

RESOLUTION NO. 2198

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING AN AGREEMENT BETWEEN THE CITY OF
GOLDEN AND JEFFERSON COUNTY TO SETTLE ALL
CLAIMS RESULTING FROM THE CITY OF GOLDEN OVER
BILLING OF JEFFERSON COUNTY FOR WATER AT THE
JEFFERSON COUNTY GOVERNMENT CENTER**

WHEREAS, the City of Golden and Jefferson County have discussed the problems with over billing of water to Jefferson County; and

WHEREAS, the City and Jefferson County have agreed to settle based on a four year refund period; and

WHEREAS, the City and Jefferson County believe that this is in the best interest of both parties; and

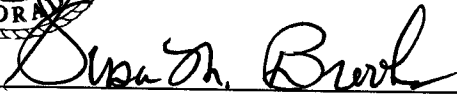
WHEREAS, the City and Jefferson County attorneys have reviewed and approved the settlement agreement.

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

1. The City of Golden enter into this Settlement Agreement with Jefferson County, in substantially the form attached hereto and made part of this resolution.
2. That this agreement settles all claims resulting from the City of Golden over billing of Jefferson County for Water at the Jefferson County Government Center.

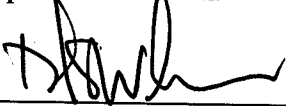
Adopted this 14th day of June, 2012.






Susan M. Brooks, MMC
City Clerk

Approved as to form:



David S. Williamson
City Attorney



Marjorie N. Sloan
Mayor

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 rescheduled regular business meeting thereof held on the 14th day of June, A.D. 2012.



ATTEST:

A handwritten signature in cursive script, reading "Susan M. Brooks", written over a horizontal line.

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

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement"), dated for reference purposes only this 2nd day of April, 2012, is made by and among the City of Golden, Colorado ("Golden"), a Colorado home-rule municipal corporation, and the County of Jefferson, State of Colorado, a body politic and corporate ("Jefferson County") (hereafter, "the Parties", collectively).

RECITALS

WHEREAS, Golden provides municipal water service to Jefferson County; and

WHEREAS, because of a water meter reading error in Golden's billing system, Jefferson County overpaid Golden for water service charges at the Human Services Building, 900 Jefferson County Parkway, Golden, CO 80401, Account # 55000010, for at least six years (the "Overpayment"); and

WHEREAS, Golden had previously credited Jefferson County \$14,347.42 on Account # 55000010 for overpayment paid in 2011; and

WHEREAS, Golden and Jefferson County have resolved the error with respect to the water service charges paid by Jefferson County in years prior to 2011; and

WHEREAS, the Parties wish to resolve all disputes and claims of either of the Parties relating to Jefferson County's Overpayment of water charges to Golden;

NOW, THEREFORE, in consideration of the above recitals, the covenants and agreements contained herein, and other good and valuable consideration set forth below, the Parties agree as follows:

AGREEMENT

1. Payments. Golden agrees to pay Jefferson County a total amount of Seventy-Seven Thousand, Six-Hundred and Sixty and 76/100 (\$77,660.76) ("Settlement Payment") as full and final settlement of any all claims Jefferson County may have for the Overpayment of water service charges for the Human Services Buildings, Account # 55000010, through the date of this Agreement. For purposes of clarity, the Settlement Payment is in addition to the \$14,347.42 previously credited to Account # 55000010 by Golden.

2. Release by Jefferson County. In exchange for receipt of the Settlement Payment from Golden, which Jefferson County hereby acknowledges, Jefferson County hereby releases, acquits, and forever discharges Golden from any and all claims, rights,

demands, obligations, actions or causes of action arising from or relating to the Overpayment of water service charges at the Human Services Buildings, Account # 55000010, up to and through the date of this Agreement, whether such claims, rights, demands, obligations, actions or causes of action are known or unknown, actual or potential, matured or unmatured.

3. Release by Golden. Golden hereby releases, acquits, and forever discharges Jefferson County from any and all claims, rights, demands, obligations, actions or causes of action arising from or relating to water service charges to Jefferson County up to and through the date of this Agreement, whether such claims, rights, demands, obligations, actions or causes of action are known or unknown, actual or potential, matured or unmatured.

4. No Admissions. Except as otherwise stated with specificity herein, the Parties' exchange of the consideration stated in this Agreement is in full satisfaction of all claims, statements, and positions made or taken by the Parties with respect to this dispute, and such exchange of consideration is not to be construed in any way as an admission or concession by either Party of the validity of any of the claims, statements, or positions made or taken by the other Party in this dispute.

5. Bear Own Costs. The Parties shall bear their own costs, expenses and attorney fees incurred in connection with this dispute, and the negotiation and drafting of this Agreement.

6. Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Parties and to bind the Parties to its terms. The person(s) executing this Agreement on behalf of each of the Parties warrants they have full authorization to execute this Agreement.

7. Agreement as Complete Integration/Amendments. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

8. Captions. The paragraph titles and captions used in this Agreement are inserted only as, and intended solely for, the convenience of reference, and shall in no

manner modify, expand, limit, constrain, or describe the scope or intent, or in any other way affect the terms or conditions, of this Agreement.

9. No Construction Against Drafting Party: The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement; and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

10. Governing Law. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties agree that the venue for any litigation arising out of this Agreement shall be in the District Court for Jefferson County, State of Colorado.

