

**BLACKSTONE METROPOLITAN DISTRICT**  
**www.blackstonemetro.org**  
**REGULAR MEETING OF THE BOARD OF DIRECTORS**

**Tuesday, November 19, 2024**  
**6:00pm**  
**at**  
**The Blackstone Country Club**  
**7777 S. Country Club Pkwy, Aurora Co. 80016**

**&**  
**VIA Zoom**

<https://us06web.zoom.us/j/2436451038?pwd=dTnF79Jr21dDo7QYamnGC5m9FL4wVS.1&omn=87215672413>

Meeting ID: 243 645 1038

Passcode: BMD7777

**AGENDA**

**I. ATTENDANCE & CALL TO ORDER**

**Board Members:**

<b>Perry Deeds</b>	<b>President</b>	<b>Term to May 2025</b>
<b>Lisa Monahan</b>	<b>Vice President</b>	<b>Term to May 2027</b>
<b>Brent Johnston</b>	<b>Treasurer</b>	<b>Term to May 2025</b>
<b>Marty Liles</b>	<b>Secretary</b>	<b>Term to May 2025</b>
<b>Aaron Jones</b>	<b>Director</b>	<b>Term to May 2027</b>

**District Consultants/Contractors:**

<b>Clint Waldron (WBA)</b>	<b>White Bear Ankele Tanaka &amp; Waldron</b>
<b>Curtis Bourgouin</b>	<b>Clifton Larson Allen LLP</b>
<b>Beau McMahon</b>	<b>Brightstar District Management</b>
<b>Ben Zand</b>	<b>LandTech</b>

**II. DISCLOSURE OF CONFLICTS OF INTEREST**

**III. AGENDA REVIEW / UPDATES OR APPROVAL**

**IV. LANDSCAPE MAINTENANCE REPORT                      PGS 4 - 17**

- a. Landscape Maintenance Report and Update on Approved Work Orders – Ben Zand, Account Manager, Landtech
- b. Consider Work Orders/Proposals
- c. Other Landscape Matters

**V. PUBLIC COMMENT**

- a. Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes. As a general practice, the Board will not discuss/debate these items, nor will the Board make any decisions on items presented during this time, rather the items for follow up. Please click on raise hand during the time of Public Comment.

**VI. FINANCIAL REPORT**

- a. Review Unaudited Financial Statements from October 2024 (**enclosure**) **PGS 18 - 32**
- b. Consider approval of Special District Payroll Services Statement of Work Blackstone MD. (**enclosure**) **PGS 33 - 39**
- c. Consider approval of Special District Preparation Statement of Work Blackstone MD. (**enclosure**) **PGS 40 - 50**

**VII. MANAGEMENT REPORT**

- a. District ARC/Violation Report (**enclosure**) **PGS 51 - 52**
- b. Project Updates:
  - i. No current updates, still working with Vendors to provide bids to the board.

**VIII. CONSENT AGENDA**

The items listed below are a group of items to be acted on with a single motion and vote by the Board. An item may be removed from the consent agenda to the regular agenda by any Board member. Items on the consent agenda are then voted on by a single motion, second, and vote by the Board.

- a. Approve October 29<sup>th</sup>, 2024 Meeting Minutes (**enclosure**) **PGS 53 - 56**
- b. Approve Independent Contractor Agreement with Landtech Contractors, LLC for 2024-2025 Snow Removal Services on Aurora Streets (**enclosure**) **PGS 57 - 76**
- c. Approve and Ratify Payment of Claims in the amount of \$218,863.50 (**enclosure**) **PGS 77**
- d. Consider Approval of Proposal from SWAP for 2025 Detention Pond Inspection, Reporting and Maintenance Services (**enclosure**) **PGS 78 - 79**
- e. Consider Approval of Proposal from Full Spectrum Lighting for 2025 Lighting Maintenance Services (**enclosure**) **PG 80**

**IX. COMMITTEE REPORTS**

- a. Landscape Committee
- b. Architectural/Design Review
- c. Social Committee
- d. Technology Committee

**X. LEGAL REPORTS**

- a. Consider Approval of License Agreement to Allow Access to Fire Hydrant to Adjacent Landowner (Toll)
- b. Discuss and Consider Approval of Independent Contractor Agreement (Arborist Services) with Davey Resource Group, Inc. **(enclosure) PGS 81 - 111**
- c. Discuss Software as a Service Agreement with Davey Resource Group, Inc. **(enclosure) PGS 112 - 142**

**XI. DIRECTOR'S ITEMS**

- a. SARIA Update and Discussion

**XII. PUBLIC COMMENT**

Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes. As a general practice, the Board will not discuss/debate these items, nor will the Board make any decisions on items presented during this time, rather the items for follow up. Please click on raise hand during the time of Public Comment.

**XIII. OTHER BUSINESS**

**XIV. ADJOURNMENT**

# November Monthly Report

Monday, November 11, 2024

Prepared For Blackstone Metropolitan District



**Item 1**

Flowers being removed. Photo taken 10/31/2024.



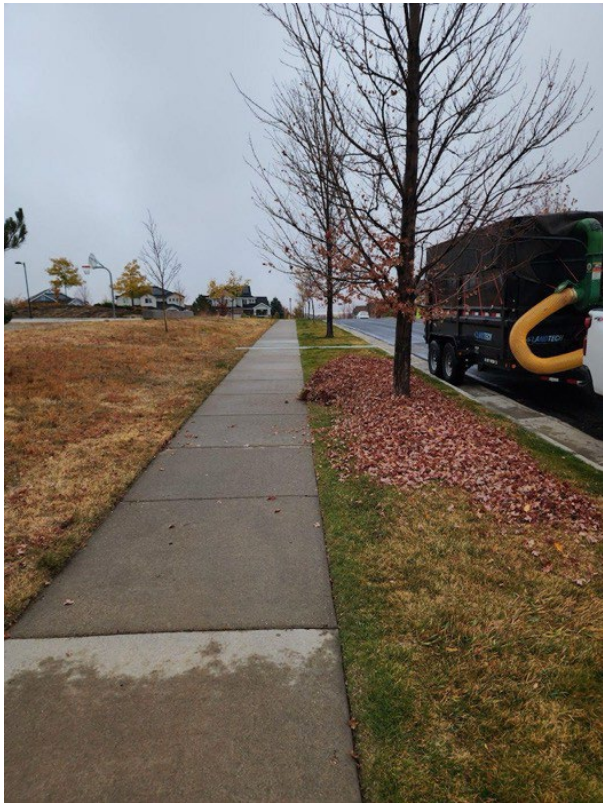
**Item 2**

Southern Monaghan entrance planter after flower removal and clean-up was in progress on 10/31/2024.



**Item 3**

Fall clean-up photo taken on 10/30/2024.



**Item 4**

Leaves about to be picked up by the vacuum truck on 10/30/2024.



**Item 5**

Canyon Park photo on 10/29/2024.



**Item 6**

Country Club pkwy median after leaves were removed on 10/29/224.



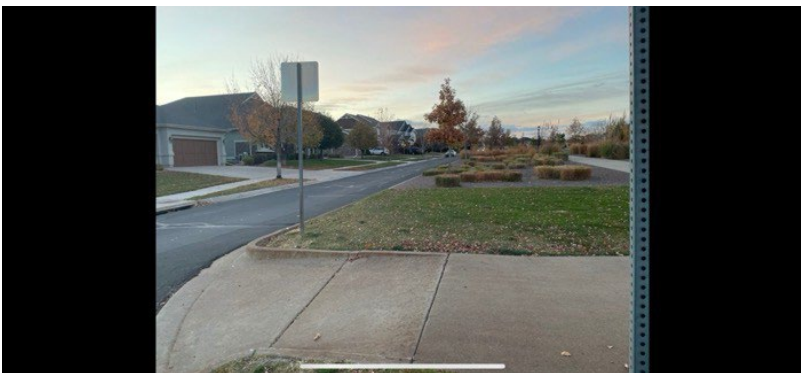
**Item 7**

Additional line of sight clearance was performed on 10/31/2024



**Item 8**

Same as item 7.



**Item 9**

Same as item 7.





**Item 10**

Landtech crew resuming holiday decoration installation on 11/11/2024.

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**Item 11**

Holiday lights installed at Smokey Hill entrance.

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**Item 12**

“Guard shack” at Smokey Hill entrance.



**Item 13**

West side of the bridge at the Smokey Hill entrance. Photo taken on Veterans Day.



**Item 14**

East side of the bridge at the Smokey Hill entrance. 11/11/2024.



**Item 15**

3 flags installed at the Blackstone monument sign. 11/11/2024.



**Item 16**

Flags and holiday decor at Smokey Hill entrance. 11/11/2024.



**Item 17**

Mineral entrance on Veterans Day.



**Item 18**

County line and Blackstone pkwy entrance on 11/11/2024.



**Item 19**

County line and Waterloo entrance by the Hilltop Park. 11/11/2024.



### Item 20

Waterloo entrance on Veterans Day.

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### Item 21

Some of the side roads that we plowed. This is Van Driver way. Multiple plow piles can be seen, we did our best to avoid placing those in front of driveways.

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**Item 22**

Snow piles around the Mineral and Country Club pkwy roundabout on 11/11/2024.



**Item 23**

Photo of a ruler on the road. Zoomed in photo in next picture.



### Item 24

8" of snow on the road at the Monaghan entrance. Photo taken very early on Saturday morning.



## Item 25

### Ongoing Services:

- Weekly maintenance services of mowing are complete for the season. We are onto the weekly winter trash patrol/dog station servicing.
- Installation of Holiday decor. Our goal is to aim for Thursday the 21st to be completed, but the snowstorm set us back a few days. We will still turn on the lights we have installed by that day, but it may not be 100% installed by that day. We will be 100% by the day before Thanksgiving though.

### Completed Services:

- Spring flower removal.
- First fall clean-up performed.

### Upcoming Services:

- Second fall clean-up. We will wait until the end of November/90-95% of the leaves to fall to perform the final clean-up.
- Mulch flip and mulch install for select portions of the community. Would have loved to have done this the week of the 4th, but we will now have to wait for enough snow to melt for the work to be performed. Should be done by the meeting on the 19th.

### Other:

- Only 23 flags/poles were installed for Veterans Day. 6 stakes were nonfunctional for the installation therefore only 23 could be installed. We did 4 at each entrance, and 3 at the Blackstone monument sign. FYI, we have 29 flags in our possession as of writing this report, but we need replacement parts and flags for future installations.
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**BLACKSTONE METROPOLITAN DISTRICT**  
**FINANCIAL STATEMENTS**  
**OCTOBER 31, 2024**

Draft

**Blackstone Metro District  
Balance Sheet - Governmental Funds  
October 31, 2024**

	<u>General</u>	<u>Special Revenue</u>	<u>Debt Service</u>	<u>Capital Projects</u>	<u>Capital Projects - Regional Improvement</u>	<u>Total</u>
<b>Assets</b>						
Checking Account	\$ 29,628.01	\$ 178,973.87	\$ -	\$ 7,156.23	\$ -	\$ 215,758.11
Colostrust	3,020,272.62	-	2,606,422.71	452,406.36	-	6,079,101.69
Accounts Receivable	-	38,235.52	-	-	-	38,235.52
Receivable from County Treasurer	15,294.09	-	10,747.26	-	946.96	26,988.31
<b>Total Assets</b>	<u>\$ 3,065,194.72</u>	<u>\$ 217,209.39</u>	<u>\$ 2,617,169.97</u>	<u>\$ 459,562.59</u>	<u>\$ 946.96</u>	<u>\$ 6,360,083.63</u>
<b>Liabilities</b>						
Accounts Payable	\$ 23,393.26	\$ 155,376.52	\$ -	\$ 7,156.23	\$ -	\$ 185,926.01
Due to SARIA	-	-	-	-	946.96	946.96
Prepaid assessments	-	40,330.16	-	-	-	40,330.16
<b>Total Liabilities</b>	<u>23,393.26</u>	<u>195,706.68</u>	<u>-</u>	<u>7,156.23</u>	<u>946.96</u>	<u>227,203.13</u>
<b>Fund Balances</b>	<u>3,041,801.46</u>	<u>21,502.71</u>	<u>2,617,169.97</u>	<u>452,406.36</u>	<u>-</u>	<u>6,132,880.50</u>
<b>Liabilities and Fund Balances</b>	<u>\$ 3,065,194.72</u>	<u>\$ 217,209.39</u>	<u>\$ 2,617,169.97</u>	<u>\$ 459,562.59</u>	<u>\$ 946.96</u>	<u>\$ 6,360,083.63</u>

**Blackstone Metro District**  
**General Fund Statement of Revenues, Expenditures and Changes in**  
**Fund Balances - Budget and Actual**  
**For the Period Ending October 31, 2024**

	<u>Annual Budget</u>	<u>Actual</u>	<u>Variance</u>
Revenues			
Property taxes	\$ 1,529,464.00	\$ 1,509,501.68	\$ 19,962.32
Specific ownership taxes	91,768.00	91,990.19	(222.19)
Interest Income	81,500.00	112,882.20	(31,382.20)
Other Revenue	-	45,633.15	(45,633.15)
Total Revenue	<u>1,702,732.00</u>	<u>1,760,007.22</u>	<u>(57,275.22)</u>
Expenditures			
Accounting	60,500.00	56,477.91	4,022.09
Auditing	6,500.00	6,500.00	-
County Treasurer's Fee	22,942.00	23,319.98	(377.98)
Directors' fees	6,000.00	4,900.00	1,100.00
Director and meeting expense	2,000.00	3,753.85	(1,753.85)
Insurance	40,000.00	34,125.00	5,875.00
Legal	77,000.00	66,734.70	10,265.30
Miscellaneous	2,000.00	736.93	1,263.07
Payroll taxes	459.00	374.85	84.15
Election	-	217.33	(217.33)
Website	1,500.00	2,276.76	(776.76)
Contingency	27,099.00	-	27,099.00
Total Expenditures	<u>246,000.00</u>	<u>199,417.31</u>	<u>46,582.69</u>
Other Financing Sources (Uses)			
Transfers to other fund	(1,262,233.00)	(351,443.64)	(910,789.36)
Total Other Financing Sources (Uses)	<u>(1,262,233.00)</u>	<u>(351,443.64)</u>	<u>(910,789.36)</u>
Net Change in Fund Balances	194,499.00	1,209,146.27	(1,014,647.27)
Fund Balance - Beginning	1,941,491.00	1,832,655.19	108,835.81
Fund Balance - Ending	<u>\$ 2,135,990.00</u>	<u>\$ 3,041,801.46</u>	<u>\$ (905,811.46)</u>

**Blackstone Metro District**  
**Special Revenue Fund Statement of Revenues, Expenditures and Changes in**  
**Fund Balances - Budget and Actual**  
**For the Period Ending October 31, 2024**

	<u>Annual Budget</u>	<u>Actual</u>	<u>Variance</u>
Revenues			
Operations fee (homeowners)	\$ 609,180.00	\$ 427,072.18	\$ 182,107.82
Operations fee (vacant lots)	2,976.00	10,456.00	(7,480.00)
Working capital	30,000.00	11,665.00	18,335.00
Design review fees	4,000.00	1,195.72	2,804.28
Legal collection fees	15,000.00	21,328.67	(6,328.67)
Violations and late fees	10,000.00	3,580.08	6,419.92
Interest Income	800.00	1,264.15	(464.15)
Other Revenue	10,000.00	12,168.23	(2,168.23)
Total Revenue	<u>681,956.00</u>	<u>488,730.03</u>	<u>193,225.97</u>
Expenditures			
Facilities management - contract	53,000.00	48,004.23	4,995.77
Facilities management - costs	25,000.00	17,167.62	7,832.38
Miscellaneous	5,000.00	2,229.59	2,770.41
Security	24,000.00	24,900.00	(900.00)
Irrigation repairs and improvements	50,000.00	42,897.60	7,102.40
Landscape improvements	50,000.00	34,086.00	15,914.00
Landscape maintenance - contract	399,900.00	266,600.00	133,300.00
Tree and shrub maintenance	25,000.00	-	25,000.00
Snow removal	35,000.00	-	35,000.00
Grounds maintenance	25,000.00	6,634.42	18,365.58
Holiday lighting	25,000.00	867.00	24,133.00
Lighting	10,000.00	6,877.18	3,122.82
Playground inspection and repairs	10,000.00	3,300.00	6,700.00
Water	160,000.00	123,495.77	36,504.23
Gas and electric	22,000.00	10,786.45	11,213.55
Community activities	60,000.00	54,917.45	5,082.55
Design review	10,000.00	4,300.00	5,700.00
Legal - collections	40,000.00	21,492.95	18,507.05
Trash collection	174,000.00	148,145.55	25,854.45
Contingency	37,100.00	-	37,100.00
Total Expenditures	<u>1,240,000.00</u>	<u>816,701.81</u>	<u>423,298.19</u>
Other Financing Sources (Uses)			
Transfers from other funds	563,144.00	316,128.89	247,015.11
Total Other Financing Sources (Uses)	<u>563,144.00</u>	<u>316,128.89</u>	<u>247,015.11</u>
Net Change in Fund Balances	5,100.00	(11,842.89)	16,942.89
Fund Balance - Beginning	20,400.00	33,345.60	(12,945.60)
Fund Balance - Ending	<u>\$ 25,500.00</u>	<u>\$ 21,502.71</u>	<u>\$ 3,997.29</u>

**SUPPLEMENTARY INFORMATION**

Draft

**Blackstone Metro District**  
**Debt Service Fund Schedule of Revenues, Expenditures and Changes in**  
**Fund Balances - Budget and Actual**  
**For the Period Ending October 31, 2024**

	<u>Annual Budget</u>	<u>Actual</u>	<u>Variance</u>
Revenues			
Property taxes	\$ 1,246,230.00	\$ 1,224,180.40	\$ 22,049.60
Specific ownership taxes	74,774.00	60,872.97	13,901.03
Interest Income	66,500.00	105,831.97	(39,331.97)
Total Revenue	<u>1,387,504.00</u>	<u>1,390,885.34</u>	<u>(3,381.34)</u>
Expenditures			
County Treasurer's Fee	18,693.00	18,350.65	342.35
Paying agent fees	450.00	450.00	-
Bond interest	1,068,125.00	534,062.50	534,062.50
Bond principal	500,000.00	-	500,000.00
Contingency	12,732.00	-	12,732.00
Total Expenditures	<u>1,600,000.00</u>	<u>552,863.15</u>	<u>1,047,136.85</u>
Net Change in Fund Balances	(212,496.00)	838,022.19	(1,050,518.19)
Fund Balance - Beginning	1,768,482.00	1,779,147.78	(10,665.78)
Fund Balance - Ending	<u>\$ 1,555,986.00</u>	<u>\$ 2,617,169.97</u>	<u>\$ (1,061,183.97)</u>

**Blackstone Metro District**  
**Capital Projects Fund Schedule of Revenues, Expenditures and Changes in**  
**Fund Balances - Budget and Actual**  
**For the Period Ending October 31, 2024**

