

**FOOTHILLS METROPOLITAN DISTRICT**

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

**NOTICE OF SPECIAL MEETING AND AGENDA**

**DATE:** October 9, 2023  
**TIME:** 12:00 p.m.  
**LOCATION:** Microsoft Teams

1. Online Microsoft Teams Meeting – via link below

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_YWQxMjBhMzYtYjQxNy00NGVhLWJiYzMtMGU1MWJiNTQxMmMy%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_YWQxMjBhMzYtYjQxNy00NGVhLWJiYzMtMGU1MWJiNTQxMmMy%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:**

To attend via telephone, dial 720-547-5281 and enter the following additional information: Conference ID: 404 585 053#

<u>Board of Directors</u>	<u>Office</u>	<u>Term Expires</u>
Rishi Loona	President	May 2027
Josh Kane	Treasurer	May 2025
Dan Doherty	Vice President/Secretary	May 2025
Patrick Bunyard	Assistant Secretary	May 2027
Tim DePeder	Assistant Secretary	May 2027

**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.

**II. CONSENT AGENDA**

- A. Review and Approve Minutes of the September 22, 2023 Regular Meeting (enclosure).

**III. MANAGER MATTERS**

- A. Review Russell + Mills Memorandum of Contract Adjustment and Consider Approval on Second Amendment to Services Agreement with Russell + Mills Studios (enclosure)
- B. Review and Consider Approval of Kimley Horn Letter Agreement for Providing Dry Utility Consulting Services for Foothills Mall Redevelopment (enclosure).
- C. Review and Consider Approval of First Amendment to Farnsworth Group Change Order No. 2 (enclosure).
- D. Review and Consider Approval of Environment Designs, LLC Winter Floral Agreement (enclosure).
- E. Update on Proposals for Financial Advisor.

**IV. LEGAL MATTERS****V. DIRECTOR MATTERS****VI. OTHER BUSINESS**

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

**VII. ADJOURNMENT**

**The next regular scheduled meeting Town Hall Meeting, December 6, 2023 at 2:00 p.m.  
and the (Budget Hearing) at 2:30 p.m.**

## RECORD OF PROCEEDINGS

### MINUTES OF SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE FOOTHILLS METROPOLITAN DISTRICT (THE "DISTRICT") HELD SEPTEMBER 22, 2023

A special meeting of the Board of Directors of the Foothills Metropolitan District (referred to hereafter as the "Board") was convened on Friday, September 22, 2023 at 9:00 a.m. This District Board meeting was held via Microsoft Teams. The meeting was open to the public.

#### ATTENDANCE

**Directors in Attendance Were:**

Rishi Loona, President  
Josh Kane, Treasurer  
Dan Doherty, Vice President/Secretary  
Tim DePeder, Assistant Secretary

Director Patrick Bunyard was absent and excused.

**Also in Attendance Were:**

Denise Denslow, Curtis Bourgouin & Sandy Brandenburger;  
CliftonLarsonAllen LLP ("CLA")  
Alan Pogue; Icenogle Seaver Pogue, P.C.

#### ADMINISTRATIVE MATTERS

**Call to Order:** Ms. Denslow called the meeting to order at 9:04 a.m.

**Disclosures of Potential Conflicts of Interest:** Mr. Pogue noted that disclosures had been filed.

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

**Public Comment:** None.

#### CONSENT AGENDA

**Minutes of June 7, 2023 Regular Meeting:** Upon a motion duly made by Director Kane, seconded by Director DePeder and, upon vote, unanimously carried, the Board approved the June 7, 2023 Regular Meeting Minutes.

#### LEGAL MATTERS

**Ratify June 19, 2023 Ground Engineering Service Agreement Regarding Foothills Mall Redevelopment 2023 Improvements:** Upon a motion duly made by Director Kane, seconded by Director DePeder and, upon vote, unanimously carried, the Board ratified the June 19, 2023 Ground Engineering Service Agreement Regarding Foothills Mall Redevelopment 2023 Improvements as presented.

## RECORD OF PROCEEDINGS

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**Ratify First Amendment to Services Agreement with Russell + Mills**

**Studios:** Director Kane questioned the amount of money being spent and requested due to amount, to stop all work.

**Review and Consider Proposals for Financial Advisor and Underwriter**

**Services:** Ms. Denslow reviewed the proposals with the Board.

D.A. Davidson  
Piper Sandler  
Stifel  
Wells Fargo

Following discussion, Director DePeder would like to reach out to Jonathan and Key for MA work. Director Kane is not sold on doing MA and stated this maybe needed for reassessment later.

