

**TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT**

Special Board Meeting

Friday, June 16, 2023, at 11:00 AM



Via tele/videoconference:

<https://video.cloudoffice.avaya.com/join/383981621>

United States: (213) 463-4500

**Access Code:** 383981621

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<b>Board of Director</b>	<b>Title</b>	<b>Term</b>
David Hewett	President	May 2027
Raymond O’Sullivan	Treasurer	May 2027
Roger Lemmon	Secretary	May 2025
Jack Wallace Mason	Assistant Secretary	May 2025
Jennifer Mullins	Assistant Secretary	May 2027

**AGENDA**

1. Call to Order
2. Declaration of Quorum/Director Qualifications/Disclosure Matters
3. Approval of Agenda
4. Public Comment - Members of the public may express their views to the Board on matters that affect the Districts. Comments will be limited to three (3) minutes.
5. Financial Matters
6. Legal Matters
  - a. Revocation of Resolution Imposing Fees (**enclosure**)
7. Adjournment – Next Regular Board Meeting is scheduled for July 19, 2023, at 11:00 a.m.

**RESOLUTION  
OF THE  
BOARD OF DIRECTORS OF  
TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT  
CONCERNING THE IMPOSITION OF AN OPERATIONS FEE**

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WHEREAS, Tuscan Foothills Village Metropolitan District (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized and existing pursuant to §§ 32-1-101, *et seq.*, C.R.S., as amended (the “**Special District Act**”); and

WHEREAS, pursuant to § 32-1-1001(1)(h), C.R.S., the Board of Directors of the District (the “**Board**”) shall have the management, control, and supervision of all the business and affairs of the District; and

WHEREAS, the Board has determined it to be in the best interests of the District, and the property owners, taxpayers, and residents within the District, and the general public, to acquire, construct, operate, and maintain certain amenities and facilities benefitting the general public and property owners, taxpayers, and residents within the District, which amenities and facilities generally include streets, sidewalks and landscaping, improvements, facilities, appurtenances, and rights-of-way (collectively, the “**Facilities**”); and

WHEREAS, the Board has determined it to be in the best interests of the District, and the property owners, taxpayers, and residents within the District, to provide certain services to the property owners, taxpayers, and residents within the District, and the general public, including without limitation, landscape maintenance, and snow removal (collectively, the “**Services**”); and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., the District is authorized to fix and impose fees, rates, tolls, penalties, and charges for services or facilities furnished by the District which, until paid, shall constitute a perpetual lien on and against the property served; and

WHEREAS, the District incurs certain direct and indirect costs associated with the upkeep, repair, replacement, improvement, reconstruction, operation, and maintenance of the Facilities, as necessary, inclusive of the costs of utilities and capital replacement costs (collectively, the “**Facility Costs**”) in order that the Facilities may be properly provided, operated, and maintained; and

WHEREAS, the District incurs certain direct and indirect costs associated with the provision of the Services in order that the Services may be properly provided, the property within the District maintained, and that the health, safety, and welfare of the District and its inhabitants may be safeguarded (collectively, the “**Service Costs**”); and

WHEREAS, the establishment and continuation of a fair and equitable fee (the “**Operations Fee**”) to provide a source of funding to pay for the Facility Costs and the Service Costs, (collectively, the “**Operations Costs**”), which Operations Costs are generally attributable

to the persons and/or properties subject to such Operations Fees, is necessary to provide for the common good and for the prosperity and general welfare of the property owners, taxpayers, and residents within the District, and the general public and for the orderly and uniform administration of the District's affairs; and

WHEREAS, the District finds that the Operations Fee, as set forth in this Resolution, is reasonably related to the overall cost of providing the Facilities and Services and paying the Operations Costs, and that imposition thereof is necessary and appropriate.

NOW, THEREFORE, be it resolved by the Board as follows:

1. DEFINITIONS. Except as otherwise expressly provided or where the context indicates otherwise, the following capitalized terms shall have the respective meanings set forth below:

**“Apartment Unit”** means a unit within an apartment building which unit is held for lease or rent for residential occupancy and for which a final certificate of occupancy has been issued.

**“District Boundaries”** means the legal boundaries of the District, as the same are established and amended from time to time pursuant to the Special District Act, as more particularly set forth in the map and legal description attached hereto as **Exhibit B** and incorporated herein by this reference.

**“Due Date”** means the date by which the Operations Fee is due, which Due Date is reflected on the Schedule of Fees.

**“End User”** means any third-party homeowner or tenant of any homeowner occupying or intending to occupy a Residential Unit and any third-party owner or tenant occupying or intending to occupy a Commercial Unit. End User specifically excludes a tenant occupying an Apartment Unit.

**“Fee Schedule”** or **“Schedule of Fees”** means the schedule of fees set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, until and unless otherwise amended and/or repealed.

**“Lot”** means each parcel of land established by a recorded final subdivision plat and which is located within the District Boundaries.

**“Residential Unit”** means each residential dwelling unit (including, without limitation, condominiums, townhomes, and any other attached dwelling unit and detached single family dwelling units) located on a Lot which has been Transferred to an End User.

**“Transfer”** or **“Transferred”** shall include a sale, conveyance, or transfer by deed, instrument, writing, lease, or any other documents or otherwise by which real property is sold, granted, let, assigned, transferred, exchanged, or otherwise vested in an End User.

“**Vacant Lot**” means each parcel of land within the District established by a recorded final subdivision plat, but specifically excluding any parcel upon which one or more Residential Units, Commercial Units, or Apartment Units is situated, and specifically excluding any parcel owned by the District.

