

RESOLUTION NO. 16

SERIES 2002

A RESOLUTION APPROVING A WATER LINE REIMBURSEMENT AGREEMENT WITH THE RED, WHITE AND BLUE FIRE PROTECTION DISTRICT

WHEREAS, the Town of Breckenridge is a home rule municipal corporation organized and existing pursuant to Article XX of the Colorado Constitution, and owns and operates a potable water utility system; and

WHEREAS, the Red, White and Blue Fire Protection District ("District") is a Colorado special district which owns the real property located at 13365 Colorado Highway 9 in unincorporated Summit County, Colorado ("District's Property"); and

WHEREAS, District has constructed and currently operates a fire station on District's Property; and

WHEREAS, in order to receive water from the Town's water system, the District expended the sum of \$137,785.00 to construct an extension of the Town's water main line to serve District's Property ("Water Line Extension"); and

WHEREAS, the parties have agreed that the District is entitled to reimbursement for all or part of the cost of constructing the Water Line Extension from those persons who are permitted to tap into the Water Line Extension by the Town, all as more fully set forth in the proposed Water Line Reimbursement Agreement, a copy of which is marked "Exhibit "A", attached hereto and incorporated herein by reference ("Agreement"); and

WHEREAS, the Town Council has reviewed the proposed Agreement and is familiar with its terms; and

WHEREAS, the Town Council finds and determines that it would be in the best interest of the Town for the Agreement to be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Water Line Reimbursement Agreement between the Town and the Red, White and Blue Fire Protection District (Exhibit "A" hereto) is approved; and the Town Manager is hereby authorized, empowered and directed to execute such Agreement for and on behalf of the Town of Breckenridge.

Section 2. This Resolution shall become effective upon its adoption.

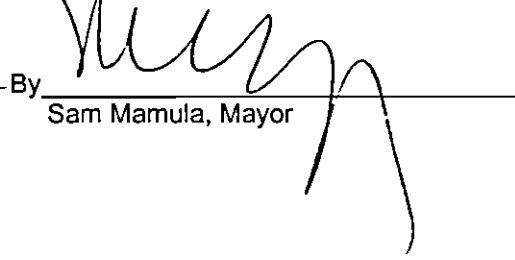
RESOLUTION APPROVED AND ADOPTED this 26th day of March, 2002.

ATTEST:

TOWN OF BRECKENRIDGE

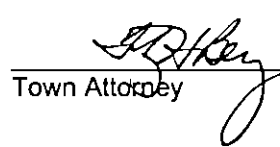


Mary Jean Loufek, CMC
Town Clerk



By Sam Mamula, Mayor

APPROVED IN FORM



Town Attorney

3/26/02

Date

WATER LINE REIMBURSEMENT AGREEMENT

This Water Line Reimbursement Agreement ("Agreement") is made and entered into this 27th day of MARCH, 2002, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and the RED, WHITE AND BLUE FIRE PROTECTION DISTRICT ("District").

WITNESSETH:

WHEREAS, Town is a home rule municipal corporation organized and existing pursuant to Article XX of the Colorado Constitution, and owns and operates a potable water utility system; and

WHEREAS, District is a Colorado special district which owns the real property located at 13365 Colorado Highway 9 in unincorporated Summit County, Colorado and more specifically described on the attached Exhibit "A" ("District's Property"); and

WHEREAS, District has constructed and currently operates a fire station on District's Property; and

WHEREAS, in order to receive water from the Town's water system, the District expended the sum of \$137,785.00 to construct an extension of the Town's water main line to serve District's Property ("Water Line Extension"); and

WHEREAS, the parties have agreed that the District is entitled to reimbursement for all or part of the cost of constructing the Water Line Extension from those persons who are permitted to tap into the Water Line Extension by the Town during the term of this Agreement; and

WHEREAS, Town agrees to use its best efforts to collect from those persons who are permitted to tap into the Water Line Extension during the term of this Agreement, and to remit to District pursuant to this Agreement, a Line Reimbursement Surcharge, all in accordance with and subject to the terms of this Agreement.

