



REGULAR BOARD MEETING PACKET

June 20, 2024

**HEATHER GARDENS METROPOLITAN DISTRICT
REGULAR MEETING
Thursday, December 21, 2023**

The regular meeting of the Board of Directors of the Heather Gardens Metropolitan District was held in the board room and via Zoom/Telephone in the Heather Gardens Clubhouse at 2888 S. Heather Gardens Way, Arapahoe County, Colorado, on Thursday, December 21, 2023 at 1:00 P.M.

PLEDGE OF ALLEGIANCE: The Board recited the Pledge of Allegiance.

CALL TO ORDER: President Daniel Taylor called the meeting to order at approximately 1:00 P.M. on Thursday, December 21, 2023. A quorum was present.

BOARD MEMBERS PRESENT: President Daniel Taylor, Vice President Eloise Laubach, Secretary Robin O'Meara, Treasurer Rita Effler, and Director Craig Baldwin.

BOARD MEMBERS ABSENT: None.

STAFF PRESENT: Acting General Manager Holly Shearer.

GUESTS PRESENT: Jennifer L. Ivey, Icenogle Seaver Pogue, P.C., six members of the Heather Gardens Association Board, Lynn Donaldson with Heather 'n Yon, and approximately 34 members of the public were present.

APPROVAL OF MINUTES: Motion made by Director Baldwin and seconded by Secretary O'Meara and passed unanimously to approve the minutes of the August 3, 2023, Special Meeting, with one minor change to the date on the last page.

Per the request of legal counsel, a motion made by Vice President Laubach to table the minutes of the October 19, 2023, Regular Meeting and the November 17, 2023, Special Meeting and seconded by Director Baldwin and passed unanimously.

PRESIDENT'S REPORT: President Taylor announced applications are being accepted for the Clubs and Activities Committee chair. Applications are available in the Management Office and will be forwarded to the Board.

TREASURER'S REPORT: Treasurer Effler reported that she is trying to track a disbursement from the District's operation account in the amount of \$179,347.48 and to confirm where a \$42,000 deposit to the reserves account came from. Controller Toennis will research the amounts and will follow up with her. Treasurer Effler also said she would review the vendor invoices for the District tomorrow and that any board member is welcome to join. Treasurer Effler also said she had questions about the mill levy and amount in the Zion account that she will discuss with former HGMD Treasurer Archambault.

COMMITTEE REPORTS:

President Taylor commented that committee agendas and reports in the future will go to Secretary O'Meara so that she may post them on the HGMD website.

- a. **Restaurant Report:** The Restaurant reports were in the packet. Secretary O'Meara reported the highlights of the "Renew the Rendezvous" project are moving along nicely; chef applications are coming in, they are working on a new menu, a new server has been hired, and Battle Born has been here overseeing the schedule of removal of the installation of equipment and professional cleaning and the layout of placement of new equipment. This will be done when the Rendezvous is closed from December 24, 2023, through January 1, 2024. They are also looking into a new point-of-sale system and a coffee machine specializing in different coffees. This is phase one of the renewal. Their marketing plan is in place, "Everyone is a winner scratch off," which will be sent to the residents to enjoy at the restaurant. They will be advertising once a month on Heather 'n Yon and continue to advertise restaurant specials and events on Pitera and HGMD website. The Restaurant Committee will meet a week from today at 3:00 p.m. in the board room. There were no further questions/comments.
- b. **Recreational Vehicle (RV) Lot Report:** The RV Lot report was in the packet. Chair McClure said their report was about the meeting with the parking management of the City of Aurora, and no action was taken. He had recently received a member's letter of resignation and read it. He has also spoken to Security Manager Marris about the security camera installed by Jon Howell at the RV lot. Security Manager Marris said the camera was tested and is working as designed, but that the coverage was very limited, and having it installed pointing at the gate, he found it insufficient and needed coverage for the perimeter. Security Manager Marris said he provided other alternatives/additions to Chair McClure that they can discuss further after the meeting. There were no further questions /comments.

UNFINISHED BUSINESS:

- a. **Approval to Pay Insurance Premium (\$56,288):** Motion made by President Taylor and seconded by Direct Baldwin and passed unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors approve the payment of its insurance premium through the Colorado Special District's Property and Liability Pool for \$56,288.

Explanatory Comment: Although the beginning of the year resolution approved the premium payment, we are taking this action because there was a question at the last meeting whether the hail and wind damage rider was included in the premium amount, which it was. Treasurer Effler also wanted to inform everyone that volunteers are covered under the policy.

- b. Auditorium Floor:** Vice President Laubach asked about the status of the auditorium floor, which she thought would be done on the 18th of December. President Taylor said there was no contract, and they are working on getting three bids. Director Baldwin will work on it and schedule it when no classes occur.

NEW BUSINESS:

- a. Adopt Election Procedure Memorandum (PM) - 1:** This motion was tabled by Vice President Laubach for attorney Ms. Ivey to review and provide her advice to the Board, seconded by Director Baldwin, and passed.
- b. Approve to Update Signers on Key Bank Accounts:** Motion made by President Taylor and seconded by Vice President Laubach and passed unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors approve updating the signers on the Key Bank accounts. Past directors and officers of the District remain on the bank accounts. These names need to be removed, and the District Treasurer and President need to be added.

Explanatory Comment: We requested that management take care of this in July, and it was raised at the July 19th joint meeting. People who no longer have authority over the District need to be removed, and the current District officers need access to review the accounts.

PUBLIC COMMENT: Two residents commented on the provision in the tabled Election PM-1 concerning the provision that the election materials must not contain any profanity or false statements. President Taylor stated that the PM language cites the statute.

EXECUTIVE SESSION: Upon motion by President Taylor, seconded by Secretary O'Meara, and unanimous vote, the Board entered into Executive Session at 1:44 p.m. pursuant to Section 24-6-402(4)(b) and/or 24-6-402(4)(e), C.R.S for the purpose of receiving legal advice on specific legal questions and/or determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators regarding the Management Agreement.

The Board reconvened the public meeting at approximately 2:25 p.m.

Approval of Actions Related to Enforcement of/Revisions to Litigation Regarding Management Agreement: Motion made by Secretary O'Meara and seconded by Director O'Meara and passed (4 For and 1 Against, Vice President Laubach).

I move to direct Peter Forbes, legal counsel for HGMD, to file a complaint seeking relief based upon Heather Gardens Association breach of the Management Agreement.

Secretary O'Meara said this complaint does not mean that the boards cannot get together in the 60 days of the complaint being authorized. There is always time to talk.

ADJOURNMENT: Upon motion by Director Baldwin, and seconded by Vice President Laubach, and passed unanimously, the meeting adjourned at 2:29 p.m.

Daniel Taylor, President

Robin O'Meara, Secretary

**HEATHER GARDENS METROPOLITAN DISTRICT
REGULAR MEETING
Thursday, January 18, 2024**

The regular meeting of the Board of Directors of the Heather Gardens Metropolitan District was held in the board room and via Zoom/Telephone in the Heather Gardens Clubhouse at 2888 S. Heather Gardens Way, Arapahoe County, Colorado, on Thursday, January 18, 2024 at 1:00 P.M.

PLEDGE OF ALLEGIANCE: The Board recited the Pledge of Allegiance.

CALL TO ORDER: President Daniel Taylor called the meeting to order at approximately 1:00 P.M. on Thursday, January 18, 2024. A quorum was present.

BOARD MEMBERS PRESENT: President Daniel Taylor, Vice President Eloise Laubach, Secretary Robin O'Meara, Treasurer Rita Effler, and Director Craig Baldwin.

BOARD MEMBERS ABSENT: None.

GUESTS PRESENT: Jennifer L. Ivey, Icenogle Seaver Pogue, P.C., five members of the Heather Gardens Association Board, Lynn Donaldson with Heather 'n Yon, and approximately 55 members of the public were present.

APPROVAL OF MINUTES: Motion made by Secretary O'Meara and seconded by Director Baldwin and passed unanimously to approve the minutes of August 3, 2023, Special Meeting, October 19, 2023, Regular Meeting, November 17, 2023, Special Meeting with two minor changes, and January 4, 2024, Special Meeting.

PRESIDENT'S REPORT: President Taylor said they held their first joint public work session with the HGA Board, which went well. They have been meeting since in different groups of two to discuss other topics and will continue to meet. The following work session is scheduled for February 8, 2024. More information to follow if there are any changes.

TREASURER'S REPORT: Treasurer Effler commented there is no report as Controller Carrie Toennis is working on completing the financials and is also working on the audit.

COMMITTEE REPORTS:

- a. Audit/Finance Report: The Audit/Finance report was in the packet. Treasurer Effler reported receiving information that entitles reimbursement of up to \$10,000 if the District spent \$20,000 on safety security equipment/items. She found items that qualify and will continue to look for others to apply for the money.
- b. Clubs and Activities Report: There was no meeting, but there was a report from the Woodshop Club, dated January 10, in the packet. Director Baldwin commented that

the members of the woodshop club have been making progress in the last six months. There was a request from Treouser Effler asking the club if they could add chair railings in the billiard room for the low chairs they use. Club member Pete VonVett said they contacted HGA Maintenance to see if they had any material to help with the project. During the HGA 6-story chair railing project, Jon Howell said they had leftover material that he would look into and get back to him. Mr.VonVett said If they can obtain the material from HGA Maintenance, the woodshop club will do the project and install it. The Woodshop Club meeting is on February 7.

- c. Clubhouse Report: No report in the packet.
- d. Compliance Committee: No meeting.
- e. Foundation Report: Vice President Laubach reported they did not have a meeting this month and that the next meeting will be on February 14. For 2023, they received \$3,985 in donations and expenditures of \$5,290.63 on landscaping, bench pads, assorted flowers, and four umbrellas for the restaurant patio.
- f. Golf Report: No meeting.
- g. **Restaurant Report:** Secretary O'Meara reported the Committee met on January 10. The meeting was to focus on marketing. There will be a lot of special events happening at the Rendezvous and getting marketed. There was a discussion about having an open house for the new equipment and letting the community know the changes they are making in the restaurant. They also discussed volunteers and what they can do at the restaurant and for the clubhouse activities. The restaurant has a new point of sale (POS) system called Toast that would save an estimated amount of \$7k and also reduce the processing fees on credit cards. They are still looking into leasing a coffee and an ice machine rather than owning them, as well as entertainment and bands for the restaurant. The next meeting is January 25.
- h. **Recreational Vehicle (RV) Lot Report:** The RV Lot report was in the packet. Director Baldwin commented that they are discussing a contract for changes to the fence. He also mentioned tree branches were hanging over the fence, which the City of Aurora said they would take care of when the weather permits.

Chair Forrest McClure joined the meeting a little later and provided an update that he met with two representatives from the Army Corp. of Engineers at the RV Lot. They said to send a letter of intent and get Aurora Parks and Recreation to agree, as they are the lessee to request to remove the Army Corp. fence and perhaps even get the two cottonwood trees that are a problem to the RV Lot. Chair McClure said he would draft a proposal for President Taylor to sign and submit to the Army Corp. of Engineers.

