

## CONSULTANT AGREEMENT

THIS CONSULTANT AGREEMENT (“Agreement”) is made and entered into effective this 11th day of November, 2021 (the “Agreement Date”) by and between:

### **“DISTRICT”**

Name: SPRING MESA METROPOLITAN DISTRICT  
Address: c/o Spencer Fane LLP, 1700 Lincoln Street, Suite 2000, Denver, CO 80203  
Phone: (303) 839-3845

### **“CONSULTANT”**

Name: METCO LANDSCAPE, LLC  
Address: 2200 Rifle Street, Aurora, CO 80111  
Phone: (303) 421-3100  
Representative: Ed O’Brien

**DESCRIPTION OF SERVICES:** CONSULTANT shall provide snow removal services, as further described in **Exhibit A**, attached hereto and incorporated herein by this reference (hereinafter called the “SERVICES”) and in accordance with this Agreement. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of Exhibit A, the terms and provisions of this Agreement shall govern, supersede, and control. CONSULTANT may, at its discretion and at any stage, engage subconsultants to perform all or any part of the SERVICES upon written consent of DISTRICT.

**DESCRIPTION OF DISTRICT:** The DISTRICT is a quasi-municipal political subdivision of the State of Colorado. The DISTRICT confirms and agrees that the DISTRICT has authority to enter into this Agreement on its own behalf.

**COMPENSATION:** Charges for the SERVICES rendered will be made in accordance with the contract price and rates set forth in **Exhibit A**. Invoices shall be paid by the DISTRICT within 30 days of receipt subject to setoff regarding any SERVICES that are in dispute. Failure to make any payment when due may be deemed a material breach of this Agreement and will entitle CONSULTANT, at its option, to suspend or terminate this Agreement and the provision of the SERVICES. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest.

**NOTICES:** All notices, consents, and approvals required to be given hereunder shall be in writing and shall be given to the representatives of each party. All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within two (2) business days if made in writing to the other party by certified mail, email, facsimile, addressed to the regular business address of such party as identified above.

**DISTRICT RESPONSIBILITIES:** The DISTRICT shall make available to CONSULTANT all relevant information or data which is required by CONSULTANT to perform the SERVICES. CONSULTANT shall be entitled to reasonably rely upon the accuracy and completeness of

all information and data furnished by the DISTRICT, including information and data originating with other consultants employed by the DISTRICT whether such consultants are engaged at the request of CONSULTANT or otherwise. Where such information or data originates either with the DISTRICT or its consultants then CONSULTANT shall not be responsible to the DISTRICT for the consequences of any error or omission contained therein.

When applicable, the DISTRICT shall arrange and make provision for CONSULTANT'S entry to public and private property as necessary for CONSULTANT to perform the SERVICES. Unless specifically required of CONSULTANT in the description of the SERVICES, the DISTRICT shall obtain any required approvals, licenses and permits from governmental or other authorities having jurisdiction over the SERVICES so as not to delay CONSULTANT in the performance of the SERVICES.

**CONSULTANT RESPONSIBILITIES:** CONSULTANT shall furnish the necessary qualified personnel to provide the SERVICES. CONSULTANT represents that it has access to the experience and capability necessary to and agrees to perform the SERVICES with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the SERVICES at the time when and the location in which the SERVICES were performed. CONSULTANT will be liable for its failure to exercise diligence, reasonable care and professional skill. This standard of care is the sole and exclusive standard of care that will be applied to measure CONSULTANT's performance. There are no other representations or warranties expressed or implied made by CONSULTANT.

In performing the SERVICES under this Agreement, CONSULTANT shall operate as and have the status of an independent contractor and shall not act as, or be an employee of the DISTRICT.

The SERVICES performed by CONSULTANT shall be subject to the inspection and the review of the DISTRICT at all times but such inspection and review shall not relieve CONSULTANT from its responsibility for the proper performance of the SERVICES.

