

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: February 7, 2024
TIME: 2:30 p.m.
LOCATION: Microsoft Teams

1. Online Microsoft Teams Meeting – via link below

ACCESS: https://teams.microsoft.com/l/meetup-join/19%3ameeting_YmJkMWRkYjEtMDRjNC00NmNhLWI4NGQtOTg1NmE3YWY2YjMw%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: 128 303 824#

<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 December 6, 2023 Annual Community Meeting and December 6, 2023 Regular Meeting (enclosure).

- B. Ratify 1st Amendment to PRISM PLACES, INC. District Service Contract (enclosure).
- C. Consider Approval of 2024 Advantage Security, Incorporated Service Agreement - \$17,493.48 (enclosure).
- D. Review and Consider Approval of 2024 Federal Cleaning Contractors, Inc. Service Agreement - \$4,677.65 (enclosure)

III. FINANCIAL MATTERS

- A. Review and Ratify Prior Claims totaling \$67,479.74 (enclosure).
- B. Review and Consider Acceptance of December 31, 2023 Unaudited Financial Statements and Cash Position Schedule (to be distributed).

IV. MANAGER MATTERS

V. LEGAL MATTERS

VI. DIRECTOR MATTERS

VII. OTHER BUSINESS

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

VIII. ADJOURNMENT

Ther next scheduled regular meeting is April 3, 2024 @ 2:30 p.m.

RECORD OF PROCEEDINGS

MINUTES OF AN ANNUAL MEETING/STUDY SESSION OF
THE BOARD OF DIRECTORS OF THE
FOOTHILLS METROPOLITAN DISTRICT (THE “DISTRICT”)
HELD
DECEMBER 6, 2023

A regular meeting of the Board of Directors of the Foothills Metropolitan District (referred to hereafter as the “Board”) was convened on Wednesday, December 6, 2023 at 2:00 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
Dan Dougherty; Secretary
Patrick Bunyard; Assistant Secretary

Also in Attendance Were:

Denise Denslow, Curtis Bourgouin; CliftonLarsonAllen LLP (“CLA”)
Mike McBride; McWhinney

ANNUAL MEETING ITEMS

Call to Order/Quorum: Ms. Denslow called the meeting to order at 2:00 p.m. and declared a quorum of the Board.

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

Annual Meeting Matters Pursuant to Section 32-1-903(6)(a), C.R.S.

- a. **Presentation on the Status of Public Infrastructure Projects within the District and Outstanding Bonds, if any:** Nothing presented.
- b. **Review of Unaudited Financial Statements for the Current Calendar Year:** Nothing presented.

Public Questions About the District: There were no public present.

ADJOURNMENT

There being no business to come before the Board and no public present, the meeting was adjourned at 2:16 p.m.

Respectfully submitted,

By _____
Secretary for the Meeting

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF
THE BOARD OF DIRECTORS OF THE
FOOTHILLS METROPOLITAN DISTRICT (THE “DISTRICT”)
HELD
DECEMBER 6, 2023

A regular meeting of the Board of Directors of the Foothills Metropolitan District (referred to hereafter as the “Board”) was convened on Wednesday, December 6, 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
Dan Doherty, Vice President/Secretary
Josh Kane, Treasurer
Patrick Bunyard, Assistant Secretary
Tim DePeder, Assistant Secretary

Also in Attendance Were:

Denise Denslow, Curtis Bourgouin & Sandy Brandenburger;
CliftonLarsonAllen LLP (“CLA”)
Alan Pogue; Icenogle Seaver Pogue, P.C.
Mike McBride & Clyde Wood; McWhinney

ADMINISTRATIVE MATTERS

Call to Order: Ms. Denslow called the meeting to order at 2:33 p.m.

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

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

Public Comment: None.

CONSENT AGENDA

Minutes of the October 9, 2023 Special Meeting:
Elevation Holiday Lighting Agreement for Tree Lighting on College Avenue and East Lawn:
Mountain West Landscapes, LLC for Snow & Ice Management Services:
Resolution 2023-12-01, Annual Resolution:
Resolution 2023-12-02, 2024 Meeting Resolution:

Upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board approved the consent agenda item as presented.