UNFINISHED BUSINESS:

- a. **Request Status of Directed Tasks (included in the packet):** The Board reviewed the items on this status task report with the Acting General Manager (AGM), Holly Shearer.
- Handicap Accessible Assessment - AGM will follow up with Jon Howell.
 - Replace Handicapped Parking Signs on two Spaces Vacated by Security – AGM will follow up with the Golf & Landscaping Dept.
 - HG Vehicles/Employees still Parking in Clubhouse Lot – AGM will send another notice to staff.
 - Parking Lot Signage - AGM will follow up with the Golf & Landscaping Dept.
 - Repair Pool Tables – AGM said the vendor came out to make repairs, but she will also follow up.
 - Submit Activities/Dances Income & Expenses – President Taylor said they received the ranges but needed more detailed information per class.
 - Submit Teacher Costs - President Taylor said they received the ranges but needed more detailed information.
 - Patch Maintenance Parking Lot Potholes - President Taylor said Maintenance should fill the potholes with dirt.
 - Remove Equipment from Golf Course - AGM will follow up with the Golf & Landscaping Dept.
 - Repair Women's Locker Room Tile – AGM said the Maintenance crew is doing repairs.
 - Repair Restroom Downstairs - AGM said the Maintenance crew is working on repairs.
 - Carpet Cleaning – AGM said the carpets were cleaned and continue to be cleaned.
 - Remove Moths from Light Fixtures – AGM said this has been done.
 - Correct Checking Accounts Signatories – AGM said it is being worked on.
 - Clubhouse Parking Lot Lights – AGM said this has been done.
 - Approved Directive to HGA Management to provide detailed accounting for all 2023 Expenditures on or before January 31, 2024 - AGM said it is being worked on.
 - Request to Review PS1 Garages for Golf Equipment – AGM said President Taylor can schedule a time and day to do a walk-through when weather permits.
 - Request for Recall Petition Circulation Rules – President Taylor skipped this.
 - Stained Carpet in Aspen Room and Mountain View Room – AGM has been done.
 - Microphones for Aspen/Blue Spruce Rooms not working – AGM will follow up with the Clubhouse Acting Manager.

- Flat Screen TV fell off the stand – Secretary O’Meara said she knew this was fixed but wanted to ensure the TV was set up appropriately to avoid this from happening again. AGM said the screws on the back were loose and have been tightened.
- Long White Tables Stained in Blue Spruce Room & Auditorium – President Taylor asked they be cleaned. AGM noted.
- Auditorium Kitchen Carts filthy - President Taylor asked they be cleaned. AGM noted.

NEW BUSINESS:

- a. **Approve to Adopt Annual Resolution:** Motion made by Director Baldwin to adopt the annual resolution and seconded by President Laubach and passed unanimously.
- b. **Approve Clubhouse Security Officer:** Motion made by President Taylor and seconded by Secretary O’Meara and passed as amended unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors investigate the feasibility of placing a one-armed security officer at a desk at the entrance of the Clubhouse. The Board will meet with the Clubhouse and SEC Committees by March 1, 2024, for further recommendations.

Noted by Secretary O’Meara, the Board of Directors will involve the Clubhouse and SEC Committee to get a feasibility and cost analysis and possibly alternatives for placing an armed security officer at a desk of the Clubhouse entrance to meet by March 1, 2024.

Explanatory Comment: HGA has reported that front desk employees don’t feel safe. During a recent incident in the management office, second-floor employees and attendees in the boardroom were evacuated into the locked management office. However, front desk employees, who are fully visible while exiting the building through any first-floor door from the management office, were not notified that there was a security threat. This officer could provide security as well as offer a service to visitors. Everyone entering the clubhouse lobby will be immediately aware that security is on duty.

- c. **Approve Clubhouse Reception Desk:** Motion made by President Taylor and seconded by Director Baldwin and passed unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors direct the Clubhouse Committee to coordinate with HGA to investigate the feasibility of moving the reception desk to the elevator wall so staff can view the Clubhouse hallway as well as the front and rear entrances. Storage cabinets with counter space for information should replace the current reception desk, which would allow the new reception desk to have free counter space. A panic button to alert security shall be included in the cost estimate.

Explanatory Comment: Front desk staff have requested moving the reception desk, if possible, to have the elevator wall at their backs so they can see people approaching them.

- d. **Approve to Appoint Clubs/Activities Director:** Motion made by Director Baldwin and seconded by President Taylor and passed.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors appoint the nominee receiving a majority of the votes as chair for the Clubs/Activities Committee. The nominees are Cecilia Williams and Nancy Linsenbigler.

The nominees presented their reasoning for applying for the chair position.

The Board voted (4 For and 1 Abstain – Robin O’Meara), and Nancy Linsenbigler received the majority vote and was appointed Clubs/Activities Committee Chair.

Explanatory Comment: The position of Clubs/Activities Chair is vacant.

- e. **Approve to Allow Acting Clubhouse Manager to Waive Deposit for the Frolics Club:** Motion made by Treasurer Effler and seconded by Director Baldwin and passed unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors authorizes Management to waive the payment of the deposit required prior to scheduling the rental of rooms for the Annual Frolics spring show and that the rooms are reserved for said event.

Explanatory Comment: The Frolics Club, active for over 25 years, has no funds in reserve to pay to reserve the auditorium and other rooms needed for this event. They are currently providing free entertainment in the restaurant, increasing its revenue. They will pay the rental contract amount with ticket sales proceeds on/or before the day of the Event.

- f. **Approve the Pool Sand Filter (\$55,000 Project Cost):** Motion made by Treasurer Effler and seconded by Vice President Laubach and passed unanimously.

Text of Motion: I move that the Heather Gardens Metropolitan District Board of Directors approve the Request for Capital Expenditure in the amount of \$55,000, including the installation and removal of the old equipment and all necessary services for the new pool filter to function, including a change order reserve of \$5,800.96 with a contract amount of \$49,193.04. CEM is the contractor.

Explanatory Comment: The installation of a new sand filter will negate the twice-annual draining and cleaning of the pool. It will replace a labor-intensive filter system

with a more economical operation. Maintenance reports that the 12-year-old system is obsolete, with parts unavailable for repair.

PUBLIC COMMENT:

Secretary O'Meara had a statement she read: "I did not know doing something with good intentions would be so hard. I and we are so determined to do what HG residents deserve and demand: accountability, transparency, and financial responsibility. Contracts is one area where we have shown financial responsibility because of our due diligence. Just on the contract alone for the point of sales system has saved the District thousands of dollars. We got the system for half price and the long-term benefit. The credit card processing fees have also been lowered. As far as attorney fees, Daniel has been working as an attorney our contracts that have saved a lot of money, I would not say thousands but at least a thousand or two as we go through the language. We have a policy, and we are looking at the contract with kind of a fine toothcomb. So, I just wanted to mention that again. Goal is to maintain the quality and reputation of the Heather Gardens Community by actively overseeing the District's properties and ensuring your money is used well to maintain and manage your investment. We are working hard for you. Thank you".

A resident commented that what Robin O'Meara read touched her heart.

ADJOURNMENT: Upon motion by Director Baldwin, and seconded by Vice President Laubach, and passed unanimously, the meeting adjourned at 3:15 p.m.

Daniel Taylor, President

Robin O'Meara, Secretary

**HEATHER GARDENS METROPOLITAN DISTRICT
SPECIAL MEETING
Thursday, June 6, 2024**

The special meeting of the Board of Directors of the Heather Gardens Metropolitan District was held in the boardroom and via Zoom/Telephone in the Heather Gardens Clubhouse at 2888 S. Heather Gardens Way, Aurora, Arapahoe County, Colorado, on Thursday, Date, at 1:00 P.M.

PLEDGE OF ALLEGIANCE: The Board recited the Pledge of Allegiance and acknowledged the 80th Anniversary of the D-Day Invasion in WWII.

CALL TO ORDER: President Daniel Taylor called the meeting to order at approximately 1:00 P.M. on Thursday, June 6, 2024. A quorum was present.

BOARD MEMBERS PRESENT: President Daniel Taylor, Vice President Eloise Laubach, Secretary Robin O'Meara, Treasurer Rita Effler, and Director Craig Baldwin.

BOARD MEMBERS ABSENT: None.

PRESIDENT'S REPORT: Attached.

FINANCIAL REPORTS: The Board received and reviewed copies of the January through March financial report received from Management the middle of May 2024.

REPORTS & UNFINISHED BUSINESS: Will be addressed at the regular board meeting, June 20, 2024.

NEW BUSINESS:

- a) **Presentation from High Country Low Voltage:** A presentation was made for repair and replacement of the auditorium sound system.
- b) **Motion 2024-6-2-1 Outdoor Pool Gate.** Motion by Daniel Taylor, seconded by Rita Effler, and passed unanimously for the outdoor pool gate to remain open during restaurant hours for food service to the pool area.

ADJOURNMENT: Upon motion by Robin O'Meara, and seconded by Rita Effler, and passed unanimously, the meeting was adjourned.

Robin O'Meara, Secretary



June 20, 2024

President's Report

We need servers and table bussers in the restaurant if any of you would like to send your grandchildren off to work for the summer.

We received some unsolicited advice last week asserting that we couldn't have volunteers in the restaurant, legally. I want to assure everyone that that is not true.

Last fall it was alleged that we couldn't have volunteers because they weren't covered under our insurance. That was not true either. We announced at the December and January board meetings that volunteers are covered under the District's insurance.

I have included an article from the U.S. Fair Labor Standards Act Advisor that states "When Congress amended the FLSA in 1985, it made clear that people are allowed to volunteer their services to public agencies and their community." I have also included a similar formal opinion from the Colorado Department of Labor which excludes volunteers.

The District is a governmental entity and this is another example of the difficulties in having an HOA with different rules trying to advise and manage the District properties and businesses.

Daniel Taylor
President, HGMD Board of Directors



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The URL is <https://webapps.dol.gov/elaws/whd/flsa/docs/volunteers.asp>.

I think it makes clear that individuals can volunteer their services for public sector employers, which would include the District.

U.S. DEPARTMENT OF LABOR

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Fair Labor Standards Act Advisor

Volunteers

The Fair Labor Standards Act (FLSA) defines employment very broadly, i.e., "to suffer or permit to work." However, the Supreme Court has made it clear that the FLSA was not intended "to stamp all persons as employees who without any express or implied compensation agreement might work for their own advantage on the premises of another." In administering the FLSA, the Department of Labor follows this judicial guidance in the case of individuals serving as unpaid volunteers in various community services. Individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable or similar **non-profit** organizations that receive their service.

For example, members of civic organizations may help out in a sheltered workshop; men's or women's organizations may send members or students into hospitals or nursing homes to provide certain personal services for the sick or elderly; parents may assist in a school library or cafeteria as a public duty to maintain effective services for their children or they may volunteer to drive a school bus to carry a football team or school band on a trip. Similarly, an individual may volunteer to perform such tasks as driving vehicles or folding bandages for the Red Cross, working with disabled children or disadvantaged youth, helping in youth programs as camp counselors, scoutmasters, den mothers, providing child care assistance for needy working mothers, soliciting contributions or participating in benefit programs for such organizations and volunteering other services needed to carry out their charitable, educational, or religious programs.

