

MAINTENANCE AGREEMENT FOR FOUNDRY PUBLIC PLAZA

THIS MAINTENANCE AGREEMENT FOR FOUNDRY PUBLIC PLAZA (“Agreement”) is entered into and effective as of this 29th day of January, 2020, by and between Foundry Loveland Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and Brinkman Real Estate Management, LLC, a Colorado limited liability company (the “BREM”). The District and BREM each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, pursuant to the Service Plan for Foundry Loveland Metropolitan District (the “Service Plan”), the District is responsible for assisting in the financing, construction, operations, and maintenance of public improvements for the redevelopment of certain real property in the downtown area of the City of Loveland, Colorado known as “The Foundry” (the “Project”); and

WHEREAS, a portion of the Project contains public plazas, and additional areas, which consists of real property (the “Property”) and improvements thereon, including but not limited to, sidewalks, walkways, landscaping, sculpture(s), clock and splash pad (the “Improvements”), as depicted in Exhibit A attached hereto and incorporated herein by this reference (the Property and Improvements are collectively referred to herein as the “Metro District Area”); and

WHEREAS, as contemplated in the Service Plan, the District will own, operate, and maintain the Metro District Area upon completion of construction by the developer of the Project and impose property taxes to provide for the operations and maintenance thereof; and

WHEREAS, the developer has completed construction of the Metro District Area and conveyed the Metro District Area to the District; and

WHEREAS, the District desires to engage BREM to manage and provide for the operation and maintenance of the Metro District Area on behalf of the District and BREM is willing to provide such services for the District, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT AND COVENANTS

1. Scope of Services. BREM shall manage the operation and maintenance of the Metro District Area on behalf of the District and perform, or cause to be performed via Service Contracts (as defined herein), the specific maintenance duties set forth in the Scope of Services in Exhibit B attached hereto and incorporated herein by reference (“Services”). For purposes of this Agreement, the Services provided by BREM will consist of furnishing such Services either directly by BREM or via contracts entered into for and in the name of the District and managed by BREM (“Service Contracts”) as such Service Contracts are authorized pursuant to Section 1.A.(5) herein. The District may, from time to time, request changes to the Services to be performed hereunder. Such

changes, including any increase or decrease in the amount of BREM's compensation, shall be mutually agreed upon by the Parties and set forth in an amendment to this Agreement as provided in Section 14 hereof. No amendment to provide for a change in Services that results in an increase in BREM's compensation shall be authorized and executed by the District unless sufficient funds have been appropriated by the District for payment of the increased compensation, as provided in Section 12 hereof. Except as otherwise provided herein, BREM shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District.

A. General Duties. In connection with performing the Services, BREM agrees to:

(1) Perform all Services required pursuant to this Agreement, and ensure that all Service Contracts are performed, in a prudent, reasonable, and efficient manner and in accordance with operating manuals, operating instructions and emergency procedures provided by the District. BREM shall use all commercially reasonable efforts to optimize the useful life of the Metro District Area and to minimize Reimbursable Costs (as such term is defined in Section 2.B.), outages or other occurrences that may hinder use and access to the Metro District Area by the public;

(2) Furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services;

(3) Take commercially reasonable precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Section 5 hereof;

(4) Advise the District of the status of the Services required by this Agreement via Monthly Reports (as defined in Section 2.C. hereof) and work in coordination with the District's staff and consultants to assure that the District has the most complete information available for the exercise of the District's powers and discretionary authority;

(5) Refrain from entering into any Service Contracts, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District, without the prior written approval of the District. Except as otherwise provided herein, all obligations incurred by BREM shall be the obligations of BREM whom shall hold the District harmless therefrom; and

(6) Manage and oversee all Service Contracts approved by the District and ensure such Service Contracts are performed pursuant to the terms therein and this Agreement; and

B. Compliance with Applicable Law. BREM shall provide, or cause to be provided via Service Contracts, the Services as set forth herein in full compliance with all applicable laws, ordinances, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction in which this Agreement is performed. BREM declares that BREM has

complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the Services to be provided pursuant to this Agreement.

C. Contractors. BREM is solely and fully responsible to the District for the Services to be provided pursuant to this Agreement and the enforcement of any Service Contracts. BREM will require any contractors to obtain the required insurance coverage pursuant to Section 5 hereof and to agree to indemnify the District in the same manner as BREM pursuant to Section 9 hereof.

