

# FOOTHILLS METROPOLITAN DISTRICT

8390 E. CRESENT PKWY., STE. 300  
GREENWOOD VILLAGE, CO 80111  
303-779-5710 (O) 303-779-0348 (F)

## NOTICE OF REGULAR MEETING AND AGENDA

**DATE:** Wednesday, June 1, 2022  
**TIME:** 2:30 p.m.  
**LOCATION:** Virtual Microsoft Teams

1. Online Microsoft Teams Meeting – via link below

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_OGY5MGRkZTQtYwZi00ODExLWI4NjMtMDAxNGNmMjY4YTVm%40thread.v2/0?context=%7b%22Tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22Oid%22%3a%22d42bab28-fbd8-4e65-a395-965cf9ef152f%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_OGY5MGRkZTQtYwZi00ODExLWI4NjMtMDAxNGNmMjY4YTVm%40thread.v2/0?context=%7b%22Tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22Oid%22%3a%22d42bab28-fbd8-4e65-a395-965cf9ef152f%22%7d)

**ACCESS:**

2. To attend via telephone, dial 720-547-5281 and enter the following additional information: Conference ID: 193 764 415#

<u>Board of Directors</u>	<u>Office</u>	<u>Term Expires</u>
Patrick Bunyard	President	May 2023
Josh Kane	Treasurer	May 2025
Clyde Wood	Secretary	May 2025
Rishi Loona	Assistant Secretary	May 2023
Tim DePeder	Assistant Secretary	May 2023

### **I. ADMINISTRATIVE MATTERS**

- A. Call to Order
- B. Disclosures of Potential Conflicts of Interest
- C. Approval of Agenda
- D. Public Comment – Members of the public may express their views to the Board on matters that affect the District that are not otherwise on the agenda. Comments will be limited to three (3) minutes per person.
- E. Discuss results of May 3, 2022 Directors’ election; Consider appointment of eligible electors to the Board of Directors.

F. Consider Election of Officers:

<u>Office</u>	
President	
Secretary/Treasurer	
Assistant Secretary	
Assistant Secretary	
Assistant Secretary	
Secretary to the Board	

**II. CONSENT AGENDA**

- A. Review and Approve Minutes of the February 21, 2022 Special Meeting (enclosed)
- B. Ratification/Approval of Claims Listing (enclosed)

**III. LEGAL MATTERS**

- A. Ratification of Approval of 2022 Funding and Reimbursement Agreement with MXD Fort Collins, LLC (MXD), and in connection therewith, issuance of subordinate promissory note to MXD to secure repayment of advances for operational expenses
- B. Ratification of Approval of District Service Contract with MXD
- C. Ratification of Approval of District Service Contract with Prism Places, Inc.
- D. Consider Approval of Event Activity License, Release and Hold Harmless Agreement (enclosed)
- E. Ratify Approval of Service Agreement with Precision Pavement Marketing Co. (enclosed)
- F. Ratify Approval of Services Agreement with Graff's Turf (enclosed)
- G. Ratify Approval of License Agreement with FMFPE, LLC for Temporary Parking (enclosed)
- H. Consider Approval of Services Agreement with Traverse Builder LLC (enclosed)
- I. Authorize public space access/event agreement structure and authorize District Manager to execute same for all events on behalf of the District

**IV. FINANCIAL ITEMS**

- A. Review and Accept March 31, 2022 Unaudited Financial Statements and May 2022 Cash Position Report (enclosed)

**V. CONSTRUCTION REPORT**

**VI. MANAGER ITEMS**

**VII. DIRECTOR ITEMS**

A. Other

**VIII. OTHER BUSINESS**

**IX.** Executive Session pursuant to Section 24-6-402(4)(e), C.R.S., if needed.

**X. ADJOURNMENT**

**The next scheduled meeting is August 3, 2022 at 2:30 p.m.**

## RECORD OF PROCEEDINGS

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MINUTES OF A SPECIAL MEETING OF  
THE BOARD OF DIRECTORS OF THE  
FOOTHILLS METROPOLITAN DISTRICT (THE “DISTRICT”)  
HELD  
FEBRUARY 21, 2022

A special meeting of the Board of Directors of the Foothills Metropolitan District (referred to hereafter as the “Board”) was convened on Monday, February 21 2022, at 3:00 p.m. This District Board meeting was held via Microsoft Teams. The meeting was open to the public.

### ATTENDANCE

**Directors in Attendance Were:**

Patrick Bunyard, President  
Josh Kane, Treasurer  
Clyde Wood, Secretary

The absence of Director Loona was excused.

**Also in Attendance Were:**

Denise Denslow, Carrie Bartow & Curtis Bourgoquin; CliftonLarsonAllen LLP (“CLA”)  
Alan Pogue; Icenogle Seaver Pogue, P.C.  
Mike Tonniges; McWhinney

### ADMINISTRATIVE MATTERS

**Call to Order:** Director Bunyard called the meeting to order at 3:05 p.m.

**Disclosures of Potential Conflicts of Interest:** Ms. Denslow noted that disclosures had been filed.

**Approval of Agenda:** Upon a motion duly made by Director Kane, seconded by Director Bunyard and upon vote, unanimously carried, the Board approved the Agenda as presented.

**Appointment of Director and Election of Officers:** Upon a motion duly made by Director Kane, seconded by Director Wood and, upon vote, unanimously carried, the Board appointed Tim DePeder to the Board as Assistant Secretary. All other officer positions to remain the same.

**Public Comment:** None.

### CONSENT AGENDA

**Minutes of the November 1, 2021, December 3, 2021 Continued, and January 1, 2022 Special Meetings:**  
**Ratification of Claims Totaling \$11,646.32:**  
**Resignation of Director Michael Tonniges:**



## RECORD OF PROCEEDINGS

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Upon a motion duly made by Director Kane, seconded by Director Wood and, upon vote, unanimously carried, the Board approved the Consent Agenda items.

### LEGAL MATTERS

**Resolution Regarding Consent to Land Use Applications:** Attorney Pogue briefed the Board on the purpose of the resolution. He noted that the developer entity would like to proceed with the planning phase of the redevelopment efforts. A portion of the property that is to potentially be redeveloped is owned by the District. This resolution provides consent for these initial planning endeavors, but is not to be considered an endorsement of the project. Following review, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved the Resolution Regarding Consent to Land Use Application.

**Memorandum of Understanding Regarding Potential Land Transfer:** Attorney Pogue advised the Board that this Memorandum of Understanding outlines the potential transfer of property, referenced in Item III-A, should the redevelopment project move forward. Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved the Memorandum of Understanding Regarding Potential Land Transfer.

**Improvement Acquisition, Advance, and Reimbursement Agreement with MXD Fort Collins, LLC:** Attorney Pogue explained that this agreement outlines the terms of the funding and reimbursement process for the planning phase of the District improvements related to the redevelopment project. He noted the MXD's legal counsel has not yet reviewed; substantive comments will come back to the Board. Additionally, the current redevelopment agreements with the City and the Urban Renewal Authority will need to be amended as the maximum authorized debt was met with the initial construction of the Foothills Mall. The Service Plan will also need to be amended as part of this process. Discussion followed regarding the amount of costs identified in the reimbursement agreement. Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Wood and, upon vote, unanimously carried, the Board approved the Improvement Acquisition, Advance, and Reimbursement Agreement with MXD Fort Collins, LLC, subject to final non-substantive changes from legal counsel, and amendments to the redevelopment agreements and Service Plan in the amount not to exceed \$1,500,000,000.

### FINANCIAL MATTERS

**December 31, 2021 Unaudited Financial Statements and February 2022 Cash Position Report:** Ms. Bartow reviewed the Financial Statements and Cash Position Report with the Board. Discussion followed regarding the management fee and T-Mobile lease. Following discussion, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote,

## RECORD OF PROCEEDINGS

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unanimously carried, the Board accepted the December 31, 2021 Unaudited Financial Statements and the February 2022 Cash Position Report.

**Other:** None.

### MANAGER ITEMS

**MRES Project Management Services Proposal:** Mr. Tonniges presented the proposal to the Board noting that the services would be billed in an hourly fashion until such time that the concept budget is finalized, after which a 5% fee would be charged. It was noted that this Scope of Services was not bid out, as the corresponding work with MDX was already underway. Director Kane requested that work of this size and scope be bid out in the future. Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved the MRES Project Management Services Proposal.

**Proposals for Design and Budget Scope Work:** Mr. Tonniges presented the proposal for the three-phase project pricing for dirt, utilities, site infrastructure and demolition from Connell Resources Inc. in the amount of \$22,140. Following review, upon a motion duly made by Director Kane, seconded by Director Wood and, upon vote, unanimously carried, the Board approved the Connell Resources Inc. contract totaling \$22,140.

Mr. Tonniges presented a proposal from Farnsworth Group, Inc. for civil engineering of the project from design through permitting, traffic assessment, traffic impact studies, and through FDP including full construction documents. It was noted that this Scope of Services was not bid out, as the corresponding work with MDX was already underway. Director Kane requested that work of this size and scope be bid out in the future. Following review, upon a motion duly made by Director Kane, seconded by Director Wood and, upon vote, unanimously carried, the Board approved the Farnsworth Group, Inc. Service Agreement.

Mr. Tonniges presented a proposal from Sasaki Associates, Inc. for horizontal design for City submittals, scope and design, and through construction drawings. The amount of the proposal is \$599,000 with an additional costs for reimbursable expenses not to exceed \$20,000. There will be additional costs related to other consultant work to be done as part of the Sasaki contract, ranging from \$100,000 - \$150,000. It was noted that this Scope of Services was not bid out, as the corresponding work with MDX was already underway. Director Kane requested that work of this size and scope be bid out in the future. Following review, upon a motion duly made by Director Wood, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved the Sasaki Associates, Inc. Service Agreement, subject to the developer agreeing to a dollar amount as a ceiling and development's counsel review.

## RECORD OF PROCEEDINGS

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**Other:** None.

DIRECTOR  
ITEMS

**Other:** None.

OTHER  
BUSINESS

None.

EXECUTIVE  
SESSION

**Executive Session pursuant to Section 24-6-402(4)(e), C.R.S. to discuss matters subject to negotiation related to District Management, if needed:**  
This item was not needed.

ADJOURNMENT

There being no further business to come before the Board, upon a motion duly made by Director Wood, seconded by Director Bunyard and, upon vote, unanimously carried, the Board meeting was adjourned at 4.28 p.m.

Respectfully submitted,

By \_\_\_\_\_  
Secretary for the Meeting

# Foothills Metropolitan District

## Check List

All Bank Accounts

January 28, 2022 - May 26, 2022

Check Number	Check Date	Payee	Amount
<b>Vendor Checks</b>			
1132	02/01/22	CliftonLarsonAllen, LLP	7,308.32
1133	02/01/22	Icenogle Seaver Pogue	5,516.00
1134	02/01/22	MXD Fort Collins LLC	204,166.67
1135	02/21/22	CliftonLarsonAllen, LLP	4,633.65
1136	02/21/22	Coloradoan	473.84
1137	02/21/22	Icenogle Seaver Pogue	4,524.54
1138	02/21/22	Pepperdines	48.75
1139	02/21/22	Graff's Turf	56,963.00
1140	03/24/22	CliftonLarsonAllen, LLP	4,824.53
1141	03/24/22	Icenogle Seaver Pogue	7,939.20
1142	03/24/22	McWhinney Real Estate Services	762.00
1143	03/24/22	Special Districts Association of CO	737.06
17285	04/29/22	Concept Signs & Graphics	3,095.00
21482	04/29/22	Icenogle Seaver Pogue	144.33
21482	04/29/22	Icenogle Seaver Pogue	7,147.00
69826	04/29/22	Colorado Asphalt Workks Inc.	10,190.00
73405	04/29/22	Graff's Turf	49,725.33
309089	04/29/22	McWhinney Real Estate Services	127.00
3176182	04/29/22	CliftonLarsonAllen, LLP	1,290.45
3218183	04/29/22	CliftonLarsonAllen, LLP	2,656.45
3220204	04/29/22	CliftonLarsonAllen, LLP	1,661.23
3222294	04/29/22	CliftonLarsonAllen, LLP	1,325.36
2221503.01	04/29/22	Connell Resources Inc.	7,245.00
ACH	02/01/22	CO Special Dist Prop & Liab Pool	17,731.00
<b>Vendor Check Total</b>			400,235.71
<b>Check List Total</b>			400,235.71

Check count = 24

# FOOTHILLS

## FOOTHILLS METROPOLITAN DISTRICT

### **Event Activity License, Release and Hold Harmless Agreement (“Agreement”)**

Foothills Metropolitan District (the “District”) hereby grants to me/us, the undersigned, a non-exclusive license to use the property owned and controlled by the District, as-is and where-is, on \_\_\_\_\_, 2022, from \_\_\_\_\_ A.M./P.M. to \_\_\_\_\_ A.M./P.M.

In consideration thereof, I/We shall indemnify and hold the District, its managers, employees, directors, agents, and insurers, harmless from and against all claims, actions, demands, expenses, and judgments for loss, damage, or injury of any kind to property or persons arising from, resulting from, or occurring during our event and/or my/our use of the District property.

I/We have read and understand, and freely and voluntarily enter into, this Agreement with the District. I/We understand that this Agreement is a waiver of all liabilities.

