

FOOTHILLS METROPOLITAN DISTRICT

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

NOTICE OF REGULAR MEETING AND AGENDA

DATE: Wednesday, June 7, 2023
TIME: 2:30 p.m.
LOCATION: Microsoft Teams

1. Online Microsoft Teams Meeting – via link below

Join on your computer, mobile app or room device

ACCESS: https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzU4OTI5NTQtYmRkZi00MjgyLTk2ZmItN2IzYWZmYzg3OTYy%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

To attend via telephone, dial 720-547-5281 and enter the following additional information: Conference ID: 550 284 848#

<u>Board of Directors</u>	<u>Office</u>	<u>Term Expires</u>
Rishi Loona	President	May 2027
Josh Kane	Treasurer	May 2025
Vacancy	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.
- E. Consider Appointment of Director and Election of Officers

II. CONSENT AGENDA

- A. Review and Approve Minutes of the April 5, 2023 Regular Meeting (enclosure).
- B. Ratification/Approval of Claims (to be distributed).

III. FINANCIAL MATTERS

- A. Review and Accept April 30, 2023 Unaudited Financial Statements and June 2023 Cash Position Report (to be distributed).
- B. Status of 2022 Audit.
- C. Bond Discussion.

IV. LEGAL MATTERS**V. MANAGER MATTER**

- A. Ratify District Service Agreement with Asphalt Works Inc. (enclosure).
- B. Approve Russell + Mills Services Contract for Landscape Architect (enclosure).

VI. DIRECTOR MATTERS**VII. OTHER BUSINESS**

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

VIII. ADJOURNMENT

The next regular scheduled meeting is August 2, 2023 at 2:30 p.m.

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF
THE BOARD OF DIRECTORS OF THE
FOOTHILLS METROPOLITAN DISTRICT (THE “DISTRICT”)
HELD
FEBRUARY 17, 2023

A regular meeting of the Board of Directors of the Foothills Metropolitan District (referred to hereafter as the “Board”) was convened on Wednesday, April 5, 2023 at 2:30 p.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
Patrick Bunyard, Assistant Secretary
Tim DePeder, Assistant Secretary

Also in Attendance Were:

Denise Denslow, Carrie Bartow, 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 2:33 p.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 Bunyard and, upon vote, unanimously carried, the Board amended the Agenda with the addition of the Colorado Asphalt Works Inc Proposal review under Manager Items.

Public Comment: None.

Acceptance of Clyde Wood’s Resignation: Following discussion, upon a motion duly made by Director Kane, seconded by President Loona and, upon vote, unanimously carried, the Board accepted Clyde Wood’s resignation.

CONSENT AGENDA

Minutes of the February 17, 2023 Special Meeting:
Ratification of Claims Totaling \$171,099.57:

Ms. Denslow reviewed with the Board. Director Kane inquired about security invoices. The Board discussed the bill.com process due to Clyde Wood’s resignation from the Board. Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote,

RECORD OF PROCEEDINGS

unanimously carried, the Board approved the Consent Agenda items as presented.

FINANCIAL MATTERS

February 28, 2023 Unaudited Financial Statements and April 2023 Cash Position Report: Mr. Bourgoiu reviewed with the Board. Attorney Pogue relayed discussion regarding new expectations with McWhinney. Director Kane requested that Attorney Pogue set up meeting with Clyde Wood, Mike Tonniges and CLA to have further discussions. Following review and discussion, upon a motion duly made by Director DePeder, seconded by Director Bunyard and, upon vote, unanimously carried, the Board accepted the February 28, 2023 Unaudited Financial Statements and April 2023 Cash Position Report as presented.

Other: The 2023 Budget was revisited with discussion following regarding the composition of anticipated developer advances for capital projects.

LEGAL MATTERS

Other: Attorney Pogue informed the Board that the May 2, 2023 Election has been cancelled, and Directors Bunyard, DePeder and Loona will be up for re-election.

MANAGER ITEMS

Ratify Green Thumb Plantscape Maintenance Agreement: Ms. Denslow reviewed the agreement with the Board. Following review, upon a motion duly made by Director Kane, seconded by President Loona and, upon vote, unanimously carried, the Board ratified the Green Thumb Plantscape Maintenance Agreement as presented.

Ratify Green Thumb Plantscape Exterior Annuals Agreement: Ms. Denslow reviewed the agreement with the Board. Following review, upon a motion duly made by Director Kane, seconded by President Loona and, upon vote, unanimously carried, the Board ratified the Green Thumb Plantscape Exterior Annuals Agreement as presented.

Other: Review Colorado Asphalt Works Inc. Proposal for Repairs: Ms. Denslow reviewed with the Board. Following review, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved the Colorado Asphalt Works Inc. Proposal as presented. CLA will send the formal prepared contract for signatures and will bring back to the June meeting for ratification of approval.

DIRECTOR ITEMS

Discuss Vacant Director Position: Attorney Pogue noted that Clyde Wood's seat would be re-filled after the May 2, 2023 Election and his office will publish a Notice of Vacancy to fill the seat.

RECORD OF PROCEEDINGS

OTHER
BUSINESS

None.

EXECUTIVE
SESSION

Executive Session pursuant to Section 24-6-402(4)(e), C.R.S., if needed: Not needed.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 3:14 p.m.