	<u>Annual Budget</u>	<u>Actual</u>	<u>Variance</u>
Revenues			
Interest Income	\$ 22,000.00	\$ 25,434.39	\$ (3,434.39)
Total Revenue	<u>22,000.00</u>	<u>25,434.39</u>	<u>(3,434.39)</u>
Expenditures			
Legal	15,000.00	4,550.51	10,449.49
Capital outlay	500,000.00	-	500,000.00
Entryways/roundabouts	-	53,792.27	(53,792.27)
Total Expenditures	<u>515,000.00</u>	<u>58,342.78</u>	<u>456,657.22</u>
Other Financing Sources (Uses)			
Transfers from other funds	699,089.00	35,314.75	663,774.25
Total Other Financing Sources (Uses)	<u>699,089.00</u>	<u>35,314.75</u>	<u>663,774.25</u>
Net Change in Fund Balances	206,089.00	2,406.36	203,682.64
Fund Balance - Beginning	450,000.00	450,000.00	-
Fund Balance - Ending	<u>\$ 656,089.00</u>	<u>\$ 452,406.36</u>	<u>\$ 203,682.64</u>

Draft



**Blackstone Metro District**  
**Fund Financials - Capital Projects - Regional Improvement Fund**  
**Fund Balances - Budget and Actual**  
**For the Period Ending October 31, 2024**

	<u>Annual Budget</u>	<u>Year to Date Actual</u>	<u>Variance</u>
Revenues			
ARI - Aurora Regional Improvement Tax	\$ 353,816.00	\$ 352,316.60	\$ (1,499.40)
Total Revenue	<u>353,816.00</u>	<u>352,316.60</u>	<u>(1,499.40)</u>
Expenditures			
County Treasurer's Fee	5,307.00	5,286.55	(20.45)
Regional mill levy - Payment to SARIA	348,509.00	347,030.05	(1,478.95)
Total Expenditures	<u>353,816.00</u>	<u>352,316.60</u>	<u>(1,499.40)</u>
Net Change in Fund Balances	<u>-</u>	<u>-</u>	<u>-</u>
Fund Balance - Beginning	<u>-</u>	<u>-</u>	<u>-</u>
Fund Balance - Ending	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>

Draft

**Blackstone Metropolitan District**  
**Schedule of Cash Position**  
**October 31, 2024**  
Updated as of November 12, 2024

	<u>General Fund</u>					
<b><u>Ist Bank - Checking</u></b>						
Balance as of 10/31/2024	\$ 29,628.01		\$ -	\$ 7,156.23	\$ -	\$ 215,758.11
Subsequent activity:						
11/04/24 - Xcel Autopay	-		-	-	-	(594.15)
11/05/24 - Public Storage Autopay	-		-	-	-	(213.00)
11/12/24 - Bill.com Payment	<u>(8,993.24)</u>					
<i>Anticipated Balance</i>	<u>20,634.77</u>					
<b><u>Colostrust - Savings Account</u></b>						
Balance as of 10/31/2024	\$ 3,020,272.62	\$ -	\$ 2,606,422.71	\$ 452,406.36	\$ -	\$ 6,079,101.69
Subsequent activity:						
11/10/24 - Property Taxes	15,294.09	-	10,747.26	946.96	-	26,988.31
Surplus fund	-	-	<u>(1,000,000.00)</u>	-	-	<u>(1,000,000.00)</u>
<i>Anticipated Balance</i>	<u>3,035,566.71</u>	<u>-</u>	<u>1,617,169.97</u>	<u>453,353.32</u>	<u>-</u>	<u>5,106,090.00</u>
<i>Total by fund</i>	<u>\$ 3,056,201.48</u>	<u>\$ 47,833.18</u>	<u>\$ 1,617,169.97</u>	<u>\$ 460,048.30</u>	<u>\$ -</u>	<u>\$ 5,181,252.93</u>

**Yield Information:**

Colostrust Prime (Oct 2024) - 4.7419%  
Colostrust Plus (Oct 2024) - 5.0190%

**BLACKSTONE METROPOLITAN DISTRICT**  
**Property Taxes Reconciliation**  
**2024**

	Current Year										Prior Year		
	Property Taxes	Delinquent Taxes, Rebates & Abatements	Specific Ownership Taxes	Interest	Treasurer's Fees	Due to County	Senate Backfill	Net Amount Received	% of Total Property Taxes Received		Total Cash Received	% of Total Property Taxes Received	
									Monthly	Y-T-D		Monthly	YTD
January	\$ 12,047.62	\$ -	\$ 17,616.85	\$ -	\$ (180.71)	\$ -	\$ -	\$ 29,483.76	0.38%	0.38%	\$ 17,448.96	0.15%	0.15%
February	1,220,728.86	-	14,132.84	(2,669.38)	(18,270.89)	-	-	1,213,921.43	39.01%	39.39%	1,119,020.79	42.22%	42.37%
March	198,344.81	-	13,231.80	16.52	(2,975.42)	-	-	208,617.71	6.34%	45.73%	165,349.19	5.66%	48.04%
April	285,907.88	-	15,569.69	38.56	(4,973.70)	-	45,633.15	342,175.58	9.14%	54.87%	142,818.11	4.91%	52.95%
May	103,477.67	-	16,479.31	49.85	(1,552.91)	-	-	118,453.92	3.31%	58.17%	218,423.50	7.75%	60.69%
June	1,226,122.97	-	12,327.22	167.01	(18,394.35)	-	-	1,220,222.85	39.18%	97.35%	991,115.51	37.31%	98.00%
July	27,137.44	-	16,411.39	665.31	(417.04)	-	-	43,797.10	0.87%	98.22%	42,138.83	1.03%	99.04%
August	3,720.55	-	15,187.76	88.64	(57.14)	-	-	18,939.81	0.12%	98.34%	19,574.73	0.10%	99.14%
September	-	-	13,784.01	-	-	-	-	13,784.01	0.00%	98.34%	13,947.55	0.00%	99.14%
October	8,510.88	-	18,122.29	490.16	(135.02)	-	-	26,988.31	0.27%	98.61%	21,080.49	0.21%	99.35%
November	-	-	-	-	-	-	-	-	0.00%	98.61%	33,526.03	0.65%	100.00%
December	-	-	-	-	-	-	-	-	0.00%	98.61%	11,278.91	0.00%	100.00%
<b>Total</b>	<b>\$ 3,085,998.68</b>	<b>\$ -</b>	<b>\$ 152,863.16</b>	<b>\$ (1,153.33)</b>	<b>\$ (46,957.18)</b>	<b>\$ -</b>	<b>\$ 45,633.15</b>	<b>\$ 3,236,384.48</b>	<b>98.61%</b>	<b>98.61%</b>	<b>\$ 2,795,722.60</b>	<b>100.00%</b>	<b>100.00%</b>

Taxes Levied	% of Levied	Property Tax Collected	% Collected to Amount Levied
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**Property Tax**

General Fund	\$ 1,529,464.00	48.87%	\$ 1,509,501.68	98.69%
Debt Service Fund	1,246,230.00	39.82%	1,224,180.40	98.23%
Regional	353,816.00	11.31%	352,316.60	99.58%
<b>Total</b>	<b>\$ 3,129,510.00</b>	<b>100.00%</b>	<b>\$ 3,085,998.68</b>	

**Specific Ownership Tax**

General Fund	\$ 91,768.00	55.10%	\$ 91,990.19	100.24%
Debt Service Fund	74,774.00	44.90%	60,872.97	81.41%
<b>Total</b>	<b>\$ 166,542.00</b>	<b>100.00%</b>	<b>\$ 152,863.16</b>	

**Treasurer's Fees**

General Fund	\$ 22,942.00	48.87%	\$ 23,319.98	101.65%
Debt Service Fund	18,693.00	39.82%	18,350.65	98.17%
Regional	5,307.00	11.31%	5,286.55	99.61%
<b>Total</b>	<b>\$ 46,942.00</b>	<b>100.00%</b>	<b>\$ 46,957.18</b>	

Due To SARIA From 2023	\$ 446.83
Pledged Ptax Collected	347,030.05
Payments to SARIA	346,529.92
<b>Due To SARIA</b>	<b>\$ 946.96</b>

**BLACKSTONE METROPOLITAN DISTRICT  
2024 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Services Provided**

The District, a quasi-municipal corporation and a political subdivision of the State of Colorado, was organized by order and decree of the District Court for Arapahoe County on November 27, 2002, and is governed pursuant to provisions of the Colorado Special District Act (Title 32, Article 1, Colorado Revised Statutes). The District operates under a Second Amended and Restated Service Plan approved on July 26, 2010.

The District was established to provide sanitation, water, streets, traffic and safety controls, parks and recreation, and other related improvements for the benefit of the taxpayers and service users within the Districts' boundaries.

As of December 31, 2015, the District had remaining voted debt authorization of approximately \$1,981,510,000. The District has not budgeted to issue any new debt during 2024. Per the District's Service Plan, the District cannot issue debt in excess of \$100,000,000.

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

**Revenues**

**Property Taxes**

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

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

**BLACKSTONE METROPOLITAN DISTRICT  
2024 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Revenues (continued)**

**Property Taxes (continued)**

For property tax collection year 2024, SB22-238 and SB23B-001 set the assessment rates and actual value reductions as follows:

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

**Aurora Regional Improvements Mill Levy**

Pursuant to the Service Plan, which is dated August 6, 2004, the District is required to impose a 1.000 mill levy for payment of the planning, designing, permitting, construction, acquisition and financing of the regional improvements described in the ARI Master Plan. The ARI Master Plan is one or more master plans adopted by an ARI Authority establishing Regional Improvements which will benefit the taxpayers and service users of the districts which constitute such ARI Authority, which master plan will change from time to time. The District is a participant in the South Aurora Regional Improvement Authority. Revenues collected and held under the ARI mill levy will be held in a segregated account for the benefit of the Authority. The required mill levy after the twentieth year is 5.000 as adjusted. The adjusted mill levy for 2024 is 6.246.

**Specific Ownership Taxes**

Specific ownership taxes are set by the State and collected by the County Treasurer, primarily on vehicle licensing within the County as a whole. The specific ownership taxes are allocated by the County Treasurer to all taxing entities within the County. The budget assumes that the District's share will be equal to approximately 6.0% of the property taxes collected.

**Operations Fee**

The District imposes a monthly operations fee on homeowners and vacant lot owners. The fee varies between the two types of owners based on applicable costs to operate the landscape and maintenance of the District property. The fees and associated expenditures are tracked in the Operations Fee fund.

**Interest Income**

Interest earned on the District's available funds has been estimated based on historical earnings.

**BLACKSTONE METROPOLITAN DISTRICT  
2024 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Expenditures**

**General, Administrative, and Operations Expenditures**

Administrative expenditures include the services necessary to maintain the District's administrative viability such as legal, accounting, audit, managerial, insurance, banking, meeting expense and other administrative expenses. Additionally, the operations expenditures to maintain District property are detailed in the Operations Fee fund.

**County Treasurer's Fees**

County Treasurer's fees have been computed at 1.5% of property tax collections.

**Capital Outlay**

The District anticipates infrastructure improvements as displayed on page 6 of the Budget.

**Debt Service**

Principal and interest payments are provided based on the debt amortization schedule from the Series 2017 General Obligation Refunding Bonds. The District's current debt service schedule is attached.

See related notes below under Debt and Leases.

**Debt and Leases**

On June 6, 2017 the District issued General Obligation Refunding Bonds Series 2017 in the amount of \$27,415,000. The proceeds from the sale of the 2017 Bonds were used to (i) refund the District's outstanding Limited Tax (Convertible to Unlimited Tax) General Obligation Bonds, Series 2005A, (ii) fund an initial deposit of \$1,000,000 to the Surplus Account, and (iii) pay certain costs of issuance of the Bonds.

The Series 2017 Bonds bear interest at rates ranging from 2.375% to 5.000%, payable semi-annually on June 1 and December 1, beginning on December 1, 2017. Annual mandatory sinking fund principal payments are due on December 1, beginning on December 1, 2019. The Series 2017 Bonds mature on December 1, 2047. The Series 2017 Bonds are subject to optional and mandatory sinking fund redemption prior to maturity.

The Series 2017 Bonds are a general obligation of the District. The full faith and credit of the District are pledged for the payment of the principal of, premium, if any and interest on the Bonds. Without limiting the foregoing, the Pledged Revenue is pledged to the payment of the Bonds, on a parity with Parity Bonds, if any. "Pledged Revenue" is defined in the Bond Resolution to mean: (i) all amounts derived by the District from imposition of the Required Mill Levy and, to the extent not applied to the payment or refunding of the Series 2005A Bonds, the debt service mill levy imposed by the District in 2016 (less costs of collection and any tax refunds or abatements authorized by or on behalf of the County); and (ii) Specific Ownership Taxes. The Series 2017 Bonds are secured by amounts held by the District in the Surplus Account, if any. All of the Series 2017 Bonds shall be additionally secured by a Bond Insurance Policy issued by National Public Finance Guarantee Corp, rated A by Standard & Poor's.

The District has no operating or capital leases.

**BLACKSTONE METROPOLITAN DISTRICT  
2024 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Reserves**

**Emergency Reserves**

The District has provided an Emergency Reserve fund equal to at least 3% of fiscal year spending for 2024, as defined under TABOR.

Draft

**BLACKSTONE METROPOLITAN DISTRICT  
SCHEDULE OF DEBT SERVICE REQUIREMENTS TO MATURITY**

**\$27,415,000**

**General Obligation Refunding Bonds  
Series 2017**

**Dated June 6, 2017**

**Rates ranging from 2.375% to 5.000%**

**Interest Payable June 1 and December 1**

**Principal Due December 1**

**Bonds and Interest  
Maturing in the Year**

<u>Ending December 31,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2024	\$ 500,000	\$ 1,068,125	\$ 1,568,125
2025	520,000	1,048,125	1,568,125
2026	565,000	1,035,775	1,600,775
2027	595,000	1,007,525	1,602,525
2028	655,000	977,775	1,632,775
2029	685,000	945,025	1,630,025
2030	755,000	910,775	1,665,775
2031	780,000	886,237	1,666,237
2032	835,000	860,888	1,695,888
2033	865,000	833,750	1,698,750
2034	940,000	790,500	1,730,500
2035	990,000	743,500	1,733,500
2036	1,070,000	694,000	1,764,000
2037	1,115,000	651,200	1,766,200
2038	1,195,000	606,600	1,801,600
2039	1,245,000	558,800	1,803,800
2040	1,330,000	509,000	1,839,000
2041	1,380,000	455,800	1,835,800
2042	1,475,000	400,600	1,875,600
2043	1,535,000	341,600	1,876,600
2044	1,630,000	280,200	1,910,200
2045	1,695,000	215,000	1,910,000
2046	1,805,000	147,200	1,952,200
2047	1,875,000	75,000	1,950,000
	<u>\$ 26,035,000</u>	<u>\$ 16,043,000</u>	<u>\$ 42,078,000</u>





Date: September 27, 2024

### ***Special Districts Payroll Services Statement of Work***

This agreement constitutes a statement of work ("SOW") under the master service agreement ("MSA") made by and between CliftonLarsonAllen LLP ("CLA," "we," "us," and "our") and Blackstone Metro District ("you," "your," "board of directors" or "the district") dated October 15, 2023 or any superseding MSA. The purpose of this SOW is to outline certain services you wish us to perform through December 31, 2025 in connection with that agreement.

#### **Scope of payroll services**

We will provide the following payroll preparation services each pay period based on information you provide:

- Perform payroll calculations within ADP
- Facilitate ADP's preparation of payroll checks and/or pay stubs
- Use ADP to initiate the electronic transfer of funds for employee net pay and payroll tax deposit

We will assist with the preparation of the following government forms, when applicable, for each calendar quarter-end and year-end with the understanding that ADP directly handles filing the payroll tax returns and payments:

- Form 941 – Employers Quarterly Tax Return
- State Employers Quarterly Withholding Return
- State Employers Quarterly Unemployment Return (SUTA)
- Form 940 – Employers Annual Federal Unemployment Tax Return
- All copies of required forms W-2 and W-3 – Transmittal of Tax and Wage Statements (annual)
- All necessary state forms (annual)

#### **Our responsibility to you and limitations of the payroll services**

We will prepare your federal and state (when applicable) payroll forms and tax returns.

We will not audit or otherwise verify the accuracy or completeness of the information we receive from you for the preparation of the payroll and related returns, and our engagement cannot be relied upon to uncover errors or irregularities in the underlying information. However, we will inform the appropriate level of management of any material errors and of any evidence or information that comes to our attention during the performance of our payroll preparation services that fraud may have occurred. In addition, we will inform you of any evidence or information that comes to our attention during the performance of our payroll preparation services regarding illegal acts that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement. You agree that we shall not be responsible for any misstatements in the entity's payroll that we may not identify as a result of misrepresentations made to us by you.

If applicable, our payroll preparation services will include electronically transmitting management-approved information to taxing authorities and your financial institution to facilitate the electronic transfer of funds.

If applicable, our payroll preparation services will include transmitting management-approved federal Form W-2, federal Form 1099, and payroll data forms to federal and state taxing authorities on your behalf.

CLA's relationship with you shall be solely that of an independent contractor and nothing in the MSA or a SOW shall be construed to create or imply any relationship of employment, agency, partnership, or any relationship other than an independent contractor.

### **Your responsibilities**

It is your responsibility to provide us with all of the information needed to prepare complete and accurate payrolls and to facilitate ADP's preparation of payroll tax returns. We will have no obligations with regards to a particular payroll or withholding taxes and filing returns in a particular state or local tax jurisdiction until you have provided such information to us.

Additionally, it is your responsibility to provide us with all of the information needed to facilitate ADP's preparation of payroll tax returns. We will have no obligations with regards to particular withholding taxes and filing returns in a particular state or local tax jurisdiction until you have provided such information to us.

Specifically, your responsibilities include:

- Accuracy of information used in the preparation of the payrolls and payroll tax returns.
- Review and approval of paychecks or paystubs prior to issuance, and payroll registers for each pay period prior to submission of payroll information to ADP.
- Evaluation of information used in the preparation and filing of all government forms for accuracy.
- Before submission of payroll information to ADP, review and approval of each electronic funds transfer to be initiated on your behalf for employee net pay amounts, payroll tax, withholding

liabilities, and related benefit amounts.

- One-time authorization to your financial institution for it to make transfers and direct deposits in accordance with future instructions from ADP.
- One-time authorization for ADP to submit tax filings and complete electronic fund transfers on your behalf.
- Sign or approve ADP issuance of all physical and/or electronic payroll checks.

If applicable, we will advise you with regard to tax positions taken in the preparation of the payroll forms and tax returns, but the responsibility for the payroll forms and tax returns remains with you.

Even if you have authorized CLA to file your employment tax returns and make your business and/or employment tax payments for you, please be aware that you are responsible for the timely filing of employment tax returns and the timely payment of business and/or employment taxes. Therefore, the Internal Revenue Service recommends that you enroll in the U.S. Department of the Treasury Electronic Federal Tax Payment System (EFTPS) to monitor your account and ensure that timely tax payments are being made for you. You may enroll in the EFTPS online at [www.eftps.gov](http://www.eftps.gov), or call 800-555-4477 for an enrollment form. Individual states have similar programs that allow you to monitor your account. A list of links by state is provided online at <http://www.americanpayroll.org/weblink/statelocal-wider/>.

