

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("**Agreement**"), effective the 18th day of October, 2024 ("**Effective Date**"), is entered into by and between Roxborough Village Metropolitan District, a political subdivision of the State of Colorado ("**District**"), and Ace Tree Care, Inc., a Colorado corporation ("**Contractor**"). The District and Contractor are referred to collectively as the "**Parties**" and individually as a "**Party**."

1. **WORK TO BE PERFORMED.** Contractor, directly or through Contractor's employees, subcontractors, or anyone else who is directly or indirectly performing any part of the Work on behalf of Contractor (collectively, the "**Contractor Parties**"), agrees to furnish all labor, tools, equipment, supervision, supplies, and other items necessary to perform the fuels mitigation and forest restoration work described below and in the proposal dated June 28, 2024 ("**Proposal**") attached as **Exhibit A** ("**Work**").

Scope of Work:

- a. Masticate rabbitbrush in the areas indicated on the map attached as **Exhibit B**;
- b. Clear all brush and small trees from the fence lines as indicated on the map attached as Exhibit B;
- c. Remove larger trees along fence lines if they are sickly or directly abut or endanger the fence; and,
- d. Limb-up larger trees along fence lines up to ten feet.

Contractor will masticate or chip materials and spread them out on site. Contractor is not required to haul away any material. The Contractor shall not remove those trees that an HOA has marked as not to be removed.

The Work shall be performed in a professional manner by experienced personnel outfitted with the appropriate tools and equipment to complete the job safely and properly. Contractor's Work shall meet or exceed the guidelines and standards set forth by the American National Standards Institute (ANSI) A300, and the requirements of Applicable Laws (defined in Section 4 below).

2. **CONTRACT PRICE; PAYMENT.**

a. **Contract Price.** In exchange for Contractor's satisfactory performance of the Work, the District agrees to pay Contractor Forty-One Thousand Two Hundred Fifty Dollars (\$41,250.00) ("**Contract Price**"). Any diesel surcharge as set forth in Subsection 2(b) below and the cost of any Additional Work as set forth in Subsection 2(c) below, shall be added to the Contract Price and shall be included in the final acceptance payment described in Subsection 2(d), below.

b. **Diesel Surcharge.** If the cost of diesel fuel exceeds \$6.00 per gallon, the District shall pay Contractor a fuel surcharge that is equal to the difference of the overage on each gallon of diesel used that exceeds \$6.00. Contractor shall promptly notify the District if Contractor

intends to impose a fuel surcharge and shall provide the District with receipts or other documentation establishing the date(s) on which a surcharge is applied, the number of gallons subject to the surcharge, and the amount of surcharge.

c. Additional Work. While performing the Work, Contractor may determine it is necessary to remove one or more additional trees. The District authorizes Contractor to remove such trees without the District's prior consent if the aggregate cost of removing all the additional trees does not exceed 2.5% of the Contract Price (without adjustments for any diesel surcharge or any Additional Work). Contractor shall obtain the District's prior consent before removing any additional trees if the aggregate cost of removing all the additional trees will exceed 2.5% of the Contract Price (without adjustments for any diesel surcharge or any Additional Work). With prior notice to and consent of the District, Contractor may charge an additional fee of \$75.00 an hour per man for handwork Contractor believes must be performed.

d. Payment. Subject to Contractor's satisfactory performance of the Work, the Contract Price shall be paid in the following installments: i) \$2,500.00 upon the Parties signing this Agreement; ii) \$9,687.50 upon commencement of the Work; iii) 9,687.50 at the half-way completion point of the Work; and iv) upon the District's final acceptance of the Work, the remaining balance of the Contract Price. If all or a portion of the Work is disputed, the District shall pay Contractor for any undisputed Work that has been performed by prorating the applicable installment payment. Any undisputed amount that the District does not pay by the date due shall accrue interest at 8% per annum compounded annually until paid in full.

3. **TERM AND TERMINATION.**

a. Term. The term of this Agreement commences on the Effective Date and terminates upon Contractor's satisfactory completion of the Work or March 31, 2025, whichever occurs first ("**Term**").

b. Termination:

i. The District may terminate this Agreement at any time upon ten (10) business days prior written notice of termination; notwithstanding the foregoing, the District may immediately terminate this Agreement and without prior notice or recourse to any judicial authority if Contractor:

- A. Breaches the terms of this Agreement.
- B. Becomes insolvent, is subject to a petition in bankruptcy filed by or against Contractor, or is placed under control of a receiver, liquidator, or committee of creditors.
- C. Assigns or attempts to assign this Agreement without the District's prior written consent.
- D. Ceases to function as a going concern or abandons the Work.

c. Nonappropriation. The District's financial obligations for 2025 are subject to the District's Board of Directors appropriating funds to meet all of the District's direct and

indirect financial obligations for 2025. If the Board fails to appropriate such funds, this Agreement shall automatically terminate on December 31, 2024 with no liability to the District beyond 2024.