Respectfully submitted,

By _____
Secretary for the Meeting

DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this 5th day of April 2023 by and between Colorado Asphalt Works Inc., a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Foothills Metropolitan District (“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** March 22, 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 4/1/23 and shall terminate by 6/30/23. 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 CliftonLarsonAllen
 Attention: Denise Denslow
 8990 East Crescent Parkway, Suite 300
 Greenwood Village, CO 80111
 Email: denise.denslow@CLAconnect.com

If to Contractor: Colorado Asphalt Works Inc.
Attn: Adriana Chavez, Manager
P.O. Box 31911
Aurora, CO 80041
303-364-7569
Email:
achavez@coasphaltworks.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

DocuSigned by:
Rishi Loona
CBEEDBFFDF84E3...

By: Rishi Loona
Its: President

CONTRACTOR:

COLORADO ASPHALT WORKS INC.

DocuSigned by:
Adriana Chavez
E4FC7D807C814FA

By: Adriana Chavez
Its: Manager

EXHIBIT A

SCOPE OF SERVICE AND CONTRACTOR'S QUOTE



P.O. Box 31911 Aurora, CO 80041
 Office: 303-364-7569 Fax: 303-341-6028

DATE	3/22/2023
ESTIMATE #	JB23-0025
P.O. No.	7009
REP	Jason Brown

Estimate/Contract

NAME: Foothills Metropolitan District
Attn: Denise Denslow, District Manager
Phone: 0 **Fax:** 0
 8390 East Crescent Parkway Suite 300
 Greenwood Village CO 80111
 Email: [0](#)

Project Name : Asphalt repair
Address: 215 East Foothills Parkway
City/State: Fort Collins CO
Owner: 0
General Contractor: 0

SCOPE OF WORK/LINE ITEMS

Colorado Asphalt Works, Inc (the "Contractor") shall perform the following work (Contractor's Work")

DESCRIPTION:	RATE
(Full Patch) Sawcut and remove approx 350 SqFt of damaged asphalt in 4 areas. Replace using grade "SX" hot asphalt rolled and compacted 6" in depth.	\$ 3,495.00
(Crack Fill) Seal independent cracks over 1/4" using Deery hot rubber. Deery meets or exceeds all state and federal specifications. Not including transition joints and/or alligatored areas. Approx 3,100 LF	\$ 3,995.00
Total:	\$7,490.00

DATE	3/22/2023
ESTIMATE #	JB23-0025
P.O. No.	7009
REP	Jason Brown

PLEASE READ THIS ESTIMATE/CONTRACT IN IT'S ENTIRETY

- * Total is based upon acceptance of all line items. If only selected line items are approved, this Estimate/Contract will need to be revised accordingly.
- * Sprinklers must be off for 24 hours prior to beginning and for 24 hours after the completion of the project.
- * Vehicles need to be removed prior to our arrival.
- * No use of parking lot for a minimum of 24 hours after work is complete.
- * Have Towing company onsite to insure vehicles are moved.

Unless specifically included above as part of the Scope of Work, the Contractor's Work excludes the following: Fees for testing, permits, licenses and inspections, bonds, material removal, personal property removal, excavation, sub grade and grade preparation, traffic control, utility adjustments, snow, frost or trash removal, de-watering, de-mucking, and weather protection.

CONTRACT PRICE/PAYMENT TERMS

The Customer shall pay the Contractor the Contract Price of \$7,490.00, which is the total of the line items above, within 30 days of invoice date unless other payment terms are stated below:

GENERAL TERMS AND CONDITIONS

1. The Estimate of the Contract Price is valid for only 30 days.
2. All work performed by the Contractor under this Contract is warranted to be free of defects in workmanship and materials for a period of one (1) year from the date of substantial completion of Contractor's Work. The Contractor will, upon timely written notification in accordance with paragraph 3 below, correct such defects by suitable repair, replacement or refund at Contractor's sole option and expense. THIS LIMITED WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. This limited warranty also excludes remedy for the following:
 - A. Damage or defect due to normal wear and tear or normal usage of the concrete, asphalt paving, asphalt patching or sealcoat.
 - B. Damage or defect caused by abuse, modifications, improper or insufficient maintenance or improper operations on, in or near the concrete, asphalt paving, asphalt patching or sealcoat.
 - C. Damage or defect caused by trucks and other vehicles or by other items of excessive weight being placed upon the concrete, asphalt paving, asphalt patching or sealcoat.
 - D. Damage or Defect to Contractor's Work caused by (i) work performed by the Customer, other trades or other contractors; (ii) site conditions which were not in plain view at the time Contractor commenced its work; (iii) the shifting and settling of the site, the grade, the subgrade or any other part of the subsurface; (iv) the failure of the grade, subgrade or other part of the subsurface; (v) improper or inadequate site preparation, excavation, grade or subgrade preparation by the Customer or other contractors; and (vi) pre-existing drainage problems on the site including inadequate or improper drainage.
3. Any claim under the Limited Warranty set forth above must be made in writing and delivered to Contractor within thirty (30) days from the date that the Customer knew or in the exercise of reasonable diligence should have known of the defect or damage. An untimely submission of a claim shall bar it.
4. Customer shall remove all personal property from the work area. Customer is responsible to locate, mark and inform Contractor of all underground utilities, sprinklers, wiring, manholes, valves and all other hazards or obstructions. The Contractor will not be held liable for damage to any unmarked underground utilities, sprinklers, wiring, man-holes or valves and Customer agrees to defend and hold Contractor harmless from any and all claims arising out of these unmarked items. The Contractor also will not be liable for delays and damages caused by acts of God, the acts and omissions of the Customer, other contractors or subcontractors, interference and obstruction of the Contractor's Work caused by the Customer, other contractors or subcontractors, shortages or nonavailability of labor, concrete, asphalt or other necessary materials, weather conditions, unforeseen site conditions, unforeseen subsurface conditions and all other conditions or events beyond the control of the Contractor.
5. Customer waives claims against the Contractor for special, incidental or consequential damages arising out of or relating to this Contract or the Contractor's Work.
6. Changes in the Contractor's Work may be authorized by either written change orders signed by the parties or by the verbal request of the Customer to which the Contractor agrees. The Contract Price may be increased by Contractor without a change order if there is a change in materials costs.
7. Invoices are payable upon receipt and bear interest at the rate of 1.5% per month (18% per annum), compounded monthly, accruing from thirty (30) days after the invoice date until paid. Payment of the Contract Price and any other sum due and owing to Contractor is not contingent or conditioned in any way upon the Customer receiving payment from the owner of the project, a construction lender, the general contractor or payment being made to Customer from any other source or third party.
8. Customer agrees to pay all collection costs incurred by Contractor to collect amounts owed to Contractor under this Contract or incurred by Contractor to enforce any other term of this Contract, including but not limited to reasonable attorney's fees, court costs and expert witness fees.