## **Fees and terms**

***The billing rates (guaranteed through one year from 1st payroll live date) for these services are as follows:***

<b>Services performed by</b>	<b>Rate per hour</b>
Payroll Analyst I	\$90-\$95
Payroll Analyst II	\$100-\$110
Senior Payroll Analyst	\$125-\$130

Subsequent to the billing rate guarantee date, the rates may be adjusted as agreed between you and CLA through a new SOW.

Our professional fees will be billed based on the degree of responsibility and contribution of the professionals working on the engagement. We will also bill for expenses (including internal and administrative charges) plus a technology and client support fee of five percent (5%) of all professional fees billed.

This agreement will automatically renew for one year from the rate guarantee expiration date unless it is cancelled in writing at least 30 days prior to the expiration date or is changed by the mutual signing of a new SOW. The terms of the applicable MSA shall continue to govern this SOW if the SOW is automatically renewed.

We do not anticipate encountering the need to perform additional services beyond those described in this letter. Below are examples of services considered to be outside the scope of our engagement. We will bill you for additional services you would like us to provide at an hourly fee at periodic dates after the additional service has been performed.

- Reprocessing for corrected information provided to us subsequent to original payroll
- Preparation of non-standard reports
- Calculation of fringe benefit additions
- Processing retirement plan contribution payments
- Preparation of retirement plan and other census information
- Responding to workers compensation insurance audits
- Responding to employment verification requests
- Preparation of additional state tax registrations
- Preparation of amended payroll tax returns
- Responding to tax notices

### **Tax examinations**

All government forms and returns are subject to potential examination by the IRS and state taxing authorities. In the event of an examination, we will be available, at your request, to assist or represent you subject to a separate SOW. Services in connection with tax examinations are not included in our fee for preparation of your payroll returns. Our fee for such services will be billed to you separately, along with any direct costs pursuant to a separate SOW.

### **Record retention**

You are responsible for retaining all documents, records, payroll journals, canceled checks, receipts, or other evidence in support of information and amounts reported in your payroll records and on your quarterly and calendar year-end payroll forms and tax returns. These items may be necessary in the event the taxing authority examines or challenges your returns. These records should be kept for at least seven years. Your copy of the payroll forms and tax returns should be retained indefinitely.

In preparing the payrolls, payroll forms, and tax returns, we rely on your representation that you understand and have complied with these documentation requirements. You are responsible for the proper

recording of transactions in the books of accounts, for the safeguarding of assets, and for the substantial accuracy of your financial records.

All of the records that you provide to us to prepare your payrolls and related forms and tax returns will be returned to you after our use. Our working papers, including any copies of your records that we chose to make, are our property and will be retained by us in accordance with our established records retention policy. This policy states, in general, that we will retain our working papers for a period of seven years. After this period expires, our working papers and files will be destroyed. Furthermore, physical deterioration or catastrophic events may shorten the time our records are available. The working papers and files of our firm are not a substitute for the records of you.

### **Tax consulting services**

This SOW also covers tax consulting services that may arise for which the entity seeks our consultation and advice, both written and oral, that are not the subject of a separate SOW. These additional services are not included in our fees for the preparation of the payroll and related federal and state forms and tax returns.

We will base our tax analysis and conclusions on the facts you provide to us, and will not independently verify those facts. We will review the applicable tax authority rules, all of which are subject to change. At your request, we will provide a memorandum of our conclusions. Written advice provided by us is for the entity's information and use only and is not to be provided to any third party without our express written consent.

Unless we are separately engaged to do so, we will not continuously monitor and update our advice for subsequent changes or modifications to the tax regulations, or to the related judicial and administrative interpretations.

### **Legal compliance**

The entity agrees to assume sole responsibility for full compliance with all applicable federal and state laws, rules or regulations, and reporting obligations that apply to the entity or the entity's business, including the accuracy and lawfulness of any reports the entity submits to any government regulator, authority, or agency. The entity also agrees to be solely responsible for providing legally sufficient substantiation, evidence, or support for any reports or information supplied by the entity to any governmental or regulatory body, or for any insurance reimbursement in the event that the entity is requested to do so by any lawful authority. CLA, its successors, affiliates, officers, and employees do not assume or undertake any duty to perform or to be responsible in any way for any such duties, requirements, or obligations.

### **Agreement**

We appreciate the opportunity to provide the services described in this SOW related to the MSA. All terms and provisions of the MSA shall apply to these services. If you agree with the terms of this SOW, please sign below and return a signed copy to us to indicate your acknowledgment and understanding of, and agreement with, this SOW.

### **CliftonLarsonAllen LLP**

Carrie Jo Bartow

Principal

7192847239  
carrie.bartow@claconnect.com

**Response**

This SOW correctly sets forth the understanding of Blackstone Metro District and is accepted by:

CLA  
CliftonLarsonAllen LLP

*Carrie Jo Bartow*

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Carrie Jo Bartow, Principal

SIGNED 11/5/2024, 9:58:44 AM MST

**Client**  
Blackstone Metro District

SIGN:

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Perry Deeds

DATE:

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Date: September 27, 2024

### ***Special Districts Preparation Statement of Work***

This agreement constitutes a statement of work ("SOW") under the master service agreement ("MSA") made by and between CliftonLarsonAllen LLP ("CLA," "we," "us," and "our") and Blackstone Metro District ("you," "your," "board of directors" or "the district") dated October 15, 2023 or any superseding MSA. The purpose of this SOW is to outline certain services you wish us to perform through December 31, 2025 in connection with that agreement.

#### **Scope of professional services**

Carrie Jo Bartow is responsible for the performance of the preparation engagement and other services identified in this agreement. They may be assisted by one or more of our authorized signers in the performance of the preparation engagement.

#### **Ongoing normal accounting services:**

- Outsourced accounting activities
  - For each fund of the district, CLA will generally prepare and maintain the following accounting records:
    - Cash receipts journal
    - Cash disbursements journal
    - General ledger
    - Accounts receivable journals and ledgers
    - Deposits with banks and financial institutions
    - Schedule of disbursements
    - Bank account reconciliations
    - Investment records
  - Detailed records and a tracking system of fee impositions, due dates and payments; and at



direction of the board of directors, provide reporting of fee imposition and payments to the board of the district

- Process accounts payable including: confirmation that for payment of any vendors that there are sufficient funds budgeted and available, prior to the preparation and issuance of checks for approval by the board of directors
- Coordinate with the district manager and/or district general counsel (in the event of legal issues) regarding financial matters and determine prior to the district entering any contract for capital or operations services that there are sufficient appropriations for same
- To the extent applicable, read and understand Developer Funding Agreements and coordinate funding from Developer necessary for the district to pay its obligations
- Prepare billings, record billings, enter cash receipts, and track revenues
- Reconcile certain accounts regularly and prepare journal entries
- Prepare depreciation schedules
- Prepare monthly financial statements and supplementary information, but not perform a compilation with respect to those financial statements; additional information is provided below
- Prepare a schedule of cash position to monitor the district's cash deposits, funding for disbursements, and investment programs in accordance with policies established by the district's board of directors and in accordance with state law
- At the direction of the board of directors, assist with the coordination and execution of banking and investment transactions and documentation
- In collaboration with district consultants and the board of directors, assist with the preparation and filing of the annual budget as required by statute
- In collaboration with district consultants and the board of directors, assist with the preparation and filing of the Certification of Tax Levies with the respective county or counties
- Assist the district's board of directors in monitoring actual expenditures against appropriation/budget: at the direction of the board of directors, evaluate budget to actual expenses and provide a report to the district board; advise the district board prior to paying any vendor amounts in excess of budgeted amounts
- If an audit is required, prepare the year-end financial statements (additional information is provided below) and related audit schedules for use by the district's auditors

- If an audit is not required, prepare the Application for Exemption from Audit, perform a compilation engagement with respect to the Application for Exemption from Audit, and assist with the filing of the Application for Exemption from Audit – additional information is provided below
- Monitor compliance with bond indentures and trust agreements, including preparation of continuing disclosure reports to the secondary market as required
- Read cost verifications and obtain acceptance and approval by the board of directors for the district prior to the requisition or disbursement of funds
- Read and understand intergovernmental agreements that create financial or cost sharing obligations of the district
- Review claims for reimbursement from related parties prior to the board of directors' review and approval
- Read supporting documentation related to the district's acquisition of infrastructure or other capital assets completed by related parties for overall reasonableness and completeness
  - Procedures in excess of providing overall reasonableness and completeness will be subject to a separate SOW
  - These procedures may not satisfy district policies, procedures, and agreements' requirements
  - Note: our procedures should not be relied upon as the final authorization for this transaction
- Attend board meetings as requested
- Be available during the year to consult with you on any accounting matters related to the district
- Review and approve monthly reconciliations and journal entries prepared by staff
- Reconcile complex accounts monthly and prepare journal entries
- Analyze financial statements and present to management and the board of directors
- Develop and track key business metrics as requested and review periodically with the board of directors
- Document accounting processes and procedures
- Continue process and procedure improvement implementation

- Report on cash flows
- Assist with bank communications
- Perform other non-attest services

### **Compilation services**

If an audit is not required, we will complete the Application for Exemption from Audit in the form prescribed by the Colorado Office of the State Auditor and perform a compilation engagement with respect to the Application for Exemption from Audit.

### **Preparation services - financial statements**

We will prepare the monthly financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information if applicable of the district, which comprise the balance sheet – governmental funds and the related statement of revenues, expenditures, and changes in fund balance – general fund and the related statement(s) or schedule(s) of revenues, expenditures, and changes in fund balance(s) for other applicable funds. The financial statements will not include the related notes to the financial statements; the government-wide financial statements; the statement of revenues, expenditures, and changes in fund balances – governmental funds; statement of cash flows for business type activities, if applicable; and required supplementary information.

### **Preparation services - annual**

If an audit is required, we will prepare the year-end financial statements of the government wide governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information if applicable, and Management Discussion and Analysis, if applicable, which collectively comprise the basic financial statements of the district, and the related notes to the financial statements. The year-end financial statements, including the related notes to the financial statements, will be prepared for use by the district's auditors.

### **Preparation services – prospective financial information (i.e., unexpired budget information)**

You have requested that we prepare the financial forecast, which comprises the forecasted financial statements identified below.

A financial forecast presents, to the best of management's knowledge and belief, the entity's expected financial position, results of operations, and cash flows for the forecast period. It is based on management's assumptions reflecting conditions it expects to exist and the course of action it expects to take during the forecast period.

The financial forecast will omit substantially all of the disclosures required by the guidelines for presentation of a financial forecast established by the American Institute of Certified Public Accountants (AICPA presentation guidelines) other than those related to the significant assumptions.

The supplementary information accompanying the financial forecast will be prepared and presented for

purposes of additional analysis and is not a required part of the basic financial forecast. References to financial statements in the remainder of this SOW are to be taken as a reference to also include the prospective financial information, where applicable.

### **Engagement objectives and our responsibilities**

The objectives of our engagement are to:

- a) Prepare monthly financial statements in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP), except for the departures from U.S. GAAP identified above, based on information provided by you and information generated through our outsourced accounting services. (GAAP stands for Generally Accepted Accounting Principles and refers to a common set of account rules, standards, and procedures.)
- b) As requested, apply accounting and financial reporting expertise to assist you in the presentation of your monthly financial statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for them to be in accordance with U.S. GAAP, except for the departures from U.S. GAAP identified above.
- c) Prepare the annual budget in accordance with the requirements prescribed by Colorado Revised Statutes C.R.S. 29-1-105 based on information provided by you.
- d) Apply accounting and financial reporting expertise to assist you in the presentation of the annual budget without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the annual budget in order for the annual budget to be in accordance with requirements prescribed by Colorado Revised Statutes C.R.S. 29-1-105.
- e) If an audit is required, prepare the year-end financial statements in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) based on information provided by you.
- f) If applicable, we will complete the Application for Exemption from Audit in the form prescribed by the Colorado Office of the State Auditor and perform a compilation engagement on the application.

We will conduct our preparation and compilation engagements in accordance with Statements on Standards for Accounting and Review Services (SSARSs) promulgated by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants (AICPA) and comply with the AICPA's Code of Professional Conduct, including the ethical principles of integrity, objectivity, professional competence, and due care.

### **Engagement procedures and limitations**

We are not required to, and will not, verify the accuracy or completeness of the information provided to us for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion.

Accordingly, we will not express an opinion, a conclusion, nor provide any assurance on the financial statements, the annual budget, the Application for Exemption from Audit (if an audit is not required), the year-end financial statements (if an audit is required), and the supplementary information.

Our engagement cannot be relied upon to identify or disclose any misstatements, in the monthly financial statements, the annual budget, the Application for Exemption from Audit, and the year-end financial statements including misstatements caused by fraud or error, or to identify or disclose any wrongdoing within the district or noncompliance with laws and regulations. However, if any of the foregoing are identified as a result of our engagement, we will promptly report this information to the board of directors of the district. We have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement, but will promptly report them to the board of directors of the district if they are identified. You agree that we shall not be responsible for any misstatements in the district's financial statements, the annual budget, the Application for Exemption from Audit, and the year-end financial statements that we may not identify as a result of misrepresentations made to us by you.

### **Our report**

If an exemption from audit applies: the compilation report on the Application for Exemption from Audit will state that management is responsible for the accompanying application included in the prescribed form, that we performed a compilation of the application, that we did not audit or review the application, and that, accordingly, we do not express an opinion a conclusion, nor provide any form of assurance on it. The report will also state that the Application for Exemption from Audit is presented in accordance with the requirements of the Colorado Office of the State Auditor and is not intended to be a presentation in accordance with accounting principles generally accepted in the United States of America. The report will include a statement that the report is intended solely for the information and use of the Colorado Office of the State Auditor and is not intended to be and should not be used by anyone other than this specified party and may not be suitable for another purpose.

There may be circumstances in which the report may differ from its expected form and content. If, for any reason, we are unable to complete the compilation on the Application for Exemption from Audit (if an audit is not required), we will not issue report on the Application for Exemption from Audit as a result of this engagement. No compilation is performed in situations where an audit is required.

### **No assurance statements**

The monthly financial statements prepared for the district will not be accompanied by a report. However, management agrees that each page of the financial statements will include a statement clearly indicating that no assurance is provided on them.

As part of our preparation of financial statements each page of the financial statements and supplementary information will include the following statement: "No assurance is provided on these financial statements. Substantially all required disclosures, the government-wide financial statements, and the statement of revenues, expenditures, and changes in fund balances – governmental funds have been omitted if applicable, For business type activities, the Statement of Cash Flows has been omitted".

If an audit is required, the year-end financial statements prepared for use by the district's auditors will not be accompanied by a report. However, management agrees that each page of the year-end financial

statements will include a statement clearly indicating that no assurance is provided on them.

### **Management responsibilities**

The financial statement engagement to be performed is conducted on the basis that management acknowledges and understands that our role is to prepare financial statements in accordance with U.S. GAAP and assist management in the presentation of the financial statements in accordance with U.S. GAAP, except for the departures from U.S. GAAP identified above.

The annual budget engagement to be performed is conducted on the basis that management acknowledges and understands that our role is to prepare the annual budget in accordance with the requirements prescribed by Colorado Revised Statutes C.R.S. 29.1.105 and assist management in the presentation of the annual budget in accordance with the requirements prescribed by Colorado Revised Statutes C.R.S. 29.1.105.

The Application for Exemption from Audit engagement to be performed is conducted on the basis that management acknowledges and understands that our role is to prepare the Application for Exemption from Audit in accordance with the requirements prescribed by the Colorado Office of the State Auditor and assist management in the presentation of the Application for Exemption from Audit in accordance with the requirements prescribed by the Colorado Office of the State Auditor.

We are required by professional standards to identify management's responsibilities in this agreement. Professional standards define management as the persons with executive responsibility for the conduct of the district's operations and may include some or all of those charged with governance. Those standards require that you acknowledge and understand that management has the following overall responsibilities that are fundamental to our undertaking the engagement in accordance with SSARs:

- a) The selection of the financial reporting framework to be applied in the preparation of the financial statements, the annual budget, and the Application for Exemption from Audit.
- b) The preparation and fair preparation of the financial statements in accordance with U.S. GAAP, except as identified as above, the preparation and fair presentation of the annual budget in accordance with the requirements prescribed by Colorado Revised Statutes C.R.S. 29.1.105, and the preparation and fair presentation of the Application for Exemption from Audit (if applicable) in accordance with the requirements prescribed by the Colorado Office of the State Auditor.
- c) The presentation of the supplementary information.
- d) The design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements, the annual budget, and the Application for Exemption from Audit (if applicable) that are free from material misstatement, whether due to fraud or error.
- e) The prevention and detection of fraud.

- f) To ensure that the entity complies with the laws and regulations applicable to its activities.
- g) The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments, you provide to us for the engagement to prepare financial statements.
- h) To provide us with the following:
  - i) Access to all information relevant to the preparation and fair presentation of the financial statements, and the annual budget, the Application for Exemption from Audit (if applicable) such as records, documentation, and other matters.
  - ii) Additional information that may be requested for the purpose of the engagement.
  - iii) Unrestricted access to persons within the entity with whom we determine it necessary to communicate.

We understand that you are engaging us to make recommendations and perform services to help you meet your responsibilities relevant to the preparation and fair presentation of the financial statements, the annual budget, and the Application for Exemption from Audit (if applicable).

For all accounting services we may provide to you, including the preparation of your financial statements, the annual budget, and the Application for Exemption from Audit (if applicable), management agrees to assume all management responsibilities; oversee the services by designating an individual (i.e., the board treasurer); evaluate the adequacy and results of the services; and accept responsibility for the results of the services.

**Fees and terms**

***Billing rates guaranteed through December 31, 2025:***

<b>Services performed by</b>	<b>Rate per hour</b>
Principal	\$300-\$650
Consulting CFO	\$290-\$400
Consulting Controller	\$240-\$380
Assistant Controller	\$210-\$300
Senior	\$150-\$230

Staff	\$130-\$190
Administrative Staff	\$120-\$170

Subsequent to the billing rate guarantee date, the rates may be adjusted as agreed between you and CLA through a new SOW.

Our professional fees will be billed based on the degree of responsibility and contribution of the professionals working on the engagement. We will also bill for expenses (including internal and administrative charges) plus a technology and client support fee of five percent (5%) of all professional fees billed.

**Use of financial statements, the annual budget, the Application for Exemption from Audit**

The financial statements, the annual budget, and the Application for Exemption from Audit (if applicable) are for management’s use. If you intend to reproduce and publish the financial statements, the annual budget, and the Application for Exemption from Audit (if applicable) and our report thereon, they must be reproduced in their entirety. Inclusion of the financial statements, the annual budget, and the Application for Exemption from Audit (if applicable) in a document, such as an annual report or an offering document, should be done only with our prior approval of the document. You are responsible to provide us the opportunity to review such documents before issuance.

With regard to the electronic dissemination of financial statements, the annual budget, and the Application for Exemption from Audit (if applicable) that have been subjected to a compilation engagement, including financial statements, the annual budget, and the Application for Exemption from Audit (if applicable) published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in those sites or to consider the consistency of other information in the electronic site with the original document.

We may issue preliminary draft financial statements to you for your review. Any preliminary draft financial statements should not be relied on or distributed.

