

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, April 5, 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

[Click here to join the meeting](#)

ACCESS: https://teams.microsoft.com/l/meetup-join/19%3ameeting_Y2UwZDNkMDktMTY0Ni00ZWQ2LTlkNTgtODQxOTc0ZWRjNDNk%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

2. To attend via telephone, dial 720-547-5281 and enter the following additional information: Conference ID: 961 506 04#

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

I. ADMINISTRATIVE MATTERS

- A. Call to Order
- B. Disclosures of Potential Conflicts of Interest
- C. Approval of Agenda
- D. Public Comment – Members of the public may express their views to the Board on matters that affect the District that are not otherwise on the agenda. Comments will be limited to three (3) minutes per person.

E. Accept Resignation of Clyde Wood

II. CONSENT AGENDA

A. Review and Approve Minutes of the February 17, 2023 Regular Meeting (enclosure).

B. Ratification/Approval of Claims Totaling \$171,099.57 (enclosure).

III. FINANCIAL MATTERS

A. Review and Accept February 28, 2023 Unaudited Financial Statements and April 2023 Cash Position Report (to be distributed).

B. Other.

IV. LEGAL MATTERS

A. Other.

V. MANAGER MATTER

A. Ratify Green Thumb Plantscape Maintenance Agreement (enclosure).

B. Ratify Green Thumb Plantscape Exterior Annuals Agreement (enclosure).

C. Other.

VI. DIRECTOR MATTERS

A. Discuss vacant director position.

VII. OTHER BUSINESS

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

IX. ADJOURNMENT

The next regular scheduled meeting is June 7, 2023 at 2:30 p.m.

RECORD OF PROCEEDINGS

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

A special meeting of the Board of Directors of the Foothills Metropolitan District (referred to hereafter as the “Board”) was convened on Friday, February 17, 2023 at 1:30 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
Clyde Wood, Secretary
Patrick Bunyard, Assistant Secretary

Director Tim DePeder was absent and excused

Also in Attendance Were:

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

ADMINISTRATIVE MATTERS

Call to Order: Director Bunyard called the meeting to order at 1:34 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 President Loona and, upon vote, unanimously carried, the Board approved the Agenda as presented.

Public Comment: None.

CONSENT AGENDA

**Minutes of the December 7, 2022 Regular Meeting:
Ratification of Claims Totaling \$171,099.57:**

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

FINANCIAL MATTERS

December 31, 2022 Unaudited Financial Statements and February 2023 Cash Position Report: Mr. Bourgoquin reviewed with the Board. Discussion followed regarding the timing of property tax receipts and expenditures in both

RECORD OF PROCEEDINGS

the General Fund and Capital Projects Fund. Following review and discussion, upon a motion duly made by Director Kane, seconded by President Loona and, upon vote, unanimously carried, the Board accepted the December 31, 2022 Unaudited Financial Statements and February 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: None.

CONSTRUCTION
REPORT

No report.

MANAGER
ITEMS

None.

DIRECTOR
ITEMS

Consider Approval of Environment Designs Inc. 2023 Landscape Maintenance Agreement and Pond Cleaning Services Addendum: Ms. Denslow briefly review the two service agreements. Director Kane inquired if they were within budget and if the agreements have provisions for termination if the services were not performed to satisfaction. Both questions were affirmed. Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved the Environment Designs Inc. 2023 Landscape Maintenance Agreement and Pond Cleaning Services Addendum.

Other: None.

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 2:02 p.m.