D. No Right or Interest in District's Assets. BREM shall have no right or interest in any assets of the District, or in any lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein. BREM shall maintain the Metro District Area free and clear of all liens and encumbrances resulting from any action of BREM or any Service Contracts managed by BREM; provided, however, BREM shall not be responsible for any liens and encumbrances recorded against the Property due to non-payment by the District of any amounts due and owing to BREM or under any Service Contract provided that non-payment by the District is not due to default by BREM and/or any contractor under this Agreement or Service Contract.

E. Maintenance Records and Reports. BREM shall maintain all maintenance logs, records, and reports documenting the maintenance of the Metro District Area. BREM shall make all such logs, records and reports available to the District upon request.

F. Litigation. Upon obtaining knowledge thereof, BREM shall promptly notify the District in writing of any litigation, claims, disputes or actions, threatened or filed, concerning the Metro District Area or the Services provided herein.

G. Emergency Action. If an emergency endangering the safety or protection of persons, the Metro District Area, or property located near the Metro District Area occurs, BREM shall promptly notify the District at 970-669-3611 (request District Manager) and take all reasonably necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. BREM shall make reasonable efforts to minimize any Reimbursable Cost associated with remedial action in case of such an emergency.

H. Action in Extraordinary Circumstances. In the event that any equipment in the Metro District Area suffers an unplanned outage (or BREM reasonably believes that such an occurrence is imminent), and BREM has made reasonable, but unsuccessful, efforts to notify and communicate with the District regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement, then BREM shall:

- (i) take all necessary action to prevent or to mitigate such unplanned outage,
- (ii) make reasonable efforts to minimize any cost associated with such remedial action,
- (iii) continue to attempt to notify and communicate with the District regarding the occurrence and the remedial action, and

- (iv) shall not expend for such purposes more than an aggregate of \$5,000.00 in any twelve (12) month period, unless otherwise approved by the District in writing.

I. Major Repair and Replacement. BREM shall promptly notify the District in writing in the event any part of the Metro District Area including, but not limited to, any of the Improvements, are damaged and require major repair or replacement. Major repair and replacement shall mean any repair or replacement costing in excess of \$2,000. The major repair or replacement of any part of the Metro District Area shall be the responsibility of the District, including the cost thereof. If the District has otherwise consented in writing for BREM to make such major repairs or replacement with reimbursement from the District, BREM shall schedule, coordinate, contract and oversee the performance of such activities. BREM also shall be responsible for monitoring and enforcing contract compliance by any contractor performing such work, including taking such steps, short of litigation, to enforce any warranties granted to the District by such contractor.

J. Minor Repairs. BREM shall be authorized to make any minor repairs and replacement of the Improvements as necessary upon notice to the District. Minor repairs shall mean any repair costing \$2,000 or less. Costs associated with minor repairs shall be a Reimbursable Cost.

K. District Responsibilities.

(1) The District shall provide BREM with all manuals, spare parts lists, Metro District Area data books and drawings or by any BREM responsible for construction, installation, repair or maintenance of the Metro District Area or a part thereof.

(2) The District shall train BREM on the proper operation of the splash pad, irrigation system, and any other electrical systems associated with the Services of the Metro District Area.

(3) The District will inspect the Metro District Area, as it deems necessary, to ensure proper maintenance of the Metro District Area by BREM. At the request of the District, BREM shall correct and perform any Services as requested by the District.

2. Compensation. BREM shall be paid for time and materials plus 10% of expenses incurred by BREM for managing Service Contracts on behalf of the District, excluding any costs associated with Reimbursable Costs (as defined in Section 2.B. herein) in providing the Services, in an amount not to exceed \$35,000 annually ("BREM Compensation"), as such amount may be adjusted in the District's annual budget process as further described in Section 2.A. herein, and in accordance with the procedures set forth in this Section 2, which amount has been budgeted and appropriated by the District for the current year of performance of the Services. BREM shall not receive additional compensation for any change in Services provided to the District unless the District and BREM have executed an amendment to this Agreement authorizing the change in Services and the payment of additional compensation to BREM. Any amendments to this Agreement resulting in additional compensation to be paid by the District to BREM shall be

subject to annual appropriations by the District as set forth in Section 12 hereof. The District is exempt from Colorado sales and use taxes. BREM shall use reasonable efforts to ensure that costs for Services charged to the District do not include sales and use taxes.