COLORADO ASPHALT WORKS, INC.By: *Jason Brown*

Print Name: Jason Brown

Title: Account Manager

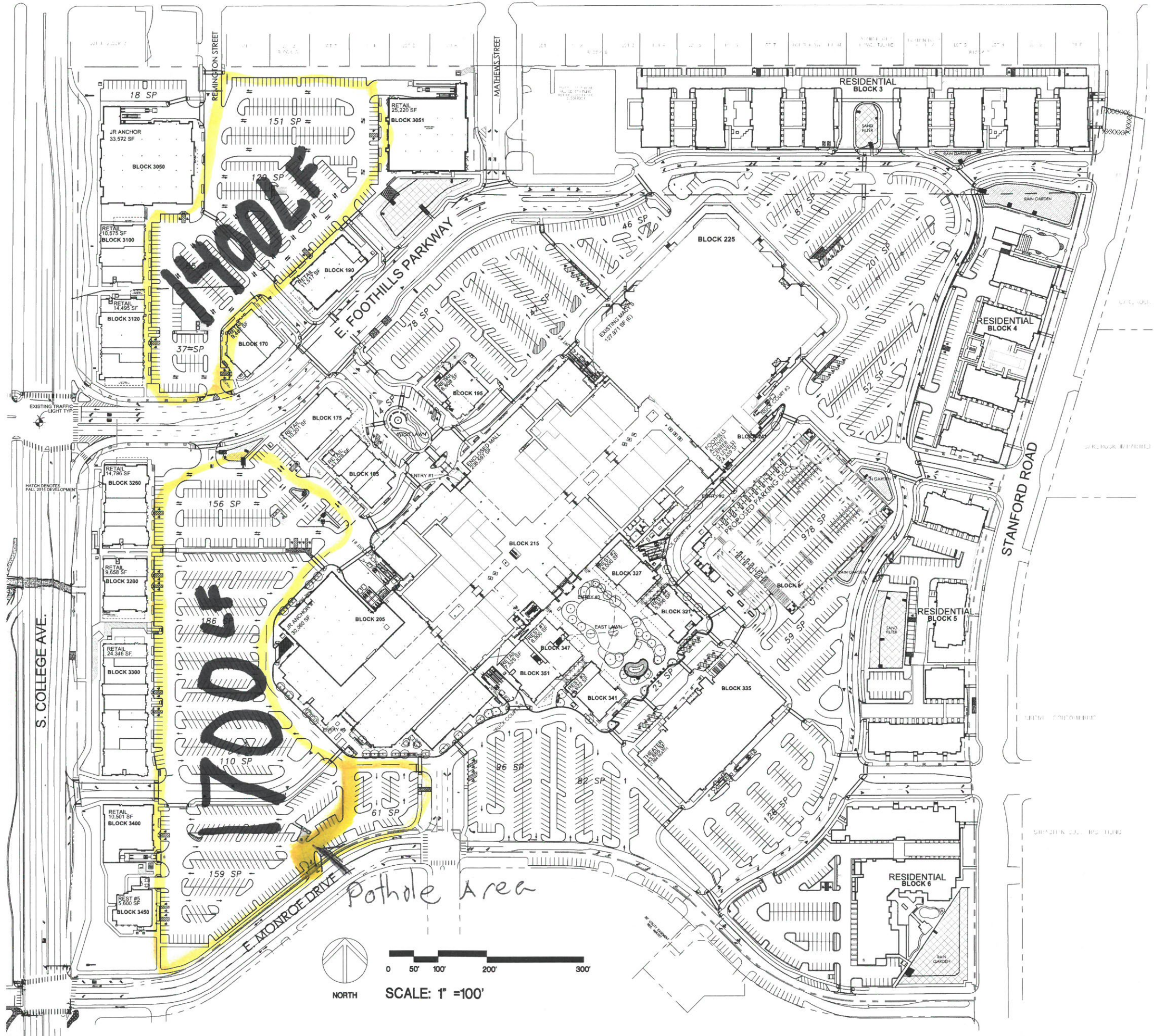
This Proposal/Contract is accepted. Colorado Asphalt Works, Inc. is authorized to proceed with the Work under this Contract.