Upon a motion duly made by Director Loona, seconded by Director Kane and, upon vote, unanimously carried, the Board approved Wells Fargo as underwriter as the lowest proposal submitted. The Board will reach out to others for MA work.

**DIRECTOR  
MATTERS**

None.

**OTHER  
BUSINESS**

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

**ADJOURNMENT**

There being no further business to come before the Board, the meeting was adjourned at 9:38 am.

**SECOND AMENDMENT  
TO SERVICES AGREEMENT**

THIS FIRST AMENDMENT TO SERVICES AGREEMENT (“First Amendment”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023, by and between **FOOTHILLS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **RUSSELL + MILLS STUDIOS** (“Contractor”), collectively, the “Parties.”

**RECITALS**

WHEREAS, the District and Contractor entered into that certain Services Agreement, dated April 24, 2023 (the “Agreement”); and

WHEREAS, pursuant to Section 15 of the Agreement, the Parties may amend the Agreement by executing a written amendment; and

WHEREAS, the Parties desire to amend the Agreement to add additional services and increase the compensation for such services by executing this Second Amendment.

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:

**TERMS**

1. Scope of Additional Services. Exhibit A attached to this Second Amendment and incorporated by this reference shall be added to the Agreement, Exhibit A – Scope of Services and Payment for Services.
2. Compensation. The first sentence of Section 3 – Compensation shall be amended and replaced in its entirety with the following:  
Contractor shall be paid an amount not to exceed Eight Hundred Twenty-Seven Thousand Seven Hundred Twenty-One Dollars (\$827,721.00), 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.
3. Counterparts. This First Amendment 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.
4. Full Force and Effect. Except as expressly modified by this First Amendment, all other provisions of the Agreement shall remain in full force and effect

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

**FOOTHILLS METROPOLITAN DISTRICT**

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By: Rishi Loona  
Its: Board President

**RUSSELL + MILLS STUDIOS**

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By: Paul Mills  
Its: Principal

**EXHIBIT A**  
**Additional Services**



## Memorandum

September 11, 2023

Mike Tonniges  
Vice President of Field Operations  
McWhinney  
via email

### **Re: Foothills Redevelopment Project: Contract adjustment, moving MXDFC scope and fees to Foothill Metro District**

Dear Mike,

Recently a decision was made to move all public realm site work to be wholly included into the purview the Foothills Metro District. As a result of this change all related design scope for Russell + Mills and sub-consultants that is part of the MXDFC Contract will move to the Foothills Metro District scope and fees in their entirety.

This memo highlights these adjustment that will need to be made to the contracts to align with the new scope. As directed the concept/schematic design phase will completed as contracted and the revised contract will start at the Design Development /PDP phase onward.

The summary of the current breakdown between contract is below and the new Foothills Metro District Total fees will be needed to be adjusted to. In effect all our remaining scope will be under one contract with Foothills Metro District that will cover all site design and development, land planning and entitlements and site lighting for the public realm for the project.

#### **Adjustment to Contracts**

Please see spreadsheet on following pages for breakdown of changes of Russell + Mills Studios Fees.

#### **MXDFC Contract Changes**

Attached is the adjustment to the MXDFC Contract. In summary contract retains Phase 1 and fees, and removed remaining scope.

#### **Foothills Metro District Contract Changes**

Attached is the adjustment required for the Foothills Metro District Contract. In summary it retains Phase 1 fees and adds he MXDFC scope and fee to the remaining of the project. This updated contract also lists and includes Mazzetti's scope into one scope and combined fees, with sub management fees to Russell+Mills Studios shown and included.

Kind regards,

Paul Mills, RLA  
Principal





Design Phase	Current Scope and Fee Breakdown		New FMD Totals
	Foothills Metro District (FMD)	MXDFC	
	Fees	Fees	Fees
1. Concept Design / Schematic Design This phase will be completed as is.	\$ 47,831	\$ 71,748	\$ 47,831
2. Design Development / PDP	\$ 80,920	\$ 121,380	\$ 202,300
3. Construction Documents / FDP	\$ 110,432	\$ 165,648	\$ 276,080
4. Construction Administration	TBD	TBD	TBD
SUBS- Mazzetti fees	\$ 109,630	\$ 164,470	\$ 274,100
Management fees	\$ 10,963	\$ 16,447	\$ 27,410
<b>TOTAL</b>	<b>\$ 359,776</b>	<b>\$ 539,693</b>	<b>\$ 827,721</b>

