

RESOLUTION NO. 2079

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE EXECUTION OF A PRE-ANNEXATION
AGREEMENT WITH THE VIRGINIA HAYDEN COLE
REVOCABLE TRUST**

WHEREAS, Virginia H. Cole, Trustee of the Virginia Hayden Cole Revocable Trust (Annexor) has initiated discussions regarding a potential future submission of a petition to annex certain property to the City of Golden, Colorado; and

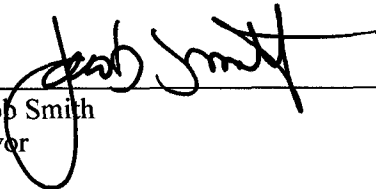
WHEREAS, the City and the potential Annexor wish to separately agree as to certain conditions and provisions under which the property may be annexed in the event that the Annexor submits a petition and the City, in its sole discretion, determines annexation is appropriate; and

WHEREAS, nothing in the potential agreement shall be interpreted to require the Annexor to submit a petition for annexation, or for the City to enact an ordinance annexing the Property if a petition is submitted.

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

The Mayor is authorized to execute on behalf of the City of Golden, a Pre-Annexation Agreement with the Virginia Hayden Cole Revocable Trust, the substance of said agreement substantially complying with the agreement attached hereto as Exhibit 1.

Adopted the 9th day of September, 2010.



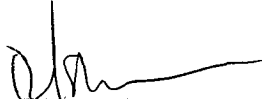
Jacob Smith
Mayor





Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:



David S. Williamson
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 business meeting thereof held on the 9th day of September, A.D., 2010.



ATTEST:

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

GOLDEN
PRE-ANNEXATION AGREEMENT
August 10, 2010-draft

This Agreement is effective the ____ day of _____, 2010 , by and between Virginia H. Cole, Trustee of the Virginia Hayden Cole Revocable Trust dated April 10, 1992, and Diana Hayden Ogden, (Annexor) and the **City of Golden**, a Colorado home rule municipal corporation (City).

WHEREAS, the Annexor holds fee title to one hundred percent of the property described in Exhibit A, known as 670 South Rooney Road, except for the Colorado Department of Transportation right of way, attached hereto, (hereinafter the "Property"); and

WHEREAS, the Annexor desires that the Property described be annexed to and be subject to the jurisdiction of the City at a future date, upon and subject to the terms and conditions set forth herein, all of which conditions are agreeable to the Annexor; and

WHEREAS, Annexor is considering filing a Petition to annex the Property to the City; and

WHEREAS, the parties desire to include in this Agreement certain provisions, understandings and agreements regarding the Property and its potential annexation.

THEREFORE, in consideration of the recitals, premises, mutual covenants and agreements herein contained, the parties agree as follows:

1. Annexation. If a petition for annexation is submitted by the Annexor, the annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act of 1965, as amended, the Golden Municipal Code and all applicable laws. Nothing herein shall be interpreted to require the Annexor to submit a petition for annexation, or for the City to enact an ordinance annexing the Property if a petition is submitted.

2. Initial and Future Zoning. The Annexor intends to request that the Property be zoned Planned Unit Development (PUD) as described in the Golden Municipal Code. Zoning of the Property shall be considered by the City simultaneously with any submitted Petition for Annexation, as allowed by the Colorado Municipal Annexation Act of 1965. Annexor intends this PUD Zoning and accompanying Official Development Plan to allow development of the property in a manner consistent with this agreement and the Golden Comprehensive Plan. City agrees to process such rezoning and any associated future requests for land use approvals according to the provisions of the Golden Municipal Code and the then current Golden Comprehensive Plan. Nothing contained in this Agreement shall be construed as a commitment

on the part of the Annexor to propose any specific land use or PUD restrictions, nor shall this Agreement be construed in any way as a commitment on the part of the City of Golden to approve any specific PUD zoning or Official Development Plan. Annexor agrees that there will be no residential dwellings as a primary use in the zoning proposal.

3. Application of City Laws - City Services. Except as expressly provided herein, if annexed, all city ordinances, regulations, codes, policies and procedures in existence and as the same may change from time to time, shall be applicable to the use and development of the Property. Except as provided herein, if annexed, the City shall provide all customary municipal services to the Property, to the same extent and upon the same terms and conditions as such services are provided to other properties throughout the City.

4. Fees and Costs. The Annexor shall pay the application fees for annexation and zoning of the Property and prepare and pay the costs of the annexation survey zoning document for the Property.

