

## SERVICES AGREEMENT

This **SERVICES AGREEMENT** ("Agreement") is made and entered into as of the \_\_\_\_\_ day of April, 2009, by and between **WATERFALL\_ METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), and **BATH, INC.** ("Contractor").

### RECITALS

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

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

WHEREAS, the District desires to procure landscaping services, as described in **Exhibit A** attached hereto, for purposes of operating and/or maintaining District facilities and/or improvements; and

WHEREAS, Contractor has experience in providing the types of services required by the District; and

WHEREAS, the District desires to engage Contractor to perform such services as are needed by the District and Contractor is willing to provide such services to the District for reasonable consideration; and

WHEREAS, the Parties desire to enter into this Agreement to establish the terms and conditions by which Contractor shall provide such services to the District.

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

### AGREEMENT

#### I. APPOINTMENT OF CONTRACTOR

1.1 APPOINTMENT OF CONTRACTOR. The District hereby retains Contractor and Contractor agrees to perform certain services for the District ("Services") pursuant to the terms and conditions set forth herein.

1.2 INDEPENDENT CONTRACTOR STATUS. Contractor is and shall be considered an independent contractor under this Agreement. Nothing herein contained shall constitute or designate Contractor or any of its employees or agents as employees or agents of the District, nor

shall Contractor be deemed or considered as a partner or agent of the District. 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 of the District except as set forth in this Agreement. It shall be Contractor's responsibility as an independent contractor to pay any and all taxes on payments which it receives under this Agreement and to pay its own costs and expenses incurred in connection with performance of this Agreement.

## II. DUTIES AND AUTHORITY

2.1 GENERAL LIMITATIONS AND REQUIREMENTS. Contractor shall perform the duties and have the authority specified in Section 2.4 below. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement or specifically authorized or ratified by the Board of Directors (the "Board") of the District as reflected in the meeting minutes of the Board. Contractor shall at all times conform to the stated policies established and approved by the District.

2.2 COMPLIANCE WITH APPLICABLE LAW. Contractor shall provide the Services set forth herein in full compliance with all applicable laws, ordinances, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction in which this Agreement is performed. Contractor declares that Contractor has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the Services to be provided under this Agreement.

2.3 NO RIGHT OR INTEREST IN THE DISTRICT ASSETS. Contractor shall have no right or interest in any of the District's assets, nor any lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

2.4 SPECIFIC DUTIES AND AUTHORITY. Contractor shall perform the Services for the District as outlined on the Scope of Work in **Exhibit A** attached hereto and incorporated herein by reference. Contractor shall obtain approval from the District prior to providing any Services that vary from those Services set forth in Exhibit A attached hereto.

2.5 GENERAL DUTIES AND AUTHORITY. In connection with its specific duties, Contractor agrees to:

(A) Provide all Services specified in Section 2.4 herein in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor's proposal to provide such Services to the District.

(B) Furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services.

(C) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Part V hereof.

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

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

### III. COMPENSATION

3.1 FEE CALCULATION. Contractor shall be paid as set forth in **Exhibit B** attached hereto and incorporated herein by reference and in accordance with the procedures described herein. Contractor shall obtain approval from the District prior to charging for any Services that vary from those costs set forth in Exhibit B attached hereto. In the event of early termination described in Section 4.2 hereof, the District shall pay Contractor for all Services satisfactorily performed up to and including the designated termination date. The District is exempt from Colorado sales and use taxes. Contractor shall use reasonable efforts to assure that costs for Services set forth in Exhibit B and charged to the District as set forth in Section 3.2 herein do not include sales and use taxes.

3.2 MONTHLY REPORTS AND PAYMENTS. Contractor shall submit to the District monthly reports in a form acceptable to the District which describes the work completed to date and the work yet to be performed, and summarizes costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District by the 5<sup>th</sup> day of each month for Services completed in the preceding month. The District's Board shall review and approve all invoices received for payment at the next meeting of the Board. The District reserves the right to inspect all services completed and invoiced for payment. In the event inspected services are not accepted for payment by the District, the terms of Section 3.3 herein shall apply.

3.3 INSPECTION OF SERVICES. The District may inspect the Services provided at any time throughout the term of this Agreement and shall notify Contractor if, in the District's discretion, any or all Services are not provided in accordance with this Agreement. Failure by Contractor to properly provide the Services required by this Agreement shall constitute a default hereunder. In such case, the District shall provide written notice of said default to Contractor. Contractor shall have two (2) days to cure the default unless otherwise agreed to by the Parties. If Contractor fails to cure the default within the time period provided, the District shall be entitled to pursue all remedies provided by law and in equity, including specific performance, and to recover all costs and reasonable attorney fees incurred in any suit or claim brought by the District to enforce the terms of this Agreement. In addition, in the event of default by Contractor, the District may hire a third party to complete the Services and Contractor agrees to pay all additional costs incurred for the completion of the Services by a third party.

3.4 EXPENSES. 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 set forth in Section 3.1 herein unless such expenses are approved for reimbursement in advance by the District in writing. Contractor shall not charge the District any other fee for use by the District of Contractor's offices, personnel, or overhead except as agreed in advance by the District in writing.

3.5 FEE ADJUSTMENT. In the event, this Agreement extends beyond one year, the District and Contractor shall annually analyze the reasonableness of the fees set forth in Exhibit B attached hereto, and may, upon the mutual consent of the District and Contractor, adjust the schedule of fees as deemed appropriate by the Parties. The failure of the District and Contractor to agree upon any such adjustment shall not require a termination of this Agreement nor shall either party be entitled to seek an adjustment from any court or other tribunal.

3.6 ANNUAL BIDDING. The District shall be entitled to bid each calendar year's services under this Agreement as it deems necessary to comply with current law regarding contracts for such services. Contractor shall have no claim against the District if this Agreement is not extended for any budget year.

#### **IV. DURATION AND TERMINATION**

4.1 TERM. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire on upon completion of the Services; provided, however, that all services shall be completed no later than February 28, 2010, subject to annual appropriations as set forth in Section 7.6 hereof, unless otherwise agreed to in writing by the parties or terminated pursuant to Section 4.2 herein.

4.2 NOTICE OF TERMINATION. The District reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Contractor. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Contractor shall immediately stop rendering services under this Agreement unless otherwise directed by the District. Contractor may terminate this Agreement, with cause, by delivery to the District of written notice of termination at least 30 days prior to the effective date of termination. Contractor shall stop rendering services under this Agreement upon the effective date of termination.

