HAWTHORN METROPOLITAN DISTRICT REGULAR MEETING

Monday, June 2, 2025 at 2:00 P.M.

https://www.hawthornmetrodistrict.org

This meeting will be held via Zoom and can be joined through the directions below: https://us06web.zoom.us/j/81129000264?pwd=vpLvn2rkXQhZm86bspnKoMatEdpnQ7.1

Meeting ID: 811 2900 0264 Passcode: 004477 Call In: 720-707-2699

Krystal Bigley, President	Term to May 2027
Gary Silverman	Term to May 2029
Stephen Daniels, Secretary	Term to May 2027
Andrea Stewart, Assistant Secretary	Term to May 2029
Stephen Bonneau, Assistant Secretary	Term to May 2027

NOTICE OF REGULAR MEETING AND AGENDA

- 1. Call to Order/Declaration of Quorum
- 2. Director Conflict of Interest Disclosures
- 3. Approval of Agenda
- 4. Election of Officers
- 5. Public Comment Members of the public may express their views to the Board(s) on matters that affect the District. Comments will be limited to three (3) minutes per person.
- 6. Financial Matters
 - a. Review and Consider Acceptance of Unaudited Financials (enclosure)
 - b. Review and Consider Approval of Claims (enclosure)
 - c. Review and Discuss 2024 Draft Audit (to be distributed)
- 7. Consent Agenda –The items listed below are a group of items to be acted on with a single motion and vote by the Board. An item may be removed from the consent agenda to the regular agenda by any Board member. Items on the consent agenda are then voted on by a single motion, second, and vote by the Board.
 - a. Approval of Board Meeting Minutes from March 3, 2025 Meeting (enclosure)
- 8. Legal Matters
 - a. Discuss ADU legislation that effectively prohibits counties and municipalities from prohibiting accessory dwelling units, and its impact on the District
 - b. Discuss repainting guidelines in relation to determining if homes are in need of repainting
 - c. Discuss status of website accessibility and document remediation

- d. Discuss Diversified Underground outstanding bills and consider approval of and Agreement with Diversified Underground going forward for utility locates (enclosure)
- e. Discuss the 5.25% revenue growth limit and a possible November election to opt out of the same
- 9. Facilities/Management Matters
 - a. Management Update
 - b. Ratify the reversal of fines imposed on vehicles parked on the street
- 10. Other Business
 - a. Update on discussions with CDOT regarding erosion to the north
 - b. Dog kennel property update
- 11. Executive session of the Board of Directors for the purpose of receiving legal advice pursuant to Section 24-6-402(4)(b), Colorado Revised Statutes as it relates to specific covenant enforcement matters.
- 12. Adjourn

HAWTHORN METROPOLITAN DISTRICT FINANCIAL STATEMENTS MARCH 31, 2025

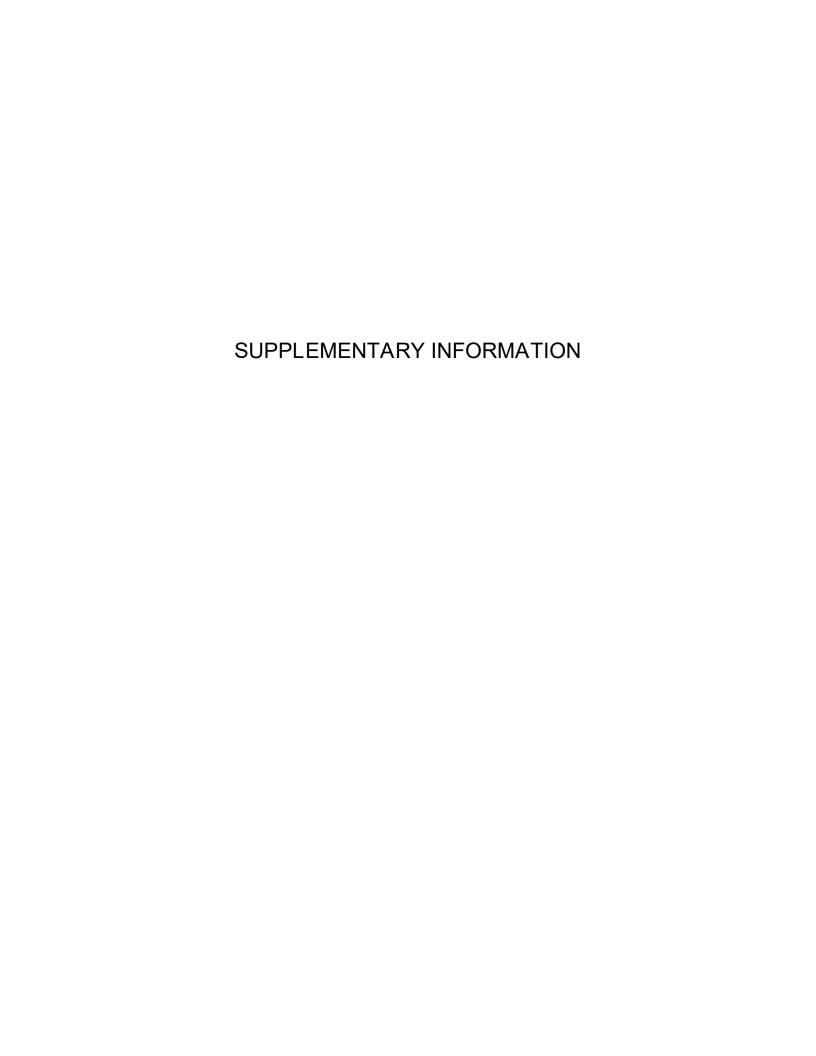
Hawthorn Metropolitan District Balance Sheet - Governmental Funds March 31, 2025