5. City Utilities. It is anticipated that water and wastewater services for the Property will be provided by Consolidated Mutual Water Company and others. Alternately, if annexed and it is deemed by the parties to be feasible, the City may agree to provide water and wastewater service to the Property. In such case, said water and wastewater services shall be in accordance with this paragraph and the requirements of Title 13 of the Municipal Code. Such water and wastewater services will be provided for properties annexed to the City, upon satisfaction of all of the requirements of Chapter 13.04 and 13.08 of the Municipal Code including the requirement that the property owner construct all necessary improvements which shall comply with the Golden Water and Wastewater Specifications, pay all applicable fees, and provide water rights as necessary to serve the property, or a cash fee in lieu of water rights, to the City. Said cash fee in lieu of water rights may be phased and will be submitted according to a phasing plan approved by the City with the final subdivision plat(s) or final site development plan for the affected property. The calculation of necessary water rights shall be based upon an independent determination by the City's water engineer of the water requirements of the proposed development phase. The value of any cash fee in lieu of water rights shall be based upon the then current value of water, as determined by the City's water attorney.

6. Parkland Dedication. City and Annexor agree that the parkland dedications for the Property shall consist of the dedication of land in conformance with the requirements of Sections 17.60.040 and 050 of the Golden Municipal Code. The actual dedications will be determined and made at the time of final subdivision plat or final site development plan, and shall be in addition to any other dedications required by this agreement or the Golden Municipal Code.

7. Public Improvements. The construction of public improvements necessitated by

development of the Property will be determined at the time of final subdivision plat or final site development plan if a final subdivision plat is not required or submitted, based upon the requirements and standards in place at that time. Annexor shall negotiate with CDOT to maintain or relocate the existing 10-foot-wide concrete trail that traverses the Annexation Property from the underpass under C-470.

8. Special Districts. The Annexor shall upon annexation initiate and be responsible for the legal proceedings and bear the related costs and legal fees for the exclusion of the Property from any and all special districts which provide municipal services to the Property of a type that the City provides to its citizens, provided that if the City does not provide water and wastewater services to the property, this section will not apply to any special district associated with such water or wastewater service.

9. Assignment. The rights, duties and obligations of the Annexor hereunder may be assigned to another person or entity only with the consent of the City. In such event, the assignee shall assume all of the rights, duties and obligations of the Annexor hereunder and the Annexor shall be correspondingly relieved from all such liabilities, duties and obligations.

10. Notices. All notices, demands or other documents required or desired to be given to either party under this Agreement shall be made in writing and shall be deemed effective upon receipt and shall be personally delivered or mailed by certified mail as follows:

City: City Manager
City of Golden
911 - 10th Street
Golden, CO 80401

Annexor: Virginia H. Cole
1421 Lake Street
San Francisco, CA 94118

11. Severability. If any covenant, stipulation or obligation of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the Agreement. The parties hereby declare that they would have entered into this Agreement and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

12. Binding Effect of Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and the assigns of the respective parties and, unless otherwise provided herein, shall run with the land from the time that Annexor acquires fee title to the

Property. This Agreement shall be recorded in the records of the Clerk and Recorder of Jefferson County, State of Colorado, at the City's expense. The parties covenant and agree that they will cooperate with each other in accomplishing the terms, conditions and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same. In the event the Annexor elects at any time hereafter not to submit a petition for annexation, as allowed by Paragraph 1 above, or if a petition for annexation has not been submitted by December 31, 2012, as provided by Paragraph 23 below, or by any later deadline established by amendment to this Agreement, then upon request in writing from the Annexor, the City shall promptly record, at the City's expense, a proper notice of termination of this Agreement.

13. Third Parties. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended nor shall be construed to confer upon or give any other person any rights, remedy or claim under or by reason of the Agreement.

14. Police Power. Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or release of the City's legislative, governmental or police powers to promote and protect the health, safety, morals or general welfare of the municipality or its inhabitants. This Agreement shall not prohibit the enactment by the City of any fee, ordinance, resolution, rule or regulation which is of uniform and general application.

15. Remedies. It is understood and agreed by the parties that they shall have all available remedies for breach of this Agreement in law or in equity, including but not limited to specific performance and damages. In the event of litigation related to this Agreement, the prevailing party shall be awarded its costs, expert fees and legal fees.

16. No Vested Property Rights. It is understood and agreed by the parties that no vested Property rights are granted by this Agreement. The Annexor represents to the City that there are no vested rights to the Property from the County of Jefferson or any other governmental entity and the Annexor hereby waives and releases any rights which may have been so granted.

