

AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898

Tel: (303) 987-0835

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Aurorahp.colorado.gov

NOTICE OF REGULAR MEETING AND AGENDA

<u>Board of Directors</u>	<u>Office</u>	<u>Term/Expires</u>
Andrew Klein	President	2023/May 2023
Otis Moore, III	Assistant Secretary	2025/May 2025
Theodore Laudick	Assistant Secretary	2025/May 2025
Mark Witkiewicz	Assistant Secretary	2025/May 2025
Ann Finn	Secretary	

DATE: October 24, 2022

TIME: 10:00 a.m.

PLACE: **VIA Conference Call**

TO ATTEND THIS MEETING DIAL THE PHONE NUMBER BELOW, AND ENTER THE INDICATED MEETING ID NUMBER AND PASSCODE WHEN PROMPTED:

Teleconference information:

Phone Number: 1-669-900-6833

Meeting ID: 434 948 0582

Passcode: 355867

I. ADMINISTRATIVE MATTERS

- A. Present Disclosures of Potential Conflicts of Interest.

- B. Confirm quorum, location of meeting and posting of meeting notices. Approve agenda.

- C. Review and consider Minutes of the July 25, 2022 Regular Meeting (enclosure).

- D. Consider approval of Annual Administrative Resolution for Year 2023 (enclosure).

- E. Acknowledge resignation of Mark Witkiewicz from the Board of Directors, effective as of _____, 2022.

- F. Acknowledge resignation of Kevin Smith from the Board of Directors, effective as of _____, 2022.
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II. PUBLIC COMMENTS

- A. Members of the public may express their view to the Board on matters that affect the District. Comments will be limited to three (3) minutes.
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III. FINANCIAL MATTERS

- A. Ratify approval of the payment of claims for the period beginning _____, 2022 through _____, 2022, in the amount of \$_____ (to be distributed).
-

- B. Review and accept the Unaudited Financial Statements for the period ending _____, 2022 and Cash Position Schedule, dated _____, updated as of _____ (to be distributed).
-

- C. Consider engagement of Schilling & Company, Inc. to prepare 2022 Audit, for an amount not to exceed \$_____.
-

- D. Review and approve CliftonLarsonAllen LLP 2023 Scope of Work.
-

- E. Conduct Public Hearing to consider Amendment to 2022 Budget and consider adoption of Resolution to Amend the 2022 Budget and Appropriate Expenditures (if necessary).
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- F. Conduct Public Hearing on the proposed 2023 Budgets and consider adoption of Resolution to Adopt the 2023 Budget and Appropriate Sums of Money and to Set Mill Levies (for General Fund _____, Debt Service Fund _____, and Other Fund(s) _____ for a total mill levy of _____) (enclosures – preliminary AV, resolutions and draft 2023 Budget).
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- G. Consider authorizing the District Accountant to prepare and sign the DLG-70 Mill Levy Certification form for certification to the Board of County Commissioners and other interested parties.
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- H. Consider appointment of District Accountant to prepare the 2024 Budget.
-

- I. Consider Change Order to Agreement for Construction Management Services with Silverbluff Companies (to be distributed)
-

IV. LEGAL MATTERS

- A. Review and consider adoption of Resolution Calling May 2, 2023 Election for Directors, appointing Designated Election Official (“DEO”) and authorizing the DEO to perform all tasks required for the conduct of a mail ballot election. Self-Nomination Forms are due by February 28, 2023 (enclosure). Discuss the need for ballot issues and/or questions.
-

V. CAPITAL PROJECTS

- A. Discuss status of the capital improvements projects:

1. Lisbon Street Extension Project (Millstone Weber, LLC).
 2. Ratify final payment to Summit for the High Point North Grading Project (Summit Excavation & Grading, LLC).
 3. Discuss the status of the 64th Ave. and Denali Street Lighting Package Project.
 4. Discuss the status of the Possum Gully Channel Improvement Project.
 5. Discuss the status of the High Point 66th & 67th Ave. Improvement Project.
 7. Discuss the status of the High Point North Pinon Sanitary Sewer Improvement Project (Vortex Services, LLC).
 8. Discuss the status of the Gun Club Road Project (RCD Construction Inc.).
-

- B. Discuss bid opening for the 66th & 67th Avenue Street Light Project
(October 27, 2022- bid opening)
-

1. Authorize Construction Manager to award contract to the lowest responsible bidder. Issue Notice of Award and Notice to Proceed.
-

VI. OPERATIONS AND MAINTENANCE

- C. Review and consider approval of the 2022/2023 Snow Removal Service Agreement between the District and All Phase Landscape Construction, Inc. (enclosure)
-

- D. Review and consider approval Service Agreement for 2023 Landscape Maintenance Services between the District All Phase Landscape Construction, Inc. (enclosures)
-

VII. OTHER BUSINESS

- A.
-

VIII. ADJOURNMENT ***THERE ARE NO MORE REGULAR MEETINGS SCHEDULED FOR 2022.***

Informational Enclosure:

- Memo regarding New Rate Structure from Special District Management Services, Inc.

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT HELD JULY 25, 2022

A Regular Meeting of the Board of Directors (referred to hereafter as the "Board") of the Aurora High Point at DIA Metropolitan District (referred to hereafter as the "District") was convened on Monday, the 25th day of July, 2022, at 10:00 a.m. This District Board meeting was held and properly noticed to be held by via Zoom. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Otis Moore, III
Theodore Laudick
Mark Witkiewicz
Andrew Klein

Also In Attendance Were:

Ann Finn; Special District Management Services, Inc.

Colin B. Mielke, Esq.; Seter & Vander Wall, P.C.

Zachary Leavitt and Jason Carroll; CliftonLarsonAllen LLP

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Disclosure of Potential Conflicts of Interest: The Board noted it was in receipt of disclosures of potential conflicts of interest statements for each of the Directors and that the statements had been filed with the Secretary of State at least seventy-two hours in advance of the meeting. Attorney Mielke requested that the Directors review the Agenda for the meeting and advised the Board of any new conflicts of interest which had not been previously disclosed. No further disclosures were made by Directors present at the meeting.

ADMINISTRATIVE MATTERS

Agenda: Ms. Finn distributed for the Board's review and approval a proposed Agenda for the District's Regular Meeting.

Following discussion, upon motion duly made by Director Moore, seconded by Director Klein and, upon vote, unanimously carried, the Agenda was approved, as presented.

RECORD OF PROCEEDINGS

May 3, 2022 Cancelled Election: Ms. Finn noted for the Board that the May 3, 2022 Regular Election was cancelled, as allowed under Colorado law, by the Designated Election Official because there were not more candidates than positions available on the Board of Directors. Directors Laudick and Moore were each deemed elected to 3-year terms ending in May 2025. Director Witkiewicz was deemed elected to a 1-year term ending in May 2023.

Appointment of Officers: Upon motion duly made by Director Moore, seconded by Director Klein and, upon vote, unanimously carried, the following slate of officers was appointed:

President	Andrew Klein
Treasurer	Otis Moore, III
Secretary	Ann E. Finn
Assistant Secretary	Mark Witkiewicz
Assistant Secretary	Theodore Laudick

Minutes: The Board reviewed the Minutes of the February 28, 2022 Regular Meeting.

Following discussion, upon motion duly made by Director Moore, seconded by Director Klein and, upon vote, unanimously carried, the Board approved the Minutes of the February 28, 2022 Regular Meeting.

PUBLIC COMMENT

There was no public comment.

FINANCIAL MATTERS

Claims: Mr. Leavitt reviewed with the Board the payment of claims for the period beginning March 1, 2022 through June 30, 2022, in the amount of \$8,635,124.56.

Following discussion, upon motion duly made by Director Moore, seconded by Director Klein and, upon vote, unanimously carried, the Board approved the payment of claims for the period beginning March 31, 2022 through June 30, 2022, in the amount of \$8,635,124.56.

Unaudited Financial Statements: Mr. Leavitt reviewed with the Board the Cash Position Schedule, dated June 30, 2022, updated as of July 22, 2022.

Following discussion, upon motion duly made by Director Moore, seconded by Director Klein and, upon vote, unanimously carried, the Board accepted the Cash Position Schedule, dated June 30, 2022, updated as of July 22, 2022.

RECORD OF PROCEEDINGS

2021 Audit: Mr. Leavitt noted that the 2021 draft Audit is 90% complete. The Board authorized Mr. Leavitt to file for an extension with the State Auditor.

LEGAL MATTERS

Request from Colorado International Center Metropolitan District No. 3: Mr. Mielke noted he received a request for documents from the District Manager for the Colorado International Center Metropolitan District No. 3 and that he and Director Laudick are in the process of compiling the requested documents.

CAPITAL PROJECTS

Capital Improvement Projects:

Lisbon Street Extension Project (Millstone Weber, LLC): Director Laudick reported the project is 100% complete and he is awaiting final acceptance from the City.

High Point North Grading Project (Summit Excavation & Grading, LLC): Director Laudick reported that the project is complete and he is the process of making the final payment to the contractor.

64th Avenue and Denali Street Lighting Package Project: Director Laudick reported he is waiting for the power to be installed.

Possum Gully Channel Improvement Project: Director Laudick reported he performed a final walk through last week and is compiling the punch line items.

High Point 66th & 67th Ave Improvement Project: Director Laudick reported the surface work is underway.

High Point North Pinon Sanitary Sewer Improvement Project: Director Laudick reported that the project is 70% complete and should be completed by September 2022.

Gun Club Road Project (“Project”): Director Laudick reported the project is 90% complete and should completed by November 2022.

OTHER BUSINESS

There was no other business to discuss at this time.

ADJOURNMENT

There being no further business to come before the Board at this time, upon motion duly made by Director Klein, seconded by Director Moore and, upon vote, unanimously carried, the meeting was adjourned.

RECORD OF PROCEEDINGS

Respectfully submitted,

By: _____
Secretary for the Meeting

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

Andrew Klein
Otis Moore, III
Theodore Laudick

When the following proceedings, were had and done, to wit:

WHEREAS, the Aurora High Point at DIA Metropolitan District (the “District”) was organized as a special district pursuant to an Order of the District Court in and for Adams County, Colorado, and is located within said County; and

WHEREAS, § 32-1-903(2), C.R.S., requires that notice of the time and place designated for all regular meetings shall be posted in accordance with § 24-6-402, C.R.S., on a website or

other on-line presence of the District which complies with the statutory criteria, or at a physical posting location as designated by the Board and within the limits of the Special District at least 24 hours prior to said meeting; and

WHEREAS, § 32-1-1001(2)(a), C.R.S., requires that at least thirty (30) days' notice be provided to customers within or outside the District receiving domestic water or sanitary sewer services directly from the District, prior to the District considering at a public meeting the fixing or increasing of any fees, rates, tolls, penalties, or charges for domestic water or sanitary sewer services; and

WHEREAS, in accordance with the Colorado Governmental Immunity Act, the Board is given authority to obtain insurance against liability for injuries for which the District may be liable under the Governmental Immunity Act, pursuant to § 24-10-115, C.R.S.; and

WHEREAS, §§ 32-1-901(2) and 32-1-902(2), C.R.S., require the District to obtain an individual, schedule or blanket surety bond in an amount of no less than \$1,000 per director and \$5,000 for the Board Treasurer, and to file such bond with the District Court and the Division of Local Government; and

WHEREAS, § 32-1-104.8, C.R.S., requires the District to have recorded a special district public disclosure document and a map of the boundaries of the District with the County Clerk and Recorder of each county in which the District is located by December 31, 2014, and at any time thereafter that an order confirming the inclusion of property into the District is recorded; and

WHEREAS, § 32-1-306, C.R.S., requires the District to file a current, accurate map of its boundaries with the Division of Local Government, the Adams County Clerk and Recorder and the County Assessor on or before January 1 of each year; and

WHEREAS, § 32-1-104(2), C.R.S., requires that the District, on or before January 15, notify the Board of County Commissioners, Assessor, Treasurer, Clerk and Recorder, the governing body of any municipality in which the District is located, and the Division of Local Government, the notice as required by § 32-1-809, C.R.S.; and

WHEREAS, § 32-1-809, C.R.S., requires that on or before January 15 of each year the District will provide a notice to the eligible electors of the District containing the information required by § 32-1-809(1), C.R.S. in the manner set forth in § 32-1-809(2), C.R.S.; and

WHEREAS, the Local Government Budget Law of Colorado, §§ 29-1-101, *et seq.*, C.R.S., requires the Board to hold a public hearing on proposed budgets and amendments thereto, to adopt budgets, and to file copies of the budgets and amendments thereto; and

WHEREAS, in accordance with the Public Securities Information Reporting Act, §§ 11-58-101, *et seq.*, C.R.S., issuers of non-rated public securities must file an annual report with the Department of Local Affairs; and

WHEREAS, in accordance with § 29-1-604(1), C.R.S., if expenditures and revenues of the District are not in excess of \$100,000, the District may file an exemption from audit with the State auditor; or, in accordance with § 29-1-604(2), C.R.S., if expenditures and revenues of the District are at least \$100,000 but not more than \$750,000 the District may, with the approval of the State Auditor, file an exemption from audit with the State Auditor, or in accordance with § 29-1-603, C.R.S., the governing body of the District shall cause to be made an annual audit of the financial statements for each fiscal year; and

WHEREAS, the Unclaimed Property Act, §§ 38-13-101, *et seq.*, C.R.S., requires that governmental subdivisions, if applicable, file an annual report listing unclaimed property with the State Treasurer; and

WHEREAS, elections may be held pursuant to the Special District Act and the Uniform Election Code of 1992 for the purpose of 1) electing members of the District's Board of Directors, 2) to present certain ballot issues to the eligible electors of the District as required by Article X, § 20 of the Colorado Constitution, and 3) to present certain ballot questions to the eligible electors of the District; and

WHEREAS, § 1-1-111(2), C.R.S., states that all powers and authority granted to the governing body of a political subdivision may be exercised by the appointed Designated Election Official; and

WHEREAS, §§ 1-11-103 and 32-1-104(1), C.R.S., require the District to notify the Division of Local Government of the results of any elections held by the District, including business address, telephone number and the contact person; and

WHEREAS, § 32-1-1101.5, C.R.S., requires the District to certify results of any election to incur general obligation indebtedness to the board of county commissioners of each county in which the special district is located or to the governing body of the municipality that has adopted a resolution of approval of the District; and

WHEREAS, § 32-1-1604, C.R.S., requires within 30 days of incurring or authorizing general obligation debt that the District shall record a notice of such debt with the County Clerk and Recorder, on a form prescribed by the Division of Local Government; and

WHEREAS, in accordance with §§ 32-1-1101.5(1.5) and (2), C.R.S., either the board of county commissioners of each county in which the special district is located, or the governing body of the municipality that has adopted a resolution of approval of the District, may require the District to file an application for quinquennial finding of reasonable diligence; and

WHEREAS, in accordance with § 32-1-207(3)(c), C.R.S. and the District's Service Plan, an annual report shall be submitted to the City of Aurora within one hundred twenty (120) days after conclusion of the District's fiscal year on December 31 of each year beginning December 31, 2005, unless waived by the City; and

WHEREAS, special district directors are governed by § 32-1-902(3), C.R.S., which requires such director to disqualify himself or herself from voting on an issue in which he or she has a conflict of interest unless the director has properly disclosed such conflict in compliance with law, and by the provisions of the Colorado Code of Ethics, §§ 24-18-101, *et seq.*, C.R.S., which provide rules of conduct concerning public officials and their fiduciary duties; and

WHEREAS, § 32-1-902, C.R.S., requires the Board to elect officers, including a Chairperson of the Board and President of the District, a Treasurer of the Board and District, and a Secretary, who may be a member of the Board; and

WHEREAS, the Board of Directors desires to identify legal counsel for the District to assist with providing legal services and to assist with the operation of the District; and

WHEREAS, the Board of Directors desires to identify a manager for the District to provide management activities to assist with the operation of the District; and

WHEREAS, the Board of Directors desires to employ the services of an accountant for the District to assist with providing financial services and to assist with the financial operations of the District, and who shall also be designated as the budget officer required to prepare and submit to the Board a proposed District budget by October 15, pursuant to §§ 29-1-104 and 29-1-103(3)(d), C.R.S.; and

WHEREAS, pursuant to § 24-71.3-101, *et seq.*, C.R.S., The Uniform Electronic Transaction Act, parties may agree to conduct transactions by electronic means relating to business, commercial and governmental affairs, and that for all documents covered by the Act, if a law requires a record to be in writing, an electronic record satisfies the law; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT, ADAMS COUNTY, COLORADO, AS FOLLOWS:

1. The Board of Directors of the District determines that each director shall receive, as compensation for services as directors, the sum of \$100 per meeting per district in an amount not to exceed \$2,400 per annum per district, subject to availability of funds.

2. The Board designates the *Aurora Sentinel* as the newspaper of general circulation within the boundaries of the District, or in the vicinity of the District if none is circulated within the District, and directs that all legal notices shall be published in accordance with applicable statutes.

3. Meeting notices will be posted on the District's website located at: <http://www.aurorahp.colorado.gov> at least 24 hours prior to the meetings. The Board designates the northwest corner of the boundaries of the District, which is within the boundaries of the District, as the designated posting place for meeting notices pursuant to § 32-1-903(2) and § 24-6-402(2)(c), C.R.S.

4. The Board determines to hold regular meetings at 10:00 a.m. on _____, 2023. Because there are no suitable locations within the District's boundaries or within twenty miles therefrom, the meetings will be held at 4100 East Mississippi Avenue, Suite 500, Glendale, Colorado 80246 or by virtual or electronic means as authorized by the Colorado Revised Statutes.

5. The Board directs the District's manager to obtain and maintain insurance for the District, to insure the Directors acting within the scope of employment by the Board against all or any part of such liability for an injury; to insure against the expense of defending a claim for injury against the District or its Board. Additionally, the Board directs the District's manager to obtain bonds or equivalent insurance coverage as required by §§ 32-1-901(2) and 32-1-902(2), C.R.S., in an amount of no less than \$1,000 per director and \$5,000 for the Board Treasurer, and to file the bond or certificate of insurance with the District Court and the Division of Local Government.

6. The Board designates _____ as the District's "Primary Representative" and designates Michele Barrasso as the District's "Alternate Representative" to the SDA Insurance Pool so that District insurance coverage may be timely renewed annually and updated as necessary.

7. The Board directs legal counsel to update the Special District Public Disclosure Document and map with Adams County Clerk and Recorder after the initial filing deadline of December 31, 2014, if the District includes additional property and records an Order of Inclusion with the County Clerk and Recorder.

8. The Board directs the District's manager to file an accurate boundary map with the Division of Local Government and the Adams County Assessor, as may be required by statute.

9. The Board directs the District's manager to file a copy of the transparency notice as described in § 32-1-809, C.R.S. with the Adams County Board of County Commissioners, Assessor, Treasurer, Clerk and Recorder, and the Division of Local Government.

10. The Board directs the District's manager to notify the registered electors in the District of certain specified District information by completing the Special District Transparency Notice as detailed in § 32-1-809, C.R.S. and causing it to be posted to the Special District Association website.

11. The Board designates the District's accountant to serve as the budget officer, and to submit a proposed budget to the Board by October 15, and, in cooperation with legal counsel, to schedule a public hearing on the proposed budget; to prepare a final budget, budget resolutions and amendments to the budget, if necessary; to certify the mill levies on or before December 15; and to file the approved budgets and amendments thereto with the proper governmental entities in accordance with the Local Government Budget Law of Colorado.

12. The Board directs legal counsel to prepare and file the annual public securities report for nonrated public securities issued by the District, with the Department of Local Affairs on or before March 1.

13. The Board directs the District's accountant to prepare for filing with the State Auditor either an Audit Exemption and Resolution for approval of Audit Exemption for the prior fiscal year by March 31; or an audit of the financial statements by June 30; further, the Board directs that the Audit be filed with the State Auditor by July 31.

14. The Board directs legal counsel to prepare the Unclaimed Property Act report, as applicable, and forward the report to the State Treasurer by November 1.