		General		Debt Service		Total
Assets						
Checking Account	\$	139,082.43	\$	230,569.80	\$	369,652.23
MSI Checking		6,762.40		-		6,762.40
CSAFE		139,687.90		-		139,687.90
Zions Payment Fund - Series 2022		-		8,430.32		8,430.32
Zions Pledged Revenue Fund - Series 2022		-		465,653.62		465,653.62
Accounts Receivable		9,636.02		-		9,636.02
Receivable from County Treasurer		20,462.58		32,392.75		52,855.33
Total Assets	\$	315,631.33	\$	737,046.49	\$	1,052,677.82
Liabilities						
Accounts Payable	\$	29,459.61	Ф		\$	29,459.61
Unearned Revenue	φ	29,439.01	Φ	-	φ	29,439.01
Total Liabilities						
Total Liabilities		29,669.61				29,669.61
Fund Balances		285,961.72		737,046.49		1,023,008.21
Liabilities and Fund Balances	\$	315,631.33	\$	737,046.49	\$	1,052,677.82

Hawthorn Metropolitan District General Fund Statement of Revenues, Expenditures and Changes in Fund Balances - Budget and Actual For the Period Ending March 31, 2025

	A	nnual Budget		Actual	 Variance
Revenues					
Property taxes	\$	334,292.00	\$	162,623.01	\$ 171,668.99
Specific ownership taxes	•	23,400.00	•	5,936.38	17,463.62
Interest Income		5,300.00		1,666.45	3,633.55
Other Revenue		-		200.00	(200.00)
Total Revenue		362,992.00		170,425.84	192,566.16
Expenditures					
Accounting		35,000.00		7,332.97	27,667.03
Auditing		7,000.00		-	7,000.00
County Treasurer's Fee		5,014.00		2,439.26	2,574.74
Directors' fees		2,000.00		200.00	1,800.00
Dues and Membership		750.00		592.55	157.45
Insurance		13,500.00		13,763.00	(263.00)
District management		18,000.00		3,552.75	14,447.25
Covenant enforcement		5,000.00		-	5,000.00
Legal		55,000.00		10,761.99	44,238.01
Miscellaneous		5,521.00		156.95	5,364.05
Election		5,000.00		1,555.95	3,444.05
Irrigation repairs		7,500.00		-	7,500.00
Landscape improvements		130,000.00		168.00	129,832.00
Landscape maintenance contract		32,000.00		8,001.00	23,999.00
Grounds cleanup		3,500.00		745.00	2,755.00
Snow removal		18,000.00		6,802.50	11,197.50
Water		5,000.00		1,138.62	3,861.38
Electricity		1,300.00		45.06	1,254.94
Trash collection		51,000.00		12,796.89	38,203.11
Compost collection		3,000.00		750.00	2,250.00
North Table Mountain IGA		18,915.00		-	18,915.00
Website		1,000.00		-	1,000.00
Total Expenditures		423,000.00		70,802.49	 352,197.51
Net Change in Fund Balances		(60,008.00)		99,623.35	(159,631.35)
Fund Balance - Beginning		176,670.00		186,338.37	 (9,668.37)
Fund Balance - Ending	\$	116,662.00	\$	285,961.72	\$ (169,299.72)

No assurance is provided on these financial statements. Substantially all required disclosures, the government-wide financial statements, and the statement of revenues, expenditures and changes in fund balances - governmental funds have been omitted.



Hawthorn Metropolitan District Debt Service Fund Schedule of Revenues, Expenditures and Changes in Fund Balances - Budget and Actual For the Period Ending March 31, 2025

	A	nnual Budget	Actual	 Variance
Revenues				
Property taxes	\$	529,192.00	\$ 257,435.99	\$ 271,756.01
Specific ownership taxes		37,043.00	9,397.48	27,645.52
Interest Income		21,500.00	4,835.55	16,664.45
Total Revenue		587,735.00	271,669.02	 316,065.98
Expenditures				
County Treasurer's Fee		7,938.00	3,861.39	4,076.61
Paying agent fees		3,000.00	-	3,000.00
Loan Interest - Series 2022		328,960.00	-	328,960.00
Loan principal		120,000.00	-	120,000.00
Contingency		9,102.00	-	9,102.00
Total Expenditures		469,000.00	3,861.39	465,138.61
Net Change in Fund Balances		118,735.00	267,807.63	(149,072.63)
Fund Balance - Beginning		472,747.00	469,238.86	3,508.14
Fund Balance - Ending	\$	591,482.00	\$ 737,046.49	\$ (145,564.49)

HAWTHORN METROPOLITAN DISTRICT Schedule of Cash Position March 31, 2025 Updated as of May 13, 2025