Respectfully submitted,

By _____
Secretary for the Meeting

RECORD OF PROCEEDINGS

Foothills Metro District
Claims Listing February 10 Through March 30, 2023

<u>Payment Date</u>	<u>Vendor</u>	<u>Ref #</u>	<u>Account Name</u>	<u>Amount (\$)</u>
2/8/2023	Colorado Hardscapes	Pay App #11	Capital outlay 307861	1,722.00
2/8/2023	Colorado Hardscapes	Pay App #12	Capital outlay 307861	1,730.28
2/15/2023	Connell Resources Inc.	2221503.02	Capital outlay 307861	2,770.00
3/1/2023	Farnsworth Group Inc.	239939	Engineering 307584	8,977.00
3/28/2023	KONE	962389579	Parking garage R&M	2,679.42
3/28/2023	KONE	962469712	Parking garage R&M	2,679.42
3/28/2023	KONE	1158494101	Parking garage R&M	900.96
3/28/2023	Special Districts Association of CO	2023 Dues	Dues and licenses 107350	755.06
3/29/2023	Elevation Holiday Lighting LLC	1107	Holiday tree lights	7,500.00
3/29/2023	Summit Compression LLC	2042	Parking garage R&M	905.38
3/29/2023	Colorado Hardscapes	2536	Fountain maintenance	1,530.00
3/29/2023	Colorado Hardscapes	2570	Fountain maintenance	1,530.00
3/29/2023	Icenogle Seaver Pogue	23027	Election expense 107581	195.00
3/29/2023	Icenogle Seaver Pogue	23027	Legal services 107460	2,315.00
3/29/2023	Icenogle Seaver Pogue	23210	Election expense 107581	994.98
3/29/2023	Icenogle Seaver Pogue	23210	Legal services 107460	2,925.00
3/29/2023	Environmental Design Inc.	163640	Landscape maintenance	5,520.55
3/29/2023	Advantage Security Inc.	465227	Security 107570	2,158.15
3/29/2023	Advantage Security Inc.	465276	Security 107570	1,715.00
3/29/2023	Advantage Security Inc.	465384	Security 107570	2,158.15
3/29/2023	Advantage Security Inc.	465551	Security 107570	2,158.15
3/29/2023	Advantage Security Inc.	465981	Security 107570	2,158.15
3/29/2023	Advantage Security Inc.	466123	Security 107570	2,158.15
3/29/2023	Advantage Security Inc.	466245	Security 107570	2,158.15
3/29/2023	Advantage Security Inc.	466409	Security 107570	2,158.15
3/29/2023	Advantage Security Inc.	466812	Security 107570	2,317.84
3/29/2023	CliftonLarsonAllen LLP	3539938	District management 107440	2,100.00
3/29/2023	CliftonLarsonAllen LLP	3539946	Accounting 107000	2,734.18
3/29/2023	CliftonLarsonAllen LLP	3542110	PIF Collection 107590	1,277.31
3/29/2023	CliftonLarsonAllen LLP	3563886	District management 107440	1,882.13
3/29/2023	CliftonLarsonAllen LLP	3572321	PIF Collection 107590	1,977.93
3/29/2023	Federal Building Services Inc.	0126719-IN	Janitorial	4,504.24
3/29/2023	Federal Building Services Inc.	0127483-IN	Janitorial	4,504.24
3/29/2023	Mountain West Landscapes LLC	2223-002-11	Snow Removal 107803	4,613.00
3/29/2023	Mountain West Landscapes LLC	2223-002-12	Snow Removal 107803	15,566.25
3/29/2023	Mountain West Landscapes LLC	2223-002-14	Snow Removal 107803	447.50
3/29/2023	All Sweep Inc	23-119	Parking garage R&M	2,424.00
3/29/2023	All Sweep Inc	23-35	Parking garage R&M	2,424.00
3/29/2023	Mountain West Landscapes LLC	S2223-002-10	Snow Removal 107803	4,713.25
3/29/2023	Mountain West Landscapes LLC	S2223-002-7A	Snow Removal 107803	1,785.75
3/29/2023	Mountain West Landscapes LLC	S2223-002-8	Snow Removal 107803	18,193.25
3/29/2023	Mountain West Landscapes LLC	S2223-002-9	Snow Removal 107803	1,709.00

\$ 171,099.57

DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this 1st day of January 2023, by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Green Thumb Plantscape (“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 November 18, 2022, 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, 2023 and shall terminate by October 1, 2023. Funding for this Agreement shall be subject to annual appropriations by the District as provided in Paragraph 8 herein.

