

INTERGOVERNMENTAL AGREEMENT CONCERNING BOAT INSPECTIONS AT
THE FRISCO MARINA ON DILLON RESERVOIR

THIS AGREEMENT ("Agreement") is made and entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS ("Board"), a municipal corporation of the State of Colorado whose address is 1600 W. 12th Avenue, Denver, Colorado 80204, and the Town of Frisco, Colorado ("Town"), a Colorado municipality whose address is PO Box 4100 Frisco, Colorado 80443.

1. The Board operates Dillon Reservoir as a water supply facility located in Summit County, Colorado.
2. The Town manages the Frisco Marina at the Dillon Reservoir through the "Lease Agreement for Frisco Marina", executed on or about November 13, 2013.
3. The Town has determined it to be in its best interests to participate in the management effort to keep Zebra and/or Quagga Mussels and other aquatic invasive species ("ANS") out of Dillon Reservoir. The Board has determined that it is in its best interests to support The Town and share in the cost to manage the effort to keep Zebra and/or Quagga Mussels and other aquatic invasive species out of Dillon Reservoir.
4. Thus, the Parties agree the Town will be responsible for the Aquatic Nuisance inspections and decontaminations of watercraft entering and exiting Dillon Reservoir through Frisco Marina.
5. Term. This Agreement is effective January 1, 2023, and shall remain in effect until December 31, 2032. The Town and the Board must agree upon any extensions of the completion date in a written amendment.
6. Town Responsibility. The Town shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all studies, reports and other Work performed under this Agreement. The Town is responsible for providing the materials, equipment, training and tools necessary for performance of the Work. The Town represents that all Work performed under this Agreement shall be performed with the usual thoroughness and competence and in accordance with the standards of care of the Town's profession prevailing in Colorado. Without additional compensation, and without limiting the Board's remedies, the Town shall promptly remedy and correct any errors, omissions or other deficiencies in the Work not meeting that standard of care, including any breaches of the representations in this Agreement.
7. Confidentiality of Information. To the extent permitted by the Colorado Open Records Act, if permitted at all, the Town shall retain in strictest confidence all information furnished by the Board and the results of any reports or studies

conducted as a result of this Agreement, along with all supporting work papers and any other substantiating documents. The Town shall not disclose such information to others without the prior written consent of the Board, except as required by law.

8. Compensation and Invoicing. The Board shall compensate the Town for Work performed under this Agreement as described in this paragraph. The compensation for the Town provided by this Agreement is entire and complete. The Town has not received and will not receive any other compensation in connection with this Agreement. The Town warrants that it has not paid or promised to pay any compensation to anyone (except Board-approved subcontractors and the Town's officers and employees) in order to obtain this Agreement.
 - a. Upon completion of the Work, the Town will be paid according to invoices submitted by the Town. Payment shall not exceed annual costs outlined in section 8.b. The Town shall provide an invoice for work accomplished at the end of the inspection season. The Town must submit documentation supporting the charges in the invoices and must include the contract number of this Agreement on each invoice. Payments shall be based upon the Town's verified progress in completing the work. Unless the Town has not properly performed the work, invoices will be paid within thirty (30) days of receipt. The Board shall have the right to refuse to pay all or a portion of an invoice that is inconsistent with this Agreement. The Board may delay payment until it can verify the accuracy of the invoice or resolve a dispute with the Town regarding an invoice. Checks shall be made payable to the Town of Frisco.
 - b. The compensation under this Agreement shall not exceed \$45,000.00 in 2023. Compensation for years 2024 through 2032 may include an increase based on the previous year's amount plus an increase calculated according to the Denver-Aurora-Lakewood Consumer Price Index established annually in late February. Annual costs shall not exceed the amount calculated by the formula listed above. There are no reimbursable costs associated with this Agreement.
 - c. The total compensation for this Agreement shall not exceed \$500,000.00.
9. Payment. Payments shall be based upon the Town's verified progress in completing the Work. Unless the Town has not properly performed the Work, invoices will be paid within thirty (30) days of receipt. The Board has the right to refuse to pay all or a portion of an invoice that is inconsistent with this Agreement; all undisputed portions of the invoice shall be paid. The Board may delay payment until it can verify the accuracy of the invoice, obtain releases or waivers with respect to Work covered in the invoice (and with respect to Colo. Rev. Stat. Article 26 of Title 38 if applicable), or resolve a dispute with the Town

regarding an invoice. **The Board will not issue payments unless the Town has current insurance coverage in accordance with this Agreement.**

Checks shall be made payable to the Town.