Printed Name(s): \_\_\_\_\_

Name(s) of minor, if applicable: \_\_\_\_\_

Name of Parent/Guardian (if under 18): \_\_\_\_\_

Signature: \_\_\_\_\_  
*(If under 18, parent/guardian must sign)*

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

## SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this 5<sup>th</sup> day of May, 2022, by and between FOOTHILLS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and PRECISION PAVEMENT MARKING CO (“Contractor”), collectively, the “Parties.”

### RECITALS

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

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

WHEREAS, the District desires to procure parking lot, garage, and drive lane striping services relating to the operation and maintenance of certain District facilities, improvements and infrastructure; and

WHEREAS, Contractor has experience in providing such services and is willing and able to provide such services to the District for reasonable consideration; and

WHEREAS, the District desires to engage Contractor to render such services as are needed by the District; and

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

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

### AGREEMENT

1. Appointment of Contractor. The District hereby retains Contractor for purposes of performing such services described in Section 2 of this Agreement, subject to the terms and conditions of this Agreement. Contractor hereby agrees to perform the Services pursuant to the terms and conditions set forth herein.

2. Scope of Services. Contractor shall perform the Services for the District as outlined in the Scope of Services in **Exhibit A** attached hereto and incorporated herein by reference (“Services”). The District may, from time to time, request changes to the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor’s compensation, shall be mutually agreed upon by the Parties and set forth in an amendment to this Agreement as provided in Section 16 hereof. No amendment to provide for a change in Services that results in an increase in the



Contractor's compensation shall be authorized and executed by the District unless sufficient funds have been appropriated by the District for payment of the increased compensation, as provided in Section 13 hereof. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement. Contractor shall at all times conform to the stated policies established and approved by the District.

A. General Duties. In connection with performing the Services, Contractor agrees to:

(1) Provide all Services in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor's proposal to provide such Services to the District;

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

(3) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Section 7 hereof;

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

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

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

C. Subcontractors. Contractor is solely and fully responsible to the District for the Services to be provided pursuant to this Agreement, including all acts and omissions of subcontractors and persons employed by them. Contractor will require any subcontractors to obtain the required insurance coverage pursuant to Section 7 hereof and to agree to indemnify the District in the same manner as Contractor pursuant to Section 10 hereof.

D. No Right or Interest in District's Assets. Contractor shall have no right or interest in any assets of the District, or in any lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

3. Compensation. Contractor shall be paid an amount not to exceed **\$10,000**, as set forth in **Exhibit A** attached hereto and incorporated herein by reference, and in accordance with the procedures set forth in this Section 3, which amount has been budgeted and appropriated by the District for the current year of performance of the Services . Contractor shall not receive additional compensation for any change in Services provided to the District unless the District and Contractor have executed an amendment to this Agreement authorizing the change in Services and the payment of additional compensation to Contractor. Any amendments to this Agreement resulting in additional compensation to be paid by the District to Contractor shall be subject to annual appropriations by the District as set forth in Section 13 hereof. The District is exempt from Colorado sales and use taxes. Contractor shall use reasonable efforts to ensure that costs for Services set forth in Exhibit A and charged to the District do not include sales and use taxes.

A. Monthly Reports and Invoices. Contractor shall submit to the District monthly reports in a form acceptable to the District which describe the work completed to date and the work yet to be performed, and summarizes costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District no later than the 3<sup>rd</sup> day of each month for Services completed in the preceding month. The District shall pay Contractor's invoice within forty-five (45) days from the 3<sup>rd</sup> day of each month. The District reserves the right to inspect all Services completed and invoiced prior to payment as set forth in Section 3.B. herein. In the event inspected services are not accepted for payment by the District, the terms of Section 3.B. herein shall apply.

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

C. Compensation Upon Termination. In the event this Agreement is terminated as provided in Section 5 hereof, the District shall pay Contractor for all of the Services satisfactorily performed prior to the designated termination date. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the Services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress pertaining to the Services contemplated herein.



4. Term. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire upon completion of the Services; provided that, in the event the completion of Services occurs in a fiscal year following the effective date of this Agreement, such Services to be performed in the following fiscal year shall be subject to annual appropriations by the District as set forth in Section 13 hereof. This Agreement may be extended in writing upon mutual agreement of the Parties, and such writing shall become an amendment to and part of this Agreement. Any extension of this Agreement shall be subject to annual appropriations by the District as set forth in Section 13 hereof.

5. Termination. The District shall have the right to terminate this Agreement, with or without cause, at any time, by providing written notice to Contractor of such termination and specifying the effective date of termination thereof. Contractor shall be entitled to receive compensation in accordance with Section 3.C. of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the effective date of termination. Contractor may terminate this Agreement, with cause, by delivery of written notice of termination to the District at least thirty (30) days prior to the effective date of termination. Such notice shall specify the extent of termination and the effective date. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Upon any termination and payment of all undisputed amounts owed to Contractor, Contractor shall transfer title and deliver to the District all Work Product, as defined and described in Section 6 hereof, which shall be deemed from and after the effective date of this Agreement to be the property of the District.

6. Ownership of Work Product. Any and all Work Product, as such term is defined herein, created, prepared, and/or produced by Contractor pursuant to this Agreement shall become the sole and exclusive property of the District under all circumstances, whether or not Contractor completes the Services set forth hereunder or the Agreement is terminated. Upon request by the District, all Work Product shall be delivered to the District in hard copy and in an electronic format compatible to the District's computer applications at Contractor's expense. Upon payment to Contractor for its Services, the District shall have the right to use and re-use all Work Product resulting from Contractor's efforts performed pursuant to this Agreement in any way or manner deemed appropriate by the District. Any modification of the documents, without written verification, completion, or adaptation by Contractor, as appropriate for the specific purpose intended, will be at the District's sole risk and without liability or legal exposure to Contractor or to its officers, directors, members, partners, agents, employees, and subcontractors. The District's use of any or all such Work Product for its own purposes shall not be a violation of any patent or copyright thereof. Contractor agrees that the copyright and other intellectual property rights (as are applicable) in and to any component of the Work Product, and to the design and content of the Work Product, are hereby assigned and shall belong exclusively to the District. Upon request by the District, Contractor shall promptly execute whatever legal documents or other materials that the District deems necessary to secure, perfect, or substantiate the District's exclusive rights and interest in any Work Product created pursuant to this Agreement. For purposes of this Agreement, "Work Product" includes, but is not limited to, any and all finished or unfinished design, development and/or construction documents, drawings, reports, writings, data, studies, graphics, maps, plans, specifications, electronic files and other documents, materials and information, in every form and/or format, which Contractor prepared and/or used in connection with this Agreement. All drawings, specifications and other documents prepared by Contractor pursuant to this Agreement are not intended or

represented to be suitable for reuse by the District or others on extensions of the work or on any other project.

7. Insurance.

(A) Minimum Scope and Limits of Insurance. Contractor shall acquire and maintain in full force and effect during the entire term of this Agreement, and at its sole cost and expense, including any extensions of this Agreement, the minimum insurance coverages and limits set forth in this Section 7(A), to provide protection from claims that may arise out of or result from Contractor’s performance or obligations pursuant to this Agreement, whether such performance is by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone who acts on behalf of Contractor, including any subcontractors of Contractor. The minimum insurance coverages and limits to be acquired by Contractor are as follows:

(1) Commercial General Liability Insurance:

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

(2) Comprehensive Automobile Liability Insurance shall include all motor vehicles owned, hired, leased, or borrowed, with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence.

(3) Workmen's Compensation and Employer Liability Insurance

Worker’s Compensation	Per Colorado Statutes
Employers’ Liability	\$ 1,000,000 each accident

(4) Umbrella Policy: \$ 1,000,000

In addition, unless otherwise marked “No,” the following coverage shall be obtained by Contractor, on an occurrence basis:

(1) Performance Bond

Included:    Yes        No   

(2) Builder’s Risk Insurance. A blanket builder’s risk insurance policy with coverage on an “all risk” basis for the project including but not limited to: (1) coverage for any ensuing loss from faulty workmanship or defective materials; (2) coverage against damage or loss caused by earth movement, flood, fire, and extended coverage perils, theft, vandalism, and malicious mischief, collapse and false work, including increased cost of construction, architects



fees and expenses, soft costs, and operational testing; (3) coverage for removal of debris and demolition; (4) transit coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) policy is to include as insured the District, the Contractor, and all subcontractors; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site of the Services. Such insurance shall be on a “completed value” form insuring probable maximum loss, all on a replacement cost basis.

Included:      Yes        No    X

(3)    General Professional Liability. Professional Liability insurance with coverage in the amount of One Million Dollars (\$1,000,000) each claim and in the aggregate covering the negligent acts, errors, or omissions of the Contractor and/or its subcontractors in the performance of the Services.

Included:      Yes        No    X

Unless otherwise indicated, all policies listed herein shall be on an occurrence basis.

B.    Waiver of Subrogation. All coverages specified herein shall waive any right of subrogation against the District and its directors, officers, employees, and agents.

C.    Additional Insured Parties. The District shall be named as an additional insured on all policies (with the exception of workers’ compensation insurance). The Contractor’s insurance coverage shall be primary insurance and non-contributory with respect to all other available insurance sources.

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

E.    Notice. Contractor agrees to provide the District with a minimum 10-day notice for the cancellation of any insurance policies required by this Agreement due to the non-payment of a premium and with a minimum of a 30-day notice for any change to or cancellation of an insurance policy other than for non-payment of a premium. Any failure on the part of the Contractor to comply with the notice reporting provisions or other conditions of the insurance policies set forth herein shall not affect the obligation of the Contractor to provide the required coverage to the District and its directors, officers, employees, and agents.

F.    Subcontractor Insurance. If Contractor subcontracts any portion(s) of the Services, Contractor shall require that each subcontractor retained by Contractor to acquire and maintain insurance coverage as set forth in this Section 7. Contractor shall require each subcontractor to provide to Contractor insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section 7. The Contractor shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. Contractor shall, upon

District request, submit them to the District for review. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

G. Non-limiting. No provision, term or condition contained in this Section 7 of the Agreement shall be construed as limiting in any way the indemnification provision contained in Section 10 hereof, or any rights, immunities and protections provided to the District by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., or the extent to which Contractor may be held responsible for payments of damages to persons or property.

8. Workers Without Authorization.

A. Certification. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit B**, that at the time of certification, it does not knowingly employ or contract with a worker without authorization who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Paragraph 8.F. herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

B. Prohibited Acts. Contractor shall not (1) knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement; or (2) enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement.

C. Verification.

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

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

(3) If Contractor obtains actual knowledge that a subcontractor performing work pursuant to this Agreement knowingly employs or contracts with a worker without authorization, Contractor shall (i) notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and (ii) terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required herein, the subcontractor does not stop employing or contracting with a worker without authorization; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information



to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

D. Duty to Comply With Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with this Paragraph 8 of the Agreement.

E. Breach. If Contractor violates a provision of this Paragraph 8, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Paragraph 8 of the Agreement, and the District terminates the Agreement.

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

9. Independent Contractor. Contractor is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with the District other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the District and any of the Contractor's employees. Neither the Contractor nor any of Contractor's employees are or shall be deemed employees of the District. Contractor is not, and shall not act as, the agent of the District. The employees who assist Contractor in the performance of the Services shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of the District. Contractor shall pay all wages, salaries, and other amounts due Contractor's employees in connection with the performance of the Services and shall be responsible for all reports and obligations respecting such employees including, without limitation social security tax, income tax withholding, unemployment compensation, worker's compensation, employee benefits and similar matters. Further, Contractor has sole authority and responsibility to employ, discharge, and otherwise control Contractor's employees. Contractor has sole authority and responsibility as principal for Contractor's agents, employees, subcontractors and all others Contractor hires to perform or assist in performing the Services.

10. Indemnification. Contractor shall indemnify, assume all responsibility for, and hold harmless the District and each of its directors, officers, consultants, employees, servants, agents, and authorized volunteers, 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 arising, or alleging to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Contractor or any of its subcontractors, agents or employees, in connection with Contractor's performance, duties, and



obligations pursuant to this Agreement; provided, however, that Contractor shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the District or any third party under the control or supervision of the District. If Contractor is providing architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify or hold harmless the District may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Contractor and the District. The obligations of the indemnifications extended by Contractor to the District under this Section 10 shall survive termination or expiration of this Agreement. Upon execution of this Agreement, Contractor shall provide the District with a copy of Contractor's IRS Form W-9, Request for Taxpayer Identification Number.

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

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

13. Subject to Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder, including for any changes in Services authorized pursuant to an amendment to this Agreement as set forth Section 2 hereof, are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year. Any extension of this Agreement, as set forth in an amendment hereto, shall be subject to annual appropriations by the District.

