

# RECORD OF PROCEEDINGS

---

## MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE DUS METROPOLITAN DISTRICT NO. 1 HELD NOVEMBER 2, 2022

A regular meeting of the Board of Directors (“**Board**”) of the DUS Metropolitan District No. 1 (“**District**”) was convened on Wednesday, November 2, 2022, at 8:00 a.m. This District Board meeting was held via Zoom videoconference. The meeting was open to the public.

### ATTENDANCE

#### Directors In Attendance Were:

Frank Cannon, President  
Mark Falcone, Assistant Secretary  
Jay Lambiotte, Assistant Secretary

#### Also present were:

Emily Murphy, Esq. and Jennifer S. Henry; McGeady Becher P.C.  
Debra Sedgely; CliftonLarsonAllen LLP (“**CLA**”)  
Matt Schartz; Continuum Partners  
Asher Werthan; Continuum Partners and Board candidate

### ADMINISTRATIVE MATTERS

Disclosure of Potential Conflicts of Interest: A quorum for the meeting was confirmed and the Board discussed the requirements of Colorado law to disclose any potential conflicts of interest or potential breaches of fiduciary duty of the Board of Directors to the Secretary of State. The members of the Board were requested to disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting and incorporated for the record those applicable disclosures made by the Board members prior to this meeting in accordance with statute. It was noted by Attorney Murphy that disclosures of potential conflicts of interest were filed with the Secretary of State for all Directors.

Agenda: The Board reviewed the Agenda for the District’s regular meeting. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board approved the Agenda and excused the absence of Director Cara.

Meeting Location and Posting of Notices: The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District’s Board meeting. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board determined to conduct this meeting via Zoom videoconference and encouraged public participation via Zoom. The Board noted that notice of this meeting and Zoom meeting information was duly posted and the Board had not received any objections to the Zoom meeting or any requests

## RECORD OF PROCEEDINGS

---

that the meeting be changed by taxpaying electors within the District's boundaries.

Public Comment: No public comment.

Director Resignation: The Board acknowledged the resignation of Donna Blair, effective June 3, 2022.

Appointment to the Board: The Board discussed the vacancy on the Board. It was noted that pursuant to Section 32-1-808(2)(a)(I), C.R.S., publication of a Notice of Vacancy on the Board was published in a newspaper having general circulation in the District and that no Letters of Interest from qualified eligible electors were received within ten (10) days of the date of such publication.

As such, qualified individual, Asher Werthan, stated his interest in serving on the Board. Following discussion and, upon motion duly made by Director Falcone, seconded by Director Cannon, Asher Werthan was nominated to fill the vacancy on the Board. Upon vote, unanimously carried, the Board appointed Asher Werthan to fill the vacancy on the Board.

Appointment of Officers: The Board considered the appointment of officers. Following discussion, upon motion duly made by Director Cannon, seconded by Director Falcone and, upon vote, unanimously carried, the Board appointed the following slate of officers:

President – Frank Cannon  
Secretary – Asher Werthan  
Treasurer – Amy Cara  
Assistant Secretaries – Jay Lambiotte and Mark Falcone

Resolution Establishing Regular Meeting Dates, Time, and Location, and Designating Location for Posting of 24-Hour Notices: The Board discussed the business to be conducted in 2023 and scheduled regular meetings for May 24, 2023 and November 1, 2023 at 8:00 a.m., to be held virtually. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board adopted Resolution No. 2022-11-01, Establishing Regular Meeting Dates, Time, and Location, and Designating Location for Posting of 24-Hour Notices.

### CONSENT AGENDA

The Board considered the following items on the Consent Agenda:

1. Approve Minutes from the May 18, 2022 regular meeting.
2. Ratify approval of the Intergovernmental Agreement (Special District Security Services) by and between the City and County of Denver, Colorado acting by and through its Denver Police Department, DUS Metropolitan District No. 1, DUS Metropolitan District No. 2 and DUS

## RECORD OF PROCEEDINGS

---

Metropolitan District No. 3.

Following discussion, upon motion duly made by Director Cannon, seconded by Director Falcone, and upon vote unanimously carried, the Board approved and/or ratified, as appropriate, the above items on the Consent Agenda.