5. Termination. The District shall have the right to terminate this Agreement, with or without cause, at any time, by providing written notice to Contractor of such termination and specifying the effective date of termination. Contractor may terminate this Agreement, with cause, by delivery of written notice of termination to the District at least thirty (30) days prior to the effective date of termination. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Contractor shall be entitled to receive compensation in accordance with Paragraph 2 of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement through the effective date of termination. Upon termination and payment of all amounts owed to Contractor, Contractor shall deliver to the District all work product, as described in Paragraph 7 hereof.

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

If to the District:

Foothills Metropolitan District
c/o CliftonLarsonAllen
Attention: Denise Denslow
8990 East Crescent Parkway, Suite 300
Greenwood Village, CO 80111
Email: denise.denslow@CLAconnect.com

If to Contractor: Green Thumb Plantscape
Attn: Sarah Ellis
5883 Lockheed Avenue
Loveland, CO 80538
Email: sarah@greenthumbplants.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:

GREEN THUMBS PLANTSCAPE

DocuSigned by:
Sarah Ellis
829E605800804DC...

By: _____
Its: _____

EXHIBIT A

SCOPE OF SERVICE AND CONTRACTOR'S QUOTE



PLANTSCAPE

5883 Lockheed Ave
 Loveland, CO 80538
 970-206-0787

Date	Estimate #
------	------------

11/18/2022	2700
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Billing Address
Foothills Metropolitan District 8390 E. Crescent Pkwy., Ste 300 Greenwood Village, CO 80111 Attn: Denise Denslow, District Manager

Qty	Description	Placement	Unit Price	Total
	2023 Maintenance for exterior Winter and Summer ground containers and hanging baskets Fort Collins Metro District			
1	January exterior maintenance		1,125.00	1,125.00
1	February exterior maintenance		1,125.00	1,125.00
1	March exterior maintenance		1,125.00	1,125.00
1	April exterior maintenance		1,125.00	1,125.00
1	May exterior maintenance		2,000.00	2,000.00
1	June exterior maintenance		3,400.00	3,400.00
1	July exterior maintenance		3,400.00	3,400.00
1	August exterior maintenance		3,400.00	3,400.00
1	September exterior maintenance		3,400.00	3,400.00
			Sales Tax (7.55%)	\$0.00
			Total	\$20,100.00

Signature _____

DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this 1st day of January 2023, by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Green Thumb Plantscape (“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 November 18, 2022, 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, 2023 and shall terminate by October 1, 2023. Funding for this Agreement shall be subject to annual appropriations by the District as provided in Paragraph 8 herein.

5. Termination. The District shall have the right to terminate this Agreement, with or without cause, at any time, by providing written notice to Contractor of such termination and specifying the effective date of termination. Contractor may terminate this Agreement, with cause, by delivery of written notice of termination to the District at least thirty (30) days prior to the effective date of termination. Contractor shall stop rendering services pursuant to this Agreement upon the effective date of termination. Contractor shall be entitled to receive compensation in accordance with Paragraph 2 of this Agreement for any satisfactory work completed pursuant to the terms of this Agreement through the effective date of termination. Upon termination and payment of all amounts owed to Contractor, Contractor shall deliver to the District all work product, as described in Paragraph 7 hereof.

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

If to the District:

Foothills Metropolitan District
c/o CliftonLarsonAllen
Attention: Denise Denslow
8990 East Crescent Parkway, Suite 300
Greenwood Village, CO 80111
Email: denise.denslow@CLAconnect.com

If to Contractor: Green Thumb Plantscape
Attn: Sarah Ellis
5883 Lockheed Avenue
Loveland, CO 80538
Email: sarah@greenthumbplants.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

C8EEDEBFFDF84E3...