				General Fund	D	ebt Service Fund		Total Funds
First Bank - Che	eckina Account							
Balance as of	-		\$	139,082.43	\$	230,569.80	\$	369,652.23
Subsequent a	ctivities:		•	,	·	,	·	,
04/09/25	Bill.com payables			(140.00)		-		(140.00)
04/10/25	Jefferson County Taxes - March			20,462.58		32,392.75		52,855.33
04/10/25	Transfer to CSAFE			(100,000.00)		-		(100,000.00)
04/10/25	Pledged Revenue Transfer			-		(230,569.80)		(230,569.80)
04/10/25	Bill.com payables			(5,219.00)		-		(5,219.00)
04/11/25	Bill.com payables			(35.00)		-		(35.00)
04/15/25	Bill.com payables			(35.00)		-		(35.00)
04/16/25 04/18/25	Xcel Energy ACH Bill.com payables			(14.92) (35.00)		-		(14.92) (35.00)
04/16/25	Bill.com payables			(13,100.64)		-		(13,100.64)
04/22/25	Waste Management ACH			(4,423.97)		_		(4,423.97)
04/25/25	Bill.com payables			(250.00)		_		(250.00)
04/25/25	Void Bill.com Payment			250.00		_		250.00
04/29/25	Utility Payment			(63.24)		_		(63.24)
05/06/25	Legal Overpayment Receipt			7,995.17		690.85		8,686.02
05/09/25	Bill.com payables			(15,103.86)		_		(15,103.86)
05/10/25	Jefferson County Taxes - April			22,804.94		36,100.76		58,905.70
05/13/25	Void Bill.com Payment			250.00		=		250.00
05/13/25	Bill.com payables			(35.00)		-		(35.00)
Anticipated ac								
	Anticipated Bill.com Payments			(24,608.12)		-		(24,608.12)
	Anticipated Pledged Revenue Tra					(69,184.36)		(69,184.36)
		Anticipated Balance		27,781.37	\$		\$	27,781.37
MSI Checking	00/04/05		•	0.700.40	•		•	0.700.40
Balance as of			\$	6,762.40	\$	-	\$	6,762.40
Subsequent a	cuviles:							
		Anticipated Balance	<u>\$</u>	6,762.40	\$_		\$	6,762.40
CSAFE								
Balance as of	02/21/25		\$	139,687.90	\$		\$	139,687.90
Subsequent a			Ψ	139,007.90	Ψ	-	Ψ	139,007.90
04/11/25	Transfer from First Bank			100,000.00		_		100,000.00
04/11/25	Interest Income			740.59		_		740.59
04/30/23	merest meome	Anticipated Palance	<u> </u>		<u> </u>		\$	
		Anticipated Balance	<u> </u>	240,428.49	\$_	_	<u> </u>	240,428.49
Zion Bank 2022	Loan Payment Fund							
Balance as of			\$	_	\$	8,430.32	\$	8,430.32
Subsequent a	ctivities:					,	·	,
04/30/25	Interest Income			-		28.69		28.69
Anticipated ac								
	Anticipated Transfer from Pledged	d Revenue Fund		-		160,848.50		160,848.50
	Anticipated Debt Service Paymen	t		-		(166,307.51)		(166,307.51)
	Anticipated Paying Agent Fee					(3,000.00)		(3,000.00)
		Anticipated Balance	\$		\$		\$	-
Zion Bank 2022	Pledged Revenue Fund							
Balance as of			\$	-	\$	465,653.62	\$	465,653.62
Subsequent a								
04/10/25	Pledged Revenue Transfer			-		230,569.80		230,569.80
04/30/25	Interest Income			-		1,585.22		1,585.22
Anticipated ac		unofor				60 101 26		60 101 26
	Anticipated Pledged Revenue Tra Anticipated Transfer to Loan Payr			<u>-</u>		69,184.36 (160,848.50)		69,184.36 (160,848.50)
	Tamoipaled Transier to Loan Payr		_		_			
		Anticipated Balance	<u> </u>		\$_	606,144.50	\$	606,144.50
		Anticipated Balances	\$	268,209.86	\$	606,144.50	\$	874,354.36

Yield as of 03/31/25

Zions Bank (invested in Morgan Stanley) - 4.65%

No assurance is provided on these financial statements. Substantially all required disclosures, the government-wide financial statements, and the statement of revenues, expenditures and changes in fund balances - governmental funds have been omitted.

HAWTHORN METROPOLITAN DISTRICT PROPERTY TAX RECONCILIATION

2025

Current Year Prior Year % of Total Property % of Total Property Delinquent Specific Net Total **Taxes Received** Cash Taxes Received Taxes, Rebates Ownership Treasurer's Due to Amount Property Taxes & Abatements Backfill Taxes Interest Fees County Received Monthly Y-T-D Received Monthly Y-T-D 6,982.16 5,010.29 \$ (104.73) \$ 11,887.72 0.81% 0.81% 5,908.68 0.00% 0.00% (5,469.66) 364,970.51 (310.75)5,159.06 (15.55)364,333.61 42.23% 43.04% 408,924.05 44.31% 44.31% 48,417.08 5,164.51 (726.26)52,855.33 5.61% 48.65% 43,109.58 4.21% 48.52% 0.00% 48.65% 65,442.42 5.57% 54.09% 0.00% 48.65% 43,638.41 4.34% 58.43% 0.00% 48.65% 375,009.04 40.56% 98.99% 0.00% 48.65% 14,602.96 1.01% 100.00% 0.00% 48.65% 4,910.07 0.00% 100.00% 0.00% 48.65% 4,963.68 0.00% 100.00% 0.00% 48.65% 5,348.75 0.00% 100.00% 0.00% 48.65% 4,673.72 0.00% 100.00% 0.00% 48.65% 5,151.30 0.00% 100.00% 420,369.75 (310.75) 15,333.86 (15.55) (6,300.65) 429,076.66 48.65% 48.65% 727,418.62 100.00% 100.00%

January February March April May June July August September October November December

				Property Taxes	% Collected to
	Та	xes Levied	% of Levied	Collected	Amount Levied
Property Tax					
General Fund	\$	334,292	38.71%	\$ 162,623.01	48.65%
Debt Service Fund		529,192	61.29%	257,435.99	48.65%
	\$	863,484	100.00%	\$ 420,059.00	48.65%
Specific Ownership Tax					
General Fund	\$	23,400	38.71%	\$ 5,936.38	25.37%
Debt Service Fund		37,043	61.29%	9,397.48	25.37%
	\$	60,443	100.00%	\$ 15,333.86	25.37%
<u>Treasurer's Fees</u>					
General Fund	\$	5,014	38.71%	\$ 2,439.26	48.65%
Debt Service Fund		7,938	61.29%	3,861.39	48.64%
	\$	12,952	100.00%	\$ 6,300.65	48.65%

HAWTHORN METROPOLITAN DISTRICT 2025 BUDGET SUMMARY OF SIGNIFICANT ASSUMPTIONS

Services Provided

The District, a quasi-municipal corporation and a political subdivision of the State of Colorado (originally as Hawthorn Metropolitan District No. 2), was organized by court order and decree of the District Court for the County of Jefferson on December 5, 2012, and is governed pursuant to provisions of the Colorado Special District Act (Title 32, Article 1, Colorado Revised Statutes).