**TERMINATION:** Either party may terminate this Agreement without cause upon thirty (30) days' notice in writing. If either party breaches this Agreement, the non-defaulting party may terminate this Agreement after giving seven (7) days' notice to the breaching party to remedy the breach. On termination of this Agreement, the DISTRICT shall forthwith pay CONSULTANT for the SERVICES performed to the date of termination. Non-payment by the DISTRICT of CONSULTANT's invoices within 30 days of CONSULTANT rendering same is agreed to constitute a material breach of this Agreement and, upon written notice as prescribed above, the duties, obligations and responsibilities of CONSULTANT are terminated.

**LAWS, ORDINANCES, AND OTHER PUBLIC REGULATIONS:** CONSULTANT shall observe and comply with all applicable laws, ordinances, codes and regulations of government agencies, including federal, state, provincial, municipal and local governing bodies having jurisdiction over the conduct of the SERVICES. CONSULTANT shall continue to provide equal employment opportunity to all qualified persons and to recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

**FORCE MAJEURE:** Any default in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

**DISPUTE RESOLUTION:** If requested in writing by either the DISTRICT or CONSULTANT, the DISTRICT and CONSULTANT shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, the dispute shall be referred to arbitration pursuant to laws of the jurisdiction in which the majority of the SERVICES are performed or elsewhere by mutual agreement.

**ATTORNEYS FEES:** In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all costs incurred by the prevailing party in enforcing this Agreement and prosecuting the dispute, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.

**ASSIGNMENT AND SUCCESSORS:** Neither the DISTRICT nor CONSULTANT shall, without the prior written consent of the other party, assign the benefit or in any way transfer the obligations of this Agreement or any part hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.

**PROTECTION OF PRIVACY LAWS:** CONSULTANT will comply with its statutory obligations respecting the collection, use, disclosure, access to, correction, protection, accuracy, retention and disposition of personal information that may be collected or created under this Agreement. CONSULTANT will refer any request for access to or correction of personal information that is made under statute to the DISTRICT and will comply with any directions from the DISTRICT respecting the access request, or respecting correction and annotation of personal information. CONSULTANT will, at reasonable times and on reasonable notice, allow the DISTRICT to enter its premises and inspect any personal information of the DISTRICT's that is in the custody of CONSULTANT or any of CONSULTANT's policies or practices relevant to the management of personal information subject to this Agreement.

**ENTIRE AGREEMENT:** This Agreement constitutes the sole and entire agreement between the DISTRICT and CONSULTANT relating to the SERVICES and supersedes all prior agreements between them, whether written or oral respecting the subject matter hereof and no other terms, conditions or warranties, whether express or implied, shall form a part hereof. This Agreement may be amended only by written instrument signed by both the DISTRICT and CONSULTANT. All attachments referred to in this Agreement are incorporated herein by this reference; however, in the event of any conflict between attachments and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall take precedence.

**DISTRICT'S RIGHT TO STOP THE SERVICES:** If the CONSULTANT fails to correct SERVICES which is not in accordance with the Agreement, the DISTRICT may direct the CONSULTANT in writing to stop the SERVICES until the correction(s) is/are made.

**DISTRICT'S RIGHT TO CARRY OUT THE SERVICES:** If the CONSULTANT defaults or neglects to carry out the SERVICES in accordance with the Agreement and fails within a seven (7) day period after receipt of written notice from the DISTRICT to correct such default or neglect with diligence and promptness, the DISTRICT may, without prejudice to other remedies, correct such deficiencies and the CONSULTANT shall pay the costs of such correction.

**COORDINATION:** The CONSULTANT shall coordinate and cooperate with any other consultants employed by the DISTRICT.

**INDEMNIFICATION:** CONSULTANT, its successors and assigns, will indemnify and hold harmless DISTRICT, DISTRICT's licensees, invitees, agents, successors, and assigns from any and all loss, claims, liability, damages, and costs, including, without limiting the generality of the foregoing, court costs and reasonable attorney's fees, caused by, resulting from, or in any way arising out of any negligent, reckless, and intentional actions or inactions of CONSULTANT, its consultants, sub-consultants, employees, successors, and assigns related to this Agreement.

**TIME:** Time is of the essence herein.

**SEVERABILITY:** If any clause, provision, subparagraph, or paragraph set forth in this Agreement is illegal, invalid, or unenforceable under present or future applicable laws, then and in that event it is the intention of parties hereto that the remainder of this Agreement shall not be affected thereby.

