

ATTACHMENT A

AGREEMENT TO FURNISH DAM REPAIR SERVICES TO THE CITY OF WESTMINSTER FOR THE KETNER LAKE DAM CONTROL VALVE.

THIS AGREEMENT, made and entered into December 01, 2023, between the **CITY OF WESTMINSTER**, hereinafter called the “City,” and **Inland Potable Services, Inc.**, a corporation organized pursuant to the laws of the State of Colorado, hereinafter called the “Consultant,” collectively, the “Parties,” is as follows:

WHEREAS, the City wishes to repair the gate and valve control structure for the Ketner Lake dam.; and

WHEREAS, the City desires to engage the Consultant to render the repair services described in this Agreement and the Consultant is qualified and willing to perform such services; and

WHEREAS, sufficient authority exists in City Charter and state statute, sufficient funds have been budgeted for these purposes and are available, and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth, the City and the Consultant agree as follows:

I. THE PROJECT

The project consists of demolishing the existing operating system for the outlet works and replacing with an upgraded gate, stem, and operator. as more specifically described the Scope of Services, attached hereto and incorporated herein as **Appendix A** (hereinafter, the “Project”).

II. CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant agrees that it will furnish all of the technical, administrative, professional, and other labor; all supplies and materials, equipment, printing, vehicles, local travel, office space and facilities, testing and analyses, calculations, and any other facilities or resources necessary to provide the professional and technical services necessary to complete the Project.

III. ADDITIONAL SERVICES

When authorized in writing by the City, the Consultant agrees to furnish or obtain from others, additional professional services due to changes in the Project or its design, subject to separate written agreement between the City and Consultant as to additional compensation for additional services.

IV. CONSULTANT'S FEE

As compensation for the Project, the Consultant shall be paid a lump sum fee of sixty-seven thousand eight hundred dollars (\$67,800.00), which shall constitute full and complete payment for the Project and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement.

V. COMMENCEMENT & COMPLETION OF PROJECT

Consultant understands and agrees that time is an essential requirement of this Agreement. The Project shall be completed as soon as good practice and due diligence will permit. In any event, the Project shall be completed within six (6) months after the Consultant receives notice to proceed, exclusive of time lost or due to delays beyond the control of the Consultant.

VI. TERMINATION

This Agreement shall terminate at such time as the Project is completed and the requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all services previously authorized and completed on the Project prior to the date of termination plus any services the City deems necessary during the notice period. Said compensation shall be paid upon the Consultant's delivering or otherwise making available to the City all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing work on the Project, whether completed or in progress.

VII. INSURANCE

During the course of the Project, the Consultant shall maintain Workers' Compensation Insurance in accordance with the Workers' Compensation laws of the State of Colorado. Consultant shall maintain an Automobile Liability policy of \$500,000 per person/\$1,000,000 per occurrence and a Commercial General Liability policy of \$500,000 per person/\$1,000,000 per occurrence; or alternatively, Consultant shall maintain an Automobile Liability policy and a Commercial General Liability policy each with a \$1,000,000 per occurrence combined single limit. The City shall be named as an additional insured under the Consultant's Automobile and Commercial General Liability coverages, providing that such insurance is primary with respect to claims made by the City. These coverages shall be occurrence-based policies, and shall specifically provide that all coverage limits are exclusive of costs of defense, including attorney fees. The Consultant shall provide certificates of insurance to the City indicating compliance with this paragraph. It shall be an affirmative duty of the Consultant to notify the City in writing within two (2) days of the cancellation of or substantive change to any insurance policy set out herein, and failure to do so shall be a breach of this Agreement.

The Consultant shall procure and maintain in full force and effect for the period set forth herein an Errors and Omissions policy, or other Professional Liability Insurance policy acceptable to the City, with a minimum two million dollars (\$2,000,000.00) coverage per claim and two million dollars (\$2,000,000) in the aggregate, but in any event sufficient to cover the Consultant's potential liability under paragraph XI(D) below. The Consultant shall maintain and keep in effect such insurance coverage for the period of the Colorado statute of repose pertaining to the professional services contemplated by this Agreement. The policy shall cover claims, damages, losses, and expenses resulting from the performance of the professional services under this Agreement. The policy shall have a deductible not in excess of twenty-five thousand dollars (\$25,000) self-insured unless a greater amount has been approved by the City in writing. Before starting any work on the Project, the Consultant shall submit to the City a Certificate of Insurance verifying such coverage. The Consultant shall also provide to the City any notices of renewals of such policy, as such renewals occur, for a period of three years after Substantial Completion of the Work or portion(s) of Work as set forth in this Agreement.