If this Agreement is terminated, the District will pay Contractor for actual Work satisfactorily performed by Contractor through the date of termination, as determined by the District in its sole discretion.

4. **APPLICABLE LAWS.** Contractor and the Contractor Parties shall at all times comply with all applicable federal, state, county, and municipal laws, ordinances, statutes, rules, and regulations (collectively “*Applicable Laws*”). Contractor shall procure and pay for all permits, licenses, and inspections required by any governmental authority for any part of the Work under this Agreement, and shall furnish any bonds, security, or deposits required by such governmental authority to permit performance of the Work.

5. **INSURANCE.** Contractor shall acquire and maintain in full force and effect during the Term of this Agreement the insurance coverage set forth below. All insurance shall be placed with insurance carriers licensed in Colorado with an A.M. Best and Company rating of no less than A- and/or Standard and Poor's Insurance Solvency Review rating of no less than A- or as otherwise accepted by the District's Representative. Each such policy shall include a provision that the insurer shall provide the District thirty (30) days written notice prior to cancellation or material modification of any policy of insurance obtained to comply with this Section 5. Except for workers' compensation insurance, each policy shall include “Roxborough Village Metropolitan District” as an additional insured and shall state that Contractor's insurance is primary and non-contributory from the District's insurance.

- a. Workers' Compensation Insurance in accordance with Applicable Laws;
- b. Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit for bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate; and,
- c. Commercial automobile liability insurance in the amount of \$1,000,000.00 combined single limit for bodily injury and property damage, each accident covering any auto.

Prior to commencing any Work hereunder, Contractor shall provide the District with certificates of insurance or endorsements evidencing that (i) all of the insurance required by this Agreement is in full force and effect; and, (ii) will remain in effect for the duration of the Term.

6. **INDEMNIFICATION.** Contractor shall indemnify and defend the District, and its directors, officers, and agents, from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, costs, and expenses, arising out of, relating to, or resulting from performance of this Agreement and the Work that is caused in whole or in part by the negligent or intentional acts or omissions of Contractor or the Contractor Parties. The District shall be entitled to hire its own attorney notwithstanding Contractor's obligation to pay the reasonable attorney's fees, costs, and expenses incurred by the attorney.

7. **SAFETY.** Contractor and the Contractor Parties shall comply fully with all

applicable safety and health laws in performing the Work, including the rules and regulations promulgated by the Federal Occupational Safety and Health Administration.

8. **CHANGE ORDERS.** The Parties may mutually agree to changes in the scope and/or nature of the Work through a written document signed by both Parties (“*Change Order(s)*”). All Change Orders shall a) describe in detail the change in the scope and/or the nature of the Work; b) when the Work will be performed; and, c) any reduction or increase in the Contract Price.

9. **GOVERNMENTAL IMMUNITY.** This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the rights, privileges, immunities, or defenses provided to, or enjoyed by, the District and its current or past directors, officers, and agents under federal or state law, including but not limited to, the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

10. **CONFLICTS.** If there is a direct or indirect conflict between anything in the Proposal and the terms and conditions in this Agreement, the terms and conditions in this Agreement shall control.

11. **INDEPENDENT CONTRACTOR.** CONTRACTOR UNDERSTANDS AND AGREES: A) CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO WORKERS COMPENSATION OR UNEMPLOYMENT COMPENSATION INSURANCE BENEFITS UNLESS WORKERS COMPENSATION OR UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY CONTRACTOR OR SOME ENTITY OTHER THAN THE DISTRICT; AND B) CONTRACTOR IS OBLIGATED TO PAY FEDERAL, STATE, AND LOCAL INCOME TAX ON ANY MONEYS PAID PURSUANT TO THIS AGREEMENT. THE DISTRICT WILL NOT MAKE FEDERAL, STATE, AND LOCAL WITHHOLDINGS AND WILL NOT PROVIDE WORKERS COMPENSATION OR UNEMPLOYMENT COMPENSATION INSURANCE.

Contractor certifies that 844062211 is Contractor’s correct Federal Taxpayer Identification Number. By signing this Agreement, Contractor certifies that it assumes full responsibility for the payment of all contributions, payroll taxes, income taxes, withholdings and backup withholdings, or assessments under Applicable Laws.

