

SPONSORED BY: COUNCIL MEMBER MARTIN

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-118  
Series of 2006

\_\_\_\_\_  
Series of 2006

A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT BY AND AMONG THE CITY OF ARVADA, AND THE CITIES OF NORTHGLENN, THORNTON AND WESTMINSTER (THE "STANDLEY LAKE CITIES") AND THE CHURCH DITCH WATER AUTHORITY CONCERNING THE CHURCH DITCH WATER QUALITY PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement by and among the City of Arvada, and the Cities of Northglenn, Thornton and Westminster (the "Standley Lake Cities") and the Church Ditch Water Authority concerning the Church Ditch Water Quality Project, attached hereto as **Exhibit 1**, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

\_\_\_\_\_  
DIANA L. LENTZ, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

AN INTERGOVERNMENTAL AGREEMENT BY AND AMONG THE CITY OF ARVADA,  
AND THE CITIES OF NORTHGLENN, THORNTON AND WESTMINSTER (THE  
“STANDLEY LAKE CITIES”) AND THE CHURCH DITCH WATER AUTHORITY  
CONCERNING THE CHURCH DITCH WATER QUALITY PROJECT

This Church Ditch Water Quality Project Intergovernmental Agreement (Agreement) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2006 among the City of Arvada (Arvada), a municipal corporation, and the Cities of Northglenn (Northglenn), a municipal corporation, Thornton, a municipal corporation, and Westminster, a municipal corporation (the “Standley Lake Cities”), and the Church Ditch Water Authority (the “Authority”) a water authority and public corporation, (collectively, the Parties).

WITNESSETH

**Whereas**, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Sections 29-1-201, et seq., and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

**Whereas** the development of residential and commercial properties, together with related infrastructure constructed within the boundaries of Arvada will result in storm water flows originating from developed property in the Standley lake drainage basin; and

**Whereas** said future storm waters will flow into Standley Lake, (the Lake) which Lake serves as a reservoir and potable water source for the Cities of Westminster, Thornton and Northglenn (the Standley Lake Cities); and

**Whereas** the Standley Lake Cities have proposed using the Church Ditch as an interceptor canal for the purpose of diverting all or portions of the storm water flows around the Lake, which diversion assists with preserving the water quality in the Lake; and

**Whereas** the cost of constructing the necessary improvements to convert the Church Ditch into a storm water interceptor are estimated to be approximately \$2 million, and discussions between the City of Arvada (Arvada) and the Standley Lake Cities have determined a reasonable apportionment of costs to be allocated between the Standley Lake Cities and Arvada; and

**Whereas**, there will be both one-time start up and ongoing costs and liabilities associated with the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Project Definition. Muller Engineering submitted a Draft Memorandum dated June 27, 2004 (the Muller Report) that provided a project description, general structure location, preliminary design specifications for each project component, and estimated construction cost. The project will consist of construction of the following structures (see attached map):
  - A. Church Ditch Diversion into Standley Lake located on the south side of Standley Lake.
  - B. Last Chance/Twin Lakes Basin Overflow Structure.
  - C. Big Dry Creek Basin Overflow Structure.
  - D. Smart Drainage/Church Pond Overflow Structure.
  - E. Ditch Improvements to achieve 125 cubic feet per second capacity.
  - F. Church Ditch Diversion to Standley Lake Spillway Channel.

The structure location and functionality as described in the Muller Report shall be followed as closely as practicable. The project will include other commitments from the Parties, which are described below.

2. Design and Construction Cost Sharing.

- 2.1. Arvada will be responsible for design and construction costs for the structures listed under paragraphs 1.B., 1.C., and 1.D (the "Arvada Structures"). Arvada will also pay to the Church Ditch Authority \$45,000 for Arvada's share of the design and construction costs for structures listed under paragraph 1.E. Said payment shall occur within 30 days of the execution of this agreement by all parties.

- 2.2. The Standley Lake Cities will be responsible for the design and construction costs for the structures listed under paragraph 1.A, and 1.F. above (the "SLC Structures"). The funding source for the Standley Lake Cities will be a portion of the payment to Farmers Reservoir and Irrigation Company from Jefferson County per the terms of the May 27, 1998 Standley Lake land sale agreement.