10. Records and Audits. The Town shall at all times maintain a system of accounting records in accordance with its normal procedures, together with supporting documentation for all Work, purchases, and billings under this Agreement. The Town shall retain all such accounting records and documentation for at least two (2) years after final payment. The Board has the right to audit the accounting records and documentation of Town related to the Work at any time during the period of this Agreement and for two (2) years after final payment. The Town shall refund to the Board any charges determined by the Board's audit to be inconsistent with this Agreement.
11. Changes in Work. The Board has the right to order additions, deletions, or changes in the Work at any time, so long as such changes are within the general scope of Work covered by this Agreement. Requests for material changes in the Work may be made by the Board orally or in writing; however, oral requests shall be confirmed by a written request within ten (10) business days after the oral request. If the Board directs the Town to proceed with a material change, the Town shall be paid for the change as agreed to by the parties.
12. Independent Contractor.
 - a. The Town is customarily engaged in an independent trade, occupation, profession or business related to the Work, and nothing in this Agreement requires the Town to work exclusively for the Board during the term of the Agreement.
 - b. Nothing in this Agreement shall be construed to establish the Town as an agent or employee of the Board for any purpose. The Town and its employees, agents, and subcontractors shall in no way represent themselves to third parties as agents or employees of the Board in performance of the Work.
 - c. The Board shall not oversee the Work of the Town or instruct the Town on how or when to perform the Work, except that the Board and the Town have agreed to a completion date for the Work. The Town shall in all respects be an independent contractor of the Board in its performance of the Work.
 - d. **The Town acknowledges that it is not entitled to unemployment insurance or workers' compensation benefits as a result of performance of the Work for the Board.**
 - e. **The Town acknowledges that it is obligated and solely liable to pay**

federal and state income tax on any moneys earned pursuant to this Agreement, which may include federal and state income and withholding taxes, unemployment taxes, FICA taxes and workers' compensation payments and premiums applicable to this Agreement or the Work. The Town shall indemnify the Board for any liability resulting from nonpayment of the Town's obligations under this paragraph.

13. Insurance.

PLEASE READ THIS CAREFULLY. THE TOWN WILL NOT BE PAID UNLESS THE FOLLOWING INSURANCE REQUIREMENTS ARE MET.

The Town shall maintain the following insurance in full force and effect during the full term of this Agreement. The Town's participation in the Colorado Risk Sharing Association to provide coverage for some or all of the insurance requirements set forth below shall be deemed to meet the requirements of this Section 13 as to that requirement or those requirements. The Town shall provide to the Board certificates of insurance (and renewals thereof) demonstrating that the following insurance requirements have been met.

- a. Public General Liability Insurance:
Public general liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage. Such insurance shall include the City and County of Denver, acting by and through its Board of Water Commissioners, as additional insured and shall be primary and non-contributing with respect to any insurance or self-insurance program of the Board.
- b. Automobile Liability Insurance:
Town shall maintain automobile liability insurance as required by Colorado law. The Board does not require a certificate of insurance unless this subparagraph (b) requires insurance that exceeds the statutory requirements.
- c. Professional Liability Insurance:
Professional liability insurance with limits not less than \$1,000,000 per claim covering all licensed professionals performing Work under this Agreement.
- d. Workers' Compensation Insurance:
The Town is located in Colorado and maintains workers' compensation insurance, as required under the laws of the State of Colorado
- e. Other Requirements:

- 1) The Town's insurers shall maintain an A.M. Best rating of A-, VII or better.
 - 2) All self-insured retentions or deductibles must be declared and acceptable to the Board.
 - 3) Thirty (30) days' advance written notice of cancellation shall be provided to the Board, except for ten (10) days' advance written notice in the event of cancellation due to non-payment of premium.
- f. The Town shall provide copies of insurance policies upon request of the Board and in redacted form if necessary to protect confidential information.
- g. The Board reserves discretion to accept alternative types of insurance.
14. Compliance with Laws. In performing this Agreement, the Town shall comply with all applicable laws, rules, and regulations, including, but not limited to, the Colorado Workers' Compensation Act, federal and state tax laws, and any applicable minimum wage requirements including Denver R.M.C. sec. 58-16, et. seq. **The Town certifies that it has complied, and during the term of this Agreement will continue to comply, with the Immigration Reform and Control Act of 1986.**
15. Liability. To the extent it legally may, if it may at all, the Town agrees to indemnify, hold harmless and defend the Board against any liability, damages, costs, expenses, claims, injuries and losses of whatever nature arising in any way out of this Agreement, to the extent caused by any negligent act or omission or willful misconduct of the Town or the Town's officers, subcontractors, agents, or employees.
16. Standards of Conduct – Nondiscrimination and Respectful Workplace. The Town agrees not to discriminate against any Board employee, or potential subcontractor or supplier because of race, color, religion, age, national origin, gender, sexual orientation, pregnancy, military status, marital status, or disability. The Town further agrees not to conduct business in a manner that brings discredit to the Board or creates a hostile or disrespectful work environment for Board employees, Board customers, or other contractors performing work for the Board. The Board reserves the right at its sole discretion to terminate this Agreement if the Town is an individual, or to direct the Town to assign another employee or agent to perform the Work, if the Board has reason to believe that during the term of the Agreement the Town, or the assigned employee or agent engaged in activity prohibited by this section.
17. Small Business Enterprises; Minority- and Women-Owned Business Enterprises. The Board recognizes the desirability, need and importance to the City and County of Denver of encouraging the development of Small Business Enterprises ("SBEs") and Minority- and Women-Owned Business Enterprises ("MWBEs").

The Town agrees to make a good faith effort to involve SBEs and MWBEs in the Work if and when the opportunity arises.

18. Environmental Compliance. Denver Water strives to adhere to all applicable environmental laws, regulations, and policies. In addition, it utilizes an Environmental Management System to monitor and improve its environmental performance. In the performance of the work, Town must comply with all applicable environmental laws, regulations, ordinances, specifications, reporting requirements, and any other relevant requirements. In addition, Town shall adhere to applicable best practices that a reasonable person performing the Work would follow, including but not limited to following the Aquatic Nuisance Inspection and Decontamination protocols developed by the Colorado's Aquatic Nuisance Species Task Force. Town shall also ensure that its personnel performing work hereunder are appropriately licensed and trained on all relevant environmental compliance rules, standards, and procedures. Town shall only allow ANS Inspections and Decontaminations to be completed by certified ANS Inspectors. Town shall also be solely responsible for managing and properly disposing of any waste(s) it generates in the performance of the work unless otherwise agreed to by Denver Water in writing.
19. Acceptance Not Waiver. The Board's approval of studies, drawings, designs, plans, specifications, reports, computer programs and other work or materials does not in any way relieve the Town of responsibility for the technical accuracy of the Work. The Board's approval or acceptance of, or payment for, any Work is not a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
20. Termination or Suspension. The Board reserves the exclusive right to terminate or suspend all or any portion of the Work by giving fourteen (14) days' written notice to the Town. If any portion of the project shall be terminated or suspended, the Board shall pay the Town equitably for all Work properly performed pursuant to this Agreement. If the project is suspended and the Town is not given an order to resume work within sixty (60) days from the effective date of the suspension, this Agreement will be considered terminated. Upon termination, the Town shall immediately deliver to the Board any documents then in existence that have been prepared by the Town pursuant to this Agreement and that have been paid for by the Board.
21. Default. Every term and condition of this Agreement is a material element of this Agreement. In the event either party should fail or refuse to perform according to the material terms of this Agreement, such party may be declared in default by the other party by a written notice.
22. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) days within which to correct, or commence correcting, the default. In the event that the default has not been

corrected or begun to be corrected, or the defaulting party has ceased to pursue the correction with due diligence, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. In the event the Town fails or neglects to perform the Work in accordance with this Agreement, the Board may elect to correct such deficiencies and charge the Town for the full cost of the corrections. The parties agree that no profits that the Town might realize from this or other work are within the scope of their agreement. They further agree that the Town waives any right to recover and shall not be compensated for any such lost profits or other consequential damages arising from a breach by the Board.