17. Disconnection. No right or remedy of disconnection of the described Property from the City shall accrue from this Agreement, other than that provided by Section 31-12-119, C.R.S. In the event the Property or any portion thereof is disconnected from the City at the Annexor's request, the City shall have no obligation to serve the disconnected Property except for the continuation of existing extra-territorial water and wastewater service as described in paragraph 5, and this Agreement shall be null and void and of no further force and effect as to such Property.

18. Initiative. If the annexation of the Property or any portion thereof is voided by

initiative, the City agrees to continue providing water and sewer service to the Property so disconnected, for existing water and wastewater taps as described in paragraph 5.

19. Referendum. If the annexation of the Property or any portion thereof is challenged by a referendum, all provisions of the Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Property from the City, then this Annexation Agreement shall be null and void and of no further effect. If the referendum challenge fails, then the Annexor and the City shall continue to be bound by the annexation of the Property.

20. Court Order. In the event that the annexation of the Property or any portion thereof is voided by Final Action ("Final Action" means that no appeal can be made or the time to appeal has expired) of a court of proper jurisdiction (such Final Action not being associated with referendum or initiative matters), the City and the Annexor shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure the Annexation Agreement shall be deemed to be an agreement to annex the Property to the City pursuant to the Colorado Municipal Annexation Act of 1965. The Annexor shall reapply for annexation when the Initial Annexation Property becomes eligible for annexation as determined by the City.

21. Entire Agreement. This Agreement contains the entire agreement between the parties and shall not be amended except by written agreement executed with the same formality of this Agreement.

22. Venue. This Agreement shall be governed by the laws of the State of Colorado with venue in the County of Jefferson.

23. Conditions. This Agreement is specifically subject to the submission by the Annexor of an Annexation Petition for the property, and enactment of an annexation ordinance by City Council, both of which to occur prior to December 31, 2012. If this condition is not realized to the reasonable satisfaction of the City or Annexor, then this Agreement shall be null and void.

ANNEXOR:

By: _____

STATE OF)
)ss.
COUNTY OF JEFFERSON)

The foregoing Annexation Agreement was signed and sworn to before me by this ____ day of _____.

Witness my hand and official seal.

Notary Public: _____

My Commission Expires: _____

STATE OF)
)ss.
COUNTY OF JEFFERSON)

The foregoing Annexation Agreement was signed and sworn to before me by this ____ day of _____.

Witness my hand and official seal.

Notary Public:

My Commission Expires: _____

CITY OF GOLDEN:

By: _____
Jacob Smith
Mayor

ATTEST:

City Clerk

PARCEL A:

A part of the NW 1/4 of Section 14, Township 4 South, Range 70 West of the 6th P.M., County of Jefferson, State of Colorado, more particularly described as follows:

Beginning at the SE corner of the E 1/2 of the W 1/2 of the NW 1/4 of said Section 14 from which the W 1/4 corner of said Section 14 bears S 89 degrees 05'59" W, a distance of 1328.23 feet; thence N 00 degrees 14'22" E along the west line of the E 1/2 of the W 1/2 of said NW 1/4 a distance of 599.13 feet to an intersection with the right of way line of a parcel conveyed to the Department of Highways, State of Colorado, and recorded in Book 1810 at Page 265 in the records of Jefferson County; thence N 30 degrees 48'00" E along said right of way line a distance of 350.58 feet to a point on the westerly right of way line of Rooney Road (March 1968); thence S 22 degrees 12'42" E along said right of way line a distance of 963.15 feet to an intersection with the south line of the NW 1/4 of said Section 14; thence S 89 degrees 05'59" W along said south line a distance of 546.19 feet to the point of beginning.

PARCEL B: (known also as survey Parcels B, B-1 and C)

A part of the NW 1/4 of Section 14, Township 4 South, Range 70 West of the 6th P.M., County of Jefferson, State of Colorado, more particularly described as follows:

Beginning at a point on the South line of the NW 1/4 of said Section 14, from which the SE corner of said NW 1/4 bears N 89 degrees 05'59" East a distance of 388.50 feet, said point also being on the Westerly right of way of Parcel No. 266-D-REV. as described at Reception No. 86045631 in the records of Jefferson County; thence South 89 degrees 05'59" W along the South line of said NW 1/4 a distance of 326.08 feet to a point, said point being the intersection of the Easterly line of Rooney Road (March 1968) with the South line of said NW 1/4, from which point the West 1/4 corner of said Section 14, bears S 89 degrees 05'59" W a distance of 1942.14 feet; thence N 22 degrees 12'42" W along said Easterly line of Rooney Road a distance of 254.90 feet to a point on the Easterly line of Parcel 6 as described at Reception No. 79033257 in the records of Jefferson County, thence N 01 degrees 53'15" W along said Easterly line a distance of 157.42 feet to a point on a non-tangent curve, the radius point of which bears N 68 degrees 18'02" E; thence along said Easterly line and along the arc of said curve to the right having a radius of 1,332.50 feet and a central angle of 29 degrees 35'09" a distance of 688.06 feet to an intersection with a non-tangent curve, the radius point of which bears S 13 degrees 31'00" W, being the Southwesterly line of Parcel No. 266D2 as described at Reception No. 86045631 in the records of Jefferson County; thence along said Southwesterly line and along the arc of said curve to the right, having a radius of 600.00 feet and a central angle of 11

degrees 08'31", a distance of 116.68 feet to a point.

Thence along a curve to the right, having a radius of 600.00 feet and a central angle of 15 degrees 30'16" a distance of 162.36 feet to a point; thence along a curve to the right, having a radius of 600.00 feet and a central angle of 00 degrees 11'38", a distance of 2.03 feet to a point of tangent, said point being on the Westerly line of Parcel 266D-REV as described at Reception No. 86045631 in the records of Jefferson County; thence S 49 degrees 38'35" E along said tangent a distance of 293.69 feet to a point of curve; thence continuing along the westerly line of said parcel 266D-REV along the arc of said curve to the right having a radius of 355.00 feet and a central angle of 60 degrees 53'07" a distance of 377.24 feet to a point of tangent; thence continuing along said Westerly boundary, S 11 degrees 14'32" W along said tangent, a distance of 415.74 feet to the point of beginning.

PARCEL C: (known also as survey Parcel D)

A part of the N 1/2 of Section 14, Township 4 South, Range 70 West of the 6th P.M., County of Jefferson, State of Colorado, more particularly described as follows:

Commencing at the center of said Section 14; thence S 89 degrees 05'59" W along the south line of the NW 1/4 of said Section 14 a distance of 121.67 feet to the SE corner of Parcel 266D-REV recorded at Reception No. 86045631 in the records of Jefferson County; thence N 06 degrees 12'30" E along the easterly line of said Parcel a distance of 209.39 feet; thence continuing along said easterly line, N 07 degrees 34'49" E a distance of 350.76 feet to the true point of beginning; thence N 48 degrees 51'39" W along the northeasterly line of said Parcel a distance of 697.31 feet; thence N 52 degrees 18'17" W along said northeasterly line a distance of 111.95 feet to the right of way line of the Department of Highways, State of Colorado, recorded in Book 1810 at Page 265 of the records of said Jefferson County; thence N 01 degree 03'19" W along said right of way line a distance of 211.22 feet; thence N 19 degrees 19'05" W along said right of way line a distance of 234.87 feet to a point on the right of way line of the present Rooney Road, as recorded at Reception No. 79033257 in the records of said Jefferson County said point lying on a non-tangent curve, the radius point of which bears S 61 degrees 19'09" E; thence along said right of way line of Rooney Road the following 5 courses:

- 1) Northeasterly along the arc of said curve to the right having a radius of 1332.50 feet and a central angle of 02 degrees 16'50", a distance of 53.04 feet to a point of tangent;
- 2) N 30 degrees 57'41" E along said tangent a distance of 204.00 feet to a point on a non tangent curve, the radius point of which bears S 59 degrees 02'08" E;
- 3) along the arc of said curve to the right, having a radius of

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616.30 feet and a central angle of 25 degrees 59'37" a distance of 279.60 feet to a point of tangent;

4) N 56 degrees 57'41" E along said tangent a distance of 320.10 feet to a point of curve;

5) along the arc of said curve to the left having a radius of 816.30 feet and a central angle of 04 degrees 14'53" a distance of 60.52 feet to a point on the westerly line of Parcel 266C-REV as recorded at Reception No. 8604531;

Thence departing said right of way line, along the westerly line of said Parcel 266C the following 3 courses:

1) S 24 degrees 04'09" E a distance of 377.43 feet;

2) S 01 degree 59'46" W a distance of 600.38 feet;

3) S 07 degrees 00'09" W a distance of 650.11 feet to the true point of beginning.

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John