**APPLICABLE LAW:** The terms and provisions contained in this Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

**INSURANCE:** CONSULTANT shall purchase and maintain comprehensive general public liability and property damage insurance in an amount not less \$2,000,000 per occurrence and aggregate as well as workers' compensation insurance in the amounts required by law. Such policies shall name the DISTRICT as an additional insured and shall prohibit cancellation without thirty (30) days' notice to the DISTRICT. CONSULTANT will furnish the DISTRICT, within ten (10) days of receipt of a written request for the same, written verification from the insurance carrier for CONSULTANT that such coverage is in full force and effect. If CONSULTANT fails to supply such written verification within such ten-day period, the DISTRICT shall be entitled to stop all SERVICES by CONSULTANT without any liability therefore.

**APPROPRIATIONS:** Pursuant to Section 24-91-103.6(2), C.R.S., the DISTRICT has appropriated sufficient funds to pay the amounts due under the Agreement. There shall be no change orders or other form of order or directive by the DISTRICT requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for this Agreement unless CONTRACTOR is given

written assurance by the DISTRICT that lawful appropriations necessary to cover the additional work have been made.

**STATUTORY WORKERS WITHOUT AUTHORIZATION PROVISIONS:**

CONSULTANT shall comply with any and all federal, state and local laws, rules and regulations regarding the hiring of employees and retention of subcontractors, including without limitation Section 8-17.5-101, *et seq.*, C.R.S. CONSULTANT shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement or contract with a subcontractor who (a) knowingly employs or contracts with a worker without authorization to perform work under this Agreement, or (b) fails to certify to CONSULTANT that the subcontractor will not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

CONSULTANT hereby certifies that it does not knowingly employ or contract with a worker without authorization. CONSULTANT shall participate in either the E-Verify Employment Verification Program administered by the United States Department of Homeland Security (“E-Verify Program”) or the State’s Department Program established pursuant to C.R.S. § 8-17.5-102(5)(c) to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement. CONSULTANT shall not utilize the E-Verify Program or the Department Program procedures to independently undertake pre-employment screening of job applicants.

CONSULTANT shall require each subcontractor to certify that subcontractor will not knowingly employ or contract with a worker without authorization to perform work under the Agreement. If CONSULTANT obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with a worker without authorization, CONSULTANT shall be required to: (a) notify the subcontractor and the DISTRICT within three (3) days that CONSULTANT has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving notice from CONSULTANT the subcontractor does not stop employing or contracting with the worker without authorization; except that CONSULTANT shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization. CONSULTANT shall comply with any reasonable request by the Colorado Department of Labor and Employment (“Department”) made in the course of an investigation by the Department pursuant to Section 8-17.5-102(5), C.R.S.

In addition to any other legal or equitable remedy the DISTRICT may be entitled to for a breach of this Agreement, if the DISTRICT terminates this Agreement, in whole or in part, due to CONSULTANT’s breach of any of this Section, CONSULTANT shall be liable for actual and consequential damages of the DISTRICT resulting from such termination, and the DISTRICT shall report such violation by CONSULTANT to the Colorado Secretary of State as required by law.

**INDEPENDENT CONSULTANT:** It is the express intention of the DISTRICT and CONSULTANT that the relationship created between them is that of employer-independent Consultant. An agent, employee, or servant of CONSULTANT shall never be or deemed to be


the employee, agent, or servant of the DISTRICT. The DISTRICT is interested only in the results obtained from this Agreement. The manner and means of conducting the work are under the sole control of CONSULTANT. The DISTRICT will not withhold any taxes or other amounts from any compensation paid to CONSULTANT. The payment of any and all federal, state, and local taxes or other required withholdings shall be the sole responsibility of CONSULTANT. CONSULTANT is not entitled to Worker's Compensation benefits or unemployment insurance benefits.

No Worker's Compensation insurance shall be obtained by the DISTRICT concerning the CONSULTANT or its agents, employees or servants. CONSULTANT shall comply with applicable workers' compensation law concerning itself and its agents, employees, and servants and shall upon request, provide to the DISTRICT a certificate of Workers' Compensation Insurance.

