

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“IGA”), is made this ____ day of _____ 2019, by and between the City of Glenwood Springs (the “City”) and the Colorado Division of Parks and Wildlife (“CPW”), a Division of the Colorado Department of Natural Resources, jointly referred to herein as the “Parties.”

A. In connection with the water court application filed by the City for recreational in-channel diversion (“RICD”) water rights in Case No. 13CW3109, Water Division No. 5, the City has proposed development of a whitewater park to include up to two RICD control structures to be installed in one of the following three potential locations: (1) Two Rivers Park in Glenwood Springs (the “Two Rivers” location); (2) No Name Rest Area at the I-70/No Name interchange (the “No Name” location); and (3) Horseshoe Bend, just downstream from the No Name Location (the “Horseshoe Bend” location).

B. Prior to development of a whitewater park at any one of these three proposed locations, the City anticipates undertaking a more detailed site evaluation and selection process.

C. In a June 4, 2015 Statement submitted to the Colorado Water Conservation Board (“2015 CPW Statement”), CPW expressed specific concerns with regard to wildlife and aquatic habitat impacts if a whitewater park is developed at the Horseshoe Bend location, and also provided reasons why CPW currently prefers the Two Rivers location over the No Name site.

D. Although site-specific permitting issues will need to be addressed in the future with regard to any of the three proposed whitewater park sites, the City is willing to consult with CPW during its site selection process and to diligently pursue and prioritize the development of the Two Rivers or No Name locations over the development of the Horseshoe Bend location during that process. Should, however, the City determine that neither the Two Rivers nor No Name locations are feasible to develop, and thus needs to pursue the Horseshoe Bend location, the City is willing to grant approval authority to CPW with regard to development of the Horseshoe Bend location pursuant to the terms of this IGA.

E. Section 29-1-203, C.R.S., as amended, authorizes and enables governments of the State of Colorado to enter into cooperative agreements or contracts. While the details and format of the City’s further site evaluation and selection process for the three potential RICD sites identified in Case No. 13CW3109 have not yet been established, the City and CPW desire to enter into this IGA to confirm the intent of the Parties to collaborate and cooperate with respect to that process, and to describe general principles that have been agreed upon. This agreement is being entered into by the Parties as partial consideration for the City’s request that CPW exercise its discretion as a referral agency to the Colorado Water Conservation Board (“CWCB”) to recommend approval of a final decree in Case No. 13CW3109 that includes the Horseshoe Bend location.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the sufficiency of which is acknowledged, the parties agree as follows:

1. Site Evaluation and Selection Process. At such time as the City commences the process of selecting the whitewater park site to be developed, the City shall notify CPW's Area 8 and NW Regional offices to request further input and comments from CPW staff regarding potential wildlife, aquatic habitat, and river corridor impacts along with and possible mitigation measures at the proposed whitewater park locations. The City shall continue to keep CPW apprised, and regularly consult with CPW, as the process progresses. The City shall fully consider and address in writing any written comments received from CPW and, at all times during the City's site selection process, to the maximum extent feasible, the development of the No Name location or the Two Rivers location shall be preferred and prioritized over any potential development of the Horseshoe Bend location, and the Horseshoe Bend location shall not be developed as a whitewater park by the City unless approved by CPW, as set forth in the following section.
2. Additional CPW Approval Authority. If it becomes apparent to the City during its site evaluation and selection process that site-specific constraints to the development of the Two Rivers or No Name locations are significantly more substantial and difficult to overcome than those presented by at the Horseshoe Bend location, the City may proceed to request the approval of CPW to develop the Horseshoe Bend location. CPW shall timely consider the City's request, including any additional measures or mitigation that the City may propose to address CPW's concerns. CPW shall then proceed to either approve the City's request, deny the City's request, or approve the City's request with conditions to minimize and to mitigate for the on-site and off-site known and predicted environmental and recreational impacts of developing this location. In all cases, such determination shall be in the sole discretion of CPW, and shall be binding upon the City.
3. RICD Structure Design and Placement Evaluation Process. After the City has chosen one of the whitewater park locations described in Case No. 13CW3109, as with the site evaluation process set forth in Paragraph 1 above, the City shall also consult with and fully consider and address CPW's comments on the design and placement of the RICD structures in addition to all other whitewater park design aspects that may have environmental impacts, such as fish passage, scour and erosion of bed and bank habitat features, stream hydraulics, natural stream function, and installation of lighting features intended to be used for lighted night-time events, as well as impacts to terrestrial wildlife. The Parties agree that the City may install up to two RICD structures at the one location chosen.
4. Abandonment of Horseshoe Bend Location. Should the City successfully develop either the Two Rivers or the No Name location, or should CPW deny the City's request to develop the Horseshoe Bend location, the City agrees it shall not pursue further development of RICD structures within the Colorado River at the Horseshoe Bend location.