By: Rishi Loona

Its: President

CONTRACTOR:

GREEN THUMBS PLANTSCAPE

DocuSigned by:

Sarah Ellis

829E605889884DC...

By: _____

Its: _____

EXHIBIT A

SCOPE OF SERVICE AND CONTRACTOR'S QUOTE



PLANTSCAPE

5883 Lockheed Ave
 Loveland, CO 80538
 970-206-0787

Date	Estimate #
------	------------

11/18/2022	2699
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Billing Address
Foothills Metropolitan District 8390 E. Crescent Pkwy., Ste 300 Greenwood Village, CO 80111 Attn: Denise Denslow, District Manager

Qty	Description	Placement	Unit Price	Total
	2023 Exterior annuals for containers and Hanging baskets Fort Collins Metro District Summer Annuals:			
50	18" Fiber pot hanging baskets		155.00	7,750.00
2	Legacy 1 planters		155.00	310.00
2	Legacy 2 planters		200.00	400.00
2	Legacy 3 planters		200.00	400.00
10	Tapered Cylinder planters		320.00	3,200.00
10	Deco planters, Courtyard		220.00	2,200.00
21	Telepot planters		135.00	2,835.00
1	Soil		1,380.00	1,380.00
1	Delivery and Installation		2,500.00	2,500.00
			Sales Tax (7.55%)	\$0.00
			Total	\$20,975.00

Signature _____

Certificate Of Completion

Envelope Id: 4DE63E5A3F384BCD856CA3789931B8EA	Status: Completed
Subject: Complete with DocuSign: Green Thumb 2023 Exterior Annuals.pdf	
Client Name: Foothills MD	
Client Number: A372454-OS01-2023	
Source Envelope:	
Document Pages: 9	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Sandy Brandenburger
Time Zone: (UTC-06:00) Central Time (US & Canada)	220 S 6th St Ste 300
	Minneapolis, MN 55402-1418
	Sandy.Brandenburger@claconnect.com
	IP Address: 71.229.161.95

Record Tracking

Status: Original	Holder: Sandy Brandenburger	Location: DocuSign
3/16/2023 1:36:35 PM	Sandy.Brandenburger@claconnect.com	

Signer Events

Rishi Loona
rishi.loona@mcwhinney.com
VP of Capital Markets
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:


CBEEDEBFDF84E3...
Signature Adoption: Pre-selected Style
Using IP Address: 64.16.27.30

Timestamp

Sent: 3/16/2023 1:42:55 PM
Viewed: 3/16/2023 2:56:28 PM
Signed: 3/16/2023 2:56:47 PM

Electronic Record and Signature Disclosure:
Accepted: 3/16/2023 2:56:28 PM
ID: 53868540-0d8b-4af8-ac42-16673bc2fdaa

Sarah Ellis
sarah@greenthumbplants.com
Security Level: Email, Account Authentication (None)

DocuSigned by:

829E60589884DC...
Signature Adoption: Pre-selected Style
Using IP Address: 76.159.172.59

Sent: 3/16/2023 1:42:56 PM
Viewed: 3/17/2023 10:48:32 AM
Signed: 3/17/2023 11:07:02 AM

Electronic Record and Signature Disclosure:
Accepted: 3/17/2023 10:48:32 AM
ID: 8171d292-b58d-43b2-8685-64ac1a46caa3

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/16/2023 1:42:56 PM
Certified Delivered	Security Checked	3/17/2023 10:48:32 AM
Signing Complete	Security Checked	3/17/2023 11:07:02 AM
Completed	Security Checked	3/17/2023 11:07:02 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, CliftonLarsonAllen LLP (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact CliftonLarsonAllen LLP:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: BusinessTechnology@CLAconnect.com

To advise CliftonLarsonAllen LLP of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at BusinessTechnology@CLAconnect.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request paper copies from CliftonLarsonAllen LLP

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

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To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

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- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify CliftonLarsonAllen LLP as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by CliftonLarsonAllen LLP during the course of your relationship with CliftonLarsonAllen LLP.