12. **NOTICE.** Any notice required or permitted under this Agreement shall be in writing and given by hand delivery or sent by certified/registered mail, return receipt requested, to the address set forth on the signature page, or at another address previously furnished in writing to the other Party pursuant to this Section 12. A notice sent by certified/registered mail is deemed given when received or refused, or 3 business days after the date sent, whichever is earlier.

13. **VEHICLES AND HEAVY EQUIPMENT.** Contractor and the Contractor Parties may only operate their vehicles and any heavy equipment within unpaved areas to the extent necessary to perform the Work. Whenever possible, vehicles and heavy equipment will be kept to streets, parking lots, and paved paths so as to minimize the adverse impact in the unpaved areas.

14. **NO GUARANTY.** Except as set forth in this Agreement or the Proposal,

Contractor has not made, does not make, and specifically disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, that the areas upon which the Work is performed are fire resistant, fire-proof, or any other related term.

15. **RESEEDING AND RECLAMATION WORK.** Contractor shall reseed the areas where the Work was performed using a District-approved mix of grass seed. The District is responsible for ensuring the seed receives the proper amount of water. Unless the condition is the result of the negligent act or omission of Contractor or the Contractor Parties, Contractor shall not be responsible for: i) rutting or erosion; ii) staining from lubricants; iii) damage to landscaping from tracks or tires; or, iv) scars to trees.

16. **LOGS AND FIREWOOD.** All merchantable logs and firewood created during the Work are Contractor's property.

17. **PROTECTION OF AND ACCESS TO DISTRICT PROPERTY.** Contractor and the Contractor Parties shall meet industry standards for protecting the District's property. The District shall provide and maintain suitable access for vehicles, machinery, and other equipment.

18. **ADDITIONAL TERMS.** This Agreement is the entire agreement between the Parties; there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Colorado law governs this Agreement. Jurisdiction and venue lie exclusively in the District Court for Douglas County. In any civil action or proceeding arising from or relating to this Agreement or the Work, the prevailing Party shall be awarded its reasonable attorneys' fees, costs, and expenses, including the reasonable attorneys' fees, costs, and expenses incurred in any appellate action and in collecting or executing upon any judgment, order, or award. This Agreement may be executed in counterparts and by facsimile or electronic pdf, each of which shall be deemed an original and both of which shall constitute one valid and binding instrument.

Roxborough Village Metropolitan District, a political subdivision of the State of Colorado

By: Ephram Glass 10 / 21 / 2024
Ephram Glass, Board President Date

Attest:

By: Travis C Jensen 10 / 22 / 2024
Travis Jensen, Board Secretary Date

Address: Roxborough Village Metropolitan District
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, CO 80228-1898

Ace Tree Care, Inc., a Colorado Corporation

By: Griff Gehring 10 / 21 / 2024
Griff Gehring, President Date

Address: 8156 S. Wadsworth Blvd., Ste. 125
Littleton, CO 80126

EXHIBIT A
(Proposal)



Ace Tree Care, Inc
8156 S. Wadsworth Blvd. Suite 125
Littleton, CO 80128
303-720-556-4922 Office
Email: griff@acetreecareservices.com

June 28th 2024

Dear Michelle,

Thank you for the opportunity to do business with you. We are looking forward to working with you on this important fuels mitigation and forest restoration project.

I have over 26 years in the industry. I owned and operated Colorado TreeScapes, Inc. from 1998 to 2018, we offered all phases of tree care and fire-mitigation from 2008 to 2018. I sold TreeScapes in 2018 and formed Ace Tree Care in 2019. We now specialize in wildfire mitigation & forest restoration. I am accustomed to and excellent with working open space managers, property managers, homeowners and the general public (happy to see us or not) on large and small projects.

My team and I regularly work 10-acre projects that are extremely technical. Technical in the way that a lot of the ground is inoperable w/ any sort of equipment due to the slope and or rocky terrain. A large amount of handwork is required in the cutting phase and winching material out to where it can be processed. I'm bringing this up because some of our 10-acre projects are the equivalent of 30 to 40 acre projects w/ operable ground.

My team will be using low impact techniques to perform the treatment. We'll accomplish this through the use of several CAT299D3 compact track loaders with mulching heads, log grapples, a tree shear and high-capacity winches, we also have a 2021 Morbark 1821 tracked chipper with 175 HP motor, plus a wheeled Vermeer 150 HP chipper. We are adding a harvester to our fleet in the near future, this will allow us to tackle 100+ acre projects with ease.