The Standley Lake Cities shall solicit construction bids for the SLC Structures. In the event the construction bids received for the SLC Structures contain irregularities or materially exceed the funding amount available, the Standley Lake Cities shall meet to determine the appropriate course of action to take. The Standley Lake Cities shall act on the following courses of action within no more than 30 days after the opening of the bid:

- (1). Reduce the scope of the SLC Structures
- (2). Revise and re-bid the SLC Structures
- (3). Develop a workable phasing plan for the SLC Structures to meet budgetary constraints

Upon acceptance or modification of the bid on the basis of any of the above courses of action the Standley Lake Cities shall develop a Construction Contract and shall promptly submit such Construction Contract, including any subsequent reduction or revision to the Project scope, and any other agreements contemplated by this Agreement for approval as required by each Standley Lake City's policies.

In no event will a notice to proceed with the construction of the SLC Structures commence until all Standley Lake Cities have approved the Construction Contract and have adequate funds appropriated under their City policies to cover the costs associated with the SLC Structures.

2.3. If, for the purpose of funding capital improvements for the Church Ditch, the Authority seeks a general assessment applicable to all shareholders, then Arvada agrees not to oppose the process by which the Authority presents such proposed increase to any governing body that has, or that may have, authority to deny, amend, or modify such general assessment.

3. Project Management. The Standley Lake Cities will contract and manage construction of the SLC Structures, and Arvada will contract and manage construction of the Arvada Structures. The Church Ditch Authority will contract and manage construction of the ditch improvements. Management of the Standley Lake Cities' Project construction may be by committee, by an Owners Representative or by the Church Ditch Water Authority. Construction of the Arvada Structures will require approvals and license agreements from the Church Ditch Water Authority. The Authority will use best efforts to streamline the approval process and provide timely comments on design submittals.
4. Project Schedule. The Parties agree and acknowledge that time is of the essence and it is essential to each Party that all critical components of the Project be completed in a diligent and timely manner. The Standley Lake Cities will use best efforts to contract for final design and construction of the SLC Structures in 2006. The Standley Lake Cities shall have supplemental IGA's needed for design and construction contract approval in place allowing sufficient time to meet the deadlines listed above. Arvada will construct the Project structure described in Paragraph 1.B. prior to issuance of any Certificate of Occupancy for any structure within the Last Chance or Twin Lakes drainage basins upstream of that Project structure; the Project structure described in paragraph 1.C. prior to issuance of any Certificate of Occupancy for any structure in the Big Dry Creek Basin upstream of that Project structure; and the Project structure described in Paragraph 1.D. prior to issuance of any Certificate of Occupancy in the Smart Ditch/Church Pond drainage basin upstream of that Project structure.
5. Long Term Operation and Maintenance. The structures listed under paragraph 1.B., 1.C., and 1.D. shall become the property of the Church Ditch Authority when completed. Operation, maintenance and capital improvement of the Church Ditch shall be solely the responsibility and in the control of the Church Ditch

Authority. The cost of operation, maintenance and capital improvement shall be borne proportionally by the Church Ditch Authority and Arvada, with Arvada to pay 7% of such costs in the manner provided herein.

5.1. For purposes of this Agreement, starting in fiscal year 2007 not later than thirty days after the end of the fiscal year of the Authority, the Authority shall calculate all costs described in this paragraph that Arvada must pay. Simultaneously therewith, the Authority shall provide Arvada with a detailed, itemized final statement of such costs (the "Maintenance Statement"). The Maintenance Statement shall include sufficient detail to permit Arvada to determine the nature and purpose of each expenditure or line item, operating expense, capital item or provider of service and the specific total cost associated therewith. Within 30 days of receipt by Arvada of the Maintenance Statement, Arvada shall remit payment in full an amount equal to 7% of the total costs as specified in the Maintenance Statement.