4.3 COMPENSATION. In the event of termination by either party, the District shall pay Contractor for reasonable costs incurred and services satisfactorily performed up to and including the date of the notice of termination if terminated by the District or the effective date of termination if terminated by Contractor. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, pertaining to the Services contemplated herein.

## V. INSURANCE

### 5.1 INSURANCE COVERAGE REQUIREMENTS.

(A) Minimum Scope and Limits of Insurance. At all times during the Term of this Agreement, Contractor shall carry and maintain, at its sole cost and expense, no less than the following liability insurance coverage limits (unless otherwise crossed out or adjusted by the Parties, any such changes shall be initialed and dated by both Parties):

#### General Liability

General Aggregate	\$ 2,000,000.00
Products and Completed Operations	\$ 2,000,000.00
Personal and Advertising Injury	\$ 1,000,000.00
Each Occurrence	\$ 1,000,000.00
Damage to Rented Premises	\$ 100,000.00
Medical Expenses (Any one person)	\$ 5,000.00

#### Automobile Liability

Combined Single Limit	\$ 1,000,000.00
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#### Workmen's Compensation and Employer Liability

Each Accident	\$ 100,000.00
Disease Limit	\$ 500,000.00
Disease Each Employee	\$ 100,000.00

<u>Umbrella</u>	\$ 1,000,000.00
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All policies listed herein shall be on an occurrence basis.

(B) Additional Coverage. In addition, unless otherwise crossed out, initialed and dated by both Parties, the following coverage shall be obtained by Contractor, on an occurrence basis:

- (1) ~~Performance Bond~~
- (2) Inland Marine including Builder's Risk, Installation Floater, Contractor's Equipment
- (3) ~~Pollution Liability, claims made is acceptable~~

(C) Endorsements. The District, and if applicable, its managing consultant, shall be listed as additional insured on the comprehensive general liability insurance policy and auto liability insurance policy. General liability insurance coverage and auto liability insurance coverage shall be primary. Waiver of subrogation applies to general liability insurance and Workers Compensation insurance. All insurance policies required by this Agreement shall include a provision requiring a 10-day notice to the District for the cancellation of an insurance

policy due to the non-payment of a premium and a minimum of a 30-day notice to the District for any change to or cancellation of an insurance policy other than for non-payment of a premium.

(D) Certificates of Insurance. Contractor shall provide to the District certificates of insurance showing the insurance coverages and required endorsements described above, prior to performing any services under this Agreement.

(E) Non-limiting. No provision, term or condition contained under this Part V of the Agreement shall be construed as limiting in any way, the indemnification provision contained in Section 7.3 hereof, or the extent to which Contractor may be held responsible for payments of damages to persons or property

## VI. ILLEGAL ALIENS

6.1 CERTIFICATION. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit C**, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Section 6.6 herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

6.2 PROHIBITED ACTS. Contractor shall not:

(A) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(B) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall provide the District with all certifications received from subcontractors in which subcontractors certify that said subcontractors do not knowingly employ or contract with an illegal alien to perform work under this Agreement.

6.3 VERIFICATION.

(A) Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(B) Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(C) If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

(i) Notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor 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 an illegal alien.

6.4 DUTY TO COMPLY WITH INVESTIGATIONS. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to § 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with this Part VI of the Agreement.

6.5 BREACH. If Contractor violates a provision of this Part VI, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Part VI of the Agreement and the District terminates the Agreement.

6.6 DEPARTMENT PROGRAM. If Contractor participates in the Department Program, in lieu of the E-Verify Program, Contractor shall notify the Department and the District of such participation. Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and not altered or falsified the identification documents for such employees. Contractor shall provide a written, notarized copy of the affirmation, similar in form as attached hereto as **Exhibit D**, to the District.

## VII. MISCELLANEOUS

7.1 MODIFICATION. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by both the District and Contractor.

7.2 ASSIGNMENT. Contractor shall not assign or transfer all or any part of Contractor's interest in this Agreement without the District's prior written consent. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement. Regardless of the District's consent, no assignment or transfer shall release Contractor from Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the Term of the Agreement. Consent to one

assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

7.3 INDEMNIFICATION. Contractor shall defend, indemnify, assume all responsibility for and hold harmless the District and its directors, officers, consultants, employees, servants, agents, or authorized volunteers, from all claims or suits for any damages to property or injury to persons, and for the costs of litigation and reasonable attorney fees of all such parties and persons that may arise out of any actions undertaken by Contractor pursuant to this Agreement; provided, however, that the provisions of this Section 7.3 shall not apply to loss, damage or claims attributable solely to the intentional acts or omissions of the District.

7.4 GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded the District or its Board of Directors, officers, employees, servants, agents, or authorized volunteers, pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.

7.5 LIABILITY OF THE DISTRICT. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the District shall constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

7.6 SUBJECT TO ANNUAL BUDGET AND APPROPRIATION. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the District hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

7.7 NOTICES. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by electronic mail; or sent by a nationally recognized receipted overnight delivery service, including United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit in the United States mail, postage prepaid; when by electronic mail, on the day sent if sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses for mailing, transmitting, or delivering notices shall be as follows:

**If to the District:** Waterfall Metropolitan District No.1  
c/o Pinnacle Consulting Group Inc.  
Attention: Carla Hawkins  
5110 Granite Street, Suite C  
Loveland, CO 80538  
Email: [carlah@pinnacleconsultinggroupinc.com](mailto:carlah@pinnacleconsultinggroupinc.com)

**Copy to:** Icenogle, Norton, Smith, Gilida, & Pogue, PC.  
Attention: Alan D. Pogue  
1331 Seventeenth Street, Suite 500  
Denver, Colorado 80202  
Email: [apogue@insbcolorado.com](mailto:apogue@insbcolorado.com)

**If to the Contractor:** Bath Inc.  
Attention: Kevin Laman  
2000 E. Prospect Road  
Fort Collins, CO 80525  
Email: [klaman@bathlandscape-irrigation.com](mailto:klaman@bathlandscape-irrigation.com)

7.8 NON-WAIVER. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence of event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

7.9 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

7.10 SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

7.11 ATTORNEYS' FEES. In the event that litigation is brought by either party hereto in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any terms, conditions, or provisions hereof.