15. The Board hereby appoints Michele Barrasso as the "Designated Election Official" of the District for any elections to be held during 2023 and any subsequent year. The Board hereby grants all powers and authority for the proper conduct of the election to the Designated Election Official, including but not limited to appointing election judges, appointing a canvass board and cancellation, if applicable, of the election.

16. The District directs the Designated Election Official to notify the Division of Local Government of the results of any elections held by the District, including business address, telephone number and the contact person.

17. The District directs the Designated Election Official to certify results of any election to incur general obligation indebtedness to the Aurora City Council.

18. Whenever the District authorizes or incurs general obligation debt, the Board directs the Designated Election Official to record a notice of such debt with the Adams County Clerk and Recorder, within 30 days of authorizing or incurring the debt, on a form prescribed by the Division of Local Government.

19. The Board directs legal counsel to prepare and file with the Board of County Commissioners of each County in which the special district is located, or to the governing body of the municipality that has adopted a resolution of approval of the District, if requested, the quinquennial finding of reasonable diligence in accordance with §§ 32-1-1101.5(1.5) and (2), C.R.S.

20. The Board directs legal counsel to prepare and file the special district annual report with the Aurora City Council, the Division of Local Government, the State Auditor and shall further deposit a copy of such report with the County Clerk and Recorder per § 32-1-207(3)(c), C.R.S.

21. The District hereby directs each present and future member of the Board to execute an Affidavit of Qualification of Director, to be retained in the District's files.

22. The District hereby elects the following officers for the District:

President – Andrew Klein
Treasurer – _____
Asst. Secretary – Otis Moore III
Asst. Secretary – Theodore Laudick
Asst. Secretary – _____
Secretary – Ann Finn

23. The Board directs legal counsel to file conflict of interest disclosures provided by Board members with the Secretary of State 72 hours prior to the first meeting of the Board and thereafter as directed by the Board member(s). In addition, written disclosures provided by Board members required to be filed with the governing body in accordance with § 18-8-308, C.R.S., shall be deemed filed with the Board of Directors of the District when filed with the Secretary of State.

24. The Board extends the current indemnification resolution to allow the resolution to continue in effect as written.

25. The Board of Directors appoints the law firm of Seter & Vander Wall, P.C. as legal counsel for the District.

26. The Board of Directors appoints Special District Management Services, Inc. as the District's manager.

27. The Board of Directors appoints CliftonLarsonAllen LLP to serve as the District accountant.

28. The Board authorizes its consultants to conduct transactions by electronic means to the extent allowed by the Uniform Electronic Transactions Act.

Whereupon, the motion was seconded by Director _____, and upon vote, unanimously carried. The President declared the motion carried and so ordered.

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ADOPTED AND APPROVED THIS 24TH DAY OF OCTOBER, 2022.

AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT

By: _____
President / Chairperson

ATTEST:

By: _____
Secretary or Assistant Secretary

CERTIFICATION

I, _____, Secretary or Assistant of the Board of the Aurora High Point at DIA Metropolitan District, do hereby certify that the attached and foregoing Resolution is a true copy from the records of the proceedings of the Board of said District, on file with Seter & Vander Wall, P.C., legal counsel to the District.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District, at Arapahoe County, Colorado, this 24th day of October, 2022.

Secretary or Assistant Secretary

[S E A L]

Ken Musso
ASSESSOR

AUG 25 2022



Assessor's Office
4430 South Adams County Parkway
2nd Floor, Suite C2100
Brighton, CO 80601-8201
PHONE 720.523.6038
FAX 720.523.6037
www.adcogov.org

August 25, 2022

AURORA HIGH POINT AT DIA
SPECIAL DISTRICT MANAGEMENT SERVICES INC
Attn: ANN E FINN
141 UNION BLVD STE 150
LAKEWOOD CO 80228-1898

To ANN E FINN:

Enclosed is the 2022 preliminary valuation. This valuation along with all other statutory requirements is on the enclosed form. A final certification of value will be sent out on or before December 10, 2022.

This value is subject to change by the County Board of Equalization, Board of Assessment Appeals and the State Board of Equalization as provided by law.

Sincerely,

Ken Musso
Adams County Assessor
KM/rmb

CERTIFICATION OF VALUATION BY ADAMS COUNTY ASSESSOR

Name of Jurisdiction: **254 - AURORA HIGH POINT AT DIA**

IN ADAMS COUNTY ON 8/25/2022

New Entity: No

USE FOR STATUTORY PROPERTY TAX REVENUE LIMIT CALCULATIONS (5.5% LIMIT) ONLY

IN ACCORDANCE WITH 39-5-121(2)(a) AND 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES THE TOTAL VALUATION FOR ASSESSMENT FOR THE TAXABLE YEAR 2022 IN ADAMS COUNTY, COLORADO

1. PREVIOUS YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$10
2. CURRENT YEAR'S GROSS TOTAL TAXABLE ASSESSED VALUATION: *	\$50,430
3. LESS TIF DISTRICT INCREMENT, IF ANY:	\$0
4. CURRENT YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$50,430
5. NEW CONSTRUCTION: **	\$0
6. INCREASED PRODUCTION OF PRODUCING MINES: #	\$0
7. ANNEXATIONS/INCLUSIONS:	\$10
8. PREVIOUSLY EXEMPT FEDERAL PROPERTY: #	\$0
9. NEW PRIMARY OIL OR GAS PRODUCTION FROM ANY PRODUCING OIL AND GAS LEASEHOLD OR LAND (29-1-301(1)(b) C.R.S.): ##	\$0
10. TAXES COLLECTED LAST YEAR ON OMITTED PROPERTY AS OF AUG. 1 (29-1-301(1))(a) C.R.S.):	\$0.00
11. TAXES ABATED AND REFUNDED AS OF AUG. 1 (29-1-301(1)(a) C.R.S.) and (39-10-114(1)(a)(I)(B) C.R.S.):	\$0.00

* This value reflects personal property exemptions IF enacted by the jurisdiction as authorized by Art. X, Sec.20(8)(b), Colo.

** New construction is defined as: Taxable real property structures and the personal property connected with the structure.

Jurisdiction must submit respective certifications (Forms DLG 52 AND 52A) to the Division of Local Government in order for the values to be treated as growth in the limit calculation.

Jurisdiction must apply (Forms DLG 52B) to the Division of Local Government before the value can be treated as growth in the limit calculation.

USE FOR 'TABOR' LOCAL GROWTH CALCULATIONS ONLY

IN ACCORDANCE WITH THE PROVISION OF ARTICLE X, SECTION 20, COLO CONST, AND 39-5-121(2)(b), C.R.S. THE ASSESSOR CERTIFIES THE TOTAL ACTUAL VALUATION FOR THE TAXABLE YEAR 2022 IN ADAMS COUNTY, COLORADO ON AUGUST 25, 2022

1. CURRENT YEAR'S TOTAL ACTUAL VALUE OF ALL REAL PROPERTY: @	\$981
ADDITIONS TO TAXABLE REAL PROPERTY:	
2. CONSTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS: !	\$0
3. ANNEXATIONS/INCLUSIONS:	\$1
4. INCREASED MINING PRODUCTION: %	\$0
5. PREVIOUSLY EXEMPT PROPERTY:	\$0
6. OIL OR GAS PRODUCTION FROM A NEW WELL:	\$0
7. TAXABLE REAL PROPERTY OMITTED FROM THE PREVIOUS YEAR'S TAX WARRANT:	\$0
(If land and/or a structure is picked up as omitted property for multiple years, only the most current year's actual value can be reported as omitted property.)	
DELETIONS FROM TAXABLE REAL PROPERTY:	
8. DESTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS:	\$0
9. DISCONNECTIONS/EXCLUSION:	\$0
10. PREVIOUSLY TAXABLE PROPERTY:	\$0

@ This includes the actual value of all taxable real property plus the actual value of religious, private schools, and charitable real property.

! Construction is defined as newly constructed taxable real property structures.

% Includes production from new mines and increases in production of existing producing mines.

IN ACCORDANCE WITH 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES TO SCHOOL DISTRICTS: 1. TOTAL ACTUAL VALUE OF ALL TAXABLE PROPERTY:----->

\$0

NOTE: All levies must be Certified to the Board of County Commissioners NO LATER THAN DECEMBER 15, 2022

IN ACCORDANCE WITH 39-5-128(1.5) C.R.S. THE ASSESSOR PROVIDES:

HB21-1312 ASSESSED VALUE OF EXEMPT BUSINESS PERSONAL PROPERTY (ESTIMATED): **

** The tax revenue lost due to this exempted value will be reimbursed to the tax entity by the County Treasurer in accordance with 39-3-119 f(3), C.R.S.

Data Date: 8/23/2022

AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT

ANNUAL BUDGET

FOR THE YEAR ENDING DECEMBER 31, 2023

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
SUMMARY
2023 BUDGET
WITH 2021 ACTUAL AND 2022 ESTIMATED
For the Years Ended and Ending December 31,**

10/14/22

	ACTUAL 2021	BUDGET 2022	ACTUAL 6/30/2022	ESTIMATED 2022	BUDGET 2023
BEGINNING FUND BALANCES	\$ (787,938)	\$ 4,970,981	\$ (1,042,776)	\$ (1,042,776)	\$ 252,371
REVENUES					
Interest income	-	2	-	-	-
Intergovernmental - Transfer from CIC 4	4,492,222	1,835,355	6,767,152	10,720,849	3,027,628
Intergovernmental - Transfer from CIC 5	1	64	137	137	544
Intergovernmental - Transfer from CIC 8	9,215,044	36,766,498	6,249,916	10,997,987	22,021,601
Intergovernmental Revenues - HM1	1,000,000	-	-	-	-
Reimbursed expenditures	104,000	-	-	-	-
Developer advance	1,610,672	395,000	98,000	225,000	400,000
Total revenues	16,421,939	38,996,919	13,115,205	21,943,973	25,449,773
Total funds available	15,634,001	43,967,900	12,072,429	20,901,197	25,702,144
EXPENDITURES					
General Fund	337,590	410,000	83,442	287,321	400,000
Capital Projects Fund	16,339,187	17,370,000	14,606,630	20,361,505	24,270,000
Total expenditures	16,676,777	17,780,000	14,690,072	20,648,826	24,670,000
Total expenditures and transfers out requiring appropriation	16,676,777	17,780,000	14,690,072	20,648,826	24,670,000
ENDING FUND BALANCES	\$ (1,042,776)	\$ 26,187,900	\$ (2,617,643)	\$ 252,371	\$ 1,032,144

No assurance provided. See summary of significant assumptions.

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
PROPERTY TAX SUMMARY INFORMATION
2023 BUDGET
WITH 2021 ACTUAL AND 2022 ESTIMATED
For the Years Ended and Ending December 31,**

10/14/22

	ACTUAL 2021	BUDGET 2022	ACTUAL 6/30/2022	ESTIMATED 2022	BUDGET 2023
ASSESSED VALUATION					
Agricultural	\$ 40	\$ 10	\$ 10	\$ 10	\$ 10
State assessed	-	-	-	-	280
Personal property	-	-	-	-	50,140
Certified Assessed Value	<u>\$ 40</u>	<u>\$ 10</u>	<u>\$ 10</u>	<u>\$ 10</u>	<u>\$ 50,430</u>
MILL LEVY					
General	0.000	0.000	0.000	0.000	0.000
Total mill levy	<u>0.000</u>	<u>0.000</u>	<u>0.000</u>	<u>0.000</u>	<u>0.000</u>
PROPERTY TAXES					
General	\$ -	\$ -	\$ -	\$ -	\$ -
Budgeted property taxes	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

No assurance provided. See summary of significant assumptions.

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
GENERAL FUND
2023 BUDGET
WITH 2021 ACTUAL AND 2022 ESTIMATED
For the Years Ended and Ending December 31,**

10/14/22

	ACTUAL 2021	BUDGET 2022	ACTUAL 6/30/2022	ESTIMATED 2022	BUDGET 2023
BEGINNING FUND BALANCE	\$ 137,413	\$ 17,525	\$ 65,031	\$ 65,031	\$ 3,338
REVENUES					
Developer advance	265,167	395,000	98,000	225,000	400,000
Intergovernmental - Transfer from CIC 4	40	36	-	36	2,876
Intergovernmental - Transfer from CIC 5	1	64	137	137	544
Intergovernmental - Transfer from CIC 8	-	455	-	455	21,601
Interest income	-	2	-	-	-
Total revenues	265,208	395,557	98,137	225,628	425,021
Total funds available	402,621	413,082	163,168	290,659	428,359
EXPENDITURES					
General and administrative					
Accounting	93,276	106,000	44,669	100,000	115,000
Auditing	11,900	12,500	-	12,500	14,500
Dues and licenses	2,808	3,000	1,724	1,724	3,000
Insurance and bonds	38,072	42,000	11,845	25,000	42,000
District management	38,501	45,000	11,589	45,000	52,000
Legal services	82,191	100,000	12,656	50,000	75,000
Miscellaneous	8,850	5,000	245	2,500	5,000
Election expense	-	5,000	72	72	3,000
Contingency	-	5,975	-	-	4,975
Operations and maintenance					
Utilities - Storm Drainage	189	-	-	-	-
Electricity	76	525	-	525	525
Water	24,225	60,000	-	25,000	60,000
Repairs and maintenance	-	5,000	-	5,000	5,000
Intergovernmental expenditures	34,924	-	-	-	-
Snow removal	1,440	5,000	642	5,000	5,000
Landscape contract	-	10,000	-	10,000	10,000
Landscape repairs and maintenance	1,138	5,000	-	5,000	5,000
Total expenditures	337,590	410,000	83,442	287,321	400,000
Total expenditures and transfers out requiring appropriation	337,590	410,000	83,442	287,321	400,000
ENDING FUND BALANCE	\$ 65,031	\$ 3,082	\$ 79,726	\$ 3,338	\$ 28,359
EMERGENCY RESERVE	\$ 100	\$ -	\$ -	\$ -	\$ 800

No assurance provided. See summary of significant assumptions.

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
CAPITAL PROJECTS FUND
2023 BUDGET
WITH 2021 ACTUAL AND 2022 ESTIMATED
For the Years Ended and Ending December 31,**

10/14/22

	ACTUAL 2021	BUDGET 2022	ACTUAL 6/30/2022	ESTIMATED 2022	BUDGET 2023
BEGINNING FUND BALANCE	\$ (925,351)	\$ 4,953,456	\$ (1,107,807)	\$ (1,107,807)	\$ 249,033
REVENUES					
Developer advance	1,345,505	-	-	-	-
Reimbursed expenditures	104,000	-	-	-	-
Intergovernmental revenues - CIC4	4,492,182	1,835,319	6,767,152	10,720,813	3,024,752
Intergovernmental revenues - CIC8	9,215,044	36,766,043	6,249,916	10,997,532	22,000,000
Intergovernmental Revenues - HM1	1,000,000	-	-	-	-
Total revenues	16,156,731	38,601,362	13,017,068	21,718,345	25,024,752
Total funds available	15,231,380	43,554,818	11,909,261	20,610,538	25,273,785
EXPENDITURES					
Accounting	10,716	13,500	13,999	25,000	28,750
Legal services	5,869	10,000	1,986	10,000	11,500
Organization costs	94,326	-	-	-	-
Construction trailer lease	49,587	50,000	26,980	55,000	60,000
Miscellaneous	2,799	3,000	405	3,000	1,000
Public Arts Fee	21,996	-	-	-	-
Contingency	-	798,500	-	100,000	918,750
Intergovernmental expenditures	88,000	-	-	-	-
Repay Developer advance	-	-	1,343,505	1,343,505	-
Streets	3,625,689	7,100,000	1,147,091	2,000,000	4,500,000
Storm drainage	1,990,017	2,500,000	2,302,306	3,500,000	4,000,000
Engineering	136,552	650,000	82,823	300,000	500,000
Sewer	1,547,865	1,400,000	2,397,603	3,500,000	3,500,000
Water	1,270,816	1,000,000	1,400,242	2,600,000	2,500,000
Construction management	938,000	900,000	635,000	1,300,000	1,000,000
Grading/Earthwork	4,958,856	1,000,000	4,829,156	5,000,000	6,000,000
Erosion control	609,711	500,000	417,874	500,000	800,000
Dry utilities	150,631	-	-	-	-
Utility relocation	4,088	445,000	1,996	5,000	150,000
Parks and recreation	833,669	1,000,000	5,664	120,000	300,000
Total expenditures	16,339,187	17,370,000	14,606,630	20,361,505	24,270,000
Total expenditures and transfers out requiring appropriation	16,339,187	17,370,000	14,606,630	20,361,505	24,270,000
ENDING FUND BALANCE	\$ (1,107,807)	\$ 26,184,818	\$ (2,697,369)	\$ 249,033	\$ 1,003,785

No assurance provided. See summary of significant assumptions.

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

Services Provided

Aurora High Point at DIA Metropolitan District (the “District”), a quasi-municipal corporation is governed pursuant to provisions of the Colorado Special District Act. The District’s service area is located in Adams County, Colorado. Concurrently with the formation of the District (the “Management District”), the City of Aurora approved the formation of Colorado International Center Metropolitan District Nos. 3, 4, 5, 6, 8, 9, and 10 (the “Taxing Districts”) (collectively, the “Aurora High Point Districts”). The District was established to provide public streets, traffic and safety, water, sewer, park and recreation, television relay and translation, and mosquito control facilities and improvements for the use and benefit of the inhabitants and taxpayers of the District.

During elections held on November 2, 2004, and May 3, 2016, the District’s voter’s authorized total general obligation indebtedness of \$10,820,000,000 for the above listed facilities and powers. The elections also approved annual increases in property taxes of up to \$20,000,000, without limitation to rate, to pay the District’s operations and maintenance costs. Per the District’s service plan, the District is prohibited from issuing debt in excess of \$400,000,000.

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

The District prepares its budget on the modified accrual basis of accounting, in accordance with 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

Developer Advances

For 2023, the operational expenditures of the District are anticipated to be funded mainly by the Developer. Developer advances are to be recorded as revenue for budget purposes and may be repaid to the Developer from unpledged revenue in future years.

Intergovernmental Transfers

On January 21, 2005 and as amended on July 27, 2006, the District entered into an agreement with the Taxing Districts, that as the Management District it will own, operate, maintain, finance and construct facilities that benefit all of the Aurora High Point Districts and that the Taxing Districts will contribute to the costs of construction, operation, and maintenance of such facilities. During 2023 it is anticipated that Colorado International Center Metropolitan District No. 4 (CIC No. 4), Colorado International Center Metropolitan District No. 5 (CIC No. 5), and Colorado International Center Metropolitan District No. 8 (CIC No. 8) will transfer all available funds from the imposition of a mill levy for operations and maintenance to the District in compliance with this agreement. CIC No. 3 has terminated its participation in the FFCOA and CIC No. 3 now retains its revenues from the operations mill levy and is responsible for the operations and maintenance of public improvements and property within CIC No. 3.

CIC No. 4 and CIC No. 8 will also transfer project funds from the issuance of their 2019 bonds and 2020 bonds, respectively, to fund capital improvements to be constructed by the District.

**AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

Expenditures

Administrative Expenditures

Administrative expenditures have been provided based on estimates of the District's Board of Directors and consultants and include the services necessary to maintain the District's administrative viability such as legal, accounting, managerial, insurance, meeting expense, and other administrative expenses.

Operations and Maintenance

Certain street and open space landscaping will be owned and maintained by the District. The estimated cost of repairs and maintenance of these areas are found on page 3 of the budget. CIC No. 3, CIC No. 7, and CIC No. 11 have terminated their participation in the FFCOA. The District no longer maintains public improvements or property within CIC No. 3, CIC No. 7, nor CIC No. 11.

Capital Outlay

The District anticipates infrastructure improvements as noted in the Capital Projects fund.

Debt and Leases

Developer Advances

The District's debt is comprised of developer advances, which are not general obligation debt. As of December 31, 2021, the District had \$6,298,616 in outstanding developer advances and interest accrued at 8%. Repayment of advances is subject to annual appropriation if and when eligible funds become available. See below for the anticipated developer advance activity.

