

**POUDRE TECH METROPOLITAN DISTRICT  
WATER VALLEY METROPOLITAN DISTRICT NOS. 1 & 2**  
[www.poudretechmetro.org](http://www.poudretechmetro.org)

**PTMD**

Martin Lind, President  
May 2025  
Jerry Helgeson, Vice President  
May 2023  
John Jensen, Secretary/Treasurer  
May 2025  
Marissa Donahoo, Asst. Secretary  
May 2025  
Justin Donahoo, Asst. Secretary  
May 2023

**WVMD NO. 1**

John Jensen, President  
May 2025  
Jerry Helgeson, Vice President  
May 2023  
Duane Sullivan, Secretary/Treasurer  
May 2025  
Justin Donahoo, Asst. Secretary  
May 2023  
James Porth, Jr., Asst. Secretary  
May 2025

**WVMD NO. 2**

Martin Lind, President  
May 2025  
Jerry Helgeson, Vice President  
May 2023  
John Jensen, Secretary/Treasurer  
May 2025  
Marissa Donahoo, Asst. Secretary  
May 2025  
Justin Donahoo, Asst. Secretary  
May 2023

**RAINDANCE METROPOLITAN DISTRICT NOS. 1-4**

[www.raindancemetrodistrict.org](http://www.raindancemetrodistrict.org)

**Raindance MD No. 1**

Martin Lind, President  
May 2023  
Justin Donahoo,  
Secretary/Treasurer  
May 2025  
Austin Lind, Asst. Secretary  
May 2025  
Ryan Scallon, Asst.  
Secretary  
May 2025  
Vacant  
May 2023

**Raindance MD No. 2**

Martin Lind, President  
May 2023  
Justin Donahoo,  
Secretary/Treasurer  
May 2025  
Austin Lind, Asst. Secretary  
May 2025  
Nate Kvamme  
May 2023  
Garrett Scallon  
May 2025

**Raindance MD No. 3**

Martin Lind, President  
May 2023  
Justin Donahoo,  
Secretary/Treasurer  
May 2025  
Alan MacGregor  
May 2025  
Kris Kazian  
May 2023  
Ryan Scallon  
May 2025

**Raindance MD No. 4**

Martin Lind, President  
May 2023  
Justin Donahoo,  
Secretary/Treasurer  
May 2025  
Austin Lind, Asst. Secretary  
May 2025  
Vacant  
May 2025  
Vacant  
May 2023

**NOTICE OF JOINT MEETING**

Tuesday, April 11, 2023, at 10:00 a.m.

*This meeting may be attended via teleconferencing through the directions below:*

<https://us06web.zoom.us/j/88488367897?pwd=L2t2cWw5SnJJanYxb3pKdWxIUFN0UT09>

Meeting ID: 884 8836 7897; Passcode: 824791; Call In # 720-707-2699

and

1600 Pelican Lakes Point, Windsor, CO

## JOINT MEETING AGENDA

1. Call to Order
2. Declaration of Quorum/Director Conflict of Interest Disclosures/Affirmation of Qualifications
3. Approval of Agenda
4. Public Comment – Members of the public may express their views to the Boards on matters that affect the Districts. Comments will be limited to three (3) minutes per person.
5. Consent Agenda –The items listed below are a group of items to be acted on with a single motion and vote by the respective Boards. An item may be removed from the consent agenda to the regular agenda, by any Board member of the applicable District. Items on the consent agenda are then voted on by a single motion, second, and vote by the respective Boards.

### ***PTMD/WVMD NOS. 1 & 2 MATTERS***

- a. Approval of Minutes from the November 15, 2022 and December 21, 2022 Joint Meetings (PTMD/WVMD Nos. 1 & 2) (**enclosure**)
- b. Ratification of Independent Contractor Agreement with Aquatics Associates, Inc. for Water Sampling and Lake Treatment Services (**enclosure**)
- c. Ratification of Independent Contractor Agreement with Zak George Landscaping, LLC for Landscape Maintenance Services (**enclosure**)

### ***RAINDANCE MATTERS***

- d. Consider Approval of Minutes from the November 17, 2022, December 16, 2022, December, 21, 2022 Joint Meetings, January 9, 2023 (Raindance MD Nos. 1-4) (**enclosure**)
- e. Ratification of Independent Contractor Agreement with YMCA of Northern Colorado for Lifeguarding Services (**enclosure**)
- f. Ratification of Independent Contractor Agreement with Southern Exposure Landscape Management, Inc. for Landscape Maintenance Services (**enclosure**)
- g. Ratification of Independent Contractor Agreement with CMS Environmental Solutions, LLC for Stormwater Management Services re Raindance Reservoir #2 Construction Project (**enclosure**)
- h. Ratification of Independent Contractor Agreement with Ground Engineering Consultants, Inc. for Geotechnical Services re Raindance Reservoir #2 Construction Project (**enclosure**)
- i. Ratification of Independent Contractor Agreement with Galloway & Company for Survey Services re Raindance Reservoir #2 Construction Project (**enclosure**)
- j. Ratification of Purchase Order with DemaLenko America, Inc. for Hoedown Hill Snowmaking Equipment (**enclosure**)
- k. Ratification of Purchase Order with Contech Engineered Solutions for Hoedown Hill Concrete Tunnel (**enclosure**)

1. Ratification of Purchase Order with MND France for Hoedown Hill Carpet Lift  
(**enclosure**)
6. District Manager/Operations Matters
  - a. Operations Matters
    - i. Raindance Park Reservations Discussion
    - ii. Replacement of Inflatable with Wahoo Dock
  - b. Capital Matters
    - i. Sea Wall Repair Updates
    - ii. Raindance Reservoir # 2 Status Update
  - c. Water Matters
    - i. Water Quality and Fishing Presentation
  - d. WaterDance Updates
7. Water Activity Enterprise
  - a. Water Activity Enterprise Presentation re Water Conservation, Water System Infrastructure and Capital Requirements, Operations Costs, Long-Term Financial Plan, and Water Service Fees and Rates.
8. Other Business
9. Adjourn

MINUTES OF A JOINT SPECIAL MEETING OF THE  
BOARDS OF DIRECTORS

OF

POUDRE TECH METROPOLITAN DISTRICT AND WATER  
VALLEY METROPOLITAN DISTRICT NOS. 1 AND 2  
("Districts")

Held: Tuesday, November 15, 2022 at 1:30 p.m.

*This meeting was held via teleconference.*

Attendance

The joint regular meeting of the Boards of Directors of the Districts was called and held in accordance with the applicable laws of the State of Colorado. The following Directors, have confirmed their qualifications to serve, were in attendance:

Martin Lind, President (PTMD/WVMD No. 2)  
Jerry Helgeson, Vice President (PTMD/WVMD Nos. 1 & 2)  
Duane Sullivan, Secretary/Treasurer (WVMD No. 1)  
Justin Donahoo, Asst. Secretary (PTMD/WVMD No. 1 & 2)  
John Jensen, President (WVMD No. 1), Secretary/Treasurer  
(WVMD No. 2)  
James Porth, Jr., Asst. Secretary (WVMD No. 1)  
Marissa Donahoo, Asst. Secretary, (PTMD/WVMD No. 2)

Also present were William P. Ankele, Jr., Esq., and Zachary P. White, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law; Lara Wynn, Gary Kerr, Water Valley Land Company; and Hannah Barker, Steve Southard, Baylie Weiss, Advance HOA Management

Call to Order/Declaration  
of Quorum

It was noted that a quorum of the Boards was present, and the meeting was called to order.

Conflict of Interest  
Disclosures

Mr. White advised the Boards that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. White reported that disclosures for those directors that provided White Bear White Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Boards at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Boards. Mr. White inquired into whether members of the Boards had any additional disclosures of potential or

existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Boards to act.

Combined Meetings

The Boards of Directors of the Districts have determined to hold joint meetings of the Districts and to prepare joint minutes of action taken by the Districts in such meetings. Unless otherwise noted herein, all official action reflected in these minutes is the action of each of the Districts. Where necessary, action taken by an individual District will be so reflected in these minutes.

Approval of Agenda

Mr. White presented the proposed agenda to the Boards for consideration. Following discussion, upon a motion duly made and seconded, the Boards unanimously approved the agenda as presented.

Public Comment

None.

Consent Agenda

Mr. White reviewed the items on the consent agenda with the Boards. Mr. White advised the Boards that any item may be removed from the consent agenda to the regular agenda upon the request of any director. No items were requested to be removed from the consent agenda. Upon a motion duly made and seconded, the following items on the consent agenda were unanimously approved, adopted, and ratified:

- Approval of October 20, 2022 Joint Special Meeting Minutes **(enclosure)**
- Approval of 2023 Joint Annual Administrative Resolution **(enclosure)**
- Renewal of General Liability Schedule and Limits Consider Approval and Authorization to Bind Coverage, Renewal of Special District Association of Colorado Membership, Payment of Agency Fee, and Inclusion of Workers' Compensation Coverage
- Approval of Reimbursement to Raindance Metropolitan District No. 1 for 7<sup>th</sup> Street Bridge Construction Costs
- Ratification of Independent Contractor Agreement with Zak George Landscaping for 2022-2023 Snow Removal Services
- Ratification of Independent Contractor Agreement with Aquatics Associates, Inc for Water Quality Testing Services )
- Approval of Independent Contractor Agreement with Prairie Dog Pros, LLC for On Call Prairie Dog Mitigation Services

- Approval of Consent to Landscape Easement Agreement between Trollco, Inc. and Pelican Shores at Water Valley Owners Association (**enclosure**)
- Approval of Easement Agreement with Pelican Shores at Water Valley Owners Association (**enclosure**)

Manager/Operation Items

Manager’s Report                      Mr. Southard provided the Boards with a Manager’s Report.

Capital Improvements  
Update

Legal Matters

Consider Approval of Joint Resolution Calling May 2, 2023 Election                      Mr. White presented the Joint Resolution Calling the May 2, 2023 Election to the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution.

Designation of Method for Providing Notice of Call for Nominations                      Mr. White discussed the Designation of Method for Providing Notice of Call for Nominations with the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously designated posting on the Districts website as the method for providing the notice of call for nominations.

Discussion re Website Director Contact Information                      Mr. White discussed the requirement for Director Contact Information to be provided on the Districts website. Following discussion, upon a motion duly made and seconded, the Board unanimously approved contact information to be provided on the Districts website.

Consider Approval of Revised Property Donation Agreement with Frye Farms Investment, LLC                      Mr. White presented a revised Property Donation Agreement with Frye Farms Investment, LLC to allow the District to enter into license agreements to manage private property owner encroachments in the donation land. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the revised Property Donation Agreement. Mr. Martin Lind abstained.

Consider Adoption of Resolution Certifying Delinquent Water Fees to the County for Collection                      Mr. White presented the Resolution Certifying Delinquent Water Fees to the County for Collection to the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution.

Financial Matters

Consider Approval of                      Mr. Kerr reviewed the claims listing with the Boards. Following

Payables/Financials

discussion, upon a motion duly made and seconded, the Board unanimously ratified the claims.

Conduct Public Hearing on 2022 Budget Amendments and Consider Adoption of Resolutions Amending 2022 Budget

Director Martin Lind opened the public hearings on the 2022 Budget Amendments. Mr. White noted that the notice of public hearing was provided in accordance with Colorado Law. No written objections have been received prior to the meeting. There being no public comment, the hearings were closed.

Mr. White presented the Resolution Amending the 2022 Budget with the Board of PTMD and Mr. Kerr discussed the purpose for the amendment. Following discussion, upon a motion duly made and seconded, the Board of PTMD unanimously adopted the resolution amending the General Fund to \$3,422,500.

Mr. White reviewed the Resolution Amending the 2022 Budget with the Board of District No. 1 and Mr. Kerr discussed the purpose for the amendment. Following discussion, upon a motion duly made and seconded, the Board of District No. 1 unanimously adopted the resolution amending the General Fund to \$802,000.

Mr. White reviewed the Resolution Amending the 2022 Budget with the Board of District No. 2 and Mr. Kerr discussed the purpose for the amendment. Following discussion, upon a motion duly made and seconded, the Board of District No. 2 unanimously adopted the resolution amending the General Fund to \$1,798,500 and amending the Debt Service Fund to \$1,561,500.

Conduct Public Hearing on 2023 Budgets and Consider Adoption of Resolution Adopting 2023 Budgets, Imposing Mill Levy and Appropriating Funds

Director Martin Lind opened the public hearings on the proposed 2023 Budgets. Mr. White noted that the notice of public hearing was provided in accordance with Colorado law. No written objections have been received prior to the meeting. There being no public comment, the hearings were closed.

Mr. Kerr reviewed the 2023 Budget with the Board of PTMD. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution adopting the 2023 Budget, appropriating funds therefor and certifying 0.000 mills for the General fund, 0.000 mills for the Debt Service fund, 0.000 mills for the Capital Projects Fund, and 0.000 mills for the Contractual Obligation fund.

Mr. Kerr reviewed the 2023 Budget with the Board of District No. 1. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution adopting the 2023 Budget, appropriating funds therefor and certifying 21.926 mills for the

General fund, 20.860 for the Debt Service fund, 0.000 mills for the Capital Projects Fund, and 0.000 mills for the Contractual Obligation fund.

Mr. Kerr reviewed the 2023 Budget with the Board of District No. 2. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution adopting the 2023 Budget, appropriating funds therefor and certifying 23.186 mills for the General fund, 19.000 mills for the Debt Service fund, 0.000 mills for the Capital Projects Fund, and 0.000 mills for the Contractual Obligation fund.

Consider Authorization to Approve Auditor Engagement Letter for 2022 Audit

Mr. White discussed the Auditor Engagement Letter for the 2022 Audit with the Boards. Following discussion, upon a motion duly made and seconded, the Boards unanimously authorized Director Martin Lind to approve an engagement letter.

Consider Approval of CLA Master Services Agreement and Statement of Work

Mr. White discussed the CliftonLarsonAllen Master Services Agreements and Statements of Work to the Boards. Following discussion, upon a motion duly made and seconded, the Boards unanimously approved the agreements, subject to Mr. Kerr's discussions with the CLA re fees and scope of service.

Other Business

None.

Adjourn

There being no further business to come before the Boards, and following discussion and upon a motion duly made, seconded and unanimously carried, the Boards determined to adjourn the meeting.

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

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Secretary for the Meeting Districts

The foregoing minutes were approved on the 11<sup>th</sup> day of April, 2023.



MINUTES OF A JOINT SPECIAL MEETING OF THE  
BOARDS OF DIRECTORS

OF

POUDRE TECH METROPOLITAN DISTRICT, AND WATER  
VALLEY METROPOLITAN DISTRICT NOS. 1 & 2,  
RAINDANCE METROPOLITAN DISTRICT NOS. 1-4,

Held: Wednesday, December 21, 2022, at 10:00 a.m.

*This meeting was held via teleconference.*

Attendance

The joint special meeting of the Boards of Directors of the Poudre Tech Metropolitan District, Water Valley Metropolitan District Nos. 1 & 2. And Raindance Metropolitan District Nos. 1-4, was called and held in accordance with the applicable laws of the State of Colorado. The following Directors, have confirmed their qualifications to serve, were in attendance:

**Poudre Tech Metropolitan District and Water Valley  
Metropolitan District Nos. 1 & 2**

Martin Lind, President (PTMD/WVMD No. 2)  
Jerry Helgeson, Vice President (PTMD/WVMD Nos. 1 & 2)  
Duane Sullivan, Secretary/Treasurer (WVMD No. 1)  
Justin Donahoo, Asst. Secretary (PTMD/WVMD No. 1 & 2)  
John Jensen, Secretary/Treasurer (PTMD/WVMD Nos. 1 & 2)  
James Porth, Jr., Asst. Secretary (WVMD No. 1)  
Marissa Donahoo, Asst. Secretary, (PTMD/WVMD No. 2)

**Raindance Metropolitan District Nos. 1-4**

Martin Lind, President (District Nos. 1-4)  
Justin Donahoo, Secretary/Treasurer (District Nos. 1-4)  
Austin Lind, Assistant Secretary (District Nos. 1, 2 & 4))  
Ryan Scallon, Assistant Secretary (District No. 1 & 3)  
Kris Kazian, Assistant Secretary (District No. 3)  
Nate Kvamme, Assistant Secretary (District No. 2)  
Garrett Scallon, Assistant Secretary (District No. 2)  
Alan MacGregor, Assistant Secretary (District No. 3)

Also present were William P. Ankele, Jr., Esq., and Zachary P. White, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law; Lara Wynn, Gary Kerr, Water Valley Land Company; Jason Kusel, Pelican Lakes; Hannah Barker, Steve Southard, Baylie Weiss,

Advance HOA Management...

Call to Order/Declaration of Quorum

It was noted that a quorum of the Boards was present, and the meeting was called to order.

Conflict of Interest Disclosures

Mr. White advised the Boards that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. White reported that disclosures for those directors that provided White Bear White Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Boards at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Boards. Mr. White inquired into whether members of the Boards had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Boards to act.

Combined Meetings

The Boards of Directors of the Districts have determined to hold joint meetings of the Districts and to prepare joint minutes of action taken by the Districts in such meetings. Unless otherwise noted herein, all official action reflected in these minutes is the action of each of the Districts. Where necessary, action taken by an individual District will be so reflected in these minutes.

Approval of Agenda

Mr. White presented the proposed agenda to the Boards for consideration. Following discussion, upon a motion duly made and seconded, the Boards unanimously approved the agenda as presented.

Public Comment

None.

Recreation Amenities  
Sharing

Discussion re Recreation Amenities Sharing

Mr. Kerr presented to the Boards a proposal to share recreation amenities between the Water Valley and Raindance communities, including shared access to parks, orchards, lakes and beaches, the Raindance River Resort, and the W-Club. The Boards engaged in a discussion regarding issues surrounding access by the general public and implementation of fees for the Raindance River Resort and W-Club. A tiered recreation pass was proposed to allow for general access to parks, orchards, lakes, and beaches, and a paid membership for the Raindance River Resort and the W-Club.

Review Responses to Public Survey re Recreation Amenities Sharing and Consider Recommendations from District Management

Ms Barker and Mr. Southard reviewed with Boards responses received to the public survey about sharing recreation amenities. In general, the Boards shared the same views as the public, including overcrowding and access by the general public.

Consider Approval of Transaction Based Informed Consent Letter re Recreation Amenities Sharing Agreement from White Bear Ankele Tanaka & Waldron

Mr. White presented a Transaction Based Informed Consent Letter regarding Recreation Amenities Sharing Agreement from White Bear Ankele Tanaka & Waldron to the Boards. Following discussion, upon a motion duly made and seconded, the Boards unanimously approved the letter and directed preparation of an Amenities Sharing Agreement to be approved at a future meeting, and directed Staff to begin to implement the sharing of amenities for the 2023 season.

Legal Matters – PTMD  
Matters

Consider Approval of Lease Agreement with Marina One, LLC for W-Club

Mr. White presented a Lease Agreement with Marina One, LLC, for W-Club to the Board of Poudre Tech Metropolitan District. Following discussion, upon a motion duly made and seconded, the Board of Poudre Tech Metropolitan District approved the agreement with Mr. Martin Lind abstaining.

Consider Approval of Independent Contractor Agreement with Pelican Lakes, LLC for W-Club Managements Services

Mr. White presented an Independent Contractor Agreement with Pelican Lakes, LLC for W-Club Management Services to the Board of Poudre Tech Metropolitan District. Following discussion, upon a motion duly made and seconded, the Board of Poudre Tech Metropolitan District approved the agreement with Mr. Martin Lind abstaining.

Other Business

Next Regular Meeting – January 9, 2023

Adjourn

There being no further business to come before the Boards, and following discussion and upon a motion duly made, seconded and unanimously carried, the Boards determined to adjourn the meeting.

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

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Secretary for the Meeting Districts

The foregoing minutes were approved on the 11<sup>th</sup> day of April, 2023.

**INDEPENDENT CONTRACTOR AGREEMENT**  
(WATER SAMPLING AND LAKE TREATMENTS – 2023 SEASON)

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 17<sup>th</sup> day of January 2023, by and between **POUDRE TECH METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **AQUATICS ASSOCIATES, INC.**, a Colorado corporation (the “**Contractor**”). The District and the Contractor are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

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

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

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

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

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

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

**TERMS AND CONDITIONS**

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

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

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2023.

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

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

5. GENERAL PERFORMANCE STANDARDS.

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

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

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

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

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

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

6. MONTHLY STATUS REPORT. The Contractor shall provide to the District, at the District's request, on or before the 25<sup>th</sup> 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 / EMPLOYMENT ELIGIBILITY. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

11. CONTRACTOR'S INSURANCE.

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

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

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

12. CONFIDENTIALITY AND CONFLICTS.

a. Confidentiality. Any information deemed confidential by the District and given to the Contractor by the District, or developed by the Contractor as a result of the

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

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

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

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

14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's,

materialmen's, or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through, or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers, and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed and 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:	Poudre Tech Metropolitan District 1625 Pelican Lakes Point, Suite 201 Windsor, Colorado 80550 Attention: Steve Southard Phone: 970-686-5825 Email: steve.southard@advancehoa.com
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With a Copy to:	WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Attention: Zachary P. White, Esq. Phone: (303) 858-1800 E-mail: zwhite@wbapc.com
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Contractor:	Aquatics Associates, Inc. 3013 E. Mulberry St. Fort Collins, CO 80524 Attention: Tami Schneck Phone: (970) 493-2626 Email: tami@aquaticsassociates.com
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21. AUDITS. The District shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such

purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the District at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

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

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

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

25. GOVERNING LAW.

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

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

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

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

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

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

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

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

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

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

33. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the

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

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

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

*[Signature pages follow].*



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

**DISTRICT:**

POUDRE TECH METROPOLITAN  
DISTRICT, a quasi-municipal corporation and  
political subdivision of the State of Colorado

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President

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

**CONTRACTOR:**  
AQUATICS ASSOCIATES, INC.,  
a Colorado corporation

Tami L. Schneck

Tami L. Schneck

Printed Name

President

Title

STATE OF COLORADO )

)

) ss.

COUNTY OF Larimer )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of March 2023, by Tami Schneck, as the President of Aquatics Associates, Inc.

Witness my hand and official seal.



My commission expires: May 26, 2025

Amie E Nepereny  
Notary Public

## EXHIBIT A

### SCOPE OF SERVICES

#### Water Sampling and Analyses

Water sampling and analyses will be performed on the five lakes at Water Valley (Lake Water Valley, Eagle, Rock Bridge, Habitat and Pelican) during the May through September period. The program will be the same as performed by AAI during the 2021 and 2022 seasons with one sampling event each month. A second sample in a particular month would be collected in case of an elevated E. coli result. Samples will be collected from each lake at three locations for microbial analysis (E. coli and total coliforms) in the lab including a total of 15 samples per event. One nutrient sample will also be collected from each lake in August as in 2021 and 2022 (Nitrogen, phosphorus, and chlorophyll a). Microbial and nutrient samples will be analyzed in the lab.

One composite sample from each lake will also be analyzed in the field for general water quality parameters including dissolved oxygen, pH, total hardness, alkalinity, temperature, and Secchi depth. Observations of lake conditions, specifically phytoplankton growth will also be made during each event, which will be useful in managing/treating problematic algae blooms in Pelican and Habitat Lakes. Phytoplankton samples will be collected on an as needed basis.

A summary of water data will be provided at the end of the 2023 season. AHOAM will be notified immediately of any abnormal results for E. coli or other parameters.

#### Algae Treatments for Pelican and Habitat Lakes

AAI will manage harmful algae blooms (HAB, Cyanobacteria blooms) in Pelican and Habitat Lakes for the 2023 season as requested. Supplemental phytoplankton samples will also be collected on an as needed basis for qualitative analysis (species identification and relative abundance) to determine the target algae species, their relative densities, and the appropriate algaecide products and rates for controlling blooms in Pelican and Habitat Lakes.

Site visits will be made on a regular basis during the growing season to visually assess phytoplankton growth and water clarity conditions, to ensure that algae treatments are properly timed thereby reducing the chance of an oxygen depletion and fish kill caused by excessive blooms in these lakes. These observations are an integral part of a successful algae management program.

A treatment program will be implemented during the 2023 growing season. The 2023 treatment season will extend from April/May through September. The objectives of the program are:

- controlling unwanted HAB/Cyanobacteria blooms,
- shifting species composition from Cyanobacteria to desirable phytoplankton species,
- reduce potential exposure risks to human health and pets during recreational activity, and
- improve lake water clarity by reducing overall phytoplankton densities.

Furthermore, selecting the appropriate algaecide product and/or product mix is crucial for achieving our goal for a treatment that targets Cyanobacteria (blue-green algae) thereby causing a species shift to desirable algae species (greens, diatoms, etc.). Several algaecide products will be used as appropriate including the copper-based products (Captain XTR, Cutrine, SeaClear, etc.), peroxide-products (Oximycin P5, Green Clean 5.0, Green Clean Pro, etc.) as well as surfactants.

Treatments will be performed on an as needed basis. Six to eight treatments or more may be required to manage the algae blooms in these two lakes based on the elevated in-water nutrient concentrations (TP, TN), phytoplankton species and densities measured, and water flow through. Nonetheless, improved water quality and clarity are realistic goals for Water Valley with a sound lake management program.

## **EXHIBIT B**

### **COMPENSATION SCHEDULE**

Work under this Agreement will be billed on a time and materials basis, in an amount not to exceed \$78,000 for the term of the Agreement. Any additional work will be performed per a written work order. The Contractor will send an invoice to the District on July 15, August 15, and a final invoice at the end of the season.

**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 \$1,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

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

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the District covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.



**EXHIBIT C-1**

**CERTIFICATE(S) OF INSURANCE**

**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,

AQUATICS ASSOCIATES, INC.

is a

Corporation

formed or registered on 02/26/2001 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 20011041360 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/24/2023 that have been posted, and by documents delivered to this office electronically through 01/26/2023 @ 11:23:22 .

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 01/26/2023 @ 11:23:22 in accordance with applicable law. This certificate is assigned Confirmation Number 14644763 .



*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."*

**INDEPENDENT CONTRACTOR AGREEMENT**  
(LANDSCAPE MAINTENANCE – 2023)

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 17<sup>th</sup> day of January 2023, by and between **POUDRE TECH METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **ZAK GEORGE LANDSCAPING 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; (ii) completion of the Services; or (iii) December 31, 2023.

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

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

5. GENERAL PERFORMANCE STANDARDS.

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

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

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

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

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

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

6. MONTHLY STATUS REPORT. The Contractor shall provide to the District, at the District's request, on or before the 25<sup>th</sup> 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 / EMPLOYMENT ELIGIBILITY.** This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

11. **CONTRACTOR'S INSURANCE.**

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

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

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

12. CONFIDENTIALITY AND CONFLICTS.

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

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

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

13. OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files, and other documents, in whatever form, shall remain the property of the District under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the District's request, the Contractor will provide the District with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a



period of two (2) years after termination of this Agreement, shall make them available for the District's use and shall provide such copies to the District upon request at no cost.

14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's, or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through, or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers, and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed and 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: Poudre Tech Metropolitan District  
1625 Pelican Lakes Point, Suite 201  
Windsor, Colorado 80550  
Attention: Steve Southard  
Phone: 970-686-5825  
Email: steve.southard@advancehoa.com

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

Contractor: Zak George Landscaping LLC  
335 S Summit View Dr.  
Fort Collins, CO 80524  
Attention: Zak George

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

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

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

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

25. GOVERNING LAW.

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

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

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

in a timely manner, or failure of the District to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.

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

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

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

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

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

31. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such

Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

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

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

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

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

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

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

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

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

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

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

*[Signature pages follow].*

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

**DISTRICT:**

POUDRE TECH METROPOLITAN  
DISTRICT, a quasi-municipal corporation and  
political subdivision of the State of Colorado

---


President

ATTEST:

---

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law



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General Counsel for the District



**CONTRACTOR:**  
ZAK GEORGE LANDSCAPING LLC  
a Colorado limited liability company

*[Handwritten Signature]*

Brisson Bishop

Printed Name

Department Manager  
Title

STATE OF COLORADO )

) ss.

COUNTY OF Larimer )

The foregoing instrument was acknowledged before me this 21 day of March 2023, by Brisson Bishop, as the Department Manager of Zak George Landscaping LLC.

Witness my hand and official seal.



My commission expires: Aug 12, 2026

*[Handwritten Signature]*  
Notary Public

## EXHIBIT A

### SCOPE OF SERVICES

<b>Spring Maintenance Activities</b>	
Spring Cleanup: One visit each season. light pruning, leaf clean up, trash and tumbleweed removal	Included
Pruning: Cut back perennials and ornamental grasses and haul debris away	Included
Pre-emergent Applied to Landscape Beds: Pre-emergent to be applied to landscape beds in March or April. Product to be approved by District Staff.	Included
Aeration: See specifications below for each area – Bluegrass turf areas only	Included
<b>Turfgrass Maintenance</b>	
Weekly Maintenance: Mow, trim, blow all turf areas and clear sidewalks of clipping (24 visits). Mowing may be bi-weekly in the early spring and late fall.	Included
Spring Fertilization: See specifications below for each area. Bluegrass areas to be fertilized at a rate of 1.5 lbs of N per 1000 ft <sup>2</sup> . Crabgrass and goosegrass pre-emergent to be contained on the fertilizer prills and applied at the labeled rates. Fertilizer must be approved free of phosphorus and approved by the Metro District. Alternatives to be approved in writing by the Metro District.	Included
Fall Fertilization - Bluegrass areas to be fertilized at a rate of 1.5 lbs of N per 1000 ft <sup>2</sup> . Fertilizer must be free of phosphorus and approved by the Metro District.	Included
3 Way Type Weed Control – Post-emergent to be applied 2 times a year.	Included
Edging: Edging of turf areas along cart paths and curbs in bluegrass turf areas only. Monthly (up to 5 times per season)	Included
<b>Irrigation Maintenance</b>	
Irrigation Chlorination: Complete chlorination of irrigation system approximately two weeks prior to start of the irrigation system. (water fund item)	Included
Irrigation Activation: Pressurize mainlines and public spaces irrigation systems, do <u>not</u> pressurize farm field irrigation during system activation. Identify and repair any leak in the system. Spring leaks are most likely caused by water left in the lines during winterization.	Included
Daily Irrigation Valve Checks: Contractor will check to make sure the nightly irrigation has shut off properly. This daily service include daily checks on Saturday and Sunday. All checks will begin by 8 a.m.	Included
Irrigation System Checks – 4 full system checks per year to confirm the proper function of the control valves and to identify leaks and system malfunctions. A full system check will be performed in May, July, August, and September. Repairs over \$2,000 will be reported and approved by the Metro District.	Included
Irrigation Winterization and Spring Repairs: Irrigation system will be winterized in the fall when freezing weather approaches. Winterization will be performed using a commercial air compressor to blow out the system. All zones will be winterized (except the farm fields) and any breaks caused by freezing will the responsibility of the contractor to repair.	Included
<b>Native Area Maintenance</b>	
Beauty Band Mow: To be performed by District Staff	Not Included

Native Area Mow: To be performed by District Staff	Not Included
Grassland Restoration: To be performed by District Staff	Not Included
Native Weed Control: See specifications below	Included
Native Fertilization: To be performed by District Staff on all accepted filings	Not Included
<b>Fall Maintenance</b>	
Fall Turf and Leaf Cleanup: Two (2) visits per season. Service includes the following: Short mow all turf areas, pick up all trash and leaves in the landscape areas and cut perennials as required	Included
Trimming of Ornamental Grasses in Landscape Beds: Trim grasses to 6 to 8 inches above ground starting in late fall. Leave ornamental grasses (feather grass) in high visibility beds and intersections until the end of winter	Included
Weekly Trash and Dog Stations: Trash and pet stations will be emptied two times a week April 15 – October 15 and one time per week in the winter. Dog bags and trash bags will be provided by Contractor and is included in the bid price	Included
Annual Flower Installation: Contractor will provide approximately 2,400 2” deep annuals from the Plantorium and will have ordered by February 15 <sup>th</sup> . Annual beds will be installed in the spring by May 15 or as soon as the weather permits. Annual beds will be prepped prior to plants being installed	Included
<b>Other Maintenance Tasks</b>	
Flower installation: ZGL will provide approximately 2,400 2” deep annuals from the Plantorium and will have them ordered by February 15 <sup>th</sup> . Annuals will be installed by May 15 or as soon as the weather permits in the event of late frosts.	
Flower Bed Weeding and Maintenance: Contractor will maintain beds every week. Maintenance will include dead heading and weeding beds. Beds will be cleared and tilled at the end of the year.	Included
Fall Landscape Bed Cleanup: Landscape bed will be cleaned in November. Ornamental grasses that are likely to become matted will be trimmed to 6 inches. Some ornamental grasses that will withstand the snow may be left until spring to provide winter character but will be trimmed to 6 inches in the late winter or early spring. Perennial flowers will be trimmed and annual flowers will be removed. District staff will trim the bushes and trees in the flower beds.	Included
Dog Stations and Trash Containers: Emptied 2 times per week from April 15 – October 15 and one time per week during the winter. Dog bags are provided by ZGL and included in the landscape fee.	Included
Trash Pick Up: In all landscape areas during the growing season (24 visits). Off season trash to be cleaned by Metro District Staff or by Contractor billed at time and material costs	Included
Beach Spraying: Spray all existing beach areas under the care of PTMD three (3) times per season for weed and grass control. Additional sprays will be invoiced based on time and material used.	Included
Beach Grooming – Beach grooming is excluded from this landscape maintenance scope and will be performed by the contractor on a time and material basis as requested by the District. The first grooming will be completed prior to the	Excluded

Memorial Day Weekend.	
Winter Watering of New Trees: Two rounds of winter watering will be conducted on all trees less than 2 years old that were recently planted by the contractor. Additional tree watering will be performed contractor based on a time and material work order	Included
TOTAL MAINTENANCE BID	\$381,940.00

Additional landscape maintenance work may be approved by the Board of Directors and completed on a time and material work order or may be bid as a lump sum project and added as a work order. An example would be the replacement of broke irrigation controller.

Fuel Surcharge – ZGL will impose a monthly fuel surcharge of 1% of the contract price if gas prices rise over \$4.00 per gallon per the AAA Average Gas Price website for more than 7 consecutive days in the previous month. For every \$1.00 per gallon over \$4.00 per gallon, there will be an additional 0.5% added. i.e., the surcharge will be 1.5% for \$5.00 per gallon.

Emergency Calls – Any night, weekend, or holiday calls will be billed at \$106 per hour, minimum of 1 hour.

Water Restrictions – If water restrictions are imposed by local governing bodies, ZGL will reprogram the irrigation system to adhere to the new parameters. Contractor will make every effort to ensure that all plant life survives the restricted water requirements. Contract cannot be canceled or reduced during the period of drought restrictions.

Enhancements – If additional work is requested, ie, adding mulch, replacing plants, etc. pricing can be provided as a hard bid or submitted as Time and Material at a rate of \$70 per hour.

## EXHIBIT B

### COMPENSATION SCHEDULE

January - \$11,270.40 (3%)  
February - \$15,027.20 (4%)  
March - \$15,027.20 (4%)  
April - \$37,568.00 (10%)  
May - \$56,352.00 (15%)  
June - \$38,462.29 (10%)  
July - \$38,462.29 (10%)  
August - \$38,462.29 (10%)  
September - \$38,462.29 (10%)  
October - \$38,462.29 (10%)  
November - \$38,462.29 (10%)  
December - \$15,921.46 (4%)  
  
Total Contract - \$381,940.00

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

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

1. 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.**
2. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the District covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.

3. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
4. 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,

Zak George Landscaping LLC

is a

Limited Liability Company

formed or registered on 05/05/2005 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 20051182344 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/13/2023 that have been posted, and by documents delivered to this office electronically through 03/14/2023 @ 11:21:33 .

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 03/14/2023 @ 11:21:33 in accordance with applicable law. This certificate is assigned Confirmation Number 14779273 .



*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."*

MINUTES OF A JOINT SPECIAL MEETING OF THE  
BOARDS OF DIRECTORS

OF

RAINDANCE METROPOLITAN DISTRICT NOS. 1-4

Held: Thursday, November 17, 2022 at 11:00 a.m.

*This meeting was held via teleconference.*

Attendance

The joint special meeting of the Boards of Directors of Raindance Metropolitan District Nos. 1-4 was called and held in accordance with the applicable laws of the State of Colorado. The following Directors, have confirmed their qualifications to serve, were in attendance:

Martin Lind, President (District Nos. 1-4)  
Justin Donahoo, Secretary/Treasurer (District Nos. 1-4)  
Austin Lind, Assistant Secretary (District Nos. 1, 2 & 4))  
Ryan Scallon, Assistant Secretary (District No. 1 & 3)  
Kris Kazian, Assistant Secretary (District No. 3)  
Nate Kvamme, Assistant Secretary (District No. 2)  
Garrett Scallon, Assistant Secretary (District No. 2)  
Alan MacGregor, Assistant Secretary (District No. 3)

Also present were William P. Ankele, Jr., Esq., and Zachary P. White, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law; Lara Wynn, Gary Kerr, Water Valley Land Company; and Hannah Barker, Steve Southard, Baylie Weiss, Advance HOA Management

Call to Order/Declaration  
of Quorum

It was noted that a quorum of the Boards was present, and the meeting was called to order.

Conflict of Interest  
Disclosures

Mr. White advised the Boards that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. White reported that disclosures for those directors that provided White Bear White Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Boards at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Boards. Mr. White inquired into whether members of the Boards had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for

discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Boards to act.

Combined Meetings

The Boards of Directors of the Districts have determined to hold joint meetings of the Districts and to prepare joint minutes of action taken by the Districts in such meetings. Unless otherwise noted herein, all official action reflected in these minutes is the action of each of the Districts. Where necessary, action taken by an individual District will be so reflected in these minutes.

Approval of Agenda

Mr. White presented the proposed agenda to the Boards for consideration. Following discussion, upon a motion duly made and seconded, the Boards unanimously approved the agenda as presented.

Public Comment

None.

Consent Agenda

Mr. White reviewed the items on the consent agenda with the Boards. Mr. White advised the Boards that any item may be removed from the consent agenda to the regular agenda upon the request of any director. No items were requested to be removed from the consent agenda. Upon a motion duly made and seconded, the following items on the consent agenda were unanimously approved, adopted, and ratified:

- Consider Approval of October 19, 2022 Joint Special Meeting Minutes
- Consider Adoption of 2023 Joint Annual Administrative Resolution
- Consider Approval for Renewal of General Liability Schedule and Limits Consider Approval and Authorization to Bind Coverage, Renewal of Special District Association of Colorado Membership, Payment of Agency Fee, and Inclusion of Workers' Compensation Coverage
- Consider Approval of Independent Contractor Agreement with Prairie Dog Pros, LLC for On Call Prairie Dog Mitigation Services
- Consider Ratification of Independent Contractor Agreement with Zak George Landscaping for 2022-2023 Snow Removal Services
- Consider Approval of Independent Contractor Agreement with ProCraft Mechanical, Inc. for Pool Heater Installation Services
- Consider Approval of Independent Contractor Agreement with Nobleman Electric Contracting LLC for Pool Heater

Manager/Operation Items

Manager's Report

Mr. Southard provided the Boards with a Manager's Report.