Remains unchanged

Updated merged FMD scope starts at Phase 2 DD/PDP through to completions

New fees for phase 2 and 3 under one FMD contract

**Spreadsheet showing a summary of fee changes per contract with new adjustments - Russell + Mills Studios only**

## DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Kimley-Horn and Associates, Inc. (“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 certain professional services to serve the administrative needs of the District; and

WHEREAS, Contractor has experience and resources to provide 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 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. Scope of Services. Contractor shall perform such services for the District as outlined in the Scope of Services attached hereto as **Exhibit A** and incorporated herein by reference (“Services”). Contractor shall, at its own expense, 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; furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services; and take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Paragraph 3 of this Agreement.

2. Compensation. The District hereby agrees to pay to Contractor the amounts required for the completed Services at the unit prices set forth in Contractor’s proposal/quote

attached hereto as Exhibit A. It is specifically understood and agreed that **Contractor's quotation dated** September 18, 2023, and attached hereto as Exhibit A, with the Scope of Services to be performed hereunder, are each and all included in and made a part of this Agreement.

a. Invoices. Invoicing shall be done on a monthly basis reflecting completed and accepted work done on a progress of completion basis. Invoices shall be submitted to the District by the 5th of the month for work completed in the preceding month. The invoices will be reviewed for accuracy and processed for payment.

b. Inspection of Services. The District reserves the right to inspect all services completed and invoiced for payment to ensure services have been provided in accordance with this Agreement. In the event inspected services are not accepted for payment by the District, the District shall notify Contractor in writing that Contractor is in default and has two (2) days to cure said default. The District shall be entitled to pursue all remedies provided by law and in equity if Contractor fails to cure the default.

3. 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 Paragraph 3.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

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). 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.

4. Term. The term of this Agreement shall commence on October 9, 2023 and shall terminate by December 31, 2023. Funding for this Agreement shall be subject to annual appropriations by the District as provided in Paragraph 8 herein.

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. 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. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Contractor shall be entitled to receive compensation in accordance with Paragraph 2 of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement through the effective date of termination. Upon termination and payment of all amounts owed to Contractor, Contractor shall deliver to the District all work product, as described in Paragraph 7 hereof.

6. Notice. 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 c/o <u>CliftonLarsonAllen</u> Attention: Denise Denslow 8990 East Crescent Parkway, Suite 300 Greenwood Village, CO 80111
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Email: [denise.denslow@CLAconnect.com](mailto:denise.denslow@CLAconnect.com)

If to Contractor:

Kimley-Horn and Associates, Inc  
 Attn: Kory Andryscik, Vice President  
 300 Interlocken Crescent, Ste 100  
 Broomfield, CO 80021  
 Email: [Kory.Andryscik@kimley-horn.com](mailto:Kory.Andryscik@kimley-horn.com)

7. Instruments of Service. For purposes of this Agreement, Instruments of Service includes the following: any and all finished or unfinished design, development and/or construction documents, if any, 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 created, prepared and/or produced in connection with this Agreement. Contractor owns the Instruments of Service, including all associated copyrights and the right of reuse at the discretion of the Contractor. Contractor shall continue to own the Instruments of Service and all associated rights whether or not the Services are completed. The District may make and retain copies of Instruments of Service for information and reference in connection with the use of the Instruments of Service on the Services. Contractor grants the District a limited license to use the Instruments of Service on the Services, extensions of the Services, and for related uses of the District, subject to receipt by Contractor of full payment due and owing for all Services, and subject to the following limitations: (a) the District acknowledges that such Instruments of Service are not intended or represented to be suitable for use on the Services unless completed by the Contractor, or for use or reuse by the District or others on extensions of the Services, on any other project, or for any other use or purpose, without written verification or adaptation by the Contractor; (b) any such use or reuse, or any modification of the Instruments of Service, without written verification, completion, or adaptation by the Contractor, as appropriate for the specific purpose intended, will be at the District's sole risk and without liability or legal exposure to the Contractor or to its officers, directors, members, partners, agents, employees, and subconsultants; and (c) such limited license to the District shall not create any rights in third parties.

8. 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 are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year.