VIII. BONDS

The Consultant will be required, simultaneously with the execution of the Agreement, to furnish separate Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Consultant Fee in Article IV. Said bonds shall be issued by a responsible surety approved by the City and shall guarantee the faithful performance of the Construction Contract and the terms and conditions herein contained and the maintenance of the proposed improvements in good repair according to the terms contained in the Agreement. Accompanying the bond form shall be a "Power of Attorney" authorizing the attorney in fact to bind the surety company and certified to include the date of the bond. Such bonds shall be on forms provided by the City. The Consultant shall deliver said bonds to the Project Manager no later than the date of execution of the Agreement. If the Consultant fails or neglects to deliver the bonds, as specified, he shall be considered to have abandoned the Agreement and his bid security will be forfeited.

IX. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this Agreement, the Consultant shall not unlawfully discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex, immigration status, gender identity or expression, sexual orientation, national origin, or disability. Such actions shall include, but not be limited to the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the execution of this Agreement.

X. PROHIBITED INTEREST

A. The Consultant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further agrees that in the performance of the Agreement, no person having any such interests shall be employed.

B. No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

XI. GENERAL PROVISIONS

A. Independent Contractor. In the performance of the Project, the Consultant shall act as an independent contractor and not as agent of the City except to the extent the Consultant is specifically authorized to act as agent of the City.

B. Books and Records. The Consultant's books and records with respect to the Project and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Project.

C. Ownership and Format of Drawings. All plans, drawings, specifications and the like relating

to the Project shall be the joint property of the City and Consultant. Upon completion of the Project, or at such other time as the City may require, the Consultant shall deliver to the City a complete corrected set of drawings in hard copy and in an electronic/digital format acceptable to the City and such additional copies thereof as the City may request, corrected as of the date of completion of the Project.

D. Responsibility; Liability.

1. Professional Liability. The Consultant shall exercise in its performance of the Project the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services. The Consultant shall be liable to the City for any loss, damages or costs incurred by the City for the repair, replacement or correction of any part of the Project that is deficient or defective as a result of any failure of the Consultant to comply with this standard.

2. Indemnification. To the fullest extent permitted by law and except for professional liability claims, which are addressed in the paragraph below, the Consultant agrees to indemnify, defend, and hold harmless the City, its officers and employees from and against all liability, claims, and demands, including but not limited to attorneys' fees, on account of any injury, loss, or damage arising out of, connected to or resulting from the Project, if such injury, loss, or damage, or a portion thereof, is caused by the act, omission, or fault of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excluding any portion directly attributable to the City's own negligence, and only to the degree or percentage of negligence or fault agreed to be or adjudicated to be attributable to the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

For professional liability claims, to the fullest extent permitted by law, the Consultant agrees to indemnify and hold harmless the City, its officers, and employees from and against all professional liability claims and demands - including but not limited to attorneys' fees - on account of any injury, loss, or damage arising out of, connected to, or resulting from the Project, if such injury, loss, or damage, or a portion thereof, is caused by the act, omission, or fault of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excluding any portion directly attributable to the City's own negligence, and only to the degree or percentage of negligence or fault agreed to be or adjudicated to be attributable to the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

These obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that otherwise exists as to any party or person described in this Subsection (X)(D)(2). In any and all claims against the City, its officers, or employees by any employee of the Consultant, any subcontractor of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations under this Subsection (X)(D)(2) shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant or any subcontractor under the workers' compensation acts, disability benefit acts, or other employee benefit acts.

E. Communications. All communications relating to the day-to-day activities for the Project shall be exchanged between the following Project representatives of the City and the Consultant.

<u>Project Representative for City:</u>	<u>Project Representative for Consultant:</u>
Name: Joe Reale Address: 4800 W 92ND AVE	Name: Jeff Roberts Address: 16297 East Crestline Lane

Westminster, CO 80031 Phone: 303-658-2142 Email: jreale@westminsterco.gov	Centennial, CO 80015 Phone: 303-400-4220 Email: jeff@inlandmarineservices.com
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All notices and communications required or permitted hereunder shall be in writing and delivered personally (which may include email to the address designated above) to the respective Project representatives of the City and the Consultant or shall be sent via registered mail, postage prepaid, return receipt requested to the Parties at their addresses shown herein. When sent via registered mail, notices shall be effective three (3) days after mailing.

F. Assignment. The Consultant shall not assign this Agreement in whole or in part, including the Consultant's right to receive compensation hereunder, without the prior written consent of the City; provided, however, that such consent shall not be unreasonably withheld with respect to assignments to the Consultant's affiliated or subsidiary companies, and provided, further, that any such assignment shall not relieve the Consultant of any of its obligations under this Agreement. This restriction on assignment includes, without limitation, assignment of the Consultant's right to payment to its surety or lender.

G. Applicable Laws and Venue. This Agreement shall be governed by the laws of the State of Colorado and the Charter of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the City is located in both counties. At the City's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

H. Remedies. Consultant agrees that the economic loss rule as set forth in *Town of Alma v. Azco Construction, Inc.*, 10 P.3d 1256 (Colo. 2000) shall not serve as a limitation on the City's right to pursue tort remedies in addition to other remedies it may have against Consultant. Such rights and remedies shall survive the Project or any termination of this Agreement.

