

**FOOTHILLS METROPOLITAN DISTRICT**

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

**NOTICE OF SPECIAL MEETING AND AGENDA**

**DATE:** Friday, February 17, 2023  
**TIME:** 1:30 p.m.  
**LOCATION:** Microsoft Teams

1. Online Microsoft Teams Meeting – via link below

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MDliYzVmZTQtMjFiZC00N2QyLWl1ZjEtNjJiMTdiYTlxMTE4%40thead.v2/0?context=%7b%22tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22oid%22%3a%22d42bab28-fbd8-4e65-a395-965cf9ef152f%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDliYzVmZTQtMjFiZC00N2QyLWl1ZjEtNjJiMTdiYTlxMTE4%40thead.v2/0?context=%7b%22tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22oid%22%3a%22d42bab28-fbd8-4e65-a395-965cf9ef152f%22%7d)

**ACCESS:**

2. To attend via telephone, dial 720-547-5281 and enter the following additional information: Conference ID: 506 299 492#

| <u>Board of Directors</u> | <u>Office</u>       | <u>Term Expires</u> |
|---------------------------|---------------------|---------------------|
| Rishi Loona               | President           | May 2023            |
| Josh Kane                 | Treasurer           | May 2025            |
| Clyde Wood                | 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.

**II. CONSENT AGENDA**

- A. Review and Approve Minutes of the December 7, 2022 Regular Meeting (enclosure).

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

**III. FINANCIAL MATTERS**

A. Review and Accept December 31, 2022 Unaudited Financial Statements and February 2023 Cash Position Report (to be distributed).

B. Other.

**IV. LEGAL MATTERS**

A. Other.

**V. CONSTRUCTION REPORT**

**VI. MANAGER MATTER**

A. Other.

**VII. DIRECTOR MATTERS**

A. Consider Approval of Environmental Designs Inc. 2023 Landscape Maintenance Agreement and Pond Cleaning Services Addendum (enclosures).

B. Other.

**VIII. OTHER BUSINESS**

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

**X. ADJOURNMENT**

**The next regular scheduled meeting is April 5, 2023 at 2:30 p.m.**

## RECORD OF PROCEEDINGS

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MINUTES OF A REGULAR MEETING OF  
THE BOARD OF DIRECTORS OF THE  
FOOTHILLS METROPOLITAN DISTRICT (THE “DISTRICT”)  
HELD  
DECEMBER 7, 2022

A regular meeting of the Board of Directors of the Foothills Metropolitan District (referred to hereafter as the “Board”) was convened on Wednesday, December 7, 2022, at 2:30 p.m. This District Board meeting was held via Microsoft Teams. The meeting was open to the public.

### ATTENDANCE

**Directors in Attendance Were:**

Rishi Loona, President  
Josh Kane, Treasurer  
Clyde Wood, Secretary  
Patrick Bunyard, Assistant Secretary  
Tim DePeder, Assistant Secretary

**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 2:33 p.m.

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

**Approval of Agenda:** Upon a motion duly made by Director DePeder, seconded by Director Kane and upon vote, unanimously carried, the Board approved the Agenda as amended to include an amendment to the 2022 Budget.

**Public Comment:** None.

**Discuss and consider approval of 2023 insurance renewal and authorize 2023 membership to the Special District Association:** Upon a motion duly made by Director Kane, seconded by Director Wood and, upon vote, unanimously carried, the Board approved the 2023 insurance renewal and membership to Special District Association, subject to final review of the property schedule by Director Bunyard.

### CONSENT AGENDA

**Minutes of the October 5, 2022 Regular Meeting:**  
**Ratification of Claims Totaling \$299,385.33:**  
**Consider and Approval of 2023 Annual Administrative Matters Resolution 2022-12-01:**

## RECORD OF PROCEEDINGS

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**Consideration and Approval of 2023 Meeting Resolution 2022-12-02:  
Consideration and Approval of Resolution 2022-12-03, Calling May 2, 2023  
Directors' Regular Election for May 2023 Election:**

Upon a motion duly made by Director Kane, seconded by Director Loona and, upon vote, unanimously carried, the Board approved the Consent Agenda items with the insertion of the regular meeting dates on the first Wednesday of even numbered months at 2:30 p.m. via Microsoft TEAM, and to be adjusted as necessary.

**FINANCIAL  
MATTERS**

**October 31, 2022 Unaudited Financial Statements and December 2022 Cash Position Report:** Ms. Bartow reviewed with the Board. Discussion followed regarding the schedule of developer advances and the operational costs. Following review and discussion, upon a motion duly made by Director Kane, seconded by Director Wood and, upon vote, unanimously carried, the Board accepted the October 31, 2022 Unaudited Financial Statements and December 2022 Cash Position Report as presented.

**Fiscal Focus Partners LLC Engagement Letter to Perform 2022 Audit:** Ms. Bartow reviewed the engagement letter with the Board and informed the Board of an increase in fee of \$650. 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 engagement letter to perform the 2022 Audit in the amount of \$7,050 as presented.