23. Force Majeure. The parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement solely caused by the following events: natural disaster, flood, fire, war, or public enemy. Events not listed in the preceding sentence, including, but not limited to, epidemics such as the current COVID-19 pandemic, economic conditions, and labor strikes, shall not be considered force majeure events. As a condition precedent to invoking this force majeure clause, the invoking party must provide timely written notice detailing the reasons why the force majeure event has made performance under the original contract terms impossible, and the invoking party must immediately take all reasonable measures to mitigate or avoid damages to the other party.
24. Assignment and Subcontracts. The Town may not assign this Agreement or any right or liability of this Agreement or enter into any subcontract or amend any subcontract related to this Agreement without prior written consent of the Board. Any subcontract must include language similar to the Records and Audits paragraph of this Agreement, requiring records to be adequate and available for Board audit. This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns. This Agreement is intended to benefit only the parties, and neither subcontractors nor suppliers of the Town nor any other person or entity is intended by the parties to be a third-party beneficiary of this Agreement.
25. Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement will remain enforceable to the fullest extent permitted by law.
26. Venue and Governing Law. This Agreement shall be deemed performable in the City and County of Denver, notwithstanding that the parties may find it necessary to take some action outside the City and County. The sole venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. This Agreement shall be governed by and construed under the laws of the State of Colorado.

27. Notice and Contact. The parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other party; or (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date.

If to the Town:

Logan Snyder, Marina General Manager
Town of Frisco
PO Box 4100
1 E Main Street
Frisco, CO 80443
LoganS@townoffrisco.com

If to the Board:

Brandon Ransom, Manager of Recreation
Denver Water Department
1600 West 12th Avenue
Denver, Colorado 80204
brandon.ransom@denverwater.org

or such other persons or addresses as the parties may have designated in writing.

28. Charter of the City and County of Denver. This Agreement is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. The Charter provisions are incorporated by this reference and supersede any apparently conflicting provisions otherwise contained in this Agreement.
29. Governmental Immunity Act. The parties understand and agree that the Board and the Town are relying upon, and have not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.
30. Entire Agreement. This Agreement constitutes the entire agreement between the Board and the Town and replaces all prior written or oral agreements and understandings with regard to the subject matter herein. This Agreement is intended to supplement the Lease Agreement dated November 13, 2013. It may be altered, amended, or repealed only by a duly executed written instrument.

The terms of this Agreement shall control in the event of any conflict between the terms of the Agreement and any documents or exhibits attached or incorporated into the Agreement.

31. Effective Date. This Agreement shall become effective on the date it is fully signed by the Board.
32. Electronic Signatures and Records. The Town consents to the use of electronic signatures by the Board. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically in the manner specified by the Board. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

THEREFORE, the parties have executed this Agreement. This Agreement must have the signature of an authorized representative of the Town.

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

By: _____
CEO/Manager

DATE: _____

APPROVED:

By: _____
Chief Administrative Officer

REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER

By: _____
Timothy M. O'Brien, CPA
Auditor

APPROVED AS TO FORM:

By: _____
Office of General Counsel

DocuSigned by:
Alix Joseph
5C5ED3F784D90487...

THIS AGREEMENT IS ACCEPTED BY:

TOWN: Town of Frisco

By execution, signer certifies s/he is authorized to bind the Town to the terms of this Agreement.

By: _____

DATE: _____

TITLE: _____
[for other than individual]

For Board records only, Town shall check the applicable box(es) below:

- ☐ Town is a Small Business per federal SBA guidelines
☐ Town is not a Small Business per federal SBA guidelines
☐ Town is a Minority-owned Business Enterprise (MBE) and/or Women-owned Business Enterprise (WBE) per _____ (name of certifying entity)
☐ Town is not an MBE or WBE
☐ Town elects not to answer this question

If Town is an MBE and/or WBE, Town must submit evidence of certification from an agency such as the City and County of Denver or the Mountain Plains Minority Supplier Development Council.

YOU MUST INCLUDE THE NOTARIZATION BELOW FOR CONTRACTORS WHO ARE PERFORMING THE WORK AS INDIVIDUALS AND NOT AS A SEPARATE LEGAL ENTITY. FOR ALL OTHER CONTRACTORS, THE NOTARIZATION BELOW MAY BE DELETED.

TOWN'S SIGNATURE MUST BE NOTARIZED BELOW:

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by the Town of Frisco, Colorado.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public