**NO WAIVER OF GOVERNMENTAL IMMUNITY:** The parties hereto understand and agree that the DISTRICT is relying on and does not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the DISTRICT.

The parties, intending to be legally bound, have made, accepted and executed this Agreement as of the Agreement Date noted above.


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

DocuSigned by:  
  
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\_\_\_\_\_  
President

ATTEST

DocuSigned by:  
  
49CF87F7EE784D1...  
\_\_\_\_\_  
Secretary

**CONSULTANT:**  
METCO LANDSCAPE, LLC,  
a Colorado limited liability company

By:   
Name: Ed O'Brien  
Its: VP of Maintenance

## **Exhibit A**



2200 Rifle Street Aurora, CO 80011 (303)421-3100 Office (303)421-1120 Fax

**Owner/Management**

Clifton Larson Allen LLP  
8390 E. Crescent Pkwy, #500  
Greenwood Village, CO. 80111  
Manager: Natalie Herschberg  
Phone: 303-793-1417  
Email: natalie.herschberg@claconnect.com

**Client/Property**

Spring Mesa Metro District  
Quaker St. & W. 76th Dr  
Arvada, CO. 80007  
Contact: Natalie Herschberg  
Phone: 303-793-1417  
Email: natalie.herschberg@claconnect.com

**SNOW MANAGEMENT AGREEMENT**

This Snow Management Agreement (“Agreement”) is entered this \_\_\_\_\_ day of \_\_\_\_\_, by and between **Spring Mesa Metro District** (hereinafter referred to as the “Client”) and **Metco Landscape, Inc.** (hereinafter referred to as the “Contractor”) for site-specific snow maintenance services at Spring Mesa Metro District located at Quaker St. & W. 76th Dr., Arvada, CO. 80007 (hereinafter referred to as the “Premises”). All Billing will be submitted to Clifton, Allen Larson LLP at 8390 E. Crescent Pkwy, #500, Greenwood Village, CO. 80111. The Term of this Agreement shall be from **October 1<sup>st</sup> 2021 until April 31<sup>st</sup> 2022**, unless the contract is terminated in accordance with the provisions of this Agreement. *(If the client requests snow management services outside of the term of this contract and after the contract has been signed, the provisions of this contract shall apply.)*

For and in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

**I. GENERAL REQUIREMENTS/OBLIGATIONS**

- A. It is hereby mutually agreed and understood that for and in consideration of the sums to be paid to the Contractor by the Client as set forth in this Agreement, the Contractor shall furnish all labor, equipment, accessories and material to perform snow maintenance activities as outlined at the hourly rate set forth on the attached Exhibit “A” and “Exhibit A1”. Client agrees that Contractor may enter into subcontract agreements for the provision of some or all of the work identified in this Agreement.
- B. Contractor and Client agree that snow maintenance services are controlled in large part by the severity and duration of the snow activity. Contractor will perform its services in a good and workmanlike manner consistent with reasonable industry standards. Contractor is responsible only for work performed by Contractor at the Premises and is not responsible for Acts of God, poor site drainage conditions, dangerous conditions, vandalism, conditions arising after the completion of Contractor’s work, or other events beyond the control of Contractor including those described under the Force Majeure section below.
- C. Contractor and Client shall inspect the property, prior to snow maintenance activities, to determine property boundaries, pre-existing conditions, and snow removal requirements. The Client is responsible for documentation of pre-existing conditions. Unless clearly marked by Client, Contractor shall not be liable for damages due to items buried under the snow (i.e. curbs, turf, wheel stops, hydrants, etc.). If requested by Client, Contractor shall provide premises identification services which will include marking of items which will be buried under the snow in a manner which will enable Contractor to avoid these items during snow maintenance activities. The cost of these services is identified on Exhibit “A”.