I. Entire Agreement. This Agreement and its attachments shall constitute the entire agreement between the Parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the Project. To the extent there is any conflict between the terms of this Agreement and the terms of an attachment hereto, this Agreement shall control.

J. Subcontracting. Except subcontractors identified by name and accepted by the City as part of **Appendix A**, Consultant may not employ additional subcontractors to perform work on the Project without the City's express prior written approval. Consultant is solely responsible for any compensation, insurance, and all clerical detail involved in employment of subcontractors.

K. Enforcement of Agreement. In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

L. Authorization. The person or persons signing and executing this Agreement on behalf of each Party, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

M. Digital Signatures and Copies. The Parties hereby acknowledge that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute

one and the same instrument. The Parties agree that signature pages may be executed via ink signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means. Further, the Parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

N. This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all the terms set forth herein. In the event this Agreement is not approved in its entirety by City Council, neither Party shall be bound to the terms of this Agreement.

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO
PARKS, REC AND LIBRARIES DEPARTMENT, ATTENTION: JOE REALE.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers on the date first appearing above.

<p>INLAND POTABLE SERVICES, INC.</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>ATTEST:</p> <p>_____</p> <p>Printed Name: _____</p> <p>Title: Corporate Secretary</p> <p>(Corporate Seal)</p>	<p>CITY OF WESTMINSTER</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>ATTEST:</p> <p>_____</p> <p>City Clerk</p> <p>(Seal)</p> <p>APPROVED AS TO LEGAL FORM</p> <p>By: _____</p> <p>City Attorney</p>
<p>I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.</p> <p>_____</p> <p>City Manager</p> <p>Account No. _____</p>	

Appendix A Scope of Service



Inland Marine Services
16297 E. Crestline Lane
Centennial, CO 80015
303.400.4220

City of Westminster
Parks, Recreation, and Libraries
Attn: Lance J Johnson
Parks, Golf, and Open Space Manager
4800 West 92nd Avenue
Westminster, CO 80031
303.658.2854
ljohnson@westminsterco.gov

November 29, 2023

Estimate for Marine Construction Services

Inland Potable Services, Inc. dba Inland Marine Services proposes to provide/complete the following services for the City of Westminster, located at Ketner Reservoir. Summary of work is to demolish the existing operating system for the outlet works and replace with upgraded gate, stem, and operator.

Scope of Work:

1. Mobilization to Ketner Reservoir in Westminster, CO
2. Shallow water diving spread with certified commercial divers.
3. Demolition of existing stem, operator, and remaining elements of existing gate, to include local excavation of the rip rap and earth covering existing stem (above and below the waterline at approximately 2' below grade level of slope per historical drawings)
4. Procure and install new outlet works mechanical components
 - 12" diameter Series 6400 Model 20-10c Sluice Gate: Flat Back for Wall Mounting. 24" Tall Galvanized Frame Height, Cast Iron Seating Faces, 80' Long Galvanized Encasement Pipe with Oil Seals, Oil Fill, Pipe Clamps, SST Stems on Upper and Lower Ends. Carbon Steel Stems Encased in Pipe, Stem Splices, Pedestal Mounted Hand Wheel Lift with Merkeley Lock and Stem Cover, SST Assembly Fasteners, SST Stud Anchors, and Hilti RE 500 Epoxy for all Anchors embedded in concrete
5. Underwater installation of lower portion of stem and all gate frame, gate, and associated parts
6. Refill cover over new stem with same fill and rip rap removed during demolition.
7. Start up and Testing to verify proper functionality
8. Final Inspection
9. Demobilization from Ketner Reservoir in Westminster, CO

What we provide: All personnel and equipment necessary to provide the above listed work to be performed by certified underwater welders/commercial divers.



Inland Marine Services
16297 E. Crestline Lane
Centennial, CO 80015
303.400.4220

Total Price for Items Listed Above _____ \$67,800.00.

To Accept, please sign, and date the proposal and remit to jeff@inlandmarineservices.com

Printed Name and Title

Signature

Date:

Quotation prepared by
Jeff Roberts
Inland Marine Services, Inc.

Terms & Conditions

- Pricing and lead times quoted are firm for acceptance within 30 days of the bid date and apply to this quotation only. If this proposal is not accepted within 30 days after bid, Inland Marine Services reserves the right to re-quote and price escalation may be necessary with adjusted lead times.
- Payment Terms: 1% Ten Days, Net 30 Days. 1.5% interest will be charged on all accounts past 30 days.
- This contract is based on a total price which includes time and mobilization to and from the project site, setup and breakdown of equipment, and materials.
- Schedule dates are tentative and subject to change
- Inland Marine Services is fully bondable and insured
- Inland Marine Services makes every attempt to obtain complete information from customers prior to the presentation of bids concerning fees required for municipal licenses, registration fees, Sales Tax or Use Taxes in your area. In the event that additional fees are discovered or charged, after the bid has been submitted, these charges will be added to the stated contract amount when billed.