	Balance 12/31/2021*	Additions*	Retirements*	Balance 12/31/2022*	Additions*	Retirements*	Balance 12/31/2023*
Developer Advances							
Operations	\$ 2,897,840	\$ 225,000	\$ -	\$ 3,122,840	\$ 400,000	\$ -	\$ 3,522,840
Capital	1,351,596	-	1,343,505	8,091	-	-	8,091
Accrued Interest	2,049,180	348,122	-	2,397,302	274,715	-	2,672,016
	<u>\$ 6,298,616</u>	<u>\$ 573,122</u>	<u>\$ 1,343,505</u>	<u>\$ 5,528,233</u>	<u>\$ 674,715</u>	<u>\$ -</u>	<u>\$ 6,202,947</u>

* Estimated

The District has no general obligation debt, nor operating or capital leases.

Reserves

Emergency Reserve

The District has provided for an emergency reserve fund equal to at least 3% of fiscal year spending for 2023, as defined under TABOR.

This information is an integral part of the accompanying budget.

RESOLUTION NO. 2022 - 10 - __

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT
TO ADOPT THE 2023 BUDGET AND APPROPRIATE SUMS OF MONEY

WHEREAS, the Board of Directors of the Aurora High Point at DIA Metropolitan District ("District") has appointed the District Accountant to prepare and submit a proposed 2023 budget to the Board at the proper time; and

WHEREAS, the District Accountant has submitted a proposed budget to this Board on or before October 15, 2022, for its consideration; and

WHEREAS, upon due and proper notice, published or posted in accordance with the law, said proposed budget was open for inspection by the public at a designated place, a public hearing was held on October 24, 2022, and interested electors were given the opportunity to file or register any objections to said proposed budget; and

WHEREAS, the budget has been prepared to comply with all terms, limitations and exemptions, including, but not limited to, reserve transfers and expenditure exemptions, under Article X, Section 20 of the Colorado Constitution ("TABOR") and other laws or obligations which are applicable to or binding upon the District; and

WHEREAS, whatever increases may have been made in the expenditures, like increases were added to the revenues so that the budget remains in balance, as required by law.

WHEREAS, the Board of Directors of the District has made provisions therein for revenues in an amount equal to or greater than the total proposed expenditures as set forth in said budget; and

WHEREAS, it is not only required by law, but also necessary to appropriate the revenues provided in the budget to and for the purposes described below, as more fully set forth in the budget, including any inter-fund transfers listed therein, so as not to impair the operations of the District.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Aurora High Point at DIA Metropolitan District:

1. That the budget as submitted, amended, and summarized by fund, hereby is approved and adopted as the budget of the Aurora High Point at DIA Metropolitan District for the 2023 fiscal year.

2. That the budget, as hereby approved and adopted, shall be certified by the Secretary of the District to all appropriate agencies and is made a part of the public records of the District.

3. That the sums set forth as the total expenditures of each fund in the budget attached hereto as **EXHIBIT A** and incorporated herein by reference are hereby appropriated from the revenues of each fund, within each fund, for the purposes stated.

ADOPTED this 24th day of October, 2022.

Secretary

(SEAL)

EXHIBIT A
(Budget)

I, Ann E. Finn, hereby certify that I am the duly appointed Secretary of the Aurora High Point at DIA Metropolitan District, and that the foregoing is a true and correct copy of the budget for the budget year 2023, duly adopted at a meeting of the Board of Directors of the Aurora High Point at DIA Metropolitan District held on October 24, 2022.

By: _____
Secretary

**RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT**

A RESOLUTION CALLING AN ELECTION FOR DIRECTOR POSITIONS

WHEREAS, three directors must be elected to four-year terms; and

WHEREAS, successors to these director seats are to be voted upon at the regular District election scheduled for May 2, 2023 (“**Election**”) as required by the Special District Act, Title 32, C.R.S. (“**Act**”); the Uniform Election Code of 1992 and the Colorado Local Government Election Code, Title 1, Article 13.5, C.R.S. (the “**Code**”); and

NOW THEREFORE, be it resolved by the Board of Directors of the Aurora High Point at DIA Metropolitan District as follows:

1. Date and Time of Election. The regular election shall be held on May 2, 2023, between the hours of 7:00 A.M. and 7:00 P.M. pursuant to and in accordance with the Act, the Code and other legal requirements. At that time, three directors shall be elected to four-year terms.
2. Conduct of Election. The Election shall be conducted as an independent mail-ballot election pursuant to Article 13.5 of Title 1.
3. Designated Election Official. Michele Barrasso shall be the Designated Election Official (“**DEO**”). She is authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and of the Act, Code, or other laws.
4. Self-Nomination and Acceptance Forms. Self-nomination and acceptance forms for the director positions are available at the DEO’s offices: 7400 E. Orchard Road, Suite 3300, Greenwood Village, Colorado 80111, or by requesting a form via telephone or e-mail: (303) 303-770-2700 or mbarrasso@svwpc.com. All candidates must file self-nomination and acceptance forms with the DEO no later than 5:00 P.M. on February 24, 2023.
5. Cancellation of Director Election. Pursuant to § 1-13.5-513, C.R.S., if there are not more candidates running than seats to be filled at 5:00 P.M. on February 24, 2023, the DEO shall cancel the portion of the Election related to the director positions and by Resolution declare the candidates elected. Notice of such cancellation shall be published and posted in accordance with law.
6. Severability. If any part or provision of this Resolution is unenforceable or invalid, it shall remain enforceable in accordance with the District Boards manifest intent.
7. Effective Date. The provisions of this Resolution shall take effect October 24, 2022.

ADOPTED AND APPROVED this 24th day of October, 2022.

**AURORA HIGH POINT AT DIA
METROPOLITAN DISTRICT**

President

Attest:

Secretary

BIDDING AND CONTRACT REQUIREMENTS
SECTION 00020 INVITATION TO BID

INVITATION TO BID

The Aurora High Point at DIA Metro District (hereinafter called the “**Owner**”) will receive sealed Bids for the 66th & 67th Avenue Street Light Project (the “**Project**”) at 18591 E 64th Ave, Denver CO, 80249 until 10:00 am. October 27, 2022. At such time, Bids received will be publicly opened and read aloud.

A description of the Work to be performed is: new streetlighting consisting of light poles including foundations, underground conduit, and conductors

Bid packages will be available for pickup after 10:00 am. on October 10, 2022. Send request for bid documents to Nate Lapp at Nate@silverbluffcompanies.com. Include company name, contact name, and contact information.

Bids shall be made on the forms furnished by the Owner and shall be enclosed in a sealed envelope and endorsed with the name of the Bidder. A Bid Bond in an amount equal to ten percent (10%) of the total Bid amount will be required. The Bid Bond will be retained by Owner as liquidated damages should the Successful Bidder fail to enter into a Contract with the Owner in accordance with the Bid. Bidders must supply a list of Subcontractors providing \$10,000 or more in labor and/or materials to the Project.

Attention is called to the fact that Bidders offer to assume the obligations and liabilities imposed by the Contract Documents. The Successful Bidder for the Project will be required to furnish a Performance Bond and a Labor and Materials Payment Bond in the full amount of the Contract Price, in conformity with the requirements of the Contract Documents.

Bidders are hereby advised that the Owner reserves the right to not award a Contract until sixty (60) days from the date of the opening of Bids, and Bidders expressly agree to keep their Bids open for the sixty (60) day time period. Owner reserves the right to reject any and all Bids, to waive any informality, technicality or irregularity in any Bid, to disregard all non-conforming, non-responsive, conditional or alternate Bids, to negotiate contract terms with the Successful Bidder, to require statements or evidence of Bidders’ qualifications, including financial statements, and to accept the proposal that is in the opinion of the Owner in its best interest. Owner also reserves the right to extend the Bidding period by Addendum if it appears in its interest to do so.

Any questions concerning this bid shall be directed in writing to: Nate at Nate@silverbluffcompanies.com no later than October 21, 2022.

END OF SECTION

**SERVICE AGREEMENT FOR
AURORA HIGH POINT AT DIA SNOW REMOVAL**

THIS SERVICE AGREEMENT FOR AURORA HIGH POINT AT DIA LANDSCAPE MAINTENANCE (this “**Agreement**”) is entered into and effective as of the 1st day of August, 2022, by and between **AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **ALL PHASE LANDSCAPE CONSTRUCTION, INC.**, (the “**Consultant**”) (each a “**Party**” and, collectively, the “**Parties**”).

RECITALS

A. The District was organized pursuant to the laws of the State of Colorado in order to construct, operate and maintain certain public facilities and improvements in accordance with its service plan.

B. Pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts and agreements affecting the affairs of the District.

C. The Consultant has experience in providing snow clearing and removal services, as set forth in **Exhibit A** hereto, attached and incorporated herein (the “**Services**”), and is willing to provide such Services to the District for reasonable consideration.

D. The Parties desire to enter into this Agreement to establish the terms by which the Consultant will provide the Services to the District.

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

I. CONSULTANT DUTIES AND AUTHORITY

1.1 Duties of Consultant. The Consultant shall:

(a) Perform the Services, safely and in accordance with the highest standard of care, skill, and diligence provided by a professional consultant in performance of work similar to the Services.

(b) Be properly qualified to perform the Services. The Consultant does hereby warrant that the quality of the Services shall be as specified in this Agreement, shall conform in all respects to the requirements of this Agreement and shall be free of defects and deficiencies.

(c) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required under Section 4.2 hereof.

(d) Advise the District of the status of the Services required by this Agreement on a regular basis and work in coordination with the District's consultants to assure that the District has the most complete information available for the exercise of the District's powers and discretionary authority.

(e) Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District. All obligations incurred by the Consultant shall be obligations of the Consultant and the Consultant shall hold the District harmless therefrom.

1.2 Limitations on Authority.

(a) The Consultant shall have no right or authority, expressed 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 or specifically authorized or ratified by the board of directors of the District as reflected in the minutes of the District board meetings. The Consultant shall at all times conform to the stated policies established and approved by the District.

(b) Independent Contractor Status. The Consultant is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Consultant or any of its employees, agents, subcontractors or suppliers as employees of the District. The District is concerned only with the results to be obtained. **AS AN INDEPENDENT CONTRACTOR, THE CONTRACTOR ACKNOWLEDGES THERE IS NO ENTITLEMENT TO WORKER'S COMPENSATION BENEFITS OR UNEMPLOYMENT BENEFITS THROUGH THE DISTRICT AND THAT THE CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED UNDER THIS AGREEMENT.**

1.3 Compliance with Applicable Law. The Consultant shall provide the Services set forth herein in full compliance with all applicable laws, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction over the activities of the District.

1.4 No Right or Interest in District Assets. The Consultant shall have no right or interest in any of the District's assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

1.5 Work Product. "Work Product" shall consist of all written materials maintained by the Consultant in connection with performance of this Agreement, including, but not limited to, all test results, logs, surveys, maps, plans, drawings, specifications, reports, PDF formatted electronic files and other documents, in whatever form. The Consultant shall maintain reproducible copies of any test results and logs which it obtains and shall make them available for the District's use, and shall provide such copies to the District upon request at reasonable commercial printing rates. Consultant agrees all right, title and interest in the Work Product is and shall remain the property of the District. If requested by the District, Consultant shall

execute and deliver such documents as shall be necessary in the District's sole discretion, to assign, transfer and convey all rights in the Work Product to the District or its assignee. If Consultant fails to execute any documents required under this Section 1.5, then Consultant hereby irrevocably appoints the District its attorney-in-fact for the purpose of executing any required transfers of ownership or interests and any other documents necessary to effectuate this Section 1.5. Further, all Work Product, whether in paper or electronic form, reproductions thereof, or any information or instruments derived therefrom, shall be provided to the District immediately upon termination of this Agreement.

II. COMPENSATION

2.1 Compensation. The Consultant shall be paid on a time and materials basis as set forth in **Exhibit B** attached hereto. The Consultant 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**, unless said reimbursement or compensation approved in writing by the District in advance of incurring such expenses.

2.2 Monthly Invoices and Payments. The Consultant shall submit to the District regular invoices, in a form acceptable to the District. Invoices shall be paid no more frequently than once a month.

2.3 Expenses. The Consultant is responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as set forth in **Exhibit B**, unless otherwise approved in advance by the District in writing.

2.4 Subject to Annual Budget and Appropriation; District Debt. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the District hereunder requiring budgeting and appropriation of funds is subject to annual budgeting and appropriation. Nothing herein constitutes or creates an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

III. TERM AND TERMINATION

3.1 Term. The term of this Agreement shall begin on the date set forth above, and shall expire on June 30, 2023. Extensions of this Agreement must be pursuant to a written amendment executed by both Parties.

3.2 Termination. The District may terminate this Agreement for convenience or for cause, in whole or in part, by written notice of termination given to the Consultant at least thirty (30) days prior to the effective date of such termination. The Consultant may terminate this Agreement for convenience or for cause, in whole or in part, by written notice of termination given to the District at least thirty (30) days prior to the effective date of such termination. Any termination notice provided pursuant to this Section 3.2 shall specify the extent of termination and the effective date of the same.

The District shall pay the Consultant for all Services satisfactorily performed through the termination date.

IV. INDEMNIFICATION AND INSURANCE

4.1 Indemnification. The Consultant shall indemnify, defend and hold the District and its affiliated entities or other persons or entities designated by the District, and their respective directors, trustees, officers, members, managers, agents and employees (collectively, the “**Indemnitees**”), harmless from any and all liability for damage, including, but not limited to, the reimbursement of attorneys’ fees and costs, arising out of death or bodily injury to persons or damage to property, in such amount that is represented by the degree or percentage of negligence or fault attributable to the Consultant and/or its agents, representatives, subcontractors, or suppliers.

4.2 Insurance Requirements. The Consultant shall procure, at its sole cost and expense, the insurance coverages set forth below, which insurance shall be placed with insurance companies rated at least “A:XIII” by A.M. Best Company. The Consultant shall give notice to the District at least thirty (30) days prior to the cancellation or nonrenewal of such policies. The Consultant shall give notice to the District within five (5) business days, or as soon as practicable, of any modification of any such policies. Consultant’s cost of maintaining the insurances required hereunder shall not be considered a reimbursable expense of the Consultant. The Consultant shall, upon request, promptly furnish the District with copies of policies obtained pursuant to this Section 4.2. Prior to commencing the Services, the Consultant shall furnish the District with certificates evidencing such insurance and provided further, however, with respect to the Workers’ Compensation Insurance required below, the Consultant must furnish to the District, prior to the commencement of any Services, duly executed and validated forms as prescribed by the state authority having jurisdiction evidencing that such insurance is in full force and effect. The District shall not pay any invoices until Consultant provides the certificates evidencing such insurance and Workers’ Compensation coverage.

(a) Liability Insurance Coverage.

(i) Workers’ Compensation Insurance. A Workers’ Compensation Insurance Policy in form and substance reasonably acceptable to the District and in an amount not less than the statutory benefits, including Employer’s Liability Insurance with limits of liability of not less than (i) \$500,000 for bodily injury by accident, each accident; (ii) \$500,000 for bodily injury by disease, each employee; and (iii) \$500,000 aggregate liability for disease. The Workers’ Compensation Insurance Policy, or an endorsement to such policy, must include a waiver of subrogation in favor of the District.

(ii) Commercial General Liability Insurance. A Commercial General Liability Insurance Policy written on an occurrence basis, in form and substance reasonably acceptable to the District, which policy shall include the District as an additional insured, a waiver of subrogation endorsement in favor of the District, cross liability and severability of interest endorsements, endorsements providing that the coverage afforded by the insurance policy or policies is primary and non-contributing with any other insurance maintained by or available to the District, and appropriate language providing the following coverages: Premises and Operations Liability; Personal Injury Liability; Broad Form Property Damage

Liability; Contractual Liability supporting the Consultant's indemnification agreements in favor of the District; Completed Operations and Products Liability; and Independent Contractor's Protective Liability. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability.

(iii) Automobile Liability Insurance. An Automobile Liability Insurance Policy written on a per accident basis, in form and substance reasonably acceptable to the District. The Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and non-owned automobiles, and must include uninsured motorist coverages. The Automobile Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each accident for bodily injury and/or property damage.

(iv) Excess Liability Insurance. An Excess Liability Insurance Policy written in excess of the coverages provided by the insurance policies described in the preceding Subsections 4.2(a)(i) - (iii), in form and substance reasonably acceptable to the District, which policy will include the District as additional insured. The Excess Liability Insurance Policy must be written with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury/or property damage and annual aggregate.

(b) Failure to Obtain and Obligation to Maintain Insurance. If the Consultant fails to furnish and maintain insurance as required by this Section 4.2, the District may purchase such insurance on behalf of the Consultant and deduct the cost of such insurance premium(s) from the compensation otherwise owed to the Consultant, and the Consultant shall furnish to the District any information needed to obtain such insurance. Except as otherwise expressly provided herein, all insurance policies required by the terms of this section shall be kept in full force and effect until the date of final payment to the Consultant for the Services specified in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the foregoing insurance requirements are in no way intended to, and will not in any manner, limit or qualify the liabilities and/or indemnities assumed by the Consultant under or pursuant to this Agreement.

(c) Effect of Approval or Acceptance of Insurance. District acceptance and/or approval of any or all of the insurances required hereunder does not and shall not be construed to relieve Consultant from any obligations, responsibilities or liabilities under this Agreement.

4.3 Property Damage. The District must notify the Consultant in writing of any property damage alleged to have been caused by the Consultant or its subcontractor within thirty (30) days of the discovery of such damage. If the Consultant is not notified in writing within thirty (30) days of such discovery, neither the Consultant nor its subcontractor shall be held liable for such damage. If Consultant is notified in writing within thirty (30) days of discovery of

said damage, the District and Contractor will investigate the claim. The Contractor will present the findings and conclusion of its investigation to the District. If such investigation determines that Contractor or its subcontractor is clearly responsible for said damage, the Contractor will be responsible to remedy said damage but only to the extent that the Contractor or its subcontractor has been negligent in the cause of said damage. In such a case, the Consultant will be given the opportunity to remedy applicable damages within a reasonable time frame. If the District disagrees with the finding and conclusion the Contractor's investigation, the District must notify the Contractor in writing within fifteen (15) days of the Contractor's presentation of its findings and conclusion. If the Contractor is not notified within fifteen (15) days of the Contractor's findings and conclusion to the District, the District will accept the Contractor's findings and conclusion as final and binding and the District shall specifically waive the right to pursue any other alternate resolution or claim. If the District does notify the Contractor in writing of its disagreement within said fifteen (15) days, and parties are unable to come to an agreement as to responsibility for damage, the parties shall proceed by first making every effort to meet and resolve the issue between themselves. If unsuccessful, the parties will then engage in non-binding mediation, and then, if that is also unsuccessful, then by binding arbitration. The prevailing party in any arbitration or litigation shall also be awarded the amount of their attorney fees and any reasonable costs incurred in the arbitration or litigation and shall also collect unpaid invoice balances and the interest on unpaid invoice balance.

V. MISCELLANEOUS

5.1 Assignment. The Consultant shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and of no effect.

5.2 Modification; Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Consultant unless the same is in writing and duly executed by the Parties.

5.3 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

5.4 Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

5.5 Governing Law and Jurisdiction This Agreement shall be governed by the laws of the State of Colorado. Court venue and jurisdiction shall be solely in the state and federal courts located in the State of Colorado.

5.6 Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

5.7 Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Consultant any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Consultant shall be for the sole and exclusive benefit of the District and the Consultant.

5.8 Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Aurora High Point at DIA Metropolitan District
4100 E. Mississippi Ave. #500
Denver, CO 80246
Phone: (303) 368-9553
Email: tlaudick@silverbluffcompanies.com
Attn: Ted Laudick

With a Copy To: Seter & Vander Wall, P.C.
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
Phone: (303) 770-2700
Email: cmielke@svwpc.com
Attn: Colin Mielke

To Consultant: All Phase Landscape Construction, Inc.
16080 Smith Rd.
Aurora, CO 80011
Phone: (303) 360-0606
Email: chelmuth@allphaselandscape.net
Attn: Corinna Helmuth
Email: mfisher@allphaselandscape.net
Attn: Mark Fisher

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service, upon electronic confirmation of email transmission, or three (3) business days after deposit in the United States mail. By giving the other Party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

5.9 Default/Remedies. If either Party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the provisions of this Agreement, and if such failure of performance continues for a period of thirty (30) days following written

notice of default from the other Party (or such additional period of time as may reasonably be required to cure such default; provided that the curative action is commenced within such thirty (30) day period and is diligently and continuously pursued to completion), then the non-defaulting Party, at its option, may elect (i) to treat this Agreement as remaining in full force and effect; or (ii) terminate this Agreement as of any specified date. The non-defaulting Party shall additionally be entitled to exercise all remedies available at law or in equity. In the event of any litigation or other proceeding to enforce the terms, covenants or conditions hereof, the non-defaulting Party in any such litigation or other proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

5.10 Instruments of Further Assurance. Each Party covenants it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

5.11 Compliance with Law. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules, and regulations of the jurisdiction in which the Agreement is performed. The Consultant declares it has complied and will comply with all federal, state and local laws regarding business permits, certificates and licenses required to perform the Services.