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- D. Contractor shall have sufficient resources and equipment to be able to service the Property for the type and size of snowstorms customarily encountered in the area (1” to 12”) where the Premises are located. Contractor agrees to obtain and pay for any licenses and certifications required by the city, county, state and federal governments, to conduct snow maintenance operations.
- E. Accumulations greater than 12” may require larger or different types of equipment that are not normally a part of Contractors fleet and supplemental pricing per Exhibit “B” will apply in those circumstances in which Contractor must rent equipment. In the event of a forecasted storm greater than 12”, the Contractor will contact the Client and make recommendations for equipment and personnel to complete snow activity and provide an expected time frame. Extreme weather may prevent the Contractor from getting to the Premises either during, or immediately after the snow event. Client understands that staff may need to partially clear the Premises early and return later to clear remaining snow. Client understands that this may result in additional time required to clear snow at the Premises. In the event of a government issued snow emergency, the Contractor will make every effort to continue snow operations as allowed by law. Contractor’s available equipment includes, but is not limited to, dump trucks, front-end loaders, and additional trucks with blades.
- F. Client agrees that Contractor may suspend services if staff is unable to work safely because temperatures and wind conditions combine to make “Wind Chill” temperatures below 0 degrees Fahrenheit. Client agrees and understands that Contractor may suspend services in severe weather, wind chill conditions below 0 degrees, and/or government issued snow emergencies, without penalty or liability, so as not to force unsafe working conditions upon employees. Client agrees that Contractor shall not be liable for any claims, damages, or injuries that result from cessation or unavailability of snow services under these conditions.
- G. Because of the volatile nature of petroleum and the cost of fuel, it may be necessary during this contract to impose a fuel surcharge. If the cost of fuel (regular unleaded) exceeds \$4.00 a gallon in the Denver Metro area, a 2 % surcharge will be applied to all invoices.

### III. SPECIFICATIONS

A. Minimum Accumulation Standards:

Contractor hereby advises Client that in Contractor’s experience service trigger depths at 3” and greater are associated with greater potential for injury and damages to people and property. Based on this advisement, Client specifically and to the fullest extent permitted by law, relinquishes, waives, and releases any and all claims, liabilities, obligations, losses, penalties, actions, suits, damages, expenses, or costs of any kind and nature for property damage, bodily injury, or death that arise out of or relate to the service trigger depths of 3” or greater.

Contractor will plow the snow at a depth of 3 inches or as requested by the Client. Contractor will shovel the snow at a depth of 3 inches or as requested by the Client. A representative on the premises should be available to provide the Contractor with specific site conditions, therefore allowing the Contractor to most effectively service the Premises. The name of the Client Contact is \_\_\_\_\_ and their phone number is \_\_\_\_\_. Client Contact will notify the Contractor of any substitute or replacement manager during periods the Manager is unavailable.

- B. Equipment and Materials to be used during normal events **may** include, but not be limited to, the following:
1. ½ ton to 1 ton trucks with 7.5 foot blades.
  2. Snow blowers; walk behind.
  3. ATV with Plow
  4. Skid Steer / Bob Cat

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5. Ice Slicer
6. Ice Melt

C. Notification Procedures:

Snow maintenance activities will be initiated when, in the opinion of the Contractor, conditions are such that removal operations are required or when notified by the Client. It shall be the responsibility of the Client to notify the Contractor if snow maintenance services are not required.

D. Areas to be serviced:

A site meeting between the Contractor and the Client is necessary to generate maps identifying the area to be serviced, including areas where snow is to be piled and any area of special need. The Client is responsible to provide a site map and the specific snow maintenance services required and these documents will be included as a part of this Agreement. The Contractor shall not be liable for any claims, damages, or injuries that are alleged to have been caused by a failure to perform snow services, when the subject snow services were not requested by the Client nor required to have been performed under this Agreement.

E. Work Not Included:

1. Sweeping or cleaning of the areas after the snowstorm due to accumulation of sand or debris.
2. Premises identification services unless specifically requested by Property Manager under Paragraph II (C).