The URL is <https://webapps.dol.gov/elaws/whd/flsa/docs/volunteers.asp>.

I think it makes clear that individuals can volunteer their services for public sector employers, which would include the District.

Under the FLSA, employees may not volunteer services to **for-profit** private sector employers. On the other hand, in the vast majority of circumstances, individuals can volunteer services to [public sector employers](#). When Congress amended the FLSA in 1985, it made clear that people are allowed to volunteer their services to public agencies and their community with but one exception - public sector employers may not allow their [employees to volunteer](#), without compensation, additional time to do the same work for which they are employed. There is no prohibition on anyone employed in the private sector from volunteering in any capacity or line of work in the public sector.

For information about [independent contractors](#) and [trainees](#) (including School-to-Work programs) or to find out whether you are covered by the [FLSA](#), click on the underlined text.

Remember that some employees are [exempt](#) from various provisions of the law. To explore the broad categories of these exemptions or to obtain further information about the [FLSA](#), click on the underlined text.

For more information, please contact your local [Wage and Hour District Office](#).

Please click on the **Back** button to return to the Advisor.



Interpretive Notice & Formal Opinion (“INFO”) #10:

Worker Classification: Who Is and Isn’t an “Employee” Protected by Labor Standards Laws?

Overview

- **What labor rights** a worker has depends on **what kind of worker** they are.
 - Most paid workers are “**employees**” with various labor rights — to minimum and overtime wages, rest and meal breaks, paid leave, limits on pay deductions, and more.
 - Other paid workers are “**independent contractors**” with a more limited set of rights related to their work.
 - **Other workers are unpaid** — which is allowed for situations that aren’t really about providing labor to an employer, such as most bona fide volunteers for nonprofits or educational internships/externships.
- The **actual facts of the work** determine whether a worker is an “employee” — not just whether they’re called a “contractor” (or other kind of non-employee) in **tax papers** (W-2, 1099, etc.) or in an **agreement**.¹

The Core Definition and Question: Is the Activity “**Labor or Services**” for the “**Benefit of an Employer**”?

- What facts matter, and what order to examine them, are covered by the [Colorado Wage Act](#) “**employee**” definition (C.R.S. § 8-4-101(5), or “§ 101(5)”) that applies to most but not all Colorado labor standards laws.²

Text of the § 101(5) “Employee” Definition <i>[bracketed letters/numbers added, to show the 3 parts]</i>	How to Apply Each Part of the Two-Sentence Definition
<p>[1] “Employee” means any person ... [A] performing labor or services [B] for the benefit of an employer ...</p>	<p>The first sentence of § 101(5) – and the core definition: ➤ Anyone whose labor or services benefit an employer is an employee.</p>
<p>[2] Relevant factors ...include the [A] degree of control the employer may or does exercise over the person and the [B] degree to which the ... work... is the primary work of the employer;</p>	<p>The first half of the second sentence – noting factors for applying the core definition of whether activity is or isn’t “labor or services,” or to “benefit ... an employer”: ➤ To what degree is the activity controlled by, or the primary work of, an employer?</p>
<p>[3] except that an individual [A] primarily free from control and direction... and... [B] customarily engaged in an independent trade, occupation, profession, or business ... is not an employee.</p>	<p>The second half of the second sentence – an exception: ➤ Even if applying [1]-[2] shows a worker meets the core definition of an “employee,” the worker is not an employee if they are actually doing independent work, with little to no control by those hiring them.</p>

¹ [Colorado Custom Maid, LLC v. Industrial Claim Appeals Office](#), 2019 CO 43, ¶ 2, 441 P.3d 1005, 1007 (“employee” status depends on “the realities” of the work “relationship,” not just what parties wrote or said); [Jackson Cartage, Inc. v. Van Noy](#), 738 P.2d 47, 48 (Colo. App. 1987) (disregarding agreement “that the parties intend to create an independent contractor-employer relationship”: “we are primarily concerned with what is done under the contract and not with what the contract says”); [C.R.S. § 8-4-121](#) (voiding any agreement, written or oral, that waives or modifies applicable wage rights).

² The § 101(5) definition applies to [a number of Colorado statutes](#) and [rules under those statutes](#), including: (1) the various statutes authorizing Division wage and hour enforcement and interpretation, including the Industrial Relations Act, Wage Act, and Minimum Wage Act (C.R.S. Title 8, Articles 1, 4, 6); (2) paid sick leave under the Healthy Families and Workplaces Act (Title 8, Article 13.3, Part 4); (3) rights under the Protected Health/Safety Expression and Whistleblowing Law (Title 8, Article 14.4); and (4) given the pervasive adoption and application of the § 101(5) definition across much of Colorado labor law, presumptively any other labor standards statutes or rules that do not specify a different definition — for example, the Equal Pay for Equal Work Act (C.R.S. Title 8, Article 5) and Job Application Fairness Act (C.R.S. § 8-2-131).

Other areas of law use similar but not identical definitions, including unemployment insurance, workers’ compensation, taxes, and Denver wage ordinances. For details, consult the relevant agency, or a professional advisor.

How to Determine When a Worker Called an "Independent Contractor" Is Actually an "Employee"

- A common question is whether a worker actually is an "employee" covered by labor law, even though the hiring business called them an "independent contractor" — sometimes in a written agreement, sometimes verbally — and recorded their pay with tax form 1099 for contractor pay, not W-2 for employee pay.

- **Applying the basic definition:** Of the two parts of the "employee" definition (that a worker is an "employee" if "[A] performing labor or services [B] for the benefit of an employer"),

[A] "**labor or services**" typically isn't in question, since contractors are hired for labor or services,³ so

[B] "**benefit of an employer**" is the key question, informed by any relevant facts, including the two (degree of "control" and what the business's "primary work" is) that the statute, § 101(5), notes may be relevant to whether labor or services benefit an employer. Any business benefits from labor or services it pays for, but the question is **what kind of benefit**, and **who draws the primary economic benefit**:

1) Did the business **benefit** from the labor or services more:

- a) **as an employer** does – commonly with **meaningful control**, or for its **primary work?** *or*
- b) **as a customer** does – commonly with **limited control**, or for tasks **other than** its primary work?

2) Did the **economic** benefit of the work go primarily:

- a) **to the business** – in the manner that an **employer** benefits from the work of its employees, not just in the manner that a **customer** benefits from the services it pays for? *or*
- b) **to the worker** – in the manner that a **business** benefits from paying customers, not just in the manner that an **employee** benefits from receiving wages?

- **Analyzing "Control":**

- The key question is whether a business had **limited** control like a typical knowledgeable **customer** (choosing end products, deadlines, limited quality control, etc.), or **greater** control like an **employer** has.
- Look to how much **authority** to control a worker a business had, not just how much it **used** its authority. For example, authority to discipline is relevant, even if discipline was never needed.
- Consider **all relevant facts**; no one fact alone determines the outcome. It typically helps to consider the **degree** that a business **did, or had authority** to:⁴
 - 1) instruct **when, where, and how much** to work — rather than just **general timing** or **deadlines**;
 - 2) direct or train **how to perform** work — rather than just explain **goals** or **desired end products**, relying on the **worker's own skill** or ongoing learning;
 - 3) **supervise and monitor** the work, including **productivity, time, location**, etc. — rather than just limited observation of **progress**, or for **quality control**;
 - 4) **enforce policies or standards** — rather than just require **lawful** activity, respect for property, etc.;
 - 5) retain **opportunity for profit or loss** (such as by **setting prices** customers pay, paying by **time**, or retaining the **investment** in the project) — rather than the worker having that opportunity (such as by receiving **flat rate** pay regardless of time, or **investing** their own funds);
 - 6) hold out workers as **representing** the business — whether verbally, by requiring uniforms, etc. — rather than workers having websites, business cards, etc., with their own personal or trade name;

³ Whether activity is "labor or services" may be an issue in situations *other than* employee/contractor, such as a student *intern* claiming their activity was actually the kind of "labor or services" that *employees* do for their employer's benefit.

⁴ The numbering of this list doesn't imply a rank-ordering of importance, that all factors are equally relevant in all cases, or that this list is exhaustive in terms of what factors should be considered in any given employment situation.

- 7) retain **decision-making on changes in plans** — rather than let the **worker independently**, for example, decide on and execute changes to the planned work (e.g., changing the materials to be used), or **directly** receive and respond to any feedback from the business's customers.
- 8) **discipline** the worker, or **terminate at will** — rather than having the limited remedies of a contracting party, such as to terminate only for breaches by the worker.⁵

- **Analyzing "Primary Work":**

- Consider **all relevant facts**; no one fact alone determines the outcome. It typically helps to consider:
 - 1) how the business **defines** its work — including how it **presents** itself to the public;
 - 2) to what degree the work is **important** to the business;
 - 3) to what degree the work occurs **regularly** or only **occasionally**; and
 - 4) to what degree the work is a source of **revenue**.
- The question is "the **degree** to which" a worker performs a business's primary work, not just a simple yes or no. For example:
 - A) A worker who doesn't directly generate goods, services, or sales, but does work **necessary to support the revenue-generating work** of the business, still "performs work that is the primary work" of the business to a **high degree**.⁶
 - B) A worker whose work doesn't fit into (A) above, but is **necessary to the broader operation** of the business — for example, daily janitorial work necessary for a business's building to be a functioning worksite — "performs work that is the primary work" of the business to a **limited degree**.
 - C) A worker whose work is **useful but not necessary** to operating the business — for example, a cafeteria that a business offers to employees who have other meal options (bringing their own food, eating off-site, etc.) — does **not perform the primary work** of the business.

- **Analyzing the Exception:** If the facts show the worker "performed labor or services for the benefit of an employer," commonly based on analyzing the "control" and "primary work" factors, then the worker is an "employee" unless the business **proves both requirements of the exception** — that the worker was:

- [A] "**primarily free from control and direction**" — typically under the **same facts as the "control"** analysis above; and
- [B] "**customarily engaged** in an **independent trade**, occupation, profession, or business" — typically looking to the degree to which a worker is
 - 1) **actually "engaged** in ... independent" work **for others**, not working primarily for one employer,⁷ and
 - 2) in **work that is a "trade**, occupation, profession, or business" — rather than, for example, labor not requiring as much training or learning.

⁵ See [Colo. Custom Maid](#), ¶¶ 13, 19 ("simply the right to terminate a service contract without liability is an important factor in ... whether the individual is free of control and direction" of an employer, since the right to discharge "immediately involves the right of control"); [Indus. Comm'n of Colo. v. Bonfils](#), 241 P. 735, 736 (1925) (applying unemployment statute) ("By virtue of its power to discharge, the company could, at any moment, direct the minutest detail and method of the work").