CUSTOMER: _____

By: *Garin J Daum*

Title: facilities operations manager

Date: 3/27/23



SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into this 24th day of April 2023, by and between FOOTHILLS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Russell + Mills (“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 Landscape Architecture and Planning 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 15 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 12 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 9 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 \$239,184.00, 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 12 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 3rd 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 3rd 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 12 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 12 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 Instruments of Service, 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. 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.

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 X No

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 9 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. 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.

9. 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 9 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.

10. 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.

11. 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

15. 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.

16. 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.

17. 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.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

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

25. 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.

26. 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:
Rishi Loona
CBEEDEDEDF61E3
By: Rishi Loona
Its: President

RUSSELL + MILLS STUDIOS

DocuSigned by:
Paul Mills
AF68A3BCC3D41E
By: Paul Mills
Its: Principal

EXHIBIT A
SCOPE OF SERVICES AND PAYMENT FOR SERVICES



April 11, 2023

Foothills Metropolitan District

sent via email

Re: Foothills Redevelopment Landscape Architecture and Planning Services Proposal

We are excited to submit the following proposal to you for this exciting and wonderful project for Fort Collins and the region. We have enjoyed working to date on an hourly basis in refining a new master plan vision and feel we can now enter a structured agreement to take the project from here to fruition. We believe our working relationship and team approach will help create a successful project and memorable places. Below is our scope and fee for the project.

SCOPE

The scope of work below is a scope based on our knowledge of the project, and how we would propose the steps we need to take to advance a viable and exciting design. We believe we have completed the Master Plan update and we are about to start conceptual design and then the series of design phases, SD, DD, CD, and CA. The scope is a our proposed work plan. Our scope would include all things site that would make up place making and developing an exciting destination.

For this scope for the Foothills Metro District, we will be designing and entitling all public areas for the project that are owned, operated and managed by the Foothill Metro District. Our role in the project includes the following:

Site Design: Lead the overall site design and planning, advancing the master plan to the design process to eventual construction documents.

Planning and Entitlement: Lead the project through the city approval process to have the project successfully approved and entitled.

Sustainability: Lead the sustainability discussion focused on site and support sustainability consultant for sustainable options. Sustainability items will be listed in each design phase of the scope below.

Coordination: As the overall site planners and designers will be help coordinate with all team members for project schedule, deliverables, team meetings and team meeting minutes.

Collaboration: Throughout the process we will coordinate all site and building issues with each architect to ensure we develop a connected site design.

Our scope includes our focus and work in the following areas of the project:

- Site design including all walks, plaza, hardscape materials selection/specification, circulation, parking and street design including cross sections, streetscapes, planting, site furnishings, seat walls, benches, lighting selection, retaining wall materials (footings by structural).
- Initial conceptual schematic grading then collaboration with engineer. Review and coordination of site grading and coordination on grading and drainage during Design development and Construction Documents.
- decorative site elements



- site furnishings selection
- planting plans
- irrigation [R+M sub-consultant]
- Planning and entitlement process for the project development approval.

The project is broken up into the following design phases that focus on the overall site for the conceptual / schematic design phase then specifically focuses on the the phase 1 for the main entitlement push to begin with. Phase 1 includes parking areas, street alignment and streetscapes, residential area streets and streetscapes, residential linear park. Our scope of work is divided into the following phases:

1. Concept Design / Schematic Design - Advance master plan ideas to an actual design direction for all areas. Master Plan materials will be utilized for PDR (Conceptual Review and neighborhood meetings).
2. Schematic Design - Schematic design will focus on the Phase 1 of the project areas listed above. Will not include the design of the site areas around future buildings.
3. Design Development - Phase 1 and 2 / PDP 1 and PDP 2 separate submittals and process. Submittal
4. Construction Documents - Phase 1 and 2 / FDP 1 and FDP 2 Submittal
5. Construction Administration

Assumptions

1. Meetings are not quantified in this proposal. We have enabled an allowance in our fees that accommodate meetings into each scope item and will not be measured per meeting. We are committed to meetings as required to deliver a successful project.
2. Survey is provided with all existing conditions and utilities surveyed.
3. Building footprints will be sent to Russell + Mills from Michael Hsu Office of Architecture, SAR, Hassell and residential architect. We understand that buildings move during the design project. For construction documentation the buildings will be in their final location.

1. CONCEPTUAL DESIGN / SCHEMATIC DESIGN PHASE

We will seamlessly move beyond master planning to create conceptual design for the site at a larger scale and starting defining the actual design for the spaces in the site.

During Master Planning we created and are responsible for the overall site design and background that is coordinated and distributed to the entire design team for use in all drawings. We will lead the coordination of the site and building locations throughout the project.

In this phase we will focus on advancing the master plan into designed and curated experiences, working in 1"=30' scale for higher detail and accuracy. In each area of focus we will develop draft design, options, for reviews and then narrow to a preferred direction. The areas will be focus is broken into per area:

College Avenue Commercial Area and Parking

- Look in more detail at College Avenue frontage and entry areas to celebrate the new Foothills and communicate the new experience. This frontage design will then lead the College Avenue Design project and communicate what exactly the project is looking for for the planned right of way improvements and entrances.
- Work and collaborate with design team and artists for at concepts for entry signage and thematic materials for the project.
- Advance parking design and water quality locations and study site grading. Coordinate



with civil.

