

FIRST AMENDED
INTERGOVERNMENTAL AGREEMENT

Among

SUMMIT COUNTY, COLORADO

And

THE TOWNS OF BRECKENRIDGE, DILLON, FRISCO AND SILVERTHORNE,
COLORADO

,

providing for the establishment of the "Summit Combined Housing Authority" as a
multijurisdictional housing authority pursuant to Section 29-1-204.5, Colorado Revised
Statutes, as amended

THIS FIRST AMENDED INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into this _____ day of September, 2006, among SUMMIT COUNTY, COLORADO (the "County"), a body corporate and politic and political subdivision of the State of Colorado (the "State"), and THE TOWNS OF BRECKENRIDGE, DILLON, FRISCO AND SILVERTHORNE, COLORADO (the "Towns"), home rule municipalities and political subdivisions of the State. The County and the Towns are referred to collectively herein as "the Members" or individually as "a Member."

WHEREAS, Section 29-1-204.5, Colorado Revised Statutes, as amended (the "Act"), authorizes any combination of home rule or statutory cities, towns, counties, and cities and counties of the State to, by contract with each other, establish a separate governmental entity to be known as a multijurisdictional housing authority to effect the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan in order to provide dwelling accommodations at rental prices or purchase prices within the means of families of low or moderate income and to provide affordable housing projects or programs for employees of employers located within the jurisdiction of the authority; and

WHEREAS, pursuant to title 29, article 1, part 2, Colorado Revised Statutes, as amended (the "Intergovernmental Relations Statute"), and article XIV, section 18 of the State Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units and any such contract may provide for the joint exercise of the function, service or facility, including the establishment of a separate legal entity to do so; and

WHEREAS, the County has historically provided affordable housing services in the unincorporated portions of the County through its existing housing authority, with the cooperation and assistance of the Towns; and

WHEREAS, the County and Town of Silverthorne previously entered into an Intergovernmental Agreement in 2002 ("Original IGA") in order to establish the Summit Combined Housing Authority ("Authority"); and

WHEREAS, the Towns of Breckenridge, Dillon and Frisco desire to participate in the governance of the Authority pursuant to and in accordance with the Act and this Agreement (this "Agreement");

NOW, THEREFORE, be it covenanted and agreed as follows:

Section 1. Authority and Members. The County and the Towns are hereby established as the Members of the Authority. The Authority shall continue to be a separate governmental entity and a political subdivision and public corporation of the State pursuant to the Act, the Intergovernmental Relations Statute and the terms of this Agreement.

Section 2. Name. The name of the Authority shall be the "Summit Combined Housing Authority."

Section 3. Purpose. The purpose and function of the Authority shall be to: plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate housing projects and programs pursuant to a multijurisdictional plan within the means of families of low or moderate income and to plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate affordable housing projects or programs for employees of employers located within the jurisdiction of the Authority, as will be further set forth in the multijurisdictional plan to be adopted by the Authority pursuant to the Act and Section 8 hereof.

Section 4. Boundaries. The boundaries of the Authority shall be coterminous with the boundaries of the County.

Section 5. Powers and Duties. The Authority shall have all power, privileges and duties vested in or imposed on it by the Act, by the Intergovernmental Relations Statute, this Agreement and by any other applicable law, subject to the provisions of the Act, the Intergovernmental Relations Statute and any other applicable law.

Section 6. Board of Directors.

(a) Powers and Duties. The Authority shall be governed by a Board of Directors (the "Board") as described in this Section. The Board shall exercise and perform all powers, privileges and duties vested in or imposed on the Authority, including, without limitation, any duties imposed on the Authority by title 29, article 1, parts 1, 5 and 6, Colorado Revised Statutes, as amended. Subject to the provisions of the Act and this Agreement, the Board may delegate any of its powers to any director, officer, employee or agent of the Authority.

(b) Directors. The Board shall be composed of one director for each Member. The governing body of each Member shall select and appoint the director for such Member.

(c) Terms of Office. The term of office of each director shall commence with his or her appointment and shall continue until the date on which a successor is duly appointed.

(d) Resignation, Removal and Vacancies. Any director may resign at any time, effective upon receipt by the Secretary (described in Section 7, hereof) or the Chair (described in Section 7 hereof) of written notice signed by the person who is resigning; and may be removed at any time by the governing body of the Member that appointed him or her, in its sole and exclusive discretion, effective upon receipt by the Secretary or the Chair of written notice signed by a duly authorized representative the governing body of the appointing Member. Vacancies in the office of any director shall be filled in the same manner in which the vacant office was originally filled pursuant to subsection (b) of this Section.