NOW THEREFORE, the parties agree as follows:

1. Legal Description of Affected Area. The properties which may potentially be serviced by Town from the Water Line Extension during the term of this Agreement are described on the

attached Exhibit "B". Such properties shall be referred to as the "Affected Area."

2. Term. The term of this Agreement shall be 20 years from date of the execution of this Agreement.

3. Line Reimbursement Surcharge. The parties stipulate and agree as follows:

3.1 The total principal amount expended by the District for the Water Line Extension and which is eligible for reimbursement pursuant to this Agreement is \$137,785.00 ("District's Construction Costs").

3.2 Based upon the Town's most current Water Master Plan, and taking into consideration that certain Agreement between the District and Lincoln Highlands III Limited, a Colorado limited partnership, dated JAN. 7, 200~~9~~ ("Lincoln Highlands Agreement"), the total number of single family equivalents ("SFEs") which may potentially connect to the Water Line Extension during the term of this Agreement is 63.0 SFEs ("Total Capacity"), all as more fully set forth on Exhibit "B".

3.3 The District's Construction Costs divided by the Total Capacity results in a Line Reimbursement Surcharge per SFE as set forth on Exhibit "C".

3.4 If, at any time during the term of this Agreement, the Town permits any person to connect real property or improvements located within the Affected Area to the Water Line Extension, the Town shall use its best efforts to collect the Line Reimbursement Surcharge as set forth on Exhibit "C" from such person in addition to Town's regular plant investment fees and other charges. In addition to the Line Reimbursement Surcharge and its regular plant investment fees and other charges, the Town may charge any person who connects to the Water Line Extension during the term of this Agreement an administrative service fee in such amount as Town may determine from time to time.

3.5 Town shall collect the Line Reimbursement Surcharge at the time of the issuance of a building permit for the construction of any permanent improvements which will be connected to the Water Line Extension.

- 3.6 Town shall remit the collected Line Reimbursement Surcharge(s) to the District, without interest thereon, within 60 days of collection.
- 3.7 Town shall act in good faith and shall use its best efforts to collect the Line Extension Surcharge due to District pursuant to this Agreement. However, Town shall have no liability to District in the event that Town fails to collect or remit a Line Reimbursement Surcharge so long as Town has acted in good faith and used its best efforts in attempting to collect such sum.
- 3.8 District shall not be entitled to recoup through this Agreement, the Lincoln Highlands Agreement, or both such agreements, more than the District's Construction Costs, together with interest thereon at the rate of 6% per annum. District shall be solely responsible for refunding to any applicable party any amount wrongfully collected by District in excess of such amount.
- 3.9 The District expressly acknowledges that the Town's obligation to collect a Line Reimbursement Surcharge shall expire 20 years from the date of execution of this Agreement regardless of whether any additional SFEs have been sold within the Affected Area.
- 3.10 District understands and agrees that by entering into this Agreement the Town's obligation for the payment of the collected Line Reimbursement Surcharge(s) is expressly contingent upon the sale by the Town of SFEs within the Affected Area during the term of this Agreement, and that no Line Reimbursement Surcharge is due to District unless such SFEs are sold by the Town to a third party or parties. The parties acknowledge that the Town's decision to allow any person to connect to the Water Line Extension is dependent upon compliance with the Town's then existing treatment capacity, policies, rules and regulations, and any orders or directives by applicable regulatory agencies which may have jurisdiction over Town's treatment and delivery of potable water.
- 3.11 Town shall not waive the obligation of any person to pay a Line Reimbursement Surcharge due to District

under this Agreement without the prior written consent of the District.

