

**INDEPENDENT CONTRACTOR AGREEMENT  
SNOW REMOVAL**

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 14<sup>th</sup> day of September, 2020, by and between HAWTHORN METROPOLITAN DISTRICT NO. 2, 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 September 1, 2020 and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; or (ii) May 31, 2021.

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 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.

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. INTENTIONALLY DELETED.

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**.

b. Invoices. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> 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 a timely, satisfactory and detailed invoice in the form required by Section 7. 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 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 / EMPLOYMENT ELIGIBILITY. 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.

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

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

b. The Contractor shall not knowingly enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform the services contemplated in this Agreement.

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

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

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

i. Notify the subcontractor and the District within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.

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

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

g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the District may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the District.

#### 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, 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 No. 2  
c/o Special District Management Services, Inc.  
141 Union Boulevard, Suite 150  
Lakewood, CO 80228  
Attention: Peggy Ripko  
Phone: 303-987-0835  
Email: [pripko@sdmsi.com](mailto:pripko@sdmsi.com)

With a Copy to: WHITE BEAR ANKELE TANAKA & WALDRON  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122  
Attention: Kristin Tompkins  
Phone: (303) 858-1800  
E-mail: [ktompkins@wbapc.com](mailto:ktompkins@wbapc.com)

Contractor: Environmental Landworks Company, Inc.  
17173 Mount Vernon Road  
Golden, CO 80401  
Attention: Fred McAfoos  
Phone: 303-862-9480  
Email: [fred@elciworks.com](mailto:fred@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. 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.

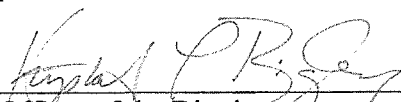
34. TAX EXEMPT STATUS. The District is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the District is exempt shall not be included in any invoices submitted to the District. The District shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. 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  
NO. 2, a quasi-municipal corporation and  
political subdivision of the State of Colorado


  
\_\_\_\_\_  
Officer of the District

ATTEST:

  
\_\_\_\_\_

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

  
\_\_\_\_\_  
General Counsel for the District

*District's Signature Page to Independent Contractor Agreement for Snow Removal Services  
with Environmental Landworks Company, Inc., dated September 14, 2020*

**CONTRACTOR:**  
ENVIRONMENTAL LANDWORKS  
COMPANY, INC., a Colorado corporation

*[Handwritten Signature]*

*Michael Sittaro*

Printed Name

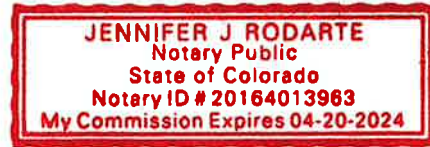
*Vice President*

Title

STATE OF COLORADO )

COUNTY OF JEFFERSON )

ss.



The foregoing instrument was acknowledged before me this 16 day of Sept., 2020, by Michael Sittaro as the VICE PRESIDENT of Environmental Landworks Company, Inc.

Witness my hand and official seal.

My commission expires: 04/20/2024

*Jennifer Rodarte*  
Notary Public

***Contractor's Signature Page to Independent Contractor Agreement for Snow Removal Services with Hawthorn Metropolitan District No. 2, dated September 14, 2020***

## **EXHIBIT A**

### **SCOPE OF SERVICES/COMPENSATION SCHEDULE**

#### **GENERAL REQUIREMENTS/OBLIGATIONS**

Contractor shall furnish all labor, equipment, accessories and material to perform snow maintenance activities as outlined in this Agreement and on any Site Map. These services shall be provided at the hourly rates set forth on in this Agreement.

Contractor will perform the services in a good and workmanlike manner consistent with reasonable industry standards and in consideration of the natural conditions present.

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).

Accumulations greater than 8" may require larger or different types of equipment that are not normally a part of Contractor's fleet and supplemental pricing will apply in those circumstances where Contractor must rent equipment. In the event of a forecast storm greater than 8" the Manager may contact the District and make recommendations for equipment and personnel to complete services in the expected time frame. The District understands that snow maintenance services under these conditions could require two or more trips addressing areas of highest need first. Clint understands that this may result in additional time required to perform services under this Agreement. In the event of a government issues Snow Emergency, the 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.

#### **WORK NOT INCLUDED**

Sweeping or cleaning of sand or other materials used when performing services or cleaning accumulation of trash, sand or debris after snow melts.

Any other work not listed in this Agreement or its exhibits.

#### **SPECIFICATIONS**

Contractor will plow the snow when accumulation reaches a depth of \_\_\_ inches as determined by the nearest location for which a report is available on [www.skyviewweather.com](http://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 \_\_\_ inches as determined by the nearest location for which a report is available on [www.skyviewweather.com](http://www.skyviewweather.com) (or other standard agreed to by the Parties), or as requested by the District for an additional fee.



Equipment and materials to be used during normal events may include, but not be limited to, the following:

- ½ ton trucks with 7.5-foot blades;
- Snow blowers; walk behind;
- Dump truck with blade;
- Front end loaders;
- Ice slicer; and
- Ice melt CaCl 94/97 equal.

Snow maintenance activities will be initiated when the Contractor reasonably determines conditions are such that maintenance operations are required based upon the accumulations specifications above, or when Contractor is specifically notified by the District when conditions and law permit snow maintenance activities to be undertaken according to the terms and conditions of this Agreement.

The District may choose to forego service for a specific time, but in any such case the District shall notify the 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 property. Failure to give notice as required under this section may result in charges by Contractor for time, equipment and administrative expenses.