**Municipal advisors**

For the avoidance of doubt, the district is not engaging CLA as a municipal advisor, and CLA is not a municipal advisor as defined in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or under Section 158 of the Securities Exchange Act of 1934 (the “Act”). CLA is not recommending an action to you, is not acting as an advisor to you, and does not owe a fiduciary duty to you pursuant to Section 158 of the Act with respect to the information and material contained in the deliverables issued under this engagement. You should discuss any information and material contained in the deliverables with any and all internal and external advisors that you deem appropriate before acting on this information or material.

**Agreement**

We appreciate the opportunity to provide the services described in this SOW related to the MSA. All terms



and provisions of the MSA shall apply to these services. If you agree with the terms of this SOW, please sign below and return a signed copy to us to indicate your acknowledgment and understanding of, and agreement with, this SOW.

**CliftonLarsonAllen LLP**

Carrie Jo Bartow

Principal

7192847239

carrie.bartow@claconnect.com

**Response**

This SOW correctly sets forth the understanding of Blackstone Metro District and is accepted by:

CLA  
CliftonLarsonAllen LLP

*Carrie Jo Bartow*

---

Carrie Jo Bartow, Principal

SIGNED 11/5/2024, 9:57:56 AM MST

**Client**  
Blackstone Metro District

SIGN:

---

Perry Deeds

DATE:

# Blackstone Metro District

## Operations Summary

### Architectural Requests

Status of Architectural Requests Received in May 2024

- Approved = 0
- Approved w/Stipulations = 12
- Partial Approval = 0
- Pending = 0
- Denied = 1

### Compliance (Current Violation Statuses)

August 1, 2024 – November 12, 2024

- Courtesy Advisory Notice = 10 (0.1% of total units)
- Cont. Violation/Fine Notice = 1 (0.001% of total units)
- Ongoing Violation/2nd Fine = 17 (0.2% of total units)
- Ongoing Violation/3rd Fine = 1 (0.001% of total units)
- Violations Corrected = 87

### Summary of Inspection

Inspection Time – 08/27/2024

New Notices – 116

Updated Notices – 110

Closed Notices - 87

Violation type not – 0

Basketball Backboard Requirements – 0

BBQ Grill Requirements – 1

Birdbath Requirements – 0

Business Parking Congestion – 2

Clotheslines – 0

Commercial Vehicle in Driveway – 2

Cooling or Heating Equipment – 0

Dead/Dying Landscaping – 2

Dead/Dying Lawn – 1

Dead/Dying Shrub(s) – 4

Dead/Dying Tree (s) – 10

Design Review Requirements – 5

Dog Run Requirements – 0

Exterior Antenna – 0

Hazardous Activities or Materials – 0

Improvement w/o ARC Approval – 0

Landscape Maintenance – 4

Landscape Installation Requirement – 3

Lawn Maintenance: Mowing – 3

Lawn Maintenance: Watering – 24

Legacy Violation – 2

Lots to be Maintained – 2

Misc. Improvement: Fence – 0

Nuisance – 0

Nuisance - Light, Sound, or Odor – 0

Owner Maintenance Responsibilities – 0

Paint Refresh Needed – 4

Paint Requirement - Garage Door – 1

Painting Requirement - Radon Pipes – 2

Parking in Restricted Area – 0  
Pets: Commercial Pets – 0  
Pets: Damage Caused by Pets – 0  
Pets: Leashed Required – 0  
Pets: Pet Waste Disposal – 1  
Recreational Vehicle in Driveway – 4  
Sign: Size Limitation Exceeded – 0  
Signs: Disallowed Sign Type – 0  
Storage Area – 0

Trash Container Storage – 5  
Unightly Conditions – 3  
Vehicle Maintenance – 16  
Weeds in Rock Bed – 0  
Weeds on Lot – 2  
Weeds on Lot: Multiple Areas – 7  
Windows - 2

**Blackstone Metropolitan District**  
**SPECIAL MEETING OF THE BOARD OF DIRECTORS**  
**MINUTES**  
**October 29, 2024**

**I. ATTENDANCE & CALL TO ORDER**

Board Members in attendance were Perry Deeds (was on zoom), Lisa Monohan, Brent Johnston, Aaron Jones and Marty Lyles were present in person.

Also, in attendance were Clint Waldron (White Bear Ankele Tanaka & Waldron), Ben Zand (Landtech Contractors, LLC), Curtis Bourgouin (CliftonLarsonAllen, LLP), Beau McMahon (Brightstar District Management), and members of the public. The meeting was called to order at 6:07 pm.

**II. DISCLOSURE OF ANY CONFLICTS OF INTEREST**

**III. AGENDA REVIEW / UPDATES OR APPROVAL**

**IV. LANDSCAPE MAINTENANCE REPORT**

- a. Mr. Zand reviewed the Landscape Maintenance Report and gave an update on previously approved Work Orders. Mr. Zand noted standard maintenance items have been addressed in accordance with the current agreement.
  1. Backflow Discussion was had about adding the backflows to the District Insurance Policy.
    - a. The Manager will work with the insurance company to provide a bid for this change.
  2. Dog Station Bag discussion. Director Monohan discussed that several of the dog stations have been out dog bags for several weeks. Mr. Zand stated that he will check with the crew to make sure they are stopping at all stations.
  3. Snow removal discussion was had. The board has requested a snow removal agreement from Landtech to include rates for services. The board has also confirmed that the snow removal trigger is 4".
  4. Mr. Zand stated that Holiday decorations will start going up next week, the first week of November.
    - a. The Board would like to have the lights active no later than 11/21.
    - b. With a motion from Director Lyles, a second from Director Monohan, and upon vote, all were in favor of Approving to spend up to \$5000 to replace any damaged, non-working lights. The board has requested pictures of the items being replaced, and the installation of the new lights.

**V. ALTITUDE LAW**

- a. Discussions around time limits to finish construction on vacant lots were had. The board would like the manager to work with Jeff Smith from Altitude to make sure compliance is being followed.

**VI. PUBLIC COMMENT**

- A homeowner discussed having the CC&R report put back in the meeting packet. The manager stated that he wasn't aware there was one and asked for an example. Brightstar will work on having it included moving forward.
- There was discussion around having the Metro Districts items that are being stored inventoried. The inventory would include holiday decorations and social committee items. Etc. Landtech and the Social committee will work together on this. The board would like this completed by February 2025.

**Blackstone Metropolitan District**  
**SPECIAL MEETING OF THE BOARD OF DIRECTORS**  
**MINUTES**  
**October 29, 2024**

**VII. FINANCIAL REPORT**

- a. Mr. Bourgouin Reviewed the unaudited financials. With no questions or comments and a motion by Director Johnston, a second by Director Lyles, upon vote all were in favor of approving the unaudited financials from September 2024.
- b. Conduct Public Hearing on 2025 Budget and Consider Adoption of Resolution Adopting 2025 Budget, Imposing Mill Levy, and Appropriating Funds – Mr. Bourgouin presented the 2025 budget and resolution to the Board. Attorney Waldron opened the public hearing on the proposed 2025 Budget. Attorney Waldron noted that the notice of public hearing was provided in accordance with Colorado law. No written objections were received prior to the meeting. There being no public comment, the hearing was closed. Upon motion duly made by Director Johnston, seconded by Director Lyles, upon vote, unanimously carried, the Board adopted the resolution adopting the 2025 Budget, appropriating funds therefore and certifying mill levies for the general fund, debt service fund and ARI fund, subject to receipt of the final assessed valuation, any legislative changes, final legal review and final accounting review and revisions.

**VIII. MANAGEMENT REPORT**

- a. Entrance Lighting Discussion
  - 1. The manager presented the board with the scope of work for the entrance lighting. The board reviewed the scope and confirmed this is what they were looking for. The manager was informed that Director Lyles was working with Full Spectrum lighting currently. The manager will send the scope out to 2 additional vendors.
- b. Sign Discussion
  - 1. The board reviewed the mockup from Fast Signs. After discussion, with a motion from Director Johnston, a second from Director Monahan, and upon vote, all in favor of Director Monahan working directly with the manager to have this project completed for no more than \$1500.00
- c. Arborist Discussion
  - 1. The manager discussed that Davey Tree is still waiting for their legal team to review and approve the contract with the District. The board has voiced their concerns with the process taking an excessive amount of time. With a motion from Director Monahan, a second from Director Johnston, and upon vote, all are in favor of the Manager giving Davey Tree notice that they will need to supply an update on the agreement within 10day, or they will consider other opportunities.
- d. Geo Mapping Discussion
  - 1. The manager stated he wasn't sure of this project. The board stated that there are companies, for hire, that will assess all common elements of District Property. Director Johnston has two vendors contact for the manager to reach out to. The manager will also conclude a generic google service and seek a bid.

**IX. CONSENT AGENDA**

- a. Approve August 20, 2024 Meeting Minutes & September 17<sup>th</sup>, 2024 Meeting minutes, with a motion Director Johnson, a second from Director Jones, upon vote 3 votes in favor, 1 abstain the vote to approve the minutes from August 20<sup>th</sup>, 2024 Meeting.
  - 1. Approve September 25<sup>th</sup> Special Meeting Minutes, with a motion from Director Johnston, a second from Director Monohan, upon vote all in favor of approval of the meeting minutes from the September 25<sup>th</sup> meeting.
- b. Approve and Ratify Payment of Claims in the amount of \$149,385.64
- c. Approve Special District Disclosure Notice Pursuant to 32-1-809, C.R.S. with a motion from Director

**Blackstone Metropolitan District**  
**SPECIAL MEETING OF THE BOARD OF DIRECTORS**  
**MINUTES**  
**October 29, 2024**

Monohan, a second by Director Johnston, upon vote, all were in favor.

- d. Adoption of Resolution Designating Meeting Notice Posting Location with a motion from Director Monohan, a second by Director Johnston, upon vote, all were in favor
- e. Approve Amended and Restated Public Records Request Policy with a motion from Director Monohan, a second by Director Johnston, upon vote, all were in favor
- f. Consider Approval of Resolution Adopting Website Accessibility Policy and Designating a Compliance Officer with a motion from Director Monohan, a second by Director Johnston, upon vote, all were in favor

**X. COMMITTEE REPORTS**

- a. Landscape Committee
  - 1. No New Business for discussion.
- b. Architectural / Design Review
  - 1. The committee is proposing a new color scheme in a gray tone. With a motion from Director Monohan, a second from director Johnston, upon vote, all were in favor of approving the new color scheme.
- c. Social Committee
  - 1. an update was given about the food drive previously completed. A total of 14 boxes of food were donated. The committee would like to send a sincere thank you to the community for their kind donations.
  - 2. The committee also discussed the upcoming masquerade ball being hosted on 11/23. They will be putting together a notice to be distributed to all neighbors.
- d. Technology Committee – The committee will be putting together a formal letter looking for additional volunteers. The committee will also be working with the manager in the coming weeks to have events added to the community calendar, to include social events.

**XI. LEGAL REPORT**

- a. Adoption of 2025 Annual Administrative Resolution with a motion from Director Johnston, a second by Director Monohan, upon vote, all were in favor of approving this resolution.
- b. Resolution Calling May 6, 2025 Election. Director Monohan motions, Director Johnston seconds, upon vote, all were in favor to approve the resolution.
- c. Discussion was had around the 2024 Legislative Memorandum and Changes Implemented by HB 24B-1001.
- d. Crime Coverage – This item was tabled until more information is provided.

**XII. DIRECTOR'S ITEMS**

- a. Final Acceptance of Blackstone Entryways and Medians.
  - 1. Director Monohan motions, Director Johnston seconds, upon vote, the board approved to allow Director Lyles to complete a final walk, and release payment.
- b. Approval of Renewal of Workers Compensation Coverages.
  - 1. Director Monohan motions, Director Johnston seconds, upon vote, all members approved to move forward with the work comp package received. They would like the manager to see about increasing the coverages.
- c. ARI Mill Levy/SARIA Discussion
  - 1. Director Jones provided the Board with a recap. Motion to set forth a deadline date, and to have the 3<sup>rd</sup> party counsel draft the deadline letter to the SARIA board. Director Jones

**Blackstone Metropolitan District**  
**SPECIAL MEETING OF THE BOARD OF DIRECTORS**  
**MINUTES**  
**October 29, 2024**

motions, seconded by Director Monohan, upon vote, all were in favor of this action.

d. Sponsorship for Eagle Scout Project.

1. Wyatt discussed in detail how many flags & Flag poles are currently in stock, he noted 44. He is proposing for the Metro District to purchase an additional 26 flags and new poles for existing flag. Bringing the total to 77 flags and poles for the District at a cost of \$4500. After considerable discussion Director Jones motion, Director Monohan seconds, upon vote 3 approving, 1 abstaining, to approve the purchase of 14 flags, poles, and replacement poles, not to exceed the amount of \$1400.

**XIII. PUBLIC COMMENT**

None.

**XIV. OTHER BUSINESS**

None.

**XV. ADJOURNMENT**

- a. Upon motion duly made by Director Deeds, seconded by Director Jones, upon vote, unanimously carried, the Board adjourned the meeting at **9:05** pm.

Minutes approved: \_\_\_\_\_ Date: \_\_\_\_\_



**INDEPENDENT CONTRACTOR AGREEMENT**  
(2024-25 SNOW REMOVAL SERVICES ON AURORA STREETS)

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 19<sup>th</sup> day of November 2024, by and between BLACKSTONE METROPOLIAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and LANDTECH CONTRACTORS, LLC, a Colorado limited liability company (the “**Contractor**”). The District and the Contractor are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

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

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

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

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

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

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

**TERMS AND CONDITIONS**

1. SCOPE OF SERVICES; PERFORMANCE STANDARDS. The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “**Services**”): (a) in a professional manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) using reasonable commercial efforts to minimize any annoyance, interference, or disruption to the residents, tenants, occupants, and invitees within the District. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate

the District in any manner whatsoever, except to the extent specifically provided in this Agreement (including **Exhibit A**) or through other authorization expressly delegated to or authorized by the District through its Board of Directors.

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; or (ii) midnight on May 31, 2025.

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

4. REPAIRS/CLAIMS. The Contractor shall notify the District immediately of any and all damage caused by the Contractor to District property and that of third parties. The Contractor will promptly repair or, at the District's option, reimburse the District for the repair of any damage to property caused by the Contractor or its employees, agents, or equipment. In addition, the Contractor shall promptly notify the District of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information, which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

5. GENERAL PERFORMANCE STANDARDS.

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

Contractor's performance of the Services does not meet this standard, the Contractor shall, at the District's request, re-perform the Services not meeting this standard without additional compensation.

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

c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. The Contractor agrees that it has complied and will continue to comply with all Laws while providing Services under this Agreement. "**Laws**" means: (i) federal, state, county, and local or municipal body or agency laws, statutes, ordinances, and regulations; (ii) any licensing, bonding, and permit requirements; (iii) any laws relating to storage, use, or disposal of hazardous wastes, substances, or materials; (iv) rules, regulations, ordinances, and/or similar directives regarding business permits, certificates, and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws; and (vii) rules and regulations of the Colorado Department of Public Health and Environment..

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, sub-consultant, or employee of the District. Review, acceptance, or approval by the District of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions, or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

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

7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit B**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit B** of this Agreement, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a

reasonable attempt to notify the District of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the District with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) (“**W-9**”). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B-1**.

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

- i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the District to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

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

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

9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor shall have full power and authority to select the means, manner, and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained. The District shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income, or other tax contributions, insurance contributions (e.g. FICA taxes), workers’ compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions,

or any other form of taxes, benefits, or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or sub-contractors of the Contractor and will not for any purpose be considered employees or agents of the District. **The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the District, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.**

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

11. **CONTRACTOR'S INSURANCE.**

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

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

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

12. **CONFIDENTIALITY AND CONFLICTS.**

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

b. Personal Identifying Information. During the performance of this Agreement, the District may disclose Personal Identifying Information to the Contractor. **"Personal Identifying Information"** means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

c. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the District, the Contractor agrees to notify the District of conflicts known to the Contractor that impact the Contractor's provision of Services to the District.

13. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files, and other documents, in whatever form, shall remain the property of the District under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the District's request the Contractor will provide the District with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the District's use and shall provide such copies to the District upon request at no cost.

14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this

Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's, or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through, or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers, and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed and/or materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

15. INDEMNIFICATION.

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

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

c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

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

17. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the District for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the District's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities, or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the District. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the District harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the District in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.

18. TERMINATION. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days' prior written notice to the District and by the District by giving the Contractor thirty (30) days' prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors, or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the District to ensure a timely and efficient transition of all work and work product to the District or its designees. All time, fees, and costs associated with such transition shall not be billed by the Contractor to the District.

19. DEFAULT. If either Party fails to perform in accordance with the terms, covenants, and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party



is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

20. NOTICES. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

District: Blackstone Metropolitan District  
c/o Brightstar District Management LLC  
9351 Grant Street, Suite 500  
Thornton, CO 80229  
Attention: Beau McMahan  
Phone: (303) 952-4004  
Email: bmcMahon@brightstarcolorado.com

With a Copy to: WHITE BEAR ANKELE TANAKA & WALDRON  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122  
Attention: Clint C. Waldron, Esq.  
Phone: (303) 858-1800  
E-mail: cwaldron@wbapc.com

Contractor: Landtech Contractors, LLC  
252 Laredo Street  
Aurora, CO 80011  
Attention: Ben Zand  
Phone: (303) 344-4465  
Email: benz@landtechcontractors.com

21. AUDITS. The District shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll, and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the District at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

22. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements, or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the District.

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

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

25. GOVERNING LAW.

a. Venue. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the District's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the District shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

b. Choice of Law. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

c. Litigation. At the District's request, the Contractor will consent to being joined in litigation between the District and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner, or failure of the District to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

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

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

28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

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

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

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

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

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

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

*[Signature pages follow].*

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

**DISTRICT:**  
BLACKSTONE METROPOLITAN  
DISTRICT, a quasi-municipal corporation and  
political subdivision of the State of Colorado

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Officer of the District

ATTEST:

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APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

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General Counsel for the District

*District's Signature Page to Independent Contractor Agreement for 2024-25 Snow Removal  
Services with Landtech Contractors, LLC, dated November \_\_, 2024*

**CONTRACTOR:**  
LANDTECH CONTRACTORS, LLC, a  
Colorado limited liability company

---

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Printed Name

---

Title

*Contractor's Signature Page to Independent Contractor Agreement for 2024-25 Snow  
Removal Services with Blackstone Metropolitan District, dated November 19, 2024*

**EXHIBIT A**

**SCOPE OF SERVICES/COMPENSATION SCHEDULE**

Landtech has provided the following approximate price to plow the side roads in the Blackstone Metropolitan District for a 4” storm event. Actual cost will be calculated based on T & M Rates which are provided below. These are the T & M prices for the 2024-25 season and are subject to change in the following winter seasons.

