

WORK ORDER #2024-03
TO MASTER SERVICES AGREEMENT, DATED June 24, 2022

This Work Order is made and entered into this **1st day of January, 2024**, by and between **WATERFALL METROPOLITAN DISTRICT NO. 1**, (the “District”), and **GREENEARTH MIDWEST, LLC** (“Contractor”), collectively, the “Parties.” Unless otherwise defined herein, all capitalized terms shall have the meaning given to them in that certain Master Services Agreement between the District and Contractor, dated **June 24, 2022** (the “Agreement”).

1. Services. The Services to be provided by Contractor pursuant to the terms of the Agreement and this Work Order are set forth in **Exhibit A-1** attached hereto and further described as follows: **Waterfall 1 O&M: Native Area Maintenance Services**.

2. Compensation. Contractor hereby agrees to perform such Services as set forth in Paragraph 1 to this Work Order and the District hereby agrees to pay Contractor for the satisfactory performance of the Services **a lump sum in the amount of \$840.00**, as set forth in **Exhibit A-1** attached hereto. The District’s payment obligation set forth in this Paragraph 2 is subject to the annual appropriation of funds by the District, as set forth in Section 13 of the Agreement. The District has appropriated sufficient funds to compensate Contractor for Services rendered pursuant to this Work Order for the current fiscal year. Payment by the District for any Services rendered by Contractor in the subsequent fiscal year shall be subject to the District appropriating such funds for payment for the subsequent fiscal year.

3. Term. The term of this Work Order shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall terminate **December 31, 2024**.

4. Modification. This Work Order may not be amended, modified or changed, in whole or in part, except by a Change Order executed by the District and the Contractor. Any Change Order resulting in an increase in compensation shall be subject to the appropriation of funds by the District prior to the execution of a Change Order, as set forth in Section 13 of the Agreement.

5. Integrated Agreement. This Work Order has been issued pursuant to, and is hereby made a part of, the Agreement. The terms and conditions of the Agreement remain in full force and effect and shall apply to this Work Order and the Services performed hereunder.

IN WITNESS WHEREOF, the Parties have executed this Work Order as of the **1st day of January, 2024.**

WATERFALL METROPOLITAN DISTRICT NO. 1:

DocuSigned by:
Bryan Newby
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By: Bryan Newby

Its: District Manager

GREENEARTH MIDWEST, LLC:

DocuSigned by:
Brandon Jenkins
B5571EE9C93D433...

By: Brandon Jenkins

Its: General Manager

EXHIBIT A-1 TO WORK ORDER #2024-03
SCOPE OF SERVICES AND PAYMENT FOR SERVICES



Proposal #33877

Date: 8/17/2023

Primary Contact

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Landscape Service Provider:

GreenEarth MidWest, LLC 1713 East Lincoln Ave Fort Collins, CO 80524
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Constitutes the entire agreement between the aforementioned parties and includes the scope of service, guarantees, terms and conditions, pricing, and payment responsibilities for landscape management services provided at:

Property:

Waterfall Metro-Horstman Pl and E 15th Street Horstman Place & E 15th Street Loveland, CO 80537

Landscape Management Agreement, MW - Native Services RENEWAL

This Agreement takes effect January 1, 2024 (the "Commencement Date") and will continue for an original term of 12 months. Thereafter, it shall automatically renew on a year-to-year basis and the service intervals shall repeat, unless either party gives written notice to the other of intention not to renew at least thirty (30) days prior to the end of the then current term. All renewals will continue to be subject to the general provisions and conditions of this Agreement. The pricing for the services performed hereunder is subject to adjustment by Us on each anniversary of the Commencement Date to reflect increases/decreases in labor, material, and other costs.

SCHEDULE AND FREQUENCY OF SERVICES:

The frequency schedule contained in the Scope of Services herein represents only an approximation of the actual frequency of services, and it is not intended to be a schedule commitment. The actual services provided under this Agreement will vary depending on weather, holidays, accidents, and other conditions beyond Our control. We will perform the agreed scope of professional landscape management services (up to the maximum annual number of visits listed) according to the schedule and frequency described for each service.

Landscape Maintenance Map:



SPECIAL PROVISIONS:

Upon execution, this will replace Agreement # 0000000

A pre-contract clean-up will be required if site conditions are not at an acceptable level. The landscape should be in a condition to allow regular maintenance activities to occur while meeting client expectations as defined in the sales process.

