

HAWTHORN METROPOLITAN DISTRICT NO. 2

SPECIAL MEETING

Leyden Rock Clubhouse

17685 W. 83rd Drive, Arvada, Colorado

Monday, January 20, 2020 – 12:00 p.m.

www.hawthornmetrodistrict.org

Krystal Bigley, President	Term to May 2020
Carly Fenton, Treasurer	Term to May 2020
Matthew Cavanaugh, Secretary	Term to May 2020
Andrea Stewart, Assistant Secretary	Term to May 2022
Brittany Lutz, Assistant Secretary	Term to May 2022

NOTICE OF SPECIAL MEETING AND AGENDA

1. Call to Order/Declaration of Quorum
2. Director Conflict of Interest Disclosures
3. Approval of Agenda
4. Public Comment – Members of the public may express their views to the Board on matters that affect the District that are not otherwise on the agenda. Comments will be limited to three (3) minutes per person. Comments will be taken in the order reflected on the sign in sheet.
5. Consent Agenda
 - a. Approval of Minutes from December 2, 2019 regular meeting (**enclosure**)
6. Facilities/Management Matters
 - a. District Manager Update
 - b. Covenant Enforcement Update
 - c. Architectural Review Committee Update
 - i. Consider Approval of Amendment to Amended and Restated Residential Improvement Guidelines and Site Restrictions regarding District Lot Fence Specification (**enclosure**)
 - d. Discuss 2020 Contract Renewals/Proposals
 - i. Consider Approval of Independent Contractor Agreement with Special District Management Services, Inc. for District Management and Covenant Enforcement Services (**enclosure**)
 - ii. Consider Approval of Proposal from H2 Enterprises for Weed Control Services
 - iii. Consider Proposal from Environmental Landworks for Landscape Management Services

- 7. Legal Matters
- 8. Financial Matters
- 9. Other Business
- 10. Adjourn

2020 Regular Meetings	Location
March 2, 2020; June 1, 2020; September 7, 2020; and December 7, 2020 at 2:00 p.m.	Leyden Rock Clubhouse, 17685 W. 83rd Drive, Arvada, Colorado

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF

HAWTHORN METROPOLITAN DISTRICT NO. 2

Held: Monday, December 2, 2019, at 2:00 p.m. at 17685 W. 83rd Drive, Arvada, Colorado.

Attendance

The regular meeting of the Board of Directors of the Hawthorn Metropolitan District No. 2, was called and held as shown above and in accordance with the applicable statutes of the State of Colorado. The following Directors, having confirmed their qualification to serve on the Board, were in attendance:

Krystal Bigley
Carly Fenton
Matthew Cavanaugh
Andrea Stewart
Brittany Lutz

All Director absences are deemed excused unless otherwise specified.

Also present were:

Megan J. Murphy, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law, District General Counsel; Denise Denslow and Patrick Shannon, CliftonLarsonAllen, LLP, District Managers; Susie Ellis, Community Preservation Specialists.

Call to Order

It was noted that a quorum of the Board was present and the meeting was called to order.

Conflict of Interest Disclosures

Ms. Murphy advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Murphy reported that disclosures for those directors with potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Ms. Murphy noted that a quorum was present and inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The Board determined that the participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

Approval of Agenda

Ms. Murphy presented the Agenda to the Board for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the Agenda as amended.

Public Comment

None.

Consent Agenda

The following items on the consent agenda were considered routine or administrative. Following a summary by Ms. Murphy the items on the consent agenda were approved by one motion duly made, seconded, and vote unanimously carried.

1. Minutes from September 9, 2019 special meeting
2. Resolution Calling May 2020 Election

Facilities Management

District Manager Update

Mr. Shannon presented the Board with the district manager report. The Board engaged in general discussion regarding the Davey Tree contract. Davey Tree has represented that the 1 year warranty that only covers the cost of replacement trees but not labor to install the trees which is approximately \$6,080. Mr. Shannon will talk to Davey Tree about winter watering.

The Board engaged in discussion regarding doggie daycare fence that was repaired by Director Fenton and Ty Fenton. Mr. Cavanaugh said Jefferson County wanted the fence installed and it is not an asset to the District. Susie will reach out to Jefferson County regarding the fence and will provide an update to the Board at the next meeting. The Board engaged in general discussion regarding the Reservation Signs and Rules and Regulations Signs. Following discussion, upon a motion duly made and seconded, the Board approved two Park and Open Space Rules signs from FastSigns not to exceed \$800.

Mr. Shannon noted that the RV has been moved.

Mr. Shannon presented a proposal from H2 Enterprises for native area seeding. Director Bigley presented a proposal from DTEC Solutions & Services for native seeding. Following discussion, the Board decided to defer this matter until Spring 2020.

Mr. Shannon presented the CliftonLarsonAllen (“CLA”) 5% Technology Fee to the Board. Beginning in 2020, CLA is implementing a firm wide 5% Technology Fee on all client invoices. This fee is a direct cost pass through for expenses related to protecting client data and will appear on all invoices beginning in January.

Covenant Enforcement Update

Ms. Ellis presented the Board with the covenant enforcement report.

The Board engaged in discussion regarding a homeowner fence. The Residential Improvement Guidelines and Site Restrictions require perimeter lot fencing to be setback a minimum of 10’ from the front of the home. The homeowners’ fence is 4.5 feet from the front of the garage but more than 10’ from the front porch of the home. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the fence as installed.

Following discussion, upon a motion duly made and seconded, the Board directed legal counsel to revise the language regarding the

minimum setback for District Lot Fence Specifications as stated in the Residential Improvement Guidelines and Site Restrictions.