DESCRIPTION	QUANTITY	Price
<b>Estimated Cost for Plowing services.</b>		
-Drive Lane Clearing	Per Round	\$5,250.00
-Extensive Clearing	Per Round	\$10,500.00
<b>Total:</b>		-



**Article A: HOURLY RATES 2024-2025**

**Rates include operator and have a one (1) hour minimum charge.  
Drive time is charged one direction.**

**Light Equipment**

4x4 Truck with Plow	\$133.00 per hour
Ice Slicer Spreader	\$145.00 per hour
Skid Steer Loader with Push Box/Plow	\$156.00 per hour
ATV w/Plow, SnowRator w/Spreader, UTV w/Plow and Spreader	\$102.00 per hour

**Heavy Equipment**

Loader/Backhoe with 1-yard Push box or plow	\$225.00 per hour
Loader/Backhoe with 3-yard Push box or plow	\$284.00 per hour

**Labor**

Hand Shovel/Spread Ice Melt	\$67.00 per man, per hour
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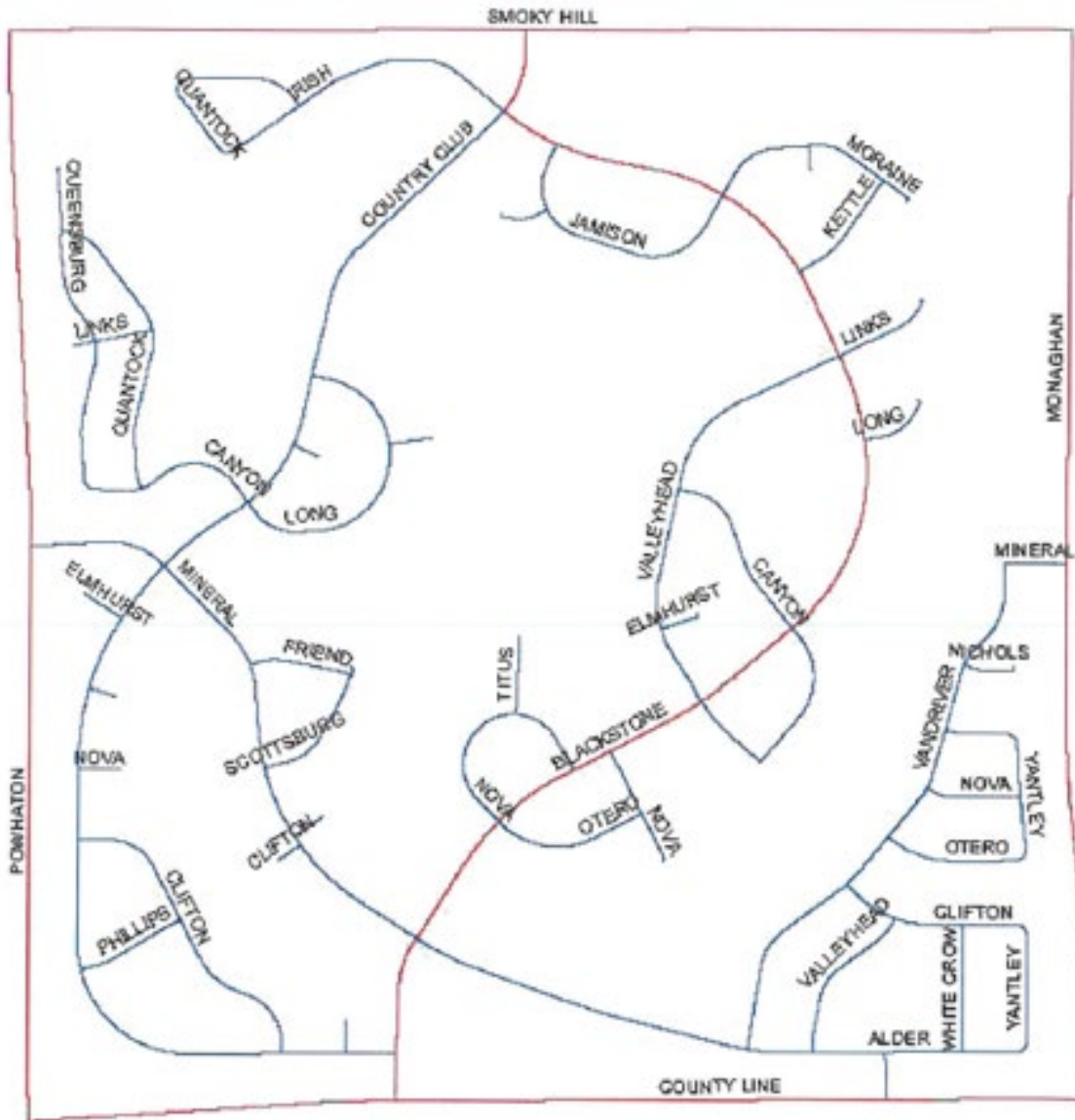
**Material**

Standard Ice Melt	\$1.00 per pound
Environmentally Friendly Ice Melt	\$1.42 per pound
Ice Slicer (Granulated Magnesium Chloride)	\$294.00 per ton

**Other**

Snow Pile Relocation/Haul Off	\$172.00 per hour
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(Landtech) will perform snow plowing of the roads shown in BLUE, otherwise, the City will perform snow services in accordance with its normal snow routes / standards on the RED lined areas below.



### Legend

- Blackstone Snow Removal Routes
- City of Aurora Snow Removal Routes



**EXHIBIT B-1**

CONTRACTOR'S COMPLETED W-9

## EXHIBIT C

### INSURANCE REQUIREMENTS

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

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

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

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. NA Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
5. Professional liability insurance in the amount of \$2,000,000.00 each occurrence.

**EXHIBIT C-1**

**CERTIFICATE(S) OF INSURANCE**

**EXHIBIT D**

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

**OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO**

**CERTIFICATE OF FACT OF GOOD STANDING**

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

LANDTECH CONTRACTORS, LLC

is a

Limited Liability Company

formed or registered on 03/01/1994 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19941024139 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 10/28/2024 that have been posted, and by documents delivered to this office electronically through 11/01/2024 @ 11:36:52 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 11/01/2024 @ 11:36:52 in accordance with applicable law. This certificate is assigned Confirmation Number 16527281 .



*Jena Griswold*

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*  
*Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."*

**Blackstone Metro District Interim Claims List 9/10/24 - 10/16/24**

<u>Process Date</u>	<u>Vendor</u>	<u>Invoice Number</u>	<u>Amount</u>
10/29/2024	Altitude Community Law P.C.	1726 SEP24	\$ 3,403.89
10/29/2024	Brent Johnston	Reimbursement	1,516.07
10/29/2024	CliftonLarsonAllen LLP	L241636637	5,926.17
10/29/2024	Landtech Contractors, Inc	Multiple	19,135.13
10/29/2024	Laura Elson	Reimbursement	69.01
10/29/2024	REPUBLIC SERVICES #535	0535-006094745	15,120.00
10/29/2024	REPUBLIC SERVICES #535	0535-006129378	15,120.00
10/29/2024	White Bear Ankele Tanaka & Waldron	36711	9,263.38
10/30/2024	Aurora Water	A116530 OCT24	13.81
10/30/2024	Aurora Water	A116535 OCT24	13.81
10/30/2024	Aurora Water	A116538 OCT24	22.09
10/30/2024	Aurora Water	A116540 OCT24	38.65
10/30/2024	Aurora Water	A116533 OCT24	86.69
10/30/2024	Aurora Water	A116539 OCT24	205.12
10/30/2024	Aurora Water	A116534 OCT24	378.13
10/30/2024	Aurora Water	A116532 OCT24	610.52
10/30/2024	Aurora Water	A116537 OCT24	941.72
10/30/2024	Aurora Water	A116536 OCT24	1,371.20
10/30/2024	Aurora Water	A116529 OCT24	2,513.42
10/30/2024	Aurora Water	A116531 OCT24	3,200.83
10/30/2024	Xcel Energy	53-0014753463-1 OCT24	125.83
11/12/2024	Brightstar District Management LLC	102	5,062.98
11/12/2024	Candice Nolan	Reimbursement	161.12
11/12/2024	Emrullah Tankut	Reimbursement	165.00
11/12/2024	Flock Safety	INV-48411	24,900.00
11/12/2024	Landtech Contractors, Inc	Multiple	96,640.42
11/12/2024	Law of the Rockies Attorneys at Law	2	1,519.05
11/12/2024	Pet Scoop, Inc.	579285	292.00
11/12/2024	Westwind Management Group LLC	28.17194	3,112.02
11/12/2024	White Bear Ankele Tanaka & Waldron	37202	7,935.44
<b>Total</b>			<b>\$ 218,863.50</b>



November 13, 2024

Blackstone Metropolitan District  
C/O Clint Waldron  
2154 E. Commons Ave #2000  
Centennial, CO 80122

**BLACKSTONE METROPOLITAN DISTRICT 2025 STORMWATER FACILITY OBSERVATION, REPORTING, MAINTENANCE CONTRACTING AND OVERSIGHT SERVICES PROPOSAL**

Stormwater Asset Protection, LLC (SWAP) is pleased to respond to your request to provide stormwater observation and maintenance oversight services for the Blackstone Metropolitan District (District) Stormwater System.

**SCOPE OF SERVICES**

**Observation** - SWAP will review inspection and maintenance (IM) plans and local jurisdiction reports provided by the District and will conduct a detailed inspection of the storm sewer systems outfalls and treatment facilities.

**Reporting** - SWAP will provide a report that identifies the detention ponds and their components condition including a recommendation for necessary maintenance and or repairs. A separate report detailing maintenance and repair operations will be provided for the purpose of requesting proposals. The inspection section of the report required by the City of Aurora to be submitted annually will be completed and SWAP will work with the contractor on the completion of the maintenance section of the report. Once completed, the report will be sent to the owner for final signature and submittal.

**Maintenance Contracting** - SWAP will acquire and provide to the District, bids to complete the recommended corrections and maintenance for contract approval or will work directly with the District’s current maintenance contractor to ensure the scope of work is detailed and understood.

**Oversight** - SWAP will conduct oversight of the maintenance operations to ensure the quality of work meets the expectations of the District and the local jurisdiction.

**ADDITIONAL SERVICES**

**Community Drainage Concerns** – SWAP can review issues, make recommendations and coordinate engineered plans and repair contracts as needed.

**Underdrain Review and Maintenance Contracting** – SWAP can review information provided by the District, review and document underdrain discharges to determine if televising and jetting is needed.

**Other District Owned Infrastructure Review and Contracting** – SWAP can review, provide reports and recommendations and coordinate maintenance and repair operations for infrastructure such as but not limited to concrete, asphalt and signage.

**Maintenance Prioritization** – SWAP can prioritize maintenance and repairs to meet the annual budgetary constraints of the District.

**Annual Inspections, Report, Coordination, Oversight** – SWAP can conduct scope of services annually for the cost listed below plus 3%.

**FEE**

SWAP proposes to perform Services on a Time and Material Basis in accordance with the Charge Rate Schedule below (assumes two detention ponds). Based on our experience, the total amount listed below should allocate the funds for the complete scope of services. Any excess funds may be used for additional services.

Observation	\$2,500.00
Reporting	\$1,500.00
Maintenance Contracting	\$2,500.00
Oversight	\$1,500.00
<b>Total</b>	<b>\$7,500.00</b>

## CHARGE RATE SCHEDULE

Services will be provided on a Labor Time and Expenses basis as provided below. Hourly rates are revised periodically to reflect the current cost for delivery of services and the fees charged for services under this engagement may change without notice. The District agrees that IDES is authorized perform a task authorized under this scope of services at the direction of any individual board member.

### Billing Rates

Project Administrator	\$115.00 per hour
Contract Administrator	\$130.00 per hour
Senior Contract Administrator	\$150.00 per hour
Project Engineer	\$150.00 per hour
Senior Technical Specialist	\$165.00 per hour
Senior Construction Manager	\$205.00 per hour
Contractor Management	Time + 10% Mark-Up

### Reimbursable Expenses

Mileage	IRS rate + 10%
Tolls	At cost + 10%
Plan copies, outside copies, other items	At cost + 10%

If you have any comments or questions, please feel free to contact me. We appreciate the opportunity to submit this proposal.

Respectfully Submitted,

*Tanna Boisvert*

Tanna Boisvert, CSM  
SWAP, LLC



**Blackstone Metropolitan District Rate 2025 Contractor Agreement**

- **Monthly Lighting Inspections on the 15th of every month.**
  1. Tech drives property at night to ensure all lights are working properly. Including pathway lights (bollards), bridge lights, median lighting.
  2. Report turned in and parts ordered for repairs to be completed by the end of month.
  
- **The following lights are part of the city.**
  1. Sidewalk pole lights are the city's responsibility.
  
- **Large projects**
  1. Underground wiring.
  2. New electrical installation for lighting.
  3. We will provide estimates on any new projects.

Monthly lighting inspection rate \$150.00 month.

Labor rate \$110.00-\$295.00 per hour.

Service call \$65.00.

Matthew Holmes  
Full Spectrum Lighting  
303-204-0949

Blackstone Metropolitan District  
7777 South Country Club Parkway  
Aurora CO. 80016

<b>Contractor:</b>	<b>District:</b>
<b>By:</b> _____	<b>By:</b> _____
<b>Name:</b> <u>Matthew Holmes</u>	<b>Name:</b> _____
<b>Title:</b> <u>President</u>	<b>Title:</b> _____



**INDEPENDENT CONTRACTOR AGREEMENT  
(ARBORIST SERVICES)**

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the \_\_\_\_ of \_\_\_\_\_, 2024, by and between BLACKSTONE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and DAVEY RESOURCE GROUP, Inc., a Delaware corporation (the “**Contractor**”). The District and the Contractor are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

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

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

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

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

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

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

**TERMS AND CONDITIONS**

1. SCOPE OF SERVICES; PERFORMANCE STANDARDS. The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “**Services**”): (a) in a professional manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) using reasonable commercial efforts to minimize any annoyance, interference, or disruption to the residents, tenants, occupants, and invitees within the District. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement

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

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof or (ii) December 31, 2029.

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

4. REPAIRS/CLAIMS. The Contractor shall notify the District immediately of any and all damage caused by the Contractor to District property and that of third parties. The Contractor will promptly repair or reimburse the District for the repair of any damage to property caused by the Contractor or its employees, agents, or equipment. In addition, the Contractor shall promptly notify the District of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information, which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the District the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services, whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

5. GENERAL PERFORMANCE STANDARDS.

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

District's request, re-perform the Services not meeting this standard without additional compensation.

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

c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.

d. The Contractor agrees that it has complied and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means applicable: (i) federal, state, county, and local or municipal body or agency laws, statutes, ordinances, and regulations; (ii) licensing, bonding, and permit requirements; (iii) laws relating to storage, use, or disposal of hazardous wastes, substances, or materials; (iv) rules, regulations, ordinances, and/or similar directives regarding business permits, certificates, and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws; and (vii) rules and regulations of the Colorado Department of Public Health and Environment.

e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, sub-consultant, or employee of the District. Review, acceptance, or approval by the District of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions, or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

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

## 7. COMPENSATION AND INVOICES.

a. Compensation. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the District in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the District of the estimated amount of such reimbursable costs (or

any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the District with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) (“W-9”). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B**.

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

- i. An itemized statement of the Services performed. Contractor may invoice progress payments against firm-fixed price tasks, by applying the percentage of work performed during each billing period.
- ii. Any other reasonable information required by the District to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

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

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

9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. The Contractor shall have full power and authority to select the means, manner, and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors. The District is concerned only with the results to be obtained. The District shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income, or other tax contributions, insurance contributions (e.g. FICA taxes), workers’ compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits, or insurance. The Contractor shall be responsible for its safety,

and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or sub-contractors of the Contractor and will not for any purpose be considered employees or agents of the District. **The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the District, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.**

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

11. CONTRACTOR'S INSURANCE.

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

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

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

12. CONFIDENTIALITY AND CONFLICTS.

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

b. Personal Identifying Information. During the performance of this Agreement, the District may disclose Personal Identifying Information to the Contractor. **"Personal Identifying Information"** means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

c. Conflicts. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the District, the Contractor agrees to notify the District of conflicts known to the Contractor that impact the Contractor's provision of Services to the District.

13. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files, and other documents, in whatever form, shall remain the property of the District under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the District's request the Contractor will provide the District with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the District's use and shall provide such copies to the District upon request at no cost.

14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this

Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's, or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through, or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers, and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed and/or materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

15. INDEMNIFICATION.

a. The Contractor shall defend, indemnify, and hold harmless the District and each of its directors, officers, employees, and agents (collectively, the "**District Indemnitees**"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "**Claims**"), including reasonable legal expenses and attorneys' fees actually incurred, by the District Indemnitees to the extent caused by the errors or omissions, negligence, willful misconduct, or any criminal or tortious **act** or omission of the Contractor or any of its subcontractors, officers, agents, or employees, during the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the District Indemnitees for the negligence of the District or the negligence of any other District Indemnitee, or other third party not under Contractor's control; rather, such indemnification claims will be administered based upon a determination of the degree of comparative fault of each party. Contractor retains the right to select counsel reasonably acceptable to the District Indemnitees, and the District Indemnitees will provide reasonable cooperation and not unreasonably withhold consent to settle any claims for which Contractor is providing defense or indemnification. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential, indirect or punitive damages.

b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within a reasonable time period after notice from the District of the existence of such Claim, the District may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel.

16. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

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

18. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the District for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the District's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities, or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the District. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the District harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the District in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.

19. TERMINATION. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days' prior written notice to the District and by the District by giving the Contractor thirty (30) days' prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors, or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the District to ensure a timely and efficient transition of all work and work product to the District or its designees. All time, fees, and costs associated with such transition shall not be billed by the Contractor to the District.

20. DEFAULT. If either Party fails to perform in accordance with the terms, covenants, and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

21. NOTICES. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service,



or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

District: Blackstone Metropolitan District  
Brightstar District Management LLC  
9351 Grant Street, Suite 500  
Thronton, CO 80229  
Attention: Laura Reese  
Phone: (303) 952-4004  
Email: lreese@brightstarcolorado.com

With a Copy to: WHITE BEAR ANKELE TANAKA & WALDRON  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122  
Attention: Clint C. Waldron  
Phone: (303) 858-1800  
E-mail: cwaldron@wbapc.com

Contractor: Davey Resource Group, Inc.  
295 S. Water Street  
Kent, Ohio 44240  
Attention: Dana Karcher  
Phone: 661-964-7158  
Email: dana.karcher@davey.com

With a Copy to: Davey Resource Group, Inc.  
295 S. Water Street  
Kent, Ohio 44240  
Attention: Legal Department

22. AUDITS. The District shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll, and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the District at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.


23. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements, or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the District.

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

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

26. GOVERNING LAW.

a. Venue. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise. At the District's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the District shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

 b. Choice of Law. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.

c. Litigation. At the District's request, the Contractor will consent to being joined in litigation between the District and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner, or failure of the District to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

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

28. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the District's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement, or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the District, or as creating a multiple- fiscal year direct or indirect debt or other

financial obligation whatsoever of the District or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of District funds. The District's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

29. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

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

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

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

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

34. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “**Work**”) will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules, and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the District, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date for a period of ninety (90) days following the completion of the Work. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

35. TAX EXEMPT STATUS. The District is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the District is exempt shall not be included in any 1336.4200; 2ZJD32YYKN72-293431133-1091

invoices submitted to the District. The District shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

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

*[Signature pages follow].*

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

**DISTRICT:**  
BLACKSTONE METROPOLITAN  
DISTRICT, a quasi-municipal corporation and  
political subdivision of the State of Colorado

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

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

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

*District's Signature Page to Independent Contractor Agreement for Arborist Services with  
Davey Resource Group, Inc., dated July 30, 2024*

**CONTRACTOR:**

DAVEY RESOURCE GROUP, Inc., a Delaware corporation

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Printed Name

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Title

*Contractor's Signature Page to Independent Contractor Agreement for Arborist Services with  
Blackstone Metropolitan District, dated July 30, 2024*

# EXHIBIT A

## SCOPE OF SERVICES/COMPENSATION SCHEDULE

The Scope of Services shall include the services set forth in this Exhibit A. Additional services and an associated compensation schedule shall be detailed pursuant to such work orders approved and executed by an authorized representative of the District and Contractor. Contractor shall be referred to in this Exhibit A as “DRG.”