**Conduct Public Hearing to Consider Adoption of 2023 Budget:** Upon a motion duly made by Director Wood, seconded by Director Kane and, upon vote, unanimously carried, the Board opened the public hearing at 2:55 p.m. for both the consideration of the 2023 proposed Budget as well and a 2022 Budget amendment.

It was noted that publication of notice stating that the Board would consider approval of the 2023 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to the public hearing.

Ms. Bartow reviewed the draft 2023 Budget with the Board. Discussion followed regarding engineering costs and whether or not they should be moved to the Capital Projects Fund. It was noted for the Board that the existing Service Plan does have limits in it regarding the mill levy rates. The Board requested that CLA provide a comparison of mill levies for similar properties.

Following discussion, the Board determined that since the draft budget did not contain amounts in the Capital Projects Fund for 2023, a modification needed to

## RECORD OF PROCEEDINGS

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be made in the amount of \$800,000 in expenditures with the same offset on the revenue side in developer advances.

1. **Consider Adoption of Resolution 2022-12-04, Adopting 2023 Budget, Appropriating Expenditures and Certifying Mill Levies:** Upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board adopted Resolution 2022-12-04, Adopting 2023 Budget, Appropriating Expenditures and Certifying Mill Levies, subject to modifications to reflect activity in the Capital Projects Fund.

**Appointment of Board member and/or General Counsel to sign DLG-70 Certification of Tax Levies:** Ms. Bartow informed the Board that CLA would sign the DLG-70 form upon completion and file as necessary.

**Conduct Public Hearing to Consider Amendment of 2022 Budget:** It was noted that publication of notice stating that the Board would consider amendment of the 2022 Budget and the date, time and place of the public hearing was made in a newspaper having general circulation within the District. No written objections were received prior to the public hearing.

1. **Consider Adoption of Resolution 2022-12-05 to Amend 2022 Budget:** Ms. Bartow informed the Board that the 2022 Capital Projects Fund would need to be amended to reflect expenditures anticipated through the end of the year. Following discussion, upon a motion duly made by Director Kane, seconded by Director DePeder and, upon vote, unanimously carried, the Board Adopted Resolution 2022-12-05 to Amend the 2022 Budget's Capital Projects Fund from \$219,303 to \$450,000.

The Board closed the public hearing.

**Other:** None.

### FINANCIAL MATTERS

### LEGAL MATTERS

**Consideration and Approval of First Amendment to 2022 Funding and Reimbursement Agreement with MXD Fort Collins, LLC for Operation Costs:** Attorney Pogue informed the Board noting that the 2022 agreement does not include costs for 2023. Therefore, the term needs to be extended, and the amount of the funding amount increased. Discussion followed regarding interest rates in both this agreement and the Capital Funding Agreement. The Board determined that the interest rate, if there are no provisions in the existing Service Plan to limit it, should be the greater of the prime plus 2 or 6, not to exceed 8%, with no compounding.

## RECORD OF PROCEEDINGS

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Following discussion, upon a motion duly made by Director Kane, seconded by Director DePeder and, upon vote, unanimously carried, the Board approved the First Amendment to 2022 Funding and Reimbursement Agreement with MXD Fort Collins, LLC for Operation Costs to extend the term to December 31, 2023, increase the funding amount by \$60,000 to cover expenditures and confirm interest rate, subject to legal review of the interest rate provisions of the Service Plan.

**Consideration and Approval of First Amendment to Improvement Acquisition, Advance and Reimbursement Agreement with MXD Fort Collins, LLC for Capital Costs:** Attorney Pogue informed the Board noting that the 2022 agreement does not include costs for 2023. Therefore, the term needs to be extended, and the amount of the funding amount increased. Discussion followed regarding the same topics in prior agenda item. Following discussion, upon a motion duly made by Director Kane, seconded by Director DePeder and, upon vote, unanimously carried, the Board approved the First Amendment to Improvement Acquisition, Advance and Reimbursement Agreement with MXD Fort Collins, LLC for Capital Costs to extend the term to December 31, 2023, increase the funding amount by \$800,000 to cover expenditures, and confirm interest rate, subject to legal review of the interest rate provisions of the Service Plan.

**Ratify Event Holiday Lights Agreement:** Upon a motion duly made by Director Bunyard, seconded by Director Kane and, upon vote, unanimously carried, the Board ratified approval of the Event Holiday Lights Agreement.

**Ratify Tree Lighting Agreement:** Upon a motion duly made by Director Bunyard, seconded by Director Kane and, upon vote, unanimously carried, the Board ratified approval of the Tree Lighting Agreement.

**Ratify Mountain West Landscapes, LLC Snow Agreement:** Upon a motion duly made by Director Bunyard, seconded by Director Kane and, upon vote, unanimously carried, the Board ratified approval of the Mountain West Landscapes, LLC Snow Agreement.

**Consider Approval of Consent Resolution to Entitle the Metro District Surface Parking:** Attorney Pogue noted that this item includes all metro district property and is not confined to the surface parking area as noted in the agenda item. Following discussion, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved the Consent Resolution to entitle the Metro District Surface Parking.