The District was established to provide financing for the operations and maintenance and design, acquisition, installation, construction and completion of public improvements and services, including water, sanitation/storm sewer, streets, park and recreation, transportation, mosquito control, safely protection, fire protection, television relay and translation, and security. The District was organized in conjunction with Hawthorn Metropolitan District No. 1, which is now dissolved.

The District is not authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided as part of an intergovernmental agreement with the County.

On November 6, 2012, the District's voters authorized total indebtedness of \$300,000,000 for the above listed facilities and \$30,000,000 for operations and maintenance, \$30,000,000 for both intergovernmental and private agreements, and \$30,000,000 for refunding. The election also approved an annual increase in property taxes of \$5,000,000 without limitation of rate, to pay the District's operation and maintenance costs. Per the District's service plan, the maximum debt mill levy is 50.000 mills, as adjusted. The maximum mill levy is 62.846 mills. Additionally, the service plan limits the total amount of debt issued between both Districts to \$10,000,000.

The District has no employees and all administrative functions are contracted.

The District prepares its budget on the modified accrual basis of accounting and in accordance with the requirements of Colorado Revised Statutes C.R.S. 29-1-105 using its best estimates as of the date of the budget hearing. These estimates are based on expected conditions and its expected course of actions. The assumptions disclosed herein are those that the District believes are significant to the budget. There will usually be differences between the budget and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material.

Revenues

Property Taxes

Property Taxes are levied by the District's Board of Directors. The levy is based on assessed valuations determined by the County Assessor generally as of January 1 of each year. The levy is normally set by December 15 by certification to the county Commissioners to put the tax lien on the individual properties as of January 1 of the following year. The County Treasurer collects the determined taxes during the ensuing calendar year. The taxes are payable by April or, if in equal installments, at the taxpayer's election, in February and June. Delinquent taxpayers are notified in August and, generally, sales of the tax liens on delinquent properties are held in November or December. The County Treasurer remits the taxes collected monthly to the District.

HAWTHORN METROPOLITAN DISTRICT 2025 BUDGET SUMMARY OF SIGNIFICANT ASSUMPTIONS

Revenues (continued)

Property Taxes (continued)

For property tax collection year 2025, SB22-238, SB23B-001, SB 24-233 and HB24B-1001 set the assessment rates and actual value reductions as follows:

Category	Rate	Category	Rate	Actual Value Reduction	Amount
Single-Family				Single-Family	\$55,000
Residential	6.70%	Agricultural Land	26.40%	Residential	
Multi-Family		Renewable		Multi-Family	\$55,000
Residential	6.70%	Energy Land	26.40%	Residential	
Commercial	27.90%	Vacant Land	27.90%	Commercial	\$30,000
		Personal		Industrial	\$30,000
Industrial	27.90%	Property	27.90%		
Lodging	27.90%	State Assessed	27.90%	Lodging	\$30,000
		Oil & Gas Production	87.50%		

Specific Ownership Taxes

Specific ownership taxes are set by the State and collected by the County Treasurer, primarily on vehicle licensing within the County as a whole. The specific ownership taxes are allocated by the County Treasurer to all taxing entities within the County. The budget assumes that the District's share will be equal to approximately 7% of the property taxes collected.

Interest Income

Interest earned on the District's available funds has been estimated based on an average interest rate of approximately 4%.

Expenditures

County Treasurer's Fees

County Treasurer's collection fees have been computed at 1.5% of property taxes.

Administrative Expenditures

Administration expenses include the services necessary to maintain the District's administrative viability such as legal, accounting, insurance, dues and membership, and other administrative expenses.

Operations and Maintenance Expenditures

Anticipated operations and maintenance expenditures, such as landscaping, trash removal and snow removal, are shown on the General Fund page of the budget.

No assurance is provided on these financial statements. Substantially all required disclosures, the government-wide financial statements, and the statement of revenues, expenditures and changes in fund balances - governmental funds have been omitted.

HAWTHORN METROPOLITAN DISTRICT 2025 BUDGET SUMMARY OF SIGNIFICANT ASSUMPTIONS

Expenditures (continued)

Debt Service

Principal and interest payments in 2025 are provided based on the debt amortization schedule from the Series 2022 General Obligation Refunding Loan (discussed under Debt and Leases).

Debt and Leases

On August 3, 2022, the District issued its \$8,715,000 General Obligation Refunding Loan, Series 2022 (2022 Loan). The proceeds from the 2022 Loan was applied to refunding the 2017 Bonds of the District, reimbursing and paying the costs of issuing the 2022 Loan. The 2022 Loan bears interest at 3.942% and 4.928%, payable semi-annually on June 1 and December 1, beginning on December 1, 2022. Principal payments are due on December 1, beginning on December 1, 2022. The 2022 Loan matures on December 1, 2052.

