

INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICES

This Intergovernmental Agreement is entered into this 24th day of September, 2001, by and between the Town of Frisco, a Colorado municipal corporation ("Town") and the Board of County Commissioners of Summit County, 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 uses authorized for lands within the Summit County Library and Service Center Planned Unit Development (hereinafter referred to as the "County Commons") as may be amended, as such uses are established at the County Commons; and

WHEREAS, the Town has agreed to sell treated water to the County for the County Commons, and the County has agreed to make available for the use of the Town certain water and water rights in consideration for such water service, in accordance with the terms of this Intergovernmental Agreement ("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. Definitions and Conversions. For the purposes of this Agreement, the parties agree to the following definitions and conversions:

1.1. One residential water tap equivalent ("EQR") from the Town for domestic and commercial use, with no outside irrigation, requires three one-hundredths of an acre-foot of fully consumable water annually to replace stream depletions. [1 EQR = .03 A.F.]

1.2. Outside irrigation of one acre [43,560 square feet] of lawn and landscape with the Town's treated water requires one and forty-five hundredths of an acre-foot (1.45 A.F.) of fully consumable water annually to replace stream depletions. [1 irrigated acre = 1.45 A.F./yr.] [100 square feet of irrigation = approximately .0033 A.F./yr.]

1.3. One share of the Class A, Series 1, common stock of the Clinton Ditch and Reservoir Company (a "Clinton Reservoir Share") supplies a firm annual water yield of one-tenth of an acre-foot (.10 A.F.) of fully consumable water. [1 Clinton Reservoir Share = .10 A.F./yr.]

1.4. One EQR, without outside irrigation use, requires County Water replacement to the Town in the amount of the yield from three-tenths (.3) of a Clinton Reservoir Share. [1 EQR = .3 Clinton Reservoir Share]

1.5. One acre of irrigated lawn and landscape through the Town's treated water system requires County water replacement to the Town in the amount of the yield from fourteen and one-half (14.5) Clinton Reservoir Shares. [1 irrigated acre = 14.5 Clinton Reservoir Shares] [100 square feet of irrigation = approximately .033 Clinton Reservoir Share]

2. Water Service Commitment. The Town shall sell and deliver water taps up to 171.64 EQRs for treated water to the County for domestic and commercial use at the County Commons (*including the 8.40 EQRs of water taps recently conveyed to the County for the Seniors and Community Center, located on Parcel 4 of the County Commons*). These 171.64 EQRs are in addition to the other previous taps issued to the County at the County Commons, which previous taps are not subject to this Agreement and do not require water replacement to the Town by the County.

3. Replacement Water. For each EQR issued to the County, and assuming no outside irrigation use under such EQR, the County shall make available to the Town for the sole discretionary use and benefit of the Town the water attributable to 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 Clinton Ditch and Reservoir Company ("Reservoir Company").

3.1. Promptly upon issuance of the taps by the Town, the County shall notify the Reservoir Company in writing (with a copy to the Town) that the County has made available to the Town the water attributable to the requisite number of shares; thereupon, the Town shall be responsible for directing the Reservoir Company to deliver water in the amounts and at the times directed by the Town, and in accordance with the regulations of the Reservoir Company.

3.2. The County may provide another equivalent water supply to the Town as may be agreed to by the Parties.

4. Reserved Shares. The County shall hold in reserve fifty-two (52) of its Clinton Reservoir Shares (Reserved Shares) to secure its obligations under this Agreement to provide replacement water to the Town for the issuance of 171.64 EQRs.

4.1. The County shall not sell, convey, or otherwise encumber these Reserved Shares, except as provided herein.

4.2. Promptly after execution of this Agreement, the County shall obtain from the Clinton Ditch and Reservoir Company a reissued and separate stock certificate for the Reserved Shares, with the following notation on the face of the certificate: "These shares are subject to the Intergovernmental Agreement for Water Service, as may be amended from time to time, between the Board of County Commissioners of Summit County, Colorado, and the Town of Frisco."

4.3. The County shall be entitled to the use of these Reserved Shares and their associated water, until made available for the use of the Town upon issuance of taps.

4.4. The County shall retain ownership of the Reserved Shares, together with the associated voting rights in the Reservoir Company, both before and after the water attributable to these shares has been made available to the Town upon issuance of water taps. The County shall pay all assessments levied by the Reservoir Company on the Reserved Shares as such assessments become due and payable.

5. Irrigation Replacement Water. The County plans to use untreated water from sources other than the Town's water system for most, if not all, its outside irrigation uses at the County Commons. If the County wishes to use the Town's treated water for lawn or landscape irrigation through the taps issued pursuant to this Agreement, the County shall make available to the Town, as additional replacement water for the depletions caused by such irrigation, Clinton Reservoir Shares at the conversion rates set forth in section 1. These shares shall be furnished from the County's shares that are in addition to the "Reserved Shares;" such shares, when furnished to the Town, shall be reissued stock certificate(s) bearing the same notation as the "Reserved Shares" as provided in section 4.2.