(e) Compensation. Directors shall serve without compensation, but may be reimbursed for expenses incurred in serving in such capacities upon such terms and

pursuant to such procedures as may be established by the Board.

(f) Resolutions and Voting. All actions of the Board shall be by resolution, which may be written or oral. Resolutions of the Board shall be adopted upon the affirmative vote of at least a majority of a quorum of the directors eligible to vote thereon. A quorum shall consist of a majority of the directors then in office.

(g) Bylaws and Rules. The Board, acting by resolution adopted as provided in subsection (f) of this Section, may adopt bylaws or rules governing the activities of the Authority and the Board, including, but not limited to, bylaws or rules governing the conduct of Board meetings, voting procedures, and the type of resolutions that must be in writing. The bylaws shall be consistent with the Act and this Agreement.

Section 7. Officers.

(a) Generally. The Board shall select and appoint a Chair, a Vice Chair, a Secretary, a Treasurer and an Executive Director. The Board also may appoint one or more subordinate officers and agents, each of whom shall hold his or her office or agency for such term and shall have such authority, powers and duties as shall be determined from time to time by the Board. The Chair and the Vice Chair shall be directors. Other officers may, but need not, be directors. Any two or more of such offices may be held by the same person, except that the offices of Chair and Secretary may not be held by the same person and the person serving as Executive Director may not hold any other of such offices. All officers of the Authority shall be persons of the age of 18 years or older and shall meet the other qualifications, if any, stated for his or her office elsewhere in this Section.

(b) Chair. The Chair shall have the power to call meetings of the Board; the power to execute, deliver, acknowledge, file and record on behalf of the Authority such documents as may be required by this Agreement, the Act or other applicable law; and such other powers as may be prescribed from time to time by the Board. The Chair may execute and deliver contracts, deeds and other instruments and agreements on behalf of the Authority as are necessary or appropriate in the ordinary course of its activities or as are duly authorized or approved by the Board. The Chair shall have such additional authority, powers and duties as are appropriate and customary for the office of the Chair of the Board of Directors of entities such as the Authority, and as the Board may otherwise prescribe.

(c) Vice Chair. The Vice Chair shall be the officer next in seniority after the Chair and, upon the death, absence or disability of the Chair, shall have the authority, powers and duties of the Chair. The Vice Chair shall have such additional authority, powers and duties as are prescribed by the Board.

(d) Secretary. The Secretary shall give, or cause to be given, notice of all meetings (including special meetings) of the Board, keep written minutes of such meetings, have charge of the Authority's seal, be responsible for the maintenance of all records and files and the preparation and filing of reports to governmental agencies (other than tax returns), have authority to impress or affix the Authority's seal to any instrument

requiring it (and, when so impressed or affixed, it may be attested by his or her signature), and have such other authority, powers and duties as are appropriate and customary for the office of Secretary of entities such as the Authority, and as the Board may otherwise prescribe. If a Treasurer has not been appointed, the Secretary shall also serve as Treasurer and may use the title of Treasurer in performing the functions of Treasurer.

(e) Treasurer. The Treasurer shall, subject to rules and procedures established by the Board, be responsible for the custody of the funds and all stocks, bonds and other securities owned by the Authority and shall be responsible for the preparation and filing of all tax returns, if any, required to be filed by the Authority. The Treasurer shall receive all moneys paid to the Authority and, subject to any limits imposed by the Board or the Chair, shall have authority to give receipts and vouchers, to sign and endorse checks and warrants in the Authority's name and on the Authority's behalf, and to give full discharge for the same. The Treasurer shall also have charge of disbursement of the funds of the Authority, shall keep full and accurate records of the receipts and disbursements, and shall deposit all moneys and other valuables in such depositories as shall be designated by the Board. The Treasurer shall deposit and invest all funds of the Authority in accordance with this Agreement and laws of the State applying to the deposit and investment of funds of multijurisdictional housing authorities formed under the Act. The Treasurer shall have such additional authority, powers and duties as are appropriate and customary for the office of Treasurer of entities such as the Authority, and as the Board may otherwise prescribe. If a Treasurer has not been appointed, the Secretary shall also serve as Treasurer and may use the title of Treasurer in performing the functions of Treasurer.