9. Independent Contractor. Contractor is and shall be considered an independent contractor pursuant to this Agreement. Nothing herein contained shall constitute or designate Contractor or any of its employees or agents as employees or agents of the District, nor shall Contractor be deemed or considered to be a partner of the District. Contractor shall have full power and authority to select the means, manner, and method of performing its duties pursuant to this Agreement without detailed control or direction of the District except as set forth in this Agreement. It shall be Contractor's responsibility as an independent contractor to pay any and all taxes on payments which it receives pursuant to this Agreement and to pay its own costs and expenses incurred in connection with performance of this Agreement.

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. The obligations of the indemnifications extended by Contractor to the District under this Paragraph 10 shall survive termination or expiration of this Agreement.

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 Board of 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. 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.

13. Assignment. No portion of the Agreement shall be sublet, assigned or otherwise disposed of by Contractor except with the written consent of the District, and such consent when given shall not be construed to relieve Contractor of any responsibility for the fulfillment of this Agreement. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement.

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

15. 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.

16. 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.

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

18. 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.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.)

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

**DISTRICT:**

**FOOTHILLS METROPOLITAN DISTRICT**

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

**CONTRACTOR:**

**KIMLEY-HORN AND ASSOCIATES, INC**

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



**EXHIBIT A**

**SCOPE OF SERVICE AND CONTRACTOR'S QUOTE**



September 18, 2023

Foothills Metropolitan District  
8390 E Crescent Parkway  
Suite 300  
Greenwood Village, CO 80111

Re: Foothills Mall Redevelopment Professional Services Agreement

Dear Mike:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to McWhinney ("Client") for providing dry utility consulting services for Foothills Mall Redevelopment.

## **PROJECT UNDERSTANDING**

The developer intends to redevelop the existing Foothills Mall in Ft Collins, CO (the "City") and will be situated on approximately 60 acres. The site is bounded by S College Ave on the west, E Foothills Pkwy to the north, Stanford Rd to the east, and E Monroe Dr to the south. The development consists of approximately 930 residential units and 800,000sf of commercial space.

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of Kimley-Horn, the Client, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. Kimley-Horn will exercise reasonable efforts to overcome the challenges presented by current circumstances, but Kimley-Horn will not be liable to Client for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

## **SCOPE OF SERVICES**

### **Task 1 – Dry Utility Design & Coordination (Site Infrastructure)**

Kimley-Horn will provide the services specifically set forth below.

- Lead the coordination of franchise dry utilities including utility natural gas, electrical power, and telecommunications.
- Submit applications to Xcel Energy and Ft Collins Utilities for removal of existing natural gas and electrical service to 9 buildings. Coordinate with Comcast and CenturyLink on service removals.
- Submit applications to Xcel Energy and Ft Collins Utilities for relocation of natural gas and electrical services that are currently fed from infrastructure that is shown to be removed. Coordinate with Comcast and CenturyLink on service relocations.
- Submit applications to Xcel Energy and Ft Collins Utilities for removal of existing natural gas main and electrical feeder/primary distribution within project boundary. Coordinate with Comcast and CenturyLink on mainline relocation to match electrical and natural gas.

- Provide Engineer's Opinion of Probable Cost for demo, relocations and redistribution of facilities. Track costs as designs from Service Providers are provided.
- Provide cursory review of existing conditions and capacity studies. Estimated loads to be provided by MEP Engineers.
- Assist design team with coordinating joint trench routing and equipment (transformer and pedestal) locations to maintain clearances from wet utilities, structures, and landscaping. Facilities and routing to be shown by others.
- Prepare dry utility coordination plan indicating routing of underground natural gas, electric, and telecommunication lines, transformers, service pedestals, or other dry utility required equipment.
- Review the designs and cost estimates provided by Services Providers.
- Schedule pre-construction meeting with Service Providers and their contractors prior to construction start.

#### **OPINION OF PROBABLE COST DISCLAIMER**

Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

#### **Task 2 – Dry Utility Service Coordination Supporting Vertical Development**

Kimley-Horn will provide the services specifically set forth below. Coordination of services shall align with installation of backbone infrastructure.

- Submit applications to Xcel Energy and Ft Collins Utilities for gas and electric service to each residential, retail, or commercial building. Natural gas and electric loads to be provided by MEP Engineers.
- Assist design team with coordinating joint trench routing and equipment (transformer and pedestal) locations to maintain clearances from wet utilities, structures, and landscaping. Facilities and routing to be shown by others.
- Review the designs and cost estimates provided by Services Providers.
- Schedule pre-construction meeting with Service Providers and their contractors prior to construction start.
- Assist General Contractor in coordinating electric and gas meter sets with Fort Collins Utilities and Xcel Energy.