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

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

**If to the District:** Foothills Metropolitan District  
 Attention: Denise Denslow, District Manager  
 8390 E. Crescent Pkwy, Ste 300  
 Greenwood Village, CO 80111  
 Email: denise.denslow@CLAconnect.com

**With a Copy to:** Icenogle Seaver Pogue, PC.  
 Attn: Alan D. Pogue  
 4725 S. Monaco St., Suite 360  
 Denver, Colorado 80237  
 Email: APogue@ISP-law.com

**If to the Contractor:** Precision Pavement Marking Co  
 Attention: Chris Jacomet  
 PO Box 270990  
 3817 Goodell Ln  
 Fort Collins, CO 80526  
 Email: chris@ppmhub.com

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

17. Assignment. Contractor shall not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part, without the prior written consent of the District. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement. Regardless of the District's consent, no assignment or transfer shall release Contractor from Contractor's obligation to perform all other obligations required to be performed by Contractor hereunder for the term of the Agreement. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

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

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

20. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity



or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

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

22. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the District and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement.

23. Conflicts. The terms of this Agreement may be used to construe the intent of the Parties in connection with any exhibits, addendums or amendments attached hereto, and shall be read as nearly as possible to make the provisions of any such exhibits, addendums, and/or amendments and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the provisions of any such exhibits, addendums, or amendments, the provisions of this Agreement shall prevail.

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

25. Binding Agreement. This Agreement shall inure to and be binding upon the respective Parties hereto and their successors and permitted assigns.

26. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

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

(Remainder of Page Left Intentionally Blank.)



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

**FOOTHILLS METROPOLITAN DISTRICT**

*Patrick Bunyard*  
Patrick Bunyard (May 9, 2012 10:44 MDZ)

\_\_\_\_\_  
By: Patrick Bunyard  
Its: President

**PRECISION PAVEMENT MARKING CO**

*Chris Jacomet*

\_\_\_\_\_  
By: Chris Jacomet  
Its: President  
\_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES AND PAYMENT FOR SERVICES**

**Precision Pavement Marking Co**  
 PO BOX 270990  
 Fort Collins, CO 80527  
 970-310-1223  
 Chris@ppmhub.com

## Proposal



**ADDRESS**

8390 E. Crescent Pkwy, Ste 300  
 Greenwood Village, CO 80111  
 Attn: Denise Denslow, District  
 Manager

PROPOSAL #	DATE
2562	04/30/2022

**PROJECT NAME**

Mall Striping 2022

ACTIVITY	QTY	RATE	AMOUNT
Stripe mall parking lot per plan sent on 4/21/2022			8,500.00
Install approx 100 more arrow stencils			1,500.00
<b>TOTAL</b>			<b>\$10,000.00</b>

Accepted By

Accepted Date

**EXHIBIT B****CERTIFICATION REGARDING WORKER WITHOUT AUTHORIZATION**

To: FOOTHILLS METROPOLITAN DISTRICT

I, Chris Jacomet, as President of Precision Pavement Marking Co, the prospective "Contractor" for that certain contract for parking lot, garage, and drive lane striping services ("Agreement") to be entered into with Foothills Metropolitan District, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with a worker without authorization who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

Executed on the 5th of May, 2022.

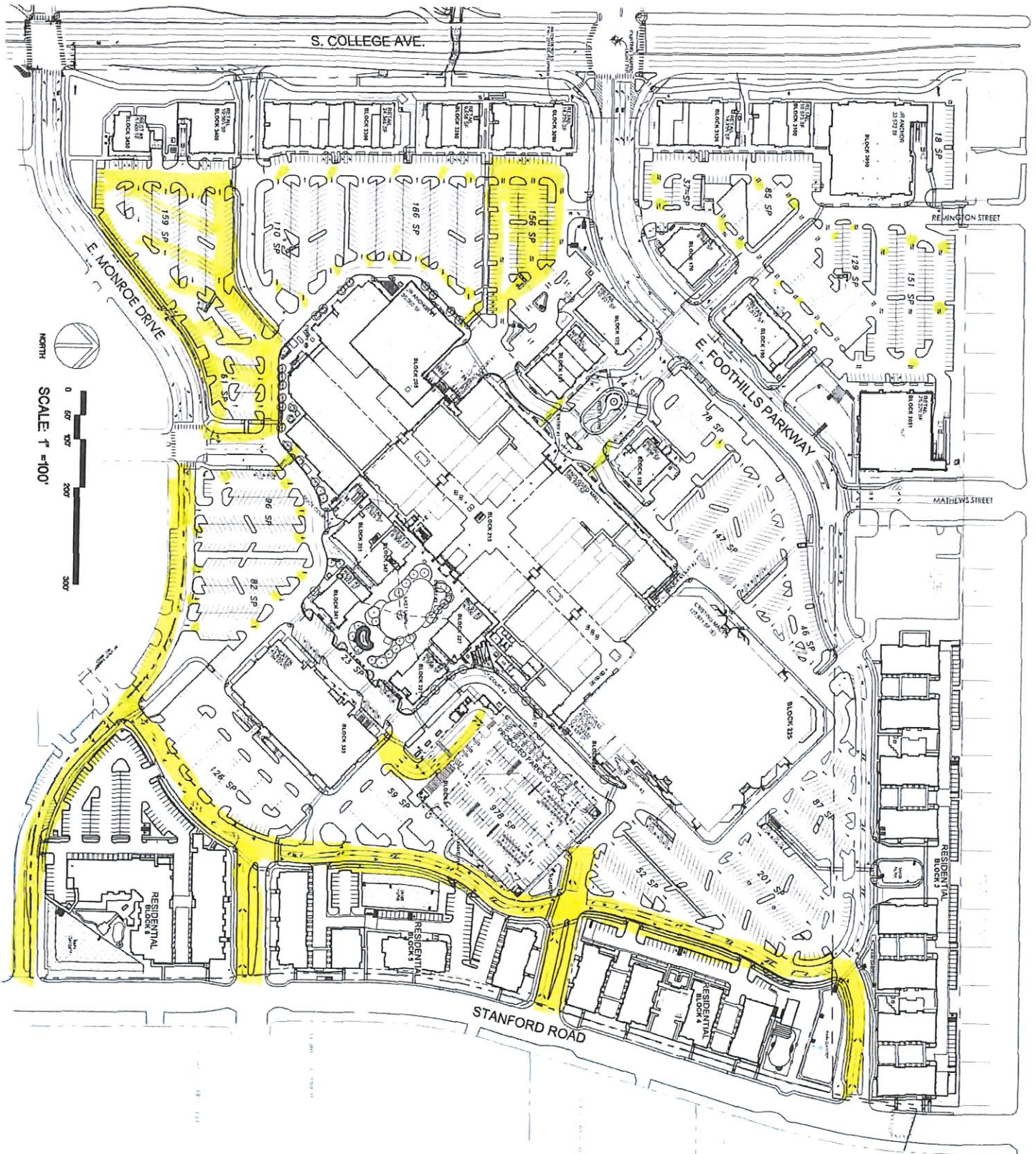
**PRECISION PAVEMENT MARKING CO.**

*Chris Jacomet*

By: Chris Jacomet

Its: President















# Precision Pavement Marking Co - Foothills contractor agreement 5.5.22

Final Audit Report

2022-05-09

Created:	2022-05-05
By:	Toni Mbowe (Tmbowe@prismplaces.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAuxnFnHnUiUhnysY9xLyX6AyBoM_I3Uvu

## "Precision Pavement Marking Co - Foothills contractor agreement 5.5.22" History

-  Document created by Toni Mbowe (Tmbowe@prismplaces.com)  
2022-05-05 - 3:22:04 PM GMT- IP address: 192.190.114.75
  
-  Document emailed to Chris Jacomet (chris@ppmhub.com) for signature  
2022-05-05 - 3:24:04 PM GMT
  
-  Email viewed by Chris Jacomet (chris@ppmhub.com)  
2022-05-05 - 4:08:20 PM GMT- IP address: 70.190.146.71
  
-  Document e-signed by Chris Jacomet (chris@ppmhub.com)  
Signature Date: 2022-05-05 - 4:11:14 PM GMT - Time Source: server- IP address: 70.190.146.71
  
-  Document emailed to Patrick Bunyard (pbunyard@prismplaces.com) for signature  
2022-05-05 - 4:11:16 PM GMT
  
-  Email viewed by Patrick Bunyard (pbunyard@prismplaces.com)  
2022-05-09 - 4:44:23 PM GMT- IP address: 104.47.59.254
  
-  Document e-signed by Patrick Bunyard (pbunyard@prismplaces.com)  
Signature Date: 2022-05-09 - 4:44:43 PM GMT - Time Source: server- IP address: 192.190.114.75
  
-  Agreement completed.  
2022-05-09 - 4:44:43 PM GMT

## SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this 1<sup>st</sup> day of April 2022, by and between FOOTHILLS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Graff’s Turf (“Contractor”), collectively, the “Parties.”

### RECITALS

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

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

WHEREAS, the District desires to procure Turf Installation services relating to the operation and maintenance of certain District facilities, improvements and infrastructure; and

WHEREAS, Contractor has experience in providing such services and is willing and able to provide such services to the District for reasonable consideration; and

WHEREAS, the District desires to engage Contractor to render such services as are needed by the District; and

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

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

### AGREEMENT

1. Appointment of Contractor. The District hereby retains Contractor for purposes of performing such services described in Section 2 of this Agreement, subject to the terms and conditions of this Agreement. Contractor hereby agrees to perform the Services pursuant to the terms and conditions set forth herein.

2. Scope of Services. Contractor shall perform the Services for the District as outlined in the Scope of Services in **Exhibit A** attached hereto and incorporated herein by reference (“Services”). The District may, from time to time, request changes to the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor’s compensation, shall be mutually agreed upon by the Parties and set forth in an amendment to this Agreement as provided in Section 16 hereof. No amendment to provide for a change in Services that results in an increase in the Contractor’s compensation shall be authorized and executed by the District unless sufficient funds

have been appropriated by the District for payment of the increased compensation, as provided in Section 13 hereof. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement. Contractor shall at all times conform to the stated policies established and approved by the District.

A. General Duties. In connection with performing the Services, Contractor agrees to:

(1) Provide all Services in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor's proposal to provide such Services to the District;

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

(3) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Section 7 hereof;

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

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

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

C. Subcontractors. Contractor is solely and fully responsible to the District for the Services to be provided pursuant to this Agreement, including all acts and omissions of subcontractors and persons employed by them. Contractor will require any subcontractors to obtain the required insurance coverage pursuant to Section 7 hereof and to agree to indemnify the District in the same manner as Contractor pursuant to Section 10 hereof.

D. No Right or Interest in District's Assets. Contractor shall have no right or interest in any assets of the District, or in any lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.



3. Compensation. Contractor shall be paid an amount not to exceed \$109,530.00, as set forth in **Exhibit A** attached hereto and incorporated herein by reference, and in accordance with the procedures set forth in this Section 3, which amount has been budgeted and appropriated by the District for the current year of performance of the Services . Contractor shall not receive additional compensation for any change in Services provided to the District unless the District and Contractor have executed an amendment to this Agreement authorizing the change in Services and the payment of additional compensation to Contractor. Any amendments to this Agreement resulting in additional compensation to be paid by the District to Contractor shall be subject to annual appropriations by the District as set forth in Section 13 hereof. The District is exempt from Colorado sales and use taxes. Contractor shall use reasonable efforts to ensure that costs for Services set forth in Exhibit A and charged to the District do not include sales and use taxes.

A. Monthly Reports and Invoices. Contractor shall submit to the District monthly reports in a form acceptable to the District which describe the work completed to date and the work yet to be performed, and summarizes costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District no later than the 3<sup>rd</sup> day of each month for Services completed in the preceding month. The District shall pay Contractor's invoice within forty-five (45) days from the 3<sup>rd</sup> day of each month. The District reserves the right to inspect all Services completed and invoiced prior to payment as set forth in Section 3.B. herein. In the event inspected services are not accepted for payment by the District, the terms of Section 3.B. herein shall apply.

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

C. Compensation Upon Termination. In the event this Agreement is terminated as provided in Section 5 hereof, the District shall pay Contractor for all of the Services satisfactorily performed prior to the designated termination date. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the Services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress pertaining to the Services contemplated herein.

4. Term. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire upon completion

of the Services; provided that, in the event the completion of Services occurs in a fiscal year following the effective date of this Agreement, such Services to be performed in the following fiscal year shall be subject to annual appropriations by the District as set forth in Section 13 hereof. This Agreement may be extended in writing upon mutual agreement of the Parties, and such writing shall become an amendment to and part of this Agreement. Any extension of this Agreement shall be subject to annual appropriations by the District as set forth in Section 13 hereof.

5. Termination. The District shall have the right to terminate this Agreement, with or without cause, at any time, by providing written notice to Contractor of such termination and specifying the effective date of termination thereof. Contractor shall be entitled to receive compensation in accordance with Section 3.C. of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the effective date of termination. Contractor may terminate this Agreement, with cause, by delivery of written notice of termination to the District at least thirty (30) days prior to the effective date of termination. Such notice shall specify the extent of termination and the effective date. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Upon any termination and payment of all undisputed amounts owed to Contractor, Contractor shall transfer title and deliver to the District all Work Product, as defined and described in Section 6 hereof, which shall be deemed from and after the effective date of this Agreement to be the property of the District.

