

**INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICE  
AT NELLIE’S NEIGHBORHOOD**

This Intergovernmental Agreement for Water Service at Nellie’s Neighborhood (this “IGA”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the Town of Frisco, a Colorado municipal corporation (“Town”), and the County of Summit, Colorado, a political subdivision of the State of Colorado (“County”).

**RECITALS**

**WHEREAS**, the Town is a home-rule municipality that owns and operates a domestic water treatment and distribution system and is empowered to sell treated domestic water to its customers; and

**WHEREAS**, the County desires to obtain water service for the land to contain an affordable housing development to be known as Nellie’s Neighborhood (such land is legally described in Exhibit A hereto, and is hereinafter referred to as the "Nellie’s Neighborhood" or the “Nellie’s Neighborhood property”); and

**WHEREAS**, the County has presented an application to the Town for extra-territorial water service at Nellie’s Neighborhood for 15 residential tap equivalents (the “Application”), and the Town has, pursuant to requirements of the Code of Ordinances of the Town (the “Town Code”), received advice from its legal counsel that the water rights to be transferred to the Town’s ownership pursuant to this IGA will be sufficient, when brought into the Town’s water supply system through water court decree, to provide service to up to 15 residential water tap equivalents; and

**WHEREAS**, the County proposed in the Application to meet the water rights dedication for Nellie’s Neighborhood by utilizing certain shares in the Clinton Ditch and Reservoir Company that had been reserved for the Town’s use in providing water service to real property known as the County Commons under that certain Intergovernmental Agreement for Water Services dated on or about September 24, 2001, as amended by the First Amendment to Intergovernmental Agreement dated on or about January 9, 2018 (collectively the “County Commons Water IGA”); and

**WHEREAS**, to allow for the use of water rights reserved under the County Commons IGA within Nellie’s Neighborhood, the Town and the County entered into that certain Second Amendment to Intergovernmental Agreement for Water Services dated on or about February 27, 2024.

**WHEREAS**, the Town desires to provide water service to support Nellie’s Neighborhood, but only in a manner that protects the health, safety and welfare of both the future residents of Nellie’s Neighborhood, and the current and future residents of the Town, by causing no diminution in the supply of water available for the Town to deliver to its current and future residents and to its extra-territorial customers in times of drought or water scarcity conditions; and

**WHEREAS**, accordingly, the Town has agreed to sell treated water to the County for Nellie’s

Neighborhood, and the County has agreed to dedicate to the Town such water rights as are physically and legally sufficient for the Town's use in providing such water service, and to take such other actions and to provide such other improvements that are necessary to provide water service, all in accordance with the terms of this IGA.

**NOW THEREFORE**, for and in consideration of the provisions of this IGA and other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree as follows:

## **AGREEMENT**

### **1. Water Service Commitment/Water Rights Dedication.**

Subject to the terms and conditions of this IGA, the Town shall sell 15 residential water tap equivalents (EQRs) for treated water to the County and shall provide and sell water in connection with the same for domestic indoor use at Nellie's Neighborhood. The charges for the EQRs and for the water service shall be the same as those established by Town law and regulations for the sale of residential water tap EQRs for use within the Town and for service within the Town from time to time.

### **2. Pre-Conditions of Water Service.**

- I. Before the Town has any obligation to sell any of the water tap equivalents described in section 1 above, or to deliver water to Nellie's Neighborhood pursuant to the same:**
  - A. Pursuant to the Second Amendment to Intergovernmental Agreement for Water Services, the County must have transferred to, or caused a transfer to, the sole legal and beneficial ownership of the Town 3.9 Class A, Series 1, shares of the Clinton Ditch and Reservoir Company, and the form of such transfer shall have been approved in advance in the sole discretion of the Town; and
  - B. The County must have provided the Town with a written confirmation of the Frisco Sanitation District that the property to be served by the water tap equivalent(s) to be purchased hereunder is connected to and served by the Frisco Sanitation District's wastewater treatment system. The County acknowledges and agrees that the connection of Nellie's Neighborhood to the Frisco Sanitation District facilities is a continuing obligation of the County, and a continuing condition of the Town's obligation to provide water service to Nellie's Neighborhood; and
  - C. The County shall have established, through a restrictive covenant binding the Nellie's Neighborhood property, or through other legally enforceable means, restrictions on the outdoor use of water that are consistent with the limitations set forth in Section 3 below.

3. **Outdoor Use of Water Prohibited or Limited.** The County acknowledges and agrees that the outdoor use of water at the Nellie's Neighborhood project is prohibited, with the following exceptions: (i) watering of flowers, decorative plants, bushes and trees is permitted, but only if such watering is accomplished by hand using a watering can or handheld sprinkler; and (ii) watering for purposes of revegetation after construction is permitted for a period of three (3) growing seasons immediately following construction, but only if such watering is accomplished without the installation of a dedicated sprinkler system or other permanent or semi-permanent irrigation system. The County further acknowledges and agrees that if and to the extent that the Town shall, as a result of drought or water scarcity conditions, temporarily prohibit any outdoor water usage within the Town, then the terms of such prohibition shall apply to the use of water within the Nellie's Neighborhood project.
4. **Right of First Refusal.** In accordance with Section 171-6. B.7. of the Town Code; the County hereby grants to the Town a right of first refusal to acquire any water right(s) historically used on the Nellie's Neighborhood property. The Town shall be entitled to acquire any such water right(s) on the terms established in a bona fide purchase offer made to the owner of the property. The Town's exercise of its right of first refusal shall be exercised within one hundred twenty (120) days of the property owner's delivery to the Town of notice of such bona fide purchase offer.
5. **Water System Extension.** The County acknowledges and agrees that Section 171-5 of the Town Code, as amended from time to time: (i) provides the standards and procedures to be followed for extension of a water main within the Town and shall apply to the County's construction of the water lines that will be required to serve the Nellie's Neighborhood property outside of the Town; and (ii) provides that the owner of property outside of the Town that requires the extension of new mains in order to be served shall bear all of the costs of such extensions, including but not limited to the design and construction of such mains, and the costs of obtaining land or easements for the water mains. Without limiting the generality of the foregoing, the County acknowledges and agrees that it shall convey to the Town, in a form approved by the Town Attorney, a water main use and maintenance easement over all areas traversed by the water main that serves the property.
6. **Notices.** All notices provided for herein shall be in writing and shall be deemed given to a party when a copy thereof, addressed to such party as provided herein, is actually delivered, by personal delivery, or by commercial courier, at the address of such party as provided below. All notices to the County shall be addressed to the County at the following addresses or such other addresses of which the County gives the Town notice hereunder:

Board of Commissioners of Summit County, Colorado  
Attention: County Manager  
208 East Lincoln Avenue  
P.O. Box 68  
Breckenridge, Colorado 80424  
Telephone: 970-453-2561

with copies to:

Hayes Poznanovic Korver LLC  
Attention: Tom Korver, Esq.  
730 Seventeenth Street, Suite 820  
Denver, Colorado 80202-3518  
Telephone: 303-825-1980

All notices to the Town shall be addressed to the Town at the following addresses or such other addresses of which the Town gives the County notice hereunder:

Town of Frisco  
Attention: Town Manager  
P.O. Box 4100  
Frisco, Colorado 80443  
Facsimile: 668-0677  
Telephone: 668-5276

with copies to:

Moses Wittemyer Harrison & Woodruff, P.C.  
Attention: Jennifer M. DiLalla  
2595 Canyon Blvd., Ste. 300  
Boulder, Colorado 80302  
Email: [jdilalla@mwhw.com](mailto:jdilalla@mwhw.com)  
Telephone: 303-443-8782

7. **Amendments.** This IGA may be modified or amended only by a duly authorized written instrument executed by the parties hereto.
8. **Binding Effect.** This IGA shall be binding upon and shall inure to the benefit of the parties hereto, their successors, assigns and representatives. This IGA shall run with the Nellie's Neighborhood property and shall benefit and burden the County's successors in interest in and to the Nellie's Neighborhood property, or any part or portion thereof. To that end, this IGA shall be recorded in the real property records maintained by the Office of the Clerk and Recorder for Summit County, Colorado.

**IN WITNESS WHEREOF**, this IGA is entered into as of the date first above written.

**TOWN OF FRISCO**

\_\_\_\_\_  
**Hunter Mortenson, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Stacey Nell, Town Clerk**

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
\_\_\_\_\_, **Chair**

**ATTEST:**

\_\_\_\_\_  
**County Clerk and Recorder**

## EXHIBIT A

### Legal Description of Nellie's Neighborhood

Tracts 4 – 10 & 15-17, Bill's Ranch Subdivision.