Architectural Review
Committee Update

No update.

**Discuss 2020 Contract
Renewals/Proposals**

Discussion regarding District Management and Covenant Enforcement Proposals

Ms. Murphy presented the Board with the proposals. Ms. Ellis and Ms. Denslow answered questions from the board. This was deferred until after the 2020 budget discussion.

Consider Approval of Proposal from H2 Enterprises for Weed Control Services

This was deferred.

Consider Approval of Proposal from Metco Landscape for Landscape Maintenance Services

This was deferred.

Consider Proposal from Environmental Landworks for Landscape Management Services

This was deferred.

Consider Approval of Proposal from Poop911

Ms. Murphy presented the Board with proposal from Poop911 for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the proposal.

Financial Matters

Consider Approval of Payables/Financials

Ms. Pangindian presented the Board with the September 30, 2019 unaudited financials for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously accepted the unaudited financials.

Ms. Pangindian presented the Board with the claims payable. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the claims from September 6, 2019 through November 25, 2019 for a total of \$37,326.29.

Consider Approval of Engagement Letter from Dazzio & Associates, P.C. to perform 2019 Audit

Ms. Pangindian presented the engagement letter from Dazzio & Associates, P.C. The audit fee of \$4,700, is the same cost as 2018. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the engagement letter from Dazzio & Associates, P.C.

Conduct Public Hearing on 2019 Budget Amendment and Consider Adoption of

Director Bigley opened the public hearing for the 2019 budget amendment. Ms. Murphy noted that the notice for the public hearing was made in accordance with the applicable Colorado statutes. No

Resolution Amending 2019 Budget

written objections were received prior to the public hearing. After no public comment was made, the public hearing was closed.

Ms. Pangindian presented the proposed 2019 budget amendment to the Board for consideration. Following discussion, upon a motion duly made and seconded, the Board determined to amend the 2019 Operations Fund from \$156,220 to \$162,353.

Conduct Public Hearing on 2020 Budget and Consider Adoption of Resolution Adopting 2020 Budget

Director Bigley opened the public hearing for the 2020 budget. Ms. Murphy noted that the notice for the public hearing was made in accordance with the applicable Colorado statutes. No written objections were received prior to the public hearing. After no public comment was made, the public hearing was closed.

Ms. Pangindian presented the proposed 2020 budget to the Board for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the budget as presented, subject to receipt of the 2019 Final Assessed Valuation, and certified 20.382 in the General Fund and 55.663 in the Debt Service Fund.

The Board directed legal counsel and the District's accountant to certify the District's mill levy by December 15, 2019, and to file the 2020 budget by January 30, 2020.

Discuss Dissolution of Hawthorn Metropolitan District No. 1

The Board engaged in general discussion. Following discussion, the Board decided to not allocate funds to the dissolution of District No. 1 in 2020.

Discuss 2020 District Management Contract (Executive Session for the purpose of receiving legal advice on specific legal questions pursuant to § 24-6-402(4)(b), C.R.S. and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators pursuant to § 24-6-402(4)(e), C.R.S.

Upon motion by Director Bigley, seconded by Director Fenton, and upon an affirmative vote of at least two-thirds of the quorum present, the Board convened in executive session at 3:39 p.m. for the purpose of receiving legal advice pursuant to §24-6-402(4)(b), C.R.S.; and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators pursuant to § 24-6-402(4)(e), C.R.S. Pursuant to § 24-6-402(2)(d.5)(II)(B), C.R.S., no record will be kept of the portion of this executive session that, in the opinion of the District's attorney, constitutes privileged attorney-client communication pursuant to § 24-6-402(4)(b), C.R.S.

Also pursuant to § 24-6-402(4), C.R.S., the Board did not adopt any proposed policy, position, resolution, rule, regulation or take formal action during execution session.

The Boards reconvened in regular session at 4:20 p.m. and instructed legal counsel to request that CLA honor their current contract price in January 2020. The Board will interview potential district managers in December and January with the intention of awarding a district management contract for 2020 at a special meeting in January.

Legal Matters

Consider Adoption of Resolution Adopting a Park and Open Space Use Policy

Ms. Murphy presented the Board with the Resolution Adopting a Park and Open Space Use Policy for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution.

Consider Approval of Amended and Restated Resolution Establishing Guidelines for the Processing and Collection of Delinquent Fees and Charges

Ms. Murphy presented the Board with the Amended and Restated Resolution Establishing Guidelines for the Processing and Collection of Delinquent Fees and Charges for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution.

Consider Adoption of 2020 Annual Administrative Resolution

Ms. Murphy presented the Board with the 2020 Annual Administrative Resolution for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution.

Consider Renewal of Property and Liability Schedule and Limits, Workers Compensation and SDA Membership

Ms. Murphy presented the Board with the Renewal of Property and Liability Schedule and Limits, Workers Compensation and SDA Membership for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously authorized legal counsel to bind insurance coverage for 2020.

Next Meeting

The next meeting is scheduled for Monday, March 2, 2020 at 2:00 p.m. at 17685 W. 83rd Drive, Arvada, Colorado.

