



## **REGULAR BOARD MEETING PACKET**

July 18, 2024



**HGMD REGULAR BOARD MEETING  
MINUTES  
June 20, 2024, at 1:00 P.M.**

Pursuant to Section 24-6-402(2)(c), C.R.S., the Board of Directors of the Heather Gardens Metropolitan District held a regular meeting at the Heather Clubhouse in the boardroom and via Zoom videoconference at **1:00 p.m.** on **June 20, 2024**. This meeting is open to the public.

**MINUTES**

1. **PLEDGE OF ALLEGIANCE**
2. **DETERMINE QUORUM** All Directors are present: Rita Effler, Eloise Laubach, Robin O'Meara, Daniel Taylor, and Craig Baldwin via Zoom
3. **CALL MEETING TO ORDER**
4. **APPROVAL OF PRIOR MEETING MINUTES**
  - December 21, 2023 - Motion to Approve: Rita Effler, Second Eloise Laubach Motion has a majority and passes. Minutes approved.
  - January 18, 2024 - Motion to Approve: Rita Effler, Second Robin O'Meara Motion has a majority and passes. Minutes approved.
  - June 6, 2024 Motion to Approve: Rita Effler, Second Eloise Laubach Motion has a majority and passes. Minutes approved.
5. **PRESIDENT'S REPORT** - See Board Packet
6. **TREASURER'S REPORT**, Rita Effler - See Board Packet. There are no April and May Financials, so there is nothing to report, audit coming soon
7. **MANAGEMENT REPORTS** - None
8. **COMMITTEE REPORTS** -See Board Packet Audit/Finance Report
  - Capital Program Committee – No meeting
  - Clubs/Activities Committee Report – Auditorium Sound Proposal Below
    - Frolics - No report provided
    - Garden Club - No report provided
    - Woodshop Club – See Woodshop Employee Discussion in New Business
  - Clubhouse Committee Report – Oral Report
  - Foundation Committee Report – No report. Meeting Cancelled
  - Golf Committee Report – Oral report- Taylor See Motion 2024-6-20-3
  - Restaurant Committee Report – Oral report at meeting
  - RV Lot Committee Report – included in Board Packet

**UNFINISHED BUSINESS**

**Auditorium Sound Proposal** – Spectrum AV - Directors to review proposal for HGMD Regular Meeting on July 18, 2024 at 1:00 PM.

## **NEW BUSINESS**

### **Discussion of Woodshop Employee**

- Directors discussed the position
- Director O'Meara will bring the topic back to Clubhouse Committee for their consideration and recommendation. She will also get information from the HG Wood Shop Club.

### **Motion 2024-6-20-1 Resurface Auditorium Floor**

- **Motion made by:** Craig Baldwin Second by Eloise Laubach
- Discussion by the Board

**Secondary Motion:** Eloise Laubach made a motion to table the motion to get more information

#### **Second by Rita Effler**

- Secondary motion has a majority and passes.
- Resurfacing of the auditorium floor goes back to the Clubhouse Committee for more information.

### **Motion 2024-6-20-2 Engage Appraiser**

- **Motion made by:** Rita Effler, and amended \$6,000 from \$2,500 Second: Daniel Taylor
- Discussion by the Board
- Public Comments/Discussion
- **Secondary Motion to Table the Motion:** Motion made by Craig Baldwin Second: Eloise Laubach. Motion has a majority and passes.
- Will receive more proposals and bring information to July 18, 2024 HGMD Regular Meeting

### **Motion 2024-5-16-3 Purchase of Rough Mower**

- **Motion made by:** Daniel Taylor Second: Eloise Laubach
- Discussion by the Board
- Public Comments
- Vote: 4 in favor, Craig Baldwin - opposed
- Motion has a majority and passes.

### **Motion 2024-5-16-4 Purchase of Mobile Speakers**

- **Motion made by:** Robin O'Meara, Second Eloise Laubach
- Discussion by the Board
- Thank you to Rudy Morris for all his work
- Motion has majority and passes.

### **Motion 2024-5-16-5 Adopt Election PM-1**

- **Motion made by:** Daniel Taylor Second: Robin O'Meara
- Discussion by the Board
- Edit to include time frame flyers may be posted prior to election day for all elections
- Public comments None
- Vote: 4 Votes Aye; Eloise Laubach - Abstains
- Motion has a majority and passes.

**NEW BUSINESS (continued)**

**Motion 2024-6-20-6 Restaurant Name Change**

- **Motion made by:** Robin O'Meara **Second:** Dave Taylor
- Discussion by the Board
- Public Comment-Ron Hileman - Register the name
- Motion has a majority and passes.

**Motion 2024-6-20-7 Architect Contract**

- **Motion made by:** Robin O'Meara **Second:** Dave Taylor
- Discussion by the Board
- Public Comment
- The motion has a majority and passes.

**Upcoming:** Tennis Court Maintenance, Daniel Taylor

- Ron Hileman looking into repair of the crack in the tennis court service
- More details for next regular Board meeting on July 18, 2024

**PUBLIC COMMENT** – Public comment is limited to 5 minutes.

**Motion to Adjourn** by Robin O'Meara Second by Rita Effler  
The motion has a majority and passes.

**ADJOURNMENT at 2:42 PM**

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Robin O'Meara, Secretary

The next HGMD regular Board meeting will be held on Thursday, July 18, 2024, at 1:00 P.M. in the Clubhouse Boardroom



## **CLUBHOUSE COMMITTEE MEETING**

### **REPORT**

**TUESDAY, JULY 2, 2024 1:00 - 3:00 P.M.**

#### **PLEDGE OF ALLEGIANCE**

**PRESENT: Craig Baldwin, Bob Bankirer, Connie Burns, Carol Anne Mayne, Sandy McCurdy, Tom Merges, Debbie Parker, Carol Reed, Glenn Riggs**

#### **CALL MEETING TO ORDER**

**CONSIDER CHANGES TO THE AGENDA** (deletions/additions/order)

#### **CHAIR REMARKS**

#### **AUDITORIUM FLOORING- DISCUSSION**

- Stage Floor - not decided upon yet - was anything done?
- \$500 for supplies were purchased to put one layer, then two layers of flooring surface on the floor that exists and tap dancers select the surface
- Tap dancers rejected the samples that were presented
- Robin will continue to check status on this work
- Tap Dancing Classes - Sandy McCurdy will check with instructor to see if she had any direction saying she could hold tap lessons on the auditorium floor

#### **SPECIAL PRESENTATION: EMPIRE TODAY - AARON AUTRY**

A representative from Empire Today will present flooring options for the auditorium and stage.