⁶ An example: [Jina Research](#), DLSS Claim No. 4191-20, Hearing Decis. No. 21-106 (Oct. 7, 2021) (though not directly revenue-generating production work, farm manager / chief operating officer performed work that was a critical component of the business process by managing farm operations, making such work a part of the farm's "primary work").

⁷ Of course, working for more than one business doesn't *automatically* show the worker is "engaged in ... independent" work as a contractor is. A worker can have two or more "employee" jobs for different employers — for example, two part-time jobs, or a full-time job plus moonlighting in a part-time job. Or a worker can have one "employee" job plus separate independent contractor work — for example, a full-time construction worker taking handyman jobs on weekends.

Example: Is Pat, an electrician working on-site on production machines at a factory, an:

- (a) **employee** of the **service recipient**, the hat-making factory Hats Are Terrific, Inc. ("HAT")?
- (b) **employee** of the **service provider** they work for, Machinery/Appliance Technicians, Inc. ("MAT")?
- (c) **independent contractor** not employed by any other business?⁸

In these 3 situations, is Pat an:	a) Employee of HAT?	b) Employee of MAT?	c) Independent contractor?	Explanation:
(1) MAT hires Pat, then assigns and supervises Pat's work at HAT. HAT hires and pays MAT for the work; MAT informs HAT when each work task is done.	No	Yes	No	MAT draws the primary economic benefit from Pat's work, which it controls and is the primary work (electrical services) of its business.
(2) MAT hires Pat to work at HAT several days a week, and: <ul style="list-style-type: none"> - HAT, not MAT, assigns Pat's work: machine maintenance on all days Pat is on-site; plus — as needed, on a less regular basis — both machine repairs and setup of new machines. - Once Pat started at HAT, MAT interacts with Pat and HAT only in monthly check-in phone calls. 	Yes	No	No	<p>HAT benefits more as an employer of Pat than as a customer of Pat.</p> <ul style="list-style-type: none"> - HAT's degree of control is relatively high, despite one limit: Pat is retained for expert skills, so HAT's direction and evaluation don't include specific details of how to do the work. - Pat performs HAT's primary work to a relatively high degree: not just sporadic expert setup / repair work, but also maintenance that is regularly needed for, and assures the functioning of, the core production equipment. <p>MAT serves more as a mere placement agency than employer, finding labor for HAT without retaining any meaningful control over that labor.</p>
(3) MAT isn't involved: <ul style="list-style-type: none"> - Pat serves several businesses directly. HAT doesn't use Pat for regular machine maintenance, which HAT staff do since that work is relatively less specialized than the sporadic expert repairs and machine setup HAT uses Pat for. - On average Pat is on-site roughly 1/5 of work days: 2-4 setup/repair jobs a month of 1/2-2 days each. 	No	[not applicable]	Yes	<p>Pat's independent business draws the primary economic benefit — while HAT benefits more as a customer of Pat than as an employer of Pat:</p> <ul style="list-style-type: none"> - Machine/repair setup is more specialized than regular maintenance HAT does itself (indicating a low degree of control), and is needed only sporadically (indicating a low degree to which Pat performs HAT's primary work). - Even if the degree of primary work is higher, the exception is satisfied: Pat is both in an independent trade and primarily free of control.

For More Information: Visit the Division [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

⁸ This example does not consider whether, with different facts, HAT and MAT could *both* be "employers" of Pat. [Salinas v. Comm'l Interiors, Inc.](#), 848 F.3d 125 (4th Cir. 2017) ("joint employer" test used in federal and Colorado wage law).

To: HGMD Board of Directors
Audit/Finance Committee
Lary Herkal, General Manager
Carrie Toennis, Controller HG

MAY 21, 2024

REPORT: HEATHER GARDENS METROPOLITAN DISTRICT

AUDIT/FINANCE COMMITTEE MEETING

RITA EFFLER, DIRECTOR CHAIR

MAY 20, 2024

The Meeting was called to order by Director Chair, Rita Effler, at 1:02 P.M. About 10 residents were attending via Zoom.

Members T. Lee Keene, Nancy Reid, Debbie Parker, Forrest McClure were in attendance in person. Carol Anne Mayne was excused.

Lary Herkal, GM, and Carrie Toennis, Controller, were also present to answer questions and guide us through the financials for the first 3 months of 2024.

Attached is a report prepared just before the meeting and read at the meeting.

Attached are questions that we have forwarded to Carrie for answers.

We discussed the transition to become self-managed. Mr. Herkal said that HGA would not be interested in doing the accounting for us. Rita will be contacting our auditor for referral for accounting/bookkeeping services as well as a PEO company to handle personnel. Our auditor reports that they feel it is a conflict of interest, not ethical, to act in that capacity for us and also conduct what is supposed to be an independent audit. SDA also has members available offering special district services exclusively.

Nancy and Rita will prepare an RFP for accounting services as well as an RFP for a PEO company. Hopefully, these will be ready to go out by July 1st.

Rita contacted one commercial appraiser who quoted \$2500 as a ballpark figure for doing an appraisal to arrive at the fair market rental value of the properties currently used and occupied by the homeowner association. These include: Maintenance Building, office space on upper level of clubhouse, security offices on main level of clubhouse, custodial break room and laundry area in basement of clubhouse, storage area in basement area of

clubhouse, and 10 enclosed garages located on the parking lots and used by maintenance for storage.

Carrie has said that April and May financials will be available together. Therefore, we are not expecting to have the April financials available for the June meeting, but will start getting ready for the reorganization.

The meeting was adjourned at about 2:35 P.M. The next regular meeting of this committee should be June 17th, 2024, at 1:00 P.M. The meeting is regularly scheduled for the Monday before the 3rd Thursday of the month.

To: Heather Gardens Metropolitan District

Board of Directors

Audit/Finance Committee

From: Rita Effler, Treasurer

Report: For Meeting 20 May 2024

May 17, 2024 Revised 1:11PM May 18, 2024

We will be scrutinizing the January, February, and March 2024 Financial Reports received mid-May, 2024.

The reports furnished by HGA controller, Carrie Toennis, contain some minor changes and details that further help us make decisions.

On Page 1, Carrie has separated Revenue received into Total HGA Subsidy (Rec Fee)-- estimated \$144,498 per month and Revenue Generated by Enterprises. Prior to this the amount was just "Revenue". I like this better. It reminds us how we can do better.

This subsidy, had the District been formed differently, would be a TAX, collected by Arapahoe County, payable as part of real property taxes, and collected in two installments. Currently, this fee equates to about \$790 a year per unit or \$395 payable with other property taxes, in two installments. Currently, the assessed Rec Fee is based primarily on square footage. If the fee was collected by the county, it would be based on assessed value. We may be the only Special District reliant on an HOA to collect the funds to provide the benefits expected from the District.

It was C4C's promise that this subsidy would not increase. Exemplary management of District enterprises and consistent application of appropriate user fees and collection of user fees is necessary to reduce the burden on those who do not make extended use of the amenities. That is still my goal.

There are large legal fees incurred so far this year. The Recall committee reports \$100,000 in fees spread between the firm appointed to conduct a recall election, the attorney hired to litigate our suit for non-performance and our regular legal fees (reduced as far as we can). Most legal fees do not appear on the first 3 months of reports. That cost is not yet apparent, having not been paid during the first quarter of 2024. April and May will, likely, have very large payments to get to the \$100,000 cited by the Recall committee.

Zion Bank: Acct....013 2017 Bond Balance April 30, 2024 \$121.67

*Acct....015 2017 Bond Custody Balance April 30,2024 \$327,653.76

*This is the fund into which county collected property tax for bond payments are made. A small portion of vehicle registration is also remitted.

Key Bank:5397 Operating Account Ending Balance 4-30-24 \$ 352,082.93

Key Bank:.....00186 Capital Project Ending Balance 4-30-24 \$ 2,512.22

(No reason known why this account is maintained.)

Key Bank.....65405 Foundation Ending Balance 4-30-24 \$ 48,718.84

Key Bank.....65439 Lottery Ending Balance 4-30-24 \$ 157,609.03

Key Bank.....03305 Capital Mkt** Ending Balance 4-30-24 \$2,765,459.58

**This is the Investment account into which both restricted funds (foundation, lottery) and reserve funds are deposited in Special District approved investments.

In April there was a \$109,968.62 withdrawal that I am unaware of. I will ask Carrie and perhaps have an answer for Monday's meeting.

UPDATE;

Figured this out. It was not a "Cash Withdrawal" in April, but accumulated transactions which need studied. Holdings remain basically the same, so I don't think the "money" was withdrawn. Will have it tracked by Monday. 😊

IMPORTANT: New Business

Currently, Recreation Fees are collected by HGA as part of the monthly HOA dues. Those funds, averaging \$144,498 per month, are kept in HGA's operating account, used to pay HGMD liabilities, invoices approved for payment by an HGMD officer. In the past, HGA transferred funds from revenue generated and accumulated in another HGMD account, by the Enterprises, restaurant, golf course and clubhouse, to cover the expenditures exceeding the subsidy collected through the Recreation Fee. We see no invoices for Wages and Benefits billed to us by HGA.

Recently, access to transfer funds from HGMD operating account to HGA operating account was withdrawn for HGA management, following the advice of our litigation attorney. Consequently, we owe HGA \$216,219, March 31, 2024. The GM has advised me that HGA will submit an invoice with documentation for the amount owed, at which time the transfer of funds will be authorized.

For Budget Preparation: Under New Business: A/F May 20, 2024

When HGA uses the facilities and an invoice is produced, usually Restaurant, does this get entered as a Receivable by HGMD and then paid by HGA—how? How does selling at cost affect percentage of profit?

Data to assemble:

Charge out hourly rates being applied for Maintenance, Golf/ Landscape, and Custodial. Current rate and 2025 expected rate.

Clubhouse: Revenue and expenses incurred for each class/activity

Events: Revenue/Expense

Frolics: Contract Revenue/Expense

Churches: Contracts Revenue/Expenses

Mtn Man, Bayer etc contracts/agreements

* Charge Clubhouse committee to determine fees for use of facilities.

Class fees

Golf: Data available will determine budget for 2025.

* Charge Golf committee to recommend golf user fees, comparable, equitable and fair to the community.

Restaurant: Data available will be used to prepare the budget for 2025.

Audit/Finance:

* Prepare for Transition to self-management.

1. Accounting: SDA assistance, recommendation for accounting system; RFP for Financial reports/statutory requirements/reporting

2. PEO—RFP for service

3. Appraisal FMV of Maintenance Facilities, 10 enclosed garages, Office Space including Security, Custodial, Basement Storage. \$2500 professional estimate

RV Storage Lot Committee Report for June 10, 2024

I. Meeting called to order at 1:10 p.m. Attending members: Forrest McClure (chair), Len Robinson, Tom Sandquist, John Guise. Audience: Craig Baldwin, Ashlei Finney, and others.

II. Chair's Opening Remarks

- A. AJI has signed the contract and ordered the Ameristar fence. The anticipated start time to replace the existing chain link fence is mid to late July.
- B. Discussed the potential transition from HGA management to self-management.
- C. Chair purchased a DIY water quality testing kit to check on the drinkable water at the dump station, but the results were inconclusive.