2. OPERATIONS FEE.

a. The Board has determined, and does hereby determine, that it is in the best interests of the property owners, taxpayers, and residents within the District, and the general public to impose, and does hereby impose an Operations Fee to fund the Operations Costs. The Operations Fee is hereby established and imposed in an amount as set forth by the District from time to time, pursuant to the “Fee Schedule” and shall constitute the rate in effect until such schedule is amended or repealed. The Fee Schedule is set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. The Operations Fee shall consist of a recurring payment (the “**Recurring Payment**”) and a separate payment imposed on the Transfer of a Residential Unit to an End User (the “**Transfer Payment**”), which together shall comprise the Operations Fee.

b. The Transfer Payment shall be imposed on all Transfers of a Residential Unit and Commercial Unit to an End User. The Transfer Payment shall not apply to any of the following, except to the extent the District determines that such exception is being undertaken for the purpose of improperly avoiding the Operations Fee:

i. Any Transfer wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district, or other political subdivisions of this State, is either the grantor or the grantee.

ii. Any Transfer by document, decree, or agreement partitioning, terminating, or evidencing termination of a joint tenancy, tenancy in common, or other co-ownership; however, if additional consideration or value is paid in connection with such partition or termination the Transfer Payment shall apply and be based upon such additional consideration.

iii. Any Transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.

iv. Any Transfer made and delivered without consideration for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously made; making minor boundary adjustments; removing clouds of title; or granting easements, rights-of-way, or licenses.

v. Any decree or order of a court of record quieting, determining, or resting title, except for a decree of foreclosure.

vi. Transfers to secure a debt or other obligation, or releases other than by foreclosure, which is security for a debt or other obligation.

vii. Transfers pursuant to a decree or separation of divorce.

c. The Board has determined, and does hereby determine, that the Operations Fee is reasonably related to the overall cost of providing the Services, and paying the Operations Costs, and is imposed on those who are reasonably likely to benefit from or use the Facilities and Services.

d. The revenues generated by the Operations Fee will be accounted for separately from other revenues of the District. The Operations Fee revenue will be used solely for the purpose of paying Operations Costs and may not be used by the District to pay for general administrative costs of the District.

3. LATE FEES AND INTEREST. Pursuant to § 29-1-1102(3), C.R.S., any Operations Fee not paid in full within thirty (30) days after the scheduled Due Date will be assessed a late fee in the amount of Fifteen Dollars (\$15.00) or up to five percent (5%) per month, or fraction thereof, not to exceed a total of twenty-five percent (25%) of the amount due. Interest will also accrue on any outstanding Operations Fees, exclusive of assessed late fees, penalties, interest, and any other costs of collection, specially including but not limited to attorneys' fees, at the rate of 18% per annum, pursuant to § 29-1-1102(7), C.R.S. The District may institute such remedies and collection procedures as authorized under Colorado law, including but not limited to foreclosure of its perpetual lien. The defaulting property owner shall pay all fees and costs, specifically including but not limited to attorneys' fees and costs and costs associated with the collection of delinquent fees, incurred by the District and/or its consultants in connection with the foregoing.

4. PAYMENT. Payment for all Operations Fees, fees, rates, tolls, penalties, charges, interest, and attorneys' fees shall be made by check or equivalent form acceptable to the District, made payable to "Tuscan Foothills Village Metropolitan District" and sent to the address indicated on the Fee Schedule. The District may change the payment address from time to time and such change shall not require an amendment to this Resolution.

5. LIEN. The Operations Fees imposed hereunder, together with any and all late fees, interest, penalties, and costs of collection, shall, until paid, constitute a statutory, perpetual lien on and against the property served, and any such lien may be foreclosed in the manner provided by the laws of the State of Colorado for the foreclosure of mechanic's liens, pursuant to § 32-1-1001(1)(j)(I), C.R.S. Said lien may be foreclosed at such time as the District, in its sole discretion, may determine. The lien shall be perpetual in nature (as defined by the laws of the State of Colorado) on the property and shall run with the land. This Resolution shall be recorded in the offices of the Clerk and Recorder of El Paso County, Colorado.

6. SEVERABILITY. If any portion of this Resolution is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Resolution, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this

Resolution a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable.

7. THE PROPERTY. This Resolution shall apply to all property within the District Boundaries, including but not limited to the property set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, and any additional property included into the District after the date of this Resolution.

8. EFFECTIVE DATE. This Resolution shall become effective April 19, 2023.

ADOPTED this 19<sup>th</sup> day of April 2023.

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



\_\_\_\_\_  
Officer of the District

**ATTEST:**

  
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**APPROVED AS TO FORM:**

**WHITE BEAR ANKELE TANAKA & WALDRON**  
Attorneys At Law

\_\_\_\_\_  
General Counsel to the District

**EXHIBIT A**  
**TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT**  
**Schedule of Fees**  
**Effective April 19, 2023**

Schedule of Fees		
Fee Type	Classifications	Rate
<b>Operations Fee – Recurring Payment</b>	Residential Unit	\$617 /year
The Due Date for each Operations fee is July 1 <sup>st</sup> of each year.		
<b>Operations Fee – Payment Due Upon a Transfer</b>	Residential Unit	\$100 per Transfer
The Due Date for each Operations Fee - Payment Due Upon Transfer is the date upon which the Transfer occurs.		

**PAYMENTS:** Payment for each fee shall be made payable to Tuscan Foothills Village Metropolitan District and sent to the following address for receipt by the Due Date:

Tuscan Foothills Village Metropolitan District  
c/o WSDM, LLC  
614 N Tejon Street  
Colorado Springs, CO 80903

**EXHIBIT B**

**TUSCAN FOOTHILLS VILLAGE METROPOLITAN DISTRICT**

**District Boundaries**