

AGREEMENT

THIS AGREEMENT is made and entered into this 15th day of October, 1990, by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, hereinafter referred to as "Applicant," and THE ARTHUR IRRIGATION COMPANY, a Colorado mutual irrigation company, hereinafter referred to as "Ditch Company."

PROJECT

The City Stormwater Utility plans to install 200+ L.F. of 12 inch reinforced concrete pipe from the alley intersection north to the Arthur Ditch concrete box culvert as shown on the Sherwood Greens Condominiums plan attached hereto as Attachment "A." An area inlet constructed at the alley intersection will introduce stormwater into the pipe and the pipeline will convey the water to the Arthur Ditch. The pipe tie in at the Arthur box culvert will be constructed flush with the culvert's inside wall and a water tight connection will be provided. This work will begin as soon as an agreement is executed.

Further, the Applicant will construct a sluice gate and safety rail at Hillpond on Spring Creek at the headgate of the Sherwood Lateral as shown on the Arthur Ditch structure at Hill Pond plan attached hereto as Attachment "B." This construction will allow the Sherwood Lateral to convey only the desired irrigation water flows and all additional stormwater flows will pass into Spring Creek after the sluice gate is installed.

WITNESSETH:

WHEREAS, the Ditch Company is the owner of an irrigation ditch and the right-of-way therefor through land located as shown on Attachment "A."

WHEREAS, Applicant desires to construct and install a storm drain crossing which will intersect the Ditch Company's right-of-way, with all construction items as detailed in the Attachments attached hereto and made a part hereof by reference.

WHEREAS, Attachments "A" and "B" set forth all the plans and specifications and terms of this grant, and shall be in no way modified or changed by any subsequent or related plans or materials not included therein; and

WHEREAS, the Ditch Company is willing to grant to Applicant this right upon the terms and conditions hereinafter expressed;

NOW, THEREFORE, in consideration of the premises and the terms of the within Agreement, it is agreed as follows:

1. The Ditch Company grants unto Applicant the right to construct, install and maintain the above described items across the existing ditch of Ditch Company, and further grants unto the Applicant the right of ingress and egress to a part of its ditch as shall be reasonable and necessary for the exercise of the rights granted herein.

2. Applicant has previously paid to Ditch Company an application fee in the amount of Four Hundred Fifty Dollars (\$450.00). This is determined to be a minimum initial payment to cover preliminary expenses, such as legal work, time and motor vehicles for use by superintendent and/or directors; review of the application; and other preliminary matters. In addition thereto, Applicant agrees to pay for such additional, reasonable and necessary expenses of the Ditch Company for legal services and inspection of the works by the Ditch Company's President, engineers and superintendent.

3. The construction herein contemplated shall be in strict accordance with the final set of plans with modifications set forth in Attachments "A" and "B." However, the safety rail is not described in said plans, but must nonetheless be built to the Ditch Company's satisfaction. Any excavations or changes in the present ditch shall be backfilled, with non-shrink backfill, compacted and stabilized to the entire satisfaction of the Ditch Company. All compaction for dikes shall be done to ninety-five percent (95%) standard Proctor density. The dikes shall be in conformance with the plans for construction as furnished. Said work shall further be done under the supervision of the superintendent or other designated agents of the Ditch Company.

4. All construction shall be commenced immediately and completed before April 15, 1991. These periods are mandatory, except as may be extended by the President of Ditch Company or other duly authorized representative of the Ditch Company, and said construction shall in no way interrupt, impede or interfere with the flow of irrigation water, nor shall such construction adversely affect the quality of the water. All construction shall proceed with due care to make certain that no contamination of the irrigation water occurs.

5. Upon the completion of the project, the Applicant shall promptly notify the Ditch Company, and the parties shall jointly inspect the ditch at the place of construction. If there are any deficiencies in the work of the Applicant or any variations from the plans set forth in Attachments "A" and "B," the Applicant shall forthwith remedy the same, in so doing, the Applicant shall meet all reasonable requirements of the Ditch Company for the protection of the ditch and surrounding property.

6. It is the intent of this Agreement that Applicant shall exercise due care in the construction of said crossing. Accordingly, it is hereby recognized by and between the parties hereto that the Ditch Company is in no way responsible for any damages caused by such construction or structure.

7. The projects shall be without cost to the Ditch Company, and the Applicant shall hereby indemnify and forever hold the Ditch Company harmless for liability for damages caused by the project.

8. The Ditch Company shall have full power to operate, maintain, alter, enlarge or relocate its ditch as if this Agreement had not been made, and any expenses caused thereby to the Applicant shall not be chargeable to the Ditch Company.

9. The Applicant agrees that, because of increased maintenance expenses and difficulties occasioned by the location of the storm drain within the ditch right-of-way, it shall conduct such maintenance activities to the storm drain as are necessary to facilitate the customary carriage of irrigation water in said section of the ditch.

10. In the event either the Applicant or the Ditch Company shall be in default in any of their covenants herein, so as to require the party not in default to retain counsel to attempt to enforce the covenants by negotiations or otherwise, or to commence legal or equitable action against the defaulting party, the defaulting party agrees to pay all reasonable expenses of said litigation incurred by the enforcing party, including but not limited to docket fees, depositions and reasonable attorneys' fees.

11. Prior to the commencement of construction, Applicant agrees to record, at its expense, a fully executed copy of this Agreement with the Clerk and Recorder of Larimer County, Colorado and furnish such recorded Agreement to the Ditch Company.

THIS AGREEMENT shall extend to and be binding upon the heirs, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

THE CITY OF FORT COLLINS, COLORADO,
a municipal corporation

ATTEST:

Janet M. Kravick
Title

By: Steve Boud
Title

Approved As To Form
Andrew Edler
Deputy City Attorney