3.12 District acknowledges the Town's ownership of the Water Line Extension and the Town's unilateral and unqualified right to determine: (i) which user(s) will be permitted to connect to the Water Line Extension; (ii) when any such user(s) will be permitted to so connect; and (iii) the terms and conditions under which any user(s) will be permitted to connect to the Water Line Extension.

4. Conveyance of Water Line Extension. Concurrently with the execution of this Agreement the District shall convey the Water Line Extension to the Town by Bill of Sale containing a warranty of title. The Water Line Extension shall be conveyed to the Town with a five-year warranty for construction and materials.

5. Termination. This Agreement shall terminate automatically upon the first to occur of: (i) the expiration of 20 years from the date of this Agreement; or (ii) the receipt by District of the total amount which it is entitled to receive hereunder as provided in Paragraph 3.8. This Agreement may also be terminated by mutual agreement of the parties. Upon termination the parties shall execute a document in recordable form confirming such termination, and shall record such document with the Clerk and Recorder of Summit County, Colorado.

6. Limitation Of Applicability. This Agreement is solely between the parties and is not intended, nor shall it be interpreted or construed, as a commitment for the sale of SFEs to any third party or property owner within the Affected Area. The Town shall always retain the discretion to determine when and to whom it will sell its water, subject to its then existing treatment capacity, policies, rules and regulations. This Agreement is not to be deemed to be for the benefit of any third party or property owner.

7. Notice and Demands. All notices required or permitted under this Agreement shall be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies directed as follows:

If intended for Town to:

Town of Breckenridge
P.O. Box 168
150 Ski Hill Road
Breckenridge, Colorado 80424
Attn: Town Manager

Telephone number: (970) 453-2251
Telecopier number: (970) 547-3104

If intended for District to:

Red, White and Blue Fire Protection District
P.O. Box 710
Breckenridge, Colorado 80424

Telephone number: (970) 453-2474
Telecopier number: (970) 453-1350

Any notice delivered by mail in accordance with this Paragraph shall be deemed to have been duly given on the third business day after the same is deposited in any post office or postal box regularly maintained by the United States postal service. Any notice delivered by telecopier in accordance with this Paragraph shall be deemed to have been duly given upon receipt if concurrently with sending by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by certified mail, return receipt requested, on the same day to that intended recipient. Any notice delivered by hand or commercial carrier shall be deemed to have been duly given upon actual receipt. Either party, by notice given as above, may change the address, telephone number or telecopier number to which future notices may be sent.

8. Assignment. District may not assign this Agreement (or hypothecate or pledge the right to receive such Reimbursement Surcharges pursuant to this Agreement) without the prior consent of the Town.

9. Paragraph Headings. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

10. No Adverse Construction. District and Town both acknowledge having had the opportunity to participate in the

drafting of this Agreement. This Agreement shall not be construed against either the District or the Town based on authorship.

11. Additional Documents or Action. The parties agree to execute any additional documents and to take any additional action necessary to carry out the intent of this Agreement.

12. Amendment; Severability. This Agreement may be amended only by an instrument in writing signed by the parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

13. Alternative Dispute Resolution. In the event of any dispute or claim arising under or related to this Agreement, the parties shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbitrator Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the parties agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within 60 days following either party's written request therefor. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the District Court for Summit County. In any legal proceeding, other than mediation, the prevailing party shall be entitled to recover its reasonable attorneys' fees and litigation costs from the other party at the discretion of the court.

14. Governing Law. This Agreement shall be governed by the laws of Colorado.

15. Incorporation Of Exhibits. All of the exhibits referenced in this Agreement shall be deemed incorporated into this Agreement.

16. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and

supersedes any prior agreement or understanding relating to the subject matter of this Agreement.