RECORD OF PROCEEDINGS

FINANCIAL MATTERS

Prior Claims: Mr. Bourgouin reviewed with the Board. upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board approved the prior claims totaling \$457,011.79, as presented.

September 30, 2023 Unaudited Financial Statements and Cash Position: Mr. Bourgouin reviewed with the Board. Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board accepted the September 30, 2023 Unaudited Financial Statements and Cash Position, as presented.

Fiscal Focus Partners LLC 2023 Audit Engagement Letter: Ms. Denslow reviewed with the Board. Following review, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board approved the Fiscal Focus Partners LLC 2023 Audit Engagement Letter, as presented.

Public Hearing to Consider Amendment to 2023 Budget, if necessary and Adoption of Resolution 2023-12-03, to Amend 2023 Budget: Upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board opened the public hearing at 2:49 p.m. to consider the amendment of the 2023 Budget and Adoption of Resolution 2023-12-03 to Amend 2023 Budget.

Mr. Bourgouin presented the Amendment of the 2023 Budget. No public comments were received and the public hearing to consider the amendment of the 2023 Budget was closed at 2:50 p.m.

Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board approved the amendment to the 2023 Budget and Adoption of Resolution 2023-12-03 to Amend 2023 Budget, as presented.

Public Hearing on the Proposed 2024 Budget and Adoption of Resolution 2023-12-04 to Adopt the 2024 Budget and Appropriate Sums of Money and to Set Mill Levies: Upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board opened the public hearing at 2:49 p.m. to consider the adoption of the 2024 Budget and Resolution 2023-12-04 to Adopt the 2024 Budget and Appropriate Sums of Money and Set Mill Levies.

It was noted that publication of Notice stating that the Board would consider the 2024 Budget and the date, time and place of the public hearing was made in a

RECORD OF PROCEEDINGS

newspaper having general circulation within the District. No written objections were received prior to the public hearing.

Mr. Bourgoin presented the proposed 2024 Budget to the Board. No public comments were received and the public hearing to consider the proposed 2024 Budget was closed at 2:50 p.m.

Following review, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote unanimously carried, the Board adopted the proposed 2024 Budget and adopted Resolution 2023-12-04 to Adopt the 2024 Budget and Appropriate Sums of Money and Set Mill Levies, as presented subject to receipt of final assessed valuation from the County.

MANAGER MATTERS

CliftonLarsonAllen LLP Master Service Agreement and Related Statement(s) of Work: Ms. Denslow reviewed with the Board. Following review, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote unanimously carried, the Board approved the CliftonLarsonAllen LLP Master Service Agreement and Related Statement(s) of Work, as presented.

LEGAL MATTERS

Second Amendment to 2022 Funding and Reimbursement Agreement with Fort Collins, LLC for Operations Costs: Attorney Pogue reviewed with the Board. Following review, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote unanimously carried, the Board approved the Second Amendment to 2022 Funding and Reimbursement Agreement with Fort Collins, LLC for Operations Costs, as presented.

Second Amendment to Improvement Acquisition, Advance and Reimbursement Agreement with MXD Fort Collins, LLC for Capital Costs: Attorney Pogue discussed with the Board. Following discussion, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote unanimously carried, the Board approved the Second Amendment to Improvement Acquisition, Advance and Reimbursement Agreement with MXD Fort Collins, LLC for Capital Costs, as presented.

Service Agreement with Russell + Mills for Overall Development Plan (ODP) and Miscellaneous Tasks in the amount not to exceed \$40,000 : Attorney Pogue reviewed with the Board. Following review, upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote unanimously carried, the Board approved the Service Agreement with Russell + Mills for Overall Development Plan (ODP) and Miscellaneous Tasks in the amount not to exceed \$40,000, as presented.

RECORD OF PROCEEDINGS

DIRECTOR MATTERS None.

OTHER BUSINESS **Executive Session pursuant to Section 24-6-402(4)(e), C.R.S., if needed:**
No Executive Session was needed.

ADJOURNMENT There being no further business to come before the Board, the meeting was adjourned at 3:27 p.m.