III. Designated RV Lot Manager (Ashlei Finney) reported:

- A. Three spaces opened and those on the wait list are being contacted.
- B. Confirmed that paper and digital copies of lessee contracts are kept on file.

IV. Unfinished business

- A. The committee agreed that it was not worth the effort and expense to remove a tree and/or its roots that are close to the fence line.
- B. Dump Station
 - 1. Potable water hydrant. The committee agreed on the following plan. Bids are needed before the committee can make a recommendation to immediately replace the hydrant or wait until the entire dump station is rehabilitated. In the meantime, the committee will have the water tested by a laboratory. Tom Sanquist volunteered to arrange that and will be assisted by HGMD Treasurer, Rita Effler. Once a sample for testing has been obtained the water will be shut off pending test results and/or the hydrant is replaced.
 - 2. The committee unanimously agreed that the blue water tower should be removed, put into storage or installed for use at the Maintenance Building. This is because the hose from the faucet to the tower is repeatedly disconnected and left on the ground where it is subject to contamination. Most lessees use their own potable hoses to connect to the drinking water faucet and do not use the hose from the water tower. So, the water tower is irrelevant and its hose has multiple holes in it. Chair will create a work order to have Maintenance remove it.
 - 3. The committee agreed that the trash barrels should stay as long as HGA is property manager and Maintenance continues to empty them. Should that change the trash barrels will be removed.

V. Adjourned at 1:55 p.m.

Proposal

Community Center Ref: 44 - 0

HGMD
2888 S heather gardens way
Aurora, CO 80014

6/10/2024

Presented By:
Anthony Tyrrell-Ead
SpectrumAV
351 W 45th Ave
Denver, CO 80216
3034774456
www.spectrumav.com

Scope of Work

Project Summary:

Replace soundboard and microphones. Add a digital stagebox to rack for less wear and tear on cables.

Auditorium



1 ea	Allen & Heath AH-QU-32C 32 channel digital mixer, 32 Mic/Line + 3 stereo 100mm motorized faders, 24 mix outputs, 4 FX Engines, onboard 18 track recording, built in 32ch USB I/O, built in dSNAKE, Network port, 7" Touch screen	\$3,608.24	\$3,608.24
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1 ea	Allen & Heath AH-AR2-2412-BLK 24in x 12out Remote AudioRack, dSNAKE I/O for expansion, 3 RU, 48kHz	\$1,622.81	\$1,622.81
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Shure



2 ea	Shure SLXD24D-SM58-H55 Dual Wireless Vocal System with SM58	\$1,212.50	\$2,425.00
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3 pack	Shure SLXD14D-H55 Dual Combo System with (2) SLXD1 Bodypacks and SLXD4D Receiver	\$1,123.75	\$3,371.25
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4 pack	Shure SLXD1-H55 Bodypack Transmitter	\$198.75	\$795.00
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10 ea	Shure WL185 Microflex Cardioid Lavalier Microphone	\$112.50	\$1,125.00
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10 ea	Shure MX153T/O-TQG Omnidirectional Earsset Headworn Microphone, Tan	\$226.25	\$2,262.50
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1 ea	Shure UA844+SWB Five-way active antenna splitter and power distribution system for QLX-D, ULX, ULX-D, SLX, and BLX (BLX4R only) receivers. (470-952 MHz)	\$537.50	\$537.50
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2 ea	Shure UA874US Active Directional Antenna with Gain Switch 470-698 MHz	\$353.75	\$707.50
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Additional Costs

1 ea	Freight Shipping costs for equipment	\$500.00	\$500.00
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1 ea	MISC HARDWARE Cable, Screws, Anchors	\$200.00	\$200.00
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1 ea	INSTALLATION Labor cost, programming cost	\$4,000.00	\$4,000.00
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Grand Total Summary

Equipment: \$21,154.80

Sales Tax: \$1,511.34

Total Investment: \$22,666.14

Agreement Contract

Deposit:

Client will provide 50% upfront deposit of equipment total before equipment is ordered.

Freight:

Freight charge is an estimate, it will be adjusted accordingly on final invoice

Client purchased equipment:

All equipment purchased by client will be installed by them, unless specifically stated in project summary

Assumptions:

A) Power, Phone Lines, and Network connections will be provided by Customer.

B) Access to work site will be normal business hours. Waiting time for access will be charged at \$125.00 per hour per person for any waiting time over 15 minutes.

C) Customer contact info will be provided to Spectrum AV. This person will be available and responsible for approval of all change orders, questions that may come up during installation and making sure that all resources that are not provided by Spectrum AV are provided in a timely manner. This includes but is not limited to: Additional power circuits, networks feeds, aid from facilities personnel etc.

D) All existing equipment and software under the clients control are assumed to be 100% operational unless otherwise disclosed in this document. Any non-disclosed or unknown operational issues with existing equipment will be billed hourly at \$125 per hour for any additional time required.

E) Any needed network/internet connections to be provided by Customer.

G) Physical room issues out of control of Spectrum AV such as mechanical room vibrations, and the need for room acoustical treatment are not included in this scope of work.

H) Work site needs to be free and clear of obstructions and people. Specifically no unauthorized people maybe in the room while Spectrum AV is working. This is to ensure the safety and insurance requirements.

I) Desks or other obstructions shall be moved prior to the installation.

J) Equipment locations may need to be modified because of unknown obstructions. Recessed Screens and projectors typically need to have at least 12" of clearance between the dropped ceiling and any vents sprinkler systems etc.

Terms: Net 30

Changes to the original scope of work: Spectrum AV will accept requests for changes. There is a process that all change requests must go through.

Relay your request to Bill MacDonald, or to the designated Spectrum AV project manager. We will then internally review the change and decide what steps we may take.

Should we accept to complete the change request, Spectrum AV will communicate the cost and affect that the change will have on the outcome of the project.

Should the client accept the change request response, we will commence with the document changes and on-site changes following a purchase order or payment from the client.

Service Agreement: Spectrum AV upon completion of installation of equipment will give a tutorial of the system and if client requests, info to access system for maintenance, at this point service calls will not be charged up to 1 year. After 1 year has passed any service call will be charged \$100/HR including travel

time.

Warranty: Spectrum AV provides a one year warranty on all integration work performed. This includes all infrastructure-related items such as cables, connectors, physical terminations, and any custom fabrication or installation work. Should an infrastructure related failure occur within the warranty period, Spectrum AV will make reasonable attempts to troubleshoot the problem with the client via email or telephone. If the issue cannot be easily resolved in this manner, Spectrum AV will dispatch a technician to the client's location to troubleshoot and repair the problem. If the issue is a result of equipment failure, improper use, or abuse of the system, troubleshooting and repair services will be billed to *Customer* at Spectrum AV's standard hourly rates.

Sales Tax: \$1,511.34

Total Investment: \$22,666.14

Heather Gardens Metropolitan District

Anthony Tyrrell-Ead

Date: _____

Date: _____

Daniel Taylor

From: Lary Herkal <lary.herkal@HeatherGardensmail.com>
Sent: Thursday, May 23, 2024 2:20 PM
To: Daniel Taylor; Robin O'Meara; rl_effler; Eloise Laubach; cebaldwin103
Cc: Sietse Vollema; Julie Racich; Richard Barowsky
Subject: FW: Wood Shop Employee
Attachments: 20240521110753385.pdf

After interviewing candidates for the maintenance position for the Wood Shop, Richard Barowsky is recommending we present an employment offer to Gary Wooldridge. Gary's application is attached. We recommend \$20.00 per for 15 hours per week. Julie would be Richard's supervisor. Let me know if you have any questions.

Lary Herkal
General Manager



2888 S Heather Gardens Way, Aurora, CO 80014
Direct: (303) 755-0652 Fax: (303) 745-5253

Lary.herkal@heathergardensmail.com | www.heathergardens.org

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Heather Gardens Association - APPLICATION FOR EMPLOYMENT
An Equal Opportunity Employer

Heather Gardens does not discriminate on the basis of race, color, religion, national origin, sex, age, disability, or any other status protected by law or regulation. It is our intention to give all qualified applicants an equal opportunity and that selection decisions are based on job-related factors.

Answer each question fully and accurately. No action can be taken on this application until you have answered all questions. Use blank paper if you do not have enough room on this application. **PLEASE PRINT**, except for signature on back of application. In reading and answering the following questions, be aware that none of the questions are intended to imply illegal preferences or discrimination based upon non-job-related information.

Today's Date 4-29-24 Job Applied For Woodshop Maintenance Tech.

Are you seeking: Full-time Part-time Temporary employment?

When would you be available to start work? asap or when needed

Last Name	First Name	Middle Name	Telephone Number	
<u>Wooldridge</u>	<u>Gary</u>	<u>R</u>	[REDACTED]	
Present Street Address	City	State	Zip Code	
<u>12852 E. Bethany Pl.</u>	<u>Aurora</u>	<u>CO</u>	<u>80014</u>	
Email Address				
<u>garywooldridge@rocketmail.com</u>				
Are you 18 years of age or older? <small>(If you are hired, you may be required to submit proof of age.)</small>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>		
If you are under sixteen, can you, after employment, submit a work permit?	Yes <input type="checkbox"/>	No <input type="checkbox"/>		
If hired, you will be required to provide proof of your eligibility to work in the United States.				

Have you ever applied here before? Yes No If yes, when? May 2023

Were you ever employed here? Yes No If yes, when? _____

Are you able to perform all job functions with or without reasonable accommodation? Yes No

Have you ever been convicted of any felony? (Include any plea of "guilty" or "no contest". (Exclude minor traffic violations)) Yes No

If yes, give details. _____
(A conviction will not necessarily disqualify an applicant for employment.)

LM- 930 S/1

TT - interview @ 930 - 5/2

WORK HISTORY

List names of employers in consecutive order with present or last employer listed first. Account for all periods of time including military service and any periods of unemployment. If self-employed, give firm name and supply business references.

Note: A job offer may be contingent upon acceptable references from current and former employers. If you gave us a resume you may leave blank

Name of Employer	US Forest Service	Supervisor(s)	Seth Jennings
Address	9 Ten Mile Drive	Employed	
City, State, Zip Code	Granby, CO	From (mo/yr)	9 / 2011
Telephone	970-887-4100 970-531-5720	To (mo/yr)	5 / 2023
		Pay	[REDACTED]
Title	Pre Sale Forester	Reason for Leaving	Retired
Duties	Timber Sale Layout and contract development.		
Name of Employer	Columbia River Log	Supervisor(s)	
Address	Scaling Department Bureau	Employed	
City, State, Zip Code	Oregon	From (mo/yr)	/ /
Telephone	Not in business	To (mo/yr)	/ /
		Pay	
		Start \$	Final \$
Title	Log Scaler	Reason for Leaving	
Duties			
Name of Employer	Boise Cascade Corp.	Supervisor(s)	
Address	Idaho and Oregon	Employed	
City, State, Zip Code		From (mo/yr)	5 / 1986
Telephone		To (mo/yr)	5 / 2005
		Pay	
		Start \$	Final \$
Title	Forester	Reason for Leaving	
Duties			
Name of Employer		Supervisor(s)	
Address		Employed	
City, State, Zip Code		From (mo/yr)	/ /
Telephone		To (mo/yr)	/ /
		Pay	
		Start \$	Final \$
Title		Reason for Leaving	
Duties			

WORK HISTORY

Have you worked under any other names? Yes No
 If yes, give names: _____

Are you presently employed? Yes No
 May we contact your employer? Yes No
 If yes, whom do you suggest we contact? _____

Have you ever been disciplined, fired from a job or asked to resign during the past five years? Yes No
 If yes, please explain: _____

REFERENCES

Give three references, not relatives or former employers.