Adjournment

There being no further business to come before the Board, and following discussion and upon motion duly made, seconded and unanimously carried, the Board determined to adjourn the meeting.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

Secretary for the Meeting

**ATTORNEY STATEMENT
REGARDING PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

Pursuant to Section 24-6-402(2)(d.5)(II)(B), C.R.S., I attest that, in my capacity as the attorney representing Hawthorn Metropolitan District No. 2, I attended the executive session at the regular meeting of Hawthorn Metropolitan District No. 2 convened at 3:39 p.m. on December 2, 2019, for the purpose of providing legal advice on specific legal matters and determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators all pertaining to the 2020 district manager contract, as authorized by Section 24-6-402(4)(b), C.R.S and 24-6-402(4)(e), C.R.S.. I further attest it is my opinion that the executive session discussion constituted privileged attorney-client communications as provided by Section 24-6-402(4)(b), C.R.S. and, based on that opinion, no record, written or electronic was kept or required to be kept pursuant to Section 24-6-402(2)(b), C.R.S. or Section 24-6-402(2)(d.5)(II)(B), C.R.S.

Megan J. Murphy, Esq.

**AMENDMENT TO
AMENDED AND RESTATED RESIDENTIAL IMPROVEMENT GUIDELINES
AND SITE RESTRICTIONS FOR
HAWTHORN METROPOLITAN DISTRICT NO. 2
(District Lot Fence Specification)**

This Amendment to Amended and Restated Residential Improvement Guidelines for Hawthorn Metropolitan District No. 2 (the “**Amendment**”) was duly adopted the day and year hereinafter set forth by Hawthorn Metropolitan District No. 2 (the “**District**”).

WITNESSETH:

WHEREAS, on September 10, 2019, the Board of Directors of the District adopted the Amended and Restated Residential Improvement Guidelines for Hawthorn Metropolitan District No. 2 (the “**Guidelines**”); and

WHEREAS, Section 3.25.3.A of the Guidelines states that all fencing shall comply with the fence specifications in Exhibit A; and

WHEREAS, the Board of Directors of the District desires to amend Exhibit A of the Guidelines regarding District Lot Fence Specifications.

NOW, THEREFORE, the Guidelines as hereby amended as follows:

- A. The first full paragraph in Exhibit A is hereby repealed in its entirety and replaced with the following:

**EXHIBIT A
DISTRICT LOT FENCE SPECIFICATION**

The following fence specification is for perimeter lot fencing not installed and maintained by the District. Please note minimum required fence setback from the front of home is 10'. Notwithstanding the foregoing, no fence may be installed closer than 28’ from the back of the sidewalk. The side yard fence of certain lots may face a right of way (road). It is the owner’s responsibility to install side yard fence in compliance with any County required setback from right of way. Patio privacy fencing described in the Design Guidelines shall be submitted by Owner and approved on a case by case basis. Note that all side-yard fencing adjoined another lot must be installed on the property line. Perimeter lot fencing shall be 6’ cedar picket as described below. Where perimeter fencing terminates at District open space railed fence, a 16’ maximum height transition to 4’ District fence height as described below shall be required.

- B. Except as amended hereby, the Guidelines shall be and remain in full force and effect without modification.

ADOPTED this 20th day of January, 2020.

**HAWTHORN METROPOLITAN DISTRICT
NO. 2**

Officer of the District

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the District



Professional Services Proposal Prepared for

Hawthorn Metropolitan District No. 2

January 17, 2020





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Special District Management Services, Inc.

141 Union Boulevard, Suite 150
Lakewood, CO 80228-1898
303-987-0835 • Fax: 303-987-2032
www.sdmsi.com

January 17, 2020

VIA EMAIL TRANSMISSION

Hawthorn Metropolitan District No. 2
c/o Ashley Frisbie
afrisbie@wbapc.com

Re: Proposal for Professional Services

Dear Board of Directors:

Thank you for offering Special District Management Services, Inc. ("SDMS") the opportunity to provide a proposal for management services for the Hawthorn Metropolitan District No. 2 (the District").

In 2019, SDMS celebrated its 32nd anniversary of providing management, accounting, and operational services for local governments in the State of Colorado. We assume the day-to-day responsibility of operating the local government, manage all outside contractors and consultants, and support the Board of Directors with experienced and sound policy recommendations.

SDMS staff has many years of experience delivering the services important to SDMS clients. We are comprised of the best staff in our industry with over seventy-five years of combined experience in the management, accounting, and operations of Colorado Local Governments. We are presently providing services to over one-hundred and fifty special districts and authorities, ranging in size from a handful of residents to several thousand. Each entity is unique and requires a specialized set of services. Our staff has a wealth of knowledge and the expertise necessary to provide you with an accurate and detailed work product.

It is our commitment to the District to provide unequalled service with the highest ethical standards, expert knowledge, accuracy and efficiency at the most reasonable price. Our commitment to our clients is unmatched in the industry. Attached is general information regarding our firm and our qualifications. If you have any questions, please contact me at (303) 987-0835.

Sincerely,

Deborah D. McCoy
President

GENERAL INFORMATION

Founded in 1987 by Deborah McCoy, Special District Management Services, Inc. (“SDMS”) is among Colorado’s most respected special district and local government management firms. We pride ourselves in meeting the specific needs of each of our clients in the most cost-effective manner possible.

Prompt, personal attention to detail, while providing the highest quality service at the lowest possible price, is the hallmark of SDMS. SDMS takes pride in our seamless continuity of service when working with governing boards, staff, business representatives or homeowners. Our approach is to roll up our sleeves and pay attention to the unique needs of every client. Our managers don’t stamp out cookie-cutter solutions; they pay special attention to the details to find the right solution for every situation.

SDMS has four distinct divisions within our company: a District Management and Administration Division, an Accounting Division, a Community Management/HOA Division and an Operations and Field Services Division.