CONSTRUCTION

None.

**RECORD OF PROCEEDINGS**

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REPORT

MANAGER  
ITEMS

**Approval of CliftonLarsonAllen LLP 2023 Statements of Work:** Ms. Denslow reviewed with the Board. Following review, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the Board approved CliftonLarsonAllen LLP 2023 Statements of Work as presented.

DIRECTOR  
ITEMS

**Other:** None.

OTHER  
BUSINESS

None.

EXECUTIVE  
SESSION

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

ADJOURNMENT

There being no further business to come before the Board, upon a motion duly made by Director Kane, seconded by Director Bunyard and, upon vote, unanimously carried, the meeting was adjourned at 3:34 p.m.

Respectfully submitted,

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

Foothills Metro District  
Claims Listing December 1, 2022, Through February 9, 2023

| <u>Payment Date</u> | <u>Vendor</u>                    | <u>Ref #</u>    | <u>Account Name</u>                 | <u>Amount (\$)</u>         |
|---------------------|----------------------------------|-----------------|-------------------------------------|----------------------------|
| 12/27/2022          | Fort Collins Utilities           | 705139-88394    | Utilities 107804                    | 2,424.22                   |
| 12/27/2022          | Fort Collins Utilities           | 725633-88394    | Utilities 107804                    | 1,583.82                   |
| 12/28/2022          | Icenogle Seaver Pogue            | 22725           | Election expense 107581             | 4.10                       |
| 12/28/2022          | Icenogle Seaver Pogue            | 22725           | Legal services 107460               | 2,339.00                   |
| 12/28/2022          | Green Thumb Plantscape           | 39977           | Repairs and maintenance 107802      | 1,125.00                   |
| 12/28/2022          | Environmental Design Inc.        | 159946          | Repairs and maintenance 107802      | 5,441.03                   |
| 12/28/2022          | Advantage Security Inc.          | 463361          | Security 107570                     | 1,715.00                   |
| 12/28/2022          | Advantage Security Inc.          | 463457          | Security 107570                     | 1,715.00                   |
| 12/28/2022          | Advantage Security Inc.          | 463660          | Security 107570                     | 1,715.00                   |
| 12/28/2022          | Advantage Security Inc.          | 463713          | Security 107570                     | 1,715.00                   |
| 12/28/2022          | Advantage Security Inc.          | 463714          | Security 107570                     | 1,715.00                   |
| 12/28/2022          | Advantage Security Inc.          | 463715          | Security 107570                     | 1,715.00                   |
| 12/28/2022          | Advantage Security Inc.          | 464026          | Security 107570                     | 1,715.00                   |
| 12/28/2022          | CliftonLarsonAllen LLP           | 3480213         | District management 107440          | 1,906.80                   |
| 12/28/2022          | CliftonLarsonAllen LLP           | 3481959         | Accounting 107000                   | 2,768.83                   |
| 12/28/2022          | CliftonLarsonAllen LLP           | 3483564         | PIF Collection 107590               | 1,634.19                   |
| 12/28/2022          | Federal Building Services Inc.   | 0125353-IN      | Repairs and maintenance 107802      | 4,325.80                   |
| 12/28/2022          | All Sweep Inc                    | 22-1127         | Repairs and maintenance 107802      | 2,353.00                   |
| 12/28/2022          | CO Special Dist Prop & Liab Pool | 23PL-61181-2779 | Prepaid insurance 101255            | 20,110.00                  |
| 12/28/2022          | Mountain West Landscapes LLC     | S2223-002-1     | Snow Removal 107803                 | 6,014.25                   |
| 12/28/2022          | Mountain West Landscapes LLC     | S2223-002-2     | Snow Removal 107803                 | 6,588.45                   |
| 1/5/2023            | Sasaki Associates Inc.           | 87720           | Engineering 307584                  | 15,309.00                  |
| 1/5/2023            | Farnsworth Group Inc.            | 235411          | Engineering 307584                  | 1,005.00                   |
| 1/26/2023           | Elevation Holiday Lighting LLC   | 1091            | Repairs and maintenance 107802      | 7,500.00                   |
| 1/26/2023           | Icenogle Seaver Pogue            | 22871           | Election expense 107581             | 65.60                      |
| 1/26/2023           | Icenogle Seaver Pogue            | 22871           | Legal services 107460               | 3,570.00                   |
| 1/26/2023           | Green Thumb Plantscape           | 40110           | Repairs and maintenance 107802      | 1,125.00                   |
| 1/26/2023           | Environmental Design Inc.        | 160651          | Repairs and maintenance 107802      | 5,441.03                   |
| 1/26/2023           | Advantage Security Inc.          | 464222          | Security 107570                     | 1,715.00                   |
| 1/26/2023           | Advantage Security Inc.          | 464372          | Security 107570                     | 1,715.00                   |
| 1/26/2023           | Advantage Security Inc.          | 464470          | Security 107570                     | 1,715.00                   |
| 1/26/2023           | Advantage Security Inc.          | 464782          | Security 107570                     | 1,715.00                   |
| 1/26/2023           | Advantage Security Inc.          | 465038          | Security 107570                     | 2,018.85                   |
| 1/26/2023           | CliftonLarsonAllen LLP           | 3504835         | District management 107440          | 583.28                     |
| 1/26/2023           | CliftonLarsonAllen LLP           | 3506093         | PIF Collection 107590               | 965.64                     |
| 1/26/2023           | CliftonLarsonAllen LLP           | 3509161         | Accounting 107000                   | 2,731.95                   |
| 1/26/2023           | Federal Building Services Inc.   | 0126147-IN      | Repairs and maintenance 107802      | 4,325.80                   |
| 1/26/2023           | All Sweep Inc                    | 22-1207         | Repairs and maintenance 107802      | 2,353.00                   |
| 1/26/2023           | Fort Collins Utilities           | 725633-88394    | Utilities 107804                    | 3,262.73                   |
| 1/26/2023           | Prism Places Inc.                | FHMD-Q1-Q3 2022 | Property management contract 107582 | 14,158.92                  |
| 1/26/2023           | Mountain West Landscapes LLC     | S2223-001-5     | Snow Removal 107803                 | 6,658.00                   |
| 1/26/2023           | Mountain West Landscapes LLC     | S2223-002-3     | Snow Removal 107803                 | 1,559.25                   |
| 1/26/2023           | Mountain West Landscapes LLC     | S2223-002-5     | Snow Removal 107803                 | 9,459.00                   |
| 1/26/2023           | Mountain West Landscapes LLC     | S2223-002-6     | Snow Removal 107803                 | 3,829.25                   |
| 1/26/2023           | Mountain West Landscapes LLC     | S2223-002-7     | Snow Removal 107803                 | 4,242.50                   |
| 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                   |
|                     |                                  |                 |                                     | <u><u>\$171,099.57</u></u> |