Name	Address	Phone
1. Matt Jurack	1455 E. 3rd Ave Longmont CO	[REDACTED]
2. Ryan McWentney	Granby, CO	[REDACTED]
3. Kent Roorda	359 County Rd 469 Grand Lake, CO	[REDACTED]

AFFIDAVIT, CONSENT AND RELEASE
PLEASE READ EACH STATEMENT CAREFULLY BEFORE SIGNING

In making this application for employment, it is understood that an investigation may be made whereby information is obtained through personal interviews with your neighbors, friends and others with whom you are acquainted. This inquiry includes information as to your character, general reputation, personal characteristics and mode of living. You have the right to make a written request within a reasonable period of time for complete and accurate disclosure of additional information concerning the nature and scope of this investigation.

I certify that all information provided in this employment application is true and complete. I understand that any false information or omission may disqualify me from further consideration for employment and may result in my dismissal if discovered at a later date.

I authorize the investigation of any or all statements contained in this application. I also authorize, whether listed or not, any person, school, current employer, past employers and organizations to provide relevant information and opinions that may be useful in making a hiring decision. I release such persons and organizations from any legal liability in making such statements.

I understand I may be required to successfully pass a drug screening examination. I hereby consent to a pre- and/or post-employment drug screen as a condition of employment, if required.

If I am employed, I understand that all company property must be returned and any indebtedness to the company must be paid to the company before my termination. I authorize the company to deduct from my final paycheck(s) all monies due and owing to the company.

I UNDERSTAND THAT THIS APPLICATION, VERBAL STATEMENTS BY MANAGEMENT, OR SUBSEQUENT EMPLOYMENT DOES NOT CREATE AN EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT NOR GUARANTEE EMPLOYMENT FOR ANY DEFINITE PERIOD OF TIME. IF EMPLOYED, I UNDERSTAND THAT I HAVE BEEN HIRED AT THE WILL OF THE EMPLOYER AND MY EMPLOYMENT MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT REASON AND WITH OR WITHOUT NOTICE.

I have read, understand, and by my signature consent to these statements.

Signature: Barry R. Woodridge Date: 4/29/24



Heather Gardens METROPOLITAN DISTRICT

HEATHER GARDENS METROPOLITAN DISTRICT

BOARD ACTION

DATE: JUNE 20, 2024

MOTION NUMBER: 2024-6-20-__

RESERFACE AUDITORIUM FLOOR

MOTION: Based on the recommendation of Tyson Wyatt, president of Expressions in Flooring and the Clubs and Activities Committee, I move that the Heather Gardens Metropolitan District Board of Directors approve the refinishing of the auditorium floor to Denver Dustless in the amount of \$13,225.00 with a change order of \$1,375.00 for a total of \$14,600.00.

Motion by: Craig Baldwin Seconded by: _____

Economic Cost to District: 2024 budgeted: \$13,310.00

RATIONALE: See attached information.

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.

Daniel J. Taylor, President
HGMD Board of Directors

Robin O'Meara, Secretary
HGMD Board of Directors

RATIONALE. *While preparing a Request for Proposal (RFP) to replace the clubhouse auditorium floor, I sought the advice of Tyson Wyatt, president of Expressions in Flooring. Below is Mr. Wyatt's opinion.*

The wood floor that exists in the auditorium is a sprung wood floor. This means that the wood is installed over battens or “sleepers” to give the floor movement to absorb shock from athletic activity, dancing, etc. While it may be imperceptible, that floor is moving and deflecting with every step you take across it. All LVP floors are designed to be installed over substrates that meet certain criteria for structural soundness and deflection; these floors click or lock together, and while some minor movement is to be expected, big deflection in the subfloor will cause eventual failure of the LVP product. You may see a locking system failure due to excessive deflection if the new floor is installed over the existing floor. Here are some excerpts from one manufacturer regarding the installation requirements for their LVP products:

“Existing Floor Coverings – Flooring can be installed over most existing hard surface floor coverings, provided that the existing floor surface is fully adhered, clean, flat, dry, structurally sound, and free of deflection.” “DO NOT install over sleeper construction subfloors or wood subfloors applied directly over concrete.”

Each manufacturer has different requirements and language in their technical documents but nearly all of their floors exhibit similar characteristics. Couple the deflection of the floor with the more commercial-type traffic you get in that space and you will be disappointed with the results. If the space is to remain a multipurpose area, I would suggest looking at replacing it with like-kind which will last for many more decades to come.

Tyson Wyatt



Estimate

Date
5/29/2024

Name / Address
Heather Gardens 2888 S Heather Gardens Way Aurora CO 80014

Ship To
Jon 720-974-6916 Carlos 720-974-6997

Rep
DLH

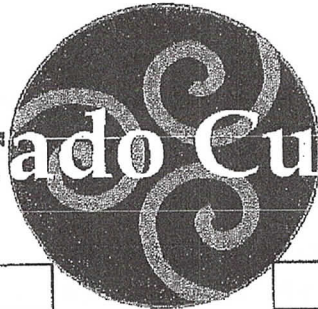
Description	Cost	Total
<p>Customer shall pay all invoices within terms of the date of the invoice. If payment is not received within that time period , we may impose a late fee of \$100.00. If after 30 days payment has not been received, Denver Dustless may assess eight (8) per cent simple interest on the unpaid invoice. Interest begins accruing on the invoice due date. If customer has not paid an invoice for more than 90 days, Company may refer collection of the unpaid amount to an attorney or collection agency. If Customer's unpaid invoices are referred to an attorney or collection agency, Customer shall pay all attorney's fees or collections agency fees. In the event legal action is necessary to collect the amount due for the work described Customer agrees to pay all attorney fees and court costs incurred by Denver Dustless.</p> <p>Craftsmanship and finish are guaranteed for a period of one year. Wood cracks are not warranted, this is natural process we can't control.</p> <p>Please note that the owner or builder is responsible for removal and replacement of all the furniture, electronics etc. Also note that minor paint touch, (Base re-painting if use dark stains) would be the owners or builders responsibility as well. We refer Move Masters for all your furniture removal and replacement needs at 303-893-8200 or Hediger Relocation 303-526-9105</p> <p>We do accept all major credit cards, cash or check.</p> <p>50% Deposit is Due at scheduling for all jobs \$5,000 and over or if material is delivered prior to an install</p> <p>Hoffman Brothers Hardwood Flooring in Denver/Boulder Since 1948</p>		
Authorized Signature	Total	\$13,225.00

Phone #	Fax #
303-650-1987	303-650-1996

98 Wadsworth Blvd Unit 127 PMB 182
 Lakewood, CO 80226
 Phone: 303-282-0829
 Fax: 303-282-0806

Estimate

Colorado Custom



Date	Estimate #
12/8/2023	28413

Bill To
Heather Gardens Municipal District 2888 S Heather Gardens Way Aurora, CO 80014

Ship To
Heather Gardens Municipal District 2888 S Heather Gardens Way Aurora, CO 80014

Qty	Unit	Description
211 2,417	Linft Sqft	<p>Refinish the Gymnasium Floor. The floor has been refinished several times previously, all of the dents and scratches may not be able to be removed . Remove & reinstall Rubber Cove base baseboard (Does not include replacement of pieces broken during removal) Sanding, Fill & Finish (water base) always 2 Coats</p> <p>All work bid to be done during regular working hours. Monday through Friday 7:00 am to 5:00 PM. A shift premium will be accessed for night or weekend work.</p> <p>No prep, contents removal, protection/containment or demo included at this time, other than as stated. Will be addressed at time of discovery if needed. Sales Tax</p>

Total	\$15,293.25
--------------	--------------------

Signing and/or scheduling work is acceptance of this bid and all payment terms. Terms of payment are COD, with full payment due within 10 days of completion. All outstanding balances will incur an interest charge of 18% per annum, with a minimum monthly service charge of \$25. In the event an outstanding balance goes unpaid, you will be held liable for collection costs, including attorney, court and processing fees. Please review bid entirely. Any work not stated above is not included. Any work not included above that is requested or found to be required to properly complete the project after work has begun, will be advised and billed through change orders that require approval prior to continuing work. This is to include any unforeseen conditions that may arise during work and/or upon demo. A cancellation fee of \$125 applies to any installs cancelled within 24 hours of start date. If you need to cancel or reschedule, please contact the office prior to that deadline to avoid the fee.

Howell

From: Office Assistant <office@coloradocustomcarpet.com>
Sent: Wednesday, May 29, 2024 10:22 AM
To: Jon Howell
Subject: Estimate 28413 from Colorado Custom
Attachments: Est_28413_from_Colorado_Custom_Carpet_Inc_12156.pdf

Good Morning

We have reviewed the attached estimate that was originally completed last December and the pricing has not changed. If you have any questions or we can assist in any way, please let us know. Thanks,
Pam

Pam Fasel

Colorado Custom Carpet Inc

98 Wadsworth Blvd, Unit 127 PMB 182

Lakewood, CO 80226

Phone: 303.282.0829

www.ColoradoCustomCarpet.com



Heather Gardens

METROPOLITAN DISTRICT

**HEATHER GARDENS METROPOLITAN DISTRICT
BOARD ACTION**

DATE: JUNE 20, 2024

MOTION NUMBER: 2024-6-20-2

MOTION: ENGAGE COMMERCIAL APPRAISER

I move that the Heather Gardens Metropolitan District Board of Directors approve engaging a commercial real estate appraiser to appraise the fair market rental value of the second floor clubhouse office space, maintenance facility, parking spaces to the west side of the clubhouse, and the grass area in the southwest corner of S. Heather Gardens Way and Abilene, individually itemized, in the amount of \$2,500 with a \$1,000 contingency.

ECONOMIC COST TO THE DISTRICT: \$2,500 with a \$1,000 contingency

APPROPRIATED FROM: OPERATING ACCOUNT

Motion by: Rita Effler

Second by: _____

Rationale: During the June 13, 2024, discussions with the HGA board, it was agreed that each board would seek an appraisal of the space HGMD proposed to rent to HGA.