Below is a summary of the services we offer:

District Management / Administrative Services: SDMS is staffed by experienced professional managers who take care of day-to-day administrative details on behalf of our clients. All of our managers regularly participate in educational opportunities provided by the Special District Association and often provide educational opportunities to others in our industry through presentations offered by the Special District Association. With the recent demand for District governance of covenant controlled communities, SDMS is taking the initiative (although not required in the industry) to obtain licensure for its managers as is currently required of homeowners association managers.

Based upon client needs, and when directed by the client, SDMS recommends and will implement initiatives to address specific needs. Examples of such initiatives include community communications (e.g., newsletters, websites, public meetings), meeting procedures to maximize efficient use of Board member time and involvement of community representatives, cost-saving measures, etc.

Depending on a particular client’s needs and desires, SDMS management and administrative responsibilities include activities such as the following:

- Ensure compliance with statutory filings with state, county and local entities as required;

- Respond to inquiries made by government officials, property owners, consultants and residents;
- Maintain all District records, which must be available for public inspection during regular business hours;
- Coordinate and attend board meetings;
- Draft minutes and agendas; Manage and coordinate services of consultants and staff; Perform regular and special election services.
- Manage public outreach information such as news letters or websites
- Perform covenant enforcement and field services
- Provide Accounting, accounts payable and billing services

Board Meetings and Elections: SDMS coordinates board meetings, prepares and distributes meeting agendas and information, and prepares and files all meeting notices as required by law. Our staff attends board meetings, records the minutes, and makes sure they are distributed in a timely manner. In addition, SDMS will act as your election official to ensure all legal requirements are met according to Colorado’s Uniform Election Code.

Custodian of District Records: SDMS will act as the official custodian of the District’s records utilizing Microsoft Office, Adobe Pro and Microsoft Outlook. SDMS maintains a secure data system with daily backup of all District information and records.

Accounting, Financial Reporting and Fiduciary Responsibility: Our Accountants work closely with the District Managers to ensure that financial information provided is accurate, comprehensive and reported in a timely manner. They prepare regularly scheduled financial reports so Managers and Board Members can monitor “planned vs. actual” financial status and make informed decisions. Additionally, our accounting team will prepare special purpose reports, as needed, to allow for more detailed monitoring of matters such as construction contract status.

SDMS maintains tight control over resources, keeps cash properly invested, and issues detailed reports. We also provide professional advice during the annual budget planning cycle and preparation of budget documents, including budgeting for debt service requirements, tracking TABOR impacts, and will prepare supplementary budgets if needed. SDMS coordinates with auditors for timely completion and filing of annual audits required by state law.

From developing pro-forma operating budgets and long-range forecasts, to reporting for continuing disclosure compliance for bonded debt, SDMS provides support for safeguarding the financial health of the Districts.

Special Assessment Fees: SDMS coordinates the collection of fees, rates, tolls, and charges such as sewer and water tap fees, system development fees, and bills for fee collection. SDMS also issues certificates upon payment, coordinates with local entities and monitors development to ensure prompt payment when due.

Operations, Field and Construction Management Services: SDMS helps the Board run their communities efficiently and economically through its Operations and Field Services staff. The Operations and Field Services Division performs work, or manages the work of Board-retained contractors, and ensures that all work is completed on schedule and in accordance with covenants, conditions, restrictions, rules and regulations, as determined by the Board. Examples of Operations and Field Services support include the following:

- Covenant and architectural inspections and enforcement;
- Project management and contractor oversight;
- Customer relations;
- Meter reading and billing services;
- Field locates of underground utilities;
- On-site review of improvements for compliance;
- Operation and maintenance budgeting.

We expertly manage and monitor construction projects to ensure the legal public bidding process is followed, including bid publication, final payment remittance, and insurance and bond requirement follow-up. SDMS also tracks actual vs. budgeted costs on a project-by-project and contract-by-contract basis to allow its clients to proactively manage projects.

Property Management and Community Management Services: SDMS provides community management services in accordance with each community's governing documents, and will consult with each Board on covenant development and enforcement procedures as necessary. Detailed and customized reports are provided as frequently as desired. SDMS will proactively monitor the property and all of the District's amenities to ensure that it is being maintained to the level desired by the Board. When appropriate, SDMS will employ the use of GIS-based software systems for tracking, reporting and monitoring covenant enforcement activities and common area maintenance.

We understand that unique staffing arrangements may sometimes be necessary to obtain a desired level of service. SDMS will consult with each client and propose a carefully tailored solution depending on the needs of the community. Our staff will work with all of the District's contractors to ensure that the District is not wasting time or money.

In short, SDMS manages the day to day operations of the District.

THE SDMS APPROACH

SDMS is proposing to offer its management services to act as the District's Manager to include accounting and property management services. By selecting SDMS, the Board is ensuring that every aspect of the District's business will be performed in the most professional and cost-effective manner possible.

While each of our clients is subject to the same Colorado Statutes, each client also has its own unique needs and objectives. Therefore, SDMS tailors its services to address each client's unique objectives and needs with the same efficiency, vigor and attention to detail as it applies to managing each client's statutory compliance requirements.

SDMS strives to exceed the expectations of our clients by ensuring that every aspect of the District is managed in the most professional manner. Our commitment to providing exceptional customer service, maintain accurate and detailed records, and provide cost-effective management is unmatched in our industry.