7.12 NO THIRD PARTY BENEFICIARY RIGHTS. This Agreement is entered into for the sole benefit of the District and Contractor and no other parties are intended to be direct or

incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.13 HEADINGS. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

7.14 BINDING AGREEMENT. This Agreement shall inure to and be binding upon the respective parties hereto and their successors and permitted assigns.

7.15 ENTIRE AGREEMENT. This Agreement, including all Exhibits and the Addendum attached hereto, constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

7.16 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

(Remainder of Page Left Intentionally Blank.)

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

**WATERFALL METROPOLITAN  
DISTRICT NO. 1:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**BATH INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

**EXHIBIT A-1**  
**Waterfall Metropolitan District**

**WEEKLY LANDSCAPE MAINTENANCE CHECKLIST**

(See Landscape Maintenance Specifications for details.)

Place a check mark by each item completed during the past week.

1. Mow and edge lawns.
2. Prune back any shrubs overhanging curbs or sidewalks.
3. Prune back any groundcover overhanging curbs or sidewalks.
4. Remove litter and leaves from plants, planters, and parking lots.
5. Remove any broken or fallen branches from trees. Remove sucker growth from tree trunks.
6. Remove any weeds larger than 2 inches (5 cm) high or wide from planters. Weeds 2 inches (5 cm) and larger must be removed, not just killed.
7. Weeds less than 2 inches (5 cm) shall be sprayed with a proper herbicide.
8. Replace bark mulch which has been knocked or washed out of planters. Smooth mulch layer if it has been disturbed.
9. Replace decorative rock which has been knocked or washed out of planters. Smooth decorative rock surface if it has been disturbed.
10. Check plants for signs of stress or disease. Replace any plants that meet conditions for replacement at the contractor's expense. Request authorization to replace other dead or missing plants.
11. Sweep or blow clean all walkways, curbs, and gutters.
12. Treat for any signs of disease or pest infestation.
13. Complete any items required on the Monthly Checklist.
14. Hand water any plants that are dry and stressed.
15. Check the irrigation system. Make emergency repairs as needed or request authorization to make major repairs.
16. Adjust the irrigation controllers for current water needs of plants.

Checked by: \_\_\_\_\_ (Print Name)

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

**EXHIBIT A-2**  
**Waterfall Metropolitan District**  
**MONTHLY MAINTENANCE CHECKLIST**

(See Landscape Maintenance Specifications for details.)

Complete items on list in accordance with contract term. (Complete all months for a 12 month contract, or complete April through November for an 8 month contract)

**January:**

1. If applicable, prune any tree branches that interfere with public safety. Prune all parking lot and street trees yearly to encourage strong upward growth.
2. Monitor property for trash and debris.
3. Monthly water plant material.

**February:**

1. Submit estimate to add new mulch to planters where the mulch depth has been reduced to less than 2 inches (5 cm) thick. Mulch not required where shrubs or groundcover completely hide the soil surface from view.
2. Submit estimate for dormant oil spray and spruce gall spray application.
3. If applicable, continue pruning operations.
4. Monitor property for trash and debris.
5. Monthly tree winter watering
6. Monthly water plant material.

**March:**

1. Submit estimate for insect spray on deciduous and evergreen trees (fir pine tip moth, tussock moth, spruce gall, etc.)
2. If applicable, apply pre-emergent to bed areas.
3. Remove tree stakes and wires from applicable trees. (1 year old deciduous, 3 year old coniferous)
4. Monitor property for trash and debris.
5. Monthly water plant material.

**April:**

1. Complete spring clean-up operations.
2. Complete spring pruning operations including hedging operations.
3. Begin lawn mowing and edging operations.
4. Submit estimate for crabgrass preventative if applicable.

5. Activate sprinkler system. (Contractor is responsible for any damage caused by freezing.)
6. Inspect sprinkler system operation weekly/adjust programming as needed.
7. Submit pre-emergent application if applicable.
8. Establish, maintain and/or create tree rings.
9. Fertilize/weed control lawn. Submit fertilizer amounts applied to project.
10. Remove tree wrap.
11. Check for fire blight and submit estimate for corrections.
12. Submit estimate for annual installation if not part of contract.
13. Submit estimate to add new mulch to planters where the mulch depth has been reduced to less than 2 inches (5 cm) thick. Mulch not required where shrubs or groundcover completely hide the soil surface from view.

**May:**

1. Install annuals.
2. Submit estimate for fertilization of trees, shrubs, and perennials if applicable.
3. Confirm aeration activities have happened in April or May.
4. Submit estimate to spray apples, crabs, pears, mountain ash, and pyracantha to prevent fire blight (as necessary) if applicable.
5. Inspect sprinkler system operation/adjust programming as needed.
6. Continue mowing operations.
7. Prune and shape applicable hedges.

**June:**

1. Prune shrubs as needed to maintain proper shape.
2. Prune and shape applicable hedges.
3. Fertilize/weed control lawn. Submit fertilizer amounts applied to project.
4. Check all trees and shrubs for insect pests (mountain pine beetle), submit estimate for treatment.
5. Continue mowing operations.
6. Inspect sprinkler system operation/adjust programming as needed.
7. Submit estimate to add new mulch to planters where the mulch depth has been reduced to less than 2 inches (5 cm) thick. Mulch not required where shrubs or groundcover completely hide the soil surface from view.

**July:**

1. Check for lawn fungi, submit estimate for treatment.
2. Prune shrubs after flowering.
3. Prune and shape applicable hedges.
4. Continue mowing operations.
5. Inspect sprinkler system operation/adjust programming as needed.
6. Prune Maples, birches, walnuts, lilac, viburnum, forsythia, etc.

**August:**

1. Continue mowing operations.
2. Inspect sprinkler system operation/adjust programming as needed.
3. Check all trees and shrubs for stress
4. Prune and shape applicable hedges.

**September:**

1. Fertilize/weed control lawn. Submit fertilizer amounts applied to project.
2. Continue mowing operations.
3. Inspect sprinkler system operations/adjust programming weekly.
4. Insulate unprotected backflow preventers.
5. Prune and shape applicable hedges.

**October:**

1. Prepare irrigation system for winter. Make sure backflow preventor is well insulated or drained prior to first hard freeze. Blow out pipes using compressed.
2. Begin fall clean-up operations during weekly mowing operations.
3. Prune back applicable perennials.
4. Submit estimate to add new mulch to planters where the mulch depth has been reduced to less than 2 inches (5 cm) thick. Mulch not required where shrubs or groundcover completely hide the soil surface from view.