A. Budget. As part of the District's annual budget process, BREM will prepare and submit to the District, no later than September 1 of each year, a set of preliminary budget documents for the cost of Services to be provided for the Metro District Area for the forthcoming budget year, and shall include the estimated maintenance costs, BREM Compensation, and Reimbursable Costs to the extent known. Upon adoption of a budget by the District for the forthcoming year, the District shall notify BREM of the amounts appropriated for the Services to be provided hereunder. BREM shall be responsible for ensuring that the cost of Services, BREM Compensation and Reimbursable Costs do not exceed the amounts annually appropriated by the District. The District shall not be obligated to pay any amounts that exceed amounts budgeted and appropriated.

B. Reimbursable Costs. The District acknowledges that, in the course of providing Services, BREM may incur unanticipated costs associated with repairs and replacement of portions of the Public Plaza and emergencies. The District hereby agrees to reimburse such costs to BREM ("Reimbursable Costs"), provided that such Reimbursable Costs are appropriated and incurred in accordance with Section 1.G. (*Emergency Actions*), Section 1.H. (*Action in Extraordinary Circumstances*), Section 1.I. (*Repair and Replacement*) and Section 2.J. (*Minor Repairs*). Any such Reimbursable Costs shall be reimbursed to BREM as provided in Section 2.C. herein, subject to the review and approval of such costs by the District. BREM shall be responsible for all costs associated with any repairs and replacement of any portion of the Metro District Area due to damage caused by BREM's performance of the Services and shall not be considered Reimbursable Costs by the District.

C. Monthly Reports and Invoices. Within ten (10) business days following the last day of each calendar month, BREM shall submit a "Monthly Report" consisting of (i) a progress report, in detail acceptable to the District, covering all activities during such month with respect to maintenance (including information regarding the availability, outages, accidents and emergencies) and minor repairs of the Metro District Area. The monthly report shall include a listing of any significant maintenance problems along with immediately planned remedial actions, (ii) an invoice summarizing costs currently due, and (iii) a statement setting forth any and all Reimbursable Costs paid or incurred in such month, which statement shall itemize, in detail acceptable to the District, the computation of such Reimbursable Costs ("Monthly Report"). The District shall pay BREM's invoice within thirty (30) days of receipt of the Monthly Report. The District reserves the right to inspect all Services completed and invoiced to the District prior to payment. In the event inspected services are not accepted for payment by the District, the terms of Section 2.D. herein shall apply.

D. Inspection of Services. The District may inspect the Services provided at any time throughout the term of this Agreement and shall notify BREM if, in the District's discretion, any or all Services are not provided in accordance with this Agreement. Failure by BREM to properly provide the Services required by this Agreement shall constitute a default hereunder. In such case, the District shall provide written notice of said default to BREM. BREM shall have ten (10) days

to cure the default unless otherwise agreed to by the Parties. If BREM fails to cure the default within the time period provided or otherwise agreed to by the Parties, or fails to begin to cure with commercially reasonable efforts, the District shall be entitled to pursue all remedies provided by law and in equity, including specific performance, and to recover all costs and reasonable attorney fees incurred in any suit or claim brought by the District to enforce the terms of this Agreement. In addition, in the event of default by BREM, the District may hire a third party to complete the Services and BREM agrees to pay all reasonable costs incurred by the District for the completion of the Services by a third party.

E. Compensation Upon Termination. In the event this Agreement is terminated as provided in Section 4 hereof, the District shall compensate BREM, as provided in Section 2 hereof, up to and including the date of termination upon receipt of a final Monthly Report and invoice from BREM, subject to review and approval by the District. Compensation for any work in progress shall be prorated as to the percentage of work completed as of the date of notice of termination or the effective date of termination, as applicable. In ascertaining the Services actually rendered hereunder up to the date of notice of termination or the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress pertaining to the Services contemplated herein.

F. Interest. Any amount owed to either Party under this Agreement by the other Party which remains unpaid more than thirty (30) days after the date such amount is due and payable shall begin to accrue interest at one- and one-half percent (1.5%) per month commencing on the thirty-first day after such due date.