Acceptable is defined as: weeds in the planting beds are at a minimal and manageable level in addition to the lawns being less than 4" high.

Miscellaneous Services	
Native weed spray	2
Native Mowing	1
Beauty Band Maintenance	2
Monthly Investment	
\$70.00	

Payment Schedule For Fixed Payment Services

Schedule	Price	Sales Tax	Total Price
January	\$70.00	\$0.00	\$70.00
February	\$70.00	\$0.00	\$70.00
March	\$70.00	\$0.00	\$70.00
April	\$70.00	\$0.00	\$70.00
May	\$70.00	\$0.00	\$70.00
June	\$70.00	\$0.00	\$70.00
July	\$70.00	\$0.00	\$70.00
August	\$70.00	\$0.00	\$70.00
September	\$70.00	\$0.00	\$70.00
October	\$70.00	\$0.00	\$70.00
November	\$70.00	\$0.00	\$70.00
December	\$70.00	\$0.00	\$70.00
	\$840.00	\$0.00	\$840.00

Your and Our Acceptance:

This Agreement will become effective only after acceptance as evidenced by the respective signatures of the parties' authorized representatives. This Agreement includes all of your and our obligations. No person has authority to make any claim, representation, promise or condition on our behalf that is not documented within this Agreement.


By _____
Brandon Jenkins

By _____

Date 8/17/2023
GreenEarth MidWest, LLC

Date _____
**Waterfall Metro-Horstman PI and E
 15th Street**

PROPERTY MAINTENANCE BOUNDARY MAP

 = Boundary

Goals:

Beautiful

Solutions proposed:

Awesomeness

Native weed spray

Native Spraying – 2 times per year. Once in Spring and Once in Fall. Spring is an effective time for catching weeds in their pre-growth season, in order to prevent them from sprouting. Fall is similarly effective because, ahead of the Winter, this is when weeds are most vulnerable.

Native Mowing

Mowing of Native areas will be performed 1 time per year as identified on property map.

Beauty Band Maintenance

Mowing of 4'-5' beauty bands around fences, trails, walkways, etc, includes 2 visits.

Terms & Conditions

DEFINITIONS:

You should note the following words have special meaning throughout this Agreement:

1. **"You"** and **"Your"** mean Waterfall Metro-Horstman PI and E 15th Street and all of their representatives.
2. **"We"**, **"Our"**, **"Ours"** and **"Us"** mean GreenEarth MidWest, LLC and all of its representatives.
3. **"Labor"** means our normal work day labor hours, overtime labor hours (time-and-one-half), travel labor hours, equipment use, and all out-of-pocket travel expenses associated with labor.

OUR RESPONSIBILITIES INCLUDE:

1. Provide a continuing managed process of professional managed care of your exterior environment.
2. Assign a lead technician to have primary responsibility for work to be performed at your site.
3. Coordinate all work with you to assure safety and minimal disruption at your site.

YOUR RESPONSIBILITIES INCLUDE:

1. Inform us of whom we should work with at your site to assure the proper coordination of our work.
2. Provide us with a copy, if available, of all site plans, drawings or prints.
3. Provide us with your protocols and regulations regarding working at your site, such as: parking, security procedures, emergency contacts, and other appropriate information.
4. Permit only our representatives to perform the work included in the Scope of Services of this Agreement, as we will only guarantee our work and not the work of other parties.
5. Bear the cost to repair or replace any materials and/or systems deemed by us to not be acceptable during our initial inspection or seasonal start-up visit. Should you choose to not make the repair or replacement, the material(s), system(s), component(s) or part(s) identified will automatically be removed from the repair or replacement guarantee provisions of this Agreement.
6. Inspect the work performed by us within seven (7) days of the date that the service is performed and notify us of any reasonable dissatisfaction with the work performed.
7. Provide us with your critique of our services and suggestions for on-going improvements.

TERMS AND CONDITIONS

Accessibility: In order for us to perform the required services for you in a cost-effective manner and for the estimated Agreement Price quoted in this Agreement, you agree to permit free and timely access to the necessary areas of your site to perform required services. All planned work under this Agreement will be performed during our normal working hours unless otherwise stipulated elsewhere in this Agreement.