**November:**

1. Complete fall clean-up/pruning operations. Remove all leaves and debris from all landscape areas.
2. Monitor site for trash and debris.
3. Wrap applicable trees.
4. Monthly water plant material.

**December:**

1. Monitor site for trash and debris.
2. Monthly water plant material.

Checked by: \_\_\_\_\_ (Print Name)

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

**Exhibit A-3**  
**Waterfall Metropolitan District**

**LANDSCAPE MAINTENANCE SPECIFICATIONS**

**I. GENERAL REQUIREMENTS**

- A. **Part of Contract:** This Landscape Maintenance Specification is a part of the contract for landscape maintenance services. Compliance with the requirements set forth in this specification is mandatory for the maintenance contractor. If any part of this specification is declared invalid for any reason, which invalidation shall apply only to that specific part declared invalid, it shall not nullify any of the requirements of any other part. In the event of question over applicability of any requirement, the requirement shall be assumed to apply, unless the District provides a written clarification stating that it does not. All modifications to this specification must be in writing.
- B. **Definitions:**
1. The term "District" refers to the person, partnership, corporation, or agency that contracted for the performance of the landscape maintenance work.
  2. The term "contractor" refers to the person, partnership, corporation, or agency that will perform the landscape maintenance work.
  3. The term "excluded damage" as used in this document shall refer to damage caused by vandalism, pedestrians, vehicles, animals (except insects and rodents), or other unusual factors. It does not include damage caused by the contractor's actions, lack of reasonable care, pest damage (such as insects), diseases, or plant loss due to lack of water caused by an irrigation system programming error, irrigation system breakage, or irrigation malfunction. (It is assumed that most plants can survive for at least one week without irrigation, during which time any irrigation problems should become apparent to the contractor. Exceptions may be made if the District's authorized representative determines that unusual circumstances contributed to a loss.)
- C. **Insurance:** See this Service Agreement Section V. Insurance Coverage Requirements of this Contract Tab.
- D. **Contact Person:** The contractor shall provide the District's authorized representative with a phone number where a message can be left for the contractor 24 hours a day. An answering machine connected to the contractor's normal phone line is an acceptable method of meeting this requirement. The contractor shall check for messages left at this phone number every 24 hours or less.
- E. **Additional Work:** All requests for work that will require additional payment must be in writing. Do not start work until the request for additional work has been approved in writing by the District's authorized representative. Failure to obtain advance approval before starting the work may result in non-payment or delays in processing payment. Emergency repairs may be made without authorization when immediate repairs are necessary to protect the health, safety, or welfare of the public, or immediate repairs are

needed to prevent additional property damage. In these situations, make immediate repairs as needed to protect the public or stabilize the situation and immediately notify the District's Representative. Additional payment for the work will be negotiated with the contractor by the District's authorized representative. Unless otherwise noted, requests for work that qualifies for an additional payment must be made within two weeks of the time when the need for the work becomes apparent. The expectation of the District is to have the contractor check for problems weekly and promptly report them so they can be corrected.

**F. Existing Conditions, Examination of Site:**

1. Within one month of the starting date for work under this contract, the contractor shall make a thorough examination of the current conditions at the site. The contractor shall make a list of all landscape items at the site that he/she believes are broken, missing, not healthy, or otherwise are not in compliance with these specifications. A copy of this list, along with an additional itemized quote for correcting each item, shall be given to the District's authorized representative. Upon confirmation of each item, the District's authorized representative will either give the contractor written authorization to make the correction, or a written release from responsibility for the item.
2. By the act of submitting a bid on this work, the contractor shall be considered to have examined both the landscape and these specifications, and to have thoroughly familiarized himself/herself with the scope of the required work.

**G. Loss Prevention:** The District may take any reasonable action necessary to control damage or protect the health, safety, and welfare of the public in the event of problems involving the landscape. Such action on the part of the District shall not relieve the contractor of any responsibilities related to the problem.

**H. Safety:**

1. No part of this work shall be performed or installed in any location or manner which may endanger the health, safety, or welfare of the public now or in the future. Means, methods, techniques, sequencing, etc. are the sole responsibility of the contractor.
2. The contractor agrees that he/she shall assume sole and complete responsibility for his/her work, including safety of all persons and property; and that the contractor shall defend, indemnify, and hold the District and tenants harmless from any and all liability, real or alleged, in connection with the contractor's performance of work on this project, excepting for liability arising from the sole negligence of the District or tenants.

**I. Laws, Codes, and Ordinances:**

1. Any requirement of this specification which conflicts with or is in violation of any government rule, ordinance, regulation, etc. shall be void. The contractor shall notify the District immediately of any such requirement found in this specification.
2. The contractor shall, throughout the course of this work, comply with all rules, ordinances, regulations, etc. set forth by agencies having jurisdiction, which apply to the work site, the contractor, and/or his/her employees.

## II. SCOPE OF WORK

- A. The contractor shall provide regular, weekly maintenance services as outlined in these Landscape Maintenance Specifications and the Weekly and Monthly Checklists for this project site.
- B. The contractor shall examine the landscape, including irrigation, on a weekly basis, looking for problems or potential problems with the landscape.
- C. The contractor shall provide at his/her own risk all labor, materials, tools, equipment, insurance, transportation, hauling, dumping, and all other items needed to provide the services outlined in this Specification.
- D. The contractor shall make minor replacements and repairs to the landscape facilities as part of the required weekly maintenance work. Major items needing replacement or repair shall be reported to the District's representative within one week of occurrence. A minor item would be something that takes less than 15 minutes to repair by skilled workmen, using minimal replacement parts. Some specific guidelines for determining if an item is minor or major are given in the section pertaining to each item. The contractor shall be available to perform additional work related to the landscape maintenance as may be authorized in writing by the District. Such work shall be non-minor items relating to landscape care, which are not a part of the normal maintenance work as outlined in this specification.
- E. Any facilities or property damaged or destroyed as a result of the landscape maintenance contractor's operations at the site shall be repaired or replaced at the landscape maintenance contractor's expense.

## III. CHECKLISTS

- A. The WEEKLY LANDSCAPE MAINTENANCE CHECKLIST is made a part of this specification as if repeated in full here. The contractor shall review this checklist weekly and complete all applicable items on the list weekly. See Exhibit A-1 in contract.
- B. The MONTHLY MAINTENANCE CHECKLIST is made a part of this specification as if repeated in full here. The contractor shall review this checklist monthly and complete all the applicable items listed for the current month prior to the end of the month. See Exhibit A-2 in contract.