Respectfully submitted,

By _____
Secretary for the Meeting

FIRST AMENDMENT TO DISTRICT SERVICE CONTRACT

This FIRST AMENDMENT TO DISTRICT SERVICE CONTRACT ("**First Amendment**") is made by and between FOOTHILLS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District**") and PRISM PLACES, INC., a California corporation ("**Manager**"), as of January 17, 2024, with reference to the following facts.

R E C I T A L S :

A. The District and Manager are parties to that certain District Service Contract between the District and Manager dated January 1, 2022 (the "**Agreement**") whereby the District retained Manager to furnish those certain maintenance services (the "**Services**") at those certain District maintained properties (the "**District Maintained Property**").

B. The parties desire to amend the terms and conditions of the Agreement as set forth in this First Amendment.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Capitalized Terms.** Capitalized terms not otherwise defined in this First Amendment shall have the same meaning as given such term in the Agreement unless expressly superseded by the terms of this First Amendment.

2. **Term.** Notwithstanding anything to the contrary set forth in the Agreement, retroactively effective as of December 31, 2022, the District and Manager agree that the term of the Agreement is hereby extended and shall expire on December 31, 2024. Thereafter, this Agreement shall automatically renew for successive one (1) year terms, unless either party provides written notice of non-renewal to the other party at least thirty (30) days prior to the end of the then existing term.

3. **Conflict; No Further Modification.** In the event of any conflict between the terms and provisions of the Agreement and terms and provisions of this First Amendment, the terms and provisions of this First Amendment shall prevail. Except as specifically set forth in this First Amendment, all of the terms and provisions of the Agreement shall remain unmodified and in full force and effect.

4. **Binding Effect.** This First Amendment shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective legal representatives, successors and assigns.

5. Time of the Essence. Time is of the essence of this First Amendment and the provisions contained herein.

6. Voluntary Agreement. The parties have read this First Amendment, and on the advice of counsel they have freely and voluntarily entered into this First Amendment.

7. Counterparts. This First Amendment may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original.

IN WITNESS WHEREOF the parties have caused this First Amendment to be executed as of the day and year first above written.


"DISTRICT":

FOOTHILLS METROPOLITAN DISTRICT,
a quasi-municipal corporation and political subdivision of
the State of Colorado

By: 
Name: Rishi Loona
Title: President

"MANAGER":

PRISM PLACES, INC.,
a California corporation

By: 
Name: Stenn Parton
Title: President







First Amendment to District Service Contract

Final Audit Report

2024-01-18

Created:	2024-01-18
By:	Toni Mbowe (Tmbowe@prismplaces.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAojSxrA2Sa3QG1d7DzzQY7mfYOF19PzqB

"First Amendment to District Service Contract" History

-  Document created by Toni Mbowe (Tmbowe@prismplaces.com)
2024-01-18 - 9:52:19 PM GMT- IP address: 192.190.114.75
-  Document emailed to stenn@prismplaces.com for signature
2024-01-18 - 9:52:35 PM GMT
-  Email viewed by stenn@prismplaces.com
2024-01-18 - 10:36:51 PM GMT- IP address: 104.28.85.116
-  Signer stenn@prismplaces.com entered name at signing as Stenn Parton
2024-01-18 - 10:37:57 PM GMT- IP address: 107.119.53.73
-  Document e-signed by Stenn Parton (stenn@prismplaces.com)
Signature Date: 2024-01-18 - 10:37:59 PM GMT - Time Source: server- IP address: 107.119.53.73
-  Agreement completed.
2024-01-18 - 10:37:59 PM GMT

DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this 1st day of January 2024 by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Advantage Security, Incorporated (“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** January 1, 2024, 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 January 1, 2024 and shall terminate by December 31, 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 CliftonLarsonAllen LLP
 Attention: Denise Denslow
 8390 E. Crescent Pkwy., Ste. 300
 Greenwood Village, CO 80111
 Email: Denise.Denslow@CLAconnect.com

To Contractor: Advantage Security Incorporated
Attn: Noah Lawonn, Portfolio Manager
13693 East Iliff Avenue, Ste. 200
Aurora, CO 80014
Email: nlawonn@advantagesecurityinc.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: Rishi Loona
Its: President

