

AGREEMENT

THIS AGREEMENT is made and entered into this 26th day of April, 1989, by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, hereinafter referred to as "Applicant," and THE ARTHUR DITCH COMPANY, a Colorado mutual irrigation company, hereinafter referred to as "Ditch Company."

PROJECT

The installation of a twelve inch water main enclosed within a twenty inch casing pipe under Arthur Ditch located at Vine Drive between Wood Street and Shields Street, all in the City of Fort Collins, Colorado. The location of the installation is as shown on Exhibit "A" attached hereto.

WITNESSETH:

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

WHEREAS, Applicant desires to install a twelve inch water main enclosed within a twenty inch casing which will cross under the Ditch Company's right-of-way, with all construction items as detailed in the Exhibit "B" attached hereto and made a part hereof by reference.

WHEREAS, Exhibit "B" sets 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 install and maintain the above described water main under 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.

CITY OF FORT COLLINS

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2. Applicant has concurrently herewith 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 the 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 any modifications set forth in Exhibit "B" to be attached and initialled by the parties hereto. No changes of any kind shall be made in ditch and the banks and bottom shall be undisturbed. 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 before May 5, 1989, and completed before May 15, 1989. 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 the Exhibits, 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 said installation. 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 installation.

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7. The project 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. 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 attorney's fees.

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.

Approved As To Form

William E. Dun
Deputy City Attorney

THE CITY OF FORT COLLINS, COLORADO,
a Municipal Corporation

ATTEST:

[Signature]
Title [unclear]

By: [Signature]
Title City Manager

THE ARTHUR IRRIGATION COMPANY
a Colorado Mutual Irrigation
Company

ATTEST:

[Signature]
Secretary

By: [Signature]
President

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The above and foregoing Agreement was acknowledged before me this 26th day of April, 1989, by Stacy C. Bennett as City Manager, and attested to by Debra J. Davis as Secretary, of The City of Fort Collins, Colorado, a Municipal Corporation.

My commission expires: 10/27/89

WITNESS my hand and official seal.

(S E A L)

Debra J. Davis
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The above and foregoing Agreement was acknowledged before me this 7 day of April, 1989, by Calvin C. Johnson as President and attested to by Gene E. Fischer as Secretary of Arthur Irrigating Company, a Colorado Mutual Irrigation Company.

My commission expires: December 30, 1991.

WITNESS my hand and official seal.

(S E A L)

Gene E. Fischer
Notary Public

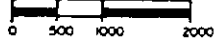
EXHIBIT "A"

FORT COLLINS COLORADO

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JANUARY 1, 1988