It is our understanding that Blackstone Metro District seeks a contractor (qualified and experienced arborists) to develop and implement a 5-year planting plan.

The following key tasks constitute the proposed project which are explained in more detail in the following scope document:

1. **5-Year Tree Planting Plan**
2. **Planting Oversight**
3. **Follow Up Inspections:**

## TASK ONE: 5-YEAR TREE PLANTING PLAN

### 1. SITE INSPECTION

DRG arborist(s) will determine appropriate locations for up to 600 trees for planting over the next five years. They will utilize the maps provided and mark locations keeping in mind the size of the planting location for the future. This will be accomplished on foot using a ruggedized field computer.

DRG provides Personal Protective Equipment (PPE), such as hard hats, high-visibility safety vests, safety glasses, and boots for field work. Additionally, our vehicles are marked with company logos and equipped with first-aid kits, fire extinguishers, and safety cones.

**Deliverable:** Map with numbered trees corresponding to a database with numbered trees. The database will include tree size. Later, the species selections can be added to the database along with planting year.

### 2. SPECIES SELECTION

The DRG arborist(s) assigned to the site inspection will make note of the current species that are doing well during their site inspection. Additionally, we will utilize the Colorado Tree Coalition’s tree list keeping in mind limitations that may exist including unwanted fruit or nuts, excessive leaf litter, water needs, pest and disease susceptibility, and stock availability. It will be important to know the Metro district’s vision for their urban forest, including number and variety of species, mix of deciduous trees and coniferous trees, and tolerance for leaf and debris litter. This will be determined during a kickoff meeting.

**Deliverable:** A species list that includes potential best species for the district. These will be categorized into deciduous and coniferous trees.

### 3. PLANTING MAPS

DRG arborists will utilize maps provided, or recent publicly available aerial imagery from the City of Aurora or County of Arapahoe. On these maps, DRG will geolocate planting locations of tree species. These will be numbered and the numbers will correspond to a planting time frame and species list. The maps can be printed

We strongly encourage Blackstone to allow DRG to recommend up to three species per site. Trees are a living organism and can be affected by a number of factors at any time from pests and diseases. Having “back up” species will allow the Metro District to assure that the right tree is going to be planted in the right place, at the right time.

**Deliverable:** A planting map(s) that correspond with the site inspection database.

#### **4. PLANTING SPECIFICATIONS**

DRG arborists are well versed in planting trees. We will provide planting instructions based on the International Society of Arboriculture's Best Management Practices for Tree Planting and other resources such as the Colorado State Forest Service. These specifications for planting will be consolidated into a planting guide for the contractor(s). These may include additional tree irrigation requirements such as watering bags or Tree Diapers based on drought conditions and tree locations. Additional information will include establishment watering, winter watering, and winter tree wrap. We will include warranty information for the contractors based on current best practices.

**Deliverable:** Planting specification one-pager in black and white for both print and web site use if desired. Warranty information will be included as well.

#### **5. TREE CARE INSTRUCTIONS**

In addition to the above named planting specifications and supplemental irrigation tools, DRG will consolidate tree care instructions from such tools as the US Forest Service's "Tree Owner's Guide", the Colorado Tree Coalition's tree care information, additional information from the Colorado State Forest Service, Arapahoe County Extension office, International Society of Arboriculture, and more if needed. Tree care instructions should be simple, based on science, and easy to understand. These sources provide enough information to create a tool that can be used by the contractor and if desired, by homeowners as well.

**Deliverable:** Tree care instructions both in illustrated and written form for both print and website use.

#### **6. RFP AND PLANTING REQUIREMENTS TEMPLATE**

DRG has numerous clients throughout the front range from which we can collect tree planting requests for proposals. Additionally, Davey's Commercial Landscape Services and Davey's Residential/Commercial offices can provide DRG templates as well. From this, we can develop the RFP for annual planting for Blackstone's approval. The RFP will include not only the planting specifications, but also the specifications for trees based on species. This will include size, caliper, taper, health, and root health.

**Deliverable:** Request for Proposal document for use by Blackstone.

#### **7. STAKEHOLDER MEETINGS**

DRG will schedule and conduct meetings and site walks with the district's Landscape Architect and/or the planting contractor as needed. We envision creating an annual schedule for these meetings based on the timing of the award of the RFP, planting project(s), and various inspections based on the planting warranty and seasonal tree care. The planting plan will be presented to both the LA and the planting contractor with pictures of the species at maturity for full understanding of what trees are suggested.

Option: DRG can also create a presentation for the homeowners of Blackstone. This will help them understand the planting project from a professional arborist perspective.

**Deliverable:** Half-day annual meeting with the Landscape Architect and Planting Contractor prior to the annual planting project.



## 8. COLLABORATIONS WITH LANDSCAPE PROVIDER

To assure collaboration with the landscape provider, they must be made aware of the tree planting plan. This includes sharing the species list and the timing of the projects to assure there are no conflicts. Additionally, if the landscape provider is responsible for irrigation, it will be important for them to understand where irrigation is needed for the trees.

**Deliverable:** One 3-hour meeting with the landscape provider, annually, prior to the planting project.

### INCLUDED IN THESE TASKS: PROJECT MANAGEMENT

Prior to starting any fieldwork, it is imperative that we are clearly aligned on the complete project scope. The DRG team sets up meetings and updates schedules prior to starting fieldwork and continually evaluates communication throughout the project to ensure the scope of work is completed on time and within budget. These meetings and e-mail updates include an On-Site Kick-Off Meeting, project update e-mails, and additional communication as requested.

## TASK TWO: PLANTING OVERSIGHT

### 1. RFP ASSISTANCE

DRG will help create the RFP template as requested. Additional updates may be required based on the prior year's performance. (One option to keep in mind is to bid the planting project on a one-year award basis with the option for renewal annually until the project is complete. This may save Blackstone resources in the long run.)

**Deliverable:** Use and update of the prior RFP to assist Blackstone in hiring the planting contractor. Includes review of the responses.

### 2. SITE PREPARATION

Prior to the planting project, DRG will assure that planting locations are marked with both paint and flagging. Additionally, DRG would request that the landscape company flag irrigation near the planting sites to assure that it remains intact and undisturbed during the planting process.

**Deliverable:** A site inspection within 24 hours of the planting project.

### 3. ONSITE COORDINATION

Prior to the planting project, DRG will assure that tree deliveries take place prior to the project. DRG will inspect each tree (using standard tree nursery stock checklists) that needs to be planted and reject and request replacement for trees that do not fit the requirements of the RFP. (Option: DRG can inspect trees at the nursery and actually pick out the trees if desired. This can be put in the RFP as a requirement or an option. This usually eliminates the need for onsite rejection of trees that don't meet the standards as requested in the RFP.) Planting inspection will take place during and after the planting project assuring that the contractor adheres to the planting instructions.

**Deliverables:** Tree inspection prior to tree planting project. Planting inspection during the project, and all trees inspected after the planting project.

#### 4. INSPECTION REPORT

**Deliverable:** DRG will provide an email report outlining inspection of the newly planted trees. We will convey problems and issues related to the planting project.

#### 5. CONTRACTOR SUPPORT

The DRG arborist(s) will be available for questions from the contractor as needed. This includes being on site the day of the planting project and prior. DRG can be the main contact for the contractor and DRG will keep Blackstone informed of any challenges or opportunities. The contractor will have all contact information for the DRG arborist.

**Deliverable:** DRG arborist available to the contract before, during and after the planting project.

### TASK THREE: FOLLOW UP INSPECTIONS

#### 1. Seasonal Inspections and

#### 2. General Inspections

DRG will conduct three inspections (annually) of all trees planted over the 5 year period. Additional inspections will take place at bi-annual intervals. (If desired, DRG can inspect newer planted trees into further years.)

For example:

Year	1	2	3	4	5
Number of Trees Planted	120	120	120	120	120
Cumulative Number of Trees Inspected	120	240	360	480	600

#### 3. Inspection Reports

Email inspection reports will be succinct noting challenges and issues with the trees. Additionally, they will include action items for Blackstone and items for the contractor(s) to address based on tree number and location. Blackstone can then utilize that information to share with the contractor(s). (Or DRG can fulfill that role.)

**Deliverable(s)** for this task: Reports via email to Blackstone outlining the inspection process and findings. DRG will utilize the original data based as the depository for information.

#### OPTIONS:

- If DRG is inspecting trees, our Certified Arborists can also complete young tree maintenance on the trees as they are inspecting them. The first three years that a tree is in the ground, if the tree is maintained, in general, later pruning is needed less. Early tree maintenance includes removing broken branches, developing a central leader, managing the low growing branches, and establishing the shape of the tree. All work completed is done from the ground with loppers and bypass hand pruners. Additional work may include inspecting irrigation, re-staking if necessary, and assuring that berms and mulch are still in place.

# Additional Scope of Work

## Tree Inventory

DRG has developed the following approach to provide consistent high-quality tree inventory data. As a client-focused company, we prioritize clear and effective communication with our clients. We intend to keep you informed every step of the way so that you are confident in your data and our services. Our communication process aims to address any issues that may arise before they become problems, and we discuss issues as they occur and work towards developing solutions that work for everyone involved.

We maintain strict quality control measures throughout the project and monitor the site count, budget, and timeline while keeping you informed. Our proprietary approach to project implementation applies stringent quality control measures, engaged team members, and clear communication to deliver the final project with confidence in meeting the specifications.

### PROJECT MANAGEMENT

Prior to starting fieldwork, it is imperative that we are clearly aligned on the complete project scope. The DRG team sets up meetings and updates schedules prior to starting fieldwork and continually evaluates communication throughout the project to ensure the scope of work is completed on time and within budget. These meetings and e-mail updates include a Kick-Off Meeting, project update e-mails, and Close-Out Meeting.

DRG will request relevant GIS from public sources, most likely the City of Aurora. We will use this data to program the data collection software and will confirm the agreed-upon data specification. Once your database is programmed and fieldwork is scheduled, we will set up an on-site kick-off meeting. This meeting occurs on the first day of data collection and includes topics such as safety, data and field calibration, communication procedures, project expectations, and milestones. We can also provide you with a press release, which can be utilized to notify homeowners about the project and what to expect.

### TREE INVENTORY DATA COLLECTION

DRG begins data collection after the on-site kick-off meeting. Our arborist will locate trees, stumps, and planting sites as per the agreed upon specification of work. They evaluate the trees and record the specified data for each site.

- **Location Accuracy:** DRG uses field computers and equipment that meet or exceed the project's location accuracy requirements. Our project teams use GIS software and ruggedized computers with GPS receivers capable of sub-meter location accuracy under favorable conditions.
- **Individual Tree Inspection Process:** Our arborist inspects each tree from the ground during data collection. They identify the species, tree diameter, assess tree condition, and recommend maintenance. Data collection is done systematically for consistency and is typically done Monday through Saturday during daylight hours.
- **Safety:** DRG team members will be outfitted in the necessary Personal Protective Equipment (PPE), such as hard hats, high-visibility safety vests, safety glasses, and boots. Additionally, our vehicles are marked with company logos and equipped with first-aid kits, fire extinguishers, and safety cones.

## Data Fields

Based on our years of experience, the data fields below will provide the information needed to accomplish the project goals. However, if you have specific requirements that are not covered by the mentioned data fields, we are happy to further customize the project's scope of work. Based on our industry-leading experience, the following data fields should be assessed:

- **Address/Location:** transfer values from provided or acquired parcel GIS layer including house address, on street, and park name (if applicable), X & Y coordinates will be provided through GPS location.
- **Species:** using botanical and common names and cultivars when appropriate.
- **Tree Size:** diameter at standard height (DSH) in 1-inch size classes.
- **Multi-Stem Tree:** noting if a tree has multiple stems. If a tree is multitemed only the largest stem will be recorded.
- **Condition:** categorized as good, fair, poor, or dead based on signs of stress, poor structure, damage, soil and root problems, disease, and pests.
- **Primary Tree Maintenance:** assigned as remove, prune, training prune, adjust stakes, discretionary prune, stump removal, or plant.
- **Defects:** including dead and dying branches, broken or hanging branches, branch attachment, trunk condition, cracks, decay or cavity, tree architecture, root problems, and no significant defect.
- **Overhead Utilities:** recording if overhead utilities are present and conflicting, present but not conflicting, or not present.
- **Comments/Notes:** observations and other pertinent information are recorded.
- **Date of Inventory:** the date the urban forester collected the data.
- **Further inspection:** Trees in this category need added and future inspections due to a variety of issues beyond the scope of a standard tree inventory. Categories include soil/ water testing, insect or disease monitoring, multi-year annual inspection, recent damage inspection, advanced risk assessment, and none.
- **Growing Space Type**
  - Median/Island-Located between lanes of traffic
  - Planting Strip-Located between the sidewalk and curb. Also called a Tree Lawn
  - Well/Pit-Limited growing space surrounded by hardscape
  - Open/Maintained Space-Space that's being actively mowed and manicured. Examples include parks, lawns, edges of fields, etc.
  - Wooded/Unmaintained Space-Space that's not being actively mowed and manicured Examples include woodlots, trails, unmowed field edges, etc.
- **Grow space size:** The shortest dimension of space available between hardscape or other features for root growth.
  - Less than 4 feet
  - 4 to 6 feet
  - 6 to 8 feet
  - More than 8 feet

Below fields are specific to newly planted trees

- **Date planted:** date the tree is planted is recorded.
- **Caliper size at planting:** measured at 1 foot off the ground
- **Stock type:** ball and burlap, containerized, bare root
- **Planting observations:** Mechanical damage, incorrect planting depth, incorrectly staked, incorrectly mulched, broken limbs, other, girdling or broken roots, none.
- **Winter wrapping:** yes or no
- **Gator/Tree diaper:** yes or no

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## QUALITY CONTROL AND QUALITY ASSURANCE

To ensure the accuracy of the data, the team employs several quality control checks consisting of hot and cold data checks during fieldwork. Hot checks involve the urban foresters working together and collecting the same data to ensure consistency. In cold checks, the urban foresters review a sample of each other's data to identify any inconsistencies. Any necessary corrections are made to ensure that you receive consistent and accurate data communicated to you. After the data collection is complete and before final delivery, a series of queries and checks are run to verify the data's correctness. Any identified errors are addressed before delivering the data to you and your representatives.

## DATA DELIVERY

At the end of data collection and final QC checks, we provide the data in TreeKeeper for both your use and our use.

# TreeKeeper Software

Davey's TreeKeeper® software is the world's leading tree inventory software and has been continually in operation for longer than our competitors have even been in business. TreeKeeper's stability and large diverse user base gives you the confidence that your data are safe, secure, and usable. While many competitors have come and gone, we have never wavered from our commitment to providing our clients with the highest quality software.

TreeKeeper® is constantly being updated based on technology advancements, user feedback, and internal research and development. It is a subscription service offered as a Software as a Service (SaaS) and requires an acceptance of SaaS terms and conditions. TreeKeeper's scalability allows our clients to grow alongside the software and facilitates a paperless workflow operation without dictating exact procedures. The pricing for TreeKeeper® is transparent and upfront, with no hidden fees, additional costs, or a-la-carte modules. With a role-based user experience, users access data with specific user-created dashboards, reports, filters, and permission rights.

## KEY SOFTWARE FEATURES

- **Interactive Dynamic Work Environment.** TreeKeeper® makes managing inventory data in the field on a desktop easy with its interactive work environment. Users can view and work with the tree inventory data through an interactive map and table that is fully customizable and can be used independently or simultaneously. TreeKeeper® also enables multiple people in different locations to access the system at the same time, enabling real-time updates to the data.
- **Unlimited Information with Multiple Data Layers.** We do not limit or charge more for the amount of users, trees, or information stored in TreeKeeper®. You have the ability to have multiple editable layers, such as historical data, additional facilities, and additional assets, as well as multiple base layers.
- **Role-Based.** Each system has the following roles that can be assigned to an unlimited number of users; admin, edit, read, contractor, and public. Each role has specific functionality and can be assigned to each layer built into the system.
- **Public View.** All TreeKeeper® systems come with an included landing page that is aimed at educating and informing the general public. Users dictate what information is viewable (not editable) and can include i-Tree benefits, species information, custom reports, planting requests, and more!
- **Mobile.** Each system has the ability to switch between mobile and desktop views. The desktop view is built on a dynamic web page optimized for whichever screen size is used. The mobile version is optimized for tablets and provides full functionality in a streamlined user experience to edit, manage work orders, add trees, take photos, etc.
- **i-Tree Eco Benefits.** Utilizing i-Tree's Eco API, TreeKeeper® automatically and dynamically calculates the environmental benefits of the trees on an annual basis and is projected out for 20 years. Information

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includes air quality, carbon sequestration and storage, storm water benefits, and energy (if possible), and is displayed for individual trees, groups of trees, or the entire population.

- **Infinite Searchability.** Users can search the live data with either the integrating mapping tools or the explore section. In the Map-Centric view, users can use the map to find information about specific sites or groups of sites. The explore section also allows users to query the data by searching for sites based on various data fields, such as address, species, condition, maintenance, size, etc. Whether searching from the map or exploring sections, the results are synchronized, so you will always have results in both spots.
- **Editability & Archive.** Within the tree view mode, users with Admin or Edit rights have the ability to make edits to all the data fields. Most data fields utilize dropdowns to minimize potential errors from spelling or inconsistent nomenclature. All edits are displayed within the Archive feature and are timestamped. This allows all users to see how the tree has changed overtime.
- **Work Orders & Calls.** All systems come with a robust work order and caller log feature that can be utilized if desired. Work orders can be created for individual or groups of trees. They can then be requested, scheduled, or completed and assigned to work crews, contractors, or projects. The system keeps track of the edits made to a site through its work history feature. Users also have the ability to log information about specific callers for a specific site.
- **Photos & Electronic Documents.** All sites have the ability to have various electronic attachments associated with them, including photos, PDFs, and documents. The upload photo option automatically uses your phone's built-in camera when using the mobile version.
- **Tree Appraisals.** Using the Council of Tree and Landscape Appraisals (CTLA) 10th Edition trunk formula method, all trees have an estimated tree valuation by default. Users can further define attributes to get an actual tree valuation with the ability to record pricing estimates and local information.
- **Custom Dashboards, Reports, & Filters.** Dashboards are configurable for each user with pre-set and user-designed graphs, reports, work orders, and filters viewable upon logging in. TreeKeeper's robust reporting feature allows users to create custom reports related to attributes, work orders, project tracking, and more. All searches are savable as quick filters, enabling users to quickly and easily run and share search results. Reports and filters are dynamic and pull from the current inventory information.
- **Administrative Hub.** Within the administrative hub, admin users can use a variety of easy-to-use tools to further customize your TreeKeeper' experience. You can add additional users, assign roles, edit attributes, create projects, update work crews, assign cost information, and more!
- **Exporting & Importing Data.** You always own your data and have access to it. You can use the exporter & importer tool on all the data or a subset of data at any time.
- **Custom API Integration.** If desired, we can work with a variety of 3rd party software providers to configure a customized API into their system. This can be customized as a simple push of data or as a complete push and pull to fully keep all systems updated. We have successfully created API's for many systems, including, but not limited to, in-house ESRI configurations, Cartegraph, Cityworks, Salesforce, Lagin, 311, etc.