5.2. Throughout the term of this Agreement, Arvada shall have the right, upon reasonable notice, to examine and have copied the underlying records, statements, ledgers, agreements, contracts, documents, invoices, budgets or memoranda, whether in printed or electronic media, that verify or document the costs set forth in the Maintenance Statement. Should Arvada dispute any cost, Arvada shall promptly notify the Authority of the disputed amount and the basis for the dispute. Arvada shall nonetheless make payment based on the Maintenance Statement, though reserving to itself the express right to recover any disputed amount by bringing suit in the appropriate court having jurisdiction over this Agreement. The parties agree that payment of any disputed amount shall not be deemed an admission by Arvada of the validity of the cost or charge, or the right of the Authority to receive payment therefore. In the course of any legal action brought by either Arvada or the Authority, any payment made pursuant to this sub paragraph shall not be deemed to be, or be admitted as, evidence or confession of the validity of the charge, or in any manner whatever be deemed an admission against Arvada's interest.

5.3. Should Arvada fail to pay its portion of the Maintenance Statement after receipt of a proper invoice, then the Authority shall have the right to specific performance of this Agreement. As further security, and solely for ensuring payment by Arvada, upon notice to Arvada, and following an opportunity to cure any defect in payment, the Authority may withhold delivery on the equivalent amount of Arvada's Church Ditch contract water rights ("Inches") in a value equivalent to any unpaid portion of the Maintenance Statement owed by Arvada to a maximum of twenty Inches on an annual basis (hereafter, the "Security"). The value of the Security shall be calculated based upon then current water rights purchase prices for such rights within the Church Ditch. Upon payment of Arvada's portion of the Maintenance Statement, the Security will be promptly released, notwithstanding the current status of any court proceeding, dispute, or claim between the parties. The remedy described in this subparagraph shall be

available to the Authority only in the event of non-payment of the Arvada portion of the Maintenance Statement, and will not be available to any other party, or for any other purpose whatever.

5.4. Prior to withholding the Security, the Authority shall promptly notify Arvada of the failure to receive payment, or of any deficiency of Arvada's payment to which the Authority may believe it is entitled. If the payment remains unpaid in full for more than five business days after Arvada receives notice of any defect or deficiency in payment, then the Authority may withhold the Security. The Security shall be promptly released upon the occurrence of the earlier of the following: (1) Arvada makes payment in full, (2) the dispute over payment has been brought to conclusion through the appropriate court proceeding, or (3) the statute of limitations for bringing a court action for specific performance by the Authority has expired and no action has been filed and served upon Arvada within the statutory time period. The Security shall thereafter be promptly released upon demand by Arvada.

5.5. If the Authority has filed an action for specific performance under this Agreement, on the first anniversary date of the alleged breach by Arvada, the Security may, at the option of the Authority, be leased at a fair market price with the proceeds thereof being applied to payment of the costs owed by Arvada based on the Maintenance Statement. If final judgment in such action is entered against Arvada, then the lease proceeds actually received shall be credited against any judgment. If any lease proceeds remain after payment of Arvada's share of the Maintenance Statement, such proceeds may be applied to any reasonable attorney's fees and costs ordered as part of a judgment entered for the Authority and against Arvada. Any remaining lease proceeds shall then be promptly remitted to Arvada.

5.6. If Arvada prevails at trial, the parties agree that the damages suffered by Arvada shall not be less than the fair market value to Arvada of the Security had it been leased by Arvada for the duration of the period that it was unlawfully withheld, together with interest at the highest statutory interest rate permitted by law. The preceding shall not foreclose Arvada from offering and proving any additional damages.

5.7. In any legal proceeding brought under this Paragraph 5, the prevailing party shall be entitled to reasonable costs and attorneys fees.

6. Permitting and Liability. The Authority will assume permitting and liability issues associated with operating and maintaining the Project structures that are in the Church Ditch. Stormwater permitting issues in a specific stream will be the responsibility of the jurisdiction in which the stream is located

Nothing herein shall prevent the Standley Lake Cities from proposing classifications, designations or standards, including numeric standards, for Big

Dry Creek Segment 2 (Standley Lake).