Capital Improvements Update

Legal Matters

Consider Approval of Joint Resolution Calling May 2, 2023 Election

Mr. White presented the Joint Resolution Calling the May 2, 2023 Election to the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution.

Designation of Method for Providing Notice of Call for Nominations

Mr. White discussed the Designation of Method for Providing Notice of Call for Nominations with the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously designated posting on the Districts website as the method for providing the notice of call for nominations.

Discussion re Website Director Contact Information

Mr. White discussed the requirement for Director Contact Information to be provided on the Districts website. Following discussion, upon a motion duly made and seconded, the Board unanimously approved contact information to be provided on the Districts website.

Consider Adoption of Resolution Certifying Delinquent Water Fees to the County for Collection

Mr. White presented the Resolution Certifying Delinquent Water Fees to the County for Collection to the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution.

Financial Matters

Consider Approval of Payables/Financials

Mr. Kerr reviewed the claims listing with the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the claims.

Conduct Public Hearing on 2022 Budget Amendments and Consider Adoption of Resolutions Amending 2022 Budget

Director Martin Lind opened the public hearings on the 2022 Budget Amendments. Mr. White noted that the notice of public hearing was provided in accordance with Colorado Law. No written objections have been received prior to the meeting. There being no public comment, the hearings were closed.

Mr. White presented the the Resolution Amending the 2022 Budget with the Board of District No. 1 and Mr. Kerr discussed the purpose for the amendment. Following discussion, upon a motion duly made and seconded, the Board of District No. 1 unanimously adopted the resolution amending the General Fund to \$4,400,000.

Mr. White reviewed the Resolution Amending the 2022 Budget with the Board of District No. 2 and Mr. Kerr discussed the purpose for the amendment. Following discussion, upon a motion duly made and seconded, the Board of District No. 2 unanimously adopted the resolution amending the General Fund to \$56,000.

Mr. White reviewed the Resolution Amending the 2022 Budget with the Board of District No. 3 and Mr. Kerr discussed the purpose for the amendment. Following discussion, upon a motion duly made and seconded, the Board of District No. 3 unanimously adopted the resolution amending the General Fund to \$56,300.

Mr. White reviewed the Resolution Amending the 2022 Budget with the Board of District No. 4 and Mr. Kerr discussed the purpose for the amendment. Following discussion, upon a motion duly made and seconded, the Board of District No. 4 unanimously adopted the resolution amending the General Fund to \$17,000.

Conduct Public Hearing on 2023 Budgets and Consider Adoption of Resolution Adopting 2023 Budgets, Imposing Mill Levy and Appropriating Funds

Director Martin Lind opened the public hearings on the proposed 2023 Budgets. Mr. White noted that the notice of public hearing was provided in accordance with Colorado law. No written objections have been received prior to the meeting. There being no public comment, the hearings were closed.

Mr. Kerr reviewed the 2023 Budget with the Board of District No. 1. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution adopting the 2023 Budget, appropriating funds therefor and certifying 39.000 mills for the General fund, 0.000 mills for the Debt Service fund, 0.000 mills for the Capital Projects Fund, and 0.000 mills for the Contractual Obligation fund.

Mr. Kerr reviewed the 2023 Budget with the Board of District No. 2. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution adopting the 2023 Budget, appropriating funds therefor and certifying 2.958 mills for the General fund, 40.915 mills for the Debt Service fund, 0.000 mills for the Capital Projects Fund, and 0.000 mills for the Contractual Obligation fund.

Mr. Kerr reviewed the 2023 Budget with the Board of District No. 3. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution adopting the 2023 Budget, appropriating funds therefor and certifying 1.974 mills for the General fund, 32.437 mills for the Debt Service fund, 0.000 mills for

the Capital Projects Fund, and 0.000 mills for the Contractual Obligation fund.

Mr. Kerr reviewed the 2023 Budget with the Board of District No. 4. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution adopting the 2023 Budget, appropriating funds therefor and certifying 39.000 mills for the General fund, 0.000 mills for the Debt Service fund, 0.000 mills for the Capital Projects Fund, and 0.000 mills for the Contractual Obligation fund.

Consider Authorization to Approve Auditor Engagement Letter for 2022 Audit

Mr. White discussed the Auditor Engagement Letter for the 2022 Audit with the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously authorized Director Martin Lind to approve an engagement letter.

Consider Approval of CLA Master Services Agreement and Statement of Work

Mr. White discussed the CliftonLarsonAllen Master Services Agreements and Statements of Work to the Boards. Following discussion, upon a motion duly made and seconded, the Board unanimously approved the agreements, subject to Mr. Kerr's discussions with the CLA re fees and scope of service.

Other Business

Next Regular Meeting – December 17, 2022

Adjourn

There being no further business to come before the Boards, and following discussion and upon a motion duly made, seconded and unanimously carried, the Boards determined to adjourn the meeting.

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

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Secretary for the Meeting Districts

The foregoing minutes were approved on the 11<sup>th</sup> day of April, 2023.



MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

OF

RAINDANCE METROPOLITAN DISTRICT NO. 1

Held: Friday, December 16, 2022 at 9:00 a.m.

*This meeting was held via teleconference.*

Attendance

The joint special meeting of the Board of Directors of Raindance Metropolitan District No. 1 was called and held in accordance with the applicable laws of the State of Colorado. The following Directors, have confirmed their qualifications to serve, were in attendance:

Martin Lind, President  
Justin Donahoo, Secretary/Treasurer  
Austin Lind, Assistant Secretary  
Ryan Scallon, Assistant Secretary

Also present were William P. Ankele, Jr., Esq., and Zachary P. White, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law; Lara Wynn, Gary Kerr, Garrett Scallon, Water Valley Land Company; and Alex Fink, CliftonLarsonAllen, District Accountant.

Call to Order/Declaration of Quorum

It was noted that a quorum of the Board was present, and the meeting was called to order.

Conflict of Interest Disclosures

Mr. White advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. White reported that disclosures for those directors that provided White Bear White Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Mr. White inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

Approval of Agenda

Mr. White presented the proposed agenda to the Boards for consideration. Following discussion, upon a motion duly made and

seconded, the Boards unanimously approved the agenda as presented.

Public Comment

None.

Legal Matters

Consider Ratification of First Amendment to Agreement Regarding LOT PIF with Raindance Development LLC

Mr. White presented the First Amendment to Agreement Regarding LOT PIF with Raindance Development LLC to the Board. Following discussion, upon a motion duly made and seconded, the Board unanimously ratified the agreement. Mr. Martin Lind abstained.

Consider Adoption of Resolution re Acceptance of District Eligible Costs Incurred by Raindance Aquatic Investments, LLC (Golf Course Soft Costs #2)

Mr. White presented the Resolution regarding Acceptance of District Eligible Costs Incurred by Raindance Aquatic Investments, LLC (Golf Course Soft Costs #2) to the Board. Following discussion, upon a motion duly made and seconded, the Board unanimously adopted the resolution. Mr. Martin Lind abstained.

Other Business

Next Regular Meeting – December 21, 2022

Adjourn

There being no further business to come before the Board, and following discussion and upon a motion duly made, seconded and unanimously carried, the Board determined to adjourn the meeting.

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

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Secretary for the Meeting

The foregoing minutes were approved on the 11<sup>th</sup> day of April, 2023.

MINUTES OF A JOINT SPECIAL MEETING OF THE  
BOARDS OF DIRECTORS

OF

POUDRE TECH METROPOLITAN DISTRICT, AND WATER  
VALLEY METROPOLITAN DISTRICT NOS. 1 & 2,  
RAINDANCE METROPOLITAN DISTRICT NOS. 1-4,

Held: Wednesday, December 21, 2022, at 10:00 a.m.

*This meeting was held via teleconference.*

Attendance

The joint special meeting of the Boards of Directors of the Poudre Tech Metropolitan District, Water Valley Metropolitan District Nos. 1 & 2. And Raindance Metropolitan District Nos. 1-4, was called and held in accordance with the applicable laws of the State of Colorado. The following Directors, have confirmed their qualifications to serve, were in attendance:

**Poudre Tech Metropolitan District and Water Valley  
Metropolitan District Nos. 1 & 2**

Martin Lind, President (PTMD/WVMD No. 2)  
Jerry Helgeson, Vice President (PTMD/WVMD Nos. 1 & 2)  
Duane Sullivan, Secretary/Treasurer (WVMD No. 1)  
Justin Donahoo, Asst. Secretary (PTMD/WVMD No. 1 & 2)  
John Jensen, Secretary/Treasurer (PTMD/WVMD Nos. 1 & 2)  
James Porth, Jr., Asst. Secretary (WVMD No. 1)  
Marissa Donahoo, Asst. Secretary, (PTMD/WVMD No. 2)

**Raindance Metropolitan District Nos. 1-4**

Martin Lind, President (District Nos. 1-4)  
Justin Donahoo, Secretary/Treasurer (District Nos. 1-4)  
Austin Lind, Assistant Secretary (District Nos. 1, 2 & 4))  
Ryan Scallon, Assistant Secretary (District No. 1 & 3)  
Kris Kazian, Assistant Secretary (District No. 3)  
Nate Kvamme, Assistant Secretary (District No. 2)  
Garrett Scallon, Assistant Secretary (District No. 2)  
Alan MacGregor, Assistant Secretary (District No. 3)

Also present were William P. Ankele, Jr., Esq., and Zachary P. White, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law; Lara Wynn, Gary Kerr, Water Valley Land Company; Jason Kusel, Pelican Lakes; Hannah Barker, Steve Southard, Baylie Weiss,

Advance HOA Management...

Call to Order/Declaration of Quorum

It was noted that a quorum of the Boards was present, and the meeting was called to order.

Conflict of Interest Disclosures

Mr. White advised the Boards that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. White reported that disclosures for those directors that provided White Bear White Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Boards at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Boards. Mr. White inquired into whether members of the Boards had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Boards to act.

Combined Meetings

The Boards of Directors of the Districts have determined to hold joint meetings of the Districts and to prepare joint minutes of action taken by the Districts in such meetings. Unless otherwise noted herein, all official action reflected in these minutes is the action of each of the Districts. Where necessary, action taken by an individual District will be so reflected in these minutes.

Approval of Agenda

Mr. White presented the proposed agenda to the Boards for consideration. Following discussion, upon a motion duly made and seconded, the Boards unanimously approved the agenda as presented.

Public Comment

None.

Recreation Amenities  
Sharing

Discussion re Recreation Amenities Sharing

Mr. Kerr presented to the Boards a proposal to share recreation amenities between the Water Valley and Raindance communities, including shared access to parks, orchards, lakes and beaches, the Raindance River Resort, and the W-Club. The Boards engaged in a discussion regarding issues surrounding access by the general public and implementation of fees for the Raindance River Resort and W-Club. A tiered recreation pass was proposed to allow for general access to parks, orchards, lakes, and beaches, and a paid membership for the Raindance River Resort and the W-Club.

Review Responses to Public Survey re Recreation Amenities Sharing and Consider Recommendations from District Management

Ms Barker and Mr. Southard reviewed with Boards responses received to the public survey about sharing recreation amenities. In general, the Boards shared the same views as the public, including overcrowding and access by the general public.

Consider Approval of Transaction Based Informed Consent Letter re Recreation Amenities Sharing Agreement from White Bear Ankele Tanaka & Waldron

Mr. White presented a Transaction Based Informed Consent Letter regarding Recreation Amenities Sharing Agreement from White Bear Ankele Tanaka & Waldron to the Boards. Following discussion, upon a motion duly made and seconded, the Boards unanimously approved the letter and directed preparation of an Amenities Sharing Agreement to be approved at a future meeting, and directed Staff to begin to implement the sharing of amenities for the 2023 season.

Legal Matters – PTMD  
Matters

Consider Approval of Lease Agreement with Marina One, LLC for W-Club

Mr. White presented a Lease Agreement with Marina One, LLC, for W-Club to the Board of Poudre Tech Metropolitan District. Following discussion, upon a motion duly made and seconded, the Board of Poudre Tech Metropolitan District approved the agreement with Mr. Martin Lind abstaining.

Consider Approval of Independent Contractor Agreement with Pelican Lakes, LLC for W-Club Managements Services

Mr. White presented an Independent Contractor Agreement with Pelican Lakes, LLC for W-Club Management Services to the Board of Poudre Tech Metropolitan District. Following discussion, upon a motion duly made and seconded, the Board of Poudre Tech Metropolitan District approved the agreement with Mr. Martin Lind abstaining.

Other Business

Next Regular Meeting – January 9, 2023

Adjourn

There being no further business to come before the Boards, and following discussion and upon a motion duly made, seconded and unanimously carried, the Boards determined to adjourn the meeting.

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

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Secretary for the Meeting Districts

The foregoing minutes were approved on the 11<sup>th</sup> day of April, 2023.

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS

OF

RAINDANCE METROPOLITAN DISTRICT NO. 1

Held: Monday, January 9, 2023, at 1:00 p.m.

*This meeting was held via teleconference.*

Attendance

The joint special meeting of the Board of Directors of Raindance Metropolitan District No. 1 was called and held in accordance with the applicable laws of the State of Colorado. The following Directors, have confirmed their qualifications to serve, were in attendance:

Martin Lind, President  
Justin Donahoo, Secretary/Treasurer  
Austin Lind, Assistant Secretary  
Ryan Scallon, Assistant Secretary

Also present were William P. Ankele, Jr., Esq., and Zachary P. White, Esq., White Bear Ankele Tanaka & Waldron, Attorneys at Law; Lara Wynn, Gary Kerr, and Garrett Scallon, Water Valley Land Company.

Call to Order/Declaration of Quorum

It was noted that a quorum of the Board was present, and the meeting was called to order.

Conflict of Interest Disclosures

Mr. White advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Mr. White reported that disclosures for those directors that provided White Bear White Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Mr. White inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain a quorum or to otherwise enable the Board to act.

Approval of Agenda

Mr. White presented the proposed agenda to the Boards for consideration. Following discussion, upon a motion duly made and

seconded, the Boards unanimously approved the agenda as presented.

Public Comment

None.

Construction Matters

Review Bids for Raindance Reservoir #2 Construction Project

Mr. Scallon and Mr. Kerr discussed with the Board the need to construct the Raindance Reservoir #2 sooner than was previously anticipated. Mr. Scallon reviewed the bids received following and identified Bemas Construction as the low bidder with the most favorable terms to complete the project in the time needed by the District and to coordinate most favorably with the District.

Consider Award and Approval of Construction Agreement, Authorize Notice of Award and Notice to Proceed

The Boards discussed Raindance Reservoir #2 construction project bids and upon a motion duly made and seconded, the Boards unanimously approved the Award and Approval of a Construction Agreement, and to Authorize Notice of Award and Notice to Proceed to Bemas Construction.

Legal Counsel

None.

Other Business

Next Meeting – April 11, 2023

Adjourn

There being no further business to come before the Board, and following discussion and upon a motion duly made, seconded and unanimously carried, the Board determined to adjourn the meeting.

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

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Secretary for the Meeting

The foregoing minutes were approved on the 11<sup>th</sup> day of April, 2023.



## INDEPENDENT CONTRACTOR AGREEMENT

[ \_\_\_\_\_ ]

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between **RAINDANCE METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **YMCA OF NORTHERN COLORADO**, a Colorado nonprofit 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 March 1, 2023 and shall terminate on the earlier to occur of: (i) termination pursuant to Section 14 hereof; (ii) completion of the Services; or December 31, 2023.

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

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

5. GENERAL PERFORMANCE STANDARDS.

a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services (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.

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

6. 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.

Invoices received by the District after the 10<sup>th</sup> of each month may be processed the following month.

7. 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.**

8. **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.

9. **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.

10. 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.

11. 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 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, 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 11 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 11. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

12. 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.

13. 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.

14. 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.

15. 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 16 below, and the defaulting party will have fifteen (15) 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 fifteen (15)-day period and the defaulting party gives written notice to the non-defaulting party within such fifteen (15)-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 fifteen (15)-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.

16. 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) five (5) 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 16 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:

RainDance Metropolitan District No. 1  
1625 Pelican Lakes Point, Suite 201  
Windsor, Colorado 80550  
Attention: Steve Southard  
Phone: 970-686-5825  
Email: steve.southard@advancehoa.com

With a Copy to:

WHITE BEAR ANKELE TANAKA & WALDRON  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122  
Attention: Zachary P. White, Esq.  
Phone: (303) 858-1800  
E-mail: zwhite@wbapc.com

Contractor:

YMCA of Northern Colorado  
2800 Dagny Way  
Lafayette, CO 80026  
Attention: Chief Operating Officer  
Phone: (303) 443-4474

17. 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.

18. 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.

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

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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

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

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

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

*[Signature pages follow].*

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

**DISTRICT:**

RAINDANCE METROPOLITAN DISTRICT  
NO. 1, a quasi-municipal corporation and  
political subdivision of the State of Colorado

---

President

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



## EXHIBIT A

### SCOPE OF SERVICES

#### SCOPE OF SERVICES & FEE SCHEDULE/CONTRACT PRICE

##### YMCA's Responsibilities.

A. Personnel/Standards. The YMCA represents and warrants it has specific knowledge of all applicable laws, codes, and regulations, whether State, County, Town or otherwise, regarding Pool operation and maintenance including, without limitation, providing the required number of professionally trained lifeguards, and will ensure that its employees, agents, and other parties follow all such applicable laws, codes, and regulations. Further, the YMCA shall comply with all applicable health and safety laws, rules, and regulations in operating the Pool.

(i) The YMCA shall pay its employees performing services under this Agreement the following, where applicable: wages; income tax withholdings; Social security withholdings; state unemployment insurance; Federal unemployment insurance and Workmen's compensation insurance.

(ii) Personnel employed by the YMCA shall go through the YMCA's orientation training, onsite training, and ongoing training, and will be trained in blood borne pathogen and provided a blood borne pathogen exposure control kit. The RDMD will inform the YMCA of concerns about the performance of any YMCA personnel and the YMCA will take reasonable steps to address such issues, including reassigning or terminating personnel.

(iii) Personnel employed by the YMCA shall have a current Lifeguarding Certificate which includes Professional CPR and First Aid from a nationally recognized organization, copies of which shall be kept on-site as necessary.

(iv) Lifeguards shall have the authority to enforce the RDMD's published and posted Pool Rules and Regulations, as provided by the RDMD to the YMCA, and minimum industry safety standards, state, and local health codes, with swimmers and all other persons at the Pool, within their best judgment and sole discretion. This includes the removal of patrons as determined by the YMCA in its sole discretion.

(v) The Pool's head guard will supervise all YMCA personnel and will engage in regular spot checks to ensure proper performance of YMCA staff.

C. Personnel Responsibilities. YMCA Personnel will be responsible for the following during hours of Pool operation and when YMCA lifeguards are on duty:

- (i) Lifeguarding;
- (ii) Maintaining Pool incident reports, and hourly guest counts;
- (iii) Daily opening tasks:
  - (a) cleaning Pool area and deck to include the following:
    - (1) clean Pool skimmer baskets and
    - (2) net / skim Pool surface as needed;
  - (b) sweeping Pool deck area, including entryways outside gate areas;
  - (c) test for proper chemical balances in the Pool;
- (iv) Daily tasks:
  - (a) Spot clean pool using skimmer net
  - (b) Monitor and clean skimmer baskets when needed
  - (c) Empty trash into proper receptacles
- (v) Daily closing tasks:
  - (a) close and store lifeguard umbrellas;
  - (b) straightening deck chairs and lounges;
  - (c) closing and locking all Pool area gates;
  - (d) putting out trash in the dumpster on the south side of the parking lot;
- (vi) Reporting the following issues to both the YMCA Director of RDMD Operations and the RDMD Manager immediately by email to [Steve.Southard@advancehoa.com](mailto:Steve.Southard@advancehoa.com):
  - (a) water chemistry or observable maintenance concerns;
  - (b) medical or disciplinary issues or incidents;
  - (c) Pool closures (excluding routine weather closures);
  - (d) equipment or supply restocking needs and
  - (e) any other safety related issue that needs to be addressed (for example, Pool equipment issues, and security issues);
- (vii) Water quality monitoring and recording
  - (a) checking pool water chemistry during the day
  - (b) logging pool water chemistry and Pool and Air temperatures in document or app provided
  - (c) notifying the RDMD Manager of any Pool chemical balancing needed beyond the ability of YMCA to correct.
- (viii) Cleaning tiles around Pool's edge (if needed);
- (ix) Restocking supplies which are used by the YMCA including water testing kits and lifeguarding supplies, as defined herein;
- (x) Following and enforcing the Pool Rules and Regulations;
- (xi) *Monitoring Pool entry – To be performed by Pelican Lakes Staff*
- (xii) Reporting and documenting all action that may jeopardize the spirit and content of this Agreement;
- (xiii) Preseason responsibilities: clean and organize pool furniture around pool, clean pool area, inventory and restock safety equipment, schedule walk-through with RDMD manager to identify any pre-season maintenance items, recommend any repairs.
- (xiii) Postseason responsibilities: stack and store all pool furniture, clean decks, store moveable pool items, and clean guard room.



## EXHIBIT B

### COMPENSATION SCHEDULE

D. Pool Schedule. Lifeguards will be on duty based on the following pool schedule:

#### Summer Schedule Lifeguard Details Including Lesson Guards

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Hours incl. swim lessons	8:30 am – 7:15 pm	10:45 am – 7:15 pm	8:30 am – 7:15 pm	10:45 am – 7:15 pm	10:45 am – 8:15 pm	9:30 am – 8:15 pm	10:45 am – 7:15 pm
# hours	10.75	8.5	10.75	8.5	9.5	10.75	8.5
# guards	6-8	6-8	6-8	6-8	6-8	6-8	6-8
# weeks	11	11	11	11	11	11	11
Pay rate	\$20	\$20	\$20	\$20	\$20	\$20	\$20
Summer Total	18,920	14,960	18,920	14,960	16,720	18,920	14,960

#### School Schedule Lifeguard Details

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Hours	4:15 pm – 7:45 pm	4:15 pm – 7:45 pm	4:15 pm – 7:45 pm	4:15 pm – 7:45 pm	4:15 pm – 7:45 pm	10:45 am – 8:15 pm	10:45 am – 7:15 pm
# hours	3.5	3.5	3.5	3.5	3.5	9.5	8.5
# guards	6-8	6-8	6-8	6-8	6-8	6-8	6-8
# weeks	3	3	3	3	3	3	3
Pay Rate	\$20	\$20	\$20	\$20	\$20	\$20	\$20
	1,680	1,680	1,680	1,680	1,680	4,560	4,080
Total Lifeguard	\$20,600	\$16,640	\$20,600	16,640	18,400	23,480	19,040

#### Supervisor during the Summer

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Hours	4	4	4	4	4	4	4
Pay rate	\$25	\$25	\$25	\$25	\$25	\$25	\$25
# weeks	11	11	11	11	11	11	11
Fee	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100

#### Total Daily Costs

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Cost per Day	21,700	17,740	21,700	17,740	19,500	24,580	20,140



Total Estimated Lifeguard and Supervisor Hours – 7,080

Total Estimated Training Hours – 75

Estimated Lifeguard and Manager Fees	\$143,100
Estimated Training Fees	\$1,500
YMCA Administration Fee	\$43,380
Uniform Fee	<u>\$1,500</u>
Total Estimated Fees	\$189,480

*\*This does not include additional compensation for special events and holidays in which the hourly rate will be \$30/hour instead of \$20/hour. Further, it does not account for potential limited hours on holidays.*

*\*\*Includes a supervisory role.*

*\*\*\*The Pool season may be extended upon terms mutually agreed upon in writing by the Parties. The Contractor will notify the RDMD by July 20, 2023, if there need to be any modifications to the pool schedule due to staffing limitations after August 8, 2023.*

#### E. Payments.

A. The YMCA shall perform the work and services set forth above for a base amount estimated at \$189,480, calculated as:

- (i) 6,770 hours of lifeguarding (1 guard) at \$20 hourly (\$135,400) and 308 hours of supervisory role at \$25 hourly (\$7,700), to be invoiced and paid based upon actual hours worked, and
- (ii) Coordinator fees and YMCA administrative services (“Coordinator Fees”) (\$43,380), to be invoiced equally in July, August, and September.
- (iii) 2.5 hours of pre-season lifeguard training (75 hours at 2.5 hours) at \$20 hourly (\$1,500) and uniform fee \$1,500, to be invoiced and paid in July invoice.

B. Additional lifeguard services required for special events and holidays (as set forth in Section 6.G.) will be invoiced to the RDMD at the rate specified.

C. The RDMD shall pay the YMCA for actual lifeguard hours provided, according to the following schedule:

- (i) The July invoice will include billable hours for the period of May 19, 2023 through June 30, 2023, plus \$14,460 of Coordinator Fees and \$3,000 of training and uniform fees;
- (ii) The August invoice will include billable hours for the period of July 1, 2023 through July 31, 2023, plus \$14,460 of Coordinator Fees; and
- (iii) The September invoice (to be submitted no earlier than September 7) will include billable hours for the period of August 1, 2023 through September 4, 2023 or later last day of the Season, plus \$14,460 of Coordinator Fees.

Contact Persons. All communications and/or notices under this Agreement should be directed to the following representatives of the Parties:

To the YMCA:  
Chief Operating Officer  
YMCA of Northern Colorado  
2800 Dagny Way  
Lafayette, CO 80026  
303-443-4474

To the RDMD after normal business hours or in case of emergency:  
Steve Southard, Head of Operations, Metropolitan Districts  
Steve.Southard@advancehoa.com  
p: 303-482-2213 ext. 222

To the YMCA after normal business hours or in case of emergency:  
Jason Stolz  
Executive Director of Community Associations YMCA of Northern Colorado

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

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

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

**EXHIBIT C-1**

**CERTIFICATE(S) OF INSURANCE**

**EXHIBIT D**

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

**INDEPENDENT CONTRACTOR AGREEMENT**  
(LANDSCAPE MAINTENANCE – 2023)

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 17<sup>th</sup> day of January 2023, by and between **RAINDANCE METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and **SOUTHERN EXPOSURE LANDSCAPE MANAGEMENT, INC.**, a Colorado corporation (the “**Contractor**”). The District and the Contractor are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

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

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

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

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

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

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

**TERMS AND CONDITIONS**

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

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

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2023.

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

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

5. GENERAL PERFORMANCE STANDARDS.

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



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

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

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

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

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

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

14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any District assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the District's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the District. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

15. INDEMNIFICATION.

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

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

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

in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

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

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

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

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

party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.

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

District: RainDance Metropolitan District No. 1  
1625 Pelican Lakes Point, Suite 201  
Windsor, Colorado 80550  
Attention: Steve Southard  
Phone: (970) 686-5825  
Email: [steve.southard@advancehoa.com](mailto:steve.southard@advancehoa.com)

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

Contractor: Southern Exposure Landscape Management, Inc.  
745 Jackson Court  
Windsor, CO 80550  
Phone: (970) 674-3010  
Fax: (970) 674-1993

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

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

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

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

25. GOVERNING LAW.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*[Signature pages follow].*

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

**DISTRICT:**

RAINDANCE METROPOLITAN DISTRICT  
NO. 1, a quasi-municipal corporation and  
political subdivision of the State of Colorado

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President

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



## EXHIBIT A

### SCOPE OF SERVICES

Spring Cleanup: Two (2) visits each season. Light pruning, leaf clean up, short mow turf, cut back perennials and ornamental grasses, and haul debris	Included
Irrigation Activation: After mainlines are pressurized, open gate valves to the public spaces irrigation system and charge the system	Included
Aeration: See specifications below for each area	Included
Weekly Maintenance: Mow, trim, blow all turf areas and clear sidewalks of clipping (24 visits)	Included
Trash Pick Up: In all landscape areas during the growing season (24 visits). Off season trash to be cleaned by Metro District Staff or by Contractor billed at time and material costs	Included
Fertilization: See specifications below for each area. Native areas to be fertilized by the Metro District staff as needed (slopes)	Included
Edging: Edging of bluegrass turf areas only. Monthly (up to 5 times per season)	Included
Low Mow Native: See specifications below	Included
Beauty Band Mow: To be performed by Contractor north of New Liberty and in filings that are not yet finally accepted South of New Liberty. District Staff to mow Beauty Bands south of New Liberty on accepted filings	Included
Native Area Mow: See specifications below	Included
Grassland Restoration: To be performed by District Staff	Not Included
Native Weed Control: See specifications below	Included
Native Fertilization: To be performed by District Staff on all accepted filings	Not Included
Winterization of Sprinklers: Close gate valves to the public spaces irrigation system and blow all water from the lines using a commercial air compressor	Included
Fall Cleanup: Two (2) visits per season. Service includes the following: Short mow all turf areas, pick up all trash and leaves in the landscape areas and cut perennials as required	Included
Trimming of Ornamental Grasses in Landscape Beds: Trim grasses to 6 to 8 inches above ground starting in late fall. Leave ornamental grasses (feather grass) in high visibility beds and intersections until the end of winter	Included

Other Maintenance Tasks on a Time and Material Basis

	Cost Per Hour
Irrigation Repairs Repairs not included in Contract – Time Cost / Parts Additional	\$79 / hr
After Hours and Holiday Emergency Response	Double Rate
Mini-Excavator for Irrigation Repairs and Drainage Projects – Including Operator	\$145 / hr
Skid Steer for Maintenance and Projects – Including Operator	\$135 / hr
Mid-Sized Excavator – Including Operator	NA
Additional Fertilizer and Spraying Applications	\$99 / hr
Landscaping , Gardening Projects, and Clean Up (general labor cost)	\$69 / hr
Trenching up to 36 inches deep – Including Operator	\$110 / hr
Tree Pruning up to 10 feet	\$69 / hr
Winter Watering	\$69 / hr
Pet Stations and Trash Pickup	\$69 / hr

Landscape Maintenance Contract with the RainDance Metro District includes the following areas that have initially accepted by the District:

Major Infrastructure

- Filing 1
- Filing 2
- Filing 3
- Filing 5
- Filing 5 NL
- Filing 6
- Filing 8
- Filing 9
- Filing 15
- Filing 16
- Filing 17
- Filing 18
- Filing 19
- New Liberty Filing 2
- New Liberty Filing 5
- New Liberty Filing 6
- RainDance River Resort inside fence (grasses only)
- Cherry Park
- Plum Park
- Butterfly Park
- Berry Park
- Cottonwood Drainage Ditch
- 13 Acre Park

## EXHIBIT B

### COMPENSATION SCHEDULE

#### Payment Schedule

January – \$0

February - \$15,079.90

March - \$15,079.90

April - \$36,191.76

May - \$36,191.76

June - \$36,191.76

July - \$36,191.76

August - \$36,191.76

September - \$36,191.76

October - \$24,127.84

November - \$15,079.90

December - \$15,079.90

**TOTAL - \$301,598.00**



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

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

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the District covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
6. 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,

Southern Exposure Landscape Management, Inc.

is a

Corporation

formed or registered on 01/24/2008 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 20081047828 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/13/2023 that have been posted, and by documents delivered to this office electronically through 03/14/2023 @ 13:12:32 .

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 03/14/2023 @ 13:12:32 in accordance with applicable law. This certificate is assigned Confirmation Number 14779882 .



*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."*

**INDEPENDENT CONTRACTOR AGREEMENT**  
**STORMWATER MANAGEMENT**

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the 23rd day of January, 2023, by and between RAINDANCE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and CMS ENVIRONMENTAL SOLUTIONS, 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; (ii) completion of the Services; or (iii) December 31, 2023. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the District determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.

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

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

5. GENERAL PERFORMANCE STANDARDS.

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



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

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

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

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

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

6. 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 A-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 B**, 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 B-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, 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:	Raindance Metropolitan District No. 1 C/O WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Attention: Zachary P. White, Esq. Phone: (303) 858-1800 E-mail: <a href="mailto:zwhite@wbapc.com">zwhite@wbapc.com</a>
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Contractor:	CMS Environmental Solutions, LLC. 5231 S. Quebec Street Greenwood Village, CO 80111 Attention: Alisha Ely Phone: 720-765-8147 Email: <a href="mailto:aely@cmsenviro.com">aely@cmsenviro.com</a>
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21. AUDITS. The District shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the District at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.

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

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

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

25. GOVERNING LAW.

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

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

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

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

27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the District's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by



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

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

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

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

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

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

33. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “**Work**”) will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work.

All Services are subject to the satisfaction and acceptance of the District, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.

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

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

*[Signature pages follow].*

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

**DISTRICT:**  
RAINDANCE METROPOLITAN DISTRICT  
NO. 1, 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



**EXHIBIT A**

**SCOPE OF SERVICES/COMPENSATION SCHEDULE**



**Prepared for Raindance Metro  
District #1 – Raindance Major  
Infrastructure and Fil 1  
COR403818, Windsor**

Prepared by:  
**Alisha Ely**  
5231 S Quebec Street  
Greenwood Village, CO 80111  
Phone: 720-765-8147  
Fax: 303-923-3416

January 23, 2023



**Itemized Services:**

**Prepare Permit Documents:**

- Notice of Modification for CDPHE (NOM)
- Notice of Termination for CDPHE (NOT)

NOM/NOT
\$195.00 each

**Stormwater Management Plan (SWMP) Addendum:**

- The SWMP Addendum is to modify your current SWMP plan to meet the requirements of the new state stormwater permit
- The SWMP is based on:
  - Sound engineering and hydrologic science
  - Current federal, state, and local regulations
  - Your particular needs and specific company procedure
- CMS will not assume responsibility for the compliance of another engineer's SWMP plan.

SWMP Addendum Only
\$295.00

**Elite Certified Inspection and Site Management Services:**

- Routine inspections plus all post storm event inspections as required.
- Utilizing our SW2 Software to manage the project and record inspections digitally.
- Routine SWMP book updates
- Inspection report sent to all parties concerned within 24 hours of inspection from SW2
- Review inspection with Construction Manager
- Premier Customer Service:
  - Communication between on-site staff, BMP installation company, CMS, Raindance Metro District #1
  - In order to maintain our superior level of customer service, we have a larger full-time staff that allows us the necessary time needed to review the inspection with the construction manager, walk the site (with the construction manager), and teach them at least one principle of stormwater on each site visit. Understandably, this extra time is vital to our modus operandi- communicating with the BMP contractors, facilitating, and delegating tasks, and in essence helping you and your team manage the entire stormwater program. Sometimes, a

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The contents of this proposal are confidential trade secret information and intended for the use of Raindance Metro District #1 only. Pricing is subject to change. The contents herein may not be reproduced without the specific written permission of CMS Environmental Solutions, L.L.C.



construction manager will not have time to walk with our staff, but it is comforting knowing they can if need be.

- We are always available to you, your staff, your BMP contractor, and local regulators.
- By listening, helping, and responding to all parties as if they are our client, we are able to ensure that you receive the best service from everyone.
- General consultation

Bi-Weekly + Unlimited Post Storm Inspections
\$375.00 per month

Approval:

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**We appreciate the opportunity and consideration. Please contact us if you have any questions.**

Proposal is only good for contracts that do not include retainage.

The contents of this proposal are confidential trade secret information and intended for the use of Raindance Metro District #1 only. Pricing is subject to change. The contents herein may not be reproduced without the specific written permission of CMS Environmental Solutions, LLC.



**EXHIBIT A-1**

CONTRACTOR'S COMPLETED W-9

**Request for Taxpayer  
Identification Number and Certification**

**Give Form to the  
requester. Do not  
send to the IRS.**

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

**1** Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.  
**CMS Environmental Solutions, LLC.**

**2** Business name/disregarded entity name, if different from above

**3** Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC

C Corporation

S Corporation

Partnership

Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) **P**

**Note:** Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ▶

**4** Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

*(Applies to accounts maintained outside the U.S.)*

**5** Address (number, street, and apt. or suite no.) See instructions.  
**5231 S. Quebec Street**

**6** City, state, and ZIP code  
**Greenwood Village, CO 80111**

**7** List account number(s) here (optional)

Requester's name and address (optional)

Print or type.  
See Specific Instructions on page 3.

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

**Social security number**

			-			-			
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or

**Employer identification number**


4	5	-	0	5	7	2	6	1	6
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**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

**Sign Here** Signature of U.S. person ▶  Date ▶ **April 13, 2022**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
  - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
  - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
  - Form 1099-S (proceeds from real estate transactions)
  - Form 1099-K (merchant card and third party network transactions)
  - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
  - Form 1099-C (canceled debt)
  - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
- If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

## EXHIBIT B

### INSURANCE REQUIREMENTS

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

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

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

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the District covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

**EXHIBIT B-1**

CERTIFICATE(S) OF INSURANCE

**RAINDANCE METROPOLITAN DISTRICT NO. 1  
CONTRACT ADDENDUM**

Name of Provider: **DEMACLENKO America, Inc.**  
Title of Project: **Hoedown Hill Snowmaking Equipment**  
Agreement/Contract Date: 2/23, 2023

This Addendum ("Addendum") is made by and between RAINDANCE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") and the above-referenced Provider, provider, or other consultant (the "Provider").

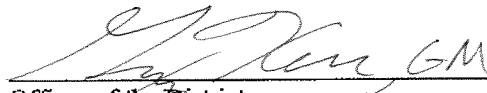
1. Introduction. The District and the Provider have entered into the above-referenced proposal ("Agreement") attached hereto as **Exhibit A**, and the District and Provider wish to modify and/or supplement the terms of the Agreement, as more particularly set forth in this Addendum. This Addendum shall be effective as of the same date as the Agreement.
2. Incorporation and Effect. This Addendum is hereby made a part of, and incorporated into, the Agreement as though fully set forth therein. As modified or supplemented by the terms set forth in this Addendum, the provisions of the Agreement shall remain in full force and effect, *provided that*, in the event of a conflict between any provision of this Addendum and any provision of the Agreement, the provision of this Addendum shall control.
3. Governing Law / Disputes. The Agreement and this Addendum and all claims or controversies arising out of or relating to the Agreement or this Addendum shall be governed and construed in accordance with the law of the State of Colorado, 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. Venue for all actions shall be in the District Court in and for the county in which the District is located.
4. 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 obligations of the District under the Agreement and this Addendum are subject to annual budgeting and appropriations, and the Provider expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of District's governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of the Agreement and this Addendum and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Provider understand and intend that the District'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.
5. Governmental Immunity. Nothing in the Agreement or this Addendum 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, Providers, 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, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
6. Remedies. To the extent the Provider's remedies for a District default under the 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 District's then current fiscal period.