The site map is included with this Agreement. The District will inform the Contractor of the location and nature of any and all hazards, concealed improvements, impediments, special circumstances or conditions known to the District and ensure that these are marked on the site map. The District shall be under a continuing duty to inform the Contractor about the location and nature of any and all hazards, concealed improvements, impediments, special circumstances or conditions known the District so that hazards and improvements may be properly marked.

Prior to the commencement of the first work by the Contractor, the District shall meet with the Contractor's designated representative and the District shall identify all pertinent property boundaries, any buried or concealed improvements, pre-existing damage, impediments, or potentially dangerous conditions existing on the property. Contractor may add items to the site map based on observed conditions.

#### LIMITATIONS, CLIENT RESPONSIBILITIES AND ASSUMPTION OF RISK

Contractor shall not be liable to the District for damage to, injury or loss to or arising out of or related to items buried under the snow (i.e. curbs, turf, wheel stops, wires, hydrants, etc.) that are not identified on the site map. The District shall notify the ELCI Manager immediately of any conditions which are not listed on the site map and which may create a hazard to the public or to Contractor or its employees due to a snow event or due to services provided by Contractor under this Agreement.

The District shall be responsible for removal, or for causing the removal of all vehicles and other personal property, from parking lots, drives, access roads, and designated stockpile areas, so that the Contractor can properly and efficiently operate snow plowing equipment. Contractor shall not be liable for any claims, loss or damage caused by or arising out of stockpiled snow unless caused by stockpiling in an area where the District has expressly marked as forbidden areas for stockpiling on the site map. Contractor shall not be obliged to perform services under this Agreement in any areas that are not accessible for the safe and efficient performance of services under this Agreement, or if designated areas for stockpiling snow are inaccessible or insufficient.

The District understands that de-icers 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 the site map. Contractor will not be held liable for safety issues relating to or resulting from Client's direction not to use chemicals for ice mitigation, and the District expressly assumes the risk of their non-use.

The District understands that snow maintenance of a particular location may not clear the area to "bare pavement" and that slippery conditions may continue to prevail even after snow maintenance and that Contractor assumes no liability for this naturally occurring condition. The District realizes that slick surfaces may be present at any time despite Contractor's efforts. The District assumes the risk of naturally occurring dangerous conditions related to snowfall, snow accumulation, ice formation and accumulation, which occur after Contractor provides services under this Agreement or which persist despite Contractor's provision of the services expressly called for under this Agreement. The Contractor will not be liable to the District for costs, fees, loss or damage that is/are not a direct result of Contractor's unexcused failure to comply with the specific requirements of this Agreement, including its exhibits. Nothing in this Agreement shall relieve the District of its legal obligations as a landowner. The Contractor shall maintain insurance to protect against claims by third parties.

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 be responsible for Acts of God, unusual weather conditions, poor site drainage conditions, vandalism 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.

### **2020-2021 Snow Rates**

Truck with Plow	\$105.00 per man hour
Hand Shoveling	\$55.00 per man hour
Ice Slicer	\$235.00 per ton applied
Sand (no ice melt-salt)	\$65.00 per ton
Ice Melt	\$0.90 per lb. applied
ATV with Plow	\$80.00 per man hour
Skid steer w/ Pusher	\$140.00 per man hour
Front End Loader	\$190.00 per man hour
Walk-behind snow blower	\$75.00 per man hour

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

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.

### **Snow Maintenance Emergency Equipment**

(For use, if necessary in extreme snow events of eight 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.

Mobilization	\$262.00
Fueling equipment on site	\$82.00 per hour
Rental Skid Steer	\$190.00 per hour
Rental Wheel Loader	\$270.00 per hour
Rental Road Grader	\$350.00 per hour
Rented/Contracted Dump Truck	\$320.00 per hour

These are our hourly rates for the 2020-2021 snow maintenance season. There is a one (1) hour minimum charge per job site.

**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;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

**This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. 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**

**EXHIBIT D**

**CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE**









# 2020-09-14 Hawthorn Meeting Signature Packet

Final Audit Report

2020-09-24

Created:	2020-09-22
By:	Maudie Johns (mjohns@wbapc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAC_eAoExTACYI2hQM_5qE_X6xKCrp2d_

## "2020-09-14 Hawthorn Meeting Signature Packet" History

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2020-09-22 - 8:40:00 PM GMT- IP address: 50.209.233.181
-  Document emailed to Krystal L. Bigley (krystalbigley@gmail.com) for signature  
2020-09-22 - 8:43:40 PM GMT
-  Email viewed by Krystal L. Bigley (krystalbigley@gmail.com)  
2020-09-24 - 2:36:17 PM GMT- IP address: 64.233.172.83
-  Document e-signed by Krystal L. Bigley (krystalbigley@gmail.com)  
Signature Date: 2020-09-24 - 2:39:37 PM GMT - Time Source: server- IP address: 97.122.192.200
-  Document emailed to Carly Fenton (tctfenton@gmail.com) for signature  
2020-09-24 - 2:39:39 PM GMT
-  Email viewed by Carly Fenton (tctfenton@gmail.com)  
2020-09-24 - 9:57:05 PM GMT- IP address: 97.122.233.161
-  Document e-signed by Carly Fenton (tctfenton@gmail.com)  
Signature Date: 2020-09-24 - 9:58:40 PM GMT - Time Source: server- IP address: 97.122.233.161
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