3. District Agreements. The District may enter into agreements with third-party entities related to the operations of the District and the Metro District Area, including the scheduling of events held at the Metro District Area. The District may enter into license and listing agreements with public or private entities for purposes of leasing any portion of the Metro District Area for any programming and/or events to be held at the Metro District Area.

4. Term; Termination. This Agreement shall remain in full force and effect until such time the Agreement is terminated by the Parties as set forth herein; provided that, for each fiscal year that this Agreement remains in effect, payment for such Services in subsequent fiscal years shall be subject to annual appropriations by the District as set forth in Section 12 hereof. Unless otherwise agreed to by the Parties, either Party may terminate this Agreement for any reason or no reason upon 45-day written notice to the non-terminating Party. Upon termination of the Agreement by either Party or both Parties, the District shall compensate BREM pursuant to Section 2.E. of this Agreement. BREM shall furnish the District with any and all logs and records related to BREM's provision of the Services, including copies of any warranties for an Improvements, upon receipt of final compensation from the District. Upon the date of termination of this Agreement, the District shall manage and assume oversight of any current Service Contracts entered into in the name of the District.

5. Insurance.

A. BREM Minimum Scope and Limits of Insurance. BREM shall acquire and maintain in full force and effect during the entire term of this Agreement, and at its sole cost and expense, including any extensions of this Agreement, the minimum insurance coverages and limits set forth in this Section 5.A., to provide protection from claims that may arise out of or result from BREM's performance or obligations pursuant to this Agreement, whether such performance is by BREM, by anyone directly or indirectly employed by BREM, or by anyone who acts on behalf of BREM, including any subcontractors of BREM. The minimum insurance coverages and limits to be acquired by BREM 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) Worker's Compensation and Employer Liability Insurance

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

(4) Umbrella Policy: \$ 1,000,000

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). BREM's insurance coverage shall be primary insurance and non-contributory with respect to all other available insurance sources.

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

E. Notice. BREM agrees to provide the District with a minimum 10-day notice for the cancellation of any insurance policies required by this Agreement due to the non-payment of a premium and with a minimum of a 30-day notice for any change to or cancellation of an insurance

policy other than for non-payment of a premium. Any failure on the part of the BREM to comply with the notice reporting provisions or other conditions of the insurance policies set forth herein shall not affect the obligation of the BREM to provide the required coverage to the District and its directors, officers, employees, and agents.

F. Subcontractor Insurance. If BREM subcontracts any portion(s) of the Services, BREM shall require each subcontractor retained by BREM to acquire and maintain insurance coverage as set forth in this Section 5. BREM shall require each subcontractor to provide to BREM insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section 5. BREM shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. BREM shall, upon District request, submit such insurance certificates and endorsements to the District for review. Failure to acquire and maintain subcontractor insurance certificates shall be a material breach of this Agreement.

G. Non-limiting. No provision, term or condition contained in this Section 5 of the Agreement shall be construed as limiting in any way the indemnification provision contained in Section 9 hereof, or any rights, immunities and protections provided to the District by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., or the extent to which BREM may be held responsible for payments of damages to persons or property.

6. Representatives. The District and BREM shall each designate a representative (“Designated Representative”) to act on its behalf in overseeing the performance of this Agreement. The District and BREM may change their respective Designated Representatives upon written notice to the other Party as provided in this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between the District and BREM that are required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal corporate approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal. In no event shall the Designated Representative for the District take any action that would create an additional or increased financial obligation than otherwise provided herein unless such additional or increased financial obligation has been approved, and such funds appropriated, by the District.

7. Illegal Aliens.

A. Certification. Prior to the execution of this Agreement, BREM shall certify to the District, as attached hereto as Exhibit C, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that BREM will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment’s Employment Verification Program (the “Department Program”), as further described in Section 7.F. herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

B. Prohibited Acts. BREM shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(2) Enter into a contract with a subcontractor that fails to certify to BREM that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

(1) BREM has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(2) BREM shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(3) If BREM obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, BREM shall:

(i) Notify the subcontractor and the District within three (3) days that BREM has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that BREM shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

D. Duty to Comply with Investigations. BREM shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), C.R.S. to ensure that BREM is complying with this Section 7 of the Agreement.