## IV. CARE OF PLANTED AREAS

### A. Trees:

1. Trees shall be maintained in a healthy, vigorous growing condition, free from disease and large concentrations of pests.
2. Prune trees only to remove dead, diseased, broken, dangerous, or crossing branches, and as required below. Pruning of this type is a minor, non-reimbursable, cost to be included as part of the regular maintenance.
3. Prune trees only in appropriate months as determined by an arborist. Prune in accordance with generally accepted standards for proper pruning.
4. Prune all trees and shrubs to 15 feet high. Submit an estimate for pruning above 15 feet high.

5. Discard all tree trimmings off-site using a legal method.
6. Any tree found to be dead or missing shall be replaced with plant material of identical species. Replacement trees shall equal in size to the originally installed tree at the time it was planted at the site.
7. Replacement trees shall be approved for size and appearance by the District's authorized representative prior to planting. Replacement trees shall be double staked with steel t-posts unless otherwise approved by the District's authorized representative. Place 6 slow-release fertilizer tablets in backfill material, evenly spaced around root ball, but not touching the root ball.
8. Remove tree stakes from trees after deciduous trees have been in the ground for 1 full year and coniferous trees for 3 years, or when the trees are able to support themselves. Remove stakes from site and dispose of by a legal method. Recycle used stakes if possible.
9. Once a year, prune all trees to encourage a high-branching structure. Remove all non-structural branches between the ground and a point half the tree's total height. Exception to the above: trees planted for screening purposes, such as those at rear perimeters of many sites shall not be pruned except as needed to remove dead, diseased, broken, dangerous, or crossing branches. Some municipalities prohibit pruning trees without a permit. Check with local authorities prior to pruning. The contractor is responsible for determining if permits are needed and shall obtain and pay for any required permits as part of the basic landscape maintenance fee.
10. The cutting blades on pruning shears, clippers, blades, saws, etc. shall be sterilized after pruning each tree to minimize the possibility of spreading disease. When pruning trees known or suspected to be diseased, cutting blades shall be sterilized after each cut. Sterilize blades by dipping them in a solution of 1 part bleach and 9 parts water or heavily spray them with a disinfectant spray, such as Lysol or de-natured alcohol. After dipping or spraying, wait 20 seconds before using again.
11. A vertical clearance of 114 inches is required above all parking spaces. A vertical clearance of 80 inches is required above all walkways. Trim trees to remove all limbs within these areas.

**B. Shrubs and Vines:**

1. Shrubs and vines shall be kept in a healthy, vigorous condition, free from disease and large concentrations of pests.
2. Shrubs shall be pruned weekly only as needed to remove branches that are dead, broken, extending beyond the face of curbs or sidewalks, or are climbing building walls (unless they are intended to climb the wall, such as climbing vines). Formal hedges and topiary shall be regularly pruned to maintain a uniform height and width. Except as noted previously, allow the shrubs to grow un-pruned to their natural sizes
3. Shrubs uniformly planted in rows, where it is clear the intent was to create a hedge, shall be pruned so as to encourage a hedge. Shrubs in hedges shall be encouraged through pruning to form a dense, continuous, hedge, branching fully to the ground. All other shrubs shall be pruned only as required for safety, visibility, and plant health, and allowed to develop into the natural shapes expected of the plant variety. Do not shear shrubs into topiary (shapes) unless

specifically instructed to do so in writing by the District's authorized representative.

4. Any shrub found to be dead or missing shall be replaced with plant material of identical species. Replacement shrubs shall be #5 size as defined by the American Nursery Association.
5. Replacement shrubs shall be at least 18 inches (45 cm) in height when planted, unless otherwise approved by the District's authorized representative. Place 2 slow-release fertilizer tablets in backfill material, 6 inches (15 cm) deep on opposite sides of the root ball, but not touching the root ball.
6. The cutting blades on pruning shears, clippers, blades, saws, etc. shall be sterilized between every three shrubs to minimize the possibility of spreading disease. When pruning shrubs known or suspected to be diseased, the cutting blades shall be sterilized after each cut. Sterilize blades by dipping them in a solution of 1 part bleach and 9 parts water or heavily spray them with a disinfectant spray, such as Lysol. After dipping or spraying, wait 20 seconds before using again.

**C. Groundcover:**

1. Groundcover shall be maintained in a healthy, vigorous growing condition.
2. Any groundcover found to be dead or missing shall be replaced with plant material of identical species.
3. Keep groundcover trimmed back from sidewalks, curbs, and paved areas on a weekly basis. Do not create vertical edges when pruning groundcover. Cut the edges at an angle /--\ for a more natural appearance and healthier plants.
4. If regular foot traffic through a planter is preventing the groundcover from reaching full coverage of the soil, contact the District's authorized representative to discuss options for redirecting the foot traffic. Consider installing pavers, stepping stones, a concrete walk, a gravel path, and/or barriers to redirect pedestrians. Provide costs for these options to the District's authorized representative.

**D. Fertilizer:**

1. All turf/lawn areas will be fertilized a minimum of 3 applications per year applying 4 pounds of actual nitrogen per one thousand (1,000) square feet of turf/lawn per growing season.
2. If contractor feels the above specification is inaccurate, the contractor will perform a soil test at contractor's expense to prove inadequacies.
3. Itemized receipts for fertilizer and other required soil amendments purchase (or for services of a fertilizer application company) must be submitted to the District's authorized representative as proof of application. The contractor shall submit the receipts together with the next regular billing. Failure to submit receipts may result in payment delays or partial payment. Receipts must show the name and phone number of the seller and the date of sale. Receipts must also be itemized, showing the total quantity and description of each item. Prices and unrelated purchases may be blacked out.

**E. Weed control:**

1. Weeds in planted areas, including turf areas, sidewalks, curbs, gutters, or pavement shall be removed or killed weekly as the weeds emerge. Weeds shall be

removed (not just killed) if they are larger than 2 inches (5 cm) in height or diameter. Weeds less than 2 inches (5 cm) shall be sprayed with proper herbicide. Dispose of weeds off-site. Pre and post-emergent herbicides may be used at the contractor's option. No additional payments will be made for herbicide applications. The cost of all weed control work shall be included in the contract price for landscape maintenance. Regular maintenance of the mulch or decorative rock layer will help minimize weeds in shrub and groundcover areas.