6. Increments of Shares. The County shall make available Clinton Reservoir Shares to the Town for the Town's sole use in one-tenth acre-foot [.10 acre foot] increments (equivalent to the yield of one Clinton Reservoir Share), in advance, as needed to provide for pending water tap sales requested by the County and to be made by the Town. Nevertheless, upon build-out of the County Commons, the County shall be obligated only to make available water to the Town directly corresponding to the final number of water taps requested and granted, in accordance with the standards set forth herein; at such build-out, at the County's request, the Town shall agree to delete and release from the Reserved Shares any excess shares.

7. Seniors and Community Center Taps. Promptly upon execution of this Agreement, the County shall make available to the Town for its sole use the water attributable to three (3) Clinton Reservoir Shares from the Reserved Shares for the 8.40 water taps recently conveyed to the County by the Town for the Senior/Community Center, with a corresponding advance water credit (in the amount of .048 A.F.) against future taps to be issued by the Town.

8. Tap Fees and Rates. The water taps shall be sold to the County at the Town's in-Town water tap rate (plant investment fee) at the time of purchase, unless otherwise waived by the Town. The water service charges and other water rates for the water taps sold hereunder shall be paid by the County at the Town's in-Town rates.

9. Records. The parties shall maintain records that account for all water and water rights reserved by the County hereunder for the Town's use and their allocation to requested water taps.

10. Assignment of Taps. The County has authorized and will likely continue to authorize third parties to construct facilities at the County Commons. Provided the replacement water has been made available to the Town in accordance with this Agreement, the County may assign the water taps provided for hereunder to such third parties so that they may construct and occupy facilities at the County Commons. In either case, the use of the water taps provided for hereunder by the County or its assigns shall be subject to the general rules, regulations and charges that are applicable to the Town's water customers within the Town.

11. Possible Future Conveyance to the Town. After the Town's issuance of the 171.64 EQRs pursuant to this Agreement, the County agrees to negotiate in good faith with the Town, at the Town's request, to convey ownership to the Town of the Clinton Reservoir Shares under which water has been made available to the Town for water taps and irrigation, provided that such a conveyance is mutually beneficial and is otherwise appropriate.

12. Binding Effect. This IGA shall be binding upon and shall inure to the benefit of the parties hereto, their successors, assigns and representatives.

13. Further Assurances. The parties shall deliver or cause to be delivered upon request such additional documents or instruments as may be reasonably necessary to accomplish the intent of this IGA.

14. 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, by commercial courier or by successful facsimile transmission, at the address of such party as provided below. All notices to the County shall be addressed to the County at the following addresses and facsimile numbers or such other addresses and facsimile numbers of which the County gives the Town notice hereunder:

Board of Commissioners of Summit County, Colorado
Attention: County Manager
208 East Lincoln Avenue
Breckenridge, Colorado 80424
Facsimile: 970-453-3535
Telephone: 970-453-2561

with copies to:

Petros & White, LLC
Attention: Raymond L. Petros, Jr., Esq.
730 Seventeenth Street, Suite 820
Denver, Colorado 80202-3518
Facsimile: 303-825-1983
Telephone: 303-825-1980

All notices to the Town shall be addressed to the Town at the following addresses and facsimile numbers or such other addresses and facsimile numbers 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 Wittermyer Harrison & Woodruff, P.C.
Attention: David L. Harrison, Esq.
1002 Walnut Street, No. 300
Boulder, Colorado 80302
Facsimile: 303-443-8796
Telephone: 303-443-8782

15. Amendments. This IGA may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

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

TOWN OF FRISCO, COLORADO

BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY, COLORADO

BY:

Robert G. Moseatelli
Robert G. Moseatelli, Mayor

BY:

William C. Wallace
William C. Wallace, Chairman

Approved and
in testimony
whereof
I, the
Clerk
do hereby
certify
this
15th
day of
August
2001

ATTEST:

Deb Helton
Deb Helton, Town Clerk

ATTEST:

Cheri Brunvand
Cheri Brunvand, County Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 2 day of October, 2001, by Robert G. Moscatelli, as Mayor, and Deb Helton, as Town Clerk, on behalf of the Town of Frisco, Colorado.

WITNESS my hand and seal.

My Commission
Expires 07/09/2005



My commission expires: _____

Mollie Thompson
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 24th day of September, 2001, by William C. Wallace, as Chairman, and Cheri Brunvand, as County Clerk, on behalf of the Board of County Commissioners of Summit County, Colorado.

WITNESS my hand and seal.

My commission expires: 8/20/05

[SEAL]

Glenice K. Browman
Notary Public