6. Ownership of Work Product. Any and all Work Product, as such term is defined herein, created, prepared, and/or produced by Contractor pursuant to this Agreement shall become the sole and exclusive property of the District under all circumstances, whether or not Contractor completes the Services set forth hereunder or the Agreement is terminated. Upon request by the District, all Work Product shall be delivered to the District in hard copy and in an electronic format compatible to the District's computer applications at Contractor's expense. Upon payment to Contractor for its Services, the District shall have the right to use and re-use all Work Product resulting from Contractor's efforts performed pursuant to this Agreement in any way or manner deemed appropriate by the District. Any modification of the documents, without written verification, completion, or adaptation by Contractor, as appropriate for the specific purpose intended, will be at the District's sole risk and without liability or legal exposure to Contractor or to its officers, directors, members, partners, agents, employees, and subcontractors. The District's use of any or all such Work Product for its own purposes shall not be a violation of any patent or copyright thereof. Contractor agrees that the copyright and other intellectual property rights (as are applicable) in and to any component of the Work Product, and to the design and content of the Work Product, are hereby assigned and shall belong exclusively to the District. Upon request by the District, Contractor shall promptly execute whatever legal documents or other materials that the District deems necessary to secure, perfect, or substantiate the District's exclusive rights and interest in any Work Product created pursuant to this Agreement. For purposes of this Agreement, "Work Product" includes, but is not limited to, any and all finished or unfinished design, development and/or construction documents, drawings, reports, writings, data, studies, graphics, maps, plans, specifications, electronic files and other documents, materials and information, in every form and/or format, which Contractor prepared and/or used in connection with this Agreement. All drawings, specifications and other documents prepared by Contractor pursuant to this Agreement are not intended or represented to be suitable for reuse by the District or others on extensions of the work or on any other project.

7. Insurance.

(A) Minimum Scope and Limits of Insurance. Contractor shall acquire and maintain in full force and effect during the entire term of this Agreement, and at its sole cost and expense, including any extensions of this Agreement, the minimum insurance coverages and limits set forth in this Section 7(A), to provide protection from claims that may arise out of or result from Contractor's performance or obligations pursuant to this Agreement, whether such performance is by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone who acts on behalf of Contractor, including any subcontractors of Contractor. The minimum insurance coverages and limits to be acquired by Contractor are as follows:

(1) Commercial General Liability Insurance:

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

(2) Comprehensive Automobile Liability Insurance shall include all motor vehicles owned, hired, leased, or borrowed, with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence.

(3) Workmen's Compensation and Employer Liability Insurance

Worker's Compensation	Per Colorado Statutes
Employers' Liability	\$ 1,000,000 each accident

(4) Umbrella Policy: \$ 1,000,000

In addition, unless otherwise marked "No," the following coverage shall be obtained by Contractor, on an occurrence basis:

(1) Performance Bond

Included: Yes  No

(2) Builder's Risk Insurance. A blanket builder's risk insurance policy with coverage on an "all risk" basis for the project including but not limited to: (1) coverage for any ensuing loss from faulty workmanship or defective materials; (2) coverage against damage or loss caused by earth movement, flood, fire, and extended coverage perils, theft, vandalism, and malicious mischief, collapse and false work, including increased cost of construction, architects fees and expenses, soft costs, and operational testing; (3) coverage for removal of debris and demolition; (4) transit coverage (unless insured by the supplier), with sub-limits sufficient to

insure the full replacement value of any key equipment item; (5) policy is to include as insured the District, the Contractor, and all subcontractors; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site of the Services. Such insurance shall be on a “completed value” form insuring probable maximum loss, all on a replacement cost basis.

Included:      Yes          No      x

(3)      General Professional Liability. Professional Liability insurance with coverage in the amount of One Million Dollars (\$1,000,000) each claim and in the aggregate covering the negligent acts, errors, or omissions of the Contractor and/or its subcontractors in the performance of the Services.

Included:      Yes          No      x

Unless otherwise indicated, all policies listed herein shall be on an occurrence basis.

B.      Waiver of Subrogation. All coverages specified herein shall waive any right of subrogation against the District and its directors, officers, employees, and agents.

C.      Additional Insured Parties. The District shall be named as an additional insured on all policies (with the exception of workers’ compensation insurance). The Contractor’s insurance coverage shall be primary insurance and non-contributory with respect to all other available insurance sources.

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

E.      Notice. Contractor agrees to provide the District with a minimum 10-day notice for the cancellation of any insurance policies required by this Agreement due to the non-payment of a premium and with a minimum of a 30-day notice for any change to or cancellation of an insurance policy other than for non-payment of a premium. Any failure on the part of the Contractor to comply with the notice reporting provisions or other conditions of the insurance policies set forth herein shall not affect the obligation of the Contractor to provide the required coverage to the District and its directors, officers, employees, and agents.

F.      Subcontractor Insurance. If Contractor subcontracts any portion(s) of the Services, Contractor shall require that each subcontractor retained by Contractor to acquire and maintain insurance coverage as set forth in this Section 7. Contractor shall require each subcontractor to provide to Contractor insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section 7. The Contractor shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. Contractor shall, upon District request, submit them to the District for review. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

G. Non-limiting. No provision, term or condition contained in this Section 7 of the Agreement shall be construed as limiting in any way the indemnification provision contained in Section 10 hereof, or any rights, immunities and protections provided to the District by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., or the extent to which Contractor may be held responsible for payments of damages to persons or property.

8. Workers Without Authorization.

A. Certification. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit B**, that at the time of certification, it does not knowingly employ or contract with a worker without authorization who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Paragraph 8.F. herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

B. Prohibited Acts. Contractor shall not (1) knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement; or (2) enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement.

C. Verification.

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

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

(3) If Contractor obtains actual knowledge that a subcontractor performing work pursuant to this Agreement knowingly employs or contracts with a worker without authorization, Contractor shall (i) notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and (ii) terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required herein, the subcontractor does not stop employing or contracting with a worker without authorization; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

D. Duty to Comply With Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “Department”) made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with this Paragraph 8 of the Agreement.

E. Breach. If Contractor violates a provision of this Paragraph 8, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Paragraph 8 of the Agreement and the District terminates the Agreement.

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

9. Independent Contractor. Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the District other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the District and any of the Contractor’s employees. Neither the Contractor nor any of Contractor’s employees are or shall be deemed employees of the District. Contractor is not, and shall not act as, the agent of the District. The employees who assist Contractor in the performance of the Services shall at all times be under Contractor’s exclusive direction and control and shall be employees of Contractor and not employees of the District. Contractor shall pay all wages, salaries, and other amounts due Contractor’s employees in connection with the performance of the Services and shall be responsible for all reports and obligations respecting such employees including, without limitation social security tax, income tax withholding, unemployment compensation, worker’s compensation, employee benefits and similar matters. Further, Contractor has sole authority and responsibility to employ, discharge, and otherwise control Contractor’s employees. Contractor has sole authority and responsibility as principal for Contractor’s agents, employees, subcontractors and all others Contractor hires to perform or assist in performing the Services.

10. Indemnification. Contractor shall indemnify, assume all responsibility for, and hold harmless the District and each of its directors, officers, consultants, employees, servants, agents, and authorized volunteers, 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 arising, or alleging to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Contractor or any of its subcontractors, agents or employees, in connection with Contractor’s performance, duties, and obligations pursuant to this Agreement; provided, however, that Contractor shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the District or any third party under the control or supervision of the District. If Contractor is providing architectural,

engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify or hold harmless the District may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Contractor and the District. The obligations of the indemnifications extended by Contractor to the District under this Section 10 shall survive termination or expiration of this Agreement. Upon execution of this Agreement, Contractor shall provide the District with a copy of Contractor's IRS Form W-9, Request for Taxpayer Identification Number.

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

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

13. Subject to Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder, including for any changes in Services authorized pursuant to an amendment to this Agreement as set forth Section 2 hereof, are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year. Any extension of this Agreement, as set forth in an amendment hereto, shall be subject to annual appropriations by the District.

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

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

**If to the District:** Foothills Metropolitan District  
Attention: Denise Denslow  
8390 E. Crescent Pkwy, Ste 300  
Greenwood Village, CO 8011  
Email: [denise.denslow@CLAconnect.com](mailto:denise.denslow@CLAconnect.com)

**With a Copy to:** Icenogle Seaver Pogue, PC.  
Attn: Alan D. Pogue  
4725 S. Monaco St., Suite 360  
Denver, Colorado 80237  
Email: [APogue@ISP-law.com](mailto:APogue@ISP-law.com)

**If to the Contractor:** Graff's Turf  
Attention: Garin Daum  
9809 N. Frontage Road, I-76  
PO Box 715  
Fort Morgan, CO 80701-0715  
Email: [info@graffsturf.com](mailto:info@graffsturf.com)

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

17. Assignment. Contractor shall not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part, without the prior written consent of the District. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement. Regardless of the District's consent, no assignment or transfer shall release Contractor from Contractor's obligation to perform all other obligations required to be performed by Contractor hereunder for the term of the Agreement. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

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

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

20. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity



or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

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

22. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the District and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement.

23. Conflicts. The terms of this Agreement may be used to construe the intent of the Parties in connection with any exhibits, addendums or amendments attached hereto, and shall be read as nearly as possible to make the provisions of any such exhibits, addendums, and/or amendments and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the provisions of any such exhibits, addendums, or amendments, the provisions of this Agreement shall prevail.

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

25. Binding Agreement. This Agreement shall inure to and be binding upon the respective Parties hereto and their successors and permitted assigns.

26. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

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

(Remainder of Page Left Intentionally Blank.)

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

**FOOTHILLS METROPOLITAN DISTRICT**

DocuSigned by:  
*Patrick Bunyard*

45484DEF41144E3...

By: Patrick Bunyard

Its: President

**GRAFF'S TURF**

DocuSigned by:  
*MJR*

0BFF2BAF44D54D9...

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

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

**EXHIBIT A**  
**SCOPE OF SERVICES AND PAYMENT FOR SERVICES**

# Invoice



9809 N. Frontage Road, I-76 | PO Box 715 | Fort Morgan 80701-0715  
 970.867.8873 • info@graффsturf.com

**BILL TO**

Garin Daum  
 FOOTHILL METROPOLITAN  
 DISTRICT  
 215 e foothills pkwy ste 220  
 FORT COLLINS, CO 80525

**SHIP TO**

215 E FOOTHILLS PKWY  
 FORT COLLINS, CO 80525

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
73405	02/07/2022	\$109,530.00	03/09/2022	Net 30	

**SHIP VIA**  
 GRAFFS

**PO NUMBER**  
 FOOTHILLS MALL

**SALES REP**  
 TJL

DATE	ACTIVITY	QTY	RATE	AMOUNT
	<b>N2N:ARTIFICIAL TURF:N2N - Leisure - STR</b> Next 2 Natural - Leisure	10,050	5.00	50,250.00T
	<b>N2N:ARTIFICIAL TURF SERVICES:N2N - Delivery</b> Next 2 Natural - Delivery	3	350.00	1,050.00
	<b>N2N:ARTIFICIAL TURF SERVICES:N2N - Install</b> Next 2 Natural - Turf Installation: Removal and disposal, ground prep, import of 3" base material, installation of turf and infill (includes, nails, seam tape)	10,050	5.00	50,250.00
	<b>N2N:N2N MISC:N2N - EnviroFill</b> N2N - EnviroFill	200	30.00	6,000.00T
	<b>N2N:N2N MISC:N2N - Nailer/Bender Board</b> N2N - Nailer Board Installed	440	4.50	1,980.00T

SUBTOTAL	109,530.00
TAX EXEMPT	
TOTAL	109,530.00
<b>BALANCE DUE</b>	<b>\$109,530.00</b>

DR 0160 (02/16/11)  
COLORADO DEPARTMENT OF REVENUE  
DENVER CO 80261-0013

**CERTIFICATE OF EXEMPTION FOR STATE SALES/USE TAX ONLY 41**

**THIS LICENSE IS  
NOT TRANSFERABLE**

USE ACCOUNT NUMBER for all references	LIABILITY INFORMATION		ISSUE DATE
98000172	G	120112	Mar 08 2013

IN THE CITY OF FT COLLINS  
FT COLLINS, CO 80525



FOOTHILLS METROPOLITAN DISTRICT  
8390 E CRESCENT PKWY STE 600  
GREENWOOD VLG CO 80111-2814



Executive Director  
Department of Revenue

▲ DETACH HERE ▲

**GENERAL INFORMATION**



The following services are available at [www.Colorado.gov/RevenueOnline](http://www.Colorado.gov/RevenueOnline) under **Business**.

**Sales:**

- Verify a Sales Tax License
- View Local Sales Tax Rates
- View Business Location Rates
- Find Local Taxes by Address
- View Sales Tax Rate Charts



**Try Revenue Online today!**

[www.Colorado.gov/RevenueOnline](http://www.Colorado.gov/RevenueOnline)

Scan this code with your smartphone or tablet to access Revenue Online

Attend our free sales tax classes. Live classes, online CPE and Webinars are available. To sign up, visit [www.TaxSeminars.state.co.us](http://www.TaxSeminars.state.co.us)

**EXHIBIT B**

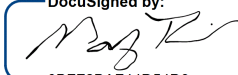
**CERTIFICATION REGARDING WORKER WITHOUT AUTHORIZATION**

To: FOOTHILLS METROPOLITAN DISTRICT

I, \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, the prospective “Contractor” for that certain contract for \_\_\_\_\_ services (“Agreement”) to be entered into with \_\_\_\_\_ Metropolitan District No. \_\_\_\_\_, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with a worker without authorization who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment’s Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

Executed on the \_\_\_ of \_\_\_\_\_, 20\_\_.