MANAGEMENT SERVICES – SCOPE OF WORK

Administrative Management

- Coordinate and attend all Board Meetings; draft agendas, minutes, and meeting notices; post in accordance with Colorado law.
- Attend study sessions, executive sessions and special meetings of the Board as requested.
- Maintain a business location and 24-hour availability for emergencies via answering service.
- Maintain the District's records in accordance with State laws and statutes which affect the District.
- Perform statutory filings with the various state, county and local entities as required.
- Assist the Board in the administration of District elections; serve as the Designated Election Official for the same.
- Track action items and keep a detailed history of events related to action items assigned to all contractors, consultants and Board members.
- Attend public forums as may be requested by the Board.
- Resolve property owner concerns as they pertain to the District.
- Coordinate with General Counsel.
- Ensure timely compliance with all statutory filings.
- Facilitate appropriate communication between the District and the property owners.
- Review and monitor insurance coverage, evaluate risks and monitor coverages required for contractors.
- File insurance claims and monitor status of reimbursements.
- Distribute District information to new property owners.
- Manage, administer, and enforce policies, rules, and regulations adopted by the Board.

- Act as liaison to the other local governmental entities, associations, developers and builders within the community.
- Upon request of the Board, prepare requests for proposals, solicit, evaluate and present bids for services required.
- Maintain the District website (if established).
- Webpage design and maintenance.
- Other duties as may be required or requested by the Board.

Financial Management

- Prepare reports to track and project costs associated with annual landscaping and beautification.
- Prepare periodic financial statements.
- Monitor expenditures to preclude exceeding appropriated (budgeted) expenditures.
- Assist auditor in performing the annual audit, to accomplish timely completion and filing.
- Maintain accounting books and supporting records, including:
 - Cash Receipts Journal.
 - Cash Disbursements Journal.
 - General Ledger.
 - Accounts Receivable Journals and Ledgers.
- Prepare all deposits; prepare disbursements for approval (coding invoices; cutting and disbursing checks).
- Coordinate the preparation of disbursements for approval.
- Prepare or assist in the annual budget preparation (including preparation of all budget documents).
- Prepare or assist in the preparation of supplementary budgets and accompanying documents, if required.
- Manage collections process coordinating with general counsel.

Field Services

Oversee contracts and contractors providing service for:

- Landscaping maintenance and upgrades.
- Snow removal.
- Pet waste stations.
- Pest control services.
- Repairs and maintenance for specific projects.
- Process work orders for routine maintenance and repairs.
- Perform site inspections as necessary to ensure the facilities are being properly maintained.
- Upon request of the Board, prepare requests for proposals, solicit, evaluate and present bids for services required in connection with the facilities.
- Oversee and follow up on all projects. Maintain communication with vendors providing services for the facilities.
- Keep an inventory of the district property.
- Validate work completed by contractors.
- Provide professional locating services for the Districts non-potable system.
- Other duties as may be required or requested by the Board.

District Community Management Services

- Review and assist in the development of District Covenants, Rules and Regulations and/or Design Guidelines.
- Create start-up Operations and Maintenance budgets, and make recommendations for potential District fees.

- Work with District legal counsel to ensure all governing documents and associated fees abide by applicable laws and statutes.
- Enforce Covenants, Rules and Regulations and/or Design Guidelines.
- Develop, coordinate, and process Design and/or Architectural Review Requests.
- Facilitate Design and/or Architectural Review Committee Meetings.
- Resolve customer and property owner concerns.
- Create and distribute Board Reports as needed, and attend and present information at Board meetings.
- Communicate with community members, customers, vendors, and contractors.
- Develop and distribute Welcome Packets and Community Newsletters.
- Generate and ensure delivery of homeowner Notices.
- Assist the Board in the development of community special events.
- Develop and monitor the District community website, and provide online billing options.
- Conduct Covenant, Design and/or Architectural inspections on a weekly, biweekly, monthly or quarterly basis as required.
- Perform on-site review of Improvements for compliance.
- Generate and maintain resident tracking sheets and inspection reports.
- Follow-up on inspection Violations by noting, generating, and delivering Courtesy and/or Violation Notices.
- Take and record photographic documentation as needed.

Billing and Collection Services provide billing and collection services for a water distribution system, including:

- Post/print/mail billing statements.
- Receive/record/deposit receipts.

- Follow-up on delinquent accounts.
- Communicate with customers and vendors.
- General reports for the Board.
- Certification of delinquent accounts.
- Set up and utilization of online bill pay features.
- Other duties as may be required or requested by the Board.

RATES

SDMS has incorporated a variable rate structure for management/administrative services. We believe this rate structure fosters a “team” approach, allowing for greater hands-on knowledge of the client, utilizing an amalgam of staff expertise.

SDMS tracks all time spent on the District in increments of 0.1 hours. All amounts billed to the District will be for actual time spent. Incidental, out-of-pocket expenses, such as postage, facsimiles, printing, etc. are billed as detailed on the attached Cost Detail and Rate Structure Table. No purchases will be made without the approval of the Board of Directors and receipts for such purchases will be provided with the monthly billing.