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: JUNE 20, 2024

MOTION NUMBER: 2024-6-20-3

MOTION: PURCHASE OF ROUGH LAWN MOWER

On the recommendation of the Golf Committee, I move that the Heather Gardens Metropolitan District Board of Directors approve the purchase of a used rough lawn mower to replace mower #610 for an amount not to exceed \$95,000 with a contingency of \$10,000. The existing mower will be sold or scraped. The golf staff will search for an adequate replacement and will have the authority to make the purchase.

ECONOMIC COST TO THE DISTRICT: \$95,000 with a \$10,000 contingency
APPROPRIATED FROM: OPERATING ACCOUNT – BUDGETED CAPITAL EXPENDITURE

Motion by: Daniel Taylor

Second by: _____

Rationale: The existing rough lawn mower is consistently out of service and far past its useful life. Replacement parts are difficult to find and the repair costs are escalating.

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

HGMD—Amazon Purchase Request ASAP June 15, 2024

Add to cart

Overall Pick



Rockville

15" Rechargable Powered 800W PA DJ Speaker, 2 Mics, Bluetooth (RAM15BT V2)

4.4 out of 5 stars

345

100+ bought in past month

\$274.95 ~~\$274.95~~

FREE delivery **Mon, Jun 24**

Or fastest delivery **Jun 20 – 21**

Approved for Purchase:

RE and DT and RO



**HEATHER GARDENS METROPOLITAN DISTRICT
ELECTION PROCEDURES
PROCEDURE MEMORANDUM 1**

ADOPTED AND EFFECTIVE JUNE 20, 2024

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ELECTION PROCEDURES PROCEDURE MEMORANDUM 1

Proposed on December 21, 2023

Adopted by HGMD Board on June 20, 2024

This Procedure Memorandum shall supersede all previous versions of the Procedure Memorandum and Functions and Policy Manuals for Election Procedures, as well as all previous resolutions, actions and informal practices and policies of the District or portions thereof which may be in conflict with the provisions hereof.

ARTICLE I - PURPOSE

The purpose of this Procedure Memorandum is to define a consistent, fair, and equal procedure for all electioneering on the Heather Gardens Metropolitan District (District) properties and ensure the dissemination of information to the public which is informative yet, balanced, consistent with the Bylaws, Rules and Regulations, and administrative or policy procedure memoranda.

ARTICLE II - ELECTIONEERING

Section 1. Electioneering Definition. Electioneering shall refer to the dissemination of information verbally or by written materials in support or against a candidate or group of candidates for any office whether a political subdivision of this state or local government or for office in Heather Gardens Association or Metropolitan District.

Section 2. Electioneering Location. Electioneering is allowed in the following manner:

- A. In person, in front of the clubhouse or adjacent to the clubhouse parking lot, but not within 20 feet of the front clubhouse door, except on election day. On election day, no electioneering is allowed within 100 feet of the front clubhouse door. Such person may disseminate written material by hand, or
- B. Inside the clubhouse, any person may place a flyer, not larger than 8.5" x 11", on the bulletin board designated for the posting of notices, or may request to set up one table on the east side of the clubhouse lobby to speak with people from behind the table or to hand out information, or

-
- C. Any candidate or elected state, federal, or local official may schedule an electioneering event in a room at the clubhouse consistent with the rules and fees contained in the Clubhouse PM-1.
 - D. Campaign yard signs no larger than 18" x 24" may be placed on District property within 45 days of any District election, HGA election or local election for office or ballot measure specifically affecting Heather Gardens. All campaign signs must be removed within 48 hours after the election.

Section 3. Electioneering Material. Written material or verbal statements must not contain profanity, inflammatory information or false statements. If a violation of this rule is alleged, such allegation shall be made in writing to the HGMD board. If the allegation appears to be sufficient to be a violation of this rule, a presumption shall be created. The person or group disseminating the statement shall be afforded an opportunity to rebut the presumption, and submit evidence that the statement does not violate this rule. The HGMD board shall make a decision whether the statement shall be allowed or prohibited.

Adopted the 20th day of June, 2024, by the Board of Directors of the Heather Gardens Metropolitan District.

President, Daniel Taylor

ATTEST:

Secretary, Robin O'Meara



Heather Gardens

METROPOLITAN DISTRICT

**HEATHER GARDENS METROPOLITAN DISTRICT
BOARD ACTION**

DATE: JUNE 20, 2024

MOTION NUMBER: 2024-6-20-6

MOTION: ADOPTION OF RESTAURANT NAME CHANGE

Upon the recommendation from the HGMD Restaurant Committee, and after a vote by Rendezvous customers, I move that the Heather Gardens Metropolitan District Board of Directors change the name of the restaurant to “The Rendezvous Bar & Grill.” In addition the name of the banquet room will be changed to “The Gardens at the Rendezvous Bar & Grill.” There is currently no cost for the name change.

ECONOMIC COST TO THE DISTRICT: \$0
APPROPRIATED FROM:

Motion by: Robin O’Meara

Second by: _____

Rationale: The goal of re-naming the restaurant is to market The Rendezvous Bar and Grill as an establishment that is open to the public and as the place to be in Aurora and Heather Gardens for great food and drink. It is anticipated that the number of customers will increase and the opportunity for earning more revenue to offset the HGMD subsidy for the restaurant will be realized. Marketing the banquet room as an excellent venue for any special occasion was also a consideration when the committee and restaurant manager discussed the name change.

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

**HEATHER GARDENS METROPOLITAN DISTRICT
BOARD ACTION**

DATE: JUNE 20, 2024

MOTION NUMBER: 2024-6-20-7

MOTION: ARCHITECTURAL SERVICES CONTRACT

Upon the recommendation from the HGMD Restaurant Committee, I move that the Heather Gardens Metropolitan District Board of Directors contract with Malikai Architectural Design to provide a design test fit for an improved layout of the Rendezvous Bar & Grill which will provide more seating and accessibility for customers. The cost for the design services is \$10,000.

ECONOMIC COST TO THE DISTRICT: \$10,000

APPROPRIATED FROM: OPERATING ACCOUNT FOR BUDGETED CAPITAL EXPENDITURES

Motion by: Robin O'Meara

Second by: _____

Rationale: The goal of the re-design is to establish clear access to the restaurant for HG residents and outside customers. By creating a clear pathway for entry to the restaurant from the golf course, pickle ball/tennis courts, etc., it is anticipated that the number of customers will increase and the opportunity for earning more revenue to offset the HGMD subsidy for The Rendezvous Bar and Grill will be realized. The test fit will include American Disabilities Act compliance.

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



2888 S. Heather Gardens Way, Aurora, CO 80014
Office (303) 755-0652 Fax: (303) 745-5253

HEATHER GARDENS METROPOLITAN DISTRICT CONTRACT

1. **PARTIES.** The Heather Gardens Metropolitan District (hereinafter “District”) hereby contracts with **MALIKAI ARCHITECTURAL DESIGN** (hereinafter “Contractor”) to provide the products and/or services defined in paragraph 3, Scope of Work, below, (hereinafter “Work”). The Contractor hereby agrees to perform Work, pursuant to the terms and conditions set forth herein as an independent contractor of the District.
2. **TERM.** The Contractor shall commence the Work on **JULY 1, 2024** or within 30 days of the acceptance of this contract by the parties, or as otherwise agreed to by the District. The Contractor shall complete all the work by **SEPTEMBER 1, 2024**. Exceptions to the completion date include delays caused by weather or the delivery of parts ordered upon acceptance of this contract or in the case of unanticipated parts required, ordered when the part requirement become known.
3. **SCOPE OF WORK.** The “Work” contracted for pursuant to the this Work Order shall consist of the following:

Attach existing requests for proposals, bids, quotes, detailed drawings or Contractor supplied documentation presented as representative of the products to be supplies or work to be performed, which are incorporated herein by reference.

In performing the Work the Contractor hereby agrees to: (a) comply with all applicable federal, state, and local laws (b) be responsible for providing, at its cost and expense, all management, supervision, labor, materials, administrative support, supplies and equipment necessary to perform the Work (c) agree not to restrict resident access except as agreed to in the Scope of Work (d) maintain a safe work environment (e) keep materials, tools, supplies, and vehicles in the agreed work area (f) supply at its cost and expense any required city permits or city zoning approvals (g) be responsible for all job clean up and removal of waste (h) register all parts or products supplied to insure the maximum warranty for the benefit of the District and (1) warrant the services and labor performed for one year after completion of the Work, as applicable.
4. **COMPENSATION.** The Contractor shall be paid the flat rate amount **\$10,000.00** by the District for Work satisfactorily performed within 30 days of completion. If the Work requires an inspection by the city or other required inspections, 10% of the contract amount will be held until such time as the Work passes such inspections. The Contractor shall be solely responsible for all expenses it incurs in the performance of the Work and shall not be entitled to any reimbursement or compensation except as set forth herein.

5. **PERFORMANCE BOND.** As applicable, for certain contracts over \$50,000 the performance and payment bond provisions of Section 38-26-105, C.R.S. are hereby incorporated by this reference into this contract as though fully set forth herein and shall hereinafter bind the District and the Contractor accordingly.
6. **INDEMNIFICATION.** Subject to the provisions of Section 13- 50 -102 (8), C. R. S. to the extent applicable to this contract, the Contractor shall indemnify, defend and hold harmless the District and each of its directors, employees, agents and consultants (collectively the "Indemnities"), from and against any and all claims, demands, suits, actions proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities of, by or with respect to, third parties ("Any Claims") to the extent they arise from or may be alleged to arise directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Contractor or any of its subcontractors, agents, representatives or employees, or the agents, representatives, or employees of any subcontractors, in connection with this contract and/or the Work provided hereunder, including, without limitation, Any Claims which causes or allows to continue a condition or event which deprives the Indemnities, as applicable, of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C. R. S. , as amended from time to time. Provided, however, that such Contractor shall not be liable for any claim, loss, damage, injury or liability arising out of the negligence, willful acts, or intentional torts of the Indemnities. The obligations of this paragraph shall survive termination or expiration of this contract.
7. **INSURANCE.** The Contractor shall secure and maintain for the term of this contract adequate statutory workers' compensation insurance coverage, comprehensive general liability insurance and excess liability coverage, from companies licensed in the State of Colorado, as will protect itself and the Indemnities from claims for bodily injuries, death, personal injury or property damage, which may arise out of or result from the Contractor's acts, errors or omissions. Such insurance coverage shall be acceptable to the District in its sole discretion. To provide evidence of the required insurance coverage, copies of certificates of insurance shall be furnished to the District.
8. **CONFIDENTIALITY.** During the performance of this contract the Contractor may have access to confidential information and hereby agrees that the Contractor will not use or disclose to anyone, except as required in the performance of this contract or by law, or as otherwise authorized by the District, developed by the Contractor as a result of the performance of this contract or accessed by the Contractor as a result of this contract. The Contractor acknowledges and agrees that all documents in the District's possession, including documents submitted by the Contractor, are subject to the provisions of the Colorado Open Records Act, Sections 24-72-200.1, et seq., C.R. S. The Contractor agrees that, if the District so requests, it will execute a confidentiality agreement, in a form acceptable to the District. The obligations of this paragraph shall survive termination or expiration of this contract.