**DISTRICT SERVICE AGREEMENT**

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this 17th day of February 2023, by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Environmental Designs, 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 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** February 1, 2023, and attached hereto as Exhibit A, with the Scope of Services to be performed hereunder, are each and all included in and made a part of this Agreement.

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

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

### 3. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall acquire and maintain in full force and effect during the entire term of this Agreement, and at its sole cost and expense, including any extensions of this Agreement, the minimum insurance coverages and limits set forth in this Paragraph 3.A., to provide protection from claims that may arise out of or result from Contractor's performance or obligations pursuant to this Agreement, whether such performance is by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone who acts on behalf of Contractor, including any subcontractors of Contractor. The minimum insurance coverages and limits to be acquired by Contractor are as follows:

(1) Commercial General Liability Insurance:

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

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

(3) Workmen's Compensation and Employer Liability Insurance

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

All policies listed herein shall be on an occurrence basis.

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

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

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

4. Term. The term of this Agreement shall commence on February 1 2023 and shall terminate by January 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<br>c/o <u>CliftonLarsonAllen</u><br>Attention: Denise Denslow<br>8990 East Crescent Parkway, Suite 300<br>Greenwood Village, CO 80111<br>Email: denise.denslow@CLAconnect.com |
|---------------------|---|

If to Contractor: Environmental Designs, Inc.  
Attn: Ross Morrison  
12511 E. 112<sup>th</sup> Avenue  
Henderson, CO 80640  
Email: [rmorrison@environmentaldesigns.net](mailto:rmorrison@environmentaldesigns.net)

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

8. Subject to Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year.

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

10. Indemnification. Contractor shall indemnify, assume all responsibility for, and hold harmless the District and each of its directors, officers, consultants, employees, servants, agents, and authorized volunteers, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities arising, or alleging to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Contractor or any of its subcontractors, agents or employees, in connection with Contractor's performance, duties, and obligations pursuant to this Agreement; provided, however, that Contractor shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the District or any third party under the control or supervision of the District. The obligations of the indemnifications extended by Contractor to the District under this Paragraph 10 shall survive termination or expiration of this Agreement.

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

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

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

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

15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

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

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

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

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.)

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

**DISTRICT:**

**FOOTHILLS METROPOLITAN DISTRICT**

\_\_\_\_\_  
By: Rishi Loona  
Its: President

**CONTRACTOR:**

**Environmental Designs, Inc.**

\_\_\_\_\_  
By: Ross Morrison  
Its: \_\_\_\_\_

**EXHIBIT A**

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





# ENVIRONMENTAL DESIGNS, INC.

17

DENVER METRO  
(303) 287-9113  
12511 E. 112TH AVE.  
BRIGHTON, CO 80640

NORTHERN COLORADO  
(970) 237-6225  
3950 PATTON AVE.  
LOVELAND, CO 80538

WWW.ENVIRONMENTALDESIGNS.COM

## LANDSCAPE MAINTENANCE AGREEMENT

EDI Contact: Ross Morrison  
Project Name: Foothills Metro District  
Project Address 215 E Foothills Parkway Suite 220, 80525, CO 80525