NOTES:

**RECOMMENDS:** Luxury Vinyl Plank or Luxury Vinyl Tile

- Cushioning underneath
- Water Proof
- Sound Absorption
- Rep will look at stage - for more examples - samples because the stage may require a different surface material for it's use
- Remove Current Flooring rather than refinish another year - only lasts 3 years
- Height of the floor is involved by layering old over new

**Flooring Samples: Commercial Grade**

**#1 Seller - Alliance Professional -**

- Will last a long time - 20 - 25 Years
- Has texture to it
- Will wear well over time - Damage one piece take out the floor

## **SPECIAL PRESENTATION: EMPIRE TODAY - AARON AUTRY**

- Snap together
- If it gets wet it is not slippery

### **#2 Metro Flooring - more samples**

#### **Pricing - \$10 per Square Foot including installation**

- Leveling, remove old floor, base board, will be included in the proposal
- Empire Today - will provide a proposal for us to include all

#### **Time Frame -**

- Five Days to do the work
- Lead time - 2 weeks

#### **Discussion**

- Compared to re-surfacing - no brainer regarding cost
- Don't forget cleaning and maintenance equipment, materials

#### **Get three bids - Robin O'Meara will contact vendors:**

- Carpet One
- Custom Carpet
- Dustless?

## **ACTING CLUBHOUSE MANAGER REPORT** - Julie Racich - Robin will follow-up with Julie

## **SPECIAL COMMITTEE REPORTS**

### **Special Amenities Committee** - Linda Worthey

- New laminated consolidated signs for the locker room and hot tub area - do the most affordable option - move forward when we have the money
- Indoor Pool - re-opening this week?
- Outdoor Pool - gate still open to the patio and a sign to indicate "proper attire" is required in the clubhouse and restaurant

### **Property Advisory Committee** - Bob Bankier, Chair See attached report

#### **1. Xeroscaping**

- Goal - reduce water use, maintaining the lawn, labor and materials and good PR - saving water
- Rocks not grass - dangerous to walk on, why take out good grass?
- Raising rates of water
- Drought resistant plants
- Grants for the xeroscaping?
- Make a plan so that everything matches and is classy, adds richness to the property
- Perhaps pull together a landscape architect-recommendation to the Board
- Project to get the entrance spruced up
- Plan for the future - Three phase plan

#### **2. Garden Plot**

- HGMD owns the area behind the vinyl fencing
- Clean up the area

**2. Garden Plot (cont.)**

- Bob Bankirer will go to Maintenance Committee to ask how to go about how to clean this up
- Split the plots to make two more plots - Linda Worthy

**3. Clubhouse Parking Lot - not planned by HGMD**

- Continue to research more - Stay tuned

**Billiard Room - Connie Burns**

- Pictures - of the club members?
- Decorate with pictures of some kind
- Ping Pong room has pictures of club members in the scoring room

**Clubs and Activities - Robin O'Meara**

- Coordinating the Activities for Auditorium
- Pickle ball Clubs vs Tennis Club - still in progress

**ID System - Sandy McCurdy**

- Looked into the system to provide limited access to the amenities -
- Windsor Gardens uses local vendor
- Cell phone used to get the code or an app to access the areas we want limited access to by guests
- Sandy McCurdy will forward the contact info to Robin

**UNFINISHED BUSINESS NONE**

**NEW BUSINESS**

**Clubhouse Committee Study Session: Purpose: Set goals and create action plans**

**Tuesday, July 18, 2024**

**9:30 to Noon**

**Mountain View Room**

**PUBLIC COMMENT on Non-Agenda Items (limit 5 minutes per speaker) NONE**

**ANNOUNCEMENTS - Don't Miss the 4<sup>th</sup> of July BBQ in The Rendezvous Bar and Grill**

**ADJOURNMENT 2:50 PM**

## Golf Committee Report to HGMA Board

The June 25, 2024 golf committee meeting was called to order at 1:05 pm by chairman Beulah Gould and a quorum was established. Committee members present were: Jo Ann Fitch, Hal Gibbons, Deb Madril, Rich Richardson, Linda Savage, Marilyn Schlitt, Jake Flint. Carol Anne Mayne attended via zoom. Greg Kohr, Harold Borquez and Matt Martella were present. Linda Hileman was in the audience.

Chairs Report - a question about the report to HGMD from the May meeting regarding the 3 motions presented at that time was brought to the Chair's attention, therefore the Chair read the report in full and will also send the meeting reports to members when they are sent to HGMD.

Golf Financials - Greg Kohr reported that YTD 2023 was at 183K and YTD 2024 is at 225K. Fees are up by 16%, carts up by 24%, merchandise sales up by 14% and the stimulator up by 33%. The course continues to be very busy with down times during the hottest part of the day. Tournaments and league play are in full swing and junior golfers have started their tournaments.

Golf Maintenance - Harold Borquez reported that the pond is recovering from the algae bloom and mosquito control by placing "pucks" in the ponds to kill larva is ongoing. Spraying for mosquitos is expensive, 5K each time and they had to do that 3 times last year. Dragon flies and the bat houses will hopefully make a difference.

The #5 sand trap will be completed soon with the soil settling and #1 trap will be finished when the grass seed matures. A request for 8 new trees with plantings protecting from errant balls and around the practice "cage" to provide shade in the area. There was an irrigation break behind the green on #6 and the crew has been busy cleaning up damaged trees and branches.

Ladies Golf League - Laura Thompson was not able to attend. Linda Savage reported that ladies league T times will begin at 6:30 during our hot months and the 2 shotgun starts every month seem to be successful mixing up groups and pace of play is improving.

Men's Gold League - Jake Flint reported that that they tried doing "double" shotgun starts and the men like that and finish play earlier.

### Unfinished Business:

- Status of May motions

The HGMD board approved the motion to purchase a rough cut mower for \$90,000.



The Board decided to further review the motion and need for the variable speed water pump. The decision was made to have the Water Conservation committee (an HGA committee) explore the water/irrigation issues as it pertains to the golf course and the community.

HGMD did not approve the 2 workman carts.

Harold and Matt are looking for a good condition used rough cut mower with floating heads for uneven terrain before buying a new one. Matt continues consulting with Rain Bird and Flowtronics regarding a 2 wire system for irrigation as they feel the need is great for the variable speed pump and new irrigation system due to age, break downs, and obsolescence of parts.

-Signage update on #2 and #7. Greg has completed verbiage to alert walkers and to have golfers have the right of way first. Signs are ordered and will be installed.

-Replacement of storage locker door. Greg has someone from the wood shop working on matching and repairing the broken side.

New Business: Golf Rates for 2025

-Greg reported that revenues for the course balance out the operating expenses budget and may even bring down subsidies. The committee reviewed several 9 hole golf course rates suggesting that a \$1 across the board increase of the daily rates would be appropriate. Weekend, pull cart, club rental, club storage rates would not change.

A motion was made by JoAnn Fitch and seconded by Jake Flint to increase the daily fee rates across the board by \$1 with weekend rates remaining unchanged. The motion passed unanimously.