5.12 Non-Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder. Notwithstanding any provision to the contrary in this Agreement, no term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protection provided to the District under the Colorado Governmental Immunity Act.

5.13 Inurement. This Agreement shall inure to and be binding on the heirs, executors, administrator, successors, and permitted assigns of the Parties hereto.

5.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

5.15 Conflicts. If any term or provision(s) in any Exhibit attached as part of this Agreement conflicts with any term or provision(s) in the body of this Agreement, the term or provision(s) contained in the body of this Agreement shall control.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO SERVICE AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

Consultant:

All Phase Landscape Construction, Inc.

By: _____

Its: _____

District:

AURORA HIGH POINT AT DIA

METROPOLITAN DISTRICT

By: _____

President

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services is as follows:

1. All Phase Landscape will clear area sidewalks highlighted in red on the snow map attached to this **Exhibit A** after a minimum accumulation depth of two inches.
2. All Phase Landscape will plow the parking lot area at the park, as highlighted in green on the snow map attached to this **Exhibit A** after a minimum accumulation depth of four inches. For plowing, snow will be removed as soon as it stops snowing; however, if it is still snowing at 6:00 a.m., plowing will commence to allow cars to get out and All Phase Landscape will return to finish when the snow stops falling.
3. When clearing the snow, All Phase Landscape will apply standard ice melt product to common area sidewalks that are cleared.
4. All Phase Landscape will not provide post-storm site monitoring and ice removal/remediation.

EXHIBIT B COMPENSATION

17) Contracting Officer agrees to pay for services and products at the following Time and Material rates.

SERVICES / HOURLY RATES (does not include product):

Labor - Shovel	\$61.00/hr	Pickup Truck hauling product	\$96.00/hr
Snow Blower *	\$78.00/hr	Truck with Mechanical spreader	\$113.00/hr
ATV with Blade *	\$102.00/hr	Large Tractor (1 ½ - 2 CY. bucket)	\$215.00/hr
Snowplow (no wings)	\$113.00/hr	Large Loader (2 ½ - 3 CY. bucket)	\$264.00/hr
Snowplow with wings	\$126.00/hr	Skid Loader (¾ CY. bucket)	\$143.00/hr
Dump Truck 6 CY	\$193.00/hr	Granular chemical product (by hand)	\$61.00/hr
Snowrator	\$165.00/hr		

* Snow blower and/or ATV use, if requested, is not guaranteed. Use depends on mobilization ability due to weather, road, availability, and scheduling conditions.

PRODUCT PRICING (labor and equipment not included. Please see Section 20 for additional information):

<u>Sidewalks:</u>	Industry standard Ice melt - \$.82 cents per lb.
<u>Parking lots/driveways:</u>	Granular chemical product - \$ 273.00 per ton

MINIMUM CHARGES:

- One (1) hour of associated service (whatever service is provided or performed) + any applied product.
- Mobilization of heavy equipment = \$300.00 minimum charge per time (Heavy equipment = Large Tractor, Large Loader, Skid Loader)
- On-Call services – Any site visit = One (1) hour of associated service (whatever service is provided or performed) + any applied product.

HOLIDAY RATES:

Services performed on Thanksgiving Day, Christmas Day, New Years Day, and/or Easter will be billed at DOUBLE THE NORMAL RATE.

FUEL SURCHARGE:

Contractor may add a fuel surcharge to any invoice at the time of billing.

18) TRAVEL TIME – Travel time will be billed.

19) Credit Card payment surcharge – Contractor will charge a 2% surcharge on all credit card transactions for any invoice paid by credit card.

SNOW MOVING AGREEMENT

- 1) This agreement, dated **August 1, 2022**, is made by and between **Aurora High Point at DIA Metropolitan District (Contracting Officer)** and **All Phase Landscape Construction, Inc. (All Phase)**. The term of this agreement shall be in effect for the period of the date the agreement is accepted, signed, and dated by All Phase (below), through June 30, 2023. Services shall be performed at a site known as **Aurora High Point at DIA Metropolitan District** located at areas **off Dunkirk Street and also off 64th Ave, Denver, CO. 80019 (only snow service areas as highlighted on snow map dated 12/27/21).** All Phase shall provide the services of this agreement in a workmanlike manner and to the reasonable satisfaction of Contracting Officer and shall perform services according to accepted industry standards. All labor, equipment and materials will be furnished by All Phase, whether by All Phase or subcontractor
- 2) Contracting Officer may be represented by an authorized and disclosed Agent. From the outset of this project the Authorized Agent is **Silverbluff Companies**. **Silverbluff Companies** is an authorized and disclosed agent of the Contracting Officer. All Phase may rely upon any representations or direction by the Authorized Agent of the Contracting Officer as if same had been made by the Contracting Officer. It is acknowledged by all parties that Contracting Officer may change the designated Authorized Agent during the project. In the event of said change in Authorized Agent, Contracting Officer has an obligation to notify All Phase in writing of any such change, however, once All Phase discovers that Contracting Officer has a new Authorized Agent, whether or not All Phase is notified in writing, All Phase may rely upon any representations or direction by the new Authorized Agent as if same had been made by Contracting Officer.
- 3) **Contracting Officer and any of its representatives and agents, including any Authorized Agent, specifically agree to INDEMNIFY, DEFEND, and HOLD HARMLESS All Phase, its employees and its agents, including its subcontractors (collectively "Contractor Indemnitees"),** for, from and against any and all claims, suits, damages, injuries, losses, and expenses, including third party claims, and including but not limited to attorney fees and court costs that occur as a result of or are directly related to the performance of work by Contractor Indemnitees under this agreement including but not limited to claims that allege any injury or property damage for incidents that occur as the result of snow, snow removal, ice, slush and /or water from melting snow or refreezing. Contracting Officer, however, shall not be obligated under this agreement to indemnify, defend, or hold harmless to the extent that Contractor Indemnitees are negligent or responsible for omissions in the cause of said claims, suits, injuries, losses, expenses or property damage. Absent negligence on the part of All Phase, its employees, its agents, or subcontractors, All Phase assumes no liability. **This agreement is subject to C.R.S. 13-21-129.** The Contracting Officer and All Phase shall be responsible to investigate all claims.
- 4) Contracting Officer must notify All Phase in writing of any property damage alleged to have been caused by All Phase or its subcontractor within thirty (30) days of event of said damage. If All Phase *is not* notified in writing by Contracting Officer within thirty (30) days of event of said damage, neither All Phase nor its subcontractor will be held liable for said damage. If All Phase *is* notified in writing within thirty (30) of event of said damage, Contracting Officer and All Phase will investigate the claim. All Phase will present the findings and conclusion of its investigation to Contracting Officer. If such investigation determines that All Phase or its subcontractor is clearly responsible for said damage, All Phase will be responsible to remedy said damage but only to the extent that All Phase or its subcontractor has been negligent in the cause of said damage. In such case, All Phase will be given the opportunity to remedy applicable damages within a reasonable time frame. If the Contracting Officer disagrees with the findings and conclusion of the All Phase investigation, Contracting Officer must notify All Phase in writing within fifteen (15) days of All Phase's presentation of its findings and conclusion to the Contracting Officer. If All Phase *is not* notified within fifteen (15) days of All Phase's presentation of its findings and conclusion to the Contracting Officer, the Contracting Officer will accept All Phase's findings and conclusion as final and binding and the Contracting Officer SHALL SPECIFICALLY WAIVE THE RIGHT to pursue any other alternate resolution or claim. If Contracting Officer *does* notify All Phase in writing of its disagreement with the findings and conclusion of All Phase's investigation within said fifteen (15) days, and parties are unable to come to an agreement as to responsibility for damage, the parties shall proceed pursuant to Section 8 below. All Phase is not responsible for damages caused by Acts of God (e.g. storm damages from snow, wind, hail, etc.), vandalism, the negligent acts (active or passive) or omissions of others, or any other claims not directly attributable to its work.

X

Initials: Contracting / Date
Officer

Initials: All Phase/ Agreement Effective Date

- 5) Services performed will be invoiced and billed upon completion of work. Contracting Officer agrees to pay invoices in full to All Phase within thirty (30) days of the invoice date. Contracting Officer agrees to pay 12% interest on any outstanding balance on invoices not paid within thirty (30) days of invoice date. **All Phase must be notified in writing of any dispute of services rendered and/or the billing of any services (or any dispute of a portion of the services or billing) within forty-five (45) days of invoice date. If All Phase is not notified in writing within said forty-five (45) days, the Contracting Officer SPECIFICALLY WAIVES THE RIGHT to dispute the services and/or billing and agrees to pay the full amount of the invoice.** If only a portion of the services and/or billing of services is disputed on any invoice, Contracting Officer agrees to pay the undisputed portion of the invoice within thirty (30) days of invoice date and provide written notification to All Phase of disputed portion within the dispute time frame and per the terms noted above. Contracting Officer agrees to pay any and all expenses, including but not limited to attorney fees, accrued by All Phase for the collection of any past due amounts owed. All Phase will not be required to bill or collect from a third party for any product or any work performed pursuant to this agreement, or otherwise done for the benefit of the site. Contracting Officer agrees that it is responsible and liable for full payment of any performed work and of applied or provided product materials. Invoices, payments, and all correspondence shall be mailed, faxed or emailed to:
- | | |
|---|---|
| All Phase Landscape Construction, Inc. | Aurora High Point Metropolitan District |
| 16080 E. Smith Rd. | c/o Silverbluff Companies, Attn: Ted Laudick |
| Aurora, Co. 80011 | 4100 E. Mississippi Ave. #500, Denver, CO. 80246 |
| Phn: 303.360.0606 / Fax: 303.360.7979 | Phn: 303.638.9553 /// Fax: 303.484.8219 |
- chelmuth@allphaselandscape.net or mfisher@allphaselandscape.net , Tlaudick@SilverbluffCompanies.com, or other accepted All Phase e-mail address or Contracting Officer address, e-mail address or fax.**
- 6) At its own expense, All Phase will maintain for the duration of term of this agreement, its General Liability Insurance, Automobile Liability Coverage and Workman's Compensation Insurance. All Phase will provide insurance certificate(s) to the Contracting Officer upon request, as evidence of this coverage. Any special insurance requests outside All Phase's standard insurance coverage (as determined by All Phase), may be provided, at All Phase's discretion, and may cost the Contracting Officer an additional fee.
- 7) Either party may terminate this agreement with or without cause, upon written notice to the other party. Final payment upon termination: Final invoices for snow services will be determined by All Phase within thirty (30) days of the last day snow services are provided and Contracting Officer agrees to pay all final invoices and all other unpaid invoices within ten (10) days of the final invoice date or within ten (10) days of the termination effective date, whichever is later.
- 8) Except in the case of a mechanic's lien, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled as per the following process: a) parties will make every effort to meet and resolve the issue between themselves, b) if unable to resolve in meeting between themselves, then by non-binding mediation, c) if unable to resolve by non-binding mediation, then by binding arbitration. The decision to enter into such arbitration shall be initiated by either party of this Agreement. The substantially prevailing party in any arbitration or litigation shall also be awarded the amount of their attorney fees and any reasonable costs incurred in the arbitration or litigation and shall also collect unpaid invoice balances and the interest on unpaid invoice balances.
- 9) This agreement shall be governed by and construed in accordance with laws of the State of Colorado, without regard to principles of conflicts of law. The parties agree that sole venue shall be in the state and federal courts located in the State of Colorado and each party hereby consents to jurisdiction of such courts over itself in any action relating to this agreement.
- 10) If any provision of this agreement is determined to be unenforceable or invalid for any reason, then the unenforceable and/or invalid portion shall be deemed conformed to the minimum requirements of law to the extent possible. In addition, all other terms, conditions, and provisions of this agreement shall not be affected and shall continue to be enforceable and valid to the fullest extent permitted by law.

 _____
Initials: Contracting / Date
Officer

Initials: All Phase/ Agreement Effective Date

11) **Services / Products Requested Specifications:** Please **MARK** either "yes" or "no" **FOR ALL ITEMS** to show what services the Contracting Officer would like performed and what products Contracting Officer would like applied at the site (as per specifications chosen and defined below). If a service is marked "yes", please **CIRCLE** the minimum depth for that service. **SERVICES / PRODUCTS THAT ARE NOT MARKED (LEFT BLANK)** will NOT be provided.

SERVICES: **

Clear sidewalks : / - after a minimum snow accumulation depth of: (please circle): **
Yes No
Less than 1" 1" 2" 3" 4" 5" 6"

Plow parking lots : / - after a minimum snow accumulation depth of: (please circle): **
Yes No
Less than 1" 1" 2" 3" 4" 5" 6"

Shovel individual
resident driveways: / - after a minimum snow accumulation depth of: (please circle): **
Yes No
Less than 1" 1" 2" 3" 4" 5" 6"

OR

Plow individual
resident driveways: / - after a minimum snow accumulation depth of: (please circle): **
Yes No
Less than 1" 1" 2" 3" 4" 5" 6"

PRODUCTS OPTIONS:**

On Pedestrian Sidewalks (sidewalks):

 /
Yes No

Product used is industry standard icemelt. Product will NOT be applied on pedestrian sidewalks unless the service to 'clear sidewalks' is also chosen above and then, only after the minimum depth chosen above is reached to initiate services to 'clear sidewalks' (or as specified in 'Special Instructions' of Section 11 or as specially requested by Contracting Officer or Authorized Agent).

On Vehicular / Parking Lots:

 /
Yes No

Product used is industry standard granular chemical product. Product on parking lots is provided ONLY if the service to 'plow parking lots' is also chosen above and then, only after the minimum depth to initiate the service to 'plow parking lots' is reached (or as specified in the 'Special Instructions' of Section 11 or as specially requested by Contracting Officer or Authorized Agent).

On Vehicular individual RESIDENT Driveway(s):

 /
Yes No

Product used is standard icemelt. Product will NOT be applied on individual resident driveways unless the service to plow or shovel individual resident driveways is also chosen above and then, only after the minimum depth chosen above is reached to initiate services to shovel or plow individual resident driveways (or as specified in 'Special Instructions' of Section 11 or as specially requested by Contracting Officer or Authorized Agent).

Section 11 continues on next page

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11) (cont.)

Post-storm service: site check and ice removal/remediation:

Yes

No

(option available only if minimum snow accumulation depth of 2 INCHES OR LESS is chosen above).

POST-STORM SERVICE OPTION IS AVAILABLE ONLY IF THERE IS A MINIMUM ACCUMULATION DEPTH OF TWO INCHES OR LESS chosen on page 3. The Post-storm service option is NOT available and will not be provided for any site that has a chosen depth of over 2 inches. If the Post-Storm service option is allowed and is marked "yes", then Post-storm service shall BE PROVIDED AFTER A STORM EVENT ONLY IF THE MINIMUM SNOW ACCUMULATION DEPTH CHOSEN ABOVE IS REACHED DURING THAT STORM EVENT and only if initial shoveling and/or plowing services have been performed by All Phase. After initial services are completed for a storm event, All Phase will return to the site to perform post-storm service within 24 – 48 hours after the end of the storm event, unless Contracting Officer requests a sooner post-storm visit in writing to All Phase (as scheduling allows). The post-storm service window shall end immediately upon arrival of a new storm event. The post-storm service includes a site check and upon observance, if needed, ice removal/remediation. All Phase will be limited on the types of post-storm services it can provide, choosing from ONLY THOSE SERVICES MARKED YES" by Contracting Officer ON PAGE 3. Post-storm services are available as scheduling allows. After initial post-storm check, on-going monitoring of a site is not provided unless the Contracting Officer makes a request in writing to All Phase that it provide on-going monitoring for any given storm. A written request for on-going monitoring of the site must be provided for EACH storm, when desired. All Post-storm services are billable.

If Post-storm service: site check and ice removal/remediation is marked "No", then Post-storm service would only be provided upon written request from Contracting Officer to All Phase, for any given storm event. All Phase will endeavor to provide the requested service within 24 - 48 hours of the written request but time frame is subject to the scheduling ability of All Phase. All Post-storm services are billable.

ANY extra SERVICES REQUESTED OUTSIDE THE SERVICES and SPECIFICATIONS and depths CHOSEN ABOVE ON PAGE 3 ARE CONSIDERED "on-call" services and will be provided upon written request to All Phase. Such services shall be provided subject to weather conditions and to the scheduling convenience of All Phase. There shall be NO liability assumed by All Phase for the time frame in which on-call services are provided and no liability assumed in any way by All Phase for last minute directives that Contracting Officer (or its Agent) make during any storm.

Special Instructions - or Additions to services requested (for more space, please continue on a separate sheet):

**** Weather conditions permitting: requested snow moving services and application of requested products shall be as early as possible to facilitate work traffic but work operations are dictated by storm time and weather conditions.**

12) If sidewalk services are requested in Section 11, All Phase shall provide hand or machine (at discretion of All Phase, based on its available resources) removal of snow from all main access sidewalks (or as designated by Contracting Officer specs). Walkways to swimming pools and other summer facilities will NOT be cleared. If requested in Section 11, plowing services will be provided and will be accomplished by mechanically pushing snow to side boundaries and/or windrows as directed by Contracting Officer. Contracting Officer shall be responsible for the removal of all vehicles from parking lot areas so that All Phase can properly and efficiently operate plowing equipment. If vehicles are not removed by the time of plow operations, All Phase shall be obligated to plow only those areas available and open for the safe use and operation of snow moving equipment. All Phase will not plow or clear a single parking space if a car (or cars) are parked on either side and will not plow a parking space that is within 5 feet of another vehicle. All Phase will not clear (shovel or plow) snow between vehicles.

13) If the services and products are requested in Section 11, requested products will be applied as per product manufacturer's recommendations and as per minimum depths to initiate services in Section 11 and other perimeters specified by Contracting Officer in Section 11. If All Phase applies a product, the clean-up of product is not included in the application price. Clean-up services are billed at a separate Time and Materials price. All Phase

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Officer

Initials: All Phase/ Agreement Effective Date

uses the safest snow melting products for all surfaces, including concrete, however, all such products that create a thaw/freeze affect can be harmful to surfaces, including concrete. All Phase will not be liable for any damage to any surfaces due to the use of any ice melting type products.

- 14) If plowing services are provided, it shall be the Contracting Officer's responsibility to clearly define and mark boundaries in the areas to be plowed. All Phase will exercise every caution so as to prevent property damage by plowing equipment. During blizzard conditions, however, larger equipment may need to be mobilized and Contracting Officer acknowledges that damage may likely be caused by use of this equipment. Contracting Officer will not hold All Phase liable for such damage during blizzard conditions unless All Phase has been **grossly negligent**. Claims for such damage are also subject to conditions and procedures in Section 4 above.
- 15) Snow services during major snow falls will be modified and will be determined based on weather conditions, road conditions, and scheduling availability. For initial services and ongoing operations during major snow falls: a) only entryways and drive lanes will be plowed open; b) All Phase will not guarantee that vehicles will not be plowed in; c) When clearing sidewalks, All Phase will shovel only 1 shovel width on sidewalks; d) All Phase will return later, as it is able, to clear more snow; e) All Phase assumes no liability related to the timing in which services and products are provided during major snow storms.
- 16) Snow accumulation depth measurements are determined by measuring snow depth on the north side of a site and/or measuring high traffic areas first. All Phase will endeavor to check depth at 2 - 3 places on the site. When accumulation depth is determined to have met the site snow specifications, the site is serviced as per specifications.
- 17) Contracting Officer agrees to pay for services and products at the following Time and Material rates.

