

SECOND AMENDMENT TO INTERGOVERNMENTAL
AGREEMENT FOR WATER SERVICES

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICES (this “Second Amendment”) is entered into this ____ day of _

_____,
2024 between the Town of Frisco, Colorado, a Colorado home rule municipality (“Town”), and the Board of County Commissioners of Summit County, Colorado, a political subdivision of the State of Colorado (“County”).

WHEREAS, on or about September 24, 2001, the Town and County entered into an Intergovernmental Agreement for Water Services (the “Agreement”) under which the Town agreed to provide and sell water taps for up to 171.64 EQRs of treated water to the County for use at the County Commons; and

WHEREAS, on or about January 9, 2018, the Town and the County entered into the First Amendment to Intergovernmental Agreement for Water Services (the “First Amendment”) under which (i) the Town agreed to increase the number of EQRs for which water taps would be provided and sold to the County for use at the County Commons from 171.64 EQRs to a total of 304.97 EQRs, and (ii) the County agreed to increase the number of Clinton Reservoir Shares held in reserve to secure its obligations under the Agreement from 52 to 92; and

WHEREAS, the Town and the County acknowledge that, to the date first written above, the Town has previously provided and sold to the County, pursuant to the Agreement and First Amendment, water taps for a total of 258.31 EQRs currently in use at the County Commons and that 84.66 EQRs remain available under the Agreement and First Amendment for such use (“Remaining EQRs”); and

WHEREAS, the County desires to use some of the Remaining EQRs for residential purposes on certain real property within the Bill’s Ranch Subdivision, and the Town desires to allow for such use pursuant to the terms and conditions of this Second Amendment.

WHEREAS, the County and the Town desire to amend the Agreement and First Amendment as provided herein.

NOW THEREFORE, it is agreed as follows:

1. Any other provision of the Agreement and First Amendment notwithstanding, the Town shall, from within the Remaining EQRs, provide and sell water taps to the County for up to 15 EQRs for use within the Bill’s Ranch Subdivision on real property described as Tracts 4 – 10 & 15-17, Bill’s Ranch Subdivision (the “Bill’s Ranch Property”).

2. Any other provision of the Agreement and First Amendment notwithstanding, the County agrees that it shall, on or before April 1, 2024, direct the Clinton Ditch and Reservoir Company (“Reservoir Company”) to transfer ownership of 77.49 Class A, Series 1 shares of the Reservoir Company common stock to the sole legal and beneficial ownership of the Town from the 92 Reserved Shares held by the County under Section 4 of the Agreement and First Amendment. The Town and the County agree that, upon the transfer of said shares to the sole legal and beneficial ownership of the Town, the County shall have no additional obligations with respect to making water available to the Town for any of the 258.31 EQRs for which a tap has been provided by the Town to the County under the Agreement and First Amendment prior to the date first set forth above.
3. Any other provision of the Agreement and First Amendment notwithstanding, prior to the sale and issuance of water taps for use on the Bill’s Ranch Property or any property within the County Commons, the County shall direct the Reservoir Company to transfer to the Town, and the Reservoir Company shall have transferred to the Town, from the 92 Reserved Shares held by the County under Section 4 of the Agreement and First Amendment, the sole legal and beneficial ownership of that number of Class A, Series 1 shares of the Reservoir Company stock (“Clinton Reservoir Shares”) required by Section 3 of the Agreement in connection with the EQRs issued.
4. The Reservoir Company has in the past and may in the future undertake actions to increase the yield of Clinton Reservoir. The increased yield is passed on to the Reservoir Company shareholders by way of the issuance of additional Reservoir Company shares in proportion to the percentage of shares currently held by each shareholder. Any additional shares issued in the future by the Reservoir Company for such increases in capacity or yield and deriving from Clinton Reservoir Shares transferred by the County to the Town under this Second Amendment will be issued in the name of the County and in the name of the Town in direct proportion to the County’s and Town’s respective pro rata share of the costs incurred by the Reservoir Company necessary to obtain the additional Clinton Reservoir yield, as such respective pro rata share is determined and documented by the Reservoir Company.
5. Section 3 and subsection 3.1 of the Agreement, are hereby amended to read in their entirety as follows:
 3. Replacement Water. For each EQR issued to the County, and assuming no outside irrigation use under such EQR under the provisions of section 5 below, the County shall direct the Reservoir Company to transfer to the Town, from the Reserved Shares the sole legal and beneficial ownership of three tenths (.3) of a Clinton Reservoir Share, being three-hundredths (.03) of a consumptive acre foot of water annually delivered from Clinton Reservoir by

the Reservoir Company.

3.1 Prior to the sale and issuance of a tap permit by the Town, the County shall direct the Reservoir Company to transfer to the Town from the Reserved Shares the required number of Clinton Reservoir Shares specified in Section 3.0 above; thereupon, the Town shall have the sole enjoyment of any benefits and the sole responsibility for any expenses or other burdens of ownership of said shares.

6. Subsection 4.3 of the Agreement is hereby amended to read in its entirety as follows:

4.3 The County shall be entitled to the use of that portion of the Reserved Shares and their associated water, that has not yet been transferred to the Town. Prior to transfer, the County shall exercise associated voting rights in the Reservoir Company, and shall pay assessments levied by the Reservoir Company on the Reserved Shares as they become due and payable. Upon and after such transfer, the Town shall be entitled to all benefits of ownership, and shall bear all burdens and expenses thereof, including but not limited to the benefits of voting rights and the burden of payment of Reservoir Company assessments.

7. Subsection 4.4 of the Agreement is hereby deleted in its entirety.

8. Section 6 of the Agreement is hereby amended to read in its entirety as follows:

6. Reserved Shares. Nothing herein shall be construed as requiring the County to make application and pay for a number of water taps that is equal to the total EQRs made available to the County under this Agreement. In the event that the County gives the Town written notice that the County will request no further taps under this Agreement, and the final number of total taps requested by the County under this Agreement constitute an EQR amount that is less than the total amount of EQRs made available for the County's request under this Agreement, the County is not required to maintain Reserved Shares as to any such excess amount. Upon such written notification from the County that the County will request no future water taps pursuant to this Agreement, the Town shall cooperate with the County in the release of any restrictions that may exist on Reserved Shares; and thereafter, the Town will have no further obligation to provide and sell new water taps to the County hereunder.

9. Section 11 of the Agreement is hereby deleted in its entirety.

10. The County agrees that, except as may be permitted by the Town Code provisions concerning the use of extra-territorial water outside of structures, as amended from time to time, no water that is provided to residential structures under this Second Amendment

shall be used for outdoor purposes, including but not limited to irrigation.

11. Except as expressly amended herein, all terms and conditions of the Agreement and the First Amendment shall remain in full force and effect. The terms defined in the Agreement are incorporated herein by reference.

IN WITNESS WHEREOF, this Second Amendment is executed this ____ day of _____, 2024.

TOWN OF FRISCO, COLORADO

By: _____

Hunter Mortensen, Mayor

ATTEST:

Stacey Nell, Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By: _____

_____, Chairperson

ATTEST:

_____, County Clerk