**GRAFF’S TURF**

DocuSigned by:  
  
0BFF2BAF44D54D9...

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

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

## LICENSE AGREEMENT

This **LICENSE AGREEMENT** (the “Agreement”) is made and entered into this 19th day of May 2022 (the “Effective Date”) by and between **FOOTHILLS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is c/o CliftonLarsonAllen LLP, 8390 E. Crescent Pky, Ste. 300, Greenwood Village, CO 80111 (“**Licensor**”), and **FMFPE, LLC**, a Delaware limited liability company, whose address is 2725 Rocky Mountain Avenue, Ste. 200, Loveland, Colorado 80538 (“**Licensee**”).

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. Licensor hereby grants to Licensee, its agents, representatives, tenants, and invitees (“**Authorized Users**”), a temporary, revocable, non-exclusive license (the “**License**”) to use the parking garage located at 215 E. Foothills Pkwy, Fort Collins, Colorado (the “**Property**”), for temporary overnight parking (the “**Authorized Activities**”).

2. Licensee shall not make any physical alterations to the Property. Licensee shall not disturb or interfere with any of Licensor’s operations or activities on the Property.

3. This Agreement shall begin at 6:00 p.m. on June 7, 2022, and shall terminate at 9:00 a.m. on June 9, 2022, or at such time as the License is terminated by Licensor upon written notice to Licensee at Licensee’s above address, whichever occurs first. In either event, Licensee shall complete all required restoration of the Property and shall be allowed to access the Property to perform the restoration work pursuant to Section 6 this Agreement.

4. Licensor licenses the Property to Licensee in its present condition, as is, without warranty or representation. This License is subject to all other easements, rights-of-way and other property interests of record. Licensor reserves the right to grant further interests in the Property so long as such interests are not inconsistent with or do not unreasonably interfere with Licensee’s use of the Property, such determination to be made by Licensor in its reasonable discretion.

5. Licensee shall comply with all applicable laws, ordinance, rules and regulations pertaining to Licensee’s use of the Property during the term of this Agreement.

6. Upon completion of its activities hereunder, Licensee, at its sole cost and expense, shall restore the Property and repair all damage thereto, caused by Licensee or its Authorized Users, to a condition comparable with the condition that it was in immediately prior to such disturbance. If Licensee fails to do so following ten (10) days’ notice to Licensee, Licensor, in addition to such other remedies as Licensor may have available by law, shall have the right to engage in “self-help” actions to accomplish the restoration or repair required, the costs of which shall be paid or reimbursed by Licensee within thirty (30) days Licensor invoicing Licensee for such costs.

7. Licensee shall indemnify, defend and hold harmless Licensor and its directors,

employees, agents and consultants (collectively the “**Indemnitees**”), 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 to the extent they arise or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Licensee or any of its Authorized Users, in connection with this Agreement or the License provided hereunder or that cause or allow to continue a condition or event that deprives the Indemnitees, as applicable, of sovereign immunity under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time. Provided, however, that the Licensee shall not be liable for any claim, loss, damage, injury or liability arising out of negligence of the Indemnitees. The obligations of this Section shall survive termination or expiration of this Agreement.

8. Licensee shall secure and maintain for the term of this Agreement adequate statutory workers’ compensation insurance coverage and comprehensive general liability insurance from companies licensed in the State of Colorado as will protect itself and the Indemnitees from claims for bodily injury, death, personal injury or property damage which may arise out of or result from Licensee’s acts, errors or omissions. Such insurance coverage shall be acceptable to Licensor in its sole discretion, and to evidence the required insurance coverage, copies of certificates of insurance shall be furnished to Licensor.

9. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute hereunder shall lie in the state district court in the City of Fort Collins.

11. Licensee may not assign this Agreement without the prior written consent of Licensor.

12. This Agreement constitutes the entire agreement between the parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be amended, altered, or otherwise changed except by a written agreement signed by the parties.

13. Nothing herein or any actions taken by Licensor pursuant to this Agreement shall be deemed a waiver of Licensor’s sovereign immunity pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

14. This Agreement may be executed in one or more counterparts, each of which, when executed shall constitute but one and the same document.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective on the date first above written.



**LICENSOR:**  
**FOOTHILLS METROPOLITAN DISTRICT**

*Patrick Bunyard*  
Patrick Bunyard (May 20, 2022 10:33 MDT)

By: Patrick Bunyard

Its: President

**LICENSEE:**

FMFPE, LLC, a Delaware limited liability company

By: Foothills MF, LLC,  
a Colorado limited liability company,  
Managing Member

By: McWhinney Real Estate Services, Inc.,  
a Colorado corporation,  
Manager

By *Marshall Johnston*  
Marshall Johnston  
SVP, Asset Management

Digitally signed by  
Beth Johnson  
Date:  
2022.05.19  
15:54:09  
-06'00'



## SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this 5<sup>th</sup> day of May, 2022, by and between FOOTHILLS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and TRAVERSE BUILDERS LLC (“Contractor”), collectively, the “Parties.”

### RECITALS

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

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

WHEREAS, the District desires to procure demolition, concrete and electrical services relating to the operation and maintenance of certain District facilities, improvements and infrastructure; and

WHEREAS, Contractor has experience in providing such services and is willing and able to provide such services to the District for reasonable consideration; and

WHEREAS, the District desires to engage Contractor to render such services as are needed by the District; and

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

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

### AGREEMENT

1. Appointment of Contractor. The District hereby retains Contractor for purposes of performing such services described in Section 2 of this Agreement, subject to the terms and conditions of this Agreement. Contractor hereby agrees to perform the Services pursuant to the terms and conditions set forth herein.

2. Scope of Services. Contractor shall perform the Services for the District as outlined in the Scope of Services in **Exhibit A** attached hereto and incorporated herein by reference (“Services”). The District may, from time to time, request changes to the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of Contractor’s compensation, shall be mutually agreed upon by the Parties and set forth in an amendment to this Agreement as provided in Section 16 hereof. No amendment to provide for a change in Services that results in an increase in the

Contractor's compensation shall be authorized and executed by the District unless sufficient funds have been appropriated by the District for payment of the increased compensation, as provided in Section 13 hereof. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement. Contractor shall at all times conform to the stated policies established and approved by the District.

A. General Duties. In connection with performing the Services, Contractor agrees to:

(1) Provide all Services in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor's proposal to provide such Services to the District;

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

(3) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Section 7 hereof;

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

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

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

C. Subcontractors. Contractor is solely and fully responsible to the District for the Services to be provided pursuant to this Agreement, including all acts and omissions of subcontractors and persons employed by them. Contractor will require any subcontractors to obtain the required insurance coverage pursuant to Section 7 hereof and to agree to indemnify the District in the same manner as Contractor pursuant to Section 10 hereof.

D. No Right or Interest in District's Assets. Contractor shall have no right or interest in any assets of the District, or in any lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

3. Compensation. Contractor shall be paid an amount not to exceed **\$58,598**, as set forth in **Exhibit A** attached hereto and incorporated herein by reference, and in accordance with the procedures set forth in this Section 3, which amount has been budgeted and appropriated by the District for the current year of performance of the Services . Contractor shall not receive additional compensation for any change in Services provided to the District unless the District and Contractor have executed an amendment to this Agreement authorizing the change in Services and the payment of additional compensation to Contractor. Any amendments to this Agreement resulting in additional compensation to be paid by the District to Contractor shall be subject to annual appropriations by the District as set forth in Section 13 hereof. The District is exempt from Colorado sales and use taxes. Contractor shall use reasonable efforts to ensure that costs for Services set forth in Exhibit A and charged to the District do not include sales and use taxes.

A. Monthly Reports and Invoices. Contractor shall submit to the District monthly reports in a form acceptable to the District which describe the work completed to date and the work yet to be performed, and summarizes costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District no later than the 3<sup>rd</sup> day of each month for Services completed in the preceding month. The District shall pay Contractor's invoice within forty-five (45) days from the 3<sup>rd</sup> day of each month. The District reserves the right to inspect all Services completed and invoiced prior to payment as set forth in Section 3.B. herein. In the event inspected services are not accepted for payment by the District, the terms of Section 3.B. herein shall apply.

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

C. Compensation Upon Termination. In the event this Agreement is terminated as provided in Section 5 hereof, the District shall pay Contractor for all of the Services satisfactorily performed prior to the designated termination date. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the Services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress pertaining to the Services contemplated herein.

4. Term. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire upon completion of the Services; provided that, in the event the completion of Services occurs in a fiscal year following the effective date of this Agreement, such Services to be performed in the following fiscal year shall be subject to annual appropriations by the District as set forth in Section 13 hereof. This Agreement may be extended in writing upon mutual agreement of the Parties, and such writing shall become an amendment to and part of this Agreement. Any extension of this Agreement shall be subject to annual appropriations by the District as set forth in Section 13 hereof.

5. Termination. The District shall have the right to terminate this Agreement, with or without cause, at any time, by providing written notice to Contractor of such termination and specifying the effective date of termination thereof. Contractor shall be entitled to receive compensation in accordance with Section 3.C. of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the effective date of termination. Contractor may terminate this Agreement, with cause, by delivery of written notice of termination to the District at least thirty (30) days prior to the effective date of termination. Such notice shall specify the extent of termination and the effective date. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Upon any termination and payment of all undisputed amounts owed to Contractor, Contractor shall transfer title and deliver to the District all Work Product, as defined and described in Section 6 hereof, which shall be deemed from and after the effective date of this Agreement to be the property of the District.

6. Ownership of Work Product. Any and all Work Product, as such term is defined herein, created, prepared, and/or produced by Contractor pursuant to this Agreement shall become the sole and exclusive property of the District under all circumstances, whether or not Contractor completes the Services set forth hereunder or the Agreement is terminated. Upon request by the District, all Work Product shall be delivered to the District in hard copy and in an electronic format compatible to the District's computer applications at Contractor's expense. Upon payment to Contractor for its Services, the District shall have the right to use and re-use all Work Product resulting from Contractor's efforts performed pursuant to this Agreement in any way or manner deemed appropriate by the District. Any modification of the documents, without written verification, completion, or adaptation by Contractor, as appropriate for the specific purpose intended, will be at the District's sole risk and without liability or legal exposure to Contractor or to its officers, directors, members, partners, agents, employees, and subcontractors. The District's use of any or all such Work Product for its own purposes shall not be a violation of any patent or copyright thereof. Contractor agrees that the copyright and other intellectual property rights (as are applicable) in and to any component of the Work Product, and to the design and content of the Work Product, are hereby assigned and shall belong exclusively to the District. Upon request by the District, Contractor shall promptly execute whatever legal documents or other materials that the District deems necessary to secure, perfect, or substantiate the District's exclusive rights and interest in any Work Product created pursuant to this Agreement. For purposes of this Agreement, "Work Product" includes, but is not limited to, any and all finished or unfinished design, development and/or construction documents, drawings, reports, writings, data, studies, graphics, maps, plans, specifications, electronic files and other documents, materials and information, in every form and/or format, which Contractor prepared and/or used in connection with this Agreement. All drawings, specifications and other documents prepared by Contractor pursuant to this Agreement are not intended or

represented to be suitable for reuse by the District or others on extensions of the work or on any other project.

7. Insurance.

(A) Minimum Scope and Limits of Insurance. Contractor shall acquire and maintain in full force and effect during the entire term of this Agreement, and at its sole cost and expense, including any extensions of this Agreement, the minimum insurance coverages and limits set forth in this Section 7(A), to provide protection from claims that may arise out of or result from Contractor's performance or obligations pursuant to this Agreement, whether such performance is by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone who acts on behalf of Contractor, including any subcontractors of Contractor. The minimum insurance coverages and limits to be acquired by Contractor are as follows:

(1) Commercial General Liability Insurance:

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

(2) Comprehensive Automobile Liability Insurance shall include all motor vehicles owned, hired, leased, or borrowed, with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence.

(3) Workmen's Compensation and Employer Liability Insurance

Worker's Compensation	Per Colorado Statutes
Employers' Liability	\$ 1,000,000 each accident

(4) Umbrella Policy: \$ 1,000,000

In addition, unless otherwise marked "No," the following coverage shall be obtained by Contractor, on an occurrence basis:

(1) Performance Bond

Included:    Yes        No    X

(2) Builder's Risk Insurance. A blanket builder's risk insurance policy with coverage on an "all risk" basis for the project including but not limited to: (1) coverage for any ensuing loss from faulty workmanship or defective materials; (2) coverage against damage or loss caused by earth movement, flood, fire, and extended coverage perils, theft, vandalism, and malicious mischief, collapse and false work, including increased cost of construction, architects



fees and expenses, soft costs, and operational testing; (3) coverage for removal of debris and demolition; (4) transit coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; (5) policy is to include as insured the District, the Contractor, and all subcontractors; and (6) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site of the Services. Such insurance shall be on a “completed value” form insuring probable maximum loss, all on a replacement cost basis.

Included:      Yes          No      X

(3)      General Professional Liability. Professional Liability insurance with coverage in the amount of One Million Dollars (\$1,000,000) each claim and in the aggregate covering the negligent acts, errors, or omissions of the Contractor and/or its subcontractors in the performance of the Services.