7. Assignability. The District shall have the right to assign the Agreement to a third party upon written notice to the Provider.
8. Negotiated Provisions. This Addendum 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 substantially and materially to the preparation of this Addendum.
9. Severability. If any portion of the Agreement or this Addendum is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Addendum a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
10. Miscellaneous. This Addendum, together with the provisions of the Agreement not expressly inconsistent herewith, constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments.
11. Counterpart Execution. This Addendum 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.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Addendum.


DISTRICT:

RAINDANCE METROPOLITAN DISTRICT NO. 1, a  
quasi-municipal corporation and political subdivision of the  
State of Colorado

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

APPROVED AS TO FORM:

WHITE BEAR ANKLE TANAKA & WALDRON  
Attorneys at Law

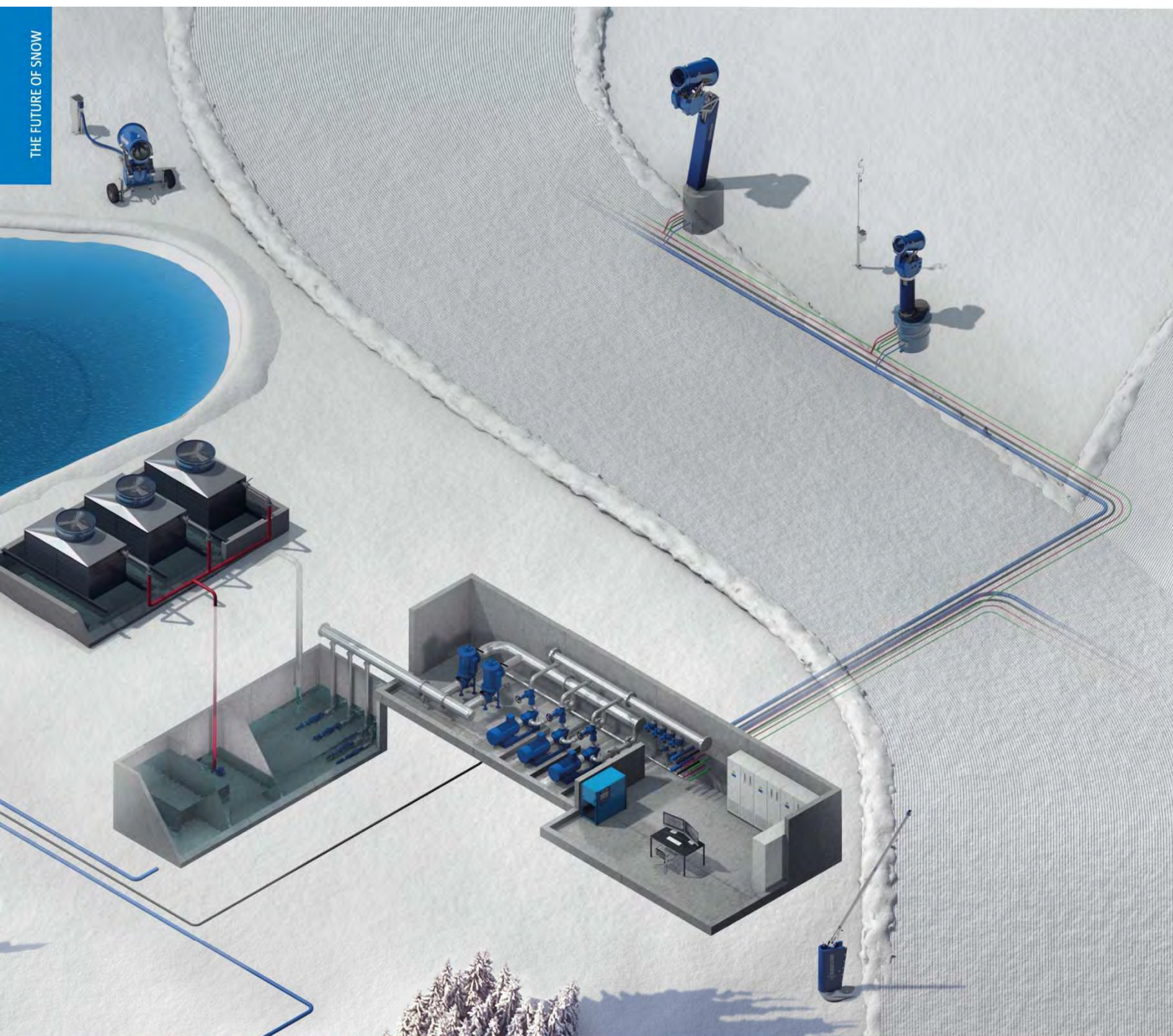
  
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Offer

## SNOWMAKING EQUIPMENT HOEDOWN HILL

Offer n. AN US22 197b from 02/03/2023

THE FUTURE OF SNOW





To  
**Hoedown Hill**  
Raindance Metro District One  
1625 Pelican Lks Point 201  
Windsor, COLORADO 80550

Gilmanon, 02/03/2023

We are grateful for your valued offer inquiry and submit you herewith our offer for the delivery of

## 1.0 WATER PIPES

*Due to current raw material and energy price increases of the ductile iron pipes manufacturer (and thus also by Demaclenko) we reserve the right to apply a surcharge at the moment of the delivery. In this case Demaclenko will submit an official letter from the pipe manufacturer confirming the surcharge.*

DESCRIPTION	AMOUNT
Ductile iron pipe DCI VRS-T incl. accessory 4" PN75-1,087psi	1820 ft
Ductile iron pipe DCI VRS-T incl. accessory 6" PN64-928psi	968 ft
Ductile iron pipe DCI VRS-T incl. accessory 8" PN40 580psi	1335 ft
Fittings and accessories	1 tot.
<b>Total Price</b>	<b>USD 156,770.00</b>

## 2.0 PE PIPES

DESCRIPTION	AMOUNT
Pipe PE100 OD180 7" PN10-145psi/SDR17	118 ft
Electrowelded coupling OD180 PN25	3 pc
Cable prot. pipe smooth surface PE OD50/DI44 2" PN8 116psi striated longit. int.	5576 ft
Joint OD50x50 2" PN16-232psi	17 pc
Drainage pipe PE-HD double wall OD110/DI93	590 ft
<b>Total Price</b>	<b>USD 9,825.00</b>

### 3.0 CABLES AND ACCESSORIES

DESCRIPTION	AMOUNT
Low voltage cable NAYY-O 3x500 MCM+ 4/0 AWG	4123 ft
Data cable 4x2x0,5mm <sup>2</sup> (22AWG) Demaclenko	4123 ft
Fiber optic cable A-DQ(ZN)B2Y 1x8 E9/125	1558 ft
Bonding wire ø 10mm (8AWG)	3985 ft
Intersection connector 60x60mm ø10mm (8AWG)	35 pc
Warning tape "caution electric cable"	3936 ft
<b>Total Price</b>	<b>USD 41,580.00</b>

### 4.0 TAPPING POINTS

DESCRIPTION	AMOUNT
F160 S (Standard) - FRP Pit F160 incl. ladder, heating, hatch, water and air intake, earthing strap and drain and 2" water ball valve PN 100 Camlock 2"; incl. summer cover.	5 pc
F160 HD (Heavy Duty) - FRP Pit F160 incl. ladder, heating, hatch, water and air intake, earthing strap and drain and 2" water ball valve PN 100 Camlock 2" incl. summer cover.	13 pc
PVC Panel FRP Pit F160	18 pc
Clamp system max. 2 x 4 x 240 mm <sup>2</sup> without brace – GRP pit Z160	18 pc
Kit of 7 braces 120 - 300 mm <sup>2</sup> – rail system 2 x 4 x 240 mm <sup>2</sup>	18 pc
Cable clamps for loop-through electrical connection box in pit Z160 2 x 4 x 240 mm <sup>2</sup> + control cable	18 pc
Tapping points disconnect 60A 3Ø 4W 480VAC NEMA 4X;12 SWITCHED AND INTERLOCKED RECEPTACLE	18 pc
Tapping points disconnect 60A 3Ø 4W 480VAC WATERTIGHT PLUG	18 pc
Communication box	18 pc
Connecting hose for shaft 2" L=5ft	18 pc
Paraffined bandages	18 pc
Double nipple 2"	18 pc
<b>Total Price</b>	<b>USD 129,500.00</b>

## 5.0 PUMP STATION PS100

DESCRIPTION	AMOUNT
High pressure pump Q= 800gpm H= 290psi P= 215hp	2 pc
Electric motor 215 hp	2 pc
Butterfly valve with intermediate flange 6" PN16 232psi with pneumatic drive	3 pc
Butterfly valve with intermediate flange 12" PN10 with pneumatic drive	1 pc
Butterfly valve with intermediate flange 10" PN16 232psi with manual lever	4 pc
Slide valve flat 4" PN16 232 psi	1 pc
Slide valve flat 12" PN10-145psi	1 pc
Slide valve cylindrical steel 6" PN40 580psi	3 pc
Ball valve compact flange pneumatic 3/4" PN16/40 232-580psi	3 pc
Regulation valve with autom. actuator 6" PN40 580psi	2 pc
Nonreturn flap with intermediate flange 6" PN40 580psi	3 pc
Filter H 10" PN10-145psi	1 pc
Automatic filter type 10" PN10-145psi	1 pc
Kit measuring transducer 0...232psi	5 pc
Kit measuring transducer 0...870psi	3 pc
Manometer with reed pen NG63 0...145psi G $\frac{1}{4}$ "RAD.	2 pc
Manometer with reed pen NG63 0...580psi G $\frac{1}{4}$ "RAD.	7 pc
Needle valve for measuring device straight 1/4" (incl. Reducing nipple)	9 pc
Water meter 6" PN16 232psi inkl. Display	3 pc
Aeration and ventilation valve 2" PN16/100 232/1450psi incl. assembly material	2 pc
Compressor 2 hp (1,5 kW) incl. frame and mounting material	1 pc
Kit for pneumatic valves	8 pc
Water alarm (WA)	1 pc
Room temperature sensor (RT)	1 pc
Temperature transmitter (TT) for pump/bearing	2 pc
Steel pipe various diameter	1 tot.

Flange, fittings, bolts and screws	1 tot.
Small parts and support	1 tot.
Zinc coating	1 tot.
Assembly of pump station	1 tot.
Aligning of the pump on site	1 tot.
<b>Total Price</b>	<b>USD 230,480.00</b>

*Pump house building to be supplied by customer.*

## 6.0 SWITCHING & CONTROL CABINET PS100

DESCRIPTION	AMOUNT
Switching cabinet	1 pc
Control cabinet	1 pc
VFD 214,57 hp (160kW)	2 pc
Electrical access point 400A	2 tot.
PLC Software	1 tot.
Assembly material	1 tot.
Assembly	1 tot.
<b>Total Price</b>	<b>USD 123,175.00</b>

## 7.0 VALVE SHAFT VS01

DESCRIPTION	AMOUNT
Concrete pit 78x78xH78in	1 pc
Slide valve with automatic actuator 4" PN40-580psi	1 pc
Ball valve compact flange electric 2" PN16/40 - 232/580psi	2 pc
Kit measuring transducer 0...1450psi	2 pc
Manometer with reed pen NG63 0...1450psi G¼"RAD.	2 pc
Needle valve for measuring device straight 1/4" (incl. Reducing nipple)	2 pc
Steel pipe various diameter	1 tot.
Flange, fittings, bolts and screws	1 tot.

Small parts and support	1 tot.
Zinc coating	1 tot.
Assembly of valve shaft	1 tot.
<b>Total Price</b>	<b>USD 13,035.00</b>

## 8.0 CONTROL CABINET VS01

DESCRIPTION	AMOUNT
Control cabinet	1 pc
PLC Software	1 tot.
Assembly material	1 tot.
Assembly	1 tot.
<b>Total Price</b>	<b>USD 11,375.00</b>

## 9.0 SNOWMAKING EQUIPMENT

DESCRIPTION	AMOUNT
Snow gun TITAN 4.0 AMK (automatic - mobile - compressor) 1 pc 47,980.00 USD	1 pc
Snow gun TITAN 4.0 AXK (automatic - swing arm 30ft - compressor)	2 pc
Snow gun TITAN 4.0 ATK3 US TOWER (automatic – tower height 10ft – compressor - service platform – rail - ladder)	11 pc
Snow gun TITAN 4.0 AMK T4.08.200310 - year of construction 2020 with rental deduction	1 pc
HYDROSYSTEM with communication cable	15 pc
Hose 2" 98ft (Premium)	2 pc
Control cable extension 130ft	2 pc
Foundation insert for swing arm 30ft	2 pc
Swing arm 30ft with hoses and cables inkl. electric oscillation.	2 pc
Weather station for wind speed and direction measurement mounted on snowgun 1 pc 5,885.00 USD	7 pc
<b>Total Price</b>	<b>USD 773,670.00</b>

Swing arm concrete foundation to be poured by customer

## 10.0 VISUALIZATION SYSTEM

DESCRIPTION	AMOUNT
Snowvisual basic package incl. Licence	1 tot.
Snowvisual Server PC	1 pc
Monitor LCD black 27" 16:9 FULL HD	2 pc
Pit integration into the control system	18 pc
Integration of DEMACLENKO snowgun into the control system (Snowvisual)	15 pc
Wind tracking	1 pc
Snow visual graphic adaptation - Changes of the Geophoto or Slope-image	1 pc
Snowvisual Cloud - account opening (once per installation)	1 pc
Application per system per year	1 pc
Snowbus communication module for extension	1 pc
External RS485 termination	2 pc
<b>Total Price</b>	<b>USD 21,525.00</b>

## 11.0 PLANNING, SUPERVISION AND COMMISSIONING

DESCRIPTION	AMOUNT
Planning snowmaking system	1 tot.
Planning pump station + drain valve	1 tot.
Project Management	1 tot.
Commissioning	1 tot.
Documentation	1 tot.
<b>Total Price</b>	<b>USD 45,730.00</b>

## 12.0 FREIGHT

DESCRIPTION	AMOUNT
Freight excluded offload	1 tot.
<b>Total Price</b>	<b>USD 45,000.00</b>

## PRICE SUMMARY:

DESCRIPTION	PRICE
1.0 Water pipes	USD 156,770.00
2.0 PE pipes	USD 9,825.00
3.0 Cables and accessories	USD 41,580.00
4.0 Tapping points	USD 129,500.00
5.0 Pump station PS100	USD 230,480.00
6.0 Switching & control cabinet PS100	USD 123,175.00
7.0 Valve shaft VS01	USD 13,035.00
8.0 Control cabinet VS01	USD 11,375.00
9.0 Snowmaking equipment	USD 773,670.00
10.0 Visualization system	USD 21,525.00
11.0 Planning, supervision and commissioning	USD 45,730.00
12.0 Freight	USD 45,000.00
<b>Sum Total</b>	<b>USD 1,601,665.00</b>
Additional discount possible, with purchase of the Prinoth Bison X snowgroomer	-3%
<b>Final price with additional discount</b>	<b>USD 1,553,615.00</b>

# SALES TERMS

<b>Terms and conditions</b>	The general terms and conditions of DEMACLENKO IT Srl apply (download: <a href="http://www.demaclenko.com">www.demaclenko.com</a> ) These general terms and conditions are an integral and essential part of the mutual agreements between the seller and the buyer, subject to the special agreements contained in the contract.
<b>Reservation of title</b>	The object of purchase remains the property of the seller until full payment, whereby the risk passes to the buyer from the time of delivery. The buyer may not sell, pledge, give away or lend the object of purchase until the purchase price has been paid in full. The seller is entitled, at his own discretion, to attach a corresponding declaration to the object of purchase for the duration of the retention of title.
<b>Object of agreement</b>	<p>The subject of the contract is exclusively the products and / or services listed in the offer and the identical order confirmation. The seller assumes no further obligations or requirements other than those specified there. Unless expressly agreed in writing, the following are not included: approval procedures and official fees, geological and limnological reports, environmental impact assessments, all construction work such as concrete structures, limiting devices, excavation and earthmoving work as well as assembly and project planning work of all kinds. The position of a possibly required safety coordinator is also included not included. Travel and accommodation costs are also not included.</p> <p>The information on weight, dimensions, capacity, price, performance and the like contained in catalogs, brochures, circulars, advertisements, illustrations and price lists etc. refer to standard versions, project-related versions may differ.</p>
<b>Billing address</b>	Hoedown Hill Raindance Metro District One 1625 Pelican Lks Point 201 - Windsor, COLORADO 80550
<b>Debt default</b>	In case of any delay in the payments, DemacLenko is entitled to interests on arrears according to the Community Guidline no. 2011/7/EU, with a minimum of 8% p.a
<b>Processing of personal data</b>	The personal data provided by you will be processed to fulfill the contractual relationship, as well as pre-contractual obligations (e.g. contract negotiations / management of regular bookkeeping, etc. in order to meet obligations according to the law. The data communicated by you can both to internal agents, as well as to third parties - in relation to the execution of the business service - to carry out the processing operations. The data provided to us will be stored for the legally required retention periods. You can contact the person responsible for data processing at the email address <a href="mailto:privacy@demaclenko.com">privacy@demaclenko.com</a> We would like to remind you that you can assert your rights at any time: you have the right to information about the personal data concerned, to have it corrected or deleted or to restrict processing, or you have the right to contact supervisory authority if you believe that your data has been processed unlawfully or improperly. You can find a detailed overview of our privacy policy and your rights at <a href="http://www.demaclenko.com">www.demaclenko.com</a> .



<b>Offer validity</b>	14 days
<b>Sum Total</b>	USD 1,601,665.00
<b>Pricing</b>	Net of GST, any taxes and fees are excluded
<b>Delivery</b>	To be agreed
<b>Packaging and transport costs</b>	Included, offload excluded
<b>Payment terms</b>	20% down payment with the order 35% (exact payment date when start of delivery is expected – invoice 30 days before) 35% (exact payment date when end of delivery is expected – invoice 30 days before) 10% at commissioning
<b>Warranty</b>	3 years or max. 900h; what occurs first

CONTRACTOR

Best regards  
**DEMACLENKO America Inc.**  
**Andreas Lambacher**  
 CEO & Board Member



CLIENT

Hoedown Hill  
 Raindance Metro District One – 1625 Pelican Lks Point 201  
 Windsor, COLORADO 80550

DATE

<p>SALES PERSON</p> <p><b>Steve Daly</b>          North American Area Manager US          Mob 802 345 3075          Steve.Daly@demaclenko.com</p> <p>CREATED BY: ANNA DAVARE</p>	<p>NOTES</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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## DELIVERY TERMS

The previous description of this order confirmation or offer is decisive for the scope of the delivery and service obligation. Furthermore, the services below are not included in the scope of delivery of DemacLenko and are provided and implemented by the buyer, unless they are expressly included within the scope of this order confirmation or offer. Verbal and telephone agreements require written confirmation from DemacLenko.

- All earth moving, including excavation of the pipe trenches according to the typical cross-section, recovering after laying of the pipes and cables, as well as revegetating
- All concrete supplies and concrete works for the construction of the pump station and water catchment, feed lines from the basin to the pump station, core hole drillings, wall ducts, annulus seals, intermediate shelves, power supply on site, pressure testing
- Eventual testing of the concrete works
- Supporting structures for the cooling towers
- Water catchments, drainings, etc.
- Muffles for PE-pipes electro-welding
- Electrical connections to our electric distributions and electrical hand-overs
- The room ventilation of the pump/compressor rooms and of the control room
- Applications and registrations for installation, as well as contacts with the power providing company installation
- Eventual measuring and inspection for third party (power providing company, etc)
- Low voltage distribution boards (PowerCenter) and their connection to the electro-distributions (switch and control cabinet) from DemacLenko
- Interface to the existing control system
- Laying of network cables and of internet connection to the pump station/main server, splitting of fiber optic cables, transmission licenses, media converters, data cable connection of pits
- Surveying of the existing system, of water, energy and data lines, tapping points (GPS) and other
- Setting and recording of the pit limiting angle for tower mounted fan guns and SnowVisual
- Expenses for board and lodging during the whole commissioning and start-up , travel costs
- Eventual construction, changes or extensions of the medium voltage installations, the low-voltage cable to the low voltage distributor
- Lightning arresters and domestic installation
- Eventual reactive power compensation and harmonics filter
- Dismantling of existing systems
- Assembly on site: according to the present offer
- Distribution of the materials on the field including laying in the trenches for the construction
- Safekeeping of the stored construction materials on-site, removal of packaging
- Return transport of the cable drums
- Return transport after rental
- Providing Construction supervision, safety plan and the safety delegate, participating at regular construction meetings (project arrangements when necessary and at the discretion of DL)

**It is essential that a qualified workforce from the operator follows the commissioning, the start-up and takes over operation of the system.**

All unforeseen, undefined supplies and services not mentioned in the price offer are not included.

**DemacLenko declines to undertake any responsibility for eventual works carried out without the relevant building authorization.**

# GENERAL TERMS AND CONDITIONS OF SALE

## PREAMBLE

The following terms and conditions are an integral and essential part of the mutual agreement between the Vendor and the Buyer, subject to the special arrangements contained in the agreement.

## 1. AWARD OF ORDER

- 1.1. The Contract is to be considered as finalized only once the Vendor has received a copy of the Order Confirmation duly signed by the Buyer. The following references to the Order Confirmation apply to any form of contract signed between the parties.
- 1.2. The sales contract is governed solely by the written agreements and the present General Terms and Conditions of Sale. All additional and/or deviating arrangements must be agreed to in writing.

## 2. SUBJECT OF THE CONTRACT

- 2.1. Subject of the Contract is only the product and/or service specified in the Order Confirmation. The Vendor assumes no obligations or conditions other than the ones indicated in.
- 2.2. In any case, the following are not included, unless expressly agreed to in writing: approval processes and agency fees, geological and limnological reports, environmental impact assessments, all construction work, such as concrete buildings, limiting structures, excavating and earthmoving and construction as well as installation and project works of all kinds. The position of a security coordinator who may possibly also be needed is likewise not included. In addition, travel and accommodation costs are not included.
- 2.3. All data contained in catalogues, brochures, circulars, presentations, illustrations or price lists regarding weight, measures, capacity, price, power etc. refer to standard models without optional and accessories. Project-related versions may vary. In addition, technical data may change in the course of product development and maintenance.

## 3. PRICES

- 3.1. Prices are always net and do not include taxes or customs duties and charges of any kind. Such charges duties, including transport and unloading costs, shall always be the sole responsibility of the Buyer.
- 3.2. In the absence of contractual provisions, the applicable hourly rates and tariffs of the Vendor in effect at the time of implementation shall apply for any installation work and other services.
- 3.3. Packaging materials (but not materials provided on deposit) are included in the price and shall be disposed of by the Buyer in accordance with regulations at his own cost and responsibility. All materials provided on deposit will be invoiced and then remitted within 4 months. The deposits are not included in the quoted prices. The materials must be returned in perfect condition and free of freight charges. The acceptance of the returned materials shall take into account the time between delivery and return acceptance.
- 3.4. Material which is supplied in excess can only be returned if previously agreed in writing. Returned material will be subject to a restocking charge of 10-30% of the amount originally invoiced, depending of its conditions, at the Vendor's sole discretion.

## 4. DOWN PAYMENT AND PAYMENT TERMS

- 4.1. The payments are to be settled according to the terms fixed in the Order Confirmation. In the absence of any special agreements, the total price shall be paid within 14 days of invoice date.
- 4.2. The amount paid at the moment of the signing of the Order Confirmation is in any case an earnest money and shall be withheld for such purpose by the Vendor should the Buyer cancel the Order. As minimum down payment before delivery of the product is agreed an amount of 30% of the price incl. VAT.
- 4.3. In case of any delay in the payments, the Vendor is entitled to interests on arrears according to the Community Guideline no. 2011/7/EU, with a minimum of 8% p.a.
- 4.4. The Buyer must punctually settle every payment also in the case of complaints regarding the product.
- 4.5. Should the delay in the payment of even a single installment or a part of it exceed a period of fifteen days, the Vendor is entitled to receive immediately the full payment of the entire balance due in a single installment and to claim for the payment of any damages resulting from the default of the Buyer. If the not paid amount exceeds the eighth part of the full price, the Vendor is entitled to deem the Contract as irrevocably terminated and the Buyer is obliged to return immediately the product; in this case, the part or the installments of the price already paid shall be retained by the Vendor to indemnify for enjoyment in the meantime, without prejudice to the right on compensation for any further damage.
- 4.6. The payments are to be settled without any deduction to the Vendor. Banking charges shall be borne by the Buyer and will be charged accordingly to the latter.

## 5. DELIVERY TERMS

- 5.1. The product is shipped from the factory of the Vendor or his supplier (FCA – Free Carrier) INCOTERM ICC 2010.
- 5.2. The delivery date can be postponed in favor of the Vendor up to a maximum of thirty days.
- 5.3. The Vendor is not responsible for delays attributable to extraordinarily harsh weather conditions, acts of God and other events out of his control such as - but not limited to - delays due to work interruptions, strikes or trade union protests, delays ascribable to suppliers, lack of means of transportation, the widespread lack of raw materials, blackouts, fires, accidents, etc.
- 5.4. The delivery date shall not be considered as having begun before complete settlement of all of the execution details.
- 5.5. Should the delay in delivery due to one of the aforementioned reasons (5.3.) last more than 90 days after the delivery date, both the Vendor and the Buyer are entitled to withdraw from the Contract.
- 5.6. Should the Buyer withdraw from the Contract pursuant to the conditions of the previous clause, the Vendor is entitled to retain the amount already paid by the Buyer as a compensation for every already borne expense for the execution of the Contract.

- 5.7. Should the Buyer not pick up the product at the date set in the Contract or at any other date specified by the Vendor or if he fails to receive the product delivered to him by the carrier or by the Vendor himself, the Buyer must in any case settle all the payments relating to the delivery as if the product had actually been received. Furthermore, the Buyer bears all expenses and risks resulting from the guardianship and the keeping in good order of the product.

## 6. WARRANTY

- 6.1. The Vendor provides a warranty on the product fully described in the Order Confirmation. Unless otherwise agreed, a 24 month or 1.200 operating hours, whatever occurs first, warranty – starting from the date of hand over and applying only to defects due to faulty design, materials, or workmanship – shall apply.
- 6.2. The warranty is effective only provided that the rules specified in the instructions and usage manual, including the safety regulations contained therein, are complied with and that the products is used as envisaged. The use of the product for purposes which are not provided for the specific application or for purposes other than those envisaged shall lead to the lapse of the warranty. Upon request of the Vendor, the Purchaser shall provide proof of compliance with this requirement.
- 6.3. The warranty does not cover components subject to the natural wearing, as well as consumables.
- 6.4. The Buyer forfeits the right to warranty of proper functioning, should he fail to report any defects within eight days starting with the discovery and/or recognizability of said defects, in writing, including statement of the serial number of the product, current operating hours and the type of damage to the Vendor.
- 6.5. The Vendor's warranty consists of the replacement and/or the material for the repair of parts recognized as being faulty. In this regard, the Vendor is entitled to employ used, repaired, as well as equally old material.
- 6.6. Any further claims, in particular for losses and indirect damages including consequential harms caused by a defect, including loss of profit, damage to image, loss of use are excluded.
- 6.7. Following items, however, are at the expense of the Buyer:
  - working hours for the repair, inspection, upgrades, improvements and / or replacement of the parts in which a defect was recognized;
  - travel, lodging and board expenses for the personnel assigned with the task of eliminating the defect;
  - expenses for the transport of the parts covered by warranty;
  - the return expenses of the parts that have been recognized to be defective, which will become the property of the Vendor once they have been returned;
  - any expense for the transport of the product to and from the seat of the Vendor.
- 6.8. The Vendor, in addition to point 6.1. and 6.2., is freed from the obligation of any warranty in following cases:
  - non-performance of the contractual obligations relating to the payments by the Buyer;
  - when using parts subject to wear and tear, replacement parts, components and additional equipment which are not the original parts or which are in a used condition, as well as in the case of other unallowed modifications of the purchased item; such as modification of factory setting;
  - when using or incorporating devices and/or systems as well as software programs from third parties, even if these components are installed or incorporated by the Vendor at the explicit request of the Buyer;
  - in the case of defects due to materials provided by the Buyer or due to designs and modification requests required by the Buyer;
  - in the case of regulations under public law in the country in which they are to be used which do not correspond with general standards and which were not explicitly – and in writing – communicated to the Vendor prior to conclusion of the contract.
  - in the event of errors or deficiencies in the supply network;

## 7. MODIFICATIONS

- 7.1. The Vendor reserves the right to make any modification on the product that he should deem necessary or appropriate in connection with new technical knowledge as well as with new production opportunities, without prejudice to the functional properties envisaged at the moment of the Order. The Vendor is not obliged to apply at a later date an eventual modification developed after delivery of the product on the latter.

## 8. CONDITIONAL SALE

- 8.1. The product remains property of the Vendor until complete payment of the price, in this regard, the risk shall pass to the Buyer immediately at the point in time of the transfer. Until the purchase price has been fully paid, the Buyer is not entitled to sell, pledge, gift, or lend out the purchased item. The Vendor is entitled, at his discretion, to attach a corresponding declaration to the purchased item for the duration of this reservation of title.

## 9. INDUSTRIAL AND TRADE SECRETS - OWNERSHIP

- 9.1. All plans, projects, technical drawings, and documents issued by the Vendor and the software remitted to the Buyer, shall remain the property of the Vendor. Said documents and the installed software cannot be used by the Buyer for any other purpose than that relating to the order nor can they be copied, reproduced, transmitted or disclosed to third parties, unless a written authorization by the Vendor.
- 9.2. In the event of an intercession in the devices and/or systems by third parties acting solely at the explicit request of the Buyer, the Buyer explicitly absolves the Vendor from any and all liability against third parties and the Buyer himself.

## 10. APPLICABLE LAW AND COURT HAVING JURISDICTION

- 10.1. The Contract and these General Conditions of Sale are governed by and construed under the law of the State, in which the Vendor has its registered seat.
- 10.2. For any dispute that may arise in connection with the Contract and these General Conditions of Sale, the Court having exclusive jurisdiction is the Court competent at the registered seat of the Vendor.

**DEMACLENKO HEADQUARTERS**

DEMACLENKO IT SRL  
Via Gabriel Leitner 1A  
IT - 39049 Vipiteno  
Tel.: +39 0472 061601

**DEMACLENKO CENTRAL & EASTERN EUROPE**

DEMACLENKO SP. Z O.O.  
Cieszyńska 444  
PL - 43300 Bielsko-Biała  
Tel.: +48 (0) 338 224 062

**DEMACLENKO TRENTINO**

DEMACLENKO TRENTINO SRL  
Via Broletti 18  
IT - 38050 Castelnuovo  
Tel.: +39 0461 1975299

**DEMACLENKO AMERICA - EASTERN OFFICE**

DEMACLENKO AMERICA INC  
264 NH Route 106  
US - Gilmanton, NH 03237  
Tel.: +1 603 267 7840

**DEMACLENKO AUSTRIA & GERMANY**

DEMACLENKO GMBH  
Michael-Seeber-Straße 1  
AT - 6410 Telfs  
Tel.: +43 5262 621 21 3405

**DEMACLENKO AMERICA - WESTERN OFFICE**

DEMACLENKO AMERICA INC  
2746 Seeber Drive  
US - Grand Junction, CO 81506  
Tel.: +1 970 241 4442

**DEMACLENKO SWITZERLAND**

DEMACLENKO SCHWEIZ GMBH  
Im Ehrmerk 11  
CH - 8362 Wallenwil  
Tel.: +41 (0) 71 9714866

**DEMACLENKO CHINA**

POMA BEIJING ROPEWAY CO LTD  
Nr. 57 Mang Niu He Road - Huairou District  
CN - 101 407 Beijing  
Tel.: +86 106 1666966 8618

**DEMACLENKO FRANCE**

LEITNER FRANCE SAS  
Voie Galilée - Zone d'activité d'Alpespace CS 50001  
FR - 73800 Porte-de-Savoie - Montmélián  
Tel.: +33 (0) 4 79 84 77 77

**DEMACLENKO OCEANIA**

LEITNER OCEANIA LTD  
14/26 Glenda Drive, Frankton  
NZ - 9371 Queenstown  
Tel.: +64 (0) 21 138 29

**INDEPENDENT CONTRACTOR AGREEMENT  
(GEOTECH SERVICES)**

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the \_\_\_ day of February, 2023, by and between RAINDANCE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and GROUND ENGINEERING CONSULTANTS, INC., a Colorado corporation (the “**Contractor**”). The District and the Contractor are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

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

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

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

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

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

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

**TERMS AND CONDITIONS**

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

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

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2023. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the District determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.

3. 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 due to negligence 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 due to negligence 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.

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 A-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 B**, 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 B-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 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. NOT USED..

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:

The District:	WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Attention: Zachary P. White Phone: (303) 858-1800 E-mail: zwhite@wbapc.com
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Contractor:	Ground Engineering Consultants, Inc. 41 Inverness Drive East Englewood, CO 80112 Phone: (303) 289-1989
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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. STANDARD OF CARE. In providing Services under this Agreement, the Contractor shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time.

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

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

*[Signature pages follow].*



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

**DISTRICT:**  
RAINDANCE METROPOLITAN DISTRICT  
NO. 1, 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



**EXHIBIT A**

**SCOPE OF SERVICES/COMPENSATION SCHEDULE**

# GROUND ENGINEERING

## FEE SCHEDULE - ENGINEERING SERVICES-WV23

All Engineering Services require a project-specific proposal

FIELD WORK		ENGINEERING	
Truck Mounted Drill Rig with 2-Man Crew		Principal Engineer (hourly)	\$225
a. Solid Stem Auger (hourly)	\$155.00	Senior Project Manager, Engineer, Geologist (hourly)	\$180
b. Hollow Stem Auger (hourly)	\$175.00	Project Engineer, Geologist (hourly)	\$150
c. Wireline Coring (hourly)	\$230.00	Project Manager (hourly)	\$110
d. ODEX, Rotary Drilling (hourly)	\$230.00	Field / Staff Engineer (hourly)	\$110
Track Mounted, All-Terrain, Limited Access Drill Rigs, and Drill Rig Support Equipment	Quote	CAD Technician (hourly)	\$80
Water Truck, Support Truck, Hydro-Vac Truck (daily)	\$300 - \$700	Special Consultation, Expert Testimony, Court Appearance	Quote
Excavator / Backhoe	Quote	Mobilization	Quote
Standby Time	Hourly Rate	Per Diem / M & IE	GSA Rates
MISCELLANEOUS			
Equipment Rental	Cost + 20%	Environmental Drilling, Sampling, Analysis	Quote
Outside Laboratory Services	Quote	Personal Protective Equipment (PPE)	Quote
Out-of-Town Living Expenses, Commercial Travel Costs, Equipment Rental, etc.	Quote	Geotechnical Instrumentation, Vibration Monitoring	Quote
Pile Dynamic Analysis, Ground Penetrating Radar, Cross Hole Sonic Logging, Sonic Echo, Falling Weight Deflectometer	Quote	Thermal Conductivity and Resistivity	Quote
		Retaining Wall Design, Shoring Design, Seepage Analysis, Slope Stability Analysis, Crane Pad Analysis	Quote
LABORATORY TESTING			
Natural Unit Weight and Moisture Content	\$18.00	Permeability	
Atterberg Limits	\$75.00	a. Falling or Constant Head, 2"-4" Diameter	\$300.00
Specific Gravity	\$105.00	b. Triaxial Permeability	\$425.00
Relative Density	\$250.00	California Bearing Ratio (1-Point)	\$200.00
Gradation Analysis		California Bearing Ratio (3-Point)	\$500.00
a. All Standard Sieves to #200 Sieve	\$70.00	"R" Value	\$400.00
b. Percent Passing #200 Sieve	\$45.00	Resilient Modulus (per point)	\$1,000.00
c. Gradation with Hydrometer	\$175.00	Los Angeles Abrasion Test	\$175.00
Swell-Consolidation	\$80.00	Soil Stabilization Mixture Analysis	\$3,500.00
Soil Suction	\$100.00	Soundness (Sodium)	\$350.00
Compaction - Standard or Modified Proctor	\$120.00	Fractured Faces Test	\$65.00
Unconfined Compressive Strength		Flat or Elongated Particles	\$65.00
a. Soil	\$65.00	Corrosivity Testing	
b. Rock	\$200.00	a. Water-Soluble Sulfates	\$55.00
Direct Shear Strength (3-Point)		b. pH Test	\$55.00
a. Quick Test	\$525.00	c. Reduction/Oxidation Potential (Redox)	\$45.00
b. Consolidated-Undrained	\$1,000.00	d. Sulfide Content	\$60.00
c. Consolidated-Drained	Quote	e. Soil Resistivity (Direct Measurement Method)	\$50.00
Triaxial Shear Strength		f. Soil Resistivity (Soil Box Method)	\$110.00
a. Unconsolidated-Undrained (Quick Test)	\$1,000.00	g. CDOT Suite (pH, Resistivity, Chlorides, Sulfates)	\$245.00
b. Consolidated-Undrained (R-Test)	Quote	h. Eng. Suite (pH, Resistivity, Redox, Sulfides)	\$235.00
c. Consolidated-Drained (S-Test)	Quote	Organic Content	\$90.00
Time-Consolidation	\$500.00		

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# GROUND ENGINEERING

## FEE SCHEDULE - CONSTRUCTION SERVICES

### MATERIAL TESTING AND SPECIAL INSPECTION

(Time is round trip from office to project site and return)

• Soil, Concrete and Asphalt Testing (hourly)	\$55.00
• Rebar, Masonry, Piers (hourly)	\$60.00
• Post Tension, Spray Applied Fireproofing (hourly)	\$75.00
• Wastewater Pipe Inspection (hourly)	\$85.00
• Floor Flatness, Pull-Testing (hourly)	\$95.00
• Coring and Concrete Humidity/Moisture (hourly)	\$95.00
• Certified Welding Inspector (CWI) (hourly)	\$85.00
• Certified Building Inspector (hourly)	\$85.00
• Certified Fire Stop Inspector (hourly)	\$105.00

### MANAGEMENT AND ENGINEERING

• Project Management-Review/Supervision (hourly)	\$110.00
• Senior Project Engineer/Geologist (hourly)	\$190.00
• Project Engineer/Geologist (hourly)	\$150.00
• Staff Engineer/Geologist (hourly)	\$110.00
• Open Hole, Field Engineer (hourly)	\$110.00
• Principal Engineer, Senior Project Manager	\$225.00
• Overtime (Over 8hrs/day, weekends, after 6pm)	rate + \$15.00
• Trip Charge (covers vehicle and equipment)	\$0.00
• Interest charged after 30 days from invoice date	1.5%

### MISCELLANEOUS

(These units are on a project by project basis and will only apply as detailed in the proposal)

• Construction Management, Civil Inspection	Quote	• Mobile Laboratory	Quote
• Quality Management	Quote	• Outside Laboratory Services	Quote
• Out-of-town living expenses, commercial travel costs, equipment rental, etc.	Quote	• Vibration Monitoring/Geotechnical Instrumentation Services, Thermal Conductivity and Resistivity	Quote
• Pile Dynamic Analysis, Ground Penetrating Radar, Cross Hole Sonic Logging, Sonic Echo, Falling Weight Deflectometer	Quote		Quote

### LABORATORY TESTING

Soil and Aggregate		Concrete	
Proctor Compaction	\$120.00	Concrete Compression Test, Cylinders (each)	\$16.00
Atterberg Limit	\$75.00	Concrete Comp. St. Cylinders (high strength concrete)	\$75.00
Gradation	\$70.00	Compressive Strength-CLSM Cylinders	\$30.00
No. 200 Wash	\$45.00	Concrete Flexural Test, Beams	\$65.00
Gradation and Hydrometer	\$175.00	Maturity Data Logger (each)	\$105.00
Specific Gravity of Fine Aggregate	\$95.00	Moisture Coupons (each)	\$105.00
Natural Density and Moisture Content	\$16.00	Relative Humidity Sensors (ASTM F2170) (each)	\$105.00
"R"-Value	\$400.00	Shotcrete Comp. Str. (per panel)	\$225.00
Soil Cement Proctor	\$150.00	Maturity Meter Strength Correlation	\$2,500.00
Unconfined Comp. Str.-Soil Stab. (per set)	\$275.00	Concrete Mix Trial Blend	\$6,000.00
pH Test	\$55.00		
Water Soluble Sulfates Test	\$55.00	<b>Asphalt</b>	
Triaxial Permeability	\$425.00	AC Content and Extracted Gradation	\$175.00
Alkali Silica Reactivity (to 28 days)	\$450.00	Sp.G.(SSD), Stability, Flow (Marshall) (per test)	\$425.00
Denver Swell	\$80.00	Specific Gravity (SSD) and Voids (Gyratory) (per test)	\$300.00
Direct Shear	\$525.00	Theoretical Maximum Specific Gravity	\$110.00
Sand Equivalent	\$100.00	Modified Lottman (TSR)	\$350.00
Relative Density	\$250.00	Ignition Oven Calibration	\$500.00
Clay Lumps and Friable Particles	\$55.00	Specific Gravity (SSD) and Voids (per Core)	\$45.00
Flat or Elongated Particles	\$65.00	Coring-Asphalt (Dia. (in. ) X Depth (in. ) X No. cores)	\$1.50
Sulfate Soundness	\$350.00	Stability (Gyratory)	\$150.00
Fractured Faces Test	\$65.00	Asphalt Moisture Content	\$25.00
Los Angeles Abrasion Test	\$175.00	Micro Deval	\$250.00
Uncompacted Voids Test	\$110.00	<b>Masonry</b>	
Specific Gravity of Coarse Aggregate	\$65.00	Mortar Compressive Strength	\$30.00
Soil Stabilization Mixture Analysis	\$3,500.00	Masonry Prism Comp. Strength	\$115.00
		Grout Compressive Strength	\$50.00
		Compressive Strength CMU/Brick Coupon	\$100.00

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**EXHIBIT A-1**

CONTRACTOR'S COMPLETED W-9

## EXHIBIT B

### 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 \$1,000,000 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. NOT USED.
5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
6. Professional liability insurance in the amount of \$2,000,000.00 each occurrence.