There were no public requests for comments

The next meeting is July 23, 2024 at 1:00 pm in the Boardroom

Meeting adjourned at 2:25

## Analysis Report

**Workorder:** 4585425 METALS, 200.7 and 200.8

**Client:** Over-the-Counter Customers  
**Profile:** METALS, 200.7 and 200.8  
**Sampled By:** TOM SANDOVIST

**Report To:** RITA EFFLER  
HEATHER GARDENS METRO  
DIST  
13952 E MARINA DR UNIT 601  
Aurora, CO 80014

### Sample Summary

Lab ID	Sample ID	Sample Type	Method	Date Collected	Date Received	Analyses Reported
2406170128	169-29	Water	EPA 200.8	06/17/2024 13:30	06/17/2024 14:05	1



E Travanty, PhD

### Scientific Director

*Note: The samples were tested as received from the customer and the results in this report relate only to the samples tested. Unless otherwise indicated in this report, all test have been performed on site at the CDPHE laboratory.*

*MRL* = Minimum Reporting Limit; *BDL* = Below Detection Limit; \* = Comment applied  
\**GL* = Guideline Value; "

*mg/L* - milligrams per liter (ppm); *ug/L* micrograms per liter (ppb)

"If you have any questions about how your results may impact your health, please contact Toxcall at 303-692-2606 or [cdphe\\_toxcall@state.co.us](mailto:cdphe_toxcall@state.co.us)"

EPA provisional certification for methods 200.8, 300.0, 300.1, 353.2, 504.1, 505, 524.2, 525.2, 531.2, 547, 548.1, 549.2, 552.2, and 555.



Report ID: 4585425-41989988

## Analysis Report

**Workorder:** 4585425 METALS, 200.7 and 200.8

### Sample Results

**Lab ID:** 2406170128      **Sample ID:** 169-29      **Sample Type:** Water  
**Date Collected:** 06/17/2024 13:30      **Collection Site:** RV LOT 14400 E YALE AVE AURORA CO 80014  
**Date Received:** 06/17/2024 14:05      **Site Description:**  
**Description:** RV LOT 14400 E YALE AVE AURORA CO 80014

Parameter	Results	Units	MRL	GL	DF	Prepared	Analyzed	Qual
<b>ICP-MS Total Water Metals (EPA 200.8)</b>								
Lead	<1	ug/L	1	15	1	07/02/2024 08:48	07/02/2024 13:45	

### Additional Information

#### NON-SDWIS

Free Chlorine (mg/L)  
 Total Chlorine (mg/L)  
 Collection Temp (C)  
 Temp at Receipt (C)      25.7  
 Water Type      MUNICIPAL

*MRL* = Minimum Reporting Limit; *BDL* = Below Detection Limit; \* = Comment applied  
*GL* = Guideline Value; "

*mg/L* - milligrams per liter (ppm); *ug/L* micrograms per liter (ppb)

"If you have any questions about how your results may impact your health, please contact Toxcall at 303-692-2606 or [cdphe\\_toxcall@state.co.us](mailto:cdphe_toxcall@state.co.us)"

EPA provisional certification for methods 200.8, 300.0, 300.1, 353.2, 504.1, 505, 524.2, 525.2, 531.2, 547, 548.1, 549.2, 552.2, and 555.



Report ID: 4585425-41989988

Tuesday, July 9, 2024 5:53:54 PM

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July 18, 2024

## **CLUBHOUSE FACILITY RENTAL AND EVENT POLICY**

### **PURPOSE**

1. **Purpose of Policy**. The HGMD Board of Directors intends to establish a consistent, understandable policy controlling the rental of space and facilities owned by the District. The unique character of the Heather Gardens community lends itself to confusing issues regarding the rental of facilities and the beneficial use enjoyed by residents in exchange for the recreation fee paid by HGA. Therefore, HGMD will establish the below policy, which after its adoption, will require the amendment of various procedure memoranda consistent with its terms.

### **FACILITY USE**

1. **General Policy**. All HGMD facilities are owned and maintained by HGMD. It is the policy and responsibility of HGMD to recover the costs of maintaining and operating the facilities through rental fees, use fees, class and event fees, retail sales, damage fees, and the recreation fee paid by HGA for resident use of the District properties (Rec Fee).
2. **Use of District Property**. All District property owned by HGMD is public property. As such, it is available for use by the general public as well as Heather Gardens' residents. Although the general public may use the District properties, HGMD may control the access, fees charged, and use of its facilities. All District facilities must be used for the purpose for which they are intended.

### **RENTAL TERMS**

1. **Non-Resident Facility Rental**. Any member of the public or vendor may rent HGMD facilities pursuant to the fees and facility purposes set forth in the procedure memoranda. Such rental shall require the following, unless specifically waived by HGMD:
  - a. A signed rental agreement in which the renter shall agree to use the facility for the approved purpose, adhere to any requirements concerning facility capacity, age restrictions, food and beverage service, smoking and alcohol, and electronic equipment. Adequate lead time is required for reservations that require room setup or the use of electronic equipment.
  - b. Payment in advance.
  - c. A damage deposit adequate to repair or replace lost or damaged property.

- d. A room setup fee, when applicable, and trash removal and custodial fee for large groups.
- e. HGMD does not advertise non-resident events through Pitera, the ARO, or other form of publication without charge.

2. **Resident Facility Rental.**

- a. **Private Use.** Heather Gardens residents may use the District facilities for their personal use and their guests at no charge, subject to the terms and conditions as stated in the procedure memoranda. Some activities have user fees to recover costs attributable to a small group of residents or those activities HGMD has chosen not to subsidize. Facilities are available by reservation or on a first come, first served basis.

Clubs and groups of residents may also use the facilities at no charge, if at least 75% of the attendees are HG residents, and there is no charge for attendance or other commercial purposes, such as company or professional marketing.

- b. If electronic equipment is required such as microphones, tv monitors or other equipment, a damage deposit will be required, and the renter must allow adequate time for staff setup and instruction.
- c. HGMD will advertise private use events if requested.
- d. **Commercial Use.** If a resident, club or group of HG residents, chooses to hold an event in which a fee will be charged for attendance or at which food and beverages will be sold for more than the actual cost, then the use will be considered commercial and the renter shall comply with the following, unless specifically waived by HGMD:
  - i. A signed rental agreement in which the renter shall agree to use the facility for the approved purpose, adhere to any requirements concerning facility capacity, age restrictions, food and beverage service, smoking and alcohol, and electronic equipment. Adequate lead time is required for reservations that require room setup or the use of electronic equipment.
  - ii. Payment in advance.
  - iii. A damage deposit adequate to repair or replace lost or damaged property.
  - iv. A room setup fee, when applicable, and trash removal and custodial fee for large groups.

- v. HGMD does not advertise commercial events through Pitera, the ARO, or other form of publication without charge.

- 3. **Governmental/Civic Use.** Heather Gardens has traditionally allowed elected officials, including HG elected officials to reserve and use rooms at no charge as a benefit to the community to have these meetings and presentation occur onsite. This policy will continue.

Candidates for election to government offices or HG offices, or groups wishing to reserve and use rooms for meetings and presentations concerning ballot issues may do so once a month per ballot issue or candidate within 45 days of the election date, at no charge.