SERVICES / HOURLY RATES (does not include product):

Labor - Shovel	\$61.00/hr	Pickup Truck hauling product	\$96.00/hr
Snow Blower *	\$78.00/hr	Truck with Mechanical spreader	\$113.00/hr
ATV with Blade *	\$102.00/hr	Large Tractor (1 ½ - 2 CY. bucket)	\$215.00/hr
Snowplow (no wings)	\$113.00/hr	Large Loader (2 ½ - 3 CY. bucket)	\$264.00/hr
Snowplow with wings	\$126.00/hr	Skid Loader (¾ CY. bucket)	\$143.00/hr
Dump Truck 6 CY	\$193.00/hr	Granular chemical product (by hand)	\$61.00/hr
Snowrator	\$165.00/hr		

* Snow blower and/or ATV use, if requested, is not guaranteed. Use depends on mobilization ability due to weather, road, availability, and scheduling conditions.

PRODUCT PRICING (labor and equipment not included. Please see Section 20 for additional information):

<u>Sidewalks:</u>	Industry standard Icemelt - \$.82 cents per lb.
<u>Parking lots/driveways:</u>	Granular chemical product - \$ 273.00 per ton

MINIMUM CHARGES:

- One (1) hour of associated service (whatever service is provided or performed) + any applied product.
- Mobilization of heavy equipment = \$300.00 minimum charge per time (Heavy equipment = Large Tractor, Large Loader, Skid Loader)
- On-Call services – Any site visit = One (1) hour of associated service (whatever service is provided or performed) + any applied product.

HOLIDAY RATES:

Services performed on Thanksgiving Day, Christmas Day, New Years Day, and/or Easter will be billed at DOUBLE THE NORMAL RATE.

FUEL SURCHARGE:

Contractor may add a fuel surcharge to any invoice at the time of billing.

- 18) TRAVEL TIME – Travel time will be billed.

- 19) Credit Card payment surcharge – Contractor will charge a 2% surcharge on all credit card transactions for any invoice paid by credit card.

X

Initials: Contracting / Date
Officer

Initials: All Phase/ Agreement Effective Date

- 20) Additional Product Information - Products selected by the Contracting Officer in Section 11 may become unavailable due to conditions beyond the control of All Phase. When product supplies are compromised, different products may be used without notice if deemed critical to the safety of the site. All Phase will attempt to notify customers when this situation prevails, but no financial compensation will be provided to the Contracting Officer when products have to be substituted. If different products are substituted, additional clean up services that are requested by Contracting Officer as a result of All Phase using different products will be billed as an extra charge at the rates listed in Section 17.
- 21) In rare cases, the Contracting Officer may request that services and/or products not be performed or applied. The Contracting Officer must discuss this request with the All Phase Snow Manager and must send an email with specific date and specific request clearly spelled out in the email. The Snow Manager and All Phase's Contract Administrator must both receive the email and must acknowledge receipt before any action is taken for any given storm. **Contracting Officer assumes ALL liability related in any way to its choice not to have services performed or products applied at any time and Contractor will not be liable in any way for not providing services or products if Contracting Officer has opted not to have services performed or products applied for any given storm or snow event.** Failure of Contracting Officer to communicate in writing to Contractor as stated above will not remove ownership and responsibility of said liability from Contracting Officer. All Phase will not agree to do this on an ongoing basis. If a Contracting Officer wants to direct storm by storm, they must sign an on-call snow moving agreement, rather than an agreement with accumulation depth specifications.
- 22) If Contracting Officer requests that a different contract document other than this Snow Moving Agreement document be used to contract for snow services, said other contract document and all associated and linked documents referred to in that contract must be reviewed by All Phase. Once the contract document and all associated and linked documents are provided to All Phase, **a minimum of 20 days is required to review and endeavor to negotiate a final contract for snow services.** All Phase may also require that a **separate administrative review fee** be paid prior to and for review of any such contract and associated and linked documents.
- 23) All terms and conditions of the agreement for work provided at or related to the site are outlined in this Snow Moving Agreement (or additional terms in an alternate master contract document if All Phase and Contracting Officer have contracted for snow services by signing an alternate master contract for snow services other than this Snow Moving Agreement). **ALL PHASE WILL NOT USE OR BE OBLIGATED TO USE ANY PURCHASE ORDER OR WORK ORDER TYPE SYSTEM OR PROCESS FOR ANY SNOW SERVICES.** Snow services and products are provided as per specifications of the agreement. Contractor, Contracting Officer and all of its agents and representatives all agree that NO terms or conditions from any purchase orders, work orders, voucher, tickets, or other such document, process, or number from Contracting Officer or any of its agents or representatives shall apply to this Snow Moving Agreement, or to any alternate master contract, to any of the contract parties, or to any work performed at or related to the site. The Contracting Officer or its agent may provide a single SEASONAL purchase order to be entered on invoices. The Contractor, the Contracting Officer and all of its agents and representatives specifically waive, cancel, dismiss and reject any of the terms and conditions from any purchase orders, work orders, vouchers, tickets, or other such document, process, or number given to Contractor; only accurate scope of work and pricing may apply. Additionally, All Phase specifically reserves the right to charge, and the Contracting Officer agrees to pay, **separate administrative processing fees** to All Phase for any administrative work on the part of All Phase due to using, processing, tracking, invoicing, or obtaining a purchase order, work order, voucher, ticket, signature or other such document, number, or item. All Phase reserves the right to reject or modify any process, procedure, or system related to: invoicing, purchase orders, work orders, vouchers, tickets, or other such document, process, or number, or to obtaining a signature(s) or other item.
- 24) Other than receipt of original signature, signature of this agreement may be sent by facsimile (with confirmation by transmitting machine) and/or the signed agreement transmitted by portable document format ("pdf") file, or like format, which shall be treated as an original signature, and any such signature, facsimile, pdf file or like format, or copy of this signed agreement shall be construed and treated as the original and shall be binding as if it were the original.

X

Initials: Contracting / Date
Officer

Initials: All Phase/ Agreement Effective Date

- 25) This proposal is valid for 120 days from the date (first date) typed in Section 1 or until the All Phase snow schedule is full for the season, whichever is earlier, all at the sole discretion of All Phase.
- 26) The failure to enforce, at any time or for any period of time, any of the terms and conditions of this agreement shall not be construed as a waiver thereof nor of the right to demand enforcement at a later date.
- 27) Where All Phase Landscape or All Phase is referenced, it is understood that it is the same as All Phase Landscape Construction, Inc.
- 28) This Snow Moving Agreement contains the entire agreement and understanding regarding terms and conditions between All Phase and Contracting Officer. No additional terms or conditions can be added or modified without the express written and specific approval of both parties (and subject to section 23).
- 29) **This "Snow Moving Agreement" is only valid with a current, signed All Phase "Landscape Maintenance Contract" for the year 2022/2023, at the discretion of All Phase. The signed Snow Moving Agreement must be received, reviewed, approved and signed by All Phase in order to finalize and initiate this agreement. Once an agreement is finalized (fully signed and filled out by both parties), the site will be added to the All Phase snow schedule. Properties will be added to the snow schedule on a first come, first served basis until the snow schedule is full for the season. Contact All Phase to inquire about availability. Send this agreement to All Phase Landscape Construction, Inc. Mail, fax (303.360.7979) or e-mail to chelmuth@allphaselandscape.net.**

The signers below represent that they are authorized to sign this document and that they have the authority to bind the Contracting Officer (including the Owner and Authorized Agent) and the entities that they are signing for. This agreement is acknowledged and accepted by:

X

Sign: _____
Contracting Officer/Owner/Authorized Agent

Date: _____ Title _____

Print Name: _____

Phone No: _____

Sign: _____
All Phase Landscape Construction, Inc.

Effective Date: _____ Title _____

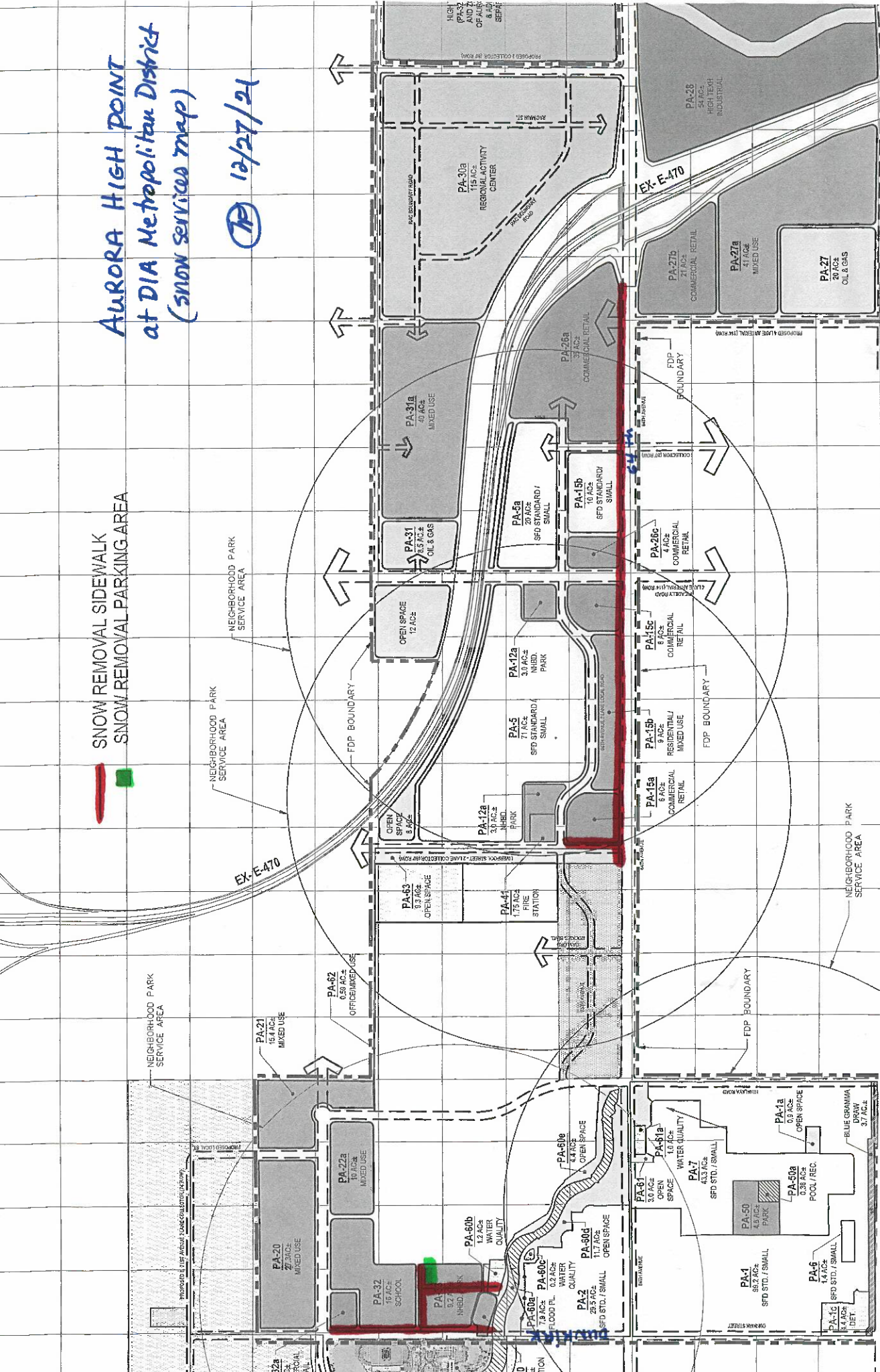
Print Name: _____

**** PLEASE sign page 7 and ALSO INITIAL & DATE PAGES 1, 2, 3, 4, 5, & 6 ****

SNOW REMOVAL SIDEWALK
SNOW REMOVAL PARKING AREA

AURORA HIGH POINT
at DIA Metropolitan District
(snow services map)

12/27/24



(red) = sidewalks
(green) = plow lot

Corinna Helmuth

From: Corinna Helmuth
Sent: Wednesday, January 5, 2022 12:25 PM
To: Ted Laudick
Cc: Shelley Kowalenko
Subject: Aurora High Point at DIA Metro District - governing agreement and snow map
Attachments: Revised snow proposal - Aurora High Point at DIA Metro District.pdf; Aurora High Point at DIA Metro District - snow map dated 12-27-21.pdf

© specs - snow -
Jan - June 2022
Season.
cl

Hello Ted,

I hope that you are doing well today.

As per your verbal direction to Shelley Kowalenko, we are providing snow services at Aurora High Point at DIA Metropolitan District for the period of 12/27/21- 6/30/22. We are providing these services as outlined on the attached Snow Moving Agreement proposal document dated 12/27/21, along with the attached snow map dated 12/27/21 to show areas to be serviced.

We are providing snow services based on the snow specifications provided to Shelley (and that follow the specs for Denver High Point at DIA Metro District):

- Clear only common area sidewalks that are highlighted in red on the snow map dated 12/27/21 - after minimum accumulation depth of 2 inches.
- Plow only the parking lot at the park, as highlighted in green on the snow map dated 12/27/21 - after minimum accumulation depth of 4 inches. For plowing, snow will be removed as soon as it stops snowing, however, if it is still snowing at 6:00 am, plowing will commence to allow cars to get out and All Phase Landscape will return to finish when snow stops.
- When clearing the snow, apply standard icemelt product to common area sidewalks that are cleared.
- NO post -storm monitoring or remediation.

We are providing services with the understanding that the terms and conditions of the All Phase Landscape document and map attached and listed above, shall govern all services provided at Aurora High Point at DIA Metropolitan District for period 12/27/21-6/30/22.

Please notify me if any of this is not correct.

Thank you and have a great day!

Corinna Helmuth
Contract Administrator
All Phase Landscape Construction, Inc.
Office: 303.360.0606 ext. 304 / Direct: 303.856.0037
Fax: 303.360.7979

From: Corinna Helmuth
Sent: Thursday, December 30, 2021 2:38 PM

To: 'Ted Laudick' <tlaudick@silverbluffcompanies.com>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: FW: Snow proposal - Aurora High Point at DIA Metro District, with map

Hi Ted,

Just following up on the snow proposal for Aurora High Point at DIA Metro District, per map. Could you send that back today with pages 3 and 4 filled in? Thank you!

Corinna Helmuth
Contract Administrator
All Phase Landscape Construction, Inc.
Office: 303.360.0606 ext. 304 / Direct: 303.856.0037
Fax: 303.360.7979

From: Corinna Helmuth
Sent: Monday, December 27, 2021 5:27 PM
To: Ted Laudick <tlaudick@silverbluffcompanies.com>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: Snow proposal - Aurora High Point at DIA Metro District, with map

Hi Ted,

Attached is the snow proposal for Aurora High Point at DIA Metro District.

Please:

- 1) Fill in pages 3 and 4 completely
- 2) Initial each page
- 3) Sign page 7

Additionally, I took your map and shrunk it down in black and white and then colored the sidewalks and the parking lot. It will make it easier for our guys to read what areas would be a part of snow services. If anything looks incorrect, just let me know.

Once we receive the snow moving agreement back, we can review and hopefully, sign quickly to get you on the snow schedule.

Thank you!

Corinna Helmuth
Contract Administrator
All Phase Landscape Construction, Inc.
Office: 303.360.0606 ext. 304 / Direct: 303.856.0037
Fax: 303.360.7979

From: Ted Laudick <tlaudick@silverbluffcompanies.com>
Sent: Monday, December 27, 2021 1:52 PM
To: Corinna Helmuth <chelmuth@allphaselandscape.net>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: Re: Snow proposal - High Point Neighborhood Park West - revised

Yes

Thanks,
Ted L. Laudick
Silverbluff Companies
303-638-9553

From: Corinna Helmuth <chelmuth@allphaselandscape.net>
Sent: Monday, December 27, 2021 1:49 PM
To: Ted Laudick <tlaudick@silverbluffcompanies.com>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: RE: Snow proposal - High Point Neighborhood Park West - revised

Hi Ted,

Is the name of the areas that we are servicing "Aurora High Point at DIA Metropolitan District", rather than the "High Point Neighborhood Park West" that was crossed off? In other words, both the name of the entity we are contracting with and the name of the "site" are both Aurora High Point at DIA Metropolitan District?

Once I hear from you, I can revise it how you need it on the proposal.

Thanks!

Corinna Helmuth
Contract Administrator
All Phase Landscape Construction, Inc.
Office: 303.360.0606 ext. 304 / Direct: 303.856.0037
Fax: 303.360.7979

From: Ted Laudick <tlaudick@silverbluffcompanies.com>
Sent: Monday, December 27, 2021 1:44 PM
To: Corinna Helmuth <chelmuth@allphaselandscape.net>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: Re: Snow proposal - High Point Neighborhood Park West - revised

See revisions and map for Aurora.

Thanks,
Ted L. Laudick
Silverbluff Companies
303-638-9553

From: Corinna Helmuth <chelmuth@allphaselandscape.net>
Sent: Wednesday, December 15, 2021 6:10 PM
To: Ted Laudick <tlaudick@silverbluffcompanies.com>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: RE: Snow proposal - High Point Neighborhood Park West - revised

Hello Ted,

I hope all is going well!

Attached is the requested, revised snow proposal for High Point Neighborhood Park West. If all looks correct, please fill in pages 3 and 4 and return the signed agreement.

Since Aurora High Point MD is involved with this site, just wanted to also ask if you have any update on the past due invoices from 2020 that Aurora HP MD has not paid yet?

Thanks Ted!

Corinna Helmuth
Contract Administrator
All Phase Landscape Construction, Inc.
Office: 303.360.0606 ext. 304 / Direct: 303.856.0037
Fax: 303.360.7979

From: Ted Laudick <tlaudick@silverbluffcompanies.com>
Sent: Saturday, December 11, 2021 10:50 AM
To: Corinna Helmuth <chelmuth@allphaselandscape.net>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: Re: Snow proposal - High Point Neighborhood Park West

Thanks Corinna.
Please revise the contract to be with:

Aurora High Point Metro District
4100 E Mississippi Ave #500
Denver CO 80246
attn: Ted Laudick

Please email the contract and invoices to me. I will also put together a map for the areas that I described to Shelley.

Thanks,
Ted L. Laudick
Silverbluff Companies
303-638-9553

From: Corinna Helmuth <chelmuth@allphaselandscape.net>
Sent: Wednesday, December 8, 2021 4:00 PM
To: Ted Laudick <tlaudick@silverbluffcompanies.com>
Cc: Shelley Kowalenko <skowalenko@allphaselandscape.net>
Subject: Snow proposal - High Point Neighborhood Park West

Hello Ted,

Hope you are doing well!

Attached is the snow moving proposal for High Point Neighborhood Park West.

- Please note that there is a **section 11 on pages 3 and 4** that must be fully filled in. If you need additional space, continue specs on a separate sheet.
- We would need to have a highlighted snow map so we could work with you to prep that.
- In order to initiate and effectively schedule services, a reviewed and completely finalized and fully executed agreement (signed by both parties) must be in place at least 1 week prior to snow removal services being required or provided.

If you have any questions, please feel free to call or email.

Thank you and hope you have a nice evening,

Corinna Helmuth
Contract Administrator
All Phase Landscape Construction, Inc.
Office: 303.360.0606 ext. 304 / Direct: 303.856.0037
Fax: 303.360.7979

**SERVICE AGREEMENT FOR
AURORA HIGH POINT AT DIA LANDSCAPE MAINTENENCE**

THIS SERVICE AGREEMENT FOR AURORA HIGH POINT AT DIA LANDSCAPE MAINTENANCE (this “**Agreement**”) is entered into and effective as of the ____ day of _____, 2022, by and between **AURORA HIGH POINT AT DIA METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **ALL PHASE LANDSCAPE CONSTRUCTION, INC.**, (the “**Consultant**”) (each a “**Party**” and, collectively, the “**Parties**”).

RECITALS

A. The District was organized pursuant to the laws of the State of Colorado in order to construct, operate and maintain certain public facilities and improvements in accordance with its service plan.

B. Pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts and agreements affecting the affairs of the District.

C. The Consultant has experience in providing the services in the area, scope, and manner as set forth in **Exhibit 1** hereto, attached and incorporated herein (the “**Services**”), and is willing to provide such Services to the District for reasonable consideration.

D. The Parties desire to enter into this Agreement to establish the terms by which the Consultant will provide the Services to the District.

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

I. CONSULTANT DUTIES AND AUTHORITY

1.1 Duties of Consultant. The Consultant shall:

(a) Perform the Services, safely and in accordance with the highest standard of care, skill, and diligence provided by a professional consultant in performance of work similar to the Services.

(b) Be properly qualified to perform the Services. The Consultant does hereby warrant that the quality of the Services shall be as specified in this Agreement, shall conform in all respects to the requirements of this Agreement and shall be free of defects and deficiencies.

(c) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required under Section 4.2 hereof.

(d) Advise the District of the status of the Services required by this Agreement on a regular basis and work in coordination with the District's consultants to assure that the District has the most complete information available for the exercise of the District's powers and discretionary authority.

(e) Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District. All obligations incurred by the Consultant shall be obligations of the Consultant and the Consultant shall hold the District harmless therefrom.

1.2 Limitations on Authority.

(a) The Consultant shall have no right or authority, expressed 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 or specifically authorized or ratified by the board of directors of the District as reflected in the minutes of the District board meetings. The Consultant shall at all times conform to the stated policies established and approved by the District.

(b) Independent Contractor Status. The Consultant is an independent contractor, as provided in Section 8-40-202(2)(b)(I)-(IV), C.R.S., as amended, and nothing herein contained shall constitute or designate the Consultant or any of its employees, agents, subcontractors or suppliers as employees of the District. The District is concerned only with the results to be obtained. **AS AN INDEPENDENT CONTRACTOR, THE CONTRACTOR ACKNOWLEDGES THERE IS NO ENTITLEMENT TO WORKER'S COMPENSATION BENEFITS OR UNEMPLOYMENT BENEFITS THROUGH THE DISTRICT AND THAT THE CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED UNDER THIS AGREEMENT.**

1.3 Compliance with Applicable Law. The Consultant shall provide the Services set forth herein in full compliance with all applicable laws, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction over the activities of the District.

1.4 No Right or Interest in District Assets. The Consultant shall have no right or interest in any of the District's assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

1.5 Work Product. "Work Product" shall consist of all written materials maintained by the Consultant in connection with performance of this Agreement, including, but not limited to, all test results, logs, surveys, maps, plans, drawings, specifications, reports, PDF formatted electronic files and other documents, in whatever form. The Consultant shall maintain reproducible copies of any test results and logs which it obtains and shall make them available for the District's use, and shall provide such copies to the District upon request at reasonable commercial printing rates. Consultant agrees all right, title and interest in the Work Product is and shall remain the property of the District. If requested by the District, Consultant shall

execute and deliver such documents as shall be necessary in the District's sole discretion, to assign, transfer and convey all rights in the Work Product to the District or its assignee. If Consultant fails to execute any documents required under this Section 1.5, then Consultant hereby irrevocably appoints the District its attorney-in-fact for the purpose of executing any required transfers of ownership or interests and any other documents necessary to effectuate this Section 1.5. Further, all Work Product, whether in paper or electronic form, reproductions thereof, or any information or instruments derived therefrom, shall be provided to the District immediately upon termination of this Agreement.

II. COMPENSATION

2.1 Compensation. The Consultant shall be paid as set forth in **Exhibit 1** attached hereto. The Consultant 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 1**, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses; however, the Consultant shall not be required to obtain prior approval for irrigation system repairs of up to \$300.00 per day. Irrigation system repairs shall be billed on a time and materials basis. All pricing for additional work shall be pre-approved by the District.

2.2 Monthly Invoices and Payments. The Consultant shall submit to the District regular invoices, in a form acceptable to the District. Invoices shall be paid no more frequently than once a month.

2.3 Expenses. The Consultant is responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as set forth in **Exhibit 1**, unless otherwise approved in advance by the District in writing.

2.4 Subject to Annual Budget and Appropriation; District Debt. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the District hereunder requiring budgeting and appropriation of funds is subject to annual budgeting and appropriation. Nothing herein constitutes or creates an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

III. TERM AND TERMINATION

3.1 Term. The term of this Agreement shall begin on the date set forth above, and shall expire on September 30, 2023. Extensions of this Agreement must be pursuant to a written amendment executed by both Parties.

3.2 Termination. The District may terminate this Agreement for convenience or for cause, in whole or in part, by written notice of termination given to the Consultant at least thirty (30) days prior to the effective date of such termination. The Consultant may terminate this Agreement for convenience or for cause, in whole or in part, by written notice of termination given to the District at least thirty (30) days prior to the effective date of such termination. Any termination notice provided pursuant to this Section 3.2 shall specify the extent of termination and the effective date of the same.

The District shall pay the Consultant for all Services satisfactorily performed through the termination date.

IV. INDEMNIFICATION AND INSURANCE

4.1 Indemnification. The Consultant hereby agrees to indemnify, defend and hold the District and its affiliated entities or other persons or entities designated by the District, and their respective directors, trustees, officers, members, managers, agents and employees (collectively, the “**Indemnitees**”), harmless from any and all liability for damage, including, but not limited to, the reimbursement of attorneys’ fees and costs, arising out of death or bodily injury to persons or damage to property, in such amount that is represented by the degree or percentage of negligence or fault attributable to the Consultant and/or its agents, representatives, subcontractors, or suppliers.

4.2 Insurance Requirements. The Consultant shall procure, at its sole cost and expense, the insurance coverages set forth below, which insurance shall be placed with insurance companies rated at least “A:XIII” by A.M. Best Company. The Consultant shall give notice to the District at least thirty (30) days prior to the cancellation or nonrenewal of such policies. The Consultant shall give notice to the District within five (5) business days, or as soon as practicable, of any modification of any such policies. Consultant’s cost of maintaining the insurances required hereunder shall not be considered a reimbursable expense of the Consultant. The Consultant shall, upon request, promptly furnish the District with copies of policies obtained pursuant to this Section 4.2. Prior to commencing the Services, the Consultant shall furnish the District with certificates evidencing such insurance and provided further, however, with respect to the Workers’ Compensation Insurance required below, the Consultant must furnish to the District, prior to the commencement of any Services, duly executed and validated forms as prescribed by the state authority having jurisdiction evidencing that such insurance is in full force and effect. The District shall not pay any invoices until Consultant provides the certificates evidencing such insurance and Workers’ Compensation coverage.

(a) Liability Insurance Coverage.

(i) Workers’ Compensation Insurance. A Workers’ Compensation Insurance Policy in form and substance reasonably acceptable to the District and in an amount not less than the statutory benefits, including Employer’s Liability Insurance with limits of liability of not less than (i) \$500,000 for bodily injury by accident, each accident; (ii) \$500,000 for bodily injury by disease, each employee; and (iii) \$500,000 aggregate liability for disease. The Workers’ Compensation Insurance Policy, or an endorsement to such policy, must include a waiver of subrogation in favor of the District.

(ii) Commercial General Liability Insurance. A Commercial General Liability Insurance Policy written on an occurrence basis, in form and substance reasonably acceptable to the District, which policy shall include the District as an additional insured, a waiver of subrogation endorsement in favor of the District, cross liability and severability of interest endorsements, endorsements providing that the coverage afforded by the insurance policy or policies is primary and non-

contributing with any other insurance maintained by or available to the District, and appropriate language providing the following coverages: Premises and Operations Liability; Personal Injury Liability; Broad Form Property Damage Liability; Contractual Liability supporting the Consultant's indemnification agreements in favor of the District; Completed Operations and Products Liability; and Independent Contractor's Protective Liability. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$2,000,000 for Completed Operations and Products Liability.

(iii) Automobile Liability Insurance. An Automobile Liability Insurance Policy written on a per accident basis, in form and substance reasonably acceptable to the District. The Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and non-owned automobiles, and must include uninsured motorist coverages. The Automobile Liability Insurance Policy must be written with a combined single limit of liability of not less than \$1,000,000 for each accident for bodily injury and/or property damage.

(iv) Excess Liability Insurance. An Excess Liability Insurance Policy written in excess of the coverages provided by the insurance policies described in the preceding Subsections 4.2(a)(i) - (iii), in form and substance reasonably acceptable to the District, which policy will include the District as additional insured. The Excess Liability Insurance Policy must be written with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury/or property damage and annual aggregate.

(b) Failure to Obtain and Obligation to Maintain Insurance. If the Consultant fails to furnish and maintain insurance as required by this Section 4.2, the District may purchase such insurance on behalf of the Consultant and deduct the cost of such insurance premium(s) from the compensation otherwise owed to the Consultant, and the Consultant shall furnish to the District any information needed to obtain such insurance. Except as otherwise expressly provided herein, all insurance policies required by the terms of this section shall be kept in full force and effect until the date of final payment to the Consultant for the Services specified in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the foregoing insurance requirements are in no way intended to, and will not in any manner, limit or qualify the liabilities and/or indemnities assumed by the Consultant under or pursuant to this Agreement.

(c) Effect of Approval or Acceptance of Insurance. District acceptance and/or approval of any or all of the insurances required hereunder does not and shall not be construed to relieve Consultant from any obligations, responsibilities or liabilities under this Agreement.'

4.3 Property Damage. The District must notify the Consultant in writing of any property damage alleged to have been caused by the Consultant or its subcontractor within thirty

(30) days of the discovery of such damage. If the Consultant is not notified in writing within thirty (30) days of such discovery, neither the Consultant nor its subcontractor shall be held liable for such damage. If Consultant is notified in writing within thirty (30) days of discovery of said damage, the District and Contractor will investigate the claim. The Contractor will present the findings and conclusion of its investigation to the District. If such investigation determines that Contractor or its subcontractor is clearly responsible for said damage, the Contractor will be responsible to remedy said damage but only to the extent that the Contractor or its subcontractor has been negligent in the cause of said damage. In such a case, the Consultant will be given the opportunity to remedy applicable damages within a reasonable time frame. If the District disagrees with the finding and conclusion the Contractor's investigation, the District must notify the Contractor in writing within fifteen (15) days of the Contractor's presentation of its findings and conclusion. If the Contractor is not notified within fifteen (15) days of the Contractor's findings and conclusion to the District, the District will accept the Contractor's findings and conclusion as final and binding and the District shall specifically waive the right to pursue any other alternate resolution or claim. If the District does notify the Contractor in writing of its disagreement within said fifteen (15) days, and parties are unable to come to an agreement as to responsibility for damage, the parties shall proceed by first making every effort to meet and resolve the issue between themselves. If unsuccessful, the parties will then engage in non-binding mediation, and then, if that is also unsuccessful, then by binding arbitration. The prevailing party in any arbitration or litigation shall also be awarded the amount of their attorney fees and any reasonable costs incurred in the arbitration or litigation and shall also collect unpaid invoice balances and the interest on unpaid invoice balance.

V. MISCELLANEOUS

5.1 Assignment. The Consultant shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and of no effect.

5.2 Modification; Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of the terms or provisions hereof shall be binding upon the District or the Consultant unless the same is in writing and duly executed by the Parties.

5.3 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

5.4 Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

5.5 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Colorado. Court venue and jurisdiction shall be solely in the state and federal courts located in the State of Colorado.

5.6 Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

5.7 Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Consultant any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Consultant shall be for the sole and exclusive benefit of the District and the Consultant.

5.8 Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Aurora High Point at DIA Metropolitan District
4100 E. Mississippi Ave. #500
Denver, CO 80246
Phone: (303) 368-9553
Email: tlaudick@silverbluffcompanies.com
Attn: Ted Laudick

With a Copy To: Seter & Vander Wall, P.C.
7400 E. Orchard Road, Suite 3300
Greenwood Village, CO 80111
Phone: (303) 770-2700
Email: cmielke@svwpc.com
Attn: Colin Mielke

To Consultant: All Phase Landscape Construction, Inc.
16080 Smith Rd.
Aurora, CO 80011
Phone: (303) 360-0606
Email: chelmuth@allphaselandscape.net
Attn: Corinna Helmuth
Email: mfisher@allphaselandscape.net
Attn: Mark Fisher

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service, upon electronic confirmation of email transmission, or three (3) business days after deposit in the United States mail. By giving the other Party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

5.9 Default/Remedies. If either Party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the provisions of this Agreement, and if such failure of performance continues for a period of thirty (30) days following written notice of default from the other Party (or such additional period of time as may reasonably be required to cure such default; provided that the curative action is commenced within such thirty (30) day period and is diligently and continuously pursued to completion), then the non-defaulting Party, at its option, may elect (i) to treat this Agreement as remaining in full force and effect; or (ii) terminate this Agreement as of any specified date. The non-defaulting Party shall additionally be entitled to exercise all remedies available at law or in equity. In the event of any litigation or other proceeding to enforce the terms, covenants or conditions hereof, the non-defaulting Party in any such litigation or other proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

5.10 Instruments of Further Assurance. Each Party covenants it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

5.11 Compliance with Law. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules, and regulations of the jurisdiction in which the Agreement is performed. The Consultant declares it has complied and will comply with all federal, state and local laws regarding business permits, certificates and licenses required to perform the Services.

5.12 Non-Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder. Notwithstanding any provision to the contrary in this Agreement, no term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protection provided to the District under the Colorado Governmental Immunity Act.

5.13 Inurement. This Agreement shall inure to and be binding on the heirs, executors, administrator, successors, and permitted assigns of the Parties hereto.

5.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

5.15 Conflicts. If any term or provision(s) in any Exhibit attached as part of this Agreement conflicts with any term or provision(s) in the body of this Agreement, the term or provision(s) contained in the body of this Agreement shall control.

5.16 Warranty. The Limited Liability Warranty attached hereto as **Exhibit 2**, is incorporated herein by this reference.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO SERVICE AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

Consultant:

All Phase Landscape Construction, Inc.

By: _____

Its: _____

District:

**AURORA HIGH POINT AT DIA
METROPOLITAN DISTRICT**

By: _____

President

EXHIBIT 1 SERVICES

The Scope of Services in this Exhibit 1 consists of the following four pages from Consultant and identified as:

1. “Exhibit A – Services and Prices”
2. “Exhibit B – Specifications”
3. “Attachment 1 – Additional Services Available”
4. “Service Area Map”

EXHIBIT A - SERVICES and PRICES

Project: High Point Neighborhood Park West

Date: 7/27/2022

Other Additional Services to be scheduled if requested and billed separately upon completion of work. This work is NOT included in monthly scheduled billings.

Basic Services:		Period	Period	Period
		<u>Jan-March</u>	<u>April-Oct</u>	<u>Nov-Dec</u>
Lawn and Ground Maintenance	included		\$4,906.95	
Tree and Shrub Maintenance	included		\$3,760.85	
Turf Fertilization	3		\$1,503.40	
Turf Broadleaf Weeds	2		\$604.90	
Irrigation System*	included		\$2,318.59	
Subtotal			\$13,094.70	
Additional Services:		Frequency		
Aeration	1.00		\$283.22	
Spring Clean Up	1.00		\$236.02	
Winter Policing	22.00	\$934.63		
Winter Prune	1.00	\$991.27		\$623.09
Tree Wrap	1.00			
Tree Unwrap	1.00	\$141.61		\$556.89
Fall Clean Up	4.00			
Winter Water Shrubs	T&M			\$1,510.51
Winter Water Trees	T&M			
Disease - Insect Turf	T&M			
Disease - Insect Trees	T&M			
Disease - Insect Shrubs	T&M			
Fertilize Shrub Beds	T&M			
Fertilize Trees	T&M			
Large Tree Pruning	T&M			
Tree Stake Removal	T&M			
Native / Field Mowing	T&M			
Native weed Control	5.00		\$1,762.26	
	2.00		\$1,419.33	
	T&M			
	T&M			
	T&M			
	T&M			
	T&M			
	T&M			
	T&M			
	T&M			
	T&M			
Dcg Stations w/ bags	T&M			
	T&M			
	T&M			
	T&M			
	T&M			
Subtotals		\$2,067.51	\$16,795.53	\$2,690.49

Scheduled Monthly Billings (does not include other Additional Services that are to be billed separately):

October-22	\$2,399.36	February-23	\$689.17	June-23	\$2,399.36
November-22	\$1,345.24	March-23	\$689.17	July-23	\$2,399.36
December-22	\$1,345.24	April-23	\$2,399.36	August-23	\$2,399.36
January-23	\$689.17	May-23	\$2,399.36	September-23	\$2,399.36

Total of scheduled monthly billings = **\$21,553.53**

The payment schedule is for the convenience of both parties and does not reflect actual work done during a particular month.

* See Comments below for any special inclusions or exceptions.

Comments: Map dated 4/30/21

Irrigation backflow testing can be requested for \$150.00 per backflow (regardless of size) - does NOT include repair costs or any fees.
In order to schedule a backflow test, the Contracting Officer must provide the backflow "test due" letter to Contractor in a timely manner.

X

PLEASE INITIAL:

Contracting / date
Officer

Contractor / date
(All Phase Landscape)

EXHIBIT B – SPECIFICATIONS

Although listed Basic Services are standard on most contracts, the 'Exhibit A- Services and Prices' page will clarify those services accepted by Contracting Officer and to be provided by Contractor (All Phase Landscape). **ONLY THOSE BASIC SERVICES THAT ARE CLASSIFIED AS "included" (and not "T&M") on the 'Exhibit A- Services and Prices' page are to be provided by the Contractor under this contract. Only the additional services with a quoted price that are INCLUDED in the scheduled monthly billings on the 'Exhibit A- Services and Prices' page, will be scheduled by the Contractor. Special exceptions/inclusions may also be noted in the "Comments" section of the 'Exhibit A- Services and Prices' page. Other additional services can be scheduled if requested, and billed upon completion of work. Contracting Officer and Contractor will endeavor to adhere to the All Phase Landscape approval guidelines (copy available, upon request) for additional services, unless both parties agree in writing to an alternate approval process.**

A. LAWN AND GROUND MAINTENANCE (pet waste pickup is NOT included)

- 1) All blue grass and irrigated native seed areas to be mowed as necessary (max. weekly and weather permitting), to promote overall appearance of the Lawn. No credit will be given for missed mows due to any circumstances beyond the control of the Contractor (e.g. weather). Cutting height will be approximately 3 (three)– 4 (four) inches. Ground trash will be picked up and removed at each mowing.
- 2) All cuttings will be removed from sidewalks, driveways and curb areas after each mowing.
- 3) Edging of all sidewalks will be done monthly during the growing season months (April through October) that are included in the Period of Work (any alternate requested frequencies included in the contract will be noted on the 'Exhibit A- Services and Prices' page).
- 4) Trimming will be done as necessary to maintain a well-groomed appearance.

B. TREE AND SHRUB MAINTENANCE

- 1) Pruning consists of one major pruning during the growing season and containment pruning throughout the contract period (any alternate requested frequencies included in the contract will be noted on the 'Exhibit A- Services and Prices' page). Shrubs will be pruned to provide an aesthetically pleasing appearance and to prevent a potentially hazardous condition. Suckers will be controlled as needed. Other additional pruning, such as winter pruning, can be provided upon request and will be billed as directed on the 'Exhibit A- Services and Prices' page.
- 2) The health of all trees and shrubs will be monitored on a regular basis. Recommendations will be made for the proper treatment of any damaging pest problems. Unless a price is included in monthly billings on the 'Exhibit A- Services and Prices' page, all pesticide treatments are an additional optional service. If pesticide treatments are needed, services are billed as specified on the 'Exhibit A- Services and Prices' page or as per separate bid provided by Contractor and approved by Contracting Officer.
- 3) Weeds will be controlled in shrub beds and planter areas with chemicals and hand weeding. Every effort will be made to control grasses and weeds that are growing directly in the shrubs and ground cover. However, control of these weeds and grasses is not guaranteed.**
- 4) Winter pruning will be provided if a price is included in monthly billings on the 'Exhibit A- Services and Prices' page, and will include cutting of grasses and removal of old and dead canes in shrubs. Trees less than 14 feet tall will have broken or damaged limbs removed and lower limbs will be skirted where needed. No shaping of shrubs is performed during winter pruning.