E. Breach. If BREM violates a provision of this Section 7, the District may terminate the Agreement for breach of the Agreement. If the Agreement is so terminated, BREM shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if BREM violates a provision of this Section 7 of the Agreement and the District terminates the Agreement.

F. Department Program. If BREM participates in the Department Program in lieu of the E-Verify Program, BREM shall notify the Department and the District of such participation. BREM shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the BREM has examined the legal work status

of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and has not altered or falsified the identification documents for such employees. BREM shall provide a written, notarized copy of the affirmation to the District.

8. Independent Contractor. BREM is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the District other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between the District and any of the BREM's employees. Neither BREM nor any of BREM's employees are or shall be deemed employees of the District. BREM is not, and shall not act as, the agent of the District. The employees who assist BREM in the performance of the Services shall at all times be under BREM's exclusive direction and control and shall be employees of BREM and not employees of the District. BREM shall pay all wages, salaries, and other amounts due BREM's employees in connection with the performance of the Services and shall be responsible for all reports and obligations respecting such employees including, without limitation social security tax, income tax withholding, unemployment compensation, worker's compensation, employee benefits and similar matters. Further, BREM has sole authority and responsibility to employ, discharge, and otherwise control BREM's employees. BREM has sole authority and responsibility as principal for BREM's agents, employees, subcontractors and all others BREM hires to perform or assist in performing the Services.

9. Indemnification. BREM 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 BREM or any of its subcontractors, agents or employees, in connection with BREM's performance, duties, and obligations pursuant to this Agreement; provided, however, that BREM shall not be liable for any claim, loss, damage, injury or liability caused by the negligence or fault of the District or any third party under the control or supervision of the District. If BREM is providing architectural, engineering, surveying, or other design services, then the extent of BREM's obligation to indemnify or hold harmless the District may be determined only after BREM's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between BREM and the District. The obligations of the indemnifications extended by BREM to the District under this Section 9 shall survive termination or expiration of this Agreement. Upon execution of this Agreement, BREM shall provide the District with a copy of BREM's IRS Form W-9, Request for Taxpayer Identification Number.

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

11. Liability of the District. No provision, covenant, or agreement contained in this Agreement, nor any obligations herein imposed upon the District shall constitute or create an

indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

12. 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, including for any changes in Services authorized pursuant to an amendment to this Agreement, are subject to annual appropriations. The District has appropriated sufficient funds for this Agreement for the current fiscal year of performance. Payment for any provisions of Services into subsequent fiscal years shall be subject to annual appropriations by the District.

13. Notices. 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: Foundry Loveland Metropolitan District
c/o Pinnacle Consulting Group, Inc.
Attn: Shannon McEvoy
550 W. Eisenhower Blvd
Loveland, CO 80538
Email: shannonm@pinnacleconsultinggroupinc.com

With a Copy to: Icenogle Seaver Pogue, PC.
Attn: Alan D. Pogue
4725 S. Monaco St., Suite 360
Denver, Colorado 80237
Email: APogue@ISP-law.com

If to the BREM: Brinkman Real Estate Management, LLC
Attn: _____
3528 Precision Drive, Suite 100
Fort Collins, CO 80528
Email: _____

14. 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 BREM.

15. Assignment. BREM shall not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part, without the prior written consent of the District. Any attempted assignment or transfer shall be void and shall constitute a breach of the Agreement and cause for termination of this Agreement. Regardless of the District's consent, no assignment or transfer shall release BREM from BREM's obligation to perform all other obligations required to be performed by BREM hereunder for the term of the Agreement. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

16. No Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence of event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

17. Force Majeure. If BREM is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, BREM shall be excused from whatever performance is impaired by such Force Majeure Event, provided that BREM promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the District stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of BREM which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence.

18. Representations and Warranties. Each Party represents and warrants to the other Party that:

A. such Party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

B. to the best of such Party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such Party; and

C. there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement.

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

20. 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.

21. 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.

22. No Third-Party Beneficiaries. This Agreement is entered into for the sole benefit of the District and BREM and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement.

21. Conflicts. The terms of this Agreement may be used to construe the intent of the Parties in connection with any exhibits, addendums or amendments attached hereto, and shall be read as nearly as possible to make the provisions of any such exhibits, addendums, and/or amendments and this Agreement fully effective. Should any irreconcilable conflict arise between the terms of this Agreement and the provisions of any such exhibits, addendums, or amendments, the provisions of this Agreement shall prevail.