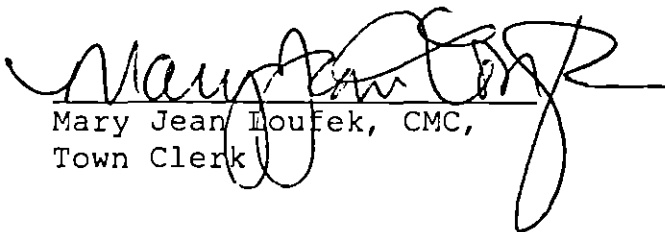
17. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective legal representatives, successors, and assigns.

Executed the date first written above.

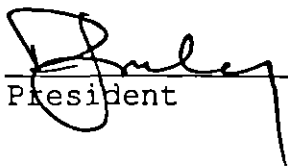
TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By 
Timothy J. Gagen, Town Manager

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

RED, WHITE AND BLUE FIRE PROTECTION
DISTRICT

By: 
President

Attest:


Secretary

Exhibit "A"
To Reimbursement Agreement for Water Line Extension Line
Between the Town of Breckenridge and Red, White and Blue Fire
Protection District

Legal Description of District's Property

A portion of the Braddock Placer (MS 13465) located in Section 18, Township 6 South, Range 77 West of the 6th Principal Meridian, Town of Breckenridge, County of Summit and State of Colorado, and more particularly described as follows:

Beginning at a point on the easterly boundary of a parcel of land known as Stan Miller's property from which Corner 1 of the Braddock Placer, also being corner 12 of the Munroe Placer (MS 1150) bears N 29° 25' 48" E, 3090.47 feet;

thence S 84° 39' 48" E, 327.21 feet;

thence S 12° 44' 00" W, 201.68 feet to a point on the northerly boundary of Stan Miller's property;

thence the following two (2) courses along the northerly and easterly boundaries of Stan Miller's property:

1.) thence N 84° 39' 46" W, 301.24 feet;

2.) thence N 05° 20' 12" E, 200.00 feet to the point of beginning.

containing 1.44 acres, more or less.

Exhibit "B"
To Reimbursement Agreement for Water Line Extension Line
Between the Town of Breckenridge and Red, White and Blue Fire
Protection District

Description of Affected Area

<u>Property</u>	<u>No. of SFEs</u>
District's Property	13
"BBC Property" (Exhibit "B-1" hereto)	40
"Stan Miller Property" (Exhibit B-2 hereto)	10

Total = 63.0 SFEs

EXHIBIT B-1 ("BBC PROPERTY")

A parcel of land situated in Section 18, Township 6 South, Range 77 West of the Sixth Principal Meridian in the Town of Breckenridge, County of Summit and State of Colorado. Being more particularly described as follows:

Beginning at corner number 4 of the Accomodation Placer (MS 19361), also being corner number 9 of the B & L No. 1 Placer (MS 14044);

thence N56°14'04"W, 53.84 feet along the 3-4 line of the Accomodation Placer;

thence N05°21'39"E, 528.18 feet;

thence S84°38'21"E, 522.58 feet to a point on the westerly right of way of Colorado State Highway 9;

thence the following five (5) courses along the westerly right of Colorado State Highway 9;

(1) thence S12°28'39"W, 18.36 feet;

(2) thence S11°58'31"W, 201.96 feet;

(3) thence S13°32'03"W, 301.19 feet;

(4) thence S00°03'50"E, 203.42 feet;

(5) thence S05°04'30"W, 84.92 feet;

thence N82°21'02"W, 452.27 feet to a point on the 4-5 line of the Accomodation Placer;

thence N11°35'37"E, 233.91 feet along the 4-5 line of the Accomodation Placer to the point of beginning.

Described parcel contains 8.59 acres more or less.