Candidates or groups supporting ballot issues who wish to have meetings or presentations more than once a month during the 45 days preceding the election or prior to 45 days before the election date, may rent rooms at the non-resident or resident rental rates as appropriate.

HGMD will advertise government/civic use events if requested

- 4. **HGMD Sponsored Event/Classes/Trips**. HGMD may sponsor events, classes or trips (Events) that benefit the community whether initiated by a club, teacher, organizer or group of residents. Although the goal of HGMD is for the revenue generated by an event to pay the costs associated with that event, HGMD recognizes that the benefit to the community of some events outweighs this goal. Therefore, HGMD may sponsor the event. In such case, the revenue for the event shall be retained by HGMD and accounted for, along with the event expenses, so that HGMD can determine the net cost to the District. HGMD may use volunteers, outside vendors, or HGA employees to conduct the event, and shall pay the associated costs. HGMD will advertise HGMD sponsored events.

Done this 17<sup>th</sup> day of July, 2024.

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Daniel Taylor, President  
HGMD Board of Directors

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Robin O'Meara, Secretary  
HGMD Board of Directors



**HEATHER GARDENS METROPOLITAN DISTRICT  
BOARD ACTION**

**DATE:** JULY 18, 2024

**MOTION NUMBER:** 2024-7-18-1

**MOTION: PERMISSION TO WORK DIRECTLY WITH ACTING CLUBHOUSE  
MANAGER**

I move that the Heather Gardens Metropolitan District Board of Directors request that HGMD Activities Coordinator Cheryl Greenman and Clubhouse Committee Chair Robin O’Meara have permission from HGA to work directly with Acting Clubhouse Manager Julie Racich in the scheduling, promotion, implementation, supervision, and organization of special clubhouse events to assure consistency and excellence of HGMD sponsored events for the remainder of 2024.

We currently are working on the following special events:

August 10<sup>th</sup> – Hippie Party

September 14<sup>th</sup> (tentative date) – Back to School Theme

October 26<sup>th</sup> – Halloween Frolics Event

December 31<sup>st</sup> – New Year’s Eve Party

Ms. Greenman and Ms. O’Meara will also schedule and implement other “traditional” HGMD events such as the Colorado Rockies Game Trip, Halloween Pooch Parade, the Fall Casino Trip, etc. HGMD has requested access to ActiveNet, the electronic scheduling program paid for by HGMD. The Front Desk Receptionists will be informed of all the details for each event and their level of participation in taking reservations and collecting any payments for each event.

**ECONOMIC COST TO THE DISTRICT:** \$23 per hour for labor already approved. Each event will have its own revenue/cost analysis within the 2024 budget or will be approved by the Board.

**APPROPRIATED BY: CLUBHOUSE OPERATING BUDGET**

Motion by: Robin O’Meara

Second by: \_\_\_\_\_

Rationale: HGMD committed to reintroduce the dances and special events that made Heather Gardens an active and vibrant community. HGMD is a metropolitan district created specifically to provide recreational services and care for Linvale PI. These efforts are consistent with the District’s mandate.

Debate: \_\_\_\_\_

Secondary Motion to: \_\_\_\_\_

Secondary Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_

**VOTE:**

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	Yes	No
Craig Baldwin		
Rita Effler		
Eloise Laubach		
Robin O'Meara		
Daniel Taylor		
Total		

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Yes	No

The secondary motion does/does not have a majority and passes/fails.  
The main motion does/does not have a majority and passes/fails.

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Daniel J. Taylor, President  
HGMD Board of Directors

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Robin O'Meara, Secretary  
HGMD Board of Directors





**HEATHER GARDENS METROPOLITAN DISTRICT  
BOARD ACTION**

**DATE:** JULY 18, 2024

**MOTION NUMBER:** 2024-7-18-2

**MOTION: DISSOLVE HGMD CLUBS AND ACTIVITIES COMMITTEE**

Based upon the recommendation of the Clubs and Activities Committee, I move that the HGMD Board of Directors dissolve the Clubs and Activities Committee and move its responsibilities to the HGMD Clubhouse Committee.

**ECONOMIC COST TO THE DISTRICT:** NONE

**APPROPRIATED BY:** NA

Motion by: Robin O’Meara

Second by: \_\_\_\_\_

Rationale: Because there is a duplication of efforts with the Clubs and Activities Committee (CAC) and the Clubhouse Committee, which leads to much confusion and inefficiency, the Clubs and Activities Committee chose to dissolve at its meeting on July 9, 2024. CAC members are welcome to continue work on projects in progress such as the Auditorium Sound System and Auditorium Flooring.

Debate: \_\_\_\_\_

Secondary Motion to : \_\_\_\_\_

Secondary Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_

**VOTE:**

	Yes	No		Yes	No
Craig Baldwin					
Rita Effler					
Eloise Laubach					
Robin O’Meara					
Daniel Taylor					
Total					

The secondary motion does/does not have a majority and passes/fails.  
The main motion does/does not have a majority and passes/fails.

\_\_\_\_\_  
Robin O’Meara, Secretary  
HGMD Board of Directors

\_\_\_\_\_  
Daniel J. Taylor, President  
HGMD Board of Directors



**HEATHER GARDENS METROPOLITAN DISTRICT  
BOARD ACTION**

**DATE:** JULY 18, 2024

**MOTION NUMBER:** 2024-7-18-3

**MOTION: FILL TENNIS COURT WATER COOLERS**

At the request of the Tennis and Pickleball Clubs, I move that the HGMD Board of Directors direct that staff fill the water coolers on the tennis courts with ice water at the same time the golf course and pro shop water coolers are filled.

**ECONOMIC COST TO THE DISTRICT:** NONE

**APPROPRIATED BY:** NA

Motion by: Robin O’Meara

Second by: \_\_\_\_\_

Rationale: HGMD is concerned that residents are able to stay hydrated during the hot summer months while in the sun.

Debate: \_\_\_\_\_

Secondary Motion to : \_\_\_\_\_

Secondary Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_

**VOTE:**

	Yes	No
Craig Baldwin		
Rita Effler		
Eloise Laubach		
Robin O'Meara		
Daniel Taylor		
Total		

	Yes	No

The secondary motion does/does not have a majority and passes/fails.  
The main motion does/does not have a majority and passes/fails.

\_\_\_\_\_  
Robin O’Meara, Secretary  
HGMD Board of Directors

\_\_\_\_\_  
Daniel J. Taylor, President  
HGMD Board of Directors



# Heather Gardens

METROPOLITAN DISTRICT

**HEATHER GARDENS METROPOLITAN DISTRICT  
BOARD ACTION**

**DATE:** JULY 18, 2024

**MOTION NUMBER:** 2024-7-18-4

**MOTION: APPROVE COUNTY USE OF AUDITORIUM**

I move that the HGMD Board of Directors allow Arapahoe County to use the auditorium as a Voter Service and Polling Center to allow county access from October 16, 2024 – November 6, 2024, between the hours of 7 a.m. – 9 p.m. each day, and for voting from October 21 – November 5, 2024. Mon. – Fri. and second Sat.: 8 a.m. – 5 p.m.; Tues. Nov. 5, 2024: 7 a.m. – 7 p.m..