**EXHIBIT B-1**

**CERTIFICATE(S) OF INSURANCE**



**INDEPENDENT CONTRACTOR AGREEMENT  
SURVEY SERVICES**

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This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the \_\_\_\_ day of February, 2023, by and between RAINDANCE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and GALLOWAY & COMPANY, INC., a Colorado corporation (the “**Contractor**”). The District and the Contractor are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

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

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

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

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

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

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

**TERMS AND CONDITIONS**

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

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

2. TERM/RENEWAL. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2023. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the District determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.

3. 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.

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. The Contractor shall re-perform defective services 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. NOT USED.

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.

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. NOT USED.

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.

c. NOT USED.

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 for that portion of the Services performed and not previously billed. 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.

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 provided that Contractor has been paid for its services. 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. Provided that Contractor has been paid for its services, 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. Provided that Contractor has been paid for its services, 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. Provided that Contractor has been paid, 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 arising directly or indirectly, in whole or in part cause 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, 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. In no event shall the Contractor be liable for special/consequential or punitive damages.

b. Contractor’s indemnification shall be consistent with Section 13-50.5-102(8), C.R.S.

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, subject to the applicable statute of limitations.

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 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:

The District: WHITE BEAR ANKELE TANAKA & WALDRON  
2154 E. Commons Ave., Suite 2000  
Centennial, CO 80122  
Attention: Zachary P. White  
Phone: (303) 858-1800  
E-mail: zwhite@wbapc.com

Contractor: Galloway & Company, Inc.  
5500 Greenwood Plaza Blvd, Suite 200  
Greenwood Village, CO 80111  
Attention:  
Phone: 303-770-8884  
Email:

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. STANDARD OF CARE. In providing Services under this Agreement, the Contractor shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time.

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

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

*[Signature pages follow].*

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

**DISTRICT:**  
RAINDANCE METROPLITAN DSITRICT  
NO. 1, a quasi-municipal corporation and  
political subdivision of the State of Colorado

---

President

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



**EXHIBIT A**  
**SCOPE OF SERVICES**



5265 Pennell Resgan Blvd., Suite 710  
Johnstown, CO 80534  
970.800.3300 - [GallowayUS.com](http://GallowayUS.com)

## Raindance Reservoir #2 Scope

1. On-Call Survey Services:
  - a. Galloway will provide on-call Survey services for Raindance Reservoir #2 at the unit rate per the attached 2023 Rate Sheet.



**EXHIBIT B**  
COMPENSATION SCHEDULE





5500 Greenwood Plaza Blvd., Suite 200  
Greenwood Village, CO 80111  
303.770.8884 • GallowayUS.com

## 2023 SCHEDULE OF RATES

CATEGORY	HOURLY RATE
<b>Management</b>	<b>\$160 - \$200</b>
President	
Principal	
Sr. Project Manager	
Team Manager	
<b>Surveying</b>	
Survey Project Manager	\$135 - \$190
Project Surveyor	\$115 - \$150
Survey Party Chief – Office	\$120
Senior Survey Party Chief – Office (PLS)	\$152
Instrument Operator – Office	\$85
1-Person Field Crew	\$140†
2-Person Field Crew	\$210†
1-Person PLS Crew	\$170†
2-Person PLS Crew	\$235†
1-Person Construction Staking Crew	\$150†*
2-Person Construction Staking Crew	\$225†*
2-Person PLS Construction Staking Crew	\$250†*
1-Person, 1 UTV	\$185†
2-Person, 2 Rover	\$240†
2-Person, 2 Rover & UTV	\$290†
1-Person Utility Locating Services	\$125†
1-Person High Definition Scanning	\$210†
2-Person High Definition Scanning	\$325†
3-Person Field Crew – Instrument Operator	\$0
3-Person Field Crew – Party Chief, Survey	\$260†
3-Person Field Crew – Party Chief, Construction	\$275†*
<b>CADD</b>	
Survey Technician (Survey-Based CADD Calculations)	\$100 - \$130
CADD Technician	\$90 - \$140
CADD Designer	\$120 - \$145

† This rate includes mileage for projects located within 30 miles of Galloway's local office.

\* Galloway crew rates for construction staking are inclusive of materials and equipment used for the project.



**EXHIBIT B-1**

CONTRACTOR'S COMPLETED W-9

## EXHIBIT C

### INSURANCE REQUIREMENTS

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

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

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

3. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. **This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.**
4. If applicable: Contractor shall secure and maintain a third-party fidelity bond in favor of the District, covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the District. Such bond shall protect the District against any fraudulent or dishonest act which may result in the loss of money, securities,

or other property belonging to or in the possession of the District. Said bond shall be in an amount as determined by the District, from a surety acceptable to the District.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.
6. Professional liability insurance in the amount of \$2,000,000.00 each occurrence.

**EXHIBIT C-1**

**CERTIFICATE(S) OF INSURANCE**

**RAINDANCE METROPOLITAN DISTRICT NO. 1  
CONTRACT ADDENDUM**

**Name of Provider: Contech Engineered Solutions, LLC.**

**Title of Project: Hoedown Hill Tunnel**

**Agreement/Contract Date: Mar 14, 2023**

This Addendum (“Addendum”) is made by and between RAINDANCE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) and the above-referenced Provider, provider, or other consultant (the “Provider”).

1. Introduction. The District and the Provider have entered into the above-referenced proposal (“Agreement”) attached hereto as **Exhibit A**, and the District and Provider wish to modify and/or supplement the terms of the Agreement, as more particularly set forth in this Addendum. This Addendum shall be effective as of the same date as the Agreement.
2. Incorporation and Effect. This Addendum is hereby made a part of, and incorporated into, the Agreement as though fully set forth therein. As modified or supplemented by the terms set forth in this Addendum, the provisions of the Agreement shall remain in full force and effect, *provided that*, in the event of a conflict between any provision of this Addendum and any provision of the Agreement, the provision of this Addendum shall control.
3. Governing Law / Disputes. The Agreement and this Addendum and all claims or controversies arising out of or relating to the Agreement or this Addendum shall be governed and construed in accordance with the law of the State of Colorado, 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. Venue for all actions shall be in the District Court in and for the county in which the District is located.
4. 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 obligations of the District under the Agreement and this Addendum are subject to annual budgeting and appropriations, and the Provider expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of District’s governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of the Agreement and this Addendum and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Provider understand and intend that the Districts’ 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.
5. Governmental Immunity. Nothing in the Agreement or this Addendum 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, Providers, 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, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

except that the district waive, on its own behalf of its respective officials, employees, providers, and agents and any other persons acting on behalf of the District, any defense of sovereign immunity to any suits or claims to resolve disputes concerning the Agreement and this Addendum.


6. Remedies. To the extent the Provider’s remedies for a District default under the 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 District’s then current fiscal period.

7. Assignability. The District shall have the right to assign the Agreement to a third party upon written notice to the Provider.
8. Negotiated Provisions. This Addendum 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 substantially and materially to the preparation of this Addendum.
9. Severability. If any portion of the Agreement or this Addendum is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Addendum a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
10. Miscellaneous. This Addendum, together with the provisions of the Agreement not expressly inconsistent herewith, constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments.
11. Counterpart Execution. This Addendum 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.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Addendum.

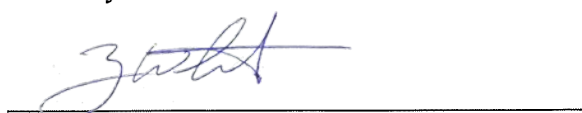
DISTRICT:

RAINDANCE METROPOLITAN DISTRICT NO. 1, a  
quasi-municipal corporation and political subdivision of the  
State of Colorado

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

APPROVED AS TO FORM:

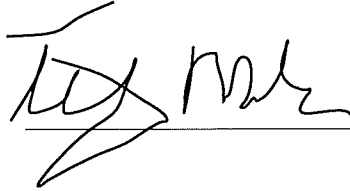
WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

  
\_\_\_\_\_

General Counsel to the District

PROVIDER:

CONTECH ENGINEERED SOLUTIONS, LLC, a Ohio  
limited liability company

A handwritten signature in black ink, appearing to read 'Tim Miller', is written over a horizontal line.

Tim Miller  
Area Manager



**EXHIBIT A**

# EXHIBIT A



## Quotation

Quote # QUO-538234-F6Q0P5					
Date	2/24/2023	Account Name	Raindance Metropolitan District No. 1	Reply-To	
Quote #	QUO-538234-F6Q0P5	Contact Name	Raindance Metropolitan District No. 1	Contech Rep.	Pete Niemann
Revision #	2	Phone	(970) 686-5828	Address	19060 County Road 66, Greeley, CO, 80631
Project Name	Hoedown Hill – Tunnel	Fax		Phone	
Project #	728273	Email		Fax	
Project City/State	Windsor, CO			Email	Pete.Niemann@conteches.com

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at [www.conteches.com/cos](http://www.conteches.com/cos). A valid tax exemption certificate must be issued to Contech or sales tax will be added.

Item #	Description	Pieces	Quantity	Extended Unit Price	Unit	Unit Total
	Multi-Plate Underpass Structure; Coating Hot Dip-Galvanized; 8 Gauge Plate (0.168); Span/Rise/Structure Pt: 14'-6" Span x 13'-5" Rise (171 Pi); Bottom centerline length: 173'-0" with step bevel outlet end and sheet pile outlet end supplied by others step bevels as noted are 4'-1" at the base; 17'-0" bevel dimension with a 10" top step Bevel; Sketch attached for reference includes 5" x 3 1/2" x 3/8" x 8'-0" curved tie back angle; Connections to headwall and tieback angle by others; Underpass to support loads for D6 Dozer, John Deere 410G Backhoe and snow cat; Minimum material cover height of 2'-0" and maximum cover of 14'-0"; Select backfill is the standard for structural plate—A1, A-2-4, A-2-5 material; The select backfill limits are 2'-0" minimum over the pipe, and 6'-0" beside the structure on both sides; A minimum of 6" bedding material required with final thickness of bedding to be determined by geotechnical/civil engineer'. Lighting and ventilation scope by others. Contech can install mounting plates on the inside crown for lighting attachment; This lighting design and material is to be prepared by others.		1.00	\$194,610.00	EA	\$194,610.00
					<b>Total</b>	\$194,610.00
					(Tax not included) <b>Net Total</b>	\$194,610.00

### Standard Notes

1. Allowable unloading time for delivery trucks is two (2) hours. Demurrage charges of \$100.00 per hour thereafter will be added.
2. Construction loadings typically exceed the intended post-construction live load used for design. Contact your Contech representative for specific guidelines and limitations based on the construction live loads anticipated.
3. Flexible structures of the type on this project are reliant on the type of structural backfill used, the compaction of that material and the balanced placement of structural backfill. Contact your Contech representative for specific information.
4. One or more of the products quoted herein is nonstandard and not returnable. A down payment equal to 1/3 of the item(s) total is required and must be received prior to commencement of any performance by Contech.
5. Quotation is based upon estimated (not guaranteed) quantities. Buyer must verify final quantities needed prior to commencement of work by Contech. If Buyer elects to purchase from Seller only a portion of the material quoted, Seller retains the right to adjust its prices.
6. The estimated lead time for the submittal package is 2-3 weeks from the receipt of a signed purchase document and receipt of the required design documents and project information. Approval review process is in addition to stated timeframes. The estimated manufacturing lead time for this material is 10-12 weeks from the receipt of approved submittal documents.
7. The material included in this quotation is to be designed and manufactured exclusively for this project, is not subject to cancellation and cannot be returned to stock. See Section 16 of the Contech COS.

### Scope Of Work

#### Multi-Plate

MULTI-PLATE pricing includes plate layout drawings, unassembled corrugated steel structural plates, and sufficient bolts and nuts. Anchor bolts, special fabrications for non square ends and fittings with associated hardware of any kind are not included unless specifically priced herein.

Quote # QUO-538234-F6Q0P5

PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/3 AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE, PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

Acceptance		Contech Engineered Solutions LLC.	
WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT <a href="http://www.conteches.com/cos">www.conteches.com/cos</a>		By	Pete Niemann
Company		(O)	
By		(F)	
Title		(Cell)	
Date		Title	

Quote # QUO-538234-F6Q0P5

Contech - CONDITIONS OF SALE

1. ACCEPTANCE. This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. LIMITED WARRANTIES. Seller warrants that it can convey good title to the products sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the products sold under this contract are substantially free from defects in material and workmanship for a period of one year after the date of delivery. There are no express or implied warranties with respect to products sold hereunder which are misused, abused or used in conjunction with mechanical equipment improperly designed, used or maintained, or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY. Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product or service sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products or services. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

4. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY. NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT.

5. FORCE MAJEURE. In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

6. BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES. In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the products purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to products manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph.

7. PASSAGE OF TITLE. Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reconsign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS. Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts, and Buyer is responsible for all costs of collection including without limitation reasonable attorneys' fees and court costs.

9. TRANSPORTATION CHARGES. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. CLAIMS BY BUYER. Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify conformance with the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective products within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. MECHANICAL PROPERTIES; CHEMICAL ANALYSES. Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. PATENTS. Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. PERMISSIBLE VARIATIONS. The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. TECHNICAL ADVICE. Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. TAXES. No taxes imposed with respect of the sale of the products or services sold hereunder are included in any quotation by Seller. All applicable taxes shall be added and paid by Buyer in addition to the purchase price.

16. BUYER'S RIGHT OF TERMINATION. Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:

- (1) the contract price for all products which have been completed prior to termination;
- (2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price; (3) the cost f.o.b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and (4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. SELLER'S RIGHT OF TERMINATION. In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. WAIVER. Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. DELIVERY. Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:

- (a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or
- (b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. PERIOD OF LIMITATIONS. Buyer and Seller agree that any action by Buyer against Seller relating to this contract or the products sold hereunder, including, without limitation, any action for breach of contract or warranty, or otherwise in connection with the products sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues or one year of delivery of the products sold hereunder, if less.

21. CONFLICTING PROVISIONS OFFERED BY BUYER. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. SEVERABILITY. In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. APPLICABLE LAW. This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract shall be brought and tried exclusively in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio.

REV. 03/15

## Contract

### Hoedown Hill Carpet Lift Project – Colorado, USA

This agreement (the “Agreement”) is made and entered into force on March 10, 2023 by and between

#### Raindance Metropolitan District No. 1

a quasi-municipal corporation and political subdivision of the State of Colorado having its head office at 1625 Pelican Lakes Point, Suite 201, Windsor, CO 80550, USA, represented by ~~Garrett Scallon~~ on behalf of the Water Valley Companies acting as District General Manager  
Gary Kerr

hereinafter referred to as the “Client”

And

#### MND France

a *société par actions simplifiée* with a capital of 20,000,000 euros, duly incorporated and existing under the laws of France registered with the Chambéry Trade and Companies Register under number 791 152 283, having its head office at 74 Voie Magellan - Parc d'Activités Alpespace - 73800 Sainte-Hélène du Lac, France, represented by its legal representative M. Xavier Gallot-Lavallée, as President of Montagne et Neige Développement SA, President of MND France

hereinafter referred to as “MND” or the “Seller”

Hereinafter individually referred to as a “Party” and collectively referred to as the “Parties”.

### WHEREAS

MND is a French industrial group specializing in ropeway mobility, snowmaking systems, mountain safety and sensational leisure infrastructures.

The Client wishes to purchase (4) carpet lifts, with (3) galleries (hereinafter referred to as the “Project”) to be installed on its property at Hoedown Hill, Windsor, CO., USA (hereinafter referred to as the “Site”).

To complete this Project, the Client wishes to purchase from MND engineering, supply of equipment including CE certified Electrical Control panels, the “Equipment”, and services, the “Services”, collectively hereinafter referred to as the “Supply”, as described in Annex 1.

The Parties wish to set forth the terms and conditions of their relationship for the execution of the Project by the signature of the present Agreement.

**NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, the Parties agree as follows:**

#### Article 1. Annexes to the Agreement and prevalence

Annexes form an integral part of the Agreement.

Notwithstanding anything to the contrary, in the case of a discrepancy or ambiguity between terms of the contract documents, the following order of prevalence shall apply to resolve the conflict:

- The present Agreement which incorporates and references the remaining documents,
- MND Offer (Hoedown Hill TUBING QUOTATION\_Rev.6\_Final): Annex 1,
- MND Technical Memorandum (General Technical Description Conveyor Belt and Canopy): Annex 2,
- MND Ropeways Scope of work and Client Scope of Work: Annex 3,
- MND General Conditions of Sales: Annex 4,
- Contract Addendum: Annex 5.

## Article 2. Object of the Agreement

Subject to the terms and conditions set forth herein, the Seller shall design, engineer, manufacture, and commission (including training of the Client operators) the Equipment, specifically designed for the Project, as described in Annex 1, at the exclusion of any other works or supplies that are not listed in this Annex.

## Article 3. Duties of MND

3.1 The Seller warrants that the Equipment shall meet MND Specifications as set forth in the MND Technical Memorandum and shall meet, exclusively for MND Scope of work defined in Appendix 3.

3.2 The Seller shall deliver in accordance with FCA MND, Sainte-Hélène du Lac, France, as per Incoterms® ICC 2020 terms.

3.3 The Seller shall prepare and provide the Client with basic design and detailed engineering of the Project equipment.

3.4 The Seller shall, at its own cost, provide supervision to oversee and supervise the installation of the Equipment and the performance of the Services as well as advise the Client on proper performance of Client's scope of work to ensure both technical and schedule aspects of the Seller's and the Client's scopes are aligned with each other. The Seller shall also provide competent, skilled and experienced service engineers and technicians at the Client's Site to assist, testing and commissioning of the Supply.

3.5 The Seller shall conduct, when relevant, Site acceptance test of the items/components of the Supply and, whenever possible, shall inform the Client in advance on the date and location at which such test will be conducted.

3.6 The Seller shall submit to the Client all technical and preservation requirements/instructions of the Equipment after delivery, that the Client undertakes to conform with, notably in terms of packaging during the storage and until final installation of the Equipment.

## Article 4. Duties of the Client

4.1 The Client shall be responsible for any and all Scope of Work defined in Appendix 3, its relating obligations and notably:

- the Client shall make its personnel that will operate the Supply available for being trained by the Seller's appointed personnel for the start-up period after the Equipment becomes operational and prior to the provisional acceptance.

- make available the construction site, access roads and mounting areas, as well as storage zone on construction site for all the Equipment supplied by the Seller and stored at construction site before installation.

4.2 The Client shall be responsible for the transport to the Site of all equipment and material and shall ensure that all packing in trucks or containers are able to withstand the normal hazards. The Client shall at its own cost, arrange for special packing or preservation during transit and placement at the Site necessary for the purpose of complying with the terms, rules, and regulations in respect of any of the items included in the Equipment/material package.

## Article 5. Selling Price, Payment, and Taxation

5.1 The total selling price (hereinafter referred to as the "Selling Price") for the Supply is, without VAT.

**Carpet Lifts** (as described in Annex 1) **FCA MND, Sainte-Hélène du Lac, France, Incoterm® ICC 2020 terms**

**Total Cost: 1,595,000 USD**

(One million five hundred ninety-five thousand United States Dollars)

Prices are set at the time of the finalization of MND Offer and in consideration of the Scope of Work agreed upon by the Parties for completion of the Project under the Contract.

In any cases, any specific Client's request related to Equipment performances or options shall lead to a price adjustment and to an amendment to the present Agreement.

5.2 The agreed schedule of payment is the following:

- down payment of forty per cent (40%) of the amount of the Selling Price to be paid in two respective payments of 20%: 1<sup>st</sup> 20% upon signing the Agreement & 2<sup>nd</sup> 20% on March 24, 2023. The payment shall be made to the bank account indicated in Article 5.3 or any other bank account indicated by the Seller at sight of the invoice, and it is understood that no preparation or work shall commence by MND until the said down payment has been received.
- fifty per cent (50%) of the amount of the Selling Price to be paid upon loading of the Equipment in MND factory at Sainte Hélène du Lac, France, a bill of loading and related invoice in proportion of the loaded Equipment (each loading container of Equipment) shall be issued and paid within ten (10) calendar days.
- final payment of ten per cent (10%) of the amount of the Selling Price upon successful commissioning with a final acceptance certificate

Any invoice shall be paid within ten (10) calendar days from the date of invoice.

5.3 Payments shall be done via bank transfer by the Client or its assignees to the following bank account of the Seller:

MND France  
IBAN: FR 76 3000 4024 7500 0100 6957 274  
BIC: BNPAFRPPXXX

Invoices shall be sent to the Client at this following address: Attention: ~~Nathaniel Phelps~~ <sup>Robin Weis</sup>, with a copy to ~~nphelps@watervalley.com~~ <sup>Billing@watervalley.com</sup>

5.4 The Selling Price does not include the customs duties and importation taxes into USA for all imported material, services, and transport fees as well as the value-added taxes applied in USA. All other taxes, duties and levies due and applicable in USA for the completion of the Agreement shall be borne by the Client. All taxes, duties and levies due and applicable in France for the completion of the Agreement shall be borne by the Seller.

All taxes, customs duties, importation taxes and levies due and applicable in USA for the completion of the Agreement shall be borne by the Client.

The terms of this Agreement incorporate the percentage-of-completion method of accounting based on an enforceable right to payment at all times for the amount calculated on the basis of the Selling Price of the equipment, material and services incurred and work in progress (i.e., the costs incurred in fulfilling the performance obligations as defined in the Agreement).

5.5 The Client commits to renegotiate in good faith upon simple request of MND in response to any change in the economic conditions occurred from the finalization of MND offer or the conclusion of the Agreement between MND and the Client and the date of completion, if and to the extent that the aforesaid changes:

- could not be reasonably or precisely anticipated in their substance, scope and/or intensity at the date of finalization of MND offer and/or at the date of conclusion of the Agreement;
- make the execution of the Agreement more difficult or expensive at the sole expense of MND and to such an extent that the execution of the contractual commitments under the initial conditions agreed could place the contractual balance and/or risk allocation in jeopardy.

The renegotiation is performed within one (1) month of the initial written request sent by MND. Throughout the whole term of the renegotiation and subject to the limit of one (1) month, the contractual schedule/planning is suspended in regard of any compensation, indemnification or delay penalties that may be claimed by the Client.

During or following the renegotiation meetings, each of the Parties may draw up a written record of the discussions and the outcome thereof.

Should the foregoing not result in an agreed renegotiation of the Agreement at the end of the one month negotiation period, MND may terminate the contract by written notification and subject to a thirty day period notice.

The Parties agree to expressly exclude any power given to the judge to modify or adapt the contract and the relationship of the Parties.

## **Article 6. Transfer of Title and Risk of Loss**

Ownership of the full Equipment and material will pass to the Client upon full payment of Equipment and material. Should the full Equipment not be ultimately delivered or installed for whatever reason, the Client shall receive ownership of the portion of the Equipment it has made payment to MND. Upon any termination of this Agreement, any materials, machinery, or other portions of the work that the Client has paid MND for will become the property of the Client.

Any risk connected to the Equipment shall pass to the Client upon delivery of the Equipment in compliance with the FCA MND, Sainte-Hélène du Lac, France, Incoterm® ICC 2020 terms.

The Client shall take out and maintain appropriate insurance to cover all risks relating to the Equipment as of this date. The Client further agrees to take out and maintain adequate insurance covering risks relating to any claim that may be lodged by third parties and covering its own liability to third parties in the event of injury or damage to persons or property, caused by the Client or its officers, agents, contracting parties or employees and arising out of or relating to the present Agreement, or not.

The Client commits to implement all reasonable and most adequate measures to protect the physical integrity of the overall construction site while the equipment is on the Site or in custody of the Client.

## **Article 7. Warranty Terms**

7.1 The Seller warrants that, provided notably that it is operated and maintained in accordance with the Seller's instructions, the Equipment, when delivered to the Client, will be of new merchantable quality and shall comply with MND Specifications and applicable Colorado Specifications, during thirty-six (36) months from the date of provisional acceptance certificate (hereinafter referred to as the "Warranty Period").

Warranty hereunder does not cover any damage arising out of wear and tear, force majeure, any natural and/or human hazards, use of improper parts in replacement of original ones (i.e. parts which were not supplied by the Seller), modification and/or retrofit of some parts that were not duly preliminary approved by the Seller, lack or improper maintenance or control, lack of registration of maintenance in the maintenance registry book, improper or inappropriate use including temporarily, use of the Equipment with power supply and electrical voltage fluctuations exceeding the standard industrial allowance of plus or minus five percent (+/- 5%), or any other cause that would not be the Seller's sole and exclusive responsibility.

Furthermore, the warranty will not be due if the Client makes any modifications or repairs himself or by using a third party without prior written and formal consent from MND.

To invoke the benefit of the warranty, the Client must notify MND in writing and within 48 hours of the defects he attributes to the material or equipment and provide all justifications as to the reality of these. The Client shall give MND every reasonable opportunity to detect such defects and to remedy them. Furthermore, the Client shall not carry out the repair himself or have it carried out by a third party, unless MND has given prior written consent.

7.2 During the Warranty Period, the Seller will replace or repair, at its own discretion, free of charge and in a timely manner, any defective part of the Equipment if such part is found by the Parties to be defective in material or in the functioning thereof. The Seller shall promptly commence the replacement or repair as soon as reasonably possible following receipt of the relevant written notice from the Client. The Seller shall provide replacing parts on DAP (Incoterms® 2020 ICC) basis during normal business hours. If rectification works relating to a defect is performed by the Seller, the Seller additionally guarantees such work as is performed including new replacement parts as part of the rectification works. Any workmanship associated with the repair or replacement of material under the Warranty Period shall be the responsibility of the Seller.

In any case, the Client will be responsible for preliminary or dismantling and reassembling operations made necessary by the conditions of use or location of this material and external elements not included in the warranty.

7.3 Notwithstanding the above, no warranty shall be available if the Client starts operating the Supply without signing the provisional acceptance certificate and or if the Client does not comply with the agreed payment terms schedule. In any cases, no warranty shall apply if the Supply is not in the exact same state as it was sold, normal wear and tear excepted.

7.4 Except for the warranties expressly set out in this article, the Seller provides no further warranties, expressed or implied.



## **Article 8. Scope and limitation of liability**

Notwithstanding any contrary provision in this Agreement, in no event shall the Seller nor any of its affiliated entities be liable for any amounts representing indirect, special, exemplary, consequential, or punitive damages including any loss of profits, loss of business, and loss of arising from errors or omissions by the Seller or any of its affiliated entities in the performance or non-performance of this Agreement or any acts or omissions associated therewith whether the basis of the liability is breach of contract, tort (including negligence and strict liability), statutes, or other legal theory. The Parties hereby agree that aggregate liability of the Seller for any and all claims in connection with performance under this Contract shall not exceed five per cent (5%) of the Selling Price.

## **Article 9. Maintenance**

The Client shall be solely responsible for the maintenance of the Equipment after commissioning evidenced by the provisional acceptance certificate.

The Seller shall provide to the Client with respective operating and maintenance instructions for the Equipment, at the latest at the date of the provisional acceptance certificate. Maintenance operations must be registered in a dedicated registry book.

## **Article 10. Confidentiality and Intellectual Property**

10.1 The Client must ensure that all confidential information received from the Seller or disclosed by the Seller for the purpose of the signature of the Agreement or its implementation is kept confidential and not disclosed directly or indirectly to any third party except the information that falls within the public domain without confidentiality having been breached by the Client.

The Client acknowledges that the design of the Equipment, the know-how and the software licensed by the Seller to operate the Equipment, as well as any other information, data or document supplied under this Agreement, are of a confidential nature and proprietary to the Seller. The Client shall not disclose any information relating to the Equipment to any person who is not a director, employee, authorized agent, or authorized government official, on a strict need to know basis. The Client shall take all reasonable precautions to maintain confidentiality of the information.

For the purpose of this Agreement, the Client's parent company and its affiliates shall be considered as third party.

If the confidential information is required to be produced by order of any court or under the requirements of any applicable law, provided that in those circumstances, the Client must notify the Seller as soon as reasonably practicable to allow Seller to take any steps it may consider necessary to be implemented.

Any Confidential Information which meets the conditions of Article L. 151-1 of the French Commercial Code is protected as a trade secret (the information is secret i.e. not commonly known or easily accessible, have a commercial value and the company takes reasonable protective measures) and any damage resulting from a breach of a trade secret shall be compensated in accordance with Article L. 152-6 of the French Commercial Code.

The obligations of this Article will not cease on the completion, expiry, or termination of the Agreement.

10.2 The Client acknowledges that intellectual property rights (including, without limitation, patents, utility models, rights to inventions, copyright, trademarks, software, whether registered or unregistered) including in the Supply are and remain at all times the Seller's property, and that nothing in the Agreement shall be construed as conferring any license or granting any rights in favor of the Client in relation to such intellectual property rights. The Client shall not repackage the Supply or remove any copyright notices, confidential or proprietary legends or identification from the Supply. The Client shall not use (other than in accordance with this Agreement) or attempt to register any trademark or trade name (including any company name) that is identical to, confusingly similar to or incorporates any trademark or trade name which the Seller or any associated company of the Seller owns or claims rights in anywhere in the world.

## **Article 11. Force Majeure**

If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement from any cause beyond its reasonable control the Party so affected shall (i) be relieved from its obligations hereunder (excluding payment obligations for Equipment already delivered in accordance with the applicable Incoterm® ICC 2020) during the period where such event and its consequences continue, but only to the extent so prevented and even in cases where the affected Party had previously been given formal notice to perform its obligations, and (ii) not be liable for any loss or damages whether general, special or consequential which the other Party may suffer due to or

resulting from such delay or failure, provided that written notice is given by the affected Party promptly after the event constituting Force Majeure has occurred.

For the purposes of this clause, "Force Majeure" shall include without limiting the generality of the foregoing, war, civil commotion, riot, insurrection, strikes, lock-outs, fire, explosion, accident, flood, hurricanes, acts of god, pandemics, epidemics, diseases, quarantines, any actions, guidelines, advices or polices taken by international, governmental or public authority, national or regional emergency, plant and traffic disturbances, general shortage of raw material, power, secondary sanctions, water and transportation facilities whether affecting any Party or its suppliers.

Either Party invoking Force Majeure shall use its best endeavors to mitigate the consequences resulting thereof, terminate the circumstances giving rise to Force Majeure and upon termination of the circumstances giving rise thereto, shall forthwith give written notice thereof to the other Party.

The Parties are aware of the Covid 19 situation that is a pandemic, and the Parties agree that such a situation, at the time of the signature of the Agreement does not prevent its proper performance. If the pandemic situation would evolved negatively and directly impact the execution of the present Agreement, the Parties acknowledge that Covid 19 situation shall be analyzed as a Force Majeure event.

**Article 12. After sale service - spare parts**

The Seller agrees to maintain an adequate inventory of those spare and replacement parts for the Equipment.

For the sake of clarity, the warranty will immediately terminate in the case the Seller or any operator or technician that is not duly qualified retrofit or modify any part of the Equipment or replace it by any spare part, not provided by or expressly authorized in writing by the Seller.

**Article 13. Agreement duration**

13.1 Entry into force of the Agreement

The Agreement shall come into force at the signature of the Agreement by both Parties.

13.2 The Agreement shall be effective as of the first date set out above until completion of their obligations by the Parties.

Notwithstanding the foregoing, the obligations of Article 10 will not cease on the completion, expiry, or termination of this Agreement.

13.3 In the event of a default or breach of the covenants, warranties or guarantees herein contained by either Party hereto, the non-defaulting Party, shall be entitled to send a written notice to the other Party, which notice shall specify the nature of the default. The defaulting Party shall submit to the other Party an action plan to cure the cause of such fault or breach or suggest any alternative prior to the expiration of a thirty-day (30) period beginning from the abovementioned notice. The Parties shall discuss and agree upon a final action plan to remedy the default or the breach.

13.4 The Seller is entitled to suspend the execution of the Agreement in case of payment delays exceeding 60 days after invoice issuance. The Seller is entitled to terminate Agreement in case of payment delays exceeding 90 days after invoice issuance.

**Article 14. Notices**

Any notices, consents, approvals, statements, authorizations, documents, or other communications (hereinafter collectively referred to as "Notices") required or permitted to be given hereunder shall be in writing, and shall be delivered personally, mailed by registered or certified mail, return receipt requested, postage pre-paid, sent by courier, or sent by facsimile, to the Parties at the addresses below:

To the Client at:

Raindance Metropolitan District No. 1  
Attention to Mr. ~~Nathaniel Phelps~~ Gary Kerr  
E-mail: ~~nphelps@watervalley.com~~ gkerr@watervalley.com  
address: 1625 Pelican Lakes Point, Suite 201  
Windsor, CO. 80550  
USA

To the Seller at:

MND France  
Attention to Mr. Xavier Gallot-Lavallée  
E-mail: xgl@mnd.com  
Address: Parc d'Activités Alpespace  
74 Voie Magellan  
73 800 Sainte Hélène du Lac  
France

or at any such other address or addresses as may be given by either of them to the other in writing from time to time. All Notices shall be effective (i) if e-mailed, when received or five (5) days after mailing, whichever is earlier; (ii) if sent by express courier or delivered personally, when delivered.

#### **Article 16. Entire Agreement**

The Agreement contains the entire understanding of the Parties as to the subject matter hereof.

In the event the Client requests a change in the Supply, or if changes are required either by an authority having jurisdiction over the Supply or necessitated by material differences between the physical conditions upon which the MND Specifications are based, and actual on-site physical condition caused by differences between input topographic data and the actual site measurements, then the Parties shall meet to update the terms and conditions of the Project. Indeed, the Selling Price shall be updated and the schedule relating to the completion of the works will be adapted accordingly.

The Party becoming aware of such required changes or physical conditions shall promptly notify the other Party. No changes shall be made in the Supply or the Selling Price and no modification, alteration, change in or waiver of any of the other terms or conditions of the Agreement shall be valid or binding unless an agreement is signed by both Parties hereto.

#### **Article 17. Governing Law and Arbitration**

17.1 The Agreement shall be governed and interpreted in accordance with the substantive laws of the state of Colorado, USA, without reference to its conflict of laws principles.

17.2 All disputes arising from or relating to this Agreement shall be settled through friendly negotiation by the Parties. If resolution cannot be reached through negotiation within three (3) months from the first notification related to the dispute by either Party, such dispute shall be finally settled by arbitration to take place in Colorado USA in accordance with the Rules of Arbitration of the Court of Arbitration of the International Chamber of Commerce (ICC) based in Paris, France, at the time of arbitration, and each party shall bear its own costs subject to any award of costs stipulated under the Rules of Arbitration. Arbitral tribunal hearings may be organized at such other location and/or through such other form of meeting (for example, via a secure online virtual meeting with video and audio) as the Parties may agree in writing. The award rendered by arbitrator(s) shall be final and binding upon both Parties. The arbitrators shall be fluent in the English language and language of the arbitration shall be the English language.

#### **Article 18. Language**

All documents, drawings, letters and all other correspondence in connection with the Agreement shall be written in English. The Agreement is made in English and any translation into another language shall be for reference only. English version should prevail.