		Balance at ecember 31, 2023	Δd	ditions		Reductions		Balance at ecember 31, 2024*
Other Debts:		2020		ditions		-	-	ZUZ
Series 2022 Loan	\$	8,460,000	\$	_	\$	115,000	\$	8,345,000
Developer Advances Accrued Interest - Developer	*	120,000	*	-	•	-	Ť	120,000
Advance		89,013		9,600		-		98,613
Total	\$	8,669,013	\$	9,600	\$	115,000	\$	8,563,613
	Balance at December 31, 2024*		Ad	ditions		Reductions		Balance at ecember 31, 2025*
Other Debts:								
Series 2022 Loan	\$	8,345,000	\$	-	\$	120,000	\$	8,225,000
Developer Advances Accrued Interest - Developer		120,000		-		-		120,000
Advance		98,613		9,600		-		108,213
Total	\$	8,563,613	\$	9,600	\$	120,000	\$	8,453,213

^{*}Estimated

The District has no operating or capital leases.

Reserve Funds

Emergency Reserve

TABOR requires local governments to establish Emergency Reserves. These reserves must be at least 3% of fiscal year spending.

HAWTHORN METROPOLITAN DISTRICT SCHEDULE OF DEBT SERVICE REQUIREMENTS TO MATURITY

\$8,715,000 **General Obligation Refunding Loan** Series 2022, Dated August 3, 2022 Interest Rate 3.942% to 4.928% Payable June 1 and December 1

Year Ending	Principal Due December 1						
December 31,	Principal			Interest	Total		
2025	\$	120,000	\$	328,960	\$	448,960	
2026		130,000		324,230		454,230	
2027		140,000		319,105		459,105	
2028		155,000		313,586		468,586	
2029		160,000		307,476		467,476	
2030		175,000		301,169		476,169	
2031		180,000		294,270		474,270	
2032		200,000		287,175		487,175	
2033		205,000		279,290		484,290	
2034		225,000		271,210		496,210	
2035		235,000		262,340		497,340	
2036		250,000		253,076		503,076	
2037		260,000		243,221		503,221	
2038		280,000		232,972		512,972	
2039		295,000		221,935		516,935	
2040		315,000		210,306		525,306	
2041		325,000		197,888		522,888	
2042		340,000		193,955		533,955	
2043		340,000		195,975		535,975	
2044		365,000		180,675		545,675	
2045		390,000		164,250		554,250	
2046		405,000		146,700		551,700	
2047		425,000		128,475		553,475	
2048		445,000		109,350		554,350	
2049		465,000		89,325		554,325	
2050		485,000		68,400		553,400	
2051		505,000		46,575		551,575	
2052		530,000		23,850		553,850	
	\$	8,345,000	\$	5,995,739	\$	14,340,739	

Hawthorn Metropolitan District Interim Claims Listing 2/26/25 - 5/28/25

Process Date	Vendor	Invoice Number	Amount
03/19/25	CliftonLarsonAllen LLP	L251116152	\$ (3,019.70)
03/19/25	Compost Colorado LLC	85A8EB6B-0007	(250.00)
03/19/25	Environmental Landworks Company, Inc.	Multiple	(2,313.00)
03/19/25	MSI, LLC	Multiple	(1,248.96)
03/19/25	POOP 911	Multiple	(210.00)
03/19/25	Special District Association of Colo	2025 Dues	(592.55)
03/19/25	White Bear Ankele Tanaka & Waldron	39442	(4,112.20)
03/25/25	Waste Management	9329770-2514-1	(4,406.98)
04/09/25	POOP 911	Multiple	(140.00)
04/10/25	MSI, LLC	Multiple	(1,142.88)
04/10/25	White Bear Ankele Tanaka & Waldron	39908	(3,826.12)
04/11/25	POOP 911	9997664	(35.00)
04/15/25	POOP 911	9997665	(35.00)
04/18/25	POOP 911	9997666	(35.00)
04/22/25	POOP 911	9997667	(35.00)
04/22/25	Waste Management	9395656-2514-1	(4,423.97)
04/22/25	White Bear Ankele Tanaka & Waldron	Multiple	(13,065.64)
04/25/25	Compost Colorado LLC	85A8EB6B-0008	(250.00)
04/29/25	North Table Mountain W & S District	00007953Mar25	(59.29)
05/09/25	CliftonLarsonAllen LLP	L251268495	(1,320.31)
05/09/25	CliftonLarsonAllen LLP	L251210649	(2,992.96)
05/09/25	Compost Colorado LLC	85A8EB6B-0009	(250.00)
05/09/25	Environmental Landworks Company, Inc.	Multiple	(9,209.68)
05/09/25	MSI, LLC	Multiple	(1,160.91)
05/09/25	POOP 911	Multiple	(170.00)
05/13/25	POOP 911	10161110	(35.00)
05/16/25	POOP 911	10161111	(35.00)
05/19/25	POOP 911	10161112	(35.00)
05/22/25	Environmental Landworks Company, Inc.	45717	(2,667.00)
			\$ (57,077.15)

MINUTES OF A REGULAR MEETING OF THE BOARDS OF DIRECTORS

OF

HAWTHORN METROPOLITAN DISTRICT

Held: Monday, March 3, 2025, at 2:00 p.m., via teleconference.

Attendance

The regular meeting referenced above was called and held in accordance with the applicable statutes of the State of Colorado. The following directors, having confirmed their qualification to serve, were in attendance:

Krystal Bigley Brittany Lutz Stephen Daniels Stephen Bonneau

Director Andrea Stewart was absent. All absences are deemed excused unless otherwise noted in these minutes.

Also present were Trisha Harris, Esq., White Bear Ankele Tanaka & Waldron, District General Counsel; Hope Starchild, MSI, LLC, District Managers; Allison Williams, CliftonLarsonAllen, LLP, District Accountants; and Gary Silverman, member of the public.