#### **Task 3 – Project Meetings**

Kimley-Horn will participate in project meetings with the Client and Project Team, attend meetings with

jurisdictional staff, and provide other coordination to support the Project. This task is intended to capture the effort for these meetings, conference calls, and design coordination for this Project. Meetings, whether in person or via telephone will include preparation and travel time. Coordination with the Client, Project Team, City, or other agencies will be invoiced as a part of this task.

Since the scope of this task cannot be fully defined at this time, these services will be provided on an hourly basis. The estimated fee is based upon 40 hours of effort and will be billed on an hourly basis. A fee estimate has been provided for budgeting purposes only. Additional time beyond this estimate will be provided as needed based at our then current hourly rates. The estimate provided in the fee section of this Agreement is based on an estimated blended hourly rate which may vary based on the professionals billing to this task.

#### **Task 4 – Construction Phase Services**

Kimley-Horn will provide limited construction phase services to Client for this project. The scope of this task includes answering questions and providing clarification of provided documents during the construction period. Periodic site visits can be arranged at appropriate times to review progress.

Kimley-Horn will not direct the work of the Contractor, guarantee the performance of the contracts, nor accept responsibility for the Contractor's means, methods, and safety at the site Kimley-Horn will not be responsible for acts or omissions of the Contractor or any of its subcontractors, suppliers, or vendors. Contractor is responsible for providing notes of all field changes. This task does not include daily or regular site observations for utility installation or other construction progress. Daily or regular observations of construction activities, if required, are to be provided by third party inspector.

Since the scope of this task cannot be fully defined at this time, these services will be provided on an hourly basis. The estimated fee is based upon 20 hours of effort and will be billed on an hourly basis. A fee estimate has been provided for budgeting purposes only. Additional time beyond this estimate will be provided as needed based at our then current hourly rates. The estimate provided in the fee section of this Agreement is based on an estimated blended hourly rate which may vary based on the professionals billing to this task.

## **SERVICES NOT INCLUDED**

Any other services, including but not limited to the following, are not included in this Agreement:

- Design coordination with Franchise Utilities other than what is listed above.
- Surveying and legal preparation of easements and right-of-way will be by others.
- Commissioning of any dry utility systems.
- Design, specification, and documentation of cable infrastructure and/or equipment such as transformers, distribution panels, nodes, amplifiers, repeaters, etc.
- Design, specification, coordination and documentation of any other utilities systems such as wet utilities, etc.
- Stamped, signed, and sealed documents for Dry Utilities Coordination by a licensed Professional Engineer (PE).

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates.

## INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

## SCHEDULE

We will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

## FEE AND EXPENSES

Kimley-Horn will perform the services described in Tasks 1 - 4 for the following fee:

Task	Description	Fee	Type
Task 1	Dry Utility Design & Coordination	\$25,650	LS
Task 2	Building Dry Utility Service Coordination	\$1,500	EA
Task 3	Project Meetings	\$7,572.80	HR
Task 4	Construction Phase Services	\$4,400	HR

Lump Sum Fee - Services indicated by a "LS" will be provided for the identified Lump Sum Fee. Fee per Each Building – Services indicated by a "EA" will be provided as a Lump Sum Fee. The total Lump Sum fee is to be multiplied by the number of buildings being designed.

Hourly Fee - Services indicated by "HR" will be provided on an hourly basis and the fee amounts provided are strictly estimates for these tasks. The estimates noted above do not cap the amount that will be billed. Labor fee will be billed based on actual hours spent according our Standard Hourly Rate Schedule, which is subject to periodic adjustment. An amount equal to 4% of the hourly labor effort will be added to each invoice to cover certain other expenses such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing.

Direct Reimbursable Expenses - For all tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client.



Fees and expenses will be invoiced monthly based, as applicable, upon the percentage of services completed or actual services performed, and expenses incurred as of the invoice date. Payment will be due and payable within 25 days of your receipt of the invoice.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, will submit invoices electronically via email in an Adobe PDF format to Mike Tonniges, [Mike.Tonniges@mcwhinney.com](mailto:Mike.Tonniges@mcwhinney.com). Additional recipients of invoices can be added upon request.

{Remainder of page intentionally left blank}



**CLOSURE**

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to Foothills Metropolitan District.