**ECONOMIC COST TO THE DISTRICT:** NONE  
**APPROPRIATED BY:** NA

Motion by: Daniel Taylor

Second by: \_\_\_\_\_

Rationale: HGMD has historically allowed the county to use the auditorium as a voting center as a civic benefit and a convenience for our residents to encourage and accommodate voting.

Debate: \_\_\_\_\_

Secondary Motion to : \_\_\_\_\_

Secondary Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_

**VOTE:**

	Yes	No
Craig Baldwin		
Rita Effler		
Eloise Laubach		
Robin O'Meara		
Daniel Taylor		
Total		

	Yes	No

The secondary motion does/does not have a majority and passes/fails.  
The main motion does/does not have a majority and passes/fails.

\_\_\_\_\_  
Robin O'Meara, Secretary  
HGMD Board of Directors

\_\_\_\_\_  
Daniel J. Taylor, President  
HGMD Board of Directors

**INTERGOVERNMENTAL AGREEMENT WITH  
HEATHER GARDENS METROPOLITAN DISTRICT FOR VSPC USE**

**THIS AGREEMENT** is made this 18th day of July, 2024, by and among the **BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY, COLORADO** (the “County”), for the use and benefit of the **ELECTIONS DIVISION OF THE CLERK AND RECORDER’S OFFICE**, and **HEATHER GARDENS METROPOLITAN DISTRICT** (the “Jurisdiction”). Collectively the County and the Jurisdiction are referred to as the “Parties.”

**WHEREAS**, pursuant to the Colorado Uniform Election Code of 1992, the County conducts election activities throughout Arapahoe County and governmental entities are encouraged to cooperate for the conduct of elections in order to reduce taxpayer expenses; and

**WHEREAS**, the County is statutorily required to operate a certain number of Voter Service and Polling Centers (“VSPC”) and to have such VSPCs open for specified dates and times during every election; and

**WHEREAS**, in designating a VSPC, the county clerk and recorder shall take into account the factors described under COLO. REV. STAT. § 1-5-102.9(1)(c)(I), and the use of a public building as a VSPC location shall be given priority over other uses of the building; and

**WHEREAS**, the County and the Jurisdiction have met and discussed the establishing and operation of VSPCs on property owned or controlled by the Jurisdiction; and

**WHEREAS**, the Jurisdiction desires to cooperate with the County for these purposes and such agreements are authorized by State law; and

**NOW, THEREFORE**, for and in consideration of the promises herein contained, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**VOTER SERVICE AND POLLING CENTERS**

1. **VSPC SITE.** The Jurisdiction grants to the County the use and occupancy of certain areas in the following locations for use as a VSPC. The County will also be allowed to use all improvements and common areas of each location that are made available on a non-exclusive basis for the general use of the public and tenants, their employees, agents and invitees.

A. Heather Gardens Clubhouse, 2888 S. Heather Gardens Way, Aurora CO 80014.

2. **ELECTION TERMS AND ACCESS.** The County will have access to and use of the VSPC site each day for the dates and hours listed below. The Parties agree that the VSPC will be open to the public for the days and hours required by the Colorado Uniform Election Code for each election, that the dates and hours stated below may change if required by Colorado law, and they recognize that the VSPC hours of operation may be different than when the building is otherwise open to the public. The public will be allowed access to the VSPC during the required statutory hours of operation, even if the building is otherwise closed to the public.

The Parties may agree to renew and extend this Agreement for use of the VSPC site for other future elections, which renewal(s) shall be indicated in writing and executed by both parties.

**A. 2024 General Election Term (November 5, 2024 Election Day)**

- County access: October 16, 2024 – November 6, 2024, to be accessible by the County 7 a.m. – 9 p.m. each day. These dates may vary based on the phased opening of VSPCs.
- VSPC hours of operation: October 21 – November 5, 2024. Mon. – Fri. and second Sat.: 8 a.m. – 5 p.m.; Tues. Nov. 5, 2024: 7 a.m. – 7 p.m. These dates may vary based on the phased opening of VSPCs.

3. **CONSIDERATION.** It is understood and agreed that the consideration provided in this agreement is non-monetary except for the allocation of costs as described herein.

4. **USE.** The County shall use the site as a voter service and polling center to conduct elections. The County shall not commit any waste or damage upon the VSPC site or cause any nuisance thereon. The County shall keep the VSPC site free and clear from all waste resulting from its use or the use of its employees, officers, agents, invitees and visitors of the VSPC. The County agrees it will not unreasonably interfere with the use of the building for other regular operations or uses.

5. **AUTHORITY TO GRANT USE.** The Jurisdiction warrants and represents it is the lawful owner or lessee of the VSPC site and has the authority to grant the use contemplated by this Agreement.

6. **SERVICES FURNISHED BY JURISDICTION.** The Jurisdiction will furnish the building and the VSPC site and any and all services necessary to serve the VSPC, including the following:

- heating or cooling;
- electricity with sufficient power to operate the County's election equipment;
- internet service with sufficient bandwidth to support the County's election equipment through wired connection to the Jurisdiction's publicly available internet service network, and the Jurisdiction's IT staff will work with the County's IT staff to ensure that any special configurations are made to allow open internet communication to support this service;
- telephone outlets currently existing in the VSPC site;
- light fixtures present in the VSPC site and replacement of fluorescent tubes and light bulbs as required from time to time;
- access to parking facilities;
- removal of ice, snow and debris in the common areas and the parking facility; and
- any other customarily supplied utilities, maintenance, security, and building operation services.

7. **NO ENTRY BY THE JURISDICTION.** To ensure the security of election equipment and ballots transported and stored at the VSPC Site, the Jurisdiction will limit its employees and representatives' entry to the VSPC Site only to times when the VSPC is open and County employees are present. The County will be responsible to gather trash within the VSPC Site each day and place it outside of the room for collection by the Jurisdiction. The County shall permit representatives of the Jurisdiction to enter into and upon the VSPC Site when the VSPC is closed if personnel are responding to an emergency situation. The Jurisdiction shall promptly notify the County if any such entry occurs.

8. **VSPC SITE ACCESSIBILITY.** The VSPC site shall be maintained during each Election Term by the Jurisdiction in compliance with its building guidelines and the Americans with Disabilities Act (“ADA”) concerning building accessibility for physically challenged citizens.

9. **PARKING.** During each Election Term of this Agreement, the Jurisdiction shall make available to the County the use of available parking spaces serving the VSPC site.

10. **SIGNAGE.** The County may install temporary signage in or on the VSPC site and the building where it is located concerning the conduct of the elections during each Election Term. All such signage will be removed at the termination of each Election Term.