- Develop access needs for all modes of transportation into the site, safely and clearly.
- Develop plant palette and imagery for frontage and parking.
- **Sustainability:** Detailed inventory on plants and trees that can be reused in place or replanted. Develop strategy for plant and tree survival during modifications.
 - Study energy concepts such as solar and potential wind power that can generate power of site lighting needs.
 - Study energy concepts such as solar and potential wind power that can generate power of site lighting needs.
 - Develop a green bioswale / rain garden stormwater system for the area

Residential Spine / Linear Park

- Study and further design the linear park and related program, developing detailed concepts at 1"=30' scale, enhancing the defining the experience that has been captured in the master plan.
- Linear park and related program, developing detailed concepts at 1"=30' scale, enhancing the defining the experience that has been captured in the master plan.
- Explore and offer variety of site materials selections for each node and areas including concepts for the F.A.C. "portal" and collaborating with artists for design that humanize the space and take advantage of perceived constraints such as the parking garage.
- Advancing design for all areas for active areas, passive spaces for residents including dog park.
- Design of all streetscapes within the residential areas including street cross sections.
- Develop conceptual schematic design grading
- Develop plant palette.
- **Sustainability:** Develop an inventory of all existing site furnishings within this area on the existing site that can either be repaired/enhanced to be re-used on site, re-used on another projects, sent to single stream re-cycler or re-purposed on site.
 - Study areas of disturbance to get quantifiable flat work removal for potential reuse. Study design concepts for re-using removed flatwork such as concrete, current indoor tile, and other material we inventory and identify.
 - Detailed inventory on plants and trees that can be reused in place or replanted. Develop strategy for plant and tree survival during modifications.
 - Study energy concepts such as solar and potential wind power that can generate power of site lighting needs.
 - Study energy concepts such as solar and potential wind power that can generate power of site lighting needs.
 - Develop a green bioswale / rain garden stormwater system for the area

Streetscapes

- Design develop street cross sections for the remaining black areas that tie into the core and residential areas to be interconnected with the overall street pattern and design. This will ensure a seamless streetscape transition.
- Design new roadway width for eastern ring road and new street cross-section.
- Develop street trees plant palette.
- **Sustainability:** Develop a green bioswale / rain garden stormwater system for the area

Overall Site Items

- Develop an overall trail looping system for residents or office users to utilize that enable a fitness walk or run with measurable loop distances.
- Coordinate with team for designs for thematic signage and iconic items for identity for the project



- Coordinate all interconnected site element to create a unified design.
- Other overall sustainability analysis for overall site approaches to site sustainable items.

Renderings

We will build sketchup modeling for the site, incorporating previous work by SAR and MHOA to develop an overall site model. All buildings will be of massing with limited facade detail with emphasis on the site. This model will evolve during the process. Using the sketchup model we will develop a Lumion model that will create the resolution and impact that matches current views created design the master planning process.

Deliverables will be:

- Plan set that shows overall concept / schematic design and enlargements of each area with refined detail focusing on each area and specific focus listed above, materials, conceptual details, renderings, plus items listed above.
- Site sustainability inventory and potential applications

Submittals - includes packet encompassing each site area outlined above

50% Schematic Design

- Colored site plans at larger scale (with more resolution and detail),
- Enlargements
- Sections/elevations
- Site grading coordination
- illustrations
- materials
- irrigation and water demand analysis
- water feature (core area)
- plant palettes

100% Schematic Design

- Colored site plans with more resolution and detail,
- Enlargements
- Sections/elevations
- Site grading coordination
- illustrations
- materials
- irrigation and water demand analysis
- water feature (core area)
- plant palettes

Planning And Entitlement Process: PDR

During conceptual and schematic design we will be concurrently provide community outreach and PDR submittals to the city.

We will plan for the following:

1. Coordinate the first open house of the project at the current mall and attending.
2. Preparing the first PDR Submittal including design and planning narratives, and materials for internal review, followed by changes and then submitting to the City for city review.
3. Attending the City review of the PDR
4. Coordinating and attending a second public open house.
5. Developing the presentation, coordinating and attending the City required Public Meeting.



2. DESIGN DEVELOPMENT

We will commence Design Development by advancing the approved schematic design and proceeding with detail design for the site. We will focus on specifically Phase 1 for the project outlined in the scope section previously. This is the scope that we will be looking for planning approval for. We will be working exclusively in AutoCAD to develop a black and white set of technical documents. We will start enlarging key areas and advance the design to a better resolution, clarity and finished solution. After we have developed 50% will seek review comments from the Client group before proceeding further. Following approval of this check-in point, we will advance the design development set to 100%. The design development drawings will be comprised of the site elements, both hardscape and softscape. Using the area breakdowns listed in Concept/Schematic Design, the design development sheets will include the following based on the approved schematic design for the areas outlined in the plan on the previous plan of the approved design:

- Site Plan identifying the layout and location of pavements, pavement patterns, pavement types, planting area locations, site furnishing, lighting locations. Materials schedule.
- Site enlargement of key areas
- Site sections to communicate design intent and key elevation changes
- Site grading plan: review of Civil grading plans
- Planting Plan showing plant arrangements and plant types
- Irrigation Plan - mainline routing and design development details
- Water feature water line requirements and system requirements and locations
- Design development site details
- Specification Outline
- Coordination with all team members

City Submittals - ODP

When the site design areas have been finalized we will prepare an revised ODP plan for submittal to the City. The process should happen soon as possible and be its own process not linked to the PDP. It will include:

1. Create a ODP plan with planning data, narrative and required and information for internal review.
2. Make any adjustments and submit to City with planning narrative.
3. Attend Planning review meeting.
4. Amend plan accordingly for submittal for Planning and Zoning Review
5. Prepare presentation for Planning and Zoning Commission.
6. Attend Planning and Zoning Commission to present.
7. Submitting updated final ODP for recording.