11. Notices. All notices, requests, demands, documents and other communications required or permitted to be given hereunder by the Parties shall be deemed to have been duly given if in writing and delivered via U.S. mail, postage prepaid, accompanied by transmission by facsimile, or by overnight mail, in care of:

Jefferson County: Director of Facilities and Construction Management
Jefferson County
700 Jefferson County Parkway, Suite 300
Golden, CO 80401

with copy to:

Jefferson County Attorney
100 Jefferson County Parkway, Suite 5500
Golden, CO 80419

City of Golden: Director of Public Works
City of Golden
911 10th Street
Golden, CO 80401
Fax: (303) 384-8001

with copy to:

Golden City Attorney
Williamson & Hayashi, LLC
911 10th Street
Golden, CO 80401

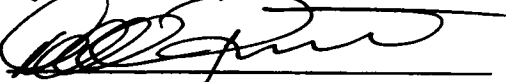
The Parties may change the address to which the communications are to be directed by giving written notice to the other in the manner provided in this paragraph 11.

12. **Execution Knowing and Voluntary.** Each of the Parties acknowledges and represents: (i) that it has fully and carefully read and considered this Agreement prior to its execution; (ii) that it has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter of this Agreement; (iii) that it has been afforded the opportunity to negotiate any and all terms hereof; and (iv) that it is executing this Agreement voluntarily, and free from any undue influence, coercion, duress or fraud of any kind.

13. **Counterparts and Signature Page.** This Agreement may be signed via facsimile and in counterparts, all of which shall have full force and effect. Following execution of the Agreement, each of the Parties shall deliver an original signature page to counsel for the other Party.

IN WITNESS WHEREOF, this Agreement is made and is effective as of the last date written below.

County of Jefferson, State of Colorado

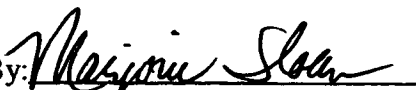
By: 
Donald Rosier, Chairman
Board of County Commissioners

Date: 07.31.12

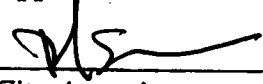
Approved as to Form:

By: 
Assistant County Attorney

City of Golden, Colorado

By: 
Marjorie Sloan, Mayor
Date: June 14, 2012

Approved as to Form:


City Attorney
Date: 6/14/12

Commissioner Odom moved that the following Resolution be adopted:

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF THE COUNTY OF JEFFERSON

STATE OF COLORADO

RESOLUTION NO. CC12-260

RE: Administrative Services - Facilities and Construction Management - Settlement Agreement - City of Golden Relating to Overpayment of Water and Sewer Charges Associated with 3500 Illinois Street, the Human Services Building

Resolved that the Board of County Commissioners hereby approves the Settlement Agreement with the City of Golden in substantially the form attached hereto.

Commissioner Griffin seconded the adoption of the foregoing Resolution. The roll having been called, the vote was as follows:


Commissioner John Odom	Aye
Commissioner Faye Griffin	Aye
Commissioner Donald Rosier, Chairman	Aye

The Resolution was adopted by unanimous vote of the Board of County Commissioners of the County of Jefferson, State of Colorado.

Dated: July 31, 2012

M E M O R A N D U M

TO: Honorable Chairman and Members of the Board of County Commissioners

FROM:  Ralph Schell, County Administrator

RE: City of Golden Settlement Agreement relating to overpayment of water and sewer charges associated with 3500 Illinois Street, the Human Services Building - Facilities

DATE: July 31, 2012

Staff Recommendation: Approve the Settlement Agreement with the City of Golden in substantially the form attached hereto.

Resolution No. **CC 12 - 260**

Background: In reviewing utility bills County staff identified potential errors in billings for water and sewer services by the City of Golden for property the County owns at 3500 Illinois Street. These potential errors were brought to the attention of the City of Golden, and they concluded that in fact errors had been being made for several years. The errors resulted from miscalculation of actual water usage because of a second water meter on the property monitoring water usage for irrigation only. The error in their billing procedure was corrected effective the billing cycle ending Nov, 30, 2011. Upon further review Facilities and Construction Management has determined that similar billing errors have been occurring for at least the last five years. In total, the errors resulted in overpayment of approximately \$113,000 during this time frame. Upon being notified of the errors and completing their investigation, the City of Golden credited the County \$14,347.42 for overpayment in 2011. In order to resolve disputes over additional water and sewer billings, the City of Golden has agreed to refund Jefferson County an additional \$77,660.76 for overpayments in 2008, 2009, and 2010, bringing the total settlement to \$92,008.18.

BCC Briefing presented on June 26, 2012.

Fiscal Impact: Upon the execution of the settlement agreement, the City of Golden will pay the County an additional \$77,660.76.

Originator: Kourtney Hartmann, Assistant County Attorney, x8964.

Contacts: Dan Brindle, Director of Facilities and Construction Management, x5008.

Distribution


Original returned to: Kourtney Hartmann, County Attorney's Office x8964

BCC HEARING ROUTING FORM (non-purchasing items)

Contacts: Originating Division and Contact: Dan Brindle Phone: X5008
 County Attorney Contact: Kourtney Hartmann Phone: X 8964

BCC Hearing July 17, 2012 – BCC Business Consent Agenda

Facilities and Construction Management – City of Golden Settlement Agreement relating to overpayment of water and sewer charges associated with 3500 Illinois Street, the Human Services Building

ROUTING					
O R D E R	Division	Authorized Signatures Name/Initials	Date Rec'd	Date Frw'd	Comments
()	Originator –				
()	Division Director – Todd Leopold		7/11/12	7/11/12	
()	Department Director – Dan Brindle	DB #	7/10/12	7/10/12	
()	County Attorney- Kourtney Hartmann	KKH	7/10/12	7/10/12	
()	Elected Official				
()	BCC Agenda Coordinator				