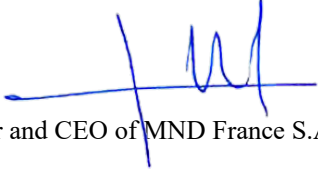
#### **Article 19. Change Orders**

The Parties agree that change orders (if any) to the Equipment, Services or Project will be proposed and documented as follows. Client shall submit to Seller in writing the details of Client's requested change. Within seven (7) business days after receipt of the request, or within the time period agreed to by the Parties in writing, the Seller shall reply in writing with an estimate of the additional time or cost (if any) that will be required to implement the requested change and shall inform Client of the likely effect (if any) on the Equipment, Services, Project or Agreement. If the Parties mutually agree to make the change, all relevant terms of the change will be documented in a written "Change Order" promptly signed and dated by an authorized representative of each Party to indicate each Party's agreement to the Change Order.

#### **Article 20. List of Annexes**

Annex 1 - MND Offer (Hoedown Hill\_TUBING QUOTATION\_Rev.6\_Final) ,  
Annex 2 - MND Technical Memorandum (General Technical Description Conveyor Belt - US - V3.3-2023 and General Technical Description of the Canopy - EN - V2.1-2021),  
Annex 3 - MND Ropeways Scope of work,  
Annex 4 - MND General Conditions of Sales,  
Annex 5 – Contract addendum.

In witness whereof, the Agreement has been duly executed by the Parties hereto as of the date first above written.

<p><b>FOR THE CLIENT</b> <b>Raindance Metropolitan District No. 1</b></p> <p>By:</p>  <p>Title: District General Manager, Raindance Metropolitan District No. 1</p>	<p><b>FOR THE SELLER</b> <b>MND France</b></p> <p>By: Mr. Xavier GALLOT-LAVALLEE</p>  <p>Title: Founder and CEO of MND France S.A.S.</p>
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March 10, 2023

Date : 02.03.2023

Réf : 0924998

Version du document : 2023-v.6

Auteur : DKi



## ANNEX 1

# Hoedown Hill Quotation



THE WATER VALLEY COMPANY

The MND ROPEWAYS logo features a white curved line above the text 'MND ROPEWAYS' in a bold, sans-serif font.

LST S.A.S.  
Parc d'Activités Alpespace, 74 voie Magellan - 73800 Sainte-Hélène-du-Lac - FRANCE  
Tel. +33 (0)4 79 65 08 90 - Fax +33 (0)4 79 65 08 91 - ropeways@mnd.com - www.mnd.com  
MND ROPEWAYS est le nom commercial de LST S.A.S. - MND ROPEWAYS is the tradename of LST S.A.S.  
RCS Chambéry - Siret : 791 152 283 000 10 APE : 7112B - N° TVA FR 42 791 152 283

## Quote for 4 MND ROPEWAYS Conveyors, lengths 751', 348', 459' and 141'

These conveyors comply with European regulations and with the French Guidelines "STRMTG Technical Guide for carpets of Mountain resorts version V1 of July 13, 2018", which are the most severe regulations for conveyors worldwide.

These conveyors conform to and exceeds ANSI B77.1-2022 standards and are manufactured under our ISO 9001 certification quality process.

### Included in the offer:

- Supply of the proposed electromechanical equipment described here after
- Electric Cabinet without auto restart function (disabled according to the ANSI code requirements), manufactured according to the European Norms and not the American standards, as requested by the ANSI code
- Line cables
- Manual Hydraulic tension
- High Grip belt Norflat
- Pit Heating
- Remote Assistance (Hard wired or Sim card)
- Remote Maintenance Switch
- PVC tarpaulin to close the sides
- Supervision and commissioning
- Canopy to cover 3 conveyors, except Bunny carpet
- Annual service visit, (2 years, 1 visit per year)

### Not included in the offer:

- Freight (delivery St. Hélène FR to Hoe Down Hill) TBD & separate price quote to follow
- Obtaining the building permit, right of access, right to passage...
- Benefits of geotechnical engineering, architect, project management...
- Earthworks and the civil engineering, if necessary,
- Supply and installation of a concrete pit 3.3 x 3.3 x H2.7 feet, located under the top station and its connection to a water drainage,
- Unloading of the equipment,
- The provision of concrete supports for the feet,
- All the electrical connections up to the main cabinet,
- ANSI B77 required signage,
- Communication system between bottom and top operators,
- Installation
- And in general, all the material and services not specifically described in our offer.



## Characteristics of the conveyor belts quoted

### Technical data of Bunny Carpet

Top drive station

Bottom return-tension station (loading)

Total length of the conveyor:	141	ft	with the stations
Useful length of the conveyor:	135	ft	line+top station
Length of line elements:	125	ft	only line
Number of line elements:	13		
Vertical drop	16	ft	
Average slope	13.2	%	
Speed	160	ft/min	
Distance between persons	6,2	ft	
Interval between persons	2,4	sec/person	
Number of persons in line	21	persons	
Capacity	1,516	p/h	
Travel time	0 min : 51 sec		
Power installed	20	HP	
Diameter of the drive drum	20	in	
Band useful width	36	in	
Band total width	38	in	
Diameter of the return drum	10	in	
Type of exit	Straight exit		
Canopy	NO		

Including:

- Automatic cabinet without the auto restart function (CE certified)
- Manual hydraulic tensioning
- Norflat high grip belt with stainless steel staples
- PVC tarpaulin to close the sides

## Technical data of Ski Carpet 1

Top drive station

Bottom return-tension station (loading)

Total length of the conveyor:	459	ft	with the stations
Useful length of the conveyor:	449	ft	line+top station
Length of line elements:	443	ft	only line
Number of line elements:	45		
Vertical drop	74	ft	
Average slope	16,7	%	
Speed	160	ft/min	
Distance between persons	6.2	ft	
Interval between persons	2,4	sec/person	
Number of persons in line	72	persons	
Capacity	1,516	p/h	
Travel time	2 min : 51	sec	
Power installed	2x15	HP	
Diameter of the drive drum	20	in	
Band useful width	36	in	
Band total width	38	in	
Diameter of the return drum	10	in	
Type of exit	Straight exit		
Canopy	ALUMINIUM		

Including:

- Automatic cabinet without the auto restart function (CE certified)
- Manual hydraulic tensioning
- Norflat high grip belt with stainless steel staples
- PVC tarpaulin to close the sides
- Canopy covering line and stations
- 5 emergency exits hinged
- Entry/exit hinged doors





## Technical data of Ski Carpet 2

Top drive station

Bottom return-tension station (loading)

Total length of the conveyor:	348	ft	with the stations
Useful length of the conveyor:	341	ft	line+top station
Length of line elements:	331	ft	only line
Number of line elements:	34		
Vertical drop	55	ft	
Average slope	16.5	%	
Speed	160	ft/min	
Distance between persons	6.2	ft	
Interval between persons	2.4	sec/person	
Number of persons in line	54	persons	
Capacity	1,516	p/h	
Travel time	2 min : 10 sec		
Power installed	2x15	HP	
Diameter of the drive drum	20	in	
Band useful width	36	in	
Band total width	38	in	
Diameter of the return drum	10	in	
Type of exit	Straight exit		
Canopy	ALUMINIUM		

Including:

- Automatic cabinet without the auto restart function (CE certified)
- Manual hydraulic tensioning
- Norflat high grip belt with stainless steel staples
- PVC tarpaulin to close the sides
- Canopy covering line and stations
- 4 emergency exits hinged
- Entry/exit hinged doors



## Technical data of Tube Carpet

Top drive station

Bottom return-tension station (loading)

Total length of the conveyor:	751	ft	with the stations
Useful length of the conveyor:	745	ft	line+top station
Length of line elements:	735	ft	only line
Number of line elements:	75		
Vertical drop	125	ft	
Average slope	17.0	%	
Speed	160	ft/min	
Distance between persons	6.2	ft	
Interval between persons	2.4	sec/person	
Number of persons in line	119	persons	
Capacity	1,516	p/h	
Travel time	4 min : 44	sec	
Power installed	2x25	HP	
Diameter of the drive drum	20	in	
Band useful width	36	in	
Band total width	38	in	
Diameter of the return drum	10	in	
Type of exit	Straight exit		
Canopy	ALUMINIUM		

Including:

- Automatic cabinet without the auto restart function (CE certified)
- Manual hydraulic tensioning
- Norflat high grip belt welded
- PVC tarpaulin to close the sides
- Canopy covering line and stations
- 8 emergency exits hinged
- Entry/exit hinged doors



Each conveyor belt with the characteristics of the TECHNICAL DATA pages 3 to 6 above, with these INCLUDED options:

- LST BELT conveyor for HOE DOWN HILL (1516 pph@ 160 ft/min)
- Top Drive consisting of standard style drive structures with shaft Mounted gearmotor, 490 mm diameter driving drum, VFD for 480VAC 60Hz 3 phase supply.
- Rollback brake on the motor with manual release option to move the belt manually a few inches forward/ backward
- Exterior Mounted pedestal drive control cabinet
- 900mm belting (Norflat). **Page 16 Attached Technical Description.pdf**
- Galvanized 3 m (+/- 10') Line Elements with our patented Fiberglass Grid system reducing friction/freezing and the associated problems. **Page 14 Attached Technical Description .pdf**
- 30 cm wide walkways for Bunny carpet
- Manual Hydraulic Tensioning Return Terminal. **Page 19 Attached Technical Description .pdf**
- Quick removable panels for access to Drive and Return Terminals with coded safety sensors and a remote safety control switch for maintenance. The drive station has been engineered for the maximum safety of the users and operators, but also to simplify the access to all the elements for easy and safe maintenance. **Pages 3-4 Attached Technical Description .pdf**
- Also includes a handheld enabling switch for some necessary maintenance procedures as standard equipment. **Page 13 Attached Technical Description.pdf**
- 300mm adjustable legs for fine tune leveling of the Line Elements. 2 legs per Line Element on the conveyor and 4 legs per Line Element on the canopy.

**TOTAL PRICE**

1)	<b>Tube Carpet with Canopy:</b>	<b>\$694,804.00</b>
2)	<b>Ski Carpet 1 with Canopy:</b>	<b>\$444,264.00</b>
3)	<b>Ski Carpet 2 with Canopy:</b>	<b>\$354,799.00</b>
4)	<b>Bunny Carpet:</b>	<b><u>\$101,215.00</u></b>

**Total: \$1,595,000.00**

**Commercial terms:**

Offer Validity: 10 days

Warranty: 3 years

Delivery time: 20 weeks (estimate) – FCA Sainte Hélène du Lac (France)

Terms of payment: 40% down payment (20% at order and 20% March 24, 2023), 50% upon shipping (leaving factory), 10% upon commissioning.

Offer subject to the MND Group general conditions of sales.




Date : 02.01.2023

Réf : COMM

Version du document : 3.3

Auteur : CSc



ANNEX 2

# CONVEYOR BELT FOR TRANSPORT OF SKIERS AND PASSENGERS WITH RECREATIONAL DEVICES

## TECHNICAL DESCRIPTION



LST S.A.S.  
Parc d'Activités Alpespace, 74 voie Magellan - 73800 Sainte-Hélène-du-Lac - FRANCE  
Tel. +33 (0)4 79 65 08 90 - Fax +33 (0)4 79 65 08 91 - ropeways@mnd.com - www.mnd.com  
MND ROPEWAYS est le nom commercial de LST S.A.S. - MND ROPEWAYS is the tradename of LST S.A.S.  
RCS Chambéry - Siret : 791 152 283 000 10 APE : 7112B - N° TVA FR 42 791 152 283

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## 1. Company presentation

Based in Sainte Hélène du Lac (France), MND ROPEWAYS combines technical excellence and recognized experience on all the mountain areas worldwide, to adapt to any context. The technological range has been expanded and reinforced as part of the strategic industrial and business alliance between the rope transport system manufacturers MND and Bartholet. This partnership of excellence places MND ROPEWAYS as a leader in its sector, particularly in terms of innovation and reliability.

Together we have been supplying our customers around the globe for more than 50 years with fixed and detachable chair lifts, gondola lifts, aerial tramways, surface lifts, funicular railways and special installations.

In the mountains, on tourist sites or in cities, MND ROPEWAYS provides rope mobility solutions with the following trademark:

- An extremely complete range of technical solutions: conveyor belts, surface lifts, chair or cabin ropeways with fixed or detachable grip, special equipment such as funiculars, aerial tramways cars, inclined elevators, etc....
- Maximum comfort for end users.
- A design that eases operation and maintenance.
- Customization of installations to differentiate each equipment and adapt to the needs and requirements of operators.
- A design that takes in consideration environmental concerns (low noise, compact and elegant design for integration into the landscape) and durability of materials since the beginning.

We place immense value on aspects such as customer proximity, innovative solutions, attractive design and French and Swiss quality. We fulfil the elevated expectations of our customers thanks to a workforce of more than 700 employees, large in-house production capacity and meticulous quality management.

Creating something unique and of lasting value, making owners proud of and that passengers love to use, have been our guiding principles and passion since our foundation. A success story followed by ever-expanding commercial activities and reference sites around the world.

## 1.1. MND Ropeways certifications

MND management manual describes the defined quality management system (QMS). Its use guarantees that all activities that impact the quality of the product are planned, managed and monitored and that the agreed requirements are fulfilled.

The QMS defines the company organization, project planning organization, project execution and integration of sub-contractors. MND has obtained with TUV Rheinland the ISO 9001 as well as the ISO 14001 certifications:



The conveyor belt described meets the different standards below in which MND is engaged:

- EN15700: Safety for conveyor belts for winter sport or leisure use
- For France the « Guide technique du STRMTG - Tapis roulants des stations de montagne » version 2 du 13 juillet 2017
- ANSI Code B77.1
- CSA Z98-19 Passenger Ropeway and Passenger Conveyors
- EN 1090 standard for weld quality
- The Environmental charter of the MND Group

## 1.2. Advantages and features of the MND ROPEWAYS product:

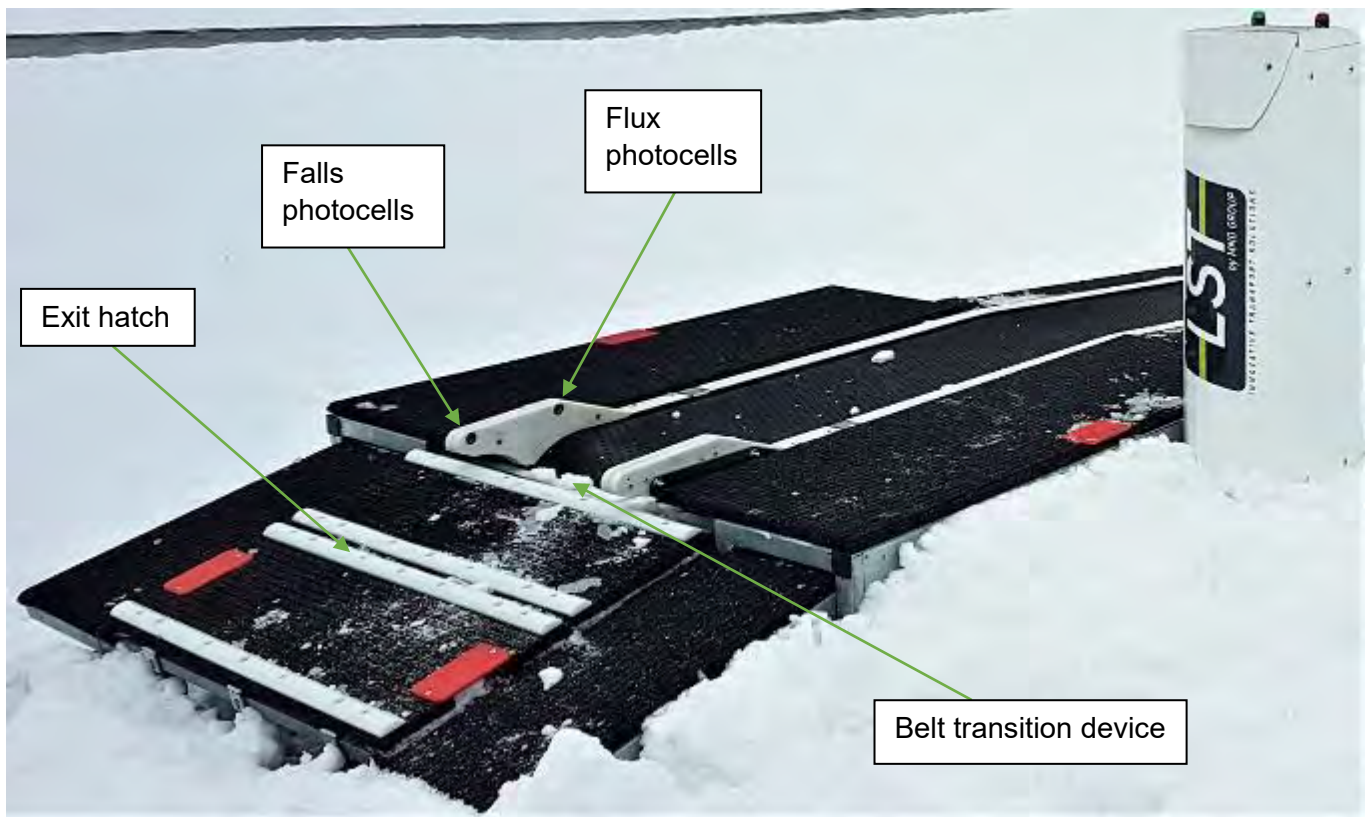
- MND ROPEWAYS has more than 25 years of experience in the design and construction of conveyor belts, having purchased and integrated the company Compac.
- The MND ROPEWAYS conveyor belts are actually the most technologically advanced available on the market.
- The MND Ropeways patented grating used as sliding surface for the belt permits to reduce the friction therefore the power absorption and the related operation and maintenance costs.
- MND Ropeways offers a full range of conveyors, with different belt types and widths and with many available options to make them tailored to every customer request.
- The MND ROPEWAYS conveyor belts are manufactured in France.
- The production is made according to the quality process ISO 9001:2015 and 14001:2015
- The headquarter of MND ROPEWAYS is based in Sainte Hélène du Lac, including an after sales service capable of responding to all types of lifts, in a truly short time and with all the spare parts stored on site.

*Photos and illustrations are not contractually binding; plans and amenities are subject to change without notice due to constant product development.*



## 2. Technical description

### 2.1. Top Drive station



The drive station is 10.5 feet long, including the exit hatch, and has a total weight that goes from 2000 to 2900 lbs, depending on the power of the motor/s installed and the related electrical cabinet.

It consists of:

- an onboard electrical power and control cabinet, as a standard placed on the left side;
- one **emergency stop button** on the electrical cabinet and one portable;
- a **drive drum, diameter 19,3"**, with anti-slip, high wear, rubber coating;
- the drive drum is driven by **1 or 2 motor/s with gearbox**;
- one motor has a **parking brake installed**, for the anti-rollback function and a manual release for the brake and a wheel to manually move the belt in reverse in case if necessary to unstuck something from the transition point after the belt is stopped;
- a **transition device, monitored by two independent magnetic safety sensors**;
- an **exit hatch, openable, monitored by a coded magnetic safety sensor**;
- all machinery **covers monitored by a coded magnetic safety sensor**;
- a pair of **safety photocells** before the transition point, to supervise the flux;
- a second pair of safety photocells, after the transition point, to supervise the falls;
- a **fix brush to clean the belt surface**, located under the drive drum;



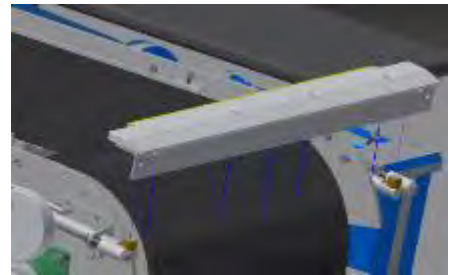
- an **ice scraper lever**, manually operable, in case the drive drum is frozen;
- a **broken belt sensor**;
- all **covers are carpeted** with an outdoor high resistance material.

The drive station has been engineered for the **maximum safety of the users and operators**, but also to simplify the access to all the elements for an **easy and safe maintenance**.

The drive roller is driven by one or two geared motors, which are dimensioned, as a standard, to allow the transport of a person of 176 lbs every 6.2 feet on a gradient of 25%.

The maximum speed allowed by the ANSI code is 160 fpm, allowing in any case to reach a considerable **transport capacity of 1500 p/h up to 3000 p/h with 2 persons side by side on a large belt**.

**Transition device:** it's the element dedicated to protecting the transition point between the belt in motion and the exit hatch. If something or someone moves the device, an emergency braking stops the belt in maximum 7.9".

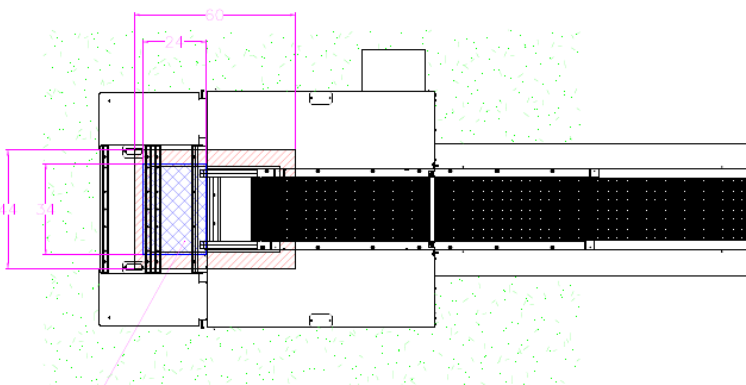
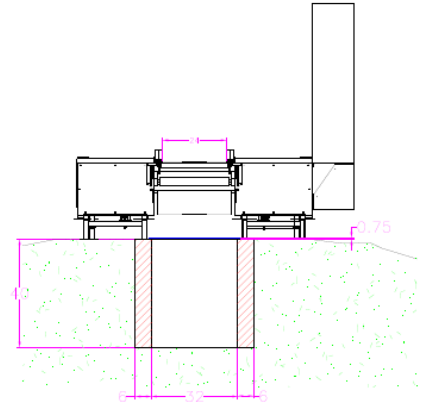
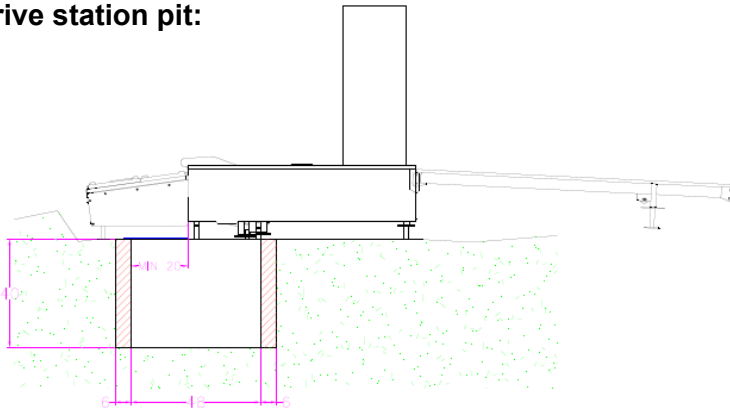


**Safety photocells:** they protect the transition point from both sides.

If something or someone stops between the 2 cells, a normal braking stops the belt after 3 seconds.



**Drive station pit:**



Galvanized steel and 31x24 H: 0.75 inches for antirfall protection

Under the top drive station should be installed a **pit** to facilitate melting the snow carried up by the belt and keep the belt clean. Overall, during snowfall days.

Inside the pit should be installed an **infrared heater** of around 2000W and a good drainage system to evacuate the water.

The dimensions of the pit will change depending on the dimensions of the stations and will be communicated by MND Ropeways for each project.

Concrete

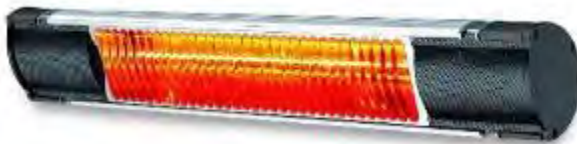


In any case, by design of our conveyor, all access for **maintenance operations is made from above**.

**No maintenance work is to be carried from below** or from the pit under it.

Available **options** for the drive station:

- IP65 **infrared heater**, 2000W, controlled and programmable from the touchscreen;



- **Remote control** on a wired box for remote control of the conveyor. Normally the top station should be under video surveillance (this can be avoided, according to the norms, only if, from the remote position, it's possible to see a ball with a diameter 4" placed on the transition point).

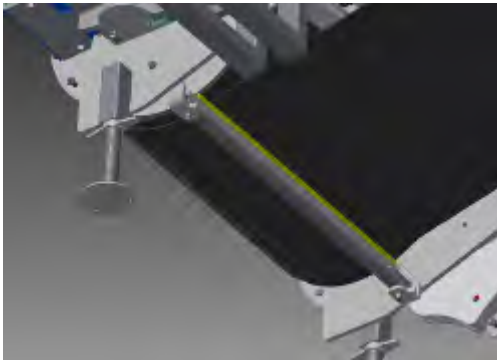


This solution permits to control the conveyor from a remote place, having exactly the same possibilities installed in the main cabinet: touchscreen, reset, start, stop and emergency stop.

The connection can be done by ethernet cable within 330 feet, otherwise we suggest using a fiber optic cable, overall to transfer the video signal.



- **motorized rotary cleaning brush**, to increase the belt cleaning in particular conditions.



*Standard fix brush*



*Motorized brush*

In addition to the standard fix brush, always installed under the drive drum, it's possible to install a motorized rotating brush designed to increase the cleaning of the conveyor belt surface, running opposite the direction of the belt travel. This is necessary only for particular conditions (such as sticky snow or mud).

The motorized brush can be added even later at any moment, if the conditions demonstrate it's necessary.

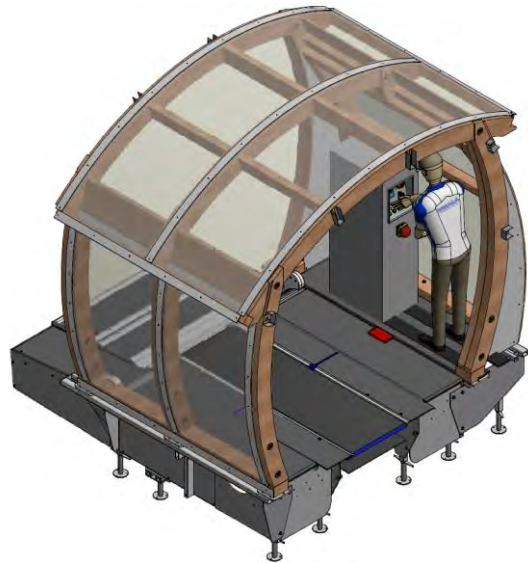
### Power and control cabinet

The electric cabinet installed on the left side of the drive station is equipped with a SIEMENS safety PLC to manage all the safeties of the conveyor and a variable frequency driver for a continuous and smooth regulation of the speed.

It permits to control all the functions of the conveyor, the PLC I/O states and several parameters of the inverter through a touchscreen.

This solution makes it possible to have the automatic restart function of the belt upon unexpected stops: feature that allows the operator to not be forced to stay all the time next to the drive station and be able to move around the conveyor where is more necessary his presence.

As an option, the cabinet can also be placed on the right side.



### Remote assistance (optional)

It's possible to have, as an option, a modem for the remote assistance.

It's a component that connecting to the internet creates a VPN that permits to an MND technician to connect to the cabinet and analyze the PLC, the inverter and the HMI touch screen.

In case of necessity, it's possible to modify parameters, reload the PLC software, update firmware and software of the different components.

There are 3 different versions: wired, wi-fi and with SIM card.



### Belt speed

The belt, according to the ANSI code, must run at the maximum speed of **160 fpm**.

It's possible to adjust the speed between 40 and 160 fpm with a specific touchscreen menu.

## Maintenance mode

The continuous research to have the maximum safety for users and operators and moreover the machine directive, to which the conveyor must submit, has led to introduce an **enabling switch for the maintenance operations**, also known as “dead-man switch”.

As clearly stated on our user manual, all the maintenance operations must be done with the belt stopped and the main switch on the electrical cabinet locked.

However, there are some maintenance operations, like the belt centering, which are much easier if the belt turns.

The new coded safety sensors installed under all the covers are no more by-passable using a magnet, this means that each time a cover is opened, the conveyor belt stops and there is no way to start it with the cover opened unless using the dead man switch.



To activate the maintenance mode, after stopping the conveyor and having opened a cover, it's necessary to turn the key on the main cabinet in the maintenance position, then plug the enabling switch to the dedicated socket previewed in both the stations: in this way all the safety sensors of that station are bypassed and, keeping the switch enabled, it's possible to run the belt.

Just keep enabled the switch with the middle finger and you will be allowed to reset/start the conveyor belt with the index finger.

To stop the belt, you just have to release the middle finger.

If in any moment and for any reason the switch is released or pressed more, it **stops immediately the belt with an emergency braking**.

After finishing the maintenance, just unplug the switch, close the opened cover/s, re-set the key on the main cabinet to the normal position (ON) and start again the conveyor belt for normal operation.

Or put the key in the OFF position and lock the control panel to leave it unattended and stopped.



## 2.2. Line elements

The continuous research to find always **more reliable and saving solutions** for our conveyor belts has led to **develop and patent** a new line element on which the sliding surface is made by a **grating** in composite material based on **fiberglass**.

Moreover, the element itself is made with this grating, on which are glued the lateral catwalks' carpets and that is screwed on the galvanized supporting structure: this permits a **quicker and easier installation**.

The belt is covered laterally by **slats** of laminated material (**HPL** - high pressure laminates), connected to each other with our traditional system (**stainless steel joint**) that prevents the presence of dangerous open spaces from one element to another, as the junction is made in the middle of the line element and not in between two elements.

The modular element of the line is around 9.9 feet long and has a total weight of 265 lbs.

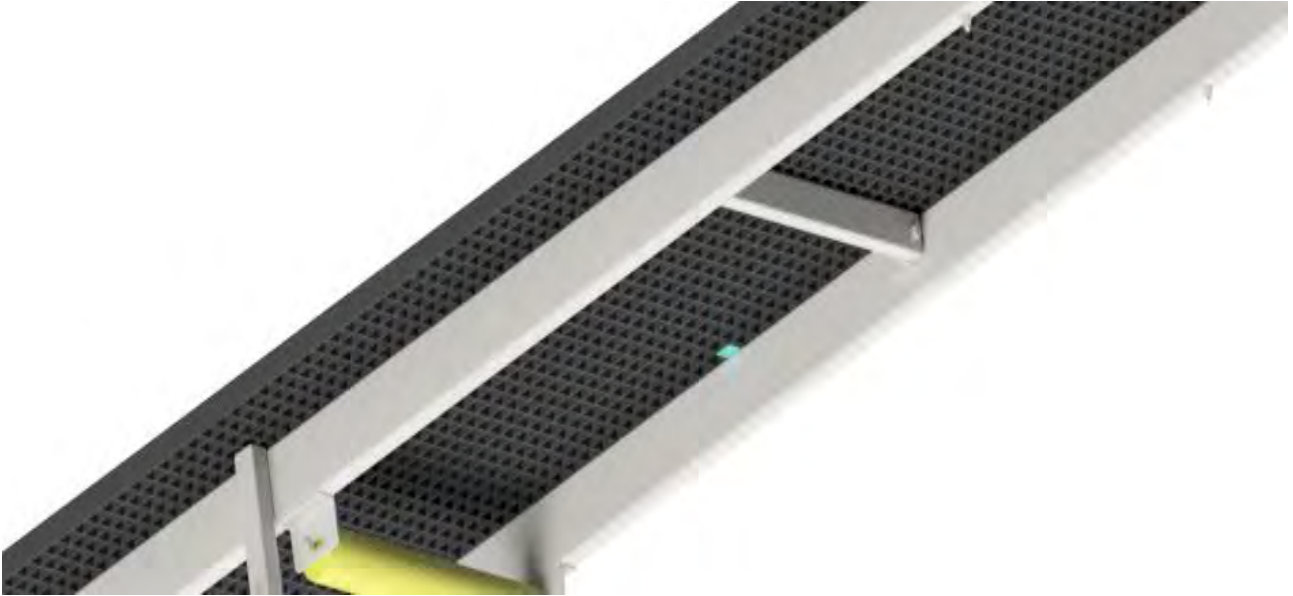
It consists of:

- **lateral catwalks**, width 12 inches, **carpeted** with an outdoor high resistance material glued directly on the fiberglass grating;
- safety joints for closing the space between two consecutive HPL slats, positioned in the middle of the element and not in correspondence of the junction between them, to avoid the dangerous spaces generated by the different inclinations occurring between the elements;
- a main structure, galvanized, on which is fixed the grating;
- a roller to support the returning part of the belt, which is adjustable to permit a fine regulation of the position of the belt along the line;
- galvanized steel feet, adjustable in height to adapt the conveyor to the natural irregularities of the ground.



The **advantages of the grating** are:

- **less friction**: that means drive **power saving** and elimination of the stick-slip phenomenon
- the holes of the grating permit to:
  - **eliminate the suction effect** due to the water film between belt and sliding surface, because all the water flows away through the holes
  - **no freezing**
  - no need of heating along the line = electric power saving
  - **faster installation**



Available **options** for the line:

- PVC tarpaulin along the sides of the conveyor, to avoid that someone can enter under it (like previewed by the norm);
- As an alternative it's possible to close the sides with steel plates or wooden boards or straw bales or the ground itself, etc....;
- PVC tarpaulin to cover the conveyor when stopped: for protection, but overall to easily remove the snow fallen during the night and avoid related problems to start the belt the morning after.

It's supplied in pieces around 65 feet long to facilitate easy management.





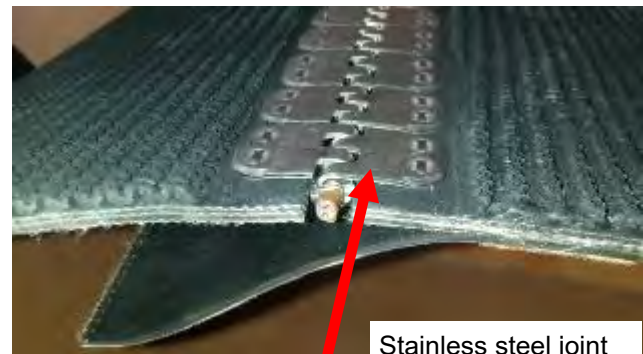
## 2.3. Conveyor rubber belt

The standard belt is the **FLATBEL** model, which can be used normally up to 15% slope or any inclination in case of canopy covering.

It's an industrial belt, commonly used for all transport conveyors, with a **honeycomb rubber coating**, which can become slippery during heavy snow falls.

To close the belt loop there are two different possibilities:

- 1) **stainless steel fasteners** with pre-installed staples, which have the advantage of easy installation and easy shortening (using 1-meter belt pieces for this purpose);
- 2) **welding** to have a continuous belt, but with the disadvantage that in case of shortening a technician must cut and reweld the belt.



Stainless steel joint and protective layer



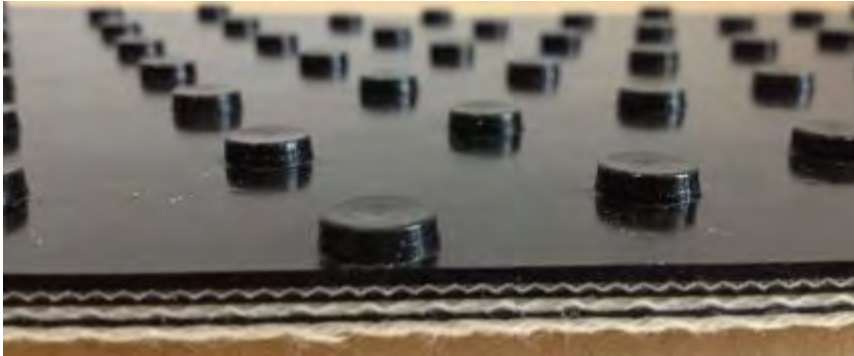
- Total thickness of this belt is 0.3 in
- The weight is 187.5 lbs/ft<sup>2</sup>
- Maximum belt tension in operation 1016 N/in
- Maximum belt strength 2240 lbs/in
- The belt is thinned at the stainless-steel joint to avoid damaging the skis
- On the underside, the joints are covered with a protective layer, to prevent scratching of the sliding surface



Welded belt



As an option, it's possible to have the **NORFLAT** model, a special **anti-slip coating** belt, in black **rubber**, specially developed for a high grip function assured by special shaped rubber pins.



This solution permits to have up to 25% inclined conveyors without risk of sliding back for the users even during snowfalls.

The belt junction, also in this case can be done with stainless steel joints or welded.

- Total thickness of the belt is 0.32 in
- The weight is 170,9 lbs/ft<sup>2</sup>
- Maximum belt tension in operation 1016 N/in
- Maximum belt strength 2240 lbs/in
- Operation temperature of the belt: -40/+176°F
- The belt is thinned at the stainless-steel joint to avoid damaging the skis
- On the underside, the joints are covered with a protective layer, to prevent scratching of the stainless-steel sliding surface

The available belt widths are:

- 24 inches useful (26 inches total): standard for skiers, pedestrians, tubing, sledges, etc....
- 36 inches useful (38 inches total): to allow the use of wheelchairs or special vehicles
- 48 inches useful (50 inches total): for 2 skiers side by side or special wide vehicles

Inclinations over 25%, but maximum till 30% are possible, but **ONLY** for pedestrians and case by case a specific calculation must be done for the power to install and the technical solutions to make easier standing on the belt, like handrails or mobile handrails.

## 2.4. Bottom Return station



The return station is 6.2 feet long and has a total weight of 800 lbs.

It consists of:

- Return drum, with polyurethane coating, diameter 10 inches
- Up to 5,5 HP a manual tensioning system with a manual chain hoist
- Over 5,5 HP a hydraulic tensioning with manual pump and buffer tank
- Stroke of the hydraulic cylinder 31.5 inches
- Inductive sensor for the anti-slip control on the return drum
- All covers are carpeted with an outdoor high resistance material
- 1 portable emergency stop button
- A control box with a start/stop key and a siren
- Entrance platform with adjustable inclination according to the ground slope

Available **options** for the return station:

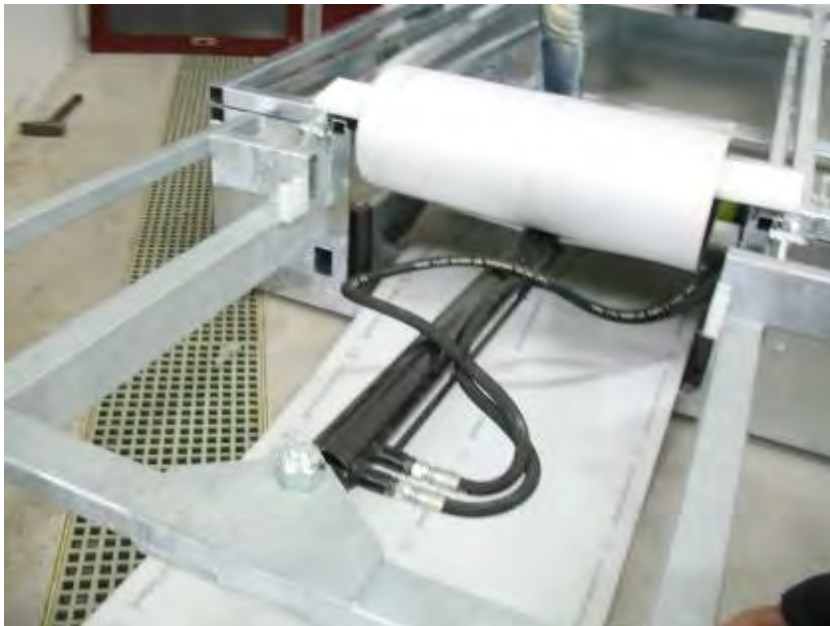
- Heating system to melt the snow or the ice that can accumulate around the roller: it consists of a galvanized steel tank with a heating cable inside that, scraping the roller with a brush, keeps it clean.
- Handrail/s to help during the loading phase.