City Submittal - PDP 1 and PDP 2

Russell + Mills Studios will lead and coordinate the entitlement process including being the main point of contact with the assigned DRC from the City of Fort Collins. This includes coordinating all comment responses, confirming meetings and staff review times for the team and City staff, delivery required submittal materials including electronic materials to staff.

The planned phases for the project are:

Phase 1 - Retail / commercial core area, office and mixed use building and associates streets with the 'Central Boulevard' becoming the dividing street that would be the northern edge of the this phase. All other associated work south of this road would be part of phase 1 including parking and frontage and entrances enhancements. Access to FAC building and parking would need to be designed for this phase.



Phase 2 - All residential product that is not a for sale product will be part of the second phase including the main residential linear park, the residential amenity areas and associated open spaces, streets, and off street parking.

Each phase will be required to go through its own process that mirrors the approval steps for PDP and then FDP.

Deliverables per Phase - each separately conducted

- Preliminary Development Review Comment responses: All comment responses pertaining to the above plans will be addressed for submittal with first round review of PDP. RMS will coordinate and compile all comments from the design team.
- Site Plan: This will include all applicable land use charts, required City notes, dimensions, call-outs and surface information.
- Site Details: All applicable site details will be shown on the plans for the City approval.
- Landscape Plan: This will include all applicable land use charts, plant information including botanic/common names, sizes, and all required City notes. Hatches for shrub beds, turf and seed areas will be shown.
- Site and Landscape Details: All applicable site details will be shown on the plans for the City approval.
- Preliminary Irrigation Plans will be issued as part of the DD drawings and if needed for the PDP submittal package.
- Planning Objectives and Narrative: A document will be prepared for submittal to the City on the required planning objectives as well as narrative on the project function and approach.
- Comment responses to all PDP review staff comments will be provided.

Meetings

- Client/Team Meeting as necessary
- City Staff Meeting: PDP (two rounds)

Planning and Zoning Hearings - two required for each PDP Phase

Once staff has given approval for moving forward to Planning and Zoning (P&Z) RMS will work with staff to schedule the project.

We will:

1. Create overall presentation for P & Z
2. Review and update after feedback
3. Attend P & Z to present project

3. CONSTRUCTION DOCUMENTS

Following the approval of our design development drawings and direction and comments from the PDP process, we will commence the Construction Documents phase of services. The final design drawings will be produced in AutoCAD and provided electronically in AutoCAD and PDF files as well as hard copies. The following list will form the basis of the Construction Document Bid Set for construction:

- Site Plan at 1"=20' with detail callouts and setout information.
- Site details including pavement, and furnishings, site walls etc.
- Plan enlargements of key areas 1"=10' or larger if needed
- Site sections
- Landscape Plans at 1" = 10', Plant Schedule and Details
- Irrigation Plans at 1" = 10', Equipment Schedule and Details
- Water Feature Plans at 1" =10', Equipment and Details



- Construction Specifications
- Grading coordination with Civil.

Submittals to include 50% Review Set, 90% Review Set, Final Set or as determined.

City Process: FDP Submittals for Phase 1 and Phase 2

We will develop the two FDP submittals separately with Phase 1 occurring first and Phase 2 FDP occurring after as soon as possible. The phases are broken up in the PDP section prior.

We will provide the following services twice, one for each phase.

Based on staff comments and approval to move forward to FDP from Planning and Zoning. Two (2) rounds of review are included. Electronic copies of all plans will be sent to the client for record set.

At this phase further detail will be added to the plans in order to meet all applicable City requirements. After final approval of plans, irrigation plans will commence and be ready for owner to submit as part of the requirement for the building permit.

Deliverables

- Comment responses to all PDP review staff comments will be provided for first round FDP.
- Site Plan: This will include all applicable land use charts, required City notes, dimensions, callouts and surface information.
- Site Details: All applicable site details will be shown on the plans for the City approval.
- Landscape Plan: This will include all applicable land use charts, plant information including botanic/common names, sizes, and all required City notes. Hatches for shrub beds, turf and seed areas will be shown. Individual plant layout within shrub beds will be shown and labeled as required.
- Landscape Details: All applicable site details will be shown on the plans for the City approval.
- Irrigation Plans: This will include all applicable information on products, water pressure and layout as required. Coordination with selected Civil Engineer and irrigation consultant.
- Comment responses to all FDP review staff comments will be provided.

Meetings

- Client/Team Meetings as necessary.
- City staff meeting: FDP (two rounds)

City Process: Final Recordings for Phase 1 and Phase 2

This will be two separate scopes for Phase 1 and Phase 2 FDP approved final recordings.

We will provide the following services twice, one for each phase.

Based on the approved FDP drawings, R+M will coordinate Final Recording of the drawings. These drawings will be printed on mylar and delivered to the client for final signatures. Once the drawings are signed, R+M or the client will take the drawings to the City of Fort Collins for filing. If any changes are necessary to the mylars as required, R+M will provide up to two (2) changes to the drawings.

Deliverables



- Final mylar drawings to be signed by the client. Once signed, the mylars will be taken to the City for filing by R+M or the client.

4. CONSTRUCTION ADMINISTRATION

NOTE: Fees for this scope will be determined prior to construction with better informed timeline and understanding.