Taxes: You agree to be responsible for all applicable taxes on the services and/or materials used or provided in connection with the services to be provided under this Agreement.

Permits: Unless otherwise required by law, you agree to obtain and bear all costs incurred in connection with obtaining any necessary permits for the services provided pursuant to this Agreement.

Payment Terms: You agree to promptly pay invoices within ten (10) days of receipt. Should a payment become forty five (45) days or more delinquent, we may stop all work under this Agreement without notice and/or cancel this Agreement. A late charge of 1 ½% per month will be charged on all amounts that become thirty (30) days or more delinquent. If any check you tender for payment is refused due to insufficient funds, you hereby agree to a "Return Check Fee" of \$25.00 per item, in addition to any other remedies available to us under Colorado law.

Attorney's Fees: In the event we must commence third-party collection or arbitration proceedings in order to recover any amount payable under this Agreement, you agree to reimburse us for all costs and attorneys' fees incurred as a result of said activities, including those fees/costs incurred on appeal and/or those fees/costs incurred to litigate the amount of fees/costs due us pursuant to this Section.

Payment by Credit Card: As an added convenience to our clients, payment due under this Agreement may be made by credit card. If choosing to pay by credit card, you hereby consent by signing this Agreement below that no disputes regarding fees or costs billed to you shall be adjudicated by the credit card company. Any charges for fees/costs made to your credit card are non-refundable and cannot be reversed by the credit card company. Any disputes over fees and/or costs paid by credit card shall be settled directly between you and us, pursuant to the terms of this Agreement.

Acceptance of Existing Conditions: The Agreement Price is conditioned upon the materials and systems covered being in maintainable condition. If the initial inspection or seasonal start-up visit indicates that repairs are necessary, a firm quotation will be submitted to you for your approval. Should you not authorize the repairs, we may remove the material(s), system(s), component(s) or part(s) from the Scope of Services under this Agreement.

Concealed Conditions: Concealed conditions, such as underground utilities, invisible fence, rock, debris, poor drainage situations, etc., not readily apparent at the time of providing the estimated Agreement Price quoted in this Agreement may cause us to incur additional costs, including without limitation additional materials and labor, which will be an extra charge (fixed price amount to be negotiated or on a time-and-material basis at our rates then in effect) over the Agreement Price.

Extra Work: Unless otherwise stated elsewhere in this Agreement, this Agreement does not include repairs to any system(s), the provision or installation of materials, or service calls requested by you. If requested, you will be charged for these services at our customer rates then in effect.

If you require any alteration to or deviation from this Agreement involving extra work, you agree that the cost of material and/or labor will be an extra charge (fixed price amount to be negotiated or on a time-and-material basis at our customer rates then in effect) over the Agreement Price.

Work Performed by Others: Unless otherwise stated elsewhere in this Agreement, we will not be responsible for work that is performed by anyone other than us. Therefore, you agree to permit only our personnel or agent(s) to perform the work included in the Scope of Services. Should anyone other than us perform such work, we may, at our option, terminate this Agreement or eliminate the areas or materials involved from the Scope of Services of this Agreement.

Hold Harmless: In the event that there is a claim, damage, loss, or expense that is caused in whole or in part by any active or passive act or omission by you, anyone directly or indirectly employed by you, or for anyone whose act you may be liable, then, to the fullest extent permitted by law, you will defend, indemnify and hold harmless our representatives and us from and against these claims, damages, losses, and expenses including, but not limited to, attorneys' fees arising out of or resulting from the performance of our work under this Agreement.

Delays Outside Our Control: In the event there is a delay, loss, damage, or detention caused by unavailability of equipment or materials, delay of carriers, strikes, lockouts, civil or military authority, priority regulations, insurrection or riot, action of the elements, forces of nature, or by any cause beyond our control, you agree that we will not be liable for this delay, loss, damage, or detention.

Loss of Profits: Under no circumstances, whether arising in contract, tort (including negligence and strict liability), equity or otherwise, will we be responsible for loss of use, loss of profits, anticipatory damages, increased operating or maintenance expenses, claims of your tenants or clients, or any special, indirect, consequential, incidental, exemplary or punitive damages, arising at any time from any cause related to or concerning this Agreement.