C. TURF FERTILIZATION

- 1) Applications of fertilizer will be applied (frequencies noted under Basic Services) at the rate of a minimum of 1 pound of nitrogen per 1000 square feet per application. All Phase Landscape is licensed for chemical application by the State of Colorado Department of Agriculture. Contractor may also subcontract to another licensed chemical applicator for this service. In any case, Contractor will guarantee the utilization of accepted industry standards of safety in the use and application of chemicals.
- 2) Turf disease and/or insect problems will be brought to the attention of the Contracting Officer. Turf disease and/or insect treatment is NOT included in Basic Services. A separate proposal for treatment will be provided when necessary or the work will be billed on a Time and Materials basis when approved by Contracting Officer.

D. TURF BROADLEAF WEEDS (Weed control does not include noxious, invasive, or hazardous plant material.)

Contractor applies weed control according to industry standards. Treatment usually consists of one (1) full coverage application of pre-emergent, one (1) complete application of post-emergent, and spot spraying throughout growing season.

E. IRRIGATION MAINTENANCE

- 1) Activation of the irrigation system is accomplished in the Spring / winterization (done with use of air compressor) is accomplished in the Fall.
- 2) The irrigation system will be monitored on a regular basis during the Period of Work to ensure proper operation of the system. This is more specifically defined as the monitoring of valves for proper operation, minor adjustment of irrigation heads to insure proper coverage, and the adjustment of irrigation watering times to maintain a pleasing turf appearance. Water conservation is important and every effort will be made to regulate water consumption. Adjustments and repairs of the system due to regular wear and tear or due to vandalism or any special requests outside of the regular schedule are NOT included in Basic Services and will be billed on a Time & Material basis. Contractor will make these adjustments and repairs or will do special requests, and will bill Contracting Officer.
- 3) Contractor is responsible to repair damages caused by the Contractor, subject to all provisions in the General Terms and Conditions of the Landscape Maintenance Contract. An improperly installed system, including improperly installed irrigation heads, will NOT be the Contractor's responsibility. Such repairs or resetting of the system will be billed by the Contractor on a Time & Material basis. Contractor will NOT be responsible for damages caused by malfunctions of the irrigation system; all necessary repairs to the system will be made to bring the system up to operating condition and will be billed on a Time & Materials basis.
- 4) Contracting Officer must communicate any emergency or time sensitive irrigation issues (especially anything related to running water) to the Contractor in a timely and concrete manner (Notice). Emails, emailed work orders, voice messages, and texts are NOT timely or concrete Notice for time sensitive issues unless a quick response is received from Contractor. Contracting Officer must either receive a quick response or speak with someone from All Phase Landscape in a timely manner to ensure that Contractor knows about the issue. Contractor assumes no liability related to untimely or non-concrete notice of emergency or time sensitive issues. Emergency response = within 24 hours of Notice.
- 5) All repairs and adjustments made to the Irrigation system will be billed to the Contracting Officer and not to any third parties.

F. NO THIRD PARTY BILLING - Contractor will NOT bill third parties. Contracting Officer is responsible for payment.

G. WARRANTY - Contractor warrants all its services and install of plants and materials for a period of one (1) year from the date of performance of specific service and/or date of the install. The Limited Liability Warranty offered by All Phase Landscape (LLW) applies. The most up to date LLW that is in place at All Phase Landscape (Maintenance Division) as of the date of the contract or proposal applies. See section 11 of the Landscape Maintenance Contract or a separate copy of the LLW is available, upon request.

H. SURCHARGES – Contractor may add a **fuel surcharge** to any invoice at the time of billing. Contractor will charge a 2% surcharge on all credit card transactions for any invoice paid by credit card.

X PLEASE INITIAL: _____ / _____
Contracting / date
Officer
Contractor / date
(All Phase Landscape)
Page 5 of 6

Attachment I

Additional Services Available

Additional Services can be included in your landscape maintenance contract or performed upon request and acceptance of a separate proposed price. Additional Services performed by All Phase Landscape (Contractor), whether included in the scheduled monthly billings or performed and billed separately, are subject to the 'General Terms and Conditions' of the Landscape Maintenance Contract (Contract). **ONLY THE ADDITIONAL SERVICES WITH A QUOTED PRICE THAT ARE INCLUDED IN THE SCHEDULED MONTHLY BILLINGS ON THE 'EXHIBIT A-Services and Prices' PAGE WILL BE SCHEDULED BY THE CONTRACTOR.** Other additional services can be scheduled if requested and will be billed upon completion of work. All Phase Landscape will NOT bill third parties. Contracting Officer and Contractor will endeavor to adhere to the All Phase Landscape approval guidelines (copy available, upon request) for additional services, unless both parties agree in writing to an alternate approval process.

AERATION AND PROPERTY CLEAN-UPS

- * All turf areas should be aerated at least once per year with a core aerator. Plugs are left to breakdown and return nutrients to the soil. Contractor is not responsible for damage to pipe or utilities that may be buried. However, Contractor will take responsibility for damage to irrigation heads due to its aeration operations (subject to the damage provisions under Section 7 of the Contract).
- * Spring Clean-up and/or Fall Clean-up performed to remove debris from all turf areas and accessible beds. A Fall Clean-up would be performed at some time between Oct. 15th and Dec. 23rd, depending on weather conditions and the contract Period of Work.

WINTER PROGRAM

- * A Winter Policing program includes minor trash/debris removal on a scheduled basis in Turf and ornamental areas (excludes parking lots and native areas), weather permitting, during the period from November 1st to March 31st (and subject to contract Period of Work).
- * Tree wrap of small deciduous trees in the Fall. Unwrap of trees in the Spring.
- * Winter Watering of turf, trees and/or shrubs during dry winter seasons.
- * Contractor is available to assist with the preparation / formulation of landscape plans for the winter and following year growing season..

MISCELLANEOUS ADDITIONAL SERVICES

- * All Phase Landscape is available for miscellaneous additional services such as: landscape & irrigation installation, application of a wetting agent, hardscaping projects, site development, install of rain or moisture sensors, mapping irrigation systems, install of remote controller upgrades to controllers, or any other service that can be successfully undertaken for the benefit of our clients. Irrigation backflow testing can be requested. In order to schedule a backflow test, Contractor must be provided the backflow test due letter from the City or Water Dept. in a timely manner (at least 2 weeks prior to due date). Contractor assumes NO liability whatsoever due to untimely test requests.

Rates for Time & Materials (T&M) work (Equipment rates include Operator) ***

Job Tech. (labor)	\$50.00	per/hr.	String Trimmer	\$59.00	per/hr.
Job Foreman	\$66.00	per/hr.	Mower	\$81.00	per/hr.
Arbor Care Foreman	\$71.00	per /hr.	2 Ton Flat Bed Dump	\$84.00	per/hr.
Irrigation Technician	\$71.00	per/hr.	Hand Tiller	\$66.00	per/hr.
Irrigation Technician:			Brush Hog (6' mower)	\$87.00	per/hr.
Emergency Repair	\$121.00	per/hr.	Batwing Mower	\$150.00	per/hr.
(portal to portal, response within 24 hours)			Skid Steer	\$72.00	per/hr.
Account Mgr./ Project. Mgr.	\$99.00	per/hr.	Backhoe	\$138.00	per/hr.
Director	\$146.00	per/hr.	Trencher - small	\$88.00	per/hr.
Executive	\$174.00	per/hr.	Grading Tractor (small)	\$99.00	per/hr.
Spray Technician	\$70.00	per/hr.	1 1/2 - 2 Yard Loader	\$110.00	per/hr.
Water Truck	\$72.00	per/hr.	2 1/2 - 3 Yard Loader	\$225.00	per/hr.
Pick up Truck (1 ton)	\$84.00	per/hr.			
Irrigation backflow test (repairs needed to pass backflow are not included in test price) = \$150.00 per backflow					

Multi-year / multi-season contracts: hourly rates and backflow tests are subject to change at each yearly/seasonal anniversary date.

*** All rates are for labor, are hourly and based a 40 hour work week. Any work over the 40 hrs of All Phase Landscape payroll for any employee or subcontractor or work done on Holidays will be billed at 1 ½ times the normal rate. Services performed "after hours" will also be billed at 1 ½ times the normal rate (with the exception of emergency irrigation repair which is billed as stated above). "After hours" rates apply to any service requested to be done on weekends or service that is done between the hours of 6:00 pm and 7:00 am on any week day. "After hours" work requests should only be made to prevent damage to persons or property, or to stop continuously running water. Material rates are not included in labor rates and are determined at time of service. The minimum charge for "Time and Materials" work is 1 three-man crew hour (\$166.00), plus materials. Rates are also available for other equipment that is not listed. Contractor will NOT invoice third parties. Contractor may add a fuel surcharge to any invoice at the time of billing. Contractor will charge a 2% surcharge on all credit card transactions for any invoice paid by credit card.

Contractor WARRANTS all its services and install of plants and materials for a period of one (1) year from the date of performance of specific service and/or date of the install. The Limited Liability Warranty offered by All Phase Landscape (LLW) applies. The most up to date LLW that is in place at All Phase Landscape (Maintenance Division) as of the date of the contract or proposal applies. See section 11 of the Landscape Maintenance Contract or a separate copy of the LLW is available, upon request.

Snow moving services are not provided for under this contract. A separate Snow Moving Agreement proposal may be provided upon request, subject to the discretion of the Contractor.

X

PLEASE INITIAL:

Contracting Officer / date

Contractor / date
(All Phase Landscape)
Page 6 of 6

EXHIBIT 2
LIMITED LIABILITY WARRANTY

LANDSCAPE MAINTENANCE CONTRACT

All Phase

LANDSCAPE

303.360.0606

Fax 303.360.7979

16080 Smith Road

Aurora, CO 80011

www.AllPhaseLandscape.net

GENERAL TERMS AND CONDITIONS

1) General Information

Contracting Officer: High Point Neighborhood Park West
P.O. Box 3603
Parker, CO. 80134

Contact: Ted L. Laudick

Contractor: All Phase Landscape Construction, Inc.
(All Phase Landscape)

303-360-0606 ext. 304 / 330

Period of Work: 10/1/2022 - 9/30/2023

Project: High Point Neighborhood Park West
Dunkirk St. and E. 67th Ave.
Aurora, Co. 80019

Phone #: 303.638.9553 (cell)

Fax #: 303.484.8219

County: Adams

E-mail: TLaudick@Silverbluffcompanies.com

Date: 7/27/2022

2) This contract is made by and between the Contractor and the Contracting Officer indicated above. This Landscape Maintenance Contract hereby incorporates the 'General Terms and Conditions' pages (page 1, 2, & 3), 'Exhibit A - Services and Prices' page (page 4), 'Exhibit B - Specifications' (page 5), and 'Attachment I - Additional Services Available' (page 6), as part of this contract. The terms "Contracting Officer", "Contractor", "Project", and "Period of Work" are defined in Section 1 above.

3) The Contractor agrees to provide, whether by All Phase Landscape or by subcontractor, all the labor, transportation, supervision and equipment necessary to carry out the contracted services as outlined and specifically quoted on the 'Exhibit A - Services and Prices' page in compliance with the contract. All work will be performed according to accepted industry standards.

4) The scope of work will include the specific services quoted by Contractor and selected by the Contracting Officer as outlined on 'Exhibit A - Services and Prices' page, and may be changed during the season as agreed upon in writing by both parties. Line items with a frequency of "T&M" (Time & Materials) are NOT included in the contract price.

5) At its own expense, the Contractor will maintain for the duration of the Period of Work, its General Liability Insurance, Automobile Liability Coverage and Workman's Compensation Insurance. The Contractor will provide an insurance certificate to the Contracting Officer upon request, as evidence of this coverage. Any special request outside the Contractor's standard insurance coverage (as determined by Contractor), may be provided at Contractor's discretion, and may cost the Contracting Officer an additional fee NOT included in the contract price.

6) **The Contracting Officer specifically agrees to indemnify, defend, and hold harmless** the Contractor, employees of Contractor, and subcontractors used by Contractor (collectively "Contractor Indemnitees") for, from and against any claims, suits, damages, injuries, losses, and expenses, including but not limited to attorney fees and court costs, that occur as a result of or are directly related to the performance of work by Contractor Indemnitees under this contract. Contracting Officer, however, shall not be obligated under this contract to indemnify or hold harmless the Contractor Indemnitees to the extent that the Contractor Indemnitees are negligent in the cause of said injury or damage. The Contracting Officer and Contractor shall be responsible for investigating all claims.

7) The Contracting Officer must notify Contractor in writing of any property damage alleged to have been caused by Contractor or its subcontractor within thirty (30) days of event of said property damage. If Contractor is not notified in writing by Contracting Officer within thirty (30) days of event of said damage, neither the Contractor nor its subcontractor will be held liable for said damage. If Contractor is notified in writing within thirty (30) days of event of said damage, Contractor and Contracting Officer will investigate the claim. Contractor will present the findings and conclusion of its investigation to the Contracting Officer. If such investigation clearly determines that Contractor or its subcontractor is responsible for said damage, Contractor will be responsible to remedy said damage but only to the extent that Contractor or its subcontractor has been negligent in the cause of said damage. In such case, Contractor will be given the opportunity to remedy applicable damages within a reasonable time frame. If the Contracting Officer disagrees with the findings and conclusion of the Contractor investigation, Contracting Officer must notify the Contractor in writing within fifteen (15) days of Contractor's presentation of its findings and conclusion to the Contracting Officer. If Contractor is NOT notified in writing within fifteen (15) days of Contractor's presentation of its findings and conclusion to Contracting Officer, the Contracting Officer will accept the Contractor's findings and conclusion as final and binding and Contracting Officer will **SPECIFICALLY WAIVE THE RIGHT** to pursue any other alternate resolution or claim. If Contracting Officer does notify Contractor in writing of its disagreement with the findings and conclusion of Contractor investigation within said fifteen (15) days and the parties are unable to come to an agreement as to responsibility for damage, the parties shall proceed pursuant to Section 10 below. The Contractor is NOT responsible for damages caused by Acts of God (e.g. storm damages from snow, wind, hail, etc.), vandalism, the negligent acts (active or passive) or omissions of others, normal operation of the irrigation system, or any other claims not directly attributable to its work.

X

PLEASE INITIAL:

Contracting /
Officer / date

Contractor /
(All Phase Landscape) / date

8) The Contracting Officer agrees to pay the Contractor the total fee for the Basic Services and applicable Additional Services as per the payment schedule and separate quoted prices for services as outlined on the attached 'Exhibit A-Services and Prices' page, as total compensation for the performance of said services. Additionally, Contracting Officer will pay for any other work it authorizes on a Time and Materials (T&M) basis (unless approval is for a separate, specific price agreed upon in advance for such work). The Contracting Officer agrees to pay invoices in full to Contractor within thirty (30) days of the invoice date. Contractor agrees to pay 12% interest on any outstanding balance on invoices not paid within thirty (30) days of invoice date. Contractor must be notified in writing of any dispute of services rendered and/or the billing of any services (or any dispute of a portion of the services or billing) within forty-five (45) days of invoice date. If Contractor is not notified in writing within said forty-five (45) days, the Contracting Officer SPECIFICALLY WAIVES THE RIGHT to dispute the services and/or monies invoiced by the Contractor and agrees to pay the full amount of the invoice. If only a portion of the services and/or monies are disputed on any invoice, Contracting Officer agrees to pay the undisputed portion of the invoice within thirty (30) days of invoice date and to provide written notification to Contractor of disputed portion, within the dispute time frame and per the terms noted above. Contracting Officer agrees to pay any and all expenses, including but not limited to attorney fees, accrued by Contractor for the collection of any past due amounts owed. Contractor will not be required to bill or collect from a third party for any materials or for work performed by Contractor pursuant to this contract, or otherwise done for the benefit of the Project. Contracting Officer agrees that it is responsible and liable for full payment of materials (acquired or installed) and payment of any performed work.

9) Either party may terminate this contract, with or without cause, with thirty (30) days written notice to the other party. If the contract is terminated prior to the end of the Period of Work (defined in Section 1), final billings will be determined by Contractor within thirty (30) days from the final day services are performed at the Project. The final Landscape Maintenance Contract billing will be based on the percentage of work completed by the final day that Contractor performs services at the Project. Additional billing(s) will also be prepared for materials (acquired or installed) and for any extra work performed. The Contracting Officer agrees to pay all unpaid invoices in full within ten (10) days of termination date; all invoices prepared after termination will be paid in full within ten (10) days of invoice date.

10) Except in the case of a mechanic's lien, any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled as per the following process: a) parties will make every effort to meet and resolve the issue between themselves, b) if unable to resolve in meeting between themselves, then by non-binding mediation, c) if unable to resolve by non-binding mediation, then by binding arbitration. The decision to enter into such arbitration shall be initiated by either party of this Contract. The substantially prevailing party in any arbitration or litigation shall also be awarded the amount of their attorney fees and any reasonable costs incurred in the arbitration or litigation and shall also collect unpaid invoice balances and interest on unpaid invoice balances.

11) LIMITED LIABILITY WARRANTY - Contractor warrants all its services and install of plants and materials for a period of one (1) year from the date of performance of specific service and/or specific date of install (the "warranty period"), provided that all applicable plants and materials have been properly maintained by Contracting Officer or Owner or their representative(s) or managing agent(s) during the one (1) year warranty period. Materials furnished and services (work) performed will be free from defects not inherent in the quality required or permitted, will be of good quality and materials will be new unless otherwise required or permitted by contract. This warranty excludes any remedy for damages or defects caused by ordinary wear and tear, improper or insufficient maintenance, insufficient inspections, abuse, vandalism, Acts of God, negligence (active or passive) of the Contracting Officer or Owner or their representative(s) or managing agent(s) or others, any claim not directly attributable to Contractor's work or materials, delay in notification to Contractor, or modifications performed by others. All implied warranties and/or express warranties will not extend beyond the one (1) year warranty period. THIS WARRANTY IS PROVIDED IN LIEU OF OTHER WARRANTIES, EXPRESS OR IMPLIED, AND THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY CONTRACTOR. Written notice of warranty issues must be received by Contractor before the end of the one (1) year warranty period. If Contractor receives such written notice before the end of the one (1) year warranty period, Contractor shall review and, upon determination of validity of warranty issue, Contractor shall have first right to repair/replace any defective plants, material, or work and shall have thirty (30) days to commence the repair/replacement of such defective plants, material, or work. During the one (1) year warranty period, if Contractor is not notified in writing of any defect in the plants, materials and/or work and/or Contractor is not given thirty (30) days to commence the repair/replacement of said defect, then Contractor will not be required to repair and/or replace defective plants, materials and/or work and NO claim for breach of warranty will be brought against Contractor. If the parties cannot resolve a disagreement regarding a warranty issue, parties will proceed pursuant to Section 10 above. No other representations, agreements, or warranties, other than what is written in this contract, are applicable.

12) This contract contains the entire agreement and understanding regarding terms and conditions between the parties. Any prior or subsequent negotiations or considerations not otherwise set forth in this contract are not a part of this contract. If any additional or subsequent documents are presented or produced during the Period of Work, that contain language contrary or contradictory to or are different from the terms and conditions contained in this contract, then the parties agree that the terms and conditions of this Landscape Maintenance Contract shall control. No other terms and conditions can be added except via an Addendum or Amendment specific to this contract, signed by the Contractor and Contracting Officer. The basic scope of work (services and pricing) can be modified if both parties agree to the change in writing. No other terms and conditions can be added for extra work or for repairs via an alternate document provided by the Contractor, except to define or approve the scope (description) and pricing of specific work. All paperwork provided by Contractor for extras and repairs is also subject to Section 13.