Russell+Mills Studios will provide Construction Administration services as related to the site's hardscape and landscape construction Scope, as defined. Construction Administration services shall include Review testing agency reports; Review of contractor's submittals and shop drawings; site visits, submittal of field reports communicating construction activities to the Client; plant selection and tagging at the source location for major trees and specimen material; Pre-maintenance inspection at Substantial Completion and preparation of a final punch list; and final inspection at completion of punch list corrections at end of the specified maintenance period.

During construction observation visits, R+M Studios representatives will familiarize themselves with the progress of the work and endeavor to determine, in general, if the site hardscape and landscape construction is preceding in accordance with the design intent and the contract documents. At the Client's request, Russell+Mills Studios will review of applications for substitutions, change orders, and in reviewing cost saving proposals submitted by the contractor to the Client.

Russell+Mills Studios shall endeavor on behalf of the Client to monitor compliance by the contractor to the plans and specifications. However, shall not be responsible for construction means, methods, techniques, sequences, procedures, or jobsite safety conditions in connection with the work. Additionally, Russell +Mills Studios shall not be responsible for the contractor's errors, omissions or failure to carry out the work in accordance with the contract documents. Construction administration would overlap between phase 1 and phase 2 and be a continuous process, which would see the final work on phase 1 completed and then move to solely phase 2.

Deliverables:

1. Reviewed and stamped shop drawings and submittals required to be submitted by the contractor per the Specifications, and indicate either approval, approval as noted, or resubmit.
2. Periodic site visits to become familiar with the works, monitor and report on quality, and adherence to the contract documents and progress of the works in accordance with the project deliver timetable. Typical landscape construction milestones for field review include;
 - Pre-Construction or 'Kick-off ' Meetings
 - Review of mock-ups
 - Nursery visits for tree and shrub tagging / selection
 - Layout of hardscape elements
 - Rough & finish grading of hardscape & softscape sub-grade.
 - Installation of hardscape elements
 - Layout of plant material (tree, shrubs and groundcovers)
 - Irrigation sprinkler coverage test
 - Substantial Completion walk-through to establish the 'Punch-List'.
 - Final walk-through for project acceptance
3. Field Reports or Punch Lists – prepare Field Reports or "Punch Lists" that comment on the status of construction for each site visit. (PDF & Microsoft Office Format)
4. Submittal, shop drawing, testing review responses. (PDF & Microsoft Office Format)



5. Responses to RFI's in written response and/or graphic format. (PDF & Microsoft Office Format)
6. Substantial Completion report, documenting any items that need to be addressed prior to final payment.

Meetings:

1. Construction administration site visits
2. Participation in phone conferences and on-line meetings, as appropriate

PROFESSIONAL FEES

Based on a lump sum agreement for the scope listed above. For a detailed breakdown of hours and tasks, refer to the task/fee breakdown attached.

Metro District Fee Summary

Design Phase	Fees
1. Concept Design / Schematic Design	\$ 47,832
2. Design Development / PDP	\$ 80,920
3. Construction Documents / FDP	\$ 110,432
4. Construction Administration	TBD
TOTAL	\$ 239,184

Invoices

All Invoices are to be paid within thirty days of issuance.

Expenses

Reimbursable will be billed to you directly with no mark up. We will bill you with copies of all receipts for plan room printing, such as color sheets for neighborhood meetings, and City submittals plots and mylars.

Invoices

All Invoices are to be paid within thirty days of issuance. Invoices shall be billed monthly.

Additional Services

Additional services shall include providing professional services not specifically identified in our basic Scope of Services described above, or for being asked to modify previously approved drawings. Additional services can be negotiated or will be billed on an hourly basis at the rates set shown below. Additional submittals (if required) will be done on an hourly basis, unless they are the result of Russell + Mills Studios errors or omissions, in which case, we will undertake at no additional charge.

A. Normal Hourly Rates (Effective through December 31st, 2022)

<u>Personnel</u>	<u>Hourly Rate</u>
Principal	\$165.00
Associate Principal	\$145.00
Senior Landscape Architect	\$125.00
Landscape Architect	\$115.00
Landscape Designer	\$ 95.00
Administrative	\$ 80.00

Note: Hourly rates are subject to revision January 1st of each calendar year.

B. The Consultant assumes that the outlined base scope of services submittals will be used for all agency submittals. Submittals beyond the amount listed in this phase will be billed as Additional Services as described in this agreement.



C. Client Initiated Program and Budget Revisions - The Consultant will endeavor to design the Client's development program to the Client's established improvement budget at the project's inception or during the Schematic Design phase. Preparation of Client initiated revisions to the approved design documents representing a ten percent (10%) or greater modification to the Client's established landscape budget and/or design program will be considered an additional service and will be subject to additional fees per the attached billing rates. These Client initiated revisions will be subject to an extension to the proposed design duration/schedule.

SPECIFIC EXCLUSIONS

The Client shall provide the following information, services and products as required for performance of the work. Russell+Mills Studios assumes no responsibility for the accuracy of such information or services and shall not be liable for errors or omissions therein. Should Russell +Mills Studios be required to provide services in obtaining or coordinating compilation of this information, such services shall be billed as Additional Services .

The specific exclusions marked with an (*) astrix below may be added to Russell + Mills Studios scope but are not currently included in the scope and fee.

