

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 _____, 2023 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; and

WHEREAS, the County and the Town desire to amend the Agreement to provide that, from within the existing, remaining total EQR commitment of the Agreement and First Amendment, water taps will be provided and sold by the Town for up to 15 EQRs for residential use within the Bills Ranch Subdivision (on property described as Tracts 4 – 10 & 15-17, Bill’s Ranch Subdivision); and

WHEREAS, the County and the Town desire to amend the Agreement to provide that for each EQR for which a water tap has been previously issued by the Town for use within the County Commons, the County shall immediately convey to the Town the sole legal and beneficial ownership of the associated Class A, Series 1 common stock of the Clinton Ditch and Reservoir Company (“Clinton Reservoir Shares”), the water from which was previously required only to be made available to the Town under Section 3 of the Agreement for each such EQR; and

WHEREAS, the County and the Town desire to amend the Agreement to provide that, prior to the sale and issuance of a water tap for the use of any EQR commitment remaining under the Agreement and First Amendment from time to time, the County shall convey to the Town the sole legal and beneficial ownership of the associated Clinton Reservoir Shares, the water from

which was previously required only to be made available to the Town under Section 3 of the Agreement for each such EQR.

NOW THEREFORE, it is agreed as follows:

1. Any other provision of the Agreement and First Amendment notwithstanding, the Town shall, from within any existing EQR commitments under the Agreement and First Amendment remaining from time to time, 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 November 1, 2023, convey 77.49 Clinton Reservoir Shares to the sole legal and beneficial ownership of the Town. The Town and the County agree that, upon the conveyance of said shares, 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 or issuance of a water tap for use on the Bill's Ranch Property or any other property within the County Commons, the County shall convey to the Town the sole legal and beneficial ownership of the Clinton Reservoir Shares that are required by Section 3 of the Agreement in connection with the EQRs issued.
4. Section 3, and subsections 3.1 and 3.2 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 convey to the Town 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 Clinton Ditch and Reservoir Company ("Reservoir Company").
 - 3.1 Prior to the sale and issuance of a tap permit by the Town, the County shall convey the required number of Clinton Reservoir Shares in a form reasonably deemed satisfactory by the Town's water counsel and the Reservoir Company; 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.

3.2 The County may provide another equivalent water supply to the Town, provided that such supply is reasonably confirmed by the Town to be a fully consumable source of water legally and physically available in the required amount and at the required location for the Town's use for augmentation purposes and all municipal purposes, and as agreed to by the parties by a written instrument that amends this Agreement.

5. 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 these Reserved Shares and their associated water, until all or part of the Reserved Shares are conveyed to the Town as required by this Agreement or the Second Amendment to this Agreement. Prior to conveyance, 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 conveyance, 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.

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

7. 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 allowed 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 that may be requested 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.

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

9. Any other provision of the Agreement and First Amendment notwithstanding, 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 the Agreement shall be used for outdoor purposes, including but not limited to irrigation.

10. 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 _____, 2023.

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