We strategically plan out each section so that the job will be performed in the safest, most efficient manner possible with the least amount of impact on the land.

I am confident that you will be extremely happy with all phases of the work we will perform. My team and I are good communicators and pleasant to work with. The community and project manager will find us easy to work with. Not only will the work be done with excellence it will also be completed on time or ahead of schedule pending appropriate weather conditions.

We run well-maintained equipment that has been purchased from reputable companies whom we have close relationships with. If there is a breakdown, we know we can rely on them to get machinery fixed as soon as possible. If the repair is lengthy, then in most cases, they will supply a loaner so we can keep the job moving. I mention this because breakdowns are a part of the work we do. Even though our equipment is on a scheduled maintenance plan, we are prepared to handle unforeseen breakdowns.

Respectfully,

Griff Gehring
President & Team member
Ace Tree Care, Inc.

Forestry Operations plan

We'll begin the job with an overview with the crew in the office. Once we're on site, we will walk the entire project to discuss safety concerns and plan of operations. Special attention will be given to keeping the public safe while we work while at the same time keeping the flow of our project on time.

Similar Projects & References

The following treatments were nearly identical on each of the following projects: Thin by approximately 50%, perform ladder fuel pruning on all leave trees, masticate or broadcast chip on site. Crews ranging in size from 1 to 10 were utilized to accomplish the work.

2015: Genesee Foundation, 30-Acre project of thinning by 40 to 50% in a Montane forest in the Genesee subdivision. This project was extremely technical. It required at least 50% of the material to be completely hauled out of the project area and recycling of all wood products. This was an 8-10 man project with two skid steers operating 8-12 hours a day and a chipper, chip trucks and log trailers continuously hauling material out.

2016: Approximately 35 Acres were completed in residential Defensible space work.
-Location: Elbert & Jefferson Counties.

2017: Approximately 40 Acres were completed in residential Defensible space work.
-Location: Elbert County, Douglas County, Jefferson County

2018: Approximately 45 acres of residential Defensible space completed
-Location: Park, Jefferson, Douglas, Elbert & Huerfano Counties.

2020-2021 Awarded a 25-acre project in Genesee by Brian Maillet, Open Space Manager of The Genesee Foundation.

2021 Awarded over 30 acres from the county of Boulder and Boulder Wildfire partners, Manager is Jim Webster. In addition to the work we've completed in Boulder and Genesee we completed an additional 35 acres combined between 7 other residential properties.

2022 We've completed over 150 acres of extremely technical work (30%+ slopes w/ lots of rock) on private land wildfire mitigation.

2023: Over 75 technical acres completed.

References

Jim Webster 303-775-5242

jbwebster@bouldercounty.org

Manager at Boulder Wildfire Partners

We completed a 20+ acres project near Estes park way ahead of schedule and are on track to complete a 12+ acre project in Boulder ahead of schedule.

JT Shaver

970-596-0841

CSFS

J.T.shavedr@colostate.edu

Brian Maillet 303-210-5587

Genesee Open space manager

brian@geneseefoundation.org

I completed a 25-acre project for Brian/The Genesee Foundation in 2020/2021.

Lyle Laverty

Lyle@thelavertygroup.com

Certified Forester

I executed a project that he was the Forester on for a Forest Ag. program in Genesee, CO.

Todd Wang, Lieutenant Colonel (USA Retired)

toddwang536@gmail.com

Private property owner

-We performed fire mitigation/forest restoration on their ponderosa pine and douglas fir forest in 2022 as well as several of his neighbors with 10 acre properties.

Bart Christensen,

Private property owner

bchris7960@aol.com :

-I worked on 20 acre projects for Dr. Christensen from 2005 to 2018

Proposal continued...

Timeline

As of today, we plan to start your project on July 30th or sooner and complete it by August September 30th potentially sooner.

Cost of treatment

*Per the scope of work you created, we will thin rabbit brush by 50%, ladder fuel prune trees and masticate trees that are less than 6'' in diameter measure at 4.5' above ground that need to be removed and masticate brush near fence line. Price assumes all of the work can be done with a compact track loader and all ground is accessible and operable. An additional fee of \$75.00/hour/man for most handwork required.

Total: \$41,250.00

*Potential fuel surcharge applies to this estimate. If the cost of diesel fuel exceeds \$6.00/gallon, you will be charged the difference of the overage on each gallon of diesel that we use in conjunction with the project.

EXHIBIT B