The parties agree to enter into a mutually agreeable contractual arrangement following award of the Project. We will commence services, as defined within the Fee and Expenses, only after we have received a fully-executed agreement. Fees stated in this Proposal are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact me at 720-642-8650 if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

By: Justin Knowles  
Project Manager

By: Kory Andryscik,  
Vice President

Foothills Metropolitan District

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

Client's Federal Tax ID: \_\_\_\_\_

Client's Business License No.: \_\_\_\_\_

Client's Street Address: \_\_\_\_\_

\_\_\_\_\_

Attachment – Standard Provisions

**KIMLEY-HORN AND ASSOCIATES, INC.  
STANDARD PROVISIONS**

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
  
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
  - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
  - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
  - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
  - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
  - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
  - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
  - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
  - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
  
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
  
- 4) **Method of Payment.** Client shall pay Consultant as follows:
  - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
  - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
  - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
  - d. If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
  - e. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
  
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's



documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.
- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
- a. If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
  - b. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
  - c. The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

## FIRST AMENDMENT TO SERVICES AGREEMENT

THIS FIRST AMENDMENT TO SERVICES AGREEMENT (“First Amendment”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023, by and between **FOOTHILLS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **FARNSWORTH GROUP, INC** (“Contractor”), collectively, the “Parties.”

### RECITALS

WHEREAS, the District and Contractor entered into that certain Services Agreement, dated March 7, 2022 (the “Agreement”); and

WHEREAS, pursuant to Section 15 of the Agreement, the Parties may amend the Agreement by executing a written amendment; and

WHEREAS, the Parties desire to amend the Agreement to add additional services and increase the compensation for such services by executing this First Amendment.

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:

### TERMS

1. Scope of Additional Services. Exhibit A attached to this First Amendment and incorporated by this reference shall be added to the Agreement, Exhibit A – Scope of Services and Payment for Services.

2. Compensation. The first sentence of Section 3 – Compensation shall be amended and replaced in its entirety with the following:

Contractor shall be paid an amount not to exceed Three Hundred Seventy-One Thousand Eight Hundred Seventeen Dollars (\$371,817.00), 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.

3. Counterparts. This First Amendment 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.

4. Full Force and Effect. Except as expressly modified by this First Amendment, all other provisions of the Agreement shall remain in full force and effect

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

**FOOTHILLS METROPOLITAN DISTRICT**

---

By: Rishi Loona  
Its: Board President

**FARNSWORTH GROUP, INC**

---

By: Ted Barela  
Its: Principal

**EXHIBIT A**  
**Additional Services**



223 Willow Street  
Fort Collins, CO 80524  
p (970) 484-7477

www.f-w.com

**CHANGE ORDER NO. Change Order No. 02**

**UNDER THE PROJECT SERVICES AGREEMENT NAME & DATE:** Foothills Mall Redevelopment, 2/1/2022

**FGI PROJECT NO.:** 0120302.08

This Change Order (“Change Order”) is effective this 26<sup>th</sup> day of June in the year 2023, between Farnsworth Group, Inc. (“**Farnsworth Group**”), and Foothills Metropolitan District, (“**Client**”), under the Project Services Agreement (“**Agreement**”) referenced above between Farnsworth Group and Client.

All provisions of the Project Services Agreement are incorporated into and made a part of this Change Order. No other provisions or conditions, oral or written, shall apply unless explicitly included, approved and accepted by both parties in writing. Any implied or stated terms and conditions which may be included in or attached to a subconsultant/subcontractor’s proposal are expressly rejected and are null and void.

By signing this Change Order, Client agrees to the changes in connection with “Foothills Mall Redevelopment”, hereinafter referred to as PROJECT.

The change to the scope of Farnsworth Group’s services on this Change Order is as follows:

No change in scope with this Change Order. We are transferring the remaining budget from the MXD Contract to the existing FMD Contract. See below for summary:

Total MXD Contract = \$190,148  
Billed to MXD Contract = \$113,231  
Remaining MXD Contract = \$76,917

Total FMD Contract = \$285,222  
Billed to MXD Contract = \$227,026  
Est. for Remainder of September = \$3,000  
Remaining FMD Contract = \$55,196

Transfer \$76,917 to FMD Contract and add to  
Remaining FMD Contract = \$55,196

Revised and Remaining Total in FMD Contract = \$132,113

The change to the estimated schedule for Farnsworth Group’s services on this Change Order is as follows:

Dependent on Design Team and Reviews.