F. Normal, after hours, and emergency phone numbers for Contractor are as follows:

Contractor's office: 8:00a.m. – 5:00p.m. Monday – Friday: **303-421-3100**  
After hours snow emergencies only: **720-610-8438**

#### IV. LIMITATIONS, ADDITIONAL TERMS AND CONDITIONS

- A. The Client is responsible for removal, or for causing the removal, of all vehicles and other personal property, from parking lots, drives, access roads, and designated stockpile areas so that the Contractor can properly and efficiently operate snow plowing equipment. If vehicles or other personal property are not removed at the time of plowing operations the Contractor will plow only those areas accessible for safe use and operation of snow maintenance equipment. If the designated snow piling areas are not accessible, the Contractor shall stock pile snow in an area, which, in the opinion of the Contractor, allows the greatest usability of the lot. To the fullest extent permitted by law, Client relinquishes, waives, and releases any and all claims, damages, or injuries that result from Client's failure to removal vehicles and personal property from parking lots, drives, access roads, and designated stockpile areas.
- B. Client understands and agrees that the snow services specified above are for a one time set of services that occur in conjunction with a snow event. The Colorado climate exhibits a freeze-thaw cycle in the winter, in which higher daytime temperatures create melting of snow and ice, followed by re-freezing when temperatures drop. This can create additional slippery, icy, and dangerous conditions. Client agrees that Contractor shall not be liable for any claims, damages, losses, or injuries arising from these conditions. Client agrees that if further snow services are required after the initial snow services are completed, in order to mitigate subsequent icy, slippery, or dangerous conditions, it is Client's responsibility to identify the needed services and to request those services from Contractor. Contractor shall have no obligation to perform the requested additional services until after Contractor provides written acknowledgement of the requested services.

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- C. Even in those areas in which plowing is accomplished, snow removal (or salting) of a particular location may not clear the area to “bare pavement.” Slippery conditions may continue to prevail even after snow removal (or application of salt). Slippery or icy conditions can also arise after performance of snow removal services. Causes may include, for example, parked cars being cleared of snow, snow blowing through the area, snow melting from parked cars, trees, or other objects, and re-freezing on the ground. Client agrees that Contractor is not responsible for the conditions of the premises after performance of snow removal services. To the fullest extent permitted by law, Client relinquishes, waives, and releases any and all claims, damages, or injuries that result from the conditions enumerated in this paragraph. Client agrees that if further snow services are required after the initial snow services are completed, in order to mitigate subsequent icy, slippery, or dangerous conditions, it is Client’s responsibility to identify the needed services and to request those services from Contractor. Contractor shall have no obligation to perform the requested additional services until after Contractor provides written acknowledgement of the requested services.
- D. Client agrees that C.R.S. §13-21-129 makes void any agreement to indemnify, defend, or hold harmless a Client for damages resulting from the Client’s acts or omissions, if the Contractor was prohibited from mitigating a specific snow, ice or other mixed precipitation event or risk. Client specifically agrees that no such indemnity, defense, or hold harmless obligations are included in the terms of this agreement, nor shall they be incorporated into any related, auxiliary, or supplemental contracts.
- E. Client is advised that de-icing materials, including but not limited to Ice Melt and Ice Slicer, may cause damage to the landscape and concrete surfaces. Contractor uses de-icing materials to increase safety for persons accessing the Property. Contractor will use de-icing materials at its discretion for each snow event. To the fullest extent permitted by law, Client relinquishes, waives, and releases any and all claims for property damage arising from the use of de-icing materials. Client shall notify Contractor in writing if the Client declines the use of de-icing materials. Such writing must be received and acknowledged by Contractor in order to become effective in advance of any subsequent snow services.
- F. If Client requests Contractor to supply, fill, or re-fill buckets or stations with de-icing materials for the general access and use by persons on the Property or Premises, then to the fullest extent permitted by law Client relinquishes, waives, and releases any and all claims or damages arising from any personal injuries incurred in the course of such general access and use.
- ~~G. Force Majeure: If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond Contractor’s reasonable control (force majeure), and if the Contractor is unable to carry out its obligations and gives the Owner prompt written notice of such event, then the obligations of the Contractor shall be suspended to the extent necessary. The term “force majeure” shall include, without limitation, acts of God, pandemics, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority or by national emergencies, insurrections, riots, or wars or strikes, lockouts, work stoppages, or other labor disputes, or supplier failures. Contractor shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.~~
- ~~H. Undersigned agrees that it has authority to execute this Agreement on behalf of the identified Client.~~
- ~~I. The Property Owner and Management Company, if any, identified above, shall be jointly and severally liable for any non-performance by Client under this Agreement.~~
- ~~J. Client shall notify Contractor in writing within three (3) days of any issue relating to Contractor’s work under this Agreement. If Client fails to provide such notice, all claims and damages asserted by Client related to that issue are completely and irrevocably waived.~~