### FINANCIAL MATTERS

Unaudited Financial Statements and Statement of Cash Position: Ms. Sedgeley reviewed the Unaudited Financial Statements dated September 30, 2022, Statement of Cash Position dated September 30, 2022, updated as of October 26, 2022, and Property Tax Reconciliation Report with the Board. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board accepted the Unaudited Financial Statements and Statement of Cash Position as presented.

Payment of Claims: Ms. Sedgeley presented for the Board's review and consideration a statement of claims for the District. Following review, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board ratified approval of the payment of the claims in the amount of \$597,067.29 for the period of July 11, 2022 through October 26, 2022.

District Insurance and Special District Association ("SDA") Renewal: The Board discussed renewal of District insurance and SDA Membership for 2023. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board approved the renewal of District insurance and SDA Membership for 2023.

2022 Budget Amendment Hearing: The President opened the public hearing to consider the proposed 2022 Budget Amendment and discuss related issues.

It was noted that a Notice stating that the Board would consider adoption of the 2022 Budget Amendment and the date, time and place of the public hearing was published in a newspaper having general circulation within the District, in accordance with statutory requirements. No written objections were received prior to the public hearing.

No public comments were received, and the public hearing was closed.

It was determined that an amendment to the 2022 Budget was not required at this time.

2023 Budget Hearing: The President opened the public hearing to consider the proposed 2023 Budget and discuss related issues.

It was noted that Notice stating that the Board would consider adoption of the

## RECORD OF PROCEEDINGS

---

2023 Budget and the date, time and place of the public hearing was published in a newspaper having general circulation within the District, in accordance with statutory requirements. No written objections were received prior to the public hearing.

No public comments were received, and the public hearing was closed.

Ms. Sedgeley reviewed the proposed 2023 Budget with the Board. Following discussion, the Board considered the adoption of Resolution No. 2022-11-02 to Adopt the 2023 Budget and Appropriate Sums of Money and Resolution No. 2022-11-03 to Set Mill Levies (zero mills). Upon motion duly made by Director Lambiotte, seconded by Director Cannon, and upon vote unanimously carried, Resolution Nos. 2022-11-02 and 2022-11-03 were adopted, as discussed, and execution of the Certification of Budget and Certification of Zero Mill Levies was authorized, subject to receipt of final Certification of Assessed Valuation from the County on or before December 10, 2022. The District Accountant was authorized to transmit the Certification of Mill Levies to the Denver County Assessor no later than December 15, 2022. District Counsel was authorized to transmit the Certification of Budget to the Division of Local Government no later than January 31, 2023.

DLG-70 Mill Levy Certification Form: The Board considered authorizing the District Accountant to prepare the DLG-70 Mill Levy Certification Form for certification to the Denver Assessor and other interested parties. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board authorized the District Accountant to prepare the Certification, appointed Director Cannon to sign the Certification, and directed the District Accountant to file the Certification with the Denver Assessor and other interested parties.

Statement of Work for 2023 Accounting Services with CliftonLarsonAllen LLP: The Board reviewed the Statement of Work with CliftonLarsonAllen LLP. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board approved the Statement of Work for 2023 Accounting Services with CliftonLarsonAllen LLP, and appointed CliftonLarsonAllen LLP to prepare the 2024 budget and directed that the 2024 draft budget be the same as the 2023 adopted budget unless a Board member provides input to otherwise adjust those assumptions.

Engagement of Auditor to Perform 2022 Audit: Ms. Sedgeley discussed Audit requirements with the Board and advised that the District will need a 2022 Audit performed. Following discussion, upon motion duly made by Director Falcone, seconded by Director Cannon, and upon vote unanimously carried, the Board approved the engagement of Simmons & Wheeler, P.C., to perform the 2022 Audit.

## RECORD OF PROCEEDINGS

---

### LEGAL MATTERS

Security Matters / Executive Session, if necessary: Mr. Schartz provided an update on security matters to the Board. An Executive Session was not required.

Service Agreement for Security Services: Mr. Schartz reported that with police presence / heightened security, private security has not yet been warranted at this time. Following discussion, upon motion duly made by Director Lambiotte, seconded by Director Falcone, and upon vote unanimously carried, the Board approved the Service Agreement for Security Services between the District and Advantage Security, Inc. and authorized the District President to execute the Service Agreement when needed.