REFERENCES

Sky Ranch Community Authority Board
Arapahoe County
Mark Harding- President
303-292-3456

Vista Ridge Metropolitan District
Weld County
James Spehalski, President
303-920-9400

Mayberry, Colorado Springs Metropolitan District
No. 1
Ironworks Village Metropolitan District
Lee Merritt – Director
lee@blvdbuilders.com
(970) 222-0743

Denver Connection West MD
City and County of Denver
Rob Johnson – President
William Lyons Homes
303-703-8671

Beebe Draw Farms Authority
Weld County
Christine Hethcock, Vice President
720-244-3336

STC MD Nos. 1 - 3
Jim Brzostowicz – President
jim@civilresources.com
303-833-1416 x 203

Greatrock North Water and Sanitation District
Adams County
Robert Fleck, President
303-637-9700

Spring Valley Metropolitan District Nos. 1-4
CJ Kirst - Director
303-330-8947
cjkirst@tahoelandservices.net

REPRESENTATIVE CLIENTS AND CONFLICTS

Although SDMS is unaware of any professional relationships that would constitute a conflict in providing management services to the District; we would like to disclose that we work closely with the following legal firms who represent the various districts we manage:

Collins Cockrel Cole, PC

Duncan Ostrander Dingess, PC

McGeady Becher, PC

Robinson Waters & O'Dorisio, PC

Spencer Fane, LLP

White Bear Ankele Tanaka & Waldron, PC

Icenogle, Seaver Pogue, P.C.

APPENDIX – COST DETAIL AND RATE STRUCTURE

Supplies and Materials

	Per	Cost
Copies, Black and White	each \$	0.20
Copies, Color	each \$	0.69
Fax	page \$	0.20
Mileage	mile \$	0.58
Postage	each	at cost
Supplies	each	at cost
Digitizing of Records	hourly \$	140.00

Hourly Rates

District Management & Administration:

Senior Managers & Managers	\$140.00-190.00
Assistant Managers & Admin. Coordinators	\$115.00-150.00

Finance & Accounting:

Senior Accountants & Accountants	\$130.00-160.00
Assistant Accountants & AP Coordinators	\$110.00-150.00

Utility Billing Service:

\$ 65.00

Operations, Maintenance and Field Services:

\$ 75.00 - 95.00

Community Management:

Managers & Assistant Managers	\$ 95.00 -140.00
Administrative Support	\$ 75.00 -140.00

District Community Management- Monthly fee of \$1,250

This will include the following:

1. Preparation and attendance at four (4) Board meetings a year.
2. Inspections conducted 17 times per year as outline above, and the resulting administrative tasks (violation letters, etc.).

To be billed on an hourly basis:

1. Communication with legal counsel, including but not limited to consultation regarding enforcement, covenant enforcement legal action and court appearances on behalf of the District.
2. Incoming communication regarding enforcement, including but not limited to phone calls and e-mails.
3. Additional meetings and/or inspections as directed by the Board.

INDEPENDENT CONTRACTOR AGREEMENT
(Community Management
Services)

This **INDEPENDENT CONTRACTOR AGREEMENT**, including any and all exhibits attached hereto (the “Agreement”), is entered into this 20th day of January, 2020, by and between the **HAWTHORN METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **SPECIAL DISTRICT MANAGEMENT SERVICES, INC.**, a Colorado corporation (the “Company”). The District and the Company are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the District was organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S., for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the District is empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, the District desires to engage the Company to perform certain services as are needed by the District to serve the property within and without its boundaries.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

TERMS AND CONDITIONS

1. **SCOPE OF SERVICES; PERFORMANCE STANDARDS.** The Company shall perform the services described in **Exhibit A** attached hereto and incorporated herein by this reference (the “Services”): (a) in a professional manner, to the reasonable satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said Exhibit A; (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the District; and (d) in compliance in all material respects with all applicable federal, state, county and local or municipal body or agency statutes, ordinances and regulations (collectively, “Laws”). In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern. Company shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement

(including Exhibit A) or through other authorization expressly delegated to or authorized by the District through its Board of Directors.

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof or (ii) December 31, 2019. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) hereof, this Agreement shall automatically renew on January 1st of each succeeding year for an additional one (1) year term.

3. ADDITIONAL SERVICES. The District may, in writing, request the Company provide additional services not set forth in Exhibit A. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Company and the District pursuant to a written addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the District has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.

4. RESERVED FOR FUTURE USE.

5. GENERAL PERFORMANCE STANDARDS.

a. The Company represents that it has or shall acquire the capacity to perform the Services in accordance in all material respects with the provisions set forth in Section 1 of this Agreement. The District shall provide the Company with prompt written notice if the District believes the Company has failed to fulfill its obligations thereunder, and shall afford the Company the opportunity to cure such failure within a reasonable time, without additional compensation to be paid to the Company; provided that in no event shall the scope of the Services to be performed under this Section 5.a be expanded beyond the original Services provided.

b. The Company shall use reasonable commercial efforts to perform and complete the Services in a reasonably timely manner. If performance of the Services by the Company is delayed due to factors beyond the Company's reasonable control, or if conditions of the scope or type of services are expected to change, the Company shall give prompt notice to the District of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.

6. MONTHLY STATUS REPORT. The Company shall provide to the District, at the District's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the period ("Monthly Report").

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit B**. The Company shall be responsible for all expenses it incurs in performance of this Agreement and

shall not be entitled to any reimbursement or compensation except as provided in **Exhibit B** of this Agreement, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Company's actual cost, provided that the Company shall notify the District of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Company shall provide the District with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification ("W-9")). No payments will be made to the Company until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B-1**.

b. Invoices. Invoices for the Services shall be submitted monthly, by the 10th of each month, during the term of the Agreement and shall contain the following information:

- i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the District to process payment of the invoice.

The District shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the District after the 10th of each month may be processed the following month.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the District within thirty (30) days of receipt of: (i) an invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The District may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Company notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Company, if it is in the interest of the District to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the District's approved budget. Such payment shall require review and approval of each Monthly Report and invoice by the President and one other officer of the District, subject to ratification at the next succeeding special or regular Board meeting.