5. RICD Monitoring, Adaptive Management, and Maintenance. In CPW's 2015 Statement, CPW requested that the City and CPW collaborate on the development of a pre and post construction monitoring and RICD structure maintenance plan. The City will consult with CPW prior to construction to develop a Monitoring and Adaptive Management Plan (MAMP) in order to define and track the implementation of construction, design and future maintenance controls. Upon completion of construction, the City also agrees to maintain the RICD structures in accordance with the final design and as set forth in the MAMP.
6. Continuing Consultation Post RICD Development. The City's water court application and proposed final decree in Case No. 13CW3109 provide for a conditional water right to be approved for "event" flows in the amount of up to 4000 c.f.s. for up to five continuous days in late June or early July. In the 2015 CPW Statement, CPW expressed concerns regarding potential impacts to fisheries from these event flows wherein the City may arrange for a release of stored upstream water to increase water flowing through the RICD. In CPW's view, the timing of the release, amount of the release, ramping rate, and the sources of the released water could impact various species of fish and fish age classes. For example, during June and July, when proposed event flows may occur, CPW is concerned that significant changes in stream flow could disrupt fish spawning, egg incubation, and fry emergence of recreationally important trout and native fish including bluehead and flannelmouth suckers, roundtail chub, speckled dace, and sculpin. In CPW's view, any substantial changes in wetted habitat due to artificial flow fluctuations could also flush fish of all ages down river or strand them in dry or undesirable habitat that could lead to fish kills. For these reasons, CPW currently prefers that changes in stream flow due to releases of upstream water for event flows not exceed a ramping rate of 500 c.f.s. in a 12-hour period, at any time from April 1 through September 30 (throughout the decreed RICD season). However, if impacts to the fishery are observed as a result of any RICD stream flow fluctuations, CPW may re-examine and revise this ramping rate recommendation and notify the City of the same. The City hereby agrees to consult with CPW as soon as practicable prior to arranging for any event flow releases that would exceed CPW's requested ramping rate. If CPW anticipates significant detriment to the fisheries as a result of the City's proposed event flow releases, the City agrees to avoid and/or minimize these fisheries concerns with a range of options to prevent and/or reduce harm to the fisheries, which may include the City altering the timing and/or rate of event flow releases, the City foregoing or rescheduling such releases, or other creative solutions agreed upon by the Parties. The City also agrees to consult with CPW and to address any other significant wildlife impacts related to the use of lighting for night-time competitive events at either the No Name or Horseshoe Bend locations.
7. Additional Consultation with CPW Prior to Section 404 Permitting. The additional obligations of the City set forth herein with regard to site selection and evaluation, RICD structure design and placement, and RICD monitoring, adaptive management, and maintenance, shall be in addition to and shall not modify or diminish the City's obligations to consult with CPW prior to initiation of Section 404 permitting for any

proposed whitewater park site pursuant to Section 11.i of the Final Decree in Case No. 13CW3109, Water Division No. 5.

8. Third Parties. Nothing contained in this IGA is intended to or shall create a contractual relationship with, or cause of action in favor of, or claim for relief by a third party. Any third party receiving a benefit from this IGA is only an incidental and unintended beneficiary.
9. Governing Law and Venue. Colorado law shall govern the administration of this IGA. Venue for purposes of any dispute shall be in the District Court for the County of Denver or Garfield County.
10. Assignment. This IGA is not assignable without the express written consent of all Parties.
11. City Approval. The City Manager's signature below is subject to ratification by City Council at its next regular meeting following mutual execution.

This Intergovernmental Agreement was executed and became effective as of the date set forth above.

THE CITY OF GLENWOOD SPRINGS

By: Debra Figueroa
Name: Debra Figueroa
Title: City Manager

COLORADO DIVISION OF PARKS & WILDLIFE

By: _____
Name: JT Romatzke
Title: Northwest Regional Manager