Call to Order

It was noted that a quorum of the Board was present and Director Bigley called the meeting to order at 2:01 p.m.

Director Conflict of Interest Disclosures

Director Bigley advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Director Bigley reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of 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. Director Bigley 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 participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

Approval of Agenda

Ms. Bigley presented the agenda to the Board for consideration. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the agenda.

Public Comment

Mr. Silverman addressed the Board regarding concerns about people riding dirt bikes on the sidewalks and grass areas on District property. It was noted that the District's rules prohibit the use of motorized vehicles on District property. He also addressed the Board regarding providing better descriptions of agenda items and actions taken in the minutes so that readers who do not have the enclosures included with the Board packets can better understand the items addressed at the meetings. He also commented on the need for better communication with residents.

Consent Agenda

Ms. Bigley reviewed the items on the consent agenda with the Board and advised the Board that any item may be moved from the consent agenda to the regular agenda upon the request of any director. The Board considered each item on the consent agenda individually.

Approval of Board Meeting Minutes from December 2, 2024 Meeting Ms. Bigley presented the Board Meeting Minutes from the December 2, 2024 Meeting to the Board. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the Board Meeting Minutes from the December 2, 2024 Meeting.

Approval of the Board Meeting Minutes from the December 2, 2024 Annual Meeting Ms. Bigley presented the Board Meeting Minutes from the December 2, 2024 Annual Meeting to the Board. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the Board Meeting Minutes from the December 2, 2024 Annual Meeting.

Ratification of the Resolution of the ARC Approving the First Amendment to the Second Amendment and Restated Residential Improvement Guidelines and Site Restrictions Ms. Bigley presented the Resolution of the ARC Approving the First Amendment to the Second Amendment and Restated Residential Improvement Guidelines and Site Restrictions to the Board, which added pre-approved waterwise garden designs to the guidelines, as required by Colorado law. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the Resolution of the ARC Approving the First Amendment to the Second Amendment and Restated Residential Improvement Guidelines and Site Restrictions.

Approval of the Resolution of the Board of Directors Designating a Meeting Notice Posting Location

Ms. Bigley presented the Resolution of the Board of Directors Designating a Meeting Notice Posting Location to the Board, which designates the District's website as the location for posting of meeting notices, with alternate physical locations identified in the event the website is not available for posting. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the Resolution of the Board of Directors Designating a Meeting Notice Posting Location.

Financial Matters

Review and Consider Acceptance of Unaudited Financials Ms. Williams presented the unaudited financials to the Board. Following discussion, upon a motion duly made and seconded, the Board unanimously accepted the financials.

Review and Consider Approval of Claims Ms. Bigley presented the claims to the Board. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the claims.

Legal Matters

Discuss May 6, 2025 Election update Ms. Harris engaged in a discussion with the Board regarding the the May 6, 2025. Ms. Harris reported that there are two seats up for election, and that self-nomination forms from Ms. Stewart and Mr. Silverman were submitted. Ms. Harris noted that as long as there are no write-in candidate affidavits received by the end of the day on March 3, the election will be cancelled, and Ms. Stewart and Mr. Silverman will be deemed elected as of May 6, 2025.

Review and Consider Approval of Amendment to Independent Contractor Agreement with Environmental Landworks Company related to costs for extra work Ms. Harris presented the Amendment to Independent Contractor Agreement with Environmental Landworks Company related to costs for extra work to the Board, noting that the rates for the 2025/2026 agreement haven't changed other than the hourly rates for extra work, which are for work that might be requested by the Board outside of the primary scope of work under the agreement. The Board also discussed that trucks being used by Environmental Landworks for snow removal on sidewalks and trails are damaging landscape edging, grass, and sprinkler heads, and noted that Environmental Landworks will need to repair the damage in the spring. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the Amendment to Agreement Independent Contractor with Environmental Landworks Company related to costs for extra work.

Facilities/Management Matters

Management Update

Ms. Starchild reported on outstanding covenant violations and engaged in a discussion with the Board regarding its expectations

in relation to covenant enforcement. The Board discussed the matter of houses needing to be repainted in the future and trying to establish some objective criteria for determining which houses are in need of repainting, and what time frame to allow for any such repainting to be completed. Mr. Daniels and Mr. Bonneau will work with Ms. Harris to put together some guidelines to be presented at the June meeting.

Review and Ratification of Agreement with Community Preservation Specialists for Architectural Review Related Services Ms. Harris presented the Agreement with Community Preservation Specialists for Architectural Review Related Services to the Board, which is a short-term agreement for ARC assistance through March 31, 2025. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the Agreement with Community Preservation Specialists for Architectural Review Related Services.

Review and Consider Options for Architectural Review and Covenant Enforcement Services The Board engaged in a discussion regarding performance issues with MSI in relation to ARC oversight, (primarily ensuring that ARC submissions are complete before sending them on to the ARC for review and approval, and covenant enforcement inspections and follow up). Because of these performance issues, the Board had solicited a proposal from Community Preservation Specialists to provide ARC oversight and covenant enforcement services. The Board also requested a proposal from MSI for a reduced scope of work to not include those services. The Board also solicited a proposal from Public Alliance to provide similar services. MSI has provided a proposal to provide a reduced scope of work for \$650 per month. The Community Preservation Specialists' proposal was for approximately \$12,000 per year for covenant enforcement services, and an estimated \$3,000 for ARC oversight. Public Alliance would bill monthly, with an estimated annual cost of around \$11,000. After considerable discussion, the Board determined to continue with MSI at its current scope of work, including ARC oversight and covenant enforcement, but at the same time to inquire whether Community Preservation Specialists would work with the District to cap its fees at \$6,000. The Board will then reconsider this matter at its June meeting.