1. Topography, utility, and boundary surveys
2. Utility potholing and location services
3. Geotechnical investigations and analysis
4. Environmental Investigations and analysis
5. Agricultural / Horticultural soil testing
6. Identification or delineation of existing or proposed easements/monumented land surveys
7. *Site / landscape lighting engineering and photometric analysis.*
8. Stormwater management system design and engineering.
9. * Signage and environmental graphics design.*
10. Erosion and Sedimentation plans and analysis.
11. * Procurement of Furniture, Fixtures and Equipment (FF&E).
12. * LEED certification and/or commissioning.
13. Maintenance manuals and development of project maintenance programs
14. Materials testing services.
15. Payment for governmental permits, application fees, processing fees, or plan check fees.
16. * Physical project models, computer fly through digital animations.*
17. * Mockups and fabricated samples.



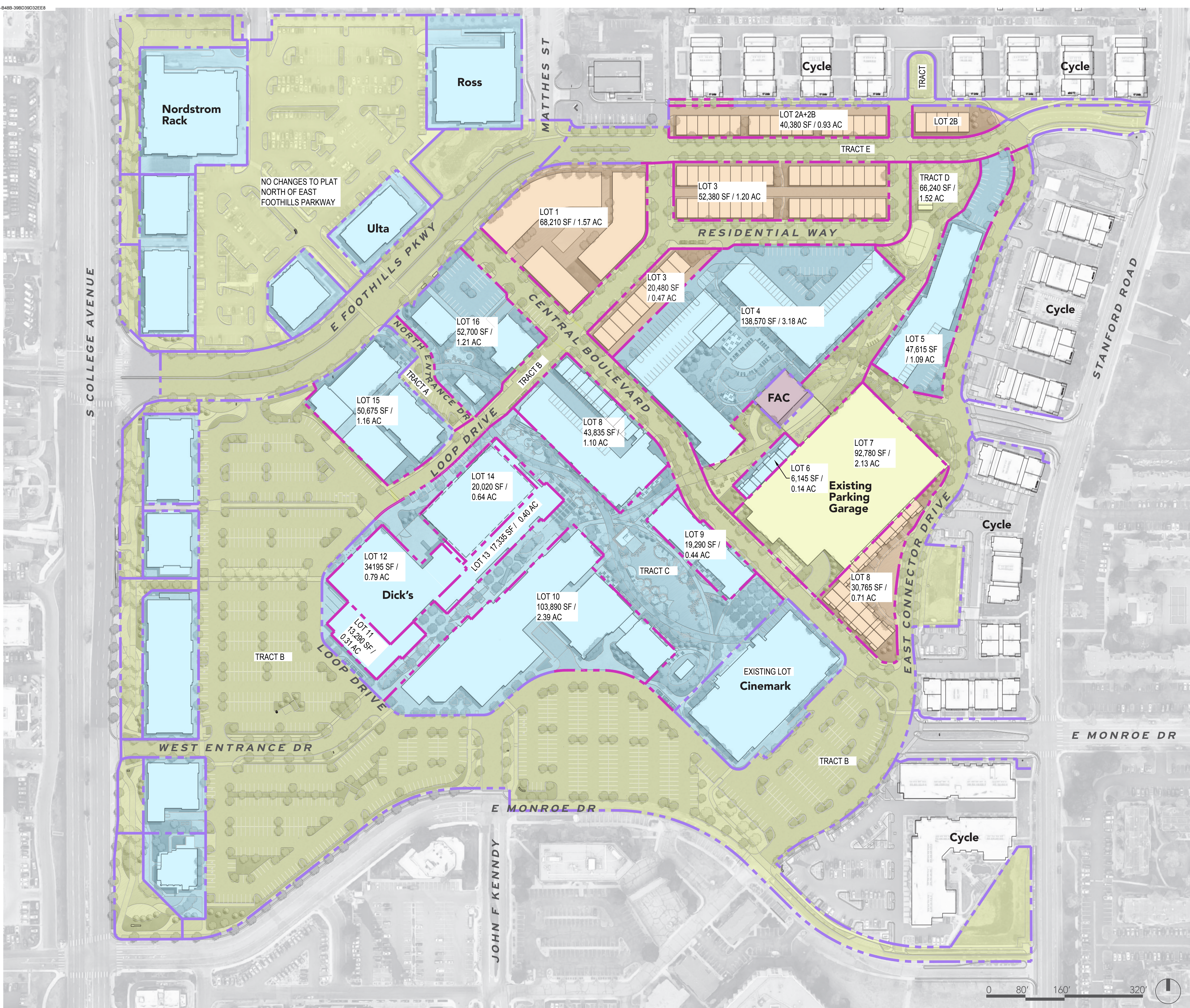
AGREEMENT

Russell+Mills Studios can initiate the proposed services upon written Authorization to Proceed. Adding your signature in the space provided below and returning a copy for our file will provide authorization of this proposal and form the basis of our contractual agreement. Should you have any questions or comments following your review of this proposal we will be pleased to address them at your earliest convenience.

Kind regards,

A handwritten signature in black ink, appearing to read "P. J. Mills", enclosed within a hand-drawn oval.

Paul Mills, RLA, ASLA
Principal / President



Legend:

- Proposed Lot/Tract Line
- Existing Lot/Tract Line
- MXD Fort Collins LLC
- Foothills Metro District
- City of Fort Collins
- Lot to Sell

EXHIBIT B

CERTIFICATION REGARDING WORKER WITHOUT AUTHORIZATION

To: FOOTHILLS METROPOLITAN DISTRICT

I, Paul Mills, as Principal of Russell + Mills Studios, the prospective “Contractor” for that certain contract for _____ 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 24th day of April, 2023.

RUSSELL + MILLS STUDIOS

DocuSigned by:
Paul Mills
By: Paul Mills
Its: Principal