Included:      Yes          No      X

Unless otherwise indicated, all policies listed herein shall be on an occurrence basis.

B.      Waiver of Subrogation. All coverages specified herein shall waive any right of subrogation against the District and its directors, officers, employees, and agents.

C.      Additional Insured Parties. The District shall be named as an additional insured on all policies (with the exception of workers’ compensation insurance). The Contractor’s insurance coverage shall be primary insurance and non-contributory with respect to all other available insurance sources.

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

E.      Notice. Contractor agrees to provide the District with a minimum 10-day notice for the cancellation of any insurance policies required by this Agreement due to the non-payment of a premium and with a minimum of a 30-day notice for any change to or cancellation of an insurance policy other than for non-payment of a premium. Any failure on the part of the Contractor to comply with the notice reporting provisions or other conditions of the insurance policies set forth herein shall not affect the obligation of the Contractor to provide the required coverage to the District and its directors, officers, employees, and agents.

F.      Subcontractor Insurance. If Contractor subcontracts any portion(s) of the Services, Contractor shall require that each subcontractor retained by Contractor to acquire and maintain insurance coverage as set forth in this Section 7. Contractor shall require each subcontractor to provide to Contractor insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section 7. The Contractor shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. Contractor shall, upon

District request, submit them to the District for review. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

G. Non-limiting. No provision, term or condition contained in this Section 7 of the Agreement shall be construed as limiting in any way the indemnification provision contained in Section 10 hereof, or any rights, immunities and protections provided to the District by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., or the extent to which Contractor may be held responsible for payments of damages to persons or property.

8. Workers Without Authorization.

A. Certification. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit B**, that at the time of certification, it does not knowingly employ or contract with a worker without authorization who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Paragraph 8.F. herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

B. Prohibited Acts. Contractor shall not (1) knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement; or (2) enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work pursuant to this Agreement.

C. Verification.

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

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

(3) If Contractor obtains actual knowledge that a subcontractor performing work pursuant to this Agreement knowingly employs or contracts with a worker without authorization, Contractor shall (i) notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and (ii) terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required herein, the subcontractor does not stop employing or contracting with a worker without authorization; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information

to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

D. Duty to Comply With Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “Department”) made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with this Paragraph 8 of the Agreement.

E. Breach. If Contractor violates a provision of this Paragraph 8, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Paragraph 8 of the Agreement and the District terminates the Agreement.

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

9. Independent Contractor. Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the District other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the District and any of the Contractor’s employees. Neither the Contractor nor any of Contractor’s employees are or shall be deemed employees of the District. Contractor is not, and shall not act as, the agent of the District. The employees who assist Contractor in the performance of the Services shall at all times be under Contractor’s exclusive direction and control and shall be employees of Contractor and not employees of the District. Contractor shall pay all wages, salaries, and other amounts due Contractor’s employees in connection with the performance of the Services and shall be responsible for all reports and obligations respecting such employees including, without limitation social security tax, income tax withholding, unemployment compensation, worker’s compensation, employee benefits and similar matters. Further, Contractor has sole authority and responsibility to employ, discharge, and otherwise control Contractor’s employees. Contractor has sole authority and responsibility as principal for Contractor’s agents, employees, subcontractors and all others Contractor hires to perform or assist in performing the Services.

10. Indemnification. Contractor shall indemnify, assume all responsibility for, and hold harmless the District and each of its directors, officers, consultants, employees, servants, agents, and authorized volunteers, 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 arising, or alleging to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Contractor or any of its subcontractors, agents or employees, in connection with Contractor’s performance, duties, and

obligations pursuant to this Agreement; provided, however, that Contractor shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the District or any third party under the control or supervision of the District. If Contractor is providing architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify or hold harmless the District may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Contractor and the District. The obligations of the indemnifications extended by Contractor to the District under this Section 10 shall survive termination or expiration of this Agreement. Upon execution of this Agreement, Contractor shall provide the District with a copy of Contractor's IRS Form W-9, Request for Taxpayer Identification Number.

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

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

13. Subject to Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder, including for any changes in Services authorized pursuant to an amendment to this Agreement as set forth Section 2 hereof, are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year. Any extension of this Agreement, as set forth in an amendment hereto, shall be subject to annual appropriations by the District.

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

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

**If to the District:** Foothills Metropolitan District  
 Attention: Denise Denslow, District Manager  
 8390 E. Crescent Pkwy, Ste 300  
 Greenwood Village, CO 80111  
 Email: denise.denslow@CLAconnect.com

**With a Copy to:** Icenogle Seaver Pogue, PC.  
 Attn: Alan D. Pogue  
 4725 S. Monaco St., Suite 360  
 Denver, Colorado 80237  
 Email: APogue@ISP-law.com

**If to the Contractor:** Traverse General Contractors, LLC  
 Attn: Brian Zwiep, CEO  
 700 Automation Drive, Unit P  
 Windsor, CO 80550  
 Email: brianzwiep@trvrsbldrs.com

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

17. Assignment. Contractor shall not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part, without the prior written consent of the District. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement. Regardless of the District's consent, no assignment or transfer shall release Contractor from Contractor's obligation to perform all other obligations required to be performed by Contractor hereunder for the term of the Agreement. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

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

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

20. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity



or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

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

22. No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the District and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement.

23. Conflicts. The terms of this Agreement may be used to construe the intent of the Parties in connection with any exhibits, addendums or amendments attached hereto, and shall be read as nearly as possible to make the provisions of any such exhibits, addendums, and/or amendments and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the provisions of any such exhibits, addendums, or amendments, the provisions of this Agreement shall prevail.

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

25. Binding Agreement. This Agreement shall inure to and be binding upon the respective Parties hereto and their successors and permitted assigns.

26. Entire Agreement. This Agreement, including all exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations.

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

(Remainder of Page Left Intentionally Blank.)

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

**FOOTHILLS METROPOLITAN DISTRICT**

\_\_\_\_\_  
By: Patrick Bunyard  
Its: President

**TRAVERSE BUILDERS LLC**

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

**EXHIBIT A**  
**SCOPE OF SERVICES AND PAYMENT FOR SERVICES**

**EXHIBIT B**

**CERTIFICATION REGARDING WORKER WITHOUT AUTHORIZATION**

To: FOOTHILLS METROPOLITAN DISTRICT

I, \_\_\_\_\_, as \_\_\_\_\_ of Traverse Builders LLC, the prospective “Contractor” for that certain contract demolition, concrete, and electrical services (“Agreement”) to be entered into with Foothills Metropolitan District, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with a worker without authorization who will perform work pursuant to this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment’s Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work pursuant to this Agreement.

Executed on the 16th of May, 2022.

**TRAVERSE BUILDERS LLC**

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

**Date: 5/11/22**  
**Project: Foothills Stage Concrete and Electric**



## **Exhibit A - Proposal**

Project Location: Foothills Mall – Fort Collins, CO

### **Design and Project Assumptions**

- General Conditions
  - Management
  - Accounting
- Demo
  - Remove Existing Concrete
  - Dumpster
- Concrete
  - Footings for Stage Trellis
  - 4” Slab on Grade
  - Design of Concrete
- Electrical
  - Based on proposal given to Traverse – Highpoint Electric West
  - 6 receptacles
  - 3 phase 100 – Amps of power
  - 1” empty Conduit for data with pull strings
  - Design of Electrical

**Proposal Amount: \$58,598.00**

#### Terms and Exclusions:

- Traverse General Contractors, LLC will invoice at the end of each month and own will provide a progress payment 30 days after receipt of invoice. If there are any disputes with the progress payment both parties will diligently work thru the issue so that the progress payment remains on time to pay the subcontractors.
- Exclude Builders Risk Insurance, must be carried by Owner
- 3<sup>rd</sup> Part Inspections and Testing by owner
- Exclusions apply if not outlined above in scopes of work
- Permit and Fees

Sincerely,  
 Traverse Builders, LLC



## BUDGET PROPOSAL

May 11, 2022

	DESCRIPTION OF WORK	P.S.F.	% COST	SITE WORK	CORE & SHELL	TENANT 1	TENANT 2	TOTAL
	<b>BUILDING G.S.F.</b>	-	SQFT					
10000	GENERAL CONDITIONS	#DIV/0!	12.07%	\$0	\$0	\$7,075	\$0	\$7,075
20000	EXISTING CONDITIONS/SITework							
20100	DEMOLITION	#DIV/0!	9.73%	\$0	\$0	\$5,700	\$0	\$5,700
20200	EXCAVATION/EARTHWORK	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
20300	SITE UTILITIES	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
20400	SITE CONCRETE	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
20400	ASPHALT PAVING	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
20600	FENCES, GATES & MISC. SITework	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
20700	LANDSCAPING & IRRIGATION	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
20800	SITE SIGNAGE/SPECIALTIES	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
30000	CONCRETE							
30100	CAISSONS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
30200	FOUNDATIONS	#DIV/0!	55.46%	\$0	\$0	\$32,500	\$0	\$32,500
30300	SLAB-ON-GRADE & SLAB-ON-DECK	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
30400	WALL PANELS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
30500	GROUTING, PLACEMENT & ACCESSORIES	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
40000	MASONRY	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
50000	METALS	#DIV/0!	1.28%	\$0	\$0	\$750	\$0	\$750
60000	WOOD, PLASTICS, & COMPOSITES							
60100	ROUGH CARPENTRY	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
60200	FINISH CARPENTRY & MILLWORK	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
70000	THERMAL & MOISTURE PROTECTION							
70100	FOUNDATION, SOUND & THERMAL INSULATION	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
70200	ROOFING SYSTEMS & ACCESSORIES	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
70300	COMPOSITE WALL PANELS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
70400	JOINT SEALERS & CAULKING	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
70500	EIFS & STUCCO SYSTEMS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
80000	OPENINGS							
80100	GLASS & GLAZING SYSTEMS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
80200	DOORS, FRAMES & HARDWARE	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
80400	SPECIALTY DOORS & OVERHEAD DOORS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
90000	FINISHES							
90100	FRAMING AND DRYWALL	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
90200	FLOORING SYSTEMS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
90300	ACOUSTICAL CEILINGS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
90400	PAINt & WALL COVERINGS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
100000	SPECIALTIES	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
110000	EQUIPMENT & APPLIANCES	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
120000	FURNISHINGS	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
130000	SPECIAL CONSTRUCTION	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
140000	CONVEYING EQUIPMENT	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
150000	MECHANICAL							
151000	PLUMBING	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
152000	FIRE PROTECTION	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
153000	HVAC	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
160000	ELECTRICAL SYSTEMS	#DIV/0!	15.44%	\$0	\$0	\$9,050	\$0	\$9,050
170000	ALLOWANCES	#DIV/0!	0.00%	\$0	\$0	\$0	\$0	\$0
	<b>SUBTOTAL DIRECT JOB COST</b>	#DIV/0!	<b>93.99%</b>	<b>\$0</b>	<b>\$0</b>	<b>\$55,075</b>	<b>\$0</b>	<b>\$55,075</b>
	<b>BUILDING SUBTOTAL</b>			<b>\$0</b>	<b>\$0</b>	<b>\$55,075</b>	<b>\$0</b>	<b>\$55,075</b>
	<b>PERMIT FEES</b>			<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
	<b>LIABILITY INSURANCE</b>		1.33%	<b>\$0</b>	<b>\$0</b>	<b>\$732</b>	<b>\$0</b>	<b>\$732</b>
	<b>CONTRACTORS OVERHEAD &amp; PROFIT</b>		5.00%	<b>\$0</b>	<b>\$0</b>	<b>\$2,790</b>	<b>\$0</b>	<b>\$2,790</b>
	<b>CONTRACTORS CONTINGENCY</b>		0.00%	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
	<b>PROJECTED CONSTRUCTION BUDGET</b>	#DIV/0!	<b>100.00%</b>	<b>\$0</b>	<b>\$0</b>	<b>\$58,598</b>	<b>\$0</b>	<b>\$58,598</b>



FOOTHILLS METROPOLITAN DISTRICT  
FINANCIAL STATEMENTS  
MARCH 31, 2022

Draft

FOOTHILLS METROPOLITAN DISTRICT  
BALANCE SHEET - GOVERNMENTAL FUNDS  
MARCH 31, 2022

	<u>General</u>	<u>Debt Service</u>	<u>Capital Projects</u>	<u>Total</u>
<b>ASSETS</b>				
Cash - Checking	\$ 6,848	\$ 138,681	\$ -	\$ 145,529
C - Safe	149,397	466,582	-	615,979
UMB - Unrestricted project fund	-	-	99,124	99,124
UMB - Unrestricted Priority Project Fund	-	-	63,121	63,121
UMB - Bond fund	-	239	-	239
UMB - Reserve fund	-	7,296,916	-	7,296,916
UMB - Revenue fund	-	345,904	-	345,904
UMB - Surplus fund	-	833,246	-	833,246
Accounts receivable - PIF	-	44,788	-	44,788
Accounts receivable - TIF	149,518	1,395,002	-	1,544,520
Receivable from County Treasurer	4,722	15,855	-	20,577
<b>TOTAL ASSETS</b>	<u>\$ 310,485</u>	<u>\$ 10,537,213</u>	<u>\$ 162,245</u>	<u>\$ 11,009,943</u>
<b>LIABILITIES AND FUND BALANCES</b>				
<b>CURRENT LIABILITIES</b>				
Accounts payable	\$ 15,352	\$ -	\$ 56,970	\$ 72,322
<b>Total Liabilities</b>	<u>15,352</u>	<u>-</u>	<u>56,970</u>	<u>72,322</u>
<b>FUND BALANCES</b>				
<b>Total Fund Balances</b>	<u>295,133</u>	<u>10,537,213</u>	<u>105,275</u>	<u>10,937,621</u>
<b>TOTAL LIABILITIES AND FUND BALANCES</b>	<u>\$ 310,485</u>	<u>\$ 10,537,213</u>	<u>\$ 162,245</u>	<u>\$ 11,009,943</u>

No assurance is provided on these financial statements. Substantially all required disclosures, the government-wide financial statements, and the statement of revenues, expenditures and changes in fund balances – governmental funds have been omitted.