### **The belt tensioning device**

The tension system of the belt is equipped with a hydraulic cylinder with an 31.5 inches stroke.

It pulls the belt along the axis of the belt therefore the system does not require any equilibration.

This system is more reliable than a system with threaded rods, which are much more complicated to regulate and make not so simple centering the belt.



If necessary, the bottom roller has the possibility to be inclined to perfectly center the belt on it.

Similarly, to the top station, also at the bottom station all the maintenance work can be made from the top: simply removing a cover there is a direct access to the hydraulic unit, therefore, it is not previewed any specific additional pit under the bottom station.

For 5.5 HP conveyors is possible to install a quite simple and convenient chain hoist for manual tensioning:



## 2.5. Lateral exit (optional)

In addition to the normal straight exit, it is possible to have a lateral or bi-lateral exit.

It is a special line element, which can be installed just before the top station, but also along the line to realize an intermediate exit (for the skiers only if the slope is less than 5%, while for pedestrians there are no limits), and consists of two stainless steel handrails, previewed for both children and adults, that allow exiting laterally from the belt.

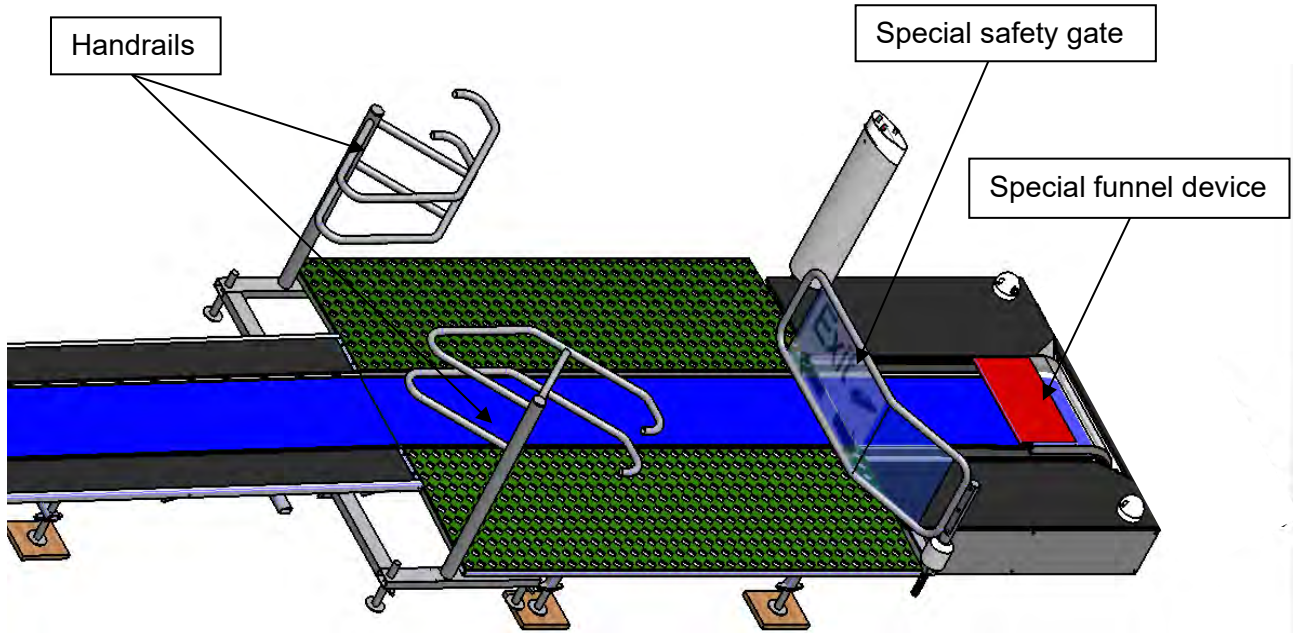
There are 2 different possibilities:

- 1) The mix exit (COMBI), with both the straight and lateral or bi-lateral exit possibilities, which leaves to the users the choice to exit straight or laterally or that can be used to divide the flux (i.e., skiers straight and pedestrian laterally).
- 2) The radial exit (SOLO), with only the lateral or bi-lateral exit, which obliges the users to exit on one and/or the other side.  
In this case, it consists of a special safety gate that obliges the users to exit only laterally through appropriate warning signs and a special funnel device that permits to evacuate all the snow carried by the belt.



In fact, the big advantage of this solution is that **all the snow carried by the belt**, instead of accumulating over the transition device till blocking the photocells then the conveyor, **goes completely inside the underground pit**, where it is melted by the heater, avoiding to have a person all day near the top station to remove the snow in front of the photocells causing unattended stops.

The bi-lateral exit can be used to divide the flux of users at the top station (i.e., skiers on one side and tubing or sledges on the other one, always with appropriate signs).



### 3. Safety Norms

The conveyor and the electronics are designed and manufactured according to the Norm EN 15700:2011 Safety for conveyor belts for winter sport or leisure use.

This European standard covers the requirements relating to the prevention of accidents and the safety of workers. It covers all the significant hazards, hazardous situations and hazardous events specific to the conveyor for leisure or winter sporting activities when they are used in conformity to the application for which they are intended, as well as for inappropriate applications which could be reasonably foreseeable by the manufacturer.

It has been also approved by the French technical agency STRMTG (Service Technique des Remontées Mécaniques et des Transports Guidés) according to the French rules stated in the “Guide technique du STRMTG - Tapis roulants des stations de montagne - Version 2 du 13 juillet 2017”.

And it has been commissioned according to the ANSI code B77.1-2017 for the American market.

Equivalence between the safety classes of the various rules:

Rule/Class				
PL ISO 13849-1	a	b / c	d	e
SIL IEC 62061	<b>No safety requirement</b>	1	2	3
CP EN 15700	T1	T2	T3	T4

The minimum working temperature of the conveyor is -22° F.



## 4. Installation and transport information

### 4.1. Installation

For the installation of a conveyor, it is recommended of using:

- 4 persons (simple mechanical workers);
- 1 truck with crane or an excavator (to carry and position the stations and the elements packs along the line);

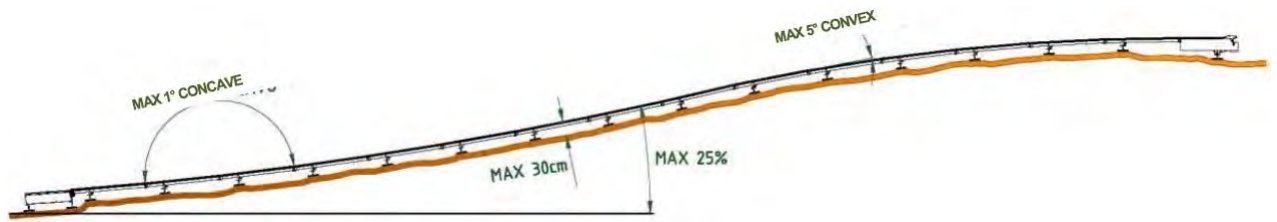


- Power supply for the drive station following the current consumption given by MND Ropeways;
- 1 electrician for wiring;
- Steel, wood or concrete slabs (or other similar things) to create a solid and flat support surface for the regulating feet;



Every foot must be fixed to its support surface with at least one fastener (bolt, dowel, screw, nail).

- The path of the conveyor clean (from rocks, snow, etc.) and as linear as possible (overall not concave);



- If possible, a concrete pit to be installed under the drive station.



By the time of installation and commissioning, including training of personnel, it can be calculated:

- 1 day up to 160 feet
- 2 days up to 330 feet
- 3 days up to 490 feet
- 4 days up to 650 feet
- ...

## 4.2. Transport

For the transport of the standard conveyor, with 600mm wide belt, it is possible to load:

- on 1 container 40' long, conveyors until 450 feet (total length)
- on 2 containers 40' long, conveyors until 800 meters (total length)

## 5. After sales

The main site of the after sales service for conveyors and canopies is based in Sainte Hélène du Lac - France.

Worldwide there is an extensive network of service points organized by the local MND subsidiaries or distributors.

In this way, we are able to guarantee the intervention of a qualified technician 7 days a week, within 4 hours after calling our assistance service, for interventions making the device unavailable for normal operation.

A complete stock of spare parts is available in the French production site, but first aid stocks are also present in every service point around the world.

Moreover, we have specific agreements with our suppliers, which keep in stock for us the most requested components, ready to be shipped in few hours after the order.

To help our customers to make the correct maintenance to their conveyors, we have also prepared several maintenance contracts that we can propose depending on the technical capabilities of the local operators, the hours of operation per year and the type of use.

Don't hesitate to ask us which could be the best one for yours needs!

### 5.1. Training

The training on the operation and maintenance of the conveyor is normally made during the installation and commissioning.

In the case of supply only, training courses, normally lasting 1 day, can be organized in the US subsidiary of MND.

In general, reading the use and maintenance manual is sufficient for correct use of the conveyor.

### 5.2. Spare parts

With the conveyor is possible to order a first aid standard kit, including a range of spare parts for easy replacement of wear-and-tear parts.



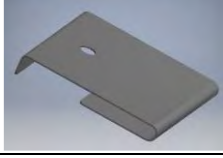










To this kit is also possible to add an extra set of electronic parts, including all the electronic components of the cabinet that can be useful in case of replacing.

Anyway, all the spare parts can be shipped from France or one of the service points around the world in a few hours from the order.

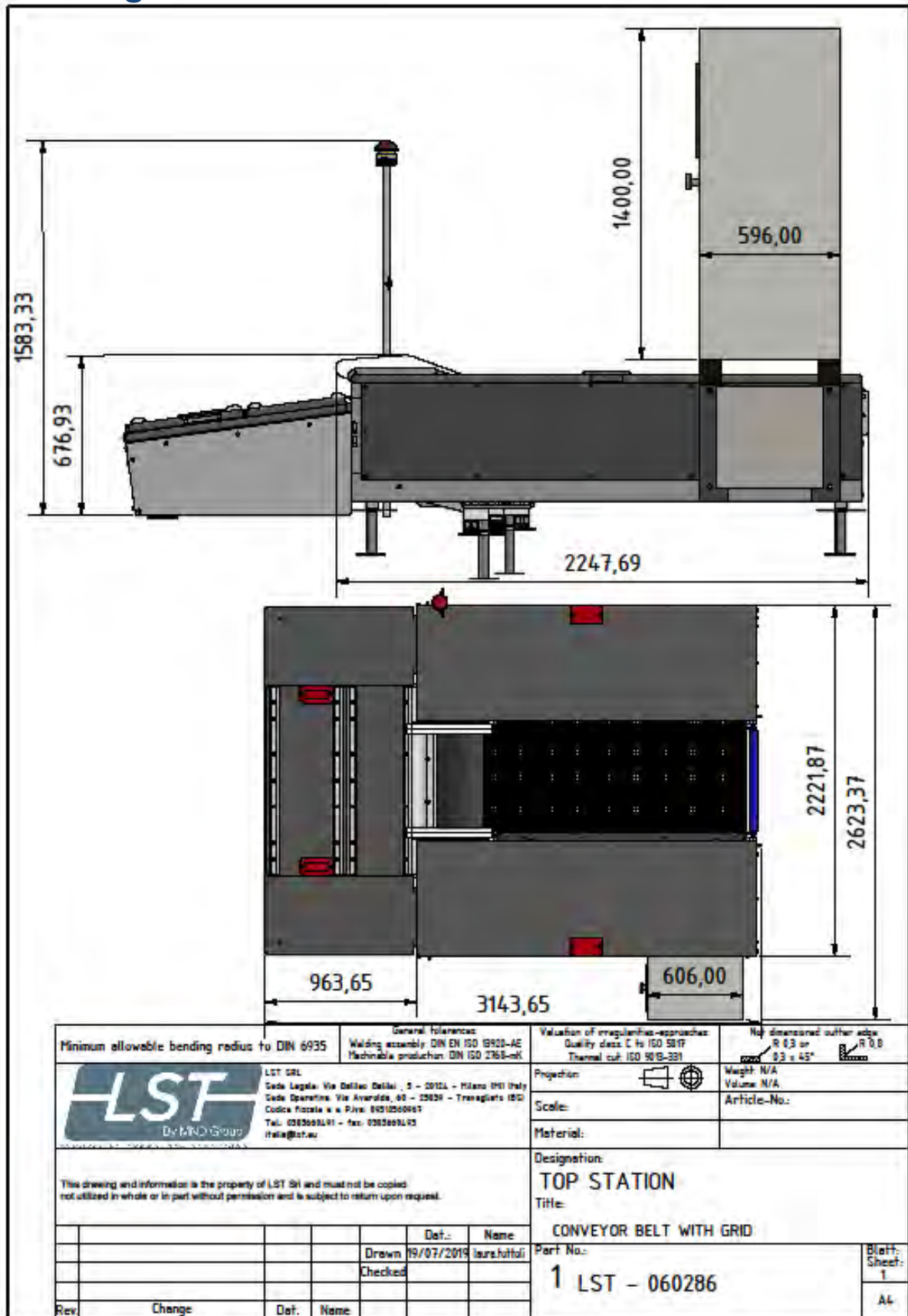
Hereunder the detailed lists of spare parts included in every kit.

Clearly, it's possible to change the quantity of each part and agree different solutions according to the customer needs.

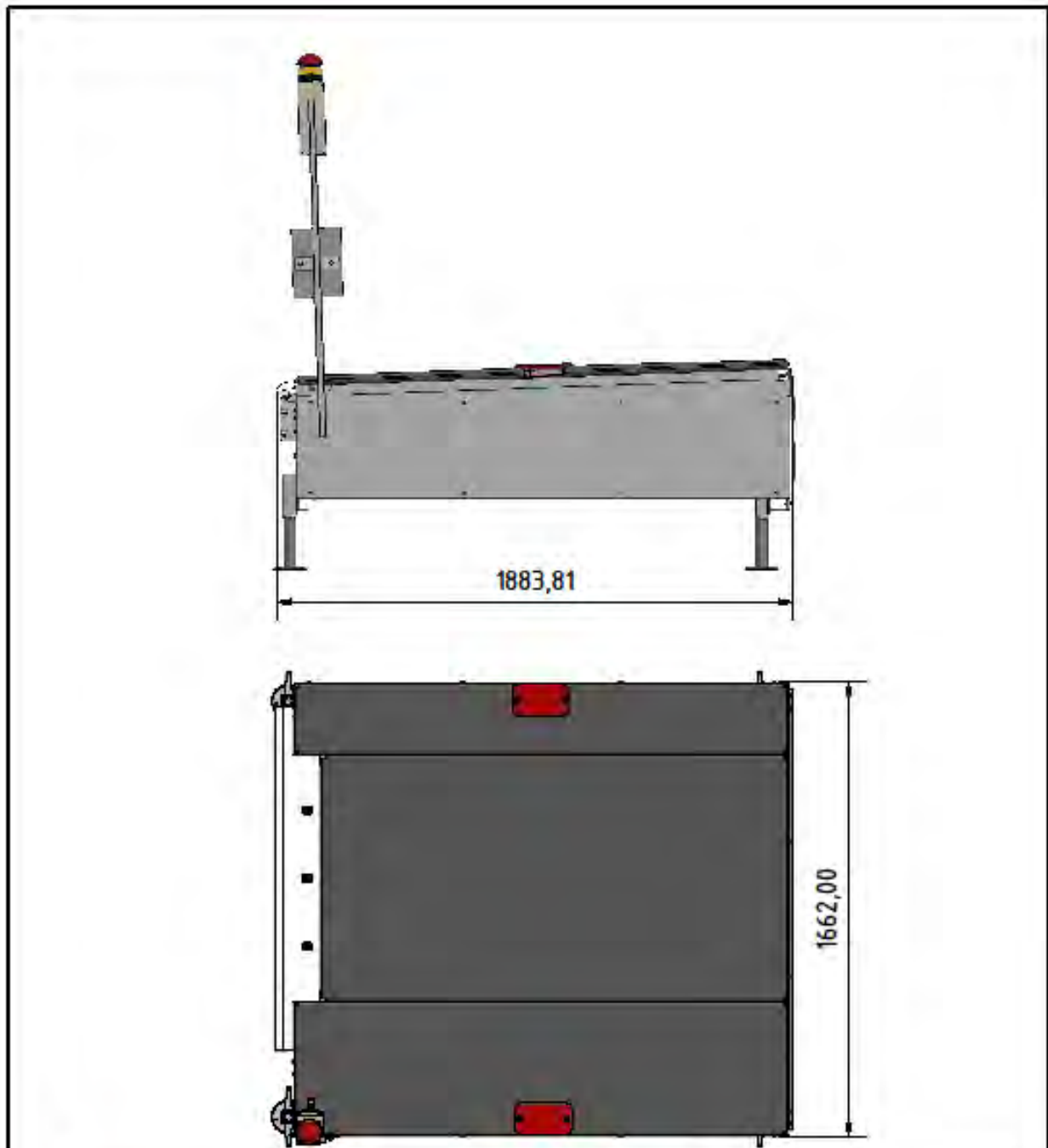
FIRST AID SPARE PARTS	Picture	Quantity
Dirak key for electrical cabinet		1
Schmersal coded sensor RST 36-1		2
Schmersal coded sensor RSS 36-I2-D-ST		2
Anti-unscrewing ASSY screw 4,5x35mm		16
Inductive sensor 10-30V return drum		1
Cable with M12 connector for inductive sensor		1
Aluminium support for brush		1
Brush under the drive drum		1
Magnetic sensor Schmersal BNS 180-O2Z		2
Schmersal magnet		2
Drum's bearing		2
CB roller		2
Special grating nut		20
Foot 500 / 600mm		4



PVC coated galvanized steel cable for RS187 with washer		3
Washer for RS187 cable		6
Junction for upper HPL		4
Upper HPL line		4
Conical upper HPL 1st element left		1
Conical upper HPL 1st element right		1
<b>Extra pack with electronic parts</b>		
Leuze MSI-TRMB-01 safety module for photocells		1
Leuze SLS46C-40.K48-M12 photocells' Transmitter		1
Leuze SLE46C-40.K4 / 4P-M12 photocells' Receiver		1
OMRON touchscreen		1
Siemens CPU interface module		1
Siemens electronics modules for CPU 1200		4
Eaton emergency button		1

## 6. Drawings



Drive station



Minimum allowable bending radius to DIN 6935		General tolerances: Welding assembly: DIN EN ISO 18123-AE Mechanical production: DIN ISO 2768-mS		Valuation of irregularities-approaches: Quality class C to ISO 5817 Thermal cut: ISO 9015-331		Not dimensioned outer edge: R 0,3 on 0,3 x 45° R 0,8	
 <b>LST</b> By MND Group LST SRL Sede Legale: Via Galileo Galilei, 3 - 20124 - Milano (MI) Italy Sede Operativa: Via Averofide, 43 - 23029 - Tresoglieri (BG) Codice Fiscale n. e. Piva: 04010400467 Tel.: 0385001491 - fax: 0385001493 Italia@lst.eu		Projection: 		Weight: N/A		Volume: N/A	
		Scale:		Article-No.:			
Material:		Designation: <b>BOTTOM STATION</b> Title: <b>CONVEYOR BELT WITH GRID</b>					
This drawing and information is the property of LST Srl and must not be copied, not utilized in whole or in part without permission and is subject to return upon request.		Part No.:		<b>LST-062217</b>		Blatt: Sheet: 1	
Rev.	Change	Def.	Name	Def.:	Name	A4	
				Drawn	19/07/2019	laure.tuttoli	
				Checked			

Return station

Titre : Technical description Conveyor Belt  
Réf : COMM

Date : 02.01.2023  
Version : 3.3





## 7. Summary of the technical characteristics

Width of the belt (mm)	26	38	50
Useful width (mm)	24	36	48
Maximum length (m)	730	900	430
Maximal slope (%)	25%		
Speed	40 to 160 fpm		
Exit	Front or Lateral (single or double)		
Tension	Manual for power < 5.5 HP Hydraulic for power > 5.5 HP		
Motor	From 5.5 HP to 2x22 HP		
Options	Steel or wooden canopy		
	Infrared heating for the drive station		
	Heating for the bottom station		
	Motorized brush to clean the belt		
	Lateral exit/s		
	Loading handrail/s		
	Presence sensor to restart the belt		
	Remote control unit with touchscreen		
	Remote assistance for maintenance		

## 8. References

- 1. Predigtstuhl (Germany) - 2012**
  - Length: 20 m
  - Useful width: 60 cm
  - Installed power: 4 kW
  - Speed 0.7 m/s
- 2. Winterberg (Germany) - 2012**
  - Length: 120 m
  - Useful width: 90 cm
  - Installed power: 2x11 kW
  - Speed 0.9 m/s
  - Lateral exit
- 3. Koprivna (Czech Republic) - 2012**
  - Length: 40 m
  - Useful width: 60 cm
  - Installed power: 7.5 kW
  - Speed 0.7 m/s
- 4. Klíny (Czech Republic) - 2013**
  - Length: 48 m
  - Useful width: 60 cm
  - Installed power: 7.5 kW
  - Speed 0.7 m/s
- 5. Gaziantep (Turkey) - 2013**
  - Length: 24 m
  - Useful width: 60 cm
  - Installed power: 4 kW
  - Speed 0.7 m/s
- 6. Gaziantep (Turkey) - 2013**
  - Length: 81 m
  - Useful width: 60 cm
  - Installed power: 15 kW
  - Lateral exit
  - Speed 0.9 m/s
- 7. Gaziantep (Turkey) - 2013**
  - Length: 147 m
  - Useful width: 60 cm
  - Installed power: 2x11 kW
  - Speed 0.9 m/s
  - Lateral exits middle and top
- 8. Benecko (Czech Republic) - 2013**
  - Length: 36 m
  - Useful width: 60 cm
  - Installed power: 7.5 kW
  - Speed 0.7 m/s
- 9. Valfrejus (France) - 2013**
  - Length: 45 m
  - Useful width: 60 cm
  - Installed power: 7.5 kW
  - Speed 0.7 m/s
- 10. Les Marecottes (Swiss) -2013**
  - Length: 27 m
  - Useful width: 60 cm
  - Installed power: 4 kW
  - Speed 0.7 m/s
- 11. Meri Teijo (Finland) - 2013**
  - Length: 40 m
  - Useful width: 60 cm
  - Installed power: 7.5 kW
  - Speed 0.7 m/s
- 12. Val Cenis (France) - 2013**
  - Length: 24 m
  - Useful width: 60 cm
  - Installed power: 7.5 kW
  - Speed 0.7 m/s
  - Covered by steel canopy
- 13. Val Cenis (France) - 2013**
  - Length: 42 m
  - Useful width: 60 cm
  - Installed power: 7.5 kW
  - Speed 0.7 m/s
  - Covered by steel canopy
- 14. Vrådal (Norway) - 2013**
  - Length: 60 m
  - Useful width: 60 cm
  - Installed power: 11 kW
  - Speed 0.7 m/s

**15. Tignes (France) - 2013**

- Length: 72 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- Covered by "Sticky Snow" canopy

**16. Valle Fura (Italy) - 2013**

- Length: 69 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**17. Fisht-Sochi (Russia) - 2013**

- Length: 27 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- Covered by a steel canopy
- Moves in both directions

**18. Seefeld (Austria) - 2013**

- Length: 48 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.9 m/s
- Lateral exit

**19. Sölden (Austria) - 2014**

- Length: 17 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s

**20. Ramzova (Czech Republic) - 2014**

- Length: 200 m
- Useful width: 60 cm
- Installed power: 2x15 kW
- Speed: 1.2 m/s

**21. Klinovec (Czech Republic) - 2014**

- Length: 68 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**22. Koli (Finland) - 2014**

- Length: 50 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**23. Chatel (France) - 2014**

- Length: 216 m
- Useful width: 76 cm
- Installed power: 2x18.5 kW
- Speed 1.2 m/s
- Covered by new steel canopy

**24. Montagne de Lure (France) - 2014**

- Length: 99 m
- Useful width: 76 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**25. Col du Rousset (France) - 2014**

- Length: 69 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**26. Tignes (France) - 2014**

- Length: 72 m
- New steel canopy for conveyor 2013

**27. Bareges (France) - 2014**

- Length: 120 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s

**28. Valfrejus (France) - 2014**

- Length: 45 m
- New steel canopy for conveyor 2013

**29. Montecopiolo (Italy) - 2014**

- Length: 177 m
- Useful width: 76 cm
- Installed power: 2x15 kW
- Speed 0.7 m/s

**30. Foppolo (Italy) - 2014**

- Length extended: 160 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s
- Covered by wooden canopy

**31. Foppolo (Italy) - 2014**

- Length extended: 175 m
- Useful width: 60 cm
- Installed power: 2x15 kW
- Speed 0.7 m/s
- Covered by wooden canopy

**32. Monte Catria (Italy) - 2014**

- Length: 114 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s

**33. Monte Nerone (Italy) - 2014**

- Length: 99 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**34. Sassotetto (Italy) - 2014**

- Length: 111 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**35. Pejo (Italy) - 2014**

- Length: 21 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s

**36. Pejo (Italy) - 2014**

- Length: 48 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0,7 m/s

**37. Suzuki Corp. (Japan) - 2014**

- Length: 54 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- Covered with new steel canopy

**38. La Molina (Spain) - 2014**

- Length: 105 m
- Useful width: 120 cm
- Installed power: 2x15 kW
- Speed 0.7 m/s

**39. Pori (Finland) - 2015**

- Length: 41 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**40. Ricky (Czech Republic) - 2015**

- Length: 101 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**41. Leitariegos (Spain) - 2015**

- Length: 65 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**42. Montagne de Lure (France) - 2015**

- Length: 104 m
- Useful width: 76 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**43. Tignes (France) - 2015**

- Length: 120 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s
- With canopy

**44. Tignes (France) - 2015**

- Length: 116 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s
- With canopy

**45. Val Cenis (France) - 2015**

- Length: 38 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With canopy

**46. Kras (Croatia) - 2015**

- Length: 56 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**47. Kaberlala (Italy) - 2015**

- Length: 119 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**48. Valle Bianca (Italy) - 2015**

- Length: 26 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s

**49. Sauda skisenter (Norway) - 2015**

- Length: 191 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.9 m/s

**50. Vardasen (Norway) - 2015**

- Length: 35 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**51. Kirkerudbakken (Norway) - 2016**

- Length: 104 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With canopy

**52. Jahorina (Bosnia-Herzegovina) - 2016**

- Length: 32 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**53. Bansko (Bulgaria) - 2016**

- Length: 74 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**54. Platak (Croatia) - 2016**

- Length: 80 m
- Useful width: 76 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**55. Kongsberg (Norway) - 2016**

- Length: 74 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**56. Courchevel (France) - 2016**

- Length: 68 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**57. Courchevel (France) - 2016**

- Length: 62 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**58. Courchevel (France) - 2016**

- Length: 50 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**59. St Gervais (France) - 2016**

- Length: 29 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s

**60. Muggenbrunn (Austria) - 2016**

- Length: 125 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**61. Neuastenberg (Austria) - 2016**

- Length: 125 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**62. Kanisbacken (Sweden) - 2016**

- Length: 80 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**63. Lindvallen (Sweden) - 2016**

- Length: 83 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With wooden canopy

**64. Passo Penice (Italy) - 2016**

- Length: 65 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**65. Farmapark (Czech Rep.) - 2016**

- Length: 53 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**66. Leitariegos (Spain) - 2016**

- Length: 170 m
- Useful width: 60 cm
- Installed power: 2x15 kW
- Speed 0.7 m/s

**67. Ski Aspen Dome (Belgium) - 2017**

- Length: 182 m
- Useful width: 90 cm
- Installed power: 2x18.5 kW
- Speed 0.9 m/s

**68. Ski Aspen Dome (Belgium) - 2017**

- Length: 182 m
- Useful width: 60 cm
- Installed power: 2x15 kW
- Speed 1.2 m/s

**69. Ski Aspen Dome (Belgium) - 2017**

- Length: 23 m
- Useful width: 60 cm
- Installed power: 1x4 kW
- Speed 0.7 m/s

**70. Teine (Japan) - 2017**

- Length: 116 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With canopy

**71. Arai (Japan) - 2017**

- Length: 155 m
- Useful width: 90 cm
- Installed power: 2x15 kW
- Speed 0.7 m/s
- With canopy

**72. Nara (Russia) - 2017**

- Length: 110 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**73. Veduchi (Chechenia) - 2017**

- Length: 71 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**74. Sokolniki (Russia) - 2017**

- Length: 62 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**75. Ruka (Finland) - 2017**

- Length: 56 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**76. Ruka (Finland) - 2017**

- Length: 119 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**77. Sappee (Finland) - 2017**

- Length: 23 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s

**78. Sappee (Finland) - 2017**

- Length: 89 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**79. Sollifjellet (Norway) - 2017**

- Length: 62 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**80. Plaine Joux (France) – 2017**

- Length: 113 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s
- With canopy

**81. Samoens Club Med (France) – 2017**

- Length: 59 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With canopy

**82. Samoens Club Med (France) – 2017**

- Length: 59 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With canopy

**83. Serre-Chevalier (France) – 2017**

- Length: 23 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With canopy

**84. Serre-Chevalier (France) – 2017**

- Length: 23 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With canopy

**85. Valloire (France) – 2017**

- Length: 44 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With canopy

**86. Valmeinier (France) – 2017**

- Length: 29 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With canopy

**87. Gatterer (Italy) – 2017**

- Length: 80 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With new sliding grating

**88. Gatterer (Italy) – 2017**

- Length: 50 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With new sliding grating

**89. Panarotta (Italy) – 2017**

- Length: 56 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With new sliding grating

**90. Ulricehamn (Sweden) – 2017**

- Length: 14 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s

**91. Waterville Valley (USA) – 2017**

- Length: 167 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.8 m/s

**92. Waterville Valley (USA) – 2017**

- Length: 74 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.8 m/s

**93. St. Corona (Austria) - 2018**

- Length: 74 m
- Useful width: 76 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**94. Agbulaq (Azerbaijan) – 2018**

- Length: 80 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**95. Agbulaq (Azerbaijan) – 2018**

- Length: 17 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s

**96. Agbulaq (Azerbaijan) – 2018**

- Length: 134 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 1.2 m/s

**97. Kazenoy (Chechnya) – 2018**

- Length: 110 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With new sliding grating

**98. Reinu (Finland) – 2018**

- Length: 32 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With new sliding grating

**99. Aavsaksa (Finland) – 2018**

- Length: 62 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**100. Valfrejus (France) – 2018**

- Length: 32 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With canopy

**101. Valmorel (France) – 2018**

- Length: 56 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With canopy

**102. Chamrousse (France) – 2018**

- Length: 50 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With canopy

**103. Patnitop (India) – 2018**

- Length: 158 m
- Useful width: 60 cm
- Installed power: 2x15 kW
- Speed 0.7 m/s

**104. Cervinia (Italy) – 2018**

- Length: 140 m
- Useful width: 76 cm
- Installed power: 2x15 kW
- Speed 0.7 m/s

**105. Predaia (Italy) – 2018**

- Length: 101 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With new sliding grating

**106. Gaustatoppen (Norway) – 2018**

- Length: 83 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.9 m/s
- With new sliding grating
- Double lateral exit

**107. Maramures (Romania) – 2018**

- Length: 119 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s



**108. Luzhki (Russia) – 2018**

- Length: 104 m
- Useful width: 76 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s
- With canopy

**109. Rogla (Slovenia) – 2018**

- Length: 89 m
- Useful width: 76 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With canopy

**110. Lindvallen (Sweden) – 2018**

- Length: 95 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With wooden canopy

**111. Sysleback (Sweden) – 2018**

- Length: 53 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With new sliding grating

**112. Gawhil (Switzerland) – 2018**

- Length: 32 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With new sliding grating

**113. Sarikamis (Turkey) – 2018**

- Length: 50 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With canopy

**114. Amirsoy (Uzbekistan) – 2018**

- Length: 80 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With new sliding grating

**115. Botombergen (Finland) – 2019**

- Length: 38 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With new sliding grating

**116. Amneville (France) – 2019**

- Length: 83 m
- Useful width: 90 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**117. Courchevel (France) – 2019**

- Length: 71 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With aluminium canopy

**118. Metabief (France) – 2019**

- Length: 23 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With manual tensioning

**119. Monetier (France) – 2019**

- Length: 38 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**120. Serre Chevalier (France) – 2019**

- Length: 23 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With manual tensioning

**121. Valloire (France) – 2019**

- Length: 26 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With manual tensioning

**122. Vars (France) – 2019**

- Length: 35 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed 0.7 m/s
- With aluminium canopy

**123. Vars (France) – 2019**

- Length: 143 m
- Useful width: 120 cm
- Installed power: 2x18.5 kW
- Speed 0.7 m/s
- With aluminium canopy

**124. Fanano (Italy) – 2019**

- Length: 77 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With aluminium canopy

**125. Campitello Matese (Italy) – 2019**

- Length: 101 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**126. Snow Planet Auckland (New Zealand) – 2019**

- Length: 71 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**127. Gleinasen Snopark (Norway) – 2019**

- Length: 158 m
- Useful width: 60 cm
- Installed power: 2x11 kW
- Speed 0.7 m/s

**128. Varingskollen (Norway) – 2019**

- Length: 71 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- Double lateral exit

**129. Noyabirsk (Russia) – 2019**

- Length: 92 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With aluminium canopy

**130. Vallter 200 (Spain) – 2019**

- Length: 137 m
- Useful width: 60 cm
- Installed power: 2x15 kW
- Speed 1.2 m/s
- With aluminium canopy

**131. Mauborget (Switzerland) – 2019**

- Length: 113 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With lateral exit

**132. Hideout (USA) – 2019**

- Length: 77 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.8 m/s

**133. Hydeout – Tubing Hill (USA) -2020**

- Length: 101 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.8 m/s

**134. Leutasch – (Austria) -2020**

- Length: 59 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**135. Vitosha – (Bulgaria) -2020**

- Length: 98 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**136. La Flecaz– (France) -2020**

- Length: 50 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s
- With aluminium canopy

**137. Les Contamines– (France) -2020**

- Length: 65 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With aluminium canopy

**138. Vars – (France) -2020**

- Length: 89 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s
- With aluminium canopy

**139. Cimoncino – (Italy) -2020**

- Length: 98 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**140. Monte Bondone 1 – (Italy) -2020**

- Length: 80 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**141. Monte Bondone 2 – (Italy) -2020**

- Length: 104 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s

**142. Vassfjellet – (Norway) -2020**

- Length: 44 m
- Useful width: 60 cm
- Installed power: 7.5 kW
- Speed 0.7 m/s

**143. Stana del Vale – (Romania) -2020**

- Length: 80 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed 0.7 m/s

**144. Big Woodyavr – (Russia) -2020**

- Length: 110 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed 0.7 m/s
- With aluminium canopy

**145. Manzherok – (Russia) -2020**

- Length: 269 m
- Useful width: 90 cm
- Installed power: 2x22 kW
- Speed 1.2 m/s

**146. Télé Envolene – (France) - 2020**

- Length: 59 m
- Useful width: 60 cm
- Installed power: 7,5 kW
- Speed 0.7 m/s

**147. Kössen – (Austria) - 2020**

- Length: 129 m
- Useful width: 60 cm
- Installed power: 2 x 11 kW
- Speed: 0.7 m/s

**148. Pertisau – (Austria) - 2021**

- Length: 80 m
- Useful width: 60 cm
- Installed power: 15 kW
- Speed: 0.7 m/s
- Lateral exit

**149. Pamporovo – (Bulgaria) - 2021**

- Length: 86 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed: 0.7 m/s

**150. Val Cenis – (France) - 2021**

- Length: 23 m
- Useful width: 60 cm
- Installed power: 4 kW
- Speed: 0.7 m/s

**151. Les Brasses – (France) - 2021**

- Length: 35 m
- Useful width: 90 cm
- Installed power: 7,5 kW
- Speed: 0.7 m/s
- With aluminium canopy

**152. Colere – (Italy) - 2021**

- Length: 83 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed: 0.7 m/s
- With aluminium canopy

**153. Kashimayari 1 – (Japan) - 2021**

- Length: 71 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed: 0.7 m/s
- With aluminium canopy

**154. Kashimayari 2 – (Japan) - 2021**

- Length: 71 m
- Useful width: 60 cm
- Installed power: 11 kW
- Speed: 0.7 m/s
- With aluminium canopy

**155. Ciceu – (Romania) - 2021**

- Length: 125 m
- Useful width: 60 cm
- Installed power: 2 x 11 kW
- Speed: 0.7 m/s

**156. Lake Bajkal – (Russia) - 2021**

- Length: 188 m
- Useful width: 60 cm
- Installed power: 2 x 22 kW
- Speed: 1.2 m/s

**157. Rosa Khutor 1 – (Russia) - 2021**

- Length: 149 m
- Useful width: 60 cm
- Installed power: 2 x 15 kW
- Speed: 0.7 m/s
- With aluminium canopy

**158. Rosa Khutor 2 – (Russia) - 2021**

- Length: 140 m
- Useful width: 60 cm
- Installed power: 2 x 11 kW
- Speed: 0.7 m/s

**159. Branas – (Sweden) - 2021**

- Length: 44 m
- Useful width: 60 cm
- Installed power: 7,5 kW
- Speed: 0.7 m/s

**160. Kungsberget – (Sweden) - 2021**

- Length: 122 m
- Useful width: 60 cm
- Installed power: 2 x 11 kW
- Speed: 0.7 m/s



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Réf : COMM

Version du document : 2.1

Auteur : CSc



## ANNEX 2

# CANOPY FOR COVERING CONVEYORS FOR TRANSPORT OF SKIERS AND PEDESTRIANS

## TECHNICAL DESCRIPTION



LST S.A.S.  
Parc d'Activités Alpespace, 74 voie Magellan - 73800 Sainte-Hélène-du-Lac - FRANCE  
Tel. +33 (0)4 79 65 08 90 - Fax +33 (0)4 79 65 08 91 - ropeways@mnd.com - www.mnd.com  
MND ROPEWAYS est le nom commercial de LST S.A.S. - MND ROPEWAYS is the tradename of LST S.A.S.  
RCS Chambéry - Siret : 791 152 283 000 10 APE : 7112B - N° TVA FR 42 791 152 283

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## 1. Company presentation

Based in Sainte Hélène du Lac (France), MND Ropeways combines technical excellence and recognized experience on all the mountain areas worldwide, to adapt to any context. The technological range has been expanded and reinforced as part of the strategic industrial and business alliance between the rope transport system manufacturers MND and Bartholet. This partnership of excellence places MND Ropeways as a leader in its sector, particularly in terms of innovation and reliability.