13) All contract terms and conditions related to any work provided at or related to the Project are outlined in this Landscape Maintenance Contract. If, at any time, Contracting Officer or any of its agents or representatives provide to Contractor another document or form as a "contract" or "agreement" or "notice" or any form to approve any work, extras, or repairs or requests or requires Contractor to sign



PLEASE INITIAL:

Contracting Officer / date

Contractor / date
(All Phase Landscape)

any document or form, or to use purchase orders, work orders, vouchers, tickets, or other such document, process, or number, and whether Contractor signs or does not sign or uses or does not use any other document, form, or purchase order, work order, voucher, ticket, or other such document, process, or number, **the Contractor, Contracting Officer and all its agents and representatives (the INVOLVED PARTIES) ALL AGREE that NO TERMS AND CONDITIONS FROM ANY OTHER such document or form, or any purchase orders, work orders, vouchers, tickets, or other such document, process or number shall apply to this contract or to any contract parties (or any agents or representatives), or to any work performed at or related to the Project. The INVOLVED PARTIES specifically waive, cancel, dismiss, and reject any terms and conditions from or associated with any other such document, form, purchase orders, work orders, vouchers, tickets, or other such document, process, or number that is provided by Contracting Officer (or its agents or representatives); ONLY accurate scope of work and pricing from such documents, forms, purchase orders, work orders, vouchers, tickets, or other such document shall apply. Additionally, Contractor specifically reserves the right to charge and Contracting Officer agrees to pay, separate administrative processing fees to Contractor for any administrative work on the part of the Contractor due to reviewing, using, processing, tracking, invoicing, or obtaining a purchase order, work order, voucher, ticket, signature, or other such document, process, or number, or other item (FEES ARE NOT INCLUDED in quoted contract price). Contractor reserves the right to reject or modify any process, procedure, or system related to: invoicing, purchase orders, work orders, vouchers, tickets or other such document, process, or number, or to obtaining a signature(s) or other item.**

14) Other than receipt of an original, signature of this contract may be sent by facsimile (with confirmation by transmitting machine) and/or the signed contract transmitted by portable document format ("pdf") file or like format, which shall be treated as an original signature, and any such signature, facsimile, pdf file or like format, or copy of this signed contract shall be construed and treated as the original and shall be binding as if it were the original.

15) At the sole discretion of Contractor, Contractor reserves the right to suspend services at any time, without penalty or liability, if payments are not received in a timely manner (as determined by Contractor) from Contracting Officer. Contractor shall notify Contracting Officer in writing of Contractor's decision to suspend services. Services shall remain suspended, at the sole discretion of the Contractor, or until such time as Contracting Officer's past due invoices are paid in full. Contractor's decision to suspend services (or not to suspend services) does not limit, in any way, other rights or remedies of Contractor herein or available at law or in equity. Contracting Officer agrees that it is responsible and liable for full payment of materials (acquired or installed) and payment of any performed work.

16) If any provision of this contract is determined to be unenforceable or invalid for any reason, then the unenforceable and/or invalid portion shall be deemed conformed to the minimum requirements of law to the extent possible. In addition, all other terms, conditions, and provisions of this contract shall not be affected and shall continue to be enforceable and valid to the fullest extent permitted by law.

17) The failure to enforce at any time or for any period of time, any of the terms or conditions of this contract shall not be construed as a waiver thereof nor of the right to demand enforcement at a later date.

18) This contract shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to principles of conflicts of law. The parties agree that sole venue shall be in the state and federal courts located in the State of Colorado and each party hereby consents to jurisdiction of such courts over itself in any action relating to this contract.

19) If a master contract document other than this Landscape Maintenance Contract is to be used to contract for the services, said other contract document and all associated and linked documents referred to by that contract must be reviewed by Contractor (All Phase Landscape). Once the contract document and all associated and linked documents are provided to Contractor, a minimum of 20 DAYS is required to review and endeavor to negotiate a final contract. Contractor may also require that a separate administrative review FEE be paid prior to and for review of any such contract document and any associated and linked documents. The contract amount of this proposal is subject to change if additional fees, bonds, or other costs are added by Contracting Officer entity, Owner, or managing agent after All Phase has provided this proposal.

20) The contract price is subject to change unless the contract is signed by both parties no later than thirty (30) days after the Period of Work start date (defined in Section 1 above).

21) Contractor may add a Fuel Surcharge to any invoice at the time of billing.

22) Contractor will charge a 2% surcharge on all credit card transactions for any invoice paid by credit card.

23) The signers below represent that they are authorized to sign this document and that they have the authority to bind the entity (including the Owner of Project) that they are signing for.

This contract is acknowledged and accepted by:

PLEASE ALSO INITIAL
ALL OTHER PAGES

Contracting Officer:

Contractor: All Phase Landscape Construction, Inc.

X Sign: _____

Sign: _____
All Phase Landscape Construction, Inc.

Print Name: _____

Print Name: _____

Date: _____ Title: _____

Date: _____ Title: _____

- Signature page -

EXHIBIT A - SERVICES and PRICES

Project: High Point Neighborhood Park West

Date: 7/27/2022

Other Additional Services to be scheduled if requested and billed separately upon completion of work. This work is NOT included in monthly scheduled billings.

	Period	Period	Period
	Jan-March	April-Oct	Nov-Dec
Basic Services:			
Lawn and Ground Maintenance	included	\$4,906.95	
Tree and Shrub Maintenance	included	\$3,760.85	
Turf Fertilization	3	\$1,503.40	
Turf Broadleaf Weeds	2	\$604.90	
Irrigation System*	included	\$2,318.59	
Subtotal		\$13,094.70	
Additional Services:	Frequency		
Aeration	1.00	\$283.22	
Spring Clean Up	1.00	\$236.02	
Winter Policing	22.00	\$934.63	\$623.09
Winter Prune	1.00	\$991.27	
Tree Wrap	1.00		\$556.89
Tree Unwrap	1.00	\$141.61	
Fall Clean Up	4.00		\$1,510.51
Winter Water Shrubs	T&M		
Winter Water Trees	T&M		
Disease - Insect Turf	T&M		
Disease - Insect Trees	T&M		
Disease - Insect Shrubs	T&M		
Fertilize Shrub Beds	T&M		
Fertilize Trees	T&M		
Large Tree Pruning	T&M		
Tree Stake Removal	T&M		
Native / Field Mowing	T&M		
Native weed Control	5.00	\$1,762.26	
	2.00	\$1,419.33	
	T&M		
	T&M		
	T&M		
	T&M		
	T&M		
	T&M		
	T&M		
	T&M		
Dcg Stations w/ bags	T&M		
	T&M		
	T&M		
	T&M		
	T&M		
Subtotals	\$2,067.51	\$16,795.53	\$2,690.49

Scheduled Monthly Billings (does not include other Additional Services that are to be billed separately):

October-22	\$2,399.36	February-23	\$689.17	June-23	\$2,399.36
November-22	\$1,345.24	March-23	\$689.17	July-23	\$2,399.36
December-22	\$1,345.24	April-23	\$2,399.36	August-23	\$2,399.36
January-23	\$689.17	May-23	\$2,399.36	September-23	\$2,399.36

Total of scheduled monthly billings = \$21,553.53

The payment schedule is for the convenience of both parties and does not reflect actual work done during a particular month.

* See Comments below for any special inclusions or exceptions.

Comments: Map dated 4/30/21

Irrigation backflow testing can be requested for \$150.00 per backflow (regardless of size) - does NOT include repair costs or any fees. In order to schedule a backflow test, the Contracting Officer must provide the backflow "test due" letter to Contractor in a timely manner.

PLEASE INITIAL:

Contracting / date
Officer

Contractor / date
(All Phase Landscape)

EXHIBIT B – SPECIFICATIONS

Although listed Basic Services are standard on most contracts, the 'Exhibit A- Services and Prices' page will clarify those services accepted by Contracting Officer and to be provided by Contractor (All Phase Landscape). **ONLY THOSE BASIC SERVICES THAT ARE CLASSIFIED AS "included" (and not "T&M") on the 'Exhibit A-Services and Prices' page are to be provided by the Contractor under this contract. Only the additional services with a quoted price that are INCLUDED in the scheduled monthly billings on the 'Exhibit A-Services and Prices' page, will be scheduled by the Contractor. Special exceptions/inclusions may also be noted in the "Comments" section of the 'Exhibit A- Services and Prices' page. Other additional services can be scheduled if requested, and billed upon completion of work. Contracting Officer and Contractor will endeavor to adhere to the All Phase Landscape approval guidelines (copy available, upon request) for additional services, unless both parties agree in writing to an alternate approval process.**

A. LAWN AND GROUND MAINTENANCE (pet waste pickup is NOT included)

- 1) All blue grass and irrigated native seed areas to be mowed as necessary (max. weekly and weather permitting), to promote overall appearance of the Lawn. No credit will be given for missed mows due to any circumstances beyond the control of the Contractor (e.g. weather). Cutting height will be approximately 3 (three)– 4 (four) inches. Ground trash will be picked up and removed at each mowing.
- 2) All cuttings will be removed from sidewalks, driveways and curb areas after each mowing.
- 3) Edging of all sidewalks will be done monthly during the growing season months (April through October) that are included in the Period of Work (any alternate requested frequencies included in the contract will be noted on the 'Exhibit A-Services and Prices' page).
- 4) Trimming will be done as necessary to maintain a well-groomed appearance.

B. TREE AND SHRUB MAINTENANCE

- 1) Pruning consists of one major pruning during the growing season and containment pruning throughout the contract period (any alternate requested frequencies included in the contract will be noted on the 'Exhibit A-Services and Prices' page). Shrubs will be pruned to provide an aesthetically pleasing appearance and to prevent a potentially hazardous condition. Suckers will be controlled as needed. Other additional pruning, such as winter pruning, can be provided upon request and will be billed as directed on the 'Exhibit A-Services and Prices' page.
- 2) The health of all trees and shrubs will be monitored on a regular basis. Recommendations will be made for the proper treatment of any damaging pest problems. Unless a price is included in monthly billings on the 'Exhibit A-Services and Prices' page, all pesticide treatments are an additional optional service. If pesticide treatments are needed, services are billed as specified on the 'Exhibit A-Services and Prices' page or as per separate bid provided by Contractor and approved by Contracting Officer.
- 3) Weeds will be controlled in shrub beds and planter areas with chemicals and hand weeding. Every effort will be made to control grasses and weeds that are growing directly in the shrubs and ground cover. However, control of these weeds and grasses is not guaranteed.**
- 4) Winter pruning will be provided if a price is included in monthly billings on the 'Exhibit A-Services and Prices' page, and will include cutting of grasses and removal of old and dead canes in shrubs. Trees less than 14 feet tall will have broken or damaged limbs removed and lower limbs will be skirted where needed. No shaping of shrubs is performed during winter pruning.

C. TURF FERTILIZATION

- 1) Applications of fertilizer will be applied (frequencies noted under Basic Services) at the rate of a minimum of 1 pound of nitrogen per 1000 square feet per application. All Phase Landscape is licensed for chemical application by the State of Colorado Department of Agriculture. Contractor may also subcontract to another licensed chemical applicator for this service. In any case, Contractor will guarantee the utilization of accepted industry standards of safety in the use and application of chemicals.
- 2) Turf disease and/or insect problems will be brought to the attention of the Contracting Officer. Turf disease and/or insect treatment is NOT included in Basic Services. A separate proposal for treatment will be provided when necessary or the work will be billed on a Time and Materials basis when approved by Contracting Officer.

D. TURF BROADLEAF WEEDS (Weed control does not include noxious, invasive, or hazardous plant material.)

Contractor applies weed control according to industry standards. Treatment usually consists of one (1) full coverage application of pre-emergent, one (1) complete application of post-emergent, and spot spraying throughout growing season.

E. IRRIGATION MAINTENANCE

- 1) Activation of the irrigation system is accomplished in the Spring / winterization (done with use of air compressor) is accomplished in the Fall.
- 2) The irrigation system will be monitored on a regular basis during the Period of Work to ensure proper operation of the system. This is more specifically defined as the monitoring of valves for proper operation, minor adjustment of irrigation heads to insure proper coverage, and the adjustment of irrigation watering times to maintain a pleasing turf appearance. Water conservation is important and every effort will be made to regulate water consumption. Adjustments and repairs of the system due to regular wear and tear or due to vandalism or any special requests outside of the regular schedule are NOT included in Basic Services and will be billed on a Time & Material basis. Contractor will make these adjustments and repairs or will do special requests, and will bill Contracting Officer.
- 3) Contractor is responsible to repair damages caused by the Contractor, subject to all provisions in the General Terms and Conditions of the Landscape Maintenance Contract. An improperly installed system, including improperly installed irrigation heads, will NOT be the Contractor's responsibility. Such repairs or resetting of the system will be billed by the Contractor on a Time & Material basis. Contractor will NOT be responsible for damages caused by malfunctions of the irrigation system; all necessary repairs to the system will be made to bring the system up to operating condition and will be billed on a Time & Materials basis.
- 4) Contracting Officer must communicate any emergency or time sensitive irrigation issues (especially anything related to running water) to the Contractor in a timely and concrete manner (Notice). Emails, emailed work orders, voice messages, and texts are NOT timely or concrete Notice for time sensitive issues unless a quick response is received from Contractor. Contracting Officer must either receive a quick response or speak with someone from All Phase Landscape in a timely manner to ensure that Contractor knows about the issue. Contractor assumes no liability related to untimely or non-concrete notice of emergency or time sensitive issues. Emergency response = within 24 hours of Notice.
- 5) All repairs and adjustments made to the Irrigation system will be billed to the Contracting Officer and not to any third parties.

F. NO THIRD PARTY BILLING - Contractor will NOT bill third parties. Contracting Officer is responsible for payment.

G. WARRANTY - Contractor warrants all its services and install of plants and materials for a period of one (1) year from the date of performance of specific service and/or date of the install. The Limited Liability Warranty offered by All Phase Landscape (LLW) applies. The most up to date LLW that is in place at All Phase Landscape (Maintenance Division) as of the date of the contract or proposal applies. See section 11 of the Landscape Maintenance Contract or a separate copy of the LLW is available, upon request.

H. SURCHARGES – Contractor may add a **fuel surcharge** to any invoice at the time of billing. Contractor will charge a 2% surcharge on all credit card transactions for any invoice paid by credit card.

X PLEASE INITIAL: _____ / _____
Contracting / date
Officer
Contractor / date
(All Phase Landscape)
Page 5 of 6

Attachment I

Additional Services Available

Additional Services can be included in your landscape maintenance contract or performed upon request and acceptance of a separate proposed price. Additional Services performed by All Phase Landscape (Contractor), whether included in the scheduled monthly billings or performed and billed separately, are subject to the 'General Terms and Conditions' of the Landscape Maintenance Contract (Contract). **ONLY THE ADDITIONAL SERVICES WITH A QUOTED PRICE THAT ARE INCLUDED IN THE SCHEDULED MONTHLY BILLINGS ON THE 'EXHIBIT A-Services and Prices' PAGE WILL BE SCHEDULED BY THE CONTRACTOR.** Other additional services can be scheduled if requested and will be billed upon completion of work. All Phase Landscape will NOT bill third parties. Contracting Officer and Contractor will endeavor to adhere to the All Phase Landscape approval guidelines (copy available, upon request) for additional services, unless both parties agree in writing to an alternate approval process.

AERATION AND PROPERTY CLEAN-UPS

- * All turf areas should be aerated at least once per year with a core aerator. Plugs are left to breakdown and return nutrients to the soil. Contractor is not responsible for damage to pipe or utilities that may be buried. However, Contractor will take responsibility for damage to irrigation heads due to its aeration operations (subject to the damage provisions under Section 7 of the Contract).
- * Spring Clean-up and/or Fall Clean-up performed to remove debris from all turf areas and accessible beds. A Fall Clean-up would be performed at some time between Oct. 15th and Dec. 23rd, depending on weather conditions and the contract Period of Work.

WINTER PROGRAM

- * A Winter Policing program includes minor trash/debris removal on a scheduled basis in Turf and ornamental areas (excludes parking lots and native areas), weather permitting, during the period from November 1st to March 31st (and subject to contract Period of Work).
- * Tree wrap of small deciduous trees in the Fall. Unwrap of trees in the Spring.
- * Winter Watering of turf, trees and/or shrubs during dry winter seasons.
- * Contractor is available to assist with the preparation / formulation of landscape plans for the winter and following year growing season..

MISCELLANEOUS ADDITIONAL SERVICES

- * All Phase Landscape is available for miscellaneous additional services such as: landscape & irrigation installation, application of a wetting agent, hardscaping projects, site development, install of rain or moisture sensors, mapping irrigation systems, install of remote controller upgrades to controllers, or any other service that can be successfully undertaken for the benefit of our clients. Irrigation backflow testing can be requested. In order to schedule a backflow test, Contractor must be provided the backflow test due letter from the City or Water Dept. in a timely manner (at least 2 weeks prior to due date). Contractor assumes NO liability whatsoever due to untimely test requests.

Rates for Time & Materials (T&M) work (Equipment rates include Operator) ***

Job Tech. (labor)	\$50.00	per/hr.	String Trimmer	\$59.00	per/hr.
Job Foreman	\$66.00	per/hr.	Mower	\$81.00	per/hr.
Arbor Care Foreman	\$71.00	per /hr.	2 Ton Flat Bed Dump	\$84.00	per/hr.
Irrigation Technician	\$71.00	per/hr.	Hand Tiller	\$66.00	per/hr.
Irrigation Technician:			Brush Hog (6' mower)	\$87.00	per/hr.
Emergency Repair	\$121.00	per/hr.	Batwing Mower	\$150.00	per/hr.
(portal to portal, response within 24 hours)			Skid Steer	\$72.00	per/hr.
Account Mgr./ Project. Mgr.	\$99.00	per/hr.	Backhoe	\$138.00	per/hr.
Director	\$146.00	per/hr.	Trencher - small	\$88.00	per/hr.
Executive	\$174.00	per/hr.	Grading Tractor (small)	\$99.00	per/hr.
Spray Technician	\$70.00	per/hr.	1 1/2 - 2 Yard Loader	\$110.00	per/hr.
Water Truck	\$72.00	per/hr.	2 1/2 - 3 Yard Loader	\$225.00	per/hr.
Pick up Truck (1 ton)	\$84.00	per/hr.			
Irrigation backflow test (repairs needed to pass backflow are not included in test price) = \$150.00 per backflow					

Multi-year / multi-season contracts: hourly rates and backflow tests are subject to change at each yearly/seasonal anniversary date.

*** All rates are for labor, are hourly and based a 40 hour work week. Any work over the 40 hrs of All Phase Landscape payroll for any employee or subcontractor or work done on Holidays will be billed at 1 ½ times the normal rate. Services performed "after hours" will also be billed at 1 ½ times the normal rate (with the exception of emergency irrigation repair which is billed as stated above). "After hours" rates apply to any service requested to be done on weekends or service that is done between the hours of 6:00 pm and 7:00 am on any week day. "After hours" work requests should only be made to prevent damage to persons or property, or to stop continuously running water. Material rates are not included in labor rates and are determined at time of service. The minimum charge for "Time and Materials" work is 1 three-man crew hour (\$166.00), plus materials. Rates are also available for other equipment that is not listed. Contractor will NOT invoice third parties. Contractor may add a fuel surcharge to any invoice at the time of billing. Contractor will charge a 2% surcharge on all credit card transactions for any invoice paid by credit card.

Contractor WARRANTS all its services and install of plants and materials for a period of one (1) year from the date of performance of specific service and/or date of the install. The Limited Liability Warranty offered by All Phase Landscape (LLW) applies. The most up to date LLW that is in place at All Phase Landscape (Maintenance Division) as of the date of the contract or proposal applies. See section 11 of the Landscape Maintenance Contract or a separate copy of the LLW is available, upon request.

Snow moving services are not provided for under this contract. A separate Snow Moving Agreement proposal may be provided upon request, subject to the discretion of the Contractor.

X

PLEASE INITIAL:

Contracting Officer / date

Contractor / date
(All Phase Landscape)
Page 6 of 6



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

MEMORANDUM

TO: Board of Directors

FROM: Christel Gemski
Executive Vice-President

DATE: September 2, 2022

RE: Notice of 2023 Rate Increase

A rectangular box containing a handwritten signature in blue ink that reads "Christel Gemski".

In accordance with the Management Agreement ("Agreement") between the District and Special District Management Services, Inc. ("SDMS"), at the time of the annual renewal of the Agreement, the hourly rate described in Article III for management and all services shall increase by the CPI (8.5%) per hour.

We hope you will understand that it is necessary to increase our rates due to increasing gas and operating costs along with new laws and rules implemented by our legislature.