**F. Mulch and/or Rock Layer:**

1. Soil mulch and/or rock layer shall be cared for as needed to create and maintain an even and uniform appearance over the visible soil surface of each planter area.
2. The contractor shall add additional mulch and/or decorative rock regularly to maintain a layer no less than 2 inches (5 cm) deep at all times in shrub planters. Mulch and/or decorative rock are not required in areas where plant foliage completely covers the soil surface, such that the soil is not visible through the foliage. Note: only 2 inches (5 cm) of mulch is required, however maintaining a deeper layer of mulch and/or decorative rock greatly reduces the labor and chemicals needed to control weeds, reduces water use, and helps the plants stay healthy.
3. Replacement of large amounts of mulch and/or decorative rock which has been stolen, vandalized, or washed away by a single storm will be paid as additional work. Submit a quote for the work as noted in the General Requirements section of these specifications.
4. Any mulch or decorative rock found outside planter areas shall be returned to the planter on a weekly basis.
5. Mulch and/or decorative rock shall be uniform in color and appearance, and free of leaves, sticks, or trash. Mulch may be chipped or shredded wood, bark, or decorative rock. When replacing existing mulch, use a mulch product that is similar in appearance to that already at the site.
6. In areas of the site where wood-based mulch frequently washes away, submit a quote for replacement of the organic mulch with decorative rock having a similar color.
7. Replacement rock shall be same size and color as existing decorative rock on site. In the event no rock exists, the decorative rock used shall match rock used in other areas of the landscape.

**G. Lawns:**

1. Lawns shall be kept in a healthy, vigorous condition, free of disease and pests, except as noted below.
2. All turf areas shall be mowed weekly, or as needed during the growing season. Mowing height will be at 3.0 – 3.5 inches. Frequency of mowing will vary in the spring and fall, due to seasonal weather conditions and growth rate of turf. Approximately 26 cuts over the season will be performed on all turf.
3. Lawn height shall not exceed 5 inches (13 cm) at any time.
4. All turf area inaccessible to mowing equipment will be trimmed as needed, on a weekly basis, to maintain a neat, well groomed appearance.

5. Where practical, Contractor will use approved growth regulators around fences, trees, and other obstacles that may be damaged by repeated use of string line trimmers.
6. Mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance.
7. Remove visible lawn clippings and dispose of them off-site in a legal manner. The contractor is encouraged to use mulching mowers which cut clippings into small pieces that sift down into the lawn.
8. Weeds shall be controlled in lawn areas as noted above under the weed-control section.
9. Edging of walks, curbs, etc. will be done monthly or as needed.
10. Edging is limited to concrete areas, in order to avoid damage to irregular asphalt, as well as flagstone, brick, wood, walks and decks.
11. Excessive debris, resulting from edging, shall be collected and legally disposed of offsite.
12. Lawn areas will be aerated once during the spring. A mechanical aerator capable of removing 3" core plugs will aerate lawn areas in two different directions. Aeration will occur during the spring months.
13. Any lawn found to be dead or severely yellowed shall be replaced with plant material of identical species (i.e. sod shall be similar in all respects to the existing grass. Do not seed dead lawn areas, use sod only for replacement, unless directed, in writing, by the District's authorized representative).

#### **H. Tree Circles:**

1. All plant material located in turf areas will have a grass and weed free circle maintained around the base of the plant.
2. All tree circles will extend 3 to 4 inches beyond the "drip-line" of pine and spruce trees, and a minimum of 30 inches in diameter on all deciduous trees.
3. If tree circles don't exist, at a minimum contractor will create them by use of chemicals. Contractor to use consideration of proper chemical so plant is not damaged.

### **V. IRRIGATION**

#### **A. Water Application & Scheduling:**

1. Hand water as needed to supplement natural rainfall and maintain plantings in a healthy, stress-free condition. It is the contractor's responsibility to make sure that plants receive adequate water regardless of weather conditions.
2. It is the responsibility of the contractor to conserve water and assure that all watering rules and regulations are followed. Any penalties, fines, or citations for watering ordinance violations shall be paid by the contractor.
3. Irrigation shall be made by the use of the permanent irrigation systems. Hand water as needed to supplement the permanent system. Failure of the irrigation system to provide full and proper coverage shall not relieve the landscape maintenance contractor of the responsibility to provide adequate irrigation. It is the contractor's responsibility to make sure that the irrigation system is maintained and operates properly.

4. The contractor is responsible for the complete operation and maintenance of the irrigation systems, except as noted below. The contractor shall examine the irrigation system for damage or malfunction weekly and shall report damage or malfunction to the District's authorized representative in writing.
5. Contractor is responsible for above ground irrigation components. Contractor will protect irrigation components from damage and adverse weather conditions. Wrapping backflow's in the early spring and fall is one example of this specification.
6. Adjust watering times each week. Do not over-water plantings. Use multiple-start times and short run times to prevent run-off. Drip systems should be left on for sufficient time to allow for saturation of the root zone. Shorter runs with drip irrigation do not provide sufficient water penetration for healthy root development. Avoid multiple-start times with drip systems, if possible. Do not allow run-off from any irrigation.
7. When breakdowns or malfunctions exist, the contractor shall hand water, if necessary, to maintain all plant material in a healthy condition.

**B. Irrigation System Scheduled Maintenance:**

1. Each valve zone shall be observed for signs of damage on a weekly basis during the irrigation season.
2. The landscape maintenance contractor shall maintain the irrigation system, including cleaning of filter screens yearly or more often as needed, and flushing pipes, as part of this contract.
3. Drip irrigation systems need periodic flushing to remove sediment. When flushing is necessary, it shall be performed as part of this contract. Drip systems shall be flushed at least once a year. Open ends of drip lines and run for at least 15 minutes at full flow to flush.
4. Run-off of water from irrigation systems into or onto streets, sidewalks, stairs, or gutters is not permitted. The contractor shall immediately shut down the irrigation system and make adjustments, repairs, or replacements as soon as possible to correct the source of the run-off.