FOOTHILLS METROPOLITAN DISTRICT  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCES - BUDGET AND ACTUAL  
FOR THE THREE MONTHS ENDED MARCH 31, 2022

GENERAL FUND

	Annual Budget	Year to Date Actual	Variance
<b>REVENUES</b>			
Property taxes	\$ 173,096	\$ 83,267	\$ (89,829)
Specific ownership tax	34,186	8,913	(25,273)
Interest income	130	44	(86)
FCURA - District Property Taxes	315,279	151,795	(163,484)
<b>TOTAL REVENUES</b>	<u>522,691</u>	<u>244,019</u>	<u>(278,672)</u>
<b>EXPENDITURES</b>			
Accounting	40,000	7,912	32,088
Auditing	6,500	-	6,500
County Treasurer's fee	3,462	1,665	1,797
Dues and licenses	950	737	213
Insurance and bonds	16,500	18,181	(1,681)
District management	22,000	3,764	18,236
Legal services	40,000	18,644	21,356
Miscellaneous	1,400	49	1,351
Collection Fee - URA	4,729	2,277	2,452
Management fee	44,700	889	43,811
PIF Collection	30,000	3,542	26,458
Election expense	2,000	1,111	889
Repairs and maintenance	397,000	-	397,000
Utilities	50,000	-	50,000
Contingency	1,759	-	1,759
<b>TOTAL EXPENDITURES</b>	<u>661,000</u>	<u>58,771</u>	<u>602,229</u>
<b>NET CHANGE IN FUND BALANCES</b>	(138,309)	185,248	323,557
<b>FUND BALANCES - BEGINNING</b>	<u>154,596</u>	<u>109,885</u>	<u>(44,711)</u>
<b>FUND BALANCES - ENDING</b>	<u>\$ 16,287</u>	<u>\$ 295,133</u>	<u>\$ 278,846</u>

## SUPPLEMENTARY INFORMATION

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FOOTHILLS METROPOLITAN DISTRICT  
SCHEDULE OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCES - BUDGET AND ACTUAL  
FOR THE THREE MONTHS ENDED MARCH 31, 2022

DEBT SERVICE FUND

	Annual Budget	Year to Date Actual	Variance
<b>REVENUES</b>			
Property taxes	\$ 581,175	\$ 279,573	\$ (301,602)
Specific ownership tax	114,782	29,925	(84,857)
Public improvement fees	875,000	218,860	(656,140)
Interest income	8,684	2,410	(6,274)
FCURA - District Property Taxes	1,058,561	509,655	(548,906)
FCURA - Property Tax Increment	1,567,369	906,590	(660,779)
Sales tax increment	500,000	-	(500,000)
TOTAL REVENUES	4,705,571	1,947,013	(2,758,558)
<b>EXPENDITURES</b>			
County Treasurer's fee	11,624	5,592	6,032
Collection Fee - URA	30,389	21,244	9,145
Bond interest	4,060,613	-	4,060,613
Paying agent fees	3,500	-	3,500
Bond principal	1,520,000	-	1,520,000
Contingency	13,874	-	13,874
TOTAL EXPENDITURES	5,640,000	26,836	5,613,164
NET CHANGE IN FUND BALANCES	(934,429)	1,920,177	2,854,606
FUND BALANCES - BEGINNING	9,110,606	8,617,036	(493,570)
FUND BALANCES - ENDING	\$ 8,176,177	\$ 10,537,213	\$ 2,361,036

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FOOTHILLS METROPOLITAN DISTRICT  
 SCHEDULE OF REVENUES, EXPENDITURES AND  
 CHANGES IN FUND BALANCES - BUDGET AND ACTUAL  
 FOR THE THREE MONTHS ENDED MARCH 31, 2022

CAPITAL PROJECTS FUND

	Annual Budget	Year to Date Actual	Variance
REVENUES			
Interest income	\$ 110	\$ 48	\$ (62)
TOTAL REVENUES	<u>110</u>	<u>48</u>	<u>(62)</u>
EXPENDITURES			
Capital outlay	<u>219,303</u>	<u>113,933</u>	<u>105,370</u>
TOTAL EXPENDITURES	<u>219,303</u>	<u>113,933</u>	<u>105,370</u>
NET CHANGE IN FUND BALANCES	(219,193)	(113,885)	105,308
FUND BALANCES - BEGINNING	<u>219,193</u>	<u>219,160</u>	<u>(33)</u>
FUND BALANCES - ENDING	<u>\$ -</u>	<u>\$ 105,275</u>	<u>\$ 105,275</u>

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**FOOTHILLS METROPOLITAN DISTRICT  
2022 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Services Provided**

The District was organized on January 10, 2013, for the purpose of financing and providing public improvements and related operation and maintenance services within and outside of the boundaries of the District. The public improvements include streets, safety protection, park and recreation facilities, water, sanitation, storm sewer, transportation, fire protection, television relay and translation, security services and mosquito control. When appropriate, these improvements will be dedicated to the City of Fort Collins, Larimer County, or other such entities as appropriate for the use and benefit of the District taxpayers and service users. The District's service area is located within the City of Fort Collins, Larimer County, Colorado.

On November 6, 2012, District voters approved general obligation indebtedness of \$100,000,000 for street improvements, \$100,000,000 for parks and recreation, \$100,000,000 for water facilities, \$100,000,000 for sanitation system, \$100,000,000 for transportation, \$100,000,000 for fire protection facilities or services, \$100,000,000 for television relay and translation services, \$100,000,000 for security services, \$25,000,000 for mosquito control, \$100,000,000 for traffic and safety, \$100,000,000 for operations and maintenance, \$600,000,000 for intergovernmental contracts, \$100,000,000 for special assessment debt, \$100,000,000 for private agreements, \$100,000,000 for mortgages and \$600,000,000 for debt refunding. The election also approved an increase in ad valorem property taxes of up to \$20,000,000 annually and allows the District to collect fees of up to \$20,000,000 annually for operations and maintenance and \$100,000,000 in sales taxes not to exceed 3%.

Pursuant to the Service Plan, the District may issue bond indebtedness in an amount sufficient to produce (a) \$53,000,000 in net proceeds to fund the costs of the eligible improvements and (b) the costs of issuance of such bonds.

The District has no employees and all administrative functions are contractual.

The District prepares its budget on the modified accrual basis of accounting in accordance with the requirements of Colorado Revised Statutes C.R.S. 29-1-105 using its best estimates as of the date of the budget hearing. These estimates are based on expected conditions and its expected course of actions. The assumptions disclosed herein are those that the District believes are significant to the budget. There will usually be differences between the budget and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material.

**FCURA**

On January 17, 2014, the District entered into a Redevelopment and Reimbursement Agreement with Fort Collins Urban Renewal Authority ("FCURA"), the Developer, and the City of Fort Collins to redevelop Foothills Fashion Mall.

**FOOTHILLS METROPOLITAN DISTRICT  
2022 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Revenues**

**Property Taxes**

Property taxes are levied by the District's Board of Directors. The levy is based on assessed valuations determined by the County Assessor generally as of January 1 of each year. The levy is normally set by December 15 by certification to the County Commissioners to put the tax lien on the individual properties as of January 1 of the following year.

The County Treasurer collects the determined taxes during the ensuing calendar year. The taxes are payable by April or, if in equal installments, at the taxpayer's election, in February and June. Delinquent taxpayers are notified in August and generally sales of the tax liens on delinquent properties are held in November or December. The County Treasurer remits the taxes collected monthly to the District.

The calculation of taxes levied is displayed on the Property Tax Summary page of the budget using the adopted mill levy imposed by the District.

**Property Tax Increment Revenue**

FCURA will receive property tax revenue ("Pledged Property Tax Increment Revenue") from the Larimer County Treasurer in excess of the amount produced by the levy of those bodies that levy property taxes against the Property Tax Base Amount in the TIF District, excluding the mill levy override payments approved by the electors of Poudre School District in 2012 and subsequent years, the District operations and maintenance and debt service mill levies, FCURA administration and redevelopment fees. The remaining revenue received by FCURA, net of all costs, will be remitted to the District's Bond Trustee and pledged to the payment of the Bonds.

**Specific Ownership Taxes**

Specific ownership taxes are set by the State and collected by the County Treasurer, primarily on vehicle licensing within the County as a whole. The specific ownership taxes are allocated by the County Treasurer to all taxing entities within the County. The budget assumes that the District's share will be equal to approximately 7% of the property taxes calculated from the gross assessed valuation.

**Net Investment Income**

Interest earned on the District's available funds has been estimated based on an average fund balance at an interest rate of approximately .10%.

**FOOTHILLS METROPOLITAN DISTRICT  
2022 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Revenues - (continued)**

**Sales Tax Increment Revenue**

A major source of revenue or cash receipts will be incremental sales tax revenue. The Redevelopment Agreement provides that sales taxes collected by the City within the TIF District in excess of a sales tax base amount are payable to FCURA. Pursuant to the Redevelopment Agreement, FCURA has covenanted to deposit such incremental City sales taxes with the Trustee for payment on the Bonds. The City currently imposes a 2.25% sales tax. Retail sales are calculated on assumed sales per square foot of commercial space at a value that varies based on the type of commercial use. A lease-up percentage and a collection factor are also applied to the estimated sales.

**Public Improvement Fees**

The District charges public improvement fees (PIF). The nature of the PIF is that of a fee imposed under private contract and not through the exercise of any governmental taxing authority. The PIF is applied to the sale of goods at a rate of 1%, in addition to all sales and use taxes that may be imposed and is collected by the retailers in the District and remitted to the District within 20 days after month end.

**Expenditures**

**Administrative Expenditures**

Administrative expenditures include the services necessary to maintain the administrative viability such as legal, accounting, insurance, and other administrative expenses of the District.

**County Treasurer's Fees**

County Treasurer's fees have been computed at 2% of property tax collections.

**Operations and Maintenance**

The district anticipates expenditures associated with the operation and maintenance of certain streets, landscaping and irrigation. The estimated cost of operations and maintenance of these areas are included in the general fund on page 3 of the budget.

**Debt Service**

Principal and interest payments in 2022 are provided based on the debt amortization schedule from the Series 2014 Bonds (discussed under Debt and Leases).

**FOOTHILLS METROPOLITAN DISTRICT  
2022 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

**Debt and Leases**

On October 9, 2014, the District issued \$72,950,000 in Series 2014 Special Revenue Bonds for street park and recreation, water and sanitation improvements. Bond proceeds were also transferred by the bond resolution from the Capital Projects Fund to the Debt Service Fund to pay the bond interest for the subsequent construction period and to establish a reserve account. The interest rate ranges from 5.35 to 6.00%. Interest is payable semiannually on June 1 and December 1 and principal is payable annually on December 1. The bonds mature on December 1, 2038, and are term bonds subject to redemption, prior to maturity, at the option of the District, on December 1, 2024, upon payment of par and accrued interest, without redemption premium. The bonds maturing on December 1, 2024, are subject to mandatory sinking fund redemption. The Series 2014 Bonds were issued for the purpose of financing public improvements.

The Bonds are secured by and payable from the Pledged Revenue consisting of monies derived by the District from the following sources, net of any collection costs: 1) the Required Mill Levy, 2) the portion of the Specific Ownership tax which is collected as a result of the imposition of the Required Mill Levy, 3) Property Tax Increment revenues, 4) Add-On PIF revenues, 5) sales Tax Increment revenues and 6) any other legally available monies which the District determines to be treated as Pledged Revenue.

The District has no operating or capital leases.

**Developer Advances**

The District has entered into Reimbursement and Acquisition Agreements with the Developer as follows:

**Reimbursement and Infrastructure Acquisition Agreement**

On April 26, 2013, the District has entered into a Reimbursement and Infrastructure Acquisition Agreement with Walton Foothills Holdings VI, LLC (Developer) pursuant to which the District agrees to reimburse the Developer for advances made to or on behalf of the District plus interest of 8% annually for costs related to the construction of public improvements subject to limitations set forth in the Service Plan. This agreement was amended on May 28, 2014. As of December 31, 2020, outstanding advances under the agreement totaled \$630,401 and accrued interest totaled \$371,763.