EXHIBIT B-2 ('STAN MILLER PROPERTY')

A portion of the Accommodation Placer M. S. 13361 and the Braddock Placer M. S. 13465, Section 18, Township 6 South, Range 77 West of the 6th Principal Meridian, situate in the County of Summit, State of Colorado and more particularly described as follows:

Beginning at Corner No. 1 of said Accommodation Placer M. S. 13361, common with Corner No. 7 of said Braddock Placer M. S. 13465, which point is, in fact the true point of beginning, thence S 56°03'00" E 310.00', thence S 05°32'43" W 617.00', thence S 81°27'17" E 655.00' to the westerly right of way of Colorado State Highway No. 9, thence S 12°32'10" W 201.48' along said right of way, thence N 84°27'17" W 535.59', thence S 05°32'43" W 523.18' to a point on line 3-4 of said Accommodation Placer, thence N 55°03'00" W 303.97' to Corner No. 3 of said Accommodation Placer, thence N 01°53'00" E 779.36' along line 2-3 to Corner No. 2 of said Accommodation Placer, thence N 19°12'00" E 526.18' to Corner No. 1, the true point of beginning.

A TRACT OF LAND BEING A PORTION OF THE B AND L NO. 1 PLACER, U.S. MINERAL SURVEY NO. 14044, SECTION 18, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SUMMIT COUNTY, COLORADO. SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER NO. 4 OF SAID B AND L NO. 1 PLACER, THENCE ALONG THE BOUNDARY OF A 4.344 ACRES TRACT OF LAND FOR THE FOLLOWING THREE COURSES:

- 1) N 49°33'44" E A DISTANCE OF 435.00 FEET;
- 2) S 20°24'16" E A DISTANCE OF 435.00 FEET;
- 3) S 69°33'44" W A DISTANCE OF 435.00 FEET TO A POINT ON THE 3-4 LINE OF SAID B AND L NO. 1 PLACER;

THENCE S 20°24'16" E A DISTANCE OF 358.83 FEET TO CORNER NO. 3 OF SAID B AND L NO. 1 PLACER; THENCE S 31°40'24" W ALONG THE 2-3 LINE OF SAID B AND L NO. 1 PLACER A DISTANCE OF 373.21 FEET; THENCE N 11°03'33" E A DISTANCE OF 878.89 FEET TO A POINT ON THE 7-10 LINE OF SAID B AND L NO. 1 PLACER, ALSO BEING THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED IN BOOK 303 AT PAGE 114 IN THE OFFICE OF THE SUMMIT COUNTY CLERK AND RECORDER; THENCE N 12°01'49" E A DISTANCE OF 233.71 FEET TO CORNER NO. 9 OF SAID B AND L NO. 1 PLACER, ALSO BEING CORNER NO. 4 OF THE ACCOMMODATION PLACER, U.S.M.S. NO. 13361; THENCE N 55°03'00" W A DISTANCE OF 357.81 FEET TO CORNER NO. 8 OF SAID B AND L NO. 1 PLACER, ALSO BEING CORNER NO. 3 OF SAID ACCOMMODATION PLACER; THENCE N 02°10'15" E A DISTANCE OF 350.34 FEET TO CORNER NO. 7 OF SAID B AND L NO. 1 PLACER, ALSO BEING CORNER NO. 2 OF SAID ACCOMMODATION PLACER; THENCE N 19°12'00" E A DISTANCE OF 588.38 FEET TO CORNER NO. 6 OF SAID B AND L PLACER, ALSO BEING CORNER NO. 14 OF THE BRADDOCK PLACER, U.S.M.S. NO. 13465; THENCE N 25°31'44" W A DISTANCE OF 673.58 FEET TO CORNER NO. 5 OF SAID B AND L NO. 1 PLACER, ALSO BEING CORNER NO. 13 OF SAID BRADDOCK PLACER; THENCE S 13°47'44" W A DISTANCE OF 1050.43 FEET TO THE POINT OF BEGINNING, CONTAINING 24,000 ACRES, MORE OR LESS.