May 2, 2023 Regular Directors' Election: The Board discussed the May 2, 2023 Regular Directors' election. Following review and discussion, upon motion duly made by Director Lambiotte, seconded by Director Cannon, and upon vote unanimously carried, the Board adopted Resolution No. 2022-11-04; Resolution Calling a Regular Election for Directors on May 2, 2023, appointing the Designated Election Official ("DEO"), and authorizing the DEO to perform all tasks required for the conduct of a mail ballot election.

Section 32-1-809, C.R.S., Requirements (Transparency Notice): Attorney Murphy discussed the special district transparency requirements of Section 32-1-809, C.R.S., with the Board. Following discussion, the Board directed District Counsel to post the Transparency Notice on the Special District Association website and the District's website.

### CAPITAL IMPROVEMENTS

The Board discussed potential capital enhancements to certain areas within the boundaries of the District.

Report from Bike Station Committee: Mr. Schartz provided a report to the Board. Following discussion, upon motion duly made by Director Falcone, seconded by Director Lambiotte, and upon vote unanimously carried, the Board authorized a contribution to Downtown Denver Leadership Program for art activation / beautification related to the Bike Station for an amount not to exceed \$50,000.

### OPERATIONS AND MAINTENANCE

Change Order No. 1 to Service Agreement for Landscape Maintenance Services: The Board reviewed Change Order No. 1 to the Service Agreement for Landscape Maintenance Services with Sustainable Landscapes Colorado, LLC to extend term of services through 2023 ("**Change Order No. 1**"). Following discussion, upon motion duly made by Director Cannon, seconded by Director Lambiotte, and upon vote unanimously carried, the Board approved Change Order No. 1.

Change Order No. 2 to Service Agreement for Holiday Lighting: The Board reviewed Change Order No. 2 to the Service Agreement for Holiday Lighting

## RECORD OF PROCEEDINGS

---

with Elevation Holiday Lighting LLC for 2022/2023 services (“**Change Order No. 2**”). Following discussion, upon motion duly made by Director Cannon, seconded by Director Lambiotte, and upon vote unanimously carried, the Board approved Change Order No. 2.

### **Tail Tracks Plaza:**

Change Order No. 8 to Intergovernmental Agreement for Services with the Downtown Denver Business Improvement District (“**BID**”): Following discussion, upon a motion duly made by Director Cannon, seconded by Director Lambiotte, and upon vote unanimously carried, the Board approved Change Order No. 8 to Intergovernmental Agreement for Services with the BID for 2023 services.

Dog Relief Area Facilities Acquisition Agreement: Following discussion, upon a motion duly made by Director Lambiotte, seconded by Director Falcone, and upon vote unanimously carried, the Board ratified approval of the Dog Relief Area Facilities Acquisition Agreement between the District and Wynkoop Owner, LLC.

Encroachment Permit(s): There was no update on this matter.

Potential engagement of consultants for additional Tail Tracks Plaza (“**Plaza**”) services:

*Option to deter skateboarding on the planters within the Plaza*: Discussion deferred.

*Report from Art Installation Committee*: Director Falcone and Mr. Schartz provided an update to the Board. They mentioned the possibility of renaming the Plaza but were unsure of official steps associated therewith. Director Falcone noted everyone’s satisfaction with the partnership with Denver Biennial of the Americas Corporation.

*Engagement of Denver Biennial of the Americas Corporation*: Following discussion, upon motion duly made by Director Lambiotte, seconded by Director Cannon, and upon vote unanimously carried, the Board ratified the engagement of Denver Biennial of the Americas Corporation for art activation.

*Potential art installation opportunities for the Plaza and engagement of urban designer*: The Board discussed the potential engagement of an urban designer to support and enhance future activations on the Plaza. No Board action at this time.

## RECORD OF PROCEEDINGS

---

Shade structures in lieu of swings: Discussion deferred.

Options for enhancing landscape wall surfaces: Discussion deferred.

Landscaping Enhancements on north and south sidewalk areas: The Board deferred discussion.

Vending Policy: There was no update on this matter.

Preparation of District O&M Map: There was no update on this matter.

### OTHER BUSINESS

Annual Meeting: It was noted that Notice of the public meeting was published as required under the District's Service Plan.

### ADJOURNMENT

There being no further business to come before the Board at this time, the meeting was adjourned.

The foregoing record constitutes a true and correct copy of the Minutes of the above-referenced meeting.

Respectfully submitted,

By 

Asher Werthan, Secretary for the Meeting