7. Church Ditch Water Authority Contractual Deliveries. The water deliveries to the contractual users of the Authority will be the responsibility of the Authority. The rights of the contractual users of the Authority will remain the same as they were prior to implementation of the Project. The Authority can manage water deliveries through a variety of methods all at the discretion of the Authority.
8. Water Rights. The Standley Lake Cities will not claim injury as a result of operation the Project bypassing stormwater from Standley Lake. The Standley Lake Cities will cooperate with Arvada in developing augmentation plans necessary for the storage and consumption of stormwater originating from the Project drainage basin.
9. Insurance.

9.1. Arvada shall maintain commercial general liability and property damage insurance, by self insurance or otherwise, to cover those claims for which Arvada, the Standley Lake Cities, or the Church Ditch Water Authority, their officials, employees, agents and contractors (without the fault or negligence of any of the Parties hereto) are held liable at law arising out of this Agreement or in connection with the construction, operations, maintenance, removal or use of Church Ditch in the Project area. The insurance coverage shall be for a combined single limit of one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence; however, said limits shall be increased to the amount specified from time to time as the limitation on judgments in the Colorado Governmental Immunity Act. The Standley Lake Cities and the Authority shall be designated as additional insureds on the policy of insurance obtained by Arvada in compliance with this paragraph. Arvada shall provide the Standley Lake Cities and the Church Ditch Water Authority with a certificate of insurance or other evidence satisfactory to the Standley Lake Cities and the Church Ditch Water Authority of compliance with this paragraph. Failure by Arvada, at any time, to have provided a current certificate of insurance or other evidence of compliance with this paragraph shall allow the Standley Lake Cities or the Authority to exercise the remedies contained hereinbelow. Arvada expressly reserves the right to assert all defenses and liability limitations set forth in the Colorado Governmental Immunity Act or any successor act or provision. An assignment of all or any portion of this Agreement by Arvada shall not relieve Arvada of the obligation to maintain insurance as provided herein.

9.2. Arvada, the Standley Lake Cities, and the Authority understand that despite best management practices implemented during construction, operation, and maintenance of the Project, claims or actions for alleged damages may be brought against all or some of them by third parties in connection with the use of the Authority's facility. If a third party claim or legal action is brought against any of the parties to this Agreement, and such claim or action alleges the use of the

Authority's facility is the cause of the claim or has contributed to the damages alleged, the parties agree to share the risk of litigation and to cooperate with each other in the defense of such claim or action. In such event, the parties shall meet and confer with respect to the appropriate strategy in defense of this action. The parties further agree that the Authority shall be presumed responsible for the operation and maintenance of the facility, and subject to the remaining language of this provision, the Authority shall be presumed responsible for any allegation of damages alleged to be caused by the operation and maintenance of the facility; provided, however, that any design modifications or other permitted uses of the Church Ditch pursuant to executed License agreements or other forms of crossing agreements that are issued on the sole discretion of the Church Ditch Water Authority shall be the sole responsibility of the Church Ditch Water Authority, regardless of whether they constitute claims related to design, operation or maintenance. In addition, the parties agree that Arvada shall be presumed responsible for causing the diversion of storm water flows originating from developed properties within those portions of the Standley Lake drainage basin physically located within Big Dry Creek Segment 2 into the Church Ditch, and subject to the remaining language of this provision, Arvada shall be presumed responsible for any damages alleged to be caused by the diversion of storm water into the Church Ditch originating from developed properties within those portions of the Standley Lake drainage basin physically located within Big Dry Creek Segment 2. The parties may enter into joint defense agreements, or defend separately as each deems appropriate. In the event of an adverse judgment following litigation of the claim or action for damages, each party shall contribute to the payment of such judgment based upon its presumed responsibility as set forth above, unless, based on the circumstances of the claim, one or more of the parties believes the presumptions are not applicable. In such event, each party shall contribute to the payment of any judgment as the same is determined to be attributable to its conduct. In the event of settlement of any claims or actions for damages, each party shall contribute payment based upon its presumed responsibility as set forth above, unless specific liability to the contrary is determined during discovery or by stipulation, in which case the party deemed liable shall pay the cost of settlement to the extent that liability has been reasonably demonstrated. The parties agree that each shall have a right to bring an action against the others pursuant to this Agreement to compel contribution for satisfaction of a final judgment entered in favor of a third party if such judgment is based on the activities and actions described in this Agreement. Anything in this Agreement to the contrary notwithstanding, nothing herein shall be deemed an admission of liability by any party hereto in any action or suit brought against all or some of them arising from or out of the design, use, operation or maintenance of the Authority's facility.