**FOOTHILLS METROPOLITAN DISTRICT  
2022 BUDGET  
SUMMARY OF SIGNIFICANT ASSUMPTIONS**

	Balance at December 31, 2020	Additions	Reductions	Balance at December 31, 2021
Developer Advance	\$ 630,401	\$ -	\$ -	\$ 630,401
Developer Advance - Interest	371,763	80,173	-	451,936
Total	<u>\$ 1,002,164</u>	<u>\$ 80,173</u>	<u>\$ -</u>	<u>\$ 1,082,337</u>

	Balance at December 31, 2021	Additions	Reductions	Balance at December 31, 2022
Developer Advance	\$ 630,401	\$ -	\$ -	\$ 630,401
Developer Advance - Interest	451,936	86,587	-	538,523
Total	<u>\$ 1,082,337</u>	<u>\$ 86,587</u>	<u>\$ -</u>	<u>\$ 1,168,924</u>

**Reserve Funds**

**Emergency Reserve**

The District has provided for an Emergency Reserve equal to at least 3% of the fiscal year spending for 2022, as defined under TABOR.

**Debt Service Reserves**

The District maintains a Debt Service Reserve of \$7,295,000 as required with the issuance of the Series 2014 Bonds.

**FOOTHILLS METROPOLITAN DISTRICT  
SCHEDULE OF DEBT SERVICE REQUIREMENTS TO MATURITY**

**\$72,950,000 Special Revenue Bonds**

**Dated October 9, 2014**

**Principal Due Annually December 1**

**Interest from 5.25 to 6.00%, Due June and December 1**

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2022	\$ 1,520,000	\$ 4,060,613	\$ 5,580,613
2023	1,690,000	3,980,812	5,670,812
2024	1,915,000	3,892,088	5,807,088
2025	2,110,000	3,791,550	5,901,550
2026	2,365,000	3,670,225	6,035,225
2027	2,600,000	3,534,237	6,134,237
2028	2,895,000	3,384,738	6,279,738
2029	3,160,000	3,218,275	6,378,275
2030	3,490,000	3,036,575	6,526,575
2031	3,800,000	2,835,900	6,635,900
2032	4,180,000	2,607,900	6,787,900
2033	4,540,000	2,357,100	6,897,100
2034	4,970,000	2,084,700	7,054,700
2035	5,385,000	1,786,500	7,171,500
2036	5,870,000	1,463,400	7,333,400
2037	6,340,000	1,111,200	7,451,200
2038	12,180,000	730,800	12,910,800
<b>Total</b>	<b>\$ 69,010,000</b>	<b>\$ 47,546,613</b>	<b>\$ 116,556,613</b>



**Foothills Metropolitan District**  
**Schedule of Cash Position**  
**March 31, 2022**  
**Updated as of May 23, 2022**

	<u>General Fund</u>	<u>Debt Service Fund</u>	<u>Capital Projects Fund</u>	<u>Total</u>
<b><u>1st Bank - Checking</u></b>				
Balance as of 03/31/22	\$ 6,848.11	\$ 138,681.00	\$ -	\$ 145,529.11
Subsequent activity:				
4/21/2022	20,000.00	-	-	20,000.00
4/22/2022	-	(138,681.00)	-	(138,681.00)
4/27/2022	-	-	7,245.00	7,245.00
4/27/2022	-	-	63,010.33	63,010.33
4/29/2022	(14,351.82)	-	(70,255.33)	(84,607.15)
5/19/2022	-	523,072.00	-	523,072.00
	(12,477.15)	-	-	(12,477.15)
	10,000.00	-	-	10,000.00
	-	(523,072.00)	-	(523,072.00)
<i>Anticipated balance</i>	<u>10,019.14</u>	<u>-</u>	<u>-</u>	<u>10,019.14</u>
<b><u>CSAFE</u></b>				
Balance as of 03/31/22	\$ 149,396.62	\$ 466,582.32	\$ -	\$ 615,978.94
Subsequent activity:				
4/1/2022	-	28,517.35	-	28,517.35
4/11/2022	4,722.32	15,855.35	-	20,577.67
4/11/2022	-	8,706.68	-	8,706.68
4/20/2022	-	5,442.75	-	5,442.75
4/21/2022	(20,000.00)	-	-	(20,000.00)
4/22/2022	-	(525,104.45)	-	(525,104.45)
4/26/2022	-	30,106.75	-	30,106.75
4/30/2022	41.75	130.38	-	172.13
5/2/2022	-	52,359.38	-	52,359.38
5/10/2022	11,527.67	38,704.50	-	50,232.17
5/16/2022	-	2,513.37	-	2,513.37
5/19/2022	-	5,490.54	-	5,490.54
5/20/2022	-	5,638.58	-	5,638.58
	(10,000.00)	-	-	(10,000.00)
	-	(134,943.50)	-	(134,943.50)
<i>Anticipated balance</i>	<u>135,688.36</u>	<u>-</u>	<u>-</u>	<u>135,688.36</u>
<b><u>UMB - Bond Fund - 142301.1</u></b>				
Balance as of 03/31/22	\$ -	\$ 239.22	\$ -	\$ 239.22
Subsequent activity:				
4/20/2022	-	3,417.02	-	3,417.02
4/30/2022	-	0.42	-	0.42
	-	(2,030,306.25)	-	(2,030,306.25)
	-	523,072.00	-	523,072.00
	-	134,943.50	-	134,943.50
	-	1,009,859.44	-	1,009,859.44
	-	358,774.65	-	358,774.65
<i>Anticipated balance</i>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b><u>UMB - Reserve Fund - 142301.2</u></b>				
Balance as of 03/31/22	\$ -	\$ 7,296,915.53	\$ -	\$ 7,296,915.53
Subsequent activity:				
4/20/2022	-	(3,417.02)	-	(3,417.02)
4/30/2022	-	2,430.12	-	2,430.12
<i>Anticipated balance</i>	<u>-</u>	<u>7,295,928.63</u>	<u>-</u>	<u>7,295,928.63</u>
<b><u>UMB - Surplus Fund - 142301.3</u></b>				
Balance as of 03/31/22	\$ -	\$ 833,245.68	\$ -	\$ 833,245.68
Subsequent activity:				
4/30/2022	-	277.54	-	277.54
	-	(358,774.65)	-	(358,774.65)
<i>Anticipated balance</i>	<u>-</u>	<u>474,748.57</u>	<u>-</u>	<u>474,748.57</u>
<b><u>UMB - Revenue Fund - 142301.4</u></b>				
Balance as of 03/31/22	\$ -	\$ 345,903.88	\$ -	\$ 345,903.88
Subsequent activity:				
4/22/2022	-	138,681.00	-	138,681.00
4/22/2022	-	525,104.45	-	525,104.45
4/30/2022	-	170.11	-	170.11
	-	(1,009,859.44)	-	(1,009,859.44)
<i>Anticipated balance</i>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>

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**UMB - Unrestricted Project Fund - 142301.5**

Balance as of 03/31/22	\$	-	\$	-	\$	99,123.89	\$	99,123.89
Subsequent activity:								
4/1/2022						11.82		11.82
4/27/2022						(7,133.96)		(7,133.96)
4/30/2022						32.81		32.81
			<i>Anticipated balance</i>			<u>92,034.56</u>		<u>92,034.56</u>

**UMB - Unrestricted Priority Project Fund - 142301.6**

Balance as of 03/31/22	\$	-	\$	-	\$	63,121.37	\$	63,121.37
Subsequent activity:								
4/1/2022						(11.82)		(11.82)
4/27/2022						(7,245.00)		(7,245.00)
4/27/2022						(55,876.37)		(55,876.37)
4/30/2022						19.25		19.25
			<i>Anticipated balance</i>			<u>7.43</u>		<u>7.43</u>

**Total Anticipated Balance**

	\$	<u>145,707.50</u>	\$	<u>7,770,677.20</u>	\$	<u>92,041.99</u>	\$	<u>8,008,426.69</u>
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Foothills Metro District  
Property Taxes Reconciliation  
2022

	Current Year										Prior Year				
	Property Taxes	Delinquent Taxes, Rebates and Abatements	Specific Ownership Taxes	Interest	Interest Owed to County	Treasurer's Fees	Treasurer's Fees Returned	Due To County	Net Amount Received	% of Total Property Taxes Received		Total Cash Received	% of Total Property Taxes Received		
										Monthly	Y-T-D		Monthly	Y-T-D	
Beg Balance															
January	\$ 2,727.67	\$ (1,762.26)	\$ 13,118.40	\$ -	\$ -	\$ -	\$ (19.31)	\$ -	\$ 14,064.50	0.13%	0.13%	-	0.03%	0.03%	
February	354,993.95	-	11,888.63	-	-	-	(7,099.89)	-	359,782.69	47.06%	47.19%	60,652.66	13.46%	13.49%	
March	6,880.73	-	13,831.06	3.56	-	-	(137.68)	-	20,577.67	0.91%	48.10%	395,552.89	35.43%	48.92%	
April	-	-	-	-	-	-	-	-	-	0.00%	48.10%	44,473.80	2.62%	51.54%	
May	-	-	-	-	-	-	-	-	-	0.00%	48.10%	142,881.89	11.89%	63.42%	
June	-	-	-	-	-	-	-	-	-	0.00%	48.10%	376,461.98	34.28%	97.70%	
July	-	-	-	-	-	-	-	-	-	0.00%	48.10%	24,033.45	0.28%	97.98%	
August	-	-	-	-	-	-	-	-	-	0.00%	48.10%	20,811.03	0.00%	97.98%	
September	-	-	-	-	-	-	-	-	-	0.00%	48.10%	19,807.14	0.00%	97.98%	
October	-	-	-	-	-	-	-	-	-	0.00%	48.10%	22,396.62	0.00%	97.98%	
November	-	-	-	-	-	-	-	-	-	0.00%	48.10%	18,175.94	0.00%	97.98%	
December	-	-	-	-	-	-	-	-	-	0.00%	48.10%	15,169.63	0.00%	97.98%	
	\$ 364,602.35	\$ (1,762.26)	\$ 38,838.09	\$ 3.56	\$ -	\$ -	\$ (7,256.88)	\$ -	\$ 394,424.86	48.10%	48.10%	\$ 1,140,417.03	97.98%	97.98%	

	Taxes Levied	% of Levied	Property Taxes Collected	% Collected to Amount Levied
<b>Property Tax</b>				
General Fund	\$ 173,096.00	22.95%	\$ 83,267.38	48.10%
Debt Service Fund	581,175.00	77.05%	279,572.71	48.10%
	<u>\$ 754,271.00</u>	<u>100.00%</u>	<u>\$ 362,840.09</u>	<u>48.10%</u>
<b>Specific Ownership</b>				
General Fund	\$ 34,186.00	22.95%	\$ 8,912.87	26.07%
Debt Service Fund	114,782.00	77.05%	29,925.22	26.07%
	<u>\$ 148,968.00</u>	<u>100.00%</u>	<u>\$ 38,838.09</u>	<u>26.07%</u>
<b>Treasurer's Fees</b>				
General Fund	\$ 3,462.00	22.95%	\$ 1,665.37	48.10%
Debt Service Fund	11,624.00	77.05%	5,591.51	48.10%
	<u>\$ 15,086.00</u>	<u>100.00%</u>	<u>\$ 7,256.88</u>	<u>48.10%</u>

No assurance is provided on these financial statements. Substantially all required disclosures, the government-wide financial statements, and the statement of revenues, expenditures and changes in fund balances – governmental funds have been omitted.

**Foothills Metro District  
FCURA Sales and Property Tax TIF  
2022**

	<b>FCURA Property Taxes</b>	<b>FCURA Property Tax Increment</b>	<b>URA Fee</b>	<b>Sales tax Increment</b>	<b>Net Amount Received</b>
Beg Balance					
January	\$ 1,762.26	\$ 2,411.76	\$ (62.61)	\$ -	\$ 4,111.41
February	647,127.82	886,973.57	(23,011.58)	-	1,511,089.81
March	12,560.13	17,204.71	(446.47)	-	29,318.37
April	-	-	-	-	-
May	-	-	-	-	-
June	-	-	-	-	-
July	-	-	-	-	-
August	-	-	-	-	-
September	-	-	-	-	-
October	-	-	-	-	-
November	-	-	-	-	-
December	-	-	-	-	-
	<b>\$ 661,450.21</b>	<b>\$ 906,590.04</b>	<b>\$ (23,520.66)</b>	<b>\$ -</b>	<b>\$ 1,544,519.59</b>

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Foothills Metropolitan District  
PIF Revenue  
As of 03/31/22

<b>Summary of 2022 PIF Revenues</b>					
<b>1/1/22-12/31/22 Sales</b>					
<u>Month of Sale</u>	<u>Total Revenue - 2022</u>		<u>Total Revenue - 2021</u>		<u>% Change</u>
January	\$	63,979.88	\$	61,970.50	3.24%
February		66,351.34		60,302.95	10.03%
March		88,528.39		83,974.87	5.42%
April				79,893.93	
May				85,370.83	
June				90,027.12	
July				86,249.20	
August				94,331.83	
September				53,270.47	
October				83,736.20	
November				75,934.03	
December				116,335.13	
	<u>\$</u>	<u>218,859.61</u>	<u>\$</u>	<u>971,397.06</u>	
<b>Budget 2022</b>	<b>\$</b>	<b>875,000.00</b>			

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