**C. Irrigation System Repair:**

1. The landscape maintenance contractor shall replace or repair, any irrigation components damaged. Regardless of the cause of damage, the contractor shall take immediate action to prevent further damage by shutting off the damaged part of the irrigation system and commencing with hand watering as needed. As soon as possible after receiving written authorization to proceed, the contractor shall make repairs. The following items are considered to be minor repairs: damaged or clogged sprinkler nozzles, adjustment of sprinkler patterns or arcs, adjustment of sprinkler position (i.e.; raise, lower, or straighten sprinkler head), replacement of clogged, broken, or missing barbed-style drip emitters, replacement or repositioning of drip distribution tubing smaller than 1/2 inch or 15 mm diameter. These minor repair items shall be corrected by contractor at contractor's expense.
2. Any replacement of irrigation system components shall be made with materials of the same manufacturer and model as the original equipment. Substitutions of materials other than original equipment will be approved only when the original equipment has been discontinued and is no longer available for purchase at any

location. The substituted equipment must be completely compatible with the original and must be approved in advance by the District's authorized representative.

3. All repairs to the system shall be identical to the original installation, unless approved otherwise in advance by the District's authorized representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization to make the change from the District's authorized representative.
4. For safety, never install sprinklers on risers above the ground level, even if the risers are flexible. Always use spring-operated, pop-up style, sprinkler heads. Sprinkler heads are available with pop-up heights up to 12 inches (30 cm) above ground level. If the existing sprinklers are mounted on above-ground risers, the replacements shall be pop-up type sprinklers. No exceptions, ever!
5. If any existing sprinklers at this site are installed on risers above the ground level, submit a quote for additional work to the District's authorized representative covering the cost of removal and replacement of these sprinklers with new, spring-loaded, pop-up type, sprinklers.
6. The contractor shall check the entire irrigation system weekly for items such as dry spots and missing or malfunctioning irrigation components. Check for leaking valves, water running across sidewalks, water standing in puddles, or any other condition which hampers the correct operation of the system or the public safety. The contractor shall carefully observe plant materials for signs of wilting, indicating a lack of water. Plants which die due to irrigation failure will be considered to have died due to the contractor's negligence and shall be replaced at the contractor's expense.
7. Plastic sprinkler nozzles with bad patterns shall be replaced with new nozzles of the same gallonage and arc as part of the regular maintenance of the sprinkler system. Do not attempt to clean plastic nozzles by sticking knife blades or wire into the openings. The plastic will be scratched and the pattern will be ruined. Brass nozzles may be carefully cleaned if needed.

## **VI. CLEAN UP AND LITTER REMOVAL**

- B. Sweep or blow-off all walks, curbs, and gutters weekly. Sweeping of parking lots is not part of this work unless noted otherwise in contract.
  1. Do not sweep or blow trash, leaves, clippings, or landscape debris into planters or onto adjacent property. Collect all debris swept or blown from landscape areas and remove from the site.
  2. Do not use blowers prior to 7:00 A.M. or after 8:00 P.M. or at any other hours restricted by law. Do not use blowers around parked vehicles to avoid scratching vehicle paint with blowing sand and debris. Blowers may not be used where prohibited by law. All litter shall be removed from sidewalks, gutters, and all planted areas each week. In no case shall trash, litter, or leaves be blown or swept onto the property of others. All trash, litter, leaves, etc. shall be collected, hauled away, and disposed of legally.

- C. In addition to removing all litter from sidewalks, gutters, and planted areas, the contractor shall remove and dispose of any large miscellaneous debris or trash throughout the development. For the purpose of this contract, "large" shall mean items the size of a small beverage cup or larger. The intent of this requirement is that the contractor's workers should take sufficient pride in the appearance of the site that they would pick up any significant litter they come across at the site. Sweeping of the parking lots is not included in the landscape maintenance. All litter shall be removed from fences, planter areas and sidewalks, regardless of the size of the litter. Clean up and litter removal is contracted for a 12 month period.

## **VII. CHEMICALS, HERBICIDES, PESTICIDES**

- A. Contractor will provide Material Safety Data Sheet's (MSDS) of any chemical, herbicide, or pesticide to the District's authorized representative prior to use on project property.
- B. All chemicals shall be used in accordance with label directions and the manufacturer's recommended handling methods. All chemicals shall be handled in accordance with all applicable regulations. Registered chemicals shall be used only on the advice of a qualified, licensed, pest control applicator. Nothing in this specification shall be construed to be the advice of, or to substitute for the advice of, a pest control applicator.
- C. Pesticides shall not be applied within one hour of the start of operating hours for businesses at the site. In the event that it is not possible to complete the application by one hour prior to business hours (i.e.; 24 hour operations), applications shall be made at times when customer presence is minimal. Areas to be treated shall be posted in accordance with government, state and local ordinance.
- D. The landscape maintenance contractor shall take precautions to keep persons away from pesticide and herbicide-treated areas until the applied material is fully dry and the treated area is safe for entry. Follow the recommendations of the pesticide manufacturer and all applicable governmental and industry regulations.

## **VIII. COMMUNICATIONS AND REPORTS**

- A. Regular communication between the contractor and the District's authorized representative is encouraged.
- B. The contractor is encouraged to ask questions, rather than make assumptions.
- C. As the landscape matures, some of the maintenance procedures will be eliminated and others may have to be added. For example, as the shrubs mature they will require less fertilizer. Regular communication will eliminate most surprises to the District of changing maintenance costs, which will vary as the landscape grows. Remember, all changes to these specifications must be approved in writing by the District's authorized representative.
- D. The contractor shall provide the District's authorized representative with the name and phone number of the contractor's representative for this site. The contractor's representative shall be a person in the employ of the contractor who is familiar with, and regularly updated on, all the contractor's activities at the site. The contractor's representative shall personally perform regular reviews of the contractor's work at the site.

- E. The contractor shall provide the District's authorized representative with a phone or pager number for after hours emergency situations (i.e.; broken irrigation mainline).
- F. The contractor shall turn in a copy of the Weekly Maintenance Checklist to the District's authorized representative each week. The checklist copy shall have a check mark by all items completed at the site during the week by the contractor. Any items completed that are not on the checklist shall be noted on the back of the checklist. The checklist shall be dated and contain the name and signature of the contractor's representative for the work at this site.
- G. The contractor shall turn in a copy of the Monthly Maintenance Checklist to the District's authorized representative each month. The checklist copy shall have a check mark by all items completed at the site during the month by the contractor. Any items completed that are not on the checklist shall be noted on the back of the checklist. The checklist shall be dated and contain the name and signature of the contractor's representative for the work at this site.