Other Business

Update on Discussions with CDOT regarding Erosion to the North

Mr. Bonneau reported that CDOT made repairs to the shoulder off Highway 93, including laying materials along the shoulder and grading it to create a level surface, addressing several deep channels that were running along the shoulder and down the hill. It was noted that the deep channels were not backfilled, but Mr. Bonneau will follow up.

Dog Kennel Property Update

Ms. Harris and Mr. Daniels reported that a letter was sent to the new owner of the property, and that a response was received stating that they are soliciting bids to have the fence replaced. Ms. Harris noted that she would reach out to the new owner to request sketches and specifications of the replacement fence.

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 at 4:06 p.m.

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

Secretary for the Meeting

The foregoing minutes were approved on the 2nd day of June, 2025.

INDEPENDENT CONTRACTOR AGREEMENT

(UTILITY LOCATE SERVICES)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "**Agreement**"), is entered into as of the 2nd day of June, 2025, by and between HAWTHORN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District**"), and DIVERSIFIED UNDERGROUND. INC, a Colorado corporation (the "**Contractor**"). The District and the Contractor 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 Contractor to perform certain services as are needed by the District to serve the property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill, and resources to perform the services, as set forth herein.

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. <u>SCOPE OF SERVICES; PERFORMANCE STANDARDS</u>. The Contractor 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 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**; and (c) using reasonable commercial efforts to minimize any annoyance, interference, or disruption to the residents, tenants, occupants, and invitees within the District. **Exhibit A** may take any form, including forms which may include price and payment terms. 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. Contractor 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. <u>TERM/RENEWAL</u>. 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 (iii) December 31, 2025. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the District determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.
- 3. <u>ADDITIONAL SERVICES</u>. The District may, in writing, request the Contractor 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 Contractor and the District pursuant to a written service/work order executed by an authorized representative of the District and the Contractor or an 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. <u>REPAIRS/CLAIMS</u>. The Contractor shall notify the District immediately of any and all damage caused by the Contractor to District property and that of third parties. The Contractor will promptly repair or, at the District's option, reimburse the District for the repair of any damage to property caused by the Contractor or its employees, agents, or equipment. In addition, the Contractor shall promptly notify the District of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information, which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

5. <u>GENERAL PERFORMANCE STANDARDS</u>.

a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment, and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the District or any agent of the District and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the

standards of care, skill, and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the District's request, re-perform the Services not meeting this standard without additional compensation.

- b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor 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.
- c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.
- d. The Contractor agrees that it has complied and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county, and local or municipal body or agency laws, statutes, ordinances, and regulations; (ii) any licensing, bonding, and permit requirements; (iii) any laws relating to storage, use, or disposal of hazardous wastes, substances, or materials; (iv) rules, regulations, ordinances, and/or similar directives regarding business permits, certificates, and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws; and (vii) rules and regulations of the Colorado Department of Public Health and Environment..
- e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subconsultant, or employee of the District. Review, acceptance, or approval by the District of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions, or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 6. <u>MONTHLY STATUS REPORT</u>. The Contractor 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 invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").

7. COMPENSATION AND INVOICES.

a. <u>Compensation</u>. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit B**. The Contractor 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 Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to 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 Contractor 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 Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B-1**.

- b. <u>Invoices</u>. Invoices for the Services shall be submitted monthly, by the 10th of each month for the prior month, during the term of this 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, including project and/or cost codes as provided in any applicable written service/work order.

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. <u>TIME FOR PAYMENT</u>. Payment for the Services shall be made by the District within thirty (30) days of receipt of: (i) a timely, satisfactory, and detailed 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 Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, 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 two officers of the District.
- 9. <u>INDEPENDENT CONTRACTOR</u>. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor 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 Contractor 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 Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or sub-contractors of the Contractor and will not for any purpose be considered employees or agents of the District. The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the District, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.

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

11. <u>CONTRACTOR'S INSURANCE</u>.

- a. The Contractor 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 Commercial General Liability and workers' compensation coverage. 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 in this Agreement.
- b. Prior to commencing any work under this Agreement, the Contractor 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 Contractor 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 satisfactory to the District and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the District to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.
- c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement, nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

12. CONFIDENTIALITY AND CONFLICTS.

- Confidentiality. Any information deemed confidential by the District and given to the Contractor by the District, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor 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 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 Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the District; or (iii) independently developed by the Contractor without use of the District's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the District and the Contractor. The Contractor 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. <u>Personal Identifying Information</u>. During the performance of this Agreement, the District may disclose Personal Identifying Information to the Contractor. "**Personal Identifying Information**" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.
- c. <u>Conflicts</u>. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the District, the Contractor agrees to notify the District of conflicts known to the Contractor that impact the Contractor's provision of Services to the District.
- OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files, and other documents, in whatever form, shall remain the property of the District under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the District's request the Contractor will provide the District with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the District's use and shall provide such copies to the District upon request at no cost.

