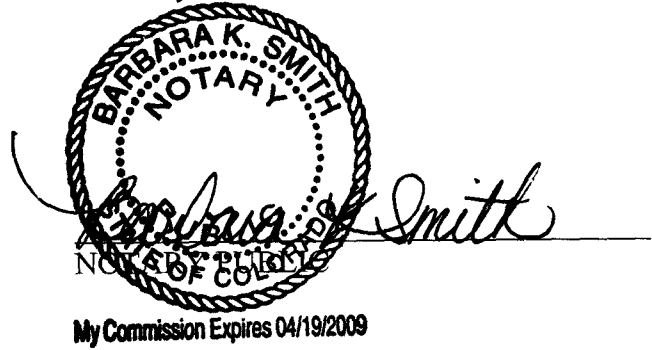
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STATE OF COLORADO)
) ss:
COUNTY OF)

The foregoing instrument was acknowledged before me this 1st day of November, 2005, by Barbara K Smith, as notary.

Witness my hand and official seal.

My commission expires:



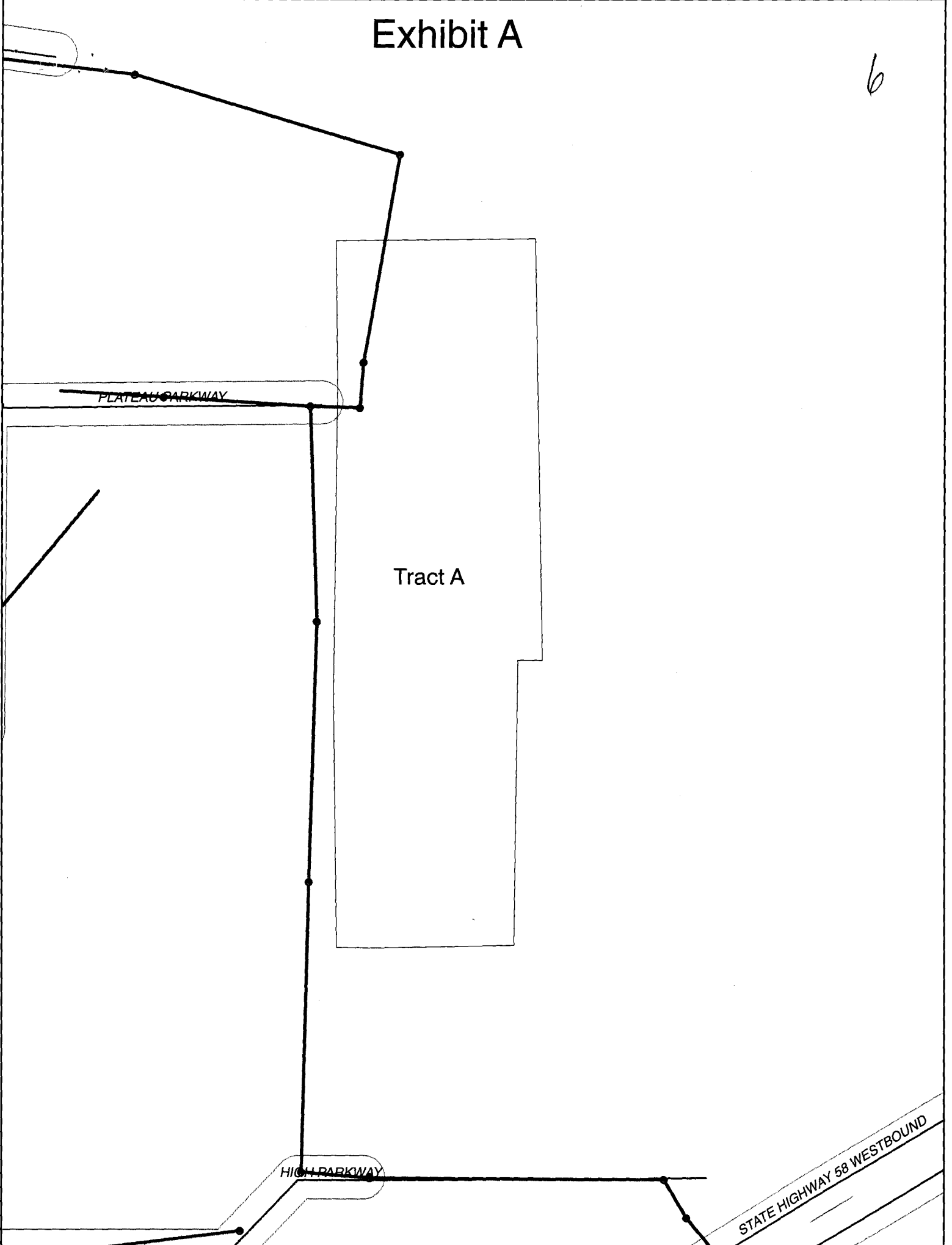
ACCEPTED BY THE CITY OF GOLDEN THIS ___ DAY OF ___, 200__.

C. J. Baroch
Charles J. Baroch
Mayor

ATTEST:
Susan M. Brooks
Susan M. Brooks, MMC
City Clerk

Exhibit A

6



Tract A

PLATEAU PARKWAY

HIGH PARKWAY

STATE HIGHWAY 58 WESTBOUND