11. **ALTERATIONS.** Because the site will be used as a voter service and polling center, the County may need to install additional electrical and/or telephone/internet wiring, cabling, or other hardware as necessary in order to operate and maintain the County’s election equipment. Any such alterations will be discussed with the Jurisdiction in advance and require Jurisdiction approval in writing. The Jurisdiction acknowledges that such installation may result in a permanent alteration in and improvement to the VSPC site. Any costs associated with alteration shall be paid by the County. Any alteration work shall be supervised by the Jurisdiction staff to ensure any alterations do not impact Jurisdiction facilities, operation or equipment.

12. **BUILDING CLOSURE.** In the event the Jurisdiction experiences a building closure for reasons including, but not limited to, acts of God, acts of the public enemy, unusually severe weather, fire, floods, epidemics, quarantines, strikes, labor disputes or other similar occurrence (each a “Force Majeure Event”), the VSPC Site will also be closed, unless expressly agreed otherwise by the Parties. The Jurisdiction shall promptly notify the County of a Force Majeure Event and permit the County to enter the VSPC site to remove ballots and election equipment, to the extent election equipment is on site and entry is safe.

13. **SUBSTITUTION OF SPACE.** In the event the VSPC site is not available for use as contemplated by this Agreement for any reason beyond the reasonable control of the Parties including, without limitation, a Force Majeure Event, the Jurisdiction shall promptly notify the County and provide substitute space for use by the County. In the event such substituted space is not available or not acceptable to the County, the subject VSPC site will not be available for use that Election Term.

14. **SURRENDER OF POSSESSION.** The County agrees to surrender possession of the VSPC site to the Jurisdiction at the termination of each Election Term in as good condition and repair as when the County obtained the site, except for any and all alterations or improvements authorized by the Jurisdiction or any damage occurring without the fault of the County or other persons permitted by the County to occupy or enter the VSPC site.

15. **LOSS OR DAMAGE.** The County agrees to promptly remedy any damage to the VSPC site, at its expense, resulting from the County’s use of the property under this Agreement and that was caused by the County and/or its employees, officers, agents or invitees. The County shall not be liable or responsible for any loss or damage to the building or VSPC site when such loss or damage is caused by a Force Majeure Event or damage occurring without the fault of the County or other persons permitted by the County to occupy or enter the VSPC site.

MISCELLANEOUS

16. **NOTICES.** Any and all notices required to be given by this Agreement are deemed to have been received and to be effective: (1) three days after they have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that an email or fax was received; to the address of a Party as set forth below or to such Party or addresses as may hereafter be designated in writing:

To County:                   Joan Lopez  
                                  Arapahoe County Clerk and Recorder's Office  
                                  Elections Division  
                                  5334 S. Prince St.  
                                  Littleton, Colorado 80120  
                                  Fax: (303) 794-4625  
                                  Email: [jlopez@arapahoegov.com](mailto:jlopez@arapahoegov.com); [elections@arapahoegov.com](mailto:elections@arapahoegov.com)

To Jurisdiction:           Heather Gardens Metropolitan District  
                                  2888 S. Heather Gardens Way  
                                  Aurora, CO 80014  
                                  Email: [management@heathergardensmail.com](mailto:management@heathergardensmail.com)

17. **TERMINATION.** This Agreement may be terminated by either Party at any time by providing written notice to the other of the termination, provided the Jurisdiction shall not terminate the Agreement within 90 days of the start of any Election Term described herein. This 90-day window shall not apply to terminations resulting from the inability to provide substitute premises for a VSPC under the terms of this Agreement.

18. **AMENDMENTS.** This Agreement may be amended only in writing, and following the same formality as the execution of the initial Agreement.

19. **INTEGRATION.** The Parties acknowledge that this Agreement constitutes the sole and entire Agreement between them relating to the subject matter hereof and that no Party is relying upon any oral representation made by another Party or employee, agent or officer of that Party.

20. **CONFLICT OF LAW.** In the event that any provision in this Agreement conflicts with the Colorado Uniform Election Code or other statute, this Agreement shall be modified to conform to such law.

21. **NO WAIVER OF GOVERNMENTAL IMMUNITY.** The Parties understand and agree that both Parties and their officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities, protections or defenses provided by the Colorado Governmental Immunity Act (the "CGIA"), §§ 24-10-101 to 120, C.R.S., or otherwise available to the County or the Jurisdiction. To the extent the CGIA imposes varying obligations or contains different waivers for cities and counties, both the Jurisdiction and the County agree that they will remain liable for their independent obligations under the CGIA, and neither party shall be the agent of the other or liable for the obligations of the other.

22. **NO THIRD PARTY BENEFICIARIES.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to

the County and the Jurisdiction, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

23. **GOVERNING LAW: JURISDICTION AND VENUE.** Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado. Venue for any and all legal actions arising under this Agreement shall lie in the District Court in and for the County of Arapahoe, State of Colorado.

24. **SEVERABILITY.** Should any provision of this Agreement be determined by a court of competent jurisdiction to be unconstitutional or otherwise null and void, it is the intent of the Parties hereto that the remaining provisions of this Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF,** the Parties have caused this Agreement for VSPC Use to be executed by their duly authorized representatives.

HEATHER GARDENS METROPOLITAN DISTRICT

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

Name: Daniel Taylor

Title: President, Board of Directors

Date: July 18, 2024

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

Name: Robin O'Meara

Title: Secretary, Board of Directors

Date: July 18, 2024

ARAPAHOE COUNTY, COLORADO

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

Name: Joan Lopez

Title: Clerk and Recorder

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





**HEATHER GARDENS METROPOLITAN DISTRICT  
BOARD ACTION**

**DATE:** JULY 18, 2024

**MOTION NUMBER:** 2024-7-18-5

**MOTION: MEAL DISCOUNT FOR EMPLOYEES**

Upon the recommendation from the Restaurant Committee of the Heather Gardens Metropolitan District, I move that the HGMD Board of Directors approve a 50% discount for meals purchased by Heather Gardens Employees at the Rendezvous Bar and Grill between the hours of 11:00AM to 3:00 PM every day of the week except Sunday, 10:00 - 1:30 PM. Upon approval, the Director of Human Resources and the Heather Gardens Personnel Committee may notify their employees of this discount available to them beginning on Tuesday, July 30, 2024.

**ECONOMIC COST TO THE DISTRICT:** NONE  
**APPROPRIATED BY:**

Motion by: Robin O'Meara

Second by: \_\_\_\_\_

Rationale: The Rendezvous Bar and Grill is easily accessible and a convenient location for Heather Gardens employees to have a meal during their specified lunch and break times. A 50% discount on meals encourages employees to purchase a meal in the restaurant. This discount does not cost the District anything. Employees' purchases cover the costs.

Debate: \_\_\_\_\_

Secondary Motion to : \_\_\_\_\_

Secondary Motion by: \_\_\_\_\_ Second by: \_\_\_\_\_

**VOTE:**

	Yes	No		Yes	No
Craig Baldwin					
Rita Effler					
Eloise Laubach					
Robin O'Meara					
Daniel Taylor					
Total					

The secondary motion does/does not have a majority and passes/fails.  
The main motion does/does not have a majority and passes/fails.