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~~K. With the exception of actions by Contractor to recover amounts due and owing, all other disputes or claims arising from this Agreement shall be submitted first to non binding mediation, and then to binding arbitration if mediation is unsuccessful. Arbitration shall be conducted by a single arbitrator, mutually chosen by the parties from the Judicial Arbitrator Group in Denver, Colorado. If the parties cannot agree on an arbitrator, a party seeking enforcement of this arbitration agreement may request, as part of a petition for enforcement, that a District Court judge appoint an arbitrator. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any Court having jurisdiction thereof.~~

~~L. THE PARTIES KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF OR PERTAINING TO THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON OR PARTY RELATED TO THIS AGREEMENT; THIS IRREVOCABLE WAIVER OF THE RIGHT TO A JURY TRIAL BEING A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS CONTRACT.~~

~~M. This Agreement is solely for the benefit of Client and Contractor and is not intended for the benefit of any other person or parties.~~

~~N. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.~~

~~O. Each provision of this Agreement shall be construed as if both Parties mutually drafted this Agreement. If a provision is held by a court to be invalid, the remaining provisions of the Agreement and will be reformed/enforced. This Agreement records the entire Agreement of the Parties. All documents/exhibits referred to in this Agreement are an integral part of the Agreement and are incorporated by reference. In the event of a conflict among the Agreement documents, these terms and conditions shall control, govern, and take precedence.~~

## ~~V. INSURANCE~~

~~Contractor agrees to maintain insurance current and in force during the term of this Agreement. Contractor will obtain a Certificate of Insurance prior to the start of the work stated in this Agreement and deliver it to the Client. Contractor shall also have its employees covered by a Worker's Compensation and Employer's Liability Policy.~~

~~The minimum limits of insurance are as follows:~~

- |                                      |   |
|--------------------------------------|---|
| <del>A. General Liability:</del>     | <del>Minimum requirements are \$1,000,000 per occurrence/\$1,000,000 general aggregate.</del> |
| <del>B. Automobile Liability:</del>  | <del>Minimum requirements are \$1,000,000 combined single limit.</del>                        |
| <del>C. Worker's compensation:</del> | <del>Statutory amount.</del>  |
| <del>D. Employer's Liability:</del>  | <del>\$1,000,000 each employee/accident/disease</del>   |

## ~~VI. TERMINATION~~

~~Either party may terminate this Agreement by giving notice in writing by certified mail to the other party at the respective addresses stated below. Notice shall be given at least thirty (30) days prior to the effective date of such termination.~~

~~If notice to Client: Spring Mesa Metro District  
Attention: Natalie Herschberg~~

~~{Spring Mesa Metro District}  
{09/09/2021}~~

~~Quaker St. & W. 76th Dr  
Arvada, CO. 80007~~

~~If to Contractor: Meteo Landscape, Inc.  
Attention: Ed O'Brien  
2200 Rifle Street  
Aurora, CO 80011~~

~~Final payment will be due within 15 days of the termination date. Such payment shall be considered payment, in full, for services performed under this Agreement.~~

~~**VII. PAYMENT**~~

~~Payments for snow management services is due within thirty (30) days of invoice date, at the rates outlined in Exhibit "A" and "Exhibit A1". There will be a one (1) hour minimum charge per location per snow maintenance activity for the equipment and manpower sent to the Premises. Payments shall be made payable to Meteo Landscape, Inc.~~

~~Client will inform the Contractor in writing of any billing discrepancies or disputes within seven (7) days of invoice date. If Client fails to provide such notice, all rights to dispute the invoice or the basis for services are completely and irrevocably waived.~~

~~The Client agrees to pay one and one-half percent (1.5%) per month interest on all past due accounts which are not paid within thirty (30) days. If payment for services rendered is delinquent by forty-five (45) days or more, Contractor may suspend any and all services to the Property and/or Premises, including snow, landscape, or any other services provided by or requested of Contractor, until the account is made current. The Contractor will provide three (3) days' notice to the Property Manager of its intent to suspend services. Contractor shall recover all expenses incurred in the enforcement of any provision of this Agreement, including but not limited to all collection agency charges, lien fees, costs, court costs, attorneys' fees, and all expenses incurred in collecting on any judgement.~~