Proposal #: 107187  
Effective Date: February 1, 2023  
Termination Date: January 31, 2024

THIS LANDSCAPE MAINTENANCE AGREEMENT (the "Agreement") is made and entered into as of 2/1/2023 (the "Effective Date") by and between Environmental Designs, Inc. (the "Contractor") and Foothills Metro District (the "Client"). The Client and Contractor agree as follows:

### 1. SCOPE OF WORK

- A. The Contractor agrees to perform the work and services under this Agreement at its sole expense for all labor, materials, services, equipment, and tools required to fulfill its obligations and to properly execute and complete the work as described more particularly on the attachment (the "Work") identified as Exhibit A.
- B. The Contractor shall commence work on the Effective Date and shall expire on the Termination Date unless sooner terminated as provided in this Agreement.

### 2. GENERAL PROVISIONS

- A. The Contractor shall be responsible for any damages caused by his work force while performing the requirements of this agreement. The Contractor shall provide Labor and Materials for the repair or replacement of these damages.
- B. This proposal shall expire unless accepted in writing, by Client and an authorized agent of Contractor, as evidenced by their signatures below, and the offering party receives notice of acceptance within ten (10) calendar days of the date of this contract. If accepted, this document shall become a contract between Client and Contractor. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between Client and Contractor.
- C. This agreement constitutes the entire contract between the Client and Contractor, and any prior agreements pertaining thereto, whether verbal or written, have been merged and integrated into this contract. No subsequent modification of any of the terms of this contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by both the Client and an authorized agent of Contractor. Any obligation in this contract that, by its terms, is intended to be performed after completion shall survive the same.

### 3. TERMINATION

- A. Either party may terminate this Agreement by written notice by certified mail to the other party. Notice to be given at least thirty (30) days prior to the effective date of such termination.
- B. Contractor and Client agree that the work performed is proportionally greater during the growing season. In the event of termination full payment for actual services performed or materials provided become due and payable on or before date of termination. In the event of pre-payment of services or materials not performed or provided, a refund will be due and payable on termination date.
- C. In the event that Contractor cannot secure an adequate labor force to perform the work as outline within this agreement, at the sole discretion of Contractor, Contractor may cancel this agreement without penalty from Client subject to notification as outlined above.
- D. If payment for services rendered is delinquent by thirty (30) days or more, Environmental Designs, Inc. reserves the right to suspend services until the account is made current without any breach of contract.

### 4. INSURANCE

- A. The Contractor shall at all times be covered by adequate liability and workers compensation insurance. The Contractor shall provide proof of coverage to the client prior to work being performed.

Award-Winning Landscape Architecture, Construction, & Maintenance since 1989

☎ 303.287.9113 Main ☎ 970.237.6225 Northern Colorado 📍 12511 East 112th Avenue, Brighton, CO 80640 🌐 environmentaldesigns.com

**5. ADDITIONAL SERVICES AVAILABLE**

A. The Contractor offers the following services to complete their Landscape Maintenance & Construction Package:

- 1. Full Landscape Design Services by in house Architects and Designers.
- 2. All sizes of landscape construction projects, both residential and commercial.
- 3. Irrigation system design, installation, and service.
- 4. Annual Floral Color design, installation, and maintenance including beds, pots, hanging pots, decks, etc.
- 5. Replacement of or addition of trees, shrubs, ornamental grasses, and perennial flowers.
- 6. Full Plant Health Care (PHC) including pest control, fertilization, and deep root watering.
- 7. Full Arbor Services including tree pruning, tree removal, and stump grinding.
- 8. Estate Maintenance Programs
- 9. Native Grass and Field Mowing
- 10. Holiday Lighting and Decoration

**6. PAYMENT SCHEDULE**

A. All payments are to be made on or before that last day of each month. Billing cycle will be processed on the first for services performed for that month. Time and material charges will be invoiced separately and will be due NET 30 from date of invoice.

B. Payments past due fifteen (15) days shall incur a finance charge of 1.5% per month (18% per annum). ENVIRONMENTAL DESIGNS, INC. or its assignee shall be entitled to collect all reasonable costs and expenses of collection, including, but not limited to, reasonable attorney fees.

C. In consideration for the Contractor's performance of the Work included in this agreement and before any Additional Services Addendums, if any, the Client will pay the Contractor as follows:

|                             |                      |
|-----------------------------|----------------------|
| 12 Monthly Installments of: | <b>\$4,839.99</b>    |
| Starting:                   | <b>February 2023</b> |
| Ending:                     | <b>January 2024</b>  |
| Total Contract Price:       | <b>\$58,079.89</b>   |

D. In the event that the average fuel price index, as found on <http://www.denvergasprices.com>, reach or exceed \$4.00 per gallon, a fuel surcharge of 3% will be applied to all invoices associated with this Snow Services Agreement until fuel prices drop below the aforementioned benchmark price, said surcharge shall increase 3% for every \$0.50 increase above the benchmark price of \$4.00 per gallon.

**7. ACCEPTANCE**

ENVIRONMENTAL DESIGNS, INC.  
 12511 E. 112th. Avenue  
 Henderson, CO 80640  
 303-287-9113

Foothills Metro District  
 215 E Foothills Parkway Suite 220  
 80525, CO 80525  
 970-226-5556

\_\_\_\_\_  
Contractor Signature    Date

\_\_\_\_\_  
Client Signature    Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

## EXHIBIT A

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

|  |                                      |    |
|--|--------------------------------------|----|
| Weekly Services  | Frequency included in this Agreement | 26 |
| <p>Weekly Services shall include the weekly monitoring of landscape areas for loose trash and debris, trimming of turf areas where necessary, weed control in beds, blowing of grass clippings from walks, porches, and curb lines, and mowing of all turf areas to a height of 3"-4" from May to September and twice monthly in April and October. Steel-blade edging along sidewalks and curbs will be performed bi-weekly from April to October.</p> <p>The Contractor shall be selective in the chemical controls used so as to ensure against an improper application that may cause damage to turf, trees, or shrubs. The Contractor shall provide for the complete safety the user(s), the public, residents, and their properties. The Contractor shall meet all Colorado State and Environmental Protection Agency (EPA) licensing requirements.</p> <p><b>Commercial Applicators are licensed by the Colorado Department of Agriculture.</b></p> |                                      |    |
| Aeration - Spring  | Frequency included in this Agreement | 1  |
| <p>A core aeration of all turf areas shall be performed in the Spring to minimize the compaction of the soil which will promote greater air movement within the ground and, in turn, promote a healthier, stronger root system for the turf.</p>   |                                      |    |
| Aeration - Fall  | Frequency included in this Agreement | 1  |
| <p>A core aeration of all turf areas shall be performed in the Fall to minimize the compaction of the soil which will promote greater air movement within the ground and, in turn, promote a healthier, stronger root system for the turf.</p>   |                                      |    |
| Fertilization - Spring Turf  | Frequency included in this Agreement | 1  |
| <p>Spring Fertilization consists of an application of granular fertilizer containing a slow-release nitrogen compound applied to all turf areas. This application is crucial to a strong "green up" during the spring, and with the slow-release nitrogen, the product not only benefits the turf for a longer period of time but also helps it to hold its color later into the season. The Spring Fertilization application of fertilizer is coupled with a granular pre-emergent weed control to mitigate germination of weeds in turf areas. Thus, reducing the overall volume of weeds to be controlled with a broadleaf herbicide.</p>   |                                      |    |
| Fertilization - Summer Turf  | Frequency included in this Agreement | 1  |
| <p>Summer Fertilization consists of an application of granular fertilizer containing a slow-release nitrogen compound applied to all turf areas. This application is crucial to maintaining a strong green appearance through the hot summer season and with the slow-release nitrogen, the product not only benefits the turf for a longer period of time but also helps it to hold its color later into the season.</p>  |                                      |    |
| Spring Leaf & Debris Clean-up  | Frequency included in this Agreement | 1  |
| <p>Spring Leaf &amp; Debris Clean-up consists of the cleaning of any leftover leaves, bed maintenance, and edging along sidewalks and hardscape as needed.</p>   |                                      |    |
| Fall Leaf & Debris Clean-up  | Frequency included in this Agreement | 1  |
| <p>Fall Leaf and Debris Clean-up includes the raking or blowing of leaves and removal from landscape areas after all of the leaves have fallen from the trees and shrubs on the property. All leaves and debris will be disposed of off site.</p>  |                                      |    |
| Prune / Cutback Grasses & Perennials   | Frequency included in this Agreement | 1  |
| <p>Prune / Cutback Grasses &amp; Perennials includes the late winter or early spring cutting of the Ornamental Grasses and Perennials to promote healthy growth in the next growing season.</p>  |                                      |    |
| Prune Trees & Shrubs   | Frequency included in this Agreement | 1  |
| <p>This service includes the one-time pruning of all shrubs and ornamental trees (up to 12' in height and branches 2" or less in diameter) on site at the appropriate time during the growing season to accommodate normal growing habits. This includes the removal of nuisance growth and site restrictions. Large tree trimming and removal, rejuvenation pruning, full removal of dead and/or dying branches &amp; limbs, and other major pruning projects are available upon request under separate bid.</p>  |                                      |    |
| Prune Trees & Shrubs - Touchup   | Frequency included in this Agreement | 1  |
| <p>This service includes additional rounds of selective pruning of nuisance growth and site restrictions on shrubs and ornamental trees (up to 12' in height and branches 2" or less in diameter) on site.</p>   |                                      |    |

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

|   |                                      |    |
|---|--------------------------------------|----|
| Irrigation Activation   | Frequency included in this Agreement | 1  |
| <p>This service includes the activation of the irrigation system and a full system check. If any repairs are necessary to complete the activation of the irrigation system, a proposal for said repairs will be delivered for approval. Any delay in approving Spring Activation Repairs may result in a delay in fully activating the irrigation system.</p>   |                                      |    |
| Irrigation Checks - Bi-Weekly   | Frequency included in this Agreement | 14 |
| <p>This service includes a full system check as necessary up to every other week during the growing season. This service includes checking the entire system for proper operation, the minor adjustment of irrigation heads, clearing plugged nozzles, and Irrigation Timer adjustments. In the event of a non-operable condition not caused by the Contractor's Mowing Operations, any irrigation system repairs necessary will be corrected and billed at \$80.00 per man hour plus materials and machine if necessary. This includes raising and lowering irrigation heads, clearing of plugged lines, replacement of broken or missing irrigation heads, redesign work, additions, valve locating, Irrigation Timer repairs and replacements, toning or tracing wires, and anything that requires digging or excavation.</p> <p>Contractor provides 24-Hour Emergency Service with a two hour minimum billed as outlined above.</p> |                                      |    |
| Irrigation Winterization  | Frequency included in this Agreement | 1  |
| <p>This service includes a fully system shutdown and Winterization.</p>   |                                      |    |
| Pre-Emergent Application-Beds/Parking   | Frequency included in this Agreement | 1  |
| <p>This service includes the spraying of a Pre-Emergent Weed Control Pesticide on all beds and cracks in the adjacent walks and parking areas.</p> <p>The Contractor shall be selective in the chemical controls used so as to ensure against an improper application that may cause damage to turf, trees, or shrubs. The Contractor shall provide for the complete safety the user(s), the public, residents, and their properties. The Contractor shall meet all Colorado State and Environmental Protection Agency (EPA) licensing requirements.</p> <p><b>Commercial Applicators are licensed by the Colorado Department of Agriculture.</b></p>   |                                      |    |
| Broadleaf Application Round 1   | Frequency included in this Agreement | 1  |
| <p>This service includes one broadcast application of a Selective Post-Emergent Weed Control Pesticide to all turf areas.</p> <p>The Contractor shall be selective in the chemical controls used so as to ensure against an improper application that may cause damage to turf, trees, or shrubs. The Contractor shall provide for the complete safety the user(s), the public, residents, and their properties. The Contractor shall meet all Colorado State and Environmental Protection Agency (EPA) licensing requirements.</p> <p><b>Commercial Applicators are licensed by the Colorado Department of Agriculture.</b></p>  |                                      |    |
| Broadleaf Application Round 2   | Frequency included in this Agreement | 1  |
| <p>This service includes one spot spray or full broadcast application of a Selective Post-Emergent Weed Control Pesticide to all turf areas as needed.</p> <p>The Contractor shall be selective in the chemical controls used so as to ensure against an improper application that may cause damage to turf, trees, or shrubs. The Contractor shall provide for the complete safety the user(s), the public, residents, and their properties. The Contractor shall meet all Colorado State and Environmental Protection Agency (EPA) licensing requirements.</p> <p><b>Commercial Applicators are licensed by the Colorado Department of Agriculture.</b></p>   |                                      |    |
| Broadleaf Application Round 3   | Frequency included in this Agreement | 1  |
| <p>This service includes one additional spot spray or full broadcast application of a Selective Post-Emergent Weed Control Pesticide to all turf areas as needed.</p> <p>The Contractor shall be selective in the chemical controls used so as to ensure against an improper application that may cause damage to turf, trees, or shrubs. The Contractor shall provide for the complete safety the user(s), the public, residents, and their properties. The Contractor shall meet all Colorado State and Environmental Protection Agency (EPA) licensing requirements.</p> <p><b>Commercial Applicators are licensed by the Colorado Department of Agriculture.</b></p>  |                                      |    |

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

|   |                                      |   |
|---|--------------------------------------|---|
| Broadleaf Application Round 4   | Frequency included in this Agreement | 1 |
| <p>This service includes one additional spot spray or full broadcast application of a Selective Post-Emergent Weed Control Pesticide to all turf areas as needed.</p> <p>The Contractor shall be selective in the chemical controls used so as to ensure against an improper application that may cause damage to turf, trees, or shrubs. The Contractor shall provide for the complete safety the user(s), the public, residents, and their properties. The Contractor shall meet all Colorado State and Environmental Protection Agency (EPA) licensing requirements.</p> |                                      |   |

**Commercial Applicators are licensed by the Colorado Department of Agriculture.**

|  |                                      |    |
|--|--------------------------------------|----|
| Winter Services  | Frequency included in this Agreement | 24 |
| <p>Winter Services are included under this agreement and shall consist of a weekly policing of the property for removal of loose trash &amp; debris.</p> |                                      |    |

### Additional Services Addendums

In the event that any Additional Services are included in this agreement they shall be attached hereto as an Addendum to this Exhibit A and if executed properly shall be incorporated into the Scope of Services (the "Work") and any fees and terms shall be incorporated into this agreement.

## DISTRICT SERVICE AGREEMENT

THIS DISTRICT SERVICE AGREEMENT (“Agreement”) is made and entered into on this 1st day of February, 2023, by and between Foothills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Environmental Designs, 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 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** February 1, 2023, and attached hereto as Exhibit A, with the Scope of Services to be performed hereunder, are each and all included in and made a part of this Agreement.

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

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

### 3. Insurance.

A. Minimum Scope and Limits of Insurance. Contractor shall acquire and maintain in full force and effect during the entire term of this Agreement, and at its sole cost and expense, including any extensions of this Agreement, the minimum insurance coverages and limits set forth in this Paragraph 3.A., to provide protection from claims that may arise out of or result from Contractor's performance or obligations pursuant to this Agreement, whether such performance is by Contractor, by anyone directly or indirectly employed by Contractor, or by anyone who acts on behalf of Contractor, including any subcontractors of Contractor. The minimum insurance coverages and limits to be acquired by Contractor are as follows:

(1) Commercial General Liability Insurance:

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

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

(3) Workmen's Compensation and Employer Liability Insurance

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

All policies listed herein shall be on an occurrence basis.

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

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

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

4. Term. The term of this Agreement shall commence on February 1, 2023 and shall terminate by January 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<br>c/o <u>CliftonLarsonAllen</u><br>Attention: Denise Denslow<br>8990 East Crescent Parkway, Suite 300<br>Greenwood Village, CO 80111<br>Email: denise.denslow@CLAconnect.com |
|---------------------|---|



If to Contractor: Environmental Designs, Inc.  
Attn: Ross Morrison  
12511 E, 112<sup>th</sup> Avenue  
Henderson, CO 80640  
Email: [rmorrison@environmentaldesigns.net](mailto:rmorrison@environmentaldesigns.net)

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

8. Subject to Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year.

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

10. Indemnification. Contractor shall indemnify, assume all responsibility for, and hold harmless the District and each of its directors, officers, consultants, employees, servants, agents, and authorized volunteers, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities arising, or alleging to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Contractor or any of its subcontractors, agents or employees, in connection with Contractor's performance, duties, and obligations pursuant to this Agreement; provided, however, that Contractor shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the District or any third party under the control or supervision of the District. The obligations of the indemnifications extended by Contractor to the District under this Paragraph 10 shall survive termination or expiration of this Agreement.

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

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

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

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

15. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

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

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

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

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.)

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

**DISTRICT:**

**FOOTHILLS METROPOLITAN DISTRICT**

\_\_\_\_\_  
By: Rishi Loona  
Its: President

**CONTRACTOR:**

**ENVIRONMENTAL DESIGNS, INC.**

\_\_\_\_\_  
By: Ross Morrison  
Its: \_\_\_\_\_

**EXHIBIT A**

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



# ENVIRONMENTAL DESIGNS, INC.

30

DENVER METRO  
(303) 287-9113  
12511 E. 112TH AVE.  
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(970) 237-6225  
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LOVELAND, CO 80538

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## ADDITIONAL SERVICES ADDENDUM

### Additional Scope of Services (the "Work") to the LANDSCAPE MAINTENANCE AGREEMENT

EDI Contact: Ross Morrison

Proposal #: 106891

Project Name: Foothills Metro District

Project Address 215 E Foothills Parkway Suite 220, 80525, CO 80525

THIS ADDITIONAL SERVICES ADDENDUM (the "Addendum") is made part of the LANDSCAPE MAINTENANCE AGREEMENT and more specifically Exhibit A, Scope of Services (the "Work") by and between Environmental Designs, Inc. (the "Contractor") and Foothills Metro District (the "Client") entered into on 2/1/2023. The Client and Contractor agree as follows:

#### 1. ADDITIONAL SCOPE OF WORK

Detention Pond Clean Up

Frequency included in this Agreement

2

EDI will clean up the 6 detention ponds maintained and managed by Foothills Mall up to 2 times per year.

Group Price

\$8,166.67

By initialing here, Client agrees to adding only the services in this group to the Standard Maintenance Agreement. If all groups are not accepted by Client then the final price of this Addendum shall be adjusted accordingly.

#### 2. PAYMENT TERMS

By initialing here Client agrees to have the services approved above invoiced in whole at the time that the services are performed.

Total Price of Addendum:

**\$8,166.67**

By initialing here Client agrees to have the services approved above added to its monthly invoice outlined in the Landscape Maintenance Agreement

12 Monthly Installments of:

**\$680.56**

Starting:

**February 2023**

Ending:

**January 2024**

#### 3. ACCEPTANCE

ENVIRONMENTAL DESIGNS, INC.  
12511 E. 112th. Avenue  
Henderson, CO 80640  
303-287-9113

Foothills Metro District  
215 E Foothills Parkway Suite 220  
80525, CO 80525  
970-226-5556

Contractor Signature

Date

Client Signature

Date

Printed Name

Printed Name

Award-Winning Landscape Architecture, Construction, & Maintenance since 1989

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970.237.6225 Northern Colorado

12511 East 112th Avenue, Brighton, CO 80640

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