9. INDEPENDENT CONTRACTOR. The Company is an independent contractor and nothing herein shall constitute or designate the Company or any of its employees or agents as employees or agents of the District. The Company shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained. The District shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Company or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal

income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Company shall be responsible for its safety and the safety of its employees, sub-consultants, contractors, agents and representatives. The Company shall comply in all material respects with federal, state and local employment laws, as well as laws relating to safety and health, including but not limited to the Occupational Safety and Health Act of 1970 (OSH Act). All personnel furnished by the Company will be deemed employees or independent contractors of the Company and will not for any purpose be considered employees of the District. **The Company's employees are not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Company or some other entity other than the District and the Company is obligated to pay federal and state income taxes on moneys earned by it pursuant to this Agreement.**

10. EQUAL OPPORTUNITY; EMPLOYMENT ELIGIBILITY. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Company represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Company hereby states that it does not knowingly employ or contract with illegal aliens and that the Company has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Company affirmatively makes the following declarations:

a. The Company shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated herein and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for Services contemplated herein.

b. The Company shall not knowingly enter into a contract with a subcontractor that fails to certify to the Company that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the Services contemplated herein.

c. The Company has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.

d. The Company is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

e. If the Company obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Company shall be required to:

i. Notify the subcontractor and the District within three (3) business days that the Company has actual knowledge that the subcontractor is employing or contracting with an illegal alien. For purposes of this Agreement, a “business day” shall mean any day when national banks located in the state of Colorado are open for business with the public.

ii. Terminate the subcontract with the subcontractor if within three (3) business days of receiving the notice required above the subcontractor does not stop employing or contracting with the illegal alien; except that the Company shall not terminate the contract with the subcontractor if during such three (3) business days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

f. The Company shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.

g. If the Company violates a provision of the Agreement pursuant to which §8-17.5-102, C.R.S. applies, which violation is not cured within the time provided for cure under this Agreement or under such statute, the District may terminate the Agreement upon written notice to the Company. If the Agreement is so terminated, the Company shall be liable for actual and consequential damages to the District.

11. COMPANY’S INSURANCE.

a. The Company shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the District, its directors, officers, employees and agents is required for each coverage provided. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The District shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein.

b. Prior to commencing any work under this Agreement, the Company shall provide the District with a certificate or certificates evidencing the policies required by this Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit C-1**. If the Company subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers’ compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts reasonably satisfactory to the District and the Company; provided; however, that subcontractors of the Company shall not be required by the District to provide coverage in excess of that which is required hereunder of the Company. If the coverage required expires during the term of this Agreement, the Company or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Company's failure to purchase the required insurance shall not serve to release it from any obligations contained herein; nor shall the purchase of the required insurance serve to limit the Company's liability under any provision herein. The Company shall be responsible for the payment of any deductibles on issued policies.

12. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. Any information deemed confidential by the District and given to the Company by the District, or developed by the Company as a result of the performance of a particular task, shall remain confidential. In addition, the Company shall hold in strict confidence, and shall not use in competition, any information which the Company becomes aware of under or by virtue of this Agreement which the District deems confidential, or which the District has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the best interests of the District. Confidential information shall not include, however, any information which is (i) generally known to the public at the time provided to the Company, (ii) provided to the Company by a person or entity not bound by confidentiality to the District or (iii) independently developed by the Company without use of the District's confidential information. During the performance of this Agreement, if the Company is notified that certain information is to be considered confidential, the Company agrees to enter into a confidentiality agreement in a form reasonably acceptable to the Company. The Company agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the District shall agree to be bound by the terms of such confidentiality agreement.

b. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the District, the Company agrees to notify the District of conflicts known to the Company that would be reasonably likely to adversely impact the Company's provision of Services to the District.

13. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Company pursuant to this Agreement, including, but not limited to, all electronic files and other documents, in whatever form, shall remain the property of the District under all circumstances, upon payment to the Company of the invoices representing the work by which such materials were produced. For as long as the Company continues to provide Services to the District, the Company shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services, shall make them available for the District's use, and shall provide such copies to the District upon request, at no cost (as it relates to electronic files) and for copies of other documents, at the Company's actual cost (including both time and materials) to reproduce same.

14. LIENS AND ENCUMBRANCES. The Company shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein. The Company, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection

with any Services performed under or in connection with this Agreement.

15. INDEMNIFICATION.

a. The Company shall defend, indemnify and hold harmless the District and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "District Indemnitees"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses ("Claims"), including reasonable legal expenses and attorneys' fees, actually incurred by the District Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Company or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Company's performance of the Services or work pursuant to this Agreement. Anything else in this Agreement or otherwise to the contrary notwithstanding, the Company is not obligated to indemnify the District Indemnitees for the negligence of the District or the negligence of any other District Indemnitee. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for the Company under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Company be liable for special, consequential or punitive damages.

b. In the event the Company fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the District of the existence of any such Claim, the District may assume the defense of the Claim with counsel of its own selection, and the Company will pay all reasonable expenses of such counsel. Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Company under the terms of this indemnification obligation.

c. The Company shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in this Section 15. This defense and indemnification obligations set forth in this Section 15 shall survive the expiration or termination of this Agreement.

16. ASSIGNMENT. The Company shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the District, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment of this Agreement in whole or in part with respect to which the District has not consented, in writing, shall be null and void and of no effect whatsoever.

