

**INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICE
AT LAKE HILL**

This Intergovernmental Agreement for Water Service at Lake Hill (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 within the Lake Hill Workforce Housing Development (such land is legally described in Exhibit A hereto, and is hereinafter referred to as the "Lake Hill" or the “Lake Hill property”); and

WHEREAS, the County expects there will be 436 deed restricted workforce units, and a senior facility, and a child care center, and a community center, constructed on a 44.81-acre site between the Dillon Dam Road and Interstate Highway 70, that is located immediately east of the Town of Frisco boundary; and

WHEREAS, the County acknowledges that the Town’s current water supply is not sufficient to allow the Town to provide water service to Lake Hill, particularly in light of climate trends and both existing and expected drought and water scarcity conditions in the western United States; and

WHEREAS, the County has presented an application to the Town for extra-territorial water service at Lake Hill for 436 residential tap equivalents, 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 436 residential water tap equivalents; and

WHEREAS, the County’s application for water service provides that it is the County’s desire to receive “[e]nough EQR’s to serve 436 units in phase I with infrastructure to serve up to 825 units.”; and

WHEREAS, the Town has not approved any additional or future water service at Lake Hill beyond that to be provided in connection with the 436 EQRs authorized for sale hereunder, and the authorization provided herein is not intended to provide any assurance whatsoever to the County that any additional EQRs will ever be provided by the Town for use at the Lake Hill property; and

WHEREAS, the County acknowledges that if and to the extent that the County shall, pursuant to applicable provisions of the Town Code, request that infrastructure for the Lake Hill property be

approved by the Town in a size or of a nature that exceeds the requirements of the Town or of general engineering standards for the delivery of 436 EQRs of water to be provided under this IGA, the County shall undertake such over-sized construction at its sole risk, and shall make no claim of right or entitlement whatsoever to any future water service at Lake Hill as a result thereof, it being acknowledged by the County that any provision of additional water service beyond that provided in this IGA shall be in the sole and absolute discretion of the Town; and

WHEREAS, the County acknowledges that Lake Hill's proximity to the Town will result in adverse impacts: (i) to the Town's street infrastructure and transportation systems, including its multi-modal pathways; (ii) to the transit services within and around the Town; (iii) to law enforcement services provided by the Town within the Town and in support of agencies outside of the Town; (iv) to the availability of child-care services within the Town; (v) to the demands placed on the Town's recreational and cultural facilities; and (vi) to the demands placed on communications and mail facilities that serve the citizens and visitors of the Town and its immediately surrounding area; and

WHEREAS, the Town desires to provide water service to support Lake Hill, but only in a manner that protects the health, safety and welfare of both the future residents of Lake Hill, and the current and future residents of the Town, by: (i) 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 (ii) by addressing and mitigating the adverse impacts of Lake Hill on existing public services and infrastructure; and

WHEREAS, accordingly, the Town has agreed to sell treated water to the County for Lake Hill, 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 and to mitigate Lake Hill's adverse impacts on the Town, 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 436 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 Lake Hill. 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 Lake Hill pursuant to the same:**
- A. The County must have transferred to, or caused a transfer to, the sole legal and beneficial ownership of the Town 111.8 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 Lake Hill 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 Lake Hill; and
 - C. The Town must have obtained, and the County must have reimbursed the Town for all documented costs and expenses of obtaining, including but not limited to documented engineering and legal fees for the preparation and prosecution of a water court application, a final and unappealable decree for a new plan for augmentation or an amendment to the plan for augmentation decreed in Case No. 87CW198, under which the Town will replace out-of-priority depletions attributable to domestic indoor use at Lake Hill. For purposes of this section and pursuant to section 171-6. D. of the Code, "final and unappealable" shall mean that ninety (90) days have passed since the date of the final decree. The County understands and agrees that (i) the Town will not begin to prepare for or make an application to the water court for a new or amended augmentation plan hereunder until after the County has transferred water rights to the Town pursuant to subparagraph A above; and (ii) that the water court application could take up to three (3) years before it reaches a final decree; and (iii) that, depending on whether there are objections to the application and whether the application proceeds to trial, the costs and expenses of the proceeding to be paid by the County hereunder could exceed Two Hundred Thousand Dollars (\$200,000.00). The Town agrees that it shall, with reasonable diligence after the transfer of water rights to the Town hereunder, pursue the water court decree, and the County agrees that it shall reimburse the Town for its documented expenses therefore, within thirty (30) days of receiving written invoice from the Town from time to time; and
 - D. The County must have constructed a roundabout intersection at each of the two primary access points to Lake Hill, with each of the roundabouts including landscaping and improved crosswalks with push-button rectangular rapid flashing beacon (RRFB) signals for pedestrian crossings; and

- E. The County must have provided the Town with written confirmation from the United States Post Office within the Town of Frisco that the Post Office has the capacity to and will serve the Lake Hill development, or that it will not serve the development; and
 - F. The County must have caused a new cell phone tower to be established and operated, or an existing cell phone tower to be upgraded and operational, to serve the Lake Hill community; and
 - G. The County must have caused a ready-to-build pad site for a senior facility to be constructed and made available for sale or lease within Lake Hill; and
 - H. The County must have constructed or caused the United States Forest Service to construct parking improvements at the Giberson Bay Day Use Area to include formal separation of parking from the roadway, and distinct points of ingress and egress; and
 - I. The County shall have established, through a restrictive covenant binding the Lake Hill property, or through other legally enforceable means, requirements for pay-as-you-throw trash and recycling service and for dark-sky compliant outdoor lighting fixtures throughout the Lake Hill project; and
 - J. The County shall have established, through a restrictive covenant binding the Lake Hill 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.
- II. Before the Town has any obligation to sell any of the EQRs described in section 1 above that utilizes, in combination with all EQRs previous sold hereunder, more than twenty-five percent (25%) of the total EQRs available to be purchased under this IGA, or to deliver water to Lake Hill pursuant to the same:**
- A. The County shall cause to be constructed and operated within Lake Hill a child care center that operates at a percentage of the total planned capacity for the center that is not less than the percentage that the total EQRs then sold and utilized under this IGA bears to the total number of EQRs that are available for issuance under this IGA (e.g. at the issuance of 50% of the EQRs available under IGA, the child care center must be operating at 50% of its planned capacity).
- III. Before the Town has any obligation to sell any of the EQRs described in section 1 above that utilizes, in combination with all EQRs previous sold hereunder, more than fifty percent (50%) of the total EQRs available to be purchased under this IGA, or to deliver water to Lake Hill pursuant to the same:**

- A. The County must have constructed a multi-modal public pathway on both the north and south side of the Dillon Dam Road between State Highway 9 and the first roundabout access to Lake Hill. The pathways shall be: (i) constructed of asphalt or concrete, at a minimum of 14 feet in width, and in a manner that meets the requirements of Chapter 14 of the CDOT Roadway Design Guide in effect at the time of construction; (ii) detached from the roadway surface by at least 4 feet horizontally; and (iii) maintained by the County to allow for year-around use; and
 - B. The County must have caused the construction and operation of a community center that is open to public use.
- IV. The Town's obligation to sell the EQRs described in section 1 above, or to deliver water to Lake Hill pursuant to the same, is further conditioned as follows:**

- A. If, at any time before the Town has sold to the County each and every of the EQRs available to be purchased under this IGA, the Colorado Department of Transportation (CDOT) requires the issuance or reissuance of an access permit or permits for the intersection of State Highway 9 and the Dillon Dam Road, or for the intersection of State Highway 9 and Lake Point Drive, or for the intersection of State Highway 9 and Ten Mile Drive, and the Town reasonably determines that the requirement for issuance or reissuance is substantially caused by an increase in traffic travelling to or from the Lake Hill project, then the County shall reimburse the Town for all of its documented costs and expenses (including but not limited to construction expenses) in obtaining the issuance or reissuance of the required permit and meeting all conditions of the permit; and
- B. If, at any time before the Town has sold to the County each and every of the EQRs available to be purchased under this IGA, the Town reasonably determines, after review and a written report by a qualified traffic engineer, that the traffic volume that has been or will be created by the Lake Hill project has caused or will cause a degradation in the level of service provided by the then-existing improvements at the intersection of the Dillon Dam Road and State Highway 9, or at the intersection of State Highway 9 and Ten Mile Drive, then the County shall reimburse the Town for all of its documented costs and expenses (including but not limited to construction expenses) that are necessary to restore the intersection to its prior level of service, or maintain the intersection at its current level of service in the event of an anticipated degradation of level of service; and
- C. On or before the time that the first certificate of occupancy is issued for a residential unit at the Lake Hill project, the County shall cause an operational transit solution for the project that provides a minimum of fifteen (15) minute headways, or the functional equivalent thereof. Without limiting the generality of the foregoing requirement, the Town recommends that the County meet its obligation by causing the operation of an on-demand system, integrated with fixed route micro-transit or circulator service. The operational transit solution shall

connect to the Transit Center within the Town, and the County shall use its best efforts to cause the system to connect to the Towns of Dillon and Silverthorne; and

- D. On or before the time that the first certificate of occupancy is issued for a residential unit at the Lake Hill project, the County and the Town will negotiate in good faith to come to an agreement concerning the maintenance and repair obligations of the Town and County (including but not limited to snowplowing and repaving responsibilities) for the Dillon Dam Road between the Lake Hill property and the intersection of the Dillon Dam Road and State Highway 9 in the Town; and
- E. On or before the time that the first certificate of occupancy is issued for a residential unit at the Lake Hill project, the County and the Town will cooperate in negotiating with Denver Water for the expansion of the use of the Dillon Dam Road over the dam, particularly as relates to access by busses; and
- F. On or before the time that the first certificate of occupancy is issued for a residential unit at the Lake Hill project, the County will construct, provide and operate, on a portion of the Lake Hill property that is not planned for use by any of the residences or other facilities that will utilize EQRs under this IGA:
 - (i) An area to be used as a hike-able, publicly accessible, dog park; and
 - (ii) An area to be used for a basketball court; and
 - (iii) An area to be used as a year-around, unsheltered persons, non-profit use of at least 30 parking spaces in size;
 - (iv) Such other, additional uses as may be agreed to in writing by the Town and County.
- G. On or before the time that the first certificate of occupancy is issued for a residential unit at the Lake Hill project, the County will construct, provide and operate a County Sheriff's substation either within the Lake Hill property or at the Frisco Transit Center; and
- H. Within six months after such time as the Town has issued tap permits for structures within the Lake Hill project that will utilize ninety percent (90%) of the EQRs available for purchase by the County under this IGA, the County shall prepare and present to the Town Council of the Town, at a public meeting, an impact study that shall: (i) measure and analyze the impacts of the Lake Hill project on Town traffic, water supply, transit, child care services, emergency services, tax revenue and other community impact; and (ii) provide comparisons of the measured impacts with the impacts anticipated by the County's 2023 impact study.

3. **Outdoor Use of Water Prohibited or Limited.** The County acknowledges and agrees that the outdoor use of water at the Lake Hill 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 Lake Hill 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 Lake Hill 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 Lake Hill 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:
 - A. The water system for Lake Hill will be designed and sized to meet the fire flow requirements of the most recent version of the International Fire Code, Appendix B, and shall meet any additional requirements of Summit Fire and EMS concerning pressure and fire flows; and
 - B. Pursuant to the engineering analysis completed by Leonard Rice Engineers in 2015, redundant water lines are required for service to the Lake Hill property from both the existing Dillon Dam Road water tank and the Lake Forest development in order to provide adequate redundancy and meet fire flow requirements. The County agrees that it shall provide such redundant lines unless the Town, in its sole discretion, approves engineered alternatives that accomplish the same purposes; and

- C. The County shall provide the Town with a modeled analysis performed by a hydraulic engineer to determine whether the water system proposed by the County for construction at Lake Hill will result in a diminution of water pressure and fire flow in any part of the Town water system below the minimums required by the International Fire Code referenced above, and shall take any and all actions necessary to ensure that no such diminution shall occur; and
 - D. All water mains that are to be located outside of the Lake Hill property shall be dedicated to the ownership and maintenance of the Town in accordance with the requirements of the Town Code, and all water mains and other lines that are located within the Lake Hill property or that connect the Lake Hill property to the Town's water main shall be considered service lines which shall be owned and maintained by the County in good condition and in accordance with applicable requirements of the Colorado Department of Public Health and Environment.
 - E. The Town's provision of water service to the Lake Hill property shall be master-metered through water meters that are located at the north boundary of the Dillon Dam Road right-of-way where water is taken from the main, and at the boundary of the Lake Forest property where the redundant main is provided, and the County shall pay the Town for water service provided as measured by said meters. The County understands and agrees that the Town will not be responsible for billing or collections of water service charges from the individual properties or units that are provided with water service pursuant to this IGA.
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
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 Lake Hill property and shall benefit and burden the County's successors in interest in and to the Lake Hill 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 Lake Hill

Lots 7, 9, and 11, Section 23, and Lot 3, Section 24, Township 5 South, Range 78 West of the 6th Principal Meridian, Colorado; as shown on the Bureau of Land Management Supplemental Plat officially filed on August 21, 2015; containing 44.81 acres.