Together we have been supplying our customers around the globe for more than 50 years with fixed and detachable chair lifts, gondola lifts, aerial tramways, surface lifts, funicular railways and special installations.

In the mountains, on tourist sites or in cities, MND Ropeways provides rope mobility solutions with the following trademark:

- An extremely complete range of technical solutions: conveyor belts, surface lifts, chair or cabin ropeways with fixed or detachable grip, special equipment such as funiculars, aerial tramways cars, inclined elevators, etc....
- Maximum comfort for end users.
- A design that eases operation and maintenance.
- Customization of installations to differentiate each equipment and adapt to the needs and requirements of operators.
- A design that takes in consideration environmental concerns (low noise, compact and elegant design for integration into the landscape) and durability of materials since the beginning.

We place great value on aspects such as customer proximity, innovative solutions, attractive design and French and Swiss quality. We fulfil the high expectations of our customers thanks to a workforce of more than 700 employees, large in-house production capacity and meticulous quality management.

Creating something unique and of lasting value, making owners proud of and that passengers love to use, have been our guiding principles and passion since our foundation. A success story followed by ever-expanding commercial activities and reference sites around the world.



## 1.1. MND Ropeways certifications

MND management manual describes the defined quality management system (QMS). Its use guarantees that all activities that impact the quality of the product are planned, managed and monitored and that the agreed requirements are fulfilled.

The QMS defines the company organization, project planning organization, project execution and integration of sub-contractors. MND has obtained with TUV Rheinland the ISO 9001 as well as the ISO 14001 certifications:



The canopy described meets the different standards below in which MND is engaged:

- EN15700: Safety for conveyor belts for winter sport or leisure use
- For France, the « Guide technique du STRMTG - Tapis roulants des stations de montagne » version 2 du 13 juillet 2017
- ANSI Code B77.1
- CSA Z98-19 Passenger Ropeway and Passenger Conveyors
- EN 1090 standard for weld quality
- The Environmental charter of the MND Group

## 1.2. Advantages and features of the MND Ropeways product:

- MND Ropeways has more than 20 years of experience in the design and construction of conveyor belts and canopies, having purchased and integrated the company Compac.
- The MND Ropeways canopies are manufactured in Spain, by Idderman
- The MND Ropeways canopies are divided in 3 parts, to ease the installation and permitting the customer to personalize the color of the roof or of the walls
- The production is made according to the quality process ISO 9001:2015 and 14001:2015
- The headquarter of MND Ropeways is based in Sainte H el ene du Lac, including an after sales service capable of responding to all types of lifts, in a very short time and with all the spare parts stored on site.



*Photos and illustrations are not contractually binding; plans and amenities are subject to change without notice due to constant product development.*

## 2. Design of the MND Ropeways Canopy

The canopy is designed and produced by the company Idderman.

Idderman controls all steps of the design and manufacturing process of its canopy. Thanks to its complete machinery park, Idderman carries out all the metalwork operations in its factory in Spain, where they have machines to manufacture every piece of the canopy: punching, folding, cutting, bending, welding and pre-assembly.



*Punching machine*



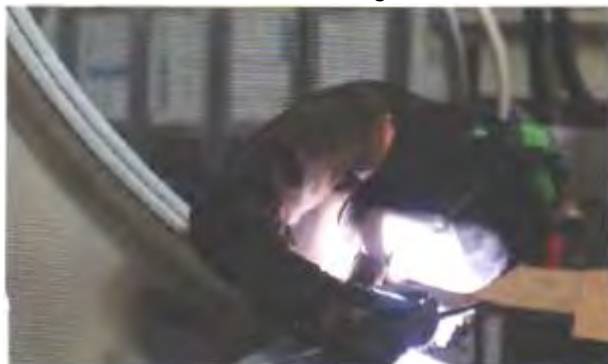
*Folding*



*Cutting*



*Bending*



*Welding*



*Assembling*

It's designed as a transparent canopy, resistant to most severe environmental conditions.

It's realized with an aluminium and polycarbonate structure, offering a perfect interior luminosity.

**In exclusivity for MND Ropeways**, Idderman realizes the **polycarbonate covering divided in 3 parts**.

The MND Ropeways canopy is available, as a **standard**, with an internal width of **2.400 mm** (at the conveyor level), to respect regulatory constraints.

As an option, it's available a **large version** with an internal width of **3.800 mm** (at the conveyor level) for larger conveyors or two conveyors side by side or one conveyor and a walking path.

**Emergency doors** are normally installed every 24 meters, except special requests, and available in the rigid hinged version or flexible and rolling.

As an option, it's possible to install **entry and exit doors**, flexible or rigid and lockable.

The general shape of the canopy gives it good rigidity and guarantees a **landscape integration** respectful of the environment. Moreover, the shape of the canopy gives it **good habitability**, while assuring the **total protection** of the skiers/persons transported.

Each tunnel module, 3 meters long, consists of a support basement, one or two arches and a polycarbonate covering divided in 3 parts: the roof and the 2 sides.

This gives the **advantage** that, if a polycarbonate sheet is damaged, it is easy to replace, easily removable and of standard dimensions. This allows you to **minimize maintenance costs**.



*Side view of the MND Ropeways canopy*

The MND Ropeways canopy is designed on a supporting structure, which stands on both sides on adjustable feet, supported by concrete slabs or sleepers.

It's intended to be **completely independent from the conveyor**: this permits the MND Ropeways canopy to cover all the conveyors on the market, independently from the manufacturer.

The sides are connected by steel beams passing under the conveyor.

In case of **covering of an existing conveyor**, it's possible to install the canopy **without disassembling** it: we only need 20 cm "empty space" under the conveyor structure.

**Removable sidewalks** ensure a flat connection between the conveyor and the edges of the canopy, permitting to access to the side of the conveyor for **maintenance** purposes.

These sidewalks are made with a fiberglass grating, with **anti-slip coating**, able to provide maximum adherence to the people who walk on it, but also to allow better **ventilation** inside the canopy.

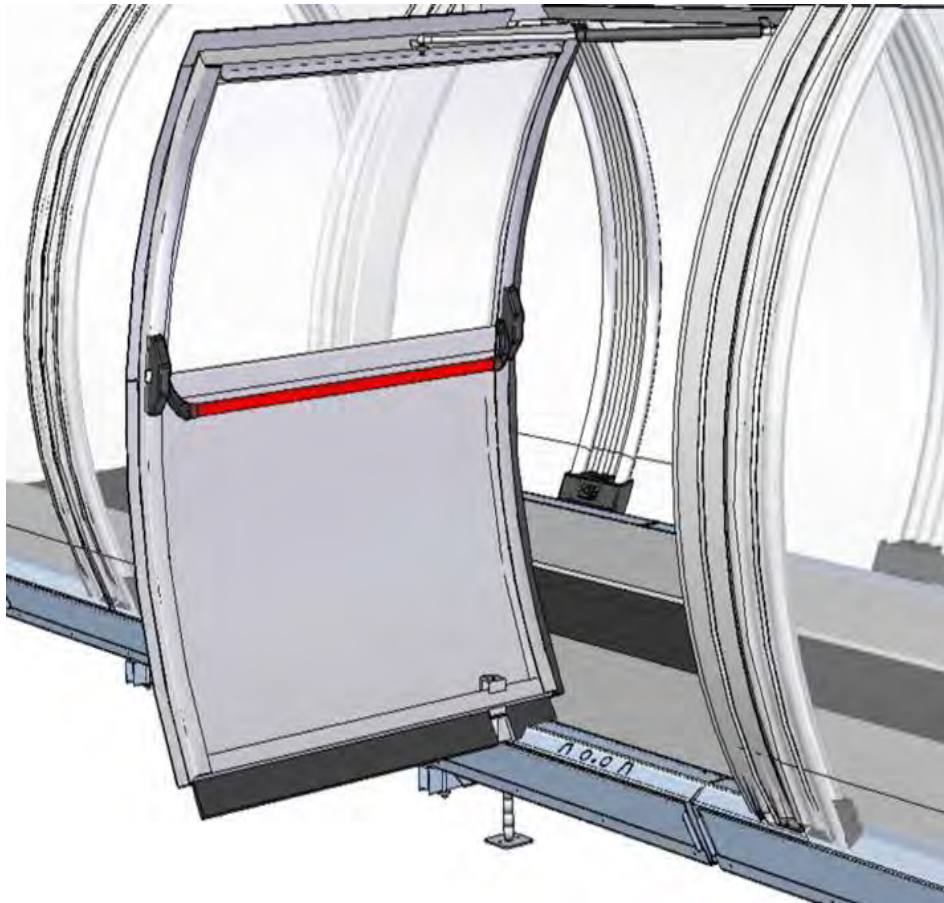
The **access doors** can be **flexible**, made with a PVC sheet with side zippers, or **rigid hinged** doors or with **rolling shutters** (manual or electric), allowing a complete closure of the canopy.

**Emergency exits** can be **flexible**, made by a PVC sheet, that will remain rolled up all the time during the operation, or made by **rigid hinged** doors.

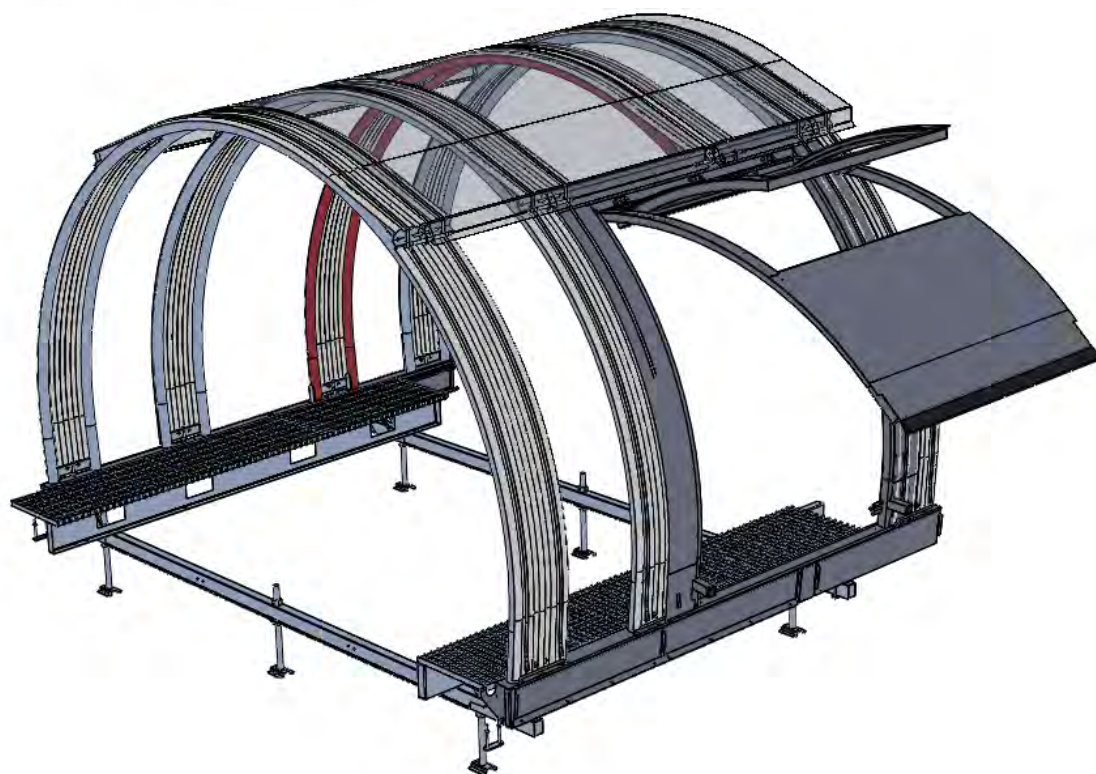
For the standard version, the emergency door is hinged vertically, while for the large version horizontally, to respect the correct heights requested by the norms.

Emergency exits can be positioned either on the right or left and they can be manipulated from inside or outside.

In addition, they have a window that can be kept open to ensure the ventilation of the canopy.



*Rigid hinged (vertically) emergency exit with window for the standard version*



*Rigid hinged (horizontally) emergency exit with window for the large version*

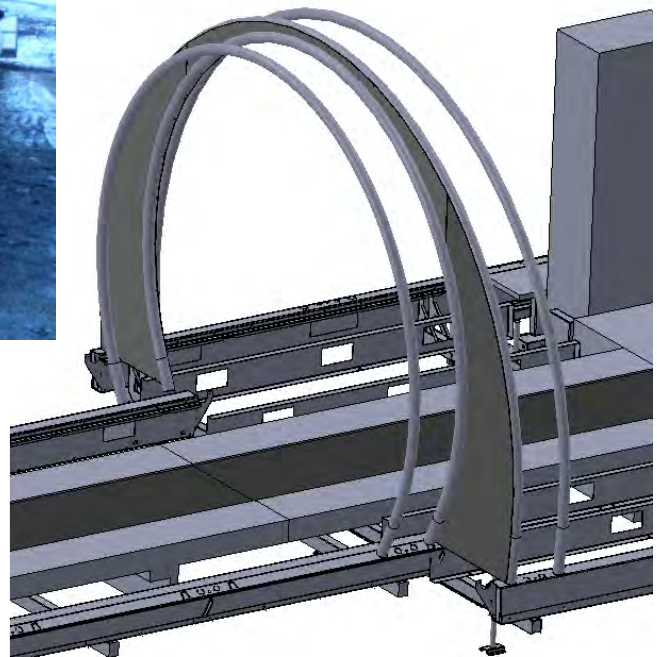


The cover of the top station is realized with the large version of the canopy to assure the right space for the electrical cabinet and for the operator that in this way can stand comfortably on both sides of the belt.

The transition between the large and the standard version of the canopy is made with an aluminium sheet, preassembled in the factory for a faster installation on site.



*Large canopy for the top station*



*Transition system between large and standard canopy at the top station*



*Rigid hinged access doors*



*Flexible PVC doors with side zippers for closing*



*Special doors can be designed on request*

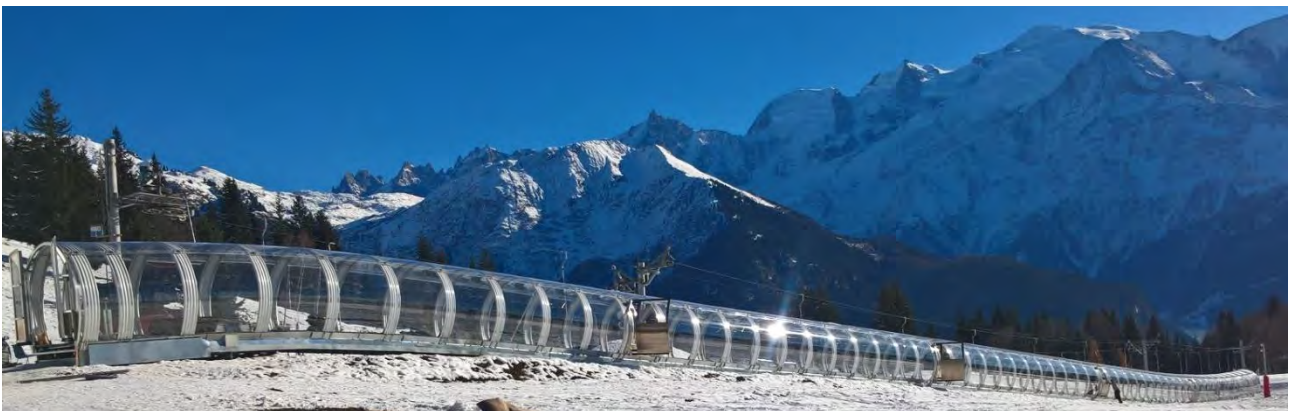




The cover skeleton is made of **aluminium tubes** on which aluminium arches are mounted and finally everything is covered by **polycarbonate sheets**, fixed with **stainless steel strips**.



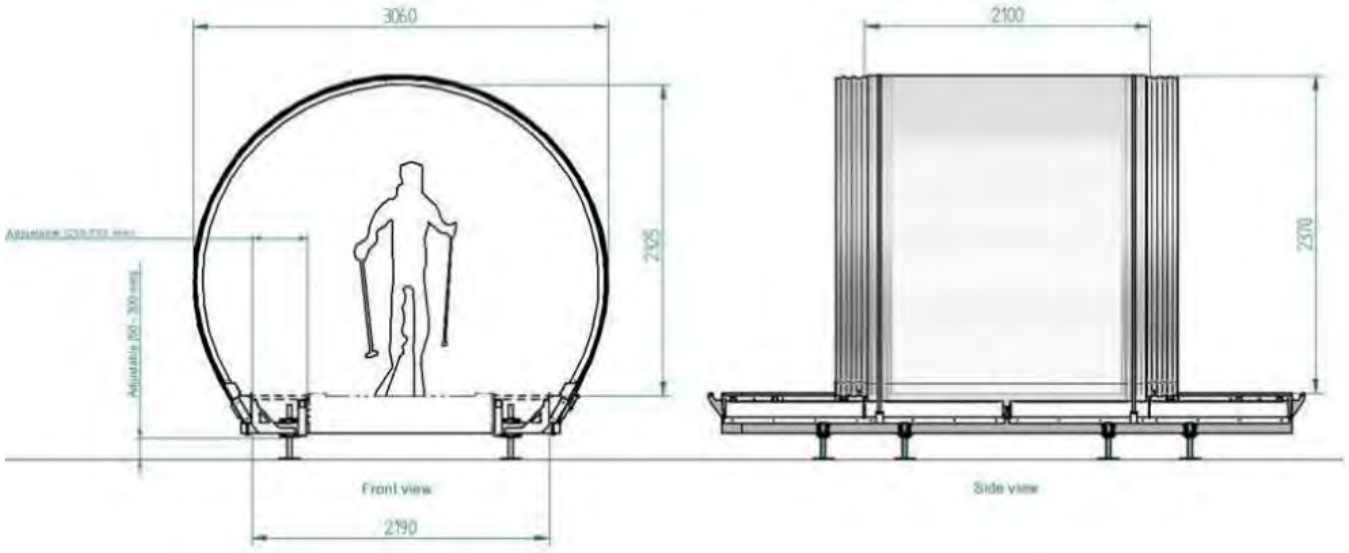
*Installation phases of the covering skeleton*



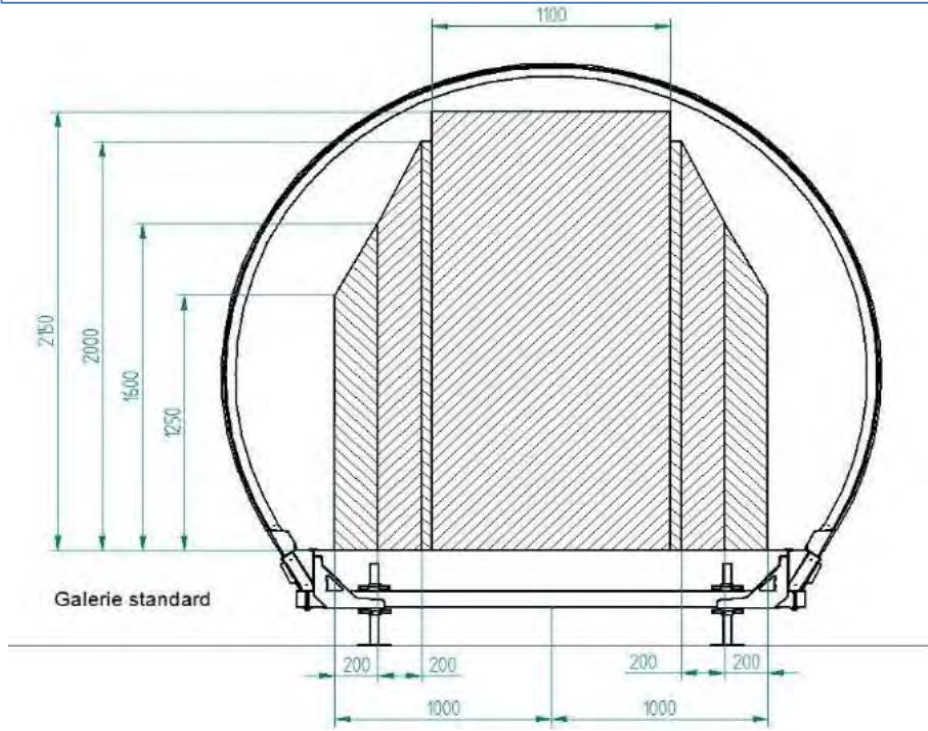
### 3. Dimensions

**Dimensions of the standard canopy along the line:**

STANDARD CANOPY  
MAIN EXTERNAL DIMENSIONS

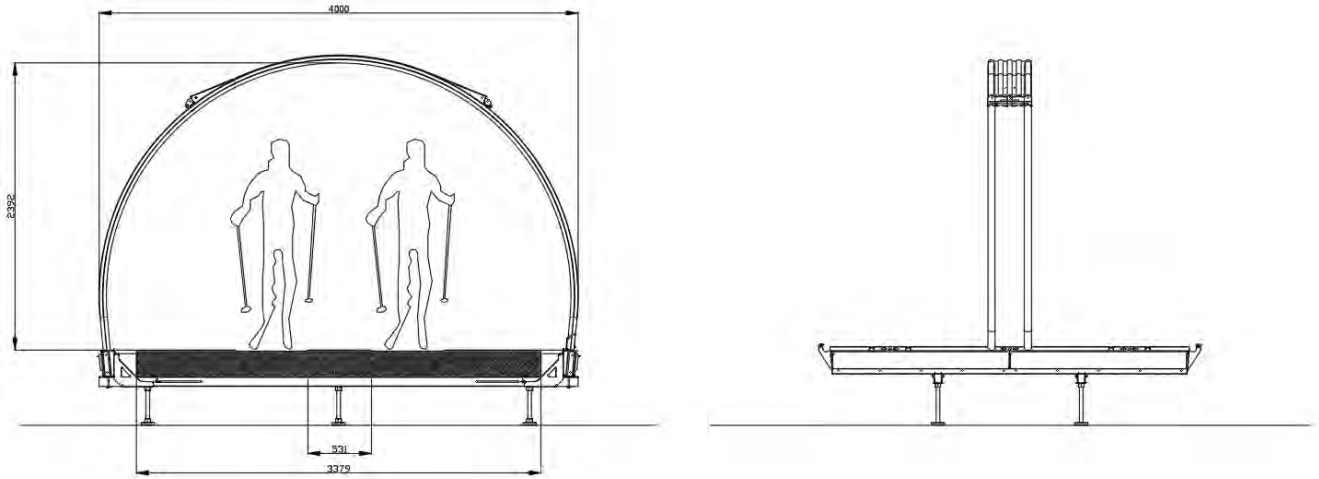


STANDARD CANOPY  
MAIN INTERNAL DIMENSIONS

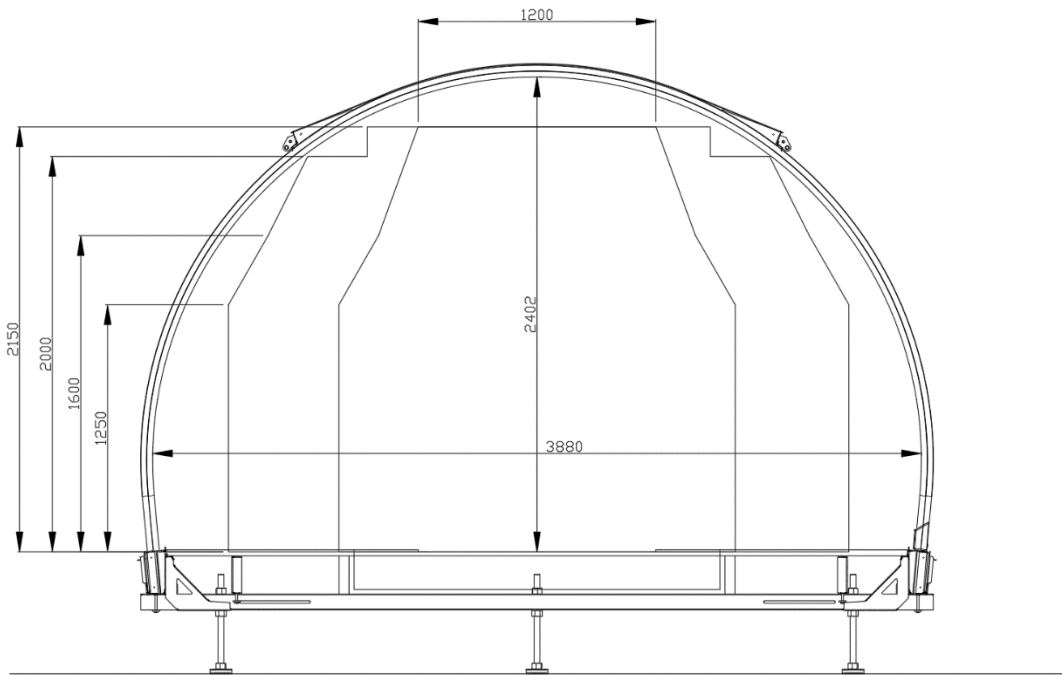


**Dimensions of the large canopy:**

**LARGE CANOPY  
MAIN EXTERNAL DIMENSIONS**



**LARGE CANOPY  
MAIN INTERNAL DIMENSIONS**



## 4. Anchorage of the canopy and fastening system

To resist to the most adverse weather conditions and snowfalls, the canopy must be anchored to the soil in a proper manner.

The design of the canopy and its foundations or anchors has been done to permit to withstand a **snow load of 5 kN/m<sup>2</sup>** and **lateral wind of 800 Pa**.

For the anchoring, depending on the type of ground and on the soil bearing capacity, there are several possibilities.

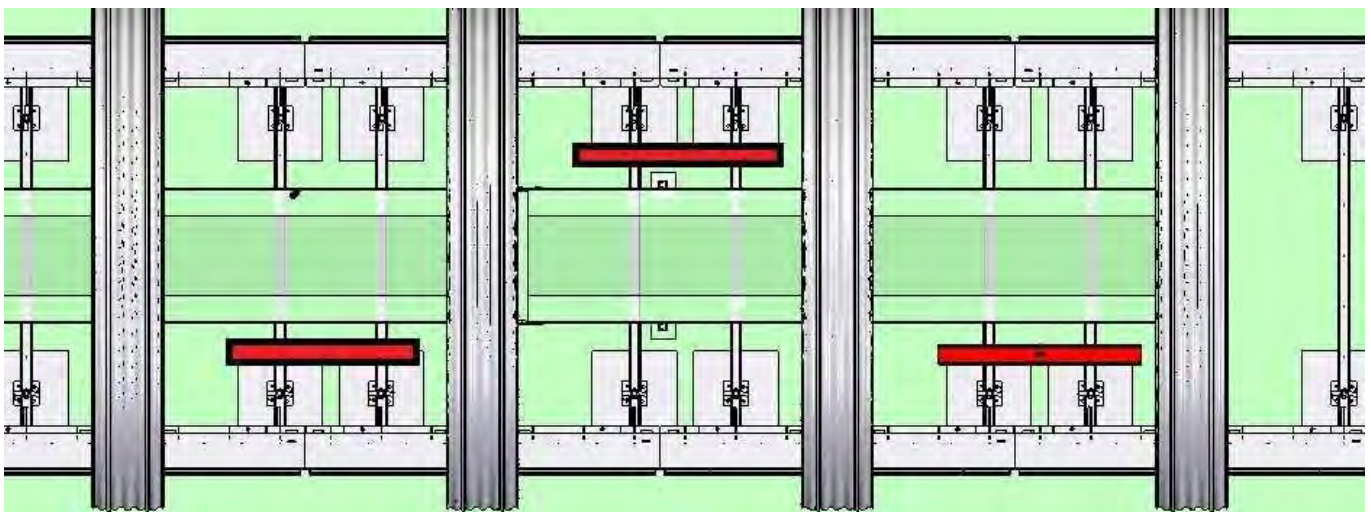
It's possible to use prefabricated **concrete counterweights**:



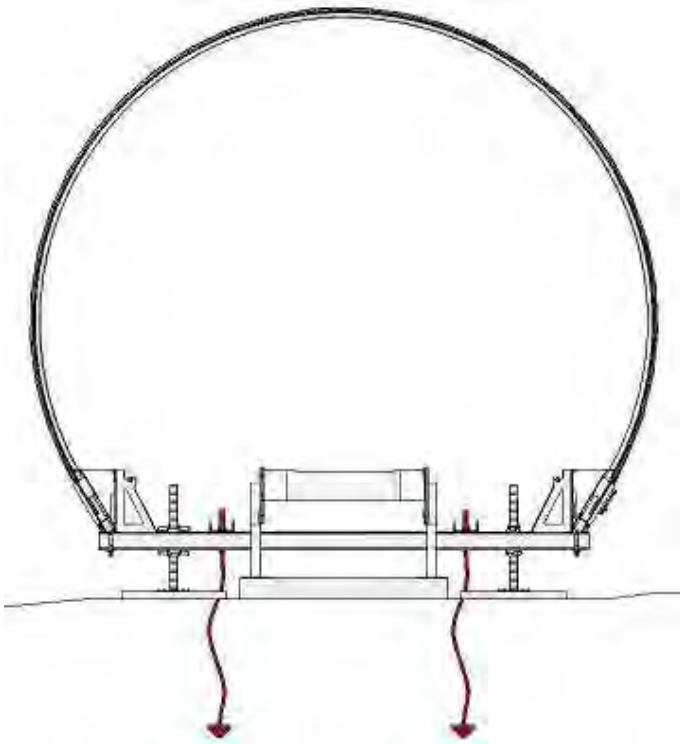
Otherwise, it's necessary to connect the transversal steel beams to the soil through an anchor positioned at regular intervals.

This can be a **Gewi rod** or a **Krinner screw** or a **Fenox rod**, installed between two cross members and fixed on a tubular profile (red in the picture hereunder).

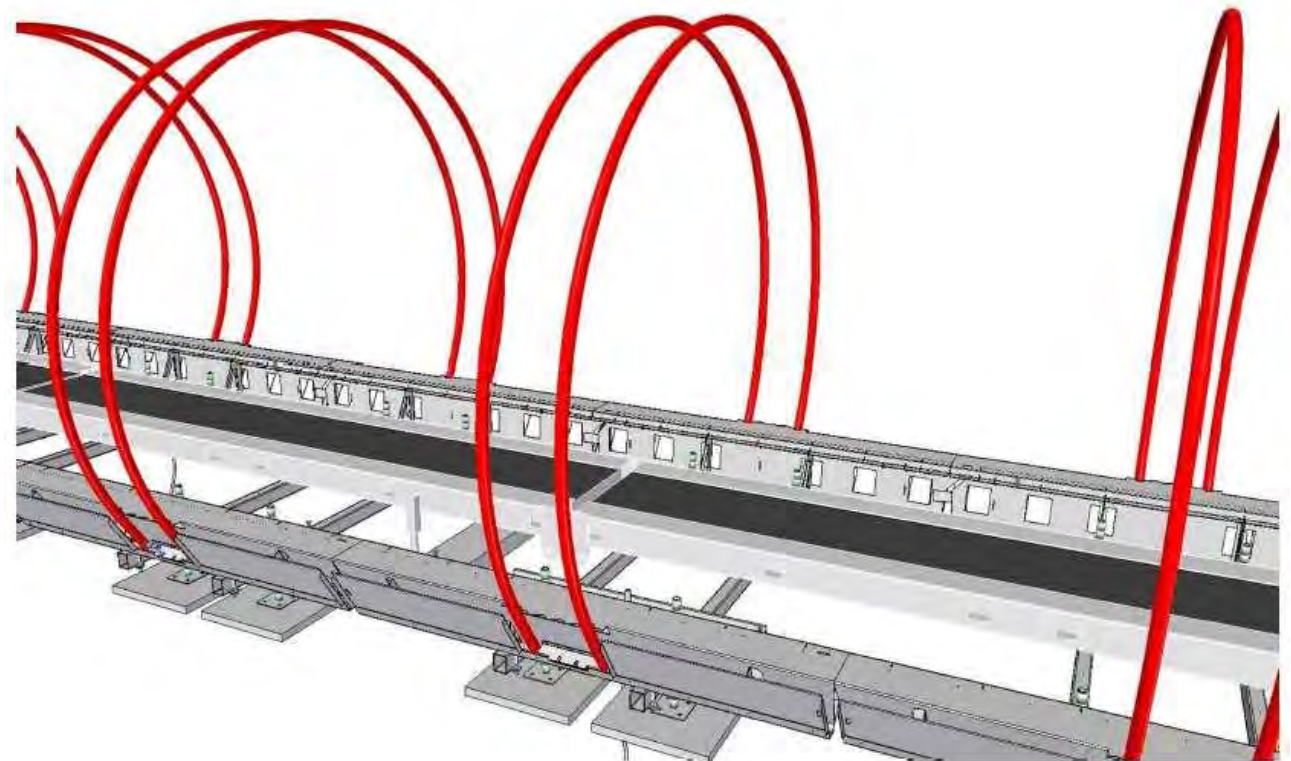
Depending on the type of ground and on the local wind conditions, there can be 1 anchor per module (every 3 meters) and staggered (see image below).



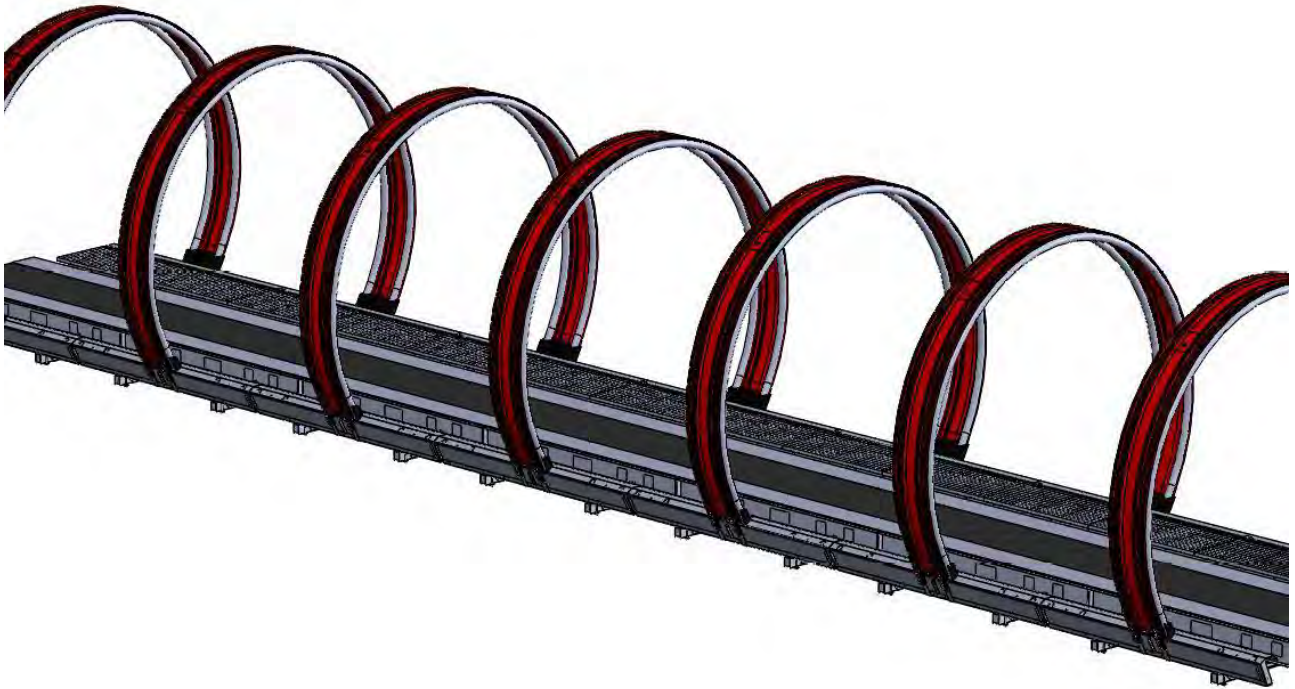
Or it's possible to have even 2 anchors per module, one on each side every 3 meters.



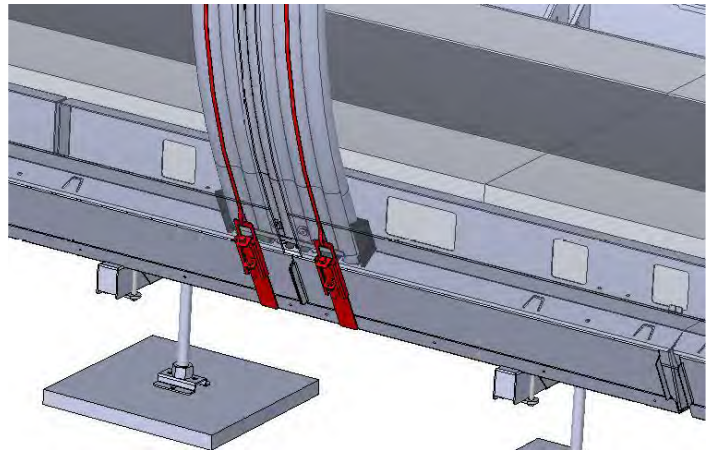
Between the longitudinal modules are positioned 2 aluminium tubes:



On these tubes is placed a corrugated sheet in aluminium attached on both sides.



Between two "arches", a polycarbonate sheet is positioned on the two bent corrugated sheets. The ends of this sheet come to "clip" on the lateral modules (rabbet). To secure the whole, two metal strips are placed on either side of the polycarbonate sheets. A **patented strip tensing system** is used to block them (see image).

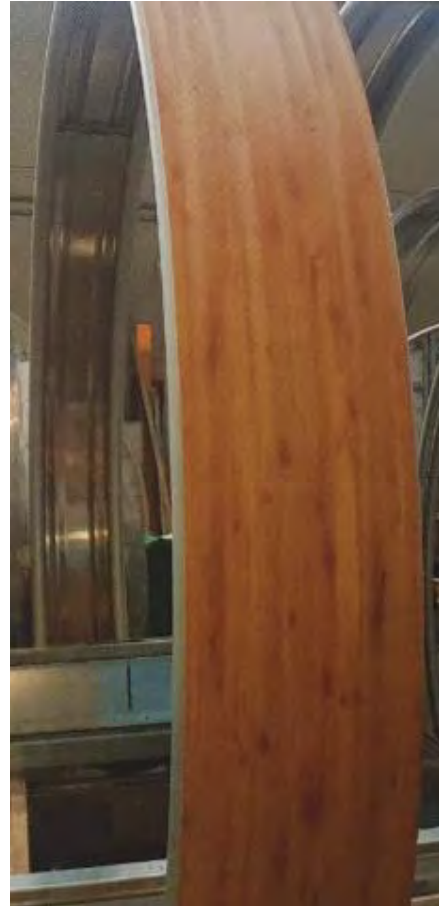


**Characteristics of materials:**

1. Corrugated aluminium sheet

Corrugated aluminium sheet, pre-painted, with a thickness of 1 mm, curved and corrugated.