\_\_\_\_\_  
Robin O'Meara, Secretary  
HGMD Board of Directors

\_\_\_\_\_  
Daniel J. Taylor, President  
HGMD Board of Directors



Office  
5810 East 77<sup>th</sup> Avenue  
Commerce City, CO 80022

T (303-755-1281)  
graniteconstruction.com

Heather Gardens Association  
2888 S Heather Gardens Way  
Aurora, CO 80014

12 July 2024

Attn: Mr. Harold Borquez, Golf and Landscape Maintenance Assistant Manager  
Subj: Well A1

Dear Mr. Borquez:

Layne Christensen Company is pleased to present this proposal for service work on the above-mentioned well. Layne would propose the following scope of work:

- Mobilize pump hoisting rig and crew to/from the well site
- Remove pumping equipment from the well
- Mobilize tv video van to/from the well location
- Complete televised video survey of the well with both straight down hole perspective and side scan perspective (as needed to view an item of interest), provide copies of the survey
- Furnish/install the following new equipment: pump, motor, seal, motor lead, submersible pump cable, check valve; reinstall existing drop pipe
- System start up

Layne would propose to complete the work for the lump sum amount of \$176,000.00. If you wished to install a new pressure transducer with data logger the cost for this would be \$11,300.00. Anticipated delivery of the replacement pump parts is estimated at 6-8 weeks after receipt of order. A potential time savings may be realized if you decided to complete the work in two phases. In the first phase the pump would be pulled and videoed. If the well needs rehabilitation, then this work could be completed under the first mobilization effort while waiting on the pump parts to be delivered. This process would potentially save 2 weeks of time and add a cost of \$11,600.00 for an additional mobilization effort to reinstall the permanent pumping equipment. This proposal is subject to the following attached terms and conditions and does not include any well rehabilitation and/or replacement of the drop pipe. If acceptable, please sign below and the work will be scheduled. If you have any questions, please contact our office. Layne Christensen Company has appreciated this opportunity to be of service and looks forward to the possibility of working with you and your team on this project.

Sincerely,  
**LAYNE CHRISTENSEN COMPANY**

Nathan Anderson, Account Manager III

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



Office  
5810 East 77<sup>th</sup> Avenue  
Commerce City, CO 80022

T (303-755-1281)  
graniteconstruction.com

**LIABILITY OF CONTRACTOR:** Contractor shall not be liable for any bodily injury, death, or injury to or destruction of tangible property except, as the same may have been caused by the negligence of Contractor. In no event shall Contractor be liable for any delays or special, indirect, incidental or consequential damages. Purchaser agrees that the total limit of Contractor's liability (whether based on negligence, warranty, strict liability or otherwise) hereunder, shall not exceed the aggregate amount due Contractor for services rendered under this contract. All claims, including claims for negligence or any other cause whatsoever, shall be deemed waived unless made in writing and received by Contractor within one (1) year after Contractor's completion of work hereunder.

**INSURANCE:** Contractor shall provide worker's compensation insurance, public liability and property damage insurance covering its employees and operation. Purchaser, at its option, may maintain such insurance as will protect it against claims arising out of the work.

**TERMS:** Net 30 days from date of invoice. For extended projects, Contractor shall submit invoices on a monthly basis for any and all work completed, and materials or equipment provided during the previous month. Past due invoices shall be subject to a delinquency charge.

**MATERIAL SHORTAGES AND COST INCREASES:** If any portion of materials or equipment which Contractor is required to furnish becomes unavailable, either temporarily or permanently, through causes beyond the control and without the fault of Contractor, then in the case of temporary unavailability any completion time frames shall be extended for such period of time as Contractor shall be delayed by such above-described unavailability, and in the case of permanent unavailability Contractor shall be excused from the requirement of furnishing such materials or equipment. Purchaser agrees to pay Contractor any increase in cost between the cost of the materials or equipment, which become permanently unavailable and the cost of the closest substitute, which is then reasonably available.

**DELAYS:** If Contractor is delayed at any time in the progress of work by labor disputes, fire, unusual delays in transportation, unavoidable casualties, weather, or any cause beyond Contractor's reasonable control, then any completion time frames shall be extended by a reasonable period of time, at least equal to the period of delay.

**CHANGED CONDITIONS:**

- a. The discovery of any hazardous waste, substances, pollutants, contaminants, underground obstructions or utilities on or in the jobsite which were not brought to the attention of Contractor prior to the date of this contract will constitute a materially different site condition entitling Contractor, at its sole discretion to immediately terminate this contract without further liability.
- b. In the event adequate circulation cannot be properly maintained by Contractor for two (2) consecutive hours, the Client will be notified, and drilling operations will immediately revert to Contractor's negotiated hourly and material rates. After circulation has been adequately maintained, the drilling operation will revert back to the contracted footage rate. Should circulation be lost again, the hourly rate will start immediately at Contractor's negotiated hourly and material rates.
- c. In the event subsurface and/or geologic conditions slow the drilling rate below 5 feet per hour, the client will be notified, and drilling operations will revert to contractor's negotiated hourly and material rate. When the drilling rate moves above 5' per hour and is adequately maintained, the drilling operation will revert back to the footage rate.

**GUARANTEE AND LIABILITY:** Contractor warrants that its labor supplied hereunder shall be free from defect and shall conform to the standards of care in effect in its industry at the time of performance of such labor for a period of twelve (12) months after substantial completion of Contractor's work. Contractor agrees, to the extent it is permitted, to pass on any warranties provided by the manufactures of materials and/or equipment furnished under this contract. Contractor itself provides no warranty, express, implied or otherwise, on any such materials or equipment. Contractor will not be responsible for; work done, material or equipment furnished, or repairs or alterations made by others.

For any breach hereunder, Contractor shall be liable only for the values of the installation work or, if it wrongfully fails to install, then its liability is limited to the difference between the contract price herein, and the value of other similar installation work. If Contractor's breach damages any materials or equipment furnished hereunder,



Contractor shall only be liable for the value of such materials or equipment. Under no circumstances will Contractor be liable for consequential, special or indirect damages, including without limitation, any crop loss or damage to other equipment, structures or property, nor for any other similar or dissimilar damages or losses whether due to delay, failure to furnish or install, delay in installation, defective material or equipment, defective workmanship, defective installation, delay in replacing, nor for any cause or breach whatsoever. In any event, Contractor's total liability towards Purchaser for alleged faulty performance or nonperformance under this contract shall be limited to the total contract price. No materials, equipment or services contracted herein carries any guarantee not mentioned in this contract. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED.

Water well rehabilitation or well repair may require the use of strong chemical agents and/or mechanical techniques that impart higher than normal stresses on the well. This is necessary to effectively repair the well casing or disperse and distribute the chemicals to breakdown any mineral build up, biofouling or encrustation. Layne will use standard industry practices available to repair or rehabilitate the well; however, it is possible due to poor construction practices, poor construction materials, pre-existing conditions, etc. that damage may occur. Impairment is very unlikely, and rarely occurs, but should such events such as gas production, increased sand production, reduced capacity, casing damage, surface subsidence, water quality changes or complete well failure occur, Layne Christensen will not be held liable for any damage due to these repair or rehabilitation processes.