Contractor: Advantage Security Incorporated

By: Noah Lawonn
Its: Portfolio Manager

EXHIBIT A

SCOPE OF SERVICE AND CONTRACTOR'S QUOTE

Foothills Metro District 2024

Level	Pay Rate	Bill Rate	OT/HOL Rate	Hours/Week	Cost/Week		
*Security Officer 1	\$20.30	\$28.72	\$41.49	70	\$2,010.54	Average Wage	\$20.30
				<u>70</u>	<u>\$2,010.54</u>	Average Bill Rate	\$28.72
						Average OT/HOL Premium	\$12.76
						Average OT/HOL Bill Rate	\$41.49
Additional Annual Costs							
						1 - Holiday Cost (7 Holidays)	\$893.48
						2 - Vehicle	\$16,600.00
						3 - Fuel	Direct Bill
						Total:	\$17,493.48
Estimated Monthly Cost					\$10,194.07		
*Estimated Yearly Cost					\$122,328.78		
Deduct Macy's parcel owned by MXD					\$91,746.59		
<p>1 - Holiday Costs include Holiday Premium based on 7 holidays per year. 2 - Provide late model, marked patrol vehicle including maintenance, repair, signage, registration & insurance. 3 - Fuel will be direct billed as incurred. * Parking Lot/Vehicle Patrol</p>							

DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this 1st day of January 2024 by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Federal Cleaning Contractors, 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 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 safety 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** January 1, 2024, 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 January 1, 2024 and shall terminate by December 31, 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 CliftonLarsonAllen LLP
Attention: Denise Denslow
8390 E. Crescent Pkwy., Ste. 300
Greenwood Village, CO 80111
Email: Denise.Denslow@CLAconnect.com

To Contractor: Federal Cleaning Contractors, Inc.
Attn: Luis Aguilar, Sr. Vice President
2907 Meade Avenue
Las Vegas, NV 89102
Email: laguilar@escfederal.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: Rishi Loona
Its: President

Contractor: Federal Cleaning Contractors, Inc.

By: Luis Aguilar
Its: Senior Vice President

EXHIBIT A

SCOPE OF SERVICE AND CONTRACTOR'S QUOTE



January 2, 2024

Toni M’Bowe
Associate Manager – Foothills Mall

Re: Pricing for Metro effective 1/1/24 – 12/31/24

Dear Toni:

Thank you for the opportunity to present you with our Pricing for Janitorial Services for the “Metro” Area of Foothills Mall, to be effective January 1st and the proposed increase for January 1st, 2024 to December 31st, 2024.

Foothills Mall 1.1.2024	
Monthly Pricing	
Metro	\$ 4,677.65

Pricing includes:

- Labor & Supervision
- Cleaning Supplies, equipment, and Tools
- Insurances
- No changes in Scope of Work

Please contact me should you have any questions or comments.

Respectfully,

Luis A. Aguilar
Senior Vice President

Foothills Metro District
Claims Listing 12/2/23 to 2/2/24

<u>Process Date</u>	<u>Vendor</u>	<u>Invoice Number</u>	<u>Amount</u>
1/3/2024	Advantage Security Inc.	Multiple	\$ 8,938.27
1/3/2024	All Sweep Inc	23-1088	2,424.00
1/3/2024	City of Fort Collins	94442	4,946.55
1/3/2024	CliftonLarsonAllen LLP	3986095	954.28
1/3/2024	CliftonLarsonAllen LLP	3986327	1,300.82
1/3/2024	CliftonLarsonAllen LLP	3986328	1,365.00
1/3/2024	CliftonLarsonAllen LLP	3959293	3,077.55
1/3/2024	Colorado Hardscapes	3200	1,530.00
1/3/2024	Elevation Holiday Lighting LLC	1161	15,000.00
1/3/2024	Environmental Design Inc.	Multiple	7,515.19
1/3/2024	Federal Building Services Inc.	0133766-IN	4,504.24
1/3/2024	Fort Collins Utilities	Multiple	4,836.06
1/3/2024	Icenogle Seaver Pogue	24647	2,349.00
1/3/2024	KONE	871221718	2,826.78
1/9/2024	Connell Resources Inc.	2221503.03	5,785.00
1/9/2024	McWhinney Real Estate Services	415687	127.00
		Total	<u><u>\$ 67,479.74</u></u>