Client agrees to compensate Farnsworth Group for providing the above services and expenses on this Change Order as follows:

The change to the estimated total Hourly Charges for Farnsworth Group's services and expenses, as set forth in the Rate Schedule attached to the above referenced Agreement, is **to Transfer \$76,917 from the existing MXD Contract to the existing FMD Contract, which has \$55,196 remaining, producing a total FMD Contract of \$285,222 + \$76,917 = \$362,139 and Total Remaining in the FMD Contract of \$132,113.**

Farnsworth Group and Client hereby agree to and accept the terms and conditions stated above.

FARNSWORTH GROUP, INC.

\_\_\_\_\_  
Signature  
Ted Barela  
\_\_\_\_\_  
Typed Name  
Principal  
\_\_\_\_\_  
Title  
September 26, 2023  
\_\_\_\_\_  
Date

FMD Fort Collins, LLC

\_\_\_\_\_  
Signature  
< Typed Name >  
\_\_\_\_\_  
Typed Name  
< Title >  
\_\_\_\_\_  
Title  
< Month ##, Year >  
\_\_\_\_\_  
Date

FARNSWORTH GROUP, INC.

\_\_\_\_\_  
Signature  
J.C. Cundall  
\_\_\_\_\_  
Typed Name  
Senior Engineering Manager  
\_\_\_\_\_  
Title  
September 26, 2023  
\_\_\_\_\_  
Date

## DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Environmental Designs, 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 certain operational and/or maintenance services, for certain District facilities, improvements and infrastructure; and

WHEREAS, Contractor has experience and resources to provide 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 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. Scope of Services. Contractor shall perform such services for the District as outlined in the Scope of Services attached hereto as **Exhibit A** and incorporated herein by reference (“Services”). Contractor shall, at its own expense, 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; furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services; and take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Paragraph 3 of this Agreement.

2. Compensation. The District hereby agrees to pay to Contractor the amounts required for the completed Services at the unit prices set forth in Contractor’s proposal/quote



attached hereto as Exhibit A. It is specifically understood and agreed that **Contractor's quotation dated** September 28, 2023, and attached hereto as Exhibit A, with the Scope of Services to be performed hereunder, are each and all included in and made a part of this Agreement.

a. Invoices. Invoicing shall be done on a monthly basis reflecting completed and accepted work done on a progress of completion basis. Invoices shall be submitted to the District by the 5th of the month for work completed in the preceding month. The invoices will be reviewed for accuracy and processed for payment.

b. Inspection of Services. The District reserves the right to inspect all services completed and invoiced for payment to ensure services have been provided in accordance with this Agreement. In the event inspected services are not accepted for payment by the District, the District shall notify Contractor in writing that Contractor is in default and has two (2) days to cure said default. The District shall be entitled to pursue all remedies provided by law and in equity if Contractor fails to cure the default.

### 3. 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 Paragraph 3.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

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). 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.

4. Term. The term of this Agreement shall commence on October 9, 2023 and shall terminate by April 15, 2024. Funding for this Agreement shall be subject to annual appropriations by the District as provided in Paragraph 8 herein.

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. 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. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Contractor shall be entitled to receive compensation in accordance with Paragraph 2 of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement through the effective date of termination. Upon termination and payment of all amounts owed to Contractor, Contractor shall deliver to the District all work product, as described in Paragraph 7 hereof.

6. Notice. 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 c/o <u>CliftonLarsonAllen</u> Attention: Denise Denslow 8990 East Crescent Parkway, Suite 300 Greenwood Village, CO 80111
---------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------

Email: [denise.denslow@CLAconnect.com](mailto:denise.denslow@CLAconnect.com)

If to Contractor:

Environmental Designs, LLC

Attn: Ross Morrison

12511 E. 112<sup>th</sup> Avenue

Henderson, CO 80641

Email: [rmorrison@environmentaldesigns.net](mailto:rmorrison@environmentaldesigns.net)

7. Instruments of Service. For purposes of this Agreement, Instruments of Service includes the following: any and all finished or unfinished design, development and/or construction documents, if any, 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 created, prepared and/or produced in connection with this Agreement. Contractor owns the Instruments of Service, including all associated copyrights and the right of reuse at the discretion of the Contractor. Contractor shall continue to own the Instruments of Service and all associated rights whether or not the Services are completed. The District may make and retain copies of Instruments of Service for information and reference in connection with the use of the Instruments of Service on the Services. Contractor grants the District a limited license to use the Instruments of Service on the Services, extensions of the Services, and for related uses of the District, subject to receipt by Contractor of full payment due and owing for all Services, and subject to the following limitations: (a) the District acknowledges that such Instruments of Service are not intended or represented to be suitable for use on the Services unless completed by the Contractor, or for use or reuse by the District or others on extensions of the Services, on any other project, or for any other use or purpose, without written verification or adaptation by the Contractor; (b) any such use or reuse, or any modification of the Instruments of Service, without written verification, completion, or adaptation by the Contractor, as appropriate for the specific purpose intended, will be at the District's sole risk and without liability or legal exposure to the Contractor or to its officers, directors, members, partners, agents, employees, and subconsultants; and (c) such limited license to the District shall not create any rights in third parties.