Limited Warranty: We warrant that our workmanship on all installations and repairs shall be performed in a good and workmanlike manner and that any parts repaired or replaced by us will be free from defects in workmanship until the end of this Agreement or for thirty (30) days, whichever is earlier.

You acknowledge that we are NOT the manufacturer of the installed materials and equipment and that we make no representations or warranties as to the installed materials and equipment or their specifications, fitness for a particular purpose, performance or merchantability other than as set forth in the preceding paragraph. You agree to look solely to the manufacturer to remedy any alleged deficiency in the installed materials or equipment and damages related directly or indirectly thereto. WE HEREBY DISCLAIM ALL OTHER WARRANTIES ON THE MATERIALS FURNISHED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Limits of Liability: We guarantee that our performance of services under this Agreement will be in accordance with generally accepted practices for similar services. In case of any failure to perform our obligations under this Agreement, our liability is limited to correcting, repairing, or replacing, at our option, the deficient work. You acknowledge and agree that such correction, repair, or replacement shall be the sole remedy available to you and in no event will our liability exceed the total amount of compensation we receive for services rendered.

Site Damage: We accept responsibility to repair any physical damage to your site directly caused by us during performance of work covered by this agreement.

Dispute Resolution: Should a dispute arise between you and us relating to this Agreement, or the making, performance or interpretation of the rights and obligations set forth herein, either party may, upon written notice, seek exclusive and binding relief through the procedure of the American Arbitration Association (AAA). Such arbitration shall take place in Weld County, CO. A single arbitrator shall decide all disputes. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter. The decision of the arbitrator shall be binding on both parties, and any right to judicial action on any matter subject to arbitration hereunder is hereby waived, unless otherwise provided by applicable law, except suit to enforce the arbitration award or in the event arbitration is not available for any reason. The prevailing party shall recover all costs, including attorneys' fees, incurred as a result of the dispute. For purposes of this Agreement, a "prevailing party" shall be defined as a party that recovers at least 75% of its total claims or that is required to pay no more than 25% of the claims made against it.

We both agree that any action through arbitration relating to any plant material warranty, for plants installed by us, must be commenced within one (1) year of the documented plant material failure.

Changes: This Agreement shall not be subject to change or modification other than by a signed writing from all parties hereto.

Early Termination For Default: You may terminate this Agreement upon an event of default by us. If an event of default occurs, you must give us written notice of the same describing the reason for the default and the requested cure. If within sixty (60) days of receipt of such notice, we are unable to cure the default, you may terminate this Agreement. Any default notice will be deemed to have been given on the date of receipt at our address shown on the first page of this Agreement.

In the event that you terminate this Agreement for cause before its intended expiration date you understand that the cost of the actual work performed between the most recent anniversary date and the termination date may exceed the total amount of the scheduled payments for the services performed under this Agreement during that period. If so, you agree to reimburse us, at then current rates, (i) for all costs for the work performed in connection with this Agreement during such period up to and including the date of termination, and (ii) all costs of any materials ordered by us in connection with this Agreement. We will submit a final invoice to you for the total amount of all applicable costs less the amount of your payments made prior to termination and such amount will be due immediately.

Notice: Notice to either party to this Agreement shall be sufficient if made to the respective address shown herein.

Purchase Orders: This Agreement constitutes the entire contract between the parties. The entire contract is embodied in this writing and this writing constitutes the final expression of the parties' agreement. No change is allowed to this Agreement, nor shall they become part of this Agreement whatsoever by our acknowledgment or acceptance of your purchase order forms that contain different provisions whether in addition to or not identical to the terms set forth herein. You acknowledge and agree that any purchase order issued by you, in accordance with this Agreement, is intended only to establish payment authority for your internal accounting purposes. No purchase order shall be considered to be a counteroffer, amendment, modification, or other revision to the

terms of this Agreement. No term or condition included in the purchase order will have any force or effect.

Severability: Any provision of this Agreement that in any way contravenes the law of any state or country in which this Agreement is effective will, to the extent the law is contravened, be considered separable and inapplicable and will not affect any other provision or provisions of this Agreement.

Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronically signed, faxed, and scanned & emailed signatures shall be treated as original and binding upon the signing party.

Governing Law; Venue: This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado. Further, in the event any dispute arises from this Agreement, the undersigned parties hereby agree that the venue for said dispute(s) shall lie exclusively in Weld County, Colorado.