The standard color is white but can be painted in **any RAL color** as an option or even **wooden textured**.



2. Reinforcement tubes

Aluminum tubes curved to create the shape of the canopy according to the minimum internal measurers recommended by the norm.

3. Compact transparent polycarbonate

Transparent **polycarbonate sheets, 5 mm thick**, supported on two consecutive arches.

Double-side UV protected.

Available, as an option, in different colors (i.e., blue roof and transparent sides)



4. Stainless steel strip

Stainless steel strip for perimetral fastening of each polycarbonate sheet. Each sheet of polycarbonate will be attached perimetrically to its two support arches by means of each strip fixed to the base in the places provided for this purpose.

5. Lateral modules

Steel plate, cut and folded, thickness 3 mm. This plate, once installed, is used to attach the stainless-steel strips and to protect the lower part of the polycarbonate.



## 5. Fire station

Canopies longer than 50 m can be equipped with a fire station.

It consists of a control box located at the top or bottom station of the conveyor, fire detectors (drive station, then every 50 m along the line), but also one or more sound diffusers distributed along the canopy (one at the bottom station, one at the top station and one every 150 m along the line).

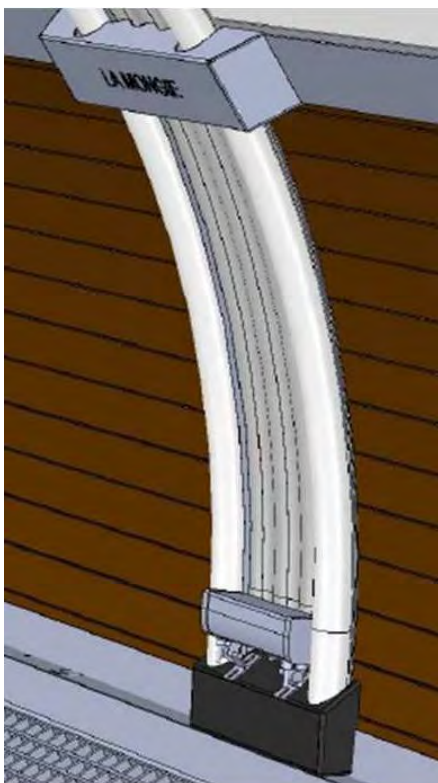
In case of fire detection, an alarm alerts the operator, as well as the users inside the canopy. In this case the operator must stop the operation and evacuate the people through the emergency exits.

The fire station must be checked annually by an approved controller (in accordance with the regulations in force for this type of equipment).

## 6. Lighting

In case of operation by night, it's possible to install a lighting system, made up of LED spotlights installed at the level of the arches.

A dedicated control box permits to choose different colors or change them randomly.





*Lighting examples*

## 7. Sound

As an option, loudspeakers can be positioned inside the canopy to broadcast sounds, music or messages.



*Loudspeaker's example*

## 8. Photovoltaic system

As an option it's possible to install a photovoltaic system on the canopy structure.



It consists of flexible panels, installed on an aluminium structure, able to produce 110-150 W each one.

Between 2 consecutive arches, it's possible to install 3 panels.

This means around 3 panels every 2 meters.

As a standard, MND Ropeways provides only the panels: all what concerns the transformation system (inverter, switches, wiring to the main network, etc....) and an eventual storage system is responsibility of the customer.

## 9. Signs

The canopy must be equipped with the signs recommended by the local authority.

MND Ropeways can deliver all of them upon request, with special support designed for this canopy:



## 10. Lower side covering

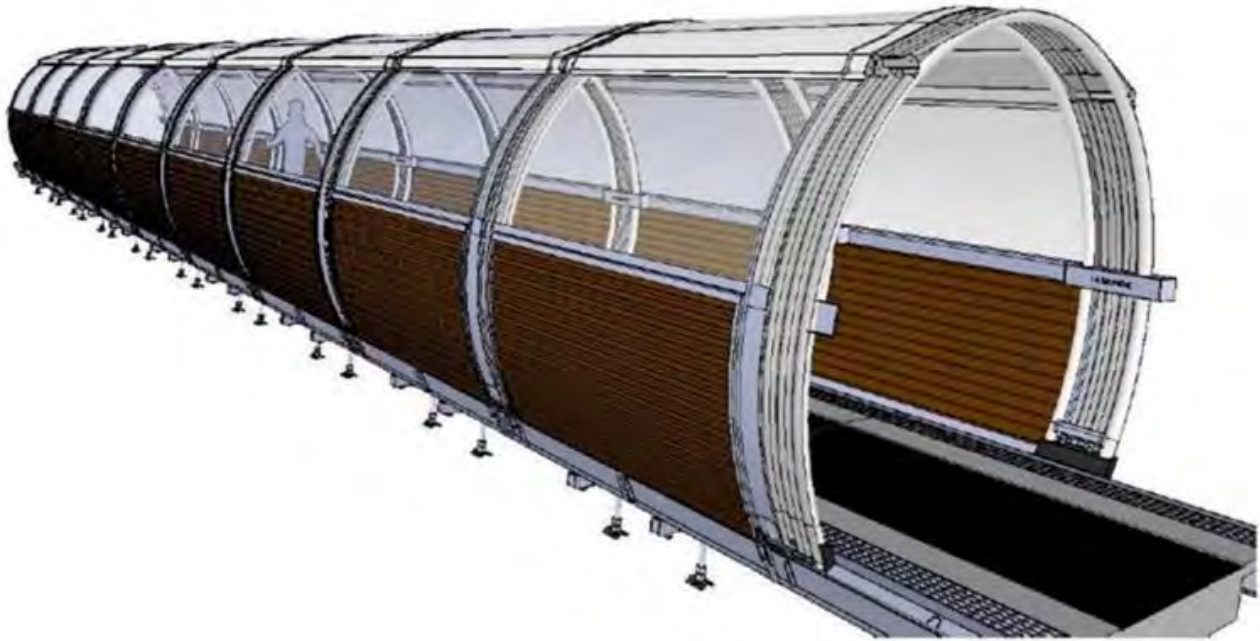
According to the norms, it's mandatory to close the lower side of the conveyor to prevent the access to dangerous moving parts.

When the conveyor is covered with a canopy, this side covering is transferred on the canopy sides and like for the conveyor it can be made of a PVC tarpaulin, or steel plates or wooden boards or straw bales or the ground itself, etc.....



## 11. Wooden base

It's also possible as an option to have wood siding in the lower half of the structure:



## 12. Logistic

Each piece of the canopy has been designed to optimize freight costs and to be quickly and easily installed.

It's possible to fit 100 meters of standard canopy inside a 40' container.



## 13. Special projects

The canopy can also be used for purposes other than the main purpose of covering a conveyor.

The possibilities are many, from the house for the start of a Ski World Cup race, as we did in Val d'Isère in 2018, to a control room for an electrical cabinet and the operator of the conveyor, to a dedicated path for the descent of pedestrians, on the side of rising carpet, separated by a handrail also equipped with emergency doors, to a lounge or bar on the snow, but even for the summer, etc....



2018 – Val d'Isère (France) – 2019 FIS Ski World Cup Start house





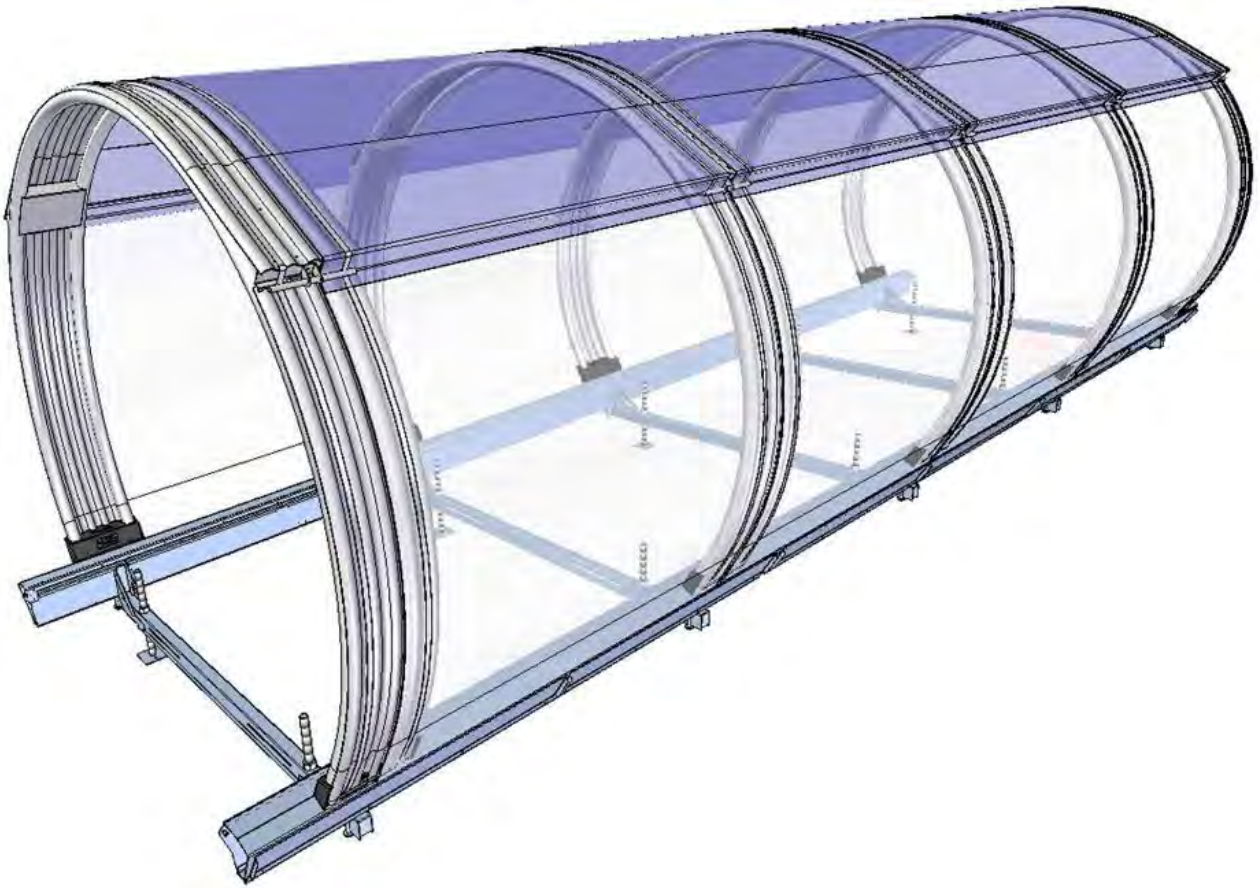


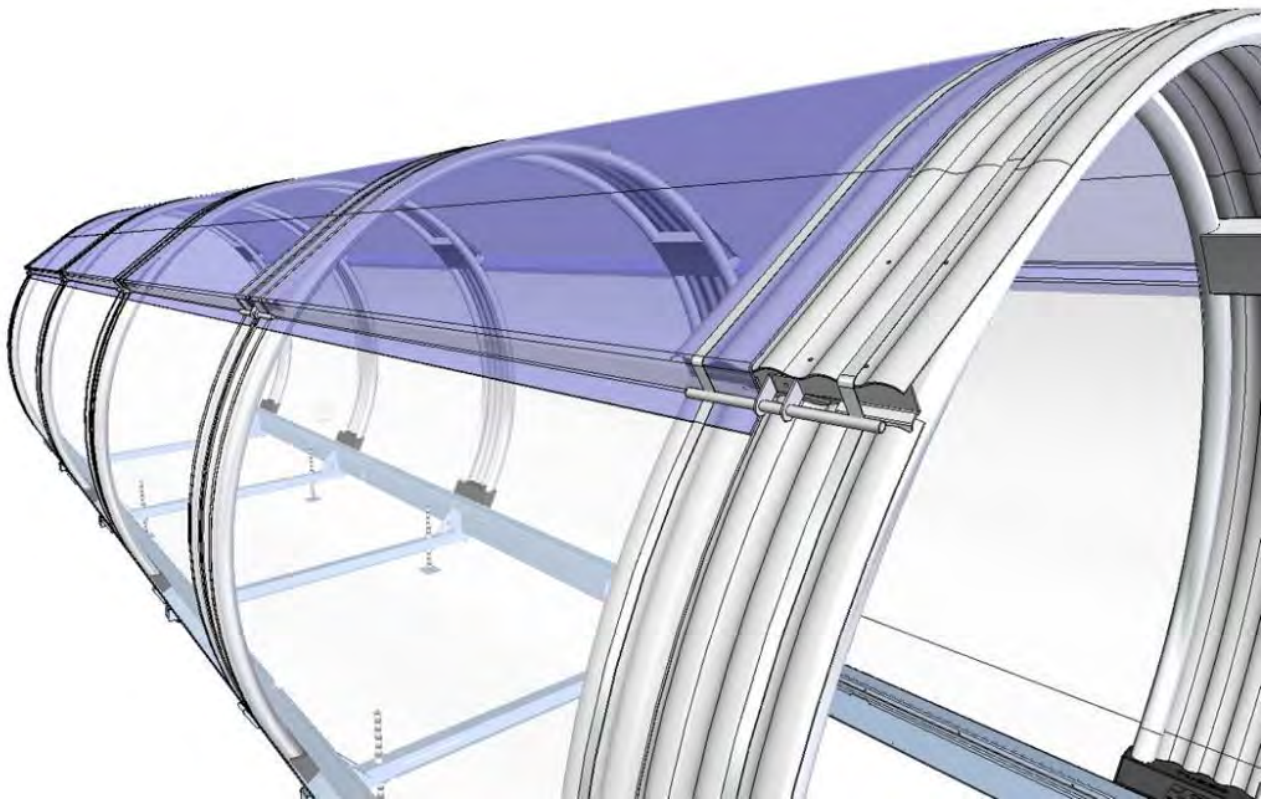
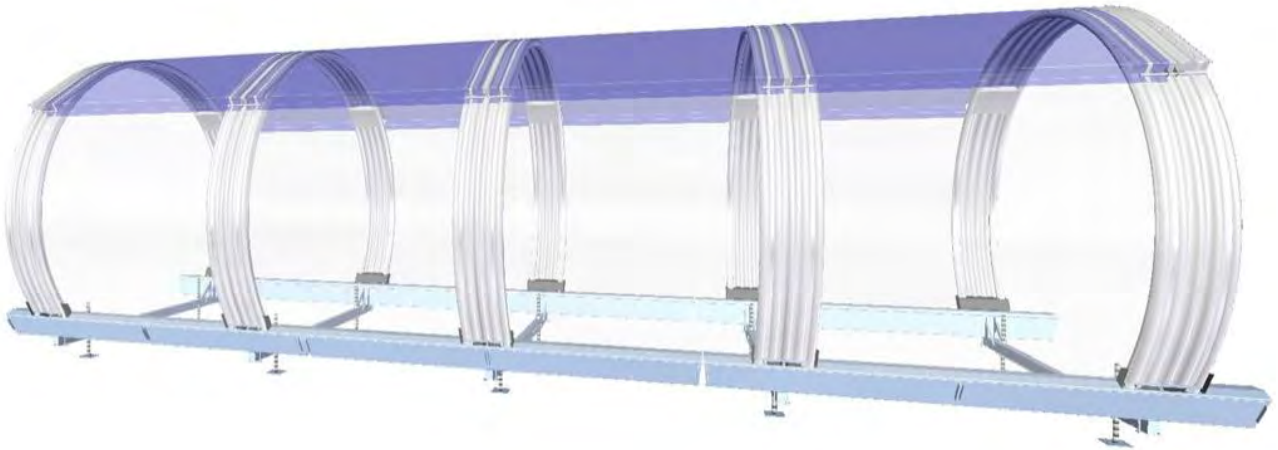


## 14. Examples of landscape integration



## 15. Drawings of the MND Ropeways Canopy





## 16. Some MND Ropeways installations

There are more than 200 canopies installed around the world (in France, Italy, Spain, Switzerland, Austria, Norway, Sweden, Finland, Russia, Slovenia, Turkey, Canada, Japan, South Korea, New Zealand, etc....), hereunder some photos of the MND Ropeways of the most representative.



2014 – Châtel (France) – Conveyor “Pré la Joux” – Length 220 m – Band width 760 mm



2015 – Tignes (France) – Conveyor « des Boisses » – Length 77 m – Band width 600 mm



2015 - Valfrejus (France) — Length 48 m – Band width 600 mm





*2015 - Barèges (France) - Canopy with wood siding – Length 120 m – Band width 600 mm*



*2016 - Chourchevel (France) – Length 68 m – Band width 600 mm*



*2016 – Saint Gervais (France) – Length 29 m – Band width 600 mm*



*2017 – Plaine Joux (France) – Length 113 m – Band width 600 mm*



2017 – Remarkables (New Zealand) – Length 160 m – Large canopy to cover 2 existing conveyors



2017 – Serre Chevalier (France) – Length 23+23 m – Band width 600 mm



*2017 – Arai (Japan) – Length 155 m – Band width 900 mm*



*2017 – Arai (Japan) – Length 155 m – Band width 900 mm*



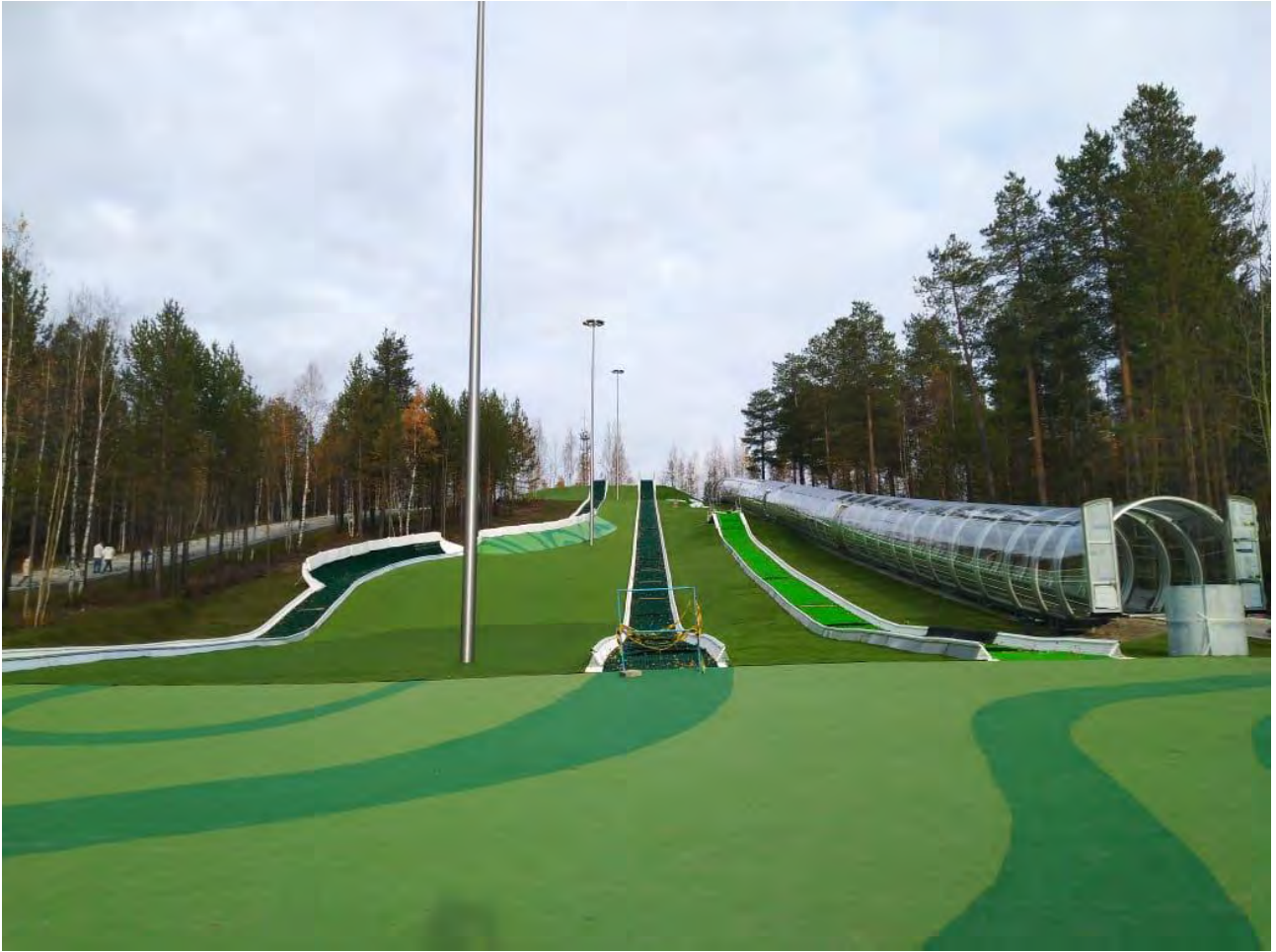
*2017 – Arai (Japan) – Length 155 m – Band width 900 mm*



2017 – Teine (Japan) – Length 116 m – Band width 600 mm



*2018 – Rogla (Slovenia) – Length 89 m – Band width 760 mm*



2019 – Noyabrsk (Russia) – Length 92 m – Band width 600 mm







# HOEDOWN HILL CONVEYORS 0924998

Annex n° 3

## SCOPE OF WORK

# 1. Scope of work

*This project and its associated price are based on the following delimitation of work and responsibilities between MND (and its eventual co-bidder, associates, sub-contractors, suppliers...) and the investor. Any item not specifically mentioned in this chart shall be considered as excluded of MND's scope of work.*

SCOPE OF WORK			
	MND	Subcontractor	Client
<b>Planning:</b>			
▪ Elaboration and creation of the ropeway project (conveyor calculation, longitudinal profile with details)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ Calculation of ropeway equipment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Conceptual plans for the stations with concrete pit	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Architects' fees	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Coordination activities with the technicians, designers, structural engineers and building managers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Checking of specifications	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Civil engineering calculations and plans, civil engineering dossier for civil engineering-related official, reinforcement and execution plans	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Geometry and geological surveys, staking out and measurement	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Civil engineering works	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Structural calculations for stations and foundation work on the line	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Site water and power	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Formwork and foundation plans, reinforcement schema, structural engineering blueprints	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Geological surveys of the finished foundations (zero measurement)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Electrical planner for network clarification	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Electrical planning / housing technology	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Approval:</b>	<b>MND</b>	<b>Subcontractor</b>	<b>Client</b>
▪ Preparation of the concession and planning approval documents for the electromechanical part	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Production and submission of operating permit documentation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Operating permit procedure	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Building and wayleave rights	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Clearing application and clearing work	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Construction permits	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Expert Opinion:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ Geological surveys	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Verification of civil engineering calculations (foundations) by independent experts	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Environmental surveys	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Avalanche and snow slide surveys	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Rescue assessments	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Fire safety reports	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Wind appraisals	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Environmental impact report	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Ecological building support	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Fees and taxes:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ Fees for construction permits and building registration	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ All administrative fees	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ All additional services required by the authorities following the quotation submission date	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Wages of the operating personnel during commissioning, trial operation and acceptance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Builders' liability insurance, construction industry insurance, property insurance against fire and natural hazards	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Constructional part:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ Land acquisition	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Local construction supervision other than for the electromechanical equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Steel structures for buildings other than those listed in the quotation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Snow clearing during the construction phase	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ All earthworks, demolition works, concrete works and masonry work	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Construction layout, excavation, backfilling, surrounding works, terrain correction work, planning, sowing, seeding	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Trench works for water, wastewater, etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Trench works for electricity, telephone, computer, cable routing supply lines, including pipe and wiring material	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Transformer, power and control rooms	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Sanitary facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Adaptations to existing constructions, renovation of existing infrastructure	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ All plumbing, roofing works, carpentry, joinery and plumbing installation services, water drains	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Heating and ventilation of power and transformer room	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

▪ Draining of wetlands and re-routing of water	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Shore protection measures for existing bodies of water	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Additional measures as a result of geological problems (slope stability, installation of displacement chassis, etc. protection against other natural hazards	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Fire extinguishers, fire-hose cabinets, fire alarm system, fire safety measures	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Electrical engineering:</b>	<b>MND</b>	<b>Subcontractor</b>	<b>Client</b>
▪ Energy costs and any emergency generators during assembly, commissioning and acceptance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Telecommunications connections	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Transformer station including separate mains transformer for frequency converters	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Power connection to main system switch as well as mains fuse	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ External control points and emergency stop buttons, including wiring in the stations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Electrical supply lines to stations, protection and control for lighting on the lift line	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Installation of fiber optic cables for networking the stations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Earthing of stations (connection to building structure)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Indoor installations (lighting, etc.), including installation material	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Ductwork including feeder wires between the control cabinet, control room and station	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Cabling between the control cabinet, control room and station (ropeway equipment)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Lightning protection for buildings	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Transfer of existing power lines	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Public telephone system	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Radio communications	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Transport:</b>	<b>MND</b>	<b>Subcontractor</b>	<b>Client</b>
▪ Transport from the plant to the building site in accordance with service specifications, quotation (crane, logistic, storage yard, safety storage)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Any costs for road and crop damage	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Transport insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Provision of free access to the building site	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Provision of assembly and material landfill sites free of charge	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Assembly:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ Assembly of electromechanical equipment including expenses	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Snow clearing during the assembly phase	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Any enclosures required during the construction and assembly phase, construction site security	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Assembly insurance for electromechanical equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Levelling of lift line and stations with surveyors	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Supervision of the installation works	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Safety equipment, protective measures:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ Safety and protective nets	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Flight obstacle markings	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Any protection structures for high-voltage lines	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Mobile safety equipment and public guidance systems	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Additionally required construction protection measures during the construction phase (personal protection measures and construction protection measures)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Information:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ General warning signs, station signs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Ropeway-specific warning signs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
▪ Passenger information, illuminated display	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Infrastructure:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ Workshop equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Ticket windows	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Control room	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Power room	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Toilet facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Ticket machines	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Turnstiles, entry barriers	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Parking lot management equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Acceptance:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
▪ Electricity for trial operation and acceptance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ Test rides	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<ul style="list-style-type: none"> <li>Training for operating personnel during assembly and commissioning of the system</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Provision of an engineer during acceptance of electromechanical equipment</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Provision of an electromechanical engineer by the control engineer during acceptance of electrical equipment</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>Provision of staff for trial operation and tests for operating the ropeway (following electrical commissioning)</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>Notice of readiness for acceptance including performance of trial operation</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Additional and follow-on costs:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
<ul style="list-style-type: none"> <li>Maintenance and inspection work</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>Electrical, hydraulic and mechanical spare parts</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Documents:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
<ul style="list-style-type: none"> <li>Creation of all detailed plans for the ropeway equipment</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Submission of operation and maintenance instructions</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Submission of final longitudinal profile</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Submission of ropeway calculation</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Submission of system drawings (relevant combinations) in simple form, hydraulic diagram</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Submission of electrical circuit diagrams</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Submission of necessary documents for the electromechanical system equipment to the authorities, experts and inspection engineers</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Miscellaneous:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
<ul style="list-style-type: none"> <li>Noise protection measures</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>Inspection and discussion of completion and guarantee work</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>Free access to the building site must be ensured for all MND employees</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>All services in general that are not specified explicitly in the service delimitation</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>Project changes and conditions that are not included in the offer</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other:</b>	<b>MND</b>	<b>Subcon tractor</b>	<b>Client</b>
<ul style="list-style-type: none"> <li>Catering (lunch) for staff working on the project</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li>Accommodation and catering for staff working on the project</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> <li></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



#### ARTICLE 1 - Opposability

When ordering to a company of the Montagne et Neige Développement group (hereinafter referred to as "the Company"), the Customer unreservedly accepts the present general conditions to the exclusion of any other document. Notably, the Customer expressly declares that he renounces his own general conditions. So, any contrary condition of the Customer will be, for lack of express acceptance by the Company or of a mention in the acknowledgment of receipt of the order mentioned in the article 2.1 or in the accepted estimate mentioned in the article 2.2, non-invocable to the latter.

The Customer accepts that the Company could change later and reasonably the present general conditions and that their relationship will be always subject to the last conditions in force the day of the order.

#### ARTICLE 2 - Drawing up of contracts

2.1. Any products delivery must be preceded by an order from the Customer that could be an order form or an accepted estimate, knowing that estimates are valid for 30 days from date of estimate. As soon as the Company has received the acknowledgment of receipt of the order, duly signed by the Customer, the contract is drawn up. However, if the Company does not receive this signed document within the business 24 hours from the sending of the acknowledgment of receipt of the order, it could consider that the contract is concluded, as **the Customer's silence is acceptance. Once the contract is drawn up, no invalidation or amendment will be accepted and the cost will be owed.**

2.2. Services (installation, maintenance, study, **assistance...**) can lead to a previous estimate sent by fax or e-mail to the Customer. This estimate is valid 30 days from date of estimate. For a firm order, the estimate must be signed as agreed, without reserve, by the Customer and sent back to the Company by fax or e-mail.

#### ARTICLE 3 - Price - Financial conditions

3.1. The price is based on the current rate when the order is placed (this rate will be enclosed to the present conditions on Customer's request) or, if need be, it is the one indicated on the acknowledgment of receipt of the order accepted in accordance with the article 2.1 for the products and the one on the estimate previously accepted by the Customer as indicated at the article 2.2 for services.

Prices are EX WORKS (2000 CCI Incoterms) the Company workshop, firm, net, before taxes and charges. No discount will be granted for an early payment.

3.2. The price is payable at forty five (45) days net from date of invoice. No discount will be granted for an early payment.

3.3. In accordance with the law n°2008-776 (08/08/04) late payment entails a penalty equal to the rate of EURIBOR at its last refinancing operation +10 points. In case of partial delivery, the non-delivery or the balance carried forward cannot delay, under no circumstances, the payment of the delivered part. As a general rule, the Customer cannot refer to any cause to defer or modify the terms of payment, especially a dispute on the products quality or nonconformity or a delivery delay. If an invoice is not paid when due, the Company could suspend the realization of its obligations, suspend or cancel current orders and/or require the immediate payment of the owed remaining balance.

#### ARTICLE 4 - Delivery - Receipt

Delivery times are for information only, and the Customer would not take advantage of it to demand the cancellation of the order, penalties or compensations and/or to refuse to pay the price.

Products are delivered EX WORKS (2000 CCI Incoterms) the Company workshop. If the Company takes care of the transport to the site indicated on the acknowledgment of receipt of the order signed by the Customer, it is only as the representative of the Customer. Delivery costs are so fully charged to the Customer.

The Customer commits himself to control the goods during the delivery and, in case of noticed defects or deteriorations or missing products, to write precise reserves on the delivery slip, in the presence of the driver, during the unloading of the delivered goods and to confirm these reserves to the carrier by registered letter with AR within the 48 hours from the delivery. Once this time is over, no contesting will be accepted and the Customer expressly renounces to bring an action concerning these charges against the Company.

If need be, at the date planned by the parties, for reasons no imputable to the Company, if tests and/or the control have not been done in presence of the Customer, he will be deemed to have taken delivery of the work and the minutes will be signed only by the Company. It will be like an acceptance minutes with all referring consequences.

#### ARTICLE 5 - Reserve of ownership - Risks

**THE TRANSFER OF OWNERSHIP OF THE PRODUCTS DELIVERED BY THE COMPANY TO THE CUSTOMER WILL TAKE PLACE ONLY AFTER THE FULL PAYMENT OF THE PRICE BY THE LATTER.**

The Customer commits himself to create an easy identification of the delivered products for the Company.

In case of demand, received early payments will be kept definitively by the Company as an inclusive compensation, without including any other action that the Company could bring.

However, the transfer of risks will take place according to the chosen INCOTERM. Thus, the Customer will insure risks and event liability such as, theft, destruction, damages on products or made by products, after the transfer of risks. It is not an exhaustive list.

#### ARTICLE 6 - Guarantee - Liability

6.1. The Customer must pass on, to the Company, the characteristics of the products and services that correspond to his needs, especially market and technical information necessary to understand perfectly the required installation (location, photographs, **installation maps...**) and control that these characteristics correspond exactly to his expectations. The Customer is thus deemed to know exactly the products and/or services he buys and recognizes that he has been able to obtain information concerning the ordered ones. He is notably the only one responsible for the choice of the installation site for the products.

6.2. The Company commits itself to guarantee the Customer against any defect and/or fault for the duration indicated on the acknowledgment of receipt of the order, from the delivery of the product defined in the article 4.

During the defects liability period, the Company could choose between replacing the faulty product at its own expense or repairing it, excluding return transport costs. In the case the Company does not install, only costs of pieces are guaranteed, excluding all labour costs. The guarantee does not apply to the defect and/or fault due to the fair wear of products, a use of products that is not in conformity with the operating conditions in the technical documents, with the Company recommendations or all uses, laws and regulations in force, a defect of maintenance, a negligence, the installation and/or removal and/or changes of accessories, pieces or any other device on products by the Customer without previous written authorization from the Company.

**6.3. THE COMPANY DOES NOT TAKE ON ANY OTHER OBLIGATION OF GUARANTEE, EXPRESS OR IMPLICIT, THAN THE ONE STIPULATED IN THE ARTICLE 6.2.**

In case of doubt about interpreting a clause, the Customer recognizes that the Company obligations mean due cares.

Without questioning the article 4 and on condition of a wilful misconduct, the Company liability cannot, under no circumstances, be held towards the Customer when the delivered products are in conformity with the order and when services are in conformity with the rule book, especially if the Customer does not respect the installation, use, maintenance and/or safety instructions applicable to the products or when the damage is due to a defect in the products installation or maintenance that has not been made by the Company.

In any case, the Company could not be hold responsible towards the Customer or a third party, for any indirect damage, especially loss of exploitation, loss of customers, commercial loss, damage to the public image, resulting from the holding or use of products or services.

In any event, on condition of a wilful misconduct, the Company liability could not exceed, under no circumstances, the price paid by the Customer in compensation of its obligations.

The Company could always prevent a liability action by putting in conformity or replacing the product that is not in conformity.

Any commitment of the Company liability by the Customer will be subjected to a registered letter with AR sent within the 48 hours of the alleged nonfulfillment. This contesting will be precisely justified. If the Customer does not act like this, it means that he renounces to rely on the Company liability.

#### ARTICLE 7 - Maintenance - Security

Some products need, to guarantee goods and people security, a regular maintenance according to the terms written in the standards and/or manuals that are applicable to the products. The Customer declares that he knows them perfectly. The Customer must call out the Company to realize this safety maintenance before the end of each recommended expiry date. If the Customer does not respect the recommended maintenance calendar, the Company is exempted from any liability, especially in case of accident.

As a general rule, the Customer has the exclusive liability to control frequently the condition and wear of the products to be sure that they are in conformity with the standards and/or manuals that are applicable to them.

#### ARTICLE 8 - Intellectual property - Drawings

All drawings, documents and technical data given by the Company to the Customer, as well as, if need be, the referring intellectual property rights remains the exclusive property of the Company. The Customer could not thus communicate them to third parties without previous authorization of the Company.

#### ARTICLE 9 - Force majeure

If a case of force majeure occurs, it leads to the immediate suspension of the contract execution. If it lasts more than 60 days, the contract could be terminated by one party without compensation for any party.

Are expressly considered as cases of force majeure: exceptional bad weather, natural disasters, attacks, strikes, lock-out, riots, war, international difficulties, requisitioning, fires or floods in the premises of the Company or of one of its own suppliers, transport interruption or delays, important incident on the production devices, import restraints.

#### ARTICLE 10 - Evidence

In case of dispute, parties accept to consider that the fax and e-mail are original written documents and perfect evidences and renounce to contest this means of evidence.

#### ARTICLE 11 - Disputes

The present general conditions are subject to French law.  
**ALL DISPUTES RESULTING FROM THE OPERATIONS AIMED BY THE PRESENT GENERAL CONDITIONS WILL BE SUBJECT TO THE COMMERCIAL COURT OF THE REGISTERED OFFICE OF THE COMPANY, WHICH IS EXPRESSLY ACCEPTED BY THE CUSTOMER.**





**RAINDANCE METROPOLITAN DISTRICT NO. 1**  
**PURCHASE CONTRACT (Annex 5)**

**Name of Provider: MND France S.a.S.**

**Title of Project: MDN Ropeways Conveyor – Hoe Down Hill Tubing**

**Agreement/Contract Date: March 10, 2023**

This Addendum (“Addendum”) is made by and between RAINDANCE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) and the above-referenced Provider, provider, or other consultant (the “Provider”).

1. Introduction. The District and the Provider have entered into an “Agreement” to which the present Purchase contract is attached. This Addendum shall be effective as of the same date as the Agreement.
2. Incorporation and Effect. This Addendum is hereby made a part of, and incorporated into, the Agreement as though fully set forth therein.
3. Governing Law / Disputes. The Agreement and this Addendum and all claims or controversies arising out of or relating to the Agreement or this Addendum shall be governed and construed in accordance with the law of the State of Colorado, 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. Venue for all actions shall be in the District Court in and for the county in which the District is located.
4. 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 obligations of the District under the Agreement and this Addendum are subject to annual budgeting and appropriations, and the Provider expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of District’s governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of the Agreement and this Addendum and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Provider understand and intend that the Districts’ 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.
5. Governmental Immunity. Nothing in the Agreement or this Addendum 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, Providers, 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, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
6. Remedies. To the extent the Provider’s remedies for a District default under the 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 District’s then current fiscal period.
7. Assignability. The District shall have the right to assign the Agreement to a third party upon written notice to the Provider.



8. Negotiated Provisions. This Addendum 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 substantially and materially to the preparation of this Addendum.
9. Severability. If any portion of the Agreement or this Addendum is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Addendum a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
10. Counterpart Execution. This Addendum 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.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Addendum.

DISTRICT:


RAINDANCE METROPOLITAN DISTRICT NO. 1, a  
quasi-municipal corporation and political subdivision of the  
State of Colorado

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Officer of the District

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

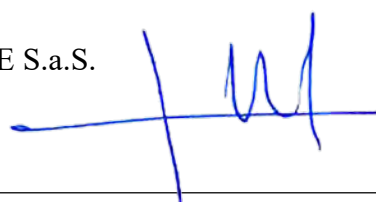


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General Counsel to the District

PROVIDER:

MND FRANCE S.a.S.



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Founder and CEO