## SOFTWARE TRAINING & SUPPORT

We are happy to provide a complementary orientation training during the inventory. Additionally, DRG offers custom software training for an additional fee that can be arranged at any time throughout your subscription.

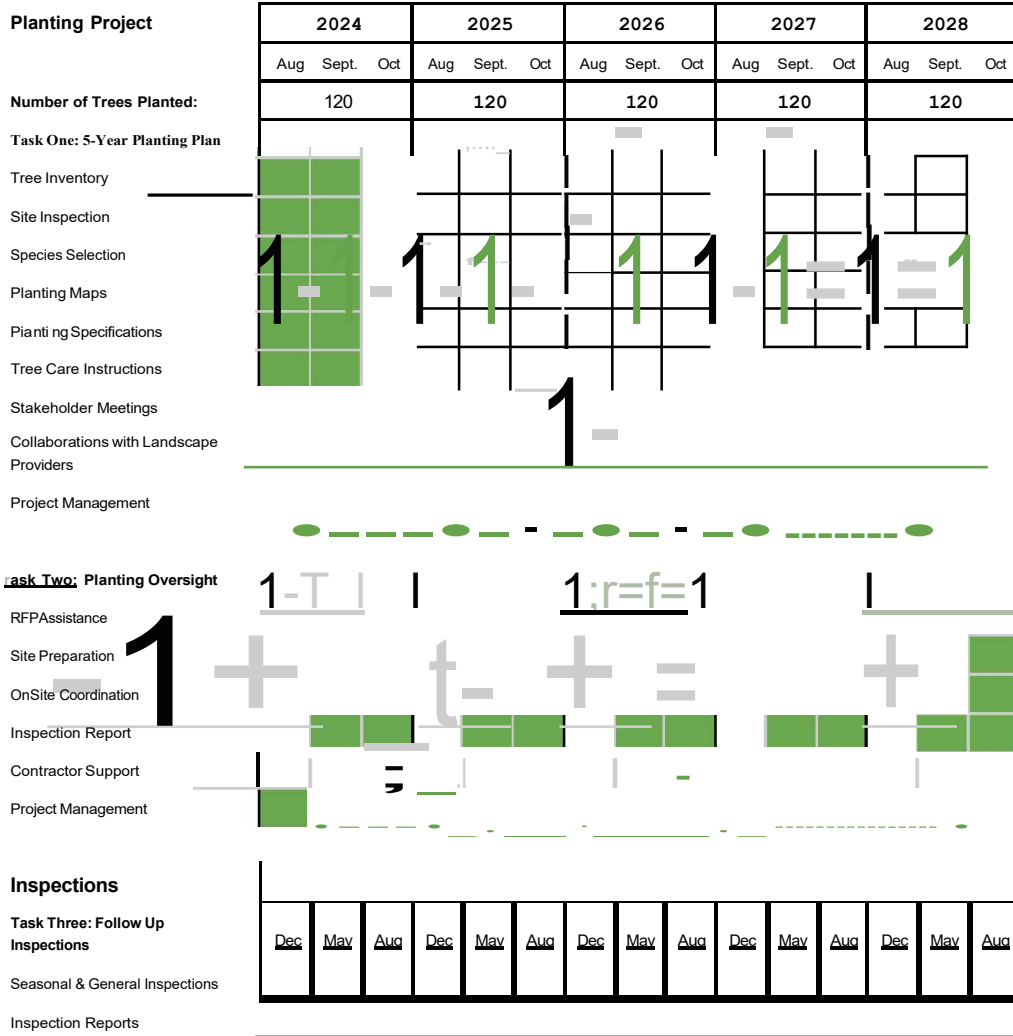
## SOFTWARE UPDATES

All TreeKeeper® clients receive free unlimited updates. We are committed to staying up-to-date with the latest technology trends to ensure that TreeKeeper® remains the most advanced software system for tree inventory management. We value client feedback and have made numerous upgrades to TreeKeeper® based on suggestions from clients over the past 20 years. These upgrades are developed in-house by DRG's professional software developers-not by off-shore labor or other subcontractors.

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# Proposed Timeline

It is important to note that the planting season is short in Colorado; the best months for planting are September and October, and April and May. We anticipate that the first plantings may take place in late October of 2024. This is based on contracting by August 15, 2024. If that is not feasible, then the first planting will take place in April of 2025. Timelines can shift accordingly. Plantings can either be in the fall or in the spring depending on how Blackstone wants to proceed.



# Cost Proposal (Original RFP)

This proposal is based on the interpretation of the scope of work listed in the RFP. Davey Resource Group, Inc. reserves the right to renegotiate the price based on the timing of the award, scheduling of fieldwork, the final methodology chosen by the client, and availability, completeness, and quality of maps. The pricing includes escalated hour rates which can be renegotiated with a change in personnel.

Blackstone Metro District	2024		2025		2026		2027		2028	
Team Member Rates	\$95.00	\$125.00	\$102.00	\$134.00	\$109.00	\$143.00	\$111.00	\$153.00	\$125.00	\$164.00
	<b>Project Hours</b>									
<b>Task One: 5-Year Planting Plan</b>										
Site Inspection	20									
species Selection	10	1								
Planting Maps	10	1	1		1	1	1	1	1	1
Planting Specifications	10	1	1		1	1	1	1	1	1
Tree Care Instructions	7	1								
Stakeholder Meetings	3		3		3		3		3	
Collaborations with L. Providers	4		4		4		4		4	
Project Management		1			1		1		1	
<b>Task Two: Planting Oversight</b>										
RFP Assistance	5	1	3		3		3		3	
Site Preparation	20	20	20		20		20		20	
OnSite Coordination										
Inspection Report	10	1	10		10		10		10	
Contractor Support	10	10								
Project Management										
<b>Task Three: Follow Up Inspections</b>										
Seasonal and General Inspections	15	1	15		15		15		15	
Inspection Reports	3	3			3		3		3	
<b>Total Hours</b>	147	15	88	9	88	9	88	9	88	9
<b>Total Cost Per Year</b>	\$15,840.00		\$10,182.00		\$10,879.00		\$11,673.00		\$12,476.00	

Davey Resource Group, Inc.  
Arborist Services  
Page B



## Additional Costs:

Tree Inventory	\$6,872.00 for 750 trees, \$9.16 per tree after 750 trees
Tree Keeper (Annually)	\$3,600.00

Year one total will include:

Tasks One through Three, the Tree inventory, and TreeKeeper software for a total of \$26,312.00

**All work that is not scoped in this document will be billed at an hourly rate as quoted above.**

# CLIENT RESPONSIBILITIES

- Provide DRG with imagery, maps, and data files. Our request may include the following: digital orthophotographs, available GIS data layers, other electronic or paper copies of maps for roads, pavement widths, right-of-way widths, boundaries and utilities, and an electronic file or printed list of street names and endpoints.
- Provide daily contact information and directions during the inventory project.
- Provide a copy of any existing tree inventory databases.
- Coordinate and host an on-site kick-off meeting before the start of fieldwork.
- By accepting this proposal, you accept DRG's Terms and Conditions and Limited Warranty and agree that, upon award, this proposal and its attachments will be made a part of the Agreement.

# TERMS AND CONDITIONS

- All pricing is valid for 30 days from the date of this proposal, after which time we reserve the right to amend fees as needed.
- Time and materials (T&M) estimates will be billed using the labor rates in DRG's current commercial price list. Fixed Fee Contract Prices will be billed in monthly increments for the percentage of work completed in the billing period. Firm-Fixed Unit Prices will be billed in monthly increments for the number of completed units in the billing period.
- Payment terms are net 30 days.
- If prevailing wage requirements are discovered after the date of this proposal, we reserve the right to negotiate our fees.
- The client is responsible for any permit fees, ~~taxes~~, and other related expenses unless noted as being included in our proposal.
- The client shall provide 48 hours notice of any meetings where the consultant's attendance is required.
- Unless otherwise stated, one round of revisions to deliverables is included in our base fee. Additional edits or revisions will be billed on a time and material (T&M) basis.
- All reports are provided only to the client unless otherwise directed.
- ~~DRG represents that it and its agents, and consultants employed by it, are protected by Workers' Compensation insurance and that DRG has coverage under liability insurance policies which DRG deems reasonable and adequate. DRG shall furnish certificates of insurance upon request. DRG agrees to maintain general liability insurance in commercially reasonable amounts. Client is responsible for requesting specific inclusions or limits of coverage that are not present in DRG insurance, and the cost of such inclusion or coverage increases if available, will be at Client's sole cost and expense. If the Client requires an Additional Insured endorsement, DRG shall provide one in the certificate of insurance, listing only the entities requested in the "Additional Insured Requirements" section above.~~

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\_\_\_\_\_ **DISTRICT INITIAL** \_\_\_\_\_ **CONTRACTOR INITIAL**

# LIMITED WARRANTY

Davey Resource Group, Inc. ("DRG") provides this limited warranty ("Limited Warranty") in connection with the provision of services by DRG (collectively the "Services") under the agreement between the parties, including any bids, orders, contracts, or understandings between the parties (collectively the "Agreement").

Notwithstanding anything to the contrary in the Agreement, this Limited Warranty will apply to all Services rendered by DRG and supersedes all other warranties in the Agreement and all other terms and conditions in the Agreement that conflict with the provisions of this Limited Warranty. Any terms or conditions contained in any other agreement, instrument, or document between the parties, or any document or communication from you, that in any way modifies the provisions in this Limited Warranty, will not modify this Limited Warranty nor be binding on the parties unless such terms and conditions are approved in a writing signed by both parties that specifically references this Limited Warranty.

Subject to the terms and conditions set forth in this Limited Warranty, for a period of ninety (90) days from the date Services are performed (the "Warranty Period"), DRG warrants to Customer that the Services will be performed in a timely, professional and workmanlike manner by qualified personnel.

To the extent the Services involve the evaluation or documentation {"Observational Data"} of trees, tree inventories, natural areas, wetlands and other water features, animal or plant species, or other subjects (collectively, "Subjects"), the Observational Data will pertain only to the specific point in time it is collected (the "Time of Collection"). DRG will not be responsible nor in any way liable for (a) any conditions not discoverable using the agreed upon means and methods used to perform the Services, (b) updating any Observational Data, (c) any changes in the Subjects after the Time of Collection (including, but not limited to, decay or damage by the elements, persons or implements; insect infestation; deterioration; or acts of God or nature [collectively, "Changes"]), (d) performing services that are in addition to or different from the originally agreed upon Services in response to Changes, or (e) any actions or inactions of you or any third party in connection with or in response to the Observational Data. If a visual inspection is utilized, visual inspection does not include aerial or subterranean inspection, testing, or analysis unless stated in the scope of work. When performing tree inventories or assessments, DRG will not be liable for the discovery or identification of non-visually observable, latent, dormant, or hidden conditions or hazards, and does not guarantee that Subjects will be healthy or safe under all circumstances or for a specified period of time, or that remedial treatments will remedy a defect or condition.

To the extent you request DRG's guidance on your permitting and license requirements, DRG's guidance represents its recommendations based on its understanding of and experience in the industry and does not guarantee your compliance with any particular federal, state or local law, code or regulation.

DRG may review information provided by or on behalf of you, including, without limitation, paper and digital GIS databases, maps, and other information publicly available or other third-party records or conducted interviews (collectively, "Source Information"). DRG assumes the genuineness of all Source Information. DRG disclaims any liability for errors, omissions, or inaccuracies resulting from or contained in any Source Information.

If it is determined that DRG has breached this Limited Warranty, DRG will, in its reasonable discretion, either: (i) re-perform the defective part of the Services or (ii) credit or refund the fees paid for the defective part of the Services. This remedy will be your sole and exclusive remedy and DRG's entire liability for any breach of this Limited Warranty. You will be deemed to have accepted all of the Services if written notice of an alleged breach of this Limited Warranty is not delivered to DRG prior to the expiration of the Warranty Period.

To the greatest extent permitted by law, except for this Limited Warranty, DRG makes no warranty whatsoever, including, without limitation, any warranty of merchantability or fitness for a particular purpose, whether express or implied, by law, course of dealing, course of performance, usage of trade or otherwise.

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**EXHIBIT B**

**CONTRACTOR'S COMPLETED W-9**

## EXHIBIT C

### INSURANCE REQUIREMENTS

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

1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
2. Commercial General Liability Insurance with limits of liability of \$5,000,000 per occurrence for bodily injury and property damage liability; and \$5,000,000 general aggregate. Such insurance will include coverage for contractual liability, personal injury, and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage; and
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant.

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

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired automobiles used in connection with the performance of the Services, with limits of liability of \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. reserved.
5. Professional liability insurance in the amount of \$2,000,000.00 each occurrence and in the aggregate.

**EXHIBIT C-1**

**CERTIFICATE(S) OF INSURANCE**

**EXHIBIT D**

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

**OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO**

**CERTIFICATE OF FACT OF GOOD STANDING**

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Davey Resource Group, Inc.

is an entity formed or registered under the law of Delaware, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20171762593.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 08/06/2024 that have been posted, and by documents delivered to this office electronically through 08/07/2024 @ 10:12:24.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 08/07/2024 @ 10:12:24 in accordance with applicable law. This certificate is assigned Confirmation Number 16276373.



*Jena Griswold*

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*  
*Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."*

## Software as a Service Agreement

This Software as a Service Agreement (this "**Agreement**"), effective as of this 30th day of July, 2024 (the "**Effective Date**"), is by and between Davey Resource Group, Inc., a Delaware corporation with offices located at 295 South Water Street, Kent, OH 44240 ("**Provider**"), and Blackstone Metropolitan District[CUSTOMER NAME], a quasi-municipal corporation and political subdivision of the State of Colorado a [STATE OF ORGANIZATION] [ENTITY TYPE] with offices located at [ADDRESS] ("**Customer**"). Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

**WHEREAS**, Provider provides access to the Services (defined below) to its customers; and

**WHEREAS**, Customer desires to access the Services, and Provider desires to provide Customer access to the Services, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

(a) "**Authorized User**" means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement.

(b) "**Confidential Information**" means information about or relating to the Disclosing Party or the Disclosing Party's Affiliates or their respective products, inventions (whether patentable or not), trade secrets, know-how, software, confidential Intellectual Property, specimens, data, samples, plans, designs methods, processes, test results or reports, marketing or pricing activities or plans, costs or profits, and/or any other information or materials and that is not generally known to the public, whether in oral, written, electronic, or other form or media, whether or not such information is marked, designated, or otherwise identified as "confidential" and whether or not such items would be considered trade secrets under applicable law.

(c) "**Customer Data**" means information, data, and other content, in any form or medium that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services. Customer Data may include data provided by Customer through the Services, such as Tree Site Data, Work History Data, Call History Data, and/or Caller Information.

(d) "**Disclosing Party**" means the Party disclosing or making available an item of Confidential Information or with respect to which an item of Confidential Information is about or relates.



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(e) **"Documentation"** means Provider's material, including without limitation online user guides relating to the Services provided by Provider to Customer either electronically through an online support portal or in hard copy form/end user documentation relating to the Services available at <https://daveyresourcegroup.atlassian.net/wiki/spaces/TKS/overview>

(f) **"Downloadable Components"** means any downloadable tools, modules, components, or other software that Provider makes available for download specifically for purposes of facilitating access to, operation of, or use with the Services, and any updates Provider may make available to such software from time-to-time.

(g) **"Provider IP"** means the Services, the Documentation, the Downloadable Components, and any and all Intellectual Property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP does not include Customer Data.

(h) **"Intellectual Property"** means any and all registered and unregistered throughout the world ( ) patents, patent applications, patent disclosures and related improvements, including without limitation all provisionals, nonprovisionals, utilities, continuations, divisionals, continuations-in-part, reexaminations, reissues designs, and utility models with all renewals and extensions thereof (ii) trademarks, service marks, trade dress, logos, trade names, , corporate names, URLs, Internet domain names, and second-level domain names, along with any associated goodwill, (iii) copyrights and copyrightable works, software, including any derivative works (iv) trade secrets and confidential business information (including ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, research and development information, software, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information), (v) social media, (vi) registrations and applications to register any of the foregoing, if applicable, and (vii) rights to sue with respect to past and future infringements of any of the foregoing.

(i) **"Receiving Party"** means the Party receiving any item of Confidential Information from or with respect to the Disclosing Party.

(i) **"Services"** means the software-as-a-service offering described in **Exhibit A** and any Documentation.

## 2. Access and Use.

(a) Provision of Access. Provider hereby grants Customer a non-exclusive, nontransferable, nonsublicensable, limited (except in compliance with Section 12(g)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer



the necessary passwords and network links or connections to allow Customer to access the Services within five (5) days following the Effective Date. This Agreement is binding on all Authorized Users, and Customer shall ensure compliance of all the terms and conditions herein by its Authorized Users.

(b) Downloadable Components and Documentation License. Provider hereby grants to Customer a non-exclusive, revocable, non-sublicensable, non-transferable (except in compliance with Section 12(g)) license to use of the Downloadable Components, in object code format only, and the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

(c) Specifications. Customer shall ensure that its network and systems comply with the relevant specifications provided by Provider from time to time and shall provide Provider with information as may be required by Provider in order to provide the Services. Customer is responsible for obtaining, maintaining, and supporting all Internet access, computer hardware, and other equipment, products and services needed for it to utilize the Services, including but not limited to keeping any third party license in good standing. In the event Customer fails to obtain, maintain and support the necessary access to use the Services, Customer acknowledges and agrees that it may lose access to the Services. In the event Customer does not provide the information, licenses and other such information as set forth herein then Provider shall not be deemed to be in breach of this Agreement. Customer will determine the access controls for its authorized users and will be responsible for activity occurring under Customer's account, including compliance with this Agreement. Customer agrees to: (i) timely (within thirty (30) days of any change) maintain the accuracy and completeness of information provided to Provider, and (ii) notify Provider immediately of any unauthorized use of Customer's account or any other known breach of security.

(d) Scheduled Downtime and Outages. Provider shall notify Customer at least 24 hours in advance of all scheduled outages of the Services in whole or in part ("Scheduled Downtime"). Provider shall use commercially reasonable efforts for Scheduled Downtime in a manner that is of minimum interruption to Customer. In the event of a service failure where the Services are inaccessible, Provider shall resolve the service failure within seventy-two (72) hours. If the service failure is not resolved in seventy-two (72) hours, as determined by Provider, Provider shall extend the Term of this Agreement by the equivalent amount of days of the service failure. This Section 2(d) sets forth Provider's sole obligation and liability and Customer's sole remedy for any service failure.