LIENS AND ENCUMBRANCES. The Contractor shall not have any right or 14. 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 in this Agreement. The Contractor, 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, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through, or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers, and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed and/or materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

15. INDEMNIFICATION.

- The Contractor 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 (the "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 Contractor or any of its subcontractors, officers, agents, or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the District Indemnitees for the negligence of the District or the negligence of any other District Indemnitee, except the Contractor. 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 Contractor under workers' compensation acts, disability acts, or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.
- b. In the event the Contractor 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 such Claim, the District may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.
- c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor 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 Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- 16. <u>ASSIGNMENT</u>. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the District. 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. <u>SUB-CONTRACTORS</u>. The Contractor 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 Contractor or a subcontractor engaged by the Contractor, and neither the District's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities, or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the District. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement 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 the requirements of this Agreement. The Contractor 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 convenience by the Contractor upon delivery of thirty (30) days' prior written notice to the District and by the District by giving the Contractor thirty (30) days' prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors, or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the District to ensure a timely and efficient transition of all work and work product to the District or its designees. All time, fees, and costs associated with such transition shall not be billed by the Contractor to the District.
- 19. <u>DEFAULT</u>. If either Party fails to perform in accordance with the terms, covenants, and conditions of this Agreement, or is otherwise in default 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 ten (10) 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 ten (10)-day period and the defaulting party gives written notice to the

non-defaulting party within such ten (10)-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 ten (10)-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. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

NOTICES. Any notice or communication required under this Agreement must be 20. 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 in this Section 20 of this Agreement, 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

c/o MSI, LLC

11022 Benton Street Westminster, CO 80020 Attention: Mark Becker Phone: (720) 974-4140

Email: mbecker@msihoa.com

With a Copy to: White Bear Ankele Tanaka & Waldron

2154 E. Commons Ave., Suite 2000

Centennial, CO 80122

Attention: Trisha K. Harris, Esq. Phone: (303) 858-1800 E-mail: tharris@wbapc.com

Contractor: DIVERSIFIED UNDERGROUND, INC

PO BOX 460909 Aurora, CO 80046 Phone: (303) 636-9999

Email: eric@duinc.work

- 21. <u>AUDITS</u>. The District shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll, and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the District at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.
- 22. <u>ENTIRE AGREEMENT</u>. 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, and hereby supersedes any and all prior negotiations, representations, agreements, or arrangements of any kind with respect to the Services, whether written or oral. 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 Contractor and the District.
- 23. <u>BINDING AGREEMENT</u>. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.
- 24. <u>NO WAIVER</u>. 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 in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

25. GOVERNING LAW.

- a. <u>Venue</u>. 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 Contractor 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.
- b. <u>Choice of Law</u>. Colorado law shall apply to any dispute, 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.
- c. <u>Litigation</u>. At the District's request, the Contractor 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. The Contractor 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 Contractor'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 Contractor 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. <u>GOVERNMENTAL IMMUNITY</u>. 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. <u>NEGOTIATED PROVISIONS</u>. 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. <u>SEVERABILITY</u>. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void, or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. 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. <u>NO THIRD-PARTY BENEFICIARIES</u>. 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. <u>OPEN RECORDS</u>. 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. <u>STANDARD OF CARE</u>. In providing Services under this Agreement, the Contractor shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time.
- 34. <u>TAX EXEMPT STATUS</u>. 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 Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.
- 35. <u>COUNTERPART EXECUTION</u>. 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.

[Signature pages follow].

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

	DISTRICT: HAWTHORN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado
	Officer of the District
ATTEST:	
	<u> </u>
APPROVED AS TO FORM:	
WHITE BEAR ANKELE TANAKA & WALD Attorneys at Law	RON
General Counsel for the District	<u> </u>

	CONTRACTOR: Diversified Underground, LLC, a Colorado corporation
	Printed Name
	Title
STATE OF COLORADO COUNTY OF)) ss.)
	owledged before me this day of as the of Diversified
Witness my hand and official seal.	
My commission expires:	
	Notary Public

Contractor's Signature Page to Independent Contractor Agreement for Locate Services with HAWTHORN METROPOLITAN DISTRICT, dated June 2, 2025

EXHIBIT A

SCOPE OF SERVICES/COMPENSATION SCHEDULE

Scope of work:

Diversified Underground Inc. shall provide and furnish its own proper cost and expense all materials, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to provide services in accordance with the conditions and prices stated in the Services Agreement.

Upon receiving a Request, Diversified Underground Inc. will perform the actual locate verification within two working days. In the case of an after-hours emergency request, Company will respond to locate within 2 hours or contact contractor who called in ticket to ensure no excavation takes place prior to Company arrival.

All tickets will be sent to Diversified Underground via one of the following methods ;
UNCC
Project Assumptions:
Parties agree that an accurate Locate will be eighteen inches (18") on either side of the mark, horizontally.
No liability will be assumed by Company for "un-locatable lines" or for "unavoidable damage." Un-locatable is defined as lines that are thought to exist but cannot be accurately located. Unavoidable damage is defined by a situation where the prints (As Builts) would not show a line might exist; however, a line does exist and is subsequently damaged.
Company will be responsible for archiving tickets from UNCC.
A ticket will include all hookups and sites necessary to identify the underground facilities within the dig, area but will not exceed 500 feet. A ticket is defined using the currently accepted guidelines as presented by UNCC
Special Notes:
Client shall provide Company with current and up to date As Built information and provide updated information as it becomes available.
During project, Company is under the guidance and direction of client. All project related direction will come from client.
Company will provide at Clients request limited access to Company's ticket management system.
Services and Fees:
Company will be responsible for locating the following utilities: Irrigation, Street Lights.
Company shall charge the following rates for utility locates to the client:
Respond to and locate during normal business hours as defined by UNCC: \$80 Respond to and locate after hours as defined by UNCC: \$175
Pre-screen of tickets not requiring a truck roll: \$6

EXHIBIT B-1

CONTRACTOR'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 this 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 \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. 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. limited contractual:
 - d. broad form property damages, including completed operations;
 - e. medical payments;
 - f. products and completed operations;
 - g. independent consultants coverage; and
 - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant.

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.

EXHIBIT C-1

CERTIFICATE(S) OF INSURANCE