SUBJECT to a right of way as deeded to Robin G. Theobald by H. O. McCain by Warranty Deed recorded under Reception No. 218765 on January 28, 1981 and by corrected Warranty Deed recorded under Reception No. 224748 on June 15, 1981 in the records of the office of the Clerk and Recorder of Summit County, Colorado, being a right of way for ingress and egress from State Highway over the existing road to the area near the Alpine Beer Plant and thence to a parcel of land described as follows: A tract of land being a portion of the B & L No. 1 Placer, U. S. Mineral Survey No. 14044 and located in Section 18, Township 6 South, Range 77 West of the Sixth Principal Meridian, Summit County, Colorado, being more particularly described as follows: Beginning at Corner No. 4 of said B & L No. 1 Placer, thence the Southwest Corner of said Section 18 bears S. 03°50'27" W. 2762.98 feet distant; thence S. 20°24'16" E. along the 4-3 line of said B & L No. 1 Placer a distance 435.00 feet; thence N. 69°33'44" E. a distance of 435.00 feet; thence N. 20°24'16" W. a distance of 435.00 feet; thence S. 69°33'44" W. a distance of 435.00 feet to the point of beginning, containing 4.344 acres, more or less.

thence N. 20°24'16" W. a distance of 435.00 feet; thence S. 69°33'44" W. a distance of 435.00 feet to the point of beginning, containing 4.344 acres, more or less.

Feb. 11. 2002 2:25PM

TOB PUBLIC WORKS

No. 0978 P. 2

San Miller

EXHIBIT B-2. (CONTINUED)

A tract of land being a portion of the B & L No. 1 Placer, U.S. Miners' Survey No. 14044 and located in Section 18, Township 6 South, Range 77 West of the Sixth Principal Meridian, Summit County, Colorado; being more particularly described as follows:

Beginning at Corner No. 4 of said B & L No. 1 Placer, whence the Southwest Corner of Said Section 18 bears S. 03 50'27" W. 2762.98 feet distant; thence S 20 24'16" E. along the 4-3 line of said B & L No. 1 Placer a distance 435.00 feet; thence N. 69 35'44" E. a distance of 435.00 feet; thence N. 20 24'16" W. a distance of 435.00 feet; thence S 69 35'44" W. a distance of 435.00 feet to the point of beginning, containing 4.344 acres, more or less,

Together with a right of way for ingress and egress from State Highway 9 over the existing road to the area near the Alpine Rock Plant and thence to the described tract, as described in the Deeds Reception Nos. 224748 and 296685

aug11leg.des/jb8

Exhibit "C"
To Reimbursement Agreement for Water Line Extension Line
Between the Town of Breckenridge and Red, White and Blue Fire
Protection District

Schedule of Reimbursement Surcharge Per SFE Per Year*

<u>Date of Connection to Water Line Extension</u>	<u>Reimbursement Per SFE</u>
2002 (1st Year)	\$2,187.00
2003 (2nd Year)	\$2,318.22
2004 (3rd Year)	\$2,457.31
2005 (4th Year)	\$2,604.75
2006 (5th Year)	\$2,761.04
2007 (6th Year)	\$2,926.70
2008 (7th Year)	\$3,102.30
2009 (8th Year)	\$3,288.44
2010 (9th Year)	\$3,485.74
2011 (10th Year)	\$3,694.89
2012 (11th Year)	\$3,916.58
2013 (12th Year)	\$4,151.58
2014 (13th Year)	\$4,400.67
2015 (14th Year)	\$4,664.71
2016 (15 th Year)	\$4,944.60
2017 (16th Year)	\$5,241.27
2018 (17th Year)	\$5,555.75
2019 (18th Year)	\$5,889.09

2020 (19th Year)	\$6,242.43
2021 (20th Year)	\$6,616.98

*Calculated by dividing District's Construction Costs (\$137,785.00) by Total Capacity (63.0 SFEs) = \$2,187.00 (rounded) per SFE. This amount of the Water Line Extension Surcharge per SFE for 2002. The amount of the Water Line Extension Surcharge has been increased by 6% per annum throughout the remaining 19 years of this Agreement.