(e) Use Restrictions. Customer shall not use the Services or the Downloadable Components for any purposes beyond the scope of the access granted in this Agreement. Customer shall be responsible for Authorized Users' adherence to the terms and conditions set forth in this Agreement, and shall not permit any Authorized Users at any time to directly or indirectly: (i) copy, modify, or create derivative works of the Services, Downloadable Components, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise



make available the Services, Downloadable Components, or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services or Downloadable Components, in whole or in part; (iv) remove any proprietary notices from the Services, Downloadable Components, or Documentation; (v) remove and/or alter any trademark, logo, copyright and/or other proprietary and/or confidentiality notices, legends symbols and/or labels on and/or in the Services made available by Provider hereunder; (vi) merge any Services or Downloadable Components and/or any portion thereof with any other program and/or materials; (vii) take any action that materially interrupts or interferes with, or that might reasonably have been expected to materially interrupt or interfere with, the Services, Provider's business operations and/or other customers; and/or (viii) permit any other person and/or entity to engage in any of the foregoing conduct.

3. Service Levels and Support. Provider shall make the Services available in accordance with subscription Term and training and support services set out in **Exhibit A**. The access rights granted hereunder entitles Customer to the support services described on **Exhibit A** for the applicable period commencing on the Effective Date under this Agreement.

4. Fees and Payment.

(a) Fees. Customer shall pay Provider the fees ("**Fees**") set forth in **Exhibit A**. Provider shall invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in **Exhibit A**. Customer shall pay all invoices upon receipt. Customer shall make all payments hereunder in US dollars, which shall be paid in full without any deduction, set-off, counterclaim or withholding of any kind unless required by law.

(b) Payment Disputes. Customer may withhold from payment any and all payments of Fees that Customer disputes in good faith, pending resolution of such dispute, provided that Customer: (i) timely renders all payments and amounts that are not in dispute; (ii) notifies Provider of the dispute prior to the due date for payment, specifying in such notice the amount in dispute and the reason for the dispute; (iii) works with Provider in good faith to promptly resolve the dispute; and (iv) promptly pays any amount determined to be payable by resolution of the dispute. Provider shall not fail to perform any obligation hereunder by reason of Customer's good faith withholding of any Fees in accordance with this Section 4(b).

(c) Expenses. Customer shall promptly reimburse Provider for any out-of-pocket expenses reasonably incurred in connection with the provision of Services and related services including without limitation the delivery, installation, support, and/or configuration of any Services, training or support at Customer's location and/or facilities. Provider shall use commercially reasonable efforts to provide Customer with estimates for such expenses, and when practicable, provide such estimates on **Exhibit A**.



(d) [Deleted.] Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind, as applicable, imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

5. Confidentiality.

(a) Confidential Information. Except as expressly permitted under this Agreement, or as otherwise permitted in writing by the Disclosing Party, neither the Receiving Party, any Affiliate of the Receiving Party or any officer, director, manager, employee or agent of either the Receiving Party or any Affiliate of the Receiving Party (the "Related Parties") will (a) disclose to any person all or any part of any Confidential Information, (b) act unreasonably or fail to act reasonably so as to impair the confidential or proprietary nature of any Confidential Information, or (c) use all or, any part of any Confidential Information for any purpose whatsoever other than performing the Receiving Party's rights and obligations under this Agreement. The Receiving Party will be responsible to the Disclosing Party for any breach by a Related Party of its obligations under this Section 5.1.

The Confidential Information may be given to and used by Related Parties solely for performing the Receiving Party's rights and obligations under this Agreement. The Receiving Party will take all such actions as are reasonably necessary to ensure that each Related Party having access to any Confidential Information does not disclose, use, act or fail to act as required by this Article 5, and Receiving Party will be liable to the Disclosing Party for any breach of these obligations by the Related Parties.

The Receiving Party shall use reasonable care, at least as protective as the efforts it uses for its own Confidential Information of a similar nature, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted hereby.

Each Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information under this Agreement shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Receiving Party or any of its Related Parties.

(b) Limitations on Application of Confidentiality Obligations. Notwithstanding anything to the contrary, "Confidential Information" will not mean information that (i) is in the public domain at the time of its disclosure to the Receiving Party, (ii) goes into the public domain after disclosure to the Receiving Party through no breach of any obligation of confidentiality to the Disclosing Party or any third person by the Receiving Party or any Related Party, (iii) is disclosed to the Receiving Party by a third party who is under no obligation of confidentiality to the Disclosing Party, (iv) is already known to the Receiving Party at the time of disclosure to the Receiving Party as evidenced by written



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documentation, (v) is independently developed by the Receiving Party without using Confidential Information of the Disclosing Party as evidenced by written documentation, or (vi) is required to be disclosed by the Receiving Party pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a "Legal Order"); provided, however, that prior to making any disclosure pursuant to a Legal Order, Receiving Party shall (unless legally prohibited) provide Disclosing Party with (i) prompt written notice of such requirement so that Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and (ii) reasonable assistance, at Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance, Receiving Party remains subject to a Legal Order to disclose any Confidential Information, Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of Receiving Party's legal counsel, such Legal Order specifically requires Receiving Party to disclose and, upon Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment. A Party disclosing Intellectual Property pursuant to this Section 5 will remain the exclusive owner of such Intellectual Property and the disclosure will not be considered a license with respect to such disclosed Intellectual Property.

(c) Methods of Disclosure. Confidential Information disclosed under Section 5, will be disclosed by each Party to the other Party in any and all ways reasonably acceptable to the Receiving Party and appropriate for the Intellectual Property that is subject to disclosure. Confidential Information that is in or has been reduced to tangible or written form will be disclosed in such form to the Receiving Party. Confidential Information that may be disclosed only by visual observation or teaching will be disclosed by demonstrating it or teaching it to technically competent representatives of the Receiving Party. Any meetings or visits at which demonstration or teaching of Confidential Information or Intellectual Property is to occur will be at mutually agreeable times and places. All such disclosures shall remain subject to the confidentiality provisions herein and any other non-disclosure agreement entered into by the Parties.

(d) Unauthorized Access to Confidential Information. In the event any Confidential Information provided to the Receiving Party is accessed by a third party who is not authorized to receive such information under this Agreement, the Receiving Party shall promptly notify the Disclosing Party of the events and circumstances involving such unauthorized access and provide a summary of the Confidential Information that was improperly accessed, the remedial actions it plans to take and will (to the extent legally permitted) reasonably cooperate with the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure in breach of this

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## Agreement.

(e) Personal Identifying Information. During the performance of this Agreement, Disclosing Party may disclose Personal Identifying Information to Receiving Party. "Personal Identifying Information" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., Receiving Party agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to Receiving Party; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

(d) Receiving Party agrees to report within forty-eight (48) hours to Disclosing Party any Data Security Incidents that may result in the unauthorized disclosure of Personal Identifying Information. For the purposes of this Agreement "Data Security Incident" is defined to mean any actual or reasonably suspected: (i) unauthorized use of, or unauthorized access to Receiving Party systems; (ii) inability to access business and other proprietary information, data, or the Receiving Party systems due to a malicious use, attack, or exploit of such business and other proprietary information or systems; (iii) unauthorized access to, theft of, or loss of business and other proprietary information, or of storage devices that could reasonably contain such information; (iv) unauthorized use of business and other proprietary information or data for purposes of actual or reasonably suspected theft, fraud, or identity theft; (iv) unauthorized disclosure of business and other proprietary information or data.

## 6. Intellectual Property Ownership.

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns and shall retain all right, title, and interest, including all Intellectual Property rights, in and to the Provider IP. Provider shall retain exclusive ownership to all inventions, improvements, designs, drawings, documentation, plans, schedules, programs, specifications, software, technology, discoveries, its Confidential Information, ideas, and other works of authorship, that are conceived, created, or reduced to practice in connection with the products supplied and services performed by Provider in connection with the Services and Downloadable Components under this Agreement (collectively "Work Product") and all related Intellectual Property. To the extent Customer creates, conceives, develops, or reduces to practice any Work Product based on the Services, Documentation, Downloadable Components, Provider IP, or Provider's Confidential Information, such Work Product and related Intellectual Property shall be deemed a work made for hire such that Provider is the author and owner, and if not deemed a work made for hire, Customer hereby irrevocably assigns to Provider all such Work Product and related Intellectual Property.

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(b) Cooperation. Customer shall, and shall cause its employees or any contractors to, take all appropriate action and execute and deliver all documents necessary or reasonably requested by Provider to effectuate any of the provisions or purposes of Section 6 or otherwise, as may be necessary or useful for Provider to prosecute, register, perfect, record, maintain, enforce or defend its rights in or to any Work Product or any Intellectual Property related to the Services and Downloadable Components. Customer hereby appoints Provider as Provider's attorney-in-fact with full irrevocable power and authority to take any such actions and execute any such documents if Customer refuses or otherwise fails, to do so within a period deemed reasonable by Provider.

(c) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all Intellectual Property, in and to the Customer Data. Customer is responsible for providing all Customer Data and/or information and responsible for the accuracy, quality, integrity and legality of such data and of the means by which Authorized Users access and use the Customer Data. Further, as between Provider and Customer, Customer shall maintain data privacy at a level at least as stringent as Provider. Customer hereby grants to Provider a non-exclusive, royalty-free, irrevocable, transferable, sublicensable, worldwide license to reproduce, distribute, prepare derivative works, display, perform, transmit, and use the Customer Data (i) to the extent necessary for Provider to provide the Services and Downloadable Components to Customer; and (ii) to use nonidentifiable Customer Data for its own business purposes.

(d) Cyber Incidents. Customer shall take all reasonable and appropriate steps to protect all of its systems used to view, receive, collect or store any of its Customer Data, Confidential Information, and data against all cyber incidents and breaches, including without limitation, ransomware attacks (collectively, "Cyber Incidents"). Upon the occurrence of a Cyber Incident, Customer shall cooperate with Provider in resolving the matter, including without limitation, providing prompt and on-going communication and details regarding the Cyber Incident. Additionally, Customer shall not introduce, permit or cause, directly or indirectly, any computer code, program, or programming device designed to disrupt, modify, delete, damage, deactivate, disable, harm, or otherwise impede the operation of the Services or Downloadable Components, or any other associated programs, firmware, hardware, computer system, or network (sometimes referred to as "Trojan horses," "viruses," or "worms"), or any other similar harmful, malicious, or hidden procedures, routines, or mechanisms that would intentionally cause such Services or Downloadable Components to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications.

## 7. Data

(a) Customer Data can be extracted from the Services by the user through data interfaces and/or reports. Authorized Users may also request a raw data extract from Provider as set forth on **Exhibit A**. Customer's raw data may be provided at the expiration or termination of the agreement at a reasonable fee as determined by Provider.



(b) The Services or Downloadable Components may include a GIS Mapping component which makes use of base layer information as provided to Provider by Customer. Any base layer provided to Provider by Customer is presumed to be authorized for distribution and usage.

(c) Provider will maintain a nightly backup of Customer Data, which can be restored upon request by Customer. Such nightly backups will be retained for seven (7) calendar days, with a weekly backup retained for four (4) weeks. After such four (4) week period, Provider will be unable to provide restoration of Customer Data.

8. Warranties and Warranty Disclaimer.

(a) Provider warrants that during the Term of this Agreement the Services will conform in material respects to the specifications set forth in **Exhibit A** during the Term of this Agreement and will be performed in a workmanlike and professional manner and by personnel that has the necessary skills, training and background to perform such Services.

(b) DISCLAIMER. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 8(a), CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SERVICES, DOWNLOADABLE COMPONENTS, DOCUMENTATION, AND ALL UPDATES THERETO ARE BEING PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS AND ANY USE IS AT CUSTOMER'S SOLE RISK. PROVIDER DOES NOT REPRESENT, WARRANT OR COVENANT THAT THE SERVICES, DOWNLOADABLE COMPONENTS, DOCUMENTATION AND PROVIDER IP (INCLUDING, BUT NOT LIMITED TO, ANY DOCUMENTATION, REPORTS, ADVICE AND RECOMMENDATIONS, IN ANY FORM) PROVIDED BY PROVIDER IN CONNECTION WITH THIS AGREEMENT, ARE OR WILL NECESSARILY ALWAYS BE COMPLETELY ACCURATE, CURRENT, COMPLETE AND/OR CONTINUOUSLY AVAILABLE. PROVIDER DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE PRODUCTS AND MATERIALS WILL BE AVAILABLE WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL DEFECTS (INCLUDING, BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY OR FEATURES) WILL BE CORRECTED. PROVIDER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE (EVEN IF PROVIDER HAS BEEN INFORMED OF SUCH PURPOSE), OF ACCURACY, AND OF QUIET ENJOYMENT.

(c) Applicability of Warranties. Notwithstanding anything herein to the contrary, no warranties shall apply if the Products: (i) have been modified by Customer unless said modification was minor, done upon the instruction, or with the approval, of Provider; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Provider; (iii) is used in ultrahazardous activities; or (iv) has been used in any manner contrary to the terms and conditions of this Agreement.



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(d) Third-Party Services and Products. Customer acknowledges and agrees that (i) Provider has not verified or pre-screened any third-party services and/or products, (ii) Customer is responsible for and assumes all risk arising from its use of any third party service and/or product, and (iii) Provider will not be responsible or liable for the availability or accuracy of such third-party services and/or product or the content, products, or services on or available from such third parties.

9. Indemnification.

(a) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Provider IP, or any use of the Services in accordance with this Agreement, directly infringes or misappropriates such third party's intellectual property rights, provided that Customer promptly notifies Provider in writing of the claim within notice (10) days, reasonably cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

(b) If such a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole expense, to (A) modify or replace the Provider IP, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If neither of these alternatives are commercially reasonable, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, provided that Provider shall refund or credit to Customer all amounts Customer paid in respect of the Provider IP that Customer cannot reasonably use as intended under this Agreement. The indemnity in this Section, shall not apply (i) to a Third-Party Claim arising from any modification of the Services or Downloadable Components by Customer or any third party, or from the use of the Services or Downloadable Components in combination with any other items not provided by Provider, to the extent such modification and/or use in combination resulted in the infringement claim, (ii) to use of the Services or Downloadable Components in a manner contrary to the terms specified herein, (iii) if such Third-Party Claim results from Customer's use of the Services or Downloadable Components after notice of the alleged or actual infringement from Provider or any appropriate authority, and/or (iv) in the event of any breach of Customer's obligations under this Agreement, or the use of the Services or Downloadable Components other than in connection with this Agreement or in a manner not reasonably contemplated by this Agreement.

(c) Indemnification by Customer.

(i) For Ohio municipalities and Ohio governmental agencies, there is no responsibility to indemnify Provider.



(ii) For any other municipality or any other entity that is not a municipality, to the fullest extent permitted by law, Customer shall indemnify, defend and hold Provider and its officers, employees, agents, and representatives harmless against all Third-Party Claims arising out of or related to (i) Customer's negligent acts and/or omissions; (ii) Customer's use of the Services or Downloadable Components; or (iii) Customer's material breach of this Agreement.

10. Limitations of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS, PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS OR OPPORTUNITIES (REGARDLESS OF HOW THESE ARE CLASSIFIED AS DAMAGES), OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR ENHANCED DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR THE PARTY AGAINST WHOM SUCH LIABILITY IS CLAIMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, PROVIDED, HOWEVER, THESE LIMITATIONS SHALL NOT APPLY TO EITHER PARTY'S LIABILITY FOR (I) CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION UNDER SECTION 9 AND (II) BREACH OF SECTION 2, SECTION 5, OR SECTION 6.

11. Term and Termination.

(a) Term. The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until the expiration of the subscription term set forth in **Exhibit A** ending on the pertinent anniversary date of the Effective Date ("Term"). This Agreement may renew for additional Terms with Customer's written notice and payment of additional subscription fees.

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) Provider either Party may terminate this Agreement for convenience, for any reason or no reason, upon ninety (90) days prior written notice to the other Party.Customer;

(ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary

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bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under 6, Customer shall delete, destroy, or return all copies of the Provider IP and Provider's Confidential Information.

(d) Survival. This Section 11(d) and 1, 5, 6, 8, 9, 10, 11 and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. Insurance. Provider shall acquire and maintain, at its sole cost and expense, during the entire term of the Agreement, the following insurance coverage: (i) Standard worker's compensation and employer's liability insurance covering all employees of Provider involved with the performance of the Services, with policy amounts and coverage in compliance with law; (ii) Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 general aggregate; and (iii) any other insurance commonly used for services of the type to be performed pursuant to this Agreement. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that Customer may carry, and any insurance maintained by Customer shall be considered excess. The Commercial General Liability will be endorsed to name include Customer as an additional insured. Provider's failure to purchase the required insurance shall not serve to release it from any obligations; nor shall the purchase of the required insurance serve to limit Provider's liability. Provider shall be responsible for the payment of any deductibles on issued policies.

13. Subject to Annual Appropriation and Budget. Customer does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The obligations of Customer under this Agreement is subject to annual budgeting and appropriations, and Provider expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of Customer's governing body, and the obligations of Customer shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. Customer and Provider understand and intend that Customer's obligation to make payments and pay other amounts due under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements. To the extent Provider's remedies for a Customer default under this Agreement include



any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited solely to sums lawfully appropriated for such purpose and shall further be limited to amounts to become due during the Customer's then-current fiscal period.

14. 11.8. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to Customer, its respective officials, employees, contractors, or agents, or any other person acting on behalf of Customer and, in particular, governmental immunity afforded or available to Customer pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.

12.15. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. Notwithstanding anything herein to the contrary, neither party shall be liable or deemed to be in default for any delay or failure in performance hereunder to the extent resulting, directly or indirectly, from acts of God, acts of war, terrorism, or civil insurrection, strikes, walkouts, or other organized labor interruptions, telecommunications or utility interruptions or failures, fire, explosions, floods, pandemic, disease outbreaks, endemics, including without limitation COVID-19, or other natural disasters, any similar cause or any third party beyond the reasonable control of such party, and any delay or failure of the other party to fulfill its obligations hereunder ("Force Majeure Event"). Notwithstanding the foregoing, a Force Majeure Event shall never excuse the failure to make





a payment due under this Agreement, except to the extent that the Force Majeure Event physically interferes with the delivery of the payment. The party whose performance is affected shall use commercially reasonable efforts to minimize the impact of such Force Majeure Event.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado. Any legal suit, action, or proceeding arising out of this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado in each case located in the County of Arapahoe, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(g) Assignment. Provider may assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Customer. However, Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider. Any purported assignment, delegation, or transfer by Customer in violation of this Section 12(g) is void.

(h) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or

other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the US.

(i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under 5 would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(j) Binding Effect. This Agreement will be binding upon and inure to the benefit of the Parties and their successors or permitted assigns.

(k) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

DAVEY RESOURCE GROUP, INC. \_\_\_\_\_ BLACKSTONE METROPOLITAN  
DISTRICT[CUSTOMER NAME]

By:-----

By:-----

Name:-----

Name:-----

Title:-----

Title:-----

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## Exhibit A

**Services** shall be subject to the Software-As-A-Service agreement found at <https://treekeepersoftware.com>.

### TreeKeeper® Software

- One-year subscription - Tier 1 \$3,600/yr

### Additional TreeKeeper® Services

- Custom TreeKeeper® Training \$750 web/\$1,800 on site
- One-Year of Unlimited Telephone Support \$1,000
- Custom TreeKeeper® Training and One-Year of Unlimited Request for Raw Data \$1750 web/\$2,800 on site  
Once per quarter at no charge

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