(f) Executive Director. The Executive Director shall be the chief executive officer of the Authority, shall supervise the activities of the Authority, shall see that all policies, directions and orders of the Board are carried out and shall, under the supervision of the Board, have such other authority, powers or duties as may be prescribed by the Board.

(g) Resignation and Removal. Any officer may resign at any time effective upon receipt by the Secretary or the Chair of written notice signed by the person who is resigning, and may be removed at any time by the Board.

(h) Changes to Authority, Powers and Duties. Notwithstanding any other provision of this Article, the Board at any time may expand, limit or modify the authority, powers and duties of any officer.

(i) Vacancies. Vacancies in the office of any officer shall be filled in the same manner in which such office was originally filled.

(j) Compensation. The Authority may compensate officers who are not directors for services performed, and may reimburse them for expenses incurred in serving in such capacities upon such terms and pursuant to such procedures as may be established by the Board.

Section 8. Multijurisdictional Plan. Pursuant to the Act, the Authority, by resolution of the Board, shall adopt a multijurisdictional plan (the "Plan") for the accomplishment of its purpose (as described in Section 3 hereof). The Plan shall include provision for the succession of the Authority to the rights, privileges, assets, liabilities, obligations and operations of the existing housing authority of the County.

Section 9. Sources of Revenue.

(a) Expected Sources of Revenue. Subject to the requirements of Article X, Section 20 of the State Constitution, the voting requirements and other provisions of the Act and the requirements hereof, the Members hereby declare the present expectation of the Authority to derive revenues from a sales tax and use tax of 0.125% (hereinafter referred to as the "Housing Sales/Use Tax") and a development impact fee of \$2.00 or less per square foot of new residential, commercial and industrial construction, to be imposed in amounts not greater than as shown in Appendix A, attached and incorporated herein, (hereinafter referred to as the "Housing Impact Fee") imposed throughout the boundaries of the Authority pursuant to and in accordance with subsection (3)(f.1) of the Act; provided, that such declaration of expectation shall not be construed to obligate the Authority in any way.

(b) Consent for Additional Fees, Taxes. No additional tax or fee shall be imposed by the Authority in excess of the tax or fee described in subsection (a) of this Section without the express written consent of the Members' governing bodies.

(c) Fair Distribution of Revenues. Prior to and as a condition of levying any tax or fee described in subsection (a) of this Section, the Board shall adopt a resolution determining that the levying of such tax or fee will fairly distribute the costs of the Authority's activities among the persons and businesses benefited thereby and will not impose an undue burden on any particular group of persons or businesses.

(d) Coordination of Sales and Use Tax Collection with Department of Revenue. The Authority shall designate a financial officer who shall coordinate with the State Department of Revenue regarding the collection of a sales and Use tax described in subsection (a) of this Section. Such coordination shall include but not be limited to the financial officer identifying those businesses eligible to collect the sales tax and any other administrative details identified by the Department of Revenue.

Section 10. Revenue Distribution, Allocated Share of Administrative Expenses.

(a) Administrative Expenses. The annual administrative budget of the Authority, as such expenditures are described in the approved annual budget for the Authority, shall be funded from the Housing Sales/Use Tax levied by the Authority. Commencing on January 1 of each calendar year, the Authority shall retain all Housing Sales/Use Tax revenues derived from all taxable retail sales within the jurisdiction of each Member until the Allocated Share of the administrative expenses for such jurisdiction, as described in subsection (b) below, have been fully collected by the Authority. Notwithstanding Section 6(f) above, approval of the annual administrative

budget of the Authority and any amendments thereto shall require the affirmative votes of the following number of directors:

<u>Number of Members of the Authority</u>	<u>Votes Required to Approve Budget</u>
2	2
3	2
4	3
5	4
6	4
7	5

(b) Allocated Share. The revenues required for the annual administrative expenditures of the Authority shall be obtained from the Housing Sales/Use Tax revenues generated within the jurisdiction of each Member in the following amounts, expressed as a percentage of the total annual approved administrative budget for the Authority (such amounts being the “Allocated Share”):

- i. Summit County – 23.2%
- ii. Breckenridge - 26.0%
- iii. Dillon - 13.3%
- iv. Frisco - 18.3%
- v. Silverthorne - 19.2%

(c) The Authority shall maintain accurate records of the services it provides to the Members during each calendar year and shall report to the Board as directed regarding the quantity of such services provided to each Member. The Members intend to develop and agree upon a new Allocated Share schedule based on the amount of Authority services provided to each Member, which schedule shall supercede the Allocated Share percentages listed above upon approval by the Board.