9. MISECLLANEOUS PROVISIONS.

- a. **Subject to Annual Budget and Appropriation.** The performance of those obligations of the District hereunder requiring the budgeting and appropriation of funds are subject to annual budgeting and appropriations. As applicable, the provisions of Section 24-91-103.6. C.R.S. are hereby incorporated by this reference into this contract as though fully set forth herein and shall hereinafter bind the District and the Contractor accordingly.
- b. **Governmental Immunity.** Nothing in this contract, or in any actions taken by the District pursuant to this contract, shall be deemed a waiver or the District's sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, and et seq., C.R.S.
- c. **Integration/Modification/assignment/Termination.** This contract contains the entire agreement between the parties, and no statement, promise or inducement made by either party or the agent of either party that is not contained in this contract shall be valid or binding. This contract may be modified, amended, or changed only by an agreement in writing duly authorized and executed by both parties. The Contractor shall not assign this contract or any interest hereunder, in whole or in part, without the prior written consent of the District, which consent may be withheld for any reason or no reason. The District may assign this contract or any interest hereunder, in whole or part, at any time. The District May terminate this contract at any time for convenience or for cause, in whole or in part, by delivery to the Contractor of a written notice of termination at least five (5) days prior to the effective date.
- d. **Severability/Non-Waiver/Governing Law and Venue.** If any term or provision of this contract is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this contract; provided, however, that if any fundamental term or provision of this contract is invalid, illegal, or unenforceable, the remainder of this contract shall be unenforceable. No waiver of any of the provisions of this contract shall be deemed to constitute a continuing waiver or waiver of any subsequent default unless otherwise expressly provided herein. This contract shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any dispute hereunder shall lie in the state courts of the State of Colorado.
- e. **Execution.** This contract may be executed in one or more counterparts, each of which shall be deemed and original and together shall constitute one and the same instrument. The parties consent to the use of electronic signatures pursuant to the Uniform Electronic Transitions Act, Sections 24-71.3 - 1-1, et seq., C.R.S., as amended from time to time.

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

DISTRICT:

CONTRACTOR:

Signature

By: Daniel Taylor
HGMD President
2888 S. Heather Gardens Way
Aurora, Colorado 80014
303-755-0652
DanielTaylor@HGmetroDist.org

Date: _____

Signature

By: **Marc James Shen**
Maliakai Architectural Design
636 Fairfield Lane
Louisville, CO 80027
303.478.1875
marc@maliakaidesign.com

Date: _____

Signature

By: Robin O'Meara
HGMD Secretary
2888 S. Heather Gardens Way
Aurora, Colorado 80014
303-755-0652
DanielTaylor@HGmetroDist.org

Date: _____

Signature

By: _____

Date: _____

Attachments: Maliakai Architectural Services Proposal



June 14, 2024

Rendezvous Restaurant at Heather Gardens Remodel Test Fit

2888 S Heather Gardens Way
Aurora CO 80014

Proposal for Architectural Services

1) Scope of Services

Maliakai Architectural Design, LLC agrees to provide the following architectural services for Robin O'Meara, Chair of HGMD Restaurant Committee in Aurora, Colorado. This proposal is for a 6,022 sf 2nd Generation Tenant Improvement to include: (1) Test Fits. New Indoor / Outdoor Bar Area, Larger Kitchen, New Dining Areas (to include Banquettes and Booths), New Lounge Areas, New Covered Patio and Interior Design Concepts. Also included are ADA compliance access at the Entry and Exit Doors. As well a ramp to the Pool Deck and new ADA door access from Indoor Pool to Outdoor Pool. The proposed scope of work listed below is intended to outline the architectural services that are contemplated for the execution of the project. Services will be provided at a fixed rate. The Scope of work may be modified by the Owner only by means of a Supplemental Agreement, which modifies the Fee Section accordingly.

a) Design Phase (DP):

- Prepare conceptual design drawings for Owner's review.

2) Fees. The fee for the services listed above shall be billed at a fixed rate of \$10,000.

Additional Services: Requested or required Additional architectural services that are not listed in the above scope of work, shall be billed to Owner on an hourly basis according to the following rates, and will be over and above the Maximum amount: of \$10,000. Any changes to the plan requested by the owner after the permit drawings have been submitted to the city, will be considered additional services.

Marc Shen, Principal	\$150/hr
Junior Designer/draftsman	\$75/hr
Intern/Admin	\$40/hr

- b) Maliakai Architectural Design, LLC will provide an invoice for services to the Owners every month. The Owners shall pay all invoices within 20 business days of invoice date. Failure to pay will trigger an automatic Stoppage of Work by Maliakai Architectural Design, LLC. Work shall not resume until all invoices have been paid in full. Overdue invoices (more than 10 business days from date of invoice) will accrue interest at the rate of 2 % per month.
- c) A \$2,500 retainer will be required to begin design services. The retainer shall be held by the Maliakai Architectural Design, LLC and applied to the final invoice only. No interest shall be paid on the retainer amount. Any credit due back to the Owner at the end of Maliakai Architectural Design, LLC services shall be delivered within 20 days of receipt of Owner's payment of the final invoice.
- d) In the event that Maliakai Architectural Design, LLC is required to pursue collection or legal action to collect unpaid bills, Maliakai Architectural Design, LLC shall be entitled, in addition to the outstanding billings, to be paid by Owner for all such legal expenses and other costs and fees required by such action. The retainer may be kept by Maliakai Architectural Design, LLC and applied towards payment of those fees.

3) Drive Time, Reimbursables & Consultants

The following expenses may be incurred or extended on behalf of the client by Maliakai Architectural Design, LLC, and shall be subject to reimbursement by the Owner under the terms below.

- a) Drive and/or flight time to the site, building department and client/project meetings will be billed at Standard hourly rates.
- a) Blueprinting, courier and oversize scanning shall be billed at 1.3x cost.
- c) All engineers' and consultants' services will be billed to the Owner at 1.3x cost. This fee covers Request for Proposals, Review of Proposals and Drawing Coordination.

4) Termination & ownership of designs

- a) Should the project or contractual relationship be terminated for any reason prior to the conclusion of construction by written notice, the Owner will be obligated to pay only for those services or materials that have been rendered or ordered and calculated to the date of termination as determined by Maliakai Architectural Design, LLC. Either party has the right to terminate the contract in writing or project at any time with no penalty except as described above.
- b) In the event that the Owner elects to terminate this contract for any reason, Maliakai Architectural Design, LLC, consultants and subcontractors shall be held harmless for any damages or consequences, including those for inconvenience or loss of use of the premises, which might occur.
- c) The Owner maintains the right to use the Instruments of Service (the drawings and specifications), to construct only one Dwelling and only provided they have paid all monies due for such services. As part of that right, upon final payment by the Owner, Maliakai Architectural

Design, LLC shall provide a copy of the instruments to the Owners upon request. The Owners do not obtain the right to utilize the Instruments of Service until all invoices have been paid to the satisfaction of Maliakai Architectural Design, LLC. Designs and the Instruments of Services may not be copied, transferred for use by any other designer, or otherwise utilized by the Owner or it's agent until authorized by Maliakai Architectural Design, LLC and all invoices have been paid.

- d) Maliakai Architectural Design, LLC maintains in perpetuity the right to re-use or re-sell the designs and drawings in their entirety, without any encumbrance or restriction. Designs are the exclusive copyrighted property of Maliakai Architectural Design, LLC and are protected by the 1990 Federal Copyright Protection Act.

5) Limit of liability

a) Maliakai Architectural Design, LLC's total liability to the Owners for any and all injuries, claims, losses, expenses or damages arising out of this Agreement from any cause or causes, shall not exceed the amount of Maliakai Architectural Design, LLC's Fee to date of termination of the contract. Such causes shall include, but are not limited to Maliakai Architectural Design, LLC's negligence, errors, omissions, strict liability, breach of contract or breach of warranty. Changes to the contract documents (i.e. the drawings, notes and specifications) not authorized by Maliakai Architectural Design, LLC shall relieve Maliakai Architectural Design, LLC of all responsibility for project construction. Failure to notify Maliakai Architectural Design, LLC in a timely manner of discrepancies, omissions or inaccuracies shall similarly relieve Maliakai Architectural Design, LLC from responsibility for all affected construction.

b) In the event of a dispute between the Owner and Maliakai Architectural Design, LLC with respect to any aspect of this Agreement both Owner and Maliakai Architectural Design, LLC hereby agree to submit the dispute to mediation or, at Maliakai Architectural Design, LLC's sole option, to binding arbitration in Boulder, Colorado, before an arbitrator to be selected by mutual agreement of the parties. In the event litigation is required to collect an outstanding billing, owner client agrees to submit to the jurisdiction of Boulder County District Court System, Colorado, whether as the trier of fact or for the purposes of enforcing the arbitration provision above and any decisions rendered by the arbitrator.

c) Any insurance required by the Owner above the amount of Maliakai Architectural Design, LLC's standard policy, shall be paid for directly (at cost) by the Owner.

d) Owner shall indemnify Maliakai Architectural Design, LLC against legal action by 3rd parties against the Owner, due to actions of the owner (for example, failure to pay consultants).

6) General Conditions

a) Owner hereby authorizes Maliakai Architectural Design, LLC to act on it's behalf in connection with any activity required under this Agreement and hereby grants to Maliakai Architectural Design, LLC a Power of Attorney where such formal power is required.

b) Maliakai Architectural Design, LLC shall respond only to directives by Owners whose signature is on the final signature page of this contract. Maliakai Architectural Design, LLC is entitled to rely upon the direction (written or verbal) of any of the signatories to this agreement as the authorized legal representatives of the Owner.

c) Owner shall guarantee Maliakai Architectural Design, LLC the right to perform an energy audit and/or receive copies of testing of the performance of the building.

d) Publicity: Owner shall provide attribution to Maliakai Architectural Design, LLC. Maliakai Architectural Design, LLC shall have the right to publicly display and publish plans, specifications and photographs of the project.

e) Maliakai Architectural Design, LLC shall have the right to photograph the project at the completion of construction.

7) Omnipotence and Omniscience Disclaimer – Standard of Care

Maliakai Architectural Design, LLC and subcontractors will proceed with reasonable, diligent professional care and service; however, the Owners understand and agree that the process of building is complex and will encounter errors and unexpected obstacles. No set of Contract Documents (drawings and specifications) is ever perfect or complete. Continual revision, refinement and correction of these documents is assumed to be the normal process of development of the Contract Documents and execution of the project. The design and documentation process is not complete until the project is finished with construction, and a post-occupancy “tweaking” period. Maliakai Architectural Design, LLC, engineers and contractor shall endeavor to solve problems that arise, but this contract in no way guarantees any final outcome of the project. Maliakai Architectural Design, LLC has no control over the means and methods of the contractor and shall bear no responsibility for the performance of the General Contractor, builder or any other party.

The parties listed below have read, understood and agreed to the terms of this contract.

Robin O’Meara
Chair of HGMD Restaurant Committee

Marc James Shen
Maliakai Architectural Design, LLC

Date

Date