8. 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 are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year.

9. Independent Contractor. Contractor is and shall be considered an independent contractor pursuant to this Agreement. Nothing herein contained shall constitute or designate Contractor or any of its employees or agents as employees or agents of the District, nor shall Contractor be deemed or considered to be a partner of the District. Contractor shall have full power and authority to select the means, manner, and method of performing its duties pursuant to this Agreement without detailed control or direction of the District except as set forth in this Agreement. It shall be Contractor's responsibility as an independent contractor to pay any and all taxes on payments which it receives pursuant to this Agreement and to pay its own costs and expenses incurred in connection with performance of this Agreement.

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. The obligations of the indemnifications extended by Contractor to the District under this Paragraph 10 shall survive termination or expiration of this Agreement.

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 Board of 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. 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.

13. Assignment. No portion of the Agreement shall be sublet, assigned or otherwise disposed of by Contractor except with the written consent of the District, and such consent when given shall not be construed to relieve Contractor of any responsibility for the fulfillment of this Agreement. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement.

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

15. 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.

16. 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.

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

18. 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.

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.)

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

**DISTRICT:**

**FOOTHILLS METROPOLITAN DISTRICT**

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

**CONTRACTOR:**

**ENVIRONMENTAL DESIGNS, INC**

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

**EXHIBIT A**

**SCOPE OF SERVICE AND CONTRACTOR'S QUOTE**

## EXHIBIT A Scope of Services (the "Work")

The Client and the Contractor agree that the scope for the "Work" included in this Agreement is as follows:

### 2024 Winter Plant Installation

Fall floral includes pansies unless otherwise specified. Fall floral should be installed prior to October 1st.

Unless otherwise outlined in this agreement, Client is responsible for watering fall floral and EDI will not maintain the fall floral beds.

NO WARRANTIES shall be given, expressed or implied, due to vandalism, theft, over or under watering when irrigation is not available or out of the control of EDI, and/or acts of nature (hail, lightening, torrential rainfall, freezing, snow, etc.). Any floral installed after October 1st will not be warrantied.

Description	Quantity	Unit
Annual - Fall Container 24" (existing pot)	42.00	EA
Spruce- Globosa #5	5.00	EA
Spruce- Nidiformis Norway #3	5.00	EA
Yew- Japanese #5	5.00	EA
Juniper- Blue Arrow Rocky Mountain #10	5.00	EA
Juniper- Old Gold Chinese #5	5.00	EA
Boxwood- Green Velvet #5	5.00	EA
Juniper- Skyrocket Red Cedar #5	4.00	EA
Mahonia- Oregon Grape #5	4.00	EA
Manzanita- Panchito #3	4.00	EA
<b>Group Total</b>		<b>\$7,156.65</b>

\_\_\_\_\_ By initialing here, the Client agrees to have the services in this group performed as part of this Agreement. If all groups are not accepted by the Client, then the final price of this Agreement shall be adjusted accordingly.

### 2024 Winter Pot Removal

This service includes the removal of fall floral at the end of the floral season and before spring floral installation.

Description	Quantity	Unit
Prep - Construction Debris Disposal - Dump Trailer (NO WASTE)	0.00	EA
Labor By Hour	27.50	HR
Annual Flower Removal	0.00	SF
<b>Group Total</b>		<b>\$1,863.89</b>

\_\_\_\_\_ By initialing here, the Client agrees to have the services in this group performed as part of this Agreement. If all groups are not accepted by the Client, then the final price of this Agreement shall be adjusted accordingly.

### 2024 Winter Pot Watering

This agreement includes periodic watering of fall floral beds and/or pots and/or hanging baskets.

Description	Quantity	Unit
Annual Floral Watering	6.00	HR
<b>Group Total</b>		<b>\$4,187.96</b>

\_\_\_\_\_ By initialing here, the Client agrees to have the services in this group performed as part of this Agreement. If all groups are not accepted by the Client, then the final price of this Agreement shall be adjusted accordingly.