**EXHIBIT B**

**PAYMENT FOR SERVICES**

**Waterfall Metropolitan District**

**2009 Landscape Maintenance AS-BID Schedule A**

April 18, 2009

Prepared by: Pinnacle Consulting Group Inc.

Bath, Inc.		Contractor Name			
#	Description of Item	Unit	Quantity	Unit Price	Item Price
I	Spring & Fall Cleanup	Each	2	\$ 400.00	\$ 800.00
II-a	Weekly Mow/Trim & Blow	Weekly	31	\$ 76.00	\$ 2,356.00
II-b	Chemical Weed Control	Weekly	31	\$ 19.35	\$ 599.85
II-c	Detail/trash removal -April - October	Weekly	31	\$ 15.48	\$ 479.88
II-d	Edge Sidewalks	Monthly	7	\$ 7.00	\$ 49.00
II-e	Tree well development and annual cultivation/maintenance	Each	1	\$ 266.00	\$ 266.00
III-a	Irrigation System Activation	Each	1	\$ 174.00	\$ 174.00
III-b	Irrigation System Management	Bi-Weekly	14	\$ 81.00	\$ 1,134.00
III-c	Irrigation System Winterization	Each	1	\$ 95.00	\$ 95.00
IV	Pruning shrubs/trees under 15 feet	Each	3	\$ 114.00	\$ 342.00
V	Turf Fertilization and Herbicide Application	Each	3	\$ 150.00	\$ 450.00
VI	Aeration	LS	1	\$ 42.00	\$ 42.00
VII	Annual Flowers	0	1		\$ -
VIII	Debris/Trash Pickup (during winter months - Nov, Dec, Jan, Feb & March)	Monthly	5	\$ 38.00	\$ 190.00
VIII-a	Other Suggested maintenance (please list items seperately below)		0		\$ -
VIII-b	Activate, Manage, Winterize Water Fountain at Monument Sign		1	\$ 750.00	\$ 750.00
VIII-c			0		\$ -
VIII-d			0		\$ -
			0		\$ -
			0		\$ -
<b>As-Bid Total</b>					<b>\$ 7,727.73</b>

**EXHIBIT C**

**CERTIFICATION REGARDING ILLEGAL ALIENS**

**CERTIFICATION  
REGARDING ILLEGAL ALIENS**

**TO: WATERFALL METROPOLITAN DISTRICT NO. 1**

I, Kevin Laman, as Vice-President of **Bath Inc.**, the prospective "Contractor" for that certain contract for landscape services to be entered into with Waterfall Metropolitan District No. 1, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Executed on the \_\_\_\_ day of April, 2009.

**BATH, INC.**

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

Its: \_\_\_\_\_

**EXHIBIT D**

**AFFIRMATION OF LEGAL WORK STATUS**



# Contractor Affirmation for the Department Program

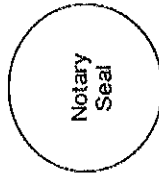
Required for use by contractors participating in the Department Program for public contracts for services 8-17.5-101 & 102, C.R.S.

The contractor shall provide a written, notarized copy of this affirmation to the contracting state agency or political subdivision.

DO NOT submit this affirmation to the Colorado Division of Labor unless specifically requested to do so.

Employee Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Date of Hire: \_\_\_\_\_  
 Last First M.I.  
 In accordance with 8-17.5-102, C.R.S., I have: \_\_\_\_\_  
 Contract Number: \_\_\_\_\_  
 Contractor / Business Name: \_\_\_\_\_  
 (Initial after each) Phone: \_\_\_\_\_  
 Contractor or Contractor Representative Name: \_\_\_\_\_  
 • Examined the legal work status of the above named employee: \_\_\_\_\_  
 • Retained file copies of documents required by § U.S.C. sec. 1524a: \_\_\_\_\_  
 • Not altered or falsified the employee's identification documents: \_\_\_\_\_  
 Contractor OR Contractor Representative Signature and Title: \_\_\_\_\_ Date Signed: \_\_\_\_\_

Subscribed and affirmed before me in the county of \_\_\_\_\_, State of Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.



\_\_\_\_\_  
(Notary's official signature)

\_\_\_\_\_  
(Commission expiration date)

8-17.5-102(5)(c)(II), C.R.S. A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by § U.S.C. sec. 1524a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

This affirmation and the documents required by 8 U.S.C. sec. 1524a will be retained by the contractor for the duration of the above named individual's employment.

This affirmation is provided as a courtesy by the Colorado Division of Labor.

A nother substantially similar affirmation may be used, provided that it contains the necessary elements and information as required by law.

**ADDENDUM  
TO SERVICES AGREEMENT**

WHEREAS, at the November 4, 2008 election, voters of the State of Colorado (the "State") passed Amendment 54 to the State Constitution, which Amendment modifies Article XXVIII of the State Constitution with the addition of Sections 15, 16, and 17; the revision of Section 13, and the addition of certain definitions to Section 2 of the Article; and

WHEREAS, Amendment 54 prohibits sole-source government contractors from contributing to a political party or candidate for the contract's duration and two years thereafter and prohibits contributors to ballot issue campaigns from entering into sole-source government contracts relating to the issue; and

WHEREAS, upon advice of legal counsel, the Parties hereto believe that Amendment 54 could be ruled to violate certain rights granted by the United States Constitution and thus, unconstitutional; and

WHEREAS, pending disposition of any legal action challenging the constitutionality of Amendment 54, the Parties hereto agree to incorporate the following provision into the Agreement:

**Compliance with Article XXVIII of the Colorado Constitution.** If and only to the extent the Agreement constitutes a "sole source government contract" within the meaning of Article XXVIII of the Colorado Constitution (the "Article"), then Sections 15, 16 and 17 of the Article ("Amendment 54") shall be an integral part of the Agreement and shall be incorporated herein as if set forth in full in the body of the Agreement. If any provision of Amendment 54, or the application thereof, is repealed retroactively, found to be inapplicable to the Agreement, or is determined by a court or administrative body of competent jurisdiction to be unconstitutional, invalid or unenforceable, in whole or in part, then such provision shall no longer be incorporated into the Agreement and the Parties hereto shall have no obligations under such provision; provided, however, that such determination shall not affect, impair or invalidate any other provision in the Agreement or the application of the provision in question to any other situation; and if any provision in the Agreement or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Executed this \_\_\_\_\_ day of April, 2009.

**WATERFALL METROPOLITAN  
DISTRICT NO. 1**

**BATH, INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_