17. SUB-CONTRACTORS. The Company is solely and fully responsible to the District for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Company or a subcontractor engaged by the Company, and neither the District's approval of any subcontractors, suppliers or materialmen, nor the failure of performance thereof by such persons or entities, will relieve, release or affect in any manner the Company's duties, liabilities or obligations under this Agreement. The Company shall not subcontract any Services without prior written approval by the District, which approval shall not be unreasonably withheld, conditioned or delayed. The Company agrees that from and after the

Effective Date each and every agreement of the Company with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained herein holding the District harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the District in accordance with requirements of Section 11 hereof. The Company further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.

18. TERMINATION. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for cause or for convenience by the Company upon delivery of thirty (30) days prior written notice to the District and the District by giving the Company thirty (30) days prior written notice prior to termination and/or prior to non-appropriation of funds for the ensuing fiscal year. If this Agreement is terminated, the Company shall be paid for all the Services performed to the reasonable satisfaction of the District in accordance with the terms of this Agreement prior to the designated termination date, including payment for all reimbursable expenses due. Said payment shall be made in the normal course of business, but in any event shall be made no later than thirty (30) days after the effective date of termination. In the event of termination by either Party hereto, the Company shall reasonably cooperate with the District to facilitate a prompt and efficient transition of all work and the District's records to the District or its designees. All reasonable time, fees and costs associated with such transition shall be billed by the Company to the District at the Company's standard rates, and District shall pay the Company all such billed amounts no later than thirty (30) days after receipt of Company's invoice therefor; provided, however, that time, fees and costs associated with the Company's duplication of files or documents for the Company's retention and/or files shall not be paid by the District and shall be a cost borne by the Company.

19. DEFAULT. If either Party fails to perform in any material respect in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default in any material respect of any of the terms of this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of the default, at the address specified in Section 20 below, and the defaulting Party will have fifteen (15) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such fifteen (15)-day period and the defaulting Party gives written notice to the non-defaulting Party within such fifteen (15)-day period that it is actively and diligently pursuing a cure, the defaulting Party will have a reasonable period of time given the nature of the default following the end of the fifteen (15)-day period to cure the default, provided that the defaulting Party is at all times within the additional time period actively and diligently pursuing the cure.

20. NOTICES. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on

the first to occur of (i) one business day after being deposited with a nationally recognized overnight air courier service or (ii) delivery to the Party to whom it is addressed. Any Party hereto may at any time, by giving written notice to the other Party hereto as provided herein designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

District: Hawthorn Metropolitan District No. 2
WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
Attention: Kristin Tompkins
(303) 858-1800 (phone)
(303) 858-1801 (fax)
ktompkins@wbapc.com

Company: Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228
Attention: Deborah D. McCoy
(303) 987-0835 (phone)
ddm@sdmsi.com

21. RECORDS REVIEW. The District shall have the right to review, upon no less than thirty (30) days' prior written notice to the Company and during the Company's normal business hours, those of the Company's books and records solely as are necessary to substantiate any invoices and payments made by the Company as part of the Services performed for the District under this Agreement.

22. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Company and the District.

23. BINDING AGREEMENT. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

24. NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default be deemed a waiver of any subsequent default.

25. GOVERNING LAW / DISPUTES. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the District's request, the Company shall carry on its duties and obligations under this Agreement during any legal proceedings and the District shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated. In the event of any litigation between the District and the Company to enforce any provision of this Agreement or any right of either Party hereto, the Parties agree that the court shall award costs and expenses to the prevailing Party, such costs and expenses to include reasonable attorneys' fees. Otherwise, each Party shall pay its own costs and fees for litigation. At the District's request, if and to the extent the Company is an indispensable party, the Company will consent to being joined in litigation between the District and third parties, but such consent shall not be construed as an admission of fault or liability. Anything else in this Agreement or otherwise to the contrary notwithstanding, the Company shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the District to furnish timely information or to approve or disapprove of Company's Services in a timely manner.

26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.

27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Parties pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Company expressly understands and agrees that the District's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the District, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the District or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of District funds. The District's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be

available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

29. NEGOTIATED PROVISIONS. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

30. SEVERABILITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

31. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

32. OPEN RECORDS. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.

33. TAX EXEMPT STATUS. The District is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the District is exempt shall not be included in any invoices submitted to the District. The District shall, upon request, furnish Company with a copy of its certificate of tax exemption. Company and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free.

34. COUNTERPART EXECUTION. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

[Remainder of Page Intentionally Left Blank. Signature Pages to Follow].

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

DISTRICT:

HAWTHORN METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado

Officer of the District

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the District

District's Signature Page to Independent Contractor Agreement for Community Management Services with Special District Management Services, Inc., dated January 20, 2020

COMPANY:

SPECIAL DISTRICT MANAGEMENT SERVICES, INC., a Colorado corporation

Name: Deborah D. McCoy
Title: President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Deborah D. McCoy as the President of Special District Management Services, Inc., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: _____

(S E A L)

Notary Public

Company's Signature Page to Independent Contractor Agreement for Community Management Services with Hawthorn Metropolitan District No. 2, dated January 20, 2020

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
COMPENSATION SCHEDULE

EXHIBIT B-1
COMPANY'S COMPLETED W-9

EXHIBIT C
INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of the Agreement.

1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
2. Commercial General Liability Insurance with minimum limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
 - a. premises operations;
 - b. personal injury liability without employment exclusion;
 - c. blanket contractual;
 - d. broad form property damages, including completed operations;
 - e. medical payments;
 - f. products and completed operations;
 - g. independent consultants coverage;
 - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.
3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the District covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.
5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
6. Professional liability insurance in the amount of \$1,000,000.00 each occurrence.

EXHIBIT C-1
CERTIFICATE OF INSURANCE

EXHIBIT D
CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE