

**HAWTHORN METROPOLITAN DISTRICT**  
**REGULAR MEETING**  
Monday, September 11, 2023, at 2:00 p.m.  
[www.hawthornmetrodistrict.org](http://www.hawthornmetrodistrict.org)

---

Krystal Bigley, President	Term to May 2027
Andrea Stewart, Assistant Secretary	Term to May 2025
Brittany Lutz, Treasurer	Term to May 2025
Steve Daniels, Secretary	Term to May 2027
Stephen Bonneau, Assistant Secretary	Term to May 2027

---

*This meeting will be held via teleconferencing and can be joined through the directions below:*

<https://us06web.zoom.us/j/84844770366?pwd=QTZtVnVvN0RrTDc0Uk8zY3pIcGZUUT09>

Meeting ID: 848 4477 0366

Passcode: 778239

Call-In Number: (720) 707-2699

**NOTICE OF REGULAR MEETING AND AGENDA**

1. Call to Order/Declaration of Quorum
2. Director Conflict of Interest Disclosures
3. Approval of Agenda
4. Consent Agenda
  - a. Consider Approval of Minutes of June 5, 2023, Regular Meeting (**enclosure**)
5. Financial Matters
  - a. Review and Consider Acceptance of Unaudited Financials (**enclosure**)
  - b. Review and Consider Approval of Claims (**enclosure**)
6. Facilities/Management Matters
  - a. Discuss Status of Erosion Along Highway 93 and Discussions with CDOT
  - b. Review and Consider Approval of Proposal from Environmental Landworks for repair of retention wall (**enclosure**)

**2023 Regular Meetings**

First Monday of March, June, and December, 2023 at 2:00 p.m. at the second Monday of September at 2:00 p.m.  
via teleconference

- c. Review and Consider Approval of Independent Contractor Agreement with Environmental Landworks for 2023/2024 Snow Removal (**enclosure**)
- 7. Legal Matters
  - a. Review and Consider Approval of Amendment to the Residential Improvement Guidelines and Site Restrictions (**enclosure**)
  - b. Discuss Write-off of Past Due Balance
- 8. Other Business
- 9. Public Comment – Members of the public may express their views to the Board on matters that affect the District on items not otherwise on the agenda. Comments will be limited to three (3) minutes per person.
- 10. Adjourn

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF

HAWTHORN METROPOLITAN DISTRICT

Held: Monday, June 5, 2023, at 2:00 p.m. via teleconference

**Attendance**

The regular meeting of the Board of Directors of the Hawthorn Metropolitan District 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  
Andrea Stewart  
Brittany Lutz  
Steve Daniels

Director Bonneau was absent. Absence is deemed excused unless otherwise noted in these minutes.

Also present were Trisha Harris, Esq. White Bear Ankele Tanaka & Waldron, District General Counsel; Alex Fink and Allison Williams, CliftonLarsonAllen, LLP, District Accountants; Mark Becker, MSI HOA, District Manager.

**Call to Order**

It was noted that a quorum of the Board was present and Director Bigley called the meeting to order at 2:02 p.m.

**Conflict of Interest Disclosures**

Ms. Harris advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Ms. Harris 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. Ms. Harris 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**

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

**Consider Appointment of Officers**

The Board engaged in a general discussion regarding the Election of Officers. Following discussion, upon a motion duly made and seconded, the Board elected Director Bigley as President, Director Lutz as Treasurer, Director Daniels as Secretary and Directors Stewart and Bonneau as Assistant Secretaries.

**Consent Agenda**

Director Bigley reviewed the items on the consent agenda with the Board. Each item on the Consent Agenda was considered separately. Upon motions duly made and seconded, the following items on the consent agenda were unanimously approved, ratified and adopted:

- Minutes from March 6, 2023 Regular Meeting

**Financial Matters**

Review and Consider  
Acceptance of Unaudited  
Financials

Ms. Williams presented the unaudited financials to the Board. She noted that approximately half of the property tax has been collected to date, with the second half expected to be collected in July, which tracks with last year. Following discussion, upon a motion duly made and seconded, the Board unanimously accepted the financials.

Review and Consider  
Approval of Claims

Ms. Williams presented the claims to the Board. Ms. Bigley noted that the \$172.91 payment to her was reimbursement for the website hosting expense which she paid with her credit card. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the claims.

Review and Consider  
Acceptance of the 2022  
Audit

Mr. Fink presented the 2022 Audit to the Board. He noted the 2022 loan, which was issued to refinance the District’s existing debt, and which resulted in a lower interest rate and savings to the District. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the 2022 Audit subject to legal and auditor review and comments. The Board approved authorizing Ms. Bigley to sign the management letter that accompanied the Audit.

**Facilities/Management  
Matters**

Discuss Status of Prairie  
Dog Project and Seeding  
Project

Ms. Bigley reported that the hill north of Eldora has been seeded and looks good at this point.

Mr. Becker reported that the prairie dog project is ongoing, and that the contractor should be out this week for the next treatment, weather permitting.

Discuss RFP Process and Re-Ratify Berm Proposal

Ms. Bigley discussed the public bidding process that was done with a request for proposals being published. The only proposal received was from Environmental Landworks. Following discussion, upon a motion duly made and seconded, the Board approved engaging Environmental Landworks for the Berm Project at a total cost not to exceed \$150,000 and final completion, including landscaping installation, no later than the end of June, 2024, with a contract to reflect either a phased approach (with a portion being done in 2023 and the remainder in 2024, subject to current budgeting and appropriation for 2023) or with a contract with billing to be done per a schedule of completion with final payment due in 2024, the final terms of which are to be approved by Ms. Bigley and Ms. Lutz.

Discuss Permanent Stormwater Quality Structure Inspection Report and Inspection Regarding Same

Ms. Harris presented the report received from Jefferson County and reported that Ms. Bigley and Mr. Daniels met with Mr. Becker and Mr. Buttram from Environmental Landworks to review the report. Mr. Becker and Mr. Buttram then met with the County Inspector to determine the work to be done. Environmental Landworks presented a proposal, which was accepted and the work has been completed.

Ratify Chanel Cleaning Proposal from Environmental Landworks

Ms. Harris presented the Chanel Cleaning Proposal from Environmental Landworks. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the Chanel Cleaning Proposal.

Ratify Rock Property Services Proposal for Fence Repair

Ms. Harris presented the Rock Property Services Proposal for Fence Repair. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the Proposal for Fence repair, noting that the proposal was from Rock Property Services. It was noted that the fence was damaged when a USPS truck ran into it. Mr. Becker will contact the USPS about reimbursement.

Discuss Purchase of Soccer Goals and/or Nets

Ms. Bigley reported that Mr. Becker had provided some information about replacing the existing soccer goals with permanent structures (cost between \$8,000 and \$12,000 per goal) or with temporary goals (cost between \$2,500 and \$5,000 per goal). The Board directed Mr. Becker to present specific proposals at the September meeting for discussion about including the expense in the 2024 budget.

Update on Tree Spraying Proposals

Mr. Becker reported that the only viable proposal received for Tree Spraying was from Environmental Landworks, which was engaged to do the work and was scheduled to be done this week.

Update on Dog Waste Stations

Ms. Bigley noted that the Dog Waste Stations are often out of bags, or the bins were full. Poop 911 comes out once a week, but Mr. Becker noted that more visits may be beneficial during the warmer months. Following discussion, upon a motion duly made and seconded, the Board unanimously approved increasing the frequency of visits by Poop 911 to two times a week for the warmer months.

Discuss Covenant Violations/Tracking on NABR

Ms. Bigley discussed that, as a Board member, she is not able to view covenant violation information on Engage, which is the new software platform used by MSI for the same, instead of NABR. Mr. Becker will discuss with MSI's IT department to ensure that the Board members have proper administrative rights to be able to view covenant enforcement tracking information.

Discuss Architectural Review Expectations

Ms. Bigley discussed issues related to incomplete ARC applications being forwarded to the ARC, such as forms not including neighbor acknowledgements or incomplete information. Ms. Bigley requested Mr. Becker's help to ensure that ARC applications are complete prior to sending them to the ARC for review. The Board discussed developing a checklist to accompany the ARC form so that owners can easily determine if there are any missing items with their submission. Mr. Becker and Mr. Daniels are to work on developing such a checklist.

## **Legal Matters**

Discussion Regarding Short-Term Rental Restrictions

Ms. Harris presented a memo regarding Short-Term Rental Restrictions. The Board discussed that the County's restrictions are more restrictive, and that those could be relied upon for enforcement by the County without the District imposing additional restrictions or amending the Declaration. With there only being one instance that raised the issue, the Board determined no action is necessary.

## **Other Business**

Discussion Regarding Erosion Issue Along Highway 93

Ms. Bigley discussed with the Board the Erosion Issue along Highway 93 and the demand letter sent to CDOT, which added a safety concern about vehicles departing the highway. No response has been received as of the date of the meeting, but the 20-day period has not yet expired.

Discussion regarding  
Vehicles Departing  
Highway 93 onto Adjacent  
Property

The Board discussed the RV that came off Highway 93 onto District property adjacent to the highway, causing damage to the District's property. Mr. Becker will obtain a copy of the police report about the incident to determine if a claim can be filed with the insurance carrier for the driver of the RV.

**Public Comment**

None

**Next Meeting**

September 11, 2023 at 2:00 p.m.

**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 4:25 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 by the Board of Directors on the 11th day of September 2023.

**HAWTHORN METROPOLITAN DISTRICT**

**FINANCIAL STATEMENTS**

**JUNE 30 2023**



**Hawthorn Metro District No. 2**  
**Balance Sheet - Governmental Funds**  
**June 30, 2023**

	<b>General</b>	<b>Debt Service</b>	<b>Total</b>
<b>Assets</b>			
Checking Account	\$ 41,842.90	\$ -	\$ 41,842.90
CSAFE	93,341.69	-	93,341.69
Zions Payment Fund - Series 2022	-	262,621.80	262,621.80
Zions Pledged Revenue Fund - Series 2022	-	123,707.27	123,707.27
Accounts Receivable	3,374.40	-	3,374.40
Receivable from County Treasurer	97,480.80	154,314.80	251,795.60
<b>Total Assets</b>	<b>\$ 236,039.79</b>	<b>\$ 540,643.87</b>	<b>\$ 776,683.66</b>
<b>Liabilities</b>			
Accounts Payable	\$ 30,812.52	\$ -	\$ 30,812.52
<b>Total Liabilities</b>	<b>30,812.52</b>	<b>-</b>	<b>30,812.52</b>
<b>Fund Balances</b>	<b>205,227.27</b>	<b>540,643.87</b>	<b>745,871.14</b>
<b>Liabilities and Fund Balances</b>	<b>\$ 236,039.79</b>	<b>\$ 540,643.87</b>	<b>\$ 776,683.66</b>

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 Metro District No. 2**  
**General Fund Statement of Revenues, Expenditures and Changes in**  
**Fund Balances - Budget and Actual**  
**For the Period Ending June 30, 2023**

	<u>Annual Budget</u>	<u>Actual</u>	<u>Variance</u>
Revenues			
Property taxes	\$ 266,495.00	\$ 265,877.45	\$ 617.55
Specific ownership taxes	18,655.00	9,565.79	9,089.21
Interest income	-	381.14	(381.14)
Total Revenue	<u>285,150.00</u>	<u>275,824.38</u>	<u>9,325.62</u>
Expenditures			
Accounting	30,000.00	16,460.47	13,539.53
Auditing	6,000.00	5,100.00	900.00
County Treasurer's fee	3,997.00	3,988.76	8.24
Directors' fees	2,000.00	600.00	1,400.00
Dues and membership	750.00	581.81	168.19
Insurance	12,300.00	12,169.00	131.00
District management	18,000.00	7,056.57	10,943.43
Covenant Enforcement	5,000.00	604.00	4,396.00
Legal	50,000.00	23,507.45	26,492.55
Miscellaneous	2,203.00	2,000.24	202.76
Election	-	3,731.53	(3,731.53)
Irrigation repairs	3,000.00	2,466.00	534.00
Landscape improvements	130,000.00	38,297.45	91,702.55
Landscape maintenance contract	30,000.00	15,411.00	14,589.00
Grounds cleanup	3,500.00	1,030.00	2,470.00
Fence and sign maintenance	-	331.00	(331.00)
Snow removal	17,250.00	3,365.50	13,884.50
Water	5,000.00	1,033.65	3,966.35
Electricity	250.00	631.92	(381.92)
Trash Collection	48,000.00	23,811.53	24,188.47
North Table Mtn IGA	17,250.00	17,657.44	(407.44)
Website	500.00	172.91	327.09
Total Expenditures	<u>385,000.00</u>	<u>180,008.23</u>	<u>204,991.77</u>
Net Change in Fund Balances	(99,850.00)	95,816.15	(195,666.15)
Fund Balance - Beginning	110,026.00	109,411.12	614.88
Fund Balance - Ending	<u>\$ 10,176.00</u>	<u>\$ 205,227.27</u>	<u>\$ (195,051.27)</u>

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.

## SUPPLEMENTARY INFORMATION

**Hawthorn Metro District No. 2**  
**Debt Service Fund Schedule of Revenues, Expenditures and Changes in**  
**Fund Balances - Budget and Actual**  
**For the Period Ending June 30, 2023**

	<u>Annual Budget</u>	<u>Actual</u>	<u>Variance</u>
Revenues			
Property taxes	\$ 421,869.00	\$ 420,891.39	\$ 977.61
Specific ownership taxes	29,531.00	15,142.74	14,388.26
Interest income	8,800.00	7,598.31	1,201.69
Total Revenue	<u>460,200.00</u>	<u>443,632.44</u>	<u>16,567.56</u>
Expenditures			
County Treasurer's fee	6,328.00	6,314.31	13.69
Paying agent fees	8,000.00	-	8,000.00
Loan Interest - Series 2022	337,041.00	170,392.95	166,648.05
Loan Principal - Series 2022	90,000.00	-	90,000.00
Contingency	8,631.00	-	8,631.00
Total Expenditures	<u>450,000.00</u>	<u>176,707.26</u>	<u>273,292.74</u>
Net Change in Fund Balances	10,200.00	266,925.18	(256,725.18)
Fund Balance - Beginning	217,124.00	273,718.69	(56,594.69)
Fund Balance - Ending	<u>\$ 227,324.00</u>	<u>\$ 540,643.87</u>	<u>\$ (313,319.87)</u>

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**  
**Schedule of Cash Position**  
**June 30, 2023**  
**Updated as of August 28, 2023**

	<b>General Fund</b>	<b>Debt Service Fund</b>	<b>Total Funds</b>
<b><u>First Bank - Checking Account</u></b>			
Balance as of 06/30/23	\$ 41,842.90	\$ -	\$ 41,842.90
Subsequent activities:			
07/10/23 Jefferson County Taxes - June	97,480.80	154,314.80	251,795.60
07/14/23 Hawthorn Metro Credits	117.00	-	117.00
07/25/23 Waste Management payment	(3,994.39)	-	(3,994.39)
07/26/23 Transfer to Pledged Revenue Fund	-	(154,314.80)	(154,314.80)
07/27/23 Bill.com payables	(31,660.11)	-	(31,660.11)
07/27/23 North Table Mountain - Water Payment	(1,031.67)	-	(1,031.67)
08/10/23 Jefferson County Taxes - July	2,166.43	3,429.49	5,595.92
08/17/23 Transfer to Pledged Revenue Fund	-	(3,429.49)	(3,429.49)
08/18/23 Bill.com payables	(11,467.89)	-	(11,467.89)
08/22/23 Waste Management payment	(4,036.65)	-	(4,036.65)
<i>Anticipated Balance</i>	<u>\$ 89,416.42</u>	<u>\$ -</u>	<u>\$ 89,416.42</u>
<b><u>CSAFE</u></b>			
Balance as of 06/30/23	\$ 93,341.69	\$ -	\$ 93,341.69
Subsequent activities:			
07/31/23 Interest Income	415.21	-	415.21
	<u>\$ 93,756.90</u>	<u>\$ -</u>	<u>\$ 93,756.90</u>
<b><u>Zion Bank 2022 Loan Payment Fund</u></b>			
Balance as of 06/30/23	\$ -	\$ 262,621.80	\$ 262,621.80
Subsequent activities:			
07/01/23 Interest Income	-	1,026.80	1,026.80
<i>Anticipated Balance</i>	<u>\$ -</u>	<u>\$ 263,648.60</u>	<u>\$ 263,648.60</u>
<b><u>Zion Bank 2022 Pledged Revenue Fund</u></b>			
Balance as of 06/30/23	\$ -	\$ 123,707.27	\$ 123,707.27
Subsequent activities:			
07/01/23 Interest Income	-	307.37	307.37
07/26/23 Pledged Revenue Transfer	-	154,314.80	154,314.80
08/17/23 Pledged Revenue Transfer	-	3,429.49	3,429.49
<i>Anticipated Balance</i>	<u>\$ -</u>	<u>\$ 281,758.93</u>	<u>\$ 281,758.93</u>
<b>Anticipated Balances</b>	<b><u>\$ 89,416.42</u></b>	<b><u>\$ 545,407.53</u></b>	<b><u>\$ 634,823.95</u></b>

**Yield as of 7/31/23**

UMB invested in CSAFE - 5.23%

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  
2023**

	Current Year							Prior Year				
	Property Taxes	Delinquent Taxes, Rebates & Abatements	Specific Ownership Taxes	Interest	Treasurer's Fees	Due to County	Net Amount Received	% of Total Property Taxes Received		Total Cash Received	% of Total Property Taxes Received	
								Monthly	Y-T-D		Monthly	Y-T-D
January	\$ 1,601.67	\$ -	\$ 4,370.48	\$ -	\$ (24.03)	\$ -	\$ 5,948.12	0.23%	0.23%	\$ 12,926.02	1.01%	1.01%
February	301,272.54	-	4,125.26	-	(4,519.09)	-	300,878.71	43.77%	44.00%	352,985.43	44.58%	45.58%
March	38,403.50	-	4,323.63	15.03	(576.28)	-	42,165.88	5.58%	49.58%	35,765.12	3.96%	49.55%
April	38,083.27	-	3,566.15	-	(571.25)	-	41,078.17	5.53%	55.11%	52,262.91	6.16%	55.71%
May	55,816.67	-	4,397.71	33.08	(837.75)	-	59,409.71	8.11%	63.22%	35,810.36	4.01%	59.72%
June	251,591.19	-	3,925.30	53.78	(3,774.67)	-	251,795.60	36.55%	99.77%	307,747.38	38.87%	98.59%
July	-	-	-	-	-	-	-	0.00%	99.77%	8,367.92	0.49%	99.08%
August	-	-	-	-	-	-	-	0.00%	99.77%	10,021.56	0.51%	99.59%
September	-	-	-	-	-	-	-	0.00%	99.77%	4,663.22	0.00%	99.59%
October	-	-	-	-	-	-	-	0.00%	99.77%	4,885.90	0.00%	99.59%
November	-	-	-	-	-	-	-	0.00%	99.77%	6,437.51	0.23%	99.83%
December	-	-	-	-	-	-	-	0.00%	99.77%	3,509.48	0.00%	99.83%
	<b>\$ 686,768.84</b>	<b>\$ -</b>	<b>\$ 24,708.53</b>	<b>\$ 101.89</b>	<b>\$ (10,303.07)</b>	<b>\$ -</b>	<b>\$ 701,276.19</b>	<b>99.77%</b>	<b>99.77%</b>	<b>\$ 835,382.81</b>	<b>99.83%</b>	<b>99.83%</b>

	Taxes Levied	% of Levied	Property Taxes Collected	% Collected to Amount Levied
<b>Property Tax</b>				
General Fund	\$ 266,495	38.71%	\$ 265,877.45	99.77%
Debt Service Fund	421,869	61.29%	420,891.39	99.77%
	<b>\$ 688,364</b>	<b>100.00%</b>	<b>\$ 686,768.84</b>	<b>99.77%</b>
<b>Specific Ownership Tax</b>				
General Fund	\$ 18,655	38.71%	\$ 9,565.80	51.28%
Debt Service Fund	29,531	61.29%	15,142.73	51.28%
	<b>\$ 48,186</b>	<b>100.00%</b>	<b>\$ 24,708.53</b>	<b>51.28%</b>
<b>Treasurer's Fees</b>				
General Fund	\$ 3,997	38.71%	\$ 3,988.76	99.79%
Debt Service Fund	6,328	61.29%	6,314.31	99.78%
	<b>\$ 10,325</b>	<b>100.00%</b>	<b>\$ 10,303.07</b>	<b>99.79%</b>

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  
2023 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, safety 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 55.663 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.

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  
2023 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Revenues (continued)**

**Property Taxes (continued)**

Senate Bill 21-293 among other things, designates multi-family residential real property (defined generally, as property that is a multi-structure of four or more units) as a new subclass of residential real property. For tax collection year 2023, the assessment rate for single family residential property decreases to 6.95% from 7.15%. The rate for multifamily residential property, the newly created subclass, decreases to 6.80% from 7.15%. Agricultural and renewable energy production property decreases to 26.4% from 29.0%. Producing oil and gas remains at 87.5%. All other nonresidential property stays at 29%.

The calculation of the taxes levied is displayed on the Property Tax Summary Information page of the budget using the adopted mill levy imposed by the District.

**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 4.00%.

**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.

**Debt Service**

Principal and interest payments in 2023 are provided based on the debt amortization schedule from the Series 2022 General Obligation Refunding Loan (discussed under Debt and Leases).

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  
2023 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**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 December 31, 2021	Additions	Reductions	Balance at December 31, 2022*
<b>Bonds Payable:</b>				
Series 2017A	\$ 5,950,000	\$ -	\$ 5,950,000	\$ -
Series 2017B	820,000	-	820,000	-
Series 2017C	928,000	-	928,000	-
Accrued Interest - 2017B	268,415	-	268,415	-
Accrued Interest - 2017C	436,691	-	436,691	-
Bond Premium	91,574	-	91,574	-
<b>Other Debts:</b>				
Series 2022 Loan	8,715,000		165,000	8,550,000
Developer Advances	120,000	-	-	120,000
Accrued Interest - Developer Advance	69,813	9,600	-	79,413
Total	<u>\$ 17,399,493</u>	<u>\$ 9,600</u>	<u>\$ 8,659,680</u>	<u>\$ 8,749,413</u>

	Balance at December 31, 2022*	Additions	Reductions	Balance at December 31, 2023*
<b>Other Debts:</b>				
Series 2022 Loan	\$ 8,550,000	\$ -	\$ 90,000	\$ 8,460,000
Developer Advances	120,000	-	-	120,000
Accrued Interest - Developer Advance	79,413	9,600	-	89,013
Total	<u>\$ 8,749,413</u>	<u>\$ 9,600</u>	<u>\$ -</u>	<u>\$ 8,669,013</u>

\*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.

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  
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**

**Principal Due December 1**

<u>Year Ending December 31,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2023	\$ 90,000	\$ 337,041	\$ 427,041
2024	115,000	333,493	448,493
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
	<u>\$ 8,550,000</u>	<u>\$ 6,666,273</u>	<u>\$ 15,216,273</u>

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**  
**Interim Claims Listing 5/27/23 - 9/5/23**

<b>Process Date</b>	<b>Vendor</b>	<b>Invoice Number</b>	<b>Amount</b>
6/22/2023	Waste Management	8200007-2514-4	(3,989.04)
6/26/2023	CliftonLarsonAllen LLP	3724035	(2,782.06)
6/26/2023	Environmental Landworks Company, Inc.	Multiple	(1,107.00)
6/26/2023	Golden Opportunities LLC	19673W58th	(15.00)
6/26/2023	MSI, LLC	Multiple	(1,147.20)
6/26/2023	POOP 911	Multiple	(70.00)
6/26/2023	UNCC	223050772	(21.93)
7/25/2023	North Table Mountain W & S District	11250-01Jun23	(1,027.92)
7/25/2023	Waste Management	8249753-2514-6	(3,994.39)
7/27/2023	Animal & Pest Control Specialist, Inc	92310	(175.00)
7/27/2023	CliftonLarsonAllen LLP	3771096	(4,834.82)
7/27/2023	Dazzio & Associates, PC	610	(5,100.00)
7/27/2023	Diversified Underground	Multiple	(375.00)
7/27/2023	Environmental Landworks Company, Inc.	Multiple	(11,082.00)
7/27/2023	MSI, LLC	Multiple	(1,137.98)
7/27/2023	POOP 911	Multiple	(435.00)
7/27/2023	UNCC	223060769	(19.35)
7/27/2023	White Bear Ankele Tanaka & Waldron	Multiple	(8,500.96)
8/18/2023	Animal & Pest Control Specialist, Inc	93423	(175.00)
8/18/2023	CliftonLarsonAllen LLP	3799091	(2,687.66)
8/18/2023	Environmental Landworks Company, Inc.	Multiple	(3,073.38)
8/18/2023	MSI, LLC	Multiple	(1,148.75)
8/18/2023	POOP 911	Multiple	(340.00)
8/18/2023	UNCC	223070764	(6.45)
8/18/2023	Waste Management	8296147-2514-3	(4,036.65)
			<u>(57,282.54)</u>

**INDEPENDENT CONTRACTOR AGREEMENT  
(RETAINING WALL REPAIR)**

---

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 11th day of September 2023, by and between HAWTHORN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and ENVIRONMENTAL LANDWORKS COMPANY, 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. SCOPE OF SERVICES; PERFORMANCE STANDARDS. 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. 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; (ii) completion of the Services; or (ii) December 31, 2023.

3. ADDITIONAL SERVICES. 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. REPAIRS/CLAIMS. 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. GENERAL PERFORMANCE STANDARDS.

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, sub-consultant, 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. MONTHLY STATUS REPORT. 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. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. 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 A** 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**.

8. TIME FOR PAYMENT. Payment for the Services shall be made by the District within thirty (30) days of receipt of: (i) a timely, satisfactory, and detailed final invoice upon completion of the Services.

9. INDEPENDENT CONTRACTOR. 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. EQUAL OPPORTUNITY. 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. CONTRACTOR’S INSURANCE.

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.

a. 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. Personal Identifying Information. 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. 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 Contractor agrees to notify the District of conflicts known to the Contractor that impact the Contractor's provision of Services to the District.

13. 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.

14. LIENS AND ENCUMBRANCES. The Contractor 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 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.

a. 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. ASSIGNMENT. 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. SUB-CONTRACTORS. 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. DEFAULT. 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.

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 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@msiho.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: Environmental Landworks Company, Inc.  
17173 Mount Vernon Road  
Golden, CO 80401  
Attention: Michael Sittaro  
Phone: (303) 862-9480  
Email: michael@elciworks.com

21. AUDITS. 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. 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, 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. 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 in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

25. GOVERNING LAW.

a. Venue. 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. Choice of Law. 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. Litigation. 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. 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 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. 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. WARRANTY AND PERMITS. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “**Work**”) will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and the applicable building code and all other applicable laws, ordinances, codes, rules, and regulations of any governmental authorities having jurisdiction over the Work. All materials are subject to the satisfaction and acceptance of the District, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

a. The Contractor hereby warrants the Work for a period of one (1) year from the date of completion and initial acceptance of the Work. The Contractor will immediately correct or replace any Work that is defective or not conforming to this Agreement at its sole expense to the reasonable satisfaction of the District. The Contractor’s guarantees and warranties shall in all

cases survive termination of this Agreement. This warranty shall be enforceable by the District, its successors and assigns.

b. Prior to final payment for any Services involving Work, and at any time thereafter but before the final inspection, as set forth below, the Contractor and the District shall, at the request of the District, conduct an inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with this Agreement. The Contractor's fees and costs associated with the inspection shall be included in the compensation schedule set forth in **Exhibit B** and shall not be billed separately to the District. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in **Exhibit B**, the Contractor is deemed to have waived these fees and costs. After completion of the inspection, the District will provide the Contractor with written notice of any Work requiring corrective action. The Contractor agrees to correct or replace the defective Work within a reasonable time, as agreed to by the Parties, but in no event later than thirty (30) calendar days from the date of notice from the District, unless otherwise agreed to by the District.

c. The Contractor agrees that if warranty issues appear before payment has been made under this Agreement, the District may withhold payment until such warranty issues are resolved to the District's satisfaction. If repair or replacement of any warranty or defective Work is not made by the Contractor promptly upon request by the District as set forth in this Agreement, in addition to any other remedy, the District may withhold any payment the District may owe to the Contractor, including payments under other contracts or agreements related or unrelated to the Work and Services.

d. The Contractor shall promptly notify the District of any Work, whether by the Contractor, its subcontractors or any third parties, which the Contractor believes to be defective or not conforming with this Agreement.

e. The Contractor shall, at its expense, obtain all permits, licenses, and other consents required from all governmental authorities, utility companies, and appropriate parties under any restrictive covenants in connection with the Work. The Contractor shall comply with all the terms and conditions of all permits, licenses, and consents.

f. At or around eleven (11) months, but no more than one (1) year, after the completion and acceptance of the Work, the Contractor and the District shall, at the request of the District, conduct a final inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with this Agreement. The Contractor's fees and costs associated with the inspection shall be included in the compensation schedule set forth in **Exhibit A** and shall not be billed separately to the District. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in **Exhibit A**, the Contractor is deemed to have waived these fees and costs. After completion of the final inspection, the District will provide the Contractor with written notice of any Work requiring corrective action. In the event the Contractor does not correct or replace the defective Work within thirty (30) calendar days from the date of notice from the District, or within such other reasonable time as agreed to by the Parties, the District may correct or replace the defective Work and the Contractor shall reimburse the District for the related costs and fees.

34. 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 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. 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.

*[Signature pages 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,  
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 for the District

*District's Signature Page to Independent Contractor Agreement for Retaining Wall Repair  
with Environmental Landworks Company, Inc., dated September 11, 2023*



**EXHIBIT A**

**SCOPE OF SERVICES/COMPENSATION SCHEDULE**



**EXHIBIT B**

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**



**INDEPENDENT CONTRACTOR AGREEMENT**  
(SNOW REMOVAL 2023-2024)

---

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 11th day of September 2023, by and between HAWTHORN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and ENVIRONMENTAL LANDWORKS COMPANY, 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. SCOPE OF SERVICES; PERFORMANCE STANDARDS. 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. 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, 2023. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) 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, 2023 and terminate on May 31, 2024.

3. ADDITIONAL SERVICES. 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. REPAIRS/CLAIMS. 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. GENERAL PERFORMANCE STANDARDS.

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, sub-consultant, 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. MONTHLY STATUS REPORT. 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. Compensation. 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. Invoices. Invoices for the Services shall be submitted monthly, by the of each 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 10<sup>th</sup> 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) 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. INDEPENDENT CONTRACTOR. 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. EQUAL OPPORTUNITY. 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. CONTRACTOR'S INSURANCE.

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.

a. 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. Personal Identifying Information. 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. 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 Contractor agrees to notify the District of conflicts known to the Contractor that impact the Contractor's provision of Services to the District.

13. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor 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.

14. LIENS AND ENCUMBRANCES. The Contractor 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 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.

a. 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. ASSIGNMENT. 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. SUB-CONTRACTORS. 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. DEFAULT. 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.

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 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@msiho.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: Environmental Landworks Company, Inc.  
17173 Mount Vernon Road  
Golden, CO 80401  
Attention: Michael Sittaro  
Phone: (303) 862-9480

Email: michael@elciworks.com

21. AUDITS. 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. 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, 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. 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 in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

25. GOVERNING LAW.

a. Venue. 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. Choice of Law. 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. Litigation. 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. 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 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. 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. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “**Work**”) will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules, and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the District, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

34. 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 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. 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.

*[Signature pages 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,  
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 for the District

*District's Signature Page to Independent Contractor Agreement for Snow Removal Services  
with Environmental Landworks Company, Inc., dated September 11, 2023*



## EXHIBIT A

### SCOPE OF SERVICES

- A. Scope and Price. Contractor shall furnish all labor, equipment, accessories and material to perform snow maintenance activities as outlined on the specifications section below and on any site map, if any, prepared and attached to this agreement as Exhibit A. These services shall be provided at the hourly rates set forth on the attached Exhibit B.
- B. Resources and Staffing. Subject to Sections C and J below, Contractor shall maintain sufficient resources and equipment to be able to service the property for the type and size of snowstorms customarily encountered in the area (1" to 8" of snowfall accumulation per day) where the premises are located.
- C. Extraordinary Conditions. Accumulations greater than 8" may require larger or different types of equipment that are not normally a part of contractor's fleet. Supplemental pricing per Exhibit B will apply in those circumstances where Contractor must rent equipment. In the event of a forecast storm greater than 8" Contractor may contact the District and make recommendations for equipment and personnel to complete services in the expected time frame. If the District agrees to Contractor's recommendations, *District snow depth tolerances under Section E will be suspended, and snow maintenance services will be performed in heavier snowfall areas. Managers will be notified via email or phone should these conditions arise: snow fall rates exceeding 4" per hour, 18" of snow fall in a 24 hour period, snowfall lasting longer than 24 hours, or temperatures below 0 degrees Fahrenheit.* The District understands that snow maintenance services under these conditions could require two or more trips addressing areas of highest need first. The District understands that this may result in additional time required to perform services under this agreement at the premises. In the event of a government issued snow emergency contractor will be entitled to discontinue snow operations under this agreement if continued operations would be a violation of law. Contractor's normally available equipment includes, but is not limited to, dump trucks, front-end loaders, and additional trucks with blades, and this equipment is subject to availability based on company's reasonable discretion based on its obligation to fulfill pre-existing commitments.
- D. Work Not Included.
1. Sweeping or cleaning of sand or other materials used when performing services or cleaning accumulation of trash, sand or debris after snow melts.
  2. Cleanup of material used for snow services (Contractor can perform this cleanup upon the District's request on a T&M basis).
  3. Repair of concrete structures damaged by Contractor or third parties during blizzard events.
  4. Any other work not listed in this Agreement or its exhibits.

- E. Minimum Accumulation Standards. Contractor will plow the snow when accumulation reaches a depth of 4 inches (Pink) as determined by the nearest location for which a report is available on www.skyviewweather.com (or other standard agreed to by the parties), or as requested by the District for an additional fee. Contractor will shovel the snow when accumulation reaches a depth of 3 inches (Green) 2 inches (Orange) & TRACE inches (mailboxes) as determined by the nearest location for which a report is available on www.skyviewweather.com (or other standard agreed to by the parties), or as requested by the District for an additional fee. If no depth tolerance is entered in spaces provided above, Contractor will assume 2” depth tolerance for plowing and 1” for shoveling.
- F. Equipment. Equipment and materials to be used during normal events may include, but not be limited to, the following:
1. 3/4-ton & 1-ton trucks with 7.5-foot blades.
  2. Dump truck with blade
  3. Front end loaders/ skid steers
  4. Sidewalk Equipment – ATV/UTV, Ventrac, Broom, MT55/85/100
  5. Ice Slicer- Truck with slicer spreader
  6. Polar Ice Melt (NaCl 98% & MgCl<sub>2</sub> 2%) – manual/mechanical broadcast
  7. Storage Unit – on site storage for long term equipment
- G. Notification Procedures for Requests for Service or to Forego Service.
1. *Automatic Services and Services on Request.* Snow maintenance activities will be initiated when the Contractor reasonably determines conditions are such that maintenance operations are required based upon the accumulation specifications above, or when Contractor is specifically notified by the District and when conditions and law permit snow maintenance activities to be undertaken according to the terms and conditions of this Agreement.
  2. Foregoing Service. The District may choose to forego service for a specific time, but in any such case the District shall notify Contractor of any election to forego snow maintenance services at least 48-hours in advance, in which case the District assumes all risks associated with conditions on the Premises. Failure to give notice as required under this section may result in charges by Contractor for time, equipment, and administrative expenses.
- H. Site Map. Areas where services will be performed will be listed on the site map attached hereto. The District shall inform Contractor of the location and nature of any and all



hazards, concealed improvements, impediments, special circumstances or conditions known to the District

- I. Salting and De-Icers. The District understands that deicers and sand salt mix may cause damage to the landscape and concrete surfaces. Contractor will not be responsible for damages these products may cause, and the District expressly assumes the risk of their use. If the District does not wish for these products to be used the District must indicate so specifically in writing, and note the areas where the products' use is prohibited on Exhibit A. Contractor will not be held liable for safety issues relating to or resulting from the District's direction not to use chemicals for ice mitigation, and the District expressly assumes the risk of their non-use.
  
- J. Force Majeure/Suspension of Work. The District acknowledges the severity and duration of weather events are matters outside of Contractor's control and that extreme weather may prevent the Contractor from getting to the premises either during, or immediately after the weather event. Contractor is not responsible for Acts of God, unusual weather conditions, poor site drainage conditions, vandalism, incidence of disease or other illness that reaches outbreak, epidemic, and/or pandemic proportions or other causes affecting the area in which the premises is located and/or the Contractor's labor and/or supply chain, or other events or conditions beyond the control of Contractor. The District further understands that sidewalk crews may not work safely if temperature and wind conditions combine to make wind chill factors below 0 degrees Fahrenheit, and agrees that Contractor shall have the right to stop work in these severe conditions (without penalty or liability) so as not to force unsafe conditions on employees.

## EXHIBIT A: SITE MAP



**EXHIBIT B**  
COMPENSATION SCHEDULE

## **EXHIBIT B**

### **2023-2024 SNOW RATES**

Truck with Plow	\$125.00 per man hour
Hand Shoveling	\$68.00 per man hour
Ice Slicer- (minimum 1 ton)	\$325.00 per ton
Ice Slicer Application	\$95.00 per hour
Ice Melt (minimum 50 lbs.)	\$2.00 per lb. applied
Sidewalk Equipment	\$93.00 per man hour
Skid steer w/ Pusher	\$158.00 per man hour
Front End Loader	\$250.00 per man hour
Storage Unit Rental	\$135.00 per month

*All rates will be increased 50% to compensate for holiday pay rate.*

*Billable time includes mobilization & will be rounded to the nearest hour.*

*Contractor will submit invoices for snow clearing services on a per snowfall basis.*

Contractor's pricing is based on the current market for materials and consumables. Increases in cost of materials or consumables by more than 10% may result in surcharges applying to the work.

## **EXHIBIT "B" (cont.) – Supplemental Pricing**

### **SNOW MAINTENANCE - EMERGENCY EQUIPMENT**

For use, if necessary, in extreme snow events of 8 plus inches of snow accumulation or requested due to large piles of snow on site when more snow is forecasted before it has time to melt

#### **2023-2024**

<b><u>\$280.00</u></b>	<b>Mobilization</b>
<b><u>\$105.00</u></b>	<b>Per hour, Fueling equipment on site</b>
<b><u>\$210.00</u></b>	<b>Per hour, Rental Skid Steer</b>
<b><u>\$325.00</u></b>	<b>Per hour, Rental Wheel Loader</b>
<b><u>\$345.00</u></b>	<b>Per hour, Rental/Contracted Dump Truck</b>

**These are our hourly rates for the 2023-2024 snow maintenance season. There is a one (1) hour minimum charge per job site.**

**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**

**RESOLUTION  
OF THE ARCHITECTURAL REVIEW COMMITTEE  
OF  
HAWTHORN METROPOLITAN DISTRICT  
ADOPTING  
THE SECOND AMENDED AND RESTATED RESIDENTIAL IMPROVEMENT  
GUIDELINES AND SITE RESTRICTIONS FOR HAWHTORN METRPOLITAN  
DISTRICT**

---

**WHEREAS**, Hawthorn Metropolitan District (the “**District**”), a quasi-municipal corporation and political subdivision of the State of Colorado, was organized to provide various services, including design review and covenant enforcement services, in and around the Hawthorn development in Jefferson County, Colorado; and

**WHEREAS**, pursuant to the Covenants and Restrictions of Hawthorn recorded in the real property records of the Clerk and Recorder of Jefferson County, Colorado at Reception No. 2013012640, on February 1, 2013 (the “**Covenants**”), the Architectural Review Committee (the “**ARC**”) has the authority to promulgate, adopt, enact, modify, amend, repeal, and re-enact architectural standards, rules and/or guidelines to interpret and implement the provisions of Article 2 of the Covenants, subject to the written approval of the Board of Directors of the District (the “**Board**”); and

**WHEREAS**, there is currently in place the Amended and Restated Residential Improvement Guidelines and Site Restrictions for Hawthorn Metropolitan District No. 2, dated September 10, 2019, and as amended by amendments dated January 20, 2020, June 25, 2021, December 6, 2021, and September 12, 2022 (the “**Guidelines**”); and

**WHEREAS**, the ARC, with the written consent of the Board, desires to amend and restate the Guidelines, which shall be replaced and superseded in their entirety by the Second Amended and Restated Residential Improvement Guidelines and Site Restrictions.

**NOW, THEREFORE**, BE IT RESOLVED BY THE ARC, WITH THE APPROVAL OF THE BOARD, AS FOLLOWS:

1. Adoption of the Second Amended and Restated Residential Improvement Guidelines and Site Restrictions. The Second Amended and Restated Residential Improvement Guidelines and Site Restrictions for Hawthorn Metropolitan, attached as Exhibit A (the “**Amended Guidelines**”), are hereby adopted by the ARC. The Amended Guidelines shall replace the Guidelines in their entirety.

2. Board Consent. The Board, by execution hereof, hereby consents to the adoption of the Amended Guidelines by the ARC.

3. Effective Date. The Amended Guidelines shall be effective as of \_\_\_\_\_, 2023.

APPROVED AND ADOPTED BY THE ARC THIS DAY \_\_\_\_\_ OF \_\_\_\_\_, 2023.

**ARCHITECTURAL REVIEW COMMITTEE  
OF HAWTHORN METROPOLITAN  
DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

**ACKNOWLEDGEMENT OF THE DISTRICT**

By execution below, the undersigned acknowledge that the Board of Directors of the District has approved the adoption of the Amended Guidelines by the ARC at a duly called meeting of the Board held on September 11, 2023.

**HAWTHORN METROPOLITAN  
DISTRICT**

By: \_\_\_\_\_  
Officer of the District

Attest:

By: \_\_\_\_\_

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

\_\_\_\_\_  
General Counsel to the District

## EXHIBIT A

**SECOND AMENDED AND RESTATED  
RESIDENTIAL IMPROVEMENT  
GUIDELINES  
AND SITE RESTRICTIONS FOR  
  
HAWTHORN  
METROPOLITAN DISTRICT ~~NO. 2~~**

AS OF \_\_\_\_\_, SEPTEMBER 11, 2019 ~~2023~~

## **TABLE OF CONTENTS**

1	INTRODUCTION .....	1
1.1	Basis for Guidelines.....	1
1.2	Definitions .....	1
1.3	Contents of Guidelines .....	1
1.4	Architectural Review Committee or Representative .....	1
1.5	ARC Contact Information.....	2
1.6	Effect of Covenants .....	2
1.7	Effect of Governmental and Other Regulations.....	2
1.8	Interference with Utilities .....	2
1.9	Goal of Guidelines.....	2
2	PROCEDURES FOR ARC APPROVAL .....	4
2.1	General .....	4
2.2	Drawings or Plans.....	4
2.3	Submission of Drawings and Plans .....	5
2.4	Action by ARC .....	5
2.5	Revisions and Additions to Approved Plans .....	5
2.6	Completion of Work.....	6
2.7	Notice of Completion .....	6
2.8	Inspection of Work .....	6
2.9	Notice of Non-Compliance.....	6
2.10	Correction of Non-Compliance .....	7
2.11	Amendment .....	7
2.12	Questions .....	7
3	SPECIFIC TYPES OF IMPROVEMENTS / SITE RESTRICTIONS.....	8
3.1	General .....	8
3.2	Accessory Buildings .....	9
3.3	Additions and Expansions .....	9
3.4	Address Numbers .....	10
3.5	Air Conditioning Equipment .....	10
3.6	Antennae/Satellite Dishes .....	10
3.7	Awnings.....	12
3.8	Backyard Sport Pads.....	12
3.9	Balconies .....	12
3.10	Barbecue/Gas Grills.....	12

3.11	Basketball Backboards .....	12
3.12	Birdbaths.....	13
3.13	Birdhouses and Bird Feeders .....	13
3.14	Carports .....	13
3.15	Clothes Lines and Hangers .....	13
3.16	Cloth or Canvas Overhangs .....	13
3.17	Decks .....	13
3.18	Dog Houses .....	14
3.19	Dog Runs .....	14
3.20	Doors .....	14
3.21	Drainage .....	15
3.22	Driveways.....	15
3.23	Evaporative Coolers .....	15
3.24	Exterior Lighting .....	15
3.25	Fences .....	16
3.26	Fire Pits.....	17
3.27	Firewood Storage.....	17
3.28	Flags/Flagpoles.....	18
3.29	Gardens – Flower or Vegetable .....	18
3.30	Gazebos .....	18
3.31	Grading and Grade Changes .....	18
3.32	Greenhouses .....	18
3.33	Hanging of Clothes.....	18
3.34	Hot Tubs and Jacuzzis .....	18
3.35	Kennels.....	19
3.36	Landscaping.....	19
3.37	Lights and Lighting .....	20
3.38	Ornaments/Art – Landscape/Yard.....	21
3.39	Overhangs/Sunshades/Awnings- Cloth or Canvas .....	21
3.40	Painting.....	21
3.41	Patio Covers.....	22
3.42	Patios – Enclosed .....	22
3.43	Patios – Open .....	22
3.44	Paving.....	22
3.45	Pipes .....	23
3.46	Play Structures and Sports Equipment.....	23
3.47	Playhouses .....	23



3.48	Poles .....	23
3.49	Ponds and Water Features .....	23
3.50	Pools .....	24
3.51	Radio Antennae .....	24
3.52	Radon Mitigation Systems.....	24
3.53	Roofing Materials .....	24
3.54	Rooftop Equipment.....	24
3.55	Satellite Dishes .....	24
3.56	Saunas.....	25
3.57	Screen Doors .....	25
3.58	Seasonal Decorations.....	25
3.59	Security Devices.....	25
3.60	Sheds .....	25
3.61	Shutters — Exterior.....	25
3.62	Siding.....	25
3.63	Signs .....	25
3.64	Solar Energy Devices .....	26
3.65	Spas .....	26
3.66	Statues or Fountains.....	26
3.67	Storage Sheds .....	26
3.68	Sunshades .....	26
3.69	Swamp Coolers.....	27
3.70	Swing Sets .....	27
3.71	Television Antennae .....	27
3.72	Tree Houses.....	27
3.73	Vanes .....	27
3.74	Vents.....	27
3.75	Walls.....	27
3.76	Walls, Retaining .....	27
3.77	Weather Vanes and Directionals .....	28
3.78	Wind Electric Generators .....	28
3.79	Windows Replacement.....	28
3.80	Windows: Tinting, Security Bars, Well Covers, etc.....	28
3.81	Work Involving District Property .....	28
3.82	Xeriscape .....	28

# **1 INTRODUCTION**

## **1.1 Basis for Guidelines**

These Second Amended and Restated Residential Improvement Guidelines and Site Restrictions (the “Guidelines”) replace and supersede in its entirety the Amended and Restated Residential Improvement Guidelines and Site Restrictions for Hawthorn Metropolitan District No. 2, dated ~~as of 2016~~September 10, 2019, and as amended by ~~that certain Amendment to Residential Improvement guidelines and Site Restrictions of Hawthorn Metropolitan District No. 2, dated July 17, 2018~~amendments dated January 20, 2020, June 25, 2021, December 6, 2021, and September 12, 2022. These Guidelines are intended to assist Owners living in the Hawthorn ~~c~~Community (the “Community”) in implementing landscaping and other Improvements to their property. The Covenants and Restrictions of Hawthorn (the “Covenants”) require prior approval from the Architectural Review Committee (the “ARC”) before the construction, erection, placement, alteration, planting, application, installation or modification of any Improvement upon any Unit shall be made. In order to assist Owners, the ARC, with the written approval of the Board of Directors (the "Board") of Hawthorn Metropolitan District (the "District") desires to establish certain pre-approved designs for several types of Improvements and to exempt certain Improvements from the requirement for approval. This booklet contains the guidelines established by the ARC, with the consent of the Board, with respect to property subject to the Covenants.

## **1.2 Definitions**

All capitalized words and phrases used in these Guidelines shall have the meaning provided in the Covenants unless otherwise defined herein.

## **1.3 Contents of Guidelines**

In addition to the introductory material, these Guidelines contain (A) a summary of procedures for obtaining approval from the ARC (see Section 2); and (B) a listing of specific types of improvements that Owners might wish to make with specific information as to each of these types of improvements (see Section 3).

## **1.4 Architectural Review Committee or Representative**

The ARC consists of persons, representatives or a committee appointed to review requests for approval of architectural or site changes.

## 1.5 ARC Contact Information

~~The contact information of the ARC, persons, committee or representative authorized to administer the architectural review process is:~~

The District's manager is the contact person for the ARC. Please visit the Contact Page of the District's website for the current management contact information.

<https://www.hawthornmetrodistrict.org/contact>

COMPANY NAME	OFFICE	E-MAIL
CliftonLarsonAllen	(303) 779-5710	patrick.shannon@elaconnect.com

## 1.6 Effect of Covenants

The Covenants govern the Property within the Community. Each Owner should review and become familiar with the Covenants. Nothing in these Guidelines supersedes or alters the provisions or requirements of the Covenants and, if there is any conflict or inconsistency, the Covenants will control.

## 1.7 Effect of Governmental and Other Regulations

Use of property within the Community and any Improvements must comply with any applicable building codes and other governmental requirements and regulations. Owners are encouraged to contact Jefferson County for further information and requirements for Improvements they wish to make.

**APPROVAL BY THE ARC DOES NOT CONSTITUTE ASSURANCE THAT IMPROVEMENTS COMPLY WITH APPLICABLE GOVERNMENTAL REQUIREMENTS OR REGULATIONS OR THAT A PERMIT OR APPROVALS ARE NOT ALSO REQUIRED FROM APPLICABLE GOVERNMENTAL BODIES.**

## 1.8 Interference with Utilities

In making Improvements to property, Owners are responsible for locating all water, sewer, gas, electrical, cable television, or other utility lines or easements. Owners should not construct any Improvements over such easements without the consent of the utility involved, and Owners will be responsible for any damage to any utility lines. All underground utility lines and easements can be located by contacting:

**Utility Notification Center of Colorado  
1-800-922-1987**

## 1.9 Goal of Guidelines

Compliance with these Guidelines and the provisions of the Covenants will help preserve the inherent architectural and aesthetic quality of the Community. It is the responsibility of the ARC to ensure that all proposed Improvements meet or exceed the requirements of these Guidelines and to promote the highest quality design for the neighborhood. It is important that Improvements to property be made in harmony with and not detrimental to the rest of the Community. A spirit of cooperation with the ARC and neighbors will go far in creating an optimum environment, which will benefit all Owners. By following these Guidelines and obtaining prior written approval for Improvements to property from the ARC, Owners will be protecting their financial investment and will help insure that Improvements to property are compatible with standards established for the Community. If a question ever arises as to the correct interpretation of any terms, phrases or language contained in these Guidelines, the ARC's interpretation shall be final and binding.

*Remainder of page intentionally left blank.*

## **2 PROCEDURES FOR ARC APPROVAL**

### **2.1 General**

As indicated in Section 3 of these Guidelines, there are some cases in which advance written approval of the ARC is not required if the Guidelines with respect to that specific type of Improvement are followed. In a few cases, as indicated in Section 3, a specific type of Improvement is not permitted under any circumstances. In all other cases, including Improvements not included in Section 3, advance, or prior written approval by the ARC is required before an Improvement to property is commenced.

### **2.2 Drawings or Plans**

Owners are required to submit to the ARC a completed Architectural Review Request Form (“ARR”), which forms ~~are is~~ available ~~from the person or entity listed in Section 4.5~~ on the District’s website (<https://www.hawthornmetrodistrict.org/contact>), and complete plans and specifications, ~~in duplicate~~, (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required) prior to commencement of work on any Improvement to property. In most cases, the materials to be submitted will not have to be professionally prepared by an architect, a landscape architect, or draftsman, and a simple drawing with dimensions and description will be sufficient. In the case of major improvements, such as room additions, structural changes or accessory building construction, detailed plans and specifications, prepared by a licensed architect, may be required. Whether done by the Owner, or professionally, the following guidelines should be followed in preparing drawings or plans:

- A. The drawing or plan should be done to scale and shall depict the property lines of your Unit and the outside boundary lines of the home as located on the Unit. If you have a copy of an improvement survey of your Unit obtained when you purchased it, this survey would be an excellent base from which to start.
- B. Existing Improvements, in addition to your home, should be shown on the drawing or plan and identified or labeled. Such existing Improvements include driveways, walks, decks, trees, shrubs, fences, etc. The proposed Improvements should be shown on the plan and labeled. Either on the plan or on an attachment, there should be a brief description of the proposed Improvement, including the materials to be used and the colors. For Example: Redwood deck, ten (10) feet by twelve (12) feet with two inch by four inch (2”x4”) decking and natural stain.
- C. The plan or drawing and other materials should include the name of the Owner, the address of the home, the lot, block and filing number of the Unit, and the e-mail address and telephone number where the Owner can be reached.

- D. The proposed Improvements must take into consideration the easements, building location restrictions and sight distance limitations at intersections.
- E. Owners should be aware that many Improvements require a permit from Jefferson County or other governmental entity. The ARC reserves the right to require a copy of such permit as a condition of its approval.
- F. In some instances, elevation drawings of the proposed Improvement will be required. The elevation drawings should indicate materials.
- G. Photographs of existing conditions and of proposed materials and colors are encouraged to be included, and are helpful to convey the intended design, but should not be used solely to describe the proposed changes.

### **2.3 Submission of Drawings and Plans**

~~Two copies of the d~~Drawings or plans (minimum acceptable size 8.5" x 11") must be submitted to the ARC along with a completed ARR. Color photographs, brochures, paint swatches, etc. will help expedite the approval process. Specific dimensions and locations are required.

Any costs incurred by the ARC for review of submittals shall be borne by the Owner and shall be payable prior to final approval. Any reasonable engineering consultant fees or other fees incurred by the ARC in reviewing any submission will be assessed to the Owner requesting approval of the submission.

### **2.4 Action by ARC**

The ARC will meet as required to review plans submitted for approval. The ARC may require submission of additional information or material, and the request will be deemed denied until all required information and materials have been submitted. The ARC will act upon all requests in writing within forty-five (45) days after the complete submission of plans, specifications, and other materials and information as requested by the ARC. If the ARC fails to review and approve in writing (which may be with conditions and/or requirements) or disapprove, a request for architectural approval within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, such request is deemed approved by the ARC.

### **2.5 Revisions and Additions to Approved Plans**

Any revisions and/or additions to approved plans made by the Owner or as required by any governmental agency, must be re-submitted for approval by the ARC. The revised plans must follow the requirements as outlined above.

## **2.6 Completion of Work**

After approval (which may be with conditions and/or requirements) of any proposed Improvement by the ARC, the proposed Improvement shall be completed and constructed as promptly and diligently as possible, and in complete conformity with all conditions and requirements of the approval. Failure to complete the proposed Improvement within one year from the date of the approval or within the time frames required for the installation of landscaping as set forth in the Covenants (the “Completion Deadline”), or to complete the Improvement in complete conformance with the conditions and requirements of the approval, shall constitute noncompliance; provided, however, that the ARC may grant extensions of time to individual Owners for completion of any proposed Improvements, either (a) at the time of initial approval of such Improvements, or (b) upon the request of any Owner, provided such request is delivered to the ARC in writing and the Owner is diligently prosecuting completion of the subject Improvements or other good cause exists at the time such request is made.

## **2.7 Notice of Completion**

Upon the completion of an Improvement, the applicant for approval of the same shall give a written "Notice of Completion" to the ARC. Until the date of receipt of such Notice of Completion, the ARC shall not be deemed to have notice of completion of any Improvement on which approval (which may be with conditions and/or requirements) has been sought and granted as provided in this Section.

## **2.8 Inspection of Work**

The ARC, or its duly authorized representative, shall have the right to inspect any Improvement at any time, including prior to or after completion, in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted pursuant to this Section.

## **2.9 Notice of Non-Compliance**

If, as a result of inspections or otherwise, the ARC determines that any Improvement has been done without obtaining all required approvals (which may be with conditions and/or requirements), or was not done in substantial compliance with the approval that was granted, or has not been completed by the Completion Deadline, subject to any extensions of time granted pursuant to Section 2.6 hereof, then the ARC shall notify the District of the non-compliance, ~~and the District shall then notify the applicant in writing of the non-compliance~~ (the “Notice of Non-Compliance”). The Notice of Non-Compliance shall specify the particulars of the non-compliance.

## 2.10 Correction of Non-Compliance

If the ARC determines that a non-compliance exists, the Person responsible for such non-compliance shall remedy or remove the same within not more than forty-five (45) days from the date of receipt of the Notice of Non-Compliance. If such Person does not comply with the ruling within such period, the ARC shall notify the District, and the District may, at its option, record a notice of non-compliance against the Unit on which the non-compliance exists, may impose fines, penalties and interest, may remove the non-complying Improvement, or may otherwise remedy the non-compliance, and the Person responsible for such non-compliance shall reimburse the District, upon demand, for all costs and expenses, as well as anticipated costs and expenses, with respect thereto.

## 2.11 Amendment

These Guidelines may at any time, from time to time, be added to, deleted from, repealed, amended, and modified, reenacted, or otherwise changed by the ARC, with the approval of the ~~Person authorized to appoint the ARC Board~~, as changing conditions and/or priorities dictate.

## 2.12 Questions

If you have any questions about the foregoing procedures, feel free to call the ~~ARC at the phone number and address listed in the Section 1.5 of these Guidelines~~ District's manager.

*Remainder of page intentionally left blank.*



### **3 SPECIFIC TYPES OF IMPROVEMENTS / SITE RESTRICTIONS**

#### **3.1 General**

The following is a listing, in alphabetical order, of a wide variety of specific types of Improvements which Owners typically consider installing, with pertinent information as to each. Unless otherwise specifically stated, drawings or plans for a proposed Improvement must be submitted to the ARC and written approval of the ARC obtained before the Improvements are made. In some cases, where it is specifically so noted, an Owner may proceed with the Improvements without advance approval if the Owner follows the stated guideline. In some cases, where specifically stated, some types of Improvements are prohibited. ARC review and approval is required on any external items not listed below.

##### **3.1.1 Variances**

Approval of any proposed plans by the granting of a variance from compliance with any of the provisions of these Guidelines is at the sole discretion of the ARC when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require.

##### **3.1.2 No Unsightliness**

All unsightly conditions, structures, facilities, equipment, and objects, including snow removal equipment and garden or maintenance equipment, when not in actual use, must be enclosed within a structure.

##### **3.1.3 Waivers; No Precedent**

The approval or consent of the ARC to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent as to any application or other matters whatsoever, as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent in any other matter.

##### **3.1.4 Liability**

The ARC and the members thereof shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction. The ARC shall not bear any responsibility for ensuring structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. The ARC will not make any investigation into title, ownership, easements, rights-of-way, or other rights appurtenant to property with respect to architectural requests and shall not be liable for any disputes relating to the same.

### **3.2 Accessory Buildings**

Approval is required. Approval will be based upon, but not limited to, the following criteria:

- A.** Storage sheds and/or accessory buildings must be aesthetically compatible and consistent with the style and character of the home and other homes in the same general area of the Community. Storage sheds and/or any accessory buildings shall not be more than ten (10) feet by ten (10) feet, and shall not be more than eleven (11) feet high at the peak. The roof pitch must be complementary to the existing roof on the home, unless otherwise approved by the ARC. Such storage sheds and/or accessory buildings must be permanent in nature.
- B.** Siding, roofing, and trim materials must match those on the home, unless otherwise approved by the ARC. Metal, plastic, PVC and other materials not consistent with original construction by the Builder are not permitted. TREX and engineered composite wood type products consistent with original Builder construction are permitted.
- C.** Smaller Units may not have a suitable location for a storage shed. In any case, no more than one (1) storage shed and one (1) playhouse (see Section 3.47, Playhouses) shall be permitted per Unit.
- D.** The ARC, in reviewing and approving or denying an application for approval of a storage shed or accessory building, shall take into consideration lot size, square footage of the home, the existing grading, fence locations, landscape screenings, etc.
- E.** Any utilities serving the storage shed or accessory building shall be underground.
- F.** A playhouse or play structure shall not be considered an accessory building.
- G.** Existing setbacks required of the home must be observed when placing storage sheds, accessory buildings, gazebos and playhouses. A copy of the home's plot plan filed with the location of the proposed accessory building is required with the ARR.

### **3.3 Additions and Expansions**

Approval is required. Additions or expansions must be constructed of wood, masonite, glass, brick, stone, or other material as used in construction of the exterior of the home. The design must be the same or generally recognized as a complimentary architectural style and meet all design guidelines as may be applicable. Colors must be the same as that of the residence. Patios may not be more than twenty-five percent (25%) of the entire rear yard of the Unit unless otherwise approved by the ARC.

### **3.4 Address Numbers**

Approval is required to replace, alter or relocate existing address numbers, unless the address numbers are replaced using the same style, color and type of number currently on the residence.

### **3.5 Air Conditioning Equipment**

Approval is required for all air conditioning equipment including evaporative coolers (swamp coolers) and attic ventilators installed after the initial construction.

Approval is not required for replacement of existing air conditioning equipment with like equipment located in the same location as the equipment being replaced.

No heating, air conditioning, air movement (e.g. swamp coolers) or refrigeration equipment shall be placed or installed on rooftops, or extended from windows. Ground mounted or exterior wall air conditioning equipment installed in the side yard must be installed in a manner so as to minimize visibility from the street and minimize any noise to adjacent property Owners.

### **3.6 Antennae/Satellite Dishes**

#### **3.6.1 General Provisions**

"Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section. Installation of Permitted Antennas shall not require the approval of the ARC.

- A.** All Permitted Antennas shall be installed with emphasis on being as unobtrusive as possible to the Community. To the extent that reception is not substantially degraded or costs unreasonably increased, all Permitted Antennas shall be screened from view from any street and nearby Units to

the maximum extent possible, and placement shall be made in the following order of preference:

- (1) Inside the structure of the house, not visible from the street
- (2) Rear yard or side yard, behind and below the fence line
- (3) Rear yard or side yard, mounted on the house, in the least visible location below roofline
- (4) Side yard in front of wing fence, screened by and integrated into landscaping
- (5) Back rooftop
- (6) Front yard screened by and integrated into landscaping

**B.** If more than one (1) location on the Unit allows for adequate reception without imposing unreasonable expense or delay, the order of preference described above shall be used, and the least visible site shall be selected.

**C.** Permitted Antennas shall not encroach upon common areas or any other Owner's property.

### **3.6.2 Installation of Antennae/Satellite Dishes**

**A.** All installations must comply with all applicable building codes and other governmental regulations, and must be secured so they do not jeopardize the safety of residents or cause damage to adjacent properties. Any installation must strictly comply with FCC guidelines.

**B.** All Permitted Antennas shall be no larger, nor installed more visibly, than is necessary for reception of an acceptable signal.

**C.** Owners are responsible for all costs associated with the Permitted Antenna, including but not limited to costs to install, replace, repair, maintain, relocate, or remove the Permitted Antenna.

**D.** All cabling must be run internally when feasible, must be securely attached, and must be as inconspicuous as possible. Permitted Antennas, masts and any visible wiring may be required to be painted to match the color of the structure to which they are attached. The Owner should check with the installer/vendor for the appropriate type of paint.

**E.** All other antennas, not addressed above, are prohibited.

### **3.7 Awnings**

Approval is required. Awnings should be an integral part of the house or patio design. The color shall be complimentary to the exterior of the residence, and shall be substantially solid in color; provided, however, that limited patterns or striping may be approved.

See Section 3.39, Overhangs/Sunshades/Awnings – Cloth or Canvas.

### **3.8 Backyard Sport Pads.**

Approval is required. Backyard, concrete pads for “sport” type courts must be approved by the ARC. The ARC will consider backyard sport courts based on pad size, Unit lot size and proximity to other Units. Sport equipment installed or stored on or around the pad must be maintained at all times in a neat and clean manner.

### **3.9 Balconies**

See Section 3.17, Decks.

### **3.10 Barbecue/Gas Grills**

Approval is not required. All barbecue grills, smokers, etc. must be stored in the rear yard or within an enclosed structure, not visible from the front of the home.

### **3.11 Basketball Backboards**

Approval is not required, subject to the following limitations. No basketball backboards shall be attached to the garage. Only portable basketball backboards shall be allowed if the following guidelines are met:

- A.** Portable units cannot be placed in the public rights of way, streets, sidewalks or street lawns.
- B.** Location must be in the driveway, at least half of the length of the driveway away from the street, or in the side or rear yard.
- C.** Portable basketball backboards may be left out when not in use only if the backboard, hoop, and net are in good repair. Portable basketball backboards that are not in good repair, including the hoop and net, must be stored out of sight when not in use and may not be left out for more than 24 hours.
- D.** Permanent garage or pole mounted basketball hoops are not permitted.

### **3.12 Birdbaths**

Approval is not required, subject to the following limitations. Placement in front or side yard is not allowed. Birdbaths are only permitted in the rear yard.

See Section 3.66, Statues or Fountains.

### **3.13 Birdhouses and Bird Feeders**

Approval is not required, subject to the following limitations. If installed in the rear yard and the size is limited to one foot by two feet, no approval is required. No more than three of each of a birdhouse or bird feeder shall be installed on any Unit. Birdhouses or bird feeders may be mounted on a pole, provided the pole shall not exceed five (5) feet in height.

### **3.14 Carports**

Approval will not be granted.

### **3.15 Clothes Lines and Hangers**

Approval is not required, subject to the following limitations. Clotheslines may only be placed in the rear yard. Fixed clotheslines and hangers are not permitted. Temporary drying structures will be permitted so long as such structures are used solely in the rear yard of a lot and are immediately removed from sight after each use. Retractable clotheslines with permanent fixtures require approval.

### **3.16 Cloth or Canvas Overhangs**

See Section 3.39, Overhangs/Sunshades/Awnings – Cloth or Canvas.

### **3.17 Decks**

Approval is required. The deck must be harmonious (in configuration, detail, material and color) with the architecture of the house. Modifications or additions to Builder installed decks must incorporate the same materials, colors and detailing as the Builder's or approved existing deck. TREX or similar engineered composite wood type products are the preferred material for construction. Plastic, PVC or similar materials are prohibited.

The appropriate governmental permits are also required.

The deck should be located so as not to create an unreasonable level of noise for adjacent property Owners.

Changes in grade or drainage pattern must not adversely affect adjoining properties and shall comply with drainage change requirements of the Covenants.

Upper-level decks shall be attached directly to the house. Only ground level decks may be approved as freestanding decks. Decks shall not extend beyond the Unit boundaries into any common area. Depending on Unit location and orientation, decks should not project beyond the side walls of the house. The side walls of the house are defined as the major (structural) side walls and do not include bay windows, chimney enclosures, porches or other such projections. In certain situations, stairs and some portions of the deck may extend up to 4' beyond the side walls.

A solid trim board shall be provided on any open side of the deck to conceal the joists and cut ends of the decking. Underdeck screening should be compatible with the architecture of the house and deck. Any lattice must be properly framed and recessed.

Railings and other features such as privacy screens for attached housing must match the approved Builder design.

### **3.18 Dog Houses**

Approval is required. Dog houses are restricted to ten (10) square feet and must be located in a fenced back yard or dog run. Dog houses must be installed at ground level, and must not be visible above the fence. Dog houses must also match the colors and materials of the exterior of the home. Limit of one dog house per Unit.

### **3.19 Dog Runs**

Approval is required. Dog runs must be located in the rear or side yard, abutting the home and substantially screened from view by planting fast-growing or mature trees or shrubs. Dog runs will be limited to two hundred (200) square feet, unless a variance is granted by the ARC. Dog run fences should be left natural in color and sealed to prevent weathering. Dog runs must be made of wood. Please refer to the fence details in **Exhibit A** for approved heights, stains and designs. Covers (ex: tarps, sheets, blankets, etc.) on dog runs are not allowed.

### **3.20 Doors**

Approval is not required for an already existing main entrance door to a home or an accessory building if the material matches or is similar to existing doors on the house and if the color is generally accepted as a complimentary color to that of existing doors on the house. Complementary colors would be the body, trim or accent colors of the house or white (for storm/screen doors).

- A. Storm Doors.** Approval is not required for storm doors (defined as a door installed in front of an exterior access door to protect it from weather but to allow ventilation) as long as the door is complimentary with the color scheme of the home. Owners wishing to utilize a different color must first obtain approval.

- B. Security Doors and Windows.** All security or security-type doors and windows (defined as those that include mechanisms, features or measures to strengthen the door or window against breaching or breaking and entering) must be approved prior to installation.

### **3.21 Drainage**

The Covenants require that there be no interference with the established drainage pattern over any property. The established drainage pattern means the drainage pattern which exists at the time final grading of a Unit by the Developer or a Builder is completed. When installing your landscaping, it is very important to insure that water drains away from the foundation of the house and that the flow patterns prevent water from flowing under or against the house foundation, walkways, sidewalks, and driveways into the street. The ARC may require a report from a drainage engineer as part of landscaping or improvement plan approval. Landscaping and all drainage from downspouts off the house should conform to the established drainage pattern. Sump pump drainage should be vented a reasonable distance from the property line, on the Owner's property, to allow for absorption. Adverse effects to adjacent properties, including District lands, sidewalks and streets, will not be tolerated.

### **3.22 Driveways**

Approval is required for any changes or alterations to driveways. This includes construction of a pull-off area to the side of the driveway and/or concrete driveway extensions. Only clear sealant may be used on the driveway (no colors) and Owners will be required to maintain the driveways against oil spills, spalling/peeling/etc.

The garage area and driveway of each Unit are first to be fully used for parking of vehicles, before any street parking is done. However, notwithstanding the foregoing, any vehicles may be parked on streets, as a temporary expedient for loading, delivery, or emergency. Parking is prohibited on landscaped or gravel areas adjacent to driveways. Parking is only permitted in the garage area, on the driveway, or on the street.

### **3.23 Evaporative Coolers**

Approval is required. No rooftop or window mount installations are allowed.

See Section 3.5, Air Conditioning Equipment.

### **3.24 Exterior Lighting**

See Section 3.37, Lights and Lighting.



## 3.25 Fences

### 3.25.1 General Statement

Fences constructed by the Developer or Builder along or abutting property lines, arterial streets, collector streets, and local streets and which are maintained by the District (“**Perimeter Fences**”) may not be removed, replaced, painted a different color or altered by an Owner, including, adding a gate, without approval of the ARC. Owners will be permitted to stain the lot-facing side of the portion of a Perimeter Fence abutting their Unit to match the stain used on their side fences with the approval of ARC.

If any Perimeter Fences constructed by the Developer or Builder which is located upon or abutting an Owner’s property are damaged or destroyed by the Owner or the Owner’s guests, family, or invitees, the Owner shall repair or recondition the same at the Owner’s expense.

### 3.25.2 Theme Fencing

(Fencing that has been installed by the Developer or Builder along or abutting property lines on residential streets, parks, green belts, or non-urban areas)

- A. Arterial/Perimeter Fencing (along major roadways): No change in this fencing is permitted without approval of the ARC.
- B. Non-Arterial Fencing: Open fence that is adjacent to or abuts open space shall not be changed.

### 3.25.3 Fence Designs

All rear or side yard fences along property lines require approval of the ARC.

- A. All fencing shall comply with the fence specifications in **Exhibit A**.
- B. Double fencing of property lines is not permitted.
- C. Wire mesh fencing may, upon approval of the ARC, be installed on the inside of the fence for pet security.

### 3.25.4 Maintenance/Staining

All fences constructed on a Unit by an Owner shall be maintained, repaired and replaced by the Owner of such Unit. Regular physical and aesthetic maintenance of fencing is required. All fences must be finished using the stain as specified in **Exhibit A**. Owners will still be required to submit their staining request to the ARC and this will be reviewed in-house with no additional submittal fee.

### **3.25.5 Additional Fence Requirements**

- A.** No electric fences are permitted (other than pet containment fencing installed below grade).
- B.** It is important to remember that certain drainage patterns may exist along, or under, proposed fence locations. When constructing a fence, be sure to provide for adequate space between the fence and the ground to accommodate these drainage patterns.
- C.** When making a submittal for fencing, include the style and height of the fence, color of stain, and all other descriptive details, as well as an elevation drawing with dimensions of the fence and a plot plan with the location of the fence clearly marked.
- D.** At the discretion of the ARC, Units may have a privacy fence installed to border the deck pad only; provided the deck pad privacy fencing is included in the Unit's fence plan.

### **3.25.6 Prior Approved Fencing**

To the extent that fencing has been previously approved by the ARC based on a prior version of these Guidelines, such fencing will be required to be compliant with this section and **Exhibit A** at such time as the fence is replaced, or whenever any repair is required or made to more than twenty-five (25) percent of the existing fencing material.

### **3.25.7 Pet Fencing**

Pet fencing may include any invisible fence on or within the perimeter boundary of an Owner's site per the above fencing standards.

See Section 3.18, Dog Houses and Section 3.19, Dog Runs.

## **3.26 Fire Pits**

Approval is required for all permanent or built-in structures. Approval is not required for portable units.

## **3.27 Firewood Storage**

All firewood must be located in the side or rear yard, must be neatly stacked, shall not be visible from any street or the ground level of any other Unit, and must not be located so as to block established drainage patterns.

### **3.28 Flags/Flagpoles**

Approval is required for any freestanding flagpole. Approval is not required for flagpoles mounted to the front of the residence provided that the height of the flagpole does not exceed the height of the roofline of the residence. Flag size cannot exceed five (5) feet in length and three (3) feet in width. Flags may not be illuminated without the prior approval of the ARC. Any request for lighting must detail the type and location of the lighting, and any such lighting shall be placed so as not to disturb Owners or occupants of neighboring Units.

### **3.29 Gardens – Flower or Vegetable**

Approval is not required for flower or vegetable gardens that do not exceed one hundred (100) total square feet. All flower and vegetable gardens must be weeded, cared for and maintained. ~~Vegetable gardens shall be located in the rear or side yard.~~

### **3.30 Gazebos**

Approval is required. A gazebo must be an integral part of the rear yard landscape plan and must be similar in material and design to the residence. The color must be generally accepted as a complementary color to the exterior of the residence.

### **3.31 Grading and Grade Changes**

See Section 3.21, Drainage.

### **3.32 Greenhouses**

Approval is required. Generally, greenhouses are discouraged due to the extensive maintenance required. Approval will be based upon but not limited to general aesthetics, quality and permanence of materials used. Adequate screening will be required.

### **3.33 Hanging of Clothes**

See Section 3.15, Clothes Lines and Hangers.

### **3.34 Hot Tubs and Jacuzzis**

Approval is required. Hot tubs and Jacuzzis must be an integral part of the deck or patio area and of the rear yard landscaping, and be installed in such a way that it is not immediately visible to adjacent property Owners and that it does not create an unreasonable level of noise for adjacent property Owners. In some instances, additional plant material around the hot tub may be required for screening. Non-vegetative screening materials should match or complement the house or deck structure. Prefabricated hot tub enclosures will be evaluated on a case-by-case basis, and may require additional plant material screening.

### 3.35 Kennels

Approval will not be granted. Breeding or maintaining animals for a commercial purpose is prohibited.

Also see Section 3.19, Dog Runs.

### 3.36 Landscaping

Approval is required except for the replacement of materials with like materials. The plot plan of the residence and yard must be provided at a measurable scale. All organic materials (plants, shrubs, trees, etc.), building materials (stone, wood, edging, etc.), must be clearly labeled in detail.

The current, approved landscape requirements are attached in **Exhibit B**. All new landscape installations and Improvements must meet these requirements.

~~Builder installed landscaping is pre-approved.~~

Significant structural elements related to landscaping, such as retaining walls, paved areas, steps, etc., must be submitted for review and approval. Changes in grade or drainage pattern must not adversely affect adjoining properties and shall comply with drainage change requirements of the Covenants.

Plant materials should be appropriate in character, habitat, species, size (both installed and mature), number and arrangement for their purpose and surroundings.

Owners are responsible for compliance with all County laws and regulations regarding landscaping, including tree installation and approved tree species. Certain tree species, such as Russian Olive, are not permitted by the County or State. Notwithstanding, the ARC shall not review landscaping plans for compliance with any such laws or regulations.

Mulch material shall be selected recognizing that high winds may be present. Mulches that “knit” together and hold to the ground should be used. Owners are responsible for removal of any mulch material that blows into other Owners’ property or the common areas of the District.

Stone used as accent elements, ground cover or paving material should be chosen so that its color, size and installation complement the architecture of the house, the natural environment and associated plan materials. Monolithic paving of yards or covering yards with decorative stones as a primary design element is prohibited.

Parking is prohibited on landscaped or gravel areas adjacent to driveways.

### 3.37 Lights and Lighting

Approval is not required for replacing existing lighting, including coach lights, with the same or similar lighting style and color as originally installed.

Approval is required to modify or add exterior lighting.

Approval is required to install motion detector spotlights, spotlights, floodlights or ballasted fixtures (sodium, mercury, multi-vapor, fluorescent, metal halide, etc.).

- A. Considerations will include, but may not be limited to, the visibility, style and location of the fixture.
- B. Exterior lighting for security and/or other uses must be directed at the ground and house, whereby the light cone stays within the property boundaries and the light source does not cause glare to other properties (bullet type light fixtures are recommended).
- C. Ground lighting along walks must be maintained in a working and sightly manner. Low- voltage or solar powered ground lighting fixtures which are typically affixed by stakes or similar posts are to be maintained in good aesthetic repair, be functional, not be a tripping or other physical hazard along pedestrian pathways, and remain generally vertical in their presentation.
- D. The addition of a front yard light post will be allowed with approval and pursuant to the following:
  - (1) Exterior lights must be conservative in design and be as small in size as is reasonably practical.
  - (2) Exterior lighting should be directed toward the ground and be of low voltage to minimize glare onto neighboring properties and the street.
  - (3) Soft, outdoor pedestrian-oriented lighting should be used with dark colored lighting fixtures so as to be less obtrusive.
  - (4) The light post should match or complement the architecture of the home in design, size, color, and finish along with any existing light fixtures.
  - (5) Light posts shall be located at an appropriate distance from the right-of-way and property line to minimize glare onto neighboring properties and the street and should be integrated into the natural or architectural features of the site.
  - (6) Light or lamp posts shall not be erected higher than 6' feet from ground level, unless approved by the ARC.
  - (7) All lighting should not be intrusive to neighboring properties and

must meet all County requirements.

Holiday lighting and decorations do not require approval. It is required that they not be installed more than thirty (30) days prior to the holiday. They shall be removed within thirty (30) days following the holiday.

### **3.38 Ornaments/Art - Landscape/Yard**

Approval is not required for yard ornaments which are installed in the rear yard and which are of a height less than three (3) feet.

Up to three (3) small (less than 12 inches in height) front yard ornaments may be installed in the front yard without approval, as long as the ornament is installed at ground level and the color and design integrate into the landscape.

Approval is required for any other yard ornaments.

See Section 3.66, Statues or Fountains.

### **3.39 Overhangs/Sunshades/Awnings- Cloth or Canvas**

Approval is required. An overhang should be an integral part of the house or patio design. The color must be the same as, or generally recognized as, a complementary color to the exterior of the residence. A swatch of material to be used must be provided with the review submittal.

See Section 3.41, Patio Covers.

### **3.40 Painting**

Approval is not required if color and/or color combinations are identical to the original manufacturer color established on the home and/or accessory improvement. Any changes to the color scheme must be submitted for approval and must conform to the general scheme of the Community.

- A.** You will need to submit the ARR with your color samples, with a general description of the colors of the next four (4) houses on either side of your home (or photos showing the colors of the next four (4) houses on either side of your home).
- B.** The ARC will not approve submittals without a description or photos of neighbors' paint colors.
- C.** Outlining the garage door panels in a contrasting color or in a checker board design is not permitted.

**C.D.** Most homes have multiple tone paint schemes (e.g., body color, trim color and accent color for shutters and doors). [The ARC has established certain approved color schemes, which can be found on the District's website. The approved color schemes are provided to assist Owners who may want to change the color of their homes, but the use of any approved color scheme does not obviate the need for ARC approval.](#) New colors [that are submitted that are not an approved color scheme](#) should preserve this multiple tone scheme.

**D.E.** Color selections should be submitted to the ARC in the form of manufacturer's paint chips [or by reference to an approved color scheme](#). Please indicate which color chips are for trim, body and accent (doors and shutters) color.

**E.F.** In general, after approval, only those areas that are painted may be repainted and only those areas that are stained may be re-stained; unpainted and unstained areas (such as brick or stone) shall remain unpainted and unstained.

### **3.41 Patio Covers**

Approval is required. Patio covers must be constructed of material consistent with the home and be similar or generally recognized as complementary in color to the colors on the house. Freestanding patio covers may be permitted as well as extensions of the roof.

### **3.42 Patios - Enclosed**

See Section 3.3, Additions and Expansions.

### **3.43 Patios - Open**

Approval is required. Open patios must be an integral part of the landscape plan and must be located so as not to create an unreasonable level of noise for adjacent property Owners. In some instances, additional plant material around the patio may be required for screening or integration into the landscape design. The patio and materials must be similar or generally accepted as a complementary color and design to the residence. Patios may not be more than twenty-five (25) percent of the entire rear yard of the Unit unless otherwise approved by the ARC.

See Section 3.17, Decks.

### **3.44 Paving**

Approval is required, regardless of whether for walks, driveways, patio areas or other purposes, and regardless of whether concrete, asphalt, brick, flagstones, stepping stones, pre-cast patterned, or exposed aggregate concrete pavers are used as the paving material.

See Section 3.11, Driveways.

### **3.45 Pipes**

Approval is required for all exterior pipes, conduits and equipment. Adequate screening may also be required.

### **3.46 Play Structures and Sports Equipment**

Approval is required. Consideration will be given to adjacent properties (a minimum five (5) foot setback from the property line, is required for trampolines, swing sets, fort structures, etc.) so as not to create an undue disturbance. In some instances, additional plant material around the equipment may be required for screening. Wood structures must be constructed of pressure treated or other weather resistant materials. All play equipment must be maintained in a good and sightly manner. The use of multi-colored cloth/canvas tarps will not be approved. Height of any play structure or sports equipment may not exceed twelve (12) feet.

### **3.47 Playhouses**

Approval is not required if a structure is less than twenty-four (24) square feet and less than six (6) feet high, from highest point to the ground.

Approval is required for structures greater than twenty-four (24) square feet and/or greater than six (6) feet high, from the highest point to the ground.

See Section 3.2, Accessory Buildings.

### **3.48 Poles**

See Section 3.28, Flags/Flagpoles.

### **3.49 Ponds and Water Features**

Approval is required. Considerations by the ARC will include, but not be limited to, the following criteria:

- A.** Must be integrated into landscape scheme.
- B.** Setback shall be a minimum of five (5) feet from all property lines.
- C.** Must not affect existing drainage on the lot or off the property.
- D.** Must be maintained at all times.



- E. The maximum height of all fountain/pool elements and their spray is not allowed to be higher than four (4) feet from the ground plane.

### **3.50 Pools**

Approval is required. Pools must be placed in the rear yard and be an integral part of the deck or patio area. They should be located in such a way that they are not immediately visible to adjacent property Owners (i.e. screened with plant material). Above ground pools and temporary pools are prohibited. One (1) wading pool, if less than eighteen (18) inches high and eight (8) feet in diameter, per Unit, is permitted on a temporary basis without prior approval, if placed in the rear yard.

See Section 3.34, Hot Tubs and Jacuzzis.

### **3.51 Radio Antennae**

See Section 3.6, Antennae/Satellite Dishes.

### **3.52 Radon Mitigation Systems**

Approval is required. Equipment must be painted a color similar or generally accepted as complimentary to the exterior of the house. All equipment shall be installed so as to minimize its visibility.

### **3.53 Roofing Materials**

Approval is required for all roofing materials other than those originally used by the Builder. All buildings constructed on a Unit should be roofed with the same or greater quality and type of roofing material as originally used by the Builder.

Approval is not required for repairs to an existing roof with the same building material that exist on the building.

### **3.54 Rooftop Equipment**

Approval is required. Equipment must be painted a color similar or generally accepted as complimentary to the roofing material of the house. All rooftop equipment shall be installed so as to minimize its visibility.

See Section 3.64, Solar Energy Devices.

### **3.55 Satellite Dishes**

See Section 3.6, Antennae/Satellite Dishes.

### **3.56 Saunas**

See Section 3.2, Accessory Buildings.

### **3.57 Screen Doors**

See Section 3.20, Doors.

### **3.58 Seasonal Decorations**

Approval is not required if installed on a lot within thirty (30) days of a holiday, provided that an Owner is keeping with the Community standards, and provided that the decorations are removed within thirty (30) days of the holiday.

See Section 3.37, Lights and Lighting.

### **3.59 Security Devices.**

Approval is not required. Security devices, including cameras and alarms, must be selected, located and installed so as to be an integral part of the house and not distract from the home's architecture and appearance. Cameras and housing sirens, speaker boxes, conduits and related exterior elements should be unobtrusive and inconspicuous. Such devices should be located where not readily visible and should be a color that blends with or matches the surface to which it is attached.

### **3.60 Sheds**

See Section 3.2, Accessory Buildings.

### **3.61 Shutters - Exterior**

Approval is required. Shutters should be appropriate for the architectural style of the home and be of the appropriate proportion to the windows they frame. Shutters should be the same color as the "accent" color of the home (typically the same as the front door or other accent details).

### **3.62 Siding**

Approval is required. Vinyl siding will not be allowed.

### **3.63 Signs**

Except as provided herein, signs no more than 36" by 48" in size each may be displayed on a Unit without approval. Signs may not be illuminated without the prior approval of the ARC. Any request for lighting must detail the type and location of the lighting, and any such lighting shall be placed so as not to disturb Owners or occupants of neighboring

Units.

Notwithstanding the above, Commercial Signs may be displayed on a Unit in accordance with the following. Commercial Signs are defined as signs that carry a message making or intended to make a profit, or advertising for the same purpose. The following Commercial Signs may be displayed:

- A. One for sale or for rent sign per Unit may be placed on a Unit during the marketing period of that Unit. Such sign must be removed upon sale or rent of the Unit.
- B. If work is actively being done on a Unit by a contractor engaged by the Owner of the Unit, one Commercial Sign of the contractor doing such work may be displayed on that Unit's property during for the letters of the time work is being performed or 60 days.

### **3.64 Solar Energy Devices**

Approval is required in order to review aesthetic conditions. Photovoltaic (PV) Solar panels must lay flat on the roof, meet all applicable safety, building codes and electrical requirements, including solar panels for thermal systems (solar water heaters). The ARC is allowed to request changes as long as they don't significantly increase the cost or decrease the efficiency of the proposed device and panels. Please also see Colorado Law C.R.S. 38-30-168, which governs the review and the Owner's installation of such devices.

### **3.65 Spas**

See Section 3.34, Hot Tubs and Jacuzzis.

### **3.66 Statues or Fountains**

Approval is not required if statues or fountains are installed in the rear yard and are not greater than four (4) feet in height from the highest point, including any pedestal.

Approval is required if the statue or fountain is proposed for the front yard. Statue or fountain location in the front yard should be located close to the main entrance of the house.

See Section 3.12, Birdbaths and Section 3.38, Ornaments/Art – Landscape/Yard

### **3.67 Storage Sheds**

See Section 3.60, Sheds and Section 3.2, Accessory Buildings.

### **3.68 Sunshades**

See Section 3.39, Overhangs/Awnings – Cloth or Canvas and Section 3.41, Patio Covers.

### **3.69 Swamp Coolers**

See Section 3.5, Air Conditioning Equipment, Section 3.23, Evaporative Coolers, and Section 3.54, Rooftop Equipment.

### **3.70 Swing Sets**

See Section 3.46, Play Structures and Sports Equipment.

### **3.71 Television Antennae**

See Section 3.6, Antennae/Satellite Dishes.

### **3.72 Tree Houses**

Approval will not be granted. Tree houses are not permitted.

### **3.73 Vanes**

See Section 3.77, Weather Vanes and Directionals.

### **3.74 Vents**

See Section 3.54, Rooftop Equipment.

### **3.75 Walls**

See Section 3.25, Fences and Section 3.76, Walls, Retaining.

### **3.76 Walls, Retaining**

Approval is required. Front yard retaining walls shall not exceed thirty (30) inches in height. In the side yard, retaining walls up to thirty (30) inches high, with a planted slope above the wall, may be constructed. In no event shall rear yard retaining walls exceed four (4) feet in height unless installed by the Builder or Developer. All retaining walls shall comply with applicable requirements of Jefferson County and shall not significantly alter the drainage patterns on the lot or adjacent properties (including District or public areas). Retaining walls shall be constructed with boulders, stone, brick or split face modular concrete block facing units installed per manufacturer instructions.

New or old creosote treated timber railroad ties are prohibited.

### **3.77 Weather Vanes and Directionals**

Approval is required.

### **3.78 Wind Electric Generators**

Approval is required. In addition to ARC approval, windmills and any other type of fixture, which fall under the criteria of a wind generator, or are used to generate power etc., must meet the requirement of the C.R.S. 40-2-124 and any regulations of the Colorado Public Utilities Commission.

### **3.79 Windows Replacement**

Approval is required. Considerations will include, but may not be limited to, size, color, existing and proposed window style and style of home.

### **3.80 Windows: Tinting, Security Bars, Well Covers, etc.**

Approval is not required for window well covers that are manufactured with metal or plexiglass. All others will require ARC approval.

Approval is required for any visible window tinting. Highly reflective and/or dark tinting is considered too commercial for residential applications and is not permitted.

Approval is required for security bars and may not be approved on second story windows and other windows visible to the street.

### **3.81 Work Involving District Property**

Approval is required. Generally, driving vehicles, including wheelbarrows, across District property is not permitted. However, when circumstances warrant, the Board of Directors will consider requests provided that prior approval is requested and the Owner advances funds as may be reasonably required by the Board of Directors to repair any damage. The actual restoration of the District property will be done by the District.

### **3.82 Xeriscape**

Approval is required. Using drought tolerant plantings and other water conservation methods of landscaping is encouraged; however, the design must be approved. [At least eighty percent \(80%\) of the landscaped area on a Unit may consist of drought-tolerant plantings.](#) Xeriscape uses much less water than typical suburban residential landscape, but it does not mean that large areas of river rock or mulch will be allowed in place of green, growing plant material.

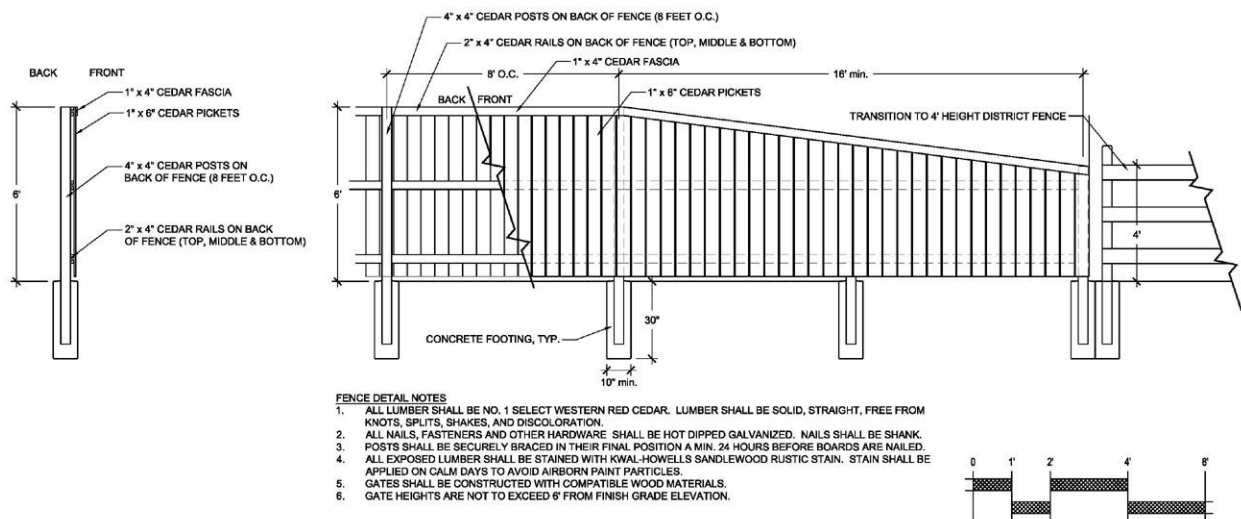
*Remainder of page intentionally left blank.*

## 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.

**Figure 1. Fence Detail**



### **FENCE DETAIL NOTES**

1. All lumber shall be no.1 select western red cedar. Lumber shall be solid, straight, free from knots, splits, shakes, and discoloration.
2. All nails, fasteners and other hardware shall be hot dipped galvanized. Nails shall be shank.
3. Posts shall be securely braced in their final position a min. 24 hours before boards are nailed.
4. All exposed lumber shall be stained with Behr Transparent waterproofing wood finish, part #401 Cedar Natural Tone. Stain shall be applied on calm days to avoid airborne paint particles.
5. Gates shall be constructed with compatible wood materials. Gate heights are not to exceed 6' from finish grade elevation.

## EXHIBIT B

### LANDSCAPE REQUIREMENTS

~~The use of drought tolerant plants is highly encouraged. **Builder installed landscaping plans are pre-approved; no approval is required for STANDARD builder installed landscaping.** If Owner negotiates alterations or additions to STANDARD landscape offering, approval is required.~~

#### ~~TIMING OF LANDSCAPE INSTALLATION~~

~~The Owner (other than a Developer or Builder) of each Unit shall install landscaping on such Unit, and on adjacent tree lawn areas, within one hundred (100) days after acquisition of the Unit by the Owner if such acquisition closes between April 1 and July 31. If such acquisition does not occur between April 1 and July 31, then all landscaping shall be installed by the Owner by the following June 30.~~

#### PLANT MATERIAL & LOCATION

Landscaping shall consist of trees, shrubs, ground covers, annual and perennial flowers, turf grasses, mulches and automatic irrigation. In the case of shade or ornamental trees (deciduous), plantings may not be installed closer than 6 feet (6') from the property line. In the case of evergreen trees (conifer), plantings may not be installed closer than 10 feet (10') from the property line. Select a variety of plant species including deciduous and evergreen trees and shrubs.

Mulch material shall be selected recognizing that high winds may be present in District. Mulches that "knit" together and hold to the ground should be used.

Thorny plants shall not be located within 10 feet of sidewalks or walkways. Planting beds must be separated from turf by edging.

#### STREET TREES

All tree lawns shall contain deciduous trees spaced at one (1) tree per forty (40) linear feet.

#### STANDARD OPTION – FRONT YARD

The area from the back of the sidewalk to the front of the building and side yard wing is defined as the front yard. Additional appurtenances, landscape elements, and decorative entry features may be allowed and will be reviewed on a case by case basis.

Plant material required in the FRONT YARD based on lot width

Suggested Turf Coverage: (Artificial Turf is not allowed)



50-55' Wide Lot (59' Max) – Suggested 40% min / 50% max  
60-70' Wide Lot (74' Max) – Suggested 40% min / 40% max  
75'+ Wide Lot – Suggested 25% min / 40% max.

50-55' Wide Lot (59' Max.) - 12 shrubs / 1 Deciduous Tree, 1 Evergreen Tree  
or 1 Ornamental Tree  
60-70' Wide Lot (74' Max.) - 16 shrubs / 1 Deciduous Tree, 1 Evergreen Tree  
or 1 Ornamental Tree  
75'+ Wide Lot - 26 shrubs / 1 Deciduous Tree, 1 Evergreen Tree or 1  
Ornamental Tree

Ornamental grasses may be substituted for shrubs at a rate of 3 to 1.

### **STANDARD OPTION - SIDE YARDS**

#### Internal Side Yard

- The portion of the lot between neighboring homes defined as the area between the building, side property line, rear of building and behind the front fence wing walls.
- May be covered in rock or mulch, no plant material is required.

#### External Side Yards

- Side yards on corner lots exposed to public view. Defined as the area between the building, back of sidewalk along the side property line, rear of building and in front of the front fence wing walls.
- Shall be landscaped with shrubs and trees at the rate of one tree and 10 shrubs per 40 linear feet of side yard.

### **STANDARD OPTION - REAR YARD**

The rear yard is that portion of the lot between the rear property line and the rear of the building.

In rear yards there shall be at least 35% long-lived plant material (turf, trees, shrubs or ornamental grasses), no more than 25% short-lived plant material (perennials or annuals), and no more than 25% non-living material. Mulch areas or planting beds in rear yards must have plant material cover the mulch at a rate of 50% coverage at installation and 75% coverage at maturity. Natural turf shall be limited to no more than 45% of the area to be landscaped.

### **STANDARD OPTION - IRRIGATION**

All landscaping shall include automatic irrigation.

## **XERIC OPTION – FRONT YARD**

The area from the back of the sidewalk to the front of the building and side yard wing walls is defined as the front yard. Additional appurtenances, landscape elements, and decorative entry features may be allowed and will be reviewed on a case by case basis. The xeric option may also require review by the County.

Turf Requirement: no turf is required.

Rock and inorganic mulches are limited to not more than 50% of the area to be landscaped. 50% of all rock and other mulch areas shall be covered with living plant material.

Brick pavers, asphalt pavers, and natural stone limited to not more than 40% of the landscaped area.

Features: One of the following features shall be incorporated:

- Wall – 1 to 2.5 feet high decorative natural stone, stucco or approved option.
- Fence – in accordance with the fence requirements of District.
- Berms – low earth berm 2.5 feet tall max. Slopes not to exceed one foot rise for each 4 feet of run.
- Natural Boulders – 2 – two feet by three feet minimum.

## **XERIC OPTION – SIDE YARD**

The side yard is the portion of the lot between the building, side property line, rear of building and behind the front fence wing walls.

Internal Side Yards – May be covered in rock or mulch, no plant material is required.

External Side Yards - On corner lots exposed to public view, they shall be landscaped by combining visible side and front yard areas and applying front yard standards.

## **XERIC OPTION – REAR YARD**

The rear yard is that portion of the lot between the rear property line and the rear of the building.

~~Turf or xeric landscaping is not required except when the rear yard at a corner lot is exposed to public view, then it shall be landscaped with turf or xeric landscaping.~~

In rear yards there shall be at least 35% long-lived plant material (turf, trees, shrubs or ornamental grasses), no more than 25% short-lived plant material (perennials or annuals), and no more than 25% non-living material. Mulch areas or planting beds in rear yards must have plant material cover the mulch at a rate of 50% coverage at installation and 75% coverage at maturity. ~~Natural turf shall be limited to no more than 45% of the area to be landscaped.~~ Artificial turf is allowed in the rear yard.

## **XERIC OPTION - IRRIGATION**

All landscaping shall include automatic irrigation.