**TITLE AND OWNERSHIP:** In case of default on Purchaser's part, Contractor shall have the right to enter the premises upon which any material or equipment furnished herein have been installed and retake such goods not then paid for and pursue any further remedy provided by law, including recovery of attorney's fees and any deficiency to the maximum extent and in the manner provided by law. Such materials and equipment shall retain their character as personal property of Contractor until Contractor receives payment in full, regardless of their mode of attachment. Unless prior specific written instructions are received to the contrary, surplus and replaced materials and equipment resulting from repair of installation work shall become the property of Contractor.

**DELIVERY:** Shipment schedules and dates, express or implied, are contingent on normal conditions. Contractor will not be responsible for any delays in shipment or completion caused by factors beyond its control such as, but not limited to, suppliers' failures, accidents, work stoppages or operation of or changes in the law. Shipments will be made as promptly as Contractor's ability to obtain materials and/or equipment and scheduling will permit. No delay in shipments or variances from shipping schedule shall be cause of cancellation or any claim for damage. Any changes in layout or design requested after acceptance of this contract will be made at Purchaser's additional cost. Any such change and/or time taken to supply engineering data or to approve drawings will automatically extend shipping schedules.

Equipment will be shipped "knocked down" to the extent Contractor considers necessary, with small parts stripped from equipment and crated. On and after delivery to the carrier for transportation to the Purchaser's site, Purchaser shall be responsible for all loss or damage to materials or equipment due to any cause, including but not limited to loss or damage resulting from casualty.

**INDEMNIFICATION:** Purchaser agrees to indemnify and hold Contractor, its directors, officers, stockholders, employees, agents and subcontractors, harmless from and against any and all claims, demands, causes of action (including third party claims, demands or causes of actions for contribution or indemnification), liability and costs (including attorneys' fees and other costs of defense) asserted and/or filed by Purchaser or any third party(ies), including without limitation Purchaser's employees, and arising out of or as a result of: (i) the presence of Contractor or its subcontractors at the job-site, (ii) the work performed by Contractor or its subcontractors, or (iii) any negligent act or omission of Purchaser, its employees, agents, consultants, or other contractors or any person or entity under Purchaser's control; except to the extent that such claims, demands, causes of action, liabilities or costs are caused by the negligence of Contractor or its subcontractors.

**INTERPRETATION:** This contract shall be governed by and construed in accordance with the laws of the state of the job-site location. In any term, provision or condition contained herein shall, to any extent, be invalid or unenforceable, pursuant to state law or otherwise, the remainder of the terms, provisions and conditions herein (or the application of such term, provision, or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this contract shall be valid and enforceable to the fullest extent permitted by law.



**ASSIGNMENT AND SUBLETTING:** Purchaser shall not have the right to transfer or assign its rights and/or obligations under this contract to any third party, related or unrelated, without the express written consent of Contractor. Contractor shall have the right to transfer, assign or sublet all or any portion of its rights or obligations hereunder, but such transfer, assignment or subletting shall not relieve Contractor from its full obligations to Purchaser unless such transfer, assignment or subletting is pursuant to the sale of Contractor, or the division of Contractor responsible for this contract, to a third party.

**LOST CIRCULATION:** Contractor agrees to maintain its' equipment in good condition at all times and shall use reasonable means to prevent losses and maintain the integrity of the borehole. However, in the event adequate circulation cannot be properly maintained by Contractor for two (2) consecutive hours, the Client will be notified, and drilling operations will immediately revert to Contractor's currently published hourly rates. After circulation has been adequately maintained for one (1) consecutive hour, the drilling operation will revert back to the contracted footage rate. Should circulation be lost again, the hourly rate will start immediately at Contractor's currently published hourly rates. Client will be invoiced for all drilling fluids, additives, special equipment, tooling, or the like that is required to correct and/or maintain adequate circulation, at Contractor's cost plus 20%.

In the event that Contractor is required to drill through or encounters formations or conditions that result in stuck and/or broken drill pipe and tools, Contractor will make every effort to notify the Client and to remove the tooling for a period of 8 hours. During that time, all work will revert to the Contractor's currently published hourly rate. The Contractor will work in a reasonable and safe manner to remove the tooling for a period up to an additional 32 hours (40 hours total). If Contractor is not successful in removing the tooling at that point, Client may direct Contractor to proceed with the recovery effort. Otherwise, the tooling will be deemed as lost. If the tools are lost due to formation or geologic conditions, or due to uncontrollable lost circulation, or due to an inadequate water supply, and not due to Contractor's sole negligence, then the Client agrees to compensate Contractor for all work completed at the applicable contracted rates, for any special tooling and equipment mobilized to the jobsite for use or possible use in the recovery or conditioning process, and for the replacement value (at cost) of all tooling and equipment damaged and/or lost.

**WELL CONDITIONS and "FISHING":** Purchaser having custody and control of the well and superior knowledge of the conditions in and surrounding it, shall provide Contractor with all necessary information to enable Contractor to perform its services safely and efficiently. Contractor's services are designed to operate under conditions normally encountered in the well bore; however, if hazardous or unusual conditions exist, Purchaser shall notify Contractor in advance and make special arrangements for servicing such wells.

In the event any of Contractor's and/or Contractor's subcontractors tooling are lost or lodged in a well, the Purchaser shall recover them without cost to Contractor and/or Contractor's subcontractor or shall pay the full replacement value. In the event any wireline cable is lost or damaged in the well or during a recovery effort, Purchaser shall pay the full replacement cost of a winch spool of cable. Contractor has certain "fishing" tools available on a rental basis as needed. In case it is necessary for the Purchaser to "fish" for any of Contractor's/Contractor's subcontractor downhole equipment, Purchaser assumes the entire responsibility for such operation, but Contractor will, if so desired by Purchaser, without any responsibility or liability on Contractor's part, render assistance in an advisory capacity for the recovery of such equipment and instruments. None of Contractor's employees is authorized to do anything other than advise and consult with Purchaser in connection with such "fishing" operations, and Contractor shall not be liable or responsible for any damage that City may incur or sustain through its use of any "fishing" tools furnished by Contractor or by reason of such advice or assistance rendered by Contractor's agents or employees, irrespective of cause.

**MISCELLANEOUS:** The terms and conditions set forth herein constitute the entire understanding of the parties relating to the work to be performed, and materials and equipment to be provided, by Contractor for the Purchaser. All previous proposals offers and other communications relative to the provisions of the subject work, oral or written, are hereby superseded, except to the extent that they have been expressly incorporated herein. Any modifications or revisions of any provisions herein or any additional provisions contained in any purchase order, acknowledgement, or other form of the Purchaser are hereby expressly objected to by Contractor and shall not operate to modify this contract. This contract shall take effect upon acceptance and execution by both parties.