9.3. Nothing contained in this Agreement is in any way intended to waive or modify any of the monetary limits on judgments or any and all other rights, immunities and protections provided for by Colorado law including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.



(Vol. 10A, 1988 Replacement Volume, as amended or any other successor statute).

10. Breach by Arvada; Remedies. In the event of a breach of any of the terms and conditions of this Agreement by Arvada, the Standley Lake Cities and/or the Church Ditch Water Authority may take such action as permitted and/or authorized by law, this Agreement, or the ordinances and/or Charters of the Standley Lake Cities and the rules and regulations of the Authority to protect the public health, safety and welfare; to protect water users of the Church Ditch and the Standley Lake Cities; and to protect the Standley Lake Cities' citizens and the contractual users of the Church Ditch from hardship and undue risk. These remedies include, but are not limited to those enumerated in paragraph 5 above.

Unless necessary to protect the immediate health, safety, and welfare of the Standley Lake Cities or the Authority, Arvada shall be provided with thirty (30) days' written notice of intent to take any action under this paragraph, during which thirty-day period, or such greater period as may be agreed to by the parties in writing, Arvada may cure the breach described in the notice and prevent further action by the Standley Lake Cities or the Authority.

11. Charter Compliance. The Parties intend this Agreement to be made in compliance with the charters of each respective entity.
12. Term of Agreement. This Agreement shall continue in full force and effect until terminated by all the Parties; provided, however, that each entity's commitment to appropriate funds beyond the first fiscal year of this Agreement is subject to existing Colorado Constitutional provisions.
13. Assignment. This Agreement shall not be assigned without the prior written consent of all Parties; provided, however, Arvada may delegate its obligation hereunder for payment of Arvada's portion of the Maintenance Statement to the Jefferson Center Metropolitan District. Acceptance of such payment from the Jefferson Center Metropolitan district, however, shall not effect a novation of the agreement or otherwise release Arvada from its obligation with respect to Maintenance Statements, and Arvada shall remain responsible for such payment, and the security arrangements for such payment set forth in Paragraph 5 above shall continue to apply.
14. Notices. Any notice to the Parties which is required or permitted by this Agreement shall be in writing, and shall be deposited in the United States mail, postage prepaid, addressed as follows:

Thornton City Manager  
City of Thornton  
9500 Civic Center Drive  
Thornton, CO 80229

Northglenn City Manager  
City of Northglenn  
11701 Community Center Drive  
Northglenn, CO 80233

Westminster City Manager  
City of Westminster  
4800 West 92<sup>nd</sup> Avenue  
Westminster, CO 80031

Arvada City Manager  
City of Arvada  
8101 Ralston Road  
Arvada, Colorado 80001

Church Ditch Water Authority

15. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns.

In Witness Whereof the Parties hereto have executed this Agreement to be effective as of the date first above written.

CITY OF THORNTON

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Noel Busck, Mayor

ATTEST:

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Nancy Vincent, MMC, City Clerk

APPROVED AS TO FORM:

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City Attorney

CITY OF WESTMINSTER

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Nancy McNally, Mayor

ATTEST:

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Linda Yeager, MMC, City Clerk

APPROVED AS TO FORM:

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Special Water Counsel

CITY OF NORTHGLENN

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Kathleen M. Novak, Mayor

ATTEST:

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Diana L. Lentz, CMC, City Clerk

APPROVED AS TO FORM:

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Corey Y. Hoffmann, City Attorney

CITY OF ARVADA

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Ken Fellman, Mayor

ATTEST:

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Christine Koch, CMC, City Clerk

APPROVED AS TO FORM:

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Christopher K. Daly, Attorney

CHURCH DITCH WATER AUTHORITY

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President

ATTEST:

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APPROVED AS TO FORM:

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Attorney



# Church Ditch Water Quality Project

## New Structure Locations