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

~~IN WITNESS WHEREOF, THE CLIENT AND CONTRACTOR HAVE CAUSED THIS AGREEMENT TO BE DULY EXECUTED ON THE DATE FIRST HEREIN WRITTEN. ALL COPIES OF THIS EXECUTED AGREEMENT SHALL BE CONSIDERED THE ORIGINAL, FOR ALL INTENTS AND PURPOSES.~~

~~CLIENT: Spring Mesa Metro District  
c/o Clifton Larson Allen LLP~~

~~CONTRACTOR: Meteo Landscape, Inc.~~

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

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

~~Printed: \_\_\_\_\_~~

~~Printed: \_\_\_\_\_~~

~~Title: \_\_\_\_\_~~

~~Title: \_\_\_\_\_~~

~~[Spring Mesa Metro District]~~  
~~[09/09/2021]~~

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

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

[Spring Mesa Metro District]  
[09/09/2021]



## Exhibit “A”

### 2021-22 Snow Removal Rates

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\$125.00	per hour, Pick-Up Truck with 7.5 Foot Plow
\$63.00	per hour, per laborer, Hand Shoveling
\$77.00	per hour, Snow Blower
\$93.00	per hour, ATV w/Blade
\$170.00	per hour, Skid Steer with Bucket
\$180.00	per hour, Skid Steer with Pusher/Plow
\$285.00	per hour, Front-End Loader (2-hr minimum)
\$285.00	per hour, Front-End Loader with Pusher/Box (2-hr minimum)
\$207.00	per hour, Dump Truck 15-yard
\$0.89	per pound, Ice Melt plus \$63.00 per hour application
\$250.00	per ton, Ice Slicer plus \$140.00 per hour application
	<b><u>Additional services if requested by client:</u></b>
\$75.00	per hour, obstacle identification service plus \$3.50 per stake

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- All services to be invoiced per hour, with a one-hour minimum charge per service and job site.
- All material to be invoice per pound or per ton.
- Mobilization costs, portal to portal, will be included in the hourly services for each visit.
- Snow removal on Thanksgiving Day, Christmas Day, New Year’s Day and Easter will be charged at 1.5 times the normal rates.
- Snow materials are subject to change from year to year, depending on industry supplier material shortage or fluctuation of costs.



[Spring Mesa Metro District]  
[09/09/2021]



## Exhibit “B”

### 2021–22 Snow Removal Emergency Equipment Rates

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For use in extreme snow/blizzard events of 12 inches or greater, accumulation in one 24-hour period.

\$260.00	per hour, Mobilization Time, Portal-to-Portal.
\$75.00	per hour, Fueling heavy equipment as necessary.
\$150.00	per hour, Pick-Up Truck with 7.5 Foot Plow
\$75.00	per hour/per laborer, Hand Shoveling
\$94.00	per hour, Snow Blower
\$115.00	per hour, ATV w/Blade
\$210.00	per hour, Skid Steer with Bucket
\$210.00	per hour, Skid Steer with Pusher/Plow
\$345.00	per hour, Front-End Loader (2-hr minimum)
\$345.00	per hour, Front-End Loader with Pusher/Box
\$250.00	per hour, Dump Truck 15-yard
\$1.50	per pound, Ice Melt plus \$65.00 per hour application
\$250.00	per ton, Ice Slicer plus \$315.00 per hour application
	<b><u>Additional services if requested by client</u></b>
\$95.00	per hour, Obstacle Identification Service plus \$5.00 per Stake

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- One hour minimum charge per service and job site.
  - Rental Equipment will be contracted as available upon approval from Client. The Contractor will monitor weather to be prepared in the event of a large storm and have necessary resources available, however assumes no liability for the unavailability of rental equipment and operators.



[Spring Mesa Metro District]  
[09/09/2021]

## Snow Service Contact Form

*Please update our records for the most up-to-date emails regarding upcoming storms and snow services provided*

Property Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Contact Email: \_\_\_\_\_@\_\_\_\_\_ .com

***Please submit this form with your signed contract***