(d) Notwithstanding subparagraphs (a) and (b) above, any Housing Sales/Use Tax revenues collected from an incorporated area of Summit County that is not within the jurisdiction of a Member shall be retained by the Authority. Furthermore, if for any reason any of the above-listed Members are not a party to this Agreement, the remaining Members shall amend this Agreement for the purpose of adjusting the Allocated Share percentages as shall be mutually agreed to.

(e) Tax Distribution to Members. Once the Allocated Share of the administrative budget for any calendar year has been collected from within the jurisdiction of a Member, all subsequent Housing Sales/Use Tax revenues collected from within the jurisdiction of such Member shall thereafter be paid to the Member by the Authority for the remainder of such calendar year.

(f) Impact Fee Distribution to Members. Any Housing Impact Fee imposed by the Authority shall be administered and collected by each Member for all new residential, commercial and industrial construction within the jurisdiction of such Member. Provided, however, any Housing Impact Fee imposed by the Authority within an

incorporated area of Summit County that is not within the jurisdiction of a Member shall be administered and collected by the Authority. The Authority shall endeavor to administer the Housing Impact Fee in cooperation with the associated non-member municipal corporation. All Housing Impact Fee revenues collected by a Member shall be retained by such Member, except as provided in subsection (g) below. A Member may develop and implement a system to provide a credit or offset against a Housing Impact Fee in favor of a developer who provides affordable housing for its project pursuant to the Member's land use development laws.

(g) Unspent Revenues. If revenues collected in a given calendar year from the imposition of a Housing Sales/Use Tax or Housing Impact Fee are not spent or allocated by a Member within three years after the end of such calendar year, such unspent revenues shall be promptly refunded to the Authority by the Member, without interest thereon, unless another method of payment is agreed to by the Member and Authority.

(h) County Jurisdiction. For purposes of this Section 10 only, the jurisdiction of the County shall be deemed to be the unincorporated area of Summit County.

Section 11. Amendment of Agreement; Additional Members.

(a) Generally. Except as otherwise provided in this Section, this Agreement may be modified or amended only by the express approval of the governing bodies of all Members.

(b) Amendment to Provide for Additional Members. This Agreement may be amended to add one or more additional Members upon: (i) resolution of the Board providing for such amendment adopted as provided herein and (ii) approval of such amendment by the governing body of the prospective additional Member and each then existing Member.

Section 12. Term of Agreement and Distribution of Assets Upon Termination of Agreement.

(a) Effective Date. The term of this Agreement shall begin when the County and at least one other Member have executed this Agreement. Upon such execution, this Agreement shall supersede the Original IGA and the Authority shall continue in accordance with the terms of this Agreement.

(b) Termination. The term of this Agreement shall end when less than two Members are willing to remain as parties to this Agreement; provided, however, that this Agreement may not be terminated so long as the Authority has any bonds, notes or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations.

(c) Distribution of Assets Upon Termination. Upon termination of this Agreement pursuant to subsection (b) of this Section, after payment of all bonds, notes and other obligations of the Authority, the net assets of the Authority shall be distributed to the parties who are Members at such time in such proportion as shall be agreed to by such

Members at such time.

Section 13. Execution and Performance of Agreement in Accordance with Law. Each Member hereby represents to each other Member that it has adopted and executed this Agreement in accordance with applicable law. Each Member and the Authority shall perform their respective obligations and expend any revenues derived hereunder for housing projects or programs in accordance with all applicable laws, rules and regulations, including but not limited to (a) the Act, (b) the terms of any approved ballot measures referred by the Authority, (c) authorized resolutions of the Authority regarding any Housing Sales/Use Tax or Housing Impact Fee, (d) the multijurisdictional housing plan adopted by the Authority, and (e) the provisions of title 29, article 1, part 8, Colorado Revised Statutes.

Section 14. Indemnification. All actions or omissions by any Member or the Authority (hereinafter referred to as a Party or collectively the Parties), including their respective representatives, employees, agents, volunteers or officials, shall be the sole responsibility of the respective Party. Accordingly, each Party shall fully indemnify, to the extent permissible under Colorado law, all other Parties for any damages, claims, costs, expenses, cause of action or liability of any manner, including without limit reasonable attorneys fees, arising out of or relating to the acts or omissions of such Party. The Parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the actions or omissions of any Party is controlled and limited by the provisions of the Colorado Governmental Immunity Act (Immunity Act) title 24, article 10, Colorado Revised Statutes, as now or hereafter amended and that the Parties do not intend to waive by any provision of this Agreement the liability limitations or any other right, immunity or protection afforded by the Immunity Act or as may otherwise be afforded by law.

Section 15. Parties in Interest: Nothing expressed or implied herein is intended or shall be construed to confer upon any person other than the Members any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the Members.

Section 16. No Personal Liability. No covenant or agreement contained in this Agreement or any resolution or bylaw adopted by the Board shall be deemed to be the covenant or agreement of an elected or appointed official, officer, agent, servant or employee of any Member in his or her individual capacity.

Section 17. Notices. Except as otherwise provided in this Agreement, all notices, certificates, requests, requisitions or other communications by the Authority, any Member, any Director or any Officer shall be in writing; shall be sufficiently given and shall be deemed given when actually received, in-the-case of the Authority and officers of the Authority, at the last address designated by the Authority for such purpose and, in the case of such other persons, at the last address specified by them in writing to the Secretary of the Authority; and, unless a certain number of days is specified, shall be given within a reasonable period of time.

Section 18. Assignment. None of the rights or benefits of any Member may be assigned, nor may any of the duties or obligations of any Member be delegated, without

the express written consent of all the Members.

Section 19. Severability. If any clause, provision, subsection, or Section of this Agreement shall be held to be invalid, illegal or unenforceable for any reason, the invalidity, illegality or enforceability of such clause, provision, subsection, or Section shall not affect any of the remaining provisions of this Agreement.

Section 20. Interpretation. Subject only to the express limitations set forth herein, this Agreement shall be liberally construed (a) to permit the Authority and the Members to exercise all powers that may be exercised by a multijurisdictional housing authority pursuant to the Act and by a separate legal entity created by a contract among the Members pursuant to the Intergovernmental Relations Statute; (b) to permit the Members to exercise all powers that may be exercised by them with respect to the subject matter of this Agreement pursuant to the Act, the Intergovernmental Relations Statute and other applicable law; and (c) to permit the Board to exercise all powers that may be exercised by the board of directors of a multijurisdictional housing authority pursuant to the Act and by the governing body of a separate legal entity created by a contract among the Members pursuant to the Intergovernmental Relations Statute. In the event of any conflict between the Act, the Intergovernmental Relations Statute or any other law with respect to the exercise of any such power, the provision that permits the broadest exercise of the power consistent with the limitations set forth in this Agreement shall control.

Section 21. Contract with Summit County Housing Authority. The Authority may enter into an agreement with the existing Summit County Housing Authority to allow the Summit County Housing Authority to perform or provide any of the duties, functions, facilities or services of the Authority.

Section 22. Governing Law. The laws of the State shall govern the construction and enforcement of this Agreement.

Section 23. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Members effective the effective date set forth above.

SUMMIT COUNTY, COLORADO

By: _____
Robert H.S. French, Chairman

ATTEST:

By: _____
Cheri Brunvand, Clerk and Recorder

TOWN OF BRECKENRIDGE

By: _____
Ernie Blake, Mayor

ATTEST:

By: _____
Mary Jean Loufek, Town Clerk

TOWN OF DILLON

By: _____
Barbara Davis, Mayor

ATTEST:

By: _____
Jan Thomas, Town Clerk

TOWN OF FRISCO

By: _____
Bernie Zurbriggen, Mayor

ATTEST:

By: _____
Deborah Wolhmuth, Town Clerk

TOWN OF SILVERTHORNE

By: _____
Dave Koop, Mayor

ATTEST:

By: _____
Michelle Karlin, Town Clerk

APPENDIX A

FIRST AMENDED INTERGOVERNMENTAL AGREEMENT

HOUSING IMPACT FEE SCHEDULE

Commercial and Industrial Construction: \$2.00 per square foot

Residential Construction:

Single Family Homes

- 1499 square feet or less - \$.0
- 1500 to 2499 square feet - \$.50 per square foot
- 2500 to 3499 square feet - \$1.00 per square foot
- 3500 to 4999 square feet - \$1.50 per square foot
- 5000+ square feet - \$2.00 per square foot

Residential Other

- 999 square feet or less - \$.0
- 1000 to 1499 square feet - \$.50 per square foot
- 1500 to 2499 square feet - \$1.00 per square foot
- 2500+ square feet - \$2.00 per square foot