22. Headings. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

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

24. 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.

25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the date and year first above written.

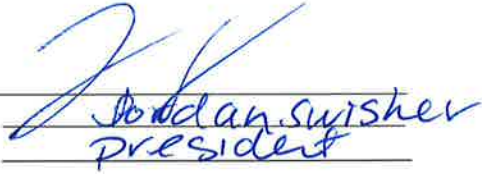
**BRINKMAN REAL ESTATE MANAGEMENT
LLC**, a Colorado limited liability company



By: Ashley Davidson

Its: Director

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

By: 
Its: president

ATTEST:



By: ALAN D PANK
Its: GENERAL COUNSEL

EXHIBIT A

DEPICTION OF METRO DISTRICT AREA

EXHIBIT B

SCOPE OF SERVICES

BREM shall perform, or cause to be performed via Service Contracts, the following Services of the Metro District Area, as depicted on Exhibit A to this Agreement. Services include but may not be limited to the following:

Landscaping

- Weekly Services: mow, trim, edge, blow, trash, bed weeds April-October
- Fertilization (2)
- Aeration (1)
- Spring Cleanup
- Fall Cleanup
- Annual cutback grasses and perennials
- Annual color (3 times) in planters and hanging baskets
- Pruning (1-2 + touchup)
- Pest control
- Plant health – aphid, scale treatment, deep root feed for trees
- Weed control – broadleaf (4), crack weed spray (5)

Irrigation

- Activation
- Winterization
- Monthly check
- Repairs
- Backflow testing and certification
- Hand water non-irrigated beds (daily, as needed)
- Subscribe to UNCC (811) as Tier 1 provider then monitor locate notices and promptly locate underground irrigation lines

Mechanical Room

- Equipment- regular and special maintenance, splash pad
- Cleaning, pest control
- Repair and replacement

Restroom

- Cleaning, pest control
- Regular maintenance/supplies during events only
- Equipment/fixture maintenance
- Equipment/fixture repair and replacement

Tree Grates

- Cleaning
- Repair and replacement

Trash

- Trash removal (3/wk.), replace bags, all year
 - Clean, repair, replace trash cans, as needed
- Dog waste stations (3/wk.), replace bags, all year
 - Clean, repair, replace dog waste stations, as needed
- Pressure wash hardscapes and alley, as needed
- General site trash removal- regular

Electrical/Lighting

- All lighting types
- Monthly inspections
- Repair and replacement
- Subscribe to UNCC (811) as Tier 1 provider then monitor locate notices and promptly locate underground electrical lines

Pavers

- Repair and replacement
- Regular maintenance

Benches, Handrails, Bike Racks

- Regular inspections
- Repair and replacement
- Re-painting, as needed

Fire pits

- Regular inspections/maintenance
- Repair and replacement

Splash Pad

- Regular inspections/maintenance
- Repair and replacement

Bollards (permanent and removable), Skate Deterrents, Trench grates

- Regular inspection/maintenance
- Repair and replacement
- Re-painting, as needed

Shade shelter

- Inspections
- Repair and replacement
- Re-painting, as needed

Snow Removal

- 2" tolerance, deicer as needed

Holiday Lighting/Decorations

- **Install, removal, monitor and maintain**

Sculpture

- **Regular inspection/maintenance**
- **Repair and replacement**
- **Re-painting, as needed**

Clock

- **Regular inspection/maintenance**
- **Repair and replacement**

EXHIBIT C


CERTIFICATION
REGARDING ILLEGAL ALIENS

To: FOUNDRY LOVELAND METROPOLITAN DISTRICT

I, Ashley Davidson, as Director of Brinkman Real Estate Management, LLC, the prospective "BREM" for that certain contract for Maintenance Agreement For Foundry Public Plaza ("Agreement") to be entered into with Foundry Loveland Metropolitan District, do hereby certify on behalf of said BREM that, as of the date of this Certification, BREM does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that BREM will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Executed on the 21st of January, 2020.

**BRINKMAN REAL ESTATE
MANAGEMENT, LLC